THE NORTH CAROLINA CODE OF 1943

Legislative Edition

N. C. Utilities Commission

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Legislative Edition

THE NORTH CAROLINA CODE OF 1943

PREPARED BY AUTHORITY OF CHAPTER 315 OF THE PUBLIC LAWS OF 1939 AND CHAPTER 35 OF THE PUBLIC LAWS OF 1941

BY

The Division of Legislative Drafting and Codification of Statutes

North Carolina Department of Justice

THE MICHIE COMPANY, LAW PUBLISHERS

CHARLOTTESVILLE, VA.

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Recommendations of the Legislative Commission on Recodification to the General Assembly of North Carolina

The undersigned members of the Legislative Commission on Recodification, appointed by Joint Resolution No. 33 of the General Assembly of 1941, respectfully make herewith their report and recommendations to the General Assembly of 1943:

Shortly after the adjournment of the 1941 Session of the General Assembly, the members of the Commission met at the office of the Attorney General and organized by electing F. E. Wallace as Chairman. The Commission has worked in close cooperation with the Attorney General and the Division of Legislative Drafting and Codification of Statutes of the Department of Justice. At the first and subsequent meetings of the Commission, full and detailed consideration was given to the problems presented in the recodification work and to the means which should be employed to meet those problems.

The initial task of the Commission was the consideration and approval of a contract with a publisher for the publication of a legislative edition of the code. It was clear that the recodification work could not adequately be presented to the General Assembly without the publication of a legislative edition in accordance with the practice followed with respect to prior North Carolina codes. After a consideration of the elements of cost involved and of estimates by other publishers, it appeared to the Commission that the proposed contract with The Michie Company was fair and reasonable and to the best interest of the State and it was therefore approved.

The Commission then gave careful attention to the plan for the final code. Questions of methods of the legal work of revision, number of volumes, size, type, paper, chapter arrangement, annotations, numbering system and index were considered in detail and approved by the Commission. The use of type of the same size used in the current Michie's unofficial code is necessitated by the limitations of the legislative act authorizing the recodification. Special attention was given to the methods of meeting the need for an effective index and it is believed that the index of the final code will be found satisfactory. A detailed explanation of the methods of work, the arrangement and the mechanical features of the new code, and the reasons for many of the decisions reached may be found in the preface to this edition.

The text of all the statutes contained in the legislative edition together with the explanatory statements prepared by the Codification Division have been submitted to the Commission. The statutes and the work thereon have been examined and studied by the Commission. After the making of various changes and suggestions, the work reached its present form and is found by the Commission to be a true and correct statement of the general and public statutes of this State.

The Commission, therefore, recommends that the statutes embodied in this legislative edition of the proposed code be adopted as the official code of North

Carolina, and that the session laws of a general and public nature enacted by the General Assembly of 1943 be codified and included in the first edition of the official code to be printed under the agreement with the publisher as soon as possible after the adjournment of the 1943 Session of the General Assembly.

F. E. WALLACE, *Chairman*
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Preface

The Act of the General Assembly creating the North Carolina Department of Justice, Ch. 315, P. L. 1939, authorized the Attorney General to set up therein a division to be designated as the Division of Legislative Drafting and Codification of Statutes.

This Division was assigned two principal duties by the statute: (1) to prepare bills to be presented to the General Assembly at the request of the Governor, state officials and departments, and members of the General Assembly, and to advise and assist counties, cities and towns in drafting legislation to be submitted to the General Assembly; (2) to supervise the recodification of the general public statutes and to keep such recodification current.

With respect to the latter duty, the General Assembly authorized the division "to make an arrangement with any publisher or publishers for doing the necessary editorial work and publication of the recodification, annotation, appendixes thereto, and indexing of such recodification of the Statute Law of North Carolina and all Acts of the General Assembly thereafter passed, which arrangement will provide that all of such work shall be done by such publisher or publishers without cost to the State, but shall be done under the supervision and direction of the said division and subject to the final approval and acceptance by the General Assembly of North Carolina by such laws as may hereafter be passed with respect thereto, and if such recodification is adopted by the General Assembly, the same may be adopted and given such legal effect and legal status and character as may be determined and fixed by the General Assembly."

This division was set up on July 1, 1939, with W. J. Adams, Jr., as the director of the staff employed to carry on the work.

At the request of the Attorney General, Honorable Kingsland Van Winkle, President of the North Carolina Bar Association, and Honorable Fred S. Hutchins, President of the North Carolina State Bar, appointed a committee of able lawyers to assist in planning the new code. For the North Carolina Bar Association the following were named: Bennett H. Perry, Henderson; H. G. Hedrick, Durham; H. Gardner Hudson, Winston-Salem; Clifford Frazier, Greensboro; and Bryan Grimes, Washington. For the North Carolina State Bar the following were named: C. W. Tillett, Charlotte; Jack Joyner, Statesville; H. J. Hatcher, Morganton; Frank E. Winslow, Rocky Mount; and William T. Joyner, Raleigh.

At the request of the Attorney General, the following named persons also served as a part of this committee: Honorable A. A. F. Seawell, Associate Justice of the Supreme Court; Dean M. T. Van Hecke, of the University Law School; Dean H. C. Horack, of the Duke University Law School; Dean Dale F. Stansbury, of the Wake Forest Law School; and Dillard S. Gardner, Raleigh, Supreme Court Marshal and Librarian.

Full acknowledgment is made of the valuable assistance given by this strong committee in making out the plans for the new code. The members of this committee very generously responded to the call for this service giving a great deal of their valuable time to it without compensation or even reimbursement for their travel expenses.

The General Assembly of 1941 (Public Laws, Chapter 35) authorized the prep-

aration and printing of this Legislative Edition of the proposed code to be submitted to the General Assembly of 1943. This Act provided, in part, "Such legislative edition shall set forth all the general public laws of North Carolina found by the division to be intended to be in effect, together with any supplemental or implementing legislation recommended by the division as essential to make a complete and clear statement of said laws, in such form and with such arrangement, numbering system, etc., as said division shall determine. . . ."

The General Assembly of 1941 also adopted Joint Resolution No. 33, providing for a Commission on Recodification to cooperate with the Attorney General and the Division of Legislative Drafting and Codification of Statutes, naming on this Commission the following persons:

Representatives F. E. Wallace, J. A. Pritchett, Hubert C. Jarvis, Irving Carlyle, Rupert T. Pickens, Julian R. Allsbrook, J. Q. LeGrand, O. L. Richardson, Arch T. Allen, John Kerr, Jr., George R. Uzzell, W. Frank Taylor, S. O. Worthington, J. T. Pritchett, Forrest A. Pollard, and T. E. Story; Senators Jeff D. Johnson, Jr., E. T. Sanders, J. C. Pittman, Wade B. Matheny, John W. Wallace, John D. Larkins, Jr., Thomas J. Gold, Archie C. Gay, Herbert Leary, and Hugh G. Horton.

The Commission organized shortly after the adjournment of the Legislature and elected Mr. F. E. Wallace as Chairman.

The members of this Commission have cooperated to the fullest possible extent in the manner provided by the Statute. Every chapter and every section of the new code has been checked and approved by the Commission. This has involved an enormous amount of work as must be evident. The cooperation and approval of this Commission affords assurance that the work has been properly done and errors reduced to a minimum.

Plans for the Publication of the Official Code

It is proposed that the official code will be published in four volumes. A one-volume work is no longer practicable because of the increase in the volume of legislation, the great increase in the size of the index, the use of much heavier paper, the inclusion of frontal tables, and the addition of supplemental material, such as State Bar regulations, etc., and additional comparative tables translating section numbers of prior codes to the new code numbers.

The type of the statutes and annotations will be the same size as that of the publisher's 1939 code. Since no money was appropriated for the publication, the publisher's offer was based on a use of its standing type. The index type will be eight point. Fifty pound paper will be used instead of the thirty pound paper used in the publisher's 1939 code. The code will be bound in a durable keratol binding.

The code will be kept current for at least six years by pocket supplements. Annotation supplements will be issued at intervals of six months.

Volume and Chapter Arrangement of Final Code

The arrangement of chapters in the proposed code has proceeded on the basis that such code will in its final form, together with annotations and other supplementary materials, be printed in four volumes. Once the idea of a one-volume final code was abandoned it became necessary to devise a new classification and arrangement of statutes since a purely alphabetical arrangement of chapters would be most

inconvenient in that all too frequently it would be necessary to resort to all volumes in order to consult several related sections appearing in different chapters. Therefore, an effort was made to group related chapters in larger "divisions" and to place related divisions together in each volume. At the same time it was necessary to maintain a balance so that all four volumes will be as nearly uniform in size as is conveniently possible. Within each division the chapters are arranged alphabetically. Under present plans Volume I will contain the Chapters on *Civil Procedure, Courts,* and related matters, *Motor Vehicles,* and *Commercial Laws.* Volume II will contain the divisions relating to *Decedents' Estates, Real and Personal Property, Domestic Relations, Corporations and Associations, Regulations in the Exercise of the Police Power, Occupations, Employer and Employee, Taxation* and a few miscellaneous chapters. Volume III will consist exclusively of divisions containing the chapters relating to *State Government and Agencies, County and City Government,* and *Election Laws.* Volume IV will contain the index, appendixes, and other supplementary materials. The Legislative Commission on Recodification has approved this chapter arrangement.

The space required for printing the index will be much greater than that used for this purpose at present because (1) the index is being expanded considerably as to number of titles and index lines; (2) the size of the type in which it is to be printed will be increased from 6-point to 8-point; and (3) it will be printed two columns to the page instead of three.

Numbering System

The enactment of thousands of new laws since adoption of the Consolidated Statutes of 1919 made it necessary to change the section numbers in the new code unless the present very unsatisfactory plan used in the unofficial code is to be perpetuated.

The choice of a satisfactory numbering system for the new code was carefully studied. The following systems were considered: (1) a decimal numbering system, (2) a purely consecutive numbering system, and (3) a modified form of the consecutive numbering system. It was thought that the decimal system of numbering, although in use in the newer codes, would cause entirely too much confusion, outweighing any theoretical advantage with respect to unlimited expansion. On the other hand, consecutive numbering throughout from section one to the end of the code, as practiced in many older codes, would be open to the objection that it is cumbersome and permits of no addition of new sections without immediately introducing variations in the numbering scheme, resulting ultimately in such a number as "6055(a27½)" or "7880(156)uuu," appearing in the present unofficial code.

It was finally decided that a modified form of consecutive numbering would be the most satisfactory system to adopt, and such a system was approved by the Legislative Commission on Recodification. This system consists of: (1) numbering the *chapters* of the code consecutively, (2) using the *chapter number* as the first part of each code section number, and (3) numbering the *sections in each chapter* consecutively from "one" on through the end of the chapter. The code section number consists of the chapter number, a dash, and the number of the section in the chapter. Thus, the sections in Chapter One are numbered "1-1, 1-2, 1-3, 1-4, etc.;" the sections in Chapter Two are numbered "2-1, 2-2, 2-3, 2-4, etc.;" the

sections in Chapter Three, "3-1, 3-2, 3-3, 3-4, etc." To illustrate further, Section 27 of Chapter Nine will be "9-27." This system will have two advantages. New sections may be added indefinitely at the end of each chapter without necessitating subnumbering and disturbing the numbering system. This numbering system will readily permit the insertions of new chapters with a minimum of inconvenience and confusion in the numbering of the new sections. The old Consolidated Statutes section number has been carried forward in the section history as has been the practice heretofore in placing prior official code references in section histories. Comparative tables translating the Consolidated Statutes and Michie Code section numbers to the new code numbers are being included in an appendix.

Method of Work

Chapter 35 of the Public Laws of 1941 directed that in the Legislative Edition *there should be incorporated such changes as were desirable for codification purposes* without changing the substance or effect of any law. Resolution 33 of the 1941 General Assembly in creating the Commission on Recodification referred to above provided that ". . . the commission shall review and examine the recodification work and consult with and advise the Attorney General and the Division in the revision of the statutes. . . ."

The Division has worked closely with the Legislative Commission and every matter of policy such as the terms of the contract for the Legislative Edition, the chapter arrangement of the code, the numbering system, as well as every change made in any section for the Legislative Edition, has been approved by the Commission.

Certain changes which could not possibly affect the meaning of the statutes have been made without making detailed explanations, such as: (1) conforming the proof to the Consolidated Statutes or to session laws appearing since; (2) correcting section histories; (3) improving section catch-lines so that they will more accurately indicate the contents of the sections; (4) correcting spelling and faulty punctuation; and, (5) making purely formal changes for recodification purposes such as changing "act" to "section" or to specifically inclusive sections or to "article" or "chapter" as might be appropriate under the different circumstances.

Explanatory Reports

Any changes in any law beyond those of the purely formal nature described above are carefully explained in a detailed section-by-section report. Even in this field no change has been made which it is thought would change existing law, but only such changes have been made as were necessary to set forth the laws "found by the Division to be intended to be in effect, together with any supplemental or implementing legislation . . . essential to make a complete and clear statement of said laws . . ." These changes are illustrated in some detail below. There are no hidden or buried changes. Every alteration is spotlighted with an explanation calling attention to the specific change made and setting forth the reasons for it. In view of the length and great number of these explanations it has not been feasible to print them but several copies will be available for consideration by all interested persons: one set will be placed at the disposal of the House, one at the disposal of the Senate and a third will be on file in the Attorney General's

office. This will afford an opportunity to any interested person to study each change in such detail as he may choose.

These changes which are accompanied by explanatory remarks consist of those made:

(1) *To modernize references.*

To illustrate: There are frequently references in the Code to "the preceding section." But since the enactment of the original section a new section has been inserted between the section containing the reference and the section to which reference is made, thus rendering the reference inaccurate. Such a reference is corrected to refer to the proper section (e. g., Section 427 where the correct reference therein is Section 425 instead of "the preceding section").

(2) *To correct improper wording resulting from clerical errors or inadvertence.*

To illustrate: "Affected" is often used when "effected" is obviously intended, and vice-versa. Such wording is corrected. To illustrate further, in Section 7150, second paragraph, line five, the word "pilotage" is used when "postage" was obviously intended. Here, the correct word is substituted.

(3) *To delete statutes expressly repealed.*

(4) *To delete superseded statutes.*

(5) *To delete statutes having only a temporary usefulness, and being without prospective significance.*

To illustrate: Section 4269(a) providing for certain types of refunds by the Governor and Council of State directs that the power granted therein to make such refunds shall not be exercised after July 1, 1927.

(6) *To delete statutes unconstitutional under the decisions of the North Carolina Supreme Court.*

To illustrate: Section 218(v) purports to authorize depositors in banks in certain enumerated counties to assign their claims to debtors of the banks and to permit such debtors to set off such assigned claims against the debts owed by them to the banks. This statute was held unconstitutional in *Edgerton v. Hood,* 205 N. C. 816.

(7) *To delete statutes unconstitutional under the decisions of the United States Supreme Court.*

To illustrate: The Alien Registration Act, Sections 193(a)-193(h), required aliens to register with the Clerk of the Superior Court of the counties where they resided. Under the decision of *Hines v. Davidowitz,* 312 U. S. 52 (1940) such a statute is clearly unenforceable.

(8) *To incorporate in the Code hitherto uncodified statutes which should be codified.*

To illustrate: Chapter 155 of the Public Laws of 1925, the "World War Veterans Loan Act of 1925" is being codified as an article in the chapter dealing with State Departments, Institutions and Commissions.

(9) *To restore to the Code in proper form statutes erroneously deleted.*

To illustrate: Section 3891 prescribed solicitors' fees. Chapter 157 of the Public Laws of 1923 placed solicitors on a salary basis exclusively. Section 3891 subsequently was deleted from the code. This was erroneous in that the same Chapter 157 of the Public Laws of 1923 did not abolish the solicitors' fees but merely diverted them, with certain exceptions, to certain county purposes. Therefore, the section should be restored to furnish the list of fees and to indicate proper application.

(10) *To redraft sections to eliminate obsolete or superseded provisions in the sections.*

(11) *To redraft a section where imperfect expression and ungrammatical construction render sections or portions of sections awkward although there is no ambiguity and the meaning intended can be perceived.*

(12) *To redraft and consolidate related sections or parts of sections dealing with the same aspects of the same subjects.*

To illustrate: Sections 1112(n) and 1112(z), both relating to the adoption and use of a seal by the Utilities Commission, have been combined into a single section.

In codifying the statutes it was necessary to determine what disposition should be made of certain standard provisions or parts of statutes. After a study of codes of other states and other research the following policies were adopted:

(1) Preambles, enacting clauses, repeal provisions and "taking effect" provisions are not codified.

(2) Clauses purporting to exempt pending litigation from the operation of the law are not codified. Their presence in many cases needlessly pads the statutes, and they have no proper function in a permanent code. Their omission from the code will not effect their repeal.

(3) Constitutionality, partial invalidity, or separability clauses, which have become increasingly popular in the enactment of session laws in recent years, have not been codified. It is believed that such provisions serve no useful function inasmuch as the presence of such a provision would be unlikely to preserve any portion of an act held unconstitutional in part which would not remain valid even in the absence of such a provision. The omission of such construction sections does not effect their repeal.

(4) Validating acts, which by reason of the date of validation or the nature of the validating act have in some instances been deleted as obsolete and having no place in a permanent code.

(5) Many state bond acts are not codified. The sections authorizing a specific issue of bonds or notes for specific purposes provide in what amount the bonds or notes shall be issued when they shall mature, the rate of interest they shall bear, and denomination, and the machinery in general for their disposition. Statutes authorizing the specific issuance of bonds or notes, only rarely referred to, soon become obsolete for all practical purposes, and their limited use does not justify the space required to set them out in full in the code. Instead, a synopsis of the purpose for which the bonds or notes are to be issued, together with the citation to the Consolidated Statutes (when the acts appeared therein) and the session laws will be inserted at the end of the appropriate sections. This will afford a convenient reference to these acts. Bond sections have also been noted in this fashion in the Chapters, *State Debt* and *Roads and Highways*. The status of the state bond laws will not be changed by reason of their omission from the code. A saving clause in the sections dealing with the effect of the adoption of the new code will save these bond sections from repeal.

Local Laws

The recodification has been made of the "general public statutes." North Carolina has enacted a great volume of private, special and local legislation. Prior codifications have included many local laws for convenience or to fill some gap in

the general laws. However, with the great increase in the volume and complexity of legislation it was clearly apparent that to continue to include in the code statutes which are essentially local in nature (except for necessary exceptions) would result in an over-bulky code and greatly complicate the search of the general laws.

The last official revision of the statutes was that embodied in the two volumes of the Consolidated Statutes of 1919, as brought forward by the third volume in 1924. Thus the basis for the present work is that revision and subsequent public session laws. The inclusion of a law in the "public laws" volume of the session laws is, of course, not controlling on the question of whether the statute is public or private, general or special, as regards a constitutional limitation, but for purposes of codification the statutes set forth in the "public laws" volumes form the basis of the work.

The immediate task of examining the statutes in the "public laws" volumes alone involved a review of more than 4,500 statutes which have been enacted since 1919. These statutes, when added to laws appearing in the Consolidated Statutes, presented a total in the neighborhood of 14,000 sections that had to be studied.

In many instances public-local laws have altered or suspended for particular communities the operation of the general statutes. The question of the treatment of local legislation was one of the most vexing problems encountered in the work of recodification and seems to be more serious in North Carolina than in most of the states. It is impossible to reflect all local variations of the law in a general code.

It was necessary to make a decision as to which statutes should be codified. It was finally decided that any statute or portion of a statute which did not affect at least 10 or more counties would not be placed in the code. All portions of statutes or *direct amendments* to statutes affecting 9 counties or less have merely been cited in the first annotation paragraph following the statute and entitled "Local Modification". Under this heading the affected counties together with the appropriate session law or Consolidated Statutes citation have been listed alphabetically without any attempt to summarize the provisions of the local laws modifying the general law. It was believed that any attempt to analyze the exact effect of particular local provisions would often be not only misleading but inaccurate in the absence of a comprehensive study of all the vast body of local legislation appearing in the Public-Local and Private Law volumes since many, in fact the vast majority of local laws, do alter the general law without making direct references.

Annotations

Although annotations form no part of the revised code as such and require no legislative action, nevertheless, it seems not inappropriate to describe the nature of the revision of the annotations which is being prepared for inclusion in the new four-volume code.

The editorial staff of the publisher has made a preliminary revision of the annotations based on a check of the following sources, which revision is in turn being examined and improved by the Codification Division:

(1) Shepard's Citators for cases citing specific statutes; (2) the annotations of the Consolidated Statutes of 1919; (3) the annotations in Pell's Revisal of 1908 for earlier cases; and, (4) the North Carolina Law Review.

References to standard treatises are also planned; and many cross references are being made to link related statutes.

The material thus gathered must be assorted, classified, weighed and edited. An effort has been made to avoid annotations which are not helpful to a present understanding of the statutes. It is believed that the proper function of code annotations is to illuminate the statutes, and that the annotations should not take the scope of a general digest of case law.

Index

Although practically all work has been completed on the index, it was impossible to print the index in the Legislative Edition in that it is contemplated that the 1943 session laws will be incorporated in the code as finally printed which will, of course, necessitate weaving into the index full index references to the 1943 laws. However, a few sample pages are being printed to indicate the form, style, size of type, etc., in which the index will eventually appear.

The index type will be increased from six point to eight point. There will be a two-column page. Deeper indentations will be made for the secondary indented index lines in order to clarify the relation of the references.

The demand for a satisfactory index is widespread and urgent. Before entering upon the indexing work, helpful reference works were sought in vain. It became necessary to rely largely on the experience gained by law publishers, on a study of other indexes, and on the experience of the staff as the work progressed. A few fundamentals soon became clear. Indexing is not an exact science, and code indexing is particularly intricate. An index must be constructed not by a mere mechanical listing of definite titles, but by a collection of ideas logically associated with the statutes, and since individuals do not uniformly share the same ideas, the effectiveness with which any given point is indexed will vary. The work is extremely technical and calls for a high degree of imagination and a retentive memory. An easy pitfall is to index part of a subject in one place and part in another. Consistency is a prime goal. It is not practicable to follow the frequently offered suggestion to dispense with cross references and reprint all the material wherever there is a reference to any part of it. Such an index would run into many volumes.

The index is constructed from a careful section-by-section reading of the statutes. As each statute was studied, indexing ideas were written down. These were passed along to the member of the staff who specialized in the indexing work. After supplementing the list with his own ideas, he referred to a card file prepared by the publisher which showed in detail how each section in the publisher's 1939 code is indexed. By comparing the list of ideas prepared by the staff with the indexing of the 1939 code, the accuracy and effectiveness of the present indexing was weighed and rounded out wherever necessary by the addition of other references.

An effort is being made to make the index as effective as possible for use in North Carolina. Such references as "Martin Act" and "Connor Act" are being added.

A great deal of attention has been devoted to the index in a section-by-section analysis, designed (1) to delete inapplicable index references, (2) to correct inaccurate index references, and (3) to add new index references where sections or portions of sections are found to be indexed inadequately or not at all. At the same time, index lines are being repeated as often as the limitations of space and utility permit to the end that "Cross References" or "See" references may be reduced to a minimum, and where they cannot be entirely eliminated, the inclusive section numbers are also being listed along with the Cross Reference.

Additional Features of New Code

A complete table of contents is inserted at the beginning of the code and will be of considerable assistance in locating any chapter immediately. Frontal tables, listing the catch lines of each section in a chapter, are being placed at the beginning of each chapter and should be of great assistance in locating any section desired. Comparative tables are planned for the final code to include not only the one appearing in this Legislative Edition, but also tables translating section numbers of codes prior to the Consolidated Statutes to the numbers of this code.

Recommendations

In addition to making the types of changes listed above for the purpose of the Legislative Edition, the work of recodification has uncovered a variety of situations which should be improved by express legislative action but which are beyond the authority of the Division to incorporate in the proposed code since they would effect changes in the law. They include generally such matters as the necessity for express repeal of outmoded statutes, redrafting to clarify ambiguity and to resolve conflicts between different sections, and the enactment of implementing or supplemental legislation. In all cases the defects in the statutes have been pointed out in some detail, but it has not always been possible to make a recommendation as to the specific action which should be taken. When a statute is ambiguous and there is no means of determining which possible meaning expresses the legislative intent, or even where the more likely intended meaning is clear, it has been felt that it was beyond the scope of the power of the Division to choose under such circumstances and to incorporate such choice in the Legislative Edition, but, rather, it was thought desirable to set out the problem and to indicate which course seemed advisable along with the reasons therefor. Therefore, these recommendations along with the explanatory reports described above have also in every case been submitted to the Legislative Commission on Recodification for approval, and it is hoped that they will furnish the basis for the drafting of supplemental legislation, amending the official code, in order to produce the most effective final code. A copy of these recommendations will be available for study in the House, the Senate and the Attorney General's office.

Whether or not the recommendations are acted on by the 1943 General Assembly, the material will be available for consideration at some future date, and failure to act on these recommendations will not affect the adoption of the official code.

The Codification Staff

The staff of the Division has consisted of five lawyers, including the director, and one secretary. The calls of the military and naval services and the opportunities for advancement elsewhere have resulted in many changes in personnel since the work was first begun. During this time the following persons have served on the legal staff: Moses B. Gillam, Jr., Cornelia McKimmon, James E. Tucker, Carmon Stuart, John Lawrence, Harry W. McGalliard, James B. McMillan, Kemp Yarborough, J. B. Bilisoly, Sarah Starr, Junius D. Grimes, Jr., Joseph B. Cheshire, IV and Catherine Paschal; and the following persons have served as secretaries: Minerva Coppage, Marjorie Mann and Effie McLean English. All of

them have given loyal and diligent service. Grateful acknowledgment is made to them for their labors which were both extensive and difficult.

When W. J. Adams, Jr., was named Assistant Attorney General in October, 1941, Harry W. McGalliard was appointed Director of the Division. Mr. Adams continued to assist in the supervision of the recodification work. Mr. McGalliard has continued to serve as Director until the present. He has personally done the important job of revamping the index.

Use of Legislative Edition

A full table of contents at the beginning of this volume lists all the chapters of the code. A comparative table in the back of the volume translates the Consolidated Statutes and Michie Code section numbers into the new section numbers of this edition. A frontal table at the beginning of each chapter furnishes an analysis of the sections contained in the chapter, listing the catch lines of all the sections of the chapter. Through the use of these editorial aids it should prove relatively simple to locate any section. In addition, the Division of Legislative Drafting and Codification of Statutes will be glad to assist anyone in every way possible in the study and examination of the code.

Effect to Be Given New Code

It is recommended that the code when adopted be made the official code of North Carolina as was done with the Consolidated Statutes of 1919 and previous compilations of our laws.

HARRY MCMULLAN,
Attorney General.

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STATE OF NORTH CAROLINA

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND FORTY-THREE

A BILL TO BE ENTITLED

AN ACT

REVISING AND CONSOLIDATING THE PUBLIC AND GENERAL
STATUTES OF THE STATE OF NORTH CAROLINA

The General Assembly of North Carolina do enact the following named chapters, subchapters and sections, to be known as the NORTH CAROLINA CODE OF 1943, that is to say:

Division I. Constitutions.

Constitution of North Carolina } Not in Legislative
Constitution of United States } Edition.

Division II. Courts and Civil Procedure.

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SUBCHAPTER I. DEFINITIONS AND GENERAL PROVISIONS.

Art. 1. Definitions.

§ 1-1. Remedies.—Remedies in the courts of justice are divided into—

1. Actions.
2. Special proceedings.

(Rev., s. 346; Code, s. 125; C. C. P., s. 1; C. S. 391.)

§ 1-2. Actions.—An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense. (Rev., s. 347; Code, s. 126; C. C. P., s. 2; 1868-9, c. 277, s. 2; C. S. 392.)

§ 1-3. Special proceedings.—Every other remedy is a special proceeding. (Rev., s. 348; Code, s. 127; C. C. P., s. 3; C. S. 393.)

§ 1-4. Kinds of actions.—Actions are of two kinds—

1. Civil.
2. Criminal.

(Rev., s. 349; Code, s. 128; C. C. P., s. 4; C. S. 394.)

§ 1-5. Criminal action.—A criminal action is—

1. An action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof.

2. An action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime against his person or property. (Rev., s. 350; Code, s. 129; C. C. P., s. 5; Const., Art. IV, s. 1; C. S. 395.)

§ 1-6. Civil action.—Every other is a civil action. (Rev., s. 351; Code, s. 130; C. C. P., s. 6; C. S. 396.)

§ 1-7. When court means clerk.—In the following sections which confer jurisdiction or power, or impose duties, where the words "superior court," or "court," in reference to a superior court are used, they mean the clerk of the superior court, unless otherwise specially stated, or unless reference is made to a regular term of the court, in which cases the judge of the court alone is meant. (Rev., s. 352; Code, s. 132; C. C. P., s. 9; C. S. 397.)

Art. 2. General Provisions.

§ 1-8. Remedies not merged.—Where the violation of a right admits both of a civil and a criminal remedy, the right to prosecute the one is not merged in the other. (Rev., s. 353; Code, s. 131; C. C. P., s. 7; C. S. 398.)

§ 1-9. One form of action.—The distinction between actions at law and suits in equity and the forms of such actions and suits are abolished, and there is but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which is denominated a civil action. (Rev., s. 354; Code, s. 133; C. C. P., s. 12; Const., Art. IV, s. 1; C. S. 399.)

§ 1-10. Plaintiff and defendant.—In civil actions the party complaining is the plaintiff, and the adverse party the defendant. (Rev., s. 355; Code, s. 134; C. C. P., s. 13; C. S. 400.)

§ 1-11. How party may appear.—A party may appear either in person or by attorney in actions or proceedings in which he is interested. (Rev., s. 356; Code, s. 109; C. C. P., s. 423; C. S. 401.)

§ 1-12. Feigned issues abolished and substituted.—Feigned issues are abolished, and instead thereof, in the cases where the power formerly existed to order a feigned issue, or when a question of fact not put in issue by the pleadings is to be tried by a jury, an order for the trial may be made by the judge, stating distinctly and plainly the question of fact to be tried; and this order is the only authority necessary for a trial. (Rev., s. 357; Code, s. 135; C. C. P., s. 15; C. S. 402.)

§ 1-13. Jurisdiction of clerk.—The clerk of the superior court has jurisdiction to hear and decide all questions of practice and procedure and all other matters over which jurisdiction is given to the superior court, unless the judge of the court or the court at a regular term is expressly referred to. (Rev., s. 358; Code, s. 251; C. C. P., s. 108; C. S. 403.)

SUBCHAPTER II. LIMITATIONS.

Art. 3. Limitations, General Provisions.

§ 1-14. When action commenced.—An action is commenced as to each defendant when the summons is issued against him. (Rev., s. 359; Code, s. 161; C. C. P., s. 40; C. S. 404.)

§ 1-15. Statute runs from accrual of action; pleading.—Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute. The objection that the action was not commenced within the time limited can only be taken by answer. (Rev., s. 360; Code, s. 138; C. C. P., s. 17; C. S. 405.)

§ 1-16. Defenses deemed pleaded by insane party.—On the trial of any action or special proceeding to which an insane person is a party, such insane person is deemed to have pleaded specially any defense, and shall on trial have the benefit of any defense, whether pleaded or not, that might have been made for him by his guardian or attorney under the provisions of this chapter. The court, at any time before the action or proceeding is finally disposed of, may order the bringing in, by proper notice, of one or more of the near relatives or friends of the insane person, and may make such other order as it deems necessary for his proper defense. (Rev., s. 361; 1889, c. 89, s. 2; C. S. 406.)

§ 1-17. Disabilities.—A person entitled to commence an action, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, who is at the time the cause of action accrued either—

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under sentence for a criminal offense;

may bring his action within the times herein limited, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the same, when he must commence his action, or make his entry, within three years next after the removal of the disability, and at no time thereafter. (Rev., s. 362; Code, ss. 148, 163; C. C. P., ss. 27, 142; 1899, c. 78; C. S. 407.)

§ 1-18. Disability of marriage.—In any action in which the defense of adverse possession is relied upon, the time computed as constituting such adverse possession shall not include any possession had against a feme covert during coverture prior to February thirteenth, one thousand eight hundred and ninety nine. (Rev., s. 363; 1899, c. 78, ss. 2, 3; C. S. 408.)

§ 1-19. Cumulative disabilities.—When two or more disabilities coexist at the time the right of action accrues, or when one disability supervenes an existing one, the limitation does not attach until they all are removed. (Rev., s. 364; Code, ss. 149, 170; C. C. P., ss. 28, 49; C. S. 409.)

§ 1-20. Disability must exist when right of action accrues.—No person may avail himself of a disability except as authorized in § 1-19, unless it existed when his right of action accrued. (Rev., s. 365; Code, s. 169; C. C. P., s. 48; C. S. 410.)

§ 1-21. Defendant out of state; when action begun or judgment enforced.—If, when the cause of action accrues or judgment is rendered or docketed against a person, he is out of the state, action may be commenced, or judgment enforced, within the times herein limited, after the return of the person into this state, and if, after such cause of action accrues or judgment is rendered or docketed, such person departs from and resides out of this state, or remains continuously absent therefrom for one year or more, the time of his absence shall not be a part of the time limited for the commencement of the action, or the enforcement of the judgment. (Rev., s. 366; Code, s. 162; C. C. P., s. 41; 1881, c. 258, ss. 1, 2; C. S. 411.)

§ 1-22. Death before limitation expires; action by or against executor.—If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives after the expiration of that time, and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative after the expiration of that time, and within one year after the issuing of letters testamentary or of administration, provided the letters are issued within ten years of the death of such person. If the claim upon which the cause of action is based is filed with the personal representative within the time above specified, and admitted by him, it is not necessary to bring an action upon such claim to prevent the bar, but no action shall be brought against the personal representative upon such claim after his final settlement. (Rev., s. 367; Code, s. 164; C. C. P., s. 43; 1881, c. 80; C. S. 412.)

§ 1-23. Time of stay by injunction or prohibition.—When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action. (Rev., s. 368; Code, s. 167; C. C. P., s. 46; C. S. 413.)

§ 1-24. Time during controversy on probate of will or granting letters.—In reckoning time when pleaded as a bar to actions, that period shall not be counted which elapses during any controversy on the probate of a will or granting letters of administration, unless there is an administrator appointed during the pendency of the action, and it is provided that an action may be brought against him. (Rev., s. 369; Code, s. 168; C. C. P., s. 47; C. S. 414.)

§ 1-25. New action within one year after nonsuit, etc.—If an action is commenced within the time prescribed therefor, and the plaintiff is nonsuited, or a judgment therein reversed on appeal, or is arrested, the plaintiff or, if he dies and the cause of action survives, his heir or representative may commence a new action within one year after such nonsuit, reversal, or arrest of judgment, if the costs in the original action have been paid by the plaintiff before the commencement of the new suit, unless the original suit was brought in forma pauperis. (Rev., s. 370; Code, ss. 142, 166; C. C. P., ss. 21, 45; 1915, c. 211, s. 1; C. S. 415.)

§ 1-26. New promise must be in writing.—No

acknowledgment or promise is evidence of a new or continuing contract, from which the statutes of limitations run, unless it is contained in some writing signed by the party to be charged thereby; but this section does not alter the effect of any payment of principal or interest. (Rev., s. 371; Code, s. 172; C. C. P., s. 51; C. S. 416.)

§ 1-27. Admission by partner or comaker.—No act, admission or acknowledgment by any partner after the dissolution of the copartnership, or by any of the makers of a promissory note or bond after the statute of limitations has barred the same, is evidence to repel the statute, except against the partner or maker of the promissory note or bond doing the act or making the admission or acknowledgment. (Rev., s. 372; Code, s. 171; C. C. P., s. 50; C. S. 417.)

§ 1-28. Undisclosed partner.—The statutes of limitations apply to a civil action brought against an undisclosed partner only from the time the partnership became known to the plaintiff. (Rev., s. 373; 1893, c. 151; C. S. 418.)

§ 1-29. Cotenants.—If in actions by tenants in common or joint tenants of personal property, to recover the same, or damages for its detention or injury, any of them are barred of their recovery by limitation of time, the rights of the others are not affected thereby, but they may recover according to their right and interest, notwithstanding such bar. (Rev., s. 374; Code, s. 173; C. C. P., s. 52; 1921, c. 106; C. S. 419.)

§ 1-30. Applicable to actions by state.—The limitations prescribed by law apply to civil actions brought in the name of the state, or for its benefit, in the same manner as to actions by or for the benefit of private parties. (Rev., s. 375; Code, s. 159; C. C. P., s. 38; C. S. 420.)

§ 1-31. Action on open account.—In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action accrues from the time of the latest item proved in the account on either side. (Rev., s. 376; Code, s. 160; C. C. P., s. 39; C. S. 421.)

§ 1-32. Not applicable to bank bills.—The limitations prescribed by law do not affect actions to enforce the payment of bills, notes or other evidences of debt, issued or put in circulation as money by banking corporations incorporated under the laws of this state. (Rev., s. 377; Code, s. 174; C. C. P., s. 53; 1874-5, c. 170; C. S. 422.)

§ 1-33. Actions against bank directors or stockholders. — The limitations prescribed by law do not affect actions against directors or stockholders of any banking association incorporated under the laws of this state, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created. (Rev., s. 378; Code, s. 175; C. C. P., s. 54; C. S. 423.)

§ 1-34. Aliens in time of war.—When a person is an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of the action. (Rev., s. 379; Code, s. 165; C. C. P., s. 44; C. S. 424.)

Art. 4. Limitations, Real Property.

§ 1-35. Title against state.—The state will not sue any person for, or in respect of, any real property, or the issue or profits thereof, by reason of the right or title of the state to the same—

1. When the person in possession thereof, or those under whom he claims, has been in the adverse possession thereof for thirty years, this possession having been ascertained and identified under known and visible lines or boundaries; which shall give a title in fee to the possessor.

2. When the person in possession thereof, or those under whom he claims, has been in possession under color of title for twenty-one years, this possession having been ascertained and identified under known and visible lines or boundaries. (Rev., s. 380; Code, s. 139; C. C. P., s. 18; R. C., c. 65, s. 2; C. S. 425.)

§ 1-36. Title presumed out of state.—In all actions involving the title to real property title is conclusively deemed to be out of the state unless it is a party to the action, but this section does not apply to the trials of protested entries laid for the purpose of obtaining grants, nor to actions instituted prior to May 1, 1917. (1917, c. 195; C. S. 426.)

§ 1-37. Such possession valid against claimants under state.—All such possession as is described in § 1-35, under such title as is therein described, is hereby ratified and confirmed, and declared to be a good and legal bar against the entry or suit of any person, under the right or claim of the state. (Rev., s. 381; Code, s. 140; C. C. P., s. 19; C. S. 427.)

§ 1-38. Seven years possession under color of title.—When a person or those under whom he claims is and has been in possession of any real property, under known and visible lines and boundaries and under color of title, for seven years, no entry shall be made or action sustained against such possessor by a person having any right or title to the same, except during the seven years next after his right or title has descended or accrued, who in default of suing within that time shall be excluded from any claim thereafter made; and such possession, so held, is a perpetual bar against all persons not under disability. (Rev., s. 382; Code, s. 141; C. C. P., s. 20; C. S. 428.)

§ 1-39. Seizin within twenty years necessary.—No action for the recovery or possession of real property shall be maintained, unless it appears that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within twenty years before the commencement of the action, unless he was under the disabilities prescribed by law. (Rev., s. 383; Code, s. 143; C. C. P., s. 22; C. S. 429.)

§ 1-40. Twenty years adverse possession.—No action for the recovery or possession of real property, or the issues and profits thereof, shall be maintained when the person in possession thereof, or defendant in the action, or those under whom he claims, has possessed the property under known and visible lines and boundaries adversely to all other persons for twenty years; and such possession so held gives a title in fee to the possessor, in such property, against all persons

not under disability. (Rev., s. 384; Code, s. 144; C. C. P., s. 23; C. S. 430.)

§ 1-41. Action after entry.—No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action is commenced thereupon within one year after the making of the entry, and within the time prescribed in this chapter. (Rev., s. 385; Code, s. 145; C. C. P., s. 24; C. S. 431.)

§ 1-42. Possession follows legal title.—In every action for the recovery or possession of real property, or damages for a trespass on such possession, the person establishing a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person is deemed to have been under, and in subordination to, the legal title, unless it appears that the premises have been held and possessed adversely to the legal title for the time prescribed by law before the commencement of the action. (Rev., s. 386; Code, s. 146; C. C. P., s. 25; C. S. 432.)

§ 1-43. Tenant's possession is landlord's.—When the relation of landlord and tenant has existed, the possession of the tenant is deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited. (Rev., s. 387; Code, s. 147; C. C. P., s. 26; C. S. 433.)

§ 1-44. No title by possession of right of way.—No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right of way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right of way, depot, stationhouse or place of landing, by any statute of limitation or by occupation of the same by any person whatever. (Rev., s. 388; Code, s. 150; C. C. P., s. 29; R. C., c. 65, s. 23; C. S. 434.)

§ 1-45. No title by possession of public ways.—No person or corporation shall ever acquire any exclusive right to any part of a public road, street, lane, alley, square or public way of any kind by reason of any occupancy thereof or by encroaching upon or obstructing the same in any way, and in all actions, whether civil or criminal, against any person or corporation on account of an encroachment upon or obstruction or occupancy of any public way it shall not be competent for a court to hold that such action is barred by any statute of limitations. (Rev., s. 389; 1891, c. 224; C. S. 435.)

Art. 5. Limitations, Other than Real Property.

§ 1-46. Periods prescribed.—The periods prescribed for the commencement of actions, other than for the recovery of real property, are as set forth in this article. (Rev., s. 390; Code, s. 151; C. C. P., s. 30; C. S. 436.)

§ 1-47. Ten years.—Within ten years an action—

1. Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

2. Upon a sealed instrument against the principal thereto.

3. For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same.

4. For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

5. For the allotment of dower upon lands not in the actual possession of the widow following the death of her husband. (Rev., s. 391; Code, s. 152; C. C. P., ss. 14, 31; 1937, c. 368; C. S. 437.)

§ 1-48. Actions to recover deficiency judgments limited to within one year of foreclosure.—No action shall be maintained on any promissory note, bond, evidence of indebtedness or debt secured by a mortgage or deed of trust on real estate after the foreclosure of the mortgage or deed of trust securing the same, except within one year from the date of sale under such foreclosure; but this section shall not extend the time of limitation on any such action. (1933, c. 529, s. 1.)

§ 1-49. Seven years.—Within seven years an action—

1. On a judgment rendered by a justice of the peace, from its date.

2. By a creditor of a deceased person against his personal or real representative, within seven years next after the qualification of the executor or administrator and his making the advertisement required by law for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor. A creditor thus barred of a recovery against the representative of any principal debtor is also barred of a recovery against any surety to the debt. (Rev., s. 392; Code, s. 153; C. C. P., s. 32; C. S. 438.)

§ 1-50. Six years.—Within six years an action—

1. Upon the official bond of a public officer.

2. Against an executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final account by the proper officer, and the filing of the audited account as required by law.

3. For injury to any incorporeal hereditament.

4. Against a corporation, or the holder of a certificate or duplicate certificate of stock in the corporation, on account of any dividend, either a cash or stock dividend, paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation. (Rev., s. 393; Code, s. 154; C. C. P., s. 33; 1931, c. 169; C. S. 439.)

§ 1-51. Five years.—Within five years—

1. No suit, action or proceeding shall be brought or maintained against a railroad company owning or operating a railroad for damages or compensation for right of way or use and oc-

cupancy of any lands by the company for use of its railroad unless the action or proceeding is commenced within five years after the lands have been entered upon for the purpose of constructing the road, or within two years after it is in operation.

2. No suit, action or proceeding shall be brought or maintained against a railroad company for damages caused by the construction of the road, or the repairs thereto, unless such suit, action or proceeding is commenced within five years after the cause of action accrues, and the jury shall assess the entire amount of damages which the party aggrieved is entitled to recover by reason of the trespass on his property. (Rev., s. 394; 1893, c. 152; 1895, c. 224; 1897, c. 339; C. S. 440.)

Local Modification.—Burke, McDowell: Pub. Loc., 1925, c. 535; Caldwell: Pub. Loc., 1927, c. 119; Haywood, Mitchell, Yancey: Pub. Loc., 1923, c. 433.

§ 1-52. Three Years.—Within three years an action—

1. Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections.

2. Upon a liability created by statute, other than a penalty or forfeiture, unless some other time is mentioned in the statute creating it.

3. For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.

4. For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

5. For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereinafter enumerated.

6. Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

7. Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

8. For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

9. For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

10. For the recovery of real property sold for the nonpayment of taxes, within three years after the execution of the sheriff's deed. (Rev., s. 395; Code, s. 155; C. C. P., s. 34; 1895, c. 165; 1889, cc. 269, 218; 1899, c. 15, s. 71; 1901, c. 558, s. 23; 1913, c. 147, s. 4; C. S. 441.)

§ 1-53. Two years.—Within two years—

1. All claims against counties, cities and towns of this state shall be presented to the chairman of the board of county commissioners, or to the chief officers of the cities and towns, within two years after the maturity of such claims, or the holders shall be forever barred from a recovery thereon; provided, however, that the provisions of this paragraph shall not apply to claims based upon bonds, notes and interest coupons.

2. An action to recover the penalty for usury.

3. The forfeiture of all interest for usury. (Rev., s. 396; Code, ss. 756, 3836; 1874-5, c. 243; 1876-7, c. 91, s. 3; 1895, c. 69; 1931, c. 231; 1937, c. 359; C. S. 442.)

Local Modification.—Cartaret, Haywood: 1933, c. 386; Cherokee, Clay: 1933, c. 318.

§ 1-54. One year.—Within one year an action—

1. Against a public officer, for a trespass under color of his office.

2. Upon a statute, for a penalty or forfeiture, where the action is given to the state alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribes a different limitation.

3. For libel, assault, battery, or false imprisonment.

4. Against a public officer, for the escape of a prisoner arrested or imprisoned on civil process.

5. An application for a widow's year's allowance. (Rev., s. 397; Code, s. 156; C. C. P., s. 35; 1885, c. 96; C. S. 443.)

§ 1-55. Six months.—Within six months an action—

1. For slander.

2. Upon a contract, transfer, assignment, power of attorney or other instrument transferring or affecting unearned salaries or wages, or future earnings, or any interest therein, whether said instrument be under seal or not under seal. The above period of limitation shall commence from the date of the execution of such instrument. (Rev., s. 398; Code, s. 157; C. C. P., s. 36; 1931, c. 168; C. S. 444.)

Local Modification.—Cleveland, Rutherford: 1933, c. 167.

§ 1-56. All other actions, ten years.—An action for relief not herein provided for must be commenced within ten years after the cause of action has accrued. (Rev., s. 399; Code, s. 158; C. C. P., s. 37; C. S. 445.)

SUBCHAPTER III. PARTIES.

Art. 6. Parties.

§ 1-57. Real party in interest; grantees and assignees.—Every action must be prosecuted in the name of the real party in interest, except as otherwise provided; but this section does not authorize the assignment of a thing in action not arising out of contract. An action may be maintained by a grantee of real estate in his own name, when he or any grantor or other person through whom he derives title might maintain such action, notwithstanding the conveyance of the grantor is void, by reason of the actual possession of a person claiming under a title adverse to that of the grantor, or other person, at the time of the delivery of the conveyance. In case of an assignment of a thing in action the action by the assignee is without prejudice to any set-off or other defense, existing at the time of, or before notice of, the assignment; but this does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, upon good consideration, and before maturity. (Rev., s. 400; Code, s. 177; C. C. P., s. 55; 1874-5, c. 256; C. S. 446.)

§ 1-58. Suits for penalties.—Where a penalty is imposed by any law, and it is not provided to what person the penalty is given, it may be re-

covered, for his own use, by any one who sues for it. When a penalty is allowed by statute, and it is not prescribed in whose name suit therefor may be commenced, suit must be brought in the name of the state. (Rev., ss. 401, 402; Code, ss. 1212, 1213; R. C., c. 35, ss. 47, 48; C. S. 447.)

§ 1-59. Suit for penalty, plaintiff may reply fraud to plea of release.—If an action be brought in good faith by any person to recover a penalty under a law of this state, or of the United States, and the defendant shall set up in bar thereto a former judgment recovered by or against him in a former action brought by any other person for the same cause, then the plaintiff in such action, brought in good faith, may reply that the said former judgment was obtained by covin; and if the collusion or covin so averred be found, the plaintiff in the action sued with good faith shall have recovery; and no release made by such party suing in covin, whether before action brought or after, shall be in anywise available or effectual. (Code, s. 932; R. C., c. 31, s. 100; 4 Hen. VII, c. 20; Rev., s. 1521; 1925, c. 21; C. S. 447(a).)

§ 1-60. Suit on bonds; defendant may plead satisfaction. — When an action shall be brought on any single bill or on any judgment, if the defendant had paid the money due upon such bill or judgment before action brought, or where the defendant hath made satisfaction to the plaintiff of the money due on such bill or judgment in other manner than by payment thereof, such payment or satisfaction may be pleaded in bar of such action; and where only part of the money due on such single bill or judgment hath been paid by the defendant, or satisfied in other manner than by payment of money, such part payment or part satisfaction may be pleaded in bar of so much of the money due on such single bill or judgment, as the same may amount to; and where an action is brought on any bond which hath a condition or defeasance to make void the same upon the payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid to the obligee, his executor or administrator, the principal and interest due by the condition or defeasance of such bond, though such payments were not made strictly according to the condition or defeasance; or if such obligor, his heirs, executors or administrators have before action brought made satisfaction to the plaintiff of the principal and interest due by the condition or defeasance of such bond, in other manner than by payment thereof, yet the said payment or satisfaction may be pleaded in bar of such action, and shall be effectual as a bar thereof, in like manner as if the money had been paid at the day and place, according to the condition or defeasance, and so pleaded. (Rev., s. 1522; Code, s. 933; R. C., c. 31, s. 101; 4 Hen. VII, c. 20; 1925, c. 21; C. S. 447(b).)

§ 1-61. Payment into court of sum due discharges penalty of bonds.—If at any time, pending an action on any bond with a penalty, the defendant shall bring into court, where the action shall be pending, all the principal money and interest due, and also all such costs as have been expended in any suit upon such bond, the said money shall be deemed and taken to be in full satisfaction and discharge of said bond, and the court shall give judgment accordingly. (Rev., s. 1523; Code, s. 934; R. C., c. 31, s. 102; 4 Anne, c. 16; 1925, c. 21; C. S. 447(c).)

§ 1-62. Action by purchaser under judicial sale. —Any one given possession under a judicial sale confirmed, where the title is retained as a security for the price, is the legal owner of the property for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass or wrongful possession, in the same manner as if the title had been conveyed to him on day of sale, unless restrained by some order of the court directing the sale; and the suit brought is under the control of the court ordering the sale. (Rev., s. 403; Code, s. 942; 1858-9, c. 50; C. S. 448.)

§ 1-63. Action by executor or trustee.—An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, includes a person with whom, or in whose name, a contract is made for the benefit of another. (Rev., s. 404; Code, s. 179; C. C. P., s. 57; C. S. 449.)

§ 1-64. Infants, etc., sue by guardian or next friend.—In actions and special proceedings when any of the parties plaintiff are infants, idiots, lunatics, or persons non compos mentis, whether residents or nonresidents of this state, they must appear by their general or testamentary guardian, if they have any within the state; but if the action or proceeding is against such guardian, or if there is no such guardian, then said persons may appear by their next friend. The duty of the state solicitors to prosecute in the cases specified in chapter entitled Guardian and Ward is not affected by this section. (Rev., s. 405; Code, s. 180; 1893, c. 5; C. C. P., s. 58; 1870-1, c. 233; 1871-2, c. 95; C. S. 450.)

§ 1-65. Infants, etc., defend by guardian ad litem. — In all actions and special proceedings when any of the defendants are infants, idiots, lunatics, or persons non compos mentis, whether residents or nonresidents of this state, they must defend by their general or testamentary guardian, if they have one within this state; and if they have no general or testamentary guardian in the state, and any of them has been summoned, the court in which said action or special proceeding is pending, upon motion of any of the parties, may appoint some discreet person to act as guardian ad litem, to defend in behalf of such infants, idots, lunatics, or persons non compos mentis. The guardian so appointed shall, if the cause is a civil action file his answer to the complaint within the time required for other defendants, unless the time is extended by the court; and if the cause is a special proceeding, a copy of the complaint, with the summons, must be served on him. After twenty days notice of the summons and complaint in the special proceeding, and after answer filed as above prescribed in the civil action, the court may proceed to final judgment as effectually and in the same manner as if there had been personal service upon the said infant, idiot, lunatic, or person non compos mentis, defendants. (Rev., s. 406; Code, s. 181; C. C. P., s. 59; 1870-1, c. 233, s. 5; 1871-2, c. 95, s. 2; C. S. 451.)

§ 1-66. Appointment of guardian ad litem in

actions begun by publication.—In all actions and special proceedings wherever any of the defendants are infants, idiots, lunatics, or persons non compos mentis, and it shall become necessary to serve the summons on said infants, idiots, lunatics, or persons non compos mentis by publication, it shall not be necessary to await the completion of the service of summons by publication before moving for the appointment of a guardian ad litem for said infants, idiots, lunatics, or persons non compos mentis, but a guardian ad litem may be appointed on motion at the time of the issuance of the order of publication; and the service of a summons, with a copy of the complaint or petition, can be made on the guardian ad litem returnable on the same date as the infant defendants are required to appear in the notice of publication; and after ten days notice of said summons and complaint in special proceedings and after answer filed as prescribed in § 1-65 under this article, the court may proceed in the same cause to final judgment and decree therein, in the same manner as if there had been personal service upon the said infant, idiot, lunatic, or person non compos mentis, defendants, and any decree or judgment in the cause shall conclude the infant, idiot, lunatic, or person non compos mentis, defendants, as effectually as if he, or they, had been personally summoned. (1919, c. 246; C. S. 452.)

§ 1-67. Guardian ad litem to file answer.—When a guardian ad litem is appointed, he shall file an answer in the action or special proceeding, admitting or denying the allegations thereof. The costs and expenses of the answer, in all applications to sell or divide the real estate of said infants, shall be paid out of the proceeds of the property, or in case of division shall be charged upon the land if the sale or division is ordered by the court, and, if not ordered, in any other manner the court directs. (Rev., s. 407; Code, s. 182; 1870-1, c. 233, s. 4; C. S. 453.)

§ 1-68. Who may be plaintiffs.—All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs, either jointly, severally, or in the alternative, except as otherwise provided. If, upon the application of any party, it shall appear that such joinder may embarrass or delay the trial, the court may order separate trials or make such other order as may be expedient. (Rev., s. 409; Code, s. 183; C. C. P., s. 60; 1931, c. 344, s. 1; C. S. 455.)

§ 1-69. Who may be defendants.—All persons may be made defendants, jointly, severally, or in the alternative, who have, or claim, an interest in the controversy adverse to the plaintiff, or who are necessary parties to a complete determination or settlement of the questions involved. In an action to recover the possession of real estate, the landlord and tenant may be joined as defendants. Any person claiming title or right of possession to real estate may be made a party plaintiff or defendant, as the case requires, in such action. If the plaintiff is in doubt as to the persons from whom he is entitled to redress, he may join two or more defendants, to determine which is liable. (Rev., s. 410; Code, s. 184; C. C. P., s. 61; 1931, c. 344, s. 2; C. S. 456.)

§ 1-70. Joinder of parties; action by or against one for benefit of a class.—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint. When the question is one of a common or general interest of many persons, or where the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. Any and/or all unincorporated, beneficial organizations, fraternal benefit orders, associations and/or societies, or voluntary fraternal beneficial organizations, orders, associations and/or societies issuing certificates and/or policies of insurance, foreign or domestic, now or hereafter doing business in this state, shall have the power to sue and/or be sued in the name commonly known and/or used by them in the conduct of their business to the same extent as any other legal entity established by law, and without naming any of the individual members composing it: Provided, however, this section shall apply only in actions concerning such certificates and/or policies of insurance. (Rev., s. 411; Code, s. 185; C. C. P., s. 62; 1933, c. 182; C. S. 457.)

§ 1-71. Persons severally liable.—Persons severally liable upon the same obligation, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action at the option of the plaintiff. (Rev., s. 412; Code, s. 186; C. C. P., s. 63; C. S. 458.)

§ 1-72. Persons jointly liable.—In all cases of joint contracts of partners in trade or others, suit may be brought and prosecuted against all or any number of the persons making such contracts. (Rev., s. 413; Code, s. 187; R. C., c. 31, s. 84; 1871-2, c. 24, s. 1; C. S. 459.)

§ 1-73. New parties by order of court.—The court either between the terms, or at a regular term, according to the nature of the controversy, may determine any controversy before it, when it can be done without prejudice to the right of others, but when a complete determination of the controversy cannot be made without the presence of other parties, the court must cause them to be brought in. When in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in its subject matter, applies to the court to be made a party, it may order him to be brought in by the proper amendment. A defendant against whom an action is pending upon a contract or for specific real or personal property, upon proof by affidavit that a person not a party to the action makes a demand against him for the same debt or property without collusion with him, may at any time before answer apply to the court, upon notice to that person and the adverse party, for an order to substitute that person in his place, and to discharge him from liability to either, on his paying into court the amount of the debt, or delivering the possession of the property or its value to such person as the court directs. The court may make such an order. (Rev., s. 414; Code, s. 189; C. C. P., s. 65; C. S. 460.)

§ 1-74. Abatement of actions.—1. No action abates by the death, or disability of a party, or by

the transfer of any interest therein, if the cause of action survives, or continues. In case of death, except in suits for penalties and for damages merely vindictive, or in case of the disability of a party, the court, on motion at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued, by, or against, his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

2. After a verdict is rendered in any action for a wrong, the action does not abate by the death of a party.

3. At any time after the death or disability of the party plaintiff, the court in which an action is pending, upon notice to such persons as it directs and upon application of any person aggrieved, may order that the action be abated, unless it is continued by the proper parties, within a time to be fixed by the court, not less than six nor more than twelve months from the granting of the order.

4. No action against a receiver of a corporation abates by reason of his death, but, upon suggestion of the facts on the record, it continues against his successor, or against the corporation in case a new receiver is not appointed. (Rev., s. 415; Code, s. 188; 1901, c. 2, s. 85; C. C. P., s. 64; R. C., c. 1, s. 4; c. 46, s. 43; C. S. 461.)

§ 1-75. Procedure on death of party.—When a party to an action in the superior court dies pending the action, his death may be suggested before the clerk of the court where the action is pending, during vacation. It is then the duty of the clerk to issue a summons to the party who succeeds to the rights or liabilities of a deceased defendant, commanding him to appear before him on a day named in the summons, which must be at least twenty days after its service, and answer the complaint, and the issue joined by the filing of the answer stands for trial at the succeeding term of the superior court. It is the duty of the clerk to issue a notice to the party succeeding to the rights of a deceased party who will be necessary to the prosecution of the action to final judgment to appear and become party plaintiff; and if the party made plaintiff files an amended complaint, the defendant has twenty days after notice of same in which to file an answer thereto, and the issue thus made up stands for trial at the succeeding term. (Rev., ss. 416, 417, 418; 1887, c. 389; C. S. 462.)

SUBCHAPTER IV. VENUE.

Art. 7. Venue.

§ 1-76. Where subject of action situated.—Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power to the court to change the place of trial, in the cases provided by law:

1. Recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

2. Partition of real property.

3. Foreclosure of a mortgage of real property.

4. Recovery of personal property. (Rev., s. 419; Code, s. 190; 1889, c. 219; C. C. P., s. 66; C. S. 463.)

§ 1-77. Where cause of action arose.—Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the power of the court to change the place of trial, in the cases provided by law:

1. Recovery of a penalty or forfeiture, imposed by statute; except that, when it is imposed for an offense committed on a sound, bay, river, or other body of water, situated in two or more counties, the action may be brought in any county bordering on such body of water, and opposite to the place where the offense was committed.

2. Against a public officer or person especially appointed to execute his duties, for an act done by him by virtue of his office; or against a person who by his command or in his aid does anything touching the duties of such officer. (Rev., s. 420; Code, s. 191; C. C. P., s. 67; C. S. 464.)

§ 1-78. Official bonds, executors and administrators.—All actions against executors and administrators in their official capacity, except where otherwise provided by statute, and all actions upon official bonds must be instituted in the county where the bonds were given, if the principal or any surety on the bond is in the county; if not, then in the plaintiff's county. (Rev., s. 421; Code, s. 193; 1868-9, c. 258; C. S. 465.)

§ 1-79. Domestic corporations.—For the purpose of suing and being sued the principal place of business of a domestic corporation is its residence. (Rev., s. 422; 1903, c. 806; C. S. 466.)

§ 1-80. Foreign corporations.—An action against a corporation created by or under the law of any other state or government may be brought in the superior court of any county in which the cause of action arose, or in which the corporation usually did business, or has property, or in which the plaintiffs, or either of them, reside, in the following cases:

1. By a resident of this state, for any cause of action.

2. By a nonresident of this state in any county where he or they are regularly engaged in carrying on business.

3. By a plaintiff, not a resident of this state, when the cause of action arose or the subject of the action is situated in this state. (Rev., s. 423; Code, s. 194; C. C. P., s. 361; 1876-7, c. 170; 1907, c. 460; C. S. 467.)

§ 1-81. Actions against railroads.—In all actions against railroads the action must be tried either in the county where the cause of action arose or where the plaintiff resided at that time, or in some county adjoining that in which the cause of action arose, subject to the power of the court to change the place of trial as provided by statute. (Rev., s. 424; C. S. 468.)

§ 1-82. Venue in all other cases.—In all other cases the action must be tried in the county in which the plaintiffs or the defendants, or any of them, reside at its commencement; or if none of the defendants reside in the state, then in the county in which the plaintiffs, or any of them, reside; and if none of the parties reside in the state, then the action may be tried in any county which the plaintiff designates in his summons and com-

plaint, subject to the power of the court to change the place of trial, in the cases provided by statute. (Rev., s. 424; Code, s. 192; C. C. P., s. 68; 1868-9, cc. 59, 277; 1905, c. 367; C. S. 469.)

§ 1-83. Change of venue.—If the county designated for that purpose in the summons and complaint is not the proper one, the action may, however, be tried therein, unless the defendant, before the time of answering expires, demands in writing that the trial be conducted in the proper county, and the place of trial is thereupon changed by consent of parties, or by order of the court.

The court may change the place of trial in the following cases:

1. When the county designated for that purpose is not the proper one.

2. When the convenience of witnesses and the ends of justice would be promoted by the change.

3. When the judge has, at any time, been interested as party or counsel. (Rev., s. 425; Code, s. 195; C. C. P., s. 69; R. C., c. 31, ss. 115, 118; 1870-1, c. 20; C. S. 470.)

§ 1-84. Removal for fair trial.—In all civil and criminal actions in the superior and criminal courts, when it is suggested on oath or affirmation, on behalf of the state or the traverser of the bill of indictment, or of the plaintiff or defendant, that there are probable grounds to believe that a fair and impartial trial cannot be obtained in the county in which the action is pending, the judge may order a copy of the record of the action removed to some adjacent county for trial, if he is of the opinion that a fair trial cannot be had in said county, after hearing all the testimony offered on either side by affidavits. The county from which the cause is removed must pay to the county in which the cause has been tried the full amount paid by the trial county for jurors' fees, and the full costs in the cause which are not taxable against or cannot be recovered from a party to the action, and for which the trial county is liable. (Rev., s. 426; Code, s. 196; 1879, c. 45; 1899, cc. 104, 508; 1806, c. 693, s. 12; 1917, c. 44; C. S. 471.)

§ 1-85. Affidavits on hearing for removal; when removal ordered. — No action, civil or criminal, shall be removed, unless the affidavit sets forth particularly and in detail the ground of the application. It is competent for the other side to controvert the allegations of fact in the application, and to offer counter affidavits to that end. The judge shall order the removal of the action, if he is satisfied after thorough examination of the evidence as aforesaid that the ends of justice demand it. (Rev., s. 427; Code, s. 197; 1879, c. 45; 1899, c. 104, s. 2; C. S. 472.)

§ 1-86. Additional jurors from other counties instead of removal.—Upon suggestion made as provided by § 1-84 or on his own motion, the presiding judge, instead of making order of removal may cause as many jurors as he deems necessary to be summoned from any county in the same judicial district or in an adjoining district by the sheriff or other proper officer thereof, to attend, at such time as the judge designates, and serve as jurors in said action. The judge may direct the required number of names to be drawn from the jury box in said county in such manner as he may direct, and a list of the same to be delivered to the sheriff or other proper officer of the county, who shall at once summon the jurors so drawn to appear at the time and place specified in the order. In case a jury is not obtained from those so summoned the judge may, in like manner, from time to time, order additional jurors summoned from any county in the same judicial district or in an adjoining district, or from the county where the trial is being held, until a jury is obtained. These jurors are subject to challenge for cause as other jurors, but not for nonresidence in the county of trial, or service within two years, or not being freeholders, and all jurors so summoned are entitled to compensation for mileage and time, to be paid by the county to which they are summoned, at the rate now provided by law for regular jurors in the county of their residence. Provided, that when the judge shall determine that it is necessary to have a special venire drawn from an adjoining county, instead of directing the jurors to appear at the courthouse in the county where the trial is pending, he may order them to appear at the courthouse of their own county and in lieu of their receiving mileage in going from their own county to the county in which the trial is held, it shall be optional with the county where the trial is held to provide transportation to said jurors from their own county seat to the place of trial and return instead of paying mileage to the jurors in going from their county seat to the place of trial. (1913, c. 4, ss. 1, 2; 1931, c. 308; 1933, c. 248; C. S. 473.)

Local Modification.—Ashe, Durham: 1933, c. 248.

§ 1-87. Transcript of removal; subsequent proceedings. — When a cause is directed to be removed, the clerk shall transmit to the court to which it is removed a transcript of the record of the case, with the prosecution bond, bail bond, and the depositions, and all other written evidences filed therein; and all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of court. (Rev., s. 428; Code, ss. 195, 198; R. C., c. 31, s. 118; 1806, c. 694, s. 12; 1810, c. 787; C. C. P., s. 69; C. S. 474.)

SUBCHAPTER V. COMMENCEMENT OF ACTIONS.

Art. 8. Summons.

§ 1-88. Civil actions commenced by.—Civil actions shall be commenced by issuing a summons; but no summons need issue in controversies submitted without action, and in confessions of judgment without action. (Rev., s. 429; Code, s. 199; C. C. P., s. 70; C. S. 475.)

§ 1-89. Contents, return, seal.—The summons must run in the name of the State, be signed by the Clerk of the Superior Court having jurisdiction to try the action, and be directed to the sheriff or other proper officers of the county or counties in which the defendants or any of them reside or may be found. It must be returnable before the clerk and must command the sheriff or other proper officer to summon the defendant, or defendants, to appear and answer the complaint of the plaintiff within thirty (30) days after its service upon defendant, or defendants; and must contain a notice stating in substance that if

the defendant or defendants fail to answer the complaint within the time specified the plaintiff will apply to the court for the relief demanded in the complaint; and must be dated on the date of its issue. Every summons addressed to the sheriff or other officer of a county, other than that from which it issued, must be attested by the seal of the court; but when addressed to the sheriff or other officer of the county in which it issued, such seal is unnecessary. Summons must be served by the sheriff to whom it is addressed for service within ten (10) days after the date of its issue; and upon serving the same, the officer shall note in writing upon the copy thereof, delivered to the defendant, the date of service, but failure to comply with this requirement shall not invalidate the service, and, if not served within ten (10) days after the date of its issue upon every defendant, must be returned by the officer holding the same for service, to the clerk of the court issuing the summons, with notation thereon of its non-service and the reasons therefor as to every defendant not served. In all cases where service of summons is made by publication, such service by publication shall be completed within fifty days from the order of publication. Provided, that in all actions for tax foreclosures, street assessment foreclosures and sidewalk assessment foreclosures, summons must be served by the sheriff to whom it is addressed for service within sixty (60) days after the date of its issue; and upon serving the same, the officer shall note in writing upon the copy thereof, delivered to the defendant, the date of service, but failure to comply with this requirement shall not invalidate the service, and, if not served within sixty (60) days after the date of its issue upon every defendant, must be returned by the officer holding the same for service, to the clerk of the court issuing the summons, with notation thereon of its non-service and the reasons therefor as to every defendant not served. (Rev., ss. 430, 431; Code, ss. 200, 203, 213; C. C. P., s. 74; 1876-7, cc. 85, 241; 1919, c. 304, s. 1; Ex. Sess. 1920, c. 96, s. 1; Ex. Sess. 1921, c. 92, s. 1; 1927, c. 66, s. 1; 1927, c. 132; 1929, c. 237, s. 1; 1935, c. 343; 1939, c. 15; C. S. 476.)

Local Modification.—Beaufort: 1937, c. 65.

§ 1-90. Issued to several counties.—The plaintiff may issue a summons, directed to the sheriff of any county where a defendant is most likely to be found, noting on each summons that it is issued in the same action. When the summons is returned, it shall be docketed as if only one had issued, and if any defendant is not served with such process, the same proceeding shall be had as in other cases of similar process not executed. (Rev., s. 432; Code, s. 204; R. C., c. 31, s. 44; 1789, c. 314, ss. 1, 2; 1831, c. 14, s. 2; C. S. 477.)

§ 1-91. When directed to officer of adjoining county.—If at any time there is not in the county a proper officer to whom summons or other process of a court of record is or ought to be directed, who can lawfully execute it; or if such officer refuses or neglects to execute the same, the clerk of the court from which it has issued or shall issue, upon the facts being verified before him by written affidavit, subscribed by the plaintiff or his agent, shall issue such summons or process to the sheriff of any adjoining county, who has power to and shall execute the same in like manner as if he were sheriff of the county. In all cases where the sheriff of any county is interested, if there is no coroner in the county, process may be issued to and shall be executed by the sheriff of any adjoining county. (Rev., ss. 1530, 1531; Code, ss. 929, 930; R. C., c. 31, s. 55; 1779, c. 156; 1821, c. 1080; 1882, c. 1132; 1846, c. 61; 1869-70, c. 175; C. S. 478.)

§ 1-92. Uniform pleading and practice in inferior courts where summons issued to run outside of county.—In all cases in which any court in North Carolina inferior to the Superior Court, except courts of Justices of the Peace, shall issue any summons to run outside the county of such inferior court, the case in which such summons is issued shall, as to the summons and the filing of all pleadings, be subject to, and governed by, the laws and rules applicable to actions in the Superior Court of North Carolina. (1931, c. 420.)

§ 1-93. Amount requisite for summons to run outside of county.—No summons in civil suits or civil proceedings shall run outside the county where issued, unless the amount involved in the litigation is more than two hundred dollars in matters arising out of contract and more than fifty dollars in matters arising in tort: Provided, that this section shall not affect or limit the provisions of §§ 7-138, 7-140 to 7-143. (1939, c. 81.)

§ 1-94. When officer must execute and return.—The officer to whom the summons is addressed must note on it the day of its delivery to him and serve it by delivering a copy thereof to each of the defendants. In all cases when a summons is issued by any court of this state, and the officer to whom said summons is directed shall find that the person or persons against whom said summons is issued cannot be served without danger of injury to said person or persons on account of the condition of said person or persons arising from illness, accident or otherwise, the officer shall file with his returns a certificate from a reputable physician certifying to this fact, and said returns shall relieve the said officer from any liability by reason of failure to actually serve the summons. The said officer shall as soon as possible make actual service of said summons, and when actually served the cause of action shall be deemed to have been commenced as of the date of the original summons, and the defendant shall have twenty days from the date of actual service within which to demur, answer or otherwise plead. (Rev., s. 433; Code, s. 200; 1876-7, c. 85; 1919, c. 304, s. 1; Ex. Sess. 1921, c. 92, s. 1; 1923, c. 62; C. S. 479.)

§ 1-95. Alias and pluries.—When the defendant in a civil action or special proceeding is not served with summons within ten days, the plaintiff may sue out an alias or pluries summons, returnable in the same manner as original process. An alias or pluries summons may be sued out at any time within ninety (90) days after the date of issue of the next preceding summons in the chain of summonses. Provided, however, that in case of tax suits brought under the provisions of § 105-391, as amended, an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, whether any intervening alias or pluries summons has

heretofore been issued or not, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action. (Rev., s. 437; Code, s. 205; R. C., c. 31, s. 52; 1777, c. 115, ss. 23, 71; 1929, c. 237, s. 2; 1931, c. 264; C. S. 480.)

§ 1-96. Discontinuance.—A failure to keep up the chain of summonses issued against a party, but not served, by means of an alias or pluries summons, is a discontinuance as to such party; and if a summons is served after a break in the chain, it is a new action as to such party, begun when the summons was issued. (Rev., s. 438; C. S. 481.)

§ 1-97. Service by copy.—The manner of delivering summons in the following cases shall be as hereinafter stated:

1. If the action is against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof. Any person receiving or collecting money in this state for a corporation of this or any other state or government is a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property, or the cause of action arose, or the plaintiff resides, in this state, or when it can be made personally within the state upon the president, treasurer or secretary thereof.

2. If against a minor under the age of fourteen years, to the minor personally, and also to his father, mother or guardian, or if there are none within the state, to any person having the care and control of the minor, or with whom he resides, or in whose service he is employed.

3. If against a person judicially declared of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a committee or guardian has been appointed, to such committee or guardian, and to the defendant personally. If the superintendent or acting superintendent of an insane asylum informs the sheriff or other officer who is charged with the duty of serving a summons or other judicial process, or notice, on an insane person confined in such asylum, that the summons, or process, or notice, cannot be served without danger of injury to the insane person, it is sufficient for the officer to return the same without actual service, but with an endorsement that it was not personally served because of such information; and when an insane person is confined in a common jail it is sufficient for an officer charged with service of a notice, summons, or other judicial process, to return the same with the endorsement that it was not served because of similar information as to the danger of service on such insane person given by the physician of the county in which the jail is situated.

4. Every unincorporated, fraternal, beneficial organization, fraternal benefit order, association and/or society issuing certificates and/or policies of insurance, whether foreign or domestic, now or hereafter doing business in this state, shall be subject to service of process, in the same manner as is now or hereafter provided for service of process on corporations: Provided, this paragraph shall only apply in actions concerning such certificates and/or policies of insurance.

5. Every nonresident individual who is engaged in business in this state and who conducts such business through an agent, employee, trustee, or other representative in this state, or who is a member of a partnership, firm, or unincorporated organization or association, or beneficiary or shareholder in a business trust doing business in this state, shall be subject to process in any action or proceeding in any court of competent jurisdiction in this state arising out of or connected with such business in this state, and such process may be served upon such agent, employee, trustee, or other representative or upon any person in this state receiving or collecting money with respect to such business, or upon any member of such partnership, firm, organization or association residing in this state or upon any person residing in this state who is authorized to act or contract for or collect or receive money on behalf of such partnership, firm, organization, association, or business trust with respect to its business in this state. Within five days after such service the plaintiff or petitioner or his attorney shall send by registered mail to said nonresident individual at his last address, if known, a copy of the summons and a copy of the complaint or petition with a statement calling attention to the provisions hereof and of the expiration of the time to answer or demur. Such service shall bind such individual as fully and effectually as if it had been made upon him personally. (Rev., s. 440; Code, s. 217; C. C. P., s. 82; 1874-5, c. 168; 1889, c. 89; 1933, c. 24; 1941, c. 256; C. S. 483.)

§ 1-98. Service by publication.—Where the person on whom the service of the summons is to be made cannot, after due diligence, be found in the state, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof and it in like manner appears that a cause of action exists against the defendant in respect to whom service is to be made, or that he is a proper party to an action relating to real property in this state, such court or judge may grant an order that the service be made by publication of a notice in either of the following cases:

1. Where the defendant is a foreign corporation and has property, or the cause of action arose, in the state.

2. Where the defendant, a resident of this state, has departed therefrom or keeps himself concealed therein with intent to defraud his creditors or to avoid the service of a summons.

3. Where he is not a resident, but has property in this state, and the court has jurisdiction of the subject of the action.

4. Where the subject of the action is real or personal property in this state, and the defendant has, or claims, or the relief demanded consists wholly or partly in excluding him from any actual or contingent lien or interest therein.

5. Where the action is for divorce.

6. Where the stockholders of a corporation are deemed to be necessary parties to an action and their names or residences are unknown; or where the names or residences of parties interested in real estate the subject of an action are unknown, if the name of at least one of the parties to the action and interested in the subject matter thereof is known, and he is a resident of the state, the court having jurisdiction may, upon affidavit that

after due diligence the names or residences of such parties cannot be ascertained, authorize service by publication.

7. Where in actions for the foreclosure of mortgages on real estate, if any party having any interest in, or lien upon, such mortgaged premises, is unknown to the plaintiff, and his residence cannot, with reasonable diligence, be ascertained, and such fact is made to appear by affidavit.

8. Where no officer or agent of a domestic corporation upon whom service can be made can, after due diligence, be found in the state, and such facts are made to appear by affidavit. This subsection also applies to all summonses, orders to show cause, orders and notices issued by any board of aldermen, board of town or county commissioners, or by individuals. (Rev., s. 442; Code, ss. 218, 221; 1885, c. 380; 1889, cc. 108, 263; 1895, c. 334; C. S. 484.)

§ 1-99. Manner of publication. — The order must direct the publication in one or two newspapers to be designated as most likely to give notice to the person to be served, and for such length of time as is deemed reasonable, not less than once a week for four successive weeks, of a notice, giving the title and purpose of the action, and requiring the defendant to appear and answer, or demur to the complaint at a time and place therein mentioned; and no publication of the summons, or mailing of the summons and complaint, is necessary. The cost of publishing in a newspaper shall not exceed one dollar and fifty cents an inch of solid type, and shall in no case exceed six dollars for the notice. (Rev., s. 443; Code, s. 219; 1903, c. 134; C. C. P., c. 84; 1876-7, c. 241, s. 3; C. S. 485.)

§ 1-100. When service by publication complete.—In the cases in which service by publication is allowed, the summons is deemed served at the expiration of the time prescribed by the order of publication, and the party is then in court; and the defendant shall have twenty days thereafter in civil actions and ten days in special proceedings in which to answer or demur. (Rev., s. 444; Code, s. 227; C. C. P., s. 88; 1939, c. 49, s. 1; C. S. 487.)

§ 1-101. Jurisdiction acquired from service.—From the time of service of the summons, in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all subsequent proceedings. (Rev., s. 445; Code, s. 229; C. C. P., s. 90; C. S. 488.)

§ 1-102. Proof of service.—Proof of the service of the summons or notice must be—

1. By the certificate of the sheriff or other proper officer.

2. In case of publication, the affidavit of the printer, or of his foreman or principal clerk, showing the same.

3. The written admission of the defendant. (Rev., s. 446; Code, s. 228; C. C. P., s. 89; C. S. 489.)

§ 1-103. Voluntary appearance by defendant.—A voluntary appearance of a defendant is equivalent to personal service of the summons upon him. (Rev., s. 447; Code, s. 229; C. C. P., s. 90; C. S. 490.)

§ 1-104. Personal service on nonresident.—When the place of residence of a person out of the state is known and the same is made to appear by affidavit, in lieu of publication in a newspaper it is sufficient to mail a copy of the summons, notice or other process, accompanied by a statement as to the nature of the action or proceeding, to the sheriff or other process officer of the county and state where the defendant resides, who shall serve same according to its tenor. The process officer who serves the paper shall, in making his return, use a form of certificate substantially as follows:

State of .....

County of .....

I, ..., clerk of the ..... court of ..... county, in the state of ....., which court is a court of record having a seal, which is hereto attached, do certify that ....., to me well known as the sheriff of said county of ....., who being by me duly sworn, says that as such sheriff he has full power to serve any and all legal processes issuing from the courts of said state, and that on the ..... day of ....., 19...., he served the summons hereto attached by reading and delivering a copy of same to ....., the defendant therein named.

....., Sheriff,
..... County,
State of .....

Sworn to and subscribed before me, this .... day of ....., 19....

....., Clerk ..... Court,
County of .....

[L. S.]

(Rev., s. 448; 1891, c. 120; C. S. 491.)

§ 1-105. Service upon non-resident drivers of motor vehicles.—The acceptance by a non-resident of the rights and privileges conferred by the laws now or hereafter in force in this state permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such non-resident on the public highways of this state, or the operation by such non-resident of a motor vehicle on the public highways of the state other than as so permitted or regulated, shall be deemed equivalent to the appointment by such non-resident of the Commissioner of Motor Vehicles, or of his successor in office, to be his true and lawful attorney upon whom may be served all summonses or other lawful process in any action or proceeding against him, growing out of any accident or collision in which said non-resident may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle on such public highway of this State, and said acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served on him personally. Service of such process shall be made by leaving a copy thereof, with a fee of one dollar, in the hands of said Commissioner of Motor Vehicles, or in his office, and such service shall be sufficient service upon the said non-resident: Provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff or the Commissioner of Motor Vehicles to the defendant and the defendant's return receipt and the plaintiff's affidavit of compliance

herewith are appended to the summons or other process and filed with said summons, complaint and other papers in the cause. The court in which the action is pending shall order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action. (1929, c. 75, s. 1; 1941, c. 36, s. 4.)

§ 1-106. Record of such processes; delivery of return.—The Commissioner of Motor Vehicles shall keep a record of all such processes, which shall show the day and hour of service upon him. When the registry return receipt shall be returned to the Commissioner of Motor Vehicles, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff. (1929, c. 75, s. 2; 1941, c. 36, s. 4.)

§ 1-107. Alternative method of service upon non-resident defendants.—In addition to the method provided in §§ 1-105 and 1-106, the plaintiff may adopt the following method of giving notice to a non-resident defendant or defendants:

When the place of residence of the defendant or defendants in the action described in §§ 1-105 and 1-106 is made to appear by affidavit filed with the Commissioner of Motor Vehicles and the plaintiff files with the Commissioner of Motor Vehicles at least five ($5.00) dollars to pay the costs of the service hereinafter provided for, then it shall be sufficient for the Commissioner of Motor Vehicles to mail a copy of the summons, together with a statement sufficient to show the nature of the action or proceedings, accompanied by his certificate that the summons and complaint had been served on him, to the sheriff or other process officer of the county and state where the defendant or defendants reside. This sheriff or other process officer, authorized to serve process in the state to which it is sent, shall serve the same according to its tenor. This sheriff or process officer, who serves the papers, shall, in making his return, use a form of certificate substantially as follows; and this form of certificate shall accompany the other papers in the case:

STATE OF .....
COUNTY OF .....

I, ..., Clerk of the ..... Court of ..... County in the State of ....., which court is a court of record, having a seal, which is hereto attached, do certify that ....., to me well known as a proper process officer of said county of ....., who being by me duly sworn, says that as such process officer he has full power to serve any and all legal processes, issued from the courts of said State, and that on the ..... day of ....., 19....., he served the summons and accompanying statement hereto attached, by reading and delivering a copy of the same to the defendant therein named (if more than one defendant, copies to each of them).

SIGNED.....
Process Officer.
.....County
.....State

Sworn to and subscribed before me this..... day of ....., 19....., ..., Clerk..... Court, county of ....., or city of ..... (SEAL)

Said sheriff or process officer shall immediately upon the execution of this evidence of service, return the same with the original papers in the cause to the Commissioner of Motor Vehicles, Raleigh, North Carolina. When the Commissioner of Motor Vehicles shall receive these papers, thus served, he shall deliver the same to the plaintiff on request, and keep a record showing the date of their receipt by him and their delivery to the plaintiff. Upon the filing of these papers in the court where the action is pending, accompanied by evidence of service upon the Commissioner of Motor Vehicles, as required by § 1-105, that shall constitute presumptive evidence of actual notice to the defendant or defendants of the pendency of the action and of its nature and effect. (1931, c. 33, s. 1; 1941, c. 36.)

§ 1-108. Defense after judgment on substituted service. — The defendant against whom publication is ordered, or who is served under the provisions of § 1-104, or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof, and within five years after its rendition, on such terms as are just; and if the defense is successful and the judgment or any part thereof has been collected or otherwise enforced, such restitution may be compelled as the court directs. Title to property sold under such judgment to a purchaser in good faith is not thereby affected. No fiduciary officer or trustee who has made distribution of a fund under such judgment in good faith is personally liable if the judgment is changed by reason of such defense made after its rendition; nor in case the judgment was rendered for the partition of land, and any persons receiving any of the land in such partition sell it to a third person; the title of such third person is not affected if such defense is successful, but the redress of the person so defending after judgment shall be had by proper judgment against the parties to the original judgment and their heirs and personal representatives, and in no case affects persons who in good faith have dealt with such parties or their heirs or personal representatives on the basis of such judgment being permanent. (Rev., s. 449; Code, s. 220; C. C. P., s. 85; 1917, c. 68; C. S. 492.)

Art. 9. Prosecution Bonds.

§ 1-109. Plaintiff's, for costs.—Before issuing the summons the clerk shall require the plaintiff to do one of the following:

1. Give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that it will be void if the plaintiff pays the defendant all costs which the latter recovers of him in the action.

2. Deposit two hundred dollars with him as security to the defendant for these costs, in which event the clerk must give to the plaintiff and defendant a certificate to that effect.

3. File with him a written authority from a judge or clerk of a superior court, authorizing the plaintiff to sue as a pauper: Provided, however, that the requirements of this section shall not apply to cities and towns; provided, further,

that cities and towns may institute civil actions and special proceedings without being required to give a prosecution bond or make deposit in lieu of bond. (Rev., s. 450; Code, s. 209; R. C., c. 31, s. 40; C. C. P., s. 71; 1935, c. 398; C. S. 493.)

§ 1-110. Suit as a pauper; counsel.—Any judge or clerk of the superior court may authorize a person to sue as a pauper in their respective courts when he proves, by one or more witnesses, that he has a good cause of action, and makes affidavit that he is unable to comply with the preceding section. The court to which such summons is returnable may assign to the person suing as a pauper learned counsel, who shall prosecute his action. (Rev., ss. 451, 452; Code, ss. 210, 211; C. C. P., s. 72; 1868-9, c. 96, s. 2; C. S. 494.)

Local Modification.—Durham, Forsyth, Nash, Northampton: 1937, c. 381.

§ 1-111. Defendant's, for costs and damages in actions for land.—In all actions for the recovery or possession of real property, the defendant, before he is permitted to plead, must execute and file in the office of the clerk of the superior court of the county where the suit is pending an undertaking with sufficient surety, in an amount fixed by the court, not less than two hundred dollars, to be void on condition that the defendant pays to the plaintiff all costs and damages which the latter recovers in the action, including damages for the loss of rents and profits. (Rev., s. 453; Code, s. 237; 1869-70, c. 193; C. S. 495.)

§ 1-112. Defense without bond.—The undertaking prescribed in the preceding section is not necessary if an attorney practicing in the court where the action is pending certifies to the court in writing that he has examined the case of the defendant and is of the opinion that the plaintiff is not entitled to recover; and if the defendant also files an affidavit stating that he is unable to give and is not worth the amount of the undertaking in any property whatsoever. (Rev., s. 454; Code, s. 237; 1869-70, c. 193; C. S. 496.)

Art. 10. Joint and Several Debtors.

§ 1-113. Defendants jointly or severally liable.—Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1. If the action is against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise directs, and if he recovers judgment it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.

2. If the action is against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

3. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants if the action had been against them or any of them alone.

4. If the name of one or more partners has, for any cause, been omitted in an action in which judgment has been rendered against the defendants named in the summons, and the omission was not pleaded in the action, the plaintiff, in case the judgment remains unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he was not named in the original action; but the plaintiff may have satisfaction of only one judgment rendered for the same cause of action. (Rev., s. 455; Code, s. 222; C. C. P., s. 87; C. S. 497.)

§ 1-114. Summoned after judgment; defense.—When a judgment is recovered against one or more of several persons jointly indebted upon a contract in accordance with the preceding section, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned. A party so summoned may answer within the time specified denying the judgment, or setting up any defense thereto which has arisen subsequent to such judgment; and may make any defense which he might have made to the action if the summons had been served on him originally. (Rev., ss. 456, 457; Code, ss. 223, 224; C. C. P., ss. 318, 322; C. S. 498.)

§ 1-115. Pleadings and proceedings same as in action.—The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply. The answer and reply must be verified in like cases and manner and be subject to the same rules that apply in an action, and the issues may be tried and judgment given in the same manner as in action and enforced by execution if necessary. (Rev., ss. 458, 459; Code, ss. 225, 226; C. C. P., ss. 323, 324; C. S. 499.)

Art. 11. Lis Pendens.

§ 1-116. Filing of notice of suit.—In action affecting the title to real property, the plaintiff, at or any time after the time of filing the complaint or when or any time after a warrant of attachment is issued, or a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief, at or any time after the time of filing his answer, if it is intended to affect real estate, may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the property in that county affected thereby. (Rev., s. 460; Code, s. 229; C. C. P., s. 90; 1917, c. 106; C. S. 500.)

§ 1-117. Cross-index of lis pendens.—Any party to an action desiring to claim the benefit of a notice of lis pendens, whether given formally under this article or in the pleadings filed in the case, shall cause such notice to be cross-indexed by the clerk of the superior court in a docket to be kept by him, to be called Record of Lis Pendens, which index shall contain the names of the parties to the action, where such notice (whether formal or in the pleadings) is filed, the object of the action, the date of indexing, and sufficient description of the land to be affected to enable any

person to locate said lands. The clerk shall be entitled to a fee of twenty-five cents for indexing said notice, to be paid as are other costs in the pending action. (Rev., s. 464; 1903, c. 472; 1919, c. 31; C. S. 501.)

§ 1-118. Effect on subsequent purchasers.—From the cross-indexing of the notice of lis pendens only is the pendency of the action constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently registered is a subsequent purchaser or incumbrancer, and is bound by all proceedings taken after the cross-indexing of the notice to the same extent as if he were made a party to the action. For the purposes of this section an action is pending from the time of cross-indexing the notice. (Rev., s. 462; Code, s. 229; C. C. P., s. 90; 1919, c. 31; C. S. 502.)

§ 1-119. Notice void unless action prosecuted.—The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an order therefor, or by the personal service on the defendant within sixty days after the cross-indexing. (Rev., s. 461; Code, s. 229; C. C. P., s. 90; 1919, c. 31; C. S. 503.)

§ 1-120. Cancellation of notice.—The court in which the said action was commenced may, at any time after it is settled, discontinued or abated, on application of any person aggrieved, on good cause shown, and on such notice as is directed or approved by the court, order the notice authorized by this article to be canceled of record, by the clerk of any county in whose office the same has been filed or recorded; and this cancellation must be made by an endorsement to that effect on the margin of the record, which shall refer to the order. (Rev., s. 463; Code, s. 229; C. C. P., s. 90; C. S. 504.)

SUBCHAPTER VI. PLEADINGS.

Art. 12. Complaint.

§ 1-121. First pleading and its filing.—The first pleading on the part of the plaintiff is the complaint. It must be filed in the clerk's office at or before the time of the issuance of summons and a copy thereof delivered to the defendant, or defendants, at the time of the service of summons; provided, that the clerk may at the time of the issuance of summons on application of plaintiff by written order extend the time for filing complaint to a day certain not to exceed twenty (20) days, and a copy of such order shall be delivered to the defendant, or defendants, at the time of the service of summons in lieu of a copy of the complaint: Provided further, said application and order shall state the nature and purpose of the suit. The clerk shall not extend the time for filing complaint beyond the time specified in such order; except that when application is made to the court, under article forty-six of this chapter, for leave to examine the defendant prior to filing complaint, and it shall be made to appear to the court that such examination of defendant is necessary to enable the plaintiff to file his complaint, and such examination is allowed, the clerk shall extend the time for filing complaint until twenty (20) days after the report of the examination is filed as required by § 1-571. When the complaint is not filed at the time of the issuance of the summons, the plaintiff shall, when he files complaint, likewise file at least one copy thereof for the use of the defendant and his attorney. When there are more than one defendant, the clerk, may, by written notice to the plaintiff, require the filing of additional (not to exceed six) copies of the complaint within the time specified in such notice, not to exceed ten days. Such notice may be served by mailing to the plaintiff or his attorney of record. (Rev., ss. 465, 466; Code, ss. 206, 232, 238; C. C. P., s. 92; 1868-9, c. 76, s. 3; 1870-1, c. 42, s. 3; 1919, c. 304, s. 2; 1927, c. 66, s. 3; C. S. 505.)

§ 1-122. Contents.—The complaint must contain—

1. The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation must be distinctly numbered.

3. A demand for the relief to which the plaintiff supposes himself entitled. If the recovery of money is demanded, the amount must be stated.

4. In actions for the recovery of a debt contracted for the purchase of land, a statement that the consideration of the debt was the purchase money of certain land, describing the land in an intelligible manner, such as the location, boundaries, and acreage. (Rev., ss. 467-8; Code, ss. 233-4; C. C. P., s. 93; 1879, c. 217; C. S. 506.)

§ 1-123. What causes of action may be joined.—The plaintiff may unite in the same complaint several causes of action, of legal or equitable nature, or both, where they all arise out of—

1. The same transaction, or transaction connected with the same subject of action.

2. Contract, express or implied.

3. Injuries with or without force to person or property.

4. Injuries to character.

5. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same.

6. Claims to recover personal property, with or without damages for the withholding thereof; or,

7. Claims against a trustee, by virtue of a contract, or by operation of law. But the causes of action so united must all belong to one of these classes, and, except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different places of trial, and must be separately stated.

In actions to foreclose mortgages, the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that remains unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor is personally liable for the debt secured; and if the mortgage debt is secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make that person a party to the action, and the court may adjudge payment

of the residue of the debt remaining unsatisfied after a sale of the mortgaged premises, against the other person, and may enforce such judgment as in other cases. (Rev., s. 469; Code, s. 267; C. C. P., s. 126; C. S. 507.)

Art. 13. Defendant's Pleadings.

§ 1-124. Demurrer and answer. — The only pleading on the part of the defendant is either a demurrer or an answer. He may demur to one or more of several causes of action stated in the complaint, and answer to the residue. (Rev., ss. 470, 471; Code, ss. 238, 246; C. C. P., ss. 94, 103; C. S. 508.)

§ 1-125. When defendant appears and pleads; extension of time; clerk to mail answer to plaintiff.—The defendant must appear and demur or answer within thirty (30) days after the service of summons upon him, or within thirty (30) days after the final determination of a motion to remove as a matter of right, or after the final determination of a motion to dismiss upon a special appearance, or after the final determination of any other motion required to be made prior to the filing of the answer, or after final judgment overruling demurrer, or after the final determination of a motion to set aside a judgment by default under § 1-220, or to set aside a judgment under § 1-108. If the time is extended for filing complaint, then the defendant shall have thirty (30) days after the final day fixed by such extension in which to plead. The clerk shall not extend the time for filing answer or demurrer more than once nor for a period of time exceeding twenty days except by consent of parties. The defendant shall, when he files answer, likewise file at least one copy thereof for the use of the plaintiff, and his attorney; and the clerk shall not receive and file any answer until and unless such copy is filed therewith. The clerk shall forthwith mail the copy of answer filed to the plaintiff or his attorney of record. This section shall also apply to all courts of record inferior to the superior court, where any defendant resides out of the county from which the summons is issued and no court of record inferior to the superior court shall fix such return date at less than thirty (30) days. (Rev., s. 473; Code, 207; 1870-1, c. 42, s. 4; 1919, c. 304, s. 3; Ex. Sess. 1919, c. 92, s. 3; 1927, c. 66, s. 4; 1935, c. 267; C. S. 509.)

§ 1-126. Sham and irrelevant defenses.—Sham and irrelevant answers and defenses may be stricken out on motion, upon such terms as the court may in its discretion impose. (Rev., s. 472; Code, s. 247; C. C. P., s. 104; C. S. 510.)

Art. 14. Demurrer.

§ 1-127. Grounds for.—The defendant may demur to the complaint when it appears upon the face thereof, either that:

1. The court has no jurisdiction of the person of the defendant, or of the subject of the action; or,
2. The plaintiff has not legal capacity to sue; or,
3. There is another action pending between the same parties for the same cause; or,
4. There is a defect of parties plaintiff or defendant; or,
5. Several causes of action have been improperly united; or,
6. The complaint does not state facts sufficient to constitute a cause of action. (Rev., s. 474; Code, s. 239; C. C. P., s. 95; C. S. 511.)

§ 1-128. Must specify grounds.—The demurrer must distinctly specify the grounds of objection to the complaint, or it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein. (Rev., s. 475; Code, s. 240; C. C. P., s. 96; C. S. 512.)

§ 1-129. Amendment; hearing.—If a demurrer is filed the plaintiff may be allowed to amend. If plaintiff fail to amend within five days after notice, the parties may agree to a time and place of hearing the same before some judge of the superior court, and upon such agreement it shall be the duty of the clerk of the superior court forthwith to send the complaint and demurrer to the judge holding the courts of the district, or to the resident judge of the district, who shall hear and pass upon the demurrer: Provided, if there be no agreement between the parties as to the time and place of hearing the same before the judge of the superior court, then it shall be the duty of the clerk of the superior court to send the complaint and demurrer to the judge holding the next term of the superior court in the county where the action is pending, who shall hear and pass upon the demurrer at that term of the court. (1919, c. 304, s. 4; Ex. Sess. 1921, c. 92, s. 5; C. S. 513.)

§ 1-130. Appeals.—Upon the rendering of the decision upon the demurrer, if either party desires to appeal, notice shall be given and the appeal perfected as is now provided in case of appeals from decisions in term time. (1919, c. 304, s. 5; Ex. Sess. 1921, c. 92, s. 6; C. S. 514.)

§ 1-131. Procedure after return of judgment.—Within ten days after the return of the judgment upon the demurrer, if there is no appeal, or within ten days after the receipt of the certificate from the supreme court, if there is an appeal, if the demurrer is sustained the plaintiff may move, upon three days notice, for leave to amend the complaint. If this is not granted, judgment shall be entered dismissing the action. If the demurrer is overruled the answer shall be filed within ten days after the receipt of the judgment, if there is no appeal, or within ten days after the receipt of the certificate of the supreme court, if there is an appeal. Otherwise the plaintiff shall be entitled to judgment by default final or by default and inquiry according to the course and practice of the court. (1919, c. 304, ss. 6, 7; Ex. Sess. 1921, c. 92, ss. 7, 8; C. S. 515.)

§ 1-132. Division of actions when misjoinder.—If the demurrer is sustained for the reason that several causes of action have been improperly united, the judge shall, upon such terms as are just, order the action to be divided into as many actions as are necessary for the proper determination of the causes of the action therein mentioned. (Rev., s. 476; Code, s. 272; C. C. P., s. 131; C. S. 516.)

§ 1-133. Grounds not appearing in complaint.—When any of the matters enumerated as grounds of demurrer do not appear on the face of the com-

plaint, the objection may be taken by answer. (Rev., s. 477; Code, s. 241; C. C. P., s. 98; C. S. 517.)

§ 1-134. Objection waived.—If objection is not taken either by demurrer or answer, the defendant waives the same, except the objections to the jurisdiction of the court and that the complaint does not state facts sufficient to constitute a cause of action. (Rev., s. 478; Code, s. 242; C. C. P., s. 99; C. S. 518.)

Art. 15. Answer.

§ 1-135. Contents.—The answer of the defendant must contain—

1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language, without repetition. (Rev., s. 479; Code, s. 243; C. C. P., s. 100; C. S. 519.)

§ 1-136. Debt for purchase money of land denied.—If the defendant shall deny in his answer that the obligation sued on was for the purchase money of the land described in the complaint, it shall be the duty of the court to submit the issue so joined to the jury. (Rev., s. 480; Code, s. 235; 1879, c. 217; 1921, c. 45; C. S. 520.)

§ 1-137. Counterclaim.—The counterclaim mentioned in this article must be one existing in favor of a defendant and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action. (Rev., s. 481; Code, s. 244; C. C. P., s. 101; C. S. 521.)

§ 1-138. Several defenses.—The defendant may set forth by answer as many defenses and counterclaims as he has, whether they are of a legal or equitable nature, or both. They must be separately stated and numbered, and refer to the cause of action which they are intended to answer in such manner that they may be intelligibly distinguished. (Rev., s. 482; Code, s. 245; C. C. P., s. 102; C. S. 522.)

§ 1-139. Contributory negligence pleaded and proved.—In all actions to recover damages by reason of the negligence of the defendant, where contributory negligence is relied upon as a defense, it must be set up in the answer and proved on the trial. (Rev., s. 483; 1887, c. 33; C. S. 523.)

Art. 16. Reply.

§ 1-140. Demurrer or reply to answer; where answer contains a counterclaim.—If the answer contains a counterclaim against the plaintiff or plaintiffs, or any of them, such answer shall be served upon the plaintiff or plaintiffs against whom such counterclaim is plead, or against the attorney or attorneys of record of such plaintiff or plaintiffs; the plaintiff or plaintiffs against whom such counterclaim shall be plead shall have twenty (20) days after the service thereof within which to answer or reply to such counterclaim: Provided, for good cause shown, the clerk may extend the time of filing such answer or reply to a day certain. If a counterclaim is plead against any of the plaintiffs and no copy of the answer containing such counterclaim shall be served upon the plaintiff or plaintiffs or his or their attorneys of record, such counterclaim shall be deemed to be denied as fully as if the plaintiff or plaintiffs had filed an answer or reply denying the same. All other replies, if any, shall be filed within twenty (20) days from the filing of the answer: Provided, for good cause shown, the clerk or judge, in the event the cause shall have been transferred to the civil issue docket, may extend the time to a day certain. (Rev., s. 484; Code, s. 208; 1870-71, c. 42, s. 5; 1919, c. 304; Ex. Sess. 1921, c. 92, s. 1; Ex. Sess. 1924, c. 18; C. S. 524.)

§ 1-141. Content; demurrer to answer.—When the answer contains new matter constituting a counterclaim, the plaintiff may reply to the new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to the new matter in the answer. The plaintiff may in all cases demur to an answer containing new matter, where, upon its face, it does not constitute a counterclaim or defense; and he may demur to one or more of such defenses or counterclaims, and reply to the residue. Such demurrer shall be heard and determined as provided for demurrers to the complaint. In other cases, when an answer contains new matter constituting a defense by way of avoidance, the court may in its discretion, on the defendant's motion, require a reply to such new matter, and such reply shall be subject to the same rules as a reply to a counterclaim. (Rev., s. 485; Code, s. 248; C. C. P., s. 105; 1919, c. 304; C. S. 525.)

§ 1-142. Demurrer to reply.—If a reply of the plaintiff to a defense set up by the answer of the defendant is insufficient, the defendant may demur thereto, and must state the grounds thereof. (Rev., s. 486; Code, s. 250; C. C. P., s. 107; C. S. 526.)

Art. 17. Pleadings, General Provisions.

§ 1-143. Forms of pleading.—The forms of pleading in civil actions in courts of record, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed by this chapter. (Rev., s. 487; Code, s. 231; C. C. P., s. 91; C. S. 527.)

§ 1-144. Subscription and verification of pleading.—Every pleading in a court of record must be subscribed by the party or his attorney, and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also. (Rev., s. 488; Code, s. 257; C. C. P., s. 116; C. S. 528.)

§ 1-145. Form of verification.—The verification

must be in substance that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true; and must be by affidavit of the party, or if there are several parties united in interest and pleading together, by one at least of such parties acquainted with the facts, if the party is in the county where the attorney resides and is capable of making the affidavit. (Rev., s. 489; Code, s. 258; C. C. P., s. 117; 1868-9, c. 159, s. 7; C. S. 529.)

§ 1-146. Verification by agent or attorney.—The affidavit may also be made by the agent or attorney, if the action or defense is founded upon a written instrument for the payment of money only and the instrument is in the possession of the agent or attorney, or if all the material allegations of the pleadings are within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge or the grounds of his belief on the subject, and the reasons why it is not made by the party. (Rev., s. 490; Code, s. 258; C. C. P., s. 117; 1868-9, c. 159, s. 7; C. S. 530.)

§ 1-147. Verification by corporation or the state.—When a corporation is a party the verification may be made by any officer, or managing or local agent thereof upon whom summons might be served; and when the state or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts. (Rev., s. 491; Code, s. 258; 1901, c. 610; C. C. P., s. 117; 1868-9, c. 159, s. 7; C. S. 531.)

§ 1-148. Verification before what officer.—Any officer competent to take the acknowledgment of deeds, and any judge or clerk of the superior court, notary public, in or out of the state, or justice of the peace, is competent to take affidavits for the verification of pleadings, in any court or county in the state, and for general purposes. (Rev., s. 492; Code, s. 258; 1891, c. 140; C. C. P., s. 117; 1868-9, c. 159, s. 7; C. S. 532.)

§ 1-149. When verification omitted; use in criminal prosecutions.—The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. No pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in it. (Rev., s. 493; Code, s. 258; C. C. P., s. 117; 1868-9, c. 159, s. 7; C. S. 533.)

§ 1-150. Items of account; bill of particulars.—It is not necessary for a party to set forth in a pleading the items of an account alleged in it; but he must deliver to the adverse party, within ten days after a demand therefor in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath or that of his agent or attorney if within the personal knowledge of the agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court or judge may order a further account when the one delivered is defective, and may, in all cases, order a bill of particulars of the claim of either party to be furnished. (Rev., s. 494; Code, s. 259; C. C. P., s. 118; C. S. 534.)

§ 1-151. Pleadings construed liberally.—In the construction of a pleading for the purpose of determining its effect its allegations shall be liberally construed with a view to substantial justice between the parties. (Rev., s. 495; Code, s. 260; C. C. P., s. 119; C. S. 535.)

§ 1-152. Time for pleading enlarged. — The judge may likewise, in his discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited, or by an order may enlarge the time. (Rev., s. 512; Code, s. 274; C. C. P., s. 133; C. S. 536.)

§ 1-153. Irrelevant, redundant, indefinite pleadings.—If irrelevant or redundant matter is inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby, but this motion must be made before answer or demurrer, or before an extension of time to plead is granted. When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment. (Rev., s. 496; Code, s. 261; C. C. P., s. 120; C. S. 537.)

§ 1-154. Pleading judgments. — In pleading a judgment or other determination of a court or of an officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. If this allegation is controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction. (Rev., s. 497; Code, s. 262; C. C. P., s. 121; C. S. 538.)

§ 1-155. How conditions precedent pleaded.—In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing performance, but it may be stated generally that the party duly performed all the conditions on his part. If this allegation is controverted, the party pleading must establish, on the trial, the facts showing performance. (Rev., s. 498; Code, s. 263; C. C. P., s. 122; C. S. 539.)

§ 1-156. How instrument for payment of money pleaded.—In an action or defense founded upon an instrument for the payment of money only, it is sufficient for the party pleading to give a copy of the instrument, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims. (Rev., s. 499; Code, s. 263; C. C. P., s. 122; C. S. 540.)

§ 1-157. How private statutes pleaded. — In pleading a private statute or right derived therefrom it is sufficient to refer to the statute by its title or the day of its ratification, and the court shall thereupon take judicial notice of it. (Rev., s. 500; Code, s. 264; C. C. P., s. 123; C. S. 541.)

§ 1-158. Pleadings in libel and slander.—In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it is sufficient to state generally that the same was published or

spoken concerning the plaintiff; and if such allegation is controverted, the plaintiff is bound to establish on trial that it was so published or spoken.

The defendant may in his answer allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances. (Rev., ss. 501, 502; Code, ss. 265, 266; C. C. P., ss. 124, 125; C. S. 542.)

§ 1-159. Allegations not denied, deemed true.—Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer, constituting a counterclaim, not controverted by the reply is, for the purposes of the action, taken as true. But the allegation of new matter in the answer, not relating to a counterclaim, or of new matter in reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case requires. (Rev., s. 503; Code, s. 268; C. C. P., s. 127; C. S. 543.)

§ 1-160. Pleading lost, copy used.—If an original pleading or paper is lost or withheld by any person, the court may authorize a copy to be filed and used instead of the original. (Rev., s. 504; Code, s. 600; C. C. P., s. 357; C. S. 544.)

Art. 18. Amendments.

§ 1-161. Amendment as of course.—Any pleading may be once amended of course, without costs, and without prejudice to the proceedings already had, at any time before the period for answering it expires; or it can be so amended at any time, unless it is made to appear to the court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is, or may be, docketed for trial; and if it appears to the court or judge that the amendment was made for that purpose, it may be stricken out, and such terms imposed as seem just to the court or judge. (Rev., s. 505; Code, s. 272; C. C. P., s. 131; C. S. 545.)

§ 1-162. Pleading over after demurrer.—After the decision on a demurrer, the judge shall, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just. (Rev., s. 506; Code, s. 272; C. C. P., s. 131; 1871-2, c. 173; C. S. 546.)

§ 1-163. Amendments in discretion of court.—The judge or court may, before and after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party; by correcting a mistake in the name of a party, or a mistake in any other respect; by inserting other allegations material to the case; or when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the fact proved. When a proceeding taken by a party fails to conform to law in any respect, the trial judge may permit an amendment of the proceeding so as to make it conformable thereto. (Rev., ss. 507, 512; Code, ss. 273, 274; C. C. P., ss. 132, 133; C. S. 547.)

§ 1-164. Amendment changing nature of action or relief; effect.—When the complaint is so amended as to change the nature of the action and the character of the relief demanded, the judgment rendered does not operate as an estoppel upon any person acquiring an interest in the property in controversy prior to the allowance of the amendment. (Rev., s. 508; 1901, c. 486; C. S. 548.)

§ 1-165. Unsubstantial defects disregarded.—The court or judge shall, in every stage of the action, disregard any error or defect in the pleadings or proceedings which do not affect the substantial rights of the adverse party; and no judgment may be reversed or affected by reason of such error or defect. (Rev., s. 509; Code, s. 276; R. C., c. 3, ss. 5, 6; C. C. P., s. 135; C. S. 549.)

§ 1-166. Defendant sued in fictitious name; amendment.—When the plaintiff is ignorant of the name of a defendant the latter may be designated in a pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly. (Rev., s. 510; Code, s. 275; C. C. P., s. 134; C. S. 550.)

§ 1-167. Supplemental pleadings.—The plaintiff or defendant respectively may be allowed on motion to make a supplemental complaint, answer or reply, alleging facts material to the case occurring after, or of which the party was ignorant when his former pleading was filed. Either party may set up by a supplemental pleading, the judgment or decree of any court of competent jurisdiction, rendered since the commencement of an action, determining all or any part of the matter in controversy in said action, and if the judgment is set up by the plaintiff, it shall be without prejudice to any provisional remedy theretofore issued or other proceedings had in the action on his behalf. Such motions may be made before the clerk of the superior court of the county in which the action is pending, by filing with the clerk the original and one copy of the proposed amended pleading and motion, which copy shall be forwarded to the opposing party or counsel and in which motion the clerk shall name a day and time of not less than ten days, unless by consent, to hear any objection to same; from the determination of the clerk, either party may have the matter sent to the judge of, or holding courts in the judicial district in which the matter is pending, by giving notice thereof to the clerk and opposing party or counsel within ten days from such date of hearing by the clerk: Provided, such motion shall be made at least thirty days before the convening of a term of court at which the cause may be calendared for trial. (Rev., s. 511; Code, s. 277; C. C. P., s. 136; 1929, c. 95; C. S. 551.)

§ 1-168. Variance, material and immaterial.—1. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action upon the merits. Whenever it is alleged that a party has been so misled, that fact and in what respect he has been misled must be proved to the satisfaction of the court; and thereupon the judge may order the pleading to be amended upon such terms as shall be just.

2. Where the variance is not material as herein provided, the judge may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. (Rev., ss. 515, 516; Code, ss. 269, 270; C. C. P., ss. 128, 129; C. S. 552.)

§ 1-169. Total failure of proof.—Where the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it is not deemed a case of variance, but a failure of proof. (Rev., s. 517; Code, s. 397; C. C. P., s. 223; C. S. 553.)

SUBCHAPTER VII. TRIAL AND ITS INCIDENTS.

Art. 19. Trial.

§ 1-170. Defined.—A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact. (Rev., s. 526; Code, s. 397; C. C. P., s. 223; C. S. 554.)

§ 1-171. Joinder of issue and trial.—Pleadings shall be made up and issues joined before the clerk. After pleadings have been so made up and issues joined, the clerk shall forthwith transmit the original papers in the cause to the court at term for trial upon the issues, when the case shall be proceeded with according to the course and practice of the court, and on appeal with the same procedure as is now in force. (1919, c. 304, s. 8; Ex. Sess. 1921, c. 92, s. 13; C. S. 555.)

§ 1-172. How issue tried.—An issue of law must be tried by the judge or court, unless it is referred. An issue of fact must be tried by a jury, unless a trial by jury is waived or a reference ordered. Every other issue is triable by the court, or judge, who, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it. (Rev., s. 527; Code, ss. 398, 399; C. C. P., ss. 224, 225; C. S. 556.)

§ 1-173. Issues of fact.—Every issue of fact joined on the pleadings, and inquiry of damages ordered to be tried by a jury, must be tried at the term of the court next ensuing the joinder of issue or order for inquiry, if the issue was joined or order made more than ten days before such term, but if not, they may be tried at the second term after the joinder or order. (Rev., s. 528; Code, s. 400; C. C. P., s. 226; 1923, c. 54; 1925, c. 5; C. S. 557.)

§ 1-174. Issues of fact before the clerk.—All issues of fact joined before the clerk shall be transferred to the superior court for trial at the next succeeding term, and in case of such transfer neither party is required to give an undertaking for costs. (Rev., s. 529; C. S. 558.)

§ 1-175. Continuance before term; affidavit.—A party to an action may apply to the court in which it is pending, or to the judge thereof, by affidavit, thirty days before the trial term, and after three days notice in writing to the adverse party, to have the trial continued to a term subsequent to that in which it is regularly triable. The court or judge may continue the trial as asked for, on such terms as may be just, if satisfied—

1. That the applicant has used due diligence to have his case ready for trial.

2. That by reason of circumstances beyond his control, which he must set forth, he cannot have a fair trial at the regular trial term. If the application is made by reason of the expected absence of a witness, it must state the name and residence of the witness, the facts expected to be proved by him, the grounds for the expectation of his nonattendance, and that the applicant expects to procure his evidence at or before some named subsequent term. The applicant must in all cases pay the costs of the application. (Rev., s. 530; Code, 401; C. C. P., s. 227; C. S. 559.)

§ 1-176. Continuance during term.—The judge at any time during the term at which an action is triable may continue the trial on the application of either party, and on such terms as shall be just, if satisfied—

1. That the applicant has used due diligence to be ready for trial.

2. That he cannot have a fair trial at that term, by reason of circumstances stated, and if the ground of application is the nonattendance of a witness, the affidavit must contain the particulars required by subdivision two of § 1-175. Unless the applicant also sets forth in his affidavit that the facts upon which his application is grounded occurred or came to his knowledge too late to allow him to apply as prescribed in § 1-175, and that his application is made as soon as it reasonably could be after the knowledge of those facts, the continuance shall not be granted, except on the payment of the costs in the action for the term. (Rev., s. 531; Code, s. 402; C. C. P., s. 228; R. C., c. 31, s. 57; C. S. 560.)

§ 1-177. Counter affidavits as to continuance.—It is competent in all civil cases only for the opposing side to controvert the allegations of fact in applications for continuance, and to offer counter affidavits to that end. The judge shall not allow the continuance unless satisfied, after thorough examination of the evidence aforesaid, that the ends of justice demand it. (Rev., s. 532; 1885, c 394; C. S. 561.)

§ 1-178. Order of business.—The criminal calendar must be first disposed of, unless, by consent of counsel, or for reasons satisfactory to the judge, particular criminal actions may be deferred. The issue on the civil calendar must be disposed of in the following order, unless, for the convenience of parties or the dispatch of business, the court otherwise directs:

1. Issues of fact to be tried by a jury.
2. Issues of fact to be tried by the court.
3. Issues of law.

(Rev., s. 533; Code, s. 403; C. C. P., s. 229; C. S. 562.)

§ 1-179. Separate trials.—A separate trial between a plaintiff and any of several defendants may be allowed by the court when, in its opinion, justice will thereby be promoted. (Rev., s. 534; Code, s. 407; C. C. P., s. 230; C. S. 563.)

§ 1-180. Judge to explain law, but give no opinion on facts.—No judge, in giving a charge to the petit jury, either in a civil or criminal action, shall give an opinion whether a fact is fully or sufficiently proven, that being the true office and province of the jury; but he shall state in a plain and correct manner the evidence given in the case

and declare and explain the law arising thereon. (Rev., s. 535; Code, s. 413; C. C. P., s. 237; R. C., c. 31, s. 130; 1796, c. 452; C. S. 564.)

§ 1-181. Request for instructions.—Counsel praying of the judge instructions to the jury, must put their requests in writing entitled of the cause, and sign them; otherwise the judge may disregard them. They must be filed with the clerk as a part of the record. (Rev., s. 538; Code, s. 415; C. C. P., s. 239; C. S. 565.)

§ 1-182. Instructions in writing; when to be taken to jury room.—The judge, at the request of any party to an action on trial, made at or before the close of the evidence, before instructing the jury on the law, must put his instructions in writing and read them to the jury. He shall then sign and file them with the clerk as a part of the record of the action.

When a judge puts his instructions in writing either of his own will or at the request of a party to the action, he must, at the request of either party to the action, allow the jury to take his instructions with them on their retirement, and the jury must return the instructions with their verdict to the court. (Rev., ss. 536, 537; Code, s. 414; C. C. P., s. 238; 1885, c. 137; C. S. 566.)

§ 1-183. Motion for nonsuit.—When on trial of an issue of fact in a civil action or special proceeding, the plaintiff has introduced his evidence and rested his case, the defendant may move to dismiss the action, or for judgment as in case of nonsuit. If the motion is allowed the plaintiff may except and appeal to the supreme court. If the motion is refused the defendant may except, and if the defendant introduces no evidence the jury shall pass upon the issues in the action, and the defendant has the benefit of his exception on appeal to the supreme court. After the motion is refused he may waive his exception and introduce his evidence just as if he had not made the motion, and he may again move to dismiss after all the evidence on both sides is in. If the motion is then refused, upon consideration of all the evidence, he may except, and after the jury has rendered its verdict, he has the benefit of the latter exception on appeal to the supreme court. (Rev., s. 539; 1897, c. 109; 1899, c. 131; 1901, c. 594; C. S. 567.)

§ 1-184. Waiver of jury trial.—Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:

1. By failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent, entered in the minutes. (Rev., s. 540; Code, s. 416; C. C. P., s. 240; C. S. 568.)

§ 1-185. Findings of fact and conclusions of law by judge.—Upon trial of an issue of fact by the court, its decision shall be given in writing, and shall contain a statement of the facts found, and the conclusions of law separately. Upon trial of an issue of law, the decision shall be made in the same manner, stating the conclusions of law. Such decision must be filed with the clerk during the court at which the trial takes place, and judgment upon it shall be entered accordingly. (Rev., s. 541; Code, s. 417; C. C. P., s. 241; C. S. 569.)

§ 1-186. Exceptions to decision of court. — 1. For the purposes of an appeal, either party may except to a decision on a matter of law arising upon a trial by the court within ten days after the judgment, in the same manner and with the same effect as upon a trial by jury. Where the decision does not authorize a final judgment, but directs further proceedings before a referee or otherwise, either party may except thereto, and make a case or exception as above provided in case of an appeal.

2. Either party desiring a review, upon the evidence appearing on the trial of the questions of law, may at any time within ten days after the judgment, or within such time as is prescribed by the rules of the court, make a case or exceptions in like manner as upon a trial by jury, except that the judge in settling the case must briefly specify the facts found by him, and his conclusions of law. (Rev., s. 542; Code, s. 418; C. C. P., s. 242; C. S. 570.)

§ 1-187. Proceedings upon judgment on issue of law.—On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of section 1-211 herein upon failure of the defendant to answer, where the summons was personally served. If judgment is for the defendant, upon an issue of law, and if taking of an account or the proof of any fact is necessary to enable the court to complete the judgment, a reference or assessment by jury may be ordered, as provided in section 1-212 herein. (Rev., s. 543; Code, s. 419; C. C. P., s. 243; C. S. 571.)

Art. 20. Reference.

§ 1-188. By consent.—Any or all of the issues in an action, whether of fact or law, may be referred, upon the written consent of the parties, except in actions to annul a marriage, or for divorce and separation. (Rev., s. 518; Code, s. 420; C. C. P., s. 244; C. S. 572.)

§ 1-189. Compulsory.—Where the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. Where the trial of an issue of fact requires the examination of a long account on either side; in which case the referee may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein.
2. Where the taking of an account is necessary for the information of the court, before judgment, or for carrying a judgment or order into effect.
3. Where the case involves a complicated question of boundary, or one which requires a personal view of the premises.
4. Where a question of fact other than upon the pleadings arises upon motion or otherwise, in any stage of the action.
5. Where the issues of fact and questions of fact arise in an action of which the courts of equity of the state had exclusive jurisdiction prior to the adoption of the constitution of one thousand eight hundred and sixty-eight, and in which the matter

or amount in dispute is not less than the sum or value of five hundred dollars.

The compulsory reference under this section does not deprive either party of his constitutional right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the referee. (Rev., s. 519; Code, s. 421; 1897, c. 237, ss. 1, 2; C. C. P., s. 245; 1917, c. 280; 1919, c. 7; C. S. 573.)

§ 1-190. How referee chosen or appointed.—In all cases of reference the parties as to whom issues are joined in the action (except when the defendant is an infant or an absentee) may agree in writing upon a person or persons, not exceeding three, and a reference shall be ordered to him or them, and to no other person or persons. And if such parties do not agree, the court shall appoint one or more referees, not more than three, who are free from exception. No person may be appointed referee to whom all parties in the action object. No judge or justice of any court may sit as referee in action pending in the court of which he is judge or justice, and not already referred, unless the parties otherwise stipulate. (Rev., s. 520; Code, s. 423; C. C. P., s. 247; C. S. 574.)

§ 1-191. Referees may administer oaths.—Every referee has power to administer oaths in any proceeding before him, and has generally the power vested in a referee by law. (Rev., s. 521; Code, s. 599; C. C. P., s. 356; C. S. 575.)

§ 1-192. Powers of referee of trial.—The trial by referees shall be conducted in the same manner as a trial by the court. Referees have the same power to grant adjournments and to allow amendments to pleadings and to the summons as the court upon such trial, upon the same terms and with like effect. They shall have the same power to preserve order and punish all violations thereof upon such trial, and to compel the attendance of witnesses before them by attachment and to punish them as for contempt for nonattendance or refusal to be sworn or to testify, as is possessed by the court. (Rev., s. 522; Code, s. 422; C. C. P., s. 246; C. S. 576.)

§ 1-193. Testimony reduced to writing.—The testimony of all witnesses on both sides must be reduced to writing by the referee, or under his direction, and signed by the witnesses, and the evidence so taken and signed shall be filed in the cause, and constitute a part of the record. (Rev., s. 523; 1897, c. 237, s. 3; C. S. 577.)

§ 1-194. Report; review and judgment.—The referee shall make and deliver a report, within the time ordered by the court, to the clerk of the court in which the action is pending. Either party, during the term or upon ten days notice to the adverse party out of term, may move the judge to review the report, and set aside, modify or confirm it in whole or in part, and no judgment may be entered on any reference except by order of the judge. (Rev., s. 524; Code, s. 423; C. C. P., s. 247; C. S. 578.)

§ 1-195. Report, contents and effect.—The referee must state the facts found and the conclusions of law separately. His decision must be given, and may be excepted to and reviewed in like manner and with like effect in all respects as in cases of appeal; and he may in like manner settle a case or exceptions. The report of the referee upon the whole issue stands as the decision of the court, and judgment may be entered thereon upon application to the judge. When the reference is to report the facts, the report has the effect of a special verdict. (Rev., s. 525; Code, s. 422; C. C. P., s. 246; C. S. 579.)

Art. 21. Issues.

§ 1-196. Defined.—Issues arise upon the pleadings, when a material fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds:

1. Of law.
2. Of fact.

(Rev., s. 544; Code, s. 391; C. C. P., s. 219; C. S. 580.)

§ 1-197. Of law.—An issue of law arises upon a demurrer to the complaint, answer or reply, or to some part thereof. (Rev., s. 545; Code, s. 392; C. C. P., s. 220; C. S. 581.)

§ 1-198. Of fact.—An issue of fact arises—

1. Upon a material allegation in the complaint controverted by the answer; or,
2. Upon new matter in the answer, controverted by the reply; or,
3. Upon new matter in the reply, unless an issue of law is joined thereon. (Rev., s. 546; Code, s. 393; C. C. P., s. 221; C. S. 582.)

§ 1-199. Order of trial.—Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In these cases the issues of law must be first tried, unless the court otherwise directs. (Rev., s. 547; Code, s. 394; C. C. P., s. 222; C. S. 583.)

§ 1-200. Form and preparation.—Issues shall be framed in concise and direct terms, and prolixity and confusion must be avoided by not having too many issues. The issues arising upon the pleadings, material to be tried, must be made up by the attorneys appearing in the action, or by the judge presiding, and reduced to writing, before or during the trial. (Rev., ss. 548, 549; Code, ss. 395, 396; C. S. 584.)

Art. 22. Verdict.

§ 1-201. General and special.—A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only, leaving the judgment to the court. (Rev., s. 550; Code, s. 408; C. C. P., s. 232; C. S. 585.)

§ 1-202. Special controls general.—Where a special finding of facts is inconsistent with the general verdict, the former controls, and the court shall give judgment accordingly. (Rev., s. 552; Code, s. 410; C. C. P., s. 234; C. S. 586.)

§ 1-203. Character of, for different actions.—In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury shall assess the value of the property, if their verdict is in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return there-

of, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding the property. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk, and entered upon the minutes. (Rev., s. 551; Code, s. 409; C. C. P., s. 233; C. S. 587.)

§ 1-204. Jury to assess damages; counterclaim.—When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury must also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer. If a counterclaim, established at the trial, exceeds the plaintiff's demand so established, judgment for the defendant must be given for the excess; or if it appears that the defendant is entitled to any other affirmative relief, judgment must be given accordingly. (Rev., s. 553; Code, s. 411; C. C. P., s. 235; C. S. 588.)

§ 1-205. Entry of verdict and judgment.—Upon receiving a verdict, the clerk shall make an entry in his minutes, specifying the time and place of the trial, the names of the jurors and witnesses, the verdict, and either the judgment rendered thereon or an order that the cause be reserved for argument or further consideration. If a different direction is not given by the court, the clerk must enter judgment in conformity with the verdict. (Rev., s. 554; Code, s. 412; C. C. P., s. 236; C. S. 589.)

§ 1-206. Exceptions.—1. If an exception is taken upon the trial, it must be reduced to writing at the time with so much of the evidence or subject matter as may be material to the exception taken; the same must be entered in the judge's minutes and filed with the clerk as a part of the case upon appeal.

2. If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections. (Rev., s. 554; Code, s. 412; C. C. P., s. 236; C. S. 590.)

§ 1-207. Motion to set aside.—The judge who tries the cause may, in his discretion, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion can only be heard at the same term at which the trial is had. When the motion is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a case or exceptions must be settled in the usual form, upon which the argument of the appeal must be had. (Rev., s. 554; Code, s. 412; C. C. P., s. 236; C. S. 591.)

SUBCHAPTER VIII. JUDGMENT.

Art. 23. Judgment.

§ 1-208. Defined.—A judgment is either interlocutory or the final determination of the rights of the parties in the action. (Rev., s. 555; Code, s. 384; C. C. P., s. 216; C. S. 592.)

§ 1-209. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.—The clerks of the superior courts are authorized to enter the following judgments: (a) All judgments of voluntary nonsuit. (b) All consent judgments (judgments coming within the meaning of (a) and (b) may be entered at any time). (c) In all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the superior court. (d) All judgments by default final and default and inquiry as are authorized by §§ 1-211, 1-212, 1-213, and in this section provided. (e) In all cases where the clerks of the superior court enter judgment by default final upon any debt secured by mortgage, deed of trust, conditional sale contract or other conveyance of any kind, either real or personal property, or by a pledge of property, the said clerks of the superior court are authorized and empowered to order a foreclosure of such mortgage, deed of trust, conditional sale contract, or other conveyance, and order a sale of the property so conveyed or pledged upon such terms as appear to be just; and the said clerks of the superior court shall have all the power and authority now exercised by the judges of the superior court to appoint commissioners to make such sales, to receive the reports thereof, and to confirm the report of sale or to order a resale, and to that end they are authorized to continue such causes from time to time as may be required to complete the sale, and in the final judgment in said causes they shall order the execution and delivery of all necessary deeds and make all necessary orders disbursing the funds arising from the sale, and may issue writs of assistance and possession upon ten days notice to parties in possession. The commissioners appointed to make foreclosure sales, as herein authorized, may proceed to advertise such sales immediately after the date of entering judgment and order of foreclosure, unless otherwise provided in said judgment and order.

In any tax foreclosure action pending on March 15, 1939 or thereafter brought under the provisions of § 105-414 in which there is filed no answer which seeks to prevent entry of judgment of sale, the clerk of the superior court may render judgment of sale and make all necessary subsequent orders and judgments to the same extent as permitted by this section in actions brought to foreclose a mortgage. All such judgments and orders heretofore rendered or made by a clerk of the superior court in such tax foreclosure actions are hereby, as to the authority of said clerk, ratified and confirmed. (1919, c. 156; Ex. Sess. 1921, c. 92, s. 12; 1929, cc. 35, 49; 1939, c. 107; C. S. 593.)

Local Modification.—Vance: 1941, c. 139, s. 1.

§ 1-210. Return of execution; order for disbursement of proceeds.—In all executions issued by the clerk of the Superior Court upon judgment before the clerk of the Superior Court, under § 1-209, and execution issued thereon, the sheriff shall make his return to the clerk of the Superior Court, who shall make the final order directing the sheriff to disburse the proceeds received by him under said execution: Provided, that any interested party may appeal to the Superior Court, where the matter shall be heard de novo. (1925, c. 222, s. 1.)

§ 1-211. By default final.—Judgment by default final may be had on failure of defendant to answer—

1. Where the complaint sets forth one or more causes of action, each consisting of the breach of an express or implied contract to pay, absolutely or upon a contingency, a sum or sums of money fixed by the terms of the contract, or capable of being ascertained therefrom by computation. Upon proof of personal service of summons, or of service of summons by publication, on one or more of the defendants, and upon the complaint being verified, judgment shall be entered for the amount mentioned in the complaint, against the defendant or defendants, or against one or more of several defendants.

2. Where the defendant, by his answer in such action, does not deny the plaintiff's claim, but sets up a counterclaim, amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of his claim over the counterclaim, in like manner in any such action, upon the plaintiff's filing with the court a statement admitting the counterclaim, which statement must be annexed to and be a part of the judgment roll. Or the court may in its discretion, order the pleadings to be so amended and the action severed as to entitle the plaintiff to judgment upon all of the claims admitted over and above the setoff or counterclaim pleaded by the defendant; and, upon application of the plaintiff, shall enter judgment for the plaintiff for so much of the claim as is admitted. The action shall thereupon be continued as to subsequent proceedings, as if it had been brought for the remainder of the claim, and the counterclaim or setoff as pleaded by the defendant shall apply thereto. Said remainder of the claim shall in any event be sufficient to cover the full amount of the principal and interest set up by the defendant in the counterclaim or setoff, and an amount in excess thereof, if in the discretion of the court the same is necessary, the court being empowered to designate and determine what part of the plaintiff's claim shall be held for the subsequent proceedings herein referred to.

3. In actions where the service of the summons was by publication, the plaintiff may, in like manner, apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant is not a resident of the state, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment the court may in its discretion require the plaintiff to cause to be filed satisfactory security to abide the order of the court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under and by virtue of said judgment, in case the defendant or his representatives apply and are admitted to defend the action, and succeed in such defense.

4. In actions for the recovery of real property, or for the possession thereof, upon the failure of the defendant to file the undertaking required by law, or upon failure of his sureties to justify according to law, unless the defendant is excused from giving such undertaking before answering.

5. In actions for the recovery of personal property, or for the possession thereof, or to have the plaintiff or plaintiffs adjudged the owner or owners thereof, if the complaint be verified. (Rev., s. 556; Code, ss. 385, 390; C. C. P., s. 217; 1870-1, c. 42; 1869-70, c. 193, s. 4; 1919, c. 26; 1929, c. 66; C. S. 595.)

§ 1-212. By default and inquiry.—In all other actions, except those mentioned in § 1-211, when the defendant fails to answer and upon a like proof, judgment by default and inquiry may be had, and inquiry shall be executed at the next succeeding term. If the taking of an intricate or long account is necessary to execute properly the inquiry, the court, at the return term, may order the account to be taken by the clerk of the court or some other fit person, and the referee shall make his report at the next succeeding term; in all other cases the inquiry shall be executed by a jury, unless by consent the court is to try the facts as well as the law. (Rev., s. 557; Code, s. 386; C. S. 596.)

§ 1-213. By default for defendant.—If the answer contains a statement of new matter constituting a counterclaim, and the plaintiff fails to reply or demur thereto, the defendant may move for such judgment as he is entitled to upon such statement; and if the case requires it, an order for an inquiry of damages by a jury may be made. (Rev., s. 558; Code, s. 249; C. C. P., s. 106; C. S. 597.)

§ 1-214. Judgment by default where no answer filed; record; force; docket.—If no answer is filed, the plaintiff shall be entitled to judgment by default final or default and inquiry as authorized by §§ 1-211, 1-212, and 1-213, and all present or future amendments of the said sections; and all judgments by default final shall be duly recorded by the clerk and be docketed and indexed in the same manner as judgments rendered in term, and in all respects be and become judgments of the superior court and be of the same force and effect as if rendered in term and before a judge of the superior court; and in all cases of judgment by default and inquiry rendered by the clerk, the clerk shall docket the case in the superior court at term time for trial upon the issues raised before a jury, or otherwise, as provided by law, and all judgments by default and inquiry shall be of the same force and effect as if rendered in term and before

a judge of the superior court. (Ex. Sess., 1921, c. 92, s. 9; C. S. 597(a).)

§ 1-215. Time for entering judgments; liens.— No judgment shall be entered by the clerk except as herein otherwise provided, except on every Monday of each month. The liens of all judgments rendered on the same Mondays shall each be of equal priority, and each Monday shall be held and construed, in determining the priority of judgment liens, as a term of court, and the first day thereof. (Ex. Sess. 1921, c. 92, s. 10; 1923, c. 68; C. S. 597(b).)

Local Modification.—Vance: 1941, c. 139, s. 2.

§ 1-216. Time for entering judgment where copy of complaint served on defendant. — If the plaintiff or plaintiffs shall cause a copy of the complaint to be served upon any of the defendants, either at the time of issuing summons or thereafter, then judgment shall be entered by the clerk as to the defendants served on any Monday after the expiration of time to answer. (Ex. Sess. 1921, c. 92, s. 11; 1925, c. 16; C. S. 597(c).)

Local Modification.—Vance: 1941, c. 139, s. 3.

§ 1-217. Certain default judgments validated.— In every case where, prior to the first day of January, one thousand nine hundred and twenty-seven, a judgment by default final has been entered by the clerk of the Superior Court of any county in this state on a day other than Monday, contrary to §§ 1-215 and 1-216, such judgment shall be deemed to have been entered as of the first Monday immediately following the default and is hereby to all intents and purposes validated; provided, however, nothing in this section shall be construed to affect the rights of any interested party, as provided in section 1-220 other than for irregularity as to date of entry of the judgment by the clerk of the court. (1927, c. 187.)

§ 1-218. Rendered in vacation; confirmation of judicial sales.—In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election.

Sales made by receivers or commissioners appointed by the superior court, unless governed by the provisions of § 45-28, as amended, may after ten days from the date of sale, in the absence of objection or raise in bid, be confirmed, or in case of objection or raise in bid, resales may be ordered, without notice, in chambers in any county in the judicial district, in which the proceedings are pending, by the resident judge or the judge holding the courts of said district; but this shall not diminish the power of the court in term time to act in such matters as now provided by law where no order has been made under this section. (Rev., s. 559; Code, s. 230; 1871-2, c. 3; 1937, c. 361; C. S. 598.)

§ 1-219. On frivolous pleading.—If a demurrer, answer or reply is frivolous, the party prejudiced thereby may apply to the court or judge for judgment thereon, which may be given accordingly. (Rev., s. 560; Code, s. 388; C. C. P., s. 218; C. S. 599.)

§ 1-220. Mistake, surprise, excusable neglect.— The judge shall, upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, verdict or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding. The clerk may hear and pass upon motions to set aside judgments rendered by him, whether for irregularity or under this section, and an appeal from his order on such motion shall lie to the judge at the next term, who shall hear and pass upon such motion de novo: Provided, however, nothing in this section shall be construed to affect the rights of innocent purchasers for value in foreclosure proceedings where personal service is obtained. (Rev., s. 513; Code, s. 274; 1893, c. 81; C. C. P., s. 133; Ex. Sess. 1921, c. 92, s. 14; C. S. 600.)

§ 1-221. Stands until reversed.—Every judgment given in a court of record having jurisdiction of the subject is, and continues to be, in force until reversed according to law. (Rev., s. 561; Code, s. 935; R. C., c. 31, s. 103; 4 Hen. IV, c. 23; C. S. 601.)

§ 1-222. For and against whom given; failure to prosecute.—1. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may determine the ultimate rights of the parties on each side, as between themselves.

2. It may grant to the defendant any affirmative relief to which he may be entitled.

3. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

4. The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. (Rev., s. 563; Code, s. 424; C. C. P., s. 248; C. S. 602.)

§ 1-223. Against married women.—In an action brought by or against a married woman, judgment may be given against her for costs or damages or both, in the same manner as against other persons, to be levied and collected solely out of her separate estate. (Rev., 563; C. S. 603.)

§ 1-224. Nonsuit not allowed after verdict.—In actions where a verdict passes against the plaintiff, judgment shall be entered against him. (Rev., s. 1520; Code, s. 936; R. C., c. 31, s. 110; 2 Hen. IV, c. 7; C. S. 604.)

§ 1-225. Party dying after verdict.—In no action shall the death of either party between the verdict and the judgment be alleged for error, if the judgment is entered within two terms after the verdict. (Rev., s. 564; Code, s. 938; R. C., c. 31, s. 112; 17 Charles II, c. 8; C. S. 605.)

§ 1-226. When limited by demand in complaint. —The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue. (Rev., s. 565; Code, s. 425; C. C. P., s. 249; C. S. 606.)

§ 1-227. When passes legal title.—In any action

wherein the court declares a party entitled to the possession of real or personal property, the legal title of which is in another party to the suit, and the court orders a conveyance of such legal title to him so declared to be entitled, or where, for any cause, the court orders that one of the parties holding property in trust shall convey the legal title to be held in trust to another person although not a party, the court, after declaring the right and ordering the conveyance, has power also, to be used in its discretion, to declare in the order then made, or in any made in the progress of the cause, that the effect thereof is to transfer to the party to whom the conveyance is directed to be made the legal title of the said property, to be held in the same plight, condition and estate as though the conveyance ordered were in fact executed; and shall bind and entitle the parties ordered to execute or to take benefit of the conveyance, in and to all such provisions, conditions and covenants as are adjudged to attend the conveyance, in the same manner and to the same extent as the conveyance would if the same were executed according to the order. A party taking benefit under the judgment has the same redress at law on account of the matter adjudged as he might on the conveyance, if the same had been executed. (Rev., s. 566; Code, s. 426; R. C., c. 32, s. 24; 1850, c. 107; 1874-5, c. 17; C. S. 607.)

§ 1-228. Regarded as a deed and registered.—Every judgment, in which the transfer of title is so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person ordered to convey, and shall be registered in the proper county, under the rules and regulations prescribed for conveyances of similar property executed by the party. The party desiring registration of such judgment must produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate. All laws which are passed for extending the time for registration of deeds include such judgments, provided the conveyance, if actually executed, would be so included. (Rev., ss. 567, 568; Code, ss. 427, 429; R. C., c. 32, ss. 25, 27; 1850, c. 107, ss. 2, 4; 1874-5, c. 17, ss. 2, 4; C. S. 608.)

§ 1-229. Certified registered copy evidence.—In all legal proceedings, touching the right of parties derived under such judgment, a certified copy from the register's books is evidence of its existence and of the matters therein contained, as fully as if proved by a perfect transcript of the whole case. (Rev., s. 569; Code, s. 428; R. C., c. 32, s. 26; 1850, c. 107, s. 3; 1874-5, c. 17, s. 3; C. S. 609.)

§ 1-230. In action for recovery of personal property.—In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or for the value thereof in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or for the value thereof in case a return cannot be had, and damages for taking and withholding the same. (Rev., s. 570; Code, s. 431; C. C. P., s. 251; C. S. 610.)

§ 1-231. What judge approves judgments.—In all cases where a judgment, decree or order of the superior court is required to be approved by a judge, it shall be approved by the judge having jurisdiction of receivers and injunctions. (Rev., s. 571; Code, s. 432; 1876-7, c. 223, s. 3; 1879, c. 63; 1881, c. 51; C. S. 611.)

§ 1-232. Judgment roll.—Unless the party or his attorney furnishes a judgment roll, the clerk, immediately after entering the judgment, shall attach together and file the following papers which constitute the judgment roll:

1. In case the complaint is not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

2. In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment. (Rev., s. 572; Code, s. 434; C. C. P., s. 253; C. S. 612.)

§ 1-233. Docketed and indexed; held as of first day of term.—Every judgment of the superior court, affecting the right to real property, or requiring in whole or in part the payment of money, shall be entered by the clerk of said superior court on the judgment docket of the court. The entry must contain the names of the parties, and the relief granted, date of judgment and date of docketing; and the clerk shall keep a cross-index of the whole, with the dates and numbers thereof. In all cases affecting the title to real property the clerk shall enter upon the judgment docket the number and page of the minute docket where the judgment is recorded, and if the judgment does not contain particular description of the lands, but refers to a description contained in the pleadings, the clerk shall enter upon the minute docket, immediately following the judgment, the description so referred to.

All judgments rendered in any county by the superior court, during a term of the court, and docketed during the same term, or within ten days thereafter, are held and deemed to have been rendered and docketed on the first day of said term, for the purpose only of establishing equality of priority as among such judgments. (Rev., c. 573; Code, s. 433; C. C. P., s. 252; Supr. Ct. Rule VIII; 1909, c. 709; 1929, c. 183; C. S. 613.)

Local Modification.—Durham: 1929, c. 88.

§ 1-234. Where and how docketed; lien.—Upon filing a judgment roll upon a judgment affecting the title of real property, or directing in whole or in part the payment of money, it shall be docketed on the judgment docket of the superior court of the county where the judgment roll was filed, and may be docketed on the judgment docket of the superior court of any other county upon the filing with the clerk thereof of a transcript of the original docket, and is a lien on the real property in the county where the same is docketed of every person against whom any such

judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for ten years from the date of the rendition of the judgment. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the ten years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith. (Rev., s. 574; Code, s. 435; C. C. P., s. 254; C. S. 614.)

§ 1-235. Of supreme court docketed in superior court; lien.—It is the duty of the clerk of the supreme court, on application of the party obtaining judgment in that court, directing in whole or in part the payment of money, or affecting the title to real estate, or on the like application of the attorney of record of said party, to certify under his hand and the seal of said court a transcript of the judgment, setting forth the title of the court, the names of the parties thereto, the relief granted, that the judgment was so rendered by said court, the amount and date of the judgment, what part thereof bears interest and from what time; and said clerk shall send such certificate and transcript to the clerk of the superior court of such counties as he is directed; and the clerk of the superior court receiving the certificate and transcript shall docket them in like manner as judgment rolls of the superior court are docketed. And when so docketed, the lien of said judgment is the same in all respects, subject to the same restrictions and qualifications, and the time shall be reckoned as is provided and prescribed in the preceding sections for judgments of the superior court, so far as the same are applicable. The party desiring the certificate and transcript provided for in this section may obtain them at any time after such judgment has been rendered, unless the supreme court otherwise directs. (Rev., s. 575; Code, s. 436; 1881, c. 75, ss. 1, 4; C. S. 615.)

§ 1-236. Fees for filing transcripts of judgments by clerks of superior courts.—The fee for filing, docketing and indexing transcripts of judgments in the offices of the several clerks of the superior court in North Carolina shall be the same fee charged for filing, docketing and indexing transcripts of judgments in the office of the clerk of the superior court of the county from which the transcript of judgment is sent to said county. (1933, c. 435, s. 1.)

§ 1-237. Of federal court docketed; lien.—Judgments and decrees rendered in the circuit and district courts of the United States within this state may be docketed on the judgment dockets of the superior courts in the several counties of this state for the purpose of creating liens of such judgments and decrees upon property within the county where the same are so docketed in like manner as judgments of superior courts for the purpose of creating liens upon property, but in no other manner, extent or order than as contemplated, provided and intended by the act of Congress entitled "An act to regulate the liens of judgments and decrees of the courts of the United States," approved August first, one thousand eight hundred and eighty-eight. And it is the duty of the clerk of the superior court, when a judgment roll of said circuit and district courts is filed with him, to docket it as judgments of the said superior courts are required to be docketed. (Rev., s. 576; 1889, c. 439; C. S. 616.)

§ 1-238. On what property judgment of federal court constitutes a lien; recordation.—Judgments and decrees rendered in a circuit or district court of the United States within this State shall be a lien on property in this State and its various subdivisions in the same manner and to the same extent and under the same conditions when the same shall be registered, recorded, docketed and indexed as is required of a judgment or decree of the courts of this State, in the same way and manner and to the same extent as the same judgment rendered in a court of this State and so registered, recorded, docketed and indexed would become a lien when so registered, recorded, docketed and indexed, and such judgments shall then have all the rights, and force, and effect, as judgments of the Superior Court of said county. Such decrees and judgments of a circuit court or a district court of the United States within this State when authenticated in the same way and manner as required of judgments and decrees of courts of this State are authorized to be registered, recorded and indexed exactly under the same conditions and circumstances and in the same offices and in the same way and manner and with the same effect as judgments of courts of this State are authorized to be.

It is the intent and purpose of this section to conform the State law to the requirements of the act of Congress entitled "An Act to Regulate the Liens on Judgments and Decrees of the Courts of the United States" being the act of August first, one thousand eight hundred and eighty-eight, chapter seven hundred and twenty-nine, twenty-five Statutes at large, page three hundred fifty-seven. (1929, c. 310, ss. 1, 2.)

§ 1-239. Paid to clerk; docket credited; transcript to other counties.—The party against whom a judgment for the payment of money is rendered, by any court of record, may pay the whole, or any part thereof, to the clerk of the court in which the same was rendered, at any time thereafter, although no execution has issued on such judgment; and this payment of money is good and available to the party making it, and the clerk shall enter the payment on the judgment docket of the court, and immediately forward a certificate thereof to the clerk of the superior court of each county to whom a transcript of said judgment has been sent, and the clerk of such superior court shall enter the same on the judgment docket of such court and file the original with the judgment roll in the action. Entries of payment or satisfaction on the judgment dockets in the office of the clerk of the superior court, by any person other than the clerk, shall be made in the presence of the clerk or his deputy, who shall witness the same, and when entries of full payment

or satisfaction have been made, the clerk or his deputy shall enter upon the judgment index kept by him, opposite and on a line with the names of the parties to the judgment, the words "Paid" or "Satisfied." (Rev., s. 577; Code, s. 438; R. C., c. 31, s. 127; 1823, c. 1212; 1911, c. 76; C. S. 617.)

§ 1-240. Payment by one of several; transfer to trustee for payor.—In all cases in the courts of this state wherein judgment has been, or may hereafter be, rendered against two or more persons or corporations, who are jointly and severally liable for its payment either as joint obligors or joint tort-feasors, and the same has not been paid by all the judgment debtors by each paying his proportionate part thereof, if one of the judgment debtors shall pay the judgment creditor, either before or after execution has been issued, the amount due on said judgment, and shall, at the time of paying the same, demand that said judgment be transferred to a trustee for his benefit, it shall be the duty of the judgment creditor or his attorney to transfer without recourse such judgment to a trustee for the benefit of the judgment debtor paying the same; and a transfer of such judgment as herein contemplated shall have the effect of preserving the lien of the judgment and of keeping the same in full force as against any judgment debtor who does not pay his proportionate part thereof to the extent of his liability thereunder in law and in equity, and in the event the judgment was obtained in an action arising out of a joint tort, and only one, or not all of the joint tort-feasors, were made parties defendant, those tort-feasors made parties defendant, and against whom judgment was obtained, may, in an action therefor, enforce contribution from the other joint tort-feasors; or at any time before judgment is obtained, the joint tort-feasors made parties defendant may, upon motion, have the other joint tort-feasors made parties defendant.

If the judgment debtors do not agree as to their proportionate liability, and it be alleged in such action by petition that any judgment debtor is insolvent or is a nonresident of the state and cannot be forced under the execution of the court to contribute to the payment of the judgment, the court shall, in the action in which the judgment was rendered, after notice to the defendants or such of them as may be within the jurisdiction of the court, submit proper issues to a jury to find the facts arising on such petition and any answer that may be filed thereto, and shall, upon such verdict and any admissions in the petition and answer, enter judgment declaring the proportionate part each judgment debtor shall pay.

Any judgment creditor who refuses to transfer a judgment in his favor to a trustee for the benefit of a judgment debtor who shall tender payment and demand in writing a transfer thereof to a trustee to preserve his rights in the same action, as contemplated by this section, shall not thereafter be entitled to an execution against the judgment debtor so tendering payment. (1919, c. 194, ss. 1, 2; 1929, c. 68; C. S. 618.)

§ 1-241. Clerk to pay money to party entitled.—The clerk, to whom money is paid as aforesaid, shall pay it to the party entitled to receive it, under the same rules and penalties as if the money had been paid into his office by virtue of an execution. (Rev., s. 578; Code, s. 439; R. C., c. 31, s. 128; 1823, c. 1212, s. 2; C. S. 619.)

§ 1-242. Credits upon judgments.—Where a payment has been made on a judgment docketed in the office of the clerk of the superior court, and no entry made on the judgment docket, or where any docketed judgment appealed from has been reversed or modified on appeal and no entry made on such docket, any person interested therein may move in the cause before the clerk, upon affidavit after notice to all persons interested, to have such credit, reversal or modification entered; and upon the hearing before the clerk he may hear affidavits, oral testimony, depositions and any other competent evidence, and shall render his judgment, from which any party may appeal in the same manner as in appeals in special proceedings. On the trial of any issue of fact on the appeal either party may demand a jury trial, which shall be had upon the evidence before the clerk, which he shall reduce to writing. On a final judgment ordering any such credit, reversal or modification, a transcript thereof shall be sent by the clerk of the superior court to each county in which the original judgment has been docketed, and the clerk of such county shall enter the same on the judgment docket of his county opposite such judgment and file the transcript. No final process shall issue on any such judgment after affidavit filed in the cause until the motion for credit, reversal or modification has been finally disposed of. (Rev., s. 579; 1903, c. 558; C. S. 620.)

§ 1-243. For money due on judicial sale.—The supreme and other courts ordering a judicial sale, or having possession of bonds taken on such sale, may, on motion, after ten days notice thereof in writing, enter judgment as soon as the money becomes due against the debtors or any of them, unless for good cause shown the court directs some other mode of collection. (Rev., s. 1524; Code, s. 941; R. C., c. 31, s. 129; C. S. 621.)

§ 1-244. Applicable to justices' courts.—This article applies, wherever appropriate, to proceedings in courts of justices of the peace. (Rev., s. 562; Code, s. 389; C. S. 622.)

§ 1-245. Cancellation of judgments discharged through bankruptcy proceedings.—When a referee in bankruptcy furnishes the clerk of the superior court of any county in this state a written statement or certificate to the effect that a bankrupt has been discharged, indicating in said certificate that the plaintiff or judgment creditor in whose favor judgments against the defendant bankrupt are docketed in the office of the clerk of the superior court have received due notice as provided by law from the said referee, and that said judgments have been discharged, it shall be the duty of the clerk of the superior court to file said certificate and enter a notation thereof on the margin of said judgments.

This section shall apply to judgments of this kind already docketed as well as to future judgments of the same kind.

For the filing of said instrument or certificate and making new notations the clerk of the superior court shall be paid a fee of one dollar ($1.00). (1937, c. 234, ss. 1-4.)

§ 1-246. Assignment of judgment to be entered on judgment docket, signed and witnessed.—No assignment of judgment shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor, or assignor, but from the entry of such assignment on the margin of the judgment docket opposite the said judgment, signed by the owner of said judgment, or his attorney under power of attorney or his attorney of record, and witnessed by the clerk or the deputy clerk of the superior court of the county in which said judgment is docketed. (1941, c. 61.)

Art. 24. Confession of Judgment.

§ 1-247. When and for what.—A judgment by confession may be entered without action either in or out of term, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this article. (Rev., s. 580; Code, s. 570; C. C. P., s. 325; C. S. 623.)

§ 1-248. Debtor to make verified statement.—A statement in writing must be made, signed, and verified by the defendant, to the following effect:

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

2. If it is for money due, or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed is justly due, or to become due.

3. If it is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed does not exceed the same. (Rev., s. 581; Code, s. 571; C. C. P., s. 326; C. S. 624.)

§ 1-249. Judgment; execution; installment debt.—The statement may be filed with the clerk of the superior court of the county in which the defendant resides, or if he does not reside in the state, of some county in which he has property. The clerk shall indorse upon it and enter on his judgment docket a judgment of the court for the amount confessed, with three dollars costs, together with disbursements. The statement and affidavit, with the judgment indorsed, thenceforth become the judgment roll. Executions may be issued and enforced thereon in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable in installments, and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form; but must have indorsed thereon, by the attorney or person issuing it, a direction to the sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment remains as security for the installments thereafter to become due; and whenever any further installment becomes due, execution may, in like manner, be issued for its collection and enforcement. (Rev., s. 582; Code, s. 572; C. C. P., s. 327; C. S. 625.)

Art. 25. Submission of Controversy without Action.

§ 1-250. Submission, affidavit, and judgment.—Parties to a question in difference which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The judge shall hear and determine the case, and render judgment thereon as if an action were pending. (Rev., s. 803; Code, s. 567; C. C. P., s. 315; C. S. 626.)

§ 1-251. Judgment roll.—Judgment shall be entered on the judgment docket, as in other cases, but without cost for any proceedings prior to trial. The case, the submission, and a copy of the judgment, constitute the judgment roll. (Rev., s. 804; Code, s. 568; C. C. P., s. 316; C. S. 627.)

§ 1-252. Judgment enforced; appeal.—The judgment may be enforced in the same manner as if it had been rendered in an action, and is subject to appeal in like manner. (Rev., s. 805; Code, s. 569; C. C. P., s. 317; C. S. 628.)

Art. 26. Declaratory Judgments.

§ 1-253. Courts of record permitted to enter declaratory judgments of rights, status and other legal relations.—Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. (1931, c. 102, s. 1.)

§ 1-254. Courts given power of construction of all instruments.—Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder. A contract may be construed either before or after there has been a breach thereof. (1931, c. 102, s. 2.)

§ 1-255. Who may apply for a declaration.—Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto: (a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or (b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or (c) To determine any ques-

tion arising in the administration of the estate or trust, including questions of construction of wills and other writings. (1931, c. 102, s. 3.)

§ 1-256. Enumeration of declarations not exclusive.—The enumeration in sections 1-254 and 1-255 does not limit or restrict the exercise of the general powers conferred in section 1-253 in any proceedings where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty. (1931, c. 102, s. 4.)

§ 1-257. Discretion of court.—The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. (1931, c. 102, s. 5.)

§ 1-258. Review.—All orders, judgments and decrees under this article may be reviewed as other orders, judgments and decrees. (1931, c. 102, s. 6.)

§ 1-259. Supplemental relief. — Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. (1931, c. 102, s. 7.)

§ 1-260. Parties.—When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the State shall also be served with a copy of the proceeding and be entitled to be heard. (1931, c. 102, s. 8.)

§ 1-261. Jury trial.—When a proceeding under this article involves the determination of an issue of fact, such issue may be determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. (1931, c. 102, s. 9.)

§ 1-262. Hearing before judge where no issues of fact raised or jury trial waived; what judge may hear.—Proceedings under this article shall stand for trial at a term of court, as in other civil actions. If no issues of fact are raised, or if such issues are raised and the parties waive a jury trial, by agreement of the parties the proceedings may be heard before any judge of the Superior Court. If in such case the parties do not agree upon a judge for the hearing, then upon motion of the plaintiff the proceeding may be heard by the resident judge of the district, or the judge holding the courts of the district, or by any judge holding a term of the Superior Court within the district. Such motion shall be in writing, with ten days notice to the defendant, and the judge so designated shall fix a time and place for the hearing and notify the parties. Upon notice given, the Clerk of the Superior Court in which the action is pending shall forward the papers in the proceeding to the judge designated. The hearing by the judge shall be governed by the practice for hearing in other civil actions before a judge without a jury. The term "Superior Court Judge" used in this section shall include emergency and special judges of the Superior Court. (1931, c. 102, s. 10.)

§ 1-263. Costs.—In any proceeding under this article the court may make such award of costs as may seem equitable and just. (1931, c. 102, s. 11.)

§ 1-264. Liberal construction and administration.—This article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be liberally construed and administered. (1931, c. 102, s. 12.)

§ 1-265. Word "person" construed.—The word "person" wherever used in this article, shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal corporation or other corporation of any character whatsoever. (1931, c. 102, s. 13.)

§ 1-266. Uniformity of interpretation. — This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with Federal laws and regulations on the subject of declaratory judgments and decrees. (1931, c. 102, s. 15.)

§ 1-267. Short title.—This article may be cited as the Uniform Declaratory Judgment Act. (1931, c. 102, s. 16.)

SUBCHAPTER IX. APPEAL.

Art. 27. Appeal.

§ 1-268. Writs of error abolished.—Writs of error in civil actions are abolished, and the only mode of reviewing a judgment, or order, in a civil action, is that prescribed by this chapter. (Rev., s. 583; Code, s. 544; C. C. P., s. 296; C. S. 629.)

§ 1-269. Certiorari, recordari, and supersedeas.—Writs of certiorari, recordari, and supersedeas are authorized as heretofore in use The writs of certiorari and recordari, when used as substitutes for an appeal, may issue when ordered upon the applicant filing a written undertaking for the costs only; but the supersedeas, to suspend execution, shall not issue until an undertaking is filed or a deposit made to secure the judgment sought to be vacated, as in cases of appeal where execution is stayed. (Rev., s. 584; Code, s. 545; 1874-5, c. 109; C. S. 630.)

§ 1-270. Appeal to supreme court; security on appeal; stay.—Cases shall be taken to the supreme court by appeal, as provided by law. All provisions in this article as to the security to be given upon appeals and as to the stay of proceedings apply to appeals taken to the supreme court. (Rev., ss. 595, 1540; Code, ss. 561, 946; C. C. P., s. 312; C. S. 631.)

§ 1-271. Who may appeal.—Any party aggrieved

may appeal in the cases prescribed in this chapter. (Rev., s. 585; Code, s. 547; C. C. P., s. 298; C. S. 632.)

§ 1-272. Appeal from clerk to judge.—Appeals lie to the judge of the superior court having jurisdiction, either in term time or vacation, from judgments of the clerk of the superior court in all matters of law or legal inference. In case of such transfer or appeal neither party need give an undertaking for costs; and the clerk shall transmit, on the transfer or appeal, to the superior court, or to the judge thereof, the pleadings, or other papers, on which the issues of fact or of law arise. An appeal must be taken within ten days after the entry of the order or judgment of the clerk upon due notice in writing to be served on the appellee and a copy of which shall be filed with the clerk of the superior court. But an appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed, the order or judgment appealed from, or who, being entitled to be heard thereon, had no opportunity of being heard, which fact may be shown by affidavit or other proof. (Rev., ss. 586, 610, 611; Code, ss. 116, 252, 253; C. C. P., ss. 109, 492; 1927, c. 15; C. S. 633.)

§ 1-273. Clerk to transfer issues of fact to civil issue docket.—If issues of law and of fact, or of fact only, are raised before the clerk, he shall transfer the case to the civil issue docket for trial of the issues at the next ensuing term of the superior court. (Rev., s. 588; Code, s. 256; C. C. P., s. 115; C. S. 634.)

§ 1-274. Duty of clerk on appeal.—On such appeal the clerk, within three days thereafter, shall prepare and sign a statement of the case, of his decision and of the appeal, and exhibit such statement to the parties or their attorneys on request. If the statement is satisfactory, the parties or their attorneys must sign it. If either party objects to the statement as partial or erroneous, he may put his objections in writing, and the clerk shall attach the writing to his statement, and within two days thereafter he shall send such statement, together with the objections, and copies of all necessary papers, by mail or otherwise, to the judge residing in the district, or in his absence to the judge holding the courts of the district, for his decision. (Rev., s. 612; Code, s. 254; C. C. P., s. 110; C. S. 635.)

§ 1-275. Duty of judge on appeal.—It is the duty of the judge on receiving a statement of appeal from the clerk, or the copy of the record of an issue of law, to decide the questions presented within ten days. But if he has been informed in writing, by the attorney of either party, that he desires to be heard on the questions, the judge shall fix a time and place for the hearing, and give the attorneys of both parties reasonable notice. He must transmit his decision in writing, endorsed on or attached to the record, to the clerk of the court, who shall immediately acknowledge its receipt, and within three days after such receipt notify the attorneys of the parties of the decision and, on request and the payment of his legal fees, give them a copy thereof, and the parties receiving such notice may proceed thereafter according to law. (Rev., s. 613; Code, s. 255; C. C. P., s. 113; C. S. 636.)

§ 1-276. Judge determines entire controversy; may recommit. — Whenever a civil action or special proceeding begun before the clerk of a superior court is for any ground whatever sent to the superior court before the judge, the judge has jurisdiction; and it is his duty, upon the request of either party, to proceed to hear and determine all matters in controversy in such action, unless it appears to him that justice would be more cheaply and speedily administered by sending the action back to be proceeded in before the clerk, in which case he may do so. (Rev., s. 614; 1887, c. 276; C. S. 637.)

§ 1-277. Appeal from superior court judge.—An appeal may be taken from every judicial order or determination of a judge of a superior court, upon or involving a matter of law or legal inference, whether made in or out of term, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial. (Rev., s. 587; Code, s. 548; C. C. P., s. 299; 1818, c. 962, s. 4; C. S. 638.)

§ 1-278. Interlocutory orders reviewed on appeal from judgment.—Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment. (Rev., s. 589; Code, s. 562; C. C. P., s. 313; C. S. 640.)

§ 1-279. When appeal taken.—The appeal must be taken from a judgment rendered out of term within ten days after notice thereof, and from a judgment rendered in term within ten days after its rendition, unless the record shows an appeal taken at the trial, which is sufficient, but execution shall not be suspended until the giving by the appellant of the undertakings hereinafter required. (Rev., s. 590; Code, s. 549; 1889, c. 161; C. C. P., s. 300; C. S. 641.)

§ 1-280. Entry and notice of appeal.—Within the time prescribed in § 1-279, the appellant shall cause his appeal to be entered by the clerk on the judgment docket, and notice thereof to be given to the adverse party unless the record shows an appeal taken or prayed at the trial, which is sufficient. (Rev., s. 591; Code, s. 550; C. C. P., s. 301; C. S. 642.)

§ 1-281. Appeals from judgments not in term time.—When appeals are taken from judgments of the clerk or judge not made in term time, the clerk is authorized to make any and all necessary orders for the perfecting of such appeals. (Ex. Sess. 1921, c. 92, s. 19a; C. S. 642(a).)

§ 1-282. Case on appeal; statement, service, and return.—The appellant shall cause to be prepared a concise statement of the case, embodying the instructions of the judge as signed by him, if there be an exception thereto, and the request of the counsel of the parties for instructions if there be any exception on account of the granting or withholding thereof, and stating separately, in articles numbered, the errors alleged. A copy of this statement shall be served on the respondent within fifteen days from the entry of the appeal taken; within ten days after such service the respondent shall return the copy with his approval or specific amendments indorsed or attached; if

the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved: Provided, that the judge trying the case shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counter statement of case. (Rev., s. 591; Code, s. 550; C. C. P., s. 301; 1905, c. 448; 1921, c. 97; C. S. 643.)

§ 1-283. Settlement of case on appeal.—If the case on appeal is returned by the respondent with objections as prescribed, the appellant shall immediately request the judge to fix a time and place for settling the case before him. If the appellant delays longer than fifteen days after the respondent serves his countercase, or exceptions, to request the judge to settle the case on appeal, and delays for such period to mail the case and countercase or exceptions to the judge, then the exceptions filed by the respondent shall be allowed, or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement.

The judge shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, within the judicial district, which time shall not be more than twenty days from the receipt of the request. At the time and place stated, the judge shall settle and sign the case, and deliver a copy to the attorney of each party, or, if the attorneys are not present, file a copy in the office of the clerk of the court. If the judge has left the district before the notice of disagreement, he may settle the case without returning to the district.

In settling the case, the written instructions signed by the judge, and the written request for instructions signed by the counsel, and the written exceptions, are deemed conclusive as to what these instructions, requests, and exceptions were. If a copy of the case settled was delivered to the appellant, he shall within five days thereafter file it with the clerk, and if he fails to do so, the respondent may file his copy.

The judge shall settle the case on appeal within sixty days after the termination of a special term or after the courts of the districts have ended, and if the judge in the meantime has gone out of office, he shall settle the case as if he were still in office. Any judge failing to comply with this section is liable to a penalty of five hundred dollars, for the use of any person who sues for it. (Rev., s. 591; Code, s. 550; C. C. P., s. 301; 1889, c. 161; 1907, c. 312; C. S. 644.)

§ 1-284. Clerk to prepare transcript.—The clerk on receiving a copy of the case settled, as required in the preceding sections, shall make a copy of the judgment roll and of the case, and within twenty days transmit the same, duly certified, to the clerk of the supreme court. The clerk, except in cases where parties are allowed to appeal without giving an undertaking on appeal, shall not be required to make the copy of the record in the case for the supreme court until the appellant has given the undertaking on appeal or made the deposit required. (Rev., s. 592; Code, s. 551; 1889, c. 135; C. C. P., s. 302; C. S. 645.)

§ 1-285. Undertaking on appeal; filing; waiver.—To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in such sum as may be ordered by the court, not exceeding two hundred and fifty dollars, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk by whom the judgment or order was entered; or such sum as is ordered by the court must be deposited with the clerk by whom the judgment or order was entered, to abide the event of the appeal. The undertaking or deposit may be waived by a written consent on the part of the respondent. No appeal shall be dismissed in the supreme court on the ground that the undertaking on appeal was not filed, or deposit made, earlier, if the undertaking is filed or the deposit made before the record of the case is transmitted by the clerk of the superior court to the supreme court. When no undertaking on appeal has been filed, or deposit made before the record of the case is transmitted to the supreme court, the supreme court shall, upon good cause shown, on such terms as may be just, allow the appellant to file an undertaking or make the deposit. (Rev., ss. 593, 595; Code, ss. 552, 561; C. C. P., ss. 303, 312; 1889, c. 135, s. 2; 1871-2, c. 31; C. S. 646.)

§ 1-286. Justification of sureties.—The undertaking on appeal must be accompanied by the affidavit of one of the sureties that he is worth double the amount specified therein. The respondent may except to the sufficiency of the sureties within ten days after the notice of appeal; and unless they or other sureties justify within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification must be upon a notice of not less than five days. (Rev., s. 594; Code, s. 560; C. C. P., s. 310; 1887, c. 121; C. S. 647.)

§ 1-287. Notice of motion to dismiss; new bond or deposit.—Before the appellee is permitted to move to dismiss an appeal, either for any irregularity in the undertaking on appeal or for failure of sureties to justify, he must give written notice to the appellant of such motion at least twenty days before the district from which the cause is sent up is called, and this notice must state the grounds upon which the motion is based. At least five days before the district from which the cause is sent up is called, the appellant may file with the clerk of the supreme court a new bond justified according to law and containing a penalty the same in amount as the penalty in the original bond, or he may deposit with the said clerk a sum of money equal to the penalty in the original bond. When a new bond has been thus filed or deposit made the cause stands as if the bond had been duly given or deposit duly made in the court below. (Rev., s. 596; 1887, c. 121; C. S. 648.)

§ 1-288. Appeals in forma pauperis; clerk's fees.—When any party to a civil action tried and determined in the superior court at the time of trial desires an appeal from the judgment rendered in the action to the supreme court, and is unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, it shall be the duty of the judge

or clerk of said superior court to make an order allowing said party to appeal from the judgment to the supreme court as in other cases of appeal, without giving security therefor. The party desiring to appeal from said judgment shall within five days make affidavit that he is unable by reason of his poverty to give the security required by law, and that he is advised by counsel learned in the law that there is error in matter of law in the decision of the superior court in said action. The affidavit must be accompanied by a written statement from a practicing attorney of said superior court that he has examined the affiant's case, and is of opinion that the decision of the superior court, in said action, is contrary to law. The appeal when passed upon and granted by the clerk shall be within ten days from the expiration by law of said term of court. The clerk of the superior court cannot demand his fees for the transcript of the record for the supreme court of a party appealing in forma pauperis, in case such appellant furnishes to the clerk two true and correctly typewritten copies of such records on appeal. Nothing contained in this section deprives the clerk of the superior court of his right to demand his fees for his certificate and seal as now allowed by law in such cases. Provided, that where the judge of the superior court or the clerk of the superior court has made an order allowing the appellant to appeal as a pauper and the appeal has been filed in the supreme court, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission. (Rev., s. 597; Code, s. 553; 1889, c. 161; 1873-4, c. 60; 1907, c. 878; 1937, c. 89; C. S. 649.)

§ 1-289. Undertaking to stay execution on money judgment.—If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court. (Rev., s. 598; Code, s. 554; C. C. P., ss. 304, 311; C. S. 650.)

§ 1-290. How judgment for personal property stayed.—If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment is not stayed by appeal, unless the things required to be assigned or delivered are brought into court, or placed in the custody of such officer or receiver as the court appoints, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court or a judge thereof directs, to the effect that the appellant will obey the order of the appellate court upon the appeal. (Rev., s. 599; Code, s. 555; C. C. P., s. 305; C. S. 651.)

§ 1-291. How judgment directing conveyance stayed.—If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment is not stayed by the appeal until the instrument has been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court. (Rev., s. 600; Code, s. 556; C. C. P., s. 306; C. S. 652.)

§ 1-292. How judgment for real property stayed.—If the judgment appealed from directs the sale or delivery of possession of real property, the execution is not stayed, unless a bond is executed on the part of the appellant, with one or more sureties, to the effect that, during his possession of such property, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment is affrmed he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of this deficiency. (Rev., s. 601; Code, s. 557; C. C. P., s. 307; C. S. 653.)

§ 1-293. Docket entry of stay.—When an appeal from a judgment is pending, and the undertaking requisite to stay execution on the judgment has been given, and the appeal perfected, the court in which the judgment was

recovered may, on special motion, after notice to the person owning the judgment, on such terms as it sees fit, direct an entry to be made by the clerk on the docket of such judgment, that the same is secured on appeal, and no execution can issue upon such judgment during the pendency of the appeal. (Rev., s. 621; Code, s. 435; 1887, c. 192; C. C. P., s. 254; C. S. 654.)

§ 1-294. Scope of stay; security limited for fiduciaries.—When an appeal is perfected as provided by this article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars, where it would otherwise exceed that sum. (Rev., s. 602; Code, s. 558; C. C. P., s. 308; C. S. 655.)

§ 1-295. Undertaking in one or more instruments; served on appellee.—The undertakings may be in one instrument or several, at the option of the appellant; and a copy, including the names and residences of the sureties, must be served on the adverse party, with the notice of appeal, unless the required deposit is made and notice thereof given. (Rev., s. 603; Code, s. 559; C. C. P., s. 309; C. S. 656.)

§ 1-296. Judgment not vacated by stay.—The stay of proceedings provided for in this article shall not be construed to vacate the judgment appealed from, but in all cases such judgment remains in full force and effect, and its lien remains unimpaired, notwithstanding the giving of the undertaking or making the deposit required in this chapter, until such judgment is reversed or modified by the supreme court. (Rev., s. 604; 1887, c. 192; C. S. 657.)

§ 1-297. Judgment on appeal and on undertakings; restitution.—Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment. Undertakings for the prosecution of appeals and on writs of certiorari shall make a part of the record sent up to the supreme court on which judgment may be entered against the appellant or person prosecuting the writ of certiorari and his sureties, in all cases where judgment is rendered against the appellant or person prosecuting the writ. (Rev., s. 605; Code, s. 563; C. C. P., s. 314; R. C., c. 4, s. 10; 1785, c. 233, s. 2; 1810, c. 793; 1831, c. 46, s. 2; C. S. 658.)

§ 1-298. Procedure after determination of appeal.—In civil cases, at the first term of the superior court after a certificate of the determination of an appeal is received, if the judgment is affirmed the court below shall direct the execution thereof to proceed, and if the judgment is modified, shall direct its modification and performance. If a new trial is ordered the cause stands in its regular order on the docket for trial at such first term after the receipt of the certificate from the supreme court. (Rev., s. 1526; 1887, c. 192, s. 2; C. S. 659.)

§ 1-299. Appeal from justice heard de novo; judgment by default; appeal dismissed.—When an appeal is taken from the judgment of a justice of the peace to a superior court, it shall be therein reheard, on the original papers, and no copy thereof need be furnished for the use of the appellate court. An issue shall be made up and tried by a jury at the first term to which the case is returned, unless continued, and judgment shall be given against the party cast and his sureties. When the defendant defaults, the plaintiff in actions instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, shall have judgment, and in other cases may have his inquiry of damages executed forthwith by a jury. If the appellant fails to have his appeal docketed as required by law, the appellee may, at the term of court next succeeding the term to which the appeal is taken, have the case placed upon the docket, and upon motion the judgment of the justice shall be affirmed and judgment rendered against the appellant, and for the costs of appeal and against his sureties upon the undertaking, if there are any, according to the conditions thereof. Nothing herein prevents the granting the writ of recordari in cases now allowed by law. (Rev., ss. 607, 609; Code, ss. 565, 881; C. C. P., s. 540; 1889, c. 443; R. C., c. 31, s. 105; 1777, c. 115, s. 63; 1794, c. 414; C. S. 660.)

Local Modification.—Transylvania: 1935, c. 32.

§ 1-300. Appeal from justice docketed for trial de novo.—When the return is made from the justice's court the clerk of the appellate court shall docket the case on his trial docket for a new trial of the whole matter at the ensuing term of said court. (Rev., s. 608; Code, s. 880; C. C. P., s. 539; 1876-7, c. 251, s. 8; C. S. 661.)

§ 1-301. Plaintiff's cost bond on appeal from justice.—When a defendant appeals from the judgment of a justice of the peace to the superior court, or when the judgment of the justice is removed by the defendant, by recordari or otherwise, to a superior court, the court having cognizance of the appeal or recordari may, upon sufficient cause shown by affidavit, compel the plaintiff to give an undertaking, with sufficient surety, for payment of the costs of the suit, in the event of his failing to prosecute the same with effect. (Rev., s. 606; Code, s. 564; R. C., c. 31, s. 104; 1831, c. 29; C. S. 662.)

SUBCHAPTER X. EXECUTION.

Art. 28. Execution.

§ 1-302. Judgment enforced by execution. — Where a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution, as provided in this article. Where

it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuses, he may be punished by the court as for contempt. (Rev., s. 615; Code, s. 441; C. C. P., s. 257; C. S. 663.)

§ 1-303. Kinds of; signed by clerk; when sealed.—There are three kinds of execution: one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, and shall be subscribed by the clerk, and when to run out of his county, must be sealed with the seal of his court. (Rev., s. 616; Code, s. 442; C. C. P., s. 258; C. S. 664.)

§ 1-304. Against married woman.—An execution may issue against a married woman, and it must direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise. (Rev., s. 617; Code, s. 443; C. C. P., s. 259; C. S. 665.)

§ 1-305. Clerk to issue, in six weeks; penalty.—The clerks of the superior court shall issue executions on all judgments rendered in their respective courts, unless otherwise directed by the plaintiff, within six weeks of the rendition of the judgment, and must endorse upon the record the date of such issue. If the executions issued are not returned satisfied to the courts to which they are made returnable, the clerks must issue alias executions, within six weeks thereafter, unless otherwise instructed as aforesaid. Every clerk who fails to comply with the requirements of this section is liable to be amerced in the sum of one hundred dollars for the benefit of the party aggrieved, under the same rules that are provided by law for amercing sheriffs, and is further liable to the party injured by suit upon his bond. (Rev., s. 618; Code, s. 470; R. C., c. 45, s. 29; 1850, c. 17, ss. 1, 2, 3; C. S. 666.)

§ 1-306. Enforcement as of course. — The party in whose favor judgment is given, and in case of his death, his personal representatives duly appointed, may at any time after the entry of judgment proceed to enforce it by execution, as provided in this article; Provided, however, that no execution upon any judgment which requires the payment of money or the recovery of personal property may be issued at any time after ten years from the date of the rendition thereof; but this proviso shall not apply to any execution issued solely for the purpose of enforcing the lien of a judgment upon any homestead, which has or shall hereafter be allotted within the ten years from the date of rendition of judgment, or any judgment directing the payment of alimony. (Rev., s. 619; Code, s. 437; C. C. P., s. 255; 1927, c. 24; 1935, c. 98; C. S. 667.)

§ 1-307. Issued from and returned to court of rendition.—Executions and other process for the enforcement of judgments can issue only from the court in which the judgment for the enforcement of the execution or other final process was rendered; and the returns of executions or other final process shall be made to the court of the county from which it issued. (Rev., s. 623; Code, s. 444; 1871-2, c. 74; 1881, c. 75; C. S. 669.)

§ 1-308. To what counties issued.—When the execution is against the property of the judgment debtor it may be issued to the sheriff of any county where the judgment is docketed. No execution may issue from the superior court of any county upon a judgment until it is docketed in that county. When it requires the delivery of real or personal property it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties. (Rev., s. 622; Code, s. 443; C. C. P., s. 259; 1871-2, c. 74; 1881, c. 75; 1905, c. 412; C. S. 670.)

§ 1-309. Sale of land under execution.—Real property adjudged to be sold must be sold in the county where it lies, by the sheriff of the county or by a referee appointed by the court for that purpose; and thereupon the sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold. (Rev., s. 622; Code, s. 443; C. C. P., s. 259; C. S. 671.)

§ 1-310. When dated and returnable.—Executions shall be dated as of the day on which they were issued, and shall be returnable to the court from which they were issued not less than forty nor more than ninety days from said date, and no executions against property shall issue until the end of the term during which judgment was rendered. (Rev., s. 624; Code, s. 449; 1903, c. 544; 1870-1, c. 42, s. 7; 1873-4, c. 7; 1927, c. 110; 1931, c. 172; C. S. 672.)

§ 1-311. Against the person.—If the action is one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the state, after the return of an execution against his property wholly or partly unsatisfied. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the article Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts is necessary to the cause of action or not. (Rev., s. 625; Code, s. 447; 1891, c. 541, s. 2; C. C. P., s. 260; C. S. 673.)

§ 1-312. Rights against property of defendant dying in execution.—Parties at whose suit the body of a person is taken in execution for a judgment recovered, their executors or administrators, may, after the death of the person so taken and dying in execution, have the same rights against the property of the person deceased, as they might have had if that person had never been in execution. (Rev., s. 626; Code, s. 469; R. C., c. 45, s. 28; 21 James I, s. 24; C. S. 674.)

§ 1-313. Form of execution.—The execution must be directed to the sheriff, or coroner when the sheriff is a party or interested, subscribed by the clerk of the court, and must intelligibly re-

fer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. Against property—no lien on personal property until levy.—If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

2. Against property in hands of personal representative.—If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees it shall require the officer to satisfy the judgment out of such property.

3. Against the person.—If it is against the person of the judgment debtor, it shall require the officer to arrest him, and commit him to the jail of the county until he pays the judgment or is discharged according to law.

4. For delivery of specific property.—If it is for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery cannot be had; and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and in that respect is deemed an execution against property.

5. For purchase money of land.—If the answer in an action for recovery of a debt contracted for the purchase of land does not deny, or if the jury finds, that the debt was so contracted, it is the duty of the court to have embodied in the judgment that the debt sued on was contracted for the purchase money of the land, describing it briefly; and it is also the duty of the clerk to set forth in the execution that the said debt was contracted for the purchase of the land, the description of which must be set out briefly as in the complaint. (Rev., s. 627; Code, ss. 234-236, 448; C. C. P., s. 261; 1868-9, c. 148; 1879, c. 217; C. S. 675.)

§ 1-314. Variance between judgment and execution.—When property has been sold by an officer by virtue of an execution or other process commanding sale, no variance between the execution and the judgment whereon it was issued, in the sum due, in the manner in which it is due, or in the time when it is due, invalidates or affects the title of the purchaser of such property. (Rev., s. 628; Code, s. 1347; R. C., c. 44, s. 13; 1848, c. 53; C. S. 676.)

§ 1-315. Property liable to sale under execution.—The property of the judgment debtor, not exempted from sale under the constitution and laws of this state, may be levied on and sold under execution as hereinafter prescribed:

1. Goods, chattels, and real property belonging to him.

2. All leasehold estates of three years duration or more, owned by him.

3. Equitable and legal rights of redemption in personal and real property pledged or mortgaged by him. But when the equity of redemption in personal property is sold under execution, notice of the time and place of said sale shall be given the mortgagee.

4. Real property or goods and chattels of which any person is seized or possessed in trust for him.

But no execution shall be levied on growing crops until they are matured. (Rev., ss. 629, 632; Code, ss. 450, 453; R. C., c. 45, ss. 1-5, 11; 5 Geo. II, c. 7, s. 4; 1777, c. 115, s. 29; 1812, c. 830, ss. 1, 2; 1822, c. 1172; 1844, c. 35; 1919, c. 30; C. S. 677.)

§ 1-316. Sale of trust estates; purchaser's title.—Upon the sale under execution of trust estates whereof the judgment debtor is beneficiary the sheriff shall execute a deed to the purchaser, and the purchaser thereof shall hold and enjoy the same freed and discharged from all encumbrances of the trustee. (Rev., s. 630; Code, s. 452; R. C., c. 45, s. 4; 1812, c. 830; C. S. 678.)

§ 1-317. Sheriff's deed on sale of equity of redemption.—The sheriff selling equitable and legal rights of redemption shall set forth in the deed to the purchaser thereof that the said estates were under mortgage at the time of judgment, or levy in the case of personal property and sale. (Rev., s. 631; Code, s. 451; R. C., c. 45, s. 5; 1812, c. 830, s. 2; 1822, c. 1172; C. S. 679.)

§ 1-318. Forthcoming bond for personal property.—If a sheriff or other officer who has levied an execution or other process upon personal property permits it to remain with the possessor, the officer may take a bond, attested by a credible witness, for the forthcoming thereof to answer the execution or process; but the officer remains, nevertheless, in all respects liable as heretofore to the plaintiff's claim. (Rev., 633; Code, 463; R. C., c. 45, s. 21; 1807, c. 731, s. 3; 1828, c. 12, s. 2; C. S. 680.)

§ 1-319. Procedure on giving bond; subsequent levies.—When the forthcoming bond is taken the officer must specify therein the property levied upon and furnish to the surety a list of the property in writing under his hand, attested by at least one credible witness, and stating therein the day of sale. The property levied upon is deemed in the custody of the surety, as the bailee of the officer. All other executions thereafter levied on this property create a lien on the same from and after the respectives levies, and shall be satisfied accordingly out of the proceeds of the sale of the property; but the officer thereafter levying shall not take the property out of the custody of the surety. But in all such cases sales of chattels shall

take place within thirty days after the first levy; and if sale is not made within that time any other officer who has levied upon the property may seize and sell it. (Rev., 634; Code, s. 464; R. C., c. 45, s. 22; 1844, c. 34; 1846, c. 50; C. S. 682.)

§ 1-320. Summary remedy on forthcoming bond.—If the condition of such bond be broken, the sheriff or other officer, on giving ten days previous notice in writing to any obligor therein, may on motion have judgment against him in a summary manner, before the superior court or before a justice of the peace, as the case may be, of the county in which the officer resides, for all damages which the officer has sustained, or may be adjudged liable to sustain, not exceeding the penalty of the bond, to be ascertained by a jury, under the direction of the court or justice. (Rev., 635; Code, s. 465; R. C., c. 45, s. 23; 1822, c. 1141; C. S. 681.)

§ 1-321. Entry of returns on judgment docket; penalty.—When an execution is returned, the return of the sheriff or other officer must be noted by the clerk on the judgment docket; and when it is returned wholly or partially satisfied, it is the duty of the clerk of the court to which it is returned to send a copy of such last mentioned return, under his hand, to the clerk of the superior court of each county in which such judgment is docketed, who must note such copy in his judgment docket, opposite the judgment, and file the copy with the transcript of the docket of the judgment in his office. A clerk failing to send a copy of the payments on the execution or judgment to the clerks of the superior court of the counties wherein a transcript of the judgment has been docketed, and a clerk failing to note said payment on the judgment docket of his court, shall, on motion, be fined one hundred dollars nisi, and the judgment shall be made absolute upon notice to show cause at the succeeding term of the superior court of his county. (Rev., s. 636; Code, s. 445; 1871-2, c. 74, s. 2; 1881, c. 75; C. S. 683.)

§ 1-322. Cost of keeping livestock; officer's account.—The court or justice shall make a reasonable allowance to officers for keeping and maintaining horses, cattle, hogs, or sheep, and all other property taken into their custody under legal process, the keeping of which is chargeable to them; and this allowance may be retained by the officers out of the sales of the property, in preference to the satisfaction of the process under which the property was seized or sold. The officer must make out his account and, if required, give the debtor or his agent a copy of it, signed by his own hand, and must return the account with the execution or other process, under which the property has been seized or sold, to the justice or court to whom the excution or process is returnable, and shall swear to the correctness of the several items set forth; otherwise he shall not be permitted to retain the allowance. (Rev., ss. 637, 638; Code, ss. 466, 467; R. C., c. 45, ss. 25, 26; 1807, c. 731; C. S. 684.)

§ 1-323. Purchaser of defective title; remedy against defendant.—Where real or personal property is sold on any execution or decree, by any officer authorized to make the sale, and the sale is made legally and in good faith, and the property did not belong to the person against whose estate the execution or decree was issued, by reason of which the purchaser has been deprived of the property, or been compelled to pay damages in lieu thereof to the owner, the purchaser, his executors or administrators, may sue the person against whom such execution or decree was issued, or the person legally representing him, in a civil action, and recover such sum as he may have paid for the property, with interest from the time of payment; but the property, if personal, must be present at the sale and actually delivered to the purchaser. (Rev., s. 639; Code, s. 468; R. C., c. 45, s. 27; 1807, c. 723; C. S. 685.)

§ 1-324. Costs on execution paid to clerk; penalty.—The sheriff or other officer must pay the costs on all executions which are satisfied in whole or in part, to the clerk of the court from which the execution issued, and to no other person, on the second day of the term of the court; and any such officer making default herein shall forfeit and pay forty dollars for the benefit of the party aggrieved, under the same rules that are provided by law for amercing sheriffs. (Rev., s. 640; Code, s. 472; R. S., c. 76, s. 5; 1822, c. 1149; C. S. 686.)

Art. 29. Execution and Judicial Sales.

§ 1-325. How advertised.—No real property shall be sold under execution, deed of trust, mortgage or other contracts, except as provided in other sections of this article until notice of sale has been posted at the courthouse door in the county for thirty days immediately preceding the sale, and also published once a week for four successive weeks in some newspaper published in the county, if a paper is published in the county: Provided, that if there be no newspaper published in said county the notice of such sale must be posted at the courthouse door and three other public places in the county for thirty days immediately preceding the sale. (Rev., s. 641; Code, s. 456; 1885, c. 38; 1905, c. 147; 1868-9, c. 237, s. 10; R. C., c. 45, s. 16; 1881, c. 278; 1909, c. 705; 1927, c. 255, s. 1; C. S. 687.)

§ 1-326. Advertisement of resale.—No real property shall be sold under execution, deed of trust, mortgage or other contracts, except as provided in the following section until notice of sale has been posted at the courthouse door in the county for at least fifteen days and published at least once a week for two successive weeks in some newspaper, if a paper is published in the county where the resale is made. (1913, c. 19; 1927, c. 255, s. 2; C. S. 688.)

§ 1-327. Judicial foreclosure; notice of sale and resale.—When any mortgage or deed of trust on real property shall be foreclosed by judicial proceedings it may be provided in the decree of foreclosure that the advertisement of the sale shall be begun at any time after the date of the decree of foreclosure, and such real property shall then be sold under judicial foreclosure proceedings only after notice of sale has been duly posted at the courthouse door in the county for thirty days immediately preceding the sale and

also published at any time during such thirty day period once a week for four successive weeks of not less than twenty-one days in some newspaper published in the county if a newspaper is published in the county, but if there is no newspaper published in said county, the notice of such sale must be posted at the courthouse door and three other public places in the county for thirty days immediately preceding the sale: Provided, however, that in case a resale of such real property shall become necessary under such judicial foreclosure proceedings, that such real property shall then be resold only after notice of resale has been duly posted at the courthouse door in the county for fifteen days immediately preceding the resale and also published at any time during such fifteen day period once a week for two successive weeks of not less than seven days in some newspaper published in the county if a newspaper is published in the county, but if there be no newspaper published in said county, the notice of resale must be posted at the courthouse door and three other public places in the county for fifteen days immediately preceding the resale. (1929, c. 44, s. 1; 1933, c. 96, s. 1.)

Local Modification.—Stanley: Pub. Loc. 1933, c. 263.

§ 1-328. Notice defined.—In any sale of real property under execution, deed of trust, mortgage or other contracts, wherever any statute calls for publication of notice in a newspaper for four successive weeks or for two successive weeks, the duration of said period shall be not less than twenty-one days for the one period of publication and not less than seven days for the period of the other publication. (1929, c. 44, s. 2; 1933, c. 96, s. 2.)

§ 1-329. Validation of certain sales.—All sales of real property under execution, deed of trust, mortgage or other contracts made since February 21, 1929, where the original sale was published for four successive weeks, and any re-sale published for two successive weeks shall be and the same are in all respects validated as to publication of notice. (1933, c. 96, s. 3.)

§ 1-330. Notice served on defendant; when on governor and attorney general.—In addition to the advertisement above required, the sheriff shall in every case, at least ten days before a sale of real property under execution, serve a copy of so much of the advertisement as relates to the real property of any defendant on him personally if he is found in the county, or on his agent if he has a known agent therein, or if he cannot be found within the county and has no known agent therein, but his address is known, by mail to such address; and the date of service shall be ascertained by the usual course of the mail from the place where sent to the place of its address. In case of the sale under execution, or under the order of any court, of any real or personal property in which the state is interested as a stockholder or otherwise, notice in writing must be served upon the governor and attorney general, at least thirty days before the sale, of the time and place of sale, and under what process it is made, otherwise the sale is invalid. (Rev., s. 642; Code, s. 457; 1868-9, c. 237, s. 11; 1876-7, c. 224; C. S. 689.)

§ 1-331. Sale days; place of sale; ratification of prior sales.—All real property sold under execution shall be sold at the courthouse door of the county in which all or a part of the property is situated, on any day of the week or month except Sunday, after advertising as required by law. All sales of real property sold under order of court shall be sold at the courthouse door in the county in which all or any part of the property is situated on any day of the week or month except Sunday, unless in the order directing such sale some other place and time are designated and then it shall be sold as directed in such order on any day of the week or month except Sunday, after advertising as required by law.

Sales and resales of real property under execution, or by order of court, or under the power of foreclosure in any deed of trust or mortgage may be made on any day of any week or month, except Sunday.

All sales made prior to March 2, 1939, under execution or by order of court on any day other than the first Monday in any month, or the first three days of a term of the superior court of said county are hereby validated, ratified and confirmed.

All sales or resales of real property made prior to March 30, 1939, under order of court on the premises or at the courthouse door in the county in which all, or any part of the property, is situated, on any day other than Monday in any month, are hereby validated, ratified and confirmed. (Rev., s. 643; Code, s. 454; 1876-7, c. 216, ss. 2, 3; 1883, c. 94, ss. 1, 2; 1931, c. 23; 1937, c. 26; 1939, cc. 71, 256; C. S. 690.)

§ 1-332. Sales on other days validated.—All sales of real or personal property made prior to February 27, 1933, by a sheriff of any county in North Carolina, in the manner provided by law for sale of real or personal property under execution, on any day other than the day now provided by law are hereby validated.

All sales of real and personal property made prior to February 14, 1939, by a sheriff under execution, or by commissioner under order of court, in the manner provided by law for sale of real or personal property, on any day other than the days now provided by law are hereby validated.

All sales of real or personal property made prior to March 10, 1939, by a sheriff of any county in North Carolina, in the manner provided by law for sale of real or personal property under execution, on any day other than the day now provided by law, are hereby validated. (1933, c. 79; 1939, cc. 24, 94.)

§ 1-333. Sale hours.—No sale under an execution or decree shall commence before ten o'clock in the morning, or continue after four o'clock in the afternoon, of the day on which the sale is to be made, except that in towns or cities of more than five thousand inhabitants public sales of goods, wares and merchandise may be continued until ten o'clock p. m. Provided, a certain hour for such sales shall be named and the sale shall begin within one hour after the time fixed, unless postponed as provided by law, or delayed by other sales. (Rev., s. 644; Code, s. 459; R. C., c. 45, s. 17; 1794, c. 41; 1927, c. 19; C. S. 691.)

§ 1-334. Postponement.—The sheriff or other person making the sale, for the absence of bidders or any other just cause, may postpone the

sale from day to day, but not for more than six days in all, and upon postponement he must post a notice thereof on the courthouse door of his county. (Rev., s. 645; Code, s. 455; 1868-9, c. 237, s. 9; C. S. 692.)

§ 1-335. Certain sales validated.—All sales of realty made under executions issued prior to March the fifteenth, one thousand nine hundred and one, on judgments regularly obtained in courts of competent jurisdiction, are hereby validated, whether such sales were continued from day to day or for a longer period, not exceeding ten days: Provided, that such executions and sales are in all other respects regular: Provided further, that purchasers and their assigns shall have held continuous and adverse possession under a sheriff's deed for three years: Provided further, that the rights of minors and married women shall in nowise be prejudiced hereby. (Rev., s. 646; 1901, c. 742; C. S. 693.)

§ 1-336. Advertisement as to personal property.—No sale of personal property under execution may be made until it has been advertised for ten days at the door of the courthouse of the county in which it is to be sold, and at three other public places in the county, and the advertisement must designate the place and the time of sale. (Rev., s. 648; Code, s. 460; R. C., c. 45, s. 16; 1808, c. 753; 1820, c. 1066; C. S. 695.)

§ 1-337. Penalty for selling contrary to law.—A sheriff or other officer who makes any sale contrary to the true intent and meaning of this article shall forfeit two hundred dollars to any person suing for it, one-half for his own use and the other half to the use of the county where the offense is committed. (Rev., s. 649; Code, s. 461; R. C., c. 45, s. 18; 1820, c. 1066, s. 2; 1822, c. 1153, s. 3; C. S. 696.)

§ 1-338. Officer's return of no sale for want of bidders; penalty.—When a sheriff or other officer returns upon an execution that he has made no sale for want of bidders, he must state in his return the several places he has advertised and offered for sale the property levied on; and an officer failing to make such statement is on motion subject to a fine of forty dollars; and every constable, for a like omission of duty, is subject to a fine of ten dollars, for the use and benefit of the plaintiff in the execution; for which, on motion of the plaintiff, judgment shall be granted by the court to which, or by justice to whom, the execution shall be returned. Nothing in, nor any recovery under, this section is a bar to any action for a false return against the sheriff or other officer. (Rev., s. 650; Code, s. 462; R. C., c. 45, s. 19; 1815, c. 887; C. S. 697.)

§ 1-339. Officer to prepare deed for property sold.—Sheriffs or other officers selling lands by authority of any execution or process shall, upon payment of the price, prepare, execute and deliver to the purchaser a deed for the property purchased. The purchaser of land must furnish the officer with a description of it. (Rev., s. 651; Code, s. 471; R. C., c. 45, s. 30; 1848, c. 39; C. S. 698.)

Art. 30. Betterments.

§ 1-340. Petition by claimant; execution suspended; issues found. — A defendant against whom a judgment is rendered for land may, at any time before execution, present a petition to the court rendering the judgment, stating that he, or those under whom he claims, while holding the premises under a color of title believed to be good, have made permanent improvements thereon, and praying that he may be allowed for the improvements, over and above the value of the use and occupation of the land. The court may, if satisfied of the probable truth of the allegation, suspend the execution of the judgment and impanel a jury to assess the damages of the plaintiff and the allowance to the defendant for the improvements. In any such action this inquiry and assessment may be made upon the trial of the cause. (Rev., s. 652; Code, s. 473; 1871-2, c. 147; C. S. 699.)

§ 1-341. Annual value of land and waste charged against defendant.—The jury, in assessing the damages, shall estimate against the defendant the clear annual value of the premises during the time he was in possession, exclusive of the use of the improvements thereon made by himself or those under whom he claims, and also the damages for waste or other injury to the premises committed by the defendant. The defendant is not liable for the annual value or for damages for waste or other injury for any longer time than three years before the suit, unless he claims for improvements. (Rev., ss. 653, 654; Code, ss. 474, 475; 1871-2, c. 147, ss. 2-3; C. S. 700.)

§ 1-342. Value of improvements estimated.—If the jury is satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the premises, permanent and valuable improvements, they shall estimate in his favor the value of the improvements made before notice, in writing, of the title under which the plaintiff claims, not exceeding the amount actually expended in making them and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment. (Rev., s. 655; Code, s. 476; 1871-2, c. 147, s. 4; C. S. 701.)

§ 1-343. Improvements to balance rents.—If the sum estimated for the improvements exceeds the damages estimated against the defendant as aforesaid, the jury shall then estimate against him for any time before the said three years the rents and profits accrued against or damages for waste or other injury done by him, or those under whom he claims, so far as is necessary to balance his claim for improvements; but the defendant in such case shall not be liable for the excess, if any, of such rents, profits, or damages beyond the value of improvements. (Rev., s. 656; Code, s. 477; 1871-2, c. 147, s. 5; C. S. 702.)

§ 1-344. Verdict, judgment, and lien.—After offsetting the damages assessed for the plaintiff, and the allowances to the defendant for any improvements, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment shall be entered therefor according to the verdict. Any such balance due to the defendant is a lien upon the land recov-

ered by the plaintiff until it is paid. (Rev., ss. 657, 658; Code, ss. 478, 479; 1871-2, c. 147, ss. 6, 7; C. S. 703.)

§ 1-345. Life tenant recovers from remainderman.—If the plaintiff claims only an estate for life in the land recovered and pays any sum allowed to the defendant for improvements, he or his personal representative may recover at the determination of his estate from the remainderman or reversioner, the value of the said improvements as they then exist, not exceeding the amount as paid by him, and he has a lien therefor on the premises as if they had been mortgaged for the payment thereof, and may keep possession of said premises until it is paid. (Rev., s. 659; Code, s. 480; 1871-2, c. 147, s. 8; C. S. 704.)

§ 1-346. Value of premises without improvements.—When the defendant claims allowance for improvements, the plaintiff may by entry on the record require that the value of his estate in the premises without the improvements shall also be ascertained. The value of the premises in such cases shall be estimated as it would have been at the time of the inquiry, if no such improvements had been made by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements. (Rev., ss. 661, 662; Code, ss. 482, 483; 1871-2, c. 147, ss. 10-11; C. S. 705.)

§ 1-347. Plaintiff's election that defendant take premises.—The plaintiff in such case, if judgment is rendered for him, may, at any time during the same term, or before judgment is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant at the value as ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit, if he pays therefor the said value with interest in the manner ordered by the court. (Rev., s. 663; Code, s. 484; 1871-2, c. 147, s. 12; C. S. 706.)

§ 1-348. Payment made to court; land sold on default.—The payment must be made to the plaintiff, or into court for his use, and the land is bound therefor, and if the defendant fails to make the payment within or at the times limited therefor, the court may order the land sold and the proceeds applied to the payment of said value and interest, and any surplus to be paid to the defendant; but if the net proceeds are insufficient to satisfy the said value and interest, the defendant is not bound for the deficiency. (Rev., s. 664; Code, s. 485; 1871-2, c. 147, s. 13; C. S. 707.)

§ 1-349. Procedure where plaintiff is under disability.—If the party by or for whom the land is claimed in the suit is a married woman, minor, or insane person, such value is deemed to be real estate, and shall be disposed of as the court considers proper for the benefit of the persons interested therein. (Rev., s. 665; Code, s. 486; 1871-2, c. 147, s. 14; C. S. 708.)

§ 1-350. Defendant evicted, may recover from plaintiff.—If the defendant, his heirs or assigns, after the premises are so relinquished to him, is evicted by force of a better title than that of the original plaintiff, the person so evicted may recover from the plaintiff or his representatives the amount paid for the premises, as so much money had and received by the plaintiff in his lifetime for the use of such person, with lawful interest thereon from the time of the payment. (Rev., s. 666; Code, s. 487; 1871-2, c. 147, s. 15; C. S. 709.)

§ 1-351. Not applicable to suit by mortgagee.—Nothing in this article applies to any suit brought by a mortgagee or his heirs or assigns against a mortgagor or his heirs or assigns for the recovery of the mortgaged premises. (Rev., s. 660; Code, s. 481; 1871-2, c. 147, s. 9; C. S. 710.)

Art. 31. Supplemental Proceedings.

§ 1-352. Execution unsatisfied, debtor ordered to answer.—When an execution against property of a judgment debtor, or any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business, or if he does not reside in the state, to the sheriff of the county where a judgment roll or a transcript of a justice's judgment is filed, is returned wholly or partially unsatisfied, the judgment creditor at any time after the return, and within three years from the time of issuing the execution, is entitled to an order from the court to which the execution is returned or from the judge thereof, requiring such debtor to appear and answer concerning his property before such court or judge, at a time and place specified in the order, within the county to which the execution was issued. (Rev., s. 667; Code, s. 488, subsec. 1; C. C. P., s. 264; 1868-9, c. 95, s. 2; C. S. 711.)

§ 1-353. Property withheld from execution; proceedings.—After the issuing of an execution against property, and upon proof by affidavit of a party, his agent or attorney, to the satisfaction of the court or a judge thereof, that any judgment debtor residing in the judicial district where such judge or sheriff resides has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as provided upon the return of an execution, and the judgment creditor is entitled to the order of examination under this and the preceding section, although the judgment debtor has an equitable estate in land subject to the lien of the judgment, or choses in action, or other things of value unaffected by the lien of the judgment and incapable of levy. (Rev., s. 668; Code, s. 488, subsec. 2; C. C. P., s. 264; 1868-9, c. 95, s. 2; C. S. 712.)

§ 1-354. Proceedings against joint debtors.—Proceedings supplemental to execution may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which the action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judg-

ments out of the property of joint debtors are maintainable in like manner and to the like effect. These provisions apply to all proceedings and actions pending and to those terminated by final decree or judgment. (Rev., s. 669; Code, s. 490; C. C. P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245; C. S. 713.)

§ 1-355. Debtor leaving state, or concealing himself, arrested; bond.—Instead of the order requiring the attendance of the judgment debtor, the court or judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor leaving the state or concealing himself, and that there is reason to believe that he has property which he unjustly refuses to apply to the judgment, issue a warrant requiring the sheriff of any county where such debtor is to arrest him and bring him before the court or judge. Upon being brought before the court or judge, the debtor may be examined on oath, and, if it appears that there is danger of his leaving the state, and that he has property which he has unjustly refused to apply to the judgment, he shall be ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the court or judge as directed, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the court or judge, as for contempt. (Rev., s. 671; Code, s. 488, subsec. 4; 1868-9, c. 148, s. 4; 1868-9, c. 277, s. 8; C. S. 714.)

§ 1-356. Examination of parties and witnesses.—On examination under this article either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness; and the party or witnesses may be required to appear before the court or judge, or a referee appointed by either, and testify on any proceedings under this article in the same manner as upon the trial of an issue. If before a referee, the examination shall be taken by the referee, and certified to the court or judge. All examinations and answers before a court or judge or referee under this article must be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof. (Rev., ss. 670, 676; Code, ss. 488 [subsec. 2], 491, 492; C. C. P., ss. 264, 267, 268; 1868-9, c. 95, s. 2; 1871-2, c. 245; C. S. 715.)

§ 1-357. Incriminating answers not privileged; not used in criminal proceedings.—No person, on examination pursuant to this article, is excused from answering any question on the ground that it will tend to convict him of the commission of a crime or that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. (Rev., s. 672; Code, s. 488, subsec. 5; C. C. P., s. 264; 1868-9, c. 95, s. 2; C. S. 716.)

§ 1-358. Disposition of property forbidden.—The court or judge may, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. (Rev., s. 673; Code, ss. 488 [subsec. 6], 494; C. C. P., s. 264; 1868-9, c. 95, s. 2; C. S. 717.)

§ 1-359. Debtors of judgment debtor may satisfy execution.—After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid. (Rev., s. 674; Code, s. 489; C. C. P., s. 265; C. S. 718.)

§ 1-360. Debtors of judgment debtor, summoned.—After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars, the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the same. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper. (Rev., s. 675; Code, s. 490; C. C. P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245; C. S. 719.)

§ 1-361. Where proceedings instituted and defendant examined.—Proceedings supplemental to execution must be instituted in the county in which the judgment was rendered; but the place designated where the defendant must appear and answer must be within the county where he resides. (Rev., s. 677; C. S. 720.)

§ 1-362. Debtor's property ordered sold.—The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor. (Rev., s. 678; Code, s. 493; C. C. P., s. 269; 1870-1, c. 245; C. S. 721.)

§ 1-363. Receiver appointed.—The court or judge having jurisdiction over the appointment of receivers may also by order in like manner, and with like authority, appoint a receiver in proceedings under this article of the property of the judgment debtor, whether subject or not to be sold under execution, except the homestead and personal property exemptions. But before the appointment of the receiver, the court or judge shall ascertain if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if so, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to the receivership. No more than one receiver of the property of a judgment debtor

shall be appointed. The title of the receiver relates back to the service of the restraining order, herein provided for. (Rev., s. 679; Code, s. 494; C. C. P., s. 270; 1870-1, c. 245; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; C. S. 722.)

§ 1-364. Filing and record of appointment; property vests in receiver.—When the court or a judge grants an order for the appointment of a receiver of the property of the judgment debtor, it shall be filed in the office of the clerk of the superior court of the county where the judgment roll in the action or transcript from justice's judgment, upon which the proceedings are taken, is filed; and the clerk shall record the order in a book to be kept for that purpose in his office, to be called Book of Orders Appointing Receivers of Judgment Debtors, and shall note the time of its filing therein. A certified copy of the order shall be delivered to the receiver named therein, and he is vested with the property and effects of the judgment debtor from the time of the service of the restraining order, if such restraining order has been made, and if not, from the time of the filing and recording of the order for the appointment of a receiver. The receiver of the judgment debtor is subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded. (Rev., s. 680; Code, s. 495; C. C. P., s. 270; 1870-1, c. 245; C. S. 723.)

§ 1-365. Where order of appointment recorded.—Before the receiver is vested with any real property of the judgment debtor, a certified copy of the order of appointment must be filed and recorded on the execution docket, in the office of the clerk of the superior court of the county in which any real estate of the judgment debtor is situated, and also in the office of the clerk of the superior court of the county in which the debtor resides. (Rev., s. 681; Code, s. 496; C. C. P., s. 270; C. S. 724.)

§ 1-366. Receiver to sue debtors of judgment debtor.—If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation by the receiver; but the court or judge may, by order, forbid a transfer or other disposition of such property or interest till a sufficient opportunity is given to the receiver to commence and prosecute the action to judgment and execution, but such order may at any time be modified or dissolved by the court or judge having jurisdiction on such security as he directs. (Rev., s. 682; Code, s. 497; C. C. P., s. 271; 1870-1, c. 245; C. S. 725.)

§ 1-367. Reference.—The court or judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts. The appointment of the referee may be made in the first order or at any time. (Rev., s. 683; Code, s. 498; C. C. P., s. 272; C. S. 726.)

§ 1-368. Disobedience of orders punished as for contempt.—Any person, party or witness, who disobeys an order of the court or judge or referee, duly served, may be punished by the judge as for a contempt. In all cases of commitment under this article the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the judge committing him, or the judge having jurisdiction, on such terms as are just. (Rev., s. 684; Code, s. 500; C. C. P., s. 274; 1869-70, c. 79, s. 3; C. S. 727.)

SUBCHAPTER XI. HOMESTEAD AND EXEMPTIONS.

Art. 32. Property Exempt from Execution.

§ 1-369. Property exempted. — The homestead and personal property exemptions as defined and declared by the article of the state constitution entitled Homesteads and Exemptions are exempt from sale under execution and other final process, as provided in the state constitution: Provided, the allotment of the homestead shall, as to all property therein embraced, suspend the running of the statute of limitations on all judgments against the homesteader during the continuance of the homestead. (Rev., s. 685; Code, s. 501; 1885, c. 359; 1887, c. 17; 1895, c. 397; 1901, c. 612; 1879, c. 256; R. C., c. 45, s. 7; 1848, c. 38; R. C., c. 45, s. 8; 1844, c. 32; 1846, c. 53: 1848, c. 38, s. 2; 1866-7, c. 61, s. 7; 1876-7, c. 263; C. S. 728.)

§ 1-370. Conveyed homestead not exempt.—The allotted homestead is exempt from levy so long as owned and occupied by the homesteader or by any one for him, but when conveyed by him in the mode authorized by the constitution, article ten, section eight, the exemption ceases as to liens attaching prior to the conveyance. The homesteader who has conveyed his allotted homestead may have another allotted, and as often as is necessary. This section shall not have any retroactive effect. (Rev., s. 686; 1905, c. 111; C. S. 729.)

§ 1-371. Sheriff to summon and swear appraisers.—Before levying upon the real estate of any resident of this state who is entitled to a homestead under this article, and the constitution of this state, the sheriff [or a deputy sheriff designated by the sheriff, and who shall be twenty-one years of age or over], or other officer charged with the levy shall summon three discreet persons qualified to act as jurors, to whom he shall administer the following oath: "I, A. B., do solemnly swear (or affirm) that I have no interest in the homestead exemption of C. D., and that I will faithfully perform the duties of appraiser (or assessor, as the case may be), in valuing and laying off the same. So help me, God." In cases where he deems it necessary he may summon the county surveyor or some other competent surveyor to assist in laying off the homestead by metes and bounds. The portions of this section in brackets shall apply to the following counties only: Guilford, Mecklenburg, Ashe, Jackson, Alamance, Martin, Brunswick, Davidson, Sampson, Davie, Randolph, Lenoir, Durham, Wilson, Cumberland, Scotland, New Hanover, Vance, Rowan, Henderson, Cabarrus, Pitt, Rockingham, Chowan, Gates, Perquimans, Pasquotank, Camden, Currituck, Hertford, Edgecombe, Harnett, Forsyth, Iredell, Lincoln, Bertie, Caldwell, Wayne, Halifax, Bun-

combe, Johnston, Moore, Duplin, Graham, Martin, Onslow. (Rev., s. 687; Code, s. 502; 1893, c. 58; 1868-9, c. 137, s. 2; 1931, c. 58; 1933, cc. 37, 147; C. S. 730.)

§ 1-372. Duty of appraisers; proceedings on return.—The appraisers shall value the homestead with its dwelling and buildings thereon, and lay off to the owner or to any agent or attorney, in his behalf, such portion as he selects not exceeding in value one thousand dollars, and must fix and describe the same by metes and bounds. They must then make and sign in the presence of the officer a return of their proceedings, setting forth the property exempted, which shall be returned by the officer to the clerk of the court for the county in which the homestead is situated and filed with the judgment roll in the action, and a minute of the same entered on the judgment docket, and a certified copy thereof under the hand of the clerk shall be registered in the office of the register of deeds for the county. The officer must likewise make a transcript of the return over his hand and return it without delay to the clerk of the court of the county from whence the execution issued, and said clerk must likewise file and make minute of the same as above directed. In all judicial proceedings the original return or a certified copy may be read in evidence. (Rev., ss. 688, 689; Code, ss. 503-4; 1868-9, c. 137, ss. 3-4; 1877, c. 272; C. S. 731.)

§ 1-373. Reallotment for increase of value.—A judgment creditor of a debtor whose homestead has been allotted may apply in writing to the clerk of the superior court of the county in which the homestead lies for an order for its reallotment, if there is in the hands of the sheriff of that county an execution issued from the proper court against said debtor. The application must be accompanied by the affidavits of three disinterested freeholders of the county in which the homestead lies, setting forth that, in their opinion, it has increased in value fifty per centum or more since the last allotment. Upon the filing of the application and affidavits the clerk shall issue notice to the judgment debtor to appear before him on a day not more than five days from the day of its service and show cause why his homestead should not be reallotted. The notice must state upon whose application it is issued. Upon the return day of the notice the clerk shall consider the affidavits filed, as heretofore required, and any additional affidavits filed by either party, and if he is of opinion that the homestead has probably appreciated in value fifty per centum or more since the last allotment, he shall command the sheriff to reallot to the judgment debtor his homestead, in the same manner as if no homestead had been allotted. If upon the reallotment any excess is found, it shall be disposed of by the sheriff as in ordinary cases of execution and levy. This section does not prevent the judgment creditor from resorting to the equity jurisdiction of the courts for a reallotment of the homestead of his judgment debtor in any case. (Rev., s. 691; 1893, c. 149; C. S. 732.)

§ 1-374. Appeal as to reallotment.—From the order of the clerk commanding or refusing a reallotment, either party may appeal to the judge resident in or holding the courts of the district, who shall hear the matter in chambers in any county of the judicial district to which belongs the county in which the proceedings were instituted. In other respects the proceedings upon such appeal are as now provided for appeals from the clerk on issues of law. (Rev., s. 691; 1893, c. 149; C. S. 733.)

§ 1-375. Levy on excess; return of officer.—The levy may be made upon the excess of the homestead, not laid off according to this chapter, and the officer shall make substantially the following return upon the execution: "A. B., C. D., and E. F., summoned and qualified as appraisers or assessors (as the case may be), who set off to X. Y. the homestead exempt by law. Levy made upon the excess." (Rev., s. 692; Code, s. 505; 1868-9, c. 137, s. 5; C. S. 734.)

§ 1-376. When appraisers select homestead.—If no selection is made by the owner, or any one acting in his behalf, of the homestead to be laid off as exempt, the appraisers shall make selection for him, including always the dwelling and buildings used therewith. (Rev., s. 693; Code, s. 506; 1868-9, c. 137, s. 6; C. S. 735.)

§ 1-377. Homestead in tracts not contiguous.—Different tracts of land not contiguous may be included in the same homestead, when a homestead of contiguous land is not of the value of one thousand dollars. (Rev., s. 694; Code, s. 509; 1868-9, c. 137, s. 15; C. S. 736.)

§ 1-378. Personal property appraised on demand.—When the personal property of any resident of this state is levied upon by virtue of an execution or other final process issued for the collection of a debt, and the owner or an agent, or attorney in his behalf, demands that the same, or any part thereof, be exempt from sale under such execution, the sheriff or other officer making the levy shall summon three appraisers, as heretofore provided, who, having been first duly sworn, shall appraise and lay off to the judgment debtor such articles of personal property as he or another in his behalf selects and to which he is entitled under this article and the constitution of the state, in no case to exceed in value five hundred dollars, which articles are exempt from said levy, and return thereof shall be made by the appraisers, as upon the laying off of a homestead exemption. (Rev., s. 695; Code, s. 507; 1868-9, c. 137, ss. 12, 13; C. S. 737.)

§ 1-379. Appraiser's oath and fees.—The persons summoned to appraise the personal property exemption must take the same oath and are entitled to the same fees as the appraisers of the homestead, and when both exemptions are claimed by the judgment debtor, at the same time, one board of appraisers must lay off both, and are entitled to but one fee. (Rev., s. 696; Code, s. 508; 1868-9, c. 137, s. 14; C. S. 738.)

§ 1-380. Returns registered.—It is the duty of the register of deeds to indorse on each of said returns the date when received for registration, and to cause the same to be registered without unnecessary delay. He shall receive for registering the returns the same fees allowed him by law for other similar or equivalent services, which fees shall be paid by said resident applicant, his agent

or attorney, upon the reception of the returns by the register. (Rev., s. 698; Code, s. 513; 1868-9, c. 137, s. 9; C. S. 739.)

§ 1-381. Exceptions to valuation and allotment; procedure.—If the judgment creditor for whom levy is made, or judgment debtor or other person entitled to homestead and personal property exemption, is dissatisfied with the valuation and allotment of the appraisers or assessors, he, within ten days thereafter, or any other creditor within six months and before sale under execution of the excess, may notify the adverse party and the sheriff having the execution in hand, and file with the clerk of the superior court of the county where the allotment is made a transcript of the return of the appraisers or assessors which they or the sheriff shall allow to be made upon demand, together with his objections in writing to said return. Thereupon the said clerk shall put the same on the civil issue docket of the superior court for trial at the next term thereof as other civil actions, and such issue joined has precedence over all other issues at that term. The sheriff shall not sell the excess until after the determination of said action. The ten days and six months respectively begin to run from the date of the filing of the return of the valuation and allotment of the appraisers or assessors by the officer with the clerk of the superior court of the county from whence the execution issued. (Rev., s. 699; Code, s. 519; 1887, c. 272, s. 2; 1883, c. 357; C. S. 740.)

§ 1-382. Revaluation demanded; jury verdict; commissioners; report.—When an increase of the exemption or an allotment in property other than that set apart is demanded, the party demanding must in his exceptions specify the property from which the increase or reallotment is to be had. If the appraisal or assessment is reduced, the jury shall assess the value of the property embraced therein; if increased, the value of the property specified in the objections from which the increase is demanded shall also be assessed; but if the allotment is made in property other than that first set apart, the jury shall assess the value of the property so allotted. The court shall appoint three disinterested commissioners to lay off and set apart the homestead and personal property exemption in accordance with the verdict of the jury and the judgment of the court, and in the manner prescribed by law. The commissioners, who shall be summoned by the sheriff, must meet upon the premises and, after being sworn by the sheriff or a justice of the peace to faithfully perform the duties of appraisers or assessors in allotting and laying off the homestead or personal property exemption, or both, in accordance with the verdict and judgment aforesaid, must allot and lay off the same and file their report to the next term of the court, when it shall be heard by the court upon exceptions thereto. (Rev., s. 700; 1885, c. 347; C. S. 741.)

§ 1-383. Undertaking of objector.—The creditor, debtor, or claimant objecting to the allotment made by the appraisers or assessors under execution or petition must file with the clerk of the superior court an undertaking in the sum of one hundred dollars for the payment to the adverse party of such costs as are adjudged against him. (Rev., s. 701; Code, s. 522; C. S. 742.)

§ 1-384. Set aside for fraud, or irregularity.—An appraisal or allotment by appraisers or assessors may be set aside for fraud, complicity, or other irregularity; but after an allotment or assessment is made or confirmed by the superior court at term time, as hereinbefore provided, the homestead shall not thereafter be set aside or again laid off by any other creditor except for increase in value. (Rev., s. 702; Code, s. 523; C. S. 743.)

§ 1-385. Return registered; original or copy evidence.—When the homestead and personal property exemption is decided by the court at term time the clerk of the superior court shall immediately file with the register of deeds of the county a copy of the same, which shall be registered as deeds are registered; and in all judicial proceedings the original or a certified copy of the return may be introduced in evidence. (Rev., s. 703; Code, s. 524; C. S. 744.)

§ 1-386. Allotted on petition of owner.—When any resident of this state desires to take the benefit of the homestead and personal property exemption as guaranteed by article ten of the state constitution, or by this article, such resident, his agent or attorney, must apply to a justice of the peace of the county in which he resides, who shall appoint as assessors three disinterested persons, qualified to act as jurors, residing in said county. The jurors, on notice by the order of the justice, shall meet at the applicant's residence, and, after taking the oath prescribed for appraisers before some officer authorized to administer an oath, lay off and allot to the applicant a homestead with metes and bounds, according to the applicant's direction, not to exceed one thousand dollars in value, and make and sign a descriptive account of the same and return it to the office of the register of deeds.

Said assessors shall set apart of the personal property of said applicant, to be by him selected, articles of personalty to which he is entitled under this chapter, not exceeding in value the sum of five hundred dollars, and make, sign and return a descriptive list thereof to the register of deeds. (Rev., ss. 697, 704; Code, ss. 511, 512; 1868-9, c. 137, ss. 7, 8; C. S. 745.)

§ 1-387. Advertisement of petition; time of hearing.—When a person entitled to a homestead and personal property exemption files the petition before a justice of the peace to have the same laid off and set apart under the preceding sections, the justice shall make advertisement in some newspaper published in the county, for six successive weeks, and if there is no newspaper in the county, then at the courthouse door of the county in which the petition is filed, notifying all creditors of the applicant of the time and place for hearing the petition. The petition shall not be heard nor any decree made in the cause in less than six nor more than twelve months from the day of making advertisement as above required. (Rev., s. 705; Code, s. 515; 1868-9, c. 137, s. 11; C. S. 746.)

§ 1-388. Exceptions, when allotted on petition.—When the homestead or personal property exemption is allotted on the petition of the person

entitled thereto, any creditor may, within six months from the time of the assessment or appraisal, and upon ten days notice to the petitioner, file his objections with the register of deeds of the county in which the premises are situated, and the register of deeds shall return the same to the clerk of the superior court of that county, who shall place them on the civil issue docket, and they shall be tried as provided for homestead and personal property exemptions set off under execution. (Rev., s. 706; Code, s. 520; C. S. 747.)

§ 1-389. Allotted to widow or minor children on death of homesteader.—If a person entitled to a homestead exemption dies without the homestead having been set apart, his widow, if he leaves no children, or his child or children under the age of twenty-one years, if he leaves such, may proceed to have the homestead exemption laid off by petition. If the widow or children have failed to have the exemption set apart in the manner provided, then in an action brought by his personal representatives to subject the realty of the decedent to the payment of debts and charges of administration, it is the duty of the court to appoint three disinterested freeholders to set apart to such widow, child or children a homestead exemption under metes and bounds in the lands of the decedent. The freeholders shall under their hands and seals make return of the same to the court, which shall be registered in the same manner as homestead exemptions. (Rev., s. 707; Code, s. 514; 1868-9, c. 137, s. 10; 1893, c. 332; C. S. 748.)

§ 1-390. Liability of officer as to allotment, return and levy.—Any officer making a levy, who refuses or neglects to summon and qualify appraisers as heretofore provided, or fails to make due return of his proceedings, or levies upon the homestead set off by appraisers or assessors except as herein provided, is guilty of a misdemeanor, and he and his sureties are liable to the owner of the homestead for all costs and damages in a civil action. (Rev., ss. 708, 3584; Code, s. 516; 1868-9, c. 137, s. 17; C. S. 749.)

§ 1-391. Liability of officer, appraiser, or assessor, for conspiracy or fraud.—Any officer, appraiser, or assessor who willfully or corruptly conspires with a judgment debtor, judgment creditor, or other person, to undervalue or to overvalue the homestead or personal property exemption of a debtor, or applicant, or assigns false metes and bounds, or makes or procures to be made a false and fraudulent return thereof, is guilty of a misdemeanor and is liable to the party injured thereby for all costs and damages in a civil action. (Rev., ss. 690, 3585, 3586; Code, ss. 517, 518; 1868-9, c. 137, ss. 18, 19; C. S. 750.)

§ 1-392. Forms.—The following forms must be substantially followed in proceedings under this article:

[No. 1]

Appraisers' Return.

When the homestead is valued at less than one thousand dollars, and personal property also appraised.

The undersigned having been duly summoned and sworn to act as appraisers of the homestead and personal property exemption of A. B., of ..... Township, ... County, by C. D., Sheriff (or constable or deputy) of said county, do hereby make the following return: We have viewed and appraised the homestead of the said A. B., and the dwellings and buildings thereon, owned and occupied by said A. B. as a homestead, to be one thousand dollars (or any less sum) and that the entire tract, bounded by the lands of.....and .....is therefore exempted from sale under execution according to law. At the same time and place we viewed and appraised at the values annexed the following articles of personal property, selected by said A. B. (here specify the articles and their value, to be selected by the debtor or his agent), which we declare to be a fair valuation, and that the said articles are exempt under said execution. We hereby certify that we are not related by blood or marriage to the judgment debtor or the judgment creditor in this execution, and have no interest, near or remote, in the above exemptions.

Given under our hands and seals, this..... day of ....., 19 .....

O. K.....[L. S.]
L. M.....[L. S.]
R. S.....[L. S.]

The above return was made and subscribed in my presence, day and date above given.

C. D....., (Sheriff or Constable.)

[No. 2]

Petition for Homestead before a Justice of the Peace.

Before....., J. P.
.....County.

In the Matter of A. B.

A. B. respectfully shows that he (she or they, as the case may be) is (or are) entitled to a homestead exempt from execution in certain real estate in said county, and bounded and described as follows: (Here describe the property). The true value of which he (she or they, as the case may be) believes to be one thousand dollars, including the dwelling, and buildings thereon. He (she or they) further shows that he (she or they, as the case may be) is (or are) entitled to a personal property exemption from execution, to the value of (here state the value), consisting of the following property: (Here specify.) He (she or they, as the case may be) therefore prays your worship to appoint three disinterested persons qualified to act as jurors, as assessors, to view the premises, allot and set apart to your petitioner his homestead and personal property exemption, and report according to law.

[No. 3]

Form for Appraisal of Personal Property Exemption.

The undersigned having been duly summoned and sworn to act as appraisers of the personal property of A. B., of ..... Township, ... County, and to lay off the exemption given by law thereto, by C. D., Sheriff (or other officer) of said county, do hereby make and subscribe the following return:

We viewed and appraised at the values annexed, the following articles of personal property

selected by the said A. B., to wit: ..... which we declare to be a fair valuation, and that said articles are exempt under said execution.

We hereby certify, each for himself, that we are not related by blood or marriage to the judgment debtor or judgment creditor in this execution, and have no interest, near or remote, in the above exemptions.

Given under our hands and seals, this ..... day of ....., 19 .....

O. K.....[L. S.]
L. M.....[L. S.]
R. S.....[L. S.]

The above return was made and subscribed in my presence, day and date above given.

C. D....., (Sheriff or Constable.)

[No. 4]

Certificate of Qualification to Be Endorsed on Return by Sheriff.

The within named B. F., G. H., and J. R. were summoned and qualified according to law, as appraisers of the ..... exemption of the said A. B., under an execution in favor of X. Y., this .....day of ....., 19.....

C. D.....(Sheriff).

[No. 5]

Minute on Execution Docket.

X ..... Y .....
vs.
A ..... B .....
Execution issued ....., 19 .....
Homestead appraised and set off and return made ....., 19 ..... (Rev., s. 709; Code, s. 524; C. S. 751.)

SUBCHAPTER XII. SPECIAL PROCEEDINGS.

Art. 33. Special Proceedings.

§ 1-393. Chapter applicable to special proceedings.—The provisions of this chapter on civil procedure are applicable to special proceedings, except as otherwise provided. (Rev., s. 710; Code, s. 278; C. S. 752.)

§ 1-394. Contested special proceedings; commencement; summons. — Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall command the officer to summons the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within ten days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the state, be signed by the clerk of the superior court having jurisdiction in the special proceeding, and be directed to the sheriff or other proper officers of the county, or counties, in which the defendant, or defendants, or any of them reside or may be found, and must be returnable before the clerk. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service, whether by the sheriff or by publication, shall be as is prescribed for summons in civil actions by § 1-89: Provided, however, that in special proceedings before the clerk, the plaintiff or petitioner shall not be required to serve a copy of the petition or complaint upon each of the defendants, as required in civil actions, but in lieu thereof such petitioner or petitioners may deliver to the clerk at the time of the issuance of the summons copies (not to exceed three) of the petition or complaint for the use of the defendants. Provided, further, where the defendant is an agency of the state the time for filing answer or other plea shall be not less than thirty (30) days after the date of service. (Rev., ss. 711, 712; Code, ss. 279, 287; 1868-9, c. 93, s. 4; 1927, c. 66, s. 5; 1929, cc. 50, 237, s. 3; 1939, c. 49, s. 2; 1939, c. 143; C. S. 753.)

§ 1-395. Return of summons.—The officer to whom the summons is addressed shall note on it the day of its delivery to him, and, if required by the plaintiff, shall execute it immediately. When executed, he shall immediately return the summons with the date and manner of its execution, by mail or otherwise, to the clerk of the court issuing it. (Rev., s. 713; Code, s. 280; C. C. P., s. 75; C. S. 754.)

§ 1-396. When complaint filed.—The plaintiff must file his complaint or petition with the clerk of the court to which the summons is returnable, at the time of issuing the summons or within ten days thereafter. (Rev., s. 714; Code, s. 281; C. C. P., s. 76; 1876-7, c. 241, s. 4; C. S. 755.)

§ 1-397. Nonsuit for failure to file.—If the plaintiff fails to file his complaint or petition within the time limited by the summons for the appearance and answer of the defendant, the defendant may demand judgment of nonsuit against the plaintiff. (Rev., s. 715; Code, s. 282; C. C. P., s. 78; C. S. 756.)

§ 1-398. Filing time enlarged.—The time for filing the complaint, petition, or any pleading may be enlarged by the court for good cause shown by affidavit, but may not be enlarged by more than ten additional days, nor more than once, unless the default was occasioned by accident over which the party applying had no control, or by the fraud of the opposing party. (Rev., s. 716; Code, s. 283; C. C. P., s. 79; C. S. 757.)

§ 1-399. Defenses pleaded; transferred to civil issue docket; amendments.—In special proceedings a defendant or other party thereto may plead any equitable or other defense, or ask any equitable or other relief in the pleadings which it would be competent to ask in a civil action; and when such pleas are filed the clerk shall transfer the cause to the civil issue docket for trial during term upon all issues raised by the pleadings. The trial judge may, with a view to substantial justice between the parties, allow amendments to the pleadings and interpleas in behalf of any person claiming an interest in the property. (Rev., s. 717; 1903, c. 566; C. S. 758.)

§ 1-400. Ex parte; commenced by petition.—If all the parties in interest join in the proceeding and ask the same relief, the commencement of the proceedings shall be by petition, setting forth

the facts entitling the petitioners to relief, and the nature of the relief demanded. (Rev., s. 718; Code, s. 284; 1868-9, c. 93; C. S. 759.)

§ 1-401. Clerk acts summarily; authority from nonresident.—In cases under § 1-400, if all persons to be affected by the decree, or their attorney, have signed the petition and are of full age, the clerk of the superior court has power to hear and decide the petition summarily. If any of the petitioners reside out of the state, an authority from them, to the attorney, in writing, must be filed with the clerk before he may make any order or decree to prejudice their rights. (Rev., s. 719; Code, s. 285; 1868-9, c. 93, s. 2; C. S. 760.)

§ 1-402. Judge approves when petitioner is infant.—If any petitioner is an infant, or the guardian of an infant, acting for him, no final order or judgment of the clerk, affecting the merits of the case and capable of being prejudicial to the infant, is valid, unless submitted to and approved by the judge resident or holding court in the district. (Rev., s. 720; Code, s. 286; 1887, c. 61; C. C. P., s. 420; 1868-9, c. 93, s. 3; C. S. 761.)

§ 1-403. Orders signed by judge.—Every order or judgment in a special proceeding required to be made by a judge of the superior court, in or out of term, must be authenticated by his signature. (Rev., s. 722; Code, s. 288; 1868-9, c. 93, s. 5; 1872-3, c. 100; C. S. 762.)

§ 1-404. Reports of commissioners and jurors.—Every order or judgment in a special proceeding imposing a duty on commissioners or jurors must prescribe the time within which the duty must be performed, except in cases where the time is prescribed by statute. The commissioners or jurors shall within twenty days after the performance of the duty file their report with the clerk of the superior court, and if no exception is filed to it within twenty days, the court may proceed to confirm the same on motion of any party and without special notice to the other parties. (Rev., s. 723; 1893, c. 209; C. S. 763.)

§ 1-405. No report set aside for trivial defect.—No report or return made by any commissoners may be set aside and sent back to them or others for a new report because of any defect or omission not affecting the substantial rights of the parties, but the defect or omission may be amended by the court, or by the commissioners with permission of the court. (Rev., s. 724; Code, s. 289; 1868-9, c. 93, s. 7; C. S. 764.)

§ 1-406. Commissioner of sale to account in sixty days.—In all actions or special proceedings when a person is appointed commissioner to sell real or personal property, he shall, within sixty days after the maturity of the note or bond for the balance of the purchase money of said property, or the payment of the amount of the bid when the sale is for cash, file with the clerk of the superior court a final account of his receipts and disbursements on account of the sale; and the clerk must audit the account and record it in the book in which the final settlements of executors and administrators are recorded. If any commissioner appointed in any action or special proceeding before the clerk fails, refuses or omits to file a final account as prescribed in this section, or renders an insufficient or unsatisfactory account, the clerk of the superior court shall forthwith order such commissioner to render a full and true account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such commissioner shall fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against said commissioner for a contempt and commit him till he exhibits such account, or files a bond for the amount held or unaccounted for as is prescribed by law for administrators, the premium for which is to be deducted from the commissioner's fee, earned by said commissioner in said action or special proceeding. (Rev., s. 725; 1901, c. 614, ss. 1, 2; 1933, c. 98; C. S. 765.)

§ 1-407. Commissioners selling land for reinvestment, etc., to give bond.—Whenever in any cause or special proceeding there is a sale of real estate for the purpose of a reinvestment of the money arising from such sale or for any other purpose, and the proceeds from such sale are held by a commissioner or other officer designated by the court to receive such money, for purposes of reinvestment or otherwise, the commissioner or officer so receiving same shall execute a good and sufficient bond, to be approved by the court, in an amount at least equal to the corpus of the fund, and payable to the state of North Carolina for the protection of the fund and the parties interested therein, and conditioned that such custodian of the money shall faithfully comply with all the orders of the court made or to be thereafter made concerning the handling of reinvestment of said funds and for the faithful and final accounting of the same to the parties interested; but the court in its discretion may waive the requirement of such bond in those cases where the court requires the funds or proceeds from such sale to be paid by the purchaser or purchasers direct to the court. The premium for any such bond shall be paid from the corpus of the fund intended to be thereby protected. (1919, c. 259; 1935, c. 45; C. S. 766.)

Local Modification.—Duplin: 1935, c. 45.

§ 1-408. Action in which clerk may allow fees of commissioners; fees taxed as costs.—In all civil actions and special proceedings instituted in the superior court in which a commissioner, or commissioners, are appointed under a judgment by the clerk of said court, said clerk shall have full power and authority and he is hereby authorized and empowered to fix and determine and allow to such commissioner or commissioners a reasonable fee for their services performed under such order, decree or judgment, which fee shall be taxed as a part of the costs in such action or proceeding, and any dissatisfied party shall have the right of appeal to the judge, who shall hear the same de novo. (1923, c. 66, s. 1; C. S. 766(a).)

SUBCHAPTER XIII. PROVISIONAL REMEDIES.

Art. 34. Arrest and Bail.

§ 1-409. Arrest only as herein prescribed.—No person may be arrested in a civil action except as prescribed by this article, but this provision shall not apply to proceedings for contempt. (Rev., s. 726; Code, s. 290; C. C. P., s. 148; C. S. 767.)

§ 1-410. In what cases arrest allowed.—The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for injury to person or character, or for injuring, or for wrongfully taking, detaining or converting real or personal property.

2. In an action for a fine or penalty, for seduction, for money received, for property embezzled or fraudulently misapplied by a public officer, attorney, solicitor, or officer or agent of a corporation or banking association in the course of his employment, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property, unjustly detained, where all or any part of the property has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

5. When the defendant has removed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

No woman shall be arrested in any action except for a willful injury to person, character or property, and no person shall be arrested on Sunday. (Rev., s. 727; Code, s. 291; C. C. P., s. 149; 1869-70, c. 79; R. C., c. 31, s. 54; 1777, c. 118, s. 6; 1891, c. 541; C. S. 768.)

§ 1-411. Order and affidavit.—An order for the arrest of the defendant must be obtained from the court in which the action is brought or a judge thereof, and may be made where it appears to the court or judge, by affidavit of the plaintiff or of any other person, that a sufficient cause of action exists and that the case is one of those provided for in this article. (Rev., ss. 728, 729; Code, ss. 292, 293; C. C. P., ss. 150, 151; C. S. 769.)

§ 1-412. Undertaking before order. — Before making the order the court or judge shall require a written undertaking on the part of the plaintiff of at least one hundred dollars, with sufficient surety, payable to the defendant, to the effect that if the defendant recovers judgment the plaintiff will pay all damages which he sustains by reason of the arrest, not exceeding the sum specified in the undertaking. (Rev., s. 730; Code, s. 294; C. C. P., s. 152; 1868-9, c. 277, s. 7; C. S. 770.)

§ 1-413. Issuance and form of order.—The order may be made to accompany the summons, or to issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a place and time therein mentioned to the clerk of the court in which the action is brought. Notice of the return must be served on the plaintiff or his attorney as prescribed by law for the service of other notices. (Rev., s. 731; Code, s. 295; C. C. P., s. 153; C. S. 771.)

§ 1-414. Copies of affidavit and order to defendant.—The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy thereof. (Rev., s. 732; Code, s. 296; C. C. P., s. 154; C. S. 772.)

§ 1-415. Execution of order.—The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law. The sheriff may call the power of the county to his aid in the execution of the arrest. (Rev., s. 733; Code, s. 297; C. C. P., s. 155; C. S. 773.)

§ 1-416. Vacation of order for failure to serve.—The order of arrest is of no avail, and shall be vacated or set aside on motion, unless it is served upon the defendant, as provided by law, before the docketing of any judgment in the action. (Rev., s. 734; Code, s. 295; C. C. P., s. 153; C. S. 774.)

§ 1-417. Motion to vacate order; jury trial.—A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail. He may deny upon oath the facts alleged in the affidavit of the plaintiff on which the order of arrest was granted, and demand that the issue so raised by the plaintiff's affidavit and the defendant's denial be submitted to the jury and tried in the same manner as other issues. If the issues are found by the jury in favor of the defendant, judgment shall be rendered discharging him from arrest and vacating the order of arrest, and he shall recover of the plaintiff all costs of the proceeding in such arrest incurred by him in defending the action. (Rev., s. 735; Code, s. 316; 1889, c. 497; C. C. P., s. 174; C. S. 775.)

§ 1-418. Counter affidavits by plaintiff.—If the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proof, in addition to those on which the order of arrest was made. (Rev., s. 736; Code, s. 317; C. C. P., s. 175; C. S. 776.)

§ 1-419. How defendant discharged.—The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this article. (Rev., s. 737; Code, s. 298; C. C. P., s. 156; C. S. 777.)

§ 1-420. Defendant's undertaking.—The defendant may give bail by causing a written undertaking, payable to the plaintiff, to be executed by sufficient surety to the effect that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he is arrested in an action to recover the possession of personal property unjustly claimed, an undertaking to the same effect as that provided by law to be given

by defendant for the retention of property, under the article entitled Claim and Delivery. (Rev., s. 738; Code, s. 299; C. C. P., s. 157; C. S. 778.)

§ 1-421. Defendant's undertaking delivered to clerk; exception.—Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the clerk of the court in which the suit is brought, with his return endorsed, and a certified copy of the undertaking of the bail, and notify the plaintiff or his attorney thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he is deemed to have accepted it and the sheriff is exonerated from the liability. (Rev., s. 739; Code, s. 304; C. C. P., s. 162; C. S. 779.)

§ 1-422. Notice of justification; new bail.—On the receipt of notice of exception to the bail, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bondsmen (specifying the places of residence and occupation of the latter) before the court, justice of the peace, or judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bondsmen are given, there must be a new bond, in the form hereinbefore prescribed. (Rev., s. 741; Code, s. 305; C. C. P., s. 163; C. S. 780.)

§ 1-423. Qualifications of bail.—The qualifications of bail must be as follows:

1. Each of them must be a resident and freeholder within the state.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification is equivalent to that of two sufficient bail. (Rev., s. 740; Code, s. 306; C. C. P., s. 164; C. S. 781.)

§ 1-424. Justification of bail.—For the purpose of justification, each of the bail shall attend before the court or judge, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the court, judge or justice of the peace, in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff. (Rev., s. 742; Code, s. 307; C. C. P., s. 165; C. S. 782.)

§ 1-425. Allowance of bail.—If the court, judge or justice of the peace finds the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk. The sheriff is then exonerated from liability. (Rev., s. 743; Code, s. 308; C. C. P., s. 166; C. S. 783.)

§ 1-426. Deposit in lieu of bail.—The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall then give a certificate of the deposit to the defendant, who shall be discharged from custody. (Rev., s. 744; Code, s. 309; C. C. P., s. 167; C. S. 784.)

§ 1-427. Deposit paid into court; liability on sheriff's bond.—Within four days after the deposit the sheriff must pay it into court, and take from the officer receiving it two certificates of such payment, one of which he must deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency. (Rev., s. 745; Code, s. 310; C. C. P., s. 168; C. S. 785.)

§ 1-428. Bail substituted for deposit.—If money is deposited, as provided in §§ 1-426 and 1-427, bail may be given and justified upon notice according to law at any time before judgment. Thereupon the judge, court or justice of the peace shall direct, in the order of allowance, that the money deposited be refunded by the sheriff or other officer to the defendant, and it shall be refunded accordingly. (Rev., s. 746; Code, s. 311; C. C. P., s. 169; C. S. 786.)

§ 1-429. Deposit applied to plaintiff's judgment.—When money has been deposited, and remains on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk or other officer shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund any surplus to the defendant. If the judgment is in favor of the defendant the clerk or other officer shall refund to him the whole sum deposited and remaining unapplied. (Rev., s. 747; Code, s. 312; C. C. P., s. 170; C. S. 787.)

§ 1-430. Defendant in jail, sheriff may take bail.—If a person for want of bail is lawfully committed to jail, at any time before final judgment, the sheriff, or other officer having him in custody, may take bail and discharge him; and the bail bond shall be regarded in every respect as other bail bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond, at the first court which is held after it is taken. (Rev., s. 748; Code, s. 318; R. C., c. 11, s. 8; C. S. 788.)

§ 1-431. When sheriff liable as bail.—If, after arrest, the defendant escapes, or is rescued, or bail is not given or justified, or a deposit is not made instead thereof, the sheriff is himself liable as bail. But he may discharge himself from such liability by the giving and justification of bail at any time before process against the person of the defendant to enforce an order or judgment in the action. (Rev., s. 749; Code, s. 313; C. C. P., s. 171; C. S. 789.)

§ 1-432. Action on sheriff's bond.—If a judgment is recovered against the sheriff, upon his liability as bail, and an execution thereon is returned wholly or partly unsatisfied, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency. (Rev., s. 750; Code, s. 314; C. C. P., s. 172; C. S. 790.)

§ 1-433. Bail exonerated.—At any time before final judgment against them, the bail may be exonerated, either by the death of the defendant or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested,

in execution of the judgment. (Rev., s. 751; Code, s. 303; C. C. P., s. 161; C. S. 791.)

§ 1-434. Surrender of defendant.—At any time before final judgment against them, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and acknowledge the surrender by a certificate in writing.

2. Upon the production of a copy of the undertaking and sheriff's certificate, the court or judge may, upon a notice to the plaintiff of ten days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and papers used on said application they shall be exonerated accordingly. But this section does not apply to an arrest in an action to recover the possession of personal property unjustly detained, so as to discharge the bail from an undertaking given to the effect provided by law to be given by defendant for the retention of property, under the article entitled Claim and Delivery. (Rev., s. 752; Code, s. 300; C. C. P., s. 158; C. S. 792.)

§ 1-435. Bail may arrest defendant.—For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking may empower any person over twenty-one years of age to do so. (Rev., s. 753; Code, s. 301; C. C. P., s. 159; C. S. 793.)

§ 1-436. Proceedings against bail by motion.—In case of failure to comply with the undertaking the bail may be proceeded against by motion in the cause on ten days' notice to them. (Rev., s. 754; Code, s. 302; C. C. P., s. 160; C. S. 794.)

§ 1-437. Liability of bail to sheriff.—The bail taken upon the arrest are, unless they justify, or other bail are given or justified, liable to the sheriff by action for damages which he may sustain by reason of such omission. (Rev., s. 755; Code, s. 315; C. C. P., s. 173; C. S. 795.)

§ 1-438. When bail to pay costs.—When a notice issues against a person, as the bail of another, and the bail, at or before the term of the court at which he is bound to appear, or ought to plead, is not discharged from his liability by the death or surrender of his principal or otherwise, he is liable for all costs which accrue on said notice, notwithstanding he may be afterwards discharged, by the death or surrender of the principal, or otherwise. (Rev., s. 756; Code, s. 319; R. C., c. 11, s. 10; C. S. 796.)

§ 1-439. Bail not discharged by amendment.—No amendment of process or pleading discharges the bail of the party arrested thereon, unless it enlarges the sum demanded beyond the sum expressed in the bail bond. (Rev., s. 757; Code, s. 320; R. C., c. 11, s. 11; C. S. 797.)

Art. 35. Attachment.

§ 1-440. In what actions attachment granted.—A warrant of attachment against the property of one or more defendants in an action may be granted upon the application of the plaintiff, as specified in this article, when the action is to recover a sum of money only, or damages for one or more of the following causes:

1. Breach of contract, express or implied.
2. Wrongful conversion of personal property.
3. Any other injury to real or personal property, in consequence of negligence, fraud, or other wrongful act.
4. Any injury to the person, caused by negligence or wrongful act. (Rev., s. 758; Code, s. 347; C. C. P., s. 197; 1893, c. 77; 1901, c. 740; C. S. 798.)

§ 1-441. Affidavit must show what.—To entitle the plaintiff to a warrant of attachment he must show by affidavit to the satisfaction of the court as follows:

1. That one of the causes of action specified in § 1-440 exists against the defendant. If the action is to recover damages for breach of contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation or a nonresident of the state, or a domestic corporation none of whose officers can be found in the state after due diligence; or, if he is a natural person and a resident of the state, that he has departed therefrom, or keeps himself concealed therein, with intent to defraud his creditors or to avoid service of summons; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property with like intent. (Rev., s. 759; Code, s. 349; C. C. P., s. 201; 1897, c. 476; C. S. 799.)

§ 1-442. Affidavit to be filed.—It is the duty of the plaintiff procuring a warrant of attachment, within ten days from its issuance, to file the affidavit on which it was granted in the office of the clerk of the superior court to which, or with the justice of the peace before whom, the process is returnable. (Rev., s. 760; Code, s. 355; C. C. P., s. 201; C. S. 800.)

§ 1-443. By whom granted.—If the action is not founded on a contract, or if founded on a contract and the sum demanded exceeds two hundred dollars, a warrant of attachment may be obtained from the judges of the district embracing the county in which the action was begun, or from the clerk of the superior court from which the summons in the action issued; and it may be issued to any county in the state where the defendant has property, money, effects, choses in action, or debts due him, and shall be made returnable before the clerk at the same time and place to which the summons is returnable. (Rev., s. 761; Code, s. 351; C. C. P., s. 199; 1869-70, c. 147; 1870-1, c. 166, ss. 1, 3; 1874-5, c. 111; 1876-7, c. 251; Ex. Sess. 1921, c. 92, s. 17; C. S. 801.)

§ 1-444. Time of issuance; service of summons.—The warrant of attachment may be granted to accompany the summons, or at any time thereafter. Personal service of the summons must be

made upon the defendant against whose property the attachment is granted, within thirty days after its granting, or else, upon the expiration of the same time, service of summons by publication must be commenced pursuant to an order obtained therefor, and if publication has been or is thereafter commenced, the service must be made complete by the continuance thereof. (Rev., s. 762; Code, s. 348; C. C. P., s. 197; C. S. 802.)

§ 1-445. Undertaking.—The officer, before issuing the warrant, must require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect that if the defendant recovers judgment, or the attachment is set aside by order of the court, the plaintiff will pay all costs that are awarded to the defendant, and all damages which he sustains by reason of the attachment, not exceeding the sum specified in the undertaking, which must be at least two hundred dollars. (Rev., s. 763; Code, s. 356; C. C. P., s. 202; C. S. 803.)

§ 1-446. Validity of undertaking.—It is not a defense to an action upon an undertaking, given upon granting a warrant of attachment, that the warrant was granted improperly, for want of jurisdiction, or for any other cause. (Rev., s. 764; Code, s. 358; C. S. 804.)

§ 1-447. To whom warrant directed; duty of officer.—The warrant shall be directed to the sheriff of any county in which the property of the defendant is located, or, in case it is issued by a justice of the peace, to the sheriff or any constable of such county, and shall require the sheriff or constable to attach and safely keep all the property of the defendant within his county, or so much thereof as is sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, together with costs and expenses; it must also state when and where it shall be returned. Several warrants may be issued at the same time to the sheriffs of different counties, but where the warrant is issued by a justice of the peace to another county than his own, the clerk of the superior court of his county must certify that he is a justice of the peace and that the signature to the warrant is in the handwriting of the justice. (Rev., s. 765; Code, s. 357; 1895, c. 435, s. 1; C. C. P., s. 203; C. S. 805.)

§ 1-448. Notice; service and content.—When the warrant of attachment is taken out at the time of issuing the summons, and the summons is to be served by publication, the order shall direct that notice be given in the publication to the defendant of the issuing of the attachment. When the warrant of attachment is obtained after the issuing of the summons, the defendant must be notified by publication of the fact for four successive weeks in some newspaper published in the county to which it is returnable, or if none, then in one published in the judicial district including said county. The publication shall state the names of the parties, the amount of the claims, and in a brief way the nature of the demand and the time and place to which the warrant is returnable. In proceedings by attachment begun before justices of the peace, advertisement in a newspaper is not necessary, but advertisement at the courthouse door and four other public places in the county for four successive weeks is sufficient publication, both as to the summons and warrant of attachment. (Rev., s. 766; Code, s. 352; 1893, c. 363; 1870-1, c. 166, s. 3; 1874-5, c. 111, s. 2; C. S. 806.)

§ 1-449. Execution, levy, and lien.—The officer to whom the warrant of attachment is directed and delivered shall seize and take into his possession the tangible personal property of the defendant or so much as is necessary, and he is liable for the care and custody of such property, as if it had been seized under execution. He shall levy on the real estate of the defendant as prescribed for executions; he shall make and return with the warrant an inventory of the property seized or levied on, and, subject to the direction of the court, shall collect all debts owing to the defendant, and take such legal proceedings in his own name or in that of the defendant as are necessary for that purpose. Where the sheriff or other officer levies an attachment upon real estate, he must certify the levy to the clerk of the superior court of the county where the land lies, with the names of the parties, and the clerk must note the same on his judgment docket and index it on the index to judgments, and the levy is a lien only from the date of entry by the clerk, except that if it is so docketed and indexed within five days after being made it is a lien from the time it was made. (Rev., s. 767; Code, s. 359; 1895, c. 435, s. 2; C. C. P., s. 204; C. S. 807.)

§ 1-450. Return of warrant by sheriff.—The sheriff shall return the warrant of attachment, and the undertakings provided for in this article, with a statement of his proceedings thereon, at the time and place at which it is on its face returnable, and upon, or at any time after, the return, he may obtain from the court to which the warrant was returnable a certified copy thereof, which, for the purpose of giving him authority, is the same as the original, and when the warrant has been fully executed or discharged, the sheriff shall return it, with his proceedings, to said court. (Rev., s. 768; Code, s. 376; C. C. P., s. 214; C. S. 808.)

§ 1-451. When granted by justice of peace.—If the action is not founded on contract and the value of the property in controversy does not exceed the sum of fifty dollars, the warrant of attachment may, or if the action is founded on contract and the sum demanded does not exceed two hundred dollars, the warrant of attachment must be obtained from and made returnable before a justice of the peace of a county to the superior court of which it would have been returnable had the sum demanded exceeded two hundred dollars, or had the action not been founded on contract. (Rev., s. 769; Code, s. 353; C. C. P., s. 200; 1876-7, c. 251; C. S. 809.)

§ 1-452. Publication in justice's court.—The plaintiff, within thirty days after obtaining a warrant of attachment from a justice of the peace, must cause publication thereof to be made for four successive weeks at the courthouse door and four other public places in the county where the warrant is returnable. (Rev., s. 770; Code, s. 350;

C. C. P., s. 198; 1868-9, c. 95, s. 3; 1870-1, c. 166, s. 4; 1874-5, c. 111; C. S. 810.)

§ 1-453. Justice's attachment against land.—If the attachment is levied on real property, the justice shall proceed to try the action, but may not issue an execution to sell the real property, and shall return the papers in the case to the office of the clerk of the superior court of his county, where the judgment shall be docketed. The levy of the attachment, however, is a lien on the real estate, when the provisions of the section as to execution and levy of attachment are complied with. (Rev., s. 771; Code, s. 354; 1868-9, c. 95, s. 4; C. S. 811.)

§ 1-454. Sale of attached property pending litigation.—If any property seized under attachment is perishable, or of a character to materially deteriorate in value pending litigation, or of such character that the expense of keeping it until the determination of the suit would be likely to exceed one-fifth of its value, or if any part of it consists of a vessel, or of any share or interest therein, and the person to whom it belongs, or his agent, does not within ten days after the serving of the attachment reclaim the same, the sheriff or other officer having possession shall apply to the court for authority to sell the property, stating the circumstances. The property shall then be sold, under the order and direction of the court, and the proceeds are liable to the judgment obtained upon the attachment, and shall be retained by the sheriff or other officer to await the judgment. (Rev., 772; Code, s. 360; C. C. P., s. 205; R. C., c. 7, s. 6; 1777, c. 115, s. 28; C. S. 812.)

§ 1-455. Replevy by defendant; undertaking.—The person owning the property advertised to be sold according to the provisions of this article, or his agent or attorney, may, at any time before sale, replevy the same, by giving an undertaking in double the amount of the value of the property, with sufficient surety, to the effect that he will return the property to the sheriff or other officer, if its return is adjudged by the court, and pay all costs that are awarded against him; and if return of the property cannot be had, then that he will pay plaintiff its value, and all costs and damages that are awarded against him. Upon the execution of this undertaking, the sheriff, or other officer, shall deliver the property to the person owning it. (Rev., s. 773; Code, s. 361; R. C., c. 7, s. 5; 1777, c. 115, s. 28; C. S. 813.)

§ 1-456. Defendant may apply for discharge and delivery of property.—When the defendant has appeared in such action, he may apply to the court in which it is pending, or to the judge thereof, for an order to discharge the attachment; and if the order is granted, all the proceeds of sale, and moneys collected in the action, and all property attached remaining in the hands of any officer of the court, under any process or order in the action, shall be delivered or paid to the defendant or his agent, and released from the attachment. Where there is more than one defendant, and the several property of one of them has been seized by virtue of the order of attachment, the defendant whose several property was seized may apply in like manner for relief. (Rev., s. 774; Code, s. 373; C. C. P., s. 212; C. S. 814.)

§ 1-457. Defendant's undertaking. — Upon the application provided for in § 1-456 the defendant must deliver to the court an undertaking in at least double the amount claimed by the plaintiff in his complaint, executed by two sureties residing in this state, approved by the court, to the effect that the surety will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking. If it appears by affidavit that the property attached is of less value than the amount claimed by the plaintiff, the court or judge may order it to be appraised, and the amount of the undertaking shall then be double the amount so appraised. Where there is more than one defendant, and the several property of one of them has been seized by virtue of the order of attachment, the defendant whose several property was seized may deliver to the court an undertaking, in accordance with this section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against him, and all of this section, applicable to such an undertaking, shall be applied thereto. (Rev., s. 775; Code, s. 374; C. C. P., s. 213; C. S. 815.)

§ 1-458. All property liable to attachment.—The rights or shares of the defendant in the stock of any association or corporation, with the interest and profits thereon, and all other property in this state of the defendant, are liable to be attached, levied on, and sold to satisfy the judgment and execution. (Rev., s. 776; Code, s. 362; C. C. P., s. 206; C. S. 816.)

§ 1-459. Levy on intangible property.—The execution of the attachment upon any such rights, shares, or any debts or other property incapable of manual delivery to the sheriff, shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or with the debtor or individual holding such property, with a notice showing the property levied on. This certified copy must be furnished to the sheriff by the plaintiff, and the certification must be by the clerk of the court from which the warrant was issued, or by the justice of the peace who issued it. A person receiving or collecting moneys within this state on behalf of any corporation of this or any other state or government is deemed a local agent for the purpose of this section. Such service can be made in respect to a foreign corporation only when it has property within this state, or the cause of action arose or the plaintiff resides in the state, or when the service can be made within the state personally upon the president, treasurer or secretary thereof. Whenever a writ of attachment may be sued out against a nonresident debtor owning shares of stock in a resident corporation, and no officer of said resident corporation may be found in the county of its principal office upon whom service of said attachment may be made, said writ may be served by leaving a certified copy of the warrant of attachment with the person in charge of the property of said corporation in said county, together with a notice showing the stock levied upon. Provided, however, no attachment or levy upon shares of stock for which a certificate is outstanding shall

be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. (Rev., s. 777; Code, s. 363; C. C. P., s. 207; 1905, c. 294; 1921, c. 94; 1941, c. 353, s. 24½; C. S. 817.)

§ 1-460. Certificate of defendant's interest to be furnished to sheriff.—When the sheriff or other officer, with a warrant of attachment or execution, applies to a president or other head or director, secretary, cashier or managing agent of any association or corporation, or to any debtor or individual, for the purpose of attaching or levying on the property of the defendant in such warrant, such officer, debtor or individual must furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in the association or corporation, with any dividend or any incumbrance thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of, or debt owing to, the defendant. If the officer, debtor or individual refuses to do so, he may be required by the court or judge to appear before him, and be examined on oath concerning the matter, and obedience to this order may be enforced by attachment. (Rev., s. 778; Code, s. 369; C. C. P., s. 208; C. S. 818.)

§ 1-461. Proceedings against garnishee.—When the sheriff or other officer serves an attachment on any person supposed to be indebted to, or to have any property of the defendant in the attachment, he shall at the same time summon in writing such person as a garnishee. The summons and notice shall be issued by the clerk of the superior court, or justice of the peace, at the request of the plaintiff, to appear at the court to which the attachment is returnable, or if issued by a justice of the peace, at a place and time named in the notice, not exceeding twenty days from date of notice, to answer upon oath what he owes to the defendant and what property of the defendant he has in his hand and had at the time of serving the attachment, and to his knowledge and belief what effects or debts of the defendant there are in the hands of any other, and what person. When an attachment is served on a garnishee in the above manner, upon his appearance and examination, judgment may be entered up and execution awarded for the plaintiff against the garnishee, for all sums of money due the defendant from him, and for all property of any kind belonging to the defendant, in his possession or custody, for the use of the plaintiff, or so much thereof as will satisfy the debt and costs and all charges incident to levying the same. All property whatsoever in the hands of any garnishee belonging to the defendant is liable to satisfy the plaintiff's judgment, and must be delivered to the sheriff or other officer serving the attachment. (Rev., s. 779; Code, s. 364; R. C., c. 7, s. 7; 1777, c. 115, s. 28; C. S. 819.)

§ 1-462. Failure of garnishee to appear.—When a garnishee is summoned and fails to appear and discover on oath as directed, the court, after solemnly calling the garnishee, shall enter a conditional judgment against him, and thereupon a notice shall issue against him returnable to the court having jurisdiction, to show cause why final judgment should not be entered against him. Upon due execution of the notice, if the garnishee fails to appear at the time and place named, and discover on oath in the manner aforesaid, the court shall confirm the judgment and award execution for the plaintiff's whole judgment and costs. Upon examination of the garnishee, if it appears to the court that there is any of the defendant's property in the hands of a person who has not been summoned, the court, upon motion of the plaintiff, shall grant a judicial attachment, to be levied in the hands of every such person having any of the property of the defendant in his custody or possession, who must appear and answer and be liable as other garnishees. (Rev., s. 780; Code, s. 365; R. C., c. 7, s. 8; 1777, c. 115, s. 28; 1838, c. 2; C. S. 820.)

§ 1-463. Garnishee denying debt; issue tried.—When a garnishee denies that he owes to, or has in his possession any property of, the defendant, and the plaintiff on oath suggests to the court the contrary, or when a garnishee makes such a statement of facts that the court cannot proceed to give judgment thereon, the court shall order an issue to be made up, which must be tried by a jury, and on their verdict judgment shall be rendered. In a court of a justice of the peace, he may try such issue, unless a jury is demanded, and then proceedings are to be conducted, in all respects, as in jury trials before justices of the peace. (Rev., s. 781; Code, s. 366; R. C., c. 7, s. 9; 1793, c. 389, s. 2; C. S. 821.)

§ 1-464. Property with garnishee valued; garnishee exonerated.—When a garnishee on oath confesses that he has in his hands any property of the defendant of a specific nature, or is indebted to him by any security or promise for the delivery of any specific article, except as hereinafter excepted, the court shall immediately order a jury to be impaneled and sworn to inquire into the value of such specific property, and the verdict of the jury subjects the garnishee to the payment of the valuation, or as much of it as is sufficient to satisfy the debt or damages and costs of the plaintiff. In a court of a justice of the peace, he may try such issue, unless a jury is demanded, and then proceedings are to be conducted in all respects as in jury trials before justices of the peace. If the garnishee states in his answer that the specific property was left with him by the defendant as a bailment, or that he has tendered said specific articles according to contract, and that they were refused by the defendant, and that he then was and always had been ready to deliver the same; or that he had such specific articles at the time and place specified in such covenant or agreement ready to be delivered, and is still ready to deliver them; and such statement is admitted by the plaintiff or found by a jury or the court, then in any such case the garnishee shall be exonerated by the delivery of such specific articles to the sheriff, who shall proceed as if the attachment had been orginally levied on the property. (Rev., s. 782; Code, s. 367; R. C., c. 7, s. 11; 1793, c. 389; 1794, c. 424; C. S. 822.)

§ 1-465. Conditional judgment against garnishee.—When a garnishee declares in his an-

swer that the money or specific article due by him will become payable or deliverable at a future day, and this is admitted by the plaintiff or found by a jury or the court, a conditional judgment shall be entered against the garnishee, and the plaintiff may obtain judgment against the defendant for his demand, but may not take final judgment against the garnishee without notice to show cause. (Rev., s. 783; Code, s. 368; R. C., c. 7, s. 12; 1794, c. 424, s. 2; C. S. 823.)

§ 1-466. Satisfaction of judgment.—If judgment is entered for the plaintiff in the action, the sheriff shall satisfy the same out of the property attached by him, if it is sufficient for that purpose—

1. By paying over to the plaintiff the proceeds of all property sold and debts or credits collected by him, or so much as is necessary to satisfy the judgment.

2. If any balance remains due, and an execution has been issued on the judgment, he shall sell under the execution as much of the attached real or personal property, except as provided in subdivision four of this section, as is necessary to satisfy the balance, if enough for that purpose remains in his hands. In case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale, and the purchaser has all the rights and privileges in respect thereto which were had by the defendant.

3. If any of the attached property belonging to the defendant has passed out of the hands of the sheriff without having been sold or converted into money, he shall repossess himself of the same, and for that purpose has all the authority which he had to seize it under the attachment. A person who willfully conceals or withholds such property from the sheriff is liable to double damages at the suit of the party injured.

4. Until the judgment against the defendant is paid, the sheriff may collect the notes and other evidences of debt, and the debts that were seized or attached, under the warrant of attachment, and prosecute any bond he has taken in the course of such proceedings, and apply the proceeds to the payment of the judgment.

At the expiration of six months from the docketing of the judgment the court has power, upon petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff since the service of the attachment, the property attached, and the disposition thereof, also the affidavit of the sheriff that he has used due diligence, and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the sheriff to sell the same upon such terms and in such manner as is deemed proper. Notice of this application must be given to the defendant or to his attorney, if the defendant has appeared in the action. If the summons has not been personally served on the defendant, the court shall make such rule or order, as to service of notice and time of service, as is deemed just. When the judgment and all costs of the proceedings have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property or the proceeds thereof. (Rev., s. 784; Code, s. 370; C. C. P., s. 209; C. S. 824.)

§ 1-467. Plaintiff may sue on defendant's bond.—The actions herein authorized to be brought by the sheriff may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the sheriff of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff from all damages, costs and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. The sureties must in all cases, when required by the sheriff, justify by making an affidavit that each is a freeholder, and worth double the amount of the penalty of the bond, over and above all demands, liabilities and exemptions. (Rev., s. 785; Code, s. 371; C. C. P., s. 210; C. S. 825.)

§ 1-468. On defendant's recovery, bonds and property delivered to him.—If the foreign corporation, or the absent, absconding, or concealed defendant, recovers judgment against the plaintiff in such action, any bond taken upon the issuing of the warrant of attachment, and any bond taken by the sheriff, except such as are mentioned in § 1-467, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant or to his agent, on request, and the warrant shall be discharged and the property released. (Rev., s. 786; Code, s. 372; C. C. P., s. 211; C. S. 826.)

§ 1-469. Motion to vacate or increase security.—The defendant, or person who has acquired a lien upon, or interest in, his property before or after it was attached, may at any time before the actual application of the attached property, or the proceeds thereof, to the payment of a judgment recovered in the action, apply to the court having jurisdiction to vacate or modify the warrant, or to increase the security given by the plaintiff, or for one or more of those forms of relief, together or in the alternative, as in cases of other provisional remedies. (Rev., s. 787; Code, s. 377; C. S. 827.)

§ 1-470. Exceptions to and justification of sureties.—The sureties to all undertakings in all proceedings for attachment may be excepted to, and justified as prescribed in respect to bail upon an order of arrest. (Rev., s. 788; Code, s. 378; C. S. 828.)

§ 1-471. Intervention.—When the property attached is claimed by any other person, the claimant may intervene, as provided for intervention in claim and delivery. (Rev., s. 789; Code, s. 375; R. C., c. 7, s. 10; 1793, c. 389, s. 3; C. S. 829.)

Art. 36. Claim and Delivery.

§ 1-472. Claim for delivery of personal property.—The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons or at any time before answer, claim the immediate delivery of the property as provided in this article. (Rev., s. 790; Code, s. 321; C. C. P., s. 176; C. S. 830.)

§ 1-473. Affidavit and requisites.—Where a delivery is claimed, an affidavit must be made be-

fore the clerk of the court in which the action is required to be tried or before some person competent to administer oaths, by the plaintiff, or some one in his behalf, showing—

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to its possession by virtue of a special property therein, the facts in respect to which must be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention, according to his best knowledge, information and belief.

4. That the property has not been taken for tax, assessment or fine, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and,

5. The actual value of the property. (Rev., s. 791; Code, s. 322; C. C. P., s. 177; 1881, c. 134; C. S. 831.)

§ 1-474. Order of seizure and delivery to plaintiff.—The clerk of the court shall, thereupon, and upon the giving by the plaintiff of the undertaking prescribed in the succeeding section, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed is located, to take it from the defendant and deliver it to the plaintiff. (Rev., s. 792; Code, s. 323; C. C. P., s. 178; C. S. 832.)

§ 1-475. Plaintiff's undertaking. — The plaintiff must give a written undertaking payable to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, with damages for its deterioration and detention if return can be had, and if for any cause return cannot be had, for the payment to him of such sum as may be recovered against the plaintiff for the value of the property at the time of the seizure, with interest thereon as damages for such seizure and detention. (Rev., s. 793; Code, s. 324; 1885, c. 50; C. C. P., s. 179; C. S. 833.)

§ 1-476. Sheriff's duties.—Upon the receipt of the order from the clerk with the plaintiff's undertaking, the sheriff shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion. (Rev., s. 793; Code, s. 324; C. C. P., s. 179; 1885, c. 50; C. S. 834.)

§ 1-477. Exceptions to undertaking; liability of sheriff.—The defendant may, within three days after the service of a copy of the affidavit and undertaking, notify the sheriff personally, or by leaving a copy at his office in the county-seat of the county, that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objection to them. When the defendant excepts, the sureties must justify on notice, in like manner as upon bail on arrest. The sheriff is responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify, or until new sureties are substituted and justify. If the defendant excepts to the sureties he cannot reclaim the property as provided in the succeeding section. (Rev., s. 794; Code, s. 325; C. C. P., s. 180; C. S. 835.)

§ 1-478. Defendant's undertaking for replevy.—At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, payable to the plaintiff, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, with damages for its deterioration and detention, and the costs, if delivery can be had, and if delivery cannot be had, for the payment to him of such sum as may be recovered against the defendant for the value of the property at the time of the wrongful taking or detention, with interest thereon, as damages for such taking and detention, together with the costs of the action. If a return of the property is not so required, within three days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, unless it is claimed by an interpleader.

The defendant's undertaking shall include liability for costs, as provided in this section, only where the undertaking is given in actions instituted in the superior court. (Rev., s. 795; Code, s. 326; 1885, c. 50, s. 2; C. C. P., s. 181; 1911, c. 17; C. S. 836.)

§ 1-479. Qualification and justification of defendant's sureties.—The qualification of the defendant's sureties, and their justification, is as prescribed in respect to bail upon an order of arrest. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than six days, shall justify before the court, a judge or justice of the peace, and upon this justification the sheriff must deliver the property to the defendant. The sheriff is responsible for the defendant's sureties until justification is completed or expressly waived, and he may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff. (Rev., ss. 796, 797; Code, ss. 327, 328; C. C. P., ss. 182, 183; C. S. 837.)

§ 1-480. Property concealed in buildings.—If the property, or any part of it, is concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it is not delivered he must cause the building or enclosure to be broken open, and take the property into his possession. If necessary, he may call to his aid the power of his county, and if the property is upon the person the sheriff or other officer may seize the person, and search for and take it. (Rev., s. 798; Code, s. 329; C. C. P., s. 184; C. S. 838.)

§ 1-481. Care and delivery of seized property.—When the sheriff has taken property, as provided in this article, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping it. (Rev., s. 799; Code, s. 330; C. C. P., s. 185; C. S. 839.)

§ 1-482. Property claimed by third person; proceedings.—When the property taken by the sheriff is claimed by any person other than the plaintiff or defendant the claimant may intervene upon filing an affidavit of his title and right to the possession of the property, stating the grounds of such right and title, and upon his delivering to the sheriff an undertaking in an amount double the value of the property specified in his affidavit, for the delivery of the property to the person entitled to it, and for the payment of all such costs and damages as may be awarded against him, this undertaking to be executed by one or more sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property. A copy of this undertaking and accompanying affidavit shall be served by the sheriff on the plaintiff and defendant at least ten days before the return day of the summons in the action, when the court trying it shall order a jury to be impaneled to inquire in whom is the right to the property specified in plaintiff's complaint. The finding of the jury is conclusive as to the parties then in court, and the court shall adjudge accordingly, unless it is reversed upon appeal. In a court of a justice of the peace he may try such issue unless a jury is demanded, and then proceedings are to be conducted in all respects as in jury trials before justices of the peace. In a court of a justice of the peace an intervener shall not be required to serve on the plaintiff and defendant the affidavits and bonds required by this section, ten days before return day; but if said bond and affidavit are filed by any person owning the property when such case is called for trial, he shall be allowed to intervene: Provided that this section shall not be construed to prevent any such intervener or third person from intervening and asserting his claim to the property, or any part thereof, without giving bond as herein required, where such intervener or other third person does not ask for possession of the property pending the trial of the issue. (Rev., s. 800; Code, s. 331; C. C. P., s. 186; R. C., c. 7, s. 10; 1793, c. 389, s. 3; 1913, c. 188; 1933, c. 131; C. S. 840.)

§ 1-483. Delivery of property to intervener.—Upon the filing by the claimant of the undertaking set forth in § 1-482, the sheriff is not bound to keep the property, or to deliver it to the plaintiff; but may deliver it to the claimant, unless the plaintiff executes and delivers to him a similar undertaking to that required of claimant; and notwithstanding such claim, when so made, the sheriff may retain the property a reasonable time to demand such indemnity. (Rev., s. 801; Code, s. 332; R. C., c. 7, s. 10; 1793, c. 389, s. 3; C. S. 841.)

§ 1-484. Sheriff to return papers in ten days.—The sheriff must return the undertaking, notice and affidavit, with his proceedings thereon, to the court in which the action is pending within ten days after taking the property mentioned therein. (Rev., s. 802; Code, s. 133; C. C. P., s. 187; C. S. 842.)

Art. 37. Injunction.

§ 1-485. When temporary injunction issued.—A temporary injunction may be issued by order in accordance with the provisions of this article. The order may be made by any judge of the superior court in the following cases, and shall be issued by the clerk of the court in which the action is required to be tried:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and this relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

2. When, during the litigation, it appears by affidavit that a party thereto is doing, or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual; or,

3. When, during the pendency of an action, it appears by affidavit of any person that the defendant threatens or is about to remove or dispose of his property, with intent to defraud the plaintiff. (Rev., s. 806; Code, ss. 334, 338; C. C. P., ss. 188, 189; C. S. 843.)

§ 1-486. When solvent defendant restrained.—In an application for an injunction to enjoin a trespass on land it is not necessary to allege the insolvency of the defendant when the trespass complained of is continuous in its nature, or is the cutting or destruction of timber trees. (Rev., s. 807; 1885, c. 401; C. S. 844.)

§ 1-487. Timber lands, trial of title to.—In all actions to try title to timber lands and for trespass thereon for cutting timber trees, when the court finds as a fact that there is a bona fide contention on both sides based upon evidence constituting a prima facie title, no order shall be made pending such action, permitting either party to cut said timber trees, except by consent, until the title to said land or timber trees is finally determined in the action. In all cases where the title to any timber or trees, or the right to cut and remove the same during a term of years, is claimed by any party to such action, and the fee of the soil or other estate in the land by another, whether party to the action or not, the time within which such timber or trees may be cut or removed by the party claiming the same, and all other rights acquired in connection therewith, shall not be affected or abridged, but the running of the term is suspended during the pendency of the action. (Rev., s. 808; 1901, c. 666, s. 1; 1903, c. 642; C. S. 845.)

§ 1-488. When timber may be cut.—In any action specified in § 1-487, when the judge finds as a fact that the contention of either party is not in good faith and is not based upon evidence constituting a prima facie title, upon motion of the other party, who may satisfy the court of the bona fides of his contention and who may produce evidence showing a prima facie title, the court may allow such party to cut the timber trees by giving bond as required by law. Nothing in this section affects the right of appeal, and when any

party to such action has been enjoined, a sufficient bond must be required to cover all damages that may accrue to the party enjoined by reason of the injunction as now required by law. (Rev., s. 809; 1901, c. 666, ss. 2, 3; C. S. 846.)

§ 1-489. Time of issuing.—The injunction may be granted when or at any time after commencing the action, before judgment, upon its appearing satisfactorily to the judge, by affidavit of the plaintiff or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction. (Rev., s. 810; Code, s. 339; C. C. P., s. 190; C. S. 847.)

§ 1-490. Not issued for longer than twenty days without notice.—No restraining order, or order to stay proceedings, for a longer time than twenty days shall be granted by a judge out of court, except upon due notice to the adverse party; but the order shall continue and remain in force until vacated after notice, to be fixed by the court, of not less than two nor more than ten days. (Rev., s. 811; Code, s. 346; C. C. P., s. 345; 1905, c. 26; C. S. 848.)

§ 1-491. Issued after answer, only on notice.—An injunction shall not be allowed after the defendant has answered, except upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the judge granting or refusing the injunction. (Rev., s. 812; Code, s. 340; C. C. P., s. 191; C. S. 849.)

§ 1-492. Order to show cause.—If the judge deems it proper that the defendant, or any of several defendants, should be heard before granting an injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained. (Rev., s. 813; Code, s. 342; C. C. P., s. 193; C. S. 850.)

§ 1-493. What judges have jurisdiction.—The judges of the superior court have jurisdiction to grant injunctions and issue restraining orders in all civil actions and proceedings. A judge holding a special term in any county may grant an injunction, or issue a restraining order, returnable before himself, in any case which he has jurisdiction to hear and determine under the commission issued to him, and the same is returnable as directed in the order. (Rev., s. 814; Code, s. 335; 1876-7, c. 223, ss. 1, 2; 1879, c. 63, ss. 1, 3; C. S. 851.)

§ 1-494. Before what judge returnable.—All restraining orders and injunctions granted by any of the judges of the superior court, except one holding a special term in any county, shall be made returnable before the resident judge of the district, or the judge assigned to the district, or holding by exchange the courts of the district where the civil action or special proceeding is pending, within twenty days from date of order. If the judge before whom the matter is returned fails, for any reason, to hear the motion and application, or to continue them to some other time and place, any judge resident in, or assigned to hold the courts of, some adjoining district may hear and determine the said motion and application, after giving ten days notice to the parties interested in the application or motion, upon its being satisfactorily shown to him by affidavit or otherwise that the judge before whom the matter was returnable failed to act upon or to continue the same to some other time and place. This removal continues in force the motion and application theretofore granted, till they can be heard and determined by the judge having jurisdiction. (Rev., s. 815; Code, s. 336; 1876, c. 223, s. 2; 1879, c. 63, ss. 2, 3; 1881, c. 51; C. S. 852.)

§ 1-495. Stipulation as to judge to hear.—By a stipulation in writing, signed by all the parties to an application for an injunction order, or their attorneys, to the effect that the matter may be heard before a judge designated in the stipulation, the judge before whom the restraining order is returnable by law, or who is by law the judge to hear the motion for an injunction order, shall, upon receipt of the stipulation forward it and all the papers to the judge designated, whose duty it then is to hear and decide the matter, and return all the papers to the court out of which they issued, the necessary postage or expressage money to be furnished to the judge. (Rev., s. 816; Code, s. 337; 1883, c. 33; C. S. 853.)

§ 1-496. Undertaking.—Upon granting a restraining order or an order for an injunction, the judge shall require as a condition precedent to the issuing thereof that the clerk shall take from the plaintiff a written undertaking, with sufficient sureties, to be justified before, and approved by, the clerk or judge, in an amount to be fixed by the judge, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as he sustains by reason of the injunction, if the court finally decides that the plaintiff was not entitled to it. (Rev., s. 817; Code, s. 341; C. C. P., s. 192; C. S. 854.)

§ 1-497. Damages on dissolution.—A judgment dissolving an injunction carries with it judgment for damages against the party procuring it and the sureties on his undertaking without the requirement of malice or want of probable cause in procuring the injunction, which damages may be ascertained by a reference or otherwise, as the judge directs, and the decision of the court is conclusive as to the amount of damages upon all the persons who have an interest in the undertaking. (Rev., s. 818; Code, s. 341; 1893, c. 251; C. S. 855.)

§ 1-498. Issued without notice; application to vacate.—If the injunction is granted without notice, the defendant, at any time before the trial, may apply, upon notice to be fixed by the court of not less than two nor more than ten days, to the judge having jurisdiction, to vacate or modify the same, if he is within the district or in an adjoining district, but if out of the district and not in an adjoining district, then before any judge who is at the time in the district, and if there is no judge in the district, before any judge in an adjoining district. The application may be made upon the complaint and the affidavits on which the injunction was granted, or upon the affidavits on the part of the defendant, with or without answer. If no such application is made, the injunction continues in

force until such application is made and determined by the judge, and a verified answer has the effect only of an affidavit. (Rev., s. 819; Code, s. 344; C. C. P., s. 195; 1905, c. 26; C. S. 856.)

§ 1-499. When opposing affidavits admitted.—If the application is made upon affidavits on the part of the defendant, the plaintiff may oppose the same by affidavits or other proof, in addition to those on which the injunction was granted. (Rev., s. 820; Code, s. 345; C. C. P., s. 196; C. S. 857.)

§ 1-500. Restraining orders and injunctions in effect pending appeal; indemnifying bond.—Whenever a plaintiff shall appeal from a judgment rendered at chambers, or in term, either vacating a restraining order theretofore granted, or denying a perpetual injunction in any case where such injunction is the principal relief sought by the plaintiff, and where it shall appear that vacating said restraining order or denying said injunction will enable the defendant to consummate the threatened act, sought to be enjoined, before such appeal can be heard, so that the plaintiff will thereby be deprived of the benefits of any judgment of the supreme court, reversing the judgment of the lower court, then in such case the original restraining order granted in the case shall in the discretion of the trial judge be and remain in full force and effect until said appeal shall be finally disposed of: Provided, the plaintiff shall forthwith execute and deposit with the clerk a written undertaking with sufficient surety, approved by the clerk or judge, in an amount to be fixed by the judge to indemnify the party enjoined against all loss, not exceeding an amount to be specified, which he may suffer on account of continuing such restraining order as aforesaid, in the event that the judgment of the lower court is affirmed by the supreme court. (1921, c. 58; C. S. 858(a).)

Art. 38. Receivers.

§ 1-501. What judge appoints.—Any judge of the superior court with authority to grant restraining orders and injunctions has like jurisdiction in appointing receivers, and all motions to show cause are returnable as is provided for injunctions. (Rev., s. 846; Code, s. 379; C. C. P., s. 215; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; C. S. 859.)

§ 1-502. In what cases appointed.—A receiver may be appointed—

1. Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had on application to the court.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In cases provided in chapter entitled Corporations in the article Receivers; and in like cases, of the property within this state of foreign corporations.

The article Receivers, in the chapter entitled Corporations, is applicable, as near as may be, to receivers appointed hereunder. (Rev., s. 847; Code, c. 379; C. C. P., s. 215; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; C. S. 860.)

§ 1-503. Appointment refused on bond's being given.—In all cases where there is an application for the appointment of a receiver, upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, or that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand, the judge before whom the application is made or pending shall have the discretionary power to refuse the appointment of a receiver if the party against whom such relief is asked, whether a person, partnership or corporation, tenders to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient and duly justified sureties, conditioned for the payment of such amount as may be recovered in the action, and summary judgment may be taken upon the undertaking. In the progress of the action the court may in its discretion require additional sureties on such undertaking. (Rev., s. 848; 1885, c. 94; C. S. 861.)

§ 1-504. Receiver's bond.—A receiver appointed in an action or special proceeding must, before entering upon his duties, execute and file with the clerk of the court in which the action is pending an undertaking payable to the adverse party with at least two sufficient sureties in a penalty fixed by the judge making the appointment, conditioned for the faithful discharge of his duties as receiver. And the judge having jurisdiction thereof may at any time remove the receiver, or direct him to give a new undertaking, with new sureties, and on the like condition. This section does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver. (Rev., s. 849; Code, s. 383; C. S. 862.)

§ 1-505. Sale of property in hands of receiver.—The resident judge or the judge assigned to hold any of the courts in any judicial district of North Carolina shall have power and authority to order a sale of any property, real or personal, in the hands of a receiver duly and regularly appointed by the Superior Court of North Carolina upon such terms as appear to be to the best interests of the creditors affected by said receivership. (1931, c. 123, s. 1.)

§ 1-506. Confirmation of sales outside county of action; notice to creditors.—Any sale made by a receiver may be confirmed outside of the county in which said action is pending, either by the resident judge or the judge assigned to hold any of the courts of the district in which said sale is made, upon proof of written notice to each creditor who has filed his claim with said receiver of

at least ten days prior to the date of confirmation. The said notice shall specify the time and place when application for confirmation shall be made, and an affidavit of the receiver showing that notice was mailed to each creditor at his last known post office address shall be sufficient proof of notice to said creditors. (1931, c. 123, s. 2; c. 267.)

§ 1-507. Validation of sales made outside county of action.—All receiver's sales made prior to March 16, 1931, where orders were made and confirmation decreed or where either orders were made or confirmation decreed outside the county in which said actions were pending by a resident judge or the judge assigned to hold the courts of the district are hereby validated, ratified and confirmed. (1931, c. 123, s. 3.)

Art. 39. Deposit or Delivery of Money or Other Property.

§ 1-508. Ordered paid into court.—When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the judge may order it deposited in court, or delivered to such party with or without security, subject to the further direction of the judge. (Rev., s. 850; Code, s. 380; C. C. P., s. 215; C. S. 863.)

§ 1-509. Ordered seized by sheriff.—When, in the exercise of his authority, a judge has ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the judge, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver, or convey it, in conformity with the direction of the judge. (Rev., s. 851; Code, s. 381; C. C. P., s. 215; C. S. 864.)

§ 1-510. Defendant ordered to satisfy admitted sum.—When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the judge, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or provisional remedy. (Rev., s. 852; Code, s. 382; C. C. P., s. 215; C. S. 865.)

SUBCHAPTER XIV. ACTIONS IN PARTICULAR CASES.

Art. 40. Mandamus.

§ 1-511. Begun by summons and verified complaint.—All applications for writs of mandamus must be made by summons and complaint, which must be duly verified. (Rev., s. 822; Code, s. 622; 1871-2, c. 75; C. S. 866.)

§ 1-512. For money demand.—In applications for a writ of mandamus when the plaintiff seeks to enforce a money demand, the summons, pleadings and practice are the same as prescribed for civil actions. Provided that in all applications seeking a writ of mandamus to enforce a money demand on actions ex contractu against any county, city, town or taxing district within the state, the applicant shall allege and show in the complaint that the claim or debt has been reduced to a final judgment establishing what part of said judgment, if any, remains unpaid, what resources, if any, are available for the satisfaction of the judgment, including the actual value of all property sought to be subjected to additional taxation and the necessity for the issuing of such writ. (Rev., s. 823; Code, s. 623; 1871-2, c. 75, s. 2; 1933, c. 349; C. S. 867.)

§ 1-513. For other relief returnable in vacation; issues of fact.—When the plaintiff seeks relief other than the enforcement of a money demand, the summons must be made returnable before a judge of the superior court at chambers, or in term at a day specified in the summons, not less than ten days after the service of the summons and complaint upon the defendant; at which time the court, except for good cause shown, shall hear and determine the action, both as to law and fact. However, when an issue of fact is raised by the pleading, it is the duty of the court, upon the motion of either party, to continue the action until the issue of fact can be decided by a jury at the next regular term of the court. (Rev., s. 824; Code, s. 623; 1871-2, c. 75, s. 3; C. S. 868.)

Art. 41. Quo Warranto.

§ 1-514. Writs of sci. fa. and quo warranto abolished.—The writs of scire facias and of quo warranto, and proceedings by information in the nature of quo warranto, are abolished; and the remedies obtainable in those forms may be obtained by civil actions under this article. (Rev., s. 826; Code, s. 603; C. C. P., s. 362; R. C., c. 26, ss. 5, 25; C. S. 869.)

§ 1-515. Action by attorney-general.—An action may be brought by the attorney-general in the name of the state, upon his own information or upon the complaint of a private party, against the parties offending, in the following cases:

1. When a person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state; or,

2. When a public officer, civil or military, has done or suffered an act which, by law, makes a forfeiture of his office.

3. When any person, natural or corporate, has or claims to have or hold any rights or franchises by reason of a grant or otherwise, in violation of the provisions of § 146-14. (Rev., s. 827; Code, s. 607; C. C. P., s. 366; 1911, cc. 195, 201; C. S. 870.)

§ 1-516. Action by private person with leave.—When application is made to the attorney-general by a private relator to bring such an action, he shall grant leave that it may be brought in the name of the state, upon the relation of such applicant, upon the applicant tendering to the attorney-general satisfactory security to indemnify the state against all costs and expenses which may accrue in consequence of the action. (Rev., s. 828; Code, s. 608; 1874-5, c. 76; 1881, c. 330; C. S. 871.)

§ 1-517. Solvent sureties required.—The attorney-general, before granting leave to a private relator to bring a suit to try the title to an office, may require two sureties to the bond required

by law to be filed to indemnify the state against costs and expenses, and require such sureties to justify, and may require such proof and evidence of the solvency of the sureties as is satisfactory to him. (Rev., s. 829; 1901, c. 595, s. 2; C. S. 872.)

§ 1-518. Leave withdrawn and action dismissed for insufficient bond.—When the attorney-general has granted leave to a private relator to bring an action in the name of the state to try the title to an office, and it afterwards is shown to the satisfaction of the attorney-general that the bond filed by the private relator is insufficient, or that the sureties are insolvent, the attorney-general may recall and revoke such leave, and upon a certificate of the withdrawal and revocation by the attorney-general to the clerk of the court of the county where the action is pending, it is the duty of the presiding judge, upon motion of the defendant, to dismiss the action. (Rev., s. 830; 1891, c. 595; C. S. 873.)

§ 1-519. Arrest and bail of defendant usurping office.—When action is brought against a person for usurping an office, the attorney-general, in addition to the statement of the cause of action, may set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to and by means of his usurpation of the office, an order shall be granted by a judge of the superior court for the arrest of the defendant, and holding him to bail; and thereupon he shall be arrested and held to bail in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest. (Rev., s. 831; Code, s. 609; C. C. P., s. 369; 1883, c. 102; C. S. 874.)

§ 1-520. Several claims tried in one action.—Where several persons claim to be entitled to the same office or franchise, one action may be brought against all of them, in order to try their respective rights to the office or franchise. (Rev., s. 832; Code, s. 614; C. C. P., s. 374; C. S. 875.)

§ 1-521. Trials expedited.—All actions to try the title or right to any state, county or municipal office stand for trial at the return term of the summons, if a copy of the complaint was served with the summons at least thirty days before the return day thereof; and it is the duty of the judges to expedite the trial of these actions, and to give them precedence over all others, civil or criminal. It is unlawful to appropriate any public funds to the payment of counsel fees in any such action. (Rev., s. 833; Code, s. 616; 1901, c. 42; 1874-5, c. 173; C. S. 876.)

§ 1-522. Time for bringing action.—All actions brought by a private relator, upon the leave of the attorney-general, to try the title to an office must be brought, and a copy of the complaint served on the defendant, within ninety days after his induction into the office to which the title is to be tried; and when it appears from the papers in the cause, or is otherwise shown to the satisfaction of the court, that the summons and complaint have not been served within ninety days, it is the duty of the judge upon motion of defendant to dismiss the action at any time before the trial, at the cost of the plaintiff. (Rev., s. 834; 1901, c. 519; 1903, c. 556; C. S. 877.)

§ 1-523. Defendant's undertaking before answer.—Before the defendant may answer or demur to the complaint he must execute and file in the superior court clerk's office of the county wherein the suit is pending, an undertaking, with good and sufficient surety, in the sum of two hundred dollars, which may be increased from time to time in the discretion of the judge, to be void upon condition that the defendant pays to the plaintiff all such costs and damages, including damages for the loss of such fees and emoluments as may or ought to have come into the hands of the defendant, as the plaintiff may recover. (Rev., s. 835; 1895, c. 105; C. S. 878.)

§ 1-524. Possession of office not disturbed pending trial.—In any civil action pending in any of the courts of this state in which the title to an office is involved, the defendant being in the possession of the office and discharging the duties thereof shall continue therein pending the action, and no judge shall make a restraining order interfering with or enjoining such officer in the premises. The officer shall, notwithstanding any such order, continue to exercise the duties of the office pending the litigation, and receive the emoluments thereof. (Rev., s. 836; 1899, c. 33; C. S. 879.)

§ 1-525. Judgment by default and inquiry on failure of defendant to give bond.—At any time after a duly verified complaint is filed alleging facts sufficient to entitle plaintiff to the office, whether this complaint is filed at the beginning of the action or later, the plaintiff may, upon ten days notice to the defendant or his attorney of record, move before the judge resident in or riding the district, at chambers, to require the defendant to give the undertaking specified in § 1-523. It is the duty of the judge to require the defendant to give the undertaking within ten days, and if it is not so given, the judge shall render judgment in favor of plaintiff and against defendant for the recovery of the office and the costs, and a judgment by default and inquiry to be executed at a term for damages, including loss of fees and salary. Upon the filing of the judgment for the recovery of such office with the clerk, it is his duty to issue and the sheriff's duty to serve the necessary process to put the plaintiff into possession of the office. If the defendant shall give the undertaking, the court, if judgment is rendered for plaintiff, shall render judgment against the defendant and his sureties for costs and damages, including loss of fees and salary. Nothing herein prevents the judge's extending, for cause, the time in which to give the undertaking. (Rev., s. 837; 1899, c. 49; 1895, c. 105, s. 2; C. S. 880.)

§ 1-526. Service of summons and complaint.—The service of the summons and complaint as hereinbefore provided may be made by leaving a copy at the last residence or business office of the defendant or defendants, and service so made shall be deemed a legal service. (Rev., s. 838; 1899, c. 126; C. S. 881.)

§ 1-527. Judgment in such actions.—In every such case judgment shall be rendered upon the

right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice requires. When the defendant, whether a natural person or corporation, against whom the action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that the defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against him. The court may also, in its discretion, fine the defendant a sum not exceeding two thousand dollars. (Rev., ss. 839, 840; Code, ss. 610, 615; R. C., c. 95; C. C. P., ss. 370, 375; Const., Art. IX, s. 5; C. S. 882.)

§ 1-528. Mandamus to aid relator.—In any civil action brought to try the title or right to hold any office, when the judgment of the court is in favor of the relator in the action, it is the duty of the court to issue a writ of mandamus or such other process as is necessary and proper to carry the judgment into effect, and to induct the party entitled into office. (Rev., s. 841; 1885, c. 406, s. 1; C. S. 883.)

§ 1-529. Appeal; bonds of parties.—No appeal by the defendant to the supreme court from the judgment of the superior court in such action shall stay the execution of the judgment, unless a justified undertaking is executed on the part of the appellant by one or more sureties, in a sum to be fixed by the court, conditioned that the appellant will pay to the party entitled to the same the salary, fees, emoluments and all moneys whatsoever received by the appellant by virtue or under color of the office. In no event shall the judgment be executed pending appeal, unless a justified undertaking is executed on the part of the appellee by one or more persons in a sum to be fixed by the court, conditioned that the appellee will pay to the party entitled to the same the salary, fees, emoluments and all moneys whatsoever received by the appellee by virtue or under color of office during his occupancy thereof. (Rev., s. 842; 1885, c. 406, s. 2; C. S. 884.)

§ 1-530. Relator inducted into office; duty.—If the judgment is rendered in favor of the person alleged to be entitled, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office. It is his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he has been excluded. (Rev., ss. 843, 844; Code, ss. 611, 613; C. C. P., ss. 371, 373; C. S. 885.)

§ 1-531. Refusal to surrender official papers misdemeanor.—If a person against whom a judgment has been rendered in an action brought to recover a public office shall fail or refuse to turn over, on demand, to the person adjudged to be entitled to such office, all papers, documents and books belonging to such office, he shall be guilty of a misdemeanor. (Rev., s. 3601; Code, s. 612; C. C. P., 372; C. S. 886.)

§ 1-532. Action to recover property forfeited to state.—When any property, real or personal, is forfeited to the state, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in any superior court. (Rev., s. 845; Code, s. 621; C. C. P., s. 381; C. S. 887.)

Art. 42. Waste.

§ 1-533. Remedy and judgment.—Wrongs, remediable by the old action of waste, are subjects of action as other wrongs; and the judgment may be for damages, forfeiture of the estate of the party offending, and eviction from the premises. (Rev., s. 853; Code, s. 624; C. C. P., s. 383; C. S. 888.)

§ 1-534. For and against whom action lies.—In all cases of waste, an action lies in the superior court at the instance of him in whom the right is, against all persons committing the waste, as well tenant for term of life as tenant for term of years and guardians. (Rev., s. 854; Code, s. 625; R. C., c. 116, s. 1; 52 Hen. III, c. 23; 6 Edw. I, c. 5; 20 Edw. I, st. 2; 11 Hen. VI, c. 5; C. S. 889.)

§ 1-535. Tenant in possession liable.—Where a tenant for life or years grants his estate to another, and still continues in the possession of the lands, tenements, or hereditaments, an action lies against the said tenant for life or years. (Rev., s. 855; Code, s. 626; R. C., c. 116, s. 2; 11 Hen. VI, c. 5; C. S. 890.)

§ 1-536. Action by tenant against cotenant.—Where a joint tenant or a tenant in common commits waste, an action lies against him at the instance of his cotenant or joint tenant. (Rev., s. 856; Code, s. 627; R. C., c. 116, s. 4; 13 Edw. I, c. 22; C. S. 891.)

§ 1-537. Action by heirs.—Every heir may bring action for waste committed on lands, tenements, or hereditaments of his own inheritance, as well in the time of his ancestor as in his own. (Rev., s. 857; Code, s. 628; R. C., c. 116, s. 5; 6 Edw. I, c. 5; 20 Edw. I, st. 2; 11 Hen. VI, c. 5; C. S. 892.)

§ 1-538. Judgment for treble damages and possession.—In all cases of waste, when judgment is against the defendant, the court may give judgment for treble the amount of the damages assessed by the jury, and also that the plaintiff recover the place wasted, if the damages are not paid on or before a day to be named in the judgment. (Rev., s. 858; Code, s. 629; R. C., c. 116, s. 3; 6 Edw. I, c. 5; 20 Edw. I, st. 2; C. S. 893.)

Art. 43. Nuisance.

§ 1-539. Remedy for nuisance.—Injuries remediable by the old writ of nuisance are subjects of action as other injuries; and in such action there may be judgment for damages, or for the removal of the nuisance, or both. (Rev., s. 825; Code, s. 630; C. C. P., s. 387; C. S. 894.)

SUBCHAPTER XV. INCIDENTAL PROCEDURE IN CIVIL ACTIONS.

Art. 44. Compromise.

§ 1-540. By agreement receipt of less sum is discharge.—In all claims, or money demands, of whatever kind, and howsoever due, where an agreement is made and accepted for a less amount than that demanded or claimed to be due, in satisfac-

tion thereof, the payment of the less amount according to such agreement in compromise of the whole is a full and complete discharge of the same. (Rev., s. 859; Code, s. 574; 1874-5, c. 178; C. S. 895.)

§ 1-541. Tender of judgment.—The defendant, at any time before the trial or verdict, may serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer, and gives notice thereof in writing within ten days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance is not given, the offer is deemed withdrawn, and cannot be given in evidence; and if the plaintiff fails to obtain a more favorable judgment he cannot recover costs, but must pay the defendant's costs from the time of the offer. If the defendant sets up a counterclaim in his answer to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing to allow judgment to be taken against him for the amount specified, or to allow the counterclaim to the amount specified, with costs. If the defendant accepts the offer, and gives notice thereof in writing within ten days, he may enter judgment as above for the amount specified, if the offer entitles him to judgment, or if the amount specified in the offer is allowed him in the trial of the action. If the notice of acceptance is not given, the offer is deemed withdrawn, and cannot be given in evidence; and if the defendant fails to recover a more favorable judgment, or to establish his counterclaim for a greater amount than is specified in the offer, he cannot recover costs, but must pay the plaintiff's costs from the time of the offer. (Rev., s. 860; Code, s. 573; C. C. P., s. 328; C. S. 896.)

§ 1-542. Conditional tender of judgment for damages.—In an action arising on contract, the defendant may, with his answer, serve upon the plaintiff an offer in writing, that if he fails in his defense, the damages be assessed at a specified sum; and if the plaintiff signifies his acceptance thereof in writing, ten days before the trial, and on the trial has a verdict, the damages shall be assessed accordingly. If the plaintiff does not accept the offer, he must prove his damages, as if it had not been made, and may not introduce it in evidence. If the damages assessed in his favor do not exceed the sum mentioned in the offer, the defendant shall recover his expenses incurred in consequence of any necessary preparation or defense in respect to the question of damages. This expense shall be ascertained at the trial. (Rev., ss. 861, 862; Code, ss. 575, 576; C. C. P., ss. 329, 330; C. S. 897.)

§ 1-543. Disclaimer of title in trespass; tender of judgment.—In actions of trespass upon real estate, the defendant in his answer may disclaim any title or claim to the lands on which the trespass is alleged by the complaint to be done, may allege that the trespass was by negligence or involuntary, and may make a tender or offer of sufficient amends for the trespass. If the plaintiff controverts such answer or a part thereof, and at the trial verdict is found for the defendant, or if the plaintiff is nonsuited, he is barred from the said action and all other suits concerning the same. (Rev., s. 863; Code, s. 577; Rev. Code, c. 31, s. 79; 1715, c. 2, s. 7; C. S. 898.)

Art. 45. Arbitration and Award.

§ 1-544. Agreement for arbitration.—Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this article, any controversy existing between them at the time of the agreement to submit. Such an agreement shall be valid and enforceable, and neither party shall have the power to revoke the submission without the consent of the other party or parties to the submission save upon such grounds as exist in law or equity for the rescission or revocation of any contract. (1927, c. 94, s. 1.)

§ 1-545. Statement of questions in controversy.—The arbitration agreement must state the question or questions in controversy with sufficient definiteness to present one or more issues or questions upon which an award may be based. (1927, c. 94, s. 2.)

§ 1-546. "Court" defined.—The term "court" when used in this article means a court having jurisdiction of the parties and of the subject matter. (1927, c. 94, s. 3.)

§ 1-547. Cases where court may appoint arbitrator; number of arbitrators.—Upon the application in writing of any party to the arbitration agreement and upon notice to the other parties thereto, the court shall appoint an arbitrator or arbitrators in any of the following cases:

(a) When the arbitration agreement does not prescribe a method for the appointment of arbitrators, in which case the arbitration shall be by three arbitrators.

(b) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(c) When any arbitrator fails or is otherwise unable to act, and his successor has not been appointed in the manner in which he was appointed.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate. (1927, c. 94, s. 4.)

§ 1-548. Application in writing; hearing.—Any application made under authority of this article shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions, except as otherwise herein expressly provided. (1927, c. 94, s. 5.)

§ 1-549. Notice of time and place of hearing.—The arbitrators shall appoint a time and place for the hearing, and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award. (1927, c. 94, s. 6.)

§ 1-550. Hearing if party fails to appear.—If any party neglects to appear before the arbitrators after reasonable notice the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. (1927, c. 94, s. 7.)

§ 1-551. Award within sixty days.—If the time within which the award shall be made is not fixed in the arbitration agreement, the award must be made within sixty days from the time of the appointment of the arbitrators, and an award made after the lapse of sixty days shall have no legal effect unless the parties extend the time in which said award may be made, which extension or ratification shall be in writing. (1927, c. 94, s. 8.)

§ 1-552. Representation before arbitrators.—No one other than a party to said arbitration, or a person regularly employed by such party for other purposes, or a practicing attorney-at-law, shall be permitted by the arbitrator or arbitrators to represent before him or them any party to the arbitration. (1927, c. 94, s. 9.)

§ 1-553. Requirement of attendance of witnesses.—The arbitrator or arbitrators, or a majority of them, may require any person to attend before him or them as a witness, and to bring with him any book or writing or other evidence.

The fees for such attendance shall be the same as the fees of witnesses in the Superior Court.

Subpœnas shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrator or arbitrators, or a majority of them, and shall be directed to the person and shall be served in the same manner as subpœnas to testify before a court of record in this State; if any person so summoned to testify shall refuse or neglect to obey such subpœnas, upon petition the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this State. (1927, c. 94, s. 10.)

§ 1-554. Depositions. — Depositions may be taken with or without a commission in the same manner and for the same reasons as provided by law for the taking of depositions in suits pending in the courts of record in this State. (1927, c. 94, s. 11.)

§ 1-555. Orders for preservation of property. —At any time before final determination of the arbitration the court may upon application of a party to the submission make such order or decree or take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award. (1927, c. 94, s. 12.)

§ 1-556. Questions of law submitted to court; form of award.—The arbitrators may, on their own motion, and shall by request of a party to the arbitration,

(a) At any stage of the proceedings submit any question of law arising in the course of the hearing for the opinion of the court, stating the facts upon which the question arises, and such opinion when given shall bind the arbitrators in the making of their award:

(b) State their final award in the form of a conclusion of fact for the opinion of the court on the questions of law arising on the hearing. (1927, c. 94, s. 13.)

§ 1-557. Award in writing and signed by arbitrators.—The award of the arbitrators, or a majority of them, shall be drawn up in writing and signed by the arbitrators or a majority of them; the award shall definitely deal with all matters of difference in the submission requiring settlement, but the arbitrators may, in their discretion, first make a partial award which shall be enforceable in the same manner as the final award; upon the making of an award, the arbitrators shall deliver a true copy thereof to each of the parties thereto, or their attorneys, without delay. (1927, c. 94, s. 14.)

§ 1-558. Time for application for confirmation. —At any time within three months after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is vacated, modified, or corrected, as provided in §§ 1-559 and 1-560. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. (1927, c. 94, s. 15.)

§ 1-559. Order vacating award. — In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or other undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time, within which the agreement required the award to be made, has not expired, the court may, in its discretion, direct a rehearing by the arbitrators. (1927, c. 94, s. 16.)

§ 1-560. Order modifying or correcting award. —In any of the following cases the court shall, after notice and hearing make an order modifying or correcting the award, upon the application of any party to the arbitration:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them.

(c) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

The order must modify and correct the award, so as to effect the intent thereof. (1927, c. 94, s. 17.)

§ 1-561. Notice of motion to vacate, modify or correct award within three months.—Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after an award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. (1927, c. 94, s. 18.)

§ 1-562. Judgment or decree entered. — Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. (1927, c. 94, s. 19.)

§ 1-563. Papers to be filed on motion relating to award.—The party moving for an order confirming, modifying, correcting or vacating an award, shall at the time such motion is filed with the clerk, file, unless the same have theretofore been filed, the following papers with the clerk:

(a) The written contract or a verified copy thereof containing the agreement for the submission; the selection or appointment of the arbitrator or arbitrators, and each written extension of the time, if any within which to make the award.

(b) The award.

(c) Every notice, affidavit and other paper used upon an application to confirm, modify, correct or vacate the award, and each order made upon such an application.

The judgment or decree shall be entered (or docketed) as if it were rendered in an action. (1927, c. 94, s. 20.)

§ 1-564. Force and effect of judgment or decree.—The judgment or decree so entered (or docketed) shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to a judgment or decree; and it may be enforced, as if it had been rendered in the court in which it is entered. (1927, c. 94, s. 21.)

§ 1-565. Appeal.—An appeal may be taken from the final judgment or decree entered by the court. (1927, c. 94, s. 22.)

§ 1-566. Uniformity of interpretation — Interpretation of article.—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1927, c. 94, s. 23.)

§ 1-567. Citation of article.—This article may be cited as the uniform arbitration act. (1927, c. 94, s. 24.)

Art. 46. Examination of Parties.

§ 1-568. Action for discovery abolished.—No action to obtain discovery under oath, in aid of the prosecution or defense of another action, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this article. (Rev., s. 864; Code, s. 579; C. C. P., s. 332; C. S. 899.)

§ 1-569. Adverse party examined.—A party to an action may be examined as a witness at the instance of any adverse party, and for that purpose may be compelled, in the same manner and subject to the same rules of examination as any other witness, to testify, either at the trial or conditionally or upon commission. Where a corporation is a party to the action, this examination may be made of any of its officers or agents. (Rev., s. 865; Code, s. 580; C. C. P., s. 333; 1907, c. 799; C. S. 900.)

§ 1-570. Before trial in his own county.—The examination, instead of being had at the trial, as provided in § 1-569, may be had at any time before the trial, at the option of the party claiming it, before a judge, commissioner duly appointed to take depositions, or clerk of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless for good cause shown the judge or court orders otherwise. (Rev., s. 866; Code, s. 581; 1893, c. 114; C. C. P., s. 334; 1899, c. 65, s. 1; C. S. 901.)

§ 1-571. Compelling attendance of party for examination before trial.—The party to be examined, as provided in § 1-570, may be compelled to attend in the same manner as a witness who is to be examined conditionally; but he shall not be compelled to attend in any county other than that of his residence or where he may be served with a summons for his attendance. The examination shall be taken and filed by the judge, clerk or commissioner, as in case of witnesses examined conditionally, and may be read by either party on the trial. (Rev., ss. 866, 867; Code, ss. 581, 582; C. C. P., ss. 334, 335; 1899, c. 65, s. 2; C. S. 902.)

§ 1-572. Party's refusal to testify; penalty.—If a party refuses to attend and testify, as provided in the preceding sections, he may be punished as for a contempt, and his pleadings may be stricken out. (Rev., s. 869; Code, s. 584; C. C. P., s. 337; C. S. 903.)

§ 1-573. Rebuttal of party's testimony.—The examination of the party thus taken may be rebutted by adverse testimony. (Rev., s. 868; Code, s. 583; C. C. P., s. 336; C. S. 904.)

§ 1-574. Irresponsive answers may be met by party's own testimony.—A party examined by an adverse party, as provided in this article, may be examined in his own behalf, subject to the same rules of examination as other witnesses. But if he testifies to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answers thereto or to discharge himself when his answers would charge himself, the adverse party may offer himself and must be received as a witness in his own behalf in respect to the new matter, subject to the same rules of examination as other witnesses. (Rev., s. 870; Code, ss. 583, 585; C. C. P., ss. 336, 338; C. S. 905.)

§ 1-575. Real party in interest examined.—A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness, in the same manner, and subject to the same rules of examination, as if he was named as a party. (Rev., s. 871; Code, s. 586; C. C. P., s. 339; C. S. 906.)

§ 1-576. Examination of coplaintiff or codefendant.—A party may be examined on behalf of his coplaintiff or codefendant as to any matter in which he is not jointly interested or liable with such coplaintiff or codefendant, and as to which a separate and not joint verdict or judgment can be rendered. He may be compelled to attend in the same manner as at the instance of an adverse party; but the examination thus taken cannot be used in behalf of the party examined. When one of several plaintiffs or defendants who are joint contractors, or are united in interest, is examined by the adverse party, the other of such plaintiffs or defendants may offer himself, and must be received, as a witness to the same cause of action or defense. (Rev., s. 872; Code, s. 587; C. C. P., s. 340; C. S. 907.)

Art. 47. Motions and Orders.

§ 1-577. Definition of order.—Every direction of a court or judge, made or entered in writing, and not included in a judgment, is an order. (Rev., s. 873; Code, s. 594; C. C. P., ss. 344, 345; C. S. 908.)

§ 1-578. Motions; when and where made.—An application for an order is a motion. Motions may be made to a clerk of a superior court, or to a judge out of court, except for a new trial on the merits. Motions must be made within the district in which the action is triable. A motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provisional remedy, have preference over all other motions. (Rev., s. 874; Code, s. 594; C. C. P., ss. 344, 345; C. S. 909.)

§ 1-579. Affidavit for or against, compelled.—When a party intends to make or oppose a motion in a court of record, and it is necessary for him to have the affidavit of any person who has refused to make it, the court may, by order, appoint a referee to take the affidavit or deposition of such person. The person may be subpoenaed and compelled to attend and make an affidavit before such referee, as before a referee to whom an issue is referred for trial. (Rev., s. 875; Code, s. 594; C. C. P., ss. 344, 345; C. S. 910.)

§ 1-580. Motions determined in ten days.—When a motion is made in a cause or proceeding in any of the courts to obtain an injunction order, order of arrest, or warrant of attachment, granted in any such case or proceeding, or to vacate or modify the same, it is the duty of the judge before whom the motion is made to render his decision within ten days after the day on which the motion was submitted to him for decision. (Rev., s. 876; Code, s. 594; C. C. P., ss. 344, 345; C. S. 911.)

§ 1-581. Notice of motion.—When notice of a motion is necessary, it must be served ten days before the time appointed for the hearing; but the court or judge may, by an order to show cause, prescribe a shorter time. (Rev., s. 877; Code, s. 595; C. C. P., s. 346; C. S. 912.)

§ 1-582. Orders without notice, vacated.—An order made out of court, without notice to the adverse party, may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made. (Rev., s. 514; Code, s. 546; C. C. P., s. 297; C. S. 913.)

§ 1-583. Orders by clerk on motion to remove; right of appeal; notice.—All motions to remove as a matter of right shall be made before the clerk, who is authorized to make all necessary orders, and an appeal shall lie from such order upon such motion to the judge at chambers, or at the next term, who shall hear and pass upon such motion de novo. But no such motion shall be heard until ten days notice thereof shall first have been given to the opposing party or his attorney. (Ex. Sess. 1921, c. 92, s. 15; 1925, c. 282, s. 1; C. S. 913(a).)

§ 1-584. Motions to remove to federal court; notice.—Motions to remove to the federal court shall be made before the clerk, and an appeal shall lie from his order to the judge at chambers, or at the next term, who shall hear and pass upon such motion de novo. But no such motion shall be heard until ten days notice thereof shall first have been given to the opposing party or his attorney. (Ex. Sess. 1921, c. 92, s. 16; 1925, c. 282, s. 2; C. S. 913(b).)

Art. 48. Notices.

§ 1-585. Form and service.—All notices must be in writing, and notices and other papers may be served on the party or his attorney personally, where not otherwise provided in this chapter. (Rev., ss. 878, 879; Code, s. 597; C. C. P., ss. 349, 353; C. S. 914.)

§ 1-586. Service upon attorney.—Notice upon an attorney may be served during his absence from his office, by leaving a copy of the paper with his clerk, or a person having charge of the office; or, when there is no person in the office, by leaving it, between the hours of six a. m. and nine p. m., in a conspicuous place in the office; or, if it is not open so as to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion. (Rev., s. 880; Code, s. 597; C. C. P., ss. 349, 353; C. S. 915.)

§ 1-587. Service upon a party.—Notice upon a party may be served by leaving a copy of the paper at his residence, between the hours of six a. m. and nine p. m., with some person of suitable age and discretion. (Rev., s. 881; Code, s. 597; C. C. P., ss. 349, 353; C. S. 916.)

§ 1-588. Service by publication.—Notice upon a person who cannot be found after due diligence, or who is not a resident of this state, may be served by its publication once a week for four successive weeks in a newspaper published in the county from which the notice is issued; and if no newspaper is published therein, then in some newspaper published within the judicial district; and the proof of service is the same as is required by law in the case of service of summons by publication. (Rev., s. 882; Code, s. 597; C. C. P., ss. 349, 353; C. S. 917.)

§ 1-589. Service by telephone or registered mail on witnesses and jurors.—Sheriffs, constables and other officers charged with service of such process may serve subpoenas for witnesses and summonses for jurors by telephone or by registered mail, and such service shall be valid and binding on the person served. When such process

is served by telephone the return of the officer serving it shall state it is served by telephone. When served by registered mail a copy shall be mailed and a written receipt demanded and such receipt shall be filed with the return and be a necessary part thereof. (1915, c. 48; 1925, c. 98; C. S. 918.)

§ 1-590. Subpoena, service and signature. — Service of a subpoena for witnesses may be made by a sheriff, coroner or constable, and proved by the return of such officer, or the service may be made by any person not a party to the action, and proved by his oath. A subpœna for witnesses need not be signed by the clerk of the court, and is sufficient if subscribed by the party or by his attorney. (Rev., s. 884; Code, s. 597; C. C. P., ss. 349, 353; C. S. 919.)

§ 1-591. Application of this article.—This article does not apply to the service of a summons, or other process (except summonses for jurors, as provided in § 1-589), or of any paper to bring a party into contempt. (Rev., s. 885; Code, s. 597; C. C. P., ss. 349, 353; C. S. 920.)

§ 1-592. Officer's return evidence of service.—When a notice issues to the sheriff, his return thereon that the same has been executed is sufficient evidence of its service. (Rev., ss. 886, 1529; Code, s. 940; R. C., c. 31, s. 123; 1799, c. 537; C. S. 921.)

Art. 49. Time.

§ 1-593. How computed. — The time within which an act is to be done, as provided by law, shall be computed by excluding the first and including the last day. If the last day is Sunday or a legal holiday, it must be excluded. (Rev., s. 887; Code, s. 596; C. C. P., s. 348; C. S. 922.)

§ 1-594. Computation in publication.—The time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event of which notice is given is to happen, or which completes the full period required for publication. (Rev., s. 888; Code, s. 602; C. C. P., s. 359; C. S. 923.)

Art. 50. General Provisions as to Legal Advertising.

§ 1-595. Advertisement of public sales.—When a statute or written instrument stipulates that an advertisement of a sale shall be made for any certain number of weeks, a publication once a week for the number of weeks so indicated is a sufficient compliance with the requirement, unless contrary provision is expressly made by the terms of the instrument. (1909, cc. 794, 875; C. S. 924.)

§ 1-596. Charges for legal advertising. — The publication of all advertising required by law to be made in newspapers in this state shall be paid for at not to exceed the local commercial rate of the newspaper selected. Any public or municipal officer of board created by or existing under the laws of this state that is now or may hereafter be authorized by law to enter into contracts for the publication of legal advertisements is hereby authorized to pay therefor prices not exceeding said rates. Nothing herein shall apply to contracts or agreements for legal advertising in this state existing at the time this section takes effect.

No newspaper in this state shall accept or print any legal advertising until said newspaper shall have first filed with the clerk of the superior court of the county in which it is published a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication, and any owner or manager of a newspaper violating the provisions of this section shall be guilty of a misdemeanor. (1919, c. 45, ss. 1, 2; C. S. 2586.)

§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.—Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the state of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this state to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails as second class matter in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least twenty-five of the twenty-six consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by §§ 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of §§ 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of §§ 1-597 to 1-599. This provision shall be retroactive to May first, one thousand nine hundred and forty, and all publications, advertisements and notices published in accordance with this provision since May first, one thousand nine hundred and forty, are hereby validated. (1939, c. 170, s. 1; 1941, c. 96.)

§ 1-598. Annual statements filed with clerk; violation a misdemeanor.—Every newspaper in

this state which shall publish any such legal notice or other legal advertisement, as mentioned in § 1-597, shall, in each calendar year, file with the clerk of the superior court of the county in which it is published a sworn statement that such newspaper is a newspaper meeting the qualifications of §§ 1-597 to 1-599, which sworn statement, when filed, shall be prima facie evidence of the qualification of such newspaper under §§ 1-597 to 1-599 during such calendar year, and any such legal notice or other legal advertisement published in any such newspaper filing such sworn statement as herein provided shall be valid; and any owner, publisher or manager of a newspaper who shall violate the provisions of this section, or any person who shall make or file a statement as required by this section which shall be false at the time of such statement, shall be guilty of a misdemeanor. (1939, c. 170, s. 1½.)

§ 1-599. Application of two preceding sections. —The provisions of §§ 1-597 to 1-599 shall not apply in counties wherein only one newspaper is published, although it may not be a newspaper having the qualifications prescribed by § 1-597; nor shall the provisions of §§ 1-597 to 1-599 apply in any county wherein none of the newspapers published in such county has the qualifications and characteristics prescribed by § 1-597. (1939, c. 170, ss. 2, 4½; 1941, c. 49.)

Chapter 2. Clerk of Superior Court.

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Art. 1. The Office.

§ 2-1. Judge of probate abolished; clerk acts as judge.—The office of probate judge is abolished, and the duties heretofore pertaining to clerks of the superior court as judges of probate shall be performed by the clerks of the superior court as clerks of said court. (Rev., s. 889; Code, s. 102; C. S. 925.)

§ 2-2. Election; term of office.—A clerk of the superior court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the general assembly. Clerks of the superior court shall hold office for four years. (Rev., s. 890; Const., Art. 4, ss. 16, 17; C. S. 926.)

§ 2-3. Clerk's bond.—At the first meeting of the board of commissioners of each county after the election or appointment of any clerk of a superior court it is the duty of the clerk to deliver to such commissioners a bond with sufficient sureties, to be approved by them, in a penalty of not less than ten thousand dollars, and not more than twenty-five thousand dollars, payable to the state of North Carolina, and with a condition to be void if he shall account for and pay over, according to law, all moneys and effects which have come or may come into his hands, by virtue or color of his office, or under an order or decree of a judge, even though such order or decree be void for want of jurisdiction or other irregularities, and shall diligently preserve and take care of all books, records, papers and property which have come or may come into his possession, by virtue or color of his office, and shall in all things faithfully perform the duties of his office as they are or thereafter shall be prescribed by law. (Rev., s. 295; Code, s. 72; C. C. P., s. 137; 1889, c. 7; 1891, c. 385; 1895, cc. 270, 271; 1899, c. 54, s. 52; 1901, c. 32; 1903, c. 747; 1931, c. 170; C. S. 927.)

Local Modification.—Camden, Hyde, Tyrrell: 1939, c. 30; Carteret, Currituck, Pamlico: C. S. 929; Chowan: 1939, c. 299; Jones: 1925, c. 10; Mecklenburg: 1925, c. 184; Washington: Pub. Loc. 1935, c. 6.

§ 2-4. Clerk's bond; approval, acknowledgments and custody.—The approval of said bond by the board of commissioners, or a majority of them, shall be recorded by their clerk. The said bond shall be acknowledged by the parties thereto, or proved by a subscribing witness, before the clerk of said board of commissioners, or their presiding officer, registered in the register's office in a separate book to be kept by him for the registration of official bonds; and the original, with the approval thereof endorsed, deposited with the register for safe keeping. The like remedies shall be had upon said bond as are or may be given by law on official bonds. (Rev., s. 296; Code, s. 73; C. C. P., s. 138; C. S. 928.)

§ 2-5. Oath of office.—The clerks of the superior court, before entering on the duties of their office, shall take and subscribe before some officer authorized by law to administer an oath, the oaths prescribed by law, and file such oaths with the register of deeds for the county. (Rev., 891; Code, s. 74; C. C. P., s. 139; C. S. 930.)

§ 2-6. Vacancy; judge of district fills.—1. Otherwise than by expiration. In case the office of clerk of a superior court for a county becomes vacant otherwise than by the expiration of the term, and in case of a failure by the people to elect, the judge of the superior court for the county shall appoint to fill the vacancy until an election can be regularly held.

2. Failure to qualify. In case any clerk fails to give bond and qualify as required by law, the presiding officer of the board of commissioners of his county shall immediately inform the resident judge of the judicial district thereof, who shall thereupon declare the office vacant and fill the same, and the appointee shall give bond and qualify.

3. Resignations. Any clerk of the superior court may resign his office to the judge of the superior court residing in the district in which is situated the county of which he is clerk, and said judge shall fill the vacancy. (Rev., ss. 892, 893, 895; Code, ss. 76, 78; C. C. P., s. 140; Const., Art. 4, s. 29; C. S. 931.)

§ 2-7. Removal for cause.—Upon the conviction of any clerk of the superior court of an infamous crime, or of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this state. (Rev., s. 894; Code, s. 123; 1868-9, c. 201, s. 53; C. S. 932.)

§ 2-8. Office and equipment furnished.—The requisite stationery, records, furniture and filing cases and devices for official use must be furnished to the clerk by the board of commissioners; and to each of such books there must be attached an alphabetical index securely bound in the volume, referring to the entries therein by the page of the book, unless there is a cross-index of such book required by law to be kept. These books must, at all proper times, be open to the inspection of any person. (Rev., s. 896; Code, ss. 82, 84, 113; C. C. P., s. 428; C. S. 933.)

§ 2-9. Solicitor to examine and report on office.—The Solicitor of the Judicial District shall inspect the office of the clerk as often as he shall deem it necessary, and shall make written report of his inspection to the court. (Rev., s. 897; Code, s. 88; C. C. P., s. 147; 1917, c. 81, s. 1; 1935, c. 423; C. S. 934.)

Art. 2. Assistant Clerks.

§ 2-10. Appointment; oath; powers and jurisdiction; responsibility of clerks.—Each clerk of the superior court, by and with the written consent and approval of the superior court judge resident in his district, may appoint an assistant clerk of the superior court, who before entering upon his duties shall take and subscribe the oath prescribed for clerks: Provided, that no more than one such assistant clerk shall hold office in any county at one time. Upon compliance with the provisions of this article such assistant clerk shall be as fully authorized and empowered to perform all the duties and functions of the office of clerk of the superior court as the clerk himself, and all the acts, orders, and judgments of such assistant clerk shall be entitled to the same faith and credit as those of such clerk. Such assistant clerks shall be subject in all respects to all laws

which apply to the clerks. The several clerks of the superior court shall be held responsible for the acts of their assistant clerks, and the official bonds of such clerks as now provided by law shall be written to and shall cover the acts of their assistant clerks. (1921, c. 32, s. 1; C. S. 934(a).)

Local Modification.—Forsyth: 1937, c. 331; Guilford: 1937, c. 331; 1941, c. 91.

§ 2-11. Certificate of appointment; confirmation; revocation of appointment; compensation.—Any clerk of the superior court desiring to appoint such an assistant clerk shall present a formal written certificate of such appointment to the superior court judge residing in his district, and such judge, if he concurs in and approves such appointment, shall in writing enter his consent and approval upon such certificate and confirm such appointment. Said certificate of appointment, and approval of the judge, together with the oath subscribed by the appointee, shall thereupon be entered in full upon the minute docket of the court, and shall be recorded and cross-indexed in the office of the register of deeds for such county. The appointment of any such assistant clerk may be revoked at any time by the clerk who appointed him or by the superior court judge resident in the district, by the entry of the word "revoked" and the date thereof, with the signature of such clerk or judge, upon the margin of the records of such appointment in the offices of the clerk of the superior court and the register of deeds; and all such appointments shall expire by limitation when the clerk making same ceases to hold office. Nothing in this article shall increase the fees or compensation now allowed by law to the clerks or deputy clerks of the superior court of the several counties of the state. (1921, c. 32, s. 2; C. S. 934(b).)

§ 2-12. Clerks not relieved from duties; deputies.—This article shall not in anywise excuse or relieve the clerk of the superior court from giving to the performance of his duties the same time, care, and attention as is now required of such clerks by law, nor shall it change or amend the present laws with reference to deputy clerks of the superior court: Provided, that one person may be appointed both as assistant clerk and as deputy. (1921, c. 32, s. 3; C. S. 934(c).)

Art. 3. Deputies.

§ 2-13. Appointment.—Clerks of the superior court may appoint deputies, who shall take and subscribe the oath prescribed for clerks. (Rev., s. 898; Code, s. 75; R. C., c. 19, s. 15; 1777, c. 115, s. 86; C. S. 935.)

§ 2-14. Record of appointment and discharge; copies.—Each clerk of a superior court shall make a record of the appointment of each deputy he may appoint, on the special proceedings docket of his court, giving the name of such appointee and the date of such appointment, and make a cross-index of the same, and shall furnish to the register of deeds of his county a transcript of such record; and such register of deeds shall record the same in the records of deeds in his office and make a cross-index thereof on the general index in his office. When any such deputy clerk is removed from his office the clerk of the superior court by whom he was appointed shall write on the margin of the record of such appointment in his office, and on the margin of the record of such appointment in the office of the register of deeds, the word "Revoked" and the date of such revocation, and sign his name thereto. A duly certified copy of such appointment and of such revocation, under the hand and official seal of the register of deeds, shall be deemed prima facie evidence of the regularity of such appointment and revocation, and shall be admitted as evidence in all the courts. (Rev., s. 899; 1899, c. 235, s. 3; C. S. 936.)

§ 2-15. Responsibility of clerk for deputy's acts.—The several clerks of the superior court shall be held responsible for the acts of their deputies. Deputies shall be subject in all respects to all laws which apply to the clerks. (Rev., s. 900; 1899, c. 235, s. 2; C. S. 937.)

Art. 4. Powers and Duties.

§ 2-16. Powers enumerated.—Every clerk has power—

1. To issue subpœnas to compel the attendance of any witness residing or being in the state, or to compel the production of any bond or paper, material to any inquiry pending in his court.
2. To administer oaths and take acknowledgments, whenever necessary, in the exercise of the powers and duties of his office.
3. To issue commissions to take the testimony of any witness within or without this state.
4. To issue citations and orders to show cause to parties in all matters cognizable in his court, and to compel the appearance of such parties.
5. To enforce all lawful orders and decrees, by execution or otherwise, against those who fail to comply therewith or to execute lawful process. Process may be issued by the clerk, to be executed in any county of the state, and to be returned before him.
6. To exemplify, under seal of his court, all transcripts of deeds, papers or proceedings therein, which shall be received in evidence in all the courts of the state.
7. To preserve order in his court and to punish contempts.
8. To adjourn any proceeding pending before him from time to time.
9. To open, vacate, modify, set aside, or enter as of a former time, decrees or orders of his court, in the same manner as courts of general jurisdiction.
10. To enter judgment in any suit pending in his court in the following instances: judgment of voluntary nonsuit in any case where judgment is permitted by law; and judgment in any suit by consent of parties.
11. To award costs and disbursements as prescribed by law, to be paid personally, or out of the estate or fund, in any proceeding before him.
12. To compel the return to his office by each justice of the peace, on the expiration of the term of office of such justice, or, if the justice be dead, by his personal representative, of all records, papers, dockets and books held by such justice by virtue or color of his office, and to deliver the same to the successor in office of such justice.
13. To take proof of deeds, bills of sale, official bonds, letters of attorney, or other instruments permitted or required by law to be registered.

14. To take proof of wills and grant letters testamentary and of administration.

15. To revoke letters testamentary and of administration.

16. To appoint and remove guardians of infants, idiots, inebriates and lunatics.

17. To audit the accounts of executors, administrators, collectors, receivers, commissioners and guardians.

18. To exercise jurisdiction conferred on him in every other case prescribed by law. (Rev., s. 901; Code, ss. 103, 108; C. C. P., ss. 417, 418, 442; 1901, c. 614, s. 2; 1919, c. 140; C. S. 938.)

§ 2-17. Disqualification to act.—No clerk can act as such in relation to any estate, proceeding or civil action—

1. If he has, or claims to have, an interest by distribution, by will, or as creditor, or otherwise.

2. If he is so related to any person having or claiming such interest that he would, by reason of such relationship, be disqualified as a juror; but the disqualification on this ground ceases unless the objection is made at the first hearing of the matter before him.

3. If he or his wife is a party or a subscribing witness to any deed of conveyance, testamentary paper or nuncupative will; but this disqualification ceases when such deed, testamentary paper, or will has been finally admitted to or refused probate by another clerk, or before the judge of the superior court.

4. If he or his wife is named as executor or trustee in any testamentary or other paper; but this disqualification ceases when the will or other paper is finally admitted to or refused probate by another clerk, or before the judge of the superior court.

5. If he shall renounce the executorship and endorse the same on the will or on some paper attached thereto, before it is propounded for probate, in which case the renunciation must be recorded with the will if admitted to probate. (Rev., s. 902; Code, s. 104; C. C. P., s. 419; 1871-2, c. 196; 1935, c. 110, s. 1; C. S. 939.)

§ 2-18. Prior orders and judgments validated.—In all cases where the Clerk was disqualified to act in relation to a civil action, in which the procedure as prescribed and set out by §§ 2-19, 2-20 and 2-21 was followed, all Orders and Judgments rendered in such civil actions by the Judge or other Clerk are hereby validated as fully and to the same extent as if this section had at such time been in force; Provided, this section shall not apply in such cases if an action has prior to March 20, 1935, been instituted attacking such Order or Judgment. (1935, c. 110, s. 3.)

§ 2-19. Waiver of disqualification.—The parties may waive the disqualification specified in subdivisions one, two, three and five of section 2-17 and upon filing in the office such waiver in writing, the clerk shall act as in other cases. (Rev., s. 903; Code, s. 105; C. C. P., s. 420; C. S. 940.)

§ 2-20. Disqualification unwaived; cause removed or judge acts.—When any of the disqualifications specified in this chapter exist, and there is no waiver thereof, or when the disqualification does not permit of waiver, any party in interest may apply to the judge of the district or to the judge holding the courts of such district for an order to remove the proceedings to the clerk of the superior court of an adjoining county in the same district; or may apply to the judge to make and render either in vacation or term time all necessary orders and judgments in any proceeding where the clerk is disqualified, and the judge in such cases is hereby authorized and empowered to make and render any and all necessary orders and judgments as if he had the same original jurisdiction as the clerk over such proceeding. (Rev., s. 904; Code, s. 106; C. C. P., s. 421; 1913, c. 70, s. 1; C. S. 941.)

§ 2-21. Disqualification at time of election; judge acts.—In all cases where the clerk of the superior court is executor, administrator, collector or guardian of any estate at the time of his election to office, in order to enable him to settle such estate, the judge of the superior court mentioned in the preceding section is empowered to make such orders as may be necessary in the settlement of the estate; may audit the accounts or appoint a commissioner to audit the accounts of such executor or administrator, and report to either of said judges for his approval, and when the accounts are so approved, it is his duty to order the proper record to be made by the clerk, and the accounts to be filed in court. (Rev., s. 905; Code, s. 107; 1871-2, c. 197; C. S. 942.)

§ 2-22. Custody of records and property of office.—1. Receipt from Predecessor. — Immediately after he has given bond and qualified, the clerk shall receive from the late clerk of the superior court all the records, books, papers, moneys and property of his office, and give receipts for the same, and if any clerk refuses or fails within a reasonable time after demand to deliver such records, books, papers, moneys and property, he is liable on his official bond for the value thereof.

2. Transfer to Successor; Penalty.—Upon going out of office for any reason, any clerk of the superior, inferior, or criminal court shall transfer and deliver to his successor (or to such person, before his successor in office may be appointed, as the court may designate) all records, documents, papers, and money belonging to the office. And the judge appointing any clerk to a vacancy in the clerkship of the superior court may give to such person an order for the delivery to him, by the person having the custody thereof, of the records, documents, papers and moneys belonging to the office, and he shall deliver the same in obedience to such order. In case any clerk going out of office as aforesaid, or other person having the custody of such records, documents, papers, and money as aforesaid, fails to transfer and deliver them as herein directed, he shall forfeit and pay to the state one thousand dollars, which shall be sued for by the prosecuting officer of that court. (Rev., ss. 906, 907; Code, ss. 81, 124; C. C. P., s. 142; R. C., c. 19, s. 14; C. S. 943.)

§ 2-23. Unperformed duties of outgoing clerk.—1. Performance Secured. — When, upon the death or resignation, removal from office, or at the expiration of his term of office, any clerk has

failed to discharge any of the duties of his office, the court, if practicable, shall cause the same to be performed by another person, who shall receive for such services, and as a compensation therefor, the fees allowed by law to the clerk.

2. Liability on Outgoing Clerk's Bond.—Such portion thereof as may be paid by the county may be recovered by the county, by suit on the official bond of the defaulting clerk, to be brought on the relation of the board of commissioners of the county. (Rev., s. 908; Code, s. 87; R. C., c. 19, s. 19; 1844, c. 5, s. 6; C. S. 944.)

§ 2-24. Location of and attendance at office.—The clerk shall have an office in the courthouse or other place provided by the board of commissioners, in the county town of his county. He shall give due attendance, in person or by deputy, at his office daily, Sundays and holidays excepted, from nine o'clock a. m. to three o'clock p. m., and longer when necessary for the dispatch of business; and personally every Monday for the transaction of probate business, and on each succeeding day till such matters are disposed of; and upon his failure to do so, unless caused by sickness or other urgent necessity or unless leave of absence is obtained by law, he shall forfeit an amount not exceeding two hundred dollars, said amount to be fixed and determined by the resident judge of his district or the judge presiding in said district upon the complaint of any citizen. Provided, however, that the board of county commissioners of each county may fix by order to be entered on their records at what hours of each Saturday of each week, (in no event to be less than three hours nor more than nine hours on said day, holidays excepted) the clerk of the superior court of their respective counties shall attend at his office in person or by assistant or by deputy, and he or his assistant or deputy shall give his attendance accordingly. (Rev., s. 909; Code, ss. 80, 114, 115; C. C. P., s. 141; 1871-2, c. 136; 1939, c. 82; 1941, c. 329; C. S. 945.)

Local Modification.—Currituck, Moore, Richmond: 1939, c. 82, s. 3.

§ 2-25. Obtaining leave of absence from office.—Upon application of any clerk of the superior court to the judge of the superior court residing in the district in which the clerk resides, the judge of the superior court riding the district or judge of superior court presiding in the county of said clerk, showing good and sufficient reason for the clerk to absent himself from his office, the judge may issue an order allowing him to absent himself from his office for such time as the judge may deem proper. But he shall at all times leave a competent deputy in charge of his office during his absence. The order of the judge granting leave of absence shall be filed and recorded in the office of the clerk of the county in which the clerk resides. (Rev., s. 910; 1903, c. 467; 1935, c. 348; C. S. 946.)

§ 2-26. Fees of clerk of superior court.—The fees of the clerk of the superior court shall be the following, and no other, namely:

Advertising and selling under mortgage in lieu of bond, two dollars for sales of real estate and one dollar for sales of personal property.

Affidavit, including jurat and certificate, twenty-five cents.

Appeal from justice of the peace, fifty cents.

Appeal from the clerk to the judge, fifty cents.

Appeal to the supreme court, including certificate and seal, two dollars.

Appointing and qualifying justices of the peace, to be paid by the justice, twenty-five cents.

Apprenticing infant, including indenture, one dollar.

Attachment, order in, fifty cents.

Auditing account of receiver, executor, administrator, guardian or other trustee, required to render accounts, if not over three hundred dollars, fifty cents; if over three hundred dollars and not exceeding one thousand dollars, eighty cents; if over one thousand dollars, one dollar.

Auditing final settlement of receiver, executor, administrator, guardian or other trustee, required to render accounts, one-half of one per cent of the amount on which commissions are allowed to such trustee, for all sums not exceeding one thousand dollars, and for all sums over one thousand dollars; one-tenth of one per cent on such excess; but such fees shall not exceed fifteen dollars, unless there be a contest, when the clerk shall have one per cent on the said excess over one thousand dollars; but in no instance shall his fees exceed twenty-five dollars.

Auditing and recording the final account of commissioners appointed to sell real estate, one-half of the fees allowed for auditing and recording final accounts of executors.

Bill of costs, preparing same, twenty-five cents.

Bond or undertaking, including justification, sixty cents.

Canceling notice of lis pendens, twenty-five cents.

Capias, each defendant, one dollar.

Capias, when the defendant is not arrested thereunder, shall be such sum as the commissioners of his county may allow.

Caveat to a will, entering and docketing same for trial, one dollar.

Certificate, except where it is a charge against the county, twenty-five cents; and where it is a charge against the county, the fee shall be such sum not exceeding twenty-five cents as the board of commissioners shall allow.

Commission, issuing, seventy-five cents.

Continuance, thirty cents.

Docketing ex parte proceedings, fifty cents.

Docketing indictment, twenty-five cents.

Docketing liens, twenty-five cents.

Docketing judgment, twenty-five cents.

Docketing summons, twenty-five cents.

Execution and return thereon, including docketing, fifty cents; and certifying return to clerk of any county where judgment is docketed, twenty-five cents.

Filing all papers, ten cents for each case.

Guardian, appointment of, including taking bond and justification, one dollar.

Impaneling jury, ten cents.

Indexing judgment on cross-index book, ten cents for the judgment, regardless of number of parties.

Indexing liens on lien book, ten cents.

Indictment, each defendant in the bill, sixty cents.

Injunction, order for, including taking bond or undertaking and justification, one dollar.

Judgment, final, in term-time, civil action, one dollar.

Judgment, final, against each defendant, in criminal actions, one dollar.

Judgment, final, before the clerk, fifty cents.

Judgment by confession, without notice, all services, three dollars.

Judgment in favor of widow for year's support, fifty cents.

Judgment nisi, entering against a defaulting witness or juror, on bail bond or recognizance, twenty-five cents.

Juror ticket, including jurat, ten cents.

Justification of sureties on any bond or undertaking, except as otherwise provided, fifty cents.

Letters of administration, including bond and justification of sureties, one dollar.

Motions, entry and record of, twenty-five cents.

Notices, twenty-five cents, and for each name over one in same paper, ten cents additional.

Notifying solicitors of removal of guardian. one dollar.

Order enlarging time for pleading, and all interlocutory orders, in special proceedings and civil actions, twenty-five cents.

Order of arrest, one dollar.

Order for appearance of apprentice, on complaint of master, one dollar; for appearance of master on complaint of apprentice, one dollar.

Order for the registration of a deed or other writing, which has been proved or acknowledged in another county, or before a judge, justice, notary or other officer, except a chattel mortgage, twenty-five cents.

Postage, actual amount necessarily expended.

Presentment, each person presented, ten cents.

Probate of a deed or other writing, proved by a witness, including the certificate, twenty-five cents.

Probate of a deed or other writing, acknowledged by the signers or makers, including all except married women, who acknowledged at the same time, with the certificate thereof, twenty-five cents.

Probate of a deed, or other writing, executed by a married woman, for her acknowledgment and private examination, with the certificate thereof, twenty-five cents.

Probate of limited partnership, fifty cents.

Probate of will in common form and letters testamentary, one dollar.

Qualifying justice of the peace, to be paid by the justice, twenty-five cents.

Qualifying members of the board of commissioners, to be paid by the commissioners, twenty-five cents.

Recognizance, each party where no bond is taken, twenty-five cents.

Recording and copying papers, per copy-sheet, ten cents.

Recording appointment of process agent for nonresident, fifty cents.

Recording names, qualification, and expiration of term of office of justices of the peace, five cents for each name.

Registering trained nurses, including certificate of registration, fifty cents.

Recording certificates of incorporation of corporations, three dollars.

Recording names of jurors as required by law, five cents for each name.

Resignation of guardian, relinquishment of right to administer, or to qualify as executor, receiving, filing and noting same, twenty-five cents.

Seal of office, when necessary, twenty-five cents.

Subpœna, each name, fifteen cents.

Summons, in civil actions or special proceedings, including all the names therein, one dollar, and for every copy thereof, twenty-five cents.

Transcript of judgment, twenty-five cents.

Transcript of any matter of record or papers on file, per copy-sheet, ten cents.

Trial of any cause, or stating an account, as referee, pursuant to order of the judge, such allowance as the judge may make.

Witness ticket, including jurat, ten cents.

Five per cent commissions shall be allowed the clerk on all fines, penalties, amercements and taxes paid the clerk by virtue of his office; and three per cent on all sums of money not exceeding five hundred dollars placed in his hands by virtue of his office, except on judgments, decrees, executions, and deposits under article three of chapter fifty-four; and upon the excess over five hundred dollars of such sums, one per cent.

Provided, that in such counties of the State where the clerk of superior court is now or may hereafter be paid a salary in lieu of fees, that such clerk of superior court shall not charge and collect a fee for juror ticket, including jurat, or witness ticket, including jurat, as herein prescribed. (Rev., s. 2773; Code, ss. 229, 1789, 3109, 3739; 1885, c. 199; 1893, c. 52, s. 4; 1897, c. 68; 1899, c. 17, s. 2; 1899, c. 247, s. 3; 1899, cc. 578, 261; 1901, c. 121; 1901, c. 614, s. 3; 1903, c. 359, s. 6; 1905, c. 360, s. 3; 1917, c. 198, s. 6; 1919, c. 329; 1927, c. 247; 1929, cc. 45, 214; 1933, c. 91; C. S. 3903.)

Local Modification.—Franklin: 1927, c. 137; Harnett: 1933, c. 75; Northampton: 1931, c. 11; Wilson: 1935, c. 241.

§ 2-27. Local modifications as to clerk's fees.—For the probate of a short-form lien bond, or lien bond and chattel mortgage combined, the clerk shall receive ten cents in the following counties: Alamance, Alleghany, Ashe, Beauford, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Greene, Harnett, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Union, Vance, Warren, Washington, Watauga, Wayne, Wilson. (Rev., s. 2773; 1907, c. 717; 1909, c. 502; P. L. 1917, c. 182; 1933, c. 84; C. S. 3904.)

In Anson, this fee is twenty cents. (P. L. 1913, c. 49; C. S. 3904.)

In Bertie county the clerk of the superior court shall collect the sum of fifteen cents for each crop lien or lien bond probated by him for registration in Bertie county, including all services connected therewith. (P. L. 1915, c. 163; C. S. 3904.)

In Forsyth county the clerk shall receive fifteen cents for the probate of a deed or other writing, acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof. He shall also receive fifteen cents for the probate of a deed or other writing, proved by a witness, including the certificate. (P. L. 1913, c. 626; C. S. 3904.)

In Jackson county, in addition to the fees now allowed by law, the clerk shall receive the sum of five dollars for writing up the minutes of each day's session of the superior court of the county, to be paid by the county. (P. L. 1913, c. 182; C. S. 3904.)

In Robeson county the board of county commissioners may make an allowance to the clerk of the superior court for keeping the records of the court and transcribing the minutes, to be paid out of the general county fund. (Rev., s. 2773; C. S. 3904.)

From and after February 27, 1923, it shall be unlawful for the clerks of the superior courts of Vance, Warren, Northampton, Wayne and Bertie counties to charge fees for witness and juror tickets issued by them. (1923, c. 92; C. S. 3904.)

In Mitchell county, the clerk of superior court shall receive double the amount of fees and commissions as provided in § 2-26 of this chapter. (1931, c. 53, s. 1.)

Local Modification.—Harnett: 1935, c. 75.

§ 2-28. Fees for probating and recording federal crop liens and chattel mortgages.—The fee to be charged by the clerk of the superior court for the probate of a federal crop lien or a federal chattel mortgage given to secure a seed and fertilizer loan from the United States government, or crop production loans, live stock loans, and/or other loans made by the regional agriculture credit corporation of Raleigh, North Carolina and/or production credit associations in North Carolina as provided for by the Farm Credit Act of Congress of one thousand nine hundred and thirty-three, or the North Carolina Rural Rehabilitation Corporation or other relief organizations by relief clients, shall be limited to twenty-five cents for each probate; and the fee of the register of deeds for registering said instrument shall be limited to fifty cents for each lien or chattel mortgage: Provided that this section shall not apply to Brunswick, Caswell, Harnett, Haywood, Hertford, Macon, Moore, Person, Polk, Richmond, Stokes, Surry and Wilson counties. (1933, cc. 160, 176, 266, 281, 326, 393, 429, 479, 514; 1935, cc. 120, 260, 369; 1939, c. 211.)

Local Modification.—Gates, Jones, Moore, Perquimans, Richmond, Rowan, Wilson: 1935, c. 120, s. 2; Stanly: 1935, c. 260; Wilson: 1935, c. 388.

§ 2-29. Advance court costs.—The clerk of the superior court is hereby authorized to collect as advance court cost on all suits started in any court the sum of seven dollars and fifty cents ($7.50) for one defendant, and one dollar and a half for each additional defendant, which fees shall include any process tax or tax on suits and sheriff fees. (1935, c. 379, s. 2.)

Local Modification.—Catawba: 1939, c. 62.

§ 2-30. Advance costs on appeal from justice of the peace.—The clerk of the superior court is authorized to collect from the appellant in all cases in appeals from justices of the peace court to the superior court four dollars as advance cost to be applied on the court cost including the process tax. (1935, c. 379, s. 1.)

§ 2-31. Fee for cross-indexing names of parties.—The fee for cross-indexing the name of each party to any action or proceeding required to be cross-indexed by law shall be ten cents for each name entered upon the cross-index records. (1935, c. 379, s. 3.)

§ 2-32. Fee for docketing judgment.—The fee for docketing any judgment shall be ten cents per copy sheet, minimum charge twenty-five cents. (1935, c. 379, s. 4.)

§ 2-33. Fee for auditing annual accounts of receivers, executors, etc.—For auditing annual accounts of receivers, executors, guardians, administrators, administrators with will annexed, trustees for incompetents, trustees under wills, surviving partner, where the total receipts and disbursements do not exceed eleven thousand dollars, the fee shall be twenty-five cents for each one hundred dollars on receipts and disbursements or a fraction thereof through one thousand dollars. If the receipts and disbursements exceed one thousand dollars, the fee shall be for the receipts and disbursements above one thousand dollars five cents on each one hundred dollars or a fraction thereof through eleven thousand dollars. When the receipts and disbursements exceed eleven thousand dollars, the fee for the amount of same above eleven thousand dollars shall be one-tenth of one per cent on the amount of receipts and disbursements in excess of eleven thousand dollars, but in no event shall the fee be less than one dollar nor more than twenty-five dollars. (1935, c. 379, s. 5.)

§ 2-34. Fee for auditing final accounts of receivers, executors, etc.—For auditing final accounts of receivers, executors, administrators, administrators with will annexed, collectors, trustees for incompetents, trustees under wills, guardians or surviving partner, the fee shall be fifty cents for each one hundred dollars or a fraction thereof of the total receipts and disbursements through one thousand dollars, and ten cents per each one hundred dollars or a fraction thereof on everything above one thousand dollars, but in no event shall the fee be less than two dollars: Provided, that when stocks, bonds or any other personal property is delivered to any heir or distributee without converting the same into cash, these fees shall be computed and charged on the same just as though they had been converted into cash; the value of said stocks, bonds, etc., to be fixed as of the date of death, or qualification of the fiduciary. (1935, c. 379, s. 6.)

Local Modification.—Beaufort: 1939, c. 103.

§ 2-35. Fee for auditing final accounts of trustees, etc., selling real estate under foreclosure proceedings.—For auditing final accounts of trustees, mortgagees, commissioners, or other persons, firms, or corporations selling real estate under foreclosure proceeding required to render such final report, the fee shall be twenty-five cents on each one hundred dollars of receipts and disbursements through one thousand dollars and ten cents on each one hundred dollars for everything above one thousand dollars, provided that the minimum fee shall be one dollar and fifty cents and the

maximum fee shall not exceed twenty-five dollars. (1935, c. 379, s. 7.)

§ 2-36. Certain counties not subject to sections 2-29—2-35.—Sections 2-29—2-35 shall not apply to the counties of: Cabarrus, Chowan, Cleveland, Columbus, Franklin, Iredell, Lincoln, Martin, Mecklenburg, Montgomery, Moore, New Hanover, Pitt, Richmond, Robeson, Rockingham, Surry, Union, Jackson, Swain, Buncombe, Rowan, Orange, Avery, Wayne, Nash, Wilson, Bladen, Cumberland, Ashe, Edgecombe, Tyrrell, Person, Duplin, Vance, Davie, Guilford, Onslow, Washington, Alleghany, Haywood, Davidson, Burke, Stokes, Franklin, Catawba, Lenoir, Jones, Pamlico, Caldwell, Caswell. Provided, that section 2-29 shall apply to Iredell county. (1935, c. 379, s. 8; 1935, c. 494; 1937, cc. 148, 149, 290.)

§ 2-37. To keep fee bill posted.—Every clerk shall keep posted in his office in some conspicuous place the fee bill, for public inspection and reference, under a penalty of one hundred dollars for such neglect, to be paid to any person who will sue for same. (Rev., s. 2774; Code, s. 3740; C. S. 947.)

§ 2-38. To furnish blank process, bonds and undertakings.—Clerks of courts shall furnish to parties printed copies of the formal parts of all process required to be issued by them, with convenient blank spaces for the insertion of written matter; and also the blank forms of such bonds and undertakings as are required to be taken by them. (Rev., s. 911; Code, s. 3761; C. C. P., s. 559; 1868-9, c. 279, s. 558; C. S. 948.)

§ 2-39. To file papers in proceedings.—The clerk must file and preserve all papers in proceedings before him, or belonging to the court; and shall keep the papers in each action in a separate roll or bundle, and at its termination attach them together, properly labeled, and file them in the order of the date of the final judgment. All such papers and the books kept by him belong to, and appertain to, his office, and must be delivered to his successor. (Rev., s. 912; Code, ss. 86, 111; C. C. P., ss. 146, 426; C. S. 949.)

§ 2-40. To keep records of his office; obtaining originals or copies.—He shall keep in bound volumes a complete and faithful record of all his official acts, and give copies thereof to all persons desiring them, on payment of the legal fees. He shall be answerable for all records belonging to his office, and all papers filed in the court, and they shall not be taken from his custody, unless by special order of the court, or on the written consent of the attorneys of record of all the parties; but parties may at all times have copies upon paying the clerk therefor. (Rev., s. 913; Code, s. 82; C. C. P., s. 143; 1868-9, c. 159, s. 4; C. S. 950.)

§ 2-41. To endorse date of issuance on process.—The clerk shall note on all precepts, process and executions the day on which the same shall be issued; and the sheriff or other officer receiving the same for execution shall in like manner note thereon the day on which he shall have received it, and the day of the execution; and every clerk, sheriff or other officer neglecting so to do shall forfeit and pay one hundred dollars. (Rev., s. 914; Code, s. 100; C. S. 951.)

§ 2-42. To keep books; enumeration. — Each clerk shall keep the following books, which shall be open to the inspection of the public during regular office hours:

1. Summons docket, which shall contain a docket of all writs, summonses or other original process issued by him, or returned to his office, which are made returnable to a regular term of the superior court; this docket shall contain a brief note of every proceeding whatever in each action, up to the final judgment inclusive.

2. Judgment docket, which shall contain a note of the substance of every judgment and every proceeding subsequent thereto.

3. Civil issue docket, which shall contain a docket of all issues of fact joined upon the pleadings, and of all other matters for hearing before the judge at a regular term of the court, a copy of which shall be furnished to the judge at the commencement of each term.

4. Cross-index to judgments, which shall contain a direct and reverse alphabetical index of all final judgments in civil actions rendered in the court, with the dates and numbers thereof, and also of all final judgments rendered in other courts and authorized by law to be entered on his judgment docket. Pending the docketing of judgments in the judgment docket and cross-indexing the same as herein provided for, the clerk shall keep a temporary index to all judgments entered in his said court or received in his court from any court for docketing; and he shall immediately index all judgments rendered in his court or received in his court for docketing, and index the names of all parties against whom judgments have been rendered or entered alphabetically in said temporary index, and which temporary index shall be preserved and open to the public until said judgments shall have been docketed in the judgment docket and cross-indexed in the permanent cross-index to judgments, as herein provided for.

5. Cross-index of Parties to Actions.—The clerk shall keep an alphabetical index and cross-index of all parties to all actions and special proceedings. Upon the issuance of summons or commencement of an ex parte proceeding he shall forthwith index and cross-index the names of all parties to such action or proceeding. When an order is made that any new or additional party be brought into an action or proceeding his name shall forthwith be indexed and cross-indexed by the clerk. The index shall be so arranged that beside each name shall appear a reference to the book and page whereon the action or proceeding will be found upon the summons docket, civil issue docket, special proceeding docket, and judgment docket, or such of said dockets as carry reference to said action or proceeding; and immediately upon said action or proceeding being entered upon any of said dockets the clerk shall cause said index to carry reference thereto upon the index and cross-index as to every party.

6. Record of lis pendens, which shall contain the names of the parties to the action, place where such notice, whether formal or in the pleadings, is filed, the object of the action, the date of indexing, and a sufficient description of the land to be affected, and which shall be cross-indexed.

7. Criminal docket, which shall contain a note of every proceeding in each criminal action.

8. Minute docket of superior court, which shall contain a record of all proceedings had in the court during term, in the order in which they occur, and such other entries as the judge may direct to be made therein.

9. Special proceedings docket, which shall contain a docket of all writs, summonses, petitions, or other original process issued by him, or returnable to his office, and not returnable to a regular term; this docket shall contain a brief note of every proceeding, up to the final judgment inclusive.

10. Minute docket of proceedings before clerk, which shall contain a record of all proceedings had before the clerk, in actions or proceedings not returnable to a regular term of the court.

11. Record of wills, which shall contain a record of all wills, with the certificate of probate thereof.

12. Record of appointments, which shall contain a record of appointments of executors, administrators, guardians, and collectors, with revocations of all such appointments; and on which shall be noted all subsequent proceedings relating thereto.

13. Record of orders and decrees, which shall contain a record of all orders and decrees passed in his office, which he is required to make in writing, and not required to be recorded in some other book.

14. Record of accounts, which shall contain a record of accounts, in which must be recorded inventories and annual accounts of executors, administrators, collectors, trustees under assignments for creditors, and guardians, as audited by him from time to time.

15. Record of settlements, which shall contain a record of settlements, in which must be entered the final settlements of executors, administrators, collectors, commissioners, trustees under assignments for creditors, and guardians.

16. Record of jurors, which shall contain a list of all persons who serve as grand, petit, and tales jurors in his court; which shall be properly indexed.

17. Record of justices of the peace, which shall contain a complete list of the justices of the peace of the county, by townships, giving the date of election or appointment, qualification, and expiration of term of office of each; and whenever a vacancy occurs it shall be noted therein. These books shall at all times show a complete list of the justices of the peace of the county and who was the predecessor of each justice and the succession in office.

18. Record of books, which shall contain the date of delivery to each justice of the peace of any dockets, records, and books; and the date of the receipt by him to any justice of the peace, or to the personal representative of a deceased justice of the peace, for any dockets, records, and books returned to him.

19. Cross-index of wills, which shall contain a general alphabetical cross-index of all wills filed or recorded in the office of the clerk of the superior court, and devising real estate or any interest therein, whether such devise appears on the face of said will or not, showing the full name of each devisor, and all devisees as they are given in the will, together with the date of the probate of such will.

20. Cross-index of executors and administrators, which shall contain a general alphabetical cross-index of the appointment of all executors and administrators made by the courts of their county, showing the name of the appointee, the name of the decedent, and date of appointment.

21. Cross-index of guardians, which shall contain a general alphabetical cross-index of the appointment of all guardians made by the courts of their county, showing the name of the guardian, the names of the wards, and date of appointment.

22. Record of fines and penalties, which shall contain an itemized and detailed statement of the respective amounts received by him in the way of fines, penalties and forfeitures, and paid over to the county treasurer.

23. Lien docket, which shall contain a record of all notices of liens filed in his office, properly indexed, showing the names of the lienor and lienee.

24. Record of appointment of receivers, which shall contain a record of all appointments of receivers, and all inventories, reports, and accounts filed by them; which shall be properly indexed.

25. Record of corporations, which shall contain a record of the certificate of incorporation of all corporations charted under general law, with principal office or place of business in his county.

26. Accounts of indigent orphans, which shall contain a record of all receipts from persons for money paid for indigent children.

27. Register of physicians and surgeons, which shall contain a list of the names and places of residence, with date of registration, of all persons registered by him as physicians and surgeons.

28. Register of dentists, which shall contain a registration of certificates of all persons entitled to practice dentistry in his county.

29. Register of chiropodists, which shall contain a list of the names and places of residence, with date of certificate, of all persons registered by him as chiropodists.

30. Register of trained nurses, which shall contain the name, residence and date of registration of all trained nurses duly licensed in his county.

31. Permanent roll of registered voters, which shall contain an alphabetical list by townships of all persons entitled to permanent registration, giving the name and age of each, the name of the person from whom he was descended, unless he himself was a voter on July 1, 1867, or prior thereto, the state in which he was such voter and the date he applied for registration.

32. Lunacy docket, which shall contain a record of all the examinations of persons alleged to be insane, a brief summary of the proceedings, and his findings, and a record of all proceedings in lunacy transmitted to him by justices of the peace.

33. Record of county treasurer's report, which shall contain an itemized statement of all fines and penalties paid to the county treasurer; which said itemized statement of fines and penalties received by the county treasurer shall be by him reported to the clerk on the first day of January, April, July and October, respectively, of each and every year.

34. Nol. pros. with leave record, which shall contain a record of all cases in which a nolle prosequi with leave is entered in criminal actions, with the term of court at which the order is made, and which shall be cross-indexed.

35. Record of permits to purchase weapons, which shall contain the name, date, place of residence, age, former place of residence, etc., of each person, firm or corporation to whom or which a permit is issued to purchase deadly weapons. (Rev., s. 915; Code, ss. 83, 95, 96, 97, 112, 1789; 1887, c. 178, s. 2; 1889, c. 181, s. 4; 1893, c. 52; 1899, c. 1, s. 17; 1899, cc. 82, 110; 1901, c. 2, s. 9; 1901, c. 89, s. 13; 1901, c. 550, s. 3; 1903, c. 51; 1903, c. 359, s. 6; 1905, c. 360, s. 2; 1919, c. 78, s. 7; 1919, cc. 152, 314; 1919, c. 197, s. 4; 1937, c. 93; C. S. 952.)

Local Modification.—Caldwell: Pub. Loc. 1927, c. 43; Durham: 1929, c. 88.

§ 2-43. To notify commissioners of insolvency of surety company in which county officer bonded.—Every clerk of the superior court shall furnish the chairman of the board of county commissioners with all notifications furnished him, in accordance with § 58-117 under the article Fidelity Insurance of the Chapter Insurance, by the insurance commissioner, that any surety company in which any officer of the county is bonded is insolvent or in imminent danger of insolvency. (Rev., 295; C. S. 953.)

Art. 5. Reports.

§ 2-44. List of justices to secretary of state.—The clerk of the superior court of each county in which justices of the peace are not elected by the qualified voters thereof on the first Monday in January preceding each regular session of the general assembly shall certify to the secretary of state a correct list of all justices of the peace in office in his county, the township in which each resides, the term of office of each, time of election or appointment, and when the respective terms of office of each expire. He shall also report the names of those elected or appointed justices of the peace, but who have failed to qualify, and when their terms of office began and the length thereof. (Rev., s. 916; Code, s. 89; 1901, c. 37, s. 2; 1881, c. 326; C. S. 954.)

§ 2-45. List of attorneys-at-law to commissioner of revenue.—It shall be the duty of the Clerk of the Superior Court in each county of the State on or before the first day of May of each year to certify to the Commissioner of Revenue of the State of North Carolina the names and addresses of all Attorneys-at-Law located within the county and engaged in the practice of law. (1931, c. 290.)

Art. 6. Money in Hand; Investments.

§ 2-46. Public funds to be reported to county commissioners.—On the first Monday in December of each and every year, or oftener, if required by order of the board of commissioners or any other lawful authority upon ten days' written notice, clerks of the superior courts shall make an annual report of all public funds which may be in their hands. The report shall be made to the board of county commissioners and addressed to the chairman thereof. It shall give an itemized statement of said funds so held, the date and source from which they were received, the person to whom due, how invested and where, in whose name deposited, the date of any certificate of deposit, the rate of interest the same is drawing, and other evidence of investment of said fund; and it shall include a statement of all funds in their hands by virtue or color of their office, and which may belong to persons or corporations. The report shall be subscribed and verified by the oath of the party making it before any person allowed to administer oaths. (Rev., s. 918; 1891, c. 580; 1931, c. 156; C. S. 956.)

Local Modification.—Bertie: Pub. Loc. 1941, c. 39; Carteret, Union: 1941, c. 316; Forsyth: 1941, c. 109; Wayne: 1939, c. 92; 1941, c. 316.

§ 2-47. Approval, registration, and publication of report.—The board of commissioners shall refer all itemized statements made by the clerks of the superior courts to a special committee of their board, who shall compare the same with the records of the clerk's office from which the report is made and certify the same to the board as correct, and if approved the board shall cause the same to be registered in the office of the register of deeds, in a book to be furnished to said register by the board of county commissioners, which book shall be styled Record of Official Reports, with a proper index of all reports recorded therein, and each original report shall, if approved by the chairman of the board, be endorsed with the word "Approved," the date of approval and the endorsement signed by the chairman, and when recorded by the register of deeds he shall endorse thereon the date of registration, the page of the Record of Official Reports upon which the same is registered, sign the same and file it in his office. The register shall also cause a copy of the report to be published one time in some newspaper of general circulation published in the county of the register and also posted at the courthouse door within twenty days after filing the reports; and if no newspaper is published in the county the posting of the report at the courthouse door shall be a sufficient publication. The cost of publishing the report shall be paid by the county. (Rev., s. 919; Code, s. 90; 1891, c. 580, s. 3; 1893, c. 14, s. 3; 1874-5, c. 151; 1876-7, c. 276; C. S. 957.)

§ 2-48. Report compelled by commissioners.—If any clerk fails to report, or if after a report has been made the board of county commissioners have reason to believe that any report is incorrect, the board shall take legal steps to compel a proper report to be made by suit on the bond of such clerk, or by reporting the fact to the solicitor of the district to which the county of said board may belong for his action. (Rev., s. 920; Code, s. 92; 1891, c. 580, s. 2; 1874-5, c. 151, s. 3; 1876-7, c. 276; C. S. 958.)

§ 2-49. Payment to persons entitled.—The said clerks shall, on or before the first day of January in every year after the statements required in the foregoing sections are made, account with and pay to the persons entitled to receive the same all such balances reported as aforesaid to be in their hands. (Rev., s. 921; Code, s. 1865; R. C., c. 73, s. 2; 1823, c. 1186, s. 2; 1831, c. 3, ss. 1, 3; 1893, c. 14, s. 1; C. S. 959.)

§ 2-50. Unclaimed fees of jurors and witnesses paid to school fund.—All moneys due jurors and witnesses which remain in the hands of any clerk of the superior court on the first day of January after the publication of a third annual report of the said clerk showing the same shall be turned over to the county treasurer for the use of the school fund of the county, and it is the duty of said clerk to indicate in his report any moneys so held by him for a period embracing the two annual reports. (Rev., s. 922; 1891, c. 580, s. 4; 1893, c. 14, s. 3; C. S. 960.)

Local Modification.—Wayne: 1941, c. 70.

§ 2-51. Use by public until claimed. — The money aforesaid, while held by the clerks, shall be paid, on application, to the person entitled thereto; and after it ceases to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner. (Rev., s. 923; Code, s. 1869; R. C., c. 73, s. 6; 1828, c. 41, s. 1; C. S. 961.)

§ 2-52. Payment of sum due minor insurance beneficiary.—Where a minor is named as beneficiary in a policy or policies of insurance issued in a sum not exceeding five hundred ($500.00) dollars, and the insured dies prior to the majority of such beneficiary, any sums due on such policy may be paid to the public guardian or clerk of the superior court of the county wherein such beneficiary resides, to be administered by such clerk or public guardian for the benefit of said minor, and the receipt of the clerk or public guardian in such cases shall be a full and complete discharge of the company or association for any sums due under such policy or policies. (1937, c. 201.)

§ 2-53. Payment of money for indigent children and persons non compos mentis. — When any moneys in the amount of three hundred dollars or less are paid into court for any minor, indigent or needy child or children for whom no one will become guardian, upon satisfactory proof of the necessities of such minor, child or children, the clerk may upon his own motion or order pay out the same in such sum or sums at such time or times as in his judgment is for the best interest of said child or children, or to some discreet and solvent neighbor of said minor, to be used and faithfully applied for the sole benefit and maintenance of such minor indigent and needy child or children. The clerk shall take a receipt from the person to whom any such sum is paid and shall require such person to render an account of the expenditure of the sum or sums so paid, and shall record the receipt and the accounts, if any are rendered by order of the clerk, in a book entitled, Record of Amounts Paid for Indigent Children, and such receipt shall be a valid acquittance for the clerk. In all cases where a minor child is now or may hereafter be the beneficiary of any policy of life insurance and the sum due to said minor child by virtue of any such policy does not exceed three hundred dollars, the insurance company which issued said policy may pay the sum due thereunder to the clerk of the superior court of the county where said minor child resides whose duty it shall be to receive it, and said clerk shall issue and deliver to such insurance company his receipt for the sum so paid, which shall be a complete release and discharge of said company from any and all liability to said minor child under and by virtue of any such policy of insurance. Moneys so paid to said clerk shall be held and disbursed by him in the manner and subject to the limitations provided by this section. This section shall also apply to incompetent or insane persons, and it shall be the duty of any person or corporation having in its possession $300.00 or less for any minor child or indigent child, or incompetent or insane person to pay same in the office of the clerk of the superior court, and the clerk of the superior court is hereby authorized and empowered to disburse the sum thus paid into his office, upon his own motion or order, without the appointment of a guardian. (Rev., s. 924; 1899, c. 82; 1911, c. 29, s. 1; 1919, c. 91; Ex. Sess. 1924, c. 1, s. 1; 1927, c. 76; 1929, c. 15; 1933, c. 363; C. S. 962.)

§ 2-54. Limitation on investment of funds in clerk's hands.—It shall be unlawful for the clerk of the superior court of any county in the State of North Carolina receiving any money by color of his office to apply or invest any of said money except as specifically authorized by law. (1931, c. 281, s. 1.)

Local Modification.—Cleveland: 1933, c. 110.

§ 2-55. Investments prescribed; use of funds in management of lands of infants, incompetents.—The clerk of the superior court of any county in the State may in his discretion invest moneys secured by color of his office or as receiver in any of the following securities:

(a) By loaning the same upon real estate security, such loans not to exceed fifty per cent (50%) of the assessed tax value; and said loans when made to be evidenced by a note, or notes, of the borrower and secured by first mortgage or deed of trust.

(b) United States Government bonds.

(c) United States Government Postal Savings Certificates.

(d) North Carolina State bonds.

(e) North Carolina county or municipal bonds which are approved by the Local Government Commission.

(f) Certificates of deposit for time deposit or savings accounts with any bank or trust company where such protection is furnished as required in § 2-56.

(g) When the clerk of the superior court as receiver or trustee for any infant or non compos mentis shall come into the possession of any lands for the use of such person and it shall be necessary to make investments of the funds of such person to manage or cultivate said lands, the clerk may make such investments as are necessary for said purposes: Provided, the same is approved by the resident judge of the superior court or the judge holding the court of the district. (1931, c. 281, s. 2; 1937, c. 188; 1939, c. 110.)

Local Modification.—Cleveland: 1933, c. 110.

§ 2-56. Securing bank deposits.—It shall be the duty of the clerk of the superior court of any county in the State to require of any bank or trust company, wherein he may deposit money placed with him in trust, a corporate surety bond in an amount sufficient to protect such deposits, but in lieu of such corporate surety bond, the clerk may require such bank to furnish bonds of

the United States Government, North Carolina State bonds, or North Carolina county or municipal bonds which have been approved by the Sinking Fund Commission; provided, however, that to the extent of the amount which may be insured by the federal deposit insurance corporation or other federal agency insuring bank deposits the said insurance shall be deemed and considered ample security, and the clerk of the superior court shall not require corporate surety bond or any of the bonds above specified for that amount of the deposit insured by deposit insurance. (1931, c. 281, s. 3; 1939, c. 86.)

§ 2-57. Inspection of records by local government commission; report to solicitor of mismanagement.—The Local Government Commission, or its successors, is hereby authorized and empowered to inspect the records of any clerk of the superior court in the State for the purpose of ascertaining that such clerk is complying with the requirements of §§ 2-54 to 2-60 and if, in the course of such inspection, it is found that such clerk has failed to comply with the requirements of §§ 2-54 to 2-60, it shall be the duty of the Local Government Commission, or its successors, to report such findings to the solicitor of the district in which the county is located and said solicitor shall proceed to prosecute as hereinafter provided. (1931, c. 281, s. 4; c. 60.)

§ 2-58. Inspection and audit by county auditors or accountants; reports of audits.—It shall be the duty of the County Auditor or County Accountant of any county to inspect and audit the records and accounts of the Clerk of the Superior Court of the county for the purpose of ascertaining that such clerk is complying with the requirements of §§ 2-54 to 2-60 and that such clerk is properly safeguarding and accounting for all funds of every nature and character which have come into his hands by virtue of his office; such audits to be made and a report thereof made by the County Auditor or County Accountant to the board of county commissioners of the county and to the Local Government Commission or such other governmental agency as shall succeed to the rights and duties of the Local Government Commission. (1931, c. 281, ss. 6, 60.)

§ 2-59. Liquidation of present funds within year. — It shall be the duty of the clerk of the superior court of any county in the State, who shall have funds invested other than as provided for in §§ 2-54 to 2-60 to liquidate same within one year from the passage of §§ 2-54 to 2-60: Provided, however, that upon approval of the resident judge of his district, the clerk may extend from time to time, the time for sale or collection of any such investments; that no one extension shall be made to cover a period of more than one year from the time the extension is made. (1931, c. 281, s. 7.)

§ 2-60. Violation of §§ 2-54 to 2-59 a misdemeanor.—The clerk of the superior court of any county in the State who shall have violated the provisions of §§ 2-54 to 2-59 shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of this court. (1931, c. 281, s. 5.)

Chapter 3. Commissioners of Affidavits and Deeds.

Sec.
3-1. Appointment by governor; term; oath.
3-2. Record of appointments; certified copies evidence.
3-3. List of appointments prepared and published by secretary of state.
3-4. Published list conclusive.
3-5. Powers of such commissioners.
3-6. Fees of commissioners of affidavits.
3-7. Powers of clerks of courts in other states.
3-8. Clerks and notaries to take affidavits.

§ 3-1. Appointment by governor; term; oath.—The governor is authorized to appoint and commission one or more commissioners in any foreign country, state or republic, and in such of the states of the United States, or in the District of Columbia, or any of the territories, colonies or dependencies as he may deem expedient, who shall continue in office for two years from the date of their appointment, unless sooner removed by the governor. Before such commissioner proceeds to perform any duty by virtue of this chapter, he shall take and subscribe an oath before a justice of the peace in the city or county in which he resides well and faithfully to execute and perform all the duties of such commissioner, according to the laws of North Carolina; which oath shall be filed in the office of the secretary of state. (Rev., ss. 926, 927; Code, ss. 632, 633; C. S. 963.)

§ 3-2. Record of appointments; certified copies evidence.—It is the duty of the governor to cause to be recorded by the secretary of state the names of the persons who are appointed and qualified as commissioners, and for what state, territory, county, city, or town; and the secretary of state, when the oath of the commissioner is filed in his office, shall forthwith certify the appointment to the several clerks of the superior courts of the state, who shall record the certificate of the secretary at length. All removals of commissioners by the governor, and the names of all commissioners whose commissions have expired by law, and which have not been renewed, shall be recorded and certified in like manner. A certified copy thereof from the clerk, or a certificate of the appointment or removal aforesaid from the secretary of state, shall be sufficient evidence of the appointment or removal of such commissioner. (Rev., s. 928; Code, s. 634; C. S. 964.)

§ 3-3. List of appointments prepared and published by secretary of state.—The secretary of state shall prepare and cause to be printed in each volume of the public laws a list of all persons who since the preceding publication in the public laws have been appointed commissioners

of affidavits and to take the probate of deeds in any foreign country and in the several states and territories of the United States and in the District of Columbia, under this chapter, setting forth the state, territory or district or foreign country for which such persons were appointed and the dates of their respective appointments and term of office; and he shall add to each of said lists a list of all those persons whose appointments have been renewed, revoked, or have resigned, removed or died since the date of the list previously published, as far as the same may be known to him, with the dates of such revocation, resignation, removal or death. (Rev., s. 929; Code, ss. 635, 636, 637, 639; C. S. 965.)

§ 3-4. Published list conclusive.—The list of commissioners so published in any volume of the public laws shall be conclusive evidence in all courts of the appointments therein stated, and of the dates thereof. (Rev., s. 930; Code, s. 638; C. S. 966.)

§ 3-5. Powers of such commissioners.—The commissioners have authority to take the acknowledgment or proof of any deed, mortgage, or other conveyance of lands, tenements, or hereditaments lying in this state, and to take the private examination of married women, parties thereto, or any other writings to be used in this state. Such acknowledgment or proof, taken or made in the manner directed by the laws of this state, and certified by the commissioner, shall have the same force and effect for all purposes as if made or taken before any competent authority in this state. The commissioners also have full power and authority to administer an oath or affirmation to any person willing or desirous to make it before him, to take depositions, and to examine the witnesses under any commission emanating from the courts of this state, relating to any cause depending or to be brought in said courts. Every deposition, affidavit, or affirmation made before him is as valid as if taken before any proper officer in this state. (Rev., ss. 926, 927; Code, ss. 632, 633; C. S. 967.)

§ 3-6. Fees of commissioners of affidavits.—Commissioners of affidavits, and those who are authorized by law to act as such, shall receive the following fees, and no other, namely: for an affidavit taken and certified, forty cents; affixing his official seal, twenty-five cents. (Rev., s. 2796; Code, s. 3741; C. S. 3924.)

§ 3-7. Powers of clerks of courts in other states.—Every clerk of a court of record in any other state has full power as a commissioner of affidavits and deeds as is vested in regularly appointed commissioners of affidavits and deeds for this state. (Rev., s. 931; Code, s. 640; C. S. 968.)

§ 3-8. Clerks and notaries to take affidavits.—The clerks of the supreme and superior courts and notaries public are authorized to take and certify affidavits to be used before any justice of the peace, judge or court of the state; and the affidavits so taken by a clerk shall be certified under the hands of the said clerk, and if to be used out of the county where taken, also under the seal of the court of which they are respectively clerks, and, if by a notary, under his notarial seal. (Rev., s. 925; Code, s. 631; C. S. 969.)

Chapter 4. Common Law.

Sec.
4-1. Common law declared to be in force.

§ 4-1. Common law declared to be in force.—All such parts of the common law as were heretofore in force and use within this state, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this state and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this state. (Rev., s. 932; Code, s. 641; R. C., c. 22; 1715, c. 5, ss. 2, 3; 1778, c. 133; C. S. 970.)

Chapter 5. Contempt.

Sec.
5-1. Contempts enumerated; common law repealed.
5-2. Appeal from judgment of guilty.
5-3. Solicitor or attorney-general to appear for the court.
5-4. Punishment.
5-5. Summary punishment for direct contempt.
5-6. Courts and officers empowered to punish.
5-7. Indirect contempt; order to show cause.
5-8. Acts punishable as for contempt.
5-9. Trial of proceedings in contempt.

§ 5-1. Contempts enumerated; common law repealed.—Any person guilty of any of the following acts may be punished for contempt:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character committed in the presence of any referee or referees, while actually engaged in any trial or hearing pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a

cause, or upon any inquest or other proceeding authorized by law.

3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness, or, when so sworn, the like refusal to answer any legal and proper interrogatory.

7. The publication of grossly inaccurate reports of the proceedings in any court, about any trial, or other matter pending before said court, made with intent to misrepresent or to bring into contempt the said court; but no person can be punished as for a contempt in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court.

8. Misbehavior of any officer of the court in any official transaction.

The several acts, neglects and omissions of duty, malfeasances, misfeasances, and nonfeasances, above specified and described, shall be the only acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances which shall be the subject of contempt of court. And if there are any parts of the common law now in force in this state which recognized other acts, neglects, omissions of duty, malfeasances, misfeasances and nonfeasances besides those specified and described above, the same are hereby repealed and annulled. (Rev., s. 939; Code, s. 648; 1905, c. 449; C. S. 978.)

§ 5-2. Appeal from judgment of guilty.—Any person adjudged guilty of contempt under the preceding section has the right to appeal to the supreme court in the same manner as is provided for appeals in criminal actions, except for the contempts described and defined in subsections one, two, three, and six. Nor shall the right of appeal lie under subsections four and five if such contempt is committed in the presence of the court. (Rev., s. 939; Code, s. 648; 1905, c. 449; C. S. 979.)

§ 5-3. Solicitor or attorney-general to appear for the court.—In all cases where a rule for contempt is issued by any court, referee, or other officer, the solicitor shall appear for the court or other officer issuing the rule, and in case of appeal to the supreme court, the attorney-general shall appear for the court or other officer by whom the rule was issued. (Rev., s. 939; Code, s. 648; 1905, c. 449; C. S. 980.)

§ 5-4. Punishment.—Punishment for contempt for matters set forth in the preceding sections shall be by fine not to exceed two hundred and fifty dollars, or imprisonment not to exceed thirty days, or both, in the discretion of the court. (Rev., s. 940; Code, s. 649; C. S. 981.)

§ 5-5. Summary punishment for direct contempt.—Contempt committed in the immediate view and presence of the court may be punished summarily, but the court shall cause the particulars of the offense to be specified on the record, and a copy of the same to be attached to every committal, attachment or process in the nature of an execution founded on such judgment or order. (Rev., s. 941; Code, s. 650; C. S. 982.)

§ 5-6. Courts and officers empowered to punish.—Every justice of the peace, referee, commissioner, clerk of the superior court, inferior court, criminal court, or judge of the superior court, or justice of the supreme court, or board of commissioners of each county, or the utilities commission, has power to punish for contempt while sitting for the trial of causes or engaged in official duties. (Rev., s. 942; Code, ss. 651, 652; 1933, c. 134, s. 8; 1941, c. 97; C. S. 983.)

§ 5-7. Indirect contempt; order to show cause.—When the contempt is not committed in the immediate presence of the court, or so near as to interrupt its business, proceedings thereupon shall be by an order directing the offender to appear, within reasonable time, and show cause why he should not be attached for contempt. At the time specified in the order the person charged with the contempt may appear and answer, and, if he fail to appear and show good cause why he should not be attached for the contempt charged, he shall be punished as provided in this chapter. (Rev., s. 943; Code, s. 653; C. S. 984.)

§ 5-8. Acts punishable as for contempt.—Every court of record has power to punish as for contempt when the act complained of was such as tended to defeat, impair, impede, or prejudice the rights or remedies of a party to an action then pending in court—

1. Any clerk, sheriff, register, solicitor, attorney, counselor, coroner, constable, referee, or any other person in any manner selected or appointed to perform any ministerial or judicial service, for any neglect or violation of duty or any misconduct by which the rights or remedies of any party in a cause or matter pending in such court may be defeated, impaired, delayed, or prejudiced, for disobedience of any lawful order of any court or judge, or any deceit or abuse of any process or order of any such court or judge.

2. Parties to suits, attorneys, and all other persons for the nonpayment of any sum of money ordered by such court, in cases where execution cannot be awarded for the collection of the same.

3. All persons for assuming to be officers, attorneys or counselors of the court, and acting as such without authority, for receiving any property or person which may be in custody of any officer by virtue of any order or process of the court, for unlawfully detaining any witness or party to any suit, while going to, remaining at, or returning from the court where the same may be set for trial, or for the unlawful interference with the proceedings in any action.

4. All persons summoned as witnesses in refusing or neglecting to obey such summons to attend, be sworn, or answer, as such witness.

5. Parties summoned as jurors for impropriety, conversing with parties or others in relation to an action to be tried at such court or receiving communication therefrom.

6. All inferior magistrates, officers and tribunals for disobedience of any lawful order of the court, or for proceeding in any matter or cause contrary to law, after the same shall have been removed from their jurisdiction.

7. All other cases where attachments and proceedings as for contempt have been heretofore adopted and practiced in courts of record in this state to enforce the civil remedies or protect the rights of any party to an action. (Rev., s. 944; Code, ss. 654, 656; C. S. 985.)

§ 5-9. Trial of proceedings in contempt.—Proceedings as for contempt shall be prosecuted and carried on as provided in provisional remedies. In all proceedings for contempt and in proceedings as for contempt, the judge or other judicial officer who issues the rule or notice to the respondent may make the same returnable before some other judge or judicial officer. When the personal conduct of the judge or other judicial officer or his fitness to hold his judicial position is involved, it is his duty to make the rule or notice returnable before some other judge or officer. Nothing herein contained shall apply to any act or conduct committed in the presence of the court and tending to hinder or delay the due administration of the law, nor to proceedings for the disobedience of a judicial order rendered in any pending action. (Rev., s. 945; Code, s. 655; 1915, c. 4; C. S. 986.)

Chapter 6. Costs.

Art. 1. Generally.

Sec.
6-1. Items allowed as costs.
6-2. Summary judgment for official fees.
6-3. Sureties on prosecution bonds liable for costs.
6-4. Execution for unpaid fees; itemized bill of costs to be annexed.
6-5. Jurors' tax fees.
6-6. In criminal cases, not demandable in advance.
6-7. Clerk to state in detail in entry of judgment.
6-8. Clerk to itemize bills of criminal costs; approval of solicitor.
6-9. Justice required to itemize costs.
6-10. Justice of the peace refusing to furnish bill of costs.
6-11. Bills of costs open to the public.
6-12. Clerks to tax solicitors fees; paid to school fund.

Art. 2. When State Liable for Costs.

6-13. Civil actions by the state; joinder of private party.
6-14. Civil action by and against state officers.
6-15. Actions by state for private persons, etc.
6-16. Costs of county in certain bribery prosecutions to be a charge against state.
6-17. Costs of state on appeals to federal courts.

Art. 3. Civil Actions and Proceedings.

6-18. When costs allowed as of course to plaintiff.
6-19. When costs allowed as of course to defendant.
6-20. Costs allowed or not, in discretion of court.
6-21. Costs allowed either party or apportioned in discretion of court.
6-22. Petitioner to pay costs in certain cases.
6-23. Defendant unreasonably defending after notice of no personal claim to pay costs.
6-24. Suits in forma pauperis; no costs unless recovery.
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Art. 9. Criminal Costs before Justices, Mayors, County or Recorder's Courts.

6-64. Liability for criminal costs before justice, mayor, county or recorder's court.
6-65. Imprisonment of defendant for nonpayment of fine and costs.

Art. 1. Generally.

§ 6-1. Items allowed as costs.—To either party for whom judgment is given there shall be allowed as costs his actual disbursements for fees to the officers, witnesses, and other persons entitled to receive the same. (Rev., s. 1249; Code, s. 528; C. S. 1225.)

§ 6-2. Summary judgment for official fees.—If any officer, to whom fees are payable by any person, fails to receive them at the time the service is performed, he may have judgment therefor on motion to the court in which the action is or was pending, upon twenty days' notice to the person to be charged, at any time within one year after the termination of the action in which the same was performed. If the motion for judgment be in behalf of the clerk of the superior court, it shall be made to the judge of the court in or out of term. (Rev., s. 1250; Code, s. 3760; 1868-9, c. 279, s. 561; C. S. 1226.)

§ 6-3. Sureties on prosecution bonds liable for costs.—When an action is brought in any court in which security is given for the prosecution thereof, or when any case is brought up to a court by an appeal or otherwise, in which security for the prosecution of the suit has been given, and judgment is rendered against the plaintiff for the costs of the defendant, the appellate court shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety. (Rev., s. 1251; Code, s. 543; R. C., c. 31, s. 126; R. S., c. 31, s. 133; 1831, c. 46; 1913, c. 189, s. 1; C. S. 1227.)

§ 6-4. Execution for unpaid fees; itemized bill of costs to be annexed. — The clerks of the supreme, superior and criminal courts, where suits are determined and the fees are not paid by the party from whom they are due, shall sue out executions, directed to the sheriff of any county in the state, who shall levy them as in other cases; and to the said execution shall be annexed a bill of costs, written in words so as plainly to show each item of costs and on what account it is taxed; and all executions for costs, issuing without such a bill annexed, shall be deemed irregular, and may be set aside as to the costs, at the return term, at the instance of him against whom it is issued. (Rev., s. 1252; Code, s. 3762; R. C., c. 102, s. 24; C. S. 1228.)

§ 6-5. Jurors' tax fees.—On every indictment or criminal proceeding, tried or otherwise disposed of in the superior or criminal courts, the party convicted, or adjudged to pay the costs, shall pay a tax of four dollars. In every civil action in any court of record the party adjudged to pay the costs shall pay a tax of five dollars; but this tax shall not be charged unless a jury shall be impaneled. Said tax fees shall be charged by the clerk in the bill of costs, and collected by the sheriff, and by him paid into the county treasury. And the fund thus raised in any county shall be set apart for the payment of the jurors attending the courts thereof. (Rev., s. 1253; Code, s. 732; R. C., c. 28; 1830, c. 1; 1879, c. 325; 1881, c. 249; 1905, c. 348; 1909, c. 1; 1919, c. 319; C. S. 1229.)

Local Modification.—Harnett: 1933, c. 75, s. 1(c); Wayne: 1927, c. 156; 1937, c. 120; 1941, c. 88.

§ 6-6. In criminal cases, not demandable in advance.—In all cases of criminal complaints before justices of the supreme court, judges of the superior and criminal courts, justices of the peace and other magistrates having jurisdiction of such complaints, the officers entitled by law to receive fees for issuing or executing process are not entitled to demand them in advance. Such officers shall indorse the amounts of their respective fees on every process issued or executed by them, and return the same to the court to which it is returnable. (Rev., s. 1254; Code, s. 1173; 1868-9, c. 178, subch. 3, s. 40; C. S. 1230.)

§ 6-7. Clerk to state in detail in entry of judgment.—The clerk shall insert in the entry of judgment the allowances for costs allowed by law, and the necessary disbursements, including the fees of officers and witnesses, and the reasonable compensation of referees and commissioners in taking depositions. The disbursements shall be stated in detail. When it is necessary to adjust costs in any interlocutory proceedings, or in any special proceedings, the same shall be adjusted by the clerk of the court to which the proceedings were returned, except in those matters in which the allowance is required to be made by the judge. (Rev., s. 1255; Code, s. 532; C. S. 1231.)

§ 6-8. Clerk to itemize bills of criminal costs; approval of solicitor.—It is the duty of the clerks of the several courts of record, at each term of the court, to make up an itemized statement of the bill of costs in every criminal action tried or otherwise disposed of at said term, which shall be signed by the clerk and approved by the solicitor. (Rev., s. 1256; Code, s. 733; 1873-4, c. 116; 1879, c. 264; C. S. 1232.)

Local Modification.—Harnett: 1933, c. 75, s. 3.

§ 6-9. Justice required to itemize costs.—In all trials before justices of the peace any party, plaintiff or defendant, may demand of the justice of the peace before whom the trial is held an itemized statement of the costs of the action. Upon such demand it shall be the duty of the justice to furnish the statement demanded. No person shall be compelled to pay any cost in any trial before a justice of the peace until an itemized state-

ment of the costs has been made out and given to the party charged. It shall be the duty of the justice to insert in the entry of the judgment in every criminal action tried or otherwise disposed of by him a detailed statement of the different items of cost, and to whom due. (Rev., ss. 1257, 2789; Code, s. 734; 1887, c. 297; C. S. 1233.)

§ 6-10. Justice of the peace refusing to furnish bill of costs.—If any justice of the peace before whom any trial is held shall refuse to furnish an itemized bill of costs, when demanded by the plaintiff or defendant, he shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court. (Rev., s. 3588; Code, s. 734; 1887, c. 297; C. S. 1234.)

§ 6-11. Bills of costs open to the public.—Every bill of costs shall at all times be open to the inspection of any person interested therein. (Rev., s. 1258; Code, s. 735; 1873-4, c. 116; C. S. 1235.)

§ 6-12. Clerks to tax solicitors fees; paid to school fund.—The clerks of the superior courts of the several counties of the state shall, in computing bills of costs in criminal cases, tax against the party convicted the solicitors fees hereinafter set forth. The solicitors fees shall be collected by the clerks and paid into the school funds of the respective counties: Provided, that no such fees which are now required by law to be paid by the county shall be taxed in the bills of costs, nor shall any such fees be taxed in said bills of costs in cases where the defendants are assigned to work on the public roads of the state, or on any county properties.

The solicitors fees are as follows:

(a) For every conviction under an indictment charging a capital crime, whether by plea or verdict, forty dollars.

(b) For perjury, forgery, passing or attempting to pass or sell any forged or counterfeited paper, or evidence of debt; maliciously injuring or attempting to injure any railroad or railroad car, or any person traveling on such railroad car; stealing or obliterating records; maliciously burning or attempting to burn houses or bridges; seduction; slander of an innocent woman, and embezzlement; breaking into houses otherwise than burglariously; assault with intent to commit rape; larcenies from the person; false pretense, and secret assault; in each of the above cases, twenty dollars.

(c) For larceny, receiving stolen goods, frauds, maims, deceits, escapes, and other felonies, fifteen dollars.

(d) For disturbing religious and other public meetings; for all violations of the prohibition law as to intoxicating liquors and narcotics; for fornication and adultery and resisting an officer, twelve dollars.

(e) For all other offenses, eight dollars.

No larger fee than ten dollars shall be taxed for the solicitor in an indictment against the justices of the peace of any county, as justices, when there are more than three justices who are found guilty.

The solicitors of the several judicial districts and criminal courts shall prosecute all penalties and forfeited recognizances entered in their courts respectively, and a sum to be fixed by the court, not to exceed ten per centum of the amount collected upon such penalty or forfeited recognizance, shall be taxed in such prosecutions.

For the performance of the solicitors duties for the appointment of a receiver of an estate of a minor, there shall be taxed a sum to be fixed by the judge, not to exceed ten dollars; for passing on the returns of the receiver in such cases, where the estate of the infant does not exceed five hundred dollars, a sum not to exceed five dollars, and where the estate exceeds five hundred dollars, a sum to be fixed by the judge, not to exceed ten dollars; and in each case such sums taxed shall be paid out of the fund. (Rev., s. 2768; Code, s. 3737; 1873-4, c. 170; 1885, c. 130; 1895, c. 14; 1901, c. 4, s. 5; 1915, c. 86; Ex. Sess. 1920, c. 97; Ex. Sess. 1921, c. 75; 1923, c. 157; C. S. 1235(a), 3891.)

Art. 2. When State Liable for Costs.

§ 6-13. Civil actions by the state; joinder of private party.—In all civil actions prosecuted in the name of the state, by an officer duly authorized for that purpose, the state shall be liable for costs in the same cases and to the same extent as private parties. If a private person be joined with the state as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the state till after execution is issued therefor against such private party and returned unsatisfied. (Rev., s. 1259; Code, s. 536; C. S. 1236.)

§ 6-14. Civil action by and against state officers.—In all civil actions depending, or which may be instituted, by any of the officers of the state, or which have been or shall be instituted against them, when any such action is brought or defended pursuant to the advice of the attorney-general, and the same is decided against such officers, the cost thereof shall be paid by the state treasurer upon the warrant of the auditor for the amount thereof as taxed. (Rev., s. 1260; Code, s. 3373; 1874-5, c. 154; C. S. 1237.)

§ 6-15. Actions by state for private persons, etc.—In an action prosecuted in the name of the state for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the state. (Rev., s. 1261; Code, s. 537; C. S. 1238.)

§ 6-16. Costs of county in certain bribery prosecutions to be a charge against state.—The expenses incurred by any county in investigating and prosecuting any charge of bribery or attempt to bribe any state officer or member of the general assembly within said county, and of receiving bribes by any state officer or member of the general assembly in said county, shall be a charge against the state, and the properly attested claim of the county commissioners shall be paid by the treasurer of the state. (Rev., s. 1262; Code, s. 742; 1868-9, c. 176, s. 6; 1874-5, c. 5; C. S. 1239.)

§ 6-17. Costs of state on appeals to federal courts.—In all cases, whether civil or criminal, to which the state of North Carolina is a party, and which are carried from the courts of this state, or from the district court of the United States, by appeal or writ of error, to the United States circuit court of appeals, or to the supreme court of the United States, and the state is adjudged to

pay the costs, it is the duty of the attorney-general to certify the amount of such costs to the auditor, who shall thereupon issue a warrant for the same, directed to the treasurer, who shall pay the same out of any moneys in the treasury not otherwise appropriated. (Rev., s. 1263; Code, s. 538; 1871-2, c. 26; C. S. 1240.)

Art. 3. Civil Actions and Proceedings.

§ 6-18. When costs allowed as of course to plaintiff.—Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases:

1. In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial.

2. In an action to recover the possession of personal property.

3. In actions of which a court of a justice of the peace has no jurisdiction, unless otherwise provided by law.

4. In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs than damages.

5. When several actions are brought on one bond, recognizance, promissory note, bill of exchange or instrument in writing, or in any other case, for the same cause of action against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election, provided the party or parties proceeded against in such other action or actions were within the state and not secreted at the commencement of the previous action or actions. (Rev., s. 1264; Code, s. 525; 1874-5, c. 119; R. C., c. 31, s. 78; C. S. 1241.)

§ 6-19. When costs allowed as of course to defendant.—Costs shall be allowed as of course to the defendant, in the actions mentioned in the preceding section, unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them. (Rev., s. 1266; Code, ss. 526, 527; C. C. P., s. 277; C. S. 1242.)

§ 6-20. Costs allowed or not, in discretion of court.—In other actions, costs may be allowed or not, in the discretion of the court, unless otherwise provided by law. (Rev., s. 1267; Code, s. 527; C. S. 1243.)

§ 6-21. Costs allowed either party or apportioned in discretion of court.—Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

1. Application for year's support, for widow or children.

2. Caveats to wills.

3. Habeas corpus; and the court shall direct what officer shall tax the costs thereof.

4. In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payment of such costs as may be incurred by the wife, either by the husband or by her from her separate estate, as may be just.

5. Application for the establishment, alteration or discontinuance of a public road, cartway or ferry. The board of county commissioners may order the costs incurred before them paid in their discretion.

6. The compensation of referees and commissioners to take depositions.

7. All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the chapter entitled Partition.

8. In all proceedings under the chapter entitled Drainage, except as therein otherwise provided.

9. In proceedings for reallotment of homestead for increase in value, as provided in the chapter, Civil Procedure.

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow. (Rev., s. 1268; Code, ss. 2134, 2161, 1660, 1294, 2039, 2056, 533, 1422, 1323; 1889, c. 37; 1893, c. 149, s. 6; 1937, c. 143; C. S. 1244.)

Local Modification.—Nash: 1939, c. 46; 1941, c. 18.

§ 6-22. Petitioner to pay costs in certain cases.—The petitioner shall pay the costs in the following proceedings:

1. In petitions for draining or damming lowlands.

2. In petitions for condemnation of water millsites when the petitioner is allowed to erect the mill; but when he is not allowed to erect the mill, the costs shall be paid by the person who is allowed to do so.

3. In petitions for condemnation of land for railroads, street railways, telegraph, telephone or electric power or light companies, or for water supplies for public institutions, or for the use of other quasi-public or municipal corporations; unless in the opinion of the superior court the defendant improperly refused the privilege, use or easement demanded, in which case the costs must be adjudged as to the court may appear equitable and just.

4. When the petition is refused. (Rev., s. 1269; Code, ss. 1299, 1855, 2013; 1893, c. 63; 1903, c. 562; C. S. 1245.)

§ 6-23. Defendant unreasonably defending after notice of no personal claim to pay costs.—In case of a defendant, against whom no personal claim is made, the plaintiff may deliver to such defendant with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects real or personal property, and that no personal claim is made against such defendant. If a defendant on whom such notice is served unreasonably defends the action, he shall pay costs to the plaintiff. (Rev., s. 1270; Code, s. 216; C. S. 1246.)

§ 6-24. Suits in forma pauperis; no costs unless recovery.—When any person sues as a pauper, no officer shall require of him any fee, and he shall recover no costs, except in case of recovery

by him. (Rev., s. 1265; Code, s. 212; 1895, c. 149; 1868-9, c. 96, s. 3; C. S. 1247.)

§ 6-25. Party seeking recovery on usurious contracts; no costs.—No costs shall be recovered by any party, whether plaintiff or defendant, who may endeavor to recover upon any usurious contract. (Rev., s. 1271; 1895, c. 69; C. S. 1248.)

§ 6-26. Costs in special proceedings.—The costs in special proceedings shall be as allowed in civil actions, unless otherwise specially provided. (Rev., s. 1272; Code, s. 541; C. S. 1249.)

§ 6-27. Fees and disbursements in supplemental proceedings.—The court or judge may allow to the judgment creditor, or to any party examined in proceedings supplemental to execution, whether a party to the action or not, witnesses' fees and disbursements. (Rev., s. 1273; Code, s. 499; C. C. P., s. 273; C. S. 1250.)

§ 6-28. Costs of laying off homestead and exemption.—The costs and expenses of appraising and laying off the homestead or personal property exemptions, when the same is made under execution, shall be charged and included in the officer's bill of fees upon such execution or other final process; and when made upon the petition of the owner, they shall be paid by such owner, and the latter costs shall be a lien on said homestead. (Rev., s. 1274; Code, s. 510; C. S. 1251.)

§ 6-29. Costs of reassessment of homestead.—If the superior court at term shall confirm the appraisal or assessment, or shall increase the exemption allowed the debtor or claimant, the levy shall stand only upon the excess remaining, and the creditor shall pay all the costs of the proceeding in court. If the amount allowed the debtor or claimant is reduced, the costs of the proceeding in court shall be paid by the debtor or claimant, and the levy shall cover the excess then remaining. (Rev., s. 1275; Code, s. 521; C. S. 1252.)

§ 6-30. Costs against infant plaintiff; guardian responsible.—When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor. (Rev., s. 1276; Code, s. 534; C. S. 1253.)

§ 6-31. Costs where executor, administrator, trustee of express trust, or person authorized by statute a party.—In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected out of the estate, fund or party represented, unless the court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in such action or defense. And when any claim against a deceased person is referred, the prevailing party shall be entitled to recover the fees of referees and witnesses, and other necessary disbursements, to be taxed according to law. (Rev., s. 1277; Code, s. 535; C. S. 1254.)

§ 6-32. Costs against assignee after action brought.—In actions in which the cause of action becomes by assignment after the commencement of the action, or in any other manner, the property of a person not a party to the action, such person shall be liable for the costs in the same manner as if he were a party. (Rev., s. 1278; Code, s. 539; C. S. 1255.)

Art. 4. Costs on Appeal.

§ 6-33. Costs on appeal generally.—On an appeal from a justice of the peace to a superior court, or from a superior court or a judge thereof to the supreme court, if the appellant recovers judgment in the appellate court, he shall recover the costs of the appellate court and those he ought to have recovered below had the judgment of that court been correct, and also restitution of any costs of the court appealed from which he has paid under the erroneous judgment of such court. If in any court of appeal there is judgment for a new trial, or for a new jury, or if the judgment appealed from is not wholly reversed, but partly affirmed and partly disaffirmed, the costs shall be in the discretion of the appellate court. (Rev., s. 1279; Code, s. 540; C. S. 1256.)

§ 6-34. Costs of transcript on appeal taxed in supreme court.—When an appeal is taken from the superior court to the supreme court, the clerk of the superior court, when he sends up the transcript, shall send therewith an itemized statement of the costs of making up the transcript on appeal, and the costs thereof shall be taxed as a part of the costs of the supreme court. (Rev., s. 1280; 1905, c. 456; C. S. 1257.)

§ 6-35. Costs on appeal from justices of the peace.—1. After an appeal from the judgment of a justice of the peace is filed with a clerk of a superior court, the costs in all subsequent stages shall be as herein provided for actions originally brought to the superior court.

2. If, on appeal from a justice of the peace, judgment is entered for the plaintiff, and he shall not recover on his appeal a greater sum than was recovered before the justice, besides interest accrued since the rendition of the judgment, he shall not recover the costs of the appeal, but shall be liable at the discretion of the court to pay the same. (Rev., ss. 1281, 1282; Code, ss. 542, 566; R. C., c. 31, s. 106; 1794, c. 414, s. 17; C. S. 1258.)

Art. 5. Liability of Counties in Criminal Actions.

§ 6-36. County to pay costs in certain cases; if approved, audited and adjudged.—If there is no prosecutor in a criminal action, and the defendant is acquitted, or convicted and unable to pay the costs, or a nolle prosequi is entered, or judgment arrested, the county shall pay the clerks, sheriffs, constables, justices and witnesses one-half their lawful fees; except in capital cases and in prosecutions for forgery, perjury, or conspiracy, when they shall receive full fees. No county shall pay any such costs unless the same are approved, audited and adjudged against the county as provided in this chapter. (Rev., s. 1283; Code, ss. 733, 739; R. C., c. 28, s. 8; R. S., c. 28, s. 12; 1874-5, c. 247; C. S. 1259.)

Local Modification.—Hertford: 1933, c. 68; Johnston: 1939, c. 183; Swain: 1935, c. 210.

§ 6-37. Local modification as to counties paying costs.—In the following counties the county shall pay one-half the fees specified when "not a

true bill" is found: Alexander, Alleghany, Ashe, Avery, Bertie, Brunswick, Burke, Caldwell, Caswell, Catawba, Chatham, Clay, Craven, Davie, Duplin, Gaston, Granville, Greene, Guilford, Haywood, Henderson, Iredell, Jackson, Johnston, Jones, Lenoir, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Northampton, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Richmond, Robeson, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Wake, Watauga, Wilkes, Yadkin, Yancey. Provided, that Haywood County shall only be liable for one-half fee to clerks, constables and sheriffs serving process. (Rev., s. 1283; Code, ss. 733, 739; 1907, cc. 94, 162, 208, 606, 627, 695; 1909, cc. 50, 107; Pub. Loc. 1911, cc. 76, 167; Pub. Loc. 1915, c. 22; 1931, cc. 135, 187; 1933, c. 366; C. S. 1260.)

In Bladen County, where in a criminal proceeding before the grand jury a "true bill" is not found, the county shall pay one-half fees to clerks, sheriffs, officers, or constables who served any process in such proceeding. (1909, c. 183; C. S. 1260.)

In Brunswick and Catawba counties the county shall not be liable for any part of the costs of justices of the peace, when "not a true bill" is found. (Rev., s. 1283; 1905, c. 598; 1909, c. 107; C. S. 1260.)

In Montgomery County, in criminal cases, where the defendant is convicted in superior court, justices of the peace are entitled to full fees, if any are legally taxed in the bill of costs. (1909, c. 223; C. S. 1260.)

In New Hanover County, in a criminal action, if there is no prosecutor, and the defendant is convicted and serves out his sentence on the public roads of the county, the county shall pay one-half fees as provided in the first sentence of this section. (Rev., s. 1283; 1905, c. 511; C. S. 1260.)

In Northampton county where in criminal proceedings before the recorder's court, the grand jury, or superior court the defendant is found not guilty or a true bill is not found by the grand jury, or the defendant is found guilty and is sentenced by the court to serve on the roads or a term in jail, then the said county shall pay full fees to the sheriff, officer, or constable who served any process in such proceeding. (1937, c. 43.)

§ 6-38. Liability of county when defendant acquitted in supreme court.—If, on appeal to the supreme court in criminal actions, the defendant is successful, the county from which the appeal was taken shall pay one-half the costs of the appeal, and shall also pay all such sums as have been properly expended by the defendant for the transcript of the record and printing done under the rules of the court. (Rev., s. 1284; C. S. 1261.)

§ 6-39. County where offense committed liable for costs.—In all cases where the county is liable to pay costs, that county wherein the offense is alleged to have been committed shall be adjudged to pay them. (Rev., s. 1285; 1889, c. 354; C. S. 1262.)

§ 6-40. Liability of counties, where trial removed from one county to another.—The costs taxed in any case removed from another county for trial shall include the fees and expenses allowed for summoning the special venire, if one is ordered in the case, and the per diem and mileage of jurors who are impaneled to try the case, together with all other costs and expenses of the trial of the case, the amount of which, if not provided for by law, to be fixed by the presiding judge, so as to fully relieve the county in which the trial is had of all costs and expenses thereof. All fines, forfeitures, penalties and amercements imposed or levied in the case shall belong to the county from which the case was removed and be paid to the treasurer of said county. When a prisoner is sent from one county to another to be held for trial, or for any other cause or purpose, the county from which he is sent shall pay his prison expenses, unless the same is collected from him, on or before the first Monday in each month, and upon a failure to do so, it shall be the duty of the county to which he is sent to pay the same to the sheriff or jailer entitled to receive it at the same rate and under the same regulations as its own prison expenses are paid; and the county liable shall repay the same within thirty days after demand, and upon failing to do so the county to which the money is due shall be entitled to recover in the superior court, or, if the amount be within its jurisdiction, the court of justice of the peace of its own county, the amount due, with ten per cent additional, together with eight per cent interest on the sum due; and said courts of said county shall have full jurisdiction to hear, try and determine all actions and proceedings that may be brought for the purpose of enforcing the collection of the same. When the county to which such prisoner has been sent has paid the prison expenses and has made demand therefor upon the county liable as above provided and such demand be not complied with within ten days, the sheriff or jailer shall at once return such prisoner to the county from which such prisoner was sent, and deliver him to the sheriff or jailer thereof. (Rev., s. 1285; 1889, c. 354; 1901, c. 718; C. S. 1263.)

§ 6-41. Statement of costs against county to be filed with commissioners.—In all criminal actions where the county is liable in whole or in part for costs, it is the duty of the clerks of the courts to make out a statement of such costs from the record or docket, within thirty days after the hearing, trial, determination, or other disposition thereof, and file the same with the board of commissioners of the county. (Rev., s. 1286; Code, s. 736; 1873-4, c. 116, s. 3; C. S. 1264.)

§ 6-42. Expenses in conveying prisoner to another county; provision for payment. — When a sheriff or other officer arrests a person under a capias or other legal process, which requires him to have the person arrested before a court or judge of another county, and such sheriff or other officer is obliged to incur expense in the safe delivery of such person by reason of his failing to give bond for his appearance, or if the sheriff or other officer of the county to which the prisoner is to be carried incurs any expense in going for and conveying said prisoner to his county, then in either case the sheriff or other officer shall file with the court or judge issuing the capias or other legal process and with the register of deeds an itemized and sworn account of such expenses, which shall be presented by the

register to the board of commissioners at their next regular meeting, to be audited by them. Such sworn statement shall be received by the said board as prima facie correct. Upon such auditing the board of commissioners shall cause to be issued to such sheriff or other officer an order on the county treasurer for the amount so audited and allowed by them, and shall notify the court or judge of their action, to the end that the amount so allowed shall be taxed in the costs to the use of the county. (Rev., s. 1287; 1885, c. 262; 1901, c. 64; C. S. 1265.)

§ 6-43. Cost of investigating lynchings.—In all cases of investigation and trial of the crime of lynching, the entire cost incurred in the prosecution, unless paid by the person or persons convicted, shall be paid by the county wherein the crime shall have been committed. (Rev., s. 1288; 1893, c. 461, s. 6; C. S. 1266.)

§ 6-44. Costs due credited on taxes due by payee.—Whenever a bill of costs in a criminal action is presented to any board of county commissioners in any county of the state for payment, as provided in this chapter and article, and the said bill is ordered to be paid by the said county commissioners, it shall be the duty of the clerk of said board, before issuing any orders for payment of the sum set out in said bill, to ascertain whether any person to whom any amount is due on said bill of costs, is indebted to the county for taxes, and if said person to whom said order is payable is so indebted, the order shall state in its face, "Payable only on taxes due .....County," and upon presentation of such order to the sheriff or tax collector, said sheriff or tax collector shall give said taxpayer credit for the sum designated in said order, and the said sheriff or tax collector shall be entitled to receive credit for said sum so paid in his settlement for taxes.

It shall be unlawful for any board of county commissioners to pay to any person who is indebted to the county for taxes any money payable out of the revenues of the county on account of costs in a criminal case, which is payable by the county, except as provided in paragraph one above. (1933, c. 245.)

Local Modification.—Alamance: 1935, c. 319, ss. 1, 2; Craven: 1933, c. 426; Granville: 1933, c. 426; Wilson: 1933, c. 501.

Art. 6. Liability of Defendant in Criminal Actions.

§ 6-45. Costs against defendant convicted, confessing, or submitting.—Every person convicted of an offense, or confessing himself guilty, or submitting to the court, shall pay the costs of prosecution. (Rev., s. 1291; Code, s. 1211; R. C., c. 35, s. 46; C. S. 1267.)

§ 6-46. Defendant imprisoned not discharged until costs paid.—If the sentence be that the guilty person be imprisoned for a time certain, and that he pay the costs, there shall be added to it that he shall remain in prison, after the expiration of the fixed time for his imprisonment, until the costs shall be paid, or until he shall otherwise be discharged according to law. (Rev., s. 1292; Code, s. 905; 1868-9, c. 178; C. S. 1268.)

§ 6-47. Judgment confessed; bond given to secure fine and costs.—In cases where a court, mayor, or a justice of the peace permits a defendant convicted of any criminal offense to give bond or confess judgment, with sureties to secure the fine and costs which may be imposed, the acceptance of such security shall be upon the condition that it shall not operate as a discharge of the original judgment against the defendant nor as a discharge of his person from the custody of the law until the fine and costs are paid. (Rev., s. 1293; Code, s. 749; 1885, c. 364; 1879, c. 264; C. S. 1269.)

§ 6-48. Arrest for nonpayment of fine and costs.—In default of payment of such fine and costs, it is the duty of the court at any subsequent term thereof, on motion of the solicitor of the state, to order a capias to issue to the end that such defendant may be again arrested and held for the fine and costs until discharged according to law; and a justice of the peace or mayor may at any subsequent time arrest the defendant and hold him for the fine and costs until discharged according to law. (Rev., s. 1294; Code, s. 750; 1885, c. 364; 1879, c. 264; C. S. 1270.)

Art. 7. Liability of Prosecutor for Costs.

§ 6-49. Prosecutor liable for costs in certain cases; court determines prosecutor.—In all criminal actions, if the defendant is acquitted, nolle prosequi entered, judgment against him arrested, or if the defendant is discharged from arrest for want of probable cause, the costs, including the fees of all witnesses summoned for the accused, whom the judge, court or justice of the peace before whom the trial took place shall certify to have been proper for the defense, shall be paid by the prosecutor, whether marked on the bill or warrant or not, whenever the judge, court or justice is of opinion that there was not reasonable ground for the prosecution, or that it was not required by the public interest. And every judge, court or justice is hereby fully authorized to determine who the prosecutor is at any stage of a criminal proceeding, whether before or after the bill of indictment has been found, or the defendant acquitted: Provided, that no person shall be made a prosecutor after the finding of the bill, unless he shall have been notified to show cause why he should not be made the prosecutor of record. (Rev., s. 1295; Code, s. 737; 1889, c. 34; R. C., c. 35, s. 37; 1799, c. 4, s. 19; 1800, c. 558; 1868-9, c. 277; 1874-5, c. 151; 1879, c. 49; C. S. 1271.)

§ 6-50. Imprisonment of prosecutor for nonpayment of costs, if prosecution frivolous.—Every such prosecutor may be adjudged not only to pay the costs, but he shall also be imprisoned for the nonpayment thereof, when the judge, court, or justice of the peace before whom the case was tried shall adjudge that the prosecution was frivolous or malicious. (Rev., s. 1297; Code, s. 738; R. C., c. 35, s. 37; 1800, c. 558; 1879, c. 49; 1881, c. 176; C. S. 1272.)

Art. 8. Fees of Witnesses.

§ 6-51. Not entitled to fees in advance.—Witnesses are not entitled to receive their fees in advance; but no witness in a civil action or special proceeding, unless summoned on behalf of the state or a municipal corporation, shall be compelled to attend more than one day, if the party by or for whom he was summoned shall, after

one day's attendance, on request and presentation of a certificate, fail or refuse to pay what then may be due for traveling to the place of examination and for the number of days of attendance. (Rev., s. 1298; Code, s. 1368; 1868-9, c. 279, subch. 11, s. 3; C. S. 1273.)

§ 6-52. Fees and mileage of witnesses.—The fees of witnesses, whether attending at a term of court or before the clerk, or a referee, or commissioner, or arbitrator, shall be such amount per day as the board of commissioners of the respective counties may fix, to be not less than one dollar per day and not more than three dollars per day, except in the counties of Union, Nash, Brunswick, Randolph, Haywood, Polk, Surry, Swain, Alleghany, Anson, Graham, Ashe, Dare, Alexander, Cleveland, Clay, Transylvania, Harnett, Stanly, Mitchell, Burke, Franklin, Greene, Johnston, and Henderson, in which counties the fees shall be one dollar per day. They shall also receive mileage, to be fixed by the county commissioners of their respective counties, at a rate not to exceed five cents per mile for every mile necessarily traveled from their respective homes in going to and returning from the place of examination by the ordinary route, and ferriage and toll paid in going and returning. If attending out of their counties, they shall receive one dollar per day and five cents per mile going and returning by the ordinary route, and toll and ferriage expenses: Provided, that witnesses before courts of justices of the peace shall receive fifty cents per day in civil cases, and in criminal actions of which justices of the peace have final jurisdiction, witnesses attending the courts of the justices of the peace, under subpoena, shall receive fifty cents per day, and in hearings before coroners witnesses shall receive fifty cents per day and no mileage; but the party cast shall not pay for more than two witnesses subpoenaed to prove any one material fact, and no prosecutor or complainant shall pay any costs, unless the justice shall find that the prosecution was malicious and frivolous: Provided further, that experts, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may in its discretion order. Witnesses attending before the utilities commission shall receive two dollars per day and five cents per mile traveled by the nearest practicable route: Provided further, that any sheriff, deputy sheriff, chief of police, police, patrolman, state highway patrolman, and/or any other law enforcement officer who receives a salary or compensation for his services from any source or sources other than the collection of fees, shall prove no attendance, and shall receive no fee as a witness for attending at any superior or inferior criminal court sitting within the territorial boundaries in which such officer has authority to make an arrest: Provided, further, that in all criminal cases tried in the state where the crime charged is of the grade of a felony, all witnesses who have been held in jail incommunicado pending the trial of such case shall be paid witness fees for each such day which such witness is so held in jail, in addition to the witness fees provided by law in criminal actions. (Rev., s. 2803; Code, ss. 2860, 3756; 1891, c. 147; 1905, cc. 279, 522; P. L. 1911, c. 402; Ex. Sess. 1920, c. 61, ss. 2, 3; 1921, c. 62, s. 2; 1933, c. 40; 1941, c. 171; C. S. 3893.)

Local Modification.—Alamance: 1935, c. 264; Beaufort: 1931, c. 54; Cleveland, Henderson, McDowell, Polk, Rutherford: 1933, c. 495; Craven: 1935, c. 209; Duplin: 1935, c. 247; Forsyth: 1935, c. 333; Franklin: C. S. 3893; 1935, c. 93; Guilford: 1935, cc. 93, 185; Iredell: 1937 c. 240; New Hanover: 1935, c. 237; Pitt, Richmond, Rowan, Wayne: 1935, c. 93.

§ 6-53. Witness to prove attendance; action for fees.—Every person summoned, who shall attend as a witness in any suit, shall, before the clerk of the court, or before the referee or officer taking the testimony, ascertain by his own oath or affirmation the sum due for traveling to and from court, attendance and ferriage, which shall be certified by the clerk; and on failure of the party, at whose instance such witness was summoned (witnesses for the state and municipal corporations excepted), to pay the same previous to the departure of the witness from court, such witness may at any time sue for and recover the same from the party summoning him; and the certificate of the clerk shall be sufficient evidence of the debt. Where recovery may be had before a justice of the peace on a witness ticket, the justice shall deface it by writing the word judgment, and deliver the same to the person of whom it is recovered. (Rev., s. 1299; Code, s. 1369; R. C., c. 31, s. 73; 1777, c. 115, s. 46; 1796, c. 458; 1868-9, c. 279, subch. 11, ss. 2, 4; C. S. 1274.)

§ 6-54. Witness tickets to be filed; only two witnesses for single fact.—At the court where the cause is finally determined the party recovering judgment shall file in the clerk's office the witness tickets; the amount whereof shall be taxed in the bill of costs, to be levied and recovered for the benefit of said party. The party cast shall not be obliged to pay for more than two witnesses to prove a single fact. (Rev., s. 1300; Code, s. 1370; R. C., c. 31, s. 74; 1783, c. 189, s. 3; 1796, c. 458, s. 2; C. S. 1275.)

Local Modification.—Anson, Buncombe, Columbus, Forsyth, Gaston, Richmond, Robeson, Rutherford, Surry: C. S. 1276.

§ 6-55. Fees of witnesses before jury of view, commissioner, etc.—Witnesses summoned to appear at any survey, or before any jury of view, or before any commissioner, arbitrator, referee, or other person authorized to require their attendance, shall be entitled to the same fees as for similar attendance at the court of the county, and may prove, by their own oath, their attendance, mileage, and ferriage before such person, who is hereby authorized to administer the oath; and when they shall attend on any commission issuing from without the state, they may recover the fees for attendance against the party summoning them, or his agent or attorney directing them to be summoned; and when they shall attend under a commission or authority from any court in this state, the fees for attendance shall be proved as aforesaid, and be certified to the proper court and taxed among the costs of the cause, as if the witness had attended the court; but nevertheless, such fees may be immediately recovered against the party summoning. (Rev., s. 1301; Code, s. 1365; R. C., c. 31, s. 67; 1805, c. 685; 1848, c. 66; 1850, c. 188, s. 3; C. S. 1277.)

§ 6-56. Fees of witnesses before grand jury.—No witness shall receive pay for attendance in a criminal case before a grand jury, unless such witness has been summoned by direction in writ-

ing of the foreman of the grand jury, or of the solicitor prosecuting, addressed to the clerk of the court, commanding him to summon such witness, stating the name of the parties against whom his testimony may be needed, or unless he has been bound or recognized by some justice of the peace to appear before the grand jury. (Rev., s. 1302; Code, s. 743; 1879, c. 264; C. S. 1278.)

Local Modification.—Martin, Moore, Wayne: C. S. 1279.

§ 6-57. Pay of state's witnesses.—All witnesses summoned or recognized in behalf of the state shall be allowed the same pay for their daily attendance, ferriage and mileage as is allowed to witnesses attending in civil suits; and such fees for attendance shall be paid by the defendant only upon conviction, confession or submission; and if the defendant is acquitted on any charge of an inferior nature, or a nolle prosequi be entered thereto, the court shall order the prosecution to pay the cost, if such prosecution appears to have been frivolous or malicious; but if the court is of opinion that such prosecution was neither frivolous nor malicious, and a greater number of witnesses have been summoned than were, in the opinion of the court, necessary to support the charge, the court may, nevertheless, order the prosecutor to pay the attendance of such unnecessary witnesses, if it appear that they were summoned at his special request. (Rev., s. 1296; Code, s. 1204; R. C., c. 35, s. 37; 1800, c. 558, s. 1; 1879, c. 49; 1879, c. 92, s. 3; 1881, c. 176; C. S. 1280.)

§ 6-58. County to pay state's witnesses in certain cases.—Witnesses summoned or recognized on behalf of the state to attend on any criminal prosecution in the superior or criminal courts where the defendant is insolvent, or by law is not bound to pay the same, and the court does not order them to be paid by the prosecutor, shall be paid by the county in which the prosecution was commenced. And in all cases wherein witnesses may be summoned or recognized to attend any such court to give evidence on behalf of the state, and the defendant is discharged, and in cases where the defendant breaks jail and is not afterwards retaken, the court shall order the witnesses to be paid. (Rev., s. 1289; Code, s. 740; R. C., c. 28, s. 9; 1804, c. 665; 1819, c. 1008; 1824, c. 1253; C. S. 1281.)

Local Modification.—Durham, Wilkes: C. S. 1282; Wake: C. S. 1282; 1929, c. 102; 1931, c. 201.

§ 6-59. County to pay defendant's witnesses in certain cases.—When the defendant is acquitted, a nolle prosequi entered, or judgment against him arrested, and it is made to appear to the court, by certificate of counsel or otherwise, that said defendant had witnesses, duly subpoenaed, bound or recognized, in attendance, and that they were necessary for his defense, it is the duty of the court, unless the prosecutor is adjudged to pay the costs, to make and file an order in the cause directing that said witnesses be paid by the county in such manner and to such extent as is authorized by law for the payment of state's witnesses in like cases. (Rev., s. 1290; Code, s. 747; 1879, c. 264; 1881, c. 312; C. S. 1283.)

§ 6-60. Fees of state witnesses; two only in misdemeanors; one fee for day's attendance. — No person shall receive pay as a witness for the state on the trial of any criminal action unless such person was summoned by the clerk under the direction of the solicitor prosecuting in the court in which the action originated, or in which it shall be tried if removed; and no solicitor shall direct that more than two witnesses shall be summoned for the state in any prosecution for a misdemeanor, nor shall any county or defendant in any such prosecution be liable for or taxed with the fees of more than two witnesses, unless the court, upon satisfactory reasons appearing, otherwise directs. And no witness summoned in a criminal action or proceeding shall be paid by the county for attendance in more than one case for any one day; nor shall the county be required to pay any such witness if his attendance shall be taxed in more than one case on the same day. (Rev., s. 1303; Code, s. 744; 1871-2, c. 186; 1879, c. 264; C. S. 1284.)

§ 6-61. On appeal from justice only two witnesses bound over.—When the defendant appeals from the judgment of the justice of the peace, in any criminal action, it is the duty of such justice of the peace to select and bind over on behalf of the state not more than two witnesses, and neither the county nor the defendant shall be liable for the fees of more than two witnesses on such appeal, unless additional witnesses are summoned by order of the appellate court as provided in the preceding section. (Rev., s. 1304; Code, s. 745; 1879, c. 264; C. S. 1285.)

§ 6-62. Solicitor to announce discharge of state's witnesses.—It is the duty of all solicitors prosecuting in the several courts, as each criminal prosecution is disposed of by trial, removal, continuance or otherwise, to call, in open court, and announce the discharge of witnesses for the state, either finally or otherwise as the disposition of the case may require, and thereupon the clerk of the superior court shall enter such announcement of discharge, with the names of the witnesses discharged, in his minutes. (Rev., s. 1305; Code, s. 746; 1879, c. 264; 1881, c. 312; 1935, c. 26; C. S. 1286.)

§ 6-63. Witnesses not paid without certificate; court's discretion.—No county, prosecutor or defendant shall be liable to pay any witness, nor shall his fees be embraced in the bill of costs to be made up as hereinbefore provided, unless his name is certified to the clerk by the solicitor, or included in the order of the court. And the judge or justice may, in his discretion, for satisfactory cause appearing, direct that the witnesses, or any of them, shall receive no pay, or only a portion of the compensation authorized by law. The court, at any time within one year after judgment, may order that any witness may be paid who for any good reason satisfactory to the court failed to have his fees included in the original bill of costs. (Rev., s. 1306; Code, ss. 733, 748; 1879, c. 264; 1881, c. 312; C. S. 1287.)

Art. 9. Criminal Costs before Justices, Mayors, County or Recorder's Courts.

§ 6-64. Liability for criminal costs before justice, mayor, county or recorder's court.—The party convicted in a criminal action or proceeding, within the jurisdiction of a justice of the peace, before

any justice, mayor, county or recorder's court, shall always be adjudged to pay the costs, and if the party charged be acquitted, the complainant shall be adjudged to pay the costs, and may be imprisoned for the nonpayment thereof, if the justice, mayor, county or recorder's court shall adjudge that the prosecution was frivolous or malicious. But in no action or proceeding in which a justice of the peace has final jurisdiction, commenced or tried in a court of a justice of the peace, mayor, county or recorder's court shall the county be liable to pay any costs: any defendants or prosecuting witness shall have the right of appeal to the superior court. (Rev., 1307; Code, s. 895; 1868-9, c. 178; 1879, c. 92, s. 3; 1881, c. 176; 1931, c. 252; C. S. 1288.)

Local Modification.—Jackson: 1933, c. 225; Martin: 1935, c. 20; Swain: 1935, c. 84.

§ 6-65. Imprisonment of defendant for nonpayment of fine and costs.—If the justice sentences the party found by him to be guilty to pay a fine and costs, and the same are not immediately paid, the justice shall commit the guilty person to the county jail until the same are paid, or until he is otherwise discharged according to law. (Rev., s. 1308; Code, s. 904; 1868-9, c. 178, subchap. 4, s. 15; C. S. 1289.)

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SUBCHAPTER I. SUPREME COURT.

Art. 1. Organization and Terms.

§ 7-1. Number of justices.—The supreme court of North Carolina shall consist of a chief justice and six associate justices, to be chosen in the manner now prescribed by law. (Rev., s. 1532; Const., Art. 4, s. 6; 1937, c. 16, s. 1; C. S. 1403.)

§ 7-2. Election and term of office.—The justices of the supreme court shall be elected by the qualified voters of the state, as is provided for the election of members of the general assembly. They shall hold their offices for eight years. (Const., Art. 4, s. 21; C. S. 1404.)

§ 7-3. Salaries of supreme court justices.—Each justice of the supreme court shall be paid an annual salary of seven thousand five hundred dollars, and in lieu of and in commutation for expenses incident to attendance upon the court or amount equal to that allowed to each judge of the superior court, payable in equal monthly installments, as a part of his compensation. (Rev., s. 2764; Code, s. 3733; 1891, c. 193; 1903, c. 805; 1905, c. 208; 1907, cc. 841, 988; 1909, c. 486; 1911, c. 82; 1915, c. 44; 1919, c. 51; 1921, c. 25, s. 2; 1925, c. 214; 1927, c. 69, s. 1; 1939, c. 252; C. S. 3883.)

§ 7-4. Oath of office.—The justices, before they act as such, shall, before the governor or some judicial officer, take and subscribe the oaths appointed for the qualification of public officers, and also an oath of office, which shall be certified by the officer taking the same and delivered to the secretary of state, to be safely kept. (Rev., s. 1533; Code, s. 955; R. C., c. 33, s. 3; 1818, c. 963; C. S. 1405.)

§ 7-5. Name of court; where records to be kept.—The court bears the name and style of The Supreme Court of North Carolina, and is a court of record; and the papers and records belonging to the clerk's office thereof shall be constantly kept within the city of Raleigh. (Rev., s. 1536; Code, s. 954; R. C., c. 33, s. 2; R. S., c. 33, s. 2; 1884, c. 660; 1805, c. 674; 1818, c. 962; 1828, c. 13; C. S. 1406.)

§ 7-6. Quorum.—Four justices shall constitute a quorum for the transaction of the business of the court. (Rev., s. 1534; Code, s. 956; 1889, c. 230; 1937, c. 16, s. 2; C. S. 1407.)

§ 7-7. Terms of court.—There shall be held at the seat of government of the state in each year two terms of the supreme court, commencing on the first Monday in February and the last Monday in August.

The court shall sit at each term until all the business on the docket shall be determined or continued on good cause shown. In case no one of the justices shall attend the term during the first week thereof, at the end of that time the court shall stand adjourned till the next term, and the causes on the docket be continued. (Rev., ss. 1535, 1536; Code, ss. 953, 954; 1901, c. 660; 1887, c. 49; 1881, c. 178; R. C., c. 33, s. 2; R. S., c. 33, s. 2; 1804, c. 660; 1805, c. 674; 1818, c. 932; 1828, c. 13; 1842, c. 15; 1846, cc. 28, 29; C. S. 1408.)

Art. 2. Jurisdiction.

§ 7-8. Original jurisdiction. — The supreme court has original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the general assembly for its action. (Rev., s. 1537; Const., Art. IV, s. 9; C. S. 1409.)

§ 7-9. Procedure to enforce claims against the state.—Any person having any claim against the state may file his complaint in the office of the clerk of the supreme court, setting forth the nature and grounds of his claim. He shall cause a copy of his complaint to be served on the governor, and therein request him to appear on behalf of the state and answer his claim. The copy shall be served at least twenty days before application for relief shall be made to the court. In case of an appearance for the state by the governor, or any other authorized officer, the pleadings and trial shall be conducted in such manner as the court shall direct. If an issue of fact shall be joined on the pleadings, the court shall transfer it to the superior court of some convenient county for trial by a jury, as other issues of fact are directed to be tried, and the judge of the court before whom the trial is had shall certify to the supreme court, at its next term, the verdict and the case, if any, made up and settled as prescribed in cases of appeal to the supreme court. If the state shall not appear in the action by any authorized officer, the court may make up issues and send them for trial, as aforesaid. The supreme court shall in all cases report the facts found, and their recommendation thereon, with the reasons thereof, to the general assembly at its next term. (Rev., s. 1538; Code, s. 948; C. S. 1410.)

§ 7-10. Appellate jurisdiction. — The supreme court has jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference. And the jurisdiction of said court over "issues of fact" and "questions of fact" is the same exercised by it before the adoption of the constitution of one thousand eight hundred and sixty-eight, and the court has the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts. (Rev., s. 1539; Const., Art. IV, s. 8; C. S. 1411.)

§ 7-11. Power to render judgment and issue execution.—In every case the court may render such sentence, judgment and decree as on inspection of the whole record it shall appear to them ought in law to be rendered thereon; and it may at its discretion make the writs of execution which it may issue returnable either to the said court or to the superior court: Provided, that when an execution shall be made returnable as last mentioned, a certificate of the final judgment of the supreme court shall always be transmitted to the superior court aforesaid, and there be recorded: Provided further, that the said superior court may enforce obedience to the execution, and in the event of its not being executed may issue new or further execution or process thereon in the same manner as though the first execution had issued from the said superior court: Provided, also, that in criminal cases the decision of

the supreme court shall be certified to the superior court from which the case was transmitted, which superior court shall proceed to judgment and sentence agreeable to the decision of the supreme court and the laws of the state. (Rev., s. 1542; Code, s. 957; R. C., c. 33, s. 6; 1799, c. 520; 1818, c. 963; 1830, c. 2; 1868-9, c. 962; C. S. 1412.)

§ 7-12. No judgment on interlocutory order; opinion certified.—When an appeal is taken to the supreme court from any interlocutory judgment, the supreme court shall not enter any judgment reversing, affirming or modifying the judgment, order or decree so appealed from, but shall cause their opinion to be certified to the court below, with instructions to proceed upon such order, judgment or decree, or to reverse or modify the same according to said opinion, and the court below shall enter upon its records the opinion at length, and proceed in the cause according to the instructions. (Rev., s. 1544; Code, s. 962; C. S. 1413.)

§ 7-13. Power of amendment and to require further testimony.—The supreme court has power to amend any process, pleading or proceeding either in form or substance for the purpose of furthering justice, on such terms as shall be deemed just at any time before final judgment; and to amend by making proper parties to any case where the court may deem it necessary and proper for the purposes of justice and on such terms as the court may prescribe. And whenever it appears necessary for the purpose of justice, the court may allow and direct the taking of further testimony in any case which may be pending in the court, under such rules as may be prescribed, or may remand the case to the intent that amendments may be made, further testimony taken or other proceedings had in the court below. (Rev., s. 1545; Code, s. 965; R. C., c. 33, s. 17; 1777, c. 115, s. 75; 1785, c. 233; 1792, c. 360; 1831, c. 46; C. S. 1414.)

§ 7-14. Proof of exhibits.—Exhibits or other documents relative to cases pending in the supreme court may be proved by the parol testimony of witnesses to be examined in the court in the same manner and under the same rules as such exhibits or documents may be proved in the superior court, and suitors in the court may have subpœnas to enforce the attendance of witnesses, who shall be liable to the same penalties and actions for nonattendance, and be entitled to the same pay for traveling, ferriage and attendance as witnesses in the superior court: Provided, that witnesses attending the supreme court shall be taxed in the bill of costs and paid by the party on whose behalf they may be summoned. (Rev., s. 1547; Code, s. 963; R. C., c. 33, s. 21; 1820, c. 1070; 1825, c. 1282; 1842, c. 1; C. S. 1415.)

§ 7-15. Opinions and judgments to be in writing.—The justices shall deliver their opinions and judgments in writing, and the clerk shall make no entry upon the records of the court that any cause pending therein is decided, nor give to any person a certificate of such decision, nor issue execution in such suit, until after the opinion of the court shall have been delivered publicly in open court, and a written copy of the same opinion shall have been delivered to the clerk; which shall afterwards be filed among the records of the court and published in the reports of the decisions made by the court: Provided, that the justices shall not be required to write their opinions in full except in cases in which they deem it necessary. (Rev., s. 1548; Code, s. 964; 1893, c. 379, s. 5; R. C., c. 33, s. 16; 1810, c. 785; C. S. 1416.)

§ 7-16. Certificates to superior courts; execution for costs; penalty.—The clerk on the first Monday in each month shall transmit by some safe hand, or by mail, to the clerks of the superior courts certificates of the decisions of the supreme court in cases sent from such courts, which shall have been on file ten days; and thereupon the clerks respectively shall issue execution for the costs incurred in the courts from which the cases were sent; and the clerk of the supreme court shall issue execution for the costs incurred in that court, including all publications in newspapers made in the progress of the cause in that court, and by order of the same, and all postage on letters which concern the transfer of original papers. And if the clerk shall fail for the space of twenty days to perform the duty herein enjoined of transmitting the certificates of decisions, he shall forfeit and pay to the party or parties in whose favor the supreme court shall have decided, one hundred dollars. (Rev., s. 1549; Code, s. 968; 1887, c. 41; R. C., c. 33, s. 21; 1820, c. 1070; 1825, c. 1282; 1842, c. 1, s. 3; C. S. 1417.)

§ 7-17. Appeals dismissed.—Suits and appeals pending in the supreme court may be dismissed on failure to prosecute the same, after a rule obtained for that purpose and served on the plaintiff or appellant, his agent or attorney, at least thirty days before the term next ensuing that of entering the rule; when, if the party shall fail to prosecute his suit or appeal, the court shall, at the election of the adverse party, dismiss the suit or appeal at the costs of the plaintiff or appellant, or proceed to hear and determine it. (Rev., s. 1543; Code, s. 967; R. C., c. 33, s. 20; 1848, c. 28; Supm. Ct. Rules, 15, et seq.; C. S. 1418.)

§ 7-18. Petition to rehear; execution restrained.—A petition to rehear may be filed during the vacation succeeding the term of the court at which the judgment was rendered, or within twenty days after the commencement of the succeeding term, and upon the filing of such petition the chief justice, or any one of the associate justices, may, upon such terms as he sees fit, make an order restraining the issuing of an execution, or the collection and payment of the same, until the next term of said court, or until the petition to rehear shall have been determined. (Rev., s. 1546; Code, s. 966; R. C., c. 33, s. 18; Supreme Court Rules 52, 53, 54; C. S. 1419.)

§ 7-19. Records to be made.—The court may order the clerk to record such parts of the record of cases as it may deem necessary. (Rev., s. 1550; Code, s. 959; C. S. 1420.)

§ 7-20. Power to make rules of court.—The justices of the supreme court shall prescribe and establish from time to time rules of practice for that court and also for the superior courts. The clerk shall certify to the judges of the superior

court the rules of practice for such court, to be entered on the records thereof in each county. (Rev., s. 1541; Code, s. 961; R. C., c. 33, s. 13; 1818, c. 963; C. S. 1421.)

§ 7-21. Supreme court to prescribe rules; rules to conform to law.—The supreme court is hereby vested with the power to prescribe from time to time the modes of making and filing proceedings, actions, and pleadings, and of entering orders and judgments and recording the same, and to prescribe and regulate the practice on appeals to the supreme court, and in the trial of actions in the superior court, and before referees: Provided, no rule or regulation so adopted shall be in conflict with any of the provisions of this code. Such rules as may be adopted by the supreme court shall be printed and distributed by the secretary of state as are the reports of the supreme court. (Ex. Sess. 1921, c. 92, s. 1, subsec. 20; C. S. 1421(a).)

Art. 3. Officers of Court.

§ 7-22. The court may appoint acting attorney-general.—If the attorney-general should fail at any term of the supreme court to attend to the business which by law is assigned him, the court may appoint some counsel learned in the law to discharge his duties during the term. (Rev., s. 1551; Code, s. 969; R. C., c. 33, s. 22; 1846, c. 29; C. S. 1422.)

§ 7-23. Reporter.—The supreme court may employ a reporter of its decisions. (Rev., s. 1552; Code, s. 3363; 1893, c. 379, s. 4; 1897, c. 429; C. S. 1423.)

§ 7-24. Supreme court reporter; salary; offices.—The governor and council of state shall fix the salary of the supreme court reporter at not to exceed three thousand dollars a year, and shall furnish the reporter with suitable offices at a cost not to exceed five hundred dollars a year, which shall be paid direct to the lessor upon the warrant of the state auditor drawn upon the state treasurer. The reporter may employ a stenographer and clerk, at a salary to be fixed by the governor and council of state, payable monthly to the stenographer and clerk by voucher drawn by the state auditor on the state treasurer. (Rev., s. 2771; Code, ss. 3363, 3728; 1893, c. 379; 1897, c. 429; 1911, c. 107; 1913, c. 59; 1917, c. 272; 1919, c. 276; 1921, c. 143; Ex. Sess. 1921, c. 29; C. S. 3861, 3889.)

§ 7-25. Clerk.—The clerk of the supreme court shall be appointed by the court, and shall hold his office for eight years. (Rev., s. 1553; Const., Art. IV, s. 15; C. S. 1424.)

§ 7-26. Clerk of supreme court; salary; fees.—The clerk of the supreme court shall receive an annual salary of three hundred dollars, to be paid semiannually, on a certificate of the justices; and, in addition thereto, the following fees, namely: For recording the papers and proceedings in the causes decided in the supreme court, which are required by law to be recorded, such compensation as may be estimated by the justices of the court at each term, not to exceed thirty cents for each page recorded, to be paid by the treasurer on the certificate of the justices; for entering an appeal, one dollar; a continuance, thirty cents; a scire facias, eighty cents; a certiorari, eighty cents; a determination, two dollars; a certificate, sixty cents; a fieri facias, or other execution, fifty cents; a seal, twenty-five cents; a transcript, or copy of a record, twenty cents for each copy-sheet; a rule given for service, twenty-five cents; a rule not for service, fifteen cents; a subpoena, writ, or other process, one dollar; a commission, fifty cents; drawing a decree or judgment, by the copy-sheet, forty cents; a search, ten cents; affixing the seal to any writing requiring it, twenty-five cents; and an affidavit, twenty-five cents. (Rev., s. 2769; Code, s. 3738; R. C., c. 102, ss. 25, 26; 1870-1, c. 139, s. 7; C. S. 3886.)

§ 7-27. Clerk's bond and oath of office.—Before undertaking his duties, the clerk of the supreme court shall enter into bond with sufficient surety payable to the state of North Carolina, in the sum of fifteen thousand dollars, conditioned for the faithful discharge of his duties and for the safe keeping of all records committed to his custody, which bond shall be lodged with the secretary of state; and he shall also before said justices, or one of them, take the oaths which are prescribed for clerks of the superior court, and shall keep his office in the city of Raleigh. (Rev., s. 290; Code, s. 958; R. C., c. 33, s. 9; 1812, c. 829, s. 2; 1818, c. 963, s. 5; 1846, c. 28, s. 3; 1799, c. 520, s. 2; C. S. 1425.)

§ 7-28. Clerk to report money on hand.—The clerk of the supreme court shall, at the beginning of each fall term, produce to the court a statement on oath of all moneys remaining in his hands which have been paid into his office three years or more previous thereto, whether received directly from parties or from his predecessor in office, and is not detained in his hands by special order of the court, specifying therein the name of the person to whom the same is payable, and his address, if known; a copy of which report shall be transmitted to the state treasurer and to the auditor. (Rev., s. 1554; Code, s. 1864; R. C., c. 73; 1823, c. 1186; 1831, c. 3; C. S. 1426.)

§ 7-29. Marshal; librarian. — The Supreme Court may appoint a marshal of the Supreme Court, removable at will, who shall have the criminal and civil powers of a sheriff and shall attend upon the court during its sessions. The Supreme Court may consolidate the duties of the marshal with those of the librarian; when so consolidated the compensation of the marshal-librarian shall be fixed by the Supreme Court, with the approval of the governor. (Rev., s. 1555; Code, s. 950; 1873-4, c. 34; 1881, c. 306; 1939, c. 4; C. S. 1427.)

Art. 4. Supreme Court Library.

§ 7-30. Location.—The Supreme Court Library shall occupy the fifth floor of the Department of Justice Building. (Rev., s. 5083; 1885, c. 121, s. 7; 1913, c. 99, s. 1; C. S. 6588.)

§ 7-31. Trustees; powers; duties.—The Justices of the Supreme Court shall be, ex officio, the trustees of the Supreme Court Library and all moneys appropriated for its benefit shall be paid out under their direction and supervision. They shall have general charge and control of the library with authority to acquire, lend, exchange, and dispose of books and equipment in the in-

terest of the library, but may, in their discretion, employ a librarian to discharge this function under such regulations and orders as they may prescribe. The trustees may employ an assistant librarian and such other assistants as may be deemed necessary for the efficient functioning of the library. (Rev., s. 5084; Code, s. 3606; 1883, c. 100; 1889, c. 482; 1937, c. 173; C. S. 1428, 6589.)

§ 7-32. Library hours; night use.—The library shall be kept open during such hours and under such conditions as the trustees may prescribe; attorneys of North Carolina, and such other persons as the trustees may deem proper, shall be admitted to the library at night upon application and compliance with reasonable rules adopted by the trustees. (Rev., s. 5085; 1889, c. 482; C. S. 6590.)

§ 7-33. Appropriation.—In addition to the funds regularly appropriated for the library, the clerk of the supreme court shall, upon order of the librarian under the general supervision and control of the trustees, expend for the maintenance and equipment of the library the funds, in excess of the actual expenses of each examination, paid in by the board of Law Examiners from the fees of applicants. (Rev., s. 5086; Code, s. 3613; Rev., 1872-3; 1925, c. 275, s. 6; C. S. 6591.)

Art. 5. Supreme Court Reports.

§ 7-34. Supreme court reports; contract for printing.—The Supreme Court is authorized to contract from time to time for the printing of its reports; to select a printer for the same and to prescribe such terms of contract as will insure, under the supervision of the Court, the prompt issue of the reports as soon as practicable after a sufficient number of opinions are filed. Such contract shall be made after consultation with the division of purchase and contract after a comparison of prices for similar work in other states to such an extent as may be practicable. (Rev., s. 5093; 1905, c. 400; 1929, c. 39, s. 1; 1931, c. 261, s. 3; 1931, c. 312, ss. 14, 15; C. S. 7296.)

§ 7-35. Supreme court reports; number printed.—Of the supreme court reports there shall be printed and bound in full sheep or buckram as many copies, not less than seven hundred and fifty, as in the opinion of the attorney-general and secretary of state may be sufficient to supply the demand. All such copies shall be delivered to the secretary of state. Advance sheets of the supreme court reports are hereby authorized to be printed, and to be sold, under the rules of the supreme court. (Rev., s. 5097; Code, s. 3632; 1893, c. 146, s. 2; 1897, c. 135; 1901, c. 401, s. 2; 1919, c. 314, s. 4; 1923, c. 25; C. S. 7297.)

Art. 6. Salaries of Supreme Court Employees.

§ 7-36. Governor and council to fix certain salaries.—The governor and council of state shall constitute a board to adjust and fix the compensation to be paid to the employees of the Supreme Court. (1921, c. 143, ss. 1, 4; Ex. Sess. 1921, c. 29; 1924, c. 124; C. S. 3861.)

§ 7-37. Limit of salary; certificate and payment.—The compensation fixed under § 7-36 shall not exceed three thousand dollars per annum, except as may be elsewhere provided by law, for any individual employee, and shall be certified by the governor to the state auditor, and paid as provided by law for the payment of other salaries. (1921, c. 143, s. 2; C. S. 3861(a).)

§ 7-38. Proceedings and reports.—The proceedings of the board shall be kept by the state auditor, and reported to each regular session of the general assembly. (1921, c. 143, s. 3; C. S. 3861(b).)

§ 7-39. Employment of additional assistants; compensation.—The governor and council of state are authorized and empowered to employ any additional clerical or stenographic help, for the Supreme Court, upon written request from the Chief Justice, and when they are satisfied that such additional help is needed temporarily, to do the departmental work efficiently, and to fix the salary of such additional help at not to exceed eighteen hundred dollars for any one person. (Ex. Sess. 1920, c. 95, s. 2; C. S. 3861(d).)

SUBCHAPTER II. SUPERIOR COURTS.

Art. 7. Organization.

§ 7-40. Number of judges and solicitors.—The state shall be divided into twenty superior court judicial districts, for each of which a judge and a solicitor shall be chosen in the manner now prescribed by law. (1913, cc. 9, 63; Const., Art. 4, s. 10; C. S. 1429.)

§ 7-41. Election and term of office of judges.—The judges of the superior courts shall be elected in like manner as is provided for justices of the supreme court, and shall hold their offices for eight years. (Const., Art. 4, s. 21; C. S. 1430.)

§ 7-42. Salaries of superior court judges.—The salary of each of the judges of the superior court shall be six thousand five hundred dollars per annum, and each judge shall be allowed the sum of one thousand five hundred and fifty dollars in lieu of his traveling expenses, to be paid monthly. They shall also receive one hundred dollars per week and their actual expenses incurred in attending and holding special terms of court by assignment of the governor, which expenses shall be paid by the county in which such special term is held. (Rev., s. 2765; Code, ss. 918, 3734; 1891, c. 193; 1901, c. 167; 1905, c. 208; 1907, c. 988; 1909, c. 85; 1911, c. 82; 1919, c. 51; 1921, c. 25, s. 3; 1925, c. 227; 1927, c. 69, s. 2; C. S. 3884.)

§ 7-43. Election and term of office of solicitors.—A solicitor shall be elected for each judicial district by the qualified voters thereof, as is prescribed for members of the general assembly, who shall hold office for the term of four years, and prosecute on behalf of the state in all criminal actions in the superior courts, and advise the officers of justice in his district. (Const., Art. 4, s. 23; C. S. 1431.)

Local Modification.—Forsyth: 1927, c. 129.

§ 7-44. Solicitors; general compensation.—The several solicitors of the judicial districts of the state of North Carolina shall each receive, as full compensation for services as solicitor, the sum of forty-five hundred dollars ($4,500.00), to be paid in equal monthly installments out of the state treasury upon warrants duly drawn thereon, which said salaries shall be in lieu of fees or other

compensation, except the expenses allowed in § 7-45. (Rev., s. 2767; Code, s. 3736; 1879, c. 240, s. 12; 1923, c. 157, s. 1; 1933, c. 78, s. 1; 1935, c. 278; C. S. 3890.)

§ 7-45. Appropriation for expenses of solicitor.—Each solicitor shall receive, in addition to the salary named in § 7-44, the sum of five hundred ($500.00) dollars per annum, which will cover all of his expenses while engaged in duties connected with his office. Said sum shall be paid in equal monthly installments out of the state treasury upon warrant duly drawn thereon. (1923, c. 157, s. 2; 1933, c. 78, s. 2; 1937, c. 348; C. S. 3890(a).)

§ 7-46. Residence and rotation of judges.—Every judge of the superior court shall reside in the district for which he is elected. The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years, but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the governor may require any judge to hold one or more specified terms in said district in lieu of the judge assigned to hold the courts of the said district. (Const., Art. 4, s. 11; C. S. 1432.)

§ 7-47. Oath of office.—Every judge before he shall act as such shall, in open court, or before the governor, or before one of the judges of the supreme or superior courts, or before some justice of the peace, take the oath appointed for public officers, and also an oath of office. The officer or court before whom the judge shall qualify shall cause the judge to subscribe the oaths by him taken, and having certified the same, shall return the oaths to the secretary of state, who shall carefully preserve them; and if any judge shall act in his office before he shall have taken the oaths directed, he shall forfeit and pay two thousand dollars, one-half to the use of the state and the other half to the person who shall sue for the same. (Rev., s. 1497; Code, s. 924; R. C., c. 31, ss. 18, 19; 1777, c. 115; 1806, c. 694, s. 13; 1848, c. 45; C. S. 1433.)

§ 7-48. Vacancies filled.—All vacancies occurring by death, resignation or otherwise in the offices of justice of the supreme or judge of the superior court of the state shall be filled for the unexpired term at the next general election for members of the general assembly held after such vacancy is created. The persons elected at such election shall be commissioned by the governor immediately after the ascertainment of the result in the manner provided by law, and shall qualify and enter upon the discharge of the duties of the office within ten days after receiving such commission. (Rev., s. 1498; 1899, c. 613; Const., Art. 4, s. 25; C. S. 1434.)

§ 7-49. When judge may discharge solicitor.—When any state solicitor, authorized by election or appointment to act as prosecuting attorney for or in behalf of the state of North Carolina, in any of the courts of said state, shall appear at such court, in term time, drunk or intoxicated, or when it shall be brought to the knowledge of the judge presiding at such court that the solicitor whose duty it is to represent the state at such court is in the town in which such court is being held, drunk or intoxicated, at any time, it shall become the duty of such judge and he is hereby directed to immediately discharge such solicitor from the duties of such court, for the term then being held, and appoint some competent attorney to act as state solicitor for the term. The appointee shall be allowed all the fees and compensation belonging to the solicitor for such term. (Rev., s. 1499; 1901, c. 717; C. S. 1435.)

§ 7-50. Emergency judges; duties; compensation.—The persons embraced within the provisions of section 7-51 are hereby constituted emergency judges of the superior court under article four (4), section eleven (11), of the constitution of this state, and are authorized to hold the superior courts of any county or district when the judge assigned thereto, by reason of sickness, disability, or other cause, is unable to attend and hold said court, and when no other judge is available to hold the same, and to hold special terms when commissioned so to do by the governor, and as compensation for holding such special terms shall receive their actual expenses and in addition thereto fifty dollars per week, to be paid by the county in which such special term is held.

In case of emergency arising as provided in said section, the governor shall designate the person to act as emergency judge who shall receive his actual expenses only incurred while so acting, to be paid by the treasurer upon warrant of the auditor, upon certificate of the judge: Provided, that the county asking the governor for an emergency judge shall have the privilege of requesting the assignment of a particular judge. Such emergency judges shall be subject to all the regulations respecting superior court judges except as otherwise provided in §§ 7-50, 7-52, and 7-53. (1921, c. 125, ss. 2, 3; Ex. Sess. 1921, c. 20, s. 3; 1941, c. 52, s. 1; C. S. 1435(a).)

§ 7-51. Salaries of resigned or retired justices of supreme court and judges of superior courts.—Every justice of the supreme court and regular or special judge of the superior court who has heretofore resigned or retired from office at the end of his term, or who shall hereafter resign or retire at expiration of his term, who has attained the age of sixty-five (65) years at the date of his resignation or retirement, and who has served for fifteen (15) years on the supreme court or on the superior court, or on the supreme and superior courts combined, or twelve consecutive years on the supreme court, or who, without regard to the age of such judge or justice having served one full term or six years on either the supreme or superior court, and while still in active service thereon, shall have become totally disabled through accident or disease to carry on the duties of said office; or who, without regard to the age of such judge or justice, by reason of such accident, without fault on his part, shall suffer such physical impairment as not to be able to efficiently perform the duties of his office and who retires at the end of his term, shall receive for life two-thirds (2/3) of the annual salary from time to time received by the justices of the supreme court or judges of superior court, respectively, payable monthly; provided, that any such justice or judge, who has or shall have served as such

for twenty-five years or longer (whether continuously or not), and whose seventieth birthday shall occur within six months next succeeding his resignation or retirement, shall be entitled to all of the benefits of this section from and after the date of his resignation or retirement, and shall also be subject to the other provisions of this section. The provisions herein as to the amount of lifetime pay shall relate back to and become effective as of the fourth day of March, one thousand nine hundred and twenty-one, and the state treasurer is authorized and directed to pay on the warrant of the state auditor the salary of any justice or judge as affected by such provisions, less any amount heretofore paid. (1921, c. 125, s. 1; Ex. Sess. 1921, c. 20, ss. 1, 2; 1927, cc. 133, 201; 1935, cc. 233, 400; 1937, c. 199; 1939, c. 258; C. S. 3884(a).)

§ 7-52. Jurisdiction and powers of emergency judges.—To the end that emergency judges provided for in § 7-51 shall have the fullest power and authority sanctioned by Article Four (IV), Section Eleven (11), of the Constitution of North Carolina, such judges are hereby vested, in the courts which they are duly appointed to hold, with the same power and authority in all matters whatsoever that regular judges holding the same courts would have. An emergency judge duly assigned to hold the court of a particular county shall have, during said term of court, in open court and in chambers, the power and authority of a regular judge in all matters whatsoever arising in that judicial district that could properly be heard or determined by a regular judge holding the same term of court. (Ex. Sess. 1921, c. 94, s. 1; 1925, c. 8; 1941, c. 52, s. 2; C. S. 1435(b).)

§ 7-53. Orders returnable to another judge; notice.—If any special or emergency judge has made any matters returnable before him, and subsequent thereto he should be called upon by the governor to hold court elsewhere, said judge shall make an order directing said matter to be heard before some other judge, setting forth in said order the time and place same is to be heard, and send a copy of said order to the attorney or attorneys representing the parties plaintiff and defendant in such matter. (Ex. Sess. 1921, c. 94, s. 2; C. S. 1435(c).)

§ 7-54. Governor to make appointment of four special judges.—The governor of North Carolina may appoint four persons who shall possess the requirements and qualifications of special judges as prescribed by article four, section eleven of the constitution, and who shall take the same oath of office and otherwise be subject to the same requirements and disabilities as are or may be prescribed by law for judges of the superior court, save the requirements of residence in a particular district, to be special judges of the superior courts of the state of North Carolina. Two of the said judges shall be appointed from the western judicial division and two from the eastern judicial division, as now established. The governor shall issue a commission to each of said judges so appointed for a term to begin July first, one thousand nine hundred and forty-one, and to end June thirtieth, one thousand nine hundred and forty-three, and the said commission shall constitute his authority to perform the duties of the office of a special judge of the superior courts during the time named herein. (1927, c. 206, s. 1; 1929, c. 137, s. 1; 1931, c. 29, s. 1; 1933, c. 217, s. 1; 1935, c. 97, s. 1; 1937, c. 72, s. 1; 1939, c. 31, s. 1; 1941, c. 51, s. 1.)

§ 7-55. Time for appointment.—Each special judge shall be appointed by the governor on or before July first, one thousand nine hundred and forty-one, and shall be subject to removal from office for the same causes and in the same manner as regular judges of the superior court; and vacancies occurring in the offices created by §§ 7-54 to 7-61 shall be filled by the governor in like manner for the unexpired term thereof. (1927, c. 206, s. 2; 1929, c. 137, s. 2; 1931, c. 29, s. 2; 1933, c. 217, s. 2; 1935, c. 97, s. 2; 1937, c. 72, s. 2; 1939, c. 31, s. 2; 1941, c. 51, s. 2.)

§ 7-56. Further appointments.—The governor is further authorized and empowered, if in his judgment the necessity exists therefor, to appoint at such time as he may determine, not exceeding four additional judges, two of whom shall be residents of the eastern judicial division and two of whom shall be residents of the western judicial division, whose term of office shall begin from his or their appointment and qualification and end June thirtieth, one thousand nine hundred and forty-three. All the provisions of §§ 7-54 to 7-61 applicable to the four special judges shall be applicable to the four special judges authorized to be appointed under this section. (1927, c. 206, s. 3; 1929, c. 137, s. 3; 1931, c. 29, s. 3; 1933, c. 217, s. 3; 1935, c. 97, s. 3; 1937, c. 72, s. 3; 1939, c. 31, s. 3; 1941, c. 51, s. 3.)

§ 7-57. Extent of authority. — The authority conferred in §§ 7-54 to 7-61 upon the governor, pursuant to article four, section eleven, of the constitution of North Carolina, to appoint such special judges shall extend to regular as well as special terms of the superior court, with either civil or criminal jurisdiction, or both, as may be designated by the statutes or by the governor pursuant to law. (1927, c. 206, s. 4; 1929, c. 137, s. 4; 1931, c. 29, s. 4; 1933, c. 217, s. 4; 1935, c. 97, s. 4; 1937, c. 72, s. 4; 1939, c. 31, s. 4; 1941, c. 51, s. 4.)

§ 7-58. Jurisdiction as of regular judges.—To the end that such special judges shall have the fullest power and authority sanctioned by article four, section eleven, of the constitution of North Carolina, such judges are hereby vested, in the courts which they are duly appointed to hold, with the same power and authority in all matters whatsoever that regular judges holding the same courts would have. A special judge duly assigned to hold the court of a particular county shall have during said term of court, in open court and in chambers, the same power and authority of a regular judge in all matters whatsoever arising in that judicial district that could properly be heard or determined by a regular judge holding the same term of court. (1927, c. 206, s. 5; 1929, c. 137, s. 5; 1931, c. 29, s. 5; 1933, c. 217, s. 5; 1935, c. 97, s. 5; 1937, c. 72, s. 5; 1939, c. 31, s. 5; 1941, c. 51, s. 5.)

§ 7-59. Salary, expenses; terms; practice of law.—The special judges so appointed shall receive the same salary and traveling expenses as now are, or may hereafter be, paid or allowed to judges of the superior court for holding their regularly as-

signed courts, and they shall hold all such regular and special terms of court as they may be directed and assigned by the governor to hold, without additional compensation: Provided, that no person appointed under §§ 7-54 to 7-61 shall engage in the private practice of law. (1927, c. 206, s. 6; 1929, c. 137, s. 6; 1931, c. 29, s. 6; 1933, c. 217, s. 6; 1935, c. 97, s. 6; 1937, c. 72, s. 6; 1939, c. 31, s. 6; 1941, c. 51, s. 6.)

§ 7-60. Powers after commission expires.—Nothing in §§ 7-54 to 7-61 shall be construed to prohibit such special judges from settling cases on appeal and making all proper orders in regard thereto after the time for which they were commissioned has expired. (1927, c. 206, s. 7; 1929, c. 137, s. 7; 1931, c. 29, s. 7; 1933, c. 217, s. 7; 1935, c. 97, s. 7; 1937, c. 72, s. 7; 1939, c. 31, s. 7; 1941, c. 51, s. 7.)

§ 7-61. Effect on sections 7-50 and 7-51.—Nothing in §§ 7-54 to 7-60 shall in any matter affect §§ 7-50 and 7-51. (1927, c. 206, s. 8; 1929, c. 137, s. 8; 1931, c. 29, s. 8; 1933, c. 217, s. 8; 1935, c. 97, s. 8; 1937, c. 72, s. 8; 1939, c. 31, s. 8; 1941, c. 51, s. 8.)

§ 7-62. Disposition of motions where judge disqualified. — Whenever the judge before whom any motion is made, either at term time or at chambers, shall disqualify himself from determining it, he may in his discretion refer the same for disposition to the resident judge of any adjoining district, who shall have full power and authority to hear and determine the cause in the same manner as if he were the presiding judge of the district in which the cause arose. (1939, c. 48.)

Art. 8. Jurisdiction.

§ 7-63. Original jurisdiction. — The superior court has original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for thirty days; and of all such affrays as shall be committed within one mile of the place where, and during the time, such court is being held; and of all offenses whereof exclusive original jurisdiction is given to justices of the peace, if some justice of the peace shall not within twelve months after the commission of the offense proceed to take official cognizance thereof. (Rev., s. 1500; Code, s. 922; 1889, c. 504, s. 2; Const., Art. IV, ss. 12, 27; 1879, c. 92, s. 11; 1881, c. 210; C. S. 1436.)

§ 7-64. Concurrent jurisdiction.—In all cases in which by statute original jurisdiction of criminal actions has been, or may hereafter be, taken from the superior court and vested exclusively in courts of inferior jurisdiction, such exclusive jurisdiction is hereby divested, and jurisdiction of such actions shall be concurrent and exercised by the court first taking cognizance thereof. The provisions of this section shall remain in full force and effect, unless expressly repealed by some subsequent Act of the General Assembly, and shall not be repealed by implication or by general repealing clauses in any Act of the General Assembly conferring exclusive jurisdiction on inferior courts in misdemeanor cases which may be hereafter enacted. Appeal shall be, as heretofore, to the superior court from all judgments of such inferior courts: Provided, that this section shall not apply to the counties of Alleghany, Cabarrus, Caswell, Cherokee, Clay, Craven, Cumberland, Currituck, Dare, Davidson, Edgecombe, Gaston, Gates, Graham, Granville, Guilford, Halifax, Harnett, Henderson, Hertford, Hyde, Iredell, Jones, Lenoir, New Hanover, Pamlico, Perquimans, Rockingham, Rutherford, Scotland, Surry, Union and Warren. (1919, c. 299; 1923, c. 98; 1941, c. 265; C. S. 1437.)

§ 7-65. Jurisdiction in vacation or at term.—In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election. The resident judge of the judicial district and the judge regularly presiding over the courts of the district, shall have concurrent jurisdiction in all matters and proceedings where the superior court has jurisdiction out of term. (Rev., s. 1501; Code, c. 10, s. 230; 1871-2, c. 3; 1939, c. 69; C. S. 1438.)

§ 7-66. Appellate jurisdiction. — The superior court has appellate jurisdiction of all issues of law or of fact, determined by a clerk of the superior court or a justice of the peace, and of all appeals from inferior courts for error assigned, in matters of law, as provided by law. (Rev., s. 1502; Const., Art. IV, ss. 12, 27; Code, s. 923; C. S. 1439.)

§ 7-67. Transfer of cases pending in abolished inferior court.—In case of the abolition of any court inferior to the superior court (except courts of the justices of the peace), all cases and matters then in such court, not finally disposed of, and all records of such court, shall forthwith be transferred and delivered to the superior court of the county in which such inferior court has functioned, for trial or other disposition of such cases and matters as may be necessary and proper.

The superior court to which such cases and matters are transferred shall have the power and jurisdiction to hear, deal with and dispose of the same to the same extent as would said inferior court had its existence continued. (1941, c. 117.)

Art. 9. Judicial Districts and Terms of Court.

§ 7-68. Number of districts.—The state shall be divided into twenty-one superior court judicial districts, numbered first to twenty-first, composed of the counties hereinafter designated. (1913, c. 63; 1913, c. 196; 1937, c. 413, s. 1; C. S. 1441.)

§ 7-69. Eastern and western judicial divisions.—The state shall be divided into two judicial divisions, the Eastern and Western Judicial Divisions. The counties which are now or may hereafter be included in the judicial districts from one to ten, both inclusive, shall constitute the Eastern Division, and the counties which are now or may hereafter be included in the judicial districts from eleven to twenty-one, both inclusive, shall constitute the Western Division. The judicial districts shall retain their numbers from one up to twenty-one, and all such other districts as may from time to time be added by the creation of new districts shall be numbered consecutively. (1915, c. 15; 1937, c. 413, s. 2; C. S. 1442.)

§ 7-70. Terms of court.—A superior court shall be held by a judge thereof at the courthouse in each county. The twenty-one judicial districts of

the state shall be composed of the counties designated in this section, and the superior courts in the several counties shall be opened and held in each year at the times herein set forth. Each court shall continue in session one week, and be for the trial of criminal and civil cases, except as otherwise provided, unless the business thereof shall be sooner disposed of. Each county shall have the number of regular weeks of superior court as set out in this section: Provided, however, that the schedule of courts of any county or judicial district may be revised or reformed and the number of terms of court may be increased or decreased from time to time as may appear advisable to the court calendar commission; which said commission shall be composed of the chief justice of the supreme court and four judges of the superior court, to be appointed by the governor for a period of four years each. The members of said commission shall serve without compensation other than their necessary expenses incurred in attending meetings of said commission. (1913, cc. 63, 196; 1937, c. 408; C. S. 1443.)

Eastern Division

First District

The first district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Currituck—Third Monday in July, for civil cases only; first Monday in March; first Monday in September. (1913, c. 196; Ex. Sess. 1913, c. 51; Ex. Sess. 1920, c. 23, s. 2; 1939, c. 59; C. S. 1443.)

Camden—First Monday after the first Monday in March and the fourth Monday after the first Monday in September. (1913, c. 196; 1921, c. 105; 1937, c. 283, s. 1; C. S. 1443.)

Pasquotank—Eighth Monday before the first Monday in March for the trial of civil cases only; third Monday before the first Monday in March to continue for two weeks, the first week for the trial of civil cases only and the second week for the trial of criminal cases only; second Monday after the first Monday in March for the trial of civil cases only; ninth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; thirteenth Monday after the first Monday in March for the trial of criminal cases only; fourteenth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; second Monday after the first Monday in September for the trial of civil cases only; fifth Monday after the first Monday in September to continue for two weeks for the trial of civil cases only; ninth Monday after the first Monday in September to continue for two weeks, the first week for the trial of civil cases only and the second week for the trial of criminal cases only. (1913, c. 196; Ex. Sess., 1913, c. 51; 1921, c. 105; 1923, c. 232; Pub. Loc. 1925, c. 631; 1929, c. 167; 1933, cc. 3, 129; C. S. 1443.)

Perquimans—Seventh Monday before the first Monday in March, for civil cases only, for which term a special judge to be assigned by the governor; sixth Monday after the first Monday in March; eighth Monday after the first Monday in September. (1913, c. 196; Ex. Sess., 1913, c. 51; 1931, c. 6; 1933, c. 286; C. S. 1443.)

Chowan—Fourth Monday after the first Monday in March; eighth Monday after the first Monday in March to continue for one week, for the trial of civil cases only; first Monday after the first Monday in September; twelfth Monday after the first Monday in September. (1913, c. 196; 1931, c. 87; 1933, c. 456; 1937, c. 102; 1941, c. 367, s. 1; C. S. 1443.)

Gates—Third Monday after the first Monday in March; eleventh Monday after the first Monday in September. (1913, c. 196; 1935, c. 70; C. S. 1443.)

Dare—Twelfth Monday after the first Monday in March; seventh Monday after the first Monday in September. (1913, c. 196; Ex. Sess. 1913, c. 51; C. S. 1443.)

Tyrrell—Seventh Monday after the first Monday in March; fourth Monday after the first Monday in September, and for this term a special Judge may be assigned; fourth Monday before the first Monday in March, for civil cases only. Upon recommendation of the local bar, the board of commissioners for the county of Tyrrell, at their option, may abolish and suspend the opening and holding, in any year, of the term above provided for the week commencing on the fourth Monday before the first Monday in March, by notifying the governor and the judge scheduled to hold said term, at least thirty days prior to the date for opening same, that such term of court is not desired. (1913, c. 196; Ex. Sess. 1913, c. 51; 1919, c. 128, s. 1; Ex. Sess. 1920, c. 23, s. 1; 1921, c. 83; Ex. Sess. 1921, c. 19; 1923, c. 124; Pub. Loc. 1925, c. 389; 1927, c. 123; 1931, c. 92; 1933, c. 126; C. S. 1443.)

Hyde—Eleventh Monday after the first Monday in March; sixth Monday after the first Monday in September.

In addition to the terms of court now provided by law to be held in Hyde county, the following term of court shall be opened and held in each year, except as hereinafter provided, in the manner and at the time herein set forth, to-wit: To convene on the third Monday in August of each year and to continue for one week for the trial of civil cases only. If the judge regularly assigned to the district in which said court is situate be unable to hold any term of court provided in the first sentence of this paragraph, for any cause set out in article four, section eleven of the constitution, the governor may appoint a judge to hold such term from among the regular, special or emergency judges. If, in the opinion of the board of commissioners of Hyde county, it is not advisable or necessary to hold said additional term of court, and such fact is so stated in a resolution duly adopted by a majority of said board on or before the second Monday in July next preceding the day for the convening of said term, then said term shall not be held on the third Monday in August of that year as provided in this paragraph. Upon the adoption of such a resolution, the clerk of said board shall immediately notify the judge, who has been assigned to hold the additional term, that the same will not be held, and no jury for the said term shall be drawn; but if no such resolution shall be adopted on or before the second Monday in July as provided above, then it shall be the duty of the board of commissioners to cause the jury to be drawn in the manner now prescribed by law for

the drawing of a jury for the trial of civil cases in regular terms of the superior court. (1913, c. 196; 1935, c. 191; 1941, c. 367, s. 1; C. S. 1443.)

Beaufort—Seventh Monday before the first Monday in March for two weeks, the first week for criminal cases only, and the second week for criminal and civil cases; second Monday before the first Monday in March for two weeks for civil cases only; second Monday after the first Monday in March for criminal cases only; fifth Monday after the first Monday in March for civil cases only; ninth Monday after the first Monday in March for two weeks for civil cases only; sixteenth Monday after the first Monday in March for the trial of criminal and civil cases; second Monday after the first Monday in September for the trial of criminal cases with a grand jury in attendance; third Monday after the first Monday in September for civil cases only; fifth Monday after the first Monday in September for civil cases only; ninth Monday after the first Monday in September for criminal cases and consent trials and decrees in civil cases; thirteenth Monday after the first Monday in September for civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 51; 1919, c. 128, ss. 3, 4; 1927, c. 111; 1931, cc. 4, 8, 87; 1933, c. 3; c. 456, s. 2; 1935, c. 176; 1937, cc. 40, 283, s. 2; C. S. 1443.)

Second District

The second district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Washington—Eighth Monday before the first Monday in March, to continue for two weeks; sixth Monday after the first Monday in March, for civil cases only; eighth Monday before the first Monday in September; seventh Monday after the first Monday in September, for civil cases only. (1913, cc. 63, 196; Ex. Sess. 1913, c. 51; 1919, c. 128, s. 2; c. 133; 1923, c. 227; 1929, c. 54; C. S. 1443.)

Martin—Second Monday after the first Monday in March, to continue for two weeks; fifteenth Monday after the first Monday in March; second Monday after the first Monday in September, to continue for two weeks; fourteenth Monday after the first Monday in September; sixth Monday after the first Monday in March and eleventh Monday after the first Monday in September, each to continue for two weeks, for the trial of civil cases only. For the last two terms of court the Governor is hereby directed to appoint a judge to hold the same from among the regular or emergency judges. (1913, c. 196; 1919, c. 133; 1924, c. 12; 1929, c. 124; C. S. 1443.)

Edgecombe—Sixth Monday before the first Monday in March; first Monday in March; fourth Monday after the first Monday in March, to continue for two weeks, for civil cases only; thirteenth Monday after the first Monday in March, to continue for two weeks; first Monday after the first Monday in September; sixth Monday after the first Monday in September; tenth Monday after the first Monday in September, to continue for two weeks, for civil cases only.

The grand jury drawn by the commissioners of Edgecombe county for the term of court beginning on the sixth Monday before the first Monday in March of each year shall also serve as the grand jury for the term beginning on the first Monday in March and on the thirteenth Monday after the first Monday in March, and shall be charged with the same duties and clothed with the same power at each of said terms and shall receive for each term such mileage and compensation as is now provided by law. (1913, c. 196; Ex. Sess. 1913, c. 17; 1915, c. 107; 1917, c. 12; 1919, c. 133; Ex. Sess., 1921, c. 108, s. 1; 1923, c. 246; 1927, c. 128; 1941, cc. 2, 32; C. S. 1443.)

Nash—Fifth Monday before the first Monday in March; second Monday before the first Monday in March, to continue for two weeks, for the trial of civil cases only; first Monday after the first Monday in March; seventh Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; twelfth Monday after the first Monday in March; first Monday before the first Monday in September; second Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases only, and for the term of court the governor is hereby directed to appoint a judge, other than the judge holding courts of the second judicial district, to hold the same from among the regular, special or emergency superior court judges; fifth Monday after the first Monday in September, for the trial of civil cases only; twelfth Monday after the first Monday in September, to continue for two weeks, the first week to be for the trial of criminal cases and the second week for the trial of civil cases only. The court shall have jurisdiction to try and determine civil actions and civil matters at any term of superior court held in Nash county, whether said term is designated above as a civil term or not. (1913, c. 196; 1915, c. 63; 1919, c. 133; Ex. Sess. 1921, c. 108; 1923, c. 237; 1924, c. 46; 1933, c. 145; 1935, c. 201; C. S. 1443.)

Wilson—Fourth Monday before the first Monday in March, to continue for two weeks, the first week for criminal cases only, and the second week for civil cases only; tenth Monday after the first Monday in March, to continue for two weeks, the first week for criminal cases only, and the second week for civil cases only; sixteenth Monday after the first Monday in March, for civil cases only; first Monday in September; fourth Monday after the first Monday in September, for civil cases only; eighth Monday after the first Monday in September, to continue for two weeks, for civil cases only; thirteenth Monday after the first Monday in September and for this term of court a special or emergency judge shall be assigned by the governor to hold the same. (1913, c. 196; 1915, c. 45; 1917, c. 12; 1919, c. 133; 1921, c. 10; 1937, c. 104; C. S. 1443.)

Third District

The third district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Hertford—First Monday before the first Monday in March; sixth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases and only such criminals as are confined in the common jail or otherwise imprisoned; fifth Monday before the first Monday in September; sixth Monday after the first Monday in September, to continue for two weeks. (1913, c. 196; 1915, c. 282; 1919, c. 142; 1923, c. 113; 1924,

c. 9; 1927, c. 118; 1929, c. 217; 1931, cc. 140, 200; 1935, cc. 102, 276; 1939, c. 40; C. S. 1443.)

Bertie—Third Monday before the first Monday in March, to continue for one week for the trial of both criminal and civil cases; ninth Monday after the first Monday in March, to continue for two weeks, for trial of both criminal and civil cases; first Monday before the first Monday in September, to continue for two weeks, for the trial of both criminal and civil cases; tenth Monday after the first Monday in September, to continue for two weeks, for the trial of both criminal and civil cases. (1913, c. 196; Ex. Sess. 1913, c. 16; 1915, c. 78; 1917, c. 226; Ex. Sess. 1921, c. 45; 1923, c. 185; 1931, cc. 192, 247; 1941, c. 367, s. 1; C. S. 1443.)

Northampton—Fourth Monday after the first Monday in March; Eighth Monday after the first Monday in September, each to continue for two weeks; first Monday in August to continue for one week. (1913, c. 196; 1929, cc. 123, 244; 1933, c. 409; 1935, c. 148; 1937, c. 64; C. S. 1443.)

Halifax—Fifth Monday before the first Monday in March, to continue for two weeks; second Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; eighth Monday after the first Monday in March, for the trial of both criminal and civil cases, to continue for one week, and for this term of court the governor is hereby directed to appoint a judge to hold same from among the regular, special or emergency judges; thirteenth Monday after the first Monday in March, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for trial of civil cases exclusively; third Monday before the first Monday in September, to continue for two weeks, for the trial of civil and criminal cases; fourth Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases only, and for this term of court the governor is hereby directed to appoint a judge to hold same from among the regular, special or emergency judges; seventh Monday after the first Monday in September, to continue for one week, for the trial of criminal cases only, and for this term of court the governor is hereby directed to appoint a judge to hold the same from among the regular, special or emergency judges; twelfth Monday after the first Monday in September, for the trial of civil and criminal cases, to continue for two weeks. (1913, c. 196; Ex. Sess. 1913, c. 2; 1915, c. 78; 1924, c. 87; 1925, cc. 36, 47; 1929, c. 160; 1941, c. 367, s. 1; C. S. 1443.)

Warren—Seventh Monday before the first Monday in March for criminal cases only; sixth Monday before the first Monday in March for civil cases only; eleventh Monday after the first Monday in March for criminal cases only; twelfth Monday after the first Monday in March for civil cases only; second Monday after the first Monday in September for criminal cases only; third Monday after the first Monday in September for civil cases only; each to continue one week. At any term for the trial of criminal cases, civil cases may be tried by consent. (1913, c. 196; 1917, c. 256; 1941, c. 367, s. 1; C. S. 1443.)

Vance—Eighth Monday before the first Monday in March for criminal cases only; first Monday in March for criminal cases only; second Monday in March for civil cases only; fifteenth Monday after the first Monday in March for criminal cases only; sixteenth Monday after the first Monday in March for civil cases only; fourth Monday after the first Monday in September for criminal cases only; fifth Monday after the first Monday in September for civil cases only, each to continue one week. At any term for the trial of criminal cases, civil cases may be tried by consent. (1913, c. 196; 1917, c. 256; 1925, cc. 66, 165; 1927, c. 169, s. 1; C. S. 1443.)

Fourth District

The fourth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Wayne—Sixth Monday before first Monday in March, fifth Monday after the first Monday in March, twelfth Monday after the first Monday in March, second Monday before the first Monday in September, each to continue for one week; twelfth Monday after the first Monday in September, to continue for two weeks; fifth Monday before the first Monday in March, sixth Monday after the first Monday in March, thirteenth Monday after the first Monday in March, first Monday before the first Monday in September, each to continue for two weeks, for civil cases only; first Monday in March and fifth Monday after the first Monday in September, each to continue for two weeks, for civil cases only.

If no regular judge is available for the two weeks' term of court beginning on the first Monday in March, or for the second week of the terms beginning on the fifth Monday before the first Monday in March, or on the sixth Monday after the first Monday in March, or on the thirteenth Monday after the first Monday in March, or on the first Monday before the first Monday in September, the governor may assign a special judge to hold said court. (1913, c. 196; 1927, c. 77; 1929, c. 132, s. 1; 1937, c. 192; C. S. 1443.)

Johnston—First Monday after the first Monday in March; third Monday before the first Monday in September, for criminal cases only; also the first Monday in March; the third Monday before the first Monday in March; sixth Monday after the first Monday in March; and sixth Monday after the first Monday in September, each for one week for criminal and civil cases; and the eighth Monday before the first Monday in March, two weeks for civil cases; and ninth Monday after the first Monday in September, two weeks for civil cases. The governor shall assign some regular or special judge to hold said courts; fourteenth Monday after the first Monday in September, to continue for two weeks; second Monday before the first Monday in March; seventh Monday after the first Monday in March; and third Monday after the first Monday in September, each to continue for two weeks; and the last three terms for civil cases only; sixteenth Monday after the first Monday in March, for the trial of criminal cases only. (1913, c. 196; 1927, c. 190; 1929, c. 208; 1933, c. 81; C. S. 1443.)

Harnett—Eighth Monday before the first Monday in March, one week, for the trial of criminal cases only; fourth Monday before the first Monday in March to continue for two weeks, for the trial of civil cases only; second Monday after the

first Monday in March, for the trial of criminal cases only; fourth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; ninth Monday after the first Monday in March for the trial of civil cases only; eleventh Monday after the first Monday in March, one week, for the trial of criminal cases only; fourteenth Monday after the first Monday in March, two weeks, for the trial of civil cases only; first Monday in September for criminal cases only; second Monday after the first Monday in September for the trial of civil cases only; fourth Monday after the first Monday in September to continue for two weeks, civil cases only; tenth Monday after the first Monday in September to continue for two weeks, for the trial of criminal cases only.

If no regular judge is available for any cause set out in article four, section eleven, of the constitution, for the one week term of court beginning on the second Monday after the first Monday in March, or on the first Monday in September, or for the two weeks term of court beginning on the fourth Monday after the first Monday in March, or on the fourth Monday after the first Monday in September, the governor may assign a special judge to hold said court. (1913, c. 196; 1927, cc. 161, 212; 1931, c. 147; 1937, c. 105; 1941, c. 367, s. 1; C. S. 1443.)

Chatham—Seventh Monday before the first Monday in March, to continue one week for the trial of criminal and civil cases; the first Monday in March to continue one week for the trial of civil cases only; the second Monday after the first Monday in March to continue one week for the trial of civil cases only; tenth Monday after the first Monday in March to continue for one week for the trial of civil and criminal cases; fifth Monday before the first Monday in September to continue for two weeks for the trial of civil cases only; seventh Monday after the first Monday in September to continue for one week for the trial of criminal and civil cases. (1913, c. 196; 1917, c. 228; 1919, c. 35; Pub. Loc. 1925, c. 602; 1929, c. 169; C. S. 1443.)

Lee—Fifth Monday before the first Monday in March, to continue for two weeks for the trial of civil cases only; provided, that for this term the governor shall assign a judge to hold the same from among the regular, special or emergency judges; third Monday after the first Monday in March to continue for two weeks; seventh Monday before the first Monday in September; first Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases; provided, that for the last week of said term the governor shall assign a judge to hold the same from among the regular, special or emergency judges; eighth Monday after the first Monday in September. (1913, c. 196; Ex. Sess. 1913, c. 24; 1917, c. 228; 1929, c. 162; 1931, c. 86; 1939, c. 194; C. S. 1443.)

Fifth District

The fifth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Pitt—Seventh Monday before the first Monday in March, for civil cases only; sixth Monday before the first Monday in March; second Monday before the first Monday in March, for civil cases only; second Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; sixth Monday after the first Monday in March and seventh Monday after the first Monday in March to constitute one term for the trial of criminal and civil cases; ninth Monday after the first Monday in March to continue for one week for the trial of civil cases; eleventh Monday after the first Monday in March, for civil cases only; twelfth Monday after the first Monday in March, for civil cases only; second Monday before the first Monday in September, for civil cases only; first Monday before the first Monday in September; first Monday after the first Monday in September, for civil cases only; third Monday after the first Monday in September, for civil cases only; seventh Monday after the first Monday in September, for civil cases only; eighth Monday after the first Monday in September; eleventh Monday after the first Monday in September, to continue for one week for the trial of civil cases. For the terms beginning the ninth Monday after the first Monday in March and the eleventh Monday after the first Monday in September the governor may appoint a judge to hold the same from among the regular or emergency judges. (1913, c. 196; Ex. Sess. 1913, c. 25; 1915, cc. 111, 139; 1917, c. 217; 1919, c. 56; Ex. Sess. 1920, c. 29; 1921, c. 159; 1929, c. 153; 1931, c. 94; 1935, c. 73; 1939, c. 43; C. S. 1443.)

Craven—Eighth Monday before the first Monday in March; thirteenth Monday after the first Monday in March, and the first Monday in September for criminal cases only; fifth Monday after the first Monday in March, for civil cases and jail cases on the criminal docket; fifth Monday before the first Monday in March to continue for three weeks for the trial of civil cases only; fourth Monday after the first Monday in September; eleventh Monday after the first Monday in September, each to continue for two weeks, for civil cases only; tenth Monday after the first Monday in March, for civil cases only. (1913, c. 196; 1915, c. 111; 1917, c. 217; 1929, c. 166; C. S. 1443.)

Pamlico—Eighth Monday after the first Monday in March, and ninth Monday after the first Monday in September, each to continue for two weeks. (1913, c. 196; 1921, c. 159; C. S. 1443.)

Jones—Fourth Monday after the first Monday in March; third Monday before the first Monday in September to continue for one week for civil cases only; fifth Monday after the first Monday in November; and second Monday after the first Monday in September.

If the judge regularly assigned to the district in which said county is situate be unable because of another regular term of court in said district, or for other cause, to hold any term of court provided in the preceding paragraph, the governor may appoint a judge to hold such term from among the regular or emergency judges. (1913, c. 196; Ex. Sess. 1913, c. 19; P. L. 1915, c. 363; 1921, c. 159; 1937, c. 29; 1939, c. 283; C. S. 1443.)

Carteret—Fourteenth Monday after the first Monday in March, to continue for two weeks; first Monday after the first Monday in March, and sixth Monday after the first Monday in September; thirteenth Monday after the first Mon-

day in September, for civil cases only. (1913, c. 196; 1921, c. 159; 1929, c. 166, s. 2; C. S. 1443.)

Greene—First Monday before the first Monday in March, to continue for two weeks; sixteenth Monday after the first Monday in March; fourteenth Monday after the first Monday in September, to continue for two weeks; thirteenth Monday after the first Monday in September to continue for one week for the trial of both criminal and civil cases. And for this last mentioned term of court the governor shall assign a judge from among the regular, special or emergency judges. (1913, cc. 63, 171, 196; Ex. Sess. 1913, cc. 19, 47; 1915, c. 139; 1935, c. 109; C. S. 1443.)

Sixth District

The sixth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Lenoir—Sixth Monday before the first Monday in March, to continue for one week, for the trial of criminal cases; second Monday before first Monday in March to continue for two weeks, for the trial of civil cases only; fifth Monday after first Monday in March for the trial of criminal cases or civil cases, or both, to continue for one week; tenth Monday after first Monday in March, to continue for two weeks for the trial of civil cases only; fourteenth Monday after first Monday in March, to continue for two weeks for the trial of civil cases only; sixteenth Monday after first Monday in March for the trial of criminal cases only; second Monday before first Monday in September, to continue for one week for the trial of criminal or civil cases, or both; third Monday after first Monday in September, to continue for one week for trial of civil cases only; sixth Monday after first Monday in September, for the trial of civil or criminal cases, or both, to continue for one week; ninth Monday after first Monday in September, to continue for two weeks for the trial of civil cases only; fourteenth Monday after first Monday in September, to continue for one week for the trial of criminal or civil cases, or both, and for this term of court, the governor is hereby directed to appoint a judge to hold the same from among the regular or special judges. (1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 240; 1917, c. 13; Pub. Loc. 1925, c. 5; 1931, c. 271; 1933, c. 234, s. 1; C. S. 1443.)

Duplin—Eighth Monday before the first Monday in March, to continue for two weeks, for the trial of civil cases only; fifth Monday before the first Monday in March, to continue for one week, for the trial of criminal cases; first Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; sixth Monday after first Monday in March to continue for two weeks, the first week of which shall be for the trial of criminal cases, or civil cases, or both, and the second week for the trial of civil cases exclusively; sixth Monday before first Monday in September to continue for one week, for the trial of criminal cases only; first Monday before the first Monday in September, to continue for two weeks, for the trial of civil cases only; fourth Monday after first Monday in September, to continue for one week for the trial of criminal cases; thirteenth Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only.

At all criminal terms of the superior court in the county of Duplin, uncontested divorce cases may be tried and the court may hear and determine all motions in civil matters, not requiring a jury trial and make any order, judgment or decree respecting the confirmation of judicial sales. (1913, c. 196; Ex. Sess. 1913, c. 53; 1915, c. 240; Ex. Sess. 1920, c. 81; Ex. Sess. 1921, cc. 78, 79; 1931, c. 271; 1933, c. 234, s. 1; 1935, cc. 157, 289; 1941, c. 321; C. S. 1443.)

Onslow—First Monday in March to continue for one week, for the trial of criminal cases, or civil cases, or both; twelfth Monday after the first Monday in March to continue for two weeks, for the trial of criminal cases only; seventh Monday before the first Monday in September, to continue for one week, for the trial of civil cases and jail cases, in accordance with the next succeeding paragraph; fifth Monday after the first Monday in September, to continue for one week for the trial of criminal and civil cases; eleventh Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases. (1913, c. 196; Ex. Sess. 1913, c. 75; 1915, c. 240; Ex. Sess. 1921, c. 78, s. 1; 1927, c. 179, s. 1; 1933, c. 234, s. 1; 1941, c. 321; C. S. 1443.)

The July term of the superior court for Onslow County, is hereby authorized, in the discretion of the board of county commissioners signified by resolution duly adopted in apt time, to try any or all state cases which involve defendants or witnesses confined in jail to await trial. In the event such trials are ordered, by such resolution, the board of county commissioners shall cause to be drawn and summoned in the usual manner sufficient jurors to provide for the empaneling of a grand jury and to also provide for a trial jury or juries. (1931, c. 341.)

Sampson—Fourth Monday before the first Monday in March, to continue for two weeks, for the trial of criminal or civil cases, or both; third Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; eighth Monday after the first Monday in March, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for the trial of civil cases exclusively; fourteenth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only, and for this term of court a special or emergency judge shall be assigned by the governor if the regular judge is unable for any cause set out in article four, section eleven of the constitution to hold said term. Fourth Monday before the first Monday in September, to continue for two weeks, for the trial of criminal or civil cases, or both; first Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases only; seventh Monday after the first Monday in September, to continue for two weeks, the first week of which shall be for the trial of criminal or civil cases, or both, and the second week for the trial of civil cases exclusively. (1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 240; Ex. Sess. 1921, c. 79, s. 2; 1927, c. 179, s. 1(b); 1933, c. 234, s. 1; 1935, c. 283; 1941, cc. 351, 367, s. 1; C. S. 1443.)

At criminal terms of superior court in the sixth judicial district, civil actions which do not require a jury may be heard by consent; and at criminal

terms in the county of Lenoir uncontested divorce cases may be tried by the court and a jury in all respects as at civil terms, and any order, judgment or decree may be entered in a civil action not requiring a jury trial. (1915, c. 240, s. 3; 1917, c. 13; Pub. Loc. 1925, c. 5; 1933, c. 234, s. 2; 1941, c. 367, s. 1; C. S. 1443.)

Seventh District

The seventh district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Wake—Criminal courts: Eighth Monday before the first Monday in March; first Monday in March to continue for two weeks; fifth Monday after the first Monday in March; ninth Monday after the first Monday in March; thirteenth Monday after the first Monday in March to continue for two weeks; eighth Monday before the first Monday in September; first Monday in September to continue for two weeks; fifth Monday after the first Monday in September; ninth Monday after the first Monday in September; thirteenth Monday after the first Monday in September to continue for two weeks. These terms shall be for criminal cases only, and there is scheduled a two weeks term of criminal court each for March, June, September, and December, no court for the month of August, criminal or civil, and one week of criminal court for each of the other months.

Civil courts: Seventh Monday before the first Monday in March to continue for three weeks; third Monday before the first Monday in March to continue for three weeks; second Monday after the first Monday in March to continue for two weeks; sixth Monday after the first Monday in March to continue for three weeks; tenth Monday after the first Monday in March to continue for three weeks; fifteenth Monday after the first Monday in March to continue for two weeks; second Monday after the first Monday in September to continue for two weeks; sixth Monday after the first Monday in September to continue for three weeks; tenth Monday after the first Monday in September to continue for three weeks; fifteenth Monday after the first Monday in September to continue for one week. These terms shall be for civil cases only and there shall be no term for civil cases in July or in August. (1913, c. 196; 1917, c. 116; 1919, c. 113; Ex. Sess. 1924, c. 77; 1937, cc. 163, 387; 1939, c. 378; 1941, c. 367, s. 1; C. S. 1443.)

Franklin—First Monday after the first Monday in September, to continue for one week for the trial of civil cases only; fifth Monday after the first Monday in September, to continue for one week for the trial of criminal cases only; ninth Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only; seventh Monday before the first Monday in March, to continue for one week for the trial of civil cases only; fourth Monday before the first Monday in March, to continue for one week for the trial of criminal cases only; second Monday after the first Monday in March, to continue for one week for the trial of civil cases only; fifth Monday after the first Monday in March, to continue for one week for the trial of criminal cases only; seventh Monday after the first Monday in March, to continue for one week for the trial of civil cases only.

The courts provided in the above paragraph shall be held by the judge regularly riding the seventh judicial district.

At all criminal terms provided for in the second preceding paragraph, all motions and divorce cases may be heard, and, by consent, jury trials in all civil cases may be heard at said criminal terms. (1913, c. 196; 1917, c. 116; 1937, c. 387, ss. 1, 3; 1939, c. 184; 1941, c. 189; C. S. 1443.)

Eighth District

The eighth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

New Hanover—Seventh Monday before the first Monday in March; second Monday after the first Monday in March; tenth Monday after the first Monday in March; fourteenth Monday after the first Monday in March; sixth Monday before the first Monday in September; first Monday before the first Monday in September; ninth Monday after the first Monday in September, each to continue for one week, and each to be for the trial of criminal cases only.

Fourth Monday before the first Monday in March; sixth Monday after the first Monday in March; twelfth Monday after the first Monday in March; sixth Monday after the first Monday in September; thirteenth Monday after the first Monday in September, each to continue for two weeks and each to be for the trial of civil cases only. The first Monday after the first Monday in March, and the second Monday before the first Monday in September, each for one week and each to be for the trial of civil cases only. The tenth Monday after the first Monday in September for one week for the trial of both criminal and civil cases. (1913, c. 196; 1915, c. 60; 1919, c. 167; 1921, c. 14; 1941, c. 367, s. 1; C. S. 1443.)

Pender—Eighth Monday before the first Monday in March; eighth Monday after the first Monday in March; third Monday after the first Monday in September, each to continue for one week, and each to be for the trial of both criminal and civil cases. The third Monday after the first Monday in March; seventh Monday before the first Monday in September; eighth Monday after the first Monday in September, each to continue for one week, and each to be for the trial of civil cases only. (1913, c. 196; 1921, c. 14; 1933, c. 153; 1941, c. 367, s. 1; C. S. 1443.)

Columbus—Fifth Monday before the first Monday in March; the fifteenth Monday after the first Monday in March, each to continue for two weeks and each to be for the trial of criminal cases only. The second Monday before the first Monday in March; the twelfth Monday after the first Monday in September, each to continue for two weeks and each to be for the trial of civil cases only. The ninth Monday after the first Monday in March; the fifth Monday after the first Monday in September; the fifteenth Monday after the first Monday in September, each to continue for one week and each to be for the trial of criminal cases only. The eighth Monday before the first Monday in September; the fourth Monday after the first Monday in September, each to continue for one week, and each to be for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 61; 1917, c. 124;

1921, cc. 14, 149; Ex. Sess. 1921, c. 40; 1931, c. 246; 1937, c. 52; 1941, c. 367, s. 1; C. S. 1443.)

Brunswick—The sixth Monday before the first Monday in March; eleventh Monday after the first Monday in March; first Monday after the first Monday in September, each to continue for one week, and each to be for the trial of both criminal and civil cases. The fifth Monday after the first Monday in March; the second Monday after the first Monday in September, each to continue for one week and each to be for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 56; 1917, c. 18; 1921, c. 14; 1941, c. 367, s. 1; C. S. 1443.)

All motions and orders, applications for injunctions, receiverships, etc., in the eighth district, may be heard at criminal terms upon five days notice. Divorce cases may be tried at any term of court, civil or criminal. (1921, c. 14; C. S. 1443.)

Ninth District

The ninth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Bladen—Eighth Monday before the first Monday in March for the trial of civil cases, and the trial of criminal cases, where bills have been found, and cases on appeal from the recorder's court and courts of the justices of the peace; the second Monday after the first Monday in March for the trial of criminal cases only; the eighth Monday after the first Monday in March for the trial of civil cases only; the fourth Monday before the first Monday in September for the trial of civil cases only; the second Monday after the first Monday in September for the trial of criminal cases only. Said courts to continue for one week unless the business is sooner disposed of, and grand juries to be summoned only for the March and September terms of court: Provided, that if the necessity should arise, and the county commissioners of Bladen county should so determine and order, a grand jury may be summoned by said commissioners for the January terms of court; and such grand jury so summoned shall have, perform and exercise all of the powers and duties of regular grand juries herein provided for the March and September terms of court. At any term for the trial of criminal cases, civil cases may be tried by consent. (1913, c. 196; 1915, c. 110; 1925, c. 64; 1927, c. 166, s. 1; 1929, c. 27, s. 1; 1931, c. 96; 1933, c. 77; Pub. Loc. 1935, c. 101, s. 3; 1937, c. 159; C. S. 1443.)

If it shall appear to the board of county commissioners of Bladen County at any time before the jury is summoned for a term of superior court of Bladen County that there is not sufficient business to justify a term of such court or that there are no cases of sufficient importance to warrant the expense of a term of such court, the said board of commissioners are authorized to order that the jury for such term be not summoned, and all cases which would come on for trial at such term shall be continued. In case of the continuance of a term of superior court of Bladen County as herein provided the board of commissioners of Bladen County shall notify, or cause to be notified, the solicitor of the district, the judge holding the courts of the district and the court stenographer of their action. (1933, c. 119.)

Cumberland—Seventh Monday before the first Monday in March; first Monday in March; the first Monday after the first Monday in March; the eighth Monday after the first Monday in March; thirteenth Monday after the first Monday in March; first Monday before the first Monday in September; fifth Monday after the first Monday in September; and the eleventh Monday after the first Monday in September, the last for two weeks; each for criminal cases only. If the regular judge is unable for any reason set forth in article four, section eleven of the constitution to hold the terms above provided for beginning on the first Monday in March, the eighth Monday after the first Monday in March, and the fifth Monday after the first Monday in September, the governor shall assign a special, emergency or other regular judge to hold said terms. Third Monday before the first Monday in March; third Monday after the first Monday in March; ninth Monday after the first Monday in March; third Monday after the first Monday in September; seventh Monday after the first Monday in September, each to continue for two weeks, for civil cases only. At all criminal terms of court civil cases may be heard by consent of the parties, and motions may be heard upon ten days' notice to the adverse party prior to said term. (1913, c. 196; Ex. Sess., 1913, c. 23; 1931, c. 96; 1937, c. 159; 1941, c. 367, s. 1; C. S. 1443.)

Hoke—Sixth Monday before the first Monday in March; seventh Monday after the first Monday in March; second Monday before the first Monday in September, to continue for one week; tenth Monday after the first Monday in September; and fifth Monday before the first Monday in September, to continue for one week for the trial of civil cases and no longer. The commissioners of Hoke County, whenever in their discretion the best interests of the county demand it, shall have and are hereby granted the power and authority, by order, to abrogate, in any year, the holding of any one of the above set forth terms of court, and when said term is so abrogated, thirty days' notice of the same shall be given by said commissioners by the publication of same in a newspaper published in said county and at the court house door: Provided, that in the event the regular term at which the grand jury is selected shall be the term abrogated then the grand jury shall continue to serve until the following term of court at which time a new grand jury shall be selected. (1913, c. 196; 1917, c. 233; Ex. Sess. 1921, c. 81; 1927, c. 155; 1931, c. 96; 1933, c. 333; 1939, c. 108; C. S. 1443.)

Robeson—Fifth Monday before the first Monday in March two weeks for the trial of criminal cases; first Monday before the first Monday in March two weeks for the trial of civil cases; fifth Monday after the first Monday in March two weeks for the trial of criminal cases; eleventh Monday after the first Monday in March two weeks for the trial of civil cases; fourteenth Monday after the first Monday in March one week for the trial of civil cases; fifteenth Monday after the first Monday in March one week for the trial of criminal cases; eighth Monday before the first Monday in September two weeks for the trial of civil cases; third Monday before the first Monday in September one week for the trial of criminal cases; first Monday in September two weeks for the trial of criminal cases; fifth Monday after the first Monday in September two weeks for the trial

of civil cases; ninth Monday after the first Monday in September one week for the trial of criminal cases; thirteenth Monday after the first Monday in September two weeks for the trial of civil cases; fifteenth Monday after the first Monday in September one week for the trial of criminal cases.

There shall also be held in Robeson county superior courts, to which judges shall be assigned, the following terms: Second Monday after the first Monday in March one week for the trial of criminal cases; ninth Monday after the first Monday in March two weeks for the trial of criminal cases; third Monday after the first Monday in September one week for the trial of criminal cases; seventh Monday after the first Monday in September one week for the trial of criminal cases.

At all criminal terms all motions and divorce cases may be heard and jury trials in all civil cases may be heard by consent. The commissioners of Robeson county, by and with the consent and approval of the solicitor of the ninth judicial district, in writing, may call off any term of superior court in said county scheduled above for the trial of criminal cases to which the judge must be assigned. The grand jury shall convene at all criminal terms of said courts unless the solicitor of the ninth judicial district shall, prior to the said court, notify the sheriff of Robeson county not to assemble the grand jury for said term, and such notice, in writing, shall be filed with the clerk of the board of commissioners of said county, and shall be spread upon the minutes of the board of commissioners thereof. (1913, c. 196; 1915, c. 208; 1919, c. 105; 1923, c. 209; Pub. Loc. 1925, cc. 12, 22, 519; 1927, c. 84; 1931, c. 96; 1935, c. 132; 1937, c. 167; 1939, c. 171, s. 2; C. S. 1443.)

In addition there shall also be held in Robeson county, superior courts to which judges shall be assigned, the following terms:

Seventh Monday before the first Monday in March two weeks for the trial of civil cases; seventh Monday after the first Monday in March one week for the trial of civil cases; first Monday before the first Monday in September one week for the trial of civil cases; tenth Monday after the first Monday in September one week for the trial of civil cases. (1939, c. 171, s. 1.)

Tenth District

The tenth district shall be composed of the following counties, and the superior courts thereof shall be held in each year at the following times, to-wit:

Alamance—First Monday before the first Monday in March, tenth Monday after the first Monday in March, third Monday before the first Monday in September and twelfth Monday after the first Monday in September, each for one week, for the trial of criminal cases only; fifth Monday before the first Monday in March, fourth Monday after the first Monday in March, each for one week, twelfth Monday after the first Monday in March, two weeks, fifth Monday before the first Monday in September, one week, first Monday in September and tenth Monday after the first Monday in September each for two weeks, all for the trial of civil cases only.

In case of conflict of any of the regularly established terms of the courts of the tenth judicial district with the terms above set out, the said terms of court herein established shall be considered special terms, and the governor may assign a special or emergency judge to hold said terms of the superior court of Alamance County when the judge holding the regular terms of court in the district is unable to hold said terms. (1913, c. 196; 1915, c. 53; 1921, c. 134; Ex. Sess. 1921, c. 36; 1929, c. 172; 1931, c. 228; C. S. 1443.)

Durham—Eighth Monday before the first Monday in March; second Monday before the first Monday in March; third Monday after the first Monday in March, for a term of two weeks; eleventh Monday after the first Monday in March; sixteenth Monday after the first Monday in March; seventh Monday before the first Monday in September; first Monday in September, for a term of two weeks; fifth Monday after the first Monday in September; thirteenth Monday after the first Monday in September, each for the trial of criminal cases only; seventh Monday before the first Monday in March, for a term of three weeks; first Monday before the first Monday in March, for a term of four weeks; fifth Monday after the first Monday in March, for a term of three weeks; eighth Monday after the first Monday in March, for a term of two weeks; twelfth Monday after the first Monday in March, for a term of three weeks; fifth Monday before the first Monday in September, for a term of two weeks; second Monday after the first Monday in September, for a term of three weeks; sixth Monday after the first Monday in September, for a term of two weeks; eighth Monday after the first Monday in September, for a term of two weeks, each for the trial of civil cases only.

In case of conflict of any of the regularly established terms of the courts of the tenth judicial district with the terms above set out, the said terms of court here established shall be considered special terms, and the governor may assign a special or emergency judge to hold said terms of the superior court of Durham county when the judge holding the regular terms of court in the district is unable to hold said terms for any cause set out in article four, section eleven, of the constitution. (1913, c. 196; 1915, c. 68; Ex. Sess. 1921, c. 36; Ex. Sess. 1924, c. 39; 1929, c. 243; 1931, cc. 224, 419; 1941, cc. 274, 367, s. 1; C. S. 1443.)

Granville—Fourth Monday before the first Monday in March, fifth Monday after the first Monday in March, tenth Monday after the first Monday in September, each term for two weeks; sixth Monday before the first Monday in September, one week; seventh Monday after the first Monday in September, one week, for civil cases only. (1913, c. 196; 1915, c. 7; Ex. Sess. 1921, c. 36; 1923, c. 131; C. S. 1443.)

Orange—Tenth Monday after the first Monday in March, fifteenth Monday after the first Monday in March, fourth Monday after the first Monday in September, for civil cases only; second Monday after the first Monday in March, first Monday before the first Monday in September, fourteenth Monday after the first Monday in September.

The fourteenth Monday after the first Monday in March, to continue for one week, for the trial of criminal and civil cases and is hereby constituted a mixed term of court;

The second Monday before the first Monday in September to continue for one week for the trial

of criminal and civil cases and is hereby constituted a mixed term of court;

The first Monday before the first Monday in September to continue for one week for the trial of civil cases only.

For each separate week of court there shall be separate jurors summoned. If the judge regularly assigned to the district in which said county is situated is unable, because of another regular term of court in the said district, or for other causes, to hold any term of court provided for in the three preceding paragraphs, then the governor shall assign another judge to hold said term. (1913, c. 196; 1915, cc. 33, 54; 1917, c. 52; Ex. Sess. 1921, c. 36; 1927, c. 205; 1929, c. 172, s. 2; C. S. 1443.)

Person—Fifth Monday before the first Monday in March; fourth Monday before the first Monday in March; seventh Monday after the first Monday in March; fourth Monday before the first Monday in September; sixth Monday after the first Monday in September. All of said terms shall be for the trial of criminal and civil cases, except the term beginning on the fourth Monday before the first Monday in March, which shall be for the trial of civil cases only. (1913, c. 196; 1915, c. 54; Ex. Sess. 1921, c. 36; 1929, c. 23; 1941, c. 367, s. 1; C. S. 1443.)

Western Division

Eleventh District

The eleventh district will be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Alleghany—Eighth Monday after the first Monday in March, and the fourth Monday after the first Monday in September, both terms to be held by the regular judge, and both terms to be for the trial of civil and criminal cases. (1913, c. 196; 1935, c. 246; 1937, c. 413, s. 4; 1941, c. 367, s. 1; C. S. 1443.)

Ashe—Sixth Monday after the first Monday in March, and seventh Monday after the first Monday in September (both by regular judge), for the trial of criminal cases only; twelfth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; sixth Monday before the first Monday in September, to continue for two weeks, for the trial of civil cases only (regular judge): Provided, that motions and uncontested civil cases may be heard at either of the terms designated for the trial of criminal cases only. (1913, c. 196; Ex. Sess. 1913, c. 34; Ex. Sess. 1921, c. 32; 1935, c. 246; 1937, c. 413, s. 4; C. S. 1443.)

Forsyth—Eighth Monday before the first Monday in March; fourth Monday before the first Monday in March; first Monday in March; fourth Monday after the first Monday in March; ninth Monday after the first Monday in March; fourteenth Monday after first Monday in March; eighth Monday before first Monday in September; first Monday in September; fifth Monday after first Monday in September; ninth Monday after the first Monday in September; thirteenth Monday after first Monday in September, each of said terms to continue for two weeks, for the trial of criminal and civil cases; the seventh Monday before the first Monday in March, to continue for three weeks; the third Monday before the first Monday in March, to continue for three weeks; the first Monday after the first Monday in March, to continue for three weeks; the sixth Monday after the first Monday in March to continue for three weeks; the twelfth Monday after the first Monday in March to continue for two weeks; the fifteenth Monday after the first Monday in March to continue for two weeks; the second Monday after the first Monday in September, to continue for three weeks; the seventh Monday after the first Monday in September to continue for two weeks; the eleventh Monday after the first Monday in September, to continue for two weeks, each of said terms for the trial of civil cases only.

The governor shall assign a special, emergency or any regular judge to hold the following courts hereinbefore provided for when the regular judge assigned to the district is unable to hold same for any cause set out in article four, section eleven, of the constitution.

The second week of the term to try civil and criminal cases of the term beginning the eighth Monday before the first Monday in March; the second week of the civil and criminal term, beginning the fourth Monday before the first Monday in March; the second week of the civil and criminal term beginning the first Monday in March; the entire civil term beginning the sixth Monday after the first Monday in March; the second week of the civil and criminal term beginning the fourteenth Monday after the first Monday in March; the third week of the term beginning the second Monday after the first Monday in September; the first week of the civil term beginning the seventh Monday after the first Monday in September. All other terms and weeks of terms shall be presided over by the regular judge assigned to hold courts in the eleventh judicial district. (1913, c. 196; 1917, c. 169; Pub. Loc. 1917, c. 375; 1919, c. 87; 1923, c. 151; Pub. Loc. 1925, c. 19; 1927, c. 197; 1929, c. 131; 1933, cc. 231, 306; 1935, c. 246; 1937, c. 158; 1937, c. 413, ss. 4, 5; 1941, c. 367, s. 1; C. S. 1443.)

Twelfth District

The twelfth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Guilford—Sixth Monday before the first Monday in March, one week; first Monday in March, two weeks; eighth Monday after the first Monday in March, one week; fifteenth Monday after the first Monday in March, one week; fifth Monday before the first Monday in September, one week; second Monday after the first Monday in September, two weeks; tenth Monday after the first Monday in September, one week; fifteenth Monday after the first Monday in September, one week, for the trial of criminal cases only.

Eighth Monday before the first Monday in March, two weeks; fourth Monday before the first Monday in March, two weeks; second Monday after the first Monday in March, two weeks; sixth Monday after the first Monday in March, two weeks; tenth Monday after the first Monday in March, two weeks; thirteenth Monday after the first Monday in March, two weeks; fourth Monday before the first Monday in September, two weeks; first Monday before the first Monday in September, two weeks; second Monday after the first Monday in September, two weeks; fourth

Monday after the first Monday in September, two weeks; eighth Monday after the first Monday in September, two weeks; for the trial of civil cases only. In addition to the terms of court now provided by law to be held in Guilford county, the following terms of court shall be opened and held in each year in the manner and at the times herein set forth, to-wit: second Monday before the first Monday in March, to continue for two weeks for the trial of civil cases; fourth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases; eighth Monday before the first Monday in September, to continue for one week for the trial of criminal cases; seventh Monday after the first Monday in September, to continue for one week for the trial of criminal cases; eleventh Monday after the first Monday in September, to continue for two weeks for the trial of civil cases.

If the judge regularly assigned to the district in which said county is situate is unable because of any cause set out in article four, section eleven, of the constitution to hold any of the last five preceding terms of court, then the governor shall assign another judge to hold such term. The commissioners of Guilford county are authorized and empowered in their discretion to pay the solicitor prosecuting the docket for the two criminal terms above provided, or other extra terms of criminal court of said county, not exceeding one hundred and fifty ($150.00) dollars a week for such terms, or to designate some other competent attorney to prosecute at any such terms on behalf of the state and to pay him not exceeding said sum for each such week of work by him.

In addition to the terms of court now provided by law to be held in Guilford county, the following additional terms of superior court for the trial of criminal cases only in Guilford county shall be held as follows: Ninth Monday before the first Monday in March, one week; third Monday after the first Monday in March, one week; twelfth Monday after the first Monday in March, one week; seventh Monday before the first Monday in September, one week; sixth Monday after the first Monday in September, one week; ninth Monday after the first Monday in September, one week. First Monday after the first Monday in September, one week; eighth Monday after the first Monday in September, one week; thirteenth Monday after the first Monday in September, one week; fourteenth Monday after the first Monday in September, one week; eighth Monday before the first Monday in March, one week; fourth Monday before the first Monday in March, one week; seventh Monday after the first Monday in March, one week; eleventh Monday after the first Monday in March, one week. (1913, c. 196; 1921, c. 22; 1923, c. 169; 1927, c. 211; 1935, c. 184; 1939, c. 42; 1941, c. 367, s. 1; C. S. 1443.)

Davidson—Fifth Monday before the first Monday in March, one week; ninth Monday after the first Monday in March, one week; sixteenth Monday after the first Monday in March, one week; second Monday before the first Monday in September, one week, for the trial of criminal cases only.

Second Monday before the first Monday in March, two weeks; twelfth Monday after the first Monday in March, two weeks; first Monday after the first Monday in September, two weeks; eleventh Monday after the first Monday in September, two weeks mixed; for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 14; 1921, c. 42; 1923, c. 169; 1933, cc. 14, 404; C. S. 1443.)

In addition to the terms of court now provided by law to be held in Davidson County, the following terms of court shall be opened and held in each year in the manner and at the times herein set forth, to-wit: To convene on the first Monday in April of each year and to continue for two weeks for the trial of civil cases only. To convene on the first Monday in October of each year and to continue for two weeks for the trial of civil cases only. If the judge regularly assigned to the district in which said county is situate be unable because of another regular term of court in said district, or for other cause, to hold any term of court provided in this paragraph, the governor may appoint a judge to hold such term from among the regular or emergency judges. (1931, c. 114.)

Thirteenth District

The thirteenth district shall be composed of the following counties, and the superior courts shall be held at the following times, to-wit:

Union—Fifth Monday before the first Monday in March, for criminal cases; third Monday after the first Monday in March, for civil cases; fifth Monday before the first Monday in September, for criminal cases. Sixth Monday after the first Monday in September, to continue for two weeks, the second week for civil cases only; second Monday before the first Monday in March, and second Monday before the first Monday in September, each to continue for two weeks; ninth Monday after the first Monday in March; the last three terms for civil cases only.

In the first two terms of court for Union County for the trial of criminal cases, if it shall appear to the clerk of the superior court that the criminal docket will not be sufficient to take up the entire term, he may make or cause to be made a calendar of civil cases as is made at other terms, and such cases shall be tried at such term in the same manner as if it were a civil term.

If it shall appear to the county commissioners for the county of Union, prior to the drawing of a jury or grand jury for any criminal term of court, that there is no prisoner in jail in the county or that the criminal docket at such term is not sufficient to justify the holding of the term, then the clerk is not to make or cause to be made a calendar of civil cases to be tried at said term, and the county commissioners, within their discretion, may not draw a jury or grand jury for such term, and notice shall be given immediately to the judge not to hold said court.

If it shall appear to the board of commissioners of Union County, thirty days before the beginning of the term held the third Monday after the first Monday in March that the condition of the criminal docket, and the number of prisoners in jail, make it necessary that said March term should be used as a criminal term, then said board of commissioners are hereby authorized and empowered within their discretion to draw a grand jury for said term, and to give thirty days' notice in some local paper that criminal cases would be

tried at said term, and all criminal process and undertakings returnable to a subsequent term shall be returnable to said March term. (1913, c. 196; Ex. Sess. 1913, c. 22; 1915, c. 72; 1917, cc. 28, 117; 1921, c. 55; C. S. 1443.)

If it shall appear to the county commissioners for the county of Union, prior to the drawing of a jury for the civil term of court to be held the third Monday after the first Monday in March, and/or the civil term to be held on the ninth Monday after the first Monday in March, that the condition of the civil docket does not justify holding said term, then the clerk shall not make, or cause to be made, a calendar of civil cases to be tried at the said term and the county commissioners may not draw a jury for such term and notice shall be given immediately to the judge not to hold said court. (1933, c. 112.)

If it shall appear to the board of county commissioners of Union county thirty days before the beginning of the term held on the ninth Monday after the first Monday in March that the condition of the criminal docket and the number of prisoners in jail make it necessary that said May term should be used for the trial of criminal cases as well as civil cases, then said board of commissioners are hereby authorized and empowered within their discretion to direct the clerk of said court to order the grand jury to assemble for said term, and to give thirty days notice in some local paper that criminal cases would be tried at said term, and all criminal process and undertaking returnable to a subsequent term shall be returnable to said May term. (1939, c. 25.)

Anson—Seventh Monday before the first Monday in March, for criminal cases only; first Monday in March for civil cases only; sixth Monday after the first Monday in March to continue for two weeks; fourteenth Monday after the first Monday in March, for civil cases only; first Monday after the first Monday in September, for civil cases only; third Monday after the first Monday in September, for criminal cases only; tenth Monday after the first Monday in September, for civil cases only. (1913, c. 196; Ex. Sess. 1921, c. 16; 1923, c. 112; 1927, c. 181; 1929, c. 157; C. S. 1443.)

Scotland—First Monday after the first Monday in March for one week, for the trial of criminal and civil cases; eighth Monday after the first Monday in March for one week, for the trial of civil cases only; fourth Monday before the first Monday in September for one week, for the trial of criminal and civil cases; eighth Monday after the first Monday in September for one week, for the trial of civil cases only; twelfth Monday after the first Monday in September for two weeks, for the trial of criminal and civil cases. (1913, c. 196; Ex. Sess. 1913, c. 22; 1917, c. 105; 1923, c. 178; 1933, c. 116; 1937, c. 371; C. S. 1443.)

Moore—Sixth Monday before the first Monday in March, for the trial of criminal cases only, to continue for one week; third Monday before the first Monday in March, for the trial of civil cases only, to continue for one week; third Monday after the first Monday in March, for the trial of civil cases only, to continue for two weeks; eleventh Monday after the first Monday in March, to continue for two weeks, the first week for the trial of criminal cases only and the second week for the trial of civil cases only; third Monday before the first Monday in September, to continue for one week, for the trial of criminal cases only; second Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases only; fourteenth Monday after the first Monday in September, to continue for one week, for the trial of civil cases only.

Each of the terms designated for the trial of criminal cases shall also have jurisdiction to hear motions in civil actions on notice; and civil cases requiring a jury may, by consent of parties thereto, be tried at such terms. (1913, c. 196; Ex. Sess. 1913, c. 30; 1915, c. 64; 1929, c. 229; C. S. 1443.)

Richmond — Eighth Monday before the first Monday in March to continue for one week; fifth Monday after the first Monday in March to continue for one week; sixth Monday before the first Monday in September to continue for one week; fourth Monday after the first Monday in September to continue for one week, all for the trial of criminal cases; fourth Monday before the first Monday in March to continue for one week; second Monday after the first Monday in March to continue for one week; twelfth Monday after the first Monday in March to continue for one week; fifteenth Monday after the first Monday in March to continue for one week; seventh Monday before the first Monday in September to continue for one week; first Monday in September to continue for one week; ninth Monday after the first Monday in September to continue for one week, all for the trial of civil cases.

Each of the terms designated for the trial of criminal cases shall also be the return term for such civil process as may be returnable at term, and for the hearing of motions in civil actions; and civil cases requiring a jury, may, by consent of the parties thereto, be tried at such criminal terms.

The governor shall assign an emergency, or any other judge, to hold any of the terms of the superior court for Richmond County when the judge regularly holding the courts in said district for any cause is unable to hold any of said terms. (1913, c. 196; 1915, c. 72; 1917, s. 117; 1919, c. 98; 1921, c. 77; Ex. Sess. 1921, c. 16; 1923, cc. 112, 184; 1925, c. 241; 1931, c. 82; 1935, c. 3; C. S. 1443.)

Stanly—Fourth Monday before the first Monday in March to continue for two weeks, for civil cases only; fourth Monday after the first Monday in March; tenth Monday after the first Monday in March, for civil cases only; eighth Monday before the first Monday in September; first Monday in September to continue for two weeks, for civil cases only; fifth Monday after the first Monday in September, for civil cases only; eleventh Monday after the first Monday in September.

Each of the terms set for the trial of criminal cases shall also be the return term for such civil process as may be returnable at term; and for the hearing of motions in civil actions; and for the trial of civil cases requiring a jury where issues are drawn by consent of the parties thereto; and for the trial of actions for divorce and other actions in which no answer has been filed when the time for filing the answer has expired.

The governor shall assign an emergency, or any other judge, to hold any of the terms of the superior court for Stanly County when the judge regularly holding the courts in said district for

any cause is unable to hold any of said terms. (1913, c. 196; 1933, c. 240; C. S. 1443.)

Fourteenth District

The fourteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Gaston—Seventh Monday before the first Monday in March; first Monday after the first Monday in March; seventh Monday after the first Monday in March; thirteenth Monday after the first Monday in March; sixth Monday before the first Monday in September; first Monday after the first Monday in September; seventh Monday after the first Monday in September; twelfth Monday after the first Monday in September, each to continue for one week, for the trial of criminal cases exclusively; sixth Monday before the first Monday in March; second Monday after the first Monday in March; eleventh Monday after the first Monday in March; fifth Monday before the first Monday in September; second Monday after the first Monday in September; thirteenth Monday after the first Monday in September, each to continue for two weeks, for the trial of civil cases exclusively; eighth Monday after the first Monday in September to continue for one week for the trial of civil cases only: Provided, that when the judge regularly assigned to hold the courts of the district is unable to do so for any cause set out in article four, section eleven, of the constitution, a special or emergency judge shall be assigned by the governor to hold said courts in Gaston county, and such special or emergency judge shall have all the powers conferred upon any resident or presiding judge.

At all criminal terms of said court, civil trials which do not require a jury may be heard by consent of the parties; and at all criminal terms of said court, upon five days' notice to the adverse party, any order, application for injunction, receivership, motions, etc., may be heard in same manner as at civil terms. (1913, c. 196; Ex. Sess. 1913, c. 12; 1915, c. 153; 1919, c. 187; Ex. Sess. 1920, c. 39; 1925, c. 237; 1931, c. 242; 1941, c. 367, s. 1; C. S. 1443.)

Mecklenburg—Eighth Monday before the first Monday in March; first Monday before the first Monday in March; tenth Monday after the first Monday in March; fourteenth Monday after the first Monday in March; eighth Monday before the first Monday in September, which last named term only is to continue two weeks; first Monday before the first Monday in September; fourth Monday after the first Monday in September; tenth Monday after the first Monday in September, which eight terms are for the trial of criminal cases exclusively; fourth Monday before the first Monday in March, to continue three weeks; the first Monday in March; fourth Monday after the first Monday in March; eighth Monday after the first Monday in March; eleventh Monday after the first Monday in March; the first Monday in September; fifth Monday after the first Monday in September; eighth Monday after the first Monday in September; eleventh Monday after the first Monday in September, which last named eight terms are to continue for two weeks; fifteenth Monday after the first Monday in March, and all of the last named ten terms are for the trial of civil cases exclusively: Provided, that the board of county commissioners of Mecklenburg county may in their discretion, by an order at their regular meeting held on the first Monday in March in any year, provide for the holding of a term of court for the seventh Monday after the first Monday in March, and for the trial of civil and criminal cases, either or both, at said term.

No process nor other writ of any kind pertaining to civil actions shall be made returnable to any of the criminal terms, and no business pertaining to civil actions shall be transacted at the criminal terms for Mecklenburg county.

In addition to the courts above set out for Mecklenburg county, the following terms of superior court for the trial of civil cases in Mecklenburg county shall be held, as follows: eighth Monday before the first Monday in March; sixth Monday before the first Monday in March; fourth Monday before the first Monday in March; second Monday before the first Monday in March; first Monday in March; second Monday after the first Monday in March; fourth Monday after the first Monday in March; sixth Monday after the first Monday in March; eighth Monday after the first Monday in March; tenth Monday after the first Monday in March; twelfth Monday after the first Monday in March; fourteenth Monday after the first Monday in March; the first Monday in September; the second Monday after the first Monday in September; the fourth Monday after the first Monday in September; the sixth Monday after the first Monday in September; the eighth Monday after the first Monday in September; the tenth Monday after the first Monday in September; the twelfth Monday after the first Monday in September; and the fourteenth Monday after the first Monday in September. Said terms of court may be held contemporaneously with other courts in said county or district, shall be for two weeks each, shall be for the trial of civil cases only, and shall be held by regular, special, or emergency judges who shall be assigned by the governor, and the special or emergency judges who preside over said additional terms of court shall have all the powers conferred upon any resident or regular judge.

In addition to the courts above set out for Mecklenburg county, the following terms of superior court for the trial of criminal cases in Mecklenburg county shall be held, as follows: sixth Monday after the first Monday in March; fifth Monday before the first Monday in September; fourth Monday before the first Monday in September, each to continue for one week. The sixth Monday before the first Monday in March; the second Monday after the first Monday in March; the sixteenth Monday after the first Monday in March; the third Monday before the first Monday in September; the second Monday after the first Monday in September; and the thirteenth Monday after the first Monday in September. Said terms of court may be held contemporaneously with other courts in said county or district, shall be for two weeks each, shall be for the trial of criminal cases only, and shall be held by regular, special, or emergency judges who shall be assigned by the governor, and the special or emergency judges who preside over said additional terms of court shall have all the powers conferred upon any resident or regular judge. (1913, c. 196; Ex. Sess. 1913, cc. 11, 18;

1915, c. 153; 1919, c. 187; Ex. Sess. 1920, c. 39; 1935, c. 48; 1937, c. 27; 1939, c. 9; 1941, c. 367, s. 1; C. S. 1443.)

Fifteenth District

The fifteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Iredell—Fifth Monday before the first Monday in March, to continue for two weeks, for the trial of criminal and civil cases; first Monday after the first Monday in March, to continue for one week, for civil cases only; eleventh Monday after the first Monday in March, to continue for two weeks, for the trial of criminal and civil cases; fifth Monday before the first Monday in September, to continue for two weeks, for criminal and civil cases; ninth Monday after the first Monday in September, to continue for two weeks, for criminal and civil cases. (1913, c. 196; 1921, c. 121, s. 2; 1923, c. 129; C. S. 1443.)

Randolph—Second Monday after the first Monday in March, to continue for two weeks, for civil cases only; fourth Monday after the first Monday in March, for criminal cases; seventh Monday before the first Monday in September, to continue for two weeks for civil cases only; the first Monday in September for criminal cases; thirteenth Monday after the first Monday in September, to continue for two weeks for criminal and civil cases. In addition to the regular terms of superior court now provided for by law for Randolph County there shall be held in Randolph County three additional terms of superior court as follows, to-wit: On the fifth Monday before the first Monday in March, to continue for two weeks, for the trial of civil cases only. On the sixteenth Monday after the first Monday in March for a term of one week, for the trial of criminal cases only. On the seventh Monday after the first Monday in September, to continue for two weeks, for the trial of civil cases only. This paragraph shall not be construed to repeal or abolish any terms now provided for the fifteenth judicial district, but in case of conflict of any of the regularly established terms of court of the fifteenth judicial district with the terms created in this paragraph, the said terms of court hereby and herein established shall be considered special terms, and the governor may assign the judge to hold said terms of superior court for Randolph County, when the judge holding the regular terms of court in the district is unable to hold said terms. (1913, c. 196; Ex. Sess. 1913, c. 31; 1921, c. 121, s. 3; Ex. Sess. 1921, c. 22; 1923, c. 229; Ex. Sess. 1924, c. 23; 1925, c. 156; Pub. Loc. 1939, c. 78; C. S. 1443.)

Rowan—Third Monday before the first Monday in March, to continue for two weeks; first Monday in March, to continue for one week, for civil cases only; ninth Monday after the first Monday in March, to continue for two weeks; first Monday after the first Monday in September, to continue for two weeks; fifth Monday after the first Monday in September, for civil cases only; eleventh Monday after the first Monday in September, to continue for two weeks. (1913, c. 196; Ex. Sess. 1913, c. 5; 1921, c. 31; C. S. 1443.)

In addition to the regular terms of court now prescribed by law for Rowan County, there shall be held in Rowan County two additional terms of the superior court as follows, to-wit: On the sixth Monday after the first Monday in September to continue for one week for the trial of civil cases only; on the first Monday after the first Monday in March to continue for one week for the trial of civil cases only. This paragraph shall not be construed to repeal or abolish any terms of court now provided for the fifteenth judicial district, but in case of conflict of any of the regularly established terms of the courts of the fifteenth judicial district with the terms above set out, the said terms of court herein established shall be considered special terms and the governor may assign a special or emergency judge to hold said terms of superior court of Rowan County when the judge holding the regular terms of court in the district is unable to hold said terms. (1933 c. 274.)

Cabarrus — Eighth Monday before the first Monday in March, to continue for two weeks, for the trial of criminal and civil cases; first Monday before the first Monday in March, to continue for two weeks, for civil cases only; seventh Monday after the first Monday in March, to continue for two weeks, for criminal and civil cases; fourteenth Monday after the first Monday in March, to continue for two weeks, for civil cases only; second Monday before the first Monday in September, to continue for one week, for criminal cases only; first Monday before the first Monday in September, to continue for one week, for civil cases only; sixth Monday after the first Monday in September, to continue for two weeks, for criminal and civil cases; tenth Monday after the first Monday in September, to continue for one week, for civil cases only; thirteenth Monday after the first Monday in September, to continue for one week, for civil cases only.

The governor shall assign an emergency or any other judge to hold any of the terms of the superior court of Cabarrus county when the judge holding courts in said district is unable to hold said terms. (1913, c. 196; 1921, c. 121, s. 2; 1933, c. 76; 1935, c. 177; 1939, c. 377; C. S. 1443.)

Montgomery—Sixth Monday before the first Monday in March for criminal cases: Provided, motions on the civil docket may be heard at said term, and uncontested divorce cases and, with the consent of the parties thereto, any other civil case requiring a jury may also be tried at said term. Fifth Monday after the first Monday in March, to continue for two weeks, for civil cases only. Eighth Monday before the first Monday in September; third Monday after the first Monday in September, and eighth Monday after the first Monday in September for civil cases; fourth Monday after the first Monday in September. (1913, c. 196; Ex. Sess. 1913, c. 61; 1915, c. 183; 1917, c. 122; 1921, c. 121, s. 3; 1927, c. 193, s. 1; 1941, c. 98; C. S. 1443.)

Alexander—Fourth Monday before the first Monday in March, to continue for two weeks, for the trial of civil and criminal cases; first Monday before the first Monday in September, to continue for two weeks, for the trial of criminal and civil cases. For these terms of court the governor may assign a judge to hold the same from among the regular, special or emergency judges. (1913, c. 196; 1921, c. 166; 1933, c. 250, s. 4; 1935, cc. 101, 252, s. 2; 1937, c. 214; C. S. 1443.)

Sixteenth District

The sixteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Cleveland—Third Monday after the first Monday in March; eleventh Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; sixth Monday before the first Monday in September; first Monday after the first Monday in September to continue for one week for the trial of civil cases only; second Monday after the first Monday in September, one week, for the trial of civil cases only; eighth Monday after the first Monday in September; each to continue for two weeks; eighth Monday before the first Monday in March, for one week.

For the terms commencing on the eleventh Monday after the first Monday in March, and on the first Monday after the first Monday in September, the governor may assign a judge to hold such terms from among the regular, special or emergency judges. (1913, c. 196; 1915, c. 173; 1917, c. 245; 1927, c. 154; 1931, cc. 240, 456; 1935, cc. 194, 195; C. S. 1443.)

Lincoln—Sixth Monday before the first Monday in March to continue for two weeks, the second week for civil cases only; seventh Monday before the first Monday in September; sixth Monday after the first Monday in September; the last term to continue for two weeks, the second week for civil cases only. (1913, c. 196; 1915, c. 210; 1925, c. 26; C. S. 1443.)

Burke—Second Monday before the first Monday in March, to continue for one week, for the trial of civil and criminal cases; first Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; thirteenth Monday after the first Monday in March, to continue for three weeks, for the trial of civil and criminal cases; fourth Monday before the first Monday in September, to continue for two weeks, for the trial of civil and criminal cases; third Monday after the first Monday in September, to continue for three weeks, for the trial of civil cases only; fourteenth Monday after the first Monday in September, to continue for two weeks, for the trial of civil and criminal cases: Provided, however, that the board of commissioners of Burke County, in any year, upon the written petition of a majority of the practicing attorneys resident in said county, may, by resolution duly adopted, dispense with and abrogate the holding of that term of said court which by the provisions of this section commences on the thirteenth Monday after the first Monday in March. (1913, c. 196; 1915, c. 67; Ex. Sess. 1920, c. 5; Ex. Sess. 1921, c. 90, s. 3; Pub. Loc. 1925, c. 306; 1931, c. 343; C. S. 1443.)

Caldwell—First Monday before the first Monday in March; second Monday before the first Monday in September, each to continue two weeks; eleventh Monday after the first Monday in March, to continue two weeks, for civil cases only; twelfth Monday after the first Monday in September, to continue two weeks, for the trial of civil and criminal cases; the eighth Monday before the first Monday in March, to continue two weeks, for the trial of civil cases only; ninth Monday after the first Monday in March, to continue one week, for the trial of civil and criminal cases; fourth Monday after the first Monday in September, to continue two weeks, for the trial of civil cases only. For the last three terms provided for above, the governor may assign a regular, special or emergency judge when the judge regularly assigned to the district is unable to hold said terms for any cause set out in article four, section eleven, of the constitution. (1913, c. 196; 1915, c. 35; Ex. Sess. 1921, c. 90, s. 2; 1941, c. 367, s. 1; C. S. 1443.)

Catawba—Seventh Monday before the first Monday in March, to continue for two weeks and for the trial of civil cases only, fourth Monday before the first Monday in March, to continue for two weeks; ninth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; ninth Monday before the first Monday in September, to continue for two weeks; first Monday in September, to continue for two weeks, for the trial of civil cases only; tenth Monday after the first Monday in September, to continue for one week, for the trial of criminal cases only; thirteenth Monday after the first Monday in September, to continue for one week and for the trial of civil cases only. Fifth Monday after the first Monday in March, to continue for two weeks, for the trial of civil cases only; eleventh Monday after the first Monday in September, to continue for one week, for the trial of civil cases only: Provided, that the board of county commissioners may by resolution, adopted not less than 30 days prior to the convening of either of the last two courts, determine that the holding of such court is not necessary and cancel the same, in which case notice of such action shall immediately be given to the governor to the end that the judge assigned to said court may be relieved from such assignment. (1913, c. 196; Ex. Sess. 1913, c. 7; Ex. Sess. 1921, c. 47; c. 90, s. 1; 1923, c. 18; 1925, c. 13, ss. 1, 2; 1933, c. 311; C. S. 1443.)

Watauga—Seventh Monday after the first Monday in March, to continue for two weeks; second Monday after the first Monday in September, to continue for one week; fourteenth Monday after the first Monday in March to continue for a term of two weeks, for the trial of civil cases only. (1913, c. 196; 1921, c. 166; 1931, c. 424; 1933, c. 250, s. 2; 1935, c. 274; C. S. 1443.)

Seventeenth District

The seventeenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Yadkin—Fourth Monday before the first Monday in March for three weeks for the trial of criminal and civil cases; second Monday before the first Monday in September for one week for the trial of criminal cases; eleventh Monday after the first Monday in September for two weeks for the trial of civil cases. (1913, c. 196; Ex. Sess. 1920, c. 42; 1921, c. 166; 1925, c. 65; 1941, c. 367, s. 1; C. S. 1443.)

Wilkes—Seventh Monday before the first Monday in March for three weeks for the trial of civil cases only; first Monday in March for three weeks for the trial of both civil and criminal cases; eighth Monday after the first Monday in March for two weeks for the trial of civil cases only; thirteenth Monday after the first Monday in March for two

weeks for the trial of civil cases only; fourth Monday before the first Monday in September for two weeks for the trial of both civil and criminal cases; fourth Monday after the first Monday in September for two weeks for the trial of civil cases only; fourteenth Monday after the first Monday in September for two weeks for the trial of civil and criminal cases.

If, in the opinion of the board of commissioners of Wilkes county, it is not advisable or necessary to hold the term of court beginning on the fourteenth Monday after the first Monday in September, and such fact is so stated in a resolution duly adopted by a majority of said board on or before the second Monday in November next preceding the day for the convening of said term, then the said term shall not be held on the fourteenth Monday after the first Monday in September of that year. Upon the adoption of such a resolution, the clerk of the board shall immediately notify the judge, who has been assigned to hold said term, that same will not be held, and no jury for the said term shall be drawn. (1913, c. 196; 1919, c. 165; 1921, c. 166; 1935, c. 105, s. 1, c. 192; 1937, c. 48; 1941, c. 367, s. 1; C. S. 1443.)

Davie—Second Monday after the first Monday in March; twelfth Monday after the first Monday in March, for civil cases only; first Monday before the first Monday in September; and thirteenth Monday after the first Monday in September, last term for civil cases only. (1913, c. 196; 1921, cc. 31, 121, 166; 1935, c. 105, s. 2; C. S. 1443.)

Mitchell—Fourth Monday after the first Monday in March, two weeks; sixth Monday before the first Monday in September, two weeks for civil cases only; second Monday after the first Monday in September for two weeks. (1913, c. 196; 1921, c. 166; Ex. Sess. 1921, c. 33; 1927, c. 168; 1929, c. 10; 1933, c. 250, s. 3; 1935, c. 1; 1941, c. 212, s. 1; C. S. 1443.)

Avery—Fifth Monday after the first Monday in March, for two weeks, the first week for the trial of criminal cases only, and the second week for the trial of civil cases only; ninth Monday before the first Monday in September, two weeks, for the trial of both criminal and civil cases; sixth Monday after the first Monday in September, for two weeks, the first week for the trial of criminal cases only, and the second week for the trial of civil cases only. (1913, c. 196; 1915, c. 169; 1921, c. 166; Ex. Sess. 1921, c. 33; 1923, c. 90; 1931, c. 84; 1933, cc. 152, 250, s. 1; 1941, c. 212, s. 1, c. 367, s. 1; C. S. 1443.)

Eighteenth District

The eighteenth district shall be composed of the following counties and the superior courts thereof shall be held at the following times, to-wit:

Henderson—Eighth Monday before the first Monday in March to continue for two weeks for the trial of civil cases only; the first Monday in March to continue for two weeks for the trial of both criminal and civil cases; the eighth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only, and the twelfth Monday after the first Monday in March to continue for two weeks for the trial of civil cases only; the fifth Monday after the first Monday in September to continue for two weeks for the trial of both criminal and/or civil cases or both; eleventh Monday after the first Monday in September to continue for two weeks for the trial of civil cases only. (1913, c. 196; 1917, c. 115; 1919, c. 162; Ex. Sess. 1921, c. 24; 1923, c. 204; 1927, c. 207, s. 1; 1933, c. 117; 1935, c. 127; C. S. 1443.)

McDowell — Ninth Monday before the first Monday in March, to continue for one week for the trial of criminal cases only; the third Monday before the first Monday in March, to continue for two weeks for the trial of civil cases only; the fourteenth Monday after the first Monday in March, to continue for two weeks for the trial of both criminal and civil cases; eighth Monday before the first Monday in September, to continue two weeks for the trial of civil cases only; the first Monday in September, to continue for two weeks for the trial of both criminal and civil cases. (1913, c. 196; Ex. Sess. 1921, c. 24; 1923, c. 219; 1927, c. 207, s. 1; 1935, c. 127; 1937, c. 309; C. S. 1443.)

Polk—The fifth Monday before the first Monday in March to continue for two weeks for the trial of both criminal and civil cases; second Monday before the first Monday in September, to continue for two weeks for the trial of both criminal and civil cases. (1913, c. 196; Ex. Sess. 1921, c. 24; 1927, c. 207, s. 1; 1933, c. 232, s. 2; 1935, c. 127; C. S. 1443.)

Rutherford—First Monday before the first Monday in March, to continue for one week for the trial of civil cases only; sixth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; tenth Monday after the first Monday in March, to continue for two weeks for the trial of both criminal and civil cases; sixteenth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; third Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only; ninth Monday after the first Monday in September, to continue for two weeks for the trial of both civil and criminal cases. (1913, c. 196; 1915, c. 116; Ex. Sess. 1921, c. 24; 1927, c. 207, s. 1; 1933, c. 232, s. 1; 1935, c. 127; 1937, c. 309; C. S. 1443.)

Transylvania—Fourth Monday after the first Monday in March, to continue for two weeks for the trial of both criminal and civil cases; sixth Monday before the first Monday in September, to continue for two weeks for the trial of both criminal and civil cases; thirteenth Monday after the first Monday in September, to continue for two weeks for the trial of both criminal and civil cases. (1913, c. 196; 1915, c. 66; Ex. Sess. 1920, c. 19; Ex. Sess. 1921, c. 24; 1925, c. 63; 1927, c. 207, s. 1; 1929, c. 173, s. 2; 1935, c. 127; C. S. 1443.)

Yancey—Sixth Monday before the first Monday in March, to continue for one week for the trial of civil cases only; second Monday after the first Monday in March, to continue for two weeks for the trial of both criminal and civil cases; fourth Monday before the first Monday in September, to continue for two weeks for the trial of criminal and civil cases; seventh Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 38; 1915, c. 71; Ex. Sess. 1920, c. 4; Ex. Sess. 1921, c. 24; 1923, c. 222; 1927, c. 207, s. 1; 1929, c. 173; 1933, c. 478; 1935, c. 127; C. S. 1443.)

In all criminal terms of court in the eighteenth judicial district, civil actions and proceedings, which do not require a jury, may be heard by consent and any order, judgment or decree therein may be entered. (1935, c. 127.)

Nineteenth District

The nineteenth district shall be composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Buncombe—Eighth Monday before the first Monday in March, to continue for two weeks for the trial of civil cases only; sixth Monday before the first Monday in March, to continue for one week, for the trial of criminal cases only; eighth Monday before the first Monday in September, to continue for two weeks for the trial of civil cases only; sixth Monday before the first Monday in September, to continue for one week for the trial of criminal cases only.

Fourth Monday before the first Monday in March, to continue for two weeks, for the trial of civil cases only; second Monday before the first Monday in March, to continue for one week for the trial of criminal cases only; first Monday in March, to continue for two weeks for the trial of civil cases only; second Monday after the first Monday in March, to continue for one week for the trial of criminal cases only; fourth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; sixth Monday after the first Monday in March, to continue for one week for the trial of criminal cases only; ninth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; eleventh Monday after the first Monday in March, to continue for one week for the trial of criminal cases only; thirteenth Monday after the first Monday in March, to continue for two weeks for the trial of civil cases only; fifteenth Monday after the first Monday in March, to continue for one week for the trial of criminal cases only; fourth Monday before the first Monday in September, to continue for two weeks for the trial of civil cases only; second Monday before the first Monday in September, to continue for one week for the trial of criminal cases only; first Monday in September, to continue for two weeks for the trial of civil cases only; second Monday after the first Monday in September, to continue for one week for the trial of criminal cases only; fourth Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only; sixth Monday after the first Monday in September, to continue for one week for the trial of criminal cases only; ninth Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only; eleventh Monday after the first Monday in September, to continue for one week for the trial of criminal cases only; thirteenth Monday after the first Monday in September, to continue for two weeks for the trial of civil cases only; fifteenth Monday after the first Monday in September, to continue for one week for the trial of criminal cases only.

The terms of court provided in the preceding paragraph shall be held by the judge regularly riding the nineteenth judicial district, and during said terms uncontested divorce actions and civil orders may be tried and heard by the judge assigned to hold said courts.

Seventh Monday before the first Monday in March, to continue for two weeks; fifth Monday before the first Monday in March, to continue for one week; second Monday before the first Monday in March, to continue for two weeks; second Monday after the first Monday in March, to continue for two weeks; sixth Monday after the first Monday in March, to continue for two weeks; eighth Monday after the first Monday in March, to continue for one week; eleventh Monday after the first Monday in March, to continue for two weeks; fifteenth Monday after the first Monday in March, to continue for two weeks; seventh Monday before the first Monday in September, to continue for two weeks; fifth Monday before the first Monday in September, to continue for one week; second Monday before the first Monday in September, to continue for two weeks; second Monday after the first Monday in September, to continue for two weeks; sixth Monday after the first Monday in September, to continue for two weeks; eighth Monday after the first Monday in September, to continue for one week; eleventh Monday after the first Monday in September, to continue for two weeks; fifteenth Monday after the first Monday in September, to continue for two weeks.

The courts provided in the preceding paragraph shall be held by special or emergency judges to be assigned by the governor, if the regular judge assigned is unable to hold said terms for any cause set out in article four, section eleven, of the constitution. The board of county commissioners shall notify the jury commission at, or before, the time of drawing the jurors for these terms of court whether the same shall be for the trial of civil or criminal cases, or what portions thereof shall be for each, and the jury commission shall draw jurors accordingly. (1913, c. 196; 1915, c. 117; 1917, c. 79; 1923, c. 31; Pub. Loc. 1925, c. 400; 1929, c. 213; 1941, c. 367, s. 1; C. S. 1443.)

Madison—First Monday before the first Monday in March, to continue for one week; third Monday after the first Monday in March, to continue for one week; seventh Monday after the first Monday in March, to continue for one week; twelfth Monday after the first Monday in March, to continue for one week; sixteenth Monday after the first Monday in March, to continue for one week; first Monday before the first Monday in September, to continue for one week; third Monday after the first Monday in September, to continue for one week; seventh Monday after the first Monday in September, to continue for one week; twelfth Monday after the first Monday in September, to continue for one week; sixteenth Monday after the first Monday in September, to continue for one week.

The board of county commissioners shall, at the time of drawing the jurors for the terms of court provided in the preceding paragraph, designate whether the terms shall be for the trial of civil or criminal cases, and draw the jurors accordingly. (1913, c. 196; 1915, c. 117; 1917, c. 79; 1929, c. 205; 1931, c. 25; 1941, c. 367, s. 1; C. S. 1443.)

Twentieth District

The twentieth district shall be composed of the

following counties, and the superior courts thereof shall be held at the following times, to-wit:

Cherokee—Sixth Monday before the first Monday in March for civil cases only; fourth Monday after the first Monday in March; fifteenth Monday after the first Monday in March, for the trial of civil causes only: Provided, that upon request of the bar of Cherokee county the board of county commissioners need not draw a jury for this term; fourth Monday before the first Monday in September; ninth Monday after the first Monday in September, each to continue two weeks. (1913, c. 196; Ex. Sess. 1913, c. 21; 1917, c. 114; 1923, c. 51; 1925, c. 30; C. S. 1443.)

Graham—Eighth Monday before the first Monday in March, to continue for two weeks, for civil cases only; second Monday after the first Monday in March; thirteenth Monday after the first Monday in March, to be held for civil cases only; first Monday in September, each to continue for two weeks. (1913, c. 196; Ex. Sess. 1913, c. 28; 1917, c. 54; 1927, c. 245, s. 1; C. S. 1443.)

Swain—Seventh Monday before the first Monday in March, for the trial of civil cases only, to continue for two weeks; a special judge to be assigned for this court; first Monday in March; sixth Monday before the first Monday in September; seventh Monday after the first Monday in September, each to continue for two weeks: Provided, that the board of commissioners of Swain County may, when the public interest requires it, decline to draw a grand jury for the July term. (1913, c. 196; 1933, c. 125; C. S. 1443.)

Haywood — Eighth Monday before the first Monday in March, to continue for two weeks, for civil cases only; fourth Monday before the first Monday in March, to continue for two weeks; ninth Monday after the first Monday in March, to continue for two weeks, for civil cases only; eighth Monday before the first Monday in September, to continue for two weeks; second Monday after the first Monday in September, for civil cases only and the eleventh Monday after the first Monday in September, each to continue for two weeks. (1913, c. 196; 1917, cc. 7, 114; 1923, c. 35, s. 2; Ex. Sess. 1924, c. 27; 1937, c. 106; C. S. 1443.)

Jackson—Second Monday before the first Monday in March; eleventh Monday after the first Monday in March, for the trial of civil cases only, each to continue for two weeks; fourteenth Monday after the first Monday in March, for the trial of criminal cases only and for this term of court the governor shall assign a judge to hold same from among the regular, special or emergency judges; fifth Monday after the first Monday in September to continue for two weeks.

The county commissioners, may, in their judgment abrogate the term herein provided to be held on the fourteenth Monday after the first Monday in March, the jurors for this term to be drawn at the same time as those for the May term, service to be withheld pending the decision of the county commissioners. (1913, c. 196; 1933, c. 107; 1939, c. 212; C. S. 1443.)

Macon—Sixth Monday after the first Monday in March; second Monday before the first Monday in September, and thirteenth Monday after the first Monday in September, each to continue for two weeks. The board of commissioners of Macon county may, for good cause, decline to draw a jury for more than one week for any term of court provided for in this paragraph. (1913, c. 196; 1923, c. 35, s. 1; 1927, c. 245; 1937, c. 106; C. S. 1443.)

Clay — Eighth Monday after the first Monday in March, and fourth Monday after the first Monday in September. (1913, c. 196; 1927, c. 245, s. 1; 1937, c. 162; 1939, c. 44; C. S. 1443.)

Twenty-First District

There is hereby created district number twenty-one composed of the following counties, and the superior courts thereof shall be held at the following times, to-wit:

Caswell—Second Monday after the first Monday in March, to continue for two weeks, the first week to be for the trial of criminal cases only, and the second week for the trial of civil cases; ninth Monday before the first Monday in September, to continue for one week for the trial of both criminal and civil cases; tenth Monday after the first Monday in September, to continue for two weeks, the first week to be for the trial of criminal cases only, and the second week for the trial of civil cases. (1913, c. 196; 1919, c. 289; 1927, c. 202; 1933, c. 45, s. 1; 1935, c. 246; 1937, cc. 107, 413, s. 5; 1941, c. 367, s. 1; C. S. 1443.)

Rockingham — First Monday after the first Monday in March to continue for one week; sixth Monday before the first Monday in March to continue for two weeks; eleventh Monday after the first Monday in March to continue for two weeks; fourth Monday before the first Monday in September to continue for two weeks; eighth Monday after the first Monday in September to continue for two weeks; fourteenth Monday after the first Monday in September to continue for one week, each of the above terms to be for the trial of criminal cases only.

First Monday in March to continue one week; sixth Monday after the first Monday in March to continue for one week; ninth Monday after the first Monday in March to continue for two weeks; fourteenth Monday after the first Monday in March to continue for two weeks; first Monday in September to continue for two weeks; seventh Monday after the first Monday in September to continue for one week; twelfth Monday after the first Monday in September to continue for two weeks, each of the above terms to be for the trial of civil cases only. Provided, that at any criminal term, either regular or special, of the superior court to be held for Rockingham County, all motions in any civil actions pending before said court, and all uncontested divorce cases pending before said court, may be heard and tried by the court, and provided further, that all other civil actions and civil matters may, with the consent of the parties and the approval of the court, be heard and tried at any criminal term, either regular or special, of the superior court of Rockingham County. However, no contested civil cases shall be tried until after the criminal docket for the term has been disposed of. (1913, c. 196; Ex. Sess. 1913, c. 49; 1917, c. 107; 1933, cc. 45, 264; 1935, c. 246; 1937, cc. 156, 413, s. 5; 1939, c. 156; 1941, c. 58; C. S. 1443.)

Stokes—Fourth Monday after the first Monday in March to continue for one week for the trial

of criminal cases only; fifth Monday after the first Monday in March to continue for one week for the trial of civil cases only; sixteenth Monday after the first Monday in March to continue for one week for the trial of criminal cases only; second Monday before the first Monday in September to continue for one week for trial of both criminal and civil cases; fifth Monday after the first Monday in September to continue for one week for the trial of criminal cases only; sixth Monday after the first Monday in September to continue for one week, for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 1; 1921, c. 142; 1923, c. 169; 1929, c. 158; 1937, c. 413, s. 5; C. S. 1443.)

There is hereby established a term of court to continue for one week in Stokes county, beginning the first Monday in January of each year for the trial of criminal causes only. There shall be jurors, including a grand jury, provided for said January term of court. (1939, c. 342.)

Surry—Eighth Monday before the first Monday in March to continue for one week; third Monday before the first Monday in March to continue for one week; seventh Monday after the first Monday in March to continue for one week; second Monday after the first Monday in September to continue for one week; fifteenth Monday after the first Monday in September to continue for one week, for the trial of criminal cases only.

Seventh Monday before the first Monday in March to continue for one week; second Monday before the first Monday in March to continue for two weeks; eighth Monday after the first Monday in March to continue one week; thirteenth Monday after the first Monday in March to continue for one week; eighth Monday before the first Monday in September to continue for two weeks; third Monday after the first Monday in September to continue for two weeks, for the trial of civil cases only. (1913, c. 196; Ex. Sess. 1913, c. 34; Ex. Sess. 1921, c. 9; Pub. Loc. 1925, c. 417; 1931, c. 251; 1933, cc. 180, 413; 1935, c. 246; 1937, cc. 210, 413, s. 5; C. S. 1443.)

§ 7-71. Governor to assign judges to hold terms of court when regular judges are not available.—If the regular judge holding the courts for any district is not available for any cause set out in Article four, Section eleven, of the Constitution to hold any of the terms of court provided for in Chapter 367 of the Public Laws of 1941, amending § 7-70, the Governor shall assign a judge to hold such term or terms from among the regular, special or emergency judges. (1941, c. 367, s. 2.)

§ 7-72. Civil cases at criminal terms.—At criminal terms of court, motions in civil actions may be heard upon due notice, and trials in civil actions may be heard by consent of parties. Also motions for confirmation or rejection of referees' reports may be heard upon ten days notice and judgment entered on said reports. (Rev., s. 1507; 1901, c. 28; 1913, c. 196, s. 2; Ex. Sess. 1913, c. 23; 1915, cc. 68, 240; 1917, c. 13; 1931, c. 394; C. S. 1444.)

Local Modification.—Anson, Bladen, Cumberland, Durham, Gaston, Robeson: C. S. 1444.

§ 7-73. No criminal business at civil terms.—No grand juries shall be drawn for the terms of court designated by law as being for the trial of civil cases exclusively, and the solicitors shall not be required to attend upon any exclusively civil terms, unless there are cases on the civil docket in which they officially appear, and no criminal process shall be returnable to any term designated for the trial of civil actions alone. (Rev., s. 1508; 1901, c. 28, ss. 3, 7; 1913, c. 196; C. S. 1445.)

§ 7-74. Rotation of judges.—The judges of the superior court shall hold the courts of the several judicial districts successively, according to the following order and system: The judges resident in the Eastern Judicial Division shall hold the courts for the fall term, one thousand nine hundred and fifteen, as follows: The judge of the first district shall hold the courts of the fifth district; the judge of the second, the courts of the sixth; the judge of the third, the courts of the seventh; the judge of the fourth, the courts of the eighth; the judge of the fifth, the courts of the ninth; the judge of the sixth, the courts of the tenth; the judge of the seventh, the courts of the first; the judge of the eighth, the courts of the second; the judge of the ninth, the courts of the third; the judge of the tenth, the courts of the fourth; and the judges of the Eastern Judicial Division shall thereafter successively hold the courts of this division, but may make exchange of the courts as now provided by law.

The judges resident in the Western Judicial Division shall hold the courts for the fall term, one thousand nine hundred and fifteen, as follows: The judge of the seventeenth district shall hold the courts of the eleventh; the judge of the eighteenth, the courts of the twelfth; the judge of the nineteenth, the courts of the thirteenth; the judge of the twentieth, the courts of the fourteenth; the judge of the eleventh, the courts of the fifteenth; the judge of the twelfth, the courts of the sixteenth; the judge of the thirteenth, the courts of the seventeenth; the judge of the fourteenth, the courts of the eighteenth; the judge of the fifteenth, the courts of the nineteenth; the judge of the sixteenth, the courts of the twentieth; and the judges resident in the Western Judicial Division shall thereafter successively hold the courts of this division, subject to such exchanges of courts as are now provided by law.

The judge riding any spring circuit shall hold all the courts which fall between January and June, both inclusive, and the judge riding any fall circuit shall hold all the courts which fall between July and December, both inclusive. (Rev., s. 1509; Code, s. 911; 1913, c. 196, ss. 4, 5, 6, 9; 1915, c. 15, ss. 3, 4; 1901, c. 28, ss. 4, 9; R. C., c. 31, s. 20; 1876-7, c. 27; 1879, c. 11; 1885, c. 180; Const. Art. 4, s. 11; C. S. 1446.)

§ 7-75. Exchange of courts.—By consent of the governor the judges may exchange the courts of a particular county or counties; and the judges resident in the western division and the judges resident in the eastern division may exchange courts or circuits with the consent of the governor; but no judge shall hold all the courts in one district oftener than once every four years. When a judge shall die or resign, his successor shall hold the courts of the district allotted to his predecessor. (Rev., s. 1511; Code, s. 913; R.

C., c. 31, s. 20; 1879, c. 11; 1915, c. 15, s. 4; Const., Art. 4, s. 11; C. S. 1447.)

§ 7-76. Court adjourned by sheriff when judge not present.—If the judge of a superior court shall not be present to hold any term of a court at the time fixed therefor, he may order the sheriff to adjourn the court to any day certain during the term, and on failure to hear from the judge it shall be the duty of the sheriff to adjourn the court from day to day until the fourth day of the term inclusive, unless he shall be sooner informed that the judge from any cause can not hold the term. If by sunset on the fourth day the judge shall not appear to hold the term, or if the sheriff shall be sooner advised that the judge cannot hold the term, it shall then be the duty of the sheriff to adjourn the court until the next term. (Rev., s. 1510; Code, s. 926; 1901, c. 269; 1887, c. 13; C. S. 1448.)

Art. 10. Special Terms of Court.

§ 7-77. Governor may designate judge.—The governor has the power to appoint any judge to hold special terms of the superior court in any county. (Rev., s. 1511; Code, s. 913; 1879, c. 11; Const., Art. 4, s. 11; C. S. 1449.)

§ 7-78. Governor may order special terms.—Whenever it shall appear to the governor by the certificate of any judge, a majority of the board of county commissioners, or otherwise, that there is such an accumulation of criminal or civil actions in the superior court of any county as to require the holding of a special term for its dispatch, he shall issue an order to the judge of the judicial district in which such county is, or to any other judge of the superior court, requiring him to hold a special term of the superior court for such county, to begin on a certain Monday, not to interfere with any of the regular terms of the courts of his district, and hold for such time as he may designate, unless the business be earlier disposed of. If the dispatch of business requires it, the Governor may order a special term of court to be held by a regular, special, or emergency judge of the superior court in any county or district during the holding of a regular term in such county or district. (Rev., s. 1512; Code, s. 914; R. C., c. 31, s. 22; 1868-9, c. 273; 1876-7, c. 44; Ex. Sess. 1924, c. 100; C. S. 1450.)

§ 7-79. Compensation of judge.—Any regular judge appointed to hold a special term of court shall attend and hold such court, and shall be paid as compensation therefor at the rate of one hundred dollars per week and his actual expenses incurred in attending such special term by the county in which the special term is held. But any such judge who is in a district having fewer than twenty regular weeks of court for the six months shall hold without extra compensation, if directed by the governor, enough extra weeks of court to make out twenty weeks for the six months. (Rev., s. 1512; Code, s. 914; 1913, c. 63; 1901, c. 167; R. C., c. 31, s. 22; 1868-9, c. 273; 1876-7, c. 44; 1909, c. 85, s. 1; C. S. 1451.)

§ 7-80. Notice of special terms.—Whenever the governor shall call a special term of the superior court for any county, he shall notify the chairman of the board of commissioners of the county of such call, and such chairman shall take immediate steps to cause competent persons to be drawn and summoned as jurors for said term; and also to advertise the term at the courthouse and at one public place in every township of his county, or by publication of at least two weeks in some newspaper published in his county in lieu of such township advertisement. (Rev., s. 1513; Code, s. 915; 1868-9, c. 273; C. S. 1452.)

§ 7-81. Certificate of attendance. — The clerk shall give the judge a certificate of attendance for the number of days occupied by the court, and the judge shall thereupon be entitled to receive from the commissioners of the county in which the court is held the compensation provided by law. (Rev., s. 1514; Code, s. 918; 1901, c. 167; 1868-9, c. 273; 1909, c. 85, s. 1; 1913, c. 63; C. S. 1453.)

§ 7-82. Grand juries at special terms.—There shall be no grand jury at any special term, unless the same shall be ordered by the governor. (Rev., s. 1515; Code, s. 921; 1868-9, c. 273; C. S. 1454.)

§ 7-83. Jurisdiction.—The special terms of the superior court held in pursuance of this chapter shall have all the jurisdiction and powers that regular terms of the superior court have. (Rev., s. 1516; Code, s. 916; 1868-9, c. 273; C. S. 1455.)

§ 7-84. Attendance and process at special terms.—All persons and witnesses summoned at the regular or special term, and officers or others who may be bound to attend the next regular term of the court, shall attend the special term, under the same rules, forfeitures and penalties as if the term were a regular term. (Rev., s. 1517; Code, s. 919; R. C., c. 31, s. 23; 1844, c. 10; 1848, c. 29; C. S. 1456.)

§ 7-85. Subpœnas returnable.—Subpœnas may issue returnable on any day of any special term. (Rev., s. 1518; Code, s. 920; 1868-9, c. 273; C. S. 1457.)

Art. 11. Special Regulations.

§ 7-86. Reading the minutes.—Every morning during the term the judge presiding shall order the reading of the minutes of the court for the day preceding, and the minutes of the last day shall be read immediately preceding the final adjournment of the term. (Rev., s. 1519, Code, s. 925; 1861, c. 3; C. S. 1458.)

§ 7-87. Officer attending juries sworn.—When any officer (except such as are appointed to attend the grand jury) shall be appointed or summoned to attend any superior court, the clerk, at the time of the first going out of a jury on the trial of any civil or criminal action, shall administer an oath to such officer, faithfully to attend the several juries that may be put under his care during that term, that shall be charged in the trial of any civil or criminal action; and after such officer shall be once so sworn, he shall be considered to all intents and purposes as acting upon the same oath while attending every jury that he may be called to attend during that term. (Rev., s. 1527; Code, s. 927; R. C., c. 31, s. 36; 1801, c. 592; C. S. 1459.)

§ 7-88. Quakers may wear hats in court.—The people called Quakers may wear their hats in

courts of judicature, as elsewhere, according to the custom of their sect. (Rev., s. 1528; Code, s. 943; R. C., c. 31, s. 131; 1784, c. 209; C. S. 1460.)

§ 7-89. Court reporters.—Upon the request of a judge holding a superior court in any county in the state, the board of county commissioners in such county shall employ a competent stenographer to take down the proceedings of the court, at a compensation not to exceed five dollars per day and actual expenses, to be paid by the county in which the court is held: Provided, that the compensation of said stenographers in counties composing the sixteenth judicial district shall not exceed ten dollars per day.

The judge is authorized to tax a reasonable fee against the losing party in every action, civil and criminal, to be turned into the county treasury towards reimbursing the county, but no fee shall be taxed against a losing party suing in forma pauperis.

Every stenographer so employed shall make three copies of the proceedings in every case appealed to the supreme court, without extra charge, and shall furnish one copy to the attorneys on each side and file one copy with the clerk of the superior court of the county in which any such case is tried, and shall obey all orders of the judge relative to the time in which any such work shall be done: Provided, that the restrictions herein against an extra charge for making copies of the proceedings in cases appealed to the supreme court shall not apply to counties composing the sixteenth judicial district.

Every stenographer so employed shall, before entering upon the discharge of his duties, be duly sworn to well, truly, and correctly take down and transcribe the proceedings of the court, except the argument of counsel, and the charge of the court thus taken down and transcribed shall be held to be a compliance with the law requiring the judge to put his instructions to the jury in writing.

This section shall not apply to any county which has a court stenographer authorized by law: Provided, that the board of county commissioners of Mecklenburg county may, by resolution approving this section, bring said county within the provisions of the same: Provided further, that this section shall not apply to the following counties: Alleghany, Brunswick, Caldwell, Camden, Carteret, Caswell, Chatham, Currituck, Dare, Davidson, Davie, Forsyth, Greene, Harnett, Haywood, Hoke, New Hanover, Orange, Pender, Person, Transylvania, Union, Watauga. (Ex. Sess. 1913, c. 69; Ex. Sess. 1921, c. 57; 1927, c. 268; Pub. Loc. 1927, c. 49; 1933, c. 75, s. 2; C. S. 1461.)

Local Modification.—Alamance: Ex. Sess. 1921, c. 2; 1935, c. 474; Burke, Lincoln, Catawba: 1929, cc. 53, 260; Halifax: 1929, c. 45, s. 5; McDowell: 1933, c. 85; Northampton: 1931, c. 11, s. 5; Robeson: 1935, c. 9; Surry: 1927, c. 268, s. 2; Wayne: 1927, c. 156.

§ 7-90. Official court reporter for second judicial district.—The resident judge of the second judicial district is hereby authorized and empowered to appoint an official court reporter for one or more or all of the counties in said district who shall serve at the will of the resident judge, and whose appointment may be terminated by thirty days' written notice thereof.

The appointment of such reporter or reporters shall be filed in the office of the clerk of the superior court of each county in said district in which said reporter is to officiate, and the same, or a certified copy thereof, shall be recorded by said clerk on the minute docket of his court.

Before entering upon the discharge of the duties of said office, said reporter shall take and subscribe an oath in words substantially as follows: "I, ..., do solemnly swear that I will, to the best of my ability, discharge the duties of the office of court reporter in and for the county of ..... in the second judicial district, and will faithfully transcribe the testimony offered in said courts as the presiding judge may direct, or as I may be required to do under the law, so help me, God." Said oath shall be filed in the office of each of the clerks of the superior courts of the counties in which said reporter is to officiate, and recorded and indexed on the minute dockets of said courts.

If on account of sickness, or for other cause, said reporter is unable to attend upon any of the regular courts of said district, and for conflict and special terms, the resident judge may appoint a reporter pro tem for said court or courts, and said appointment shall appear upon the minutes of said term, and said reporter shall take and subscribe the oath referred to above, which oath shall be filed with the clerk. In lieu of appointing a reporter pro tem for each of said courts, the resident judge may, in his discretion, appoint a reporter pro tem for a stated period whose duty it shall be to report any and all courts in the county or counties designated in the appointment, which the regular court reporter is for any cause unable to report.

The resident judge shall likewise fix the compensation to be received by such reporter and such reporter pro tem: Provided, however, such compensation shall not exceed ten dollars per day and actual expenses upon a weekly basis.

The testimony taken and transcribed by said court reporter or said court reporter pro tem, as the case may be, and duly certified, either by said reporter or the presiding judge at the trial of the cause, may be offered in evidence in any of the courts of this state as the deposition of the witness whose testimony is so taken and transcribed, in the same manner, and under the same rule governing the introduction of depositions in civil actions. (1933, c. 335.)

§ 7-91. Official court reporter for fifth judicial district.—The resident judge of the fifth judicial district is hereby authorized and empowered to appoint an official court reporter for all of the counties in said district, who shall serve at the will of the resident judge, and whose appointment may be terminated at thirty days written notice thereof.

The appointment of such reporter shall be filed in the office of the clerk of the superior court of each county in said district in which said reporter is to officiate, and the same or a certified copy thereof shall be recorded by said clerk on the minute docket of his court.

Before entering upon the discharge of the duties of said office, said reporter shall take and subscribe an oath in words substantially as follows: "I ....., do solemnly swear that I will to the best of my ability discharge the duties

of the office of court reporter in and for the counties of the fifth judicial district and will faithfully transcribe the testimony offered in said courts as the presiding judge may direct or as I may be required to do under the law, so help me, God." Said oath shall be filed in the office of each of the clerks of the superior courts of the counties of said district and recorded and indexed on the minute dockets of said courts.

If on account of sickness or for other cause said reporter is unable to attend upon any regular courts of said district, and for conflict of special terms the resident judge may appoint a reporter pro tem for said court or courts and said appointment shall appear upon the minutes of said term, and said reporter shall take and subscribe the oath referred to above, which oath shall be filed with the clerk. In lieu of appointing a reporter pro tem for said district the resident judge may, in his discretion, appoint a reporter pro tem for a stated period, whose duty it shall be to report any and all of the courts designated in the appointment which the regular court reporter is for any cause unable to report.

The resident judge shall likewise fix the compensation to be received by said reporter and said reporter pro tem, provided, however, such compensation shall not exceed ten dollars per day and actual expenses upon a weekly basis.

Said court reporter or reporter pro tem must, upon request of counsel when the presiding judge shall find as a fact that same is necessary and so order, deliver to the clerk of the superior court in which said cause is pending a transcript of the evidence in that cause within fifteen days from the adjournment of the term of court in which such evidence was taken.

The testimony taken and transcribed by said court reporter or said reporter pro tem as the case may be, and duly certified, either by said reporter or the presiding judge at the trial of the cause, may be offered in evidence in any civil action in any of the courts in this state as the deposition of the witness whose testimony is so taken and transcribed in the same manner and under the same rules governing the introduction of depositions in civil actions: Provided, however, that such transcript of testimony shall be admissible in evidence only in the cause in which same was taken. (1935, c. 128.)

Local Modification.—Carteret: 1941, c. 137.

§ 7-92. Official court reporter for sixth judicial district. — The resident judge of the sixth judicial district is hereby authorized and empowered to appoint an official court reporter for one or more, or all of the counties in said district, whose term of office shall be for a period of five years from and after qualification: Provided, however, that said judge shall have the right to remove said reporter for cause at any time.

The appointment of such reporter or reporters shall be filed in the office of the clerk of the superior court of each county in said district in which said reporter is to officiate, and the same, or a certified copy thereof shall be recorded by said clerk on the minute docket of his court.

Before entering upon the discharge of the duties of said office, said reporter shall take and subscribe the oath provided by law for public officers, and shall in addition thereto take and subscribe an oath in words substantially as follows: "I, ..., ..., do furthermore solemnly swear that I will, to the best of my ability, discharge the duties of the office of court reporter in and for the sixth judicial district, and will faithfully transcribe the testimony offered in said courts as the presiding judge may direct, or as I may be required to do under the law, so help me God." Said oath shall be filed in the office of the clerk of the superior court of the county in which said reporter resides, and recorded and indexed by him on the minute docket of said court.

In case of sickness, or for other cause, if said reporter fails to attend upon any of the courts of said district, the presiding judge may appoint a reporter pro tem, for said court, and said appointment shall appear upon the minutes of said term, and said reporter shall take and subscribe the oath referred to above, which oath shall be filed with the clerk.

The resident judge shall likewise fix the compensation to be received, by said reporter, and said reporter pro tem, provided, however, such compensation shall not exceed ten dollars per day and actual expenses upon a weekly basis.

Said court reporter or reporter pro tem must, upon request of counsel when the presiding judge shall find as a fact that same is necessary and so order, deliver to the clerk of the superior court in which said cause is pending a transcript of the evidence in that cause within fifteen days from the adjournment of the term of court in which such evidence was taken.

The testimony taken and transcribed by said court reporter, and duly certified, either by said reporter or the presiding judge at the trial of the cause, may be offered in evidence in any of the courts of this State as the deposition of the witness whose testimony is so taken and transcribed, in the same manner, and under the same rules governing the introduction of depositions in civil actions. (1931, c. 154, s. 5; 1935, c. 420.)

SUBCHAPTER III. COMMISSION FOR IMPROVEMENT OF LAWS.

Art. 12. Commission for Improvement of Laws.

§ 7-93. Commission established.—A commission to be known as the commission for the Improvement of the Laws is hereby established. (1931, c. 98, s. 1.)

§ 7-94. Members of commission.—Said commission shall consist of the attorney-general, the chairman of each of the committees on Judiciary of the Senate and the House of Representatives of the General Assembly, and the following additional members to be appointed by the Governor on the basis of their interest in and competency for the study of law reform: two members who shall be appointed from the Justices of the Supreme Court and/or the Judges of the Superior Courts; two members who shall be active practitioners in the trial and appellate courts; three members who shall be appointed from the faculties of law in the various universities in this State; and two members, not attorneys at law, who shall be men of proven ability in other occupations. (1931, c. 98, s. 2.)

§ 7-95. Terms of office.—The attorney-gen-

eral shall be a member of the commission during such time as he shall serve as attorney-general. The respective chairmen of the committees on judiciary shall hold office as members of the commission from their appointment as chairmen during the session of the General Assembly at which they were appointed and continuously thereafter until their successors as chairmen shall be appointed by the presiding officers of the next General Assembly, which successors shall in like manner become ex officio members of said commission. The other members of said commission shall serve from the dates of their appointment until the conclusion of the term of office of the Governor appointing them, or until their successors shall be appointed and qualified. (1931, c. 98, s. 3.)

§ 7-96. Chairman and executive secretary.—The Governor shall designate one of the members of such commission as the chairman and another as the executive secretary of the commission. (1931, c. 98, s. 4.)

§ 7-97. Vacancy appointments.—The Governor shall have power to fill vacancies among the unofficial members occasioned by death, resignation or otherwise. (1931, c. 98, s. 5.)

§ 7-98. Meetings of commission.—It shall be the duty of such commission to meet twice annually, or more often at the call of the chairman, to consider proposals for the betterment of the law, both substantive and procedural, to conduct such research and investigation as may be appropriate therefor, and to recommend to the General Assembly such specific changes in the existing law as it deems expedient. (1931, c. 98, s. 6.)

§ 7-99. Report and recommendations to general assembly.—In advance of each regular session of the general assembly, the commission shall prepare a report and shall embody the recommendation of the commission with drafts of proposed bills, and the reasons for the same, and copies of such report shall be sent to each member of the general assembly not less than thirty days before the beginning of such session. (1931, c. 98, s. 7.)

§ 7-100. Compensation.—The members of the commission shall serve without compensation. (1931, c. 98, s. 8.)

SUBCHAPTER IV. DOMESTIC RELATIONS COURTS.

Art. 13. In Counties with a City of at Least Twenty-five Thousand Inhabitants.

§ 7-101. Established by county or city or both.—The Board of County Commissioners in the various counties having a county seat with twenty-five thousand or more inhabitants of the State, or the governing authorities in cities of twenty-five thousand or more inhabitants shall have authority to establish a "Domestic Relations Court," which court may be a joint county and city court, as provided in section 7-102 or a court for the county or city as may be determined by the governing authorities. (1929, c. 343, s. 1.)

Local Modification.—Durham, Edgecombe, Gaston, Guilford, Nash, New Hanover, Pitt, Wayne: 1929, c. 343, s. 10; Buncombe: 1929, c. 343, s. 10; 1941, c. 208, s. 2; Forsyth: 1929, c. 343, s. 10; 1931, c. 221, s. 2; Wake: 1929, c. 343, s. 10; Pub. Loc. 1941, c. 339.

§ 7-102. Vote on establishment of court; any other city in county with required population may have such court.—In case the Board of County Commissioners and governing authorities of a particular city decide to establish a joint city and county Domestic Relations Court, they, voting as separate bodies, shall determine whether or not such Domestic Relations Court shall be established. If both bodies, shall vote for its establishment, each of them shall record the resolutions in their minutes and upon such consent by both boards, the court shall be established. In counties in which the said joint court is thus established by the Board of County Commissioners and the governing authorities of the county and city such establishment of the court shall not prevent any other city within the territorial limits of the county and having more than twenty-five thousand inhabitants, establishing its own court under section 7-101. (1929, c. 343, s. 2.)

§ 7-103. Jurisdiction.—Said Domestic Relations Court shall have, and is hereby vested with all the power, authority, and jurisdiction heretofore vested by law in the juvenile courts of North Carolina, and said power, authority, and jurisdiction being as fully vested in the Domestic Relations Court as if herein particularly set forth in detail; and in addition thereto the said Domestic Relations Court shall have exclusive original jurisdiction over the following classes of cases:

(a) All cases where any adult is charged with abandonment, non-support, or desertion of any juvenile, or where either spouse is charged with abandonment, non-support, or desertion of the other.

(b) All cases involving voluntary desertion of any juvenile by its mother.

(c) All cases involving the custody of juveniles, except where the case is tried in Superior Court as a part of any divorce proceeding.

(d) All cases where assault, or assault and battery, on a juvenile is charged against an adult, or where husband or wife is charged with assault, or assault and battery, upon the other.

(e) All cases in which an adult is charged with causing or being responsible for delinquency, dependency, or neglect of a juvenile.

(f) All bastardy cases within said county.

(g) All cases wherein any person is charged with receiving stolen goods from any juvenile, knowing them to be stolen.

(h) All cases involving violation of the North Carolina School Attendance Law as set forth in Public Laws of North Carolina, one thousand nine hundred and nineteen, chapter one hundred, and Public Laws of North Carolina, one thousand nine hundred and twenty-three, chapter one hundred and thirty-six; and in §§ 115-302 to 115-312, inclusive; and such other laws relative to school attendance as may hereafter be enacted.

(i) In either case where either parent institutes a divorce action when there is a minor child or children, it shall be the duty of the Clerk of the Superior Court to refer the case for investiga-

tion as to the child, or children, to the Domestic Relations Court, and the Judge of the Domestic Relations Court shall make his recommendations to the Judge of the Superior Court as to the disposition of the child, or children, for the consideration of the Judge of the Superior Court in disposing of the custody of the said child or children. (1929, c. 343, s. 3; 1941, c. 308.)

§ 7-104. Election of judge and term of office; vacancy appointments; judge to select clerk; juvenile Court officers may be declared officers of new Court.—It shall be the duty of the Board of Commissioners of any county and the governing board of any city, in which a joint Court of Domestic Relations is established, as provided in this article, or of the governing authorities of any city or county in which an independent Domestic Relations Court shall be established, as provided in this article, acting jointly, in the first instance, or independently, in the second instance, to elect a Judge of the Domestic Relations Court and to fix his salary and provide for the payment of same, his term of office to run from the time of his election to the second Monday in July in each odd numbered year and until his successor shall have been elected and qualified. The regular term of office shall be for a term of two years and until his successor is elected and qualified. If any vacancy should occur in said office during the two years' term, for any cause, it shall be filled for the unexpired term in the same manner and by the same bodies as provided for the election of said Judge.

It shall be the duty of the Judge of the Domestic Relations Court to appoint a Clerk for said court, the salary of said Clerk to be fixed, provided for, and paid by the Board of County Commissioners of any of such counties and the governing board of any of such cities, acting jointly, or independently when a joint county and city court is not established.

And the officers of the Juvenile Court of any of such cities and of any of such counties, as now constituted by law may be declared to be officers of the Domestic Relations Court.

The probation officers of Domestic Relations Court and their method of appointment shall be the same as now provided for in § 110-31, for probation officers of the Juvenile Court. The salaries of said probation officers, and the necessary equipment for the proper maintenance and functioning of said court, shall be a charge upon such county and such city jointly, or upon the county or city, if it is an independent court. (1929, c. 343, s. 4; 1931, c. 221, s. 1.)

Local Modification.—Mecklenburg: 1937, c. 268.

§ 7-105. Co-operation of all peace officers.—It shall be the duty of all officers of the counties and of the cities to assist the Domestic Relations Court in any and all ways in the line of their official duty as fully and to the same extent and in the same manner as they heretofore have been authorized and required to do in the case of all other courts. (1929, c. 343, s. 5.)

§ 7-106. Procedure, practice and punishments.—The procedure, practice, and punishments imposed in the Domestic Relations Court as established in this article shall be the same as now provided by law in courts now having original jurisdiction of the various offenses or causes enumerated in this article, and the Judge of the said Domestic Relations Court is hereby granted the power to prescribe such rules and fix such modes of procedure, as, in his discretion, will best effect the purposes for which said court is created. (1929, c. 343, s. 6.)

§ 7-107. Right of appeal to Superior Court; trial de novo.—Wherever in this article criminal jurisdiction is conferred upon the Domestic Relations Court there shall be the same right of appeal from this court as from Recorders' Courts or other inferior criminal courts to the Superior Court, and the same rules and regulations of such appeals from inferior courts shall apply to appeals from this court, and in the Superior Court the trial shall be de novo. This provision shall apply also to the trials in bastardy cases. (1929, c. 343, s. 7.)

§ 7-108. Offenses before Court to be petty misdemeanors; demand for jury trial; appearance bonds.—All the offenses for the trial of which the Domestic Relations Court is given jurisdiction are hereby declared to be petty misdemeanors punishable as now prescribed by law. On the trial before such Domestic Relations Court, if a jury trial is demanded, the cause shall be therewith transferred for trial to some criminal term of the Superior Court of the counties in which the Domestic Relations Court is situated. The defendant or defendants shall be held under an adequate bond to secure his or their attendance at the criminal term of the Superior Court to which the record is transferred. If in the exercise of the jurisdiction hereinbefore conferred upon the Domestic Relations Court, it should appear that a felony has been committed, said court shall have jurisdiction and authority upon proper investigation to bind over the alleged felon in all cases in which probable cause is found, to the Superior Court of the county, under proper bond and recognizances. (1929, c. 343, s. 8.)

§ 7-109. Pending cases in Juvenile Court transferred to new Court.—All causes pending in the Juvenile Court of the county or city at the time of the organization of any Domestic Relations Court within said county or city, shall be transferred to the Domestic Relations Court for final adjudication. (1929, c. 343, s. 9.)

§ 7-110. Cases transferred from Superior Court.—Upon the establishment of a domestic relations court as authorized in this article, the clerk of the superior court shall immediately transfer from the superior court to such domestic relations court all actions pending in the superior court of which the domestic relations court has jurisdiction as in this article conferred, whether such actions are untried or tried and retained for judgment, sentence or further orders, and the domestic relations court shall immediately have jurisdiction of such actions and shall thereafter try, enter further orders or dispose of such actions in the same manner and to the same extent as if said actions had been initiated in said domestic relations court. (1941, c. 208, s. 1.)

§ 7-111. Discontinuance of Court.—After the establishment of any domestic relations court by any county commissioners or by the governing authorities of a particular city, or the establishment of a joint county-city court of domestic relations, such board, governing authorities, or both, may, by resolution or resolutions, discontinue any such court. (1941, c. 208, s. 2½.)

SUBCHAPTER V: JUSTICES OF THE PEACE.

Art. 14. Election and Qualification.

§ 7-112. Constitution, article seven, abrogated; exceptions. — All the provisions of article seven of the constitution inconsistent with this chapter, except those contained in sections seven and twelve are hereby abrogated, and the provisions of this article substituted in their place; subject, however, to the power of the general assembly to alter, amend or abrogate the provisions of this article, and to substitute others in their stead, as provided in section thirteen of article seven of the constitution. (Rev., s. 1408; Code, s. 818; 1876-7, c. 141, s. 7; C. S. 1462.)

§ 7-113. Election and number of justices.—At every general election held for members of the general assembly there shall be elected in each township three justices of the peace, and for each township in which any city or incorporated town is situated, one justice of the peace for every one thousand inhabitants in such city or town, who shall hold office for a term of two years from and after the first Monday in December next after their election. (Rev., s. 1409; Code, s. 819; 1876-7, c. 141; 1895, c. 157; 1905, cc. 35, 44, 148; 1907, c. 225; 1909, cc. 177, 716; C. S. 1463.)

Local Modification.—Bertie, Caswell, Chowan, Franklin: C. S. 1464; Gaston: 1931, c. 256; Granville: C. S. 1464; New Hanover (City of Wilmington): C. S. 1464; Vance: C. S. 1466; Wake: 1937, c. 113; Warren: C. S. 1465.

§ 7-114. Oath of office; vacancies filled.—Every person elected or appointed a justice of the peace, before his term of office begins or within thirty days thereafter, shall take and subscribe the prescribed oaths of office before the clerk of the superior court, who shall file the same. All elections of justices of the peace by the general assembly or by the people shall be void unless the persons so elected shall qualify as herein directed. All original vacancies in the offices of justice of the peace occurring before qualification as provided in this section shall be filled for the term by the governor. All other vacancies shall be filled by the clerk of the superior court. (Rev., s. 1411; Code, s. 821; 1901, c. 37; C. S. 1467.)

§ 7-115. Governor may appoint justices.—The governor may, from time to time, at his discretion, appoint one or more fit persons in every county to act as justices of the peace, who shall hold their office for four years from and after the date of their appointment; and, on exhibiting their commission to the clerk of the superior court of the county in which they are to act, shall be duly qualified by taking before said clerk an oath of office and the oaths prescribed for other officers. The governor shall issue to each justice of the peace so appointed a commission, a certificate of which shall be deposited with the clerk of the court and filed among the records, and he shall note on his minutes the qualifications of the justice of the peace.

Any commission so issued by the Governor or his predecessor shall be revokable by him in his discretion upon complaint being made against such justice of the peace and when he shall be satisfied that the interest of the public will be best served by the revocation of said commission.

Whenever the Governor shall have revoked the commission of any justice of the peace appointed by him, or his predecessor in office, it shall be his duty to file with the clerk of the court in the county of such justice of the peace a copy of said order and mail a copy of same to said justice of the peace.

Any person holding himself out to the public as a justice of the peace, or any person attempting to act in such capacity after his commission shall have been revoked by the Governor, shall be guilty of a misdemeanor and upon conviction be punishable in the discretion of the court, as provided for in other misdemeanors. (1917, c. 40; 1927, c. 116; C. S. 1468.)

§ 7-116. Forfeiture of office.—When any justice of the peace removes out of his township and does not return therein for the space of six months, he thereby forfeits and loses his office; and any such justice presuming to act thereafter, contrary to this section, unless reelected or reappointed, shall be guilty of a misdemeanor. (Rev., ss. 1412, 3589; Code, s. 822; C. S. 1469.)

§ 7-117. Resignation.—Justices of the peace wishing to resign must deliver their letters of resignation to the clerk of the superior court, who shall file the same. (Rev., s. 1413; Code, s. 823; C. S. 1470.)

§ 7-118. Removal and disqualification for crime. —Upon the conviction of any justice of the peace of an infamous crime, or of corruption and malpractice in office, he shall be removed from office, and he shall be disqualified from holding or enjoying any office of honor, trust or profit under this state. (Rev., s. 1414; Code, s. 826; C. S. 1471.)

§ 7-119. Justice may hold other office.—Any justice of the peace may accept a civil office or appointment of trust or profit, under the authority of the United States, the duties of which confine him to the county where he is resident. (Rev., s. 1415; Code, s. 825; Const., Art. 14, s. 7; C. S. 1472.)

§ 7-120. Validation of official acts of certain justices of the peace.—Each and all of the official acts of justices of the peace appointed by chapter three hundred twenty-one, Public Laws of one thousand nine hundred thirty-one, performed after the expiration of their terms on April first, one thousand nine hundred thirty-seven, and before March twenty-first, one thousand nine hundred thirty-nine, including all judgments rendered, probates taken, marriages performed, and any and all other acts whatsoever, are hereby in all respects validated, ratified and confirmed. (1939, c. 268.)

Art. 15. Jurisdiction.

§ 7-121. Jurisdiction in actions on contract.—Justices of the peace shall have exclusive original jurisdiction of all civil actions founded on contract, except—

1. Wherein the sum demanded, exclusive of interest, exceeds two hundred dollars.

2. Wherein the title to real estate is in controversy. (Rev., s. 1419; Const., Art. 4, s. 27; Code, s. 834; C. S. 1473.)

§ 7-122. Jurisdiction in actions not on contract.—Justices of the peace shall have concurrent jurisdiction of civil actions not founded on contract, wherein the value of the property in controversy does not exceed fifty dollars. (Rev., s. 1420; Const., Art. 4, s. 27; Code, s. 887; C. S. 1474.)

§ 7-123. Action dismissed for want of jurisdiction; remitter.—Where it appears, in any action brought before a justice, that the principal sum demanded exceeds two hundred dollars, the justice shall dismiss the action and render a judgment against the plaintiff for the costs, unless the plaintiff shall remit the excess of principal, above two hundred dollars, with the interest on said excess, and shall, at the time of filing his complaint, direct the justice to make this entry: "The plaintiff, in this action, forgives and remits to the defendant so much of the principal of this claim as is in excess of two hundred dollars, together with the interest on said excess." (Rev., s. 1421; Code, s. 835; 1868-9, c. 159, s. 3; 1876-7, c. 63; C. S. 1475.)

§ 7-124. Title to real estate in controversy as a defense.—In every action brought in a court of a justice of the peace, where the title to real estate comes in controversy, the defendant may, either with or without other matter of defense, set forth, in his answer, any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the justice. (Rev., s. 1422; Code, s. 836; C. S. 1476.)

§ 7-125. Title to real estate in controversy, action dismissed.—If it appears on the trial that the title to real estate is in controversy, the justice shall dismiss the action and render judgment against the plaintiff for costs. (Rev., s. 1423; Code, s. 837; C. S. 1477.)

§ 7-126. Another action in Superior Court.—When an action, before a justice, is dismissed upon answer, and proof by the defendant, that the title to real estate is in controversy in the case, the plaintiff may prosecute an action for the same cause in the superior court, and the defendant shall not be admitted in that court to deny the jurisdiction by an answer contradicting his answer in the justice's court. (Rev., s. 1424; Code, s. 838; C. S. 1478.)

§ 7-127. Justice may act anywhere in county.—A justice of the peace may issue a summons or other process anywhere in his county, but he shall not be compelled to try a cause out of the township for which he was elected or appointed. (Rev., s. 1425; Code, s. 824; C. S. 1479.)

§ 7-128. Punishment for contempt in certain cases.—If any person shall profanely swear or curse in the hearing of a justice of the peace, holding court, the justice may commit him for contempt, or fine him not exceeding five dollars. (Rev., s. 1426; Code, s. 848; R. C. c. 115; 1741, c. 30; C. S. 1480.)

§ 7-129. Jurisdiction in criminal actions.—Justices of the peace have exclusive original jurisdiction of all assaults, assaults and batteries, and affrays, where no deadly weapon is used and no serious damage is done, and of all criminal matters arising within their counties, where the punishment prescribed by law does not exceed a fine of fifty dollars or imprisonment for thirty days: Provided, that justices of the peace shall have no jurisdiction over assaults with intent to kill, or assaults with intent to commit rape, except as committing magistrates: Provided further, that nothing in this section shall prevent the superior or criminal courts from finally hearing and determining such affrays as shall be committed within one mile of the place where and during the time such court is being held; nor shall this section be construed to prevent said courts from assuming jurisdiction of all offenses whereof exclusive original jurisdiction is given to justices of the peace if some justice of the peace, within twelve months after the commission of the offense, shall not have proceeded to take official cognizance of the same. (Rev., s. 1427; Const., Art. 4, s. 27; Code, s. 892; 1889, c. 504, s. 2; C. S. 1481.)

Art. 16. Dockets and Fees.

§ 7-130. Justice shall keep docket.—A civil and a criminal docket shall be furnished each justice, at the expense of the county, by the board of county commissioners, in which shall be entered a minute of every proceeding had in any action before such justice. (Rev., s. 1416; Code, s. 831; C. S. 1482.)

§ 7-131. Entries to be made.—The justice shall enter all his proceedings in a cause tried before him in his docket. No part of such proceedings must be entered on the summons, on the pleadings, or on any other paper in the cause. (Rev., s. 1470, Rule 14; Code, s. 840, Rule 13; C. S. 1483.)

§ 7-132. Dockets filed with clerk.—Each justice of the peace, as often as he has filled his docket, shall file the same with the clerk of the superior court for his county. (Rev., s. 1417; Code, s. 827; C. S. 1484.)

§ 7-133. Dockets, papers, and books delivered to successor.—When a vacancy exists, from any cause, in the office of a justice of the peace, whose docket is not filled, or when such justice goes out of office by expiration of his term, such former justice, if living, and his personal representative, if dead, shall deliver such docket, all law and other books furnished him as a justice of the peace, and all official papers, to the clerk of the superior court for his successor, who is authorized to hear and determine any unfinished action on said docket, in the same manner as if such action had been originally brought before such successor. (Rev., s. 1418; Code, s. 828; 1885, c. 372; C. S. 1485.)

Art. 17. Fees.

§ 7-134. Fees of justices of the peace.—Justices of the peace shall receive the following fees, and

none other: For attachment with one defendant, twenty-five cents, and if more than one defendant, ten cents for each additional defendant; transcript of judgment, ten cents; summons, twenty cents, if more than one defendant in the same case, for each additional defendant, ten cents; subpœna for each witness, ten cents; trial when issues are joined, seventy-five cents, and if no issues are joined, then a fee of forty cents for trial and judgment; taking an affidavit, bond or undertaking, or for an order of publication, or an order to seize property, twenty-five cents; for jury trial and entering verdict, seventy-five cents; execution, twenty-five cents; renewal of execution, ten cents; return to an appeal, thirty cents; order of arrest in civil actions, twenty-five cents; warrant of arrest in criminal and bastardy cases, including affidavit or complaint, fifty cents; warrant of commitment, twenty-five cents; taking depositions on order or commission, per one hundred words, ten cents; garnishment for taxes, and making necessary return and certificate of same, twenty-five cents; for hearing petition for widow's year's allowance, issuing notice to commissioners and allotting the same, one dollar; for filing and docketing laborers' liens, fifty cents; probate of a deed or other writing proved by a witness, including the certificate, twenty-five cents; probate of a deed or other writing executed by a married woman, proper acknowledgment and private examination, with the certificate thereof, twenty-five cents; probate of a deed or other writing acknowledged by the signers or makers, including all except married women who acknowledge at the same time, with the certificate thereof, twenty-five cents; probating chattel mortgage, including the certificate, ten cents; for issuing all papers and copies thereof in an action for claim and delivery, and the trial of the same, if issues are joined, when there is one defendant, one dollar and fifty cents, and if more than one defendant in action, fifty cents for each additional defendant, and ten cents for each subpœna issued in said cause, and twenty-five cents for taking the replevy bond, when one is given: Provided, that when the trial of such a cause shall have been removed from before the justice of the peace issuing the said papers, the justice of the peace sitting in trial of such cause shall receive fifty cents of the above costs for such trial and judgment.

Justices of the peace in the counties of Montgomery, Onslow, Macon, Swain, Greene, Hyde, Cherokee, Rowan, Anson, Bertie, Nash, Chowan, Alamance, Wake, Transylvania, Watauga, Pender, Lee, Lenoir, Perquimans, Rockingham, Stokes, Johnston, Halifax, Duplin, Chatham, Forsyth, Wilkes, Gates, Tyrrell, Brunswick, Stanly, Columbus, Edgecombe, Franklin, Vance, Mitchell, Orange, Buncombe, Jackson, Alexander, McDowell, Clay, Hertford, Davidson, Northampton, Wayne, Jones, Cabarrus, Robeson, Richmond, Randolph, Polk, Henderson, Harnett, Bladen, Burke, Granville, Person, Haywood, Caldwell, Cumberland, and Madison shall receive the following fees, and none other: For attachment with one defendant, thirty-five cents, and if more than one defendant, fifteen cents for each additional defendant; transcript of judgment, fifteen cents; summons, thirty cents; if more than one defendant in the same case, for each additional defendant, fifteen cents; subpœna for each witness, fifteen cents; trial when issues are joined, one dollar; and if no issues are joined, then a fee of fifty cents for trial and judgment; taking an affidavit, bond, or undertaking, or for an order of publication, or an order to seize property, thirty-five cents; for jury trial and entering verdict, one dollar; execution, thirty-five cents; renewal of execution, fifteen cents; return to an appeal, forty cents; order of arrest in civil actions, thirty cents; warrant of arrest in criminal and bastardy cases, including affidavit or complaint, seventy-five cents; warrant of commitment, fifty cents; taking depositions on order of commission, per one hundred words, fifteen cents; garnishment for taxes and making necessary return and certificate of same, thirty-five cents. (Rev., s. 2788; Code, ss. 2135, 3748; 1870-1, c. 130, s. 9; 1883, c. 368; 1885, c. 86; 1903, c. 225; 1907, c. 967; 1917, c. 260; 1921, c. 113; Ex. Sess. 1921, cc. 38, 64, 67; 1923, cc. 28, 114, 238; 1929, cc. 13, 59; 1931, cc. 51, 303; C. S. 3923.)

Local Modification.—Orange: 1935, c. 358; Wake: 1937, c. 136; 1941, c. 165; Warren: 1937, c. 187.

Art. 18. Process.

§ 7-135. Action begun by summons.—Civil actions in these courts shall be commenced by the issuing of a summons. (Rev., s. 1444; Code, s. 830; 1868-9, c. 159, s. 9; C. S. 1486.)

§ 7-136. Issuance and contents of summons.—The summons shall be issued by the justice and signed by him. It shall run in the name of the state, and be directed to any constable or other lawful officer, commanding him to summon the defendant to appear and answer the complaint of the plaintiff at a place, within the county, to be therein specified, and at a time to be therein named, not exceeding thirty days from the date of the summons. It shall also state the sum demanded by the plaintiff or the value of the property sued for, where specific property is claimed. (Rev., s. 1445; Code, s. 832; 1874-5, c. 234; C. S. 1487.)

§ 7-137. Service and return of summons.—The officer to whom the summons is delivered shall execute the same within five days after its receipt by him or immediately, if required to do so by the plaintiff. Before proceeding to execute it, he is entitled to require of the plaintiff his fees for the service. When executed he shall immediately return the summons, with the date and manner of the service, to the justice who issued the same. (Rev., s. 1446; Code, s. 833; C. S. 1488.)

§ 7-138. Process issued to another county.—No process shall be issued by any justice of the peace to any county other than his own, unless one or more bona fide defendants shall reside in, and also one or more bona fide defendants shall reside outside of, his county; in which case, only, he may issue process to any county in which any such nonresident defendant resides. (Rev., s. 1447; Code, s. 871; 1876-7, c. 287; C. S. 1489.)

§ 7-139. Civil process in inferior courts.—The process of any recorder's court, county court, or other court inferior to the superior courts of the state, when such court is exercising the jurisdic-

tion of a justice of the peace in civil matters, shall run only as does the process of the court of a justice of the peace for the county in which such court is located. (1915, c. 19; C. S. 1490.)

§ 7-140. Endorsement of process to another county.—In all civil actions in courts of justices of the peace where one or more of the defendants may reside in a county other than that of the plaintiff, it shall be lawful for any justice of the peace within the county where such defendant or defendants may reside, upon proof of the handwriting of the justice of the peace who issued the process, to endorse his name on the same, or a duplicate thereof, and such process so endorsed shall be executed in like manner as if it had been originally issued by the justice endorsing it. (Rev., s. 1449; Code, s. 872; C. S. 1491.)

§ 7-141. Certificate of clerk on process for another county.—In all cases referred to in § 7-140 it shall be lawful for the clerk of the superior court of the county in which the action is brought to certify, under the seal of his court, on the process or a duplicate thereof, that the justice of the peace who issued the same is an acting justice of the peace in his county. And in all such cases it shall be the duty of any sheriff or constable to whom it may be directed to make an entry of the date of its reception, and to execute the same as provided for the service of civil process in courts of justices of the peace, and return it by mail to the justice of the peace from whose court it issued. (Rev., s. 1450; Code, s. 873; 1870-1, c. 60, s. 2; C. S. 1492.)

§ 7-142. Judgment against defendant in another county.—No justice of the peace shall enter a judgment under §§ 7-140 and 7-141 against any defendant who may be a nonresident of his county, unless it shall appear that the process was duly served upon him at least ten days before the return day of the same. (Rev., s. 1451; Code, s. 874; 1876-7, c. 57; C. S. 1493.)

§ 7-143. Service on foreign corporation.—Whenever any action of which a justice of the peace has jurisdiction shall be brought against a foreign corporation, which corporation is required to maintain a process agent in the state, the summons may be issued to the sheriff of the county in which such process agent resides, and when certified under the seal of his office by the clerk of the superior court of the county in which the justice issuing such summons resides to be under the hand of such justice, the sheriff of the county to which such summons shall be issued shall serve the same as in other cases and make due return thereof. No justice of the peace shall enter a judgment in such cases against any such foreign corporation unless it shall appear that the process was duly served upon such process agent at least twenty days before the return day of the same. The summons may be made returnable at a time to be therein named, not exceeding forty days from the date of such summons: Provided, this section shall not apply to actions commenced in a county where the defendant has an officer or agent upon whom process may be served: Provided, that when any foreign corporation has no process agent in this state, but has an agent who collects money for it, said agent shall be deemed a process agent within the terms of this section, and that this proviso shall apply to existing claims as well as those arising hereafter. Such service can be made in respect to a foreign corporation only when it has property, or the cause of action arose, or the plaintiff resides in this state, or when it cannot be made personally within the state upon the president, treasurer, or secretary thereof. (Rev., s. 1448; 1907, c. 473; Ex. Sess. 1920, c. 28; C. S. 1494.)

§ 7-144. Attendance of witnesses.—The justice, on application of either party, shall, by a subpoena or by an order in writing, on the process, direct the constable or other officer to summon witnesses to appear and give testimony at the time and place appointed for the trial. Each witness failing to appear shall forfeit and pay eight dollars to the party at whose instance he was summoned, and shall be further liable to such party for all damage sustained by nonattendance. The fine herein imposed may be recovered, on motion, before the justice who tried the action, unless the witness on a notice of five days, by affidavit or other proof, show sufficient excuse for his failure to attend. (Rev., s. 1452; Code, s. 847; C. S. 1495.)

§ 7-145. Subpoena issued to another county.—Justices of the peace, in all civil cases, may issue subpoenas to counties other than their own; such subpoenas shall be authenticated in the same manner as provided by law for the authentication of process. When so authenticated the sheriff, constable or other officer to whom the same is directed shall execute and return the same as provided for the return of process: Provided, that where witnesses attend in counties other than their own under such subpoena they shall receive the same per diem and mileage as witnesses who attend the superior courts: Provided further, that before issuing such subpoenas the party wanting such witness shall deposit with the justice before whom the cause is pending one day's per diem and the mileage of the witness to and returning from place of trial, which amount shall be paid to the witness on his attendance and taxed against the party cast in the trial. (Rev., s. 1453; 1893, c. 436; C. S. 1496.)

§ 7-146. Subpoena duces tecum in case against railroad.—When any action is brought against a railroad company before a justice of the peace, the justice before whom such action is made returnable shall have power to issue a subpoena to any county within the limits of the state, commanding the president or any officer, director, agent, or any one in the employment of such company, to appear before him at the time and place of trial and to produce such books, cards and other papers as the justice shall deem proper, and to give evidence in said cause; and each witness summoned as aforesaid failing or refusing to appear and testify and produce the books and papers aforesaid in obedience to such writ shall be deemed guilty of a contempt of court and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 1454; 1885, c. 221, s. 2; C. S. 1497.)

Art. 19. Pleading and Practice.

§ 7-147. Removal of case.—In all proceedings

and trials, both criminal and civil, before justices of the peace, the justice before whom the writ or summons is returnable shall, upon written request made by either party to the action before evidence is introduced, move the same to some other justice residing in the same township, or to the justice of some neighboring township if there be no other justice in said township; but no cause shall be more than once removed. (Rev., s. 1455; Code, s. 907; 1880, c. 15; 1883, c. 66; 1917, c. 48; C. S. 1498.)

Local Modification.—Mecklenburg: 1933, c. 278.

§ 7-148. Removal in case of death or incapacity.—If any justice of the peace dies or becomes incapacitated by removal, resignation or other cause, having any action, civil or criminal, pending before him, which has not been finally determined, such action shall not abate or be discontinued, but the plaintiff in such civil action, or any one on behalf of the state in such criminal action, may remove such action for further and final determination before any other justice of the peace of the same township in which the original action was pending, or before any justice of the peace of the same county when there is no other in the township, by filing the papers in said action with the justice to whom the same is removed and by giving ten days notice to the defendant of such removal; and if the plaintiff in any civil action shall fail to give such notice of removal within ten days from the happening of the death, removal, or resignation, or incapacity of such justice, then the defendant in such action may remove the same by giving like notice to the plaintiff; and if no notice is given by either party to such action within twenty days, then such action shall stand discontinued without prejudice. The justice of the peace before whom such action may be removed shall proceed to try and determine the same, but he shall demand no fees or costs which have theretofore been properly advanced by any party to such action. After such removal either party shall be entitled to all the rights given in § 7-147. (Rev., s. 1456; 1905, c. 121; C. S. 1499.)

§ 7-149. Rules of practice:

Rule 1, Pleadings. The pleadings in these courts are—

1. The complaint of the plaintiff.

2. The answer of the defendant. (Rev., s. 1457; Code, s. 840; C. S. 1500.)

Rule 2, Complaint. The complaint must state, in a plain and direct manner, the facts constituting the cause of action. (Rev., s. 1459; Code, s. 840, Rule 3; C. S. 1500.)

Rule 3, Answer. The answer may contain a denial of the complaint, or of any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defense or counterclaim. (Rev., s. 1460; Code, s. 840, Rule 4; C. S. 1500.)

Rule 4, Demurrer. Either party may demur to a pleading of his adversary, or to any part thereof, when it is not sufficiently explicit to enable him to understand it, or contains no cause of action or defense, although it be taken as true. (Rev., s. 1461; Code, s. 840, Rule 11; C. S. 1500.)

Rule 5, Order on demurrer. If the justice deem the objection well founded, he shall order the pleading to be amended on such terms as he may think just; and if the party refuse to amend, the defective pleading shall be disregarded. (Rev., s. 1462; Code, s. 840, Rule 12; C. S. 1500.)

Rule 6, Pleadings, oral or written. The pleadings may be either oral or written; if oral, the substance must be entered by the justice on his docket; if written, they must be filed by the justice, and a reference to them be made on his docket. (Rev., s. 1458; Code, s. 840, Rule 2; C. S. 1500.)

Rule 7, No particular form for pleadings. Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is meant. (Rev., s. 1463; Code, s. 840, Rule 5; C. S. 1500.)

Rule 8, No judgment by default. Where a defendant does not appear and answer, the plaintiff must still prove his case before he can recover. (Rev., s. 1464; Code, s. 840, Rule 6; C. S. 1500.)

Rule 9, Action on account or note. In an action or defense, founded on an account, or an instrument for the payment of money only, it is sufficient for a party to deliver the account or instrument to the justice and state that there is due him thereon from the adverse party a specified sum, which he claims to recover or set off. (Rev., s. 1465; Code, s. 840, Rule 7; C. S. 1500.)

Rule 10, Account or demand exhibited. The justice may at the joining of issue require either party, at the request of the other, at that or some other specified time to exhibit his account or demand, or state the nature thereof as far as may be in his power; and in case of his default, the justice shall preclude him from giving evidence of such parts thereof as have not been so exhibited or stated. (Rev., s. 1469; Code, s. 840, Rule 10; C. S. 1500.)

Rule 11, Variance. A variance between the evidence on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court is satisfied that the adverse party has been misled to his prejudice thereby. (Rev., s. 1466; Code, s. 840, Rule 8; C. S. 1500.)

Rule 12, No process quashed for want of form. No process or other proceeding begun before a justice of the peace, whether in a civil or a criminal action, shall be quashed or set aside for the want of form, if the essential matters are set forth therein; and the court in which any such action shall be pending shall have power to amend any warrant, process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be deemed just, at any time either before or after judgment. (Rev., s. 1467; Code, s. 908; R. C., cc. 3, 62, s. 22; 1794, c. 414; C. S. 1500.)

Rule 13, Pleadings amended. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, when by such amendment substantial justice will be promoted. If the amendment be made after the joining of the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of

costs to the adverse party. (Rev., s. 1468; Code, s. 840, Rule 9; C. S. 1500.)

Rule 14, Tender of judgment. The defendant may, on the return of process and before answering, make an offer in writing to allow judgment to be taken against him for an amount, to be stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceeding be had in the action, determine whether he will accept or reject such offer. If he accept the offer, and give notice thereof in writing, the justice shall file the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance be not given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer. (Rev., s. 1471; Code, s. 840, Rule 16; C. S. 1500.)

Rule 15, Continuance. Any justice before whom an action is brought may, on sufficient excuse therefor shown on the affidavit of either party or any person for him, continue such action from time to time for trial; but such continuance shall not exceed thirty days. (Rev., s. 1472; Code, s. 840, Rule 17; C. S. 1500.)

Rule 16, Chapter on civil procedure applicable. The chapter on civil procedure, respecting forms of actions, parties to actions, the times of commencing actions, and the service of process, shall apply to justices' courts. (Rev., s. 1473; Code, s. 840, Rule 15; C. S. 1500.)

Rule 17, Attachment proceedings. The chapter on civil procedure is applicable to proceedings by attachment before justices of the peace, in all cases founded on contract wherein the sum demanded does not exceed two hundred dollars, and where the title to real estate is not in controversy. (Rev., s. 1474; Code, s. 853; C. S. 1500.)

Rule 18, Claim and delivery and arrest and bail. The chapter on civil procedure is applicable, except as herein otherwise provided, to proceedings in justices' courts concerning claim and delivery of personal property and arrest and bail, substituting the words, "justice of the peace" for "judge," "clerk" or "clerk of the court," and inserting the words "or constable" after "sheriff," whenever they occur. (Rev., s. 1475; Code, ss. 849, 889; 1876-7, c. 251; C. S. 1500.)

Rule 19, Actions for damages and for conversion. All actions in a court of a justice of the peace for the recovery of damages to real estate, or for the conversion of personal property, or any injury thereto, shall be commenced and prosecuted to judgment under the same rules of procedure as provided in civil actions in a justice's court. (Rev., s. 1476; Code, s. 888; 1876-7, c. 251; C. S. 1500.)

Rule 20, Action on former judgment. On the trial of an action founded on a former judgment, the judgment itself shall be evidence of the debt, subject to such payments as have been made. (Rev., s. 1477; Code, s. 844; C. S. 1500.)

Rule 21, Rehearing of case. When a judgment has been rendered by a justice, in the absence of either party, and when such absence was caused by the sickness, excusable mistake or neglect of the party, such absent party, his agent or attorney, may, within ten days after the date of such judgment, apply for relief to the justice who awarded the same, by affidavit, setting forth the facts, which affidavit must be filed by the justice; whereupon the justice, if he deem the affidavit sufficient, shall open the case for reconsideration; and to this end, he shall issue a summons, directed to a constable, or other lawful officer, to cause the adverse party, together with the witnesses on both sides, to appear before him at a place and at a time, not exceeding twenty days, to be specified in the summons, when the complaint shall be reheard, and the same proceedings had as if the case had never been acted on. If execution has been issued on the judgment, the justice shall direct an order to the officer having such execution in his hands, commanding him to forbear all further proceedings thereon, and to return the same to the justice forthwith. (Rev., s. 1478; Code, s. 845; C. S. 1500.)

Art. 20. Jury Trial.

§ 7-150. Parties entitled to a jury trial.—When an issue of fact shall be joined before a justice, on demand of either party thereto, he shall cause a jury of six men to be summoned, who shall try the same. (Const., Art. 4, s. 27; C. S. 1501.)

§ 7-151. Jury trial waived.—A trial by jury must be demanded at the time of joining the issue of fact, and if neither party demand at such time a jury, they shall be deemed to have waived a trial by jury. (Rev., s. 1431; Code, s. 857; C. S. 1502.)

§ 7-152. Number constituting the jury.—Six jurors shall constitute a jury in a justice's court, but, by consent of both parties, a less number may constitute it. (Rev., s. 1440; Code, s. 866; C. S. 1503.)

§ 7-153. Jury list furnished.—The clerk of the board of commissioners shall furnish, on demand, to each justice of the peace in the county, a list of the jurors for the township for which such justice is elected or appointed. (Rev., s. 1428; Code, s. 854; C. S. 1504.)

§ 7-154. Names kept in jury box.—Each justice shall keep a jury box, having two divisions marked respectively number one and number two, and having two locks, the key to be kept by the justice. He shall cause the names on his jury list to be written on small scrolls of paper of equal size, and to be placed in the jury box, in division marked number one, until drawn out for the trial of an issue as required by law. (Rev., ss. 1429, 1430; Code, ss. 855, 856; C. S. 1505.)

§ 7-155. Fees deposited for jury trial.—Before a party is entitled to a jury he shall deposit with the justice the sum of three dollars for jury fees, and the justice shall pay to all persons who attend, pursuant to the summons, as well to those who do not actually serve as to those who do serve, twenty-five cents each, to be included in the judgment as part of the costs, in case the party demanding the jury recover judgment, but not otherwise. The justice shall refund to the party the fees of all jurors who do not attend. (Rev., s. 1432; Code, s. 869; C. S. 1506.)

§ 7-156. Jury drawn and trial postponed. — When a trial by jury is demanded, the justice

shall immediately, in the presence of the parties, proceed to draw the names of twelve jurors from division marked number one of the jury box; and the trial of the cause shall thereupon be postponed to a time and place to be fixed by the justice. (Rev., s. 1433; Code, s. 858; C. S. 1507.)

§ 7-157. Summoning the jury.—A list of the jurors so drawn shall be immediately delivered by the justice to any constable, or other lawful officer, with an order indorsed thereon, directing him to summon the persons named in the list to appear as jurors at the time and place fixed for the trial; and it is the duty of the officer to proceed forthwith to summon such jurors, or so many of them as can be found, according to the order; and he shall make return thereof at the time and place appointed, stating in his return the names of the jurors summoned by him. For performing the aforementioned duties, he shall receive the fee allowed by law for summoning jurors. The preceding sentence shall not apply to the counties of Beaufort, Brunswick, Cabarrus, Edgecombe, Forsyth, Gaston, Gates, Guilford, Halifax, Martin, McDowell, Orange, Pasquotank, Rowan, Transylvania, and Wake. (Rev., s. 1434; Code, s. 859; 1935, c. 309; C. S. 1508.)

§ 7-158. Selection of jury.—At the time and place appointed, and on return of the order, if the trial be not further adjourned, and if adjourned, then at the time and place to which the trial shall be adjourned, the justice shall proceed, in the presence of the parties, to draw from the jurors summoned the names of six persons to constitute the jury for the trial of the issue. (Rev., s. 1435; Code, s. 860; C. S. 1509.)

§ 7-159. Challenges.—Each party shall be entitled to challenge, peremptorily, two of the persons drawn as jurors. (Rev., s. 1436; Code, s. 861; C. S. 1510.)

§ 7-160. Names returned to the jury box.—The scrolls containing the names of jurors not summoned, if any, and of those summoned but not drawn, and of those drawn but challenged and set aside, must be returned by the justice to his jury box, in division marked number one: Provided, that the scrolls containing the names of such as are not legally liable or legally qualified to serve as jurors shall be destroyed. (Rev., s. 1437; Code, s. 862; C. S. 1511.)

§ 7-161. Names of jurors serving.—The scrolls containing the names of the jurors who serve on the trial of an issue must be placed in the jury box in division marked number two, until all the scrolls in division marked number one have been drawn out. As often as that may happen, the whole number of scrolls shall be returned to division marked number one, to be drawn out as in the first instance. (Rev., s. 1441; Code, s. 868; C. S. 1512.)

§ 7-162. Tales jurors summoned.—If a competent and indifferent jury is not obtained from the twelve jurors drawn, as before specified, the justice may direct others to be summoned from the bystanders, sufficient to complete the jury. (Rev., s. 1438; Code, s. 863; C. S. 1513.)

§ 7-163. No juror to serve out of township.—No person is compelled to serve as a juror in a justice's court out of his own township, except as a talesman. (Rev., s. 1439; Code, s. 867; C. S. 1514.)

§ 7-164. Additional deposit for jury fees on adjournment. — No adjournment shall be granted after the return of the jury, unless the party asking the same shall, in addition to the other conditions imposed on him by law or by the justice, deposit with the justice, to be immediately paid to the jurors attending, the sum of twenty-five cents each, such amount to be in no case included in the judgment as part of the costs. On such adjournment, the jurors shall attend at the time and place appointed, without further summons or notice; and the fees for the jury, deposited with the justice in the beginning, shall remain in his hands until the jury are impaneled on the trial, and shall be then immediately paid to the jurors or to the party entitled thereto. (Rev., s. 1442; Code, s. 870; C. S. 1515.)

§ 7-165. Jury sworn and impaneled; verdict; judgment.—The jury shall be sworn and impaneled by the justice, who shall record their verdict in his docket and enter a judgment in the case according to such verdict. (Rev., s. 1443; Code, s. 864; C. S. 1516.)

Art. 21. Judgment and Execution.

§ 7-166. Justice's judgment docketed; lien and execution.—A justice of the peace, on the demand of a party in whose favor he has rendered a judgment, shall give a transcript thereof which may be filed and docketed in the office of the superior court clerk of the county where the judgment was rendered. And in such case he shall also deliver to the party against whom such judgment was rendered, or his attorney, a transcript of any stay of execution issued, or which may thereafter be issued, by him on such judgment, which may be in like manner filed and docketed in the office of the clerk of such court. The time of the receipt of the transcript by the clerk shall be noted thereon and entered on the docket; and from that time the judgment shall be a judgment of the superior court in all respects for the purposes of lien and execution. The execution thereon shall be issued by the clerk of the superior court to the sheriff of the county, and shall have the same effect, and be executed in the same manner, as other executions of the superior court; but in case a stay of execution upon such judgment shall be granted, as provided by law, execution shall not be issued thereon by the clerk of the superior court until the expiration of such stay. A certified transcript of such judgment may be filed and docketed in the superior court clerk's office of any other county, and with like effect, in every respect, as in the county where the judgment was rendered, except that it shall be a lien only from the time of filing and docketing such transcript. (Rev., s. 1479; Code, s. 839; C. S. 1517.)

§ 7-167. Effect of judgment on appeal.—In cases of appeal to the superior court from a justice's judgment docketed in such court, when judgment is rendered in the superior court on such appeal, the lien acquired by the docketing of such justice's judgment shall merge into the judgment of the superior court, and continue as a lien from the date of the docketing of such justice's judgment,

and be superior to any other judgment docketed subsequent to the date of the justice's judgment, except prior attachment liens and judgment on the same. The clerk of the superior court shall carry forward and tax into the judgment of the superior court all costs incurred in the justice's court, including transcript and docketing, as well as all costs incurred in the superior court, and shall issue execution only on the judgment rendered in the superior court, and not upon the justice's judgment. When the judgment of the superior court is satisfied, it shall be a satisfaction of the justice's judgment, and the clerk shall note such satisfaction on the record of the justice's judgment. (Rev., s. 1479; 1903, c. 179; C. S. 1518.)

§ 7-168. Entries made by clerk when judgment is rendered.—Whenever a transcript of a judgment taken before a justice of the peace is docketed on the judgment docket of the superior court and the same is afterwards reversed, modified, or affirmed in the superior court on appeal by a final judgment, the clerk of said court shall within ten days thereafter enter on the judgment docket where the said transcript was first docketed, the word "reversed," "modified," or "affirmed," as the case may be, and further refer to the book and page where can be found the judgment reversing, modifying, or affirming the former judgment. Any clerk failing to perform such duties as are required of him in this section shall pay to any person all such damages as he may have sustained by such failure. (Rev., s. 1479; 1907, c. 880; C. S. 1519.)

§ 7-169. Justice's judgment removed to another county.—Any person who may desire to have a justice's judgment in his favor removed to another county to be enforced against the goods and chattels of the defendant must obtain from the justice who rendered the judgment a transcript thereof, under his hand; and must further procure a certificate from the clerk of the superior court of the county where the judgment was rendered, under the seal of his court, that the justice who gave the judgment was, at the rendition thereof, a justice of the county. On such transcript of the judgment, thus certified, any justice in any other county may award execution for the sum therein expressed. (Rev., s. 1480; Code, s. 846; C. S. 1520.)

§ 7-170. Issue and return of execution.—Execution may be issued on a judgment, rendered in a justice's court, at any time within one year after the rendition thereof, and shall be returnable sixty days from the date of the same. (Rev., s. 1481; Code, s. 840, Rule 14; C. S. 1521.)

§ 7-171. Levy and lien of execution.—Executions issued by a justice, which must be directed to any constable or other lawful officer of the county, shall be a lien on the goods and chattels of the defendant named therein, from the levy thereof only, but shall not be levied on or enforced in any manner against real estate; but when a justice's judgment shall be made a judgment of the superior court, as is elsewhere provided, the execution shall be capable of being levied and collected out of any property of the defendant in execution, and it shall be a lien on the real estate of said defendant from the time when it becomes a judgment of the superior court. (Rev., s. 1482; Code, s. 841; 1868-9, c. 159, s. 5; C. S. 1522.)

§ 7-172. Stay of execution. — In all actions founded on contract, whereon judgments are rendered in justices' courts, stay of execution, if prayed for at the trial by the defendant or his attorney, shall be granted by the justices in the following manner: For any sum not exceeding twenty-five dollars, one month; for any sum above twenty-five dollars and not exceeding fifty dollars, three months; for any sum above fifty dollars and not exceeding one hundred dollars, four months; for any sum above one hundred dollars, six months. But no stay of execution shall be allowed in any action wherein judgment is rendered on a former judgment taken before a justice of the peace. (Rev., s. 1483; Code, s. 842; 1868-9, c. 272; C. S. 1523.)

§ 7-173. Security on stay of execution.—The party praying for a stay of execution shall, within ten days after the trial, give sufficient security, approved by the justice, for payment of the judgment, with interest thereon till paid, and cost; and the acknowledgment of the surety, entered by the justice in his docket and signed by the surety, shall be sufficient to bind such surety. If the judgment be not discharged at the time to which execution has been stayed, the justice who awarded the judgment shall issue execution against the principal, or surety, or both. (Rev., s. 1484; Code, s. 843; C. S. 1524.)

§ 7-174. Stay of execution on appeal.—In all cases of appeal from justices' courts, if the appellant desires a stay of execution of the judgment, he may, at any time, apply to the clerk of the appellate court for leave to give the undertaking as provided in a subsequent section; and the clerk, upon the undertaking being given, shall make an order that all proceedings on the judgment be stayed. Instead of before the clerk of the appellate court, the appellant may give the undertaking before the justice who tried the cause, who shall indorse his approval thereon. (Rev., ss. 1485, 1486; Code, ss. 882, 883; 1869-70, c. 187; C. S. 1525.)

§ 7-175. Nature of undertaking.—The undertaking shall be in writing, executed by one or more sufficient sureties, to be approved by the justice or clerk making the order, to the effect that if judgment be rendered against the appellant, the sureties will pay the amount together with all costs awarded against the appellant, and when judgment shall be rendered against the appellant, the appellate court shall give judgment against the said sureties. And in the event that said defendant shall prior to entry of the final judgment be adjudicated a bankrupt, then and in that event, the surety or sureties on said bond shall remain bound as if they were co-debtors with the defendant and the plaintiff may continue the prosecution of the action against said sureties, as if they were co-defendants in the cause. (Rev., s. 1487; Code, s. 884; 1879, c. 68; 1933, c. 251, s. 1; C. S. 1526.)

§ 7-176. Execution stayed upon order given.—A delivery of a certified copy of the order, hereinbefore mentioned, to the justice of the peace shall stay the issuing of an execution on the

judgment; if it has been issued, the service of a certified copy of such order on the officer holding the execution shall stay further proceedings thereon. A certified copy of such order shall also be served on the respondent, or on his agent or attorney, within ten days after the making thereof. (Rev., s. 1488; Code, s. 885; C. S. 1527.)

Art. 22. Appeal.

§ 7-177. No new trial; either party may appeal.—A new trial is not allowed in a justice's court in any case whatever; but either party dissatisfied with the judgment in such court may appeal therefrom to the superior court, as hereinafter prescribed. (Rev., s. 1489; Code, s. 865; C. S. 1528.)

§ 7-178. Appeal does not stay execution.—No appeal shall prevent the issuing of an execution on a judgment, or work a stay thereof, except as provided for by giving an undertaking and obtaining an order to stay execution. (Rev., s. 1490; Code, s. 875; 1876-7, c. 251, s. 6; C. S. 1529.)

§ 7-179. Manner of taking appeal.—The appellant shall, within ten days after judgment, serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served, and the defendant did not appear and answer, he shall have fifteen days, after personal notice of the rendition of the judgment, to serve the notice of appeal herein provided for. (Rev., s. 1491; Code, s. 876; 1876-7, c. 251, s. 7; C. S. 1530.)

§ 7-180. No written notice of appeal in open court.—Where any party prays an appeal from a judgment rendered in a justice's court, and the adverse party is present in person or by attorney at the time of the prayer, the appellant shall not be compelled to give any written notice of appeal either to the justice or to the adverse party. (Rev., s. 1492; Code, s. 877; 1869-70, c. 187; 1876-7, c. 251, s. 8; C. S. 1531.)

§ 7-181. Justice's return on appeal.—The justice shall, within ten days after the service of the notice of appeal on him, make a return to the appellate court and file with the clerk thereof the papers, proceedings and judgment in the case, with the notice of appeal served on him. He may be compelled to make such return by attachment. But no justice shall be bound to make such return until the fees, prescribed by law for his service, be paid him. The fee so paid shall be included in the costs, in case the judgment appealed from is reversed. (Rev., s. 1493; Code, s. 878; C. S. 1532.)

§ 7-182. Defective return amended.—If the return be defective, the judge or clerk of the appellate court may direct a further or amended return as often as may be necessary, and may compel a compliance with the order by attachment. (Rev., s. 1494; Code, s. 879; C. S. 1533.)

§ 7-183. Restitution ordered upon reversal of judgment.—If the judgment appealed from, or any part thereof, be paid or collected, and the judgment be afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing of the appeal, on a previous notice of six days. If the order be obtained before the judgment of reversal is entered, the amount may be included in the judgment. (Rev., s. 1495; Code, s. 886; C. S. 1534.)

Art. 23. Forms.

§ 7-184. Forms to be used in justice's court.—The following forms, or substantially similar ones, shall be sufficient in all cases of proceedings in civil actions, provided for in this article:

[No. 1]

Summons

North Carolina, ... County,.....Township.

A.....B..... } Before .....,
against } Justice of the Peace.
C.....D..... }

State of North Carolina, to any constable or other lawful officer of .....County—Greeting:

We command you to summon C. D. to appear before G. W. H., Esq., one of the justices of the peace for the county of....., on the ....day of ....., 19...., at his office (or elsewhere, as the justice may appoint the place of trial), in ..... Township, to answer A. B. in a civil action for the recovery of.....dollars; and have you then and there this precept with the date and manner of its service.

Herein fail not. Witness our said justice, this .....day of....., 19....

G. W. H.....
Justice of the Peace.

[No. 2]

Summons on Allowing Application to Rehear

(Title, etc., as in No. 1)

Whereas, A. B., plaintiff above named (or C. D., defendant above named), has applied by affidavit, which is filed, for a rehearing in the above-entitled action, wherein judgment was rendered against the said plaintiff (or defendant), in his absence, at the trial thereof, before the undersigned on the .... day of ....., 19....; and such application having been allowed, and the cause opened for reconsideration;

Now, therefore, we command you to summon the said plaintiff (or defendant) to appear before G. W. H., Esq., one of the justices of the peace for the county of ....., on the .... day of ....., 19...., at ....., in said county, when and where the complaint will be reheard and the same proceedings be had as if the case had not been acted on; and have you then and there this precept with the date and manner of its service.

Herein fail not. Witness our said justice, this .... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 3]

Affidavit to Obtain Attachment

(Title as in No. 1)

A. B., plaintiff above named, being duly sworn, deposes and says:

1. That the defendant C. D. is indebted to the plaintiff in the sum of ..... dollars (state any cause of action founded on contract, specifying the amount of the claim and the grounds thereof).

2. That the said defendant (State any fact or facts, so as to bring the case within one of the classes in which an attachment may issue. The facts must be stated positively and affirmatively, not merely upon information and belief, except where a fact is alleged with a particular intent. The intent in such case may be stated as on information and belief. See No. 4.)

A.....B.....

Sworn to and subscribed before me, this..... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 4]

Another Form of Affidavit to Obtain Attachment

(Title, etc., as in No. 1)

A. B., plaintiff above named, being duly sworn, deposes and says:

1. That the defendant C. D. is indebted to plaintiff in the sum of ..... dollars for goods sold and delivered to said defendant by the plaintiff on or about the .... day of ....., 19....

2. That the said defendant has departed from this state, or keeps himself concealed therein, with intent, as defendant is informed and believes, to avoid the service of a summons (or with intent, etc., to defraud defendant's creditors).

A. B.....

(Sworn to, etc., as in No. 3.)

[No. 5]

Affidavit against a Foreign Corporation

North Carolina, ... County.

A.....B.....
against
The Highland Mining Co. } Before....., Justice of the Peace.

A. B., the plaintiff above named, being duly sworn, deposes and says:

1. That the defendant above named is indebted to the plaintiff in the sum of ..... dollars, for the use and occupation of certain premises, by permission of plaintiff, from the ..... day of ....., 19...., until the ..... day of ....., 19....

2. That the defendant is a foreign corporation, created under the laws of the state of .....

3. That the cause of action above stated arose in this state.

A. B.....

(Sworn to, etc., as in No. 3.)

[No. 6]

Undertaking upon Attachment

(Title as in No. 1 or No. 5)

Whereas, the plaintiff above named is about to apply for a warrant of attachment against the property of the above-named defendant:

Now, therefore, we, J. W. B., of ..... County, and W. D. M., of ..... County, undertake in the sum of ..... dollars (the sum must be at least two hundred dollars), that if the said warrant be granted, and the defendant recover judgment in this action, or the attachment be set aside by order of the court, the plaintiff shall pay all costs that may be awarded to defendant in the same, and all damages which he may sustain by reason of such attachment.

J. W. B.....
W. D. M.....

Signed and delivered in the presence of G. W. H., Esq., this ....day of ...., 19....

G. W. H.....
Justice of the Peace.

[No. 7]

Warrant of Attachment

(Title as in No. 1 or No. 5)

State of North Carolina, to any constable or other lawful officer of ..... County—Greeting:

It appearing by affidavit to the undersigned that a cause of action exists in favor of the plaintiff against the defendant for the sum of ....dollars, and that the defendant is not a resident of this state (or otherwise, as the fact may be), and the plaintiff having given the undertaking as required by law:

Now, therefore, you are commanded forthwith to attach and safely keep all the property of the said defendant C. D. in your county, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, with costs and expenses; and have you this warrant before G. W. H., one of the justices of the peace for your county, at his office in said county, on the .... day of ....., 19.., with your proceedings hereon.

Witness our said justice, this ..... day of ....., 19.....

G. W. H.....
Justice of the Peace.

[No. 8]

Officer's Return to be Indorsed on Attachment

I, O. P. M., constable (or sheriff) of ....., County, do hereby return that, by virtue of the within attachment, I have seized and taken into my possession the tangible personal property (or, have levied on the real estate, as the case may be) of the defendant within named, specified in the inventory hereto annexed.

Dated this ..... day of ....., 19....

O. P. M.....
Constable (or Sheriff).

[No. 9]

Inventory of Property Attached to Above Return

(Title as in No. 1 or No. 5)

I do hereby certify that the following is a true and just inventory of all the property seized or levied on by me under a warrant of attachment, issued in the above-entitled action by G. W. H., Esq., with a statement of the books, vouchers, papers, rights and credits taken into my custody by virtue of said warrant. (Insert list of property by items.) I do further certify that the following property mentioned in the above inventory is perishable, and that the expense of keeping the same until the termination of the suit would exceed one-fifth of its value; and I do hereby apply to this court for authority to sell the same. (Insert a list of perishable property.)

Dated this ..... day of ....., 19....

O. P. M.....
Constable (or Sheriff.)

[No. 10]

Order Directing Sale of Perishable Property

(Title as in No. 1 or No. 5)

It appearing by the inventory returned by O. P. M., constable (or sheriff), under the warrant of attachment granted in this action, that the following property mentioned in said inventory is perishable, to wit: (Insert here the list of perishable property.)

It is therefore ordered that the said property be sold by the said officer at public auction, at such time and place as he shall deem advisable, and that the said officer give notice of such sale as the sale of personal property on execution.

It is further ordered that the proceeds of such sale be retained by said officer, and disposed of in the same manner as the property itself, if the same had not been sold.

Dated this .... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 11]

Notice of Levy on Property not Capable of Manual Delivery

To H. B.....:

Take notice that by warrant of attachment issued in this action, a certified copy of which is herewith served upon you, I have levied upon, and do hereby levy upon, your indebtedness, amounting to ..... dollars or thereabouts, to the defendant above named. (Describe as particularly as possible the shares, debts or property levied upon.)

Dated this ..... day of ....., 19 ....

O. P. M.....
Constable (or Sheriff.)

The officer will indorse on the copy of the attachment served with the above notice the following certificate:

I do hereby certify that the within is a true copy of the warrant of attachment in my possession, issued in this action, and of the whole thereof.

Dated this ..... day of ....., 19....

O. P. M.....
Constable (or Sheriff.)

[No. 12]

Order Directing Third Person (H. B.) to Appear and be Examined

(Title as in No. 1 or No. 5)

It appearing to me by the certificate of O. P. M., constable (or sheriff) of said county, that the said officer, with a warrant of attachment against the property of C. D., the defendant in this action, has applied to H. B. for the purpose of levying upon a debt owing to the defendant by said H. B. (or upon property of said defendant held by said H. B., or otherwise), and that the said H. B. refuses to furnish said officer with a certificate designating the amount of the debt owing by said H. B. to the defendant, or the amount and description of the property held by said H. B. for the benefit of the defendant:

Now, therefore, I do order and require the said H. B. to attend before me at my office on the .... day of ....., 19...., and be examined on oath concerning the same.

Dated this .... day of ....., 19.....

G. W. H.....
Justice of the Peace.

[No. 13]

Attachment to Enforce Obedience to Above Order

(Title as in No. 1 or No. 5)

State of North Carolina, to any constable or other lawful officer of .....County — Greeting:

Whereas, it appears that H. B. was duly served on the ..... day of ....., 19....., with an order issued by G. W. H., Esq., one of our justices of the peace for said county, requiring said H. B. to attend before said justice at his office, in said county, on the .... day of ....., 19 ...., and be examined on oath concerning a certain debt owing to the defendant, named in the above action, by the said H. B. (or property held by the said H. B. for the benefit of the defendant, or otherwise, as the case may be);

And whereas, the said H. B., in contempt of said order, has refused or neglected, and doth still refuse or neglect, to appear and be examined on oath, as in said order he is required to do:

Now, therefore, we command you that you forthwith attach the said H. B., so as to have his body before G. W. H., Esq., one of our justices of the peace for your county, on the .....day of....., 19 ...., at his office, in said county, then and there to answer, touching the contempt which he, as is alleged, hath committed against our authority; and further, to perform and abide by such order as our said justice shall make in this behalf. And have you then and there this writ, with a return, under your hand, of your proceedings thereon.

Hereof fail not, at your peril.

Witness, our said justice, this .... day of ..... 19 .....

G. W. H.....
Justice of the Peace.

[No. 14]

Undertaking on Discharge of Attachment

(Title of the cause as in No. 1)

Whereas, the property of the above-named C D. has been attached, and the defendant desires a discharge of said attachment on giving security according to law:

Now, therefore, we, B. B., of ..... County, and D. D., of ..... County, undertake in the sum of ..... dollars (the sum named must be at least double the amount claimed by plaintiff), that if the said attachment be discharged we will pay to the plaintiff, on demand, the amount of the judgment that may be recovered against the defendant in this action.

Dated this .... day of ....., 19....

(Signed) B. B.....
D. D.....

Signed and delivered in the presence of G. W. H., Esq., this .... day of .....

G. W. H.....
Justice of the Peace.

Acknowledgment and Affidavit of Sureties

North Carolina, ... County.

On this .... day of ....., 19...., before me personally appeared the above named B. B. and D. D., known to me to be the persons described in and who executed the above undertaking, and severally acknowledged that they executed the same.

And the said B. B. and D. D., being severally sworn, each for himself, says that he is a resident of the State of North Carolina and a householder (or freeholder) therein.

B. B.....
D. D.....

Sworn and subscribed before me the day above written.

G. W. H.....
Justice of the Peace.

[No. 15]

Order Vacating Attachment on Security being Given

(Title as in No. 1 or No. 5)

The defendant having appeared in this action and applied to discharge the attachment on giving security, and the said defendant having delivered to the court an undertaking in due form of law, which has been duly approved by the court:

It is ordered that the attachment issued in this action on the .... day of ....., 19...., be and the same is hereby vacated and discharged, and the defendant is released therefrom in all respects. It is further ordered that any and all proceeds of sales and money collected by O. P. M., constable (or sheriff), and all property attached, now in said officer's possession, be paid and delivered to the said defendant or his agent.

Dated this .... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 16]

Form of Publication to be Made by Plaintiff in Attachment

(Title as in No. 1)

[Amount sued for] due by note (or otherwise as the fact may be). Warrant of attachment returnable before G. W. H., Esq., a justice of the peace for ..... County, North Carolina, at his office (or otherwise as the case may be), on the .... day of ....., 19...., when and where the defendant is required to appear and answer the complaint.

Dated this .... day of ....., 19.....

A. B....., Plaintiff.

[No. 17]

Affidavit for Arrest on Debt Fraudulently Contracted

(Title as in No. 1)

A. B., plaintiff above named, being duly sworn, deposes and says:

1. That the defendant C. D. is indebted to the plaintiff in the sum of ..... dollars on an inland bill of exchange, drawn on the .... day of ....., 19..... by defendant on the First National Bank of Charlotte, North Carolina, payable at sight to the order of plaintiff.

2. That on the .... day of ....., 19...., the defendant applied to the plaintiff to purchase a bill of goods amounting to ..... dollars, which the plaintiff offered to sell to the defendant for cash; that the defendant, contriving to defraud the plaintiff, represented that he had money on deposit at said National Bank for more than the amount of the proposed purchase, and offered to give plaintiff a sight draft on said bank; that the plaintiff, relying upon the representations of the said defendant, and solely induced thereby, sold and delivered a bill of goods amounting to ..... dollars to the defendant, who thereupon drew the sight order on said bank above referred to; that on the .... day of ....., 19...., the plaintiff presented said draft at said bank for acceptance, when the same was not accepted for want of any funds in said bank to the credit of the defendant; that notice of nonacceptance was given to the defendant, who has wholly refused to pay the draft or any part thereof; that the representations made as aforesaid by the defendant were, and each and every of them was, as deponent is informed and believes, untrue; and that the defendant, as deponent is informed and believes, did not have, nor expect to have, any funds on deposit at said bank at the making of the representations above mentioned, but said defendant was then and is now wholly insolvent.

A. B. .....

Sworn to and subscribed before me, this.... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 18]

Undertaking on Arrest

(Title as in No. 1)

Whereas, the plaintiff above named is about to apply (or has applied) for an order to arrest the defendant, C. D.;

Now, therefore, we, J. J., of ..... County, and P. P., of ..... County, undertake, in the sum of ..... dollars (the sum must be at least one hundred dollars), that if the said defendant recover judgment in this action the plaintiff will pay all costs that may be awarded to the said defendant and all damages which he may sustain by reason of his arrest in this action.

J. J. .....
P. P. .....

Signed in my presence, this .... day of ....., 19....

G. W. H.....
Justice of the Peace

[No. 19]

Order of Arrest

(Title as in No. 1)

North Carolina, ... County, ... Township.

To any constable or other lawful officer of said county:

For the causes stated in the annexed affidavit, you are required forthwith to arrest C. D., the defendant named above, and hold him to bail in the sum of ..... dollars (the sum should be the amount of the plaintiff's claim), and to return this order before the undersigned at his of-

fice in said county, on the .... day of ....., 19....; of which return you will give notice to plaintiff or his attorney.

Dated this .... day ....., 19....

G. W. H. .....
Justice of the Peace.

[No. 20]

Undertaking of Bail on Arrest

(Title as in No. 1)

Whereas, the above named defendant, C. D., has been arrested in this action;

Now, therefore, we, B. B., of ..... County, and D. D., of ..... County, undertake, in the sum of ..... dollars (the sum should be the same as mentioned in the order of arrest), that if the defendant is discharged from arrest he shall at all times render himself amenable to the process of the court during the pendency of this action, and to such as may be issued to enforce judgment therein.

B. B.....
D. D.....

Signed in my presence, this .... day of ....., 19.... G. W. H.....
Justice of the Peace.

[No. 21]

Notice of Exception to Bail

(Title as in No. 1)

To O. P. M., constable (or sheriff) of the county of.....:

Take notice, that the plaintiff does not accept the bail offered by the defendant in this action (and if the undertaking is defective in form or otherwise, add also), and further he excepts to the form and sufficiency of the undertaking.

Yours, etc.,
A. B....., Plaintiff.
(or M. W. N. ....., Attorney for Plaintiff.)

Dated this .... day of ....., 19....

[No. 22]

Notice of Justification of Bail

(Title as in No. 1)

To A. B., Plaintiff (or M. W. N., Attorney for plaintiff):

Take notice, that the bail in this action will justify before G. W. H., Esq., a justice of the peace for said county, at the office of said justice, in said county, on the .... day of ....., 19.....

Dated this ..... day of ....., 19....

C. D.....
(or, M. W. N....., Attorney for C. D.), Defendant.

[No. 23]

Notice of Other Bail

(Title as in No. 1)

Take notice that R. S., of ..... County (physician), and Y. Y., of ..... County (farmer), are proposed as bail, in addition to (or in place of) B. B. and D. D., the bail already put in; and that they will justify (conclude as in last form). Date, etc.

[No. 24]

Justification of Bail

(Title as in No. 1)

On this ..... day of ....., 19 ...., before G. W. H., Esq., a justice of the peace for said county, personally appeared B. B. and D. D. (or R. S. and Y. Y., as the case may be), the bail given by the defendant C. D. in this action, for the purpose of justifying pursuant to notice; and the said B. B., being duly sworn, says:

1. That he is a resident and householder (or freeholder) in this state;

2. That he is worth the sum of .....dollars (the amount specified in the order of arrest), exclusive of property exempt from execution.

And the said D. D., being duly sworn, says:

(As with the other bail.)

(And so on with each bail offered.)

(Signatures of bail.)

Examination taken and sworn to before me, this ..... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 25]

Allowance of Bail

(Title as in No. 1)

The bail of the defendant, C. D., within mentioned, having appeared before me and justified, I do find the said bail sufficient, and allow the same.

Dated this ..... day of ....., 19....

G. W. H.....
Justice of the Peace.

[No. 26]

Subpœna to Testify

State of North Carolina, ... County.

To S. T. ....., greeting: (the justice may insert any number of necessary names.)

You (and each of you) are commanded to appear personally before G. W. H., Esq., a justice of the peace for said county, at his office in said county, on the ..... day of ....., 19....., to give evidence in a certain civil action now pending before said justice, and then and there to be tried, between A. B., plaintiff, and C. D., defendant, on the part of the defendant (or plaintiff).* Herein fail not, under the penalty prescribed by law. Witness our said justice, this ..... day of ....., 19 .....

G. W. H.....
Justice of the Peace

[No. 27]

N. B.—The justice may, instead of a formal subpœna, indorse on the summons or other process an order for witnesses, substantially as follows:

The officer to whom the within process is directed will summon the following persons as witnesses for the plaintiff: .....; and the following as witnesses for the defendant: .....; and will notify all such witnesses to appear and testify at the time and place within named for the return of this process.

Dated this ..... day of ....., 19 ....

G. W. H.....
Justice of the Peace.

[No. 28]

Subpoena Duces Tecum

If any witness has a paper or document which a party desires as evidence at the trial, the justice will pursue the form No. 26 as far down as the asterisk (*) and then add the following clause:

And you, S. T., are also commanded to bring with you and there produce as evidence a certain bond (describe particularly) which is now in your possession or under your control, together with all papers, documents, writings or instruments in your custody, or under your control. (Conclude as in form No. 26.)

[No. 29]

Form of Oath of Witness

You swear that the evidence you will give as to the matters in difference between A. B., plaintiff, and C. D., defendant, shall be the truth, the whole truth, and nothing but the truth. So help you, God.

[No. 30]

Proceedings against Defaulting Witness

When a witness, under subpoena, fails to attend, the justice will note the fact in his docket by some such entry as the following:

R. P., a witness summoned on behalf of the plaintiff, called and failed.

If the party who suffers by default of the witness wishes to move for the penalty against him, he will serve substantially the following notice on the witness:

(Title as in No. 1)

To R. P.:

Take notice, that on the .... day of ....., 19 ....., the plaintiff in the above action will move G. W. H., Esq., the justice before whom the trial of said action was had, on the..... day of ....., 19 ...., for judgment against you for the sum of ..... dollars, forfeited by reason of your failure to appear and give evidence on said trial as you were summoned to do.

Dated this ..... day of ....., 19 ....

A. B ....., Plaintiff.

The justice will enter the proceedings on the foregoing notice on his docket as follows:

A ..... B ..... } Justice's Court.
against } Motion for penalty against
C ..... D ..... } R. P., defaulting witness.

..... day of ....., 19 ...., A. B., above named, appears, and according to a notice filed and duly served on R. P., moved for the penalty of ..... dollars forfeited by the said R. P. by reason of his failure to attend and give evidence on the trial of a cause, wherein A. B. was plaintiff and C. D. was defendant, tried before me at my office on the .... day of ....., 19 ....., as appears by entry duly made on my docket; when and where the said R. P., a witness summoned on the part of the plaintiff in that action, was called and did fail.

R. P. appears and assigns for excuse "high water," and offers his own affidavit, which is filed. He also offers as a witness in his behalf S. S., who, being duly sworn, testifies that (state what S. S. says about the condition of the water at the time). R. P., having no other evidence, closed the case on his part. Whereupon A. B. offered M. Y. as a witness, who, being sworn, testifies (state what witness says).

Neither party having any other evidence, and after hearing all the proofs and allegations submitted for and against the motion, it is adjudged, on motion of A. B., that A. B. do recover of R. P. the sum of ..... dollars, penalty forfeited by reason of the premises, and the further sum of ..... dollars, costs of this motion.

[No. 31]

Form of a Venire

The justice will make a list of the persons drawn by him as jurors, and indorse thereon substantially as follows:

To O. P. M., constable of ..... County:

You are hereby directed to summon the persons named within to appear as jurors before me at my office in your county, on the ..... day of ....., 19 ...., for trial of a civil action now pending between A. B., plaintiff, and C. D., defendant, then and there to be tried. And have you then and there the names of the jurors you shall summon, with this precept.

Dated this ..... day of ....., 19.....

G. W. H.....

Justice of the Peace.

[No. 32]

Form of Juror's Oath

You swear well and truly to try the matter in difference between A. B., plaintiff, and C. D., defendant, and a verdict to give thereon according to the evidence in the cause. So help you, God.

[No. 33]

Form of Oath to Constable in Charge of the Jury

You swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial together in some private and convenient place, without any meat or drink, except such as may be ordered by the court; that you will not suffer any communication, orally or otherwise, to be made to them, and that you will not communicate with them yourself, orally or otherwise, unless by order of the court. So help you, God.

[No. 34]

Summons against Defaulting Juror to Show Cause

State of North Carolina, to any constable or other lawful officer of ..... County—Greeting:

We command you to summon R. S. to appear before G. W. H., Esq., a justice of the peace for your county, at his office in said county, on the ..... day of ....., 19 ...., to show cause why he, the said R. S., should not be fined according to law for his nonattendance as a juror before our said justice at his office in said county on the .... day of ....., 19...., in a certain cause then and there pending, in which A. B. was plaintiff and C. D. was defendant; and have you then and there this precept, with the date and manner of your service thereof.

Witness, our said justice, this .... day of ....., 19 .....

G. W. H.....

Justice of the Peace.

[No. 35]

Demurrer to Complaint

(Title as in No 1.)

The defendant demurs to the complaint in this action, for that the said complaint does not state facts sufficient to constitute a cause of action (or, for that the said complaint is not sufficiently explicit to enable this defendant to understand it.)

(Signature of defendant or defendant's attorney.)

[No. 36]

Demurrer to Answer

(Title as in No. 1 or No. 5)

The plaintiff demurs to the answer of the defendant, for that the facts stated in the answer are not legally sufficient to constitute a defense to this action (or, for that the said answer is not sufficiently explicit to make this plaintiff understand it.)

(Signature of plaintiff or plaintiff's attorney.)

[No. 37]

Judgment upon Demurrer

NOTE.— If the justice thinks the objection raised by the demurrer to the pleadings is well founded, he will make this entry on his docket:

"Demurrer to the complaint (or to the answer) filed, heard and sustained; and whereupon it is ordered that the said pleading be amended without cost (or upon payment of costs, as the case may be)."

This order to amend the defective pleading is a matter of course, and is the only judgment which the justice can render upon demurrer. He cannot give a final judgment in the cause at this stage, for the party may choose to amend his pleadings and try the case on the facts. If, however, the party refuse to amend the defective pleading, the justice will disregard the same, and proceed to render final judgment, as follows:

"The plaintiff (or defendant) having refused to amend his complaint (or his answer) demurred to, it is adjudged that the defendant go without day and recover of the plaintiff the sum of ..... dollars, costs of this action (or that the plaintiff recover of the defendant the sum of ..... dollars, damages, and the further sum of ..... dollars, costs of this action.)"

If the justice deem the objection, raised by the demurrer, not well founded, he will enter in his docket as follows: "Demurrer to the complaint (or to the answer) filed, heard and overruled," and he will then proceed to the evidence in the cause.

[No. 38]

Entry in Docket

NOTE.—The following is offered as a general precedent of the manner in which the justice will make the entries in his docket:

(Title as in No. 1)

....., 19 ..... Summons issued; returnable on the .... instant at my office.

....., 19 ..... Summons returned, served on defendant by O. P. M., constable, on the ....instant, both parties appear, the plaintiff in person, the defendant by R. H. R., Esq., attorney.

The plaintiff complains on a promissory note executed by the defendant to him, dated ....., 19...., payable one day after date, for $....., and also for goods sold and delivered to the defendant, and claims damages for $ .....

The defendant answers and denies each and every allegation in the complaint, and claims a setoff of $..... for wood sold and delivered to the plaintiff, and also of $..... for work and labor performed for the plaintiff.

On joining issue of fact as above, the action is, by consent of parties, adjourned to the ..... instant, at my office.

A venire is also issued at the plaintiff's (or defendant's) demand, returnable at the time and place last mentioned.

....., 19..... The parties appear and proceed to the trial of the cause. The following jurors are returned as summoned upon the venire by O. P. M., constable. (Insert the names of all jurors summoned.) The following jurors, who are returned as summoned, do not appear. (Insert their names.) The following jurors appear according to the summons. (Insert their names.) The following jurors are sworn to try the action. (Insert their names.)

H. P. and J. M., witnesses for the plaintiff, and W. F., a witness for the defendant, are sworn and testify; J. S., a witness on the part of the defendant, is offered, but objected to by the plaintiff on the ground (state the ground), and rejected.

Having heard the evidence (and the arguments of a counsel, if any), the cause is submitted to the jury, who retire, under charge of O. P. M., a constable duly sworn for that purpose, and afterwards return in open court and publicly deliver their verdict, by which they find in favor of the plaintiff for $..... damages; whereupon, I adjudged that the plaintiff do recover of the defendant—

Damages, - - - - - $.....
Costs, - - - - - .....

....., 19 ..... Execution issued for above judgment to O. P. M., constable.

....., 19 ..... Notice of appeal served on me by defendant; my fee paid and return to the appeal made by me.

N. B.—If the action is tried by the justice without a jury, all that relates to the venire and the verdict in the above form must be left out, and the judgment will be entered as follows:

After hearing the proofs and allegations of the respective parties, I do adjudge that the plaintiff recover, etc. (as above).

[No. 39]

Form of Notice of Appeal to the Superior Court, Where a New Trial of the Whole Matter is to be Had

(Title as in No. 1)

To G. W. H., Esq., a justice of the peace for said county.

Take notice, that the defendant in the above action appeals to the Superior Court from the judgment rendered therein by you on the ..... day of ....., 19...., in favor of the plaintiff for the sum of sixty-five dollars damages and the further sum of three dollars and seventy-five cents costs, and that this appeal is founded upon the

ground that the said judgment is contrary to law and evidence.

Dated this ..... day of ....., 19....

W. W. .....
Attorney for Appellant.

[No. 40]

Return to Notice of Appeal

A..... B..... } against C..... D..... } County of .....

To the Superior Court of ..... County:

An appeal having been taken in this action by the defendant, I, G. W. H., the justice before whom the same was tried, in pursuance of the notice of appeal hereto annexed, do hereby certify and return that the following proceedings were had by and before me in said action:

On the first of February, one thousand eight hundred and sixty-nine, at the request of the plaintiff, I issued a summons in his favor and against the defendant, which is herewith sent. Said summons was, on the return day thereof, returned before me at my office; and at the same time and place the parties personally appeared.

The plaintiff complained for goods sold and delivered to defendant to the amount of $75. The defendant denied the right of the plaintiff to recover that amount for the goods, on the ground that he had paid, at or shortly after the purchase of said goods, ... dollars thereon; and he also claimed to have a setoff against the plaintiff to the amount of $85 for board and lodging furnished to plaintiff and work and labor done for him; and he claimed to be entitled to judgment against the plaintiff for $.....

Both parties introduced evidence upon the claims so made by them, and after hearing their proofs and allegations, I rendered judgment in favor of the plaintiff and against the defendant, on the tenth of February, eighteen hundred and sixty-nine, for $65 damages, and for the further sum of $3.75, costs of the action.

I also certify that on the eleventh of February, eighteen hundred and sixty-nine, the defendant served the annexed notice of appeal on me, and at the same time paid me my fee of $1 for making my return.

All of which I send, together with the process, pleadings, and other papers in the cause. Dated this 15th day of February, 1904.

G. W. H.....
Justice of the Peace.

N. B.—If the cause was tried by a jury, state the fact and set forth the verdict, with the judgment thereon. It is not necessary to set out in the return a copy of any process, pleading, affidavit or other paper. It is sufficient to refer to such a paper as filed and as herewith sent.

[No. 41]

Where the Sum Demanded Exceeds Two Hundred Dollars

It appearing that the sum demanded by the plaintiff in this action exceeds two hundred dollars, it is ordered that the action be dismissed, and judgment is rendered against A. B., plaintiff, for the sum of ..... dollars, costs.

(Date and sign.)

[No. 42]

Where the Title to Real Estate is in Question

N. B.—The defendant, if he wishes to make answer to title, must file a written answer to the complaint, setting forth the facts.

Answer of Title

(Title as in No. 1)

The defendant answers to the complaint:

1. That no allegation thereof is true.

2. That the plaintiff ought not to have or maintain his action against the defendant, because the premises mentioned and described in the complaint, at the time when the rent and render, for which said action is brought, is alleged to be due, was and is now the land and freehold of one J. D., and not that of the plaintiff; nor was the plaintiff then, nor is he now, entitled to the possession thereof; and the defendant further answers that the title to said premises was, at the time aforesaid, and is now, in said J. D., and will come in question on the trial of this action.

Dated this ..... day of ....., 19....

C. D....., Defendant

It appearing from the answer and proof of the defendant that the title to real estate is in controversy in this action, it is ordered that the action be dismissed, and judgment is rendered against the plaintiff for ..... dollars, costs.

[No. 43]

Tender of Judgment

(Title as in No. 1)

To C. D.....:

Take notice, that the defendant hereby offers to allow judgment to be taken against him by the plaintiff in the above action for the sum of fifty dollars, with costs.

Dated this ..... day of ....., 19....

C. D....., Defendant.

[No. 44]

Acceptance of Tender of Judgment

(Title as in No. 1)

To A. B.....:

Take notice, that the plaintiff hereby accepts the offer to allow the plaintiff to take judgment in the above action for the sum of fifty dollars, with costs, and the justice will enter up judgment accordingly.

Dated this ..... day of ....., 19....

A. B....., Plaintiff.

[No. 45]

Form of Judgment on Tender

(Title as in No. 1)

N. B.—The justice will state all the proceedings in the action from the issuing of the summons down to the appearance of the parties and the complaint of the plaintiff, and then proceed as follows:

Whereupon, the said defendant, before answering said complaint, made and served an offer, in writing, to allow the plaintiff to take judgment against him for the sum of fifty dollars with costs;* and the said plaintiff thereupon accepted

such offer, and gave notice thereof to the defendant in writing; said offer and acceptance thereof being filed;

Now, therefore, judgment is accordingly rendered in favor of the plaintiff and against the defendant for the sum of fifty dollars damages, and the further sum of one dollar, costs.

If notice of acceptance is not given, the entry will be as follows:

(Follow the foregoing form down to the asterisk (*) and then add):

And the said plaintiff having refused to accept such offer, the defendant answered the complaint by denying, etc. (state the defense of the defendant down to the judgment, which, in case the plaintiff fails to recover more than the sum mentioned in the offer, will be entered thus):

After hearing the proof and allegations of the respective parties, I adjudge that the plaintiff do recover the sum of fifty dollars damages, and the further sum of one dollar, costs.

I further adjudge that the defendant do recover of the plaintiff the sum of two dollars and seventy-five cents, costs accruing in the action subsequent to the offer of the defendant referred to.

[No. 46]

General Form—Execution

(Title as in No. 1)

State of North Carolina, to any constable or other lawful officer of ..... County—Greeting:

Whereas, judgment has been rendered by G. W. H., Esq., a justice of the peace for said county, against C. D., in favor of A. B., for the sum of.... dollars damages, and the further sum of ..... dollars costs, on the ....day of ....., 19....;

You are therefore commanded forthwith to levy of the goods and chattels of the said C. D. (excepting such goods and chattels as are by law exempt from execution) the amount of such judgment, with interest from the date thereof until the money is recovered.

And make due return, according to law, in sixty days from the date hereof.

Dated this ....day of .....,19....

G. W. H.....
Justice of the Peace.

[No. 47]

Execution in Attachment

(Title as in No. 1)

State of North Carolina, to any constable or other lawful officer of.....county—Greeting:

Whereas, in pursuance of a warrant of attachment, dated the.....day of.....,19...., issued by G. W. H., Esq., a justice of the peace of said county, in an action wherein A. B. was plaintiff and C. D. defendant, the following property of defendant was, on the .... day of ....., 19.., duly levied on and attached:

(Here insert a list of property)

And whereas, judgment was rendered in said action, on the.....day of....., in favor of said plaintiff, and against the said defendant in the sum of.....dollars:

Therefore, we command you that you satisfy the said judgment out of the property so attached as aforesaid, by the sale of the same or so much thereof as shall be sufficient to satisfy the said judgment; and if a sufficient sum be not realized therefrom, then you satisfy the said judgment out of any other goods and chattels of the said judgment debtor within your county.

And make due return thereof according to law within sixty days from the date hereof.

Witness, our said justice, this.....day of ....., 19....

G. W. H.....
Justice of the Peace

[No. 48]

Record of Conviction of a Contempt

The justice will make an entry in his docket stating the particular circumstances of the contempt, of which the following is offered as an example:

Whereas, on the.....day of....., 19....., while engaged in the trial of an action (or other judicial act, as the case may be) in which A. B. was plaintiff and C. D. was defendant, at my office in.....County, M. B. did willfully and contemptuously interrupt me, and did then and there conduct himself so disorderly and insolently towards me, and by making a loud noise did disturb the proceedings on said trial (or other judicial act) and impair the respect due to the authority of the law; and on being ordered by me to cease making such noise and disturbance, the said M. B. refused so to do, but on the contrary did publicly declare and with loud voice (state whatever offensive words were used); and whereas, when immediately called upon by me to answer for the said contempt said M. B. did not make any defence thereto, nor excuse himself therefrom; the said M. B. is therefore convicted of the contempt aforesaid, and is adjudged to pay a fine of five dollars and be imprisoned in the county jail for the term of two days, and until he pays such fine or is duly discharged from imprisonment according to law.

G. W. H.....
Justice of the Peace

[No. 49]

Warrant of Commitment for a Contempt

(Title as in No. 1)

State of North Carolina, to the keeper of the common jail of .....County—Greeting:

Whereas, etc. (recite the record of conviction so as to show the entire matter of contempt, together with the judgment therefor, and then proceed as follows):

Therefore, you are hereby commanded to receive the said M. B. into your custody in the said jail, and him there safely keep during the said term of two days, and until he pays the said fine or is duly discharged according to law.

Herein fail not.

Dated this.....day of.....,19....

G. W. H.....
Justice of the Peace.

(Rev., s. 1496; Code, s. 909; C. S. 1535.)

SUBCHAPTER VI. RECORDERS' COURTS.

Art. 24. Municipal Recorders' Courts.

§ 7-185. In what cities and towns established; court of record.—In each city and town in the state, which has acquired a population of one thousand or over by the last federal census, a recorder's court for such municipality may be established, which shall be a court of record and shall be maintained pursuant to the provisions of this subchapter. (1919, c. 277, ss. 1, 2; 1925, c. 32, s. 1; C. S. 1536.)

Local Modification.—Richmond: 1941, c. 60, s. 1.

§ 7-186. Recorder's election and qualification; term of office and salary.—The court shall be presided over by a recorder, who may be a licensed attorney at law, and who shall be of good moral character and, at the time of his appointment or election, a qualified elector of the municipality. The first recorder, upon the establishment of such court, shall be elected by the governing body of the muncipality, either at the time of the establishment of the court or within thirty days thereafter, and he shall hold office until the next municipal election and until his successor is duly elected and qualified. If a vacancy occur in the office at any time, the same shall be filled by the election of a successor for the unexpired term by the governing body of the municipality, at the regular or special meeting called for that purpose. After the first elected recorder each succeeding recorder shall be nominated and elected in the municipality in the same manner and at the same time as is now provided by law for the elective officers of the municipality, and in the general election for such officers. Before entering upon the duties of his office the recorder shall take and subscribe an oath of office, as is now provided by law for a justice of the peace, and shall file the same with the clerk of the board of the city or town. The salary of the recorder shall be determined and fixed in advance by the governing body of the city or town, and shall not be increased or decreased during the term of his office, and shall be paid out of the funds of the municipality: Provided, that the governing body of such city or town is hereby authorized to provide a schedule of fees to be charged by said recorder: Provided further, that the recorder may also be the mayor of the municipality. (1919, c. 277, s. 2; 1925, c. 32, s. 2; C. S. 1537.)

§ 7-187. Time and place of holding court.—The court shall be opened for the trial of criminal cases at least one day of each week, to be fixed by the governing body of the municipality, and shall continue its session from day to day until all business is legally disposed of. The court shall be held in the city or town hall, or other place provided therefor, and other sessions of the court may be called by the recorder. as necessity may require. (1919, c. 277, s. 3; C. S. 1538.)

§ 7-188. No subsequent change of judgment.—When a case has been finally disposed of and judgment pronounced therein, it shall not thereafter be reopened or the judgment or sentence rendered therein be modified, changed or stricken out by the recorder after the adjournment of the regular weekly term or after the adjournment of any special term called by the recorder. (1919, c. 277, s. 3; C. S. 1539.)

§ 7-189. Procedure in the court.—The recorder shall preside over the court and try and determine all criminal actions coming before him, the jurisdiction of which is conferred by this article, and the proceedings of the court shall be the same as are now prescribed for courts of justices of the peace and for the superior court so far as the same may reasonably apply. (1919, c. 277, s. 9; C. S. 1540.)

§ 7-190. Criminal jurisdiction.—The court shall have the following jurisdiction within the following named territory:

1. Original, exclusive, and concurrent jurisdiction, as the case may be, of all offenses committed within the corporate limits of the municipality which are now or may hereafter be given to justices of the peace under the constitution and general laws of the state, including all offenses of which the mayor or other municipal court now has jurisdiction.

2. Original and concurrent jurisdiction with justices of the peace of all offenses committed outside the corporate limits of the municipality and within a radius of five miles thereof, which is now or may hereafter be given to justices of the peace under the constitution and general laws of the state.

3. Exclusive, original jurisdiction of all other criminal offenses committed within the corporate limits of such municipality and outside, but within a radius of five miles thereof, which are below the grade of a felony as now defined by law, and the same are hereby declared to be petty misdemeanors.

4. Concurrent jurisdiction with justices of the peace to hear and bind over to the superior court all persons charged with any crime committed within the territory above mentioned, of which the recorder's court is not herein given final jurisdiction.

5. All jurisdiction given by the general laws of the state to justices of the peace, or to the superior court, to punish for contempt, to issue writs ad testificandum, and other process to require the attendance of witnesses and to enforce the orders and judgments of the court. (1919, c. 277, s. 4; 1925, c. 32, s. 3; C. S. 1541.)

§ 7-191. Jurisdiction to recover penalties.—The recorder's court shall also have jurisdiction to try all actions for the recovery of penalties imposed by law, or by any ordinance of the municipality in which the court is located, for any offense committed within the corporate limits of the municipality or outside thereof within five miles of the corporate limits, and all such penalties shall be recovered in the name of the municipality. (1919, c. 277, s. 10; 1925, c. 32, s. 4; C. S. 1542.)

§ 7-192. Disposition of cases when jurisdiction not final. — In all cases heard by the recorder against any person for any offense whereof the court has not final jurisdiction and in which probable cause of guilt is found, such person shall be bound in a bond or recognizance with sufficient surety to appear at the next succeeding term of

the superior court of the county for the trial of criminal cases, and in default of such bond or recognizance he shall be committed to the common jail of the county to await trial; but in all capital cases such person shall be committed to the common jail of the county without bail. (1919, c. 5; C. S. 1543.)

§ 7-193. Disposition of cases when jurisdiction final.—All persons pleading guilty or convicted in the court of any offense of which the court has final jurisdiction shall be fined or imprisoned, according to law, and any person entering a plea of guilty, or who may be convicted of any such offense, shall also pay the costs of the prosecution. (1919, c. 277, s. 7; C. S. 1544.)

§ 7-194. Sentences to be imposed.—When any person is convicted, or pleads guilty, of any offense of which the court has final jurisdiction, the recorder may sentence him to the common jail of the county in which the court is held, and assign him to work on the public roads of the county as provided by law; or when such person is a woman or an infant of immature years, the recorder may sentence him or her to the city or county workhouse or state reformatory, or other penal institution provided by law for such purposes. If there is no chain-gang in the county in which the court is held, the recorder may sentence the person to work upon the public roads of any other county provided with a chain-gang for the working of public roads, as authorized by the general laws of the state. (1919, c. 277, s. 8; C. S. 1545.)

§ 7-195. Appeal to superior court.—Any person convicted of any offense of which the recorder has final jurisdiction may appeal to the superior court of the county from any judgment or sentence of the recorder, in the same manner as is now provided for appeals from courts of justices of the peace. Upon such appeal the defendant shall be required to give bond or recognizance with sufficient surety for his appearance at the next term of the superior court; and in default thereof the recorder shall commit him to the county jail of the county until he shall give bond or be otherwise discharged by law. (1919, c. 277, ss. 5, 9; C. S. 1546.)

Local Modification.—Pitt: 1937, c. 134.

§ 7-196. Costs paid to the municipality.—All costs incurred in issuing warrants and serving the same in cases where the recorder has not final jurisdiction, and for the service of process arising in such cases when the process is served by the officer of the municipality, except as hereinafter provided, shall be paid to the municipality; and officers serving process issued from said court shall be allowed the same fees as are now allowed sheriffs in like cases, the same, when collected, to be paid over as herein provided. Where such officer is not an officer of a municipality such costs shall be dealt with as is now provided by law. (1919, c. 277, s. 6; C. S. 1547.)

§ 7-197. Seal of court.—The recorder's court shall have a seal with the impression, "The Recorder's Court of the City of ————," which seal shall be used in the attestation of writs, warrants, or other process, acts, judgments, or decrees of the court, in the same manner and to the same effect as the seal of other courts in the state; but no process issuing from the court, to be executed within the county in which court is held, shall require attestation by seal. (1919, c. 277, s. 11; C. S. 1548.)

§ 7-198. Issuance and service of process.—The recorder may issue process to the chief of police of the municipality in which the court is held, or to the sheriff, constable, or other lawful officer of the county in which the municipality is located, or to any other county in the state; and such process, when attested by the seal of the court, shall run anywhere in the state, and shall be executed by all public officers authorized to execute process, and be returned by them according to law.

The summons, warrant of arrest, and every other writ, process, or precept issuing from a recorder's court or other court inferior to the superior court, except justices of the peace, may be signed by the recorder, vice recorder, or presiding justice of the court, or by the clerk of the court or deputy clerk, where the court has a clerk or deputy. (1919, cc. 157, 277, s. 12; C. S. 1549.)

§ 7-199. Vice recorder; election and duties.—The governing body of the municipality shall, at the same time and in the same manner as is provided in this article for the election of the first recorder, elect a vice recorder, who shall have the jurisdiction and authority conferred upon the recorder when the recorder shall be prevented from attending to his duties on account of sickness or other temporary disability or by reason of his temporary absence. The vice recorder shall receive the compensation allowed to the recorder for such services for the time that he may render such service, the compensation of the vice recorder to be deducted from the salary of the recorder, and the vice recorder shall be thereafter elected by the governing body of the municipality for the same term as the recorder is elected, and any vacancy occurring in the office of vice recorder shall be filled in the same manner as is provided for the filling of vacancies in the office of recorder. (1919, c. 277, s. 13; C. S. 1550.)

§ 7-200. Clerk of court; election and duties; removal; fees.—The clerk of the recorder's court shall be elected by the governing body of the city or town at the same time and for the same term as the vice recorder, and all vacancies in the office of the clerk of the court shall be filled in the manner provided for filling vacancies in the office of vice recorder. Before entering upon the duties of his office, the clerk shall enter into a bond, with sufficient surety, in a sum to be fixed by the governing body of the municipality, not to exceed five thousand dollars, payable to the state, conditioned upon the true and faithful performance of his duties as such clerk and for the faithful accounting for and paying over of all money which may come into his hands by virtue of his office. The bond shall be approved by the governing body and shall be filed with the clerk of the superior court of the county. The clerk shall make monthly settlements with the county and city treasurers for all money which has come into his hands belonging to either. The clerk of the governing body of the municipality shall ex officio discharge the duties of the clerk

of the court, unless the governing body shall elect some other person to discharge the duties. The governing body of the municipality shall have the right to remove the clerk of the court, either for incapacity or for neglect of the duties of his office; and in case of a vacancy for any cause the office shall be filled in the manner hereinbefore provided. Provided, that the governing body of the municipality is hereby authorized to provide a schedule of fees to be charged by the clerk of said court. (1919, c. 277, ss. 15, 18; 1925, c. 32, s. 5; C. S. 1551.)

§ 7-201. Clerk to keep records.—It shall be the duty of the clerk of the court to keep an accurate and true record of all costs, fines, penalties, forfeitures, and punishments by the court imposed, and the record shall show the name and residence of the offender, the nature of the offense, the date of the hearing of the trial, and the punishment imposed, which record shall at all times be open to inspection by any of the city authorities, or other person having business relating to the court. The clerk shall keep a permanent docket for recording all the processes issued by the court, which shall conform to the dockets kept by the clerk of the superior court. He shall also keep in proper files, to be provided by the city, a record of all cases which shall be disposed of in the court and the disposition made thereof. (1919, c. 277, s. 17; C. S. 1552.)

§ 7-202. Clerk to issue process.—The clerk of the court shall have all the power and authority now conferred upon justices of the peace to issue warrants for the arrest of all persons charged with the commission of offenses within the territory fixed in this article which warrants, however, shall be made returnable before the recorder of said court at the next sitting thereof, and shall be issued only upon affidavit made as now required by law to support warrants issued by justices of the peace. The clerk shall also have all power and authority of justices of the peace or clerk of the superior court to issue subpœnas or other process, to run anywhere within the state; and when such subpœnas or other process shall run beyond the county in which the court is located the same shall be attested by the seal of the court, and shall also be signed by the recorder. (1919, c. 277, s. 18; C. S. 1553.)

§ 7-203. Prosecuting attorney; duties and salary.—There shall be a prosecuting attorney in the court, who shall appear for the prosecution in all cases therein and, when specially requested by the governing body of the municipality and the recorder, shall assist in the prosecution of all cases which may be bound over or appealed from the court to the superior court; for his services he shall be paid such amount per annum as may be fixed by the governing body, at the same time and in the same manner as is provided for fixing the salary of the recorder. The prosecuting attorney may, or may not, perform the duties of city attorney, in the discretion of the governing body of the municipality: Provided, that the governing body of any such municipality is hereby authorized to provide a schedule of fees to be charged by said prosecuting attorney. (1919, c. 277, s. 16; 1925, c. 32, s. 6; C. S. 1554.)

§ 7-204. Jury trial, as in justice's court.—In all trials in the court, upon demand for a jury by the defendant or the prosecuting attorney representing the state, the recorder shall try the same as is now provided in actions before justices of the peace wherein a jury is demanded, and the same procedure as is now provided by law for jury trials before justices of the peace shall apply: Provided, however, that the compensation allowed jurors in all cases wherein the superior court has heretofore had final jurisdiction shall be the same as is allowed jurors in the superior court of the county in which the recorder's court is established. (1919, c. 277, s. 24; C. S. 1555.)

Local Modification.—Burke: 1931, c. 335; Craven: 1929, c. 115, s. 1; Hoke: Pub. Loc. 1937, c. 408; Pitt: 1937, c. 134.

§ 7-205. Continuances, recognizances, and transcripts.—The recorder's court shall have the same authority to grant continuances, take bonds and recognizances, and render judgments on forfeited bonds and recognizances, as is now vested by law in the superior courts, and the procedure regulating the issuing and service of notices against defendants and their sureties upon bonds and recognizances, and all other proceedings in taking and enforcing judgments in such cases, shall be the same as in the superior court in like cases. Transcripts of any judgments rendered may be docketed in the superior court of the county in which such court is held, in the same manner and with the same effect as judgments of other courts docketed as provided by law. (1919, c. 277, s. 21; C. S. 1556.)

§ 7-206. Officers' fees; fines and penalties paid.—In each case disposed of by the recorder where the defendant is convicted or pleads guilty, there shall, in addition to other lawful costs, be allowed the following fees, to be taxed as a part of the costs against the defendant, viz: For recorder, one dollar in each case involving the breach of a municipal ordinance and any crime or offense of which a justice of the peace has final jurisdiction, and a fee of two dollars in all other cases; for the prosecuting attorney, one dollar in all cases of violation of municipal ordinances and of any crime or offense of which a justice of the peace has final jurisdiction, and in all other cases a fee as now provided by law for solicitors prosecuting in the superior court; and for the clerk of such court the same fees as are now allowed to clerks of the superior court in similar cases; but in all cases of the breach of municipal ordinances and cases of which a justice of the peace has final jurisdiction and in which the defendant pleads guilty, the fee herein allowed a prosecuting attorney may be remitted by the recorder in his discretion. All costs recovered and collected in the court, except as herein otherwise provided, shall belong to the municipality and be paid into the treasury thereof. All fines and penalties collected shall be paid by the clerk of the court to the county treasurer as provided by law, and all fees allowed by law for an arrest or serving other process in a criminal action, when the same shall have been made by the chief of police or other officer who shall be on a salary, shall be paid over to the treasurer of the municipality for the use of the same, and to reimburse it for the ex-

pense of maintaining and supporting the court. (1919, c. 277, s. 14; C. S. 1557.)

Local Modification.—Cabarrus: 1937, c. 279; Harnett: 1933, c. 75, s. 1(g).

§ 7-207. County to pay for offenders' work on roads.—Whenever, under any judgment of the court, any defendant is sentenced to work upon the public roads or other public work in the county, or to pay a fine and the costs of the prosecution, or costs only, and the defendant shall in fact work out the sentence or fine and costs, or either, upon the public roads or other public works, as aforesaid, then the county shall be liable for and shall pay to the treasurer of the municipality one-half the amount of the costs taxed in the cause: Provided, the sentence imposed shall be of sufficient length to reimburse the county for one-half of such costs. (1919, c. 277, s. 19; C. S. 1558.)

§ 7-208. Prosecutor may be taxed with costs.—The recorder shall have full power, in any case in which he shall adjudge that the prosecution was not required by the public interests, to tax the prosecutor with the costs of such action; and in the event the recorder shall adjudge that prosecution is frivolous or malicious, he may imprison the prosecutor for the nonpayment of such costs, as provided by law for similar cases in other courts. When the costs are paid, they shall belong to the city. (1919, c. 277, s. 20; C. S. 1559.)

§ 7-209. Justice of the peace to bind defendants to recorder's court; procedure thereon.—In case any justice of the peace residing within the territory above mentioned shall bind any person over for any offense committed within said territory, of which the justice has committing, but not final, jurisdiction, but of which the recorder's court has final jurisdiction, then such justice of the peace, instead of binding the defendant over to the superior court of the county, shall bind him to appear at the recorder's court on the day succeeding the trial before the justice, at ten o'clock a. m. The justice of the peace shall at once turn over the case to the clerk of said court, and the clerk shall, upon receipt of the same, enter the case upon the docket of the court, and the recorder shall try such person either upon the original warrant under which he was bound over or upon a new warrant to be issued by him for such offense. In all cases the recorder shall have the right to amend any warrant issued by him or by the clerk of the court, or sent up by any justice of the peace as hereinbefore provided, in the same manner and to the same extent as justices of the peace are now authorized by law to make amendments to warrants in justices' courts. (1919, c. 277, s. 22; C. S. 1560.)

§ 7-210. Transfer of certain cases to recorder's court.—All cases which shall be pending in any recorder's, police, mayor's, or other municipal court in the counties where the courts provided for in this article shall be established shall, after the election and qualification of the recorder and other officers authorized and required by this article, be transferred to the recorders' courts of the respective municipalities, to be tried in the manner and in accordance with the procedure provided; but no case pending in the superior court of any county at the time this article takes effect shall be transferred to the recorder's court, except by order of the presiding judge thereof. No cause shall be removed from the recorder's court as is now provided for the removal of cases from one justice of the peace to another. (1919, c. 277, s. 23; C. S. 1561.)

§ 7-211. Jurisdiction of justice of the peace after three months delay.—If any criminal offense committed within the jurisdiction of any recorder's court, of which said court is given original, exclusive and final jurisdiction, is not prosecuted to a final termination within three months after the commission of the offense, any justice of the peace within the territory shall acquire jurisdiction to issue his warrant, apprehend the offender, and dispose of such warrant as is now provided by law. (1919, c. 277, s. 23; C. S. 1562.)

§ 7-212. Courts may be discontinued after two years.—The governing body of any municipality shall have the same power, to be exercised in the same manner, subject to the same limitations, to abolish municipal recorders' courts as is given the board of commissioners of any county to discontinue a county recorder's court, under the provisions of § 7-239. (1919, c. 277, s. 35; C. S. 1582.)

§ 7-213. Extension of jurisdiction. — In any city or town within the state of North Carolina, having a population of five thousand inhabitants or more, where there is now maintained a recorder's court under and by virtue of the law, or in which a recorder's court may be hereafter established and maintained, it shall be lawful for the governing body of any such city or town, and the board of county commissioners of the county in which such city or town shall be located, to extend the jurisdiction of the recorder's court in such city or town to the township in which such city or town is located, in the manner described in the following sections. (1921, c. 216, s. 1; C. S. 1562(a).)

§ 7-214. Meeting of town and county authorities; election.—Whenever the governing body of any city or town, as described in § 7-213, and the board of county commissioners of the county in which the same shall be located, shall desire to extend the jurisdiction of the recorder's court in such city or town to include the whole township, as set forth in § 7-213, the mayor of such city or town and the chairman of such board of county commissioners shall call a joint meeting of the two boards, to be held at any place within such township as they may agree upon, and if a majority of each of such boards, at such meeting, shall by a joint resolution vote in favor of the extension of the jurisdiction of the recorder's court as herein described, then at such joint meeting the governing body of the town or city, and the board of county commissioners of the county, shall pass a joint resolution calling an election, submitting to the voters of the entire township the question of the extension of said municipal court, and that election shall be conducted by the county commissioners in the same manner as is prescribed for the conduct of elections for the establishment of municipal recorders' courts by the governing bodies of cities and

towns, in so far as said procedure is applicable; the result of the election shall be recorded in the minutes of the county commissioners and certified to and recorded in the minutes of the governing body of the town or city; the form of the ballot shall be as prescribed in § 163-155, subsec. (e), and if by such election such resolution is adopted it shall have the effect of conferring upon the recorder's court in such city or town the same powers, authority, and jurisdiction as to offenses or crimes committed within the township in which such city or town is located as such court would have had if the same had been committed in such city or town: Provided, however, that the extension of the jurisdiction of such recorder's court as herein described shall not have the effect of in any way extending or affecting in any manner whatsoever any ordinance or other law pertaining exclusively to such city or town. (1921, c. 216, s. 2; C. S. 1562(b).)

§ 7-215. Police powers. — Whenever the jurisdiction of any recorder's court shall have been extended as described in §§ 7-213 to 7-216, such action shall thereupon confer upon the police officers of such city or town the same powers and authority in making arrests for crimes and offenses committed anywhere within the township in which such city or town shall be located, as is now or may hereafter be conferred upon sheriffs or their deputies within their respective counties. (1921, c. 216, s. 3; C. S. 1562(c).)

§ 7-216. Resolution for extension filed with each board as records.—Whenever the governing board of any city or town and the county commissioners of the county shall have adopted the resolution extending the jurisdiction of the recorder's court as described in §§ 7-213 to 7-216, a copy of such resolution duly signed by the mayor and clerk of such city or town, and the chairman and clerk of such board of county commissioners, shall be duly filed with each board, and shall be kept and maintained as a part of their official records. (1921, c. 216, s. 4; C. S. 1562(d).)

§ 7-217. Jurisdiction not to extend to other municipalities.—No court hereafter established by the governing body of any city or town shall have jurisdiction over the territory within the corporate limits of any other incorporated city or town, or outside the county in which the city or town establishing such court is located. (1925, c. 280.)

Local Modification.—Craven, Edgecombe, Nash, Robeson: 1925, c. 280.

Art. 25. County Recorders' Courts.

§ 7-218. Established by county commissioners.— In any county in which a municipal recorder's court may not be established under the provisions of this subchapter, or in which such court has in fact not been established in the county-seat, the board of commissioners may, in their discretion, establish a recorder's court for the entire county, which shall be a court of record and shall be held at the county-seat. (1919, c. 277, s. 25; 1921, c. 110, s. 1; C. S. 1563.)

Local Modification.—Caldwell: Pub. Loc. 1931, c. 138; Henderson: 1927, c. 103; 1937, c. 97; 1939, c. 238; Swain: Pub. Loc. 1939, c. 499.

§ 7-219. Recorder's election, qualification, and term of office. — The court shall be presided over by a recorder, who shall have the same qualifications as provided for recorders of municipalities. The first recorder shall be elected by the board of commissioners of the county, either at the time of the establishment of the court or within thirty days thereafter, and shall hold the office until the next regular election wherein county officers are elected, and until his successor shall be duly elected and qualified; and should a vacancy occur in said office at any time, the same shall be filled by the election of a successor with the qualifications herein provided, for the unexpired term, by the board of county commissioners at a regular or special meeting called for that purpose. The successor of the first recorder herein provided for and each succeeding recorder shall be nominated and elected in the county in the same manner and at the same time as is now provided by law for the nomination and election of the elective officers of the county and in the general election for such elective officers. Before entering upon the duties of his office the recorder shall take and subscribe an oath of office as is now provided by law for justices of the peace, and shall file the same with the clerk of the superior court of the county, who shall duly record the same in a book kept for that purpose. The recorder's salary shall be fixed in advance by the board of commissioners, and paid out of the county funds upon vouchers, and shall not be increased or decreased during his term. (1919, c. 277, s. 25; C. S. 1564.)

Local Modification.—Henderson: 1939, c. 238; Mecklenburg: 1937, c. 253; Scotland: 1925, c. 171.

§ 7-220. Time and place for holding court.— The court shall be open for the trial of all criminal causes of which it has jurisdiction at least one day of each week, to be fixed by the board of county commissioners, and shall continue its session from day to day until all business is transacted by trial, continuance, or otherwise. The session of the court shall be held in the county courthouse or other place within the county provided by the board of commissioners for that purpose. Special sessions of the court may be called by the recorder as the necessities may require. (1919, c. 277, s. 26; C. S. 1565.)

§ 7-221. No subsequent change of judgment.— When any case has been finally disposed of by the recorder and judgment pronounced therein, the case shall not thereafter be reopened or the judgment or sentence rendered therein changed, modified or stricken out by the recorder after the adjournment of the regular weekly term of court or after the adjournment of any special term of court by the recorder. (1919, c. 277, s. 26; C. S. 1566.)

§ 7-222. Criminal jurisdiction.—The court shall have jurisdiction in all criminal cases arising in the county which are now or may hereafter be given to a justice of the peace, and, in addition to the jurisdiction conferred by this section, shall have exclusive original jurisdiction of all other criminal offenses committed in the county below the grade of a felony as now defined by law, and the same are hereby declared to be petty misdemeanors: Provided, however, that where

a special court or recorder's court shall legally exist within such county by virtue of a special act of the legislature passed before the amendments to the constitution in reference thereto, then the county recorder's court, as established in this article, shall not have jurisdiction of criminal cases within the territory of such existing recorder's court, so as to interfere with or conflict with the existing recorder's court, but shall have concurrent jurisdiction where the jurisdiction of the two courts covers the same causes or the same subject-matter. This article and the establishment of any court thereunder shall not be construed to repeal, modify or in anywise affect any existing special court or recorder's court by virtue of such former special acts herein referred to. (1919, c. 277, s. 27; C. S. 1567.)

§ 7-223. Jurisdiction and powers as in municipal court.—The recorders of county courts provided for in this article shall be vested with all the jurisdiction and authority conferred upon recorders of municipal courts, in like manner and to the same extent as if such jurisdiction and authority had been specifically in this section set forth, in so far as such jurisdiction and authority are applicable to such courts, and the provisions of this subchapter relative to municipal recorders' courts shall in all things apply to the county recorders' courts where same are not inconsistent and in so far as same are practically applicable: Provided, this section shall not take away the jurisdiction of a mayor to try breaches of ordinances when such city has no other municipal court. (1919, c. 277, s. 34; C. S. 1568.)

§ 7-224. Removal of cases from justices' courts.—When, upon written request made before entering on the trial of any cause before any justice of the peace, it shall appear proper for the cause to be removed for trial to some other justice, as is now provided by law, the cause may be removed for trial to the recorder's court of the county. (1919, c. 277, s. 28; 1921, c. 110, s. 3; C. S. 1569.)

Local Modification.—Cleveland, Lenoir: 1933, c. 277; 1939, c. 63; Mecklenburg: 1933, c. 277; 1937, c. 386.

§ 7-225. Defendants bound by justice to recorder's court.—In all criminal cases heard by a justice of the peace or other committing magistrate of the county against any person for any offense included within the exclusive jurisdiction of the recorder's court as provided in this article, and in which probable cause of guilt is found, such person shall be bound in a personal recognizance or surety to appear at the next succeeding session of the recorder's court of the county, for trial; and in default of such surety such person shall be committed to the common jail of the county to await a trial: Provided, that in the event any justice of the peace or other committing magistrate shall bind over to the superior court any person accused of a crime within the jurisdiction of the county recorder's court, the clerk of the superior court shall, upon his own motion, transfer all papers in the case to the recorder's court, and the case shall then stand for trial at the next succeeding term of said recorder's court as if the defendant had been bound over to the recorder's court in the first instance: and Provided further, that in the event any justice of the peace or other committing magistrate shall bind over to the recorder's court any person charged with an offense beyond the jurisdiction of said court, the said recorder shall cause the accused person to enter into a new bond with sufficient surety for his appearance at the next succeeding term of the superior court of the county, and shall transmit all papers in the case to the said superior court, but this shall be done without additional cost to the accused person. (1919, c. 277, s. 29; 1921, c. 110, s. 4; C. S. 1570.)

Local Modification.—Vance, Warren: Pub. Loc. 1927, c. 438.

§ 7-226. Notice to accused of transfer; trial; obligation of bond.—Whenever the clerk of the superior court shall transfer the papers in any case from the superior court to a county recorder's court, he shall at the same time issue a notice to the accused person and his surety, informing them that the cause has been so transferred and requiring the accused person to appear at the next succeeding term of said recorder's court for trial, and, upon the service of said notice upon the accused person and his surety, at least five days before the beginning of the next succeeding term of the recorder's court, the case shall stand for trial at said term and the bond given by the accused person for his appearance at the next term of the superior court shall in all respects be valid and binding to compel the appearance of the accused person at the said next succeeding term of said recorder's court, and in case said notice is not served on the accused person and his surety at least five days before the beginning of the next succeeding term of the recorder's court, then the case shall not be tried without the consent of the accused person until the following term of the recorder's court. (1921, c. 110, s. 5; C. S. 1570(a).)

§ 7-227. Trials upon warrants; by whom warrants issued. — All trials of criminal causes in said court shall be upon warrant issued by the clerk of the superior court or deputy clerk provided for in this article, or by the recorder or by any justice of the peace of the county. In either event such warrant shall be issued upon affidavit duly made and subscribed, setting forth the complaint against the defendant: Provided, the recorder shall have authority to amend the warrant and to allow amendment of the affidavit at any time before judgment. (1919, c. 277, s. 30; 1921, c. 110, s. 6; C. S. 1571.)

§ 7-228. Jury trial as in municipal court.—In all trials in county recorders' courts, upon demand for a jury by the defendant or the prosecuting attorney representing the state, a jury shall be had in the same manner and under the same provisions as are set forth in this subchapter in reference to municipal courts, so far as the same may be practically applicable to a county court. (1919, c. 277, s. 40; C. S. 1572.)

Local Modification.—Burke: 1931, c. 335; Cabarrus: 1939, c. 347; Craven: 1929, c. 115; Henderson: 1933, c. 316; Hoke: Pub. Loc. 1937, c. 408; Pasquotank: 1941, c. 213; Perquimans: 1929, c. 25.

§ 7-229. Sentence imposed; fines and costs paid.—Whenever any person shall be convicted or plead guilty of any offense of which the court has final jurisdiction the recorder may sentence

him to the common jail of the county in which the court shall be held, and assign him to work on the public roads of the county where provision has been made therefor; but if no provision has been made for working convicts upon the public roads in the county, then the recorder may sentence such person to be worked upon the public roads of any other county within the judicial district or any county within any adjoining judical district which has made such provision: Provided, that in case the person so convicted or pleading guilty shall be a woman or an infant of immature years, then the recorder may assign him or her to the county workhouse, reformatory, or other penal institution located in the county; or if there be none, any similar institution that may be located outside of the county to which judges of the superior court are authorized to sentence such person under the general laws of the state. All fines imposed by the court shall be collected by the clerk of such court or the deputy clerk thereof in the same manner as the clerk of the superior court collects fines imposed by the superior court; and, where a defendant is convicted and fails to pay the costs of such conviction, the county shall pay such costs as is allowed by law in similar cases before the superior court. (1919, c. 277, s. 32; 1925, c. 308; C. S. 1573.)

§ 7-230. Appeals to superior court.—Any person convicted of any offense of which the county recorder has final jurisdiction may appeal to the superior court from any judgment or sentence of the court in the same manner as is now provided for appeals from the courts of justices of the peace; and any person tried before the recorder for any offense of which the court has not final jurisdiction shall, upon the recorder's finding probable cause of guilt, be bound over to the superior court in the same manner as is provided by law in similar cases before justices of the peace. (1919, c. 277, s. 33; C. S. 1574.)

§ 7-231. Clerk of superior court ex officio clerk of county recorder's court.—The clerk of the superior court of any county in which a county recorder's court shall be established shall be ex officio clerk of such court. He shall keep separate criminal dockets in his office for such court in the same manner as he keeps criminal dockets in the superior court; he shall otherwise possess all the powers and functions conferred upon, and discharge all the duties required of, clerks of the superior court under the general law; and he shall be liable upon his official bond as clerk of the superior court for all of his official acts and conduct in reference thereto. Whenever the clerk of the Superior Court acts ex-officio as clerk of the Recorder's Court or General County Court, any assistant clerk or deputy clerk of the Superior Court in his office shall have power and authority to take affidavits, issue warrants and other process, administer oaths to witnesses and to perform any other duty in connection with said court under the direction of the clerk of the Superior Court, and for the acts of said assistant or deputy clerk, the clerk of the Superior Court shall be liable on his official bond to the same extent that he would have been liable if he had done the act himself. The preceding sentence shall not apply to recorder's courts in Bladen, Brunswick, Camden, Gates, Halifax, Martin, Moore, Orange, Perquimans, Forsyth and Vance Counties. (1919, c. 277, s. 36; 1935, c. 345; C. S. 1575.)

Local Modification.—Columbus: 1925, c. 232.

§ 7-232. Deputy clerk may be appointed.—Instead of having the clerk of the Superior Court to act ex-officio as clerk of the Recorder's Court or General County Court, the board of commissioners of any county wherein a county Recorder's Court or General County Court may be established may, at the time of the establishment of said court or at the time of fixing the county budget for any succeeding year, call upon the clerk of the Superior Court to appoint a special deputy to act as clerk of the Recorder's Court or General County Court, and the clerk of the Superior Court shall within sixty days thereafter appoint a special deputy to act as clerk of the Recorder's Court or General County Court, unless the time for good cause shall be extended by the Board of County Commissioners. Said special deputy clerk shall assist the clerk of the Superior Court with the duties of his office and shall have all the power and authority in reference to the county Recorder's Court or General County Court conferred upon the clerk of the Superior Court by the preceding section, and he shall do all things in reference to said Recorder's Court or General County Court under the direction of the clerk of the Superior Court of the county as fully as the clerk of the Superior Court would otherwise be authorized to do. The Board of Commissioners may require and fix the official bond of said special deputy clerk for the faithful performance of his duties and fix his salary, which shall be fixed before he enters upon his duties and shall not be lowered during his term of office. His term of office shall be for the same time as the term of the recorder of said court, unless he shall be sooner removed by the clerk of the Superior Court for cause, and shall cease at any time that the court itself shall cease to exist. This section shall not apply to Bladen, Brunswick, Camden, Gates, Guilford, Halifax, Lee, Martin, Moore, Orange, Perquimans, Forsyth and Vance Counties. (1919, c. 277, s. 36; 1935, c. 346; C. S. 1576.)

§ 7-233. Compensation of clerk when no deputy appointed.—When no deputy clerk is appointed or elected by the board of commissioners, they are authorized to pay annually to the clerk of superior court an amount fixed by the board, which shall be in addition to any salary or fees theretofore allowed by law to the clerk of superior court, and which shall be in compensation for the services rendered by him as clerk of the county recorder's court. Such compensation shall be paid to the clerk of superior court so long as he shall perform the duties of clerk ex officio of the county recorder's court. (1919, c. 277, s. 36; C. S. 1577.)

§ 7-234. Deputy clerk to take oath of office.—If any deputy clerk shall be appointed as provided in this article he shall take the oath required of deputy clerks under the general law, and in addition thereto shall take and subscribe to an oath to perform faithfully all the duties required of him under this article, both of which oaths shall be recorded in the office of the clerk of the superior court, and such deputy clerk is further authorized to perform all duties of deputy

clerk under the general law in addition to the duties set forth in this article. (1919, c. 277, s. 37; C. S. 1578.)

§ 7-235. Prosecuting attorney may be elected.—The board of commissioners of any county availing itself of the provisions of this article may elect, at the same time, in the same manner, and for the same term as herein provided for the election of a deputy clerk, a prosecuting attorney for said court, and fix his compensation in such amount as they may deem suitable for the services to be rendered: Provided, that the board may require the county attorney to discharge the duties of prosecuting attorney in said court, and fix his compensation accordingly. (1919, c. 277, s. 38; C. S. 1579.)

Local Modification.—Montgomery: 1929, c. 112; Washington: 1941, c. 164.

§ 7-236. Fees for issuing and serving process.—All justices of the peace, constables and sheriffs issuing or serving warrants or other process returnable to the recorder's court shall have the same fees as are now prescribed by law, which fees shall be collected and paid out in the same manner and by the same officers as collect and distribute such fees in the superior court. (1919, c. 277, s. 31; C. S. 1580.)

§ 7-237. Costs and fees taxed as in municipal court.—Except as provided in § 7-238, there shall be taxed in the county recorder's court the same costs and fees for the benefit of the officers thereof as provided for municipal recorder's court. Such costs and fees shall be collected by the clerk and paid over monthly to the treasurer of the county as county funds to be dealt with by the commissioners. (1919, c. 277, s. 39; C. S. 1581.)

§ 7-238. Fees taxed when county officer on salary; recorder's court fund.—In cases in which the recorder or judge and the solicitor of the county recorders' courts shall be paid salaries, in lieu of fees for such recorder or judge or solicitor, the clerk of the recorder's court shall tax against the defendant who is convicted, or who confesses his guilt, or upon whom judgment is suspended in said court in cases originally within the jurisdiction of the justice of the peace a tax fee of three dollars in each case, and in all other cases within the jurisdiction of the said recorder's court a tax fee of six dollars, and these several sums when collected shall be paid over by said clerk to the treasurer or financial agent of the county, to be kept by him as a separate and distinct fund to be known as the recorder's court fund. This fund shall be used only in paying the salary of the recorder and prosecuting attorney of said court, and the other expenses of the court. (1921, c. 110, s. 13; C. S. 1598(a).)

§ 7-239. Courts may be discontinued after two years. — The board of commissioners of any county which has established a county recorder's court under the provisions of this article are authorized, after two years trial of the court, to discontinue the same at any time thereafter if in their judgment the public interest shall require it. If any such court shall be so discontinued, the action or resolution must be taken or adopted at least six months prior to the next general election, and shall not go into effect until the term of office of the recorder shall expire. (1919, c. 277, s. 35; C. S. 1582.)

Art. 26. Municipal-County Courts.

§ 7-240. Established for entire county.—The governing body of any municipality possessing a population of two thousand or over, according to the last federal census, in which the county courthouse is located, and the board of commissioners of the county, shall have the power, at a joint meeting of the two bodies, by joint resolution, in the manner hereinafter provided, to establish a recorder's court so as to include the entire county, outside of other municipalities therein possessing a population of two thousand or over. After the adoption of such joint resolution such municipal recorder's court shall possess all the powers and functions and exercise all the territorial jurisdiction in this subchapter conferred upon both municipal and county recorder's court under the procedure herein provided for, and subject to the provisions herein in reference to concurrent jurisdiction where a special or recorder's court exists under prior special acts in any portion of the county. (1919, c. 277, s. 41; C. S. 1583.)

§ 7-241. Election of recorder.—If the territorial jurisdiction of such municipal recorder's court is extended to the entire county, as set forth in the preceding section, then the first recorder shall be selected for the term and in the manner hereinbefore set forth, by a joint meeting of the governing body of such municipality and the board of commissioners of the county, and such recorder shall be thereafter nominated and elected as is provided for herein for the nomination and election of a county recorder. Such recorder shall be a resident of the municipality, and in all other respects the court shall be conducted under the proceedings herein provided for municipal courts. (1919, c. 277, s. 42; C. S. 1584.)

Local Modification.—Lenoir, Onslow, Sampson: 1925, c. 233; 1927, c. 170.

§ 7-242. Mayor's jurisdiction continued, when.—In case the jurisdiction of the recorder's court of any municipality in any county shall not be extended in the manner authorized in this article, and no county recorder's court shall be established therein, then the mayors of the various cities and towns in such county shall continue to have all the powers and functions and exercise all the jurisdiction now conferred upon such officials by the general law for municipal corporations. (1919, c. 277, s. 43; C. S. 1585.)

Art. 27. Provisions Applicable to All Recorders' Courts.

§ 7-243. Appeals from justices of the peace.—In all cases where there is an appeal from a justice of the peace, such appeal shall be first heard in the recorder's court, in the manner provided herein for hearing causes within the jurisdiction of a justice of the peace originating in the recorder's court. (1919, c. 277, s. 54½; C. S. 1597.)

§ 7-244. Offenders may be sentenced to city chain-gang. — In case any municipality possessing a population of two thousand or over, as provided for herein, in which a recorder's court shall be established pursuant to the provisions of this subchapter, shall now or hereafter establish and maintain a city chain-gang, or workhouse or other penal institutions for the imprisonment and working of city prisoners, any recorder may sentence any person convicted of any offense committed within said municipality and punishable by imprisonment, to be imprisoned and worked on such city chain-gang, or in such workhouse or other penal institutions, for such time as the recorder may in his discretion determine in accordance with the law. (1919, c. 277, s. 44; C. S. 1586.)

§ 7-245. Recorders' courts substituted for other special courts. — Wherever there has been established in any county, city, or town a recorder's court or other special court, which, under the provisions of this subchapter, might have been established hereunder, whether it shall possess exactly the same jurisdiction and functions or not, the board of commissioners of the county or the governing body of such city or town, or the governing body of such city or town and the board of commissioners of the county acting jointly, may abolish such existing court and adopt any one of the courts herein provided for by appropriate resolution of such boards. (1919, c. 277, s. 45; C. S. 1587.)

Art. 28. Civil Jurisdiction of Recorders' Courts.

§ 7-246. Civil jurisdiction may be conferred.— The board of county commissioners of any county in which there is a city or town with a population of not less than ten thousand inhabitants, in which city or town there has been established a municipal recorder's court, under the provisions of this subchapter, or in which there is a municipal recorder's court established by law, may confer upon such recorder's court jurisdiction to try and determine civil actions, as hereinafter provided, wherein the party plaintiff or defendant is a resident of such county, or is doing business in the county. Such jurisdiction may be conferred by resolution by the board of county commissioners of any county, entered upon their minutes, and the board of county commissioners of the county may likewise confer civil jurisdiction on the county recorder's court to try and determine civil actions as hereinafter provided wherein one or more of the parties, plaintiff or defendant, is a resident of said county or is doing business therein. (1919, c. 277, s. 47; 1921, c. 110, s. 7; 1933, c. 166; C. S. 1589.)

Local Modification.—Carteret: 1933, c. 379; Surry: Pub. Loc. 1927, c. 133, s. 1.

§ 7-247. Extent of jurisdiction.—The jurisdiction of such municipal and county recorders' courts in civil actions shall be as follows: (a) Jurisdiction concurrent with that of the justices of the peace within the county; (b) jurisdiction concurrent with the superior court in all actions founded on contract, wherein the amount involved exclusive of interest and costs does not exceed one thousand dollars; (c) jurisdiction concurrent with the superior court in actions not founded upon contract wherein the amount involved exclusive of interest and costs does not exceed the sum of five hundred dollars. (1919, c. 277, s. 48; 1921, c. 110, s. 8; C. S. 1590.)

Local Modification.—Carteret: 1933, c. 379; Mecklenburg: 1933, c. 174.

§ 7-248. Procedure in civil actions.—The rules of practice, issuing and serving process, and filing pleadings shall conform, as near as may be, to the practice in the superior court: Provided, it shall not be necessary to file written pleadings in any action of which justices of the peace now have jurisdiction. The process shall be returnable directly to the court; and no civil process shall be issued by any recorder's court to any county other than that in which the court is located. (1919, c. 277, s. 56; 1921, c. 110, s. 9; C. S. 1591.)

Local Modification.—Carteret: 1933, c. 379.

§ 7-249. Trial by jury in civil actions.—In all civil actions the parties shall be deemed to have waived a trial by jury unless demand for such trial is made before the trial begins. The demand shall be in writing and signed by the party making it, or his attorney, and accompanied by a deposit of five dollars to insure the payment of the jury tax: Provided, such demand shall not be used to the prejudice of the party making it. (1919, c. 277, s. 49; 1921, c. 110, s. 10; C. S. 1592.)

Local Modification.—Craven: 1929, c. 115, s. 1; Hoke: Pub. Loc. 1937, c. 408.

§ 7-250. Jurors drawn and summoned.—If a trial by jury is demanded, the recorder shall continue the cause until a day to be set, and the recorder, together with the attorneys for all parties, shall immediately proceed to the office of the register of deeds of the county and cause to be drawn a jury of eighteen, observing as nearly as may be the rule for drawing a jury for the superior court. The recorder shall issue the proper writ to the sheriff of the county, commanding him to summon the jurors so drawn to appear at the court on the day set for the trial of the action. (1919, c. 277, s. 50; C. S. 1593.)

Local Modification.—Craven: 1929, c. 115, s. 1; Hoke: Pub. Loc. 1937, c. 408.

§ 7-251. Talesmen and challenges. — The recorder shall have the right to call in bystanders according to the practice in the superior court as nearly as the same is applicable, and each party shall have the same causes of challenge as in the superior court. (1919, c. 277, s. 51; C. S. 1594.)

Local Modification.—Craven: 1929, c. 115, s. 1; Hoke: Pub. Loc. 1937, c. 408.

§ 7-252. Jury as in superior court.—The jury shall be a jury of twelve, and the trial shall be conducted as nearly as possible as in the superior court. (1919, c. 277, s. 52; C. S. 1595.)

Local Modification.—Craven: 1929, c. 115, s. 1; Hoke: Pub. Loc. 1937, c. 408; Surry: Pub. Loc. 1927, c. 133, s. 2.

§ 7-253. Appeals to superior court.—Appeals may be taken from the recorder's court to the superior court of the county in term time, for errors assigned in matters of law, in the same manner as now provided for appeals from the superior court to the supreme court, with the exception that the record may be typewritten instead of printed, and only one copy thereof

shall be required. The time for taking and perfecting appeals shall be counted from the end of the term. Upon such appeal the superior court may either affirm or modify the judgment of the recorder's court, or remand the cause for a new trial. From the judgment of the superior court an appeal may be taken to the supreme court: Provided, that appeals from a county recorder's court to the superior court of the said county shall be tried de novo in the superior court. (1919, c. 277, ss. 53, 54; 1921, c. 110, s. 11; C. S. 1596.)

§ 7-254. Enforcement of judgments.—Orders to stay execution shall be the same as in appeals from the superior court to the supreme court. Judgments of the recorder's court may be enforced by executions issued by the clerk thereof, returnable within twenty days. Transcripts of such judgments may be docketed in the superior court, as now provided for judgments of justices of the peace; and the judgment, when docketed, shall in all respects be a judgment of the superior court as if rendered by such court, and shall be subject to the same statute of limitations and the statutes relating to revival of executions: Provided, that a judgment of the recorder's court shall not be a lien upon real estate until docketed in the superior court. (1919, c. 277, s. 55; 1921, c. 110, s. 12; C. S. 1598.)

§ 7-255. Costs in civil actions.—In all civil actions the clerk shall tax against the losing party the sum of three dollars in cases originally within the jurisdiction of the justice of the peace, and the sum of six dollars in all other cases, and all sums so collected shall be disposed of as provided for tax fees in criminal actions in § 7-238. (1921, c. 110, s. 13; C. S. 1598(a).)

Art. 29. Elections to Establish Recorders' Courts.

§ 7-256. Election required.—The courts provided for in this subchapter shall be established upon elections held as set forth in this article, except county recorders' courts which may be established by the county commissioners of any county without a popular vote. (1919, c. 277, s. 58; 1921, c. 110, s. 14; C. S. 1599.)

§ 7-257. Municipal recorder's court.—The governing body of any city or town which may, under the terms of this subchapter, establish a court, prior to its establishment shall pass a resolution, if in their judgment such court should be established, reciting such fact and calling an election at a date to be fixed, which shall be not less than thirty days nor more than two years from the passage of the resolution, at which election there shall be submitted to the qualified voters of the city the question of establishing such court. The form of the ballot shall be as prescribed in § 163-155, subsec. (e). (1919, c. 277, s. 58; 1939, c. 201; C. S. 1600.)

§ 7-258. Notice of election.—Notice of such election shall be given, signed by the clerk of the city or town or the mayor thereof, containing in substance the resolution, the date of the election, and a reference to this subchapter, which notice shall be published once a week for four successive weeks prior to said election in some newspaper published in the city or town. (1919, c. 277, s. 59; C. S. 1601.)

§ 7-259. New registration may be ordered.—The governing body of such city or town may in its discretion order a new registration of the voters for any election authorized hereunder. (1919, c. 277, s. 60; C. S. 1602.)

§ 7-260. Manner of holding election. — The election shall be held, reported, and recorded in the city or town, under the laws governing general elections as near as may be applicable to the city or town. The result of the election shall be reported to, canvassed and declared by the governing body of the city or town, and recorded upon the minutes thereof. If the majority of the votes cast is declared in favor of such court, it shall be established, and not otherwise. (1919, c. 277, s. 61; C. S. 1603.)

§ 7-261. Another election after two years.—If the majority of the votes cast at such election is against the court, another election for the same purpose may thereafter be called, but not within less than two years from the first or any succeeding election in reference thereto. (1919, c. 277, s. 62; C. S. 1604.)

§ 7-262. Municipal courts with jurisdiction over the entire county.—The courts provided for in article twenty of this subchapter shall be established in the following manner: The governing body of the city and the board of county commissioners of the county, at a joint meeting, shall pass a joint resolution calling an election submitting to the voters of the entire county the question of the establishment of said court. The election shall be conducted by the county commissioners in the same manner as is prescribed for the conduct of elections for the establishment of municipal recorders' courts by the governing bodies of cities and towns, in so far as said procedure is applicable; the result of the election shall be recorded in the minutes of the county commissioners and certified to and recorded in the minutes of the governing body of the city. The form of the ballot shall be as prescribed in § 163-155, subsec. (e). (1919, c. 277, s. 62; C. S. 1606.)

§ 7-263. Expense of elections paid.—The expense of conducting the elections for "municipal courts" and "municipal-county courts" shall be borne by the city or municipality concerned. (1919, c. 277, s. 63; C. S. 1607.)

§ 7-264. Certain districts and counties not included.—This subchapter shall not apply to the following judicial districts: the tenth, except as to Granville and Orange counties; the eleventh; the seventeenth; the eighteenth, except as to Rutherford and Transylvania counties; the nineteenth; and the twentieth, except as to Cherokee, Jackson, Haywood and Swain counties; nor shall it apply to the counties of Chatham, Columbus, Johnston, New Hanover, and Robeson. (1919, c. 277, s. 64; 1921, c. 110, s. 16; Ex. Sess. 1921, cc. 59, 80; 1923, cc. 19, 40; 1925, c. 162; Pub. Loc. 1927, cc. 214, 545; 1929, cc. 17, 111, 114, 130, 340; 1931, cc. 3, 19; 1933, c. 142; 1935, c. 396; 1939, c. 204; 1941, c. 338; C. S. 1608.)

Local Modification.—Alexander: 1939, c. 204; Halifax: 1931, c. 3; Hyde: 1935, c. 396; 1941, c. 134.

SUBCHAPTER VII. GENERAL COUNTY COURTS.

Art. 30. Establishment, Organization and Jurisdiction.

§ 7-265. Establishment authorized; official entitlement; jurisdiction.—In each county of this state, there may be established a court of civil and criminal jurisdiction, which shall be a court of record and which shall be maintained pursuant to this subchapter and which court shall be called the general county court and shall have jurisdiction over the entire county in which said court may be established. In any county in the state in which there is situated a city which has or may have in the future a population, according to any enumeration by the United States census bureau, of more than twenty thousand inhabitants, the commissioners of such county or counties are authorized hereby to establish general county courts as hereinafter provided without first submitting the question of establishing such court to a vote of the people: Provided, that the said enumeration need not be made at a regular decennial census. In the event that the second sentence of this section is acted upon by the commissioners of any county in establishing a general county court, as is herein provided, the said commissioners may make such provisions for holding such courts in such city. (1923, c. 216, s. 1; 1925, c. 242; 1927, c. 74; C. S. 1608(f).)

Local Modification.—Caswell: 1931, c. 17; 1933, c. 405; 1937, c. 54; Cherokee: Pub. Loc. 1927, c. 87; Henderson: 1927, c. 103; Richmond: 1941, c. 60, s. 1; Transylvania: 1931, c. 1; Wilson: 1931, c. 61; 1935, cc. 29, 149, s. 1.

§ 7-266. Creation by board of commissioners without election.—If in the opinion of the board of commissioners of any county, the public interests will be best promoted by so doing, they may establish a general county court under this article, by resolution which shall, in brief, recite the reasons for the establishment thereof, and further recite that, in the opinion of the board of commissioners, it is not necessary that an election be called upon the establishment of such court as herein provided for, and upon the adoption of such resolution the board of commissioners may establish said court without holding such election. (Ex. Sess. 1924, c. 85, s. 2.)

Local Modification.—Henderson: 1927, c. 103; Person: 1929, c. 246.

§ 7-267. Abolishing the court.—Whenever in the opinion of the board of commissioners of any county in which a court has been established under this article, the conditions prevailing in such county are such as to no longer require the said court, such board of county commissioners may, by proper resolution reciting in brief the reasons therefor, abolish said court: Provided, no such court shall be abolished except at the end of the terms of office of the judge and solicitor, unless such judge and solicitor shall voluntarily tender their resignations, setting forth, in brief, that in their opinion the existence of the said court is no longer necessary, in which event the board of commissioners may forthwith abolish the same. (Ex. Sess. 1924, c. 85, s. 2.)

§ 7-268. Transfer of criminal cases.—Upon the establishment of the general county court, as in this article authorized, the clerk of the superior court shall immediately transfer from the superior court to such general county court all criminal actions pending in the superior court of which the general county court has jurisdiction, as in this article conferred, and the general county court shall immediately proceed to try and dispose of such criminal actions. (Ex. Sess. 1924, c. 85, s. 2.)

§ 7-269. Transfer of civil cases.—Transfers may be made in term of any civil action in the superior court to the general county court, and from the general county court to the superior court by the presiding judge of said respective courts, by consent, or upon motion of which due notice has been given, when, in the opinion of the presiding judge of the court from which the transfer is to be made, the ends of justice will be best served and promoted by such transfer. (Ex. Sess. 1924, c. 85, s. 2; 1933, c. 127.)

§ 7-270. Costs.—Cost in both criminal and civil actions shall be taxed and collected as now provided by law. (Ex. Sess. 1924, c. 85, s. 2.)

§ 7-271. Judge; election, term of office, vacancy in office, qualification, salary, office.—The court shall be presided over by the judge, who may be a licensed attorney at law, and at the time of his election he shall be a qualified elector in the county. The first judge of the court upon the establishment of said court shall be elected by the board of county commissioners within thirty days after the establishment of said court, and he shall hold his office until January first, following the next general election of county officers and until his successor is elected and qualified. If a vacancy occurs in the office of judge of said court, the same shall be filled by the election of a successor for the unexpired term by the board of county commissioners. After the first elected judge by the board of county commissioners, each succeeding judge shall be elected by a vote of the qualified electors of the county at the next general election before the expiration of the term of office and when other county officers are elected, and shall hold his office for a term of four years beginning January first following his election, and until his successor is elected and qualified. Before entering upon the duties of his office, the judge shall take and subscribe an oath of office, as is now provided by law for justices of the peace, and he shall file the same with the clerk of the superior court of the county. The salary of said judge shall be fixed by the board of commissioners of the county, and shall not be decreased during the term of office, and it shall be paid monthly out of the funds of the county. The judge shall reside in the county and shall be provided by the county commissioners with an office at the county-seat. The terms of said court shall be held in the courthouse, except as otherwise provided in § 7-265, but they shall at no time inconvenience or discommode the superior court of the county while the superior court in term is using the courthouse. If in the opinion of the board of commissioners the best interests of the county will be promoted thereby, the said board may appoint such judge, fixing his term of office, in which event the judge so appointed shall hold office pursuant to such appointment, and

shall not be elected by a vote as herein provided for. (1923, c. 216, s. 2; Ex. Sess. 1924, c. 85, s. 1; C. S. 1608(g).)

Local Modification.—Scotland: 1925, c. 172.

§ 7-272. Terms of court.—The court shall open for the transaction of business and trial of causes the first Monday of each month and continue until all matters before the court are disposed of. (1923, c. 216, s. 2; C. S. 1608(h).)

§ 7-273. Prosecuting officer; duties, election, salary, etc.—There shall be a prosecuting attorney of the general county court, to be known officially as prosecutor, who shall appear for the state and prosecute in all criminal cases being tried in said court, and for his services he shall be paid such salary as may be fixed by the board of county commissioners. He shall be elected by the board of county commissioners for the first term as herein provided for the election of the judge, and thereafter by the qualified electors of the county in the same manner as is provided herein for the election of the judge; and vacancies in the office of the prosecutor shall be filled by the board of county commissioners as they are herein authorized to fill vacancies in the office of judge. If requested to do so by the judge, the prosecutor shall represent the county in prosecution of criminal appeals from this court in the superior court. The salary of the prosecutor shall be paid monthly out of the county funds. If in the opinion of the board of commissioners the best interests of the county will be promoted thereby, the said board may appoint such solicitor, fixing his term of office, in which event the solicitor so appointed shall hold office pursuant to such appointment, and shall not be elected by a vote as herein provided for. (1923, c. 216, s. 3; Ex. Sess. 1924, c. 85, s. 1; 1925, c. 250, s. 1; C. S. 1608(i).)

Local Modification.—Henderson: 1927, c. 103.

§ 7-274. Superior court clerk as clerk ex officio; salary, bond, etc.—The clerk of the superior court of the county shall be ex officio clerk of the general county court, herein provided for, and in addition to the salary and fees paid him as clerk of the superior court, he shall be paid such additional compensation as the county commissioners of the county may fix, to be paid monthly out of the county funds. The said clerk shall be liable upon his official bond for the discharge of his duties and caring for funds paid to him to the same extent as he is bound as clerk of the superior court. The Clerk of said Court or any deputy thereof, upon application and the making of proper affidavit, as provided by law, shall have power and authority to issue any criminal warrant or warrants in said Court and make the same returnable before the Judge thereof, at any time or times designated for the trial of criminal cases. The last sentence shall not apply to the following counties: New Hanover, Caldwell, Henderson, Ashe, Hoke, Lincoln, Wayne, Wilkes, Nash, Edgecombe, Alexander, Rockingham, Duplin, Union, Alleghany, Halifax, Alamance, Clay, Yancey, Dare, Wake, Hertford, Jackson, Mecklenburg, Craven, Vance, Person, Robeson, Johnston, Yadkin, Davidson, Haywood, Pitt, Tyrrell, Hyde, Watauga, Durham, Scotland, Forsyth and Camden. (1923, c. 216, s. 4; 1931, c. 233; C. S. 1608(j).)

§ 7-275. Sheriff; duties; additional allowance.—The sheriff of the county or his deputy appointed shall attend upon the terms of this court in the same manner and with the same power and authority as he does and has in attendance upon the superior courts of the county. The county commissioners of the county are authorized to make said sheriff such additional allowances as they may fix for such services in addition to his salary and fees fixed by law. (1923, c. 216, s. 5; C. S. 1608(k).)

§ 7-276. Fees of clerk and sheriff.—In those counties in which the clerk of the superior court and sheriff are paid fees, and not salaries, such clerk and sheriff shall receive the same fees for services rendered in the general county court as they would have received had such services been rendered in the superior court. (Ex. Sess. 1924, c. 85, s. 5½.)

Local Modification.—Scotland: 1925, c. 172.

§ 7-277. Separate records to be kept by clerk; blanks, books and stationery.—The clerk of the said general county court shall keep separate records, criminal and civil, for the use of said court, to be furnished by the county commissioners, and they shall also provide all such necessary blanks, forms, books and stationery as may be needed by said court. And the said clerk shall keep the same in his office of clerk of the superior court. (1923, c. 216, s. 6; C. S. 1608(l).)

§ 7-278. Criminal jurisdiction, extent. — The general county court, herein provided for, shall have the following jurisdiction in criminal actions within the county:

1. Original, exclusive and concurrent jurisdiction, as the case may be, of all offenses within said county which are now or may hereafter be given to justices of the peace under the constitution and general laws of the state, including all offenses of which mayors of towns or other municipal courts now have jurisdiction.

2. Original and concurrent jurisdiction with justices of the peace to hear and bind over to the superior court all persons charged with any crime within the territory of the general county court, and of which said court is not herein given final jurisdiction.

3. To punish for contempt to the same extent and in the manner allowed by law to the superior courts of this state; to issue writs ad testificandum and other process to compel the attendance of witnesses and to enforce the orders and judgments of the court in the same manner allowed by law to the superior courts of this state.

4. The general county court shall have jurisdiction in all criminal cases arising in the county which are now or may hereafter be given to a justice of the peace, and in addition thereto shall have exclusive original jurisdiction of all other criminal offenses committed in the county below the grade of a felony as now defined by law, and the same are hereby declared to be petty misdemeanors. In all criminal cases heard by a justice of the peace or other committing magistrate of the county against any person for any offense included within the exclusive jurisdic-

tion of the general county court, as herein provided for, and in which probable cause of guilt is found, such person shall be bound in a personal recognizance, or surety, to appear at the next first Monday of the month next succeeding before the general county court for trial, and in default of surety such person shall be committed to the county jail to await trial.

5. In counties in which there is a special court or courts for cities and towns, the jurisdiction of the general county court in criminal actions shall be concurrent with the jurisdiction conferred upon such special courts. (1923, c. 216, s. 13; 1924, c. 85, s. 1; C. S. 1608(m).)

§ 7-279. Civil jurisdiction, extent.—The jurisdiction of the general county court in civil actions shall be as follows:

1. Jurisdiction concurrent with that of the justices of the peace of the county;

2. Jurisdiction concurrent with the superior court in all actions founded on contract;

3. Jurisdiction concurrent with the superior court in all actions not founded upon contract;

4. Jurisdiction concurrent with the superior court in all actions to try title to lands and to prevent trespass thereon and to restrain waste thereof;

5. Jurisdiction concurrent with the superior court in all actions pending in said court to issue and grant temporary and permanent restraining orders and injunctions;

6. Jurisdiction concurrent with the superior court of all actions and proceedings for divorce and alimony, or either;

7. Jurisdiction concurrent with the superior court in all matters pending in said court for the appointment of receivers, as provided in §§ 1-501, et seq.;

8. Jurisdiction concurrent with the superior court to appoint receivers. (1923, c. 216, s. 14; 1935, c. 171; 1937, c. 58; C. S. 1608(n).)

Local Modification.—Bertie: 1935, c. 179.

§ 7-280. Election, requirement of.—The general county court, herein provided for, shall be established upon elections as set forth in this article, except as otherwise provided in §§ 7-265 and 7-266. (1923, c. 216, s. 20; C. S. 1608(o).)

§ 7-281. Resolution by county commissioners; time for election; ballots.—The board of commissioners of the county shall pass a resolution, if in their judgment such court should be established, reciting such fact and calling an election at a date to be fixed, which shall not be less than thirty days nor more than sixty days from the passage of the resolution, at which election there shall be submitted to the qualified voters of the county the question of establishing such court. The form of the ballot shall be as provided in § 163-155, subsec. (e). (1923, c. 216, s. 21; C. S. 1608(p).)

§ 7-282. Notice of election; publication.—Notice of such election shall be given at least thirty days prior to the day of election, signed by the chairman of the board of county commissioners and containing in substance the resolution passed by the board, the date of the election and a reference to the act creating the court, and which notice shall be published once a week for four successive weeks prior to said election in some newspaper published in the county and a copy thereof shall be posted at the courthouse door. (1923, c. 216, s. 22; C. S. 1608(q).)

§ 7-283. Law governing elections; election officers; registration.—Any election held under the provisions of this law shall be conducted in the same manner as is now or may hereafter be prescribed by law for holding elections for the members of the general assembly, except as herein otherwise stated. The board of county commissioners shall appoint the registrars and judges of election and any other election officers necessary for holding said election, and registration and challenge of voters shall be conducted in the same manner as is now or may hereafter be provided for election of the members of the general assembly, except as herein set forth. The said board of county commissioners may or may not, in their discretion, order a new registration for any election held under this law. In case no new registration is ordered the registration books of each voting precinct shall be kept open for twenty days prior to the election for the purpose of allowing electors to register who have not theretofore registered in the township or voting precinct, of their residence, and who are entitled to register for said election; and the registration books shall close on Saturday next preceding the election and the registrar shall transcribe the names of all persons who have registered for former elections in their township, or voting precincts, and are otherwise qualified electors at said election upon a new registration book. The registrars are authorized and directed to register any person legally qualified and entitled to vote in their respective townships or voting precincts who apply for such purpose, in the same manner and under the same rules and regulations as now or hereafter may be provided for registering electors for the general election in said county. (1923, c. 216, s. 23; C. S. 1608(r).)

§ 7-284. Count and return of votes; canvass of returns; effect; expense.—The vote cast at said election shall be counted at the close of the polls by the election officers and returned to the clerk of the said board of county commissioners of said county by a member of said election officers on the second day next succeeding the day of said election; and the said board of county commissioners, at their next regular meeting, or at a called meeting, shall tabulate and declare the result of the election, all of which shall be recorded in the minutes of said board of county commissioners, and no other recording and declaring of the result of said election shall be necessary. If a majority of the votes cast at said election is declared in favor of such court, it shall be established, and not otherwise. The expenses of said election shall be paid by the county commissioners out of the county fund. (1923, c. 216, s. 24; C. S. 1608(s).)

§ 7-285. Application of article.—This article shall not apply to any county in which there has been established a court, inferior to the superior court, by whatever name called, by a special act, nor shall this article apply to the following counties: Granville, Henderson, Iredell, New Hanover, Pasquotank, Randolph and Wake; nor

shall it apply to the counties in the seventeenth (17th) and nineteenth (19th) judicial districts, except Buncombe county. (Ex. Sess. 1924, c. 85, s. 2; 1925, c. 9; 1927, c. 103, ss. 1, 2; 1929, c. 159, s. 1; 1931, c. 19; 1937, c. 439.)

Local Modification.—Watauga: 1937, c. 439.

Art. 31. Practice and Procedure.

§ 7-286. Procedure; issuance and return of process.—The rules of procedure, issuing process and filing pleadings shall conform as nearly as may be to the practice in the superior courts. The process shall be returnable directly to the court, and may issue out of the court to any county in the state: Provided, that civil process in cases within the jurisdiction now exercised by justices of the peace shall not run outside of or beyond the county in which such court sits.

Motions for the change of venue or removal of cases from the general county courts to the superior courts of counties other than the one in which the said court sits may be made and acted upon, and the causes for removal shall be the same as prescribed by law for similar motions in the superior courts.

The provisions of the chapters on civil procedure and criminal procedure, and all amendments thereof, shall apply as nearly as may be to the general county courts, and the judges and the clerks of said courts, in all causes pending in said courts, shall have rights, privileges, powers and immunities similar in all respects to those conferred by law on the judges and clerks of the superior courts of the state, and shall be subject to similar duties and liabilities: Provided, that this section shall not extend the jurisdiction of said judges and clerks, nor infringe in any manner upon the jurisdiction of the superior courts, except as provided in articles thirty and thirty-one of this chapter.

All motions and petitions for removal of actions from the general county court to the district court of the United States shall be presented to, be heard and determined by the judge of the general county court, with the right of appeal from any order or ruling of said judge to the superior court. (1923, c. 216, s. 7; 1925, c. 242, s. 2; 1925, c. 250, s. 2; 1933, c. 128, s. 1; C. S. 1608(t).)

§ 7-287. Trial by jury; waiver; deposit for jury fee.—In all civil actions the parties shall be deemed to have waived a jury trial unless demand shall be made therefor in the pleadings of the parties to the action when same are filed. The demand shall be in writing and signed by the party making it, or by his attorney, and accompanied by a deposit of three dollars to insure the payment of the jury tax: Provided, such demand shall not be used to the prejudice of the party making it. Any defendant in a criminal action may demand a trial by jury, in which event such defendant shall not be required to deposit the sum of three dollars. Such jury shall be drawn as herein otherwise provided for. (1923, c. 216, s. 8; Ex. Sess. 1924, c. 85, s. 1; 1937, c. 56; C. S. 1608(u).)

Local Modification.—Duplin: 1937, c. 85.

§ 7-288. Continuance if jury demanded; drawing of jury; list.—If a jury trial is demanded, the judge shall continue the case until a day to be set, and the judge, together with the attorneys for all parties, shall proceed to the office of the register of deeds of the county and cause to be drawn a jury of eighteen men, observing as nearly as may be the rule for drawing a jury for the superior court. The judge shall issue the proper writ to the sheriff of the county commanding him to summon the jurors so drawn to appear at the court on the day set for the trial of the action. It shall be the duty of the register of deeds to prepare a list of jurors for this the general county court identical with the list prepared for the superior court, and the jury shall be drawn out of the box containing such list. Provided, that the Judge of said Court may in his discretion, if and when a sufficient number of cases are at issue in which jury trial has been demanded to warrant such action, cause a jury of not less than eighteen, not more than twenty-four men to be drawn for a certain week of a term, setting such cases for trial during such time, and in such cases the juries shall be drawn in the same manner as now provided for the drawing of juries for the superior court. The proviso shall not apply to the following counties: New Hanover, Caldwell, Henderson, Ashe, Hoke, Lincoln, Wayne, Wilkes, Nash, Edgecombe, Alexander, Rockingham, Duplin, Union, Alleghany, Halifax, Alamance, Clay, Yancey, Dare, Wake, Hertford, Jackson, Mecklenburg, Craven, Vance, Person, Robeson, Johnston, Yadkin, Davidson, Haywood, Pitt, Tyrrell, Hyde, Watauga, Durham, Scotland, Forsyth and Camden. (1923, c. 216, s. 9; 1931, c. 233, s. 2; C. S. 1608(v).)

§ 7-289. Talesmen; challenges.—The judge shall have the right to call in talesmen to serve as jurors according to the practice of the superior court as nearly as the same is applicable, and to direct the sheriff to summon a sufficient number of talesmen to serve during any one week for the proper dispatch of the business of the court. (1923, c. 216, s. 10; C. S. 1608(w).)

§ 7-290. Process; authentication; service; return.—All civil summons in actions begun in the general county court shall be served at least ten days before the return day named therein, and shall be returnable on the first Monday of the month next succeeding the issue thereof, unless the same be issued within less than ten days before the first Monday of the month next succeeding its issuing, in which event it shall be made returnable on the first Monday of the second succeeding month next after the date of the issue thereof; and when the summons shall be issued more than ten days before the first Monday of the month next succeeding its issuing, and shall be executed by the proper officer within less than ten days of the return day named therein, it shall be returned as if executed in proper time, and the case placed on the summons docket and continued to the first Monday of the month next succeeding the return day thereof, at which time it shall be treated in all respects as if that had been the return day named therein. The summons shall run in the name of the state, be signed by the clerk of the court in which the action is brought, and shall be directed to the sheriff or other proper

officer of the county. (1923, c. 216, s. 11; C. S. 1608(x).)

§ 7-291. Pleadings; time for filing.—The complaint shall be filed by the return day named in the summons and the answer, demurrer or other pleadings on the part of the defendant shall be filed within twenty (20) days thereafter: Provided, if a copy of the complaint be served on the defendant at the time of the service of the summons, then the defendant shall have only twenty (20) days from the date of such service to file an answer, demurrer or otherwise plead. If the answer contains a counterclaim against the plaintiff or plaintiffs or any of them, such answer shall be served upon the plaintiff or plaintiffs against whom such counterclaim is pleaded or against the attorney or attorneys of record of such plaintiff or plaintiffs; the plaintiff or plaintiffs against whom such counterclaim shall be pleaded shall have twenty (20) days after the service thereof within which to answer or reply to such counterclaim. If a counterclaim is pleaded against any of the plaintiffs and no copy of the answer containing such counterclaim shall be served as herein provided for, such counterclaim shall be deemed to be denied as fully as if the plaintiff or plaintiffs had filed an answer or reply denying the same. All other replies, if any, shall be filed within twenty (20) days from the filing of the answer. For good cause shown and found by the judge, the judge may extend the time for the filing of any of the pleadings provided for in this article on the part of the plaintiff or on the part of the defendant. (1923, c. 216, s. 12; 1925, c. 250, s. 3; C. S. 1608(y).)

§ 7-292. Criminal appeals to superior court; cases bound over to superior court.—Any person convicted of any offense of which the general county court has final jurisdiction may appeal to the superior court of the county from any judgment or sentence of the court in the same manner as is now provided for appeals from justices of the peace; and any person tried before the general county court for any offense of which said court has not final jurisdiction shall, if probable cause be found, be bound over to the superior court in the same manner as is provided by law in similar cases before a justice of the peace. The judge may, upon proper affidavit, issue criminal warrants returnable before him in or out of term. All persons convicted in said court may be sentenced to the roads, or county farms, or jail, as the judge may determine. (1923, c. 216, s. 15; C. S. 1608(z).)

§ 7-293. Amendments in pleadings and warrants.—The judge shall have power in his discretion to allow amendments in pleadings and warrants, to the same extent as is allowed in the superior courts of the state. (1923, c. 216, s. 16; C. S. 1608(aa).)

§ 7-294. Jury trials, conduct of.—The jury in the general county court shall be a jury of twelve and the trial shall be conducted as nearly as possible as in the superior court. (1923, c. 216, s. 17; C. S. 1608(bb).)

§ 7-295. Appeals to superior court in civil actions; time; record; judgment; appeal to supreme court.—Appeals in civil actions may be taken from the general county court to the superior court of the county in term time for errors assigned in matters of law in the same manner as is now provided for appeals from the superior court to the supreme court except that appellant shall file in duplicate statement of case on appeal, as settled, containing the exceptions and assignments of error, which, together with the original record, shall be transmitted by the clerk of the general county court to the superior court, as the complete record on appeal in said court; that briefs shall not be required to be filed on said appeal, by either party, unless requested by the judge of the superior court; the record on appeal to the superior court shall be docketed before the next term of the superior court ensuing after the case on appeal shall have been settled by the agreement of the parties or by order of the court, and the case shall stand for argument at the next term of the superior court ensuing after the record on appeal shall have been docketed ten days, unless otherwise ordered by the court. The time for taking and perfecting appeals shall be counted from the end of the term of the general county court at which such trial is had. Upon such appeal the superior court may either affirm or modify the judgment of the general county court, or remand the cause for a new trial. From the judgment of the superior court an appeal may be taken to the supreme court as is now provided by law. (1923, c. 216, s. 18; 1933, c. 109; 1937, c. 84; C. S. 1608(cc).)

§ 7-296. Enforcement of judgments; stay of execution, etc.—Orders to stay execution on judgments entered in the general county court shall be the same as in appeals from the superior court to the supreme court. Judgments of the general county court may be enforced by execution issued by the clerk thereof, returnable within twenty days. Transcripts of such judgments may be docketed in the superior court as now provided for judgments of justices of the peace, and the judgment when docketed shall in all respects be a judgment of the superior court in the same manner and to same extent as if rendered by the superior court, and shall be subject to the same statutes of limitations and the statutes relating to the revival of judgments in the superior court and issuing executions thereon. (1923, c. 216, s. 19; C. S. 1608(dd).)

Art. 32. District County Courts.

§ 7-297. May be established in two or more contiguous counties in same judicial district; jurisdiction.—In any two or more contiguous and adjoining counties of any judicial district of this State there may be established, under the general powers and authority contained in articles thirty and thirty-one, of this chapter, except as herein otherwise provided, a court of civil and criminal jurisdiction, maintained pursuant to this sub-chapter and the said articles thirty and thirty-one, not inconsistent herewith, a court of record, to be known as and designated a district county court, and containing all the authority, jurisdiction, rights, powers and duties, compensations and fees, as provided in the articles aforesaid, except as herein otherwise provided. (1931, c. 70.)

§ 7-298. Judge of court; election; term of office; oath of office and salary.—The court shall be presided over by a judge, who may be a licensed attorney at law, and at the time of his election he

shall be a qualified elector in one of the counties composing the said district county court.

The first judge of said court, upon its establishment as hereinafter provided, shall be elected by the several boards of commissioners of the counties establishing the said district courts, each board being entitled to one vote to be cast in accordance with the majority vote of each board, at any joint meeting of said boards of commissioners, as hereinafter provided, within sixty days after the establishment, and he shall hold his office until January first, following the next general election of county officers, and until his successor is elected and qualified. Any vacancy arising in the office of judge of said court shall be filled by the several boards of commissioners of the counties establishing the said district court, in joint meeting assembled, which shall be called by the chairman of the board of commissioners of the county in which such judge resided at the time of his death or removal, or resignation.

At the joint meeting of said boards of commissioners when an election of the judge of said court is made, the said commissioners shall also fix the salary of said judge, which salary together with the salary of the prosecuting attorney hereinafter provided for shall be paid from the costs taxed and collected in the trial of all actions in said court to which costs provided for there shall be added a trial fee of five dollars and if there be a deficiency in the payment of said salaries from said costs as herein provided for, the said deficiency shall be proportionately paid by the several counties composing the said district county court, in proportion as the population of each county shall bear to the whole of the counties creating said court, on the basis of the one thousand nine hundred thirty census.

The judge shall reside in one of the counties of said district; he shall take the oath of office prescribed in section 7-271; hold his terms of court in the county courthouse in each county of his district, and shall not be permitted to practice law during his tenure of office in any of the courts of the State.

His successor shall be nominated and elected by a vote of the qualified electors of the several counties embraced within the jurisdiction of said district at the next general election before the expiration of the term of office and when other county officers are elected, in the same manner, and as provided by law for the nomination and election of judges of the Superior Court, and he shall hold his office for a term of four years beginning January first next following his election, and until his successor is elected and qualified; except, however, in instances of an appointment to fill a vacancy, in which case he shall hold through the unexpired term of his predecessor in office, and until his successor is elected and qualified. (1931, c. 70.)

§ 7-299. Present county courts may be changed to district courts. — In any county where a county court has been heretofore created and now exists under and by virtue of article thirty, of this chapter, where it is desired to change said court from a county court to a district county court, under the provisions of this article, its board of commissioners may, by proper resolution, reciting in brief the reasons therefor, abolish the said county court and establish for said county, in the manner provided in this article, a district county court; and in such event, the judge and solicitor of the said county court shall thereupon be named and elected as judge and solicitor of said district county court until the expiration of the time for which they were elected as officers of the said county court, and until their successors are duly elected and qualified. (1931, c. 70.)

§ 7-300. When court to be held.—The court shall be open for the transaction of business and trial of cases at least once a week in each county in each month in districts composed of four counties, or less, and at least once in every eight weeks in districts composed of more than four counties, which week or the time of holding said court for each of said counties shall be determined and declared by said joint meeting of said commissioners upon recommendation of the bars of the several counties composing said district, or majority of the resident lawyers of said counties, and certified by said commissioners to each superior court clerk of the several counties within the district. (1931, c. 70.)

§ 7-301. Prosecuting attorneys.—There shall be a prosecuting attorney of the said district court, known officially as the prosecuting attorney, and he shall appear for the State and prosecute all criminal actions in said county courts of his district; and for his services he shall be paid such salary as may be fixed by the boards of county commissioners of the several counties composing the district.

The said prosecuting attorney shall be elected by the respective boards of commissioners in the same manner as hereinbefore provided for the election of a judge thereof. He shall hold his office until January first next following the first general election for county officers, and at the said first general election following his election by the said boards of commissioners, and thereafter at each subsequent general election for county officers, he shall be nominated and elected by the duly qualified electors of the counties composing said district, under the general laws governing the nomination and election of district officers, or solicitors of the several judicial districts.

Any vacancy arising in the said office of prosecuting attorney shall be filled by the board of commissioners of the counties composing the district, in the same manner as hereinbefore provided for the election of the judge thereof; and the compensation or salary of the said prosecuting attorney shall be paid by the several counties composing the district in the same proportion, or basis provided for payment of the salary of the judge, and shall be payable monthly out of the funds of the counties composing said district court. If requested to do so by the judge, the prosecuting attorney shall represent the county in prosecuting any appeal of a criminal action from said district court in the Superior Court. (1931, c. 70.)

§ 7-302. Clerks; duties and compensation.—The several clerks of the superior court in the several counties of said district court shall ex-officio be clerk of said district court of each and all terms

held within the respective counties of each, and subject to all the rights, duties and liabilities provided for in sections 7-274 and 7-277. The clerk of said court or any deputy thereof, upon application and the making of proper affidavit, as provided by law, shall have power and authority to issue any criminal warrant or warrants in said court and make the same returnable before the judge thereof, at any time or times designated for the trial of criminal cases. The last sentence shall not apply to the following counties: New Hanover, Caldwell, Henderson, Ashe, Hoke, Lincoln, Wayne, Wilkes, Nash, Edgecombe, Alexander, Rockingham, Duplin, Union, Alleghany, Halifax, Alamance, Clay, Yancey, Dare, Wake, Hertford, Jackson, Mecklenburg, Craven, Vance, Person, Robeson, Johnston, Yadkin, Davidson, Haywood, Pitt, Tyrrell, Hyde, Watauga, Durham, Scotland, Forsyth and Camden. (1931, c. 70, s. 1; c. 233.)

§ 7-303. Sheriffs; duties and compensation.—The several sheriffs of the several counties of said district court, or their duly constituted deputies, shall attend upon each term of this court within their respective counties, and be subject to and possess the same power and authority and additional compensation as authorized under § 7-275. (1931, c. 70.)

§ 7-304. Jurisdiction.—The said county district courts shall have the same criminal and civil jurisdiction as that of the general county court, and as fixed and defined in §§ 7-278 and 7-279. (1931, c. 70.)

§ 7-305. Procedure to establish.—Upon a petition signed by a majority of the resident licensed attorneys at law, of not less than two counties of the State within any one judicial district, and duly verified to that effect, addressed to and filed with the Governor, praying the establishment of a general county district court for any two or more of the counties named in the petition, the Governor shall transmit a copy of the petition to each of the respective boards of county commissioners, and at the same time he shall issue an order to each of said boards directing a joint meeting of the same at the courthouse of one of the said counties at such time and place as he may designate in said order.

The several boards of commissioners, or any two or more of them, if in their judgment the said court shall be established, shall, at such meeting, or at such later meeting within thirty days thereafter to which they may adjourn, pass a resolution reciting the petition for said court, and declaring the same to be established in and for each of the respective counties thus approving and voting for the said resolution.

A majority vote of two or more of the several boards of commissioners participating in the said proceedings for the passage of the said resolution shall be sufficient for the establishment of said court, and it shall thereupon become an established court in and for the counties voting for the resolution; and thereupon a certified copy of the minutes of said meeting, the said petition and resolution, executed by any one of the commissioners present, attested by one member of each of the several boards participating in the said proceedings and voting for said court, shall be transmitted to the clerk of the Superior Court of the several counties participating and adopting the resolution, and also recorded in the minutes of said commissioners' meetings of the several counties composing the district. (1931, c. 70.)

§ 7-306. Practice and procedure.—The practice and procedure of the said county district courts shall be the same as that of the general county court, and as prescribed in §§ 7-286 to 7-296. (1931, c. 70.)

§ 7-307. Abolishing the court.—Whenever in the opinion of the board of commissioners of any county in which a court has been established under the provisions of this article, the conditions prevailing in such county are such as to no longer require the said court, such board of county commissioners may, by proper resolution, reciting in brief the reasons therefor, duly certify the same to the chairman of the board of commissioners of each other county composing, forming and creating the said district court; whereupon the respective boards of commissioners of the several counties embraced in said district court, shall meet at the courthouse of the county in which the judge resides on the third Monday of the month next following the receipt of the certified copy of the resolution aforesaid, or the subsequent and next following Monday first and abolish the said county court for the county having adopted the resolution aforesaid, which shall go into effect as to the county abolishing said court at the end of the term to which the judge has been elected. If, upon the abolition of the said county court, as to the county adopting the resolution aforesaid, as many as two other counties forming, composing and making up the said district court, desire the same continued in full force and effect within their respective counties the said commissioners shall readjust the salary and compensation of the judge and prosecuting attorney of said court on the basis hereinbefore provided to take effect at the end of the term to which the said judge has been elected, and the said county court shall continue in full force and effect within the other counties remaining, forming and composing the same, with no impairment of the rights, powers, duties, and authorities conferred by this article. But said court may, at any time, at a meeting held pursuant to a resolution, certified as aforesaid, subject to the provisions hereinbefore recited, abolish the said court in each, all or any of the counties in the districts; and in such event the Clerk of Court shall transfer all cases pending therein to the Superior Court of his respective county. (1931, c. 70.)

SUBCHAPTER VIII. CIVIL COUNTY COURTS.

Art. 33. With Jurisdiction Not to Exceed $3000.

§ 7-308. Establishment.—An inferior court with civil jurisdiction only as hereinafter provided may be established by the board of county commissioners of any county in this state upon the petition of a majority of the resident practicing attorneys within the county. (1925, c. 135, s. 1.)

§ 7-309. Jurisdiction.—The said court shall have exclusive original jurisdiction in all civil actions, matters, and proceedings, including all proceed-

ings whatever ancillary, provisional and remedial to civil actions founded on contract or tort, wherein the superior court now has exclusive original jurisdiction: Provided, that the sum demanded or the value of the property in controversy shall not exceed three thousand dollars ($3,000).

Said court shall have jurisdiction concurrent with the Superior Court in all actions to try title to land and to prevent trespass thereon and to restrain waste thereof: Provided, the sum demanded or the value of property in controversy shall not exceed three thousand dollars ($3,000).

The said court shall have jurisdiction with the Superior Court in all actions pending in said court to issue and grant temporary restraining orders and injunctions: Provided, that the sum demanded or the value of the property in controversy shall not exceed three thousand dollars ($3,000). (1925, c. 135, s. 2.)

§ 7-310. Juries in such court; drawing jury; challenges.—In the trial of civil actions in said court either the plaintiff at the time of filing the complaint or the defendant at the time of filing the answer may in his pleadings demand and have a jury trial as provided in the trial of causes in the Superior Court; failure to demand a jury trial at the time herein provided shall be deemed a waiver of the right to a trial by jury. The judge of said court, when in his opinion the ends of justice would be best served by submitting the issues to the jury, may have a jury called of his own motion and submit to it such issues as he may deem material.

Jurors shall receive the same compensation as is now provided by law for jurors serving in the Superior Court, to be paid out of the treasury of said county on presentation of a ticket duly issued by the clerk of said court; the clerk of said court shall tax the sum of three dollars as cost of jury in all jury cases and the same shall be collected by said clerks and paid into the county treasury of said county.

The commissioners of said county at their regular meeting on the first Monday of April, in the year nineteen hundred and twenty-five, and each two years thereafter, shall cause names of their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose which must have two divisions marked "No. 1" and "No. 2," respectively, and two locks to same, the keys of one to be kept by the sheriff of said county and the other to be kept by the chairman of the board of commissioners of said county, the box to be kept by the clerk of said board, which box shall be marked "County Court." The names in this box shall be drawn for juries acting as jurors in the said county court and when a jury is demanded in said court the sheriff shall cause to be drawn from said box out of partition "No. 1," by a child not more than ten years of age fifteen scrolls and the scrolls so drawn to make the jury shall be put into partition marked "No. 2," and in all other respects the jury shall be drawn as juries are drawn in the Superior Court. The jurors of this court shall have the same qualifications as provided for jurors in the trial of causes in the Superior Court. The said jurors shall be summoned to attend under the mandate from the clerk of said county court directed to the sheriff of said county: Provided, that for sufficient cause the judge of this court may issue an order to the board of county commissioners that no jury be drawn for such term or terms of this court, as may seem best to him.

The challenges allowed in the trial of causes in said county court shall be the same in number and for the same causes as are allowed in the trial of causes in the Superior Court; all jurors drawn from the box shall be regular jurors. The said court shall have the same power to summon tales jurors as the Superior Court now has and when a jury trial is had the jury shall be twelve in number. (1925, c. 135, s. 3.)

§ 7-311. Terms; docket.—The judge and clerk of said county court are hereby authorized to fix the terms of said court and to make up the docket of said court upon consulting with the bar association of said county. (1925, c. 135, s. 4.)

§ 7-312. Witnesses; how summoned. — Witnesses shall be summoned by subpœna issued by the clerk of said court as now provided for the summoning of witnesses for the trial of causes in the superior court and shall be allowed the same compensation to be taxed as cost by the clerk of this court. (1925, c. 135, s. 5.)

§ 7-313. Appeals.—Appeals may be taken by either the plaintiff or the defendant from the said county court to the Superior Court of said county in term time for errors assigned in matters of law in the same manner and under the same requirements as are now provided by law for appeals from the Superior Court to the Supreme Court, with the exception that the record may be typewritten instead of printed and only one copy thereof shall be required. The time for taking and perfecting the appeals shall be counted from the end of the term. Upon appeals from said county court the Superior Court may either affirm, modify and affirm the judgment of said county court or remand the cause to the county court for a new trial.

The bonds to stay executions shall be the same as now required for appeals from the Superior Court to the Supreme Court. The judgment of the Superior Court shall be certified to said county court; final judgment may be rendered unless there is an appeal to the Supreme Court. In case of appeal to the Supreme Court upon filing of the certificate from the Supreme Court to the Superior Court said certificate shall be transmitted by the clerk thereof to the clerk of this court. (1925, c. 135, s. 6.)

§ 7-314. How actions commenced. — All actions shall be commenced in said court by summons running in the name of the State and issued by the clerk of said county court and shall be returnable as is provided by law for summons in the Superior Court. The plaintiff shall file and retain complaint on or before the return day of such summons; the defendant shall file a written answer or demurrer and shall make his motions in writing during the term to which the summons is returnable and the case shall stand for trial at the next succeeding term. (1925, c. 135, s. 7.)

§ 7-315. Judgments.—The judgments of said

court may be enforced by execution issued by the clerk thereof, returnable within twenty days. Transcripts of said judgments shall be docketed in the Superior Court of said county and become judgments of the Superior Court as now provided for executions and transcripts of judgments from the courts of justices of the peace with the same limitations as are now provided for judgments of justices of the peace. (1925, c. 135, s. 8.)

§ 7-316. Process of the court. — The process of said court while exercising the jurisdiction of a justice of the peace shall not run outside of said county. In all other cases these processes shall run as processes issue out of the Superior Court. (1925, c. 135, s. 9.)

§ 7-317. Removal of cause before justice.— When, upon affidavit made before entering upon the trial of any cause before any justice of the peace in said county, it shall appear proper for said cause to be removed for trial to some other justice of the peace, as is now provided by law, said cause may be removed for trial to the said county court. (1925, c. 135, s. 10.)

Local Modification.—Mecklenburg: 1933, c. 279.

§ 7-318. Rules of practice.—The rules of practice as prescribed by law for the superior court for the trial of all causes shall apply in this court, supplemented, however, by such rules and regulations as may be prescribed by the judge of this court relating to causes pending therein. (1925, c. 135, s. 11.)

§ 7-319. Bonds for costs; duties of clerk.— The statutes about bonds for costs and about suits without bonds for costs that now apply to the Superior Court shall also apply to this court. Wherever the statute provides for a thing to be done by the clerk of the Superior Court or by the judge of the Superior Court or by either, the same thing shall be performed by the clerk of said county court or by the judge of said county court in causes in said county court; this provision shall apply especially to all provisional remedies as now provided by statute except special proceedings. (1925, c. 135, s. 12.)

§ 7-320. Costs.—In all causes removed to or brought into the said county court the costs shall be the same as in the Superior Court. All cost shall be paid to or collected by the clerk of said county court in the same manner as in the Superior Court and be paid by the said clerk of said county court into the treasury of said county: Provided, that for the service of process the fees shall be paid to the officer serving the process. The officers shall perform all the duties in said county court as provided in the Superior Court and receive therefor the same fees as allowed for the same service performed in the Superior Court. (1925, c. 135, s. 13.)

§ 7-321. Appointment and compensation of judge; substitute; vacancies.—After the ratification of this article and the establishment of such court by any county, it shall be the duty of the clerk of the board of commissioners of such county to immediately notify the Governor who shall appoint a judge to preside over such court, and each fourth year thereafter it shall be the duty of the Governor to appoint the judge of each such county court who shall preside over said court, who shall be learned in the law, of good moral character, and who shall at the time of his appointment and qualification be an elector in and for said county; that the said judge shall hold office for a term of four years and until his successor is appointed and qualified. And before entering upon the duties of his office the said judge shall take and subscribe an oath of office as is now provided by law for the judges of the Superior Court and file the same with the clerk of the Superior Court of said county; and the said clerk shall record the same. Said judge shall receive a salary of one hundred dollars ($100) a week for each week that he is engaged in holding court, payable in equal weekly installments out of the treasury of said county.

The said judge shall not by reason of his office be prohibited from practicing the profession of attorney at law in other courts of this State except as to matters pending in connection with or growing out of said county court.

When the said judge is unable to preside over said court on account of sickness or absence for other cause he shall appoint some other person learned in the law who shall take the same oath and possess the same qualifications as provided for the judge, to act as a substitute judge with all the powers and duties of the judge, and the compensation of said substitute judge shall be paid by the said judge.

Any vacancy occurring in the office of judge shall be filled by the Governor of the State. (1925, c. 135, s. 14.)

§ 7-322. Compensation of clerk; vacancy; files, books, stationery, etc.—The clerk of the superior court of said county by himself or his deputies shall ex officio perform the duties of clerk of said county court and shall be paid a sum not less than one thousand dollars ($1,000) annually, the amount to be determined by the board of commissioners of said county and paid out of the treasury of said county as full compensation for his duties as clerk of said county court. Upon the failure of the clerk of the Superior Court of said county to qualify under this article or in case of any vacancy in the office of clerk of the said county court such vacancy shall be filled by the board of commissioners of said county. The necessary files, books, stationery and other material of that nature shall be furnished to the clerk of said county court by said county. (1925, c. 135, s. 15.)

§ 7-323. Stenographer; fees.—There shall be an official stenographer of this court whose duty shall be the same as the official stenographer of the Superior Court of said county. Said stenographer's fees shall be the same in amount as the fees of the official stenographer of the superior court of said county and shall be taxed as costs. (1925, c. 135, s. 16.)

§ 7-324. Procedure. — The procedure of said county court, except that hereinbefore provided, shall follow the rules and principles laid down in the chapter on civil procedure and amendments thereto in so far as the same may be adapted to the needs and requirements of the said county court. (1925, c. 135, s. 17.)

§ 7-325. Records.—There shall be dockets, files, and records kept of all proceedings in the said county court, conforming as nearly as possible to the records of the superior court. (1925, c. 135, s. 18.)

§ 7-326. To be court of record.—The said county court shall be a court of record and the clerk thereof shall be provided with a seal of said court. (1925, c. 135, s. 19.)

§ 7-327. Pending cases.—All cases pending in the superior court of said county and in the courts of the justices of the peace of said county on the date the court is established shall be tried in the courts wherein they are pending. (1925, c. 135, s. 20.)

§ 7-328. First session.—The presiding judge of said county court shall hold the first session of said county court within thirty days after his appointment by the Governor, and other sessions shall be held as provided in this article. (1925, c. 135, s. 21.)

§ 7-329. Discontinuance of court.—The board of commissioners of any county may discontinue such court on written petition signed by the majority of the practicing attorneys of such county. (1925, c. 135, s. 22.)

§ 7-330. Existing laws not repealed.—This article shall not be construed to repeal chapter seven, nor shall it repeal or affect any act establishing any inferior court now existing or that may hereafter be created under the existing law but shall be construed to be supplemental to the existing law and a method by which county courts may be established. (1925, c. 135, s. 23.)

§ 7-331. Article not applicable to certain counties.—The provisions of this article shall not apply to the following counties: Burke, Hyde, Avery, Alexander, Clay, Catawba, Mitchell, Madison, Graham, Swain, Henderson, Duplin, Jackson, Davie, Cherokee, Stokes, Lincoln, Wilkes, Johnston, Person, Pamlico, Watauga, Haywood, Vance, Robeson, Craven, Caldwell, Hoke, Yancey, Anson, Pender, Macon, Onslow, Bladen, Alleghany and Scotland: Provided, this article shall not apply to any of the counties of the present Sixteenth and Seventeenth Judicial Districts. (1925, c. 135, s. 24.)

Art. 34. With Jurisdiction Not to Exceed $5000.

§ 7-332. Establishment.—In addition to the plan for a general county court provided for in articles 30 and 31, of this chapter, there may be established by the board of county commissioners in any county, a court of civil jurisdiction, which shall be a court of record and which shall be maintained pursuant to this article, and which court shall be called the county civil court, and shall have civil jurisdiction as provided in this article. (1925, c. 167, s. 1.)

§ 7-333. Qualification, election, and term of judge; office.—The county civil court shall be presided over by a judge, who may be an attorney at law, and shall reside and be a qualified elector in the county during his term of office, and shall be permitted to practice law during his term of office. The first judge of the county civil court shall be elected by the board of county commissioners at the time of the establishment of said court, and he shall hold his office until January first, following the next general election of county officers within said county, and until his successor is elected and qualified, and if a vacancy occurs in the office of judge, it shall be filled by the election of a successor for the unexpired term by the board of county commissioners. Each succeeding judge shall be elected by a vote of the qualified electors of the county at the next general election before the expiration of the term of office in the same manner as other county officers are nominated and elected, and shall hold office for a term of four years, beginning January first, following his election and until his successor is elected and qualified, unless said court is abolished. The judge shall qualify by taking and subscribing an oath of office as is now provided by law for a judge of the Superior Court, which shall be filed with the clerk. The salary of said judge shall be fixed by the board of commissioners of the county, which shall not be decreased during the term of office; to be paid in monthly installments by the county. The judge shall be provided by the county board of commissioners with an office and a suitable and convenient room for holding court at the county seat. (1925, c. 167, s. 2.)

§ 7-334. Substitute judge.—When the judge of said county civil court is unable to hold court on account of sickness, absence, disqualification, or other cause, he shall appoint some other person learned in the law, who shall take the same oath and possess the same qualifications as provided for a judge, to act as substitute judge, who shall be invested with all the powers and duties of the judge, and his compensation during his appointment shall be paid by the said judge. (1925, c. 167, s. 3.)

§ 7-335. Terms of court; calendar.—The court shall open for the transaction of business and trial of cases on the first Monday of each month and continue until the matters of the court are disposed of, and it shall be the duty of the judge to prepare a calendar of cases for trial, on which jury cases shall have precedence. (1925, c. 167, s. 4.)

§ 7-336. Clerk of court.—The clerk of the superior court of the county shall be ex officio clerk of the court, and in addition to the salary or fees paid him as clerk of the Superior Court, he shall be paid such additional compensation as the county commissioners of the county may fix to be paid monthly out of the county funds, and the board of county commissioners be and are hereby authorized and empowered to provide for salary or fees for such additional deputies as he may need. The said clerk shall be liable upon his official bond for the discharge of his duties and caring for funds paid to him as clerk, to the same extent as he is bound as clerk of the Superior Court. (1925, c. 167, s. 5.)

§ 7-337. Sheriff.—The sheriff of the county, or his deputies, appointed, shall attend upon the terms of this court in the same manner and with the same power and authority as he does and has in attendance upon the superior court of the county. The county commissioners of the county are authorized to make said sheriff such additional allowances as they may fix for such services, in

addition to his salary or fees fixed by law. (1925, c. 167, s. 6.)

§ 7-338. Records; blanks, forms, books, stationery.—The clerk of the court shall keep separate records for the use of the said court to be furnished by the county commissioners, and they shall also provide such necessary blanks, forms, books, and stationery as may be needed by the court, and the clerk shall keep the same in the office of the clerk of the Superior Court. (1925, c. 167, s. 7.)

§ 7-339. Juries.—The jury in said court shall be a jury of twelve and the trial shall be conducted as nearly as possible as in the Superior Court. In all actions the parties shall be deemed to have waived a jury trial, unless demand shall be made therefor, as hereinafter provided, in writing. The plaintiff in filing the complaint, or the defendant at the time of filing answer, may in the pleadings demand a jury trial, or in cases transferred from the Superior Court to the said court, either party may demand jury trial, in writing, signed by the party making it or his attorney, which must be made at the time of such transfer. Any demand for a jury trial shall be accompanied by a deposit of five dollars ($5.00), to insure the payment of the jury tax, except in cases brought in forma pauperis, provided such demand shall not be used to the prejudice of the party making it. (1925, c. 167, s. 8.)

§ 7-340. Jury list; summons.—It shall be the duty of the board of county commissioners, upon the establishment of a court as herein provided, and every two years thereafter, to prepare a list of jurors, identical with the list prepared for the Superior Court and subject to the same rules and regulations, and mark said jury box as the county civil court box, from which the jury shall be drawn. The judge of the court shall issue the proper writ to the sheriff of the county to summons the jurors for the court in the same manner as juries are ordered and drawn in the Superior Court. (1925, c. 167, s. 9.)

§ 7-341. Talesmen.—The judge shall have the right to call in talesmen to serve as jurors, according to the practice of the superior court, and to direct the sheriff to summons a sufficient number of talesmen to serve during any one week for the proper dispatch of the business of the court. (1925, c. 167, s. 10.)

§ 7-342. Procedure, process, pleadings, etc.—The procedure, practice, processes, pleadings and procuring evidence and judgments shall conform as near as may be to the courts having concurrent jurisdiction with this court. (1925, c. 167, s. 11.)

§ 7-343. Appeals.—Appeals in all actions may be taken from the court to the Superior Court of the county in term time for errors assigned in matters of law in the same manner as is now provided for appeals from the Superior Court to the Supreme Court, with the exception that the record may be typewritten instead of printed, and only two copies shall be required; one for the court and the other for the opposing counsel. The time for taking and prosecuting appeals shall be counted from the end of the calendar month of the court at which such trial is had. It shall be the duty of any judge of the Superior Court holding the courts in any county, where a court is established under the provisions of this article, to allot sufficient and adequate time during each regular term of the Superior Court held in such county for the hearing of appeals from the county civil court of such county. Upon such appeal the Superior Court may either affirm or modify and affirm the judgment of the county civil court or remand the cause for a new trial. From the judgment of the Superior Court an appeal may be taken to the Supreme Court, as is now provided by law. Orders to stay execution on judgments entered in the court shall be the same as in appeals from the Superior Court to the Supreme Court, and judgments of said court may be enforced by execution by the clerk thereof, returnable within twenty days, and transcripts of such judgments may be docketed in the superior court as now provided for judgments of justices of the peace, and when docketed shall, in all respects, be judgments in the superior court in the same manner and to the same extent as if rendered by the superior court. (1925, c. 167, s. 12.)

§ 7-344. Jurisdiction.—The county civil court shall have jurisdiction only in civil matters, and as follows:

(1) Jurisdiction concurrent with that of the justices of the peace of the county;

(2) Jurisdiction concurrent with the Superior Court in all actions founded on contract wherein the amount demanded shall not exceed the sum of five thousand dollars ($5,000), exclusive of interest and cost;

(3) Jurisdiction concurrent with the Superior Court in all actions not founded upon contract; wherein the amount demanded shall not exceed the sum of five thousand dollars ($5,000), exclusive of interest and cost;

(4) Jurisdiction concurrent with the Superior Court in all actions to try title to lands and to prevent trespass thereon and to restrain waste thereof;

(5) Jurisdiction concurrent with the Superior Court in all actions pending in said court to issue and grant temporary and permanent restraining orders and injunctions. (1925, c. 167, s. 13.)

§ 7-345. Stenographer; fees.—There shall be an official stenographer of the court whose duties and fees shall be the same and taxed as those of the official stenographer of the superior court. (1925, c. 167, s. 14.)

§ 7-346. Disqualification of judge.—Where the judge is disqualified to try any case, it shall be removed for trial to the superior court of the county, in which the court is located or ore tenus to the substitute judge. (1925, c. 167, s. 15.)

§ 7-347. Pending cases, transfer.—By consent of plaintiff and defendant any case, within the jurisdiction of the court, pending in the superior court may be transferred to the docket of the county civil court, and there tried. (1925, c. 167, s. 16.)

§ 7-348. Abolishing court.—This court may be abolished by resolution of the board of county commissioners of any county for such county by giving written notice of such intention six months

prior to the end of the term of any presiding judge thereof, to become effective at the end of such term of office; and, in case of the abolition of the court, cases then pending shall be transferred to the Superior Court. (1925, c. 167, s. 17.)

§ 7-349. Existing laws not repealed.—This article shall not be construed to repeal any existing laws by which a county court may be created or to effect or repeal any court now or hereafter created under existing laws and shall only be construed to be an additional method by which a county court may be established. (1925, c. 167, s. 18.)

§ 7-350. Article inapplicable to certain counties.—This article shall not apply to the counties of Bladen, Jones, Bertie, Caldwell, Craven, Columbus, Gaston, Henderson, Mitchell, Vance. (1925, c. 167, s. 19.)

Art. 35. With Jurisdiction Not to Exceed $1500.

§ 7-351. Establishment.—In addition to the plans now provided by law for the establishment of courts inferior to the superior court, there may be established by resolution of a majority of the members of the board of county commissioners of any county in the state a court of civil jurisdiction, which shall be a court of record, shall be called ..... County Civil Court and shall have civil jurisdiction as provided in this article. (1937, c. 437, s. 1.)

Local Modification.—Caswell, Wayne: 1937, c. 437, s. 30.

§ 7-352. Qualification of judge.—The county civil court shall be presided over by a judge, who may be an attorney at law, who shall at the time of appointment and qualification be an elector in and for said county, and he shall not by reason of his term of office be prohibited from practicing the profession of attorney at law in other courts except as to matters pending in connection with or growing out of said county civil court. (1937, c. 437, s. 2.)

§ 7-353. Appointment of judge; vacancies; substitute judge.—After the ratification of this article and the establishment of such court by any county, it shall be the duty of the clerk of the board of commissioners of such county to immediately notify the governor of the state, who shall appoint a judge to preside over such court, and each second year thereafter it shall be the duty of the governor of the state to appoint the judge of each such county civil court, who shall preside over said court; the said judge shall hold office for a term of two years and until his successor is appointed and qualified. Any vacancy occurring in the office of judge shall be filled by the governor of the state.

When the judge of said county civil court is unable to hold court on account of sickness, absence, disqualification or other cause, the governor of the state shall appoint some other person, who shall take the same oath and possess the same qualifications as provided for a judge, to act as substitute judge, who shall be invested with all the powers and duties of the judge. At the time of fixing the salary for the judge, the board of county commissioners shall fix a per diem compensation for the substitute judge which shall be paid out of the salary fixed for the judge. (1937, c. 437, s. 3.)

§ 7-354. Oath of judge.—Before entering upon the duties of his office, the said judge shall take and subscribe an oath of office as is now provided by law for the judges of the superior court, and file the same with the clerk of the superior court of said county; and said clerk shall record the same. (1937, c. 437, s. 4.)

§ 7-355. Salary of judge.—The salary of said judge shall be fixed by the board of commissioners of the county, shall not be decreased during the term of office, and shall be paid in monthly installments out of the funds of the county. The judge shall be provided by the county board of commissioners with a suitable and convenient room for holding court at the county-seat. (1937, c. 437, s. 5.)

§ 7-356. Disqualification of judge.—Where the judge is disqualified by reason of interest in any case, it shall be removed for trial to the superior court of the county. (1937, c. 437, s. 6.)

§ 7-357. Clerk of court.—The clerk of the superior court shall be ex officio clerk of the county civil court established under the provisions of this article, and he shall have as nearly as possible the same duties, powers and responsibilities with reference to the county civil court as he has in his capacity as clerk of the superior court. The said clerk shall be liable upon his official bond for the discharge of his duties and caring for funds paid to him as clerk of the county civil court to the same extent as he is bound as clerk of superior court. In addition to the salary or fees paid him as clerk of superior court, the clerk of the county civil court shall be paid such additional reasonable compensation as the board of county commissioners may fix; and the board of county commissioners are hereby authorized and empowered to provide the salary of such additional deputy or deputies as he may need. (1937, c. 437, s. 7.)

§ 7-358. Oath of clerks.—The clerks of the county civil court, before entering on the duties of their office, shall take and subscribe, before some officer authorized by law to administer an oath, the oath required under general law, and in addition thereto shall take and subscribe to an oath to perform faithfully all the duties required of them under this article and file such oaths with the register of deeds for the county. (1937, c. 437, s. 8.)

§ 7-359. Appointment and removal of deputies.—Each clerk of the county civil court shall have the authority to appoint deputy clerks and the authority to revoke such appointments at will. He shall make a record of each appointment and furnish a transcript of such record to the register of deeds, who shall record the same in the record of deeds and make a cross-index thereof. When the appointment of any deputy clerk is revoked, the clerk shall write on the margin of the records of such appointment the word "revoked" and the date of revocation, and sign his name thereto. (1937, c. 437, s. 9.)

§ 7-360. Oath and power of deputies.—If any deputy clerk shall be appointed as provided in this article, he shall take and subscribe to the oaths prescribed for clerks. Each deputy clerk appointed as herein provided shall have as nearly

as possible the same powers and duties, with reference to the county civil court, as a deputy clerk of the superior court has with reference to the superior court. (1937, c. 437, s. 10.)

§ 7-361. Sheriff.—The sheriff of the county, or his deputies appointed, shall attend upon this court in the same manner and with the same power and authority as he does and has in attendance upon the superior court of the county. The board of county commissioners of the county are authorized to make said sheriff such additional allowances as they may deem necessary and proper for such services, in addition to his salary or fees now fixed by law. (1937, c. 437, s. 11.)

§ 7-362. Stenographer.—The board of county commissioners shall appoint an official stenographer of the court, whose duties shall be the same as those of the official stenographer of the superior court, and the compensation shall be fixed and paid by the board of county commissioners. (1937, c. 437, s. 12.)

§ 7-363. Jury trial.—In the trial of actions in said court any party is entitled to the right of trial by jury as is provided in the trial of causes in the superior court, unless said right of trial by jury shall be waived as hereinafter provided. (1937, c. 437, s. 13.)

§ 7-364. Waiver of jury trial; jurisdiction concurrent with superior court.—In those cases in which written pleadings are required to be filed, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the filing of the complaint or petition the plaintiff, in writing, demands a jury trial; or, at the time of the filing of the answer or other pleading which raises an issue of fact, the defendant or other party filing such pleading demands, in writing, a jury trial. (1937, c. 437, s. 13(a).)

§ 7-365. Waiver of jury trial; jurisdiction concurrent with justice of peace.—In those cases in which no written pleadings are required, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the issuance of summons the plaintiff or petitioner, in writing, demands a jury trial; or the defendant, at any time before the commencement of the trial, in writing, demands a jury trial. (1937, c. 437, s. 13(b).)

§ 7-366. Jury trial in cases instituted in superior court or before magistrate.—In those cases which were or may hereafter be instituted before a justice of the peace and removed or appealed to this court, and in those cases which were or may hereafter be instituted in superior court and removed to this court, a jury trial will be conclusively presumed to have been expressly waived unless the party desiring a trial by jury shall make a demand therefor, in writing, at any time before the case is called for trial; in which event the number of the jury shall be as herein elsewhere provided. (1937, c. 437, s. 13(c).)

§ 7-367. Jury of six; demand and deposit for jury of twelve.—The jury of said court shall be a jury of six unless, at any time before the calling of the cause for trial, either party, who has not waived the right to trial by jury by failing to demand a jury trial in apt time as provided herein, or otherwise, demands a trial by a jury of twelve, in which event a jury of twelve shall be impaneled: Provided, that in those cases in which a jury of twelve is demanded the party shall, at the time of making the demand, pay to the clerk of said court a deposit of five dollars to insure the payment of the jury tax: Provided further, that where a party making such demand for a jury of twelve makes affidavit and satisfies the judge or clerk of said court that he is unable to make the deposit, such party shall not be required to make the same. The deposit for jury of twelve shall be returned to the party making it when the jury tax is paid by the losing party against whom the costs are taxed. (1937, c. 437, s. 13(d).)

§ 7-368. Judge may impanel jury on own motion.—The judge of said court, when in his opinion the ends of justice would be best served by submitting an issue or issues to the jury, may call a jury of his own motion and submit to it such issue or issues as he may deem material. (1937, c. 437, s. 13(e).)

§ 7-369. Drawing juries; summons of jurors; pay of jurors.—The regular jurors shall be drawn from the superior court jury box; the drawing and summoning of said jurors shall be in the same manner as jurors are drawn and summoned for the superior court: Provided, however, only twelve jurors shall be drawn and summoned for any one week of court unless the judge specifies that a larger number shall be drawn. The judge of each county civil court, at least thirty days in advance, shall notify the chairman of the board of county commissioners when a jury will be needed.

Jurors shall receive the same compensation as is provided by law for jurors serving in the superior court, to be paid out of the treasury of said county on presentation of a ticket duly issued by the clerk of said court. (1937, c. 437, s. 14.)

§ 7-370. Talesmen.—The judge shall have the right to call in talesmen to serve as jurors, according to the practice of the superior court, and to direct the sheriff to summon a sufficient number of talesmen to serve during any one week or a portion thereof for the proper dispatch of the business of the court. (1937, c. 437, s. 15.)

§ 7-371. When court opens; terms of court.—The county civil courts shall be open for the transaction of business within their jurisdiction whenever matters before the court require attention, except for the trial of issues of fact requiring a jury and the trial of contested causes wherein the county civil court is exercising jurisdiction concurrent with that of the superior court, which shall be heard in term time.

The judge of the county civil court is hereby authorized to fix the terms of said court upon consulting with the clerk of the court and the members of the bar of the county. (1937, c. 437, s. 16.)

§ 7-372. Jurisdiction.—The county civil court shall have jurisdiction only in civil matters and as follows:

(1) Jurisdiction concurrent with that of the justices of the peace of the county;

(2) Jurisdiction concurrent with the superior court in all actions founded on contract wherein

the amount demanded shall not exceed the sum of one thousand five hundred dollars, exclusive of interest and costs;

(3) Jurisdiction concurrent with the superior court in all actions not founded on contract wherein the amount demanded shall not exceed the sum of one thousand five hundred dollars, exclusive of interests and costs;

(4) Jurisdiction concurrent with the superior court in all actions to try title to lands, to prevent trespass thereon, and to restrain waste thereof wherein the value of the land does not exceed the sum of one thousand five hundred dollars;

(5) Jurisdiction concurrent with the superior court in all actions and proceedings for divorce and alimony, or either, and to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper. (1937, c. 437, s. 17.)

§ 7-373. Appeals from justice of the peace.—In all cases where there is an appeal from a justice of the peace of a county wherein a county civil court has been established under the provisions of this article, such appeal shall be first heard de novo in the county civil court in the manner provided herein for hearing causes within the jurisdiction of a justice of the peace originating in the said county civil court. Said appeals shall be docketed in the county civil court within the same time limit and in the same manner as such appeals are now required to be docketed in the superior court. (1937, c. 437, s. 18.)

§ 7-374. Removal of cause before justice of peace.—When, upon affidavit made before entering upon the trial of any cause before any justice of the peace of said county, it shall appear proper for said cause to be removed for trial to some other justice of the peace, as is now provided by law, said cause shall be removed for trial to the said county civil court. (1937, c. 437, s. 19.)

§ 7-375. Pending cases, transfer.—By written consent of plaintiff and defendant filed with the clerk of superior court, any case within the jurisdiction of the county civil court, now or hereafter pending in the superior court, may be transferred to the docket of the county civil court and there tried; if a jury trial is desired, it shall be expressed in the agreement to transfer the case; otherwise, the right to trial by jury shall be conclusively presumed to have been expressly waived. (1937, c. 437, s. 20.)

§ 7-376. Records; blanks, forms, books, stationery.—The clerk of the county civil court shall keep separate records for use of the said court to be furnished by the county commissioners, and they shall also provide such necessary blanks, forms, books, and stationery and office equipment as may be needed by the court; the clerk shall keep the same in the office of the clerk of such court. (1937, c. 437, s. 21.)

§ 7-377. Processes; pleadings; procedure, etc.—When the county civil court is exercising jurisdiction concurrent with that of the superior court, the rules of processes, pleadings, procedure, practice, and procuring evidence and judgment shall conform as nearly as possible to those of the superior court.

When the county civil court is exercising jurisdiction concurrent with that of justices of the peace, actions shall be commenced in the county civil court by summons issued and signed by the clerk or deputy; and orders to seize property in claim and delivery proceedings, warrants of attachment and subpoena may be issued by the clerk or deputy and the other rules of processes, pleadings, procedure, practice, and procuring evidence and judgments shall conform as nearly as possible to those of the courts of the justices of the peace of the county. (1937, c. 437, s. 22.)

§ 7-378. Appeal to superior court; time for perfecting appeal; record on appeal; briefs; judgment; appeal to supreme court.—Appeals in actions may be taken from the county civil court within ten days from date of rendition of judgment to the superior court of the county in term time, for errors assigned in matters of law or legal inference, in the same manner as is provided for appeals from the superior court to the supreme court, except as follows:

(1) The appellant shall cause a copy of the statement of case on appeal to be served on the respondent within thirty days from the entry of the appeal taken, and the respondent, within fifteen days after such service, shall return the copy with his approval or specific amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved: Provided, that the judge trying the case shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counter statement of case.

(2) The appellant shall file one typewritten copy of the statement of case on appeal, as settled, containing the exceptions and assignments of error, which, together with the original record, shall be transmitted by the clerk of the county civil court to the superior court as the complete record on appeal in said court.

(3) The record in the case on appeal to the superior court must be docketed in the superior court within ten days after the date of settling the case on appeal. If the appellant shall fail to perfect his appeal within the prescribed time, the appellee may file with the clerk of superior court a certificate of the clerk of court from which the appeal comes showing the names of the parties thereto, the time when the judgment and appeal were taken, the name of the appellant and the date of the settling of case on appeal, if any has been settled, with his motion to docket and dismiss said appeal at appellant's cost, which motion shall be allowed at the first regular term or any succeeding regular term of the superior court.

(4) Appellant shall file one typewritten brief with the clerk of superior court, and shall immediately mail or deliver to appellee's counsel a carbon typewritten copy thereof. If appellant's brief has not been filed with the clerk of superior court, and no copy has been delivered to appellee's counsel within three weeks from the date of settling the case on appeal, the appeal will be dismissed on motion of appellee at the next regular term or any succeeding regular term of the superior court, unless for good cause shown the court shall give appellant further time to file his brief.

(5) Appellee shall file one typewritten brief and a carbon copy thereof with the clerk of superior court within five weeks from the date of settling the case on appeal; the copy of same will be furnished counsel for appellant by the clerk of superior court, on application. On failure of the appellee to file his brief by the time required, the case will be heard and determined at the next regular term or any succeeding regular term of the superior court without argument from appellee, unless for good cause shown the court shall give appellee further time to file his brief.

(6) It shall be the duty of any judge of the superior court holding court in any county where a court is established under the provisions of this article, to allot sufficient and adequate time during each regular term of the superior court held in such county for the hearing of appeals from the county civil court of such county: Provided, no such appeal shall be heard until five days has expired since the filing of appellee's brief or since the time appellee's brief should have been filed.

(7) Upon such appeal, the superior court may either affirm or modify the judgment of the county civil court or remand the cause for a new trial.

(8) From the judgment of the superior court an appeal may be taken to the supreme court as is now provided by law. (1937, c. 437, s. 23.)

§ 7-379. Stay of execution; enforcement of judgments, etc.—Orders to stay execution on judgments entered in the county civil court shall be the same as in appeals from the superior court to the supreme court.

Judgments of the county civil court shall be docketed in the judgment docket of the superior court as is provided for judgments of the superior court, and the judgment when docketed shall in all respects be a judgment of the superior court in the same manner and to the same extent as if rendered by the superior court, and shall be subject to the same statute of limitations and the statutes relating to the revival of judgments in the superior court and issuing executions thereon. (1937, c. 437, s. 24.)

§ 7-380. Court seal.—The county civil court shall have a seal with the impression "..... County Civil Court," which shall be used in attestation of all summons, other processes, acts, or judgments of said court whenever required, and in the same manner and in the same effect as the seal of other courts of record in the state of North Carolina. (1937, c. 437, s. 25.)

§ 7-381. Costs and fees.—There shall be taxed in the county civil court the same costs and fees for services of the officers thereof as provided for the court having concurrent jurisdiction; such costs and fees shall be taxed and collected by the clerk and paid over monthly to the treasurer of the county as county funds to be dealt with by the commissioners. (1937, c. 437, s. 26.)

§ 7-382. Abolishing court.—This court may be abolished by resolution of a majority of the board of county commissioners of any county for such county by giving written notice of such intention six months prior to the end of the term of any presiding judge thereof, to become effective at the end of such term of office; and in case of the abolition of the court, cases then pending shall be transferred to the superior court and there tried. (1937, c. 437, s. 27.)

§ 7-383. Existing laws not repealed.—This article shall not be construed to repeal or modify any existing laws by which a county court may be created or to affect or repeal any court now or hereafter created under existing laws, and shall only be construed to be an additional method by which a county court may be established. (1937, c. 437, s. 28.)

SUBCHAPTER IX. COUNTY CRIMINAL COURTS.

Art. 36. County Criminal Courts.

§ 7-384. Counties authorized to establish county criminal courts.—In each county in this State there may be established a court of criminal jurisdiction, which shall be a court of record, and it shall be maintained pursuant to the provisions of this article, and said court shall be called the county criminal court, and shall have jurisdiction over the entire county in which said court shall be established. (1931, c. 89, s. 1.)

§ 7-385. Established by resolution of county commissioners.—If, in the opinion of the board of commissioners of any county, the public interest will be best promoted by so doing, they may establish a County Court under the provisions of this article, by resolution which shall in brief recite the reasons for the establishment thereof, and further recite that in the opinion of the board of commissioners it is not necessary that an election be called for the establishment of said court, as herein provided, and upon the adoption of such resolution the board of commissioners may establish said court without holding such election. (1931, c. 89, s. 2.)

§ 7-386. Court may be abolished by resolution.—Whenever in the opinion of the board of commissioners of any county in which a court has been established under this article, the conditions prevailing in such county are such as to no longer require the said court, such board of commissioners may, by proper resolution, reciting in brief the reasons therefore, abolish said court. (1931, c. 89, s. 3.)

§ 7-387. Transfer of cases from docket of Superior Court.—Upon the establishment of the County Court, as in this article authorized, the clerk of the Superior Court shall immediately transfer from the Superior Court to such County Court all criminal actions pending in the Superior Court of which the County Court has jurisdiction, as in this article conferred, and the County Court shall immediately proceed to try and dispose of such criminal actions. (1931, c. 89, s. 4.)

§ 7-388. Appointment of judge; associate judge.—The court shall be presided over by a judge, who may be licensed to practice law, and who, at the time of his election or appointment, shall be a qualified elector in the county. The board of commissioners of the county shall appoint such judge, whose term of office shall be two (2) years from the date of his appointment, and until his successor shall have been appointed and qualified, or until the court shall be abolished, as herein provided. In the event of a vacancy by

death or resignation, appointment shall be for the unexpired term of the previous judge. The salary of said judge shall be fixed by the board of commissioners of the county, and the same shall be paid monthly out of the general county fund. In each county in which the court is established, under the provisions of this article, there shall be appointed by the board of commissioners of said county an associate judge, who shall preside as judge of the county court, and with like authority of the regular judge, in the event of sickness or absence from the county of the regular judge, or in the event that the regular judge should be disqualified by relationship to the parties in interest, or from other cause. The associate judge shall take the same oath of office required by the judge of the county court, and shall be paid such compensation for his services as may be provided by the board of commissioners. The compensation which shall be paid to the associate judge shall be deducted from the salary to be paid to the regular county judge as herein provided. He shall be appointed at the time fixed for the appointment of the judge of the County Court, and for the same term as herein provided for a regular judge of the county, with the authority on the part of the board of commissioners to fill the vacancy in the event of death or resignation. (1931, c. 89, s. 5.)

§ 7-389. Appointment of prosecuting attorney. —There shall be a prosecuting attorney of said County Court, to be known as the prosecuting attorney, who shall appear for the State and prosecute all criminal cases being tried in said court, and for his services he shall be paid such salary as may be fixed by the board of commissioners, to be paid monthly from the general county fund. The board of commissioners shall appoint such prosecuting attorney, whose term of office shall be two (2) years from the date of his appointment, and until his successor shall have been appointed and qualified, or until the court shall be abolished, as herein provided, except in the event of a vacancy in the office of prosecuting attorney, either by death or resignation, the appointment to fill such vacancy shall be for the unexpired term of the previous prosecuting attorney. (1931, c. 89, s. 6.)

§ 7-390. Clerk of court; term of office; fees; bond; sheriff.—In those counties in which the clerk of the superior court and sheriff are paid fees and not salaries, such clerks and sheriffs shall receive the same fees for services rendered in a county court as they would have received had such services been rendered in the superior court.

The Clerk of the Superior Court shall, ex-officio, be Clerk of the County Court, and in all counties in which the Clerk of the Superior Court is paid fees, the Clerk of the Superior Court shall have the right and privilege to resign as Clerk of the County Court, and in the event of such resignation the board of commissioners shall have the authority to appoint a Clerk of the County Court, whose term of office shall be two (2) years, and whose term of office shall expire at the time fixed for the termination of the office of the judge of said court, and the appointment of the Clerk of the County Court shall thereafter be made by the board of commissioners at the same time when the appointment of the judge of said court is made by said board of commissioners. He will receive the same fees for services rendered as clerks of the Superior Courts. In all counties in which the Clerks of the Superior Court are paid salaries the board of commissioners are authorized, in their discretion, to provide additional compensation to such clerks for their services rendered as Clerk of the County Court.

In the event that the Clerk of the Superior Court shall resign as Clerk of the County Court as herein provided, upon the appointment of a Clerk to the County Court, he shall be required to enter into a bond in such sum as may be fixed by the board of commissioners for the faithful performance of the duties of his office. (1931, c. 89, s. 7.)

Local Modification.—Lee: 1941, c. 330.

§ 7-391. Oath of judge; prosecuting attorney. —The judge of the county court, before entering upon the duties of his office, shall take the prescribed oath required of judges of the Superior Court, and such oath shall be recorded by the Clerk of the Superior Court of the county. The prosecuting attorney, before entering upon the duties of his office, shall take the prescribed oath required of solicitors of the Superior Court, and said oath shall be recorded by the Clerk of the Superior Court of the county. (1931, c. 89, s. 8.)

§ 7-392. Court seal. — The County Criminal Court shall have a seal with the impression "County Court of.....County," which shall be used in attestation of all writs, warrants, or other processes, acts, or judgments of said court whenever required, and in the same manner and in the same effect as the seal of other courts of record in the State of North Carolina. (1931, c. 89, s. 9.)

§ 7-393. Jurisdiction; appeal; judgment docket. —The jurisdiction of the County Court shall be as follows:

(a) Said court shall have final exclusive and original jurisdiction of all criminal offenses committed in the county below the grade of a felony, as now defined by law, except as to offenses over which justices of the peace have final jurisdiction, and all such offenses whereof said court is given jurisdiction are hereby declared to be petty misdemeanors.

(b) To punish for contempt to the same extent and in the same manner allowed by law to the Superior Court of this State; to issue writs ad testificandum and other processes to compel the attendance of witnesses and to enforce the orders and judgments of the court in the same manner allowed by law to the Superior Courts of this State.

(c) The judge of the County Court shall have all the power and jurisdiction and authority now conferred by law upon the Superior Court to sentence any person who pleads guilty or who is convicted in said court of a misdemeanor for which the punishment prescribed by law is imprisonment, to be imprisoned in the common jail of the county and to be assigned to work on the public roads under the supervision of the state highway and public works commission and the

clerk of said court shall issue commitments therefor in the same manner as now provided by law for the Clerks of the Superior Court.

(d) Any person convicted in said court shall have the right of appeal to the Superior Court of said county, and upon such appeal the trial in the Superior Court shall be de novo.

(e) The County Court shall have exclusive preliminary jurisdiction over all offenses whereof exclusive jurisdiction is not given to said court, and shall hear and determine all warrants charging such offenses, and in the event that the court finds probable cause, shall bind the defendant over to the Superior Court, requiring such bond as the court may fix for the appearance of the defendant at the next ensuing term of the Superior Court of said county for the trial of criminal causes; and all justices of the peace issuing warrants wherein the defendant or defendants are charged with the commission of an offense whereof the Superior Court has jurisdiction, shall make said warrants returnable before the said County Court.

(f) The judge of the County Court shall have the same authority as the judge of the Superior Court to render judgments upon all appearance bonds, and such other bonds as are authorized by law, when default has been made. All such judgments shall be certified to and docketed upon the civil judgment docket in the Superior Court of the county in which the court is held, and shall be cross-indexed as other judgments, and shall, from the time of docketing, have the same force and effect as judgments of the Superior Court. (1931, c. 89, s. 10; 1931, c. 241; 1937, c. 123.)

Local Modification.—Burke: 1935, c. 298; 1939, c. 226.

§ 7-394. Jury trials.—In all cases coming before the said County Court a jury may be demanded by either the State or the defendant, or the court may, upon its own motion, order a jury trial in any case where, in the judgment of the court, the ends of justice would be better met by submitting the case to a jury. The board of commissioners of the county in which said County Court is established are hereby required to furnish the clerk of said County Court with a list of jurors of said county, and in any case where a jury trial is to be had a jury of twelve (12) shall be drawn from the said list of jurors so furnished by the board of commissioners. The names of the jurors shall be drawn from the box as now provided in cases in the Superior Court in drawing a special venire: Provided, however, the defendant may waive a jury drawn from the box, in which event the court shall direct the sheriff to summons bystanders or tales jurors to serve as jurors in said cases, and the judge of the County Court shall have like authority as is now existing by the judge of the Superior Court to order the summons of tales jurors to serve in said court where the jurors drawn from the box shall be legally challenged or shall be otherwise disqualified to serve as such jurors. The causes of challenge of jurors in the County Court shall be the same as now provided for challenges of jurors in the Superior Court. The fees of jurors shall be the same as now paid jurors in the Superior Court, and shall be paid from the general county fund, and a jury tax of fifteen ($15.00) dollars in such cases shall be taxed in the bill of costs. (1931, c. 89, s. 11.)

Local Modification.—Lee: 1939, c. 213; Onslow: 1941, c. 303.

§ 7-395. Process. — The warrants, subpoenas, and other processes of law issued by said court shall be directed to the sheriff or other lawful officer of the county to which said process is directed, and service thereof shall be lawfully made when made by the sheriff, deputy sheriff, of the county, or any other constable of said county, or by any rural policeman of said county, or municipal officer, and all warrants and subpoenas and other processes issued by the clerk of said county, when attested by the seal of said county, shall run anywhere in the State of North Carolina, and shall be executed by all officers in the same manner and way as processes now issued by the Superior Court. (1931, c. 89, s. 12.)

§ 7-396. Duties of judge; bond on appeal or on being bound over.—The judge of the County Court shall preside over said court and shall direct and determine all actions coming before him, the jurisdiction of which is conferred by this article, and in all cases where the defendant or defendants shall crave an appeal to the superior court, and in cases where the court has preliminary jurisdiction, and probable cause is found, the defendant shall be required to give bond, with sufficient surety, to be fixed by the court, conditioned upon the defendant's appearance at the next ensuing term of the Superior Court of said county for the trial of criminal causes, and in default thereof the court shall commit the defendant to the common jail of said county until said defendant shall have given bond or shall have been otherwise discharged according to law, except in capital cases, when the court shall find probable cause, he shall bind the defendant over to the superior court without bond. (1931, c. 89, s. 13.)

§ 7-397. When prosecuting attorney's fee taxed in bill of costs.—In all cases where the defendant shall plead guilty, or shall be convicted, there shall be taxed in the bill of costs a fee of eight dollars ($8.00) in lieu of prosecuting attorney's fee, which shall be paid by the defendant, and shall be paid into the general county fund. In the event the defendant is confined to jail or confined to jail and assigned to work on the public roads such fee shall not be taxed as a part of the cost. (1931, c. 89, s. 14.)

§ 7-398. Complete record to be kept by clerk; docket.—It shall be the duty of the clerk of said court to keep an accurate account and true record of all costs, fines, penalties, forfeitures, and punishments of said court imposed under the provisions of this article, and said record shall show the name of each offender, the name of the offense, the date of the hearing of the trial, and the punishment imposed, and the board of commissioners shall provide dockets for recording all of the processes issued by said court, which shall conform to the docket kept by the clerk of the Superior Court, and shall also provide proper files to properly keep a record of all cases which shall be disposed of in said court, and the disposition that has been made of the same. (1931, c. 89, s. 15.)

§ 7-399. Warrants returnable to court. — All warrants for crimes whereof the County Court shall have jurisdiction may be issued by any Justice of the Peace of said county, or mayor of any incorporated town, as provided by law, and shall be made returnable before the County Court at the next ensuing term thereof. (1931, c. 89, s. 16.)

§ 7-400. Service fees to officers except where they are on salary.—The cost of issuing and serving warrants, subpoenas, and other processes of law by said court shall be payable to the officers issuing or serving them, and shall be payable to the clerk of said court as is now done in cases determined by the superior court, except in those counties where officials are paid salaries and are not allowed fees, in which cases the costs so taxed shall be paid into the office of the clerk of said court, to be paid by him to the county treasurer or depository of said county, in the same manner and way as is now provided for similar fees in the Superior Court. (1931, c. 89, s. 17.)

§ 7-401. Regular and special terms; place of sessions.—There shall be held a regular term of the County Court established under the provisions of this article on the second Tuesday in each month: Provided, however, special terms may be held at any time by order of the judge of said court for the purpose of disposing of cases where pleas of guilty shall be entered and for the trial of cases where the defendants are confined to prison. At all regular terms the court shall continue in session until all cases are tried, continued, or otherwise disposed of according to law: Provided, however, the board of county commissioners in any county in which a County Court is established under the provisions of this article by proper resolution duly entered upon the minutes of said board, may, in the exercise of their discretion, fix other days than the days provided in this article on which regular terms of said court may be held: Provided, further, when a regular term of the County Court to be held under the terms fixed by this article shall conflict with a term of the Superior Court in said county, the regular term of the County Court shall be held on the first Tuesday following the termination of said term of the Superior Court, as fixed by law. All sessions of said County Court shall be held in the court house of the county in which said court is established. (1931, c. 89, s. 18.)

§ 7-402. Judge and prosecuting attorney may practice law in other courts.—In the event of the appointment of a licensed lawyer as judge or prosecuting attorney of said County Court, nothing in this article shall prevent the said judge or the prosecuting attorney appointed under the provisions of this article from practicing law in matters in which he is in no way connected by reason of his said office, or in courts in the State in matters which have not been heard or will not be heard in the County Court of which he is an officer. (1931, c. 89, s. 19.)

§ 7-403. Other County Court Acts not affected. —Nothing in this article shall be construed to repeal, alter, or amend any law heretofore enacted authorizing the establishment of county courts in the several counties of the State, but this article shall be construed to be in addition to and supplemental to such acts, and any court established under the provisions of this article shall be restricted and limited to all the provisions herein contained. (1931, c. 89, s. 20.)

§ 7-404. Certain counties excepted from provisions of article.—This article shall not apply to the counties of Alexander, Alleghany, Ashe, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Camden, Caswell, Catawba, Chowan, Clay, Cleveland, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Franklin, Greene, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Lincoln, Macon, Madison, Montgomery, New Hanover, Northampton, Orange, Pamlico, Pasquotank, Perquimans, Pitt, Randolph, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Vance, Wake, Warren, Watauga, Wayne, Wilkes, Yancey and Richmond. (1931, c. 89, s. 21, c. 270; 1935, c. 8; 1939, c. 41.)

SUBCHAPTER X. SPECIAL COUNTY COURTS.

Art. 37. Special County Courts.

§ 7-405. Establishment upon resolution of county commissioners. — In addition to the plans now provided for the establishment of courts inferior to the superior court, there may be established by resolution of all of the members of the board of county commissioners of any county in the state a court of criminal and civil jurisdiction, which shall be a court of record and shall be called a special county court and shall have criminal and civil jurisdiction as herein provided: Provided, that the board of county commissioners may by proper resolution, establish a special county court having only criminal jurisdiction or only civil jurisdicton or having both criminal and civil jurisdiction as herein provided. (1939, c. 357, s. 1.)

§ 7-406. Qualifications of judge and solicitor. —The judge of said court shall be an elector in and for said county at the time of appointment and qualification, and shall be a man of good moral character. The solicitor of the county shall be an elector in and for said county, shall be a man of good moral character and a licensed attorney at law. (1939, c. 357, s. 2.)

§ 7-407. Appointment of judge.—After the establishment of such court by any county, it shall be the duty of the clerk of the board of commissioners of such county to immediately notify the governor of the state, who shall appoint a judge to preside over such court, and each second year thereafter it shall be the duty of the governor of the state to appoint the judge of each such county court who shall preside over said court, and the said judge shall hold office for a term of two years, and until his successor is appointed and qualified. Any vacancy occurring in the office of judge shall be filled by the governor of the state. (1939, c. 357, s. 3.)

Local Modification.—Richmond: 1941, c. 60, s. 2.

§ 7-408. Appointment of prosecuting attorney and clerk.—The board of commissioners of any county availing itself of the provisions of this article may elect or appoint and for the same term as herein provided for the appointment of the judge of this court, a prosecuting attorney and clerk for said court. (1939, c. 357, s. 4.)

Local Modification.—Richmond: 1941, c. 60, ss. 3, 4.

§ 7-409. Appointment of acting attorney or judge in absence of regular official. — Whenever, for any reason, the prosecuting attorney is temporarily absent, the judge shall appoint some other practicing attorney in the county to act as prosecuting attorney, and in case of temporary absence of the judge, either on account of sickness or other cause, the judge of said court shall appoint a judge to hold court during the absence of the regular judge. (1939, c. 357, s. 5.)

§ 7-410. Compensation of judge and solicitor.—The salary of the judge and solicitor and clerk shall be fixed by the board of commissioners of the county, and shall be paid monthly out of the funds of the county. (1939, c. 357, s. 6.)

Local Modification.—Richmond: 1941, c. 60, s. 5.

§ 7-411. Oaths of judge and solicitor.—Before entering upon the duties of office, the judge and solicitor shall take and subscribe an oath as is now provided by law for the judges and solicitors of the superior court, and file the same with the clerk of the superior court of the county, and the clerk shall record the same. (1939, c. 357, s. 7.)

§ 7-412. Appointment of temporary judge, etc.—Where the judge is disqualified by reason of interest in any case, he may appoint a temporary judge to hear said case, or said case may be removed to the superior court for trial in the county. (1939, c. 357, s. 8.)

§ 7-413. Duties and liabilities of clerk.—The clerk of the special county court established under the provisions of this article shall have as nearly as possible the same duties, powers, and responsibilities with reference to the special county court as a clerk of the superior court. The said clerk shall be liable upon his official bond for the discharge of his duties and caring for funds paid to him as clerk of the special county court to the same extent as a clerk of the superior court (1939, c. 357, s. 9.)

§ 7-414. Oath of office of clerk.—The clerk of the special county court before entering on the duties of the office, shall take and subscribe, before some officer authorized by law to administer an oath, the oath required under general law, and in addition thereto shall take and subscribe to an oath to perform faithfully all the duties required of him under this article and file such oath with the register of deeds for the county. (1939, c. 357, s. 10.)

§ 7-415. Attendance upon court by sheriff or deputies.—The sheriff of the county, or his deputies, shall attend upon this court in the same manner and with the same power and authority as he does and has in attendance upon the superior court of the county. (1939, c. 357, s. 11.)

§ 7-416. Appointment of court stenographer.—In the trial of any case in the special county court where a stenographer is deemed necessary, the judge of said court shall appoint a stenographer, and the fees for such work shall be taxed as part of the court cost in said case. (1939, c. 357, s. 12.)

§ 7-417. Right of jury trial in civil actions.—In the trial of civil actions in said court, any party is entitled to the right of trial by jury as is provided in the trial of causes in the superior court, unless said right of trial by jury shall be waived as hereinafter provided. (1939, c. 357, s. 13.)

§ 7-418. Jury trial where no written pleadings are filed.—In those cases in which no written pleadings are required, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the issuance of the summons, the plaintiff, or petitioner, in writing, demands a jury trial, or the defendant at any time before the commencement of the trial, in writing, demands a jury trial. (1939, c. 357, s. 14.)

§ 7-419. Jury trial where written pleadings are filed.—In those cases in which written pleadings are required to be filed, the parties shall be conclusively presumed to have expressly waived their right to trial by jury, unless at the time of the filing of the complaint or petition, the plaintiff, in writing, demands a jury trial, or unless at the time of the filing of the answer, or other pleading raising an issue of fact, the defendant or other party filing such pleading demands, in writing, a jury trial. (1939, c. 357, s. 15.)

§ 7-420. Jury trial where cases appealed or removed.—In those cases which were or may hereafter be instituted before a justice of the peace and removed or appealed to this court, and in those cases which were or may hereafter be instituted in superior court, and removed to this court, a jury trial shall be conclusively presumed to have been expressly waived unless the party desiring a trial by jury shall make a demand therefor, in writing, at any time before the case is called for trial, in which event the number of the jury shall be as herein elsewhere provided. (1939, c. 357, s. 16.)

§ 7-421. Number of jurors; deposit on demand for jury trial.—The jury of said court shall be a jury of six in all civil cases where a jury is demanded: Provided, that in those cases in which a jury is demanded the party shall at the time of making the demand pay to the clerk of the said court a deposit of six dollars ($6.00) to insure the payment of the jury tax: Provided, further, that where a party making such demand for a jury trial makes affidavit and satisfies the judge or clerk of the said court that he is unable to make the deposit, such party shall not be required to make the same. The deposit for a jury shall be returned to the party making it when the cost is paid by the losing party, against whom the cost is taxed. (1939, c. 357, s. 17.)

§ 7-422. Continuance of trial upon demand for jury; drawing and summoning of jury; compensation of jurors.—When a trial by jury is demanded in civil or criminal cases, the judge shall continue the cause until a day to be set, and the judge, together with the attorneys representing all parties shall immediately proceed to the office of the register of deeds of the county and cause

to be drawn a jury of twelve, observing as nearly as may be the rule for drawing a jury for the superior court. The judge shall issue the proper writ to the sheriff of the county, commanding him to summon the jurors so drawn to appear at the court on the day set for the trial of the action. Such jurors shall receive the same compensation as is provided by law for jurors serving in the superior court, and are to be paid out of the treasury of said county on presentation of a ticket duly issued by the clerk of said court. (1939, c. 357, s. 18.)

§ 7-423. Jury trials in criminal actions.—In all criminal actions, upon demand of the defendant or the prosecuting attorney, a jury of six shall be summoned in the same manner as provided for summoning jurors in civil actions. (1939, c. 357, s. 19.)

§ 7-424. Talesmen may serve as jurors.—In all criminal and civil actions, the judge shall have the right to call in talesmen to serve as jurors, according to the practice of the superior court, and to direct the sheriff to call in a sufficient number of talesmen to serve during any one week or part of a week for the proper dispatch of the business of the court. (1939, c. 357, s. 20.)

§ 7-425. Sessions of court.—The special county court shall be open for the trial of all criminal cases of which it has jurisdiction at least one day of each week, and shall also be open at least once each month for the trial of all civil causes of which it has jurisdiction, said days to be fixed by the board of county commissioners, and shall continue its session from day to day until all business is transacted by trial, continuance or otherwise. The session of the court shall be held in the county court house or other place within the county provided by the board of county commissioners for that purpose. Special sessions of the court may be called by the judge as the necessities may require. (1939, c. 357, s. 21.)

§ 7-426. Civil jurisdiction of court.—The special county court shall have jurisdiction in civil matters as follows:

1. Jurisdiction concurrent with that of the justices of the peace of the county.

2. Jurisdiction concurrent with the superior court in all actions founded on contracts wherein the amount demanded shall not exceed the sum of fifteen hundred dollars ($1500.00), exclusive of interest and cost.

3. Jurisdiction concurrent with that of the superior court in all actions not founded on contracts wherein the amount demanded shall not exceed the sum of one thousand dollars ($1000.00), exclusive of interest and cost.

4. Jurisdiction concurrent with the superior court in all attachment and claim and delivery proceedings wherein the value of the property demanded does not exceed the sum of one thousand dollars ($1000.00), exclusive of interest and cost. (1939, c. 357, s. 22.)

§ 7-427. Procedure for hearing of appeals from courts of justices of the peace.—In all cases where there is an appeal from a justice of the peace of a county wherein a special county court has been established under the provisions of this article, such appeal shall be first heard de novo in the special county court. All appeals from justices of the peace in civil cases shall be heard in the same manner provided herein for hearing causes within the jurisdiction of a justice of the peace originating in the said special county court, and said appeals shall be docketed in the special county court within the same time limit and in the same manner as such appeals are now required to be docketed in the superior court. (1939, c. 357, s. 23.)

§ 7-428. Transfer of cases from superior court.—By written consent of a plaintiff and defendant filed with the clerk of the superior court, any civil case within the jurisdiction of the special county court, now or hereafter pending, in the superior court, may be transferred to the docket of the special county court, and there tried. If a jury trial is desired, it shall be expressed in the agreement to transfer the case; otherwise the right to trial by jury shall be conclusively presumed to have been expressly waived. (1939, c. 357, s. 24.)

§ 7-429. Separate records, equipment, etc., furnished by commissioners.—The clerk of the special county court shall keep separate records for use of said court to be furnished by the county commissioners, and they shall also provide necessary blanks, forms, books and such stationery and office equipment as may be needed by the court. The clerk shall keep the same in the office of the clerk of such court. (1939, c. 357, s. 25.)

§ 7-430. Procedure in civil actions.—In civil cases when the special county court is exercising jurisdiction concurrent with that of the superior court, as now established, the rules of procedure, pleadings, practice, and admission of evidence, and judgment shall conform as nearly as possible to those of the superior court. In civil cases where the special county court is exercising jurisdiction concurrent with that of justices of the peace, actions shall be commenced in the special county court by summons issued and signed by the clerk or deputy, and orders to seize property in claim and delivery proceedings, warrants of attachment and subpoena may be issued by the clerk or deputy and the other rules of processes, pleadings, procedure, practice and procuring evidence and judgments shall conform as nearly as possible to those of the courts of the justices of the peace. (1939, c. 357, s. 26.)

§ 7-431. Orders to stay execution; judgments.—Orders to stay execution on judgments entered in the special county court shall be the same as in appeals from the superior court to the supreme court. Judgments of the county court shall be docketed in the judgment docket of the superior court, as is provided for judgments of the superior court, and the judgments when docketed shall in all respects be judgments of the superior court in the same manner and to the same extent as if rendered by the superior court, and shall be subject to the same statute of limitations and the statutes relating to the revival of judgments in the superior court and issuing executions thereon. (1939, c. 357, s. 27.)

§ 7-432. Seal of court.—The county court shall have a seal with the impression ".....

County Special Court", which shall be used in attestation of all summons, other processes, etc., acts, or judgments of said court whenever required, and in the same manner and to the same effect as the seal of other courts of record in the state of North Carolina. (1939, c. 357, s. 28.)

§ 7-433. Costs and fees.—There shall be taxed in the special county court the same costs and fees for services of the officers thereof as provided for the court having concurrent jurisdiction; such costs and fees shall be taxed and collected by the clerk and paid over to the proper officers who are entitled to receive them. (1939, c. 357, s. 29.)

Local Modification.—Richmond: 1941, c. 60, s. 5½.

§ 7-434. Reopening of cases and modification of judgments.—When any case has been finally disposed of by the judge of the court and judgment pronounced therein, the case shall not thereafter be reopened or the judgment or sentence rendered therein changed, modified or stricken out by the judge after the adjournment of the regular weekly term of court or after the adjournment of any special term of court. (1939, c. 357, s. 30.)

§ 7-435. Criminal jurisdiction.—The court shall have concurrent jurisdiction in all criminal cases arising in the county which are now or may hereafter be given to a justice of the peace, and, in addition to the jurisdiction conferred by this section, shall have exclusive original jurisdiction of all other criminal offenses committed in the county below the grade of a felony as now defined by law, and the same are hereby declared to be petty misdemeanors: Provided, however, that where a special county court or recorder's court shall legally exist within such county by virtue of a special act of the legislature passed before the amendment of the constitution in reference thereto, then the special county court, as herein established, shall not have jurisdiction of criminal cases within the territory of such existing recorder's court, so as to interfere or conflict with the existing recorder's court, but shall have concurrent jurisdiction where the jurisdiction of the two courts covers the same causes or the same subject matter. This article and the establishment of any court thereunder shall not be construed to repeal, modify or in anywise affect any existing special court or recorder's court by virtue of such former special acts herein referred to. (1939, c. 357, s. 31.)

§ 7-436. Judges vested with jurisdiction of municipal recorders.—The judges of special county courts herein provided for shall be vested with all the jurisdiction and authority conferred upon recorders of municipal courts, in like manner and to the same extent as if such jurisdiction and authority had been specially in this section set forth, in so far as such jurisdiction and authority are applicable to such courts, and the provisions of existing law relative to municipal recorder's courts shall in all things apply to the special county courts where the same are not inconsistent and in so far as same are practically applicable: Provided, that this section shall not take away the jurisdiction of a mayor to try breaches of ordinances when such city has no other municipal court. (1939, c. 357, s. 32.)

§ 7-437. Removal of cases from courts of justices of peace. — When, upon written request made before entering on the trial of any cause before any justice of the peace, it shall appear proper for the cause to be removed for trial to some other justice, as is now provided by law, the cause may be removed for trial to the special county court of the county. (1939, c. 357, s. 33.)

§ 7-438. Criminal cases bound over by justices of the peace.—In all criminal cases heard by a justice of the peace or other committing magistrate of the county against any person for any offense included within the exclusive jurisdiction of the special county court as provided in this article, and in which probable cause of guilt is found, such person shall be bound in a personal recognizance or surety to appear at the next succeeding session of the special county court of the county, for trial; and in default of such surety such person shall be committed to the common jail of the county to await a trial: Provided, that in the event any justice of the peace or other committing magistrate shall bind over to the superior court any person accused of a crime within the jurisdiction of the special county court, the clerk of the superior court shall, upon his own motion, transfer all papers in the case to the special county court, and the case shall then stand for trial at the next succeeding term of said special county court, as if the defendant had been bound over to the said court in the first instance: Provided, further, that in the event any justice of the peace or other committing magistrate shall bind over to the special county court any person charged with an offense beyond the jurisdiction of said court, the said judge shall cause the accused person to enter into a new bond with sufficient surety for his appearance at the next succeeding term of the superior court of the county, and shall transmit all papers in the case to the said superior court, but this shall be done without additional cost to the accused person. (1939, c. 357, s. 34.)

§ 7-439. Notice to accused person and surety in cases transferred from superior court.—Whenever the clerk of the superior court shall transfer the papers in any case from the superior court to a special county court, he shall at the same time issue a notice to the accused person and his surety, informing them that the cause has been so transferred and requiring the accused person to appear at the next succeeding term of said special county court for trial, and, upon the service of said notice upon the accused person and his surety, at least five days before the beginning of the next succeeding term of the special county court, the case shall stand for trial at said term and the bond given by the accused person for his appearance at the next term of the superior court shall in all respects be valid and binding to compel the appearance of the accused person at the said next succeeding term of said special county court, and in case said notice is not served on the accused person and his surety at least five days before the beginning of the next succeeding term of the special county court, then the case shall not be tried without the consent of the accused person until the following term of the special county court. (1939, c. 357, s. 35.)

§ 7-440. Issuance of warrant in criminal causes.—All trials of criminal causes in said court shall be upon warrant issued by the clerk of said court or deputy clerk herein provided for or by the judge or by any justice of the peace of the county. In either event such warrant shall be issued upon affidavit duly made and subscribed, setting forth the complaint against the defendant: Provided, the judge shall have authority to amend the warrant and to allow amendment of the affidavit at any time before judgment. (1939, c. 357, s. 36.)

§ 7-441. Punishment upon conviction.—Whenever any person shall be convicted or plead guilty of any offense of which the court has final jurisdiction the judge may sentence him to the common jail of the county in which the court shall be held, and assign him to work on the public roads, under the supervision of the state highway and public works commission: Provided, that in case the person so convicted or pleading guilty shall be a woman or an infant of immature years, then the judge may assign him or her to the county workhouse, reformatory, or other penal institution located in the county; or if there be none, any similar institution that may be located outside of the county to which judges of the superior court are authorized to sentence such person under the general laws of the state. All fines imposed by the court shall be collected by the clerk of such court or the deputy clerk thereof in the same manner as the clerk of the superior court; and, where a defendant is convicted and fails to pay the costs of such conviction, the county shall pay such costs as are allowed by law in similar cases before the superior court. (1939, c. 357, s. 37.)

§ 7-442. Appeals to superior court.—Any person convicted of any offense of which the county court has final jurisdiction may appeal to the superior court from any judgment or sentence of the court in the same manner as is now provided for appeals from the courts of justices of the peace; and any person tried before the judge for any offense of which the court has not final jurisdiction shall, upon the judge's finding probable cause of guilt, be bound over to the superior court in the same manner as is provided by law in similar cases before justices of the peace. (1939, c. 357, s. 38.)

§ 7-443. Fees for issuance and service of warrants.—All justices of the peace, constables and sheriffs issuing or serving warrants or other process returnable to the special county court shall have the same fees as are now prescribed by law, which fees shall be collected and paid out in the same manner and by the same officers as collect and distribute such fees in the superior court. (1939, c. 357, s. 39.)

§ 7-444. Costs and fees as county funds.—There shall be taxed in the special county court the same costs and fees for the benefit of the officers thereof as provided for municipal recorder's court. Such costs and fees shall be collected by the clerk and paid over monthly to the treasurer of the county as county funds to be dealt with by the commissioners. (1939, c. 357, s. 40.)

§ 7-445. Abolition of court by resolution of commissioners.—Any court established under this article may be abolished by resolution of a majority of the board of county commissioners for such county by giving written notice of such intention one month prior thereto; and in case of the abolition of the court, cases then pending shall be transferred to the superior court and there tried. (1939, c. 357, s. 41.)

§ 7-446. Counties exempt.—This article shall not apply to the counties of Alamance, Alexander, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Caldwell, Carteret, Catawba, Chatham, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Edgecombe, Franklin, Forsyth, Gaston, Gates, Granville, Greene, Halifax, Harnett, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenior, Lincoln, Madison, Mecklenburg, Mitchell, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Perquimans, Robeson, Rutherford, Sampson, Stanly, Surry, Union, Vance, Wake, Warren, Wayne, Washington and Wilson. (1939, c. 357, s. 42.)

§ 7-447. Construction of article.—This article shall not be construed to repeal or modify any existing laws by which a county court may be created or to affect or repeal any court now or hereafter created under existing laws, and shall only be construed to be an additional method by which a special county court may be established for criminal, civil, or criminal and civil jurisdictions. (1939, c. 357, s. 43.)

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Art. 1. Statutes.

§ 8-1. Printed statutes and certified copies evidence.—All statutes, or joint resolutions, passed by the general assembly may be read in evidence from the printed statute book; or a copy of any act of the general assembly certified by the secretary of state shall be received in evidence in every court. (Rev., ss. 1592, 1593; Code, ss. 1339, 1340; R. C., c. 44, ss. 4. 5; 1826, c. 7; C. S. 1747.)

§ 8-2. Martin's collection of private acts.—Any private act published by Francis X. Martin, in his collection of private acts, shall be received in

evidence in every court. (Rev., s. 1593; Code, s. 1340; R. C., c. 44, s. 5; 1826, c. 7, s. 2; C. S. 1748.)

§ 8-3. Laws of other states or foreign countries.—A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree or ordinance, by the executive thereof, contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the judicial tribunals thereof, shall be evidence of the statute, law, proclamation, edict, decree, or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country, may be proved as a fact by oral evidence. The books of the reports of cases, adjudged in the courts thereof, shall also be admitted as evidence of the unwritten or common law thereof. And either party may also exhibit a copy of the law of such state, territory, or foreign country, duly certified by the secretary of state of this state as having been copied from a printed volume of the laws of such state, territory or country, on file in the state or supreme court library, or in the offices of the governor or secretary of state. (Rev., s. 1594; Code, s. 1338; R. C., c. 44, s. 3; 1823, c. 1193, ss. 1, 3; C. C. P., s. 360; C. S. 1749.)

§ 8-4. Judicial notice of laws of United States, other States and foreign countries.—When any question shall arise as to the law of the United States, or of any other state or territory of the United States, or of the District of Columbia, or of any foreign country, the court shall take notice of such law in the same manner as if the question arose under the law of this State. (1931, c. 30.)

§ 8-5. Town ordinances certified.—In the trial of appeals from mayors' courts, when the offense charged is the violation of a town ordinance, a copy of the ordinance alleged to have been violated, certified by the mayor, shall be prima facie evidence of the existence of such ordinance. (Rev., s. 1595; 1899, c. 277, s. 2; C. S. 1750.)

Art. 2. Grants, Deeds and Wills.

§ 8-6. Copies certified by secretary of state.—Copies of the plats and certificates of survey, or their accompanying warrants, and all abstracts of grants, which may be filed in the office of the secretary of state, certified by him as true copies, shall be as good evidence, in any court, as the original. (Rev., s. 1596; Code, s. 1341; R. C., c. 44, s. 6; 1822, c. 1154; C. S. 1751.)

§ 8-7. Certified copies of grants and abstracts.—For the purpose of showing title from the state of North Carolina to the grantee or grantees therein named and for the lands therein described, duly certified copies of all grants and of all memoranda and abstracts of grants on record in the office of the secretary of state, given in abstract or in full, and with or without the signature of the governor and the great seal of the state appearing upon such record, shall be competent evidence in the courts of this state or of the United States or of any territory of the United States, and in the absence of the production of the original grant shall be conclusive evidence of a grant from the state to the grantee or grantees named and for the lands described therein. (1915, c. 249, s. 1; C. S. 1752.)

§ 8-8. Certified copies of grants and abstracts recorded.—Duly certified copies of such grants and of such memoranda and abstracts of grants may be recorded in the county where the lands therein described are situated, and the records thereof in such counties, or certified copies thereof, shall likewise be competent evidence for the purpose of showing title from the state of North Carolina to the grantee or grantees named and for the lands described therein. (1915, c. 249, s. 2; C. S. 1753.)

§ 8-9. Copies of grants certified by clerk of secretary of state validated.—All copies of grants heretofore issued from the office of the secretary of state, duly certified under the great seal of the state, and to which the name of the secretary has been written or affixed by the clerk of the said secretary of state, are hereby ratified and approved and declared to be good and valid copies of the original grants and admissible in evidence in all courts of this state when duly registered in the counties in which the land lies; all such copies heretofore registered in said counties are hereby declared to be lawful and regular in all respects as if the same had been signed by the secretary of state in person and duly registered. (Rev., s. 1597; 1901, c. 613; C. S. 1754.)

§ 8-10. Copies of grants in Burke.—Copies of grants issued by the state within the county of Burke prior to the destruction of the records of said county by General Stoneman in the year one thousand eight hundred and sixty-five, shall be admitted in evidence in all actions when the same are duly registered; and when the original grants are lost, destroyed or cannot be found after due search, it shall be presumed that the same were duly registered within the time prescribed by law, as provided upon the face of original grant. (Rev., s. 1610; 1901, c. 513; C. S. 1755.)

§ 8-11. Copies of grants in Moore.—Copies of grants for land situated in Moore county and the counties of which Moore was a part, entered in a book, and the book being certified under the seal of the secretary of state, shall have the force and effect of the originals and be evidence in all courts. (Rev., s. 1613; 1903, c. 214; C. S. 1756.)

§ 8-12. Copies of grants in Onslow. — The copies of grants made by the register of deeds of Onslow county under laws of 1907, chapter 434, of grants, abstracts of grants, and other documents pertaining to titles of land in Onslow county issued prior to the year one thousand eight hundred, and contained in a book called Book of Transcribed Grants Issued Prior to One Thousand Eight Hundred, duly authenticated as prescribed in said chapter 434 of the laws of one thousand nine hundred and seven, shall be received as evidence in all courts of the state, and certified copies therefrom shall be received as evidence. (1907, c. 434; C. S. 1757.)

§ 8-13. Certain deeds dated before 1835 evidence of due execution.—In all actions hereafter

instituted in which the title or ownership of any lands situated in North Carolina is at issue or in dispute, any deed or release, or a duly certified copy thereof, in which the people of the state of North Carolina are grantees and bearing date prior to the year one thousand eight hundred and thirty-five and purporting to have been filed and recorded in the office of the secretary of state of North Carolina prior to said year and now on file and of record in said office, and executed or purporting to have been executed by any person or persons as the representatives or agents or for or on behalf of any society, tribe, nation or aggregation of persons, whether signed or executed individually or in their representative capacity, and any such deed or release having been authorized to be executed by an act of the general assembly of North Carolina by the properly authorized agents of such society, tribe, nation or aggregation of persons, shall be prima facie evidence that the person or persons signing or executing any such deed or release were the properly authorized agent or agents of such society, tribe, nation or aggregation of persons. Any recitals or statements of fact in any such deed or release shall be prima facie evidence of the truth thereof in any such actions. (1915, c. 75; C. S. 1758.)

§ 8-14. Certified copies of maps of Cherokee lands.—Certified copies by the secretary of state of the copies, or parts thereof, of the maps of the Cherokee lands and of the Cherokee Country, as provided for and described in chapter one hundred and seventy-five of the laws of one thousand nine hundred and eleven, shall have the same force and effect and be entitled to the same force and effect as evidence as certified copies of the whole or parts of the original maps. (1911, c. 175; C. S. 1759.)

§ 8-15. Certified copies of certain surveys and maps obtained from the state of Tennessee.—A certified copy of the report of the survey made by the North Carolina commissioners, McDowell, Vance and Matthews, of that portion of the state of Tennessee extending from a point on the Virginia line to a point on the Smoky Mountain west of the Pigeon River, as obtained and filed by the secretary of state under the provisions of chapter one hundred and sixty-two of the laws of one thousand nine hundred and thirteen, shall, when certified under the hand and seal of the secretary of state, be competent evidence in the trial of any action in the courts of the state. (1913, c. 162; C. S. 1760.)

§ 8-16. Evidence of title under H. E. McCulloch grants.—In all actions or suits, wherein it may be necessary for either party to prove title, by virtue of a grant or grants made by the king of Great Britain or Earl Granville to Henry McCulloch, or Henry Eustace McCulloch, it shall be sufficient for such party, in the usual manner, to give evidence of the grant or conveyance from the king of Great Britain or Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, and the mesne conveyances thereafter, without giving any evidence of the deed or deeds of release, relinquishment or confirmation of Earl Granville to the said Henry McCulloch, or Henry Eustace McCulloch, or the power or powers of attorney by which the conveyances from the said Henry McCulloch, or Henry Eustace McCulloch, purport to have been made. (Rev., s. 1600; Code, s. 1336; R. C., c. 44, s. 1; 1819, c. 1021; C. S. 1761.)

§ 8-17. Conveyances or certified copies evidence of title under McCulloch.—In all trials where the title of either plaintiff or defendant shall be derived from Henry Eustace McCulloch, or Henry McCulloch, out of their tracts number one and three, it shall not be required of such party to produce, in support of his title, either the original grant from the crown to the proprietors, or a registered copy thereof; but in all such cases the grant or deed executed by such reputed proprietors, or by his or their lawful attorney, or a certified copy thereof, shall be deemed and held sufficient proof of the title of such proprietors, in the same manner as though the original grants were produced in evidence. (Rev., s. 1601; Code, s. 1337; R. C., c. 44, s. 2; 1807, c. 724; C. S. 1762.)

§ 8-18. Certified copies of registered instruments evidence.—A copy of the record of any deed, mortgage, power of attorney, or other instrument required or allowed to be registered, duly authenticated by the certificate and official seal of the register of deeds of the county where the original or duly certified copy has been registered, may be given in evidence in any of the courts of the state where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court. (Rev., s. 1598; Code, s. 1251; 1893, c. 119, s. 2; R. C., c. 37, s. 16; 1846, c. 68, s. 1; C. S. 1763.)

§ 8-19. Common survey of contiguous tracts evidence.—Whenever any person owns several tracts of land which are contiguous or adjoining, but held under different deeds and different surveys, it may be lawful for any such person to have all such bodies of land included in one common survey by running around the lines of the outer tracts, and thereupon the possession of any part of said land covered by such common survey shall be deemed and held in law as a possession of the whole and every part thereof: Provided, that nothing in this section shall be construed to affect the rights or claims of persons which have already accrued to any part of said land. In all cases where such common surveys are made as directed by this section, the same may be recorded and registered as in cases of deeds, and shall be evidence in like manner. (Rev., s. 1505; Code, s. 1277; 1869-70, c. 34, ss. 1, 2; C. S. 1764.)

§ 8-20. Certified copies registered in another county and used in evidence.—A copy from the office of the register of deeds of any county of the record of any deed, mortgage, power of attorney or other instrument required or allowed

to be registered, duly authenticated by the certificate and official seal of the register of deeds of such county, may, upon presentation to the register of deeds of any other county, be registered without further proof, and the record thereof, or a duly certified copy of the same, may be given in evidence in any court in the state where the original of such copy would be admitted as evidence, although the party offering the same shall be entitled to the possession of the original, and shall not account for the nonproduction thereof, unless by a rule or order of the court, made upon affidavit suggesting some material variance from the original in such registry or other sufficient grounds, such party shall have been previously required to produce the original, in which case the same shall be produced or its absence duly accounted for according to the course and practice of the court. (Rev., s. 1599; Code, s. 1253; 1893, c. 119, s. 3; R. C., c. 37, s. 16; 1846, c. 68; C. S. 1765.)

§ 8-21. Deeds and records thereof lost, presumed to be in due form.—Whenever it is shown in any judicial proceeding that a deed or conveyance of real estate has been lost or destroyed, and that the same had been registered, and that the register's book containing the copy has been destroyed by fire or other accident, so that a copy thereof cannot be had, it shall be presumed and held, unless the contents be shown to have been otherwise, that such deed or conveyance transferred an estate in fee simple, if the grantor was entitled to such an estate at the time of conveyance, and that it was made upon sufficient consideration. (Rev., s. 1602; Code, s. 1348; R. C., c. 44, s. 14; 1854, c. 17; C. S. 1766.)

§ 8-22. Local: recitals in tax deeds in Haywood and Henderson.—In all legal controversies touching lands in the counties of Haywood and Henderson, in which either party shall claim title under any sale for taxes alleged to have been due and laid, in and for the year one thousand seven hundred and ninety-six, or any preceding year, the recital contained in the deed or assurance, made by the sheriff or other officer conveying or assuring the same, of the taxes having been laid and assessed, and of the same having remained due and unpaid, shall be held and taken to be prima facie evidence of the truth of each and every of the matters so recited. (Rev., s. 1606; Code, s. 1346; R. C., c. 44, s. 11; C. S. 1767.)

§ 8-23. Local: copies of records from Tyrrell.—Copies of records of the county of Tyrrell between the years one thousand seven hundred and thirty-five and one thousand seven hundred and ninety-nine, when copied in a book and certified to by the clerk of the superior court of Tyrrell county as to the records of his office and by the register of deeds as to the records of his office, and deposited in their respective offices in Washington county, shall be treated in all respects as original records and received as evidence in all courts of Washington county. (Rev., s. 1612; 1903, c. 199; C. S. 1768.)

§ 8-24. Local: records of partition in Duplin.—The transcripts made by the clerk of the superior court of Duplin county, in accordance with chapter three hundred and ninety-five of the laws of one thousand nine hundred and seven, of the reports of committees relating to the partition of real estate on file in his office prior and up to the year one thousand eight hundred and fifty-six, entered and indexed in a book entitled Reports of Committees, A, and the reports of committees beginning with and subsequent to the year one thousand eight hundred and fifty-six, entered and indexed in a book entitled Reports of Committees, B, shall be as competent evidence as are the original reports of the committees. (1907, c. 395, ss. 3, 4; C. S. 1769.)

§ 8-25. Local: records of wills in Duplin.—The transcripts made by the clerk of the superior court of Duplin county, in accordance with chapter three hundred and ninety-five of the laws of one thousand nine hundred and seven, of all wills and entries of probate and dates of registration appearing on the same, on file in his office prior and up to the January term of the county court of Duplin county, one thousand eight hundred and thirty, and entered in a book designated as Record of Wills, A, and duly indexed as provided by law, shall be as competent evidence in any court as are the originals of such wills. (1907, c. 395, ss. 1, 2; C. S. 1770.)

§ 8-26. Local: records of deeds and wills in Anson.—The copies of the deeds and deed books and of the wills and will books made in Anson county under the act of March second, one thousand nine hundred and five, shall have the same force and effect as the original deeds and deed books copied and as the original wills and will books copied, and shall take the place of said original deeds and deed books and wills and will books as evidence in all court procedure; and wherever said deed books or will books are ordered or directed to be produced in court by subpœna or other order of court, the copies made under such act shall be produced, unless the court shall specially order the production of the original books, and the copies so produced in court shall have the same validity and effect and be used for the same purposes, with the same effect, as the original books. (Rev., s. 1615; 1905, c. 663, s. 3; C. S. 1771.)

§ 8-27. Local: records of wills in Brunswick.—Under the provisions of chapter one hundred and six of the laws of one thousand nine hundred and eight, authorizing and directing that all unrecorded wills, dated prior to January first, one thousand eight hundred and seventy-five, on file in the office of the clerk of the superior court of Brunswick county, and which have been duly proved in the form required by law, and bearing the adjudication certificate of the proper officer, shall be recorded in the book of wills in the said office and properly indexed; that all wills recorded in the minutes of the court of pleas and quarter sessions or other books of record in said office shall be transcribed and indexed in the book of wills in said office; and that all wills recorded in the office of the register of deeds of said county shall be properly indexed in the book kept for the purpose in the office of the clerk of the superior court of the county; the record of any instrument or certified copy thereof, recorded under the provisions of this article, shall be admitted in evidence in the trial of any cause,

subject to the same rules upon which other wills are admitted. (1908, s. 106; C. S. 1772.)

§ 8-28. Copies of wills.—Copies of wills, duly certified by the proper officer, may be given in evidence in any proceeding wherein the contents of the will may be competent evidence. (Rev., s. 1603; Code, s. 2175; R. C., c. 119, s. 21; 1784, c. 225, s. 6; C. S. 1773.)

§ 8-29. Copies of wills in secretary of state's office.—Copies of wills filed or recorded in the office of the secretary of state, attested by the secretary, may be given in evidence in any court, and shall be taken as sufficient proof of the devise of real estate, and are declared good and effectual to pass the estate therein devised: Provided, that no such will may be given in evidence in any court nor taken as sufficient proof of the devise unless a certificate of probate appear thereon. (Rev., s. 1607; Code, s. 2181; R. C., c. 44, s. 12; 1852, c. 172; 1856-7, c. 22; C. S. 1774.)

§ 8-30. Copies of wills recorded in wrong county.—Whereas, by reason of the uncertainty of the boundary lines of many of the counties of the state, wills have been proved, recorded and registered in the wrong county, whereby titles are insecure; for remedy whereof: The registry or duly certified copy of the record of any will, duly recorded, may be given in evidence in any of the courts of this state. (Rev., s. 1608; Code, s. 2182; 1858-9, c. 18; C. S. 1775.)

§ 8-31. Copy of will proved and lost before recorded.—When any will which has been proved and ordered to be recorded was destroyed during the war between the states, before it was recorded, a copy of such will, so entitled to be admitted to record, though not certified by any officer, shall, when the court shall be satisfied of the genuineness thereof, be ordered to be recorded, and shall be received in evidence whenever the original or duly certified exemplification would be; and such copies may be proved and admitted to record under the same rules, regulations and restrictions as are prescribed in chapter 98 entitled Burnt and Lost Records. (Rev., s. 1609; Code, s. 2183; 1866-7, c. 127; C. S. 1776.)

§ 8-32. Certified copies of deeds and wills from other states.—In cases where inhabitants of other states or territories, by will or deed, devise or convey property situated in this state, and the original will or deed cannot be obtained for registration in the county where the land lies, or where the property shall be in dispute, a copy of said will or deed (after the same has been proved and registered or deposited, agreeable to the laws of the state where the person died or made the same) being properly certified, either according to the act of congress or by the proper officer of the said state or territory, shall be read as evidence. (Rev., s. 1619; Code, s. 1344; R. C., c. 44, s. 9; 1802, c. 623; C. S. 1777.)

§ 8-33. Copies of lost records in Bladen.—The clerk of the superior court of Bladen county shall transcribe the judgment docket and index books and the will books in his office, and all other books in said office containing records made since the year one thousand eight hundred and sixty-eight, and the records so transcribed shall have the same force and effect as the original records would have, and shall be received in evidence as the original records and be prima facie evidence of their correctness and of the sufficiency of their probate, though the probates are lost and are not transcribed. (Rev., s. 1611; 1895, c. 415; 1903, c. 65; C. S. 1778.)

Art. 3. Public Records.

§ 8-34. Copies of official writings.—Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the governor, treasurer, auditor, secretary of state, attorney general or adjutant general, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of his office when there is such seal, or under his hand when there is no such seal, unless the court shall order the production of the original. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under his hand and seal of the county. (Rev., s. 1616; Code, ss. 715, 1342; R. C., c. 44, s. 8; 1792, c. 368, s. 11; 1871-2, c. 91; 1868-9, c. 20, s. 21; C. S. 1779.)

§ 8-35. Authenticated copies of public records.—All copies of bonds, contracts, notes, mortgages, or other papers relating to or connected with any loan, account, settlement of any account or any part thereof, or other transaction, between the United States or any state thereof or any corporation all of whose stock is beneficially owned by the United States or any state thereof, either directly or indirectly, and any person, natural or artificial; or extracts therefrom when complete on any one subject, or copies from the books or papers on file, or records of any public office of the state or the United States or of any corporation all of whose stock is beneficially owned by the United States or by any state thereof, directly or indirectly, shall be received in evidence and entitled to full faith and credit in any of the courts of this state when certified to by the chief officer or agent in charge of such public office or of such office of such corporation, or by the secretary or an assistant secretary of such corporation, to be true copies, and authenticated under the seal of the office, department, or corporation concerned. Any such certificate shall be prima facie evidence of the genuineness of such certificate and seal, the truth of the statements made in such certificate, and the official character of the person by which it purports to have been executed. (Rev., s. 1617; 1891, c. 501; 1939, c. 149; C. S. 1780.)

§ 8-36. Authenticated copy of record of administration.—When letters testamentary or of administration on the goods and chattels of any person deceased, being an inhabitant in another state or territory, have been granted, or a return or inventory of the estate has been made, a copy of the record of administration or of the letters testamentary, and a copy of an inventory or return of the effects of the deceased, after the same has been granted or made, agreeable to the laws of the state where the same has been done, being properly certified, either according to the act of congress or by the proper officer of such state or territory, shall be allowed as evidence. (Rev. s.

1618; Code, s. 1343; R. C., c. 44, s. 7; 1834, c. 4; C. S. 1781.)

§ 8-37. Certificate of Commissioner of Revenue as to ownership of automobile.—In all civil actions, arising out of an injury to person or property by reason of the operation of a motor vehicle of any kind, evidence as to the display numbers on a particular car, a copy of the record kept by the Commissioner of Revenue of such display numbers and the person who obtained them, certified under the hand and seal of said Commissioner of Revenue, shall be competent evidence of the ownership of the motor vehicle inflicting the injury or doing the damage. (1931, c. 88, s. 1.)

Art. 4. Other Writings in Evidence.

§ 8-38. Proof by attesting witness not required.—It is not necessary to prove by the attesting witness instruments to the validity of which the attestation is not requisite, and such instruments may be proved by admission or otherwise as if there had been no attesting witness thereto: Provided, that this section shall not affect the method and manner of proving instruments for registration. (Rev., s. 1604; 1905, c. 204; C. S. 1782.)

§ 8-39. Parol evidence to identify land described.—In all actions for the possession of or title to any real estate parol testimony may be introduced to identify the land sued for, and fit it to the description contained in the paper writing offered as evidence of title or of the right of possession, and if from this evidence the jury is satisfied that the land in question is the identical land intended to be conveyed by the parties to such paper-writing, then such paper-writing shall be deemed and taken to be sufficient in law to pass such title to or interest in such land as it purports to pass: Provided, that such paper-writing is in all other respects sufficient to pass such title or interest. (Rev., s. 1605; 1891, c. 465, s. 1; C. S. 1783.)

§ 8-40. Proof of handwriting by comparison.—In all trials in this state, when it may otherwise be competent and relevant to compare handwritings, a comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute: Provided, this shall not apply to actions pending on March 5, 1913. (1913, c. 52; C. S. 1784.)

§ 8-41. Bills of lading in evidence.—In all actions by or against common carriers in which it shall be thought necessary to introduce in evidence any bills of lading issued by said common carrier or by a connecting carrier, it shall be competent to introduce in evidence any paper-writing purporting to be the original bill of lading, or a duplicate thereof, upon proof that such paper purporting to be such bill of lading or duplicate was received in due course of mail from consignor or agent of said carrier or connecting carrier, or delivered by said common carrier to the consignee or other person entitled to the possession of the property for which said paper purports to be the bill of lading: Provided, that such purported bill of lading shall not be declared to be the bill of lading unless the said purported bill of lading is first exhibited by the plaintiff or his agent or attorney to the defendant or its attorney, or its agent upon whom process may be served, ten days before the trial where the point of shipment is in the state, and twenty days when the point of shipment is without the state. Upon such proof and introduction of the bill of lading, the due execution thereof shall be prima facie established. (1915, c. 287; C. S. 1785.)

§ 8-42. Book accounts under sixty dollars.—When any person shall bring an action upon a contract, or shall plead, or give notice of, a setoff or counterclaim for goods, wares and merchandise by him sold and delivered, or for work done and performed, he shall file his account with his complaint, or with his plea or notice of setoff or counterclaim, and if upon the trial of the issue, or executing a writ of inquiry of damages in such action, he shall declare upon his oath that the matter in dispute is a book account, and that he hath no means to prove the delivery of any of the articles which he then shall propose to prove by himself but by this book, in that case such book may be given in evidence, if he shall make out by his own oath that it doth contain a true account of all the dealings, or the last settlement of accounts between himself and the opposing party, and that all the articles therein contained, and by him so proved, were bona fide delivered, and that he hath given the opposing party all just credits; and such book and oath shall be received as evidence for the several articles so proved to be delivered within two years next before the commencement of the action, but not for any article of a longer standing, nor for any greater amount than sixty dollars. (Rev., s. 1622; Code, s. 591; R. C., c. 15, s. 1; 1756, c. 57, ss. 2, 6, 7; C. S. 1786.)

§ 8-43. Book accounts proved by personal representative.—In all actions where executors and administrators are parties, such book account for all articles delivered within two years previous to the death of the deceased may be proved under the like circumstances, rules and conditions; and in such case, the executor or administrator may prove by himself that he found the account so stated on the books of the deceased; that there are no witnesses, to his knowledge, capable of proving the delivery of the articles which he shall propose to prove by said book, and that he believes the same to be just, and doth not know of any other or further credit to be given than what is therein mentioned: Provided, that if two years shall not have elapsed previous to the death of the deceased, the executor or administrator may prove the said book account, if the suit shall be commenced within three years from the delivery of the articles: Provided further, that whenever by the aforesaid proviso the time of proving a book account in manner aforesaid is enlarged as to the one party, to the same extent shall be enlarged the time as to the other party. (Rev., s. 1623; Code, s. 592; R. C., c. 15, s. 2; 1756, c. 57, s. 2; 1796, c. 465; C. S. 1787.)

§ 8-44. Copies of book accounts in evidence.—A copy from the book of accounts proved in manner above directed may be given in evidence in any such action or setoff as aforesaid,

and shall be as available as if such book had been produced, unless the party opposing such proof shall give notice to the adverse party or his attorney, at the joining of the issue, or ten days before the trial, that he will require the book to be produced at the trial; and in that case no such copy shall be admitted as evidence. (Rev., s. 1624; Code, s. 593; R. C., c. 15, s. 3; 1756, c. 57, s. 3; C. C. P., s. 343c; C. S. 1788.)

§ 8-45. Itemized and verified accounts.—In any actions instituted in any court of this state upon an account for goods sold and delivered, for rents, for services rendered, or labor performed, or upon any oral contract for money loaned, a verified itemized statement of such account shall be received in evidence, and shall be deemed prima facie evidence of its correctness. (Rev., s. 1625; 1897, c. 480; 1917, c. 32; 1941, c. 104; C. S. 1789.)

Art. 5. Life Tables.

§ 8-46. Mortuary tables as evidence.—Whenever it is necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he be living at the time or not, the table hereto appended shall be received in all courts and by all persons having power to determine litigation, as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the columns headed by the words "completed age" and "expectation" respectively:

Completed Age	Expectation
10	48.7
11	48.1
12	47.4
13	46.8
14	46.2
15	45.5
16	44.9
17	44.2
18	43.5
19	42.9
20	42.2
21	41.5
22	40.9
23	40.2
24	39.5
25	38.8
26	38.1
27	37.4
28	36.7
29	36.0
30	35.3
31	34.6
32	33.9
33	33.2
34	32.5
35	31.8
36	31.1
37	30.4
38	29.6
39	28.9
40	28.2
41	27.5
42	26.7
43	26.0
44	25.3
45	24.5
46	23.8
47	23.1
48	22.4
49	21.6
50	20.9
51	20.2
52	19.5
53	18.8
54	18.1
55	17.4
56	16.7
57	16.1
58	15.4
59	14.7
60	14.1
61	13.5
62	12.9
63	12.3
64	11.7
65	11.1
66	10.5
67	10.0
68	9.5
69	9.0
70	8.5
71	8.0
72	7.6
73	7.1
74	6.7
75	6.3
76	5.9
77	5.5
78	5.1
79	4.8
80	4.4
81	4.1
82	3.7
83	3.4
84	3.1
85	2.8
86	2.5
87	2.2
88	1.9
89	1.7
90	1.4
91	1.2
92	1.0
93	.8
94	.6
95	.5

(Rev., s. 1626; Code, s. 1352; 1883, c. 225; C. S. 1790.)

§ 8-47. Present worth of annuities.—Whenever it is necessary to establish the present worth or cash value of an annuity to a person, payable annually during his life, such present worth or cash value may be ascertained by the use of the following table in connection with the mortuary tables established by law, the first column representing the number of years the annuity is to run and the second column representing the present cash value of an annuity of one dollar for such number of years, respectively:

No. of Years Annuity is to Run	Cash Value of the Annuity of $1
1	$0.943
2	1.833
3	2.673
4	3.465
5	4.212
6	4.917
7	5.582
8	6.209
9	6.801
10	7.360
11	7.886
12	8.383
13	8.852
14	9.295
15	9.712
16	10.106
17	10.477
18	10.827
19	11.158
20	11.469
21	11.764
22	12.042
23	12.304
24	12.550
25	12.783
26	13.003
27	13.211
28	13.406
29	13.591
30	13.765
31	13.929
32	14.084
33	14.230
34	14.368
35	14.498
36	14.621
37	14.737
38	14.846
39	14.949
40	15.046
41	15.135
42	15.219
43	15.299
44	15.374
45	15.445
46	15.514
47	15.579
48	15.641
49	15.699
50	15.754

The present cash value of the annuity for a fraction of a year may be ascertained as follows: multiply the difference between the cash value of the annuities for the preceding and succeeding full years by the fraction of the year in decimals and add the sum to the present cash value for the preceding full year. When a person is entitled to the use of a sum of money for life, or for a given time, the interest thereon for one year, computed at four and one-half per cent, may be considered as an annuity and the present cash value be ascertained as herein provided. (Rev., s. 1627; 1905, c. 347; 1927, c. 215; C. S. 1791.)

Art. 6. Calendars.

§ 8-48. Clark's calendar; proof of dates.—In any controversy or inquiry in any court or before any fact finding board, commission, administrative agency or other body, where it becomes necessary or pertinent to determine any information which may be established by reference to a calendar for any year between the years one thousand seven hundred and fifty-three and two thousand and two, Anno Domini, inclusive, it is permissible to introduce in evidence "Clark's Calendar, A Calendar Covering 250 Years, 1753 A. D. to 2002 A. D.", as supplemented, copyrighted, 1940, by E. D. Clark, Entry: Class AA, Number three hundred and twenty-eight thousand five hundred and seventy-three, Copyright Office of the United States of America, Washington, or any reprint of said one thousand nine hundred and forty edition certified by the secretary of state to be an accurate copy thereof; and such calendar or reprint, when so introduced, shall be prima facie evidence that the information disclosed by said calendar or reprint thereof is true and correct. (1941, c. 312.)

Art. 7. Competency of Witnesses.

§ 8-49. Witness not excluded by interest or crime.—No person offered as a witness shall be excluded, by reason of incapacity from interest or crime, from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit or proceeding, civil or criminal, in any court, or before any judge, justice, jury or other person having, by law, authority to hear, receive and examine evidence; and every person so offered shall be admitted to give evidence, notwithstanding such person may or shall have an interest in the matter in question, or in the event of the trial of the issue, or of the suit or other proceeding in which he is offered as a witness. This section shall not be construed to apply to attesting witnesses to wills. (Rev., ss. 1628, 1629; Code, ss. 589, 1350; C. C. P., c. 342; 1866, c. 43, ss. 1, 4; 1869-70, c. 177; 1871-2, c. 4; C. S. 1792.)

§ 8-50. Parties competent as witnesses.—On the trial of any issue, or of any matter or question, or on any inquiry arising in any action, suit or other proceeding in court, or before any judge, justice, jury or other person having, by law, authority to hear and examine evidence, the parties themselves and the person in whose behalf any suit or other proceeding may be brought or defended, shall, except as otherwise provided, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the court, in behalf of either or any of the parties to said action, suit or other proceeding. Nothing in this section shall be construed to apply to any action or other proceeding in any court instituted in consequence of adultery, or to any action for criminal conversation. (Rev., s. 1630; Code, s. 1351; 1866, c. 43, ss. 2, 3; C. S. 1793.)

§ 8-51. A party to a transaction excluded, when the other party is dead.—Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own be-

half or interest, or in behalf of the party succeeding to his title or interest, against the executor, administrator or survivor of a deceased person, or the committee of a lunatic, or a person deriving his title or interest from, through or under a deceased person or lunatic, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or lunatic; except where the executor, administrator, survivor, committee or person so deriving title or interest is examined in his own behalf, or the testimony of the lunatic or deceased person is given in evidence concerning the same transaction or communication. (Rev., s. 1631; Code, s. 590; C. C. P., s. 343; C. S. 1795.)

§ 8-52. Communications between attorney and client.—In cases where fraud upon the state is charged it shall not be a sufficient cause to excuse any one from imparting any evidence or information legally required of him, because he came into the possession of such evidence or information by his position as counsel or attorney before the consummation of such fraud, and any person refusing for such cause to answer any question when legally required so to do shall be guilty of contempt, and punished at the discretion of the court or other body demanding such information: Provided, that it shall not be competent to introduce any admissions thus made on the trial of any persons making the same. (Rev., s. 1620; Code, s. 1349; 1874-5, c. 213; C. S. 1797.)

§ 8-53. Communications between physician and patient.—No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, that the presiding judge of a superior court may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice. (Rev., s. 1621; 1885, c. 159; C. S. 1798.)

§ 8-54. Defendant in criminal action competent but not compellable to testify.—In the trial of all indictments, complaints, or other proceedings against persons charged with the commission of crimes, offenses or misdemeanors, the person so charged is, at his own request, but not otherwise, a competent witness, and his failure to make such request shall not create any presumption against him. But every such person examined as a witness shall be subject to cross examination as other witnesses. Except as above provided, nothing in this section shall render any person, who in any criminal proceeding is charged with the commission of a criminal offense, competent or compellable to give evidence against himself, nor render any person compellable to answer any question tending to criminate himself. (Rev., ss. 1634, 1635; Code, ss. 1353, 1354; 1881, c. 89, s. 3; 1881, c. 110, ss. 2, 3; 1856-7, c. 23; 1866, c. 43, s. 3; 1868-9, c. 209, s. 4; C. S. 1799.)

§ 8-55. Testimony enforced in certain criminal investigations; immunity.—If any justice of the peace, magistrate of police, mayor of a town, or judge of the supreme or superior courts shall have good reason to believe that any person within his jurisdiction has knowledge of the existence and establishment of any faro-bank, faro-table or other gaming table prohibited by law, or of any place where intoxicating liquors are sold contrary to law, in any town or county within his jurisdiction, such person not being minded to make voluntary information thereof on oath, then it shall be lawful for such justice of the peace, magistrate, mayor, or judge to issue to the sheriff of the county or to any constable of the town or township in which such faro-bank, faro-table, gaming table, or place where intoxicating liquors are sold contrary to law is supposed to be, a subpœna, capias ad testificandum, or other summons in writing, commanding such person to appear immediately before such justice of the peace, magistrate, mayor or judge and give evidence on oath as to what he may know touching the existence, establishment and whereabouts of such faro-bank, faro-table or other gaming table, or place where intoxicating liquors are sold contrary to law, and the name and personal description of the keeper thereof. Such evidence, when obtained, shall be considered and held in law as an information on oath, and the justice, magistrate, mayor or judge may thereupon proceed to seize and arrest such keeper and destroy such table, or issue process therefor as provided by law. No person shall be excused, on any prosecution, from testifying touching any unlawful gaming done by himself or others; but no discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offenses so done or participated in by him. (Rev., ss. 3721, 1637; Code, ss. 1215, 1050; R. C., c. 35, s. 50; 1858-9, c. 34, s. 1; 1889, c. 355; 1913, c. 141; C. S. 1800.)

§ 8-56. Husband and wife as witnesses in civil actions.—In any trial or inquiry in any suit, action or proceeding in any court, or before any person having, by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as herein stated, be competent and compellable to give evidence, as any other witness on behalf of any party to such suit, action or proceeding. Nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action or proceeding in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage); or in any action or proceeding for or on account of criminal conversation, except that in actions of criminal conversation brought by the husband in which the character of the wife is assailed she shall be a competent witness to testify in refutation of such charges. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage. (Rev., s. 1636; Code, s. 588; C. C. P., s. 341; 1866, c. 43, ss. 3, 4; 1919, c. 18; C. S. 1801.)

§ 8-57. Husband and wife as witnesses in criminal actions.—The husband or wife of the defendant, in all criminal actions or proceedings, shall

be a competent witness for the defendant, but the failure of such witness to be examined shall not be used to the prejudice of the defense. Every such person examined as a witness shall be subject to be cross-examined as are other witnesses. No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage. Nothing herein shall render any husband or wife competent or compellable to give evidence against each other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, and except that in all criminal prosecutions of a husband for an assault and battery upon his wife, or for abandoning his wife, and/or his children, or for neglecting to provide for her support, and/or the support of his children, it shall be lawful to examine the wife in behalf of the state against the husband. (Rev., ss. 1634, 1635, 1636; Code, ss. 588, 1353, 1354; 1856-7, c. 23; 1866, c. 43; 1868-9, c. 209; 1881, c. 110; 1933, c. 13, s. 1; 1933, c. 361; C. S. 1802.)

§ 8-58. Wife may testify in applications for peace warrants.—The wife shall be competent to make affidavit and testify in applications for peace warrants against the husband. (1933, c. 13, s. 2.)

Art. 8. Attendance of Witness.

§ 8-59. Issue and service of subpoena.—In obtaining the testimony of witnesses in causes depending in the superior, criminal and inferior courts, the following rules shall be observed in practice, to wit:

In suits where witnesses are to appear at any court, the clerk at the instance of a party shall issue a subpoena, directed to the sheriff or other officer of the county where such witnesses reside, naming the time and place for their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance they are summoned. Every subpoena made returnable immediately shall be issued only in term time, and shall be personally served on the witness therein named. A copy of every subpoena issued by the clerk in vacation, in case any witness therein named is not to be found, may be left at his usual place of residence; and such copy certified by the sheriff or other officer, and left as aforesaid, shall be deemed a legal summons, and the person therein named shall be bound to appear in the same manner as if personally summoned. (Rev., s. 1639; Code, s. 1355; R. C., c. 31, s. 59; 1777, c. 115, s. 36; C. S. 1803.)

§ 8-60. Attendance before referee or commissioners.—In all cases not otherwise provided for, when witnesses are required to attend any court, commission, referee, order of survey, or jury of view, a summons shall be issued by the clerk of the court, at the request of either party, naming the day and place when and where they are to appear, the names of the parties to the suit, and in whose behalf summoned. (Rev., s. 1640; Code, s. 1366; R. C., c. 31, s. 68; 1805, c. 685, ss. 1, 2; C. S. 1804.)

§ 8-61. Subpœna duces tecum issued.—In all causes depending in any court, in which the production of an original paper, lodged in any of the public offices of the state, or in any office of any court, shall become necessary, the court may issue the process of subpœna duces tecum, requiring such persons who hold said offices to attend the court with such original paper, in like manner and under the same penalties as witnesses are required in cases of subpœna to testify. (Rev., s. 1641; Code, s. 1372; R. C., c. 31, s. 81; 1797, c. 476; C. S. 1805.)

§ 8-62. Subpœnas and depositions upon removal of cause.—When any cause shall be removed from the superior court of one county to that of another, after the order of removal, depositions may be taken in the cause, and subpœnas for the attendance of witnesses and commissions to take depositions may issue from either of the said courts, under the same rules as if the cause had been originally commenced in the court from which the subpoenas or commissions issued. (Rev., s. 1642; Code, s. 1371; R. C., c. 31, s. 72; 1810, c. 787; 1832, c. 8; C. S. 1806.)

§ 8-63. Witnesses attend until discharged; effect of nonattendance.—Every witness, being summoned to appear in any of the said courts, in manner before directed, shall appear accordingly, and continue to attend from term to term until discharged, when summoned in a civil action or special proceeding, by the court or the party at whose instance such witness shall be summoned, or, when summoned in a criminal prosecution, until discharged by the court, the prosecuting officer, or the party at whose instance he was summoned; and in default thereof shall forfeit and pay, in civil actions or special proceedings, to the party at whose instance the subpoena issued, the sum of forty dollars, to be recovered by motion in the cause, and shall be further liable to his action for the full damages which may be sustained for the want of such witness's testimony; or if summoned in a criminal prosecution shall forfeit and pay eighty dollars for the use of the state, or the party summoning him. If the civil action or special proceeding shall, in the vacation, be compromised and settled between the parties, and the party at whose instance such witness was summoned should omit to discharge him from further attendance, and for want of such discharge he shall attend the next term, in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk in the same manner as other witnesses, and shall recover from the party at whose instance he was summoned the allowance which is given to witnesses for their attendance, with costs.

No execution shall issue against any defaulting witness for the forfeiture aforesaid but after notice made known to him to show cause against the issuing thereof; and if sufficient cause be shown of his incapacity to attend, execution shall not issue, and the witness shall be discharged of the forfeiture without costs; but otherwise the court shall, on motion, award execution for the forfeiture against the defaulting witness. (Rev., s. 1643; Code, s. 1356; R. C., c. 31, ss. 60, 61, 62; 1777, c. 115, ss. 37, 38, 43; 1799, c. 528; 1801, c. 591; C. S. 1807.)

§ 8-64. Witnesses exempt from civil arrest.—Every witness shall be exempt from arrest in

civil actions or special proceedings during his attendance at any court, or before a commissioner, arbitrator, referee or other person authorized to command the attendance of such witness, and during the time such witness is going to and returning from the place of such attendance, allowing one day for every thirty miles such witness has to travel to and from his place of residence. (Rev., s. 1644; Code, s. 1367; R. C., c. 31, s. 70; 1777, c. 115, s. 44; C. S. 1808.)

Art. 9. Attendance of Witnesses from without State.

§ 8-65. Definitions.—"Witness" as used in this article shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and District of Columbia.

The word "summons" shall include a subpœna, order or other notice requiring the appearance of a witness. (1937, c. 217, s. 1.)

§ 8-66. Summoning witness in this state to testify in another state.—If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies, under the seal of such court, that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing, being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpœna or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (1937, c. 217, s. 2.)

§ 8-67. Witness from another state summoned to testify in this state.—If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (1937, c. 217, s. 3.)

§ 8-68. Exemption from arrest and service of process.— If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not, while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, he shall not while so passing through this state be subject to arrest or the services of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. (1937, c. 217, s. 4.)

§ 8-69. Uniformity of interpretation.—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. (1937, c. 217, s. 5.)

§ 8-70. Title of article.—This article may be cited as "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings." (1937, c. 217, s. 6.)

Art. 10. Depositions.

§ 8-71. Manner of taking depositions in civil actions.—Any party in a civil action or special proceeding, upon giving notice to the adverse party or his attorney as provided by law, may take the depositions of persons whose evidence he may desire to use, without any special order therefor, unless the witness shall be beyond the limits of the United States.

Depositions shall be taken on commission, issuing from the court and under the seal thereof, by one or more commissioners, who shall be of kin to neither party, and shall be appointed by the clerk; or depositions may be taken by a notary public of this state or of any other state or foreign country, without a commission issuing from the court.

Depositions shall be subscribed and sealed up by the commissioners or notary public, and returned to the court, the clerk whereof or the judge holding the court, if the clerk is a party to the action, shall open and pass upon the same, after having first given the parties or their attorneys not less than one day's notice; and all such depositions, when passed upon and allowed by the clerk, without appeal, or by the judge upon appeal from the clerk's order, or by the judge holding the court, when the clerk is a party to the action, shall be deemed legal evidence, if the witness be competent. (Rev., s. 1652; Code, s. 1357; 1911, c. 158; R. C., c. 31, s: 63; 1881, c. 279; 1893, c. 360; C. S. 1809.)

§ 8-72. Notice required for taking depositions.—In taking depositions in civil actions or special proceedings, written notice of the time and place of taking a deposition, specifying the name of the witness, must be served by the party at whose instance it is taken upon the adverse party or his attorney. The time for serving such notice shall be as follows: Three entire days when the party notified resides within ten miles of the place where the deposition is to be taken; in other cases, where the party notified resides in the state, one day more for every additional twenty miles, except where the deposition is to be taken within ten miles of a railway in running operation in the state, when one day only shall be given for every hundred miles of railway to the place where the deposition is to be taken. When a deposition is to be taken beyond the state, ten days notice of the taking thereof shall be given, when the person whose deposition is to be taken resides within ten miles of a railway connecting with a line of railway within twenty miles of the place where the person notified resides. In other cases, where there are no railways running as above specified, twenty days notice shall be given. When objection is taken to the reading of any such deposition, upon the ground that there are no railways or connecting railways to and from the points specified in this section, or that the notice given had otherwise been actually insufficient, it shall devolve upon the party objecting to satisfy the court of the truth of his allegation. (Rev., s. 1652; Code, s. 1357; 1881, c. 279; C. S. 1810.)

§ 8-73. Publication of notice in case of nonresident.—Instead of the notice served upon the adverse party or his attorney in taking depositions in civil actions or special proceedings, when the adverse party is a nonresident and has no attorney of record, it shall be sufficient to publish notice to the adverse party in some newspaper published in the county where the action is pending, or if no newspaper is published in such county, then in some newspaper in the judicial district, for three consecutive weeks, giving the time and place of taking the deposition and specifying the name of the witness. And when the adverse party is a nonresident and service of notice cannot be had upon him or his attorney in this state, then one publication of notice to open such deposition shall be sufficient notice. (1913, c. 137; C. S. 1811.)

§ 8-74. Depositions for defendant in criminal actions.—In all criminal actions, hearings and investigations it shall be lawful for the defendant in any such action to make affidavit before the clerk of the superior court of the county in which said action is pending, that it is important for the defense that he have the testimony of any person, whose name must be given, and that such person is so infirm, or otherwise physically incapacitated, or nonresident of this state, that he cannot procure his attendance at the trial or hearing of said cause. Upon the filing of such affidavit, it shall be the duty of the clerk to appoint some responsible person to take the deposition of such witness, which deposition may be read in the trial of such criminal action under the same rules as now apply by law to depositions in civil actions: Provided, that the solicitor or prosecuting attorney of the district, county or town in which such action is pending have ten days notice of the taking of such deposition, who may appear in person or by representative to conduct the cross-examination of such witness. This section shall not apply to the taking of depositions in courts of justices of the peace. (Rev., s. 1652; Code, s. 1357; 1891, c. 522; 1893, c. 80; 1915, c. 251; C. S. 1812.)

§ 8-75. Depositions in justices' courts.—Any party in a civil action before a justice of the peace may take the depositions of all persons whose evidence he may desire to use in the action; and to do so he may apply to the clerk of the superior court for a commission to take the same, and shall proceed in all things in taking such depositions as if such action was pending in the superior court. When any such depositions are returned to the clerk, they shall be opened and passed upon by the clerk, and delivered to the justice of the peace before whom the trial is to be had; and the reading and using of said depositions shall conform to the rules of the superior court. (Rev., s. 1646; Code, s. 1359; 1872-3, c. 33; C. S. 1813.)

§ 8-76. Depositions before municipal authori-

ties.—Any board of aldermen, board of town or county commissioners or any person interested in any proceeding, investigation, hearing or trial before such board, may take the depositions of all persons whose evidence may be desired for use in said proceeding, investigation, hearing or trial; and to do so, the chairman of such board or such person may apply in person or by attorney to the superior court clerk of that county in which such proceeding, investigation, hearing or trial is pending, for a commission to take the same, and said clerk, upon such application, shall issue such commission; and the notice and proceedings upon the taking of said depositions shall be the same as provided for in civil actions; and if the person upon whom the notice of the taking of such deposition is to be served is absent from or cannot after due diligence be found within this state, but can be found within the county in which the deposition is to be taken, then, and in that case, said notice shall be personally served on such person by the commissioner appointed to take such deposition; and when any such deposition is returned to the clerk it shall be opened and passed upon by him and delivered to such board, and the reading and using of such deposition shall conform to the rules of the superior court. (Rev., s. 1653; 1889, c. 151; C. S. 1814.)

§ 8-77. Depositions in quo warranto proceedings.—In all actions for the purpose of trying the title to the office of clerk of the superior court, register of deeds, county treasurer or sheriff of any county, it shall be competent and lawful to take the deposition of witnesses before a commissioner or commissioners to be appointed by the judge of the district wherein the case is to be tried, or the judge holding the court of said district, or the clerk of the court wherein the case is pending, under the same rules as to time of notice and as to the manner of taking and filing the same as is now provided by law for the taking of depositions in other cases; and such depositions, when so taken, shall be competent to be read on the trial of such action, without regard to the place of residence of such witness or distance of residence from said place of trial: Provided, that the provisions of this section shall not be construed to prevent the oral examination, by either party on the trial, of such witnesses as they may summon in their behalf. (Rev., s. 1654; 1889, c. 428; C. S. 1815.)

§ 8-78. Commissioner may subpoena witness and punish for contempt. — Commissioners to take depositions appointed by the courts of this state, or by the courts of the states or territories of the United States, arbitrators, referees, and all persons acting under a commission issuing from any court of record in this state, are hereby empowered, they or the clerks of the courts respectively in this state, to which such commission shall be returnable, to issue subpœnas, specifying the time and place for the attendance of witnesses before them, and to administer oaths to said witnesses, to the end that they may give their testimony. And any witness appearing before any of the said persons and refusing to give his testimony on oath touching such matters as he may be lawfully examined unto shall be committed, by warrant of the person before whom he shall so refuse, to the common jail of the county, there to remain until he may be willing to give his evidence; which warrant of commitment shall recite what authority the person has to take the testimony of such witness, and the refusal of the witness to give it. (Rev., s. 1649; Code, s. 1362; R. C., c. 31, s. 64; 1777, c. 115, s. 42; 1805, c. 685, ss. 1, 2; 1848, c. 66; 1850, c. 188; C. S. 1816.)

§ 8-79. Attendance before commissioner enforced.—The sheriff of the county where the witness may be shall execute all such subpœnas, and make due return thereof before the commissioner, or other person, before whom the witness is to appear, in the same manner, and under the same penalties, as in case of process of a like kind returnable to court; and when the witness shall be subpœnaed five days before the time of his required attendance, and shall fail to appear according to the subpœna and give evidence, the default shall be noted by the commissioner, arbitrator, or other person aforesaid; and in case the default be made before a commissioner acting under authority from courts without the state, the defaulting witness shall forfeit and pay to the party at whose instance he may be subpœnaed fifty dollars, and on the trial for such penalty the subpœna issued by the commissioner, or other person, as aforesaid, with the indorsement thereon of due service by the officer serving the same, together with the default noted as aforesaid and indorsed on the subpœna, shall be prima facie evidence of the forfeiture, and sufficient to entitle the plaintiff to judgment for the same, unless the witness may show his incapacity to have attended. (Rev., s. 1650; Code, s. 1363; R. C., c. 31, s. 65; 1848, c. 66, s. 2; 1850, c. 188, ss. 1, 2; C. S. 1817.)

§ 8-80. Remedies against defaulting witness before commissioner.—But in case the default be made before a commissioner, arbitrator, referee or other person, acting under a commission or authority from any of the courts of this state, then the same shall be certified under his hand, and returned with the subpœna to the court by which he was commissioned or empowered to take the evidence of such witness; and thereupon the court shall adjudge the defaulting witness to pay to the party at whose instance he was summoned the sum of forty dollars; but execution shall not issue therefor until the same be ordered by the court, after such proceedings had as shall give said witness an opportunity to show cause, if he can, against the issuing thereof. (Rev., s. 1651; Code, s. 1364; R. C., c. 31, s. 66; 1850, c. 188, s. 2; C. S. 1818.)

§ 8-81. Objection to deposition before trial.—At any time before the trial, or hearing of an action or proceeding, any party may make a motion to the judge or court to reject a deposition for irregularity in the taking of it, either in whole or in part, for scandal, impertinence, the incompetency of the testimony, for insufficient notice, or for any other good cause. The objecting party shall state his exceptions in writing. (Rev., s. 1648; Code, s. 1361; 1895, c. 312; 1903, c. 132; 1869-70, c. 227, ss. 13, 17; C. S. 1819.)

§ 8-82. Deposition not quashed after trial be-

gun.—No deposition shall be quashed, or rejected, on objection first made after a trial has begun, merely because of an irregularity in taking the same, provided it shall appear that the party objecting had notice that it had been taken, and it was on file long enough before the trial to enable him to present his objection. (Rev., s. 1647; Code, s. 1360; 1869-70, c. 227, s. 12; C. S. 1820.)

§ 8-83. When deposition may be read on the trial.—Every deposition taken and returned in the manner provided by law may be read on the trial of the action or proceeding, or before any referee, in the following cases, and not otherwise:

1. If the witness is dead, or has become insane since the deposition was taken.

2. If the witness is a resident of a foreign country, or of another state, and is not present at the trial.

3. If the witness is confined in a prison outside the county in which the trial takes place.

4. If the witness is so old, sick or infirm as to be unable to attend court.

5. If the witness is the president of the United States, or the head of any department of the federal government, or a judge, district attorney, or clerk of any court of the United States, and the trial shall take place during the term of such court.

6. If the witness is the governor of the state, or the head of any department of the state government, or the president of the university, or the head of any other incorporated college in the state, or the superintendent or any physician in the employ of any of the hospitals for the insane for the state.

7. If the witness is a justice of the supreme court, or a judge, presiding officer, clerk or solicitor of any court of record, and the trial shall take place during the term of such court.

8. If the witness is a member of the congress of the United States, or a member of the general assembly, and the trial shall take place during a session of the body of which he is a member.

9. If the witness has been duly summoned, and at the time of the trial is out of the state, or is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition.

10. If the action is pending in a justice's court the deposition may be read on the trial of the action, provided the witness is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting. (Rev., s. 1645; Code, s. 1358; R. C., c. 31, s. 63; 1777, c. 115, ss. 39, 40, 41; 1803, c. 633; 1828, c. 24, ss. 1, 2; 1836, c. 30; 1869-70, c. 227, s. 11; 1881, c. 279, ss. 1, 3; 1905, c. 366; 1919, c. 324; C. S. 1821.)

§ 8-84. Depositions taken in the state to be used in another state:

1. By whom obtained. In addition to the other remedies prescribed by law, a party to an action, suit or special proceeding, civil or criminal, pending in a court without the state, either in the United States or any of the possessions thereof, or any foreign country, may obtain, by the proceedings prescribed by this section, the testimony of a witness and in connection therewith the production of books and papers within the state to be used in the action, suit or special proceeding.

2. Application filed. Where a commission to take testimony within the state has been issued from the court in which the action, suit or special proceeding is pending, or where a notice has been given, or any other proceeding has been taken for the purpose of taking the testimony within the state pursuant to the laws of the state or country wherein the court is located, or pursuant to the laws of the United States or any of the possessions thereof, if it is a court of the United States, the person desiring such testimony, or the production of papers and documents, may present a verified petition to any justice of the supreme court or judge of the superior court, stating generally the nature of the action or proceeding in which the testimony is sought to be taken, and that the testimony of the witness is material to the issue presented in such action or proceeding, and he shall set forth the substance of or have annexed to his petition a copy of the commission, order, notice, consent or other authority under which the deposition is taken. In case of an application for a subpœna to compel the production of books or papers, the petition shall specify the particular books or papers, the production of which is sought, and show that such books or papers are in the possession of or under the control of the witness and are material upon the issues presented in the action or special proceeding in which the deposition of the witness is sought to be taken.

3. Subpœna issued. Upon the filing of such petition, if the justice of the supreme court or judge of the superior court is satisfied that the application is made in good faith to obtain testimony within the provisions of this section, he shall issue a subpœna to the witness, commanding him to appear before the commissioner named in the commission, or before a commissioner within the state, for the state, territory or foreign country in which the notice was given or the proceeding taken, or before the officer designated in the commission, notice or other paper, by his title or office, at a time and place specified in the subpœna, to testify in the action, suit or special proceeding. Where the subpœna directs the production of books or papers, it shall specify the particular books or papers to be produced, and shall specify whether the witness is required to deliver sworn copies of such books or papers to the commissioner or to produce the original thereof for inspection, but such books and original papers shall not be taken from the witness. This subpœna must be served upon the witness at least two days, or, in case of a subpœna requiring the production of books or papers, at least five days before the day on which the witness is commanded to appear. A party to an action or proceeding in which a deposition is sought to be taken, or a witness subpœnaed to attend and give his testimony, may apply to the court issuing such subpœna to vacate or modify the same.

4. Witness compelled to attend and testify. If the witness shall fail to obey the subpœna, or refuse to have an oath administered, or to testify or to produce a book or paper pursuant to a subpœna, or to subscribe his deposition, the justice

or judge issuing the subpœna shall, if it is determined that a contempt has been committed, prescribe punishment as in case of a recalcitrant witness. Upon proof by affidavit that a person to whom a subpœna was issued has failed or refused to obey such subpœna, to be duly sworn or affirmed, to testify or answer a question propounded to him, to produce a book or paper which he has been subpœnaed to produce, or to subscribe to his deposition when correctly taken down, the justice or judge shall grant an order requiring such person to show cause before him, at a time and place specified, why he should not appear, be sworn or affirmed, testify, answer a question propounded, produce a book or paper, or subscribe to the deposition, as the case may be. Such affidavit shall set forth the nature of the action or special proceeding in which the testimony is sought to be taken, and a copy of the pleadings or other papers defining the issues in such action or special proceeding, or the facts to be proved therein. Upon the return of such order to show cause, the justice or judge shall, upon such affidavit and upon the original petition and upon such other facts as shall appear, determine whether such person should be required to appear, be sworn or affirmed, testify, answer the question propounded, produce the books or papers, or subscribe to his deposition, as the case may be, and may prescribe such terms and conditions as shall seem proper. Upon proof of a failure or refusal on the part of any person to comply with any order of the court made upon such determination, the justice or judge shall make an order requiring such person to show cause before him, at a time and place therein specified, why such person should not be punished for the offense as for a contempt. Upon the return of the order to show cause, the questions which arise must be determined as upon a motion. If such failure or refusal is established to the satisfaction of the justice or judge before whom the order to show cause is made returnable, he shall enforce the order and prescribe the punishment as hereinbefore provided.

5. Deposit for costs required. The commissioner herein provided for shall not proceed to act under and by virtue of his appointment until the party seeking to obtain such deposition has deposited with him a sufficient sum of money to cover all costs and charges incident to the taking of the deposition, including such witness fees as are allowed to witnesses in this state for attendance upon the superior courts. From such deposit the commissioner shall retain whatever amount may be due him for services, pay the witness fees and other costs that may have been incurred by reason of taking such deposition, and if any balance remains in his hands, he shall pay the same to the party by whom it was advanced. (Rev., s. 1655; 1903, c. 608; C. S. 1822.)

Art. 11. Perpetuation of Testimony.

§ 8-85. Relief afforded by superior courts.—The relief afforded in courts of equity by what is known as a "bill to perpetuate testimony" shall be afforded by the superior courts of this State. (1935, c. 254, s. 1.)

§ 8-86. How to obtain relief.—Such relief may be obtained either by a special proceeding before the clerk of the superior court, or by a civil action brought to the superior court in term. (1935, c. 254, s. 2.)

§ 8-87. Rules of procedure; admissibility of testimony taken.—Such special proceedings and civil actions shall be governed by the same rules of procedure that govern other special proceedings and civil actions; and the testimony taken therein shall be admissible in the trial of any controversy, under the same regulations and restrictions which govern depositions taken in other cases in which the taking of depositions is provided for by the laws of this State: Provided, however, the evidence so perpetuated shall not be competent against any person who was not served with notice now provided by law for the taking of depositions in civil causes to be present and cross examine said witnesses. (1935, c. 254, s. 3.)

§ 8-88. Taxing costs.—The costs of such special proceedings and civil actions shall be taxed against the party at whose instance the proceeding is instituted. (1935, c. 254, s. 4.)

Art. 12. Inspection and Production of Writings.

§ 8-89. Inspection of writings.—The court before which an action is pending, or a judge thereof, may, in its or his discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, and documents in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court, on motion, may exclude the paper from being given in evidence, or punish the party refusing, or both. (Rev., s. 1656; Code, s. 578; R. C., c. 31, s. 82; R. S., c. 31, s. 86; 1821, c. 1095; C. C. P., s. 331; 1828, c. 7; C. S. 1823.)

§ 8-90. Production of writings.—The courts have full power, on motion and due notice thereof given, to require the parties to produce books or writings in their possession or control which contain evidence pertinent to the issue, and if a plaintiff shall fail to comply with such order, and shall not satisfactorily account for his failure, the court, on motion, may give the like judgment for the defendant, as in cases of nonsuit; and if a defendant shall fail to comply with such order, and shall not satisfactorily account for his failure, the court, on motion as aforesaid, may give judgment against him by default. (Rev., s. 1657; Code, s. 1373; R. C., c. 31, s. 25; 1821, c. 1095; 1828, c. 7; C. S. 1824.)

§ 8-91. Admission of genuineness.—Either party may exhibit to the other, or to his attorney, at any time before the trial, any paper material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense, to be ascertained at the trial, shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there were good reasons for the refusal. (Rev., s. 1658; Code, s. 578; R. C., c. 31, s. 82; R. S., c. 31, s. 86; 1821, c. 1095; 1828, c. 7; C. C. P., s. 331; C. S. 1825.)

Chapter 9. Jurors.

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Art. 1. Jury List and Drawing of Original Panel.

§ 9-1. Jury list from taxpayers of good character.—The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year nineteen hundred and five, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list, and shall be preserved as such. (Rev., s. 1957; Code, ss. 1722, 1723; 1806, c. 694; 1889, c. 559; 1899, c. 729; 1897, cc. 117, 539; 1899, c. 729; 1937, cc. 19, 200; 1941, c. 92; C. S. 2312.)

Local Modification.—Macon: 1933, c. 62; Yancey: 1929, cc. 57, 65.

§ 9-2. Names on list put in box.—The commissioners at their regular meeting on the first Monday in July in the year nineteen hundred and five, and every two years thereafter, shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board. (Rev., s. 1958; Code, s. 1726; 1868-9, c. 9, s. 5; 1937, c. 19; 1941, c. 92; C. S. 2313.)

§ 9-3. Manner of drawing panel for term from box.—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined. (Rev., s. 1959; Code, ss. 1727, 1731; 1889, c. 559; 1897, c. 117; 1868-9, c. 175; 1868-9, c. 9, s. 6; 1806, c. 694; 1901, c. 636; 1901, c. 28, s. 3; 1903, c. 11; 1905, cc. 38, 76, s. 4; 1905, c. 285; 1933, c. 89; C. S. 2314.)

Local Modification.—Buncombe, Cabarrus, Catawba, Forsyth, Guilford, Haywood, Iredell, Wake: 1933, c. 89.

§ 9-4. Local modifications as to drawing panel.—In Buncombe county forty-eight jurors shall be drawn to serve the first week and twenty-four to serve the second week.

In Cabarrus county the board of county commissioners shall annually draw forty-two jurors for the first week of the January term of superior court of each year and twenty-four jurors for each

and every other week of superior court during the year.

In Cumberland county the commissioners may, in their discretion, cause an additional twelve scrolls to be drawn, to serve as the jury for the first week.

In Forsyth county the board of county commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. At all civil terms, regular and special, for the first week thirty jurors shall be drawn and summoned, and likewise for the second week. At all criminal terms, regular and special, for the first week forty-two jurors shall be drawn and summoned.

For the second week thirty jurors shall be drawn and summoned.

In Hertford county fifteen extra jurors shall be drawn and summoned for the second week.

In Iredell county twenty-four jurors shall be drawn and summoned for the second week.

In McDowell county the board of county commissioners is authorized and empowered to draw as jurors from the box an additional number of jurors to those now provided by law. At each term when grand jury is to be selected, for the first week, forty-eight jurors shall be drawn and summoned, and for each subsequent week of such terms and at all other terms, both civil and criminal, or mixed, regular or special, for each week, thirty jurors shall be drawn and summoned.

In Randolph county forty-two scrolls shall be drawn for the first week and twenty-four for the second week. The commissioners may at the same time and in the same manner draw the names of twenty-four other persons who shall serve as petit jurors for the week for which they are drawn and summoned.

In Rockingham county the board of county commissioners is authorized and empowered to draw as jurors from the box, as provided in the preceding section, an additional number of jurors to those now provided by law. At all civil terms, regular and special, for the first week thirty jurors shall be drawn and summoned; for the second week twenty-four jurors shall be drawn and summoned. At all criminal terms, regular and special, for the first week forty-two jurors shall be drawn and summoned; for the second week twenty-four jurors shall be drawn and summoned.

In Rowan county twenty-four jurors shall be drawn and summoned for the second week.

In Stokes county the commissioners shall draw for each term of the superior court, in accordance with law, twenty-four jurors, to be summoned by the sheriff of Stokes county.

In Wayne, Robeson and Granville counties the board of commissioners for the first week of each term of the superior court of said counties for the trial of civil and criminal causes shall cause to be drawn from the jury box forty-two scrolls, and for each additional week or for any court for the trial of civil causes only, said board of commissioners shall draw twenty-four scrolls; provided, that in Wayne county the forty-two scrolls required by this section shall be drawn only at the January and July criminal terms of court; at all other times, thirty-six scrolls shall be drawn from the jury box for each week. (Rev., s. 1959; 1907, c. 239; Ex. Sess. 1913, c. 4; Pub. Loc., 1915, cc. 233, 744, 764; 1921, c. 142; 1923, c. 107, s. 2; 1923, c. 117; 1937, c. 19, s. 4; 1939, c. 140; 1941, cc. 87, 92, 175; C. S. 2315.)

§ 9-5. Fees of jurors.—All jurors in the superior court other than special veniremen and tales jurors shall receive such an amount per day as the boards of commissioners of their respective counties may fix, not less than two dollars per day and not more than four dollars per day, and mileage at the rate of five cents per mile while coming to the county-seat and returning home. The said distance to be computed by the usual route of public travel. In the counties of Union, Nash, Brunswick, Randolph, Haywood, Polk, Surry, Swain, Alleghany, Anson, Graham, Ashe, Dare, Alexander, Cleveland, Clay, Transylvania, Harnett, Stanly, Mitchell, Burke, Franklin, Greene, Johnston, and Henderson, jurors other than special veniremen and tales jurors shall not receive more than three dollars per day.

Special veniremen and tales jurors shall receive such an amount per day for their attendance upon court as may be fixed by the boards of commissioners of their respective counties, not exceeding three dollars per day. Special veniremen who have been accepted on the panel in the trial of any cause shall receive the pay and mileage of regular jurors. (Rev., s. 2798; 1919, c. 85, ss. 1, 2; Ex. Sess. 1920, c. 61, ss. 1, 3; 1921, c. 62, s. 1; C. S. 3892.)

Local Modification.—Harnett: 1933, c. 75.

§ 9-6. Jurors having suits pending.—If any of the jurors drawn have a suit pending and at issue in the superior court, the scrolls with their names must be returned into partition No. 1 of the jury box. (Rev., s. 1960; Code, s. 1728; 1868-9, c. 9, s. 7; 1806, c. 694; C. S. 2316.)

§ 9-7. Disqualified persons drawn.—If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead. (Rev., s. 1961; Code, s. 1729; 1889, c. 559; 1897, c. 117, s. 5; 1806, c. 694; C. S. 2317.)

§ 9-8. How drawing to continue.—The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed. (Rev., s. 1962; Code, s. 1730; 1868-9, c. 9, s. 9; 1806, c. 6, s. 94; C. S. 2318.)

§ 9-9. Drawing when commissioners fail to draw.—If the commissioners for any cause fail to draw a jury for any term of the superior court, regular or special, the sheriff of the county and the clerk of the commissioners, in the presence of and assisted by two justices of the peace of the county, shall draw such jury in the manner above prescribed; and if a special term continues for more than two weeks, then for the weeks exceeding two a jury or juries may be drawn as in this section provided. (Rev., s. 1963; Code, s. 1732; 1868-9, c. 9, s. 11; C. S. 2319.)

Art. 2. Petit Jurors; Attendance, Regulation and Privileges.

§ 9-10. Summons to jurors drawn; to attend until discharged. — The clerk of the board of county commissioners shall, within five days from the drawing, deliver the list of jurors drawn for the superior court to the sheriff of the county, who shall summon the persons therein named to attend as jurors at such court. The summons shall be served, personally, or by leaving a copy thereof at the house of the juror, at least five days before the sitting of the court to which he may be summoned. Jurors shall appear and give their attendance until duly discharged. (Rev., s. 1976; Code, s. 1733; 1868-9, c. 9, s. 12; R. C., c. 31, s. 29; 1779, c. 157, ss. 4, 6; C. S. 2320.)

§ 9-11. Summons to talesmen; their disqualifications. — That there may not be a defect of jurors, the sheriff shall by order of the court summon, from day to day, of the bystanders, other jurors, being freeholders, within the county where the court is held, or the judge may, in his discretion, at the beginning of the term direct the tales jurors to be drawn from the jury box used in drawing the petit jury for the term, in the presence of the court; such tales jurors so drawn to be summoned by the sheriff and to serve on the petit jury, and on any day the court may discharge those who have served the preceding day. The judge may, upon his own motion, or upon the request of counsel for either plaintiff or defendant, instruct the sheriff to summon such jurors outside of the courthouse. It is a disqualification and ground of challenge to any tales juror that such juror has acted in the same court as grand, petit or tales juror within two years next preceding such term of court. (Rev., s. 1967; Code, s. 1733; R. C., c. 31, s. 29; 1779, c. 156, s. 69; 1911, c. 15; 1915, c. 210; C. S. 2321.)

§ 9-12. How talesmen summoned when sheriff interested.—When, in the trial of any action before a jury, the sheriff of the county in which the case is to be tried is a party to or has any interest in the action, or when the presiding judge finds upon investigation that the sheriff of the county is not a suitable person, on account of indirect interest in or relative to the cause of action, to be entrusted with the summoning of the tales jurors in any particular case pending, such judge shall appoint some suitable person to summon the jurors in place of the sheriff. (Rev., s. 1968; 1889, c. 441; C. S. 2322.)

§ 9-13. Penalty for disobeying summons.—Every person on the original venire summoned to appear as a juror who fails to give his attendance until duly discharged shall forfeit and pay for the use of the county the sum of twenty dollars, to be imposed by the court; but each delinquent juryman shall have until the next succeeding term to make his excuse for his nonattendance, and, if he renders an excuse deemed sufficient by the court, he shall be discharged without costs. Every person summoned of the bystanders who shall not appear and serve during the day as a juror shall be fined in the sum of two dollars, unless he can show sufficient cause to the court; and the clerk shall forthwith issue an execution against the estate of the delinquent tales juror for such amercement and costs. (Rev., s. 1977; Code, ss. 1734, 405; R. C., c. 31, s. 30; 1779, c. 157, s. 4; 1783, c. 189; 1806, c. 694; C. S. 2323.)

§ 9-14. Jury sworn; judge decides competency. —The clerk shall, at the beginning of the court, swear such of the petit jury as are of the original panel, to try all civil cases; and if there should not be enough of the original panel the talesmen shall be sworn. The petit jurors of the original panel, as well as talesmen, shall be sworn as prescribed in the chapter entitled Oaths. Nothing herein shall be construed to disallow the usual challenges in law to the whole jury so sworn or to any of them; and if by reason of such challenge, any juror is withdrawn, his place on the jury shall be supplied by any of the original venire, or from the bystanders qualified to serve as jurors. The judge or other presiding officer of the court shall decide all questions as to the competency of jurors in both civil and criminal actions. (Rev., s. 1966; Code, s. 405; R. C., c. 31, s. 34; 1790, c. 321; 1822, c. 1133, s. 1; C. S. 2324.)

§ 9-15. Questioning jurors without challenge.— The court, or any party to an action, civil or criminal, shall be allowed, in selecting the jury to make inquiry as to the fitness and competency of any person to serve as a juror, without having such inquiry treated as a challenge of such person, and it shall not be considered by the court that any person is challenged as a juror until the party shall formally state that such person is so challenged. (1913, c. 31, s. 6; C. S. 2325.)

§ 9-16. Causes of challenge to juror drawn from box.—It shall not be a valid cause of challenge that a juror called from those whose names are drawn from the box is not a freeholder or has served upon the jury within two years prior to the court at which the case is tried or has not paid the taxes assessed against him during the preceding two years. In other respects the cause of challenge shall be the same as now provided by law, and nothing herein shall modify any law authorizing jurors to be summoned from counties other than the county of trial. (1913, c. 31, ss. 5, 7; 1933, c. 130; C. S. 2326.)

§ 9-17. Jurors impaneled to try case furnished with accommodations.—When a jury, impaneled to try any cause, is put in charge of an officer of the court, the said officer shall furnish said jury with such accommodation as the court may order, and the same shall be paid for by the party cast or by the county, under the order and in the discretion of the judge of the court. (Rev., s. 1978; Code, s. 1736; 1876-7, c. 173; 1889, c. 44; C. S. 2327.)

§ 9-18. Exemption from civil arrest.—No sheriff or other officer shall arrest under civil process any juror during his attendance on or going to and returning from any court of record. All such service shall be void, and the defendant on motion shall be discharged. (Rev., s. 1979; Code, s. 1735; R. C., c. 31, s. 31; 1779, c. 157, s. 10; C. S. 2328.)

§ 9-19. Exemptions from jury duty.—All practicing physicians, licensed druggists, telegraph operators who are in the regular employ of any telegraph company or railroad company, train dispatchers who have the actual handling of

either freight or passenger trains, regularly licensed pilots, regular ministers of the gospel, officers or employees of a state hospital for the insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, all millers of grist mills, all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers, brakemen and railroad conductors in active service, and all members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, who comply with and perform all duties required of them as members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, shall be exempt from service as jurors. On the first day of January and July of each year, the commanding officer of each company, troop, battery, detachment, or division of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, of North Carolina, shall file with the clerk of the superior court of the county in which such company, troop, battery, detachment, or division is located a statement giving the name and rank of each member of his organization who has performed all military duties during the preceding six months; and any member of such military organization whose name does not appear upon such statement shall not receive the benefit of the exemption provided for herein during the six months immediately following the filing of the statement.

The board of county commissioners of any county in North Carolina may, in their discretion, exempt any ex-confederate soldier in their county from jury duty who shall apply to them for exemption.

The clerk of the superior court of each county is hereby empowered to excuse from jury duty any person or persons exempt under the first sentence of this section prior to the convening of the term of court for which such person or persons are required to serve as jurors. (Rev., s. 1980; Code, ss. 1723, 2269; 1885, c. 289; 1889, c. 255; 1897, c. 32; 1901, c. 118; 1909, cc. 333, 868; 1913, c. 38, s. 1; 1913, c. 103; 1915, cc. 217, 228, 260; 1917, c. 200, s. 89; 1931, c. 410; 1937, c. 151; 1937, c. 224, s. 2; C. S. 2329, 6870.)

§ 9-20. Clerk to keep record of jurors.—The clerk of the superior court shall record alphabetically in a book kept for the purpose the names of all grand and petit jurors and talesmen who serve in his court, with the term at which they serve. (Rev., s. 1981; 1893, c. 52, s. 3; C. S. 2330.)

§ 9-21. Extra or alternate juror; challenges; compensation and duties. — In the trial in the Superior Court of any case, civil or criminal, when it appears to the judge presiding that the trial is likely to be protracted, upon direction of the judge after the jury has been duly impaneled and sworn, an additional or alternate juror shall be selected in the same manner as the regular jurors in said case were selected, but each party shall be entitled to two peremptory challenges as to such alternate juror; such additional or alternate juror shall likewise be sworn and seated near the jury, with equal opportunity for seeing and hearing the proceedings and shall attend at all times upon the trial with the jury and shall obey all orders and admonitions of the court to the jury and, when the jurors are ordered kept together in any case, said alternate juror shall be kept with them. Such additional or alternate juror shall be liable as a regular juror for failure to attend the trial or to obey any order or admonition of the court to the jury, shall receive the same compensation as other jurors, and except as hereinafter provided shall be discharged upon the final submission of the case to the jury. If before the final submission of the case to the jury a juror becomes incapacitated or disqualified, or by reason of illness or death in his family, or other sufficient reason in the opinion of the court, he may be discharged by the judge, in which case, or if a juror dies, upon the order of the judge said additional or alternate juror shall become one of the jury and serve in all respects as though selected as an original juror. (1931, c. 103; 1939, c. 35.)

Art. 3. Peremptory Challenges in Civil Cases.

§ 9-22. Six peremptory challenges on each side.—The clerk, before a jury is impaneled to try the issues in any civil suit, shall read over the names of the jury upon the panel in the presence and hearing of the parties or their counsel; and the parties, or their counsel for them, may challenge peremptorily six jurors upon the said panel, without showing any cause therefor, which shall be allowed by the court. (Rev., s. 1964; Code, s. 406; R. C., c. 31, s. 35; 1796, c. 452, s. 2; 1812, c. 833; 1935, c. 475, s. 1; C. S. 2331.)

§ 9-23. Where several defendants; challenges apportioned; discretion of judge.—When there are two or more defendants in a civil action the judge presiding at the trial, if it appears to the court that there are divers and antagonistic interests between the defendants, may in his discretion apportion among the defendants the challenges now allowed by law to defendants, or he may increase the number of challenges to not exceeding four to each defendant or class of defendants representing the same interest. In either event, the same number of challenges shall be allowed each defendant or class of defendants representing the same interest. The decision of the judge as to the nature of the interests and number of challenges shall be final. (Rev., s. 1965; 1905, c. 357; C. S. 2332.)

Art. 4. Grand Jurors.

§ 9-24. How grand jury drawn.—The judges of the superior court, at the terms of their courts, except those terms which are for the trial of civil cases exclusively, and special terms for which no grand jury has been ordered, shall direct the names of all persons returned as jurors to be written on scrolls of paper and put into a box or hat and drawn out by a child under ten years of age; whereof the first eighteen drawn shall be a grand jury for the court; and the residue shall serve as petit jurors for the court. (Rev., s. 1969; Code, s. 404; R. C., c. 31, s. 33; 1779, c. 157, s. 11; C. S. 2333.)

§ 9-25. Grand juries in certain counties.—At the first fall and spring terms of the criminal courts held for the counties of Craven, Gaston, Guilford, Mecklenburg, Moore, Pitt, Richmond, New Hanover, McDowell, Durham, Cumberland, Lenoir,

Columbus, Nash, Johnston, Vance, Wayne, Iredell, and Wake, grand juries shall be drawn, the presiding judge shall charge them as provided by law, and they shall serve during the remaining fall and spring terms, respectively. In the event of vacancies occurring in the grand jury of Pitt county, the judge holding the court of said county may, in his discretion, order a new juror drawn to take the oaths prescribed and to fill any vacancy occurring thereon.

At any time the judge of the superior court presiding over either the criminal or civil court of New Hanover, McDowell, Durham, Cumberland and Lenoir counties may call said grand jury to assemble and may deliver unto said grand jury an additional charge. The said judge presiding over either the criminal or civil court of New Hanover, McDowell, Durham, Cumberland, or Lenoir counties may at any time discharge said grand jury from further service, in which event he shall cause a new grand jury to be drawn which shall serve during the remainder of the said fall or spring term. The first nine members of the grand jury chosen at the first term of the superior court of Cumberland and Lenoir counties for the trial of criminal causes in the year of one thousand nine hundred twenty-two shall serve during the spring and fall terms, and at the first of such courts of the fall and spring terms thereafter, nine additional jurors shall be chosen to serve for one year.

At any time the judge of the superior court presiding over the criminal court of Columbus county may call said grand jury to assemble and may deliver unto said jury an additional charge. The said judge presiding over the criminal court of Columbus county may at any time discharge said grand jury from further service, and may cause a new grand jury to be drawn, which shall serve during the remainder of the said fall and spring term.

Every grand juror drawn and summoned in Robeson county shall serve for a period of twelve months.

At the spring term of the criminal court held for the county of Gates, and for the county of Henderson, grand jury shall be drawn, the presiding judge shall charge them as provided by law, and they shall serve for twelve (12) months: Provided, that at any time the judge of the superior court presiding over the criminal courts of Gates county or Henderson county may call said jury to assemble and may deliver unto said grand jury an additional charge: Provided further, that the judge of the superior court presiding over the criminal courts of Gates county and of Henderson county may at any time discharge said grand jury from further service, and may cause a new grand jury to be drawn, which shall serve during the remainder of the said twelve (12) months.

At the April term of superior court held for the county of Hoke a grand jury shall be drawn, the presiding judge shall charge it as provided by law, and it shall serve until the following April term, Hoke superior court: Provided, that at any time the judge of the superior court presiding over either criminal or civil court in said county may call said grand jury to assemble and may deliver unto said grand jury an additional charge: Provided further, that the judge of the superior court presiding over either criminal or civil court in said county may at any time discharge said grand jury from further service, in which event he shall cause a new grand jury to be drawn, which shall serve out the unfinished year.

If it should appear to the board of commissioners of Union county, thirty days before the beginning of the term of superior court that begins on the third Monday after the first Monday in March, that the condition of the criminal docket, and the number of prisoners in jail, make it necessary that said March term should be used as a criminal term, the said board of commissioners are authorized and empowered within their discretion to draw a grand jury for said term, and to give thirty days' notice in some local paper that criminal cases would be tried at said term, and all criminal process and undertakings returnable to a subsequent term shall be returnable to said March term. A grand jury for Union county shall be selected at each January term of the superior court in the usual manner by the presiding judge, which said grand jury shall serve for a period of one year from the time of their selection.

In the selection of a grand jury for Bertie County for the fall term of one thousand nine hundred and twenty-seven and annually thereafter, there shall be drawn and summoned forty men, in the same manner as now provided by law, from which a grand jury of eighteen shall be selected by the presiding judge of the superior court, which said grand jury shall serve for a period of one year from the time of their selection.

The persons drawn for service in the grand jury at the term at which said grand jury is selected, and who are not selected to serve on the grand jury, shall serve on the petit jury for the week of the term at which the grand jury is selected: Provided, that at other terms of the Superior Court of Bertie County, both civil and criminal, there shall be drawn and summoned, in the manner now provided by law, twenty persons from which the jury for the term of court for which they are drawn shall be selected.

At the first term of court for the trial of criminal cases in Durham county after the first day of July, one thousand nine hundred and twenty-nine, there shall be chosen a grand jury as now provided by law, and the first nine members of said grand jury chosen at said term shall serve for a term of one year, and the second nine members of said grand jury so chosen shall serve for a term of six months, and thereafter at the first regular and not special term of criminal court after the first days of January and July of each year there shall be chosen nine members of said grand jury to serve for a term of one year.

The grand jurors for Davidson County shall be drawn at the first fall and spring terms of the criminal courts held in the County of Davidson, and the judge shall charge them as provided by law, and the jurors so drawn shall serve during the remaining fall and spring terms respectively.

In the event of any vacancy occurring in the grand jury of Johnston, Wayne or Iredell County by death, removal from the county, sickness, or otherwise, the presiding judge may, in his discretion, order such vacancy, or vacancies, filled by drawing sufficient jurors to fill said vacancy or vacancies from the jury box, and said juror or jurors so drawn shall take the oath prescribed by

law and shall fill out the unexpired term of the juror or jurors whose places they were drawn to fill. The presiding judge shall have the power, in his discretion, to appoint an assistant-foreman of the grand jury in the counties of Johnston, Wayne and Iredell and said assistant-foreman so appointed shall, in the absence or disqualification of the foreman, discharge the duties of the foreman of said grand jury.

At the first term of court for the trial of criminal cases in New Hanover County after the first day of July, one thousand nine hundred and thirty-seven, there shall be chosen a grand jury as now provided by law, and the first nine members of said jury chosen at said term shall serve for a term of one year, and the second nine members of said jury so chosen shall serve for a term of six months, and thereafter at the first term of criminal court after the first days of January and July of each year there shall be chosen nine members of said grand jury to serve for a term of one year.

At each August term of the superior court hereafter held for the county of Scotland the grand jury drawn as now provided by law shall be charged by the presiding judge as provided by law, and said grand jury shall serve until the next succeeding March term of the superior court for Scotland County and until its successor has been drawn and has qualified; at each March term of the superior court hereafter held for the county of Scotland the grand jury drawn as now provided by law shall be charged by the presiding judge as provided by law, and said grand jury shall serve until the next succeeding August term of the superior court for Scotland County and until its successor has been drawn and has qualified; said grand jury shall attend every term of the superior court held in said county in which criminal cases may under the law be tried during the term of service of said grand jury and until it has been discharged; at any time the judge of the superior court presiding over either criminal, civil, or mixed terms of court in said county may call said grand jury to assemble and may deliver unto said grand jury an additional charge; the judge of the superior court presiding over either criminal, civil, or mixed terms of court in said county may at any time discharge said grand jury from further service, in which event he shall cause a new grand jury to be drawn and qualified, which shall serve out the unexpired term of said grand jury so discharged; said grand jury shall be subject to call for session and service at any time by the presiding judge, the solicitor of the district, or the foreman of said grand jury.

While in session or otherwise actually engaged in the performance of their duties as members of said grand jury, the members thereof shall be paid and compensated as follows: Three dollars per day shall be paid the foreman and two dollars per day shall be paid to other members of said grand jury.

A grand jury for Cabarrus County shall be selected at each January term of the superior court in the usual manner by the presiding judge, which said grand jury shall serve for a period of one year from the time of their selection.

A grand jury for Montgomery County shall be selected at each July term of the superior court in the usual manner, which said grand jury shall serve for a period of one year from the time of their selection.

A grand jury for Rowan County shall be selected at the one thousand nine hundred thirty-seven May term of criminal court to serve until the February term of said court in one thousand nine hundred thirty-eight, and at each February term of criminal court a grand jury for Rowan County shall be selected in the usual manner by the presiding judge, which said grand jury shall serve for a period of one year from the time of its selection: Provided, in case of removal from the county, sickness, death or other cause a juror or jurors become disqualified, the presiding judge may in his discretion select in the usual manner a juror or jurors to fill such vacancy or vacancies, which said juror or jurors selected shall fill out the unexpired term of such juror or jurors disqualified; and, Provided further, the presiding judge may in his discretion at any term discharge said grand jury in whole or in part and cause another to be selected.

A grand jury for Lincoln County shall be selected at each January term of the superior court in the usual manner by the presiding judge, which said grand jury shall serve for a period of one year from the time of its selection: Provided, that at any time the judge of the superior court presiding over either criminal or civil court in said county may call said grand jury to assemble and may deliver unto said grand jury an additional charge. (1913, c. 196; 1917, cc. 116, 118; 1919, cc. 113, 187; Ex. Sess. 1920, c. 39; 1921, cc. 18, 55, 69, 72; Ex. Sess. 1921, c. 15; 1923, cc. 11, 15, 104, 115; Ex. Sess. 1924, c. 28; 1925, c. 24; 1927, c. 78; Pub. Loc. 1927, cc. 80, 162; 1929, c. 52, ss. 1, 2; 1929, cc. 122, 133; 1931, cc. 43, 97, 130, 131, 237; 1933, cc. 29, 92, 138; 1935, cc. 5, 41; 1937, cc. 21, 77, 78, 372; 1939, c. 26; C. S. 2334.)

§ 9-26. Exceptions for disqualifications. — All exceptions to grand jurors for and on account of their disqualifications shall be taken before the jury is sworn and impaneled to try the issue, by motion to quash the indictment, and if not so taken, the same shall be deemed to be waived. But no indictment shall be quashed, nor shall judgment thereon be arrested, by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue. (Rev., s. 1970; Code, s. 1741; 1907, c. 36, s. 1; C. S. 2335.)

§ 9-27. Foreman may administer oaths to witnesses.—The foreman of every grand jury duly sworn and impaneled in any of the courts has power to administer oaths and affirmations to persons to be examined before it as witnesses: Provided, that the said foreman shall not administer such oath or affirmation to any person except those whose names are endorsed on the bill of indictment by the officer prosecuting in behalf of the state, or by direction of the court. The foreman of the grand jury shall mark on the bill the names of the witnesses sworn and examined before the jury. In case of the absence of the foreman, or in case of his inability to serve, the presiding Judge shall appoint an acting foreman, who shall have all powers vested by law in the foreman. (Rev., s. 1971; Code, s. 1742; 1879, c. 12; 1929, c. 228; C. S. 2336.)

§ 9-28. Grand jury to visit jail and county home.—Every grand jury, while the court is in session, shall visit the county home for the aged and infirm, the workhouse, if there is one, and the jail, examine the same, and especially the apartments in which inmates and prisoners shall be confined; and they shall report to the court the condition thereof and of the inmates and prisoners confined therein, and also the manner in which the jailer or superintendent has discharged his duties. (Rev., s. 1972; Code, s. 785; R. C., c. 30, s. 3; 1816, c. 911, s. 3; C. S. 2337.)

Art. 5. Special Venire.

§ 9-29. Special venire to sheriff in capital cases.—When a judge of the superior court deems it necessary to a fair and impartial trial of any person charged with a capital offense, he may issue to the sheriff of the county in which the trial may be a special writ of venire facias, commanding him to summon such number of persons qualified to act as jurors in said county as the judge may deem sufficient (such number being designated in the writ), to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ and return it to the clerk of the court on the day when it is returnable, with the names of the jurors summoned. (Rev., s. 1973; Code, s. 1738; R. C., c. 35, s. 30; 1830, c. 27; 1913, c. 31, s. 1; C. S. 2338.)

§ 9-30. Drawn from jury box in court by judge's order.—When a judge deems a special venire necessary, he may, at his discretion, issue an order to the clerk of the board of commissioners for the county, commanding him to bring into open court forthwith the jury boxes of the county, and he shall cause the number of scrolls as designated by him to be drawn from box number one by a child under ten years of age. The names so drawn shall constitute the special venire, and the clerk of the superior court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the sheriff. If the special venire is exhausted before the jury is chosen, the judge shall order another special venire until the jury has been chosen. The scrolls containing the names of the persons drawn as jurors from box number one shall, after the jury is chosen, be placed in box number two, and if box number one is exhausted before the jury is chosen, the drawing shall be completed from box number two after the same has been well shaken. (Rev., s. 1974; Code, s. 1739; 1897, c. 364; 1913, c. 31, s. 2; C. S. 2339.)

§ 9-31. Penalty on sheriff not executing writ or jurors not attending.—If any sheriff fails duly to execute and return such writ of venire facias, he shall be fined by the court not exceeding one hundred dollars. All jurors so summoned shall attend until discharged by the court, under the same rules and penalties as are prescribed for other jurors. (Rev., ss. 1975, 3602; Code, s. 1740; R. C., c. 35, s. 31; 1830, c. 27, s. 2; C. S. 2340.)

Chapter 10. Notaries.

Sec.

10-1. Appointment and commission; term of offices; revocation of commission.
10-2. To qualify before clerk; record of qualification.
10-3. Clerks notaries ex officio; may certify own seals.
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10-8. Fees of notaries.
10-9. Notarial seal.
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§ 10-1. Appointment and commission; term of office; revocation of commission.—The governor may, from time to time, at his discretion, appoint one or more fit persons in every county to act as notaries public, and shall issue to each a commission. They shall hold their office for two years from and after the date of their appointment.

Any commission so issued by the Governor or his predecessor, shall be revokable by him in his discretion upon complaint being made against such notary public and when he shall be satisfied that the interest of the public will be best served by the revocation of said commission.

Whenever the Governor shall have revoked the commission of any notary public appointed by him, or his predecessor in office, it shall be his duty to file with the clerk of the court in the county of such notary public a copy of said order and mail a copy of same to said notary public.

Any person holding himself out to the public as a notary public, or any person attempting to act in such capacity after his commission shall have been revoked by the Governor, shall be guilty of a misdemeanor and upon conviction be punishable in the discretion of the court, as provided for in other misdemeanors. (Rev., ss. 2347, 2348; Code, ss. 3304, 3305; 1927, c. 117; C. S. 3172.)

§ 10-2. To qualify before clerk; record of qualification.—Upon exhibiting their commissions to the clerk of the superior court of the county in which they are to act, the notaries shall be duly qualified by taking before said clerk an oath of office, and the oaths prescribed for officers. A certificate of the commission shall be deposited with the clerk and filed among the records, and he shall note on his minutes the qualification of the notary public. (Rev., ss. 2347, 2348; Code, ss. 3304, 3305; C. S. 3173.)

§ 10-3. Clerks notaries ex officio; may certify own seals.—The clerks of the superior court may act as notaries public, in their several counties, by virtue of their office as clerks, and may certify

their notarial acts under the seals of their respective courts. (Rev., s. 2349; Code, s. 3306; R. C., c. 75, s. 3; 1833, c. 7, ss. 1, 2; C. S. 3174.)

§ 10-4. Powers of notaries.—Notaries public, in and out of the state, have power to take and certify the acknowledgment or proof of powers of attorney, mortgages, deeds and other instruments of writing, to take depositions and to administer oaths and affirmations in matters incident or belonging to the duties of their office, and to take affidavits to be used before a court, judge or other officer, within the state, and have power to take the privy examination of femes covert. (Rev., s. 2350; Code, s. 3307; 1866, c. 30; 1879, c. 128; C. S. 3175.)

§ 10-5. Notaries public, who are stockholders, etc., permitted to take acknowledgments, administer oaths, etc.—It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or to protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation: Provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is individually a party to such instrument, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument. (1937, c. 183.)

§ 10-6. May exercise powers in any county.—Notaries public have full power and authority to perform the functions of their office in any and all counties of the state, and full faith and credit shall be given to any of their official acts wheresoever the same shall be made and done. (Rev., s. 2351; 1891, c. 248; C. S. 3176.)

§ 10-7. Expiration of commission to be stated after signature.—Notaries public shall state after each official signature by them the date of the expiration of their commissions; but the failure to do so shall not thereby invalidate their official acts. (Rev., s. 2351a; C. S. 3177.)

§ 10-8. Fees of notaries.—Notaries public and other persons acting as such shall be allowed the sum of fifty cents for protesting for nonacceptance or for nonpayment, or for both when done at the same time, any order, draft, note, bond or bill or any other thing necessary to be protested, and the sum of ten cents for each notice sent in connection therewith. For other necessary services, where no fee is fixed, they shall be allowed twenty cents for every ninety words. Cases of protest concerning vessels or other cargoes shall not be affected by this section. (Rev., s. 2800; Code, s. 3749; 1889, c. 446; 1895, c. 296; 1903, c. 734; C. S. 3178.)

§ 10-9. Notarial seal.—Official acts by notaries public shall be attested by their notarial seals. (Rev., s. 2352; C. S. 3179.)

§ 10-10. Acts of minor notaries validated.—All acts of notaries public for the state of North Carolina who were not yet twenty-one years of age at the time of the performance of such acts are hereby validated; and in every case where deeds or other instruments have been acknowledged before such notary public who was not yet twenty-one years of age at the time of taking of said acknowledgment, such acknowledgment taken before such notary public is hereby declared to be sufficient and valid. (1941, c. 233.)

Chapter 11. Oaths.

Art. 1. General Provisions.

Sec.
11-1. Oaths to be administered with solemnity.
11-2. Administration of oath upon the Gospels.
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11-4. Affirmation of Quakers and others.
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11-10. When county surveyors may administer oaths.

Art. 2. Forms of Official and Other Oaths.

11-11. Oaths of sundry persons; forms.

Art. 1. General Provisions.

§ 11-1. Oaths to be administered with solemnity.—Whereas, lawful oaths for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government; and being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood, such oaths, therefore, ought to be taken and administered with the utmost solemnity. (Rev., s. 2353; R. C., c. 76, s. 1; 1777, c. 108, s. 2; C. S. 3188.)

§ 11-2. Administration of oath upon the Gospels.—Judges and justices of the peace, and other persons who may be empowered to administer oaths, shall (except in the cases in this chapter excepted) require the party sworn to lay his hand upon the Holy Evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and method of salvation pointed out in that blessed volume; and in further token that, if he should swerve from the truth, he may be justly deprived of all the blessings of the Gospel, and made liable to that vengeance which he has im-

precated on his own head. (Rev., s. 2354; Code, s. 3309; R. C., c. 76, s. 1; 1777, c. 108, s. 2; 1941, c. 11; C. S. 3189.)

§ 11-3. Administration of oath with uplifted hand.—When the person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he shall be excused from laying hands upon, or touching the Holy Gospel; and the oath required shall be administered in the following manner, namely: He shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, and also in token that if he should swerve from the truth he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, namely:

I, A. B., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known (etc., as the words of the oath may be). (Rev., s. 2355; Code, s. 3310; R. C., c. 76, s. 2; 1777, c. 108, s. 3; C. S. 3190.)

§ 11-4. Affirmation of Quakers and others.—The solemn affirmation of Quakers, Moravians, Dunkers and Mennonites, made in the manner heretofore used and accustomed, shall be admitted as evidence in all civil and criminal actions; and in all cases where they are required to take an oath to support the constitution of the state, or of the United States, or an oath of office, they shall make their solemn affirmation in the words of the oath beginning after the word "swear"; which affirmation shall be effectual to all intents and purposes. (Rev., s. 2356; Code, s. 3311; R. C., c. 76, s. 3; 1777, c. 108, s. 4; 1777, c. 115, s. 42; 1819, c. 1019; 1821, c. 1112; C. S. 3191.)

§ 11-5. Oaths of corporations.—In all cases where a corporation is appointed administrator, executor, collector, or to any other fiduciary position, of which fiduciary an oath is required by law, such oath may be taken by such corporation by and through any officer or agent of said corporation who is authorized by law to verify pleadings in behalf of such corporation; and any oath so taken shall be valid as the oath of such corporation. Any oath heretofore taken in the manner aforesaid in behalf of a corporation as such fiduciary is hereby validated as the oath of such corporation. (1919, c. 89, ss. 1, 2; C. S. 3192.)

§ 11-6. Oath to support constitution of United States; all officers take.—All members of the general assembly, and all officers who shall be elected or appointed to any office of trust or profit within the state, shall, agreeably to act of congress, take the following oath or affirmation:

I, A. B., do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States; so help me, God.

Which oath shall be taken before they enter upon the execution of the duties of the office. (Rev., s. 2357; Code, s. 3313; R. C., c. 76, s. 5; 1791, c. 342, s. 2; C. S. 3193.)

§ 11-7. Oath or affirmation to support state constitution; all officers to take.—Every member of the general assembly, and every person who shall be chosen or appointed to hold any office of trust or profit in the state, shall, before taking his seat or entering upon the execution of the office, take and subscribe the following oath or affirmation:

I, A. B., do solemnly and sincerely swear (or affirm) that I will be faithful and bear true allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God.

Where such person shall be of the people called Quakers, Moravians, Mennonites or Dunkers, he shall take and subscribe the following affirmation:

I, A. B., do solemnly and sincerely declare and affirm that I will truly and faithfully demean myself as a peaceful citizen of North Carolina; that I will be subject to the powers and authorities that are or may be established for the good government thereof, not inconsistent with the constitution of the state and constitution of the United States, either by yielding an active or passive obedience thereto, and that I will not abet or join the enemies of the state, by any means, in any conspiracy whatever, against the state; that I will disclose and make known to the legislative, executive or judicial powers of the state all treasonable conspiracies which I shall know to be made or intended against the state. (Rev., s. 2358; Code, s. 3312; R. C., c. 76, s. 4; 1781, c. 342, s. 1; C. S. 3194.)

§ 11-8. When deputies may administer.—In all cases where any civil officer, in the discharge of his duties, is permitted by the law to administer an oath, the deputy of such officer, when discharging such duties, shall have authority to administer it, provided he is a sworn officer; and the oath thus administered by the deputy shall be as obligatory as if administered by the principal officer, and shall be attended with the same penalties in case of false swearing. (Rev., s. 2359; Code, s. 3316; R. C., c. 76, s. 7; 1836, c. 27, s. 2; C. S. 3195.)

§ 11-9. Administration by certain officers.—The chairman of the board of county commissioners and the chairman of the board of education of the several counties may administer oaths in any matter or hearing before their respective boards. (Rev., s. 2362; 1899, c. 89; 1889, c. 529; C. S. 3196.)

§ 11-10. When county surveyors may administer oaths.—The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants. (Rev., s. 2361; Code, s. 3314; 1881, c. 144; C. S. 3197.)

Art. 2. Forms of Official and Other Oaths.

§ 11-11. Oaths of sundry persons; forms.—The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively:

Administrator

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

Attorney at Law

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

Attorney-General, State Solicitors and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of attorney-general (solicitor for the state or attorney for the state in the county of .....); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Book Debt Oath

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself; and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

Book Debt Oath for Administrator

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

Clerk of the Supreme Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will give, to any person whatsoever, any gratuity, gift, fee or reward, in consideration of my appointment to the office of clerk of the supreme court of North Carolina; nor have I sold or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in this state; I do further swear that I will execute the office of clerk of the supreme court without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

Clerk of the Superior Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of.....; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the state; and I do further swear that I will execute the office of clerk of the superior court for the county of ..... without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

Commissioners Allotting a Year's Provisions

You and each of you swear (or affirm) that you will lay off and allot to the petitioner a year's provisions for herself and family, according to law, and with your best skill and ability; so help you, God.

Commissioners Dividing and Allotting Real Estate

You and each of you swear (or affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God.

Commissioner of Wrecks

I, A. B., do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a commissioner of wrecks, for the district of ....., in the county of....., according to law; so help me, God.

Constable

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of constable; I will see and cause the peace of the state to be well and truly preserved and kept, according to my power; I will arrest all such persons as, in my sight, shall ride or go armed offensively, or shall commit or make any riot, affray or other breach of the peace; I will do my best endeavor, upon complaint to me made, to apprehend all felons and rioters or persons riotously assembled, and if any such offenders shall make resistance with force, I will make hue and cry, and will pursue them according to law, and will faithfully and without delay execute and return all lawful precepts to me directed; I will well and truly, according to my knowledge, power and ability, do and execute all other things belonging to the office of constable, so long as I shall continue in office; so help me, God.

Cotton Weigher for Public

I, ..., public weigher for the city of ..... (or as the case may be), do solemnly swear that I will justly, impartially and without any deduction, except as may be allowed by law, weigh all cotton that may be brought to me for that purpose, and tender a true account

thereof to the parties concerned, if required so to do; so help me, God.

Entry-Taker

I, A, B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry-taker for the county of.....according to law; so help me, God.

Executor

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying his debts and then his legacies, as far as the said estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

Grand Jury—Foreman of

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave any one unpresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

Grand Jurors

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

Grand Jury—Officer of

You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God.

Jury—Officer of

You swear (or affirm) that you will keep every person, sworn on this jury, together in some private or convenient place, without meat or drink (water excepted). You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

Jury, in a Capital Case

You swear (or affirm) that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence; so help you, God.

Jury, in Criminal Actions Not Capital

You and each of you swear (or affirm) that you will well and truly try all issues in criminal actions which shall come before you during this term, and true verdicts give according to the evidence thereon; so help you, God.

(The same oath to talesmen, by using the word "day" instead of "term".)

Jury, in Civil Actions

You and each of you swear (or affirm) that you will well and truly try all civil actions which shall come before you during this term, and true verdicts give according to the evidence; so help you, God.

(The same oath to talesmen, by using the word "day" instead of "term.")

Jury, Laying off Dower

You and each of you swear (or affirm) that you will, without partiality and according to your best judgment, lay off and allot to A. B., widow of C. D., such dower in the lands of said C. D. as by law she is entitled to; so help you, God.

Judge of the Supreme Court

I, A. B., do solemnly swear (or affirm) that in my office of justice of the supreme court of North Carolina I will administer justice without respect to persons, and do equal right to the poor and the rich, to the state and to individuals; and that I will honestly, faithfully, and impartially perform all the duties of the said officer according to the best of my abilities, and agreeably to the constitution and laws of the state; so help me, God.

Judge of the Superior Court

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of judge of the superior court of the said state; I will do equal law and right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take, by myself or by any other person, any fee, gift, gratuity or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed; I will not maintain, by myself or by any other person, privately or openly, any plea or quarrel depending in any of the said courts; I will not delay any person of common right by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letter or orders come to me contrary to law, I will proceed to enforce the law, such letters or order notwithstanding; I will not appoint any person to be clerk of any of the said courts but such of the candidates as appear to me sufficiently qualified for that office; and in all such appointments I will nominate without reward, hope of reward, prejudice, favor or partiality or any other sinister motive whatsoever; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

Justice of the Peace

I, A. B., do solemnly swear (or affirm) that as justice of the peace of the county of ....., in all articles in the commission to me directed, I will do equal right to the poor and the rich, to the best of my judgment and according to the laws of the state; I will not, privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; the fines and amercements that shall happen to be made, and the forfeitures that shall be incurred, I will

cause to be duly entered without concealment; I will not wittingly or willingly take, by myself or by any other person for me, any fee, gift, gratuity or reward whatsoever for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will perform my office of justice of the peace; I will not delay any person of common right, by reason of any letter or order from any person in authority to me directed, or for any other cause whatever; and if any letter or order come to me contrary to law I will proceed to enforce the law, such letter or order notwithstanding. I will not direct or cause to be directed to the parties any warrant by me made, but will direct all such warrants to the sheriffs or constables of the county, or the other officers or ministers of the state, or other indifferent persons, to do execution thereof; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, and according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of....., in all things according to law; so help me, God.

Secretary of State

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of secretary of state of the state of North Carolina, during my continuance in office, according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of ..... county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Standard Keeper

I, A. B., do swear (or affirm) that I will not stamp, seal or give any certificate for any steelyards, weights or measures, but such as shall, as near as possible, agree with the standard in my keeping; and that I will, in all respects, truly and faithfully discharge and execute the power and trust by law reposed in me, to the best of my ability and capacity; so help me, God.

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of state treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

Stray Valuers

You swear (or affirm) that you will well and truly view and appraise the stray, now to be valued by you, without favor or partiality, according to your skill and ability; so help you, God.

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of ....., according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of ....., in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the state and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Criminal Action

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the state and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in Civil Cases

You swear (or affirm) that the evidence you shall give to the court and jury in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness to Prove a Will

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

General Oath

Any officer of the state or of any county or township, the form of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of ..... according to the best of my skill and ability, according to law; so help me, God. (Rev., s. 2360; Code, ss. 3057, 3315; 1903, c. 604; 1874-5, c. 58, s. 2; R. C., c. 76, s. 6; C. S. 3199.)

Chapter 12. Statutory Construction.

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12-2. Repeal of statute not to affect actions.
12-3. Rules for construction of statutes.
12-4. Construction of amended statute.

§ 12-1. No public-local or private act may amend or repeal public law unless latter is referred to in caption.—No act, which by its caption purports to be a public-local or private act, shall have the force and effect to repeal, alter or change the provisions of any Public Law, unless the caption of said public-local or private act shall make specific reference to the Public Law it attempts to repeal, alter or change. (1929, c. 250, s. 1.)

§ 12-2. Repeal of statute not to affect actions.—The repeal of a statute shall not affect any action brought before the repeal, for any forfeitures incurred, or for the recovery of any rights accruing under such statute. (Rev., s. 2830; Code, s. 3764; R. C., c. 108, s. 1; 1830, c. 4; 1879, c. 163; 1881, c. 48; C. S. 3948.)

§ 12-3. Rules for construction of statutes.—In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the same statute, that is to say:

1. Singular and plural number, masculine gender, etc. Every word importing the singular number only shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number only shall extend and be applied to one person or thing, as well as to several persons or things; and every word importing the masculine gender only shall extend and be applied to females as well as to males, unless the context clearly shows to the contrary.

2. Authority, to three or more exercised by majority. All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

3. "Month" and "year." The word "month" shall be construed to mean a calendar month, unless otherwise expressed; and the word "year," a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

4. Leap-year, how counted. In every leap-year the increasing day and the day before, in all legal proceedings, shall be counted as one day.

5. "Oath" and "sworn." The word "oath" shall be construed to include "affirmation," in all cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall be construed to include the word "affirmed."

6. "Person" and "property." The word "person" shall extend and be applied to bodies politic and corporate, as well as to individuals, unless the context clearly shows to the contrary. The words "real property" shall be coextensive with lands, tenements and hereditaments. The words "personal property" shall include moneys, goods, chattels, choses in action and evidences of debt, including all things capable of ownership, not descendible to the heirs at law. The word "property" shall include all property, both real and personal.

7. "Preceding" and "following."—The words "preceding" and "following," when used by way of reference to any section of a statute, shall be construed to mean the section next preceding or next following that in which such reference is made; unless when some other section is expressly designated in such reference.

8. "Seal."— In all cases in which the seal of any court or public office shall be required by law to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression made by means of a wafer or of wax affixed thereto.

9. "Will."—The term "will" shall be construed to include codicils as well as wills.

10. "Written" and "in writing."—The words "written" and "in writing" may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters: Provided, that in all cases where a written signature is required by law, the same shall be in a proper handwriting, or in a proper mark.

11. "State" and "United States."—The word "state," when applied to the different parts of the United States, shall be construed to extend to and include the District of Columbia and the several territories, so called; and the words "United States" shall be construed to include the said district and territories and all dependencies.

12. "Imprisonment for one month," how construed. The words "imprisonment for one month," wherever used in any of the statutes, shall be construed to mean "imprisonment for thirty days."

13. "Governor," "senator," "solicitor," "elector," "executor," "administrator," "collector," "juror," and "auditor."—The words "governor," "senator," "solicitor," "elector," "executor," "administrator," "collector," "juror," "auditor," and any other words of like character shall when applied to the holder of such office, or occupant of such position, be words of common gender, and they shall be a sufficient designation of the person holding such office or position, whether the holder be a man or woman. (Rev., s. 2831; Code, s. 3765; R. C., c. 31, s. 108; R. C., c. 108; R. S., c. 31, s. 113; 21 Hen. III; 1921, c. 30; C. S. 3949.)

§ 12-4. Construction of amended statute.—Where a part of a statute is amended it is not to be considered as having been repealed and reenacted in the amended form; but the portions which are not altered are to be considered as having been the law since their enactment, and the new provisions as having been enacted at the time of the amendment. (Rev., s. 2832; Code, s. 3766; 1868-9, c. 270, s. 22; 1870-1, c. 111; C. S. 3950.)

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§ 13-1. Petition filed.—Any person convicted of an infamous crime, whereby the rights of citizenship are forfeited, desiring to be restored to the same, shall file his petition in the superior court, setting forth his conviction and the punishment inflicted, his place or places of residence, his occupation since his conviction, the meritorious causes which, in his opinion, entitle him to be restored to his forfeited rights, and that he has not before been restored to the lost rights of citizenship. (Rev., s. 2675; Code, ss. 2938, 2940; R. C. c. 58, ss. 1, 3; 1840, c. 36, s. 4; C. S. 385.)

§ 13-2. When and where petition filed.—At any time after the expiration of two years from the date of discharge of the petitioner, the petition may be filed in the superior court of the county in which the applicant is at the time of filing and has been for five years next preceding a bona fide resident, or in the superior court of the county, at term, where the indictment was found upon which the conviction took place; and in case the petitioner may have been convicted of an infamous crime more than once, and indictments for the same may have been found in different counties, the petition shall be filed in the superior court of that county where the last indictment was found. (Rev., s. 2676; Code, ss. 2940, 2941; 1897, c. 110; R. C., c. 58, ss. 3, 4; 1840, c. 36, s. 3; 1933, c. 243; C. S. 386.)

§ 13-3. Notice given.—Upon filing the petition the clerk of the court shall advertise the substance thereof, at the courthouse door of his county, for the space of three months next before the term when the petitioner proposes that the same shall be heard. (Rev., s. 2677; Code, s. 2938; R. C., c. 58, s. 1; 1840, c. 36; C. S. 387.)

§ 13-4. Hearing and evidence.—The petition shall be heard by the judge at term, at which hearing the court shall examine all proper testimony which may be offered, either by the petitioner as to the facts set forth in his petition or by any one who may oppose the grant of his prayer. The petitioner shall also prove by five respectable witnesses, who have been acquainted with the petitioner's character for three years next preceding the filing of his petition, that his character for truth and honesty during that time has been good; but no deposition shall be admissible for this purpose unless the petitioner has resided out of this state for three years next preceding the filing of the petition. (Rev., s. 2678; Code, ss. 2938, 2939; 1897, c. 110; 1901, c. 533; R. C., c. 58, ss. 1, 2; 1840, c. 36; C. S. 388.)

§ 13-5. Decree.—At the hearing the court, on being satisfied of the truth of the facts set forth in the petition, and on its being proved that the character of the applicant for truth and honesty is good, shall decree his restoration to the lost rights of citizenship, and the petitioner shall accordingly be restored thereto. (Rev., s. 2679; Code, s. 2938; R. C., c. 58, s. 1; 1840, c. 36; C. S. 389.)

§ 13-6. Procedure in case of pardon or suspension of judgment. — Any person convicted of any crime, whereby the rights of citizenship are forfeited, and the judgment of the court pronounced does not include imprisonment anywhere, and pardon has been granted by the governor, or the court suspended judgment on payment of the costs, and the costs have been paid, such person may be restored to such forfeited rights of citizenship upon application, by petition, to the judge presiding at any term of the superior court held for the county in which the conviction was had, one year after such conviction. The petition shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and that pardon has been granted by the governor, and also that said crime was committed without felonious intent, and shall be verified by the oath of the applicant and accompanied by the affidavits of ten reputable citizens of the county, who shall state that they are well acquainted with the applicant and that in their opinion the crime was committed without felonious intent. No notice of the petition in such case shall be necessary, and no advertisement thereof be made, but the same shall be heard by the judge, upon its presentation, during a term of court; and if he is satisfied as to the truth of the matters set out in the petition and affidavits, he shall decree the applicant's restoration to the lost rights of citizenship, and the clerk shall spread the decree upon his minute docket: Provided, that in all cases where the court suspended judgment it shall not be necessary to allege or prove that pardon has been granted by the governor, and in such cases the petition may be made and the forfeited rights of citizenship restored at any time after conviction. (Rev., s. 2680; 1899, cc. 44, 249; 1905, c. 547; C. S. 390.)

§ 13-7. Restoration of rights of citizenship to persons committed to certain training schools.—Any person convicted of any crime whereby any rights of citizenship are forfeited, and the judgment of the court pronounced provides a sentence, and such sentence is suspended upon the condition that such person be admitted to and remain at one of the following schools: Eastern Carolina Industrial Training School for Boys, the Stonewall Jackson Manual Training and Industrial School, the Morrison Training School for Negro Boys, or the State Home and In-

dustrial School for Girls, until lawfully discharged, and upon payment of costs, such person may be restored to such forfeited rights of citizenship upon application and petition to the judge presiding at any term of the superior court held in the county in which the conviction was had, at any time after one year from the date of the lawful discharge from any such school. (1937, c. 384, s. 1.)

§ 13-8. Contents of petition; affidavits of reputable citizens; hearing; decree of restoration.—The petition provided for in § 13-7 shall set out the nature of the crime committed, the time of conviction, the judgment of the court, and shall recite that the costs of suit have been paid, the lawful discharge of the applicant from the school to which he or she was admitted, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten reputable citizens of the county in which said conviction took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1937, c. 384, s. 2.)

§ 13-9. Restoration of citizenship to persons convicted, etc., of involuntary manslaughter.—Any person who has been convicted of, or confessed guilt to, the crime of involuntary manslaughter and is not actually serving a term in the state prison or on the roads of the state may, at any subsequent term of the superior court of the county in which the conviction was had, or the confession of guilt made, make application and petition the court for a restoration of all forfeited rights of citizenship. (1941, c. 184, s. 1.)

§ 13-10. Contents of petition; supporting affidavits; hearing and decree.—The petition provided for in section 13-9 shall set out the nature of the crime committed, the time of conviction or confession of guilt, the judgment of the court, and shall recite that the costs of suit have been paid, and that applicant has never before had restored to him lost rights of citizenship, which petition shall be verified by the oath of the applicant, and accompanied by the affidavits of ten reputable citizens of the county in which said conviction or confession of guilt took place, who shall state that they are well acquainted with the applicant, and that they are of the opinion that the applicant should have restored to him the lost rights of citizenship. The petition shall be heard by the judge during a term of court, and if he is satisfied as to the truth of the matters set out in the petition and the affidavits, he shall have the authority to decree the applicant's restoration to the lost rights of citizenship and the clerk shall spread the decree upon his minute dockets. (1941, c. 184, s. 2.)

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SUBCHAPTER I. GENERAL PROVISIONS.

Art. 1. Felonies and Misdemeanors.

§ 14-1. Felonies and misdemeanors defined.—A felony is a crime which is or may be punishable by either death or imprisonment in the state's prison. Any other crime is a misdemeanor. (Rev., s. 3291; 1891, c. 205, s. 1; C. S. 4171.)

§ 14-2. Punishment of felonies.—Every person who shall be convicted of any felony for which no specific punishment is prescribed by statute shall be imprisoned in the county jail or state prison not exceeding two years, or be fined, in the discretion of the court, or if the offense be infamous, the person offending shall be imprisoned in the county jail or state prison not less than four months nor more than ten years, or be fined. (Rev., s. 3292; Code, s. 1096; R. C., c. 34, s. 27; C. S. 4172.)

§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, etc.—All misdemeanors, where a specific punishment is not prescribed shall be punished as misdemeanors at common law; but if the offense be infamous, or done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a felony and punished by imprisonment in the county jail or state prison for not less than four months nor more than ten years, or shall be fined. (Rev., s. 3293; Code, s. 1097; R. C., c. 34, s. 120; 1927, c. 1; C. S. 4173.)

§ 14-4. Violation of town ordinance misdemeanor; punishment.—If any person shall violate an ordinance of a city or town, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3702; Code, s. 3820; 1871-2, c. 195, s. 2; C. S. 4174.)

Art. 2. Principals and Accessories.

§ 14-5. Accessories before the fact; trial and punishment.—If any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute, the person so counseling, procuring or commanding shall be guilty of a felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished. The offense of the person so counseling, procuring or commanding, howsoever indicted, may be inquired of tried, determined and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offense had been committed at the same place as the principal felony or where the principal felony is triable, although such offense may have been committed at any place within or without the limits of the state. In case the principal felony shall have been committed within the body of any county, and the offense of counseling, procuring or commanding shall have been committed within the body of any other county, the last mentioned offense may be inquired of, tried, determined, and punished in either of such counties: Provided, that no person who shall be once duly tried for any such offense, whether as an accessory before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offense. (Rev., s. 3287; Code, s. 977; R. C., c. 34, s. 53; 1797, c. 485, s. 1; 1852, c. 58; C. S. 4175.)

§ 14-6. Punishment of accessories before the fact.—Any person who shall be convicted as an accessory before the fact in either of the crimes of murder, arson, burglary or rape shall be imprisoned for life in the state's prison. An accessory before the fact to the stealing of any horse, mare, gelding or mule, on being duly convicted thereof, shall be imprisoned in the state's prison for not less than five nor more than twenty years, in the discretion of the court. Every accessory before the fact in any other felony shall be punished by imprisonment in the state prison or

county jail for not more than ten years, or may be fined in the discretion of the court. (Rev., s. 3290; Code, s. 980; 1868-9, c. 31, s. 2; 1874-5, c. 212; C. S. 4176.)

§ 14-7. Accessories after the fact; trial and punishment.—If any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute made, or to be made, such person shall be guilty of a felony, and may be indicted and convicted together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted for such felony whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years, and may also be fined in the discretion of the court. The offense of such person may be inquired of, tried, determined and punished by any court which shall have jurisdiction of the principal felon, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed without the limits of the state; and in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other county, the offense of such person guilty of a felony as aforesaid may be inquired of, tried, determined, and punished in either of said counties: Provided, that no person who shall be once duly tried for such felony shall be again indicted or tried for the same offense. (Rev., s. 3289; Code, s. 978; R. C., c. 34, s. 54; 1797, c. 485, s. 1; 1852, c. 58; C. S. 4177.)

SUBCHAPTER 2. OFFENSES AGAINST THE STATE.

Art. 3. Rebellion.

§ 14-8. Rebellion against the state.—If any person shall incite, set on foot, assist or engage in a rebellion or insurrection against the authority of the state of North Carolina or the laws thereof, or shall give aid or comfort thereto, every person so offending in any of the ways aforesaid shall be guilty of a felony, and, shall be punished by imprisonment in the state's prison for not more than fifteen years and by a fine of not more than ten thousand dollars. (Rev., s. 3437; Code, s. 1106; 1868, c. 60, s. 2; 1861, c. 18; 1866, c. 64; Const., Art. IV, s. 5; C. S. 4178.)

§ 14-9. Conspiring to rebel against the state.—If two or more persons shall conspire together to overthrow or put down, or to destroy by force, the government of North Carolina, or to levy war against the government of the state, or to oppose by force the authority of such government, or by force or threats to intimidate, or to prevent, hinder or delay the execution of any law of the state, or by force or fraud to seize or take possession of any firearms or other property of the state, against the will or contrary to the authority of such state, every person so offending in any of the ways aforesaid shall be guilty of a felony and shall be imprisoned not more than ten years in the state's prison and be fined not exceeding five thousand dollars. (Rev., s. 3438; Code, s. 1107; 1868, c. 60, s. 1; C. S. 4179.)

§ 14-10. Secret political and military organizations forbidden.—If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character; or shall form or organize or combine and agree with any other person or persons to form or organize any such organization; or as a member of any secret political or military party or organization shall use, or agree to use, any certain signs or grips or passwords, or any disguise of the person or voice, or any disguise whatsoever for the advancement of its object, and shall take or administer any extra-judicial oath or other secret, solemn pledge, or any like secret means; or if any two or more persons, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or circumventing the laws, shall secretly assemble, combine or agree together, and the more effectually to accomplish such purposes, or any of them, shall use any certain signs, or grips, or passwords, or any disguise of the person or voice, or other disguise whatsoever, or shall take or administer any extra-judicial oath or other secret, solemn pledge; or if any persons shall band together and assemble to muster, drill or practice any military evolutions except by virtue of the authority of an officer recognized by law, or of an instructor in institutions or schools in which such evolutions form a part of the course of instruction; or if any person shall knowingly permit any of the acts and things herein forbidden to be had, done or performed on his premises, or on any premises under his control; or if any person being a member of any such secret political or military organization shall not at once abandon the same and separate himself entirely therefrom, every person so offending shall be guilty of a misdemeanor, and shall be fined not less than ten nor more than two hundred dollars, or be imprisoned, or both, at the discretion of the court. (Rev., s. 3439; Code, s. 1095; 1870-1, c. 133; 1868-9, c. 267; 1871-2, c. 143; C. S. 4180.)

Art. 4. Subversive Activities.

§ 14-11. Activities aimed at overthrow of government; use of public buildings.—It shall be unlawful for any person, by word of mouth or writing, willfully and deliberately to advocate, advise or teach a doctrine that the government of the United States, the state of North Carolina or any political subdivision thereof shall be overthrown or overturned by force or violence or by any other unlawful means. It shall be unlawful for any public building in the state, owned by the state of North Carolina, any political subdivision thereof, or by any department or agency of the state or any institution supported in whole or in part by state funds, to be used by any person for the purpose of advocating, advising or teaching a doctrine that the government of the United States, the state of North Carolina or any political subdivision thereof

should be overthrown by force, violence or any other unlawful means. (1941, c. 37, s. 1.)

§ 14-12. Punishment for violations.—Any person or persons violating any of the provisions of this article shall, for the first offense, be guilty of a misdemeanor and be punished accordingly, and for the second offense shall be guilty of a felony and punished accordingly. (1941, c. 37, s. 2.)

Art. 5. Counterfeiting and Issuing Monetary Substitutes.

§ 14-13. Counterfeiting coin and uttering coin that is counterfeit.—If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting the resemblance or similitude or likeness of a Spanish milled dollar, or any coin of gold or silver which is in common use and received in the discharge of contracts by the citizens of the state; or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or bring into the state from any other place with intent to pass, utter, publish or sell as true, any such false, forged or counterfeited coin, knowing the same to be false, forged or counterfeited, with intent to defraud any person whatsoever, every person so offending shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years. (Rev., s. 3422; Code, s. 1035; R. C., c. 34, s. 64; 1811, c. 814, s. 3; C. S. 4181.)

§ 14-14. Possessing tools for counterfeiting.—If any person shall have in his possession any instrument for the purpose of making any counterfeit similitude or likeness of a Spanish milled dollar, or other coin made of gold or silver which is in common use and received in discharge of contracts by the citizens of the state, and shall be duly convicted thereof, the person so offending shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years, or be fined not more than five hundred dollars. (Rev., s. 3423; Code, s. 1036; R. C., c. 34, s. 65; 1811, c. 814, s. 4; C. S. 4182.)

§ 14-15. Issuing substitutes for money without authority.—If any person or corporation, unless the same be expressly allowed by law, shall issue any bill, due bill, order, ticket, certificate of deposit, promissory note or obligation, or any other kind of security, whatever may be its form or name, with the intent that the same shall circulate or pass as the representative of, or as a substitute for, money, he shall forfeit and pay for each offense the sum of fifty dollars; and if the offender be a corporation, it shall in addition forfeit its charter. Every person or corporation offending against this section, or aiding or assisting therein, shall be guilty of a misdemeanor. (Rev., s. 3711; Code, s. 2493; 1895, c. 127; R. C., c. 36, s. 5; C. S. 4183.)

Local Modification.—Cumberland: 1933, c. 33; Currituck: 1933, c. 328.

§ 14-16. Receiving or passing unauthorized substitutes for money.—If any person or corporation shall pass or receive, as the representative of, or as the substitute for, money, any bill, check, certificate, promissory note, or other security of the kind mentioned in § 14-15, whether the same be issued within or without the state, such person or corporation, and the officers and agents of such corporation aiding therein, who shall offend against this section shall for every such offense forfeit and pay five dollars, and shall be guilty of a misdemeanor. (Rev., s. 3712; Code, s. 2494; 1895, c. 127; R. C., c. 36, s. 6; C. S. 4184.)

SUBCHAPTER 3. OFFENSES AGAINST THE PERSON.

Art. 6. Homicide.

§ 14-17. Murder in the first and second degree defined; punishment.—A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death. All other kinds of murder shall be deemed murder in the second degree, and shall be punished with imprisonment of not less than two nor more than thirty years in the state prison. (Rev., s. 3631; 1893, cc. 85, 281; C. S. 4200.)

§ 14-18. Punishment for manslaughter.—If any person shall commit the crime of manslaughter he shall be punished by imprisonment in the county jail or state prison for not less than four months nor more than twenty years: Provided, however, that in cases of involuntary manslaughter, the punishment shall be in the discretion of the court, and the defendant may be fined or imprisoned, or both. (Rev., s. 3632; Code, s. 1055; 1879, c. 255; R. C., c. 34, s. 24; 4 Hen. VII, c. 13; 1816, c. 918; 1933, c. 249; C. S. 4201.)

§ 14-19. Punishment for second offense of manslaughter.—If any person, having been convicted of the crime of manslaughter and sentenced thereon, shall be convicted of a second crime of the like nature, he shall be imprisoned in the state prison not less than five nor more than sixty years; and in every such case of conviction for such second offense, the prior conviction of the same person and sentence thereon may be shown to the court. (Rev., s. 3633; Code, s. 1056; R. C., c. 34, s. 25; C. S. 4202.)

§ 14-20. Killing adversary in duel; aiders and abettors declared accessories.—If any persons fight a duel in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction thereof, shall suffer death; and all their aiders or abettors shall be considered accessories before the fact. (Rev., s. 3629; Code, s. 1013; R. C., c. 34, s. 3; 1802, c. 608, s. 2; C. S. 4203.)

Art. 7. Rape and Kindred Offenses.

§ 14-21. Punishment for rape.—Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death. (Rev., s. 3637; Code, s. 1101;

R. C., c. 34, s. 5; 18 Eliz., c. 7; 1868-9, c. 167, s. 2; 1917, c. 29; C. S. 4204.)

§ 14-22. Punishment for assault with intent to commit rape.—Every person convicted of an assault with intent to commit a rape upon the body of any female shall be imprisoned in the state's prison not less than one nor more than fifteen years. (Rev, s. 3638; Code, s. 1102; 1868-9, c. 167, s. 3; R. C., c. 107, s. 44; 1823, c. 1229; 1917, c. 162, s. 1; C. S. 4205.)

§ 14-23. Emission not necessary to constitute rape and buggery.—It shall not be necessary upon the trial of any indictment for the offenses of rape, carnally knowing and abusing any female child under twelve years old, and buggery, to prove the actual emission of seed in order to constitute the offense, but the offense shall be completed upon proof of penetration only. (Rev., s. 3639; Code, s. 1105; 1860-1, c. 30; 1917, c. 29; C. S. 4206.)

§ 14-24. Obtaining carnal knowledge of married woman by personating husband.—If any person shall have carnal knowledge of any married woman by fraud in personating her husband, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison at hard labor for not less than ten nor more than twenty years. (Rev., s. 3624; Code, s. 1103; 1881, c. 89, s. 1; C. S. 4207.)

§ 14-25. Attempted carnal knowledge of married woman by personating husband.—Every person convicted of an assault upon any married woman, with intent to have knowledge of her by fraud in personating her husband, shall be punished by imprisonment in the state's prison at hard labor for not less than five nor more than fifteen years. (Rev., s. 3625; Code, s. 1104; 1881, c. 89, s. 2; C. S. 4208.)

§ 14-26. Obtaining carnal knowledge of virtuous girls between twelve and sixteen years old.—If any male person shall carnally know or abuse any female child, over twelve and under sixteen years of age, who has never before had sexual intercourse with any person, he shall be guilty of a felony and shall be fined or imprisoned in the discretion of the court; and any female person who shall carnally know any male child under the age of sixteen years shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court: Provided, that if the offenders shall be married or shall thereafter marry, such marriage shall be a bar to further prosecution. (Rev., s. 3348; 1895, c. 295; 1917, c. 29; 1923, c. 140, s. 1; C. S. 4209.)

§ 14-27. Jurisdiction of court; offenders classed as delinquents.—All persons charged with a violation of § 14-26 under the age of sixteen years shall be subject to the jurisdiction of the juvenile court and such other courts as may hereafter exercise such jurisdiction, and shall be classed as delinquents and not as felons: Provided, that where the offenders agree to marry, the consent of the parent shall not be necessary: Provided further, that any male person convicted of the violation of § 14-26 who is under eighteen (18) years of age, shall be guilty of a misdemeanor only. (1923, c. 140, s. 2; C. S. 4209(a).)

Art. 8. Assaults.

§ 14-28. Malicious castration.—If any person, of malice aforethought, shall unlawfully castrate any other person, or cut off, maim or disfigure any of the privy members of any person, with intent to murder, maim, disfigure, disable or render impotent such person, the person so offending shall suffer imprisonment in the state's prison for not less than five nor more than sixty years. (Rev., s. 3627; Code, s. 999; R. C., c. 34, s. 4; 1831, c. 40, s. 1; 1868-9, c. 167, s. 6; C. S. 4210.)

§ 14-29. Castration or other maiming without malice aforethought.—If any person shall, on purpose and unlawfully, but without malice aforethought, cut or slit the nose, bite or cut off the nose, or a lip or an ear, or disable any limb or member of any other person, or castrate any other person, or cut off, maim or disfigure any of the privy members of any other person, with intent to kill, maim, disfigure, disable or render impotent such person, the person so offending shall be imprisoned in the county jail or state's prison not less than six months nor more than ten years, and fined, in the discretion of the court. (Rev., s. 3626; Code, s. 1000; R. C., c. 34, s. 47; 1754, c. 56; 1791, c. 339, ss. 2, 3; 1831, c. 40, s. 2; C. S. 4211.)

§ 14-30. Malicious maiming. — If any person shall, of malice aforethought, unlawfully cut out or disable the tongue or put out an eye of any other person, with intent to murder, maim or disfigure, the person so offending, his counselors, abettors and aiders, knowing of and privy to the offense, shall, for the first offense, be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, and be fined, in the discretion of the court; and for the second offense shall be imprisoned in the state's prison not less than five nor more than sixty years. (Rev., s. 3636; Code, s. 1080; R. C., c. 34, s. 14; 1754, c. 56; 1791, c. 339, s. 1; 1831, c. 12; 22 and 23 Car. II, c. 1 (Coventry Act); C. S. 4212.)

§ 14-31. Maliciously assaulting in a secret manner.—If any person shall in a secret manner maliciously commit an assault and battery with any deadly weapon upon another by waylaying or otherwise, with intent to kill such other person, notwithstanding the person so assaulted may have been conscious of the presence of his adversary, he shall be guilty of a felony and shall be punished by imprisonment in jail or in the penitentiary for not less than twelve months nor more than twenty years, or by a fine not exceeding two thousand dollars, or both, in the discretion of the court. (Rev., s. 3621; 1887, c. 32; 1919, c. 25; C. S. 4213.)

§ 14-32. Assault with deadly weapon with intent to kill resulting in injury.—Any person who assaults another with a deadly weapon with intent to kill, and inflicts serious injury not resulting in death, shall be guilty of a felony and shall be punished by imprisonment in the state prison or be worked under the supervision of the state highway and public works commission for a period not less than four months nor more than ten years. (1919, c. 101; 1931, c. 145, s. 30; C. S. 4214.)

§ 14-33. Punishment for assault.—In all cases of an assault, with or without intent to kill or in-

jure, the person convicted shall be punished by fine or imprisonment, or both, at the discretion of the court: Provided, that where no deadly weapon has been used and no serious damage done, the punishment in assaults, assaults and batteries, and affrays shall not exceed a fine of fifty dollars or imprisonment for thirty days; but this proviso shall not apply to cases of assault with intent to kill or with intent to commit rape, or to cases of assault or assault and battery by any man or boy over eighteen years old on any female person: Provided, that in all cases of assault, assault and battery, and affrays, wherein deadly weapons are used and serious injury is inflicted, and the plea of the defendant is self-defense, evidence of former threats against the defendant by the person alleged to have been assaulted by him, if such threats shall have been communicated to the defendant before the altercation, shall be competent as bearing upon the reasonableness of the claim of apprehension by the defendant of death or serious bodily harm, and also as bearing upon the amount of force which reasonably appeared necessary to the defendant, under the circumstances, to repel his assailant. (Rev., s. 3620; Code, s. 987; 1870-1, c 43, s. 2; 1873-4, c. 176, s. 6; 1879, c. 92, ss. 2, 6; 1911, c. 193; 1933, c. 189; C. S. 4215.)

§ 14-34. Assaulting by pointing gun.—If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of an assault, and upon conviction of the same shall be fined, imprisoned, or both, at the discretion of the court. (Rev., s. 3622; 1889, c. 527; C. S. 4216.)

Art. 9. Hazing.

§ 14-35. Hazing; definition and punishment.—It shall be unlawful for any student in any college or school in this state to engage in what is known as hazing, or to aid or abet any other student in the commission of this offense. For the purposes of this section hazing is defined as follows: "to annoy any student by playing abusive or ridiculous tricks upon him, to frighten, scold, beat or harass him, or to subject him to personal indignity." Any violation of this section shall constitute a misdemeanor. (1913, c. 169, ss. 1, 2, 3, 4; C. S. 4217.)

§ 14-36. Expulsion from school; duty of faculty to expel.—Upon conviction of any student of the offense of hazing, or of aiding or abetting in the commission of this offense, he shall, in addition to any punishment imposed by the court, be expelled from the college or school he is attending. The faculty or governing board of any college or school charged with the duty of expulsion of students for proper cause shall, upon such conviction at once expel the offender, and a failure to do so shall be a misdemeanor. (1913, c. 169, ss. 5, 6; C. S. 4218.)

§ 14-37. Certain persons and schools excepted; copy of article to be posted.—This article shall not apply to females, nor to schools or colleges not keeping boarders, nor to schools keeping less than ten student boarders. A copy of this article shall be framed and hung on display in every college or school to which it applies. (1913, c. 169, s. 3; C. S. 4219.)

§ 14-38. Witnesses in hazing trials; no indictment to be founded on self-criminating testimony.—In all trials for the offense of hazing any student or other person subpœnaed as a witness in behalf of the state shall be required to testify if called upon to do so: Provided, however, that no student or other person so testifying shall be amenable or subject to indictment on account of, or by reason of, such testimony. (1913, c. 169, s. 8; C. S. 4220.)

Art. 10. Kidnapping and Abduction.

§ 14-39. Kidnapping.—It shall be unlawful for any person, firm or corporation, or any individual, male or female, or its or their agents, to kidnap or cause to be kidnapped any human being, or to demand a ransom of any person, firm or corporation, male or female, to be paid on account of kidnapping, or to hold any human being for ransom: Provided, however, that this section shall not apply to a father or mother for taking into their custody their own child.

Any person, or their agent, violating or causing to be violated any provisions of this section shall be guilty of a felony, and upon conviction therefor, shall be punishable by imprisonment for life.

Any firm or corporation violating, or causing to be violated through their agent or agents, any of the provisions of this section, and upon being found guilty, shall be liable to the injured party suing therefor, the sum of twenty-five thousand dollars ($25,000), and shall forfeit its or their charter and right to do business in the state of North Carolina. (1933, c. 542.)

§ 14-40. Enticing minors out of the state for the purpose of employment.—If any person shall employ and carry beyond the limits of this state any minor, or shall induce any minor to go beyond the limits of this state, for the purpose of employment without the consent in writing, duly authenticated, of the parent, guardian or other person having authority over such minor, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred and not more than one thousand dollars for each offense. The fact of the employment and going out of the state of the minor, or of the going out of the state by the minor, at the solicitation of the person for the purpose of employment, shall be prima facie evidence of knowledge that the person employed or solicited to go beyond the limits of the state is a minor. (Rev., s. 3630; 1891, c. 45; C. S. 4222.)

§ 14-41. Abduction of children.—If any one shall abduct or by any means induce any child under the age of fourteen years, who shall reside with its father, mother, uncle, aunt, brother or elder sister, or shall reside at a school, or be an orphan and reside with a guardian, to leave such person or school, he shall be guilty of a felony, and on conviction shall be fined or imprisoned in the state's prison for a period not exceeding fifteen years. (Rev., s. 3358; Code, s. 973; 1879, c. 81; C. S. 4223.)

§ 14-42. Conspiring to abduct children.—If any one shall conspire to abduct, or by any means to induce any child under the age of fourteen years,

who shall reside with any of the persons designated in § 14-41, or shall reside at school, to leave such persons or the school, he shall be guilty of a felony, and on conviction shall be punished as prescribed in that section: Provided, that no one who may be a nearer blood relation to the child than the persons named in § 14-41 shall be indicted for either of said offenses. (Rev., s. 3359; Code, s. 974; 1879, c. 81, s. 2; C. S. 4224.)

§ 14-43. Abduction of married women.—If any male person shall abduct or elope with the wife of another, he shall be guilty of a felony, and upon conviction shall be imprisoned not less than one year nor more than ten years: Provided, that the woman, since her marriage, has been an innocent and virtuous woman: Provided further, that no conviction shall be had upor the unsupported testimony of any such married woman. (Rev., s. 3360; 1903, c. 362; C. S. 4225.)

Art. 11. Abortion and Kindred Offenses.

§ 14-44. Using drugs or instruments to destroy unborn child.—If any person shall willfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of the mother, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than one year nor more than ten years, and be fined at the discretion of the court. (Rev., s. 3618; Code, s. 975; 1881, c. 351, s. 1; C. S. 4226.)

§ 14-45. Using drugs or instruments to produce miscarriage or injure pregnant woman.—If any person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be guilty of a felony, and shall be imprisoned in the jail or state's prison for not less than one year nor more than five years and shall be fined, at the discretion of the court. (Rev., s. 3619, Code, s. 976; 1881, c. 351, s. 2; C. S. 4227.)

§ 14-46. Concealing birth of child.—If any person shall, by secretly burying or otherwise disposing of the dead body of a new-born child, endeavor to conceal the birth of such child, such person shall be guilty of a felony, and punished by fine or imprisonment, or both, such imprisonment to be in the county jail or state's prison, at the discretion of the court: Provided, that the imprisonment in the state's prison shall in no case exceed a term of ten years: Provided further, that nothing in this section shall be construed to prevent the mother, who may be guilty of the homicide of her child, from being prosecuted and punished for the same according to the principles of the common law. Any person aiding, counseling or abetting any woman in concealing the birth of her child shall be guilty of a misdemeanor. (Rev., s. 3623; Code, s. 1004; R. C., c. 34, s. 28; 1818, c. 985; 1883, c. 390; 21, Jac. I, c. 27. See 43 Geo. III, c. 58, s. 3; 9 Geo. IV, c. 31, s. 14; C. S. 4228.)

Art. 12. Libel and Slander.

§ 14-47. Communicating libelous matter to newspapers.—If any person shall state, deliver or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person or corporation, and thereby secure the publication of the same, he shall be guilty of a misdemeanor. (Rev., s. 3635; 1901, c. 557, ss. 2, 3; C. S. 4229.)

§ 14-48. Slandering innocent women.—If any person shall attempt, in a wanton and malicious manner, to destroy the reputation of an innocent woman by words, written or spoken, which amount to a charge of incontinency, every person so offending shall be guilty of a misdemeanor. (Rev., s. 3640; Code, s. 1113; 1879, c. 156; C. S. 4230.)

Art. 13. Injuring Others by Use of High Explosives.

§ 14-49. Willful injury a felony; punishment.—Any person who shall willfully and maliciously injure or attempt to injure any person, or any building in actual use for residential or business purposes or customarily devoted to any such use or any contents thereof, by the use of nitro-glycerine, dynamite, gunpowder, or other high explosive, shall be guilty of a felony, and on conviction shall be punished by imprisonment in the state prison for not less than five years and not more than thirty years. (1923, c. 80, s. 1; C. S. 4231(a).)

§ 14-50. Conspiracy declared a felony; punishment.—If any two or more persons shall conspire to willfully and maliciously injure any person, or any building in actual use for residential or business purposes or customarily devoted to any such use or any contents thereof, by the use of nitroglycerine, dynamite, gunpowder, or other high explosive, each and every one so conspiring shall be guilty of a felony, and on conviction shall be punished by imprisonment in the state prison for not less than two years and not more than fifteen years. (1923, c. 80, s. 2.)

SUBCHAPTER 4. OFFENSES AGAINST THE HABITATION AND OTHER BUILDINGS.

Art. 14. Burglary and Other House-Breakings.

§ 14-51. First and second degree burglary.—There shall be two degrees in the crime of burglary as defined at the common law. If the crime be committed in a dwelling-house, or in a room used as a sleeping apartment in any building, and any person is in the actual occupation of any part of said dwelling-house or sleeping apartment at the time of the commission of such crime, it shall be burglary in the first degree. If such crime be committed in a dwelling-house or sleeping apartment not actually occupied by any one at the time of the commission of the crime, or if it be committed in any house within the curtilage of a dwelling-house or in any building not a dwelling-house, but in which is a room used as a sleeping apartment and not actually occupied as such at the time of the commission of the crime, it shall be burglary in the second degree. (Rev., s. 3331; 1889, c. 434, s. 1; C. S. 4232.)

§ 14-52. Punishment for burglary.—Any person convicted, according to due course of law, of the crime of burglary in the first degree shall suffer death: Provided, if the jury shall so recommend, the punishment shall be imprisonment for life in the state's prison. Anyone so convicted of burglary in the second degree shall suffer imprisonment in the state's prison for life, or for a term of years, in the discretion of the court. (Rev., s. 3330; Code, s. 994; 1889, c. 434, s. 2; 1870-1, c. 222; 1941, c. 215, s. 1; C. S. 4233.)

§ 14-53. Breaking out of dwelling-house burglary.—If any person shall enter the dwelling-house of another with intent to commit any felony or other infamous crime therein, or being in such dwelling-house, shall commit any felony or other infamous crime therein, and shall, in either case, break out of such dwelling-house in the nighttime, such person shall be guilty of burglary. (Rev., s. 3332; Code, s. 995; R. C., c. 34, s. 8; 12 Anne, c. 7, s. 3; C. S. 4234.)

§ 14-54. Breaking into or entering houses otherwise than burglariously.—If any person, with intent to commit a felony or other infamous crime therein, shall break or enter either the dwelling-house of another otherwise than by a burglarious breaking; or any storehouse, shop, warehouse, banking-house, counting-house or other building where any merchandise, chattel, money, valuable security or other personal property shall be; or any uninhabited house, he shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years. (Rev., s. 3333; Code, s. 996; 1874-5, c. 166; 1879, c. 323; C. S. 4235.)

§ 14-55. Preparation to commit burglary or other house-breakings.—If any person shall be found armed with any dangerous or offensive weapon, with the intent to break or enter a dwelling, or other building whatsoever, and to commit a felony or other infamous crime therein; or shall be found having in his possession, without lawful excuse, any pick-lock, key, bit or other implement of house-breaking; or shall be found in any such building, with intent to commit a felony or other infamous crime therein, such person shall be guilty of a felony and punished by fine or imprisonment in the state's prison, or both, in the discretion of the court. (Rev., s. 3334; Code, s. 997; 1907, c. 822; C. S. 4236.)

§ 14-56. Breaking into or entering railroad cars.—If any person shall, with intent to commit larceny or other felony, break any seal upon a railroad car containing any goods, wares, freight or other thing of value, or shall unlawfully and willfully break or enter into any railroad car containing any goods, wares, freight or other thing of value, such person shall upon conviction be punished by confinement in the penitentiary in the discretion of the court for a term not exceeding five years. Any person found unlawfully in such car shall be presumed to have entered in violation of this section. (1907, c. 468; C. S. 4237.)

§ 14-57. Burglary with explosives.—Any person who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of nitro-glycerine, dynamite, gunpowder, or any other explosive, or acetylene torch, shall be deemed guilty of burglary with explosives. Any person convicted under this section shall be punished as for burglary in the second degree, as provided in § 14-52. (1921, c. 5; C. S. 4237(a).)

Art. 15. Arson and Other Burnings.

§ 14-58. Punishment for arson.—Any person convicted according to due course of law of the crime of arson shall suffer death: Provided, if the jury shall so recommend, the punishment shall be imprisonment for life. (Rev., s. 3335; Code, s. 985; R. C., c. 34, s. 2; 1870-1, c. 222; 1941, c. 215, s. 2; C. S. 4238.)

§ 14-59. Burning of certain public and other corporate buildings.—If any person shall willfully and maliciously burn the statehouse, or any of the public offices of the state, or any courthouse, jail, arsenal, clerk's office, register's office, or any house belonging to any county or incorporated town in the state or to any incorporated company whatever, in which are kept the archives, documents, or public papers of such county, town or corporation, he shall, on conviction, be imprisoned in the state's prison for not less than five nor more than ten years. (Rev., s. 3344; Code, s. 985, subsec. 3; R. C., c. 34, s. 7; 1830, c. 41, s. 1; 1868-9, c. 167, s. 5; C. S. 4239.)

§ 14-60. Setting fire to schoolhouse.—If any person shall willfully set fire to any schoolhouse, or procure the same to be done, he shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the state's prison or the county jail, and may also be fined, in the discretion of the court. (Rev., s. 3345; 1901, c. 4, s. 28; 1919, c. 70; C. S. 4240.)

§ 14-61. Burning or attempting to burn certain bridges and buildings.—If any person, with intent to destroy the same, shall willfully and maliciously set fire to and burn any public bridge, or private toll-bridge, or the bridge of any incorporated company, or any fire-engine house, or any house belonging to any county or incorporated town, used for public purposes other than the keeping of archives, documents and public papers, or any house belonging to an incorporated company and used in the business of such company; or if any person shall willfully and maliciously attempt to burn any of such houses or bridges, or any of the houses or buildings mentioned in this article, the person offending shall be guilty of a felony and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years. (Rev., s. 3337; Code, s. 985, subsec. 4; R. C., c. 34, s. 30; 1825, c. 1278; C. S. 4241.)

§ 14-62. Setting fire to churches and certain other buildings.—If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any church, chapel or meeting-house, or any stable, coach house, outhouse, warehouse, office, shop, mill, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or

any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than two nor more than forty years. (Rev., s. 3338; 1885, c. 66; 1903, c. 665, s. 2; 1874-5, c. 228; Code, s. 985, subsec. 6; 1927, c. 11, s. 1; C. S. 4242.)

§ 14-63. Burning boats and barges.—If any person, with the intent to destroy the same, shall willfully and maliciously, or for a fraudulent purpose, set fire to and burn any boat, barge or float, whether he be the owner thereof or not, he shall be guilty of a felony and shall be punished by imprisonment in the state's prison for not less than four months nor more than ten years, or fined in the discretion of the court. (1909, c. 854; C. S. 4243.)

§ 14-64. Burning of gin-houses, tobacco houses and stables.—Every person convicted of the willful burning of any gin-house or tobacco house, or any part thereof, or, in the nighttime, of any stable containing a horse or a mule, or cattle, shall be imprisoned in the state's prison not less than two nor more than ten years. (Rev., s. 3341; 1863, c. 17; 1868-9, c. 167, s. 5; 1903, c. 665, s. 1; Code, s. 985, subsec. 2; C. S. 4244.)

§ 14-65. Fraudulently setting fire to dwelling-houses.—If any person, being the occupant of any building used as a dwelling-house, whether such person be the owner thereof or not, or, being the owner of any building designed or intended as a dwelling-house, shall willfully and wantonly or for a fraudulent purpose set fire to or burn or cause to be burned, or aid, counsel or procure the burning of such building, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail, and may also be fined, in the discretion of the court. (Rev., s. 3340; Code, s. 985; 1903, c. 665, s. 3; 1909, c. 862; 1927, c. 11, s. 2; C. S. 4245.)

§ 14-66. Willful and malicious burning of personal property. — Any person who shall willfully or maliciously burn, or cause to be burned, or aid, counsel, or procure the burning of any goods, wares, merchandise, or other chattels or personal property of any kind, whether the same shall be at the time insured, by any person or corporation against loss or damage by fire, or not, with intent to injure or prejudice the insurer, creditor or the person owning the property, or any other person, whether the same be the property of such person or another, shall be guilty of a felony. (1921, c. 119; C. S. 4245(a).)

§ 14-67. Attempting to burn dwelling-houses and certain other buildings.—If any person shall willfully attempt to burn any dwelling-house, uninhabited house, barn, stable or outhouse, or any mill, manufacturing house, cotton gin, tobacco barn, granary or turpentine distillery, the property of another, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison or county jail, and may also be fined, in the discretion of the court. (Rev., s. 3336; Code, s. 985, subsec. 7; 1876-7, c. 13; C. S. 4246.)

§ 14-68. Failure of owner of property to comply with orders of public authorities.—If the owner or occupant of any building or premises shall fail to comply with the orders of the chief of the fire department, or of the insurance commissioner, he shall be guilty of a misdemeanor, and shall be fined not less than ten nor more than fifty dollars for each day's neglect. (Rev., s. 3343; 1899, c. 58, s. 4; C. S. 4247.)

§ 14-69. Failure of officers to investigate incendiary fires.—If any town or city officer shall fail, neglect or refuse to comply with any of the requirements of the law in regard to the investigation of incendiary fires, he shall be guilty of a misdemeanor and may be fined not less than twenty-five nor more than two hundred dollars. (Rev., s. 3342; 1899, c. 58, s. 5; C. S. 4248.)

SUBCHAPTER 5. OFFENSES AGAINST PROPERTY.

Art. 16. Larceny.

§ 14-70. Distinction between grand and petit larceny abolished.—All distinctions between petit and grand larceny, where the same has had the benefit of clergy, are abolished; and the offense of felonious stealing, where no other punishment shall be specifically prescribed therefor by statute, shall be punished as petit larceny is: Provided, that in cases of much aggravation, or of hardened offenders, the court may, in its discretion, sentence the offender to the state's prison for a period not exceeding ten years. (Rev., s. 3500; Code, s. 1075; R. C., c. 34, s. 26; C. S. 4249.)

§ 14-71. Receiving stolen goods.—If any person shall receive any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing the same to have been feloniously stolen or taken, he shall be guilty of a misdemeanor, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing, shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and any such receiver may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county where he actually received such chattel, money, security, or other thing; and such receiver shall be punished as one convicted of larceny. (Rev., s. 3507; Code, s. 1074; R. C., c. 34, s. 56; 1797, c. 485, s. 2; C. S. 4250.)

§ 14-72. Larceny of property, or the receiving of stolen goods, not exceeding fifty dollars in value.—The larceny of property, or the receiving of stolen goods knowing them to be stolen, of the value of not more than fifty dollars, is hereby declared a misdemeanor, and the punishment therefor shall be in the discretion of the court. If the larceny is from the person, or from the dwelling by breaking and entering, this section shall have no application: Provided, that this section shall not apply to horse stealing. In all cases of doubt the jury shall, in the verdict, fix the value

of the property stolen. (Rev., s. 3506; 1895, c. 285; 1913, c. 118, s. 1; 1941, c. 178, s. 1; C. S. 4251.)

§ 14-73. Jurisdiction of the superior courts in cases of larceny and receiving stolen goods.—The superior courts shall have exclusive jurisdiction of the trial of all cases of the larceny of property, or the receiving of stolen goods knowing them to be stolen, of the value of more than fifty dollars. (1913, c. 118, s. 2; 1941, c. 178, s. 2; C. S. 4252.)

§ 14-74. Larceny by servants and other employees.—If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section, by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be fined or imprisoned in the state prison or county jail not less than four months nor more than ten years, at the discretion of the court: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of sixteen years. (Rev., s. 3499; Code, s. 1065; R. C., c. 34, s. 18; 21 Hen. VIII, c. 7, ss. 1, 2; C. S. 4253.)

§ 14-75. Larceny of chose in action.—If any person shall feloniously steal, take and carry away, or take by robbery, any bank-note, check or other order for the payment of money issued by or drawn on any bank or other society or corporation within this state or within any of the United States, or any treasury warrant, debenture, certificate of stock or other public security, or certificate of stock in any corporation, or any order, bill of exchange, bond, promissory note or other obligation, either for the payment of money or for the delivery of specific articles, being the property of any other person, or of any corporation (notwithstanding any of the said particulars may be termed in law a chose in action), such felonious stealing, taking and carrying away, or taking by robbery, shall be a felony of the same nature and degree and in the same manner as it would have been if the offender had feloniously stolen, or taken by robbery, money, goods or property of any value, and the offender for every such offense shall suffer the same punishment and be subject to the same pains, penalties and disabilities as he should or might have suffered if he had feloniously stolen or taken by robbery money, goods or other property of value. (Rev., s. 3498; Code, s. 1064; R. C., c. 34, s. 20; 1811, c. 814, s. 1; C. S. 4254.)

§ 14-76. Larceny, mutilation, or destruction of public records and papers.—If any person shall steal, or for any fraudulent purpose shall take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney or any original document whatsoever, of or belonging to any court of record, or relating to any matter, civil or criminal, begun, pending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order or decree or any original document whatsoever, of or belonging to any court or relating to any cause or matter begun, pending or terminated in any such court, every such offender shall be guilty of a misdemeanor; and in any indictment for such offense it shall not be necessary to allege that the article, in respect to which the offense is committed, is the property of any person or that the same is of any value. If any person shall steal or for any fraudulent purpose shall take from the register's office, or from any person having the lawful custody thereof, or shall unlawfully and willfully obliterate, injure or destroy any book wherein deeds or other instruments of writing are registered, or any other book of registration or record required to be kept by the register of deeds or shall unlawfully destroy, obliterate, deface or remove any records of proceedings of the board of county commissioners, or unlawfully and fraudulently abstract any record, receipt, order or voucher or other paper-writing required to be kept by the clerk of the board of commissioners of any county, he shall be guilty of a misdemeanor. (Rev., s. 3508; Code, s. 1071; R. C., c. 34, s. 31; 8 Hen. VI. c. 12, s. 3; 1881, c. 17; C. S. 4255.)

§ 14-77. Larceny, concealment or destruction of wills.—If any person, either during the life of the testator or after his death, shall steal or, for any fraudulent purpose, shall destroy or conceal any will, codicil or other testamentary instrument, he shall be guilty of a misdemeanor. (Rev., s. 3510; Code, s. 1072; R. C., c. 34, s. 32; C. S. 4256.)

§ 14-78. Larceny of ungathered crops.—If any person shall steal or feloniously take and carry away any maize, corn, wheat, rice or other grain, or any cotton, tobacco, potatoes, peanuts, pulse, fruit, vegetable or other product cultivated for food or market, growing, standing or remaining ungathered in any field or ground, he shall be guilty of larceny, and shall be punished accordingly. (Rev., s. 3503; Code, s. 1069; 1811, c. 816; R. C., c. 34, s. 21; 1868-9, c. 251; C. S. 4257.)

§ 14-79. Larceny of ginseng.—If any person shall take and carry away, or shall aid in taking or carrying away, any ginseng growing upon the lands of another person, with intent to steal the same, he shall be guilty of a felony, and shall be imprisoned not less than two years nor more than five years, in the discretion of the court: Provided, that such ginseng, at the time the same is taken, shall be in beds and the land upon which such beds are located shall be surrounded by a lawful fence. (Rev., s. 3502; 1905, c. 211; C. S. 4258.)

§ 14-80. Larceny of wood and other property from land.—If any person, not being the present owner or bona fide claimant thereof, shall willfully and unlawfully enter upon the lands of an-

other, carrying off or being engaged in carrying off any wood or other kind of property whatsoever, growing or being thereon, the same being the property of the owner of the premises, or under his control, keeping or care, such person shall, if the act be done with felonious intent, be guilty of larceny, and punished as for that offense; and if not done with such intent, he shall be guilty of a misdemeanor. (Rev., s. 3511; Code, s. 1070; 1866, c. 60; C. S. 4259.)

§ 14-81. Larceny of horses and mules.—If any person shall steal any horse, mare, gelding or mule, he shall suffer imprisonment at hard labor for not less than one nor more than twenty years, at the discretion of the court. A count under this section may be joined in a bill of indictment with a count under section 14-82. (Rev., s. 3505; Code, s. 1066; 1868, c. 37, s. 1; 1879, c. 234, s. 2; 1866-7, c. 62; 1917, c. 162, s. 2; C. S. 4260.)

§ 14-82. Taking horses or mules for temporary purposes.—If any person shall unlawfully take and carry away any horse, gelding, mare or mule, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (Rev., s. 3509; Code, s. 1067; 1879, c. 234, s. 1; 1913, c. 11; C. S. 4261.)

§ 14-83. Taking of automobiles and electric vehicles for temporary purpose.—If any person shall unlawfully take and carry away any automobile or electrical vehicle of any nature, kind or description whatsoever, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of larceny, and shall be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, in the discretion of the court: Provided, that this section shall not be construed to repeal any other section of this article. (1907, c. 126; C. S. 4262.)

§ 14-84. Larceny of taxed dogs misdemeanor.—The larceny of any dog upon which the license tax provided in article two of the chapter entitled Dogs has been paid shall be a misdemeanor. (1919, c. 116, s. 9; C. S. 4263.)

§ 14-85. Pursuing or injuring livestock with intent to steal.—If any person shall pursue, kill or wound any horse, mule, ass, jennet, cattle, hog, sheep or goat, the property of another, with the intent unlawfully and feloniously to convert the same to his own use, he shall be guilty of a felony, and shall be punishable, in all respects, as if convicted of larceny, though such animal may not have come into the actual possession of the person so offending. (Rev., s. 3504; Code, s. 1068; 1866, c. 57; C. S. 4264.)

§ 14-86. Destruction or taking of soft drink bottles.—It shall be unlawful for any person, firm or corporation, or any employee thereof, to maliciously take up, carry away, destroy or in any way dispose of bottles or other property belonging to any bottler, bottling company, person, firm or corporation engaged in the business of bottling and/or distributing in bottles or other closed containers soda water, coca-cola, pepsi-cola, cheri-wine, cherocola, ginger ale, grape and other fruit juices or imitations thereof, carbonated or malted beverages and like preparations commonly known as soft drinks. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1937, c. 322, ss. 1, 2.)

Art. 17. Robbery.

§ 14-87. Robbery with firearms or other dangerous weapons.—Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not less than five nor more than thirty years. (1929, c. 187, s. 1.)

§ 14-88. Train robbery.—If any person shall enter upon any locomotive engine or car on any railroad in this state, and by threats, the exhibition of deadly weapons or the discharge of any pistol or gun, in or near any such engine or car, shall induce or compel any person on such engine or car to submit and deliver up, or allow to be taken therefrom, or from him, anything of value, he shall be guilty of train robbery, and on conviction thereof shall be punished by imprisonment in the state's prison for not less than ten years nor more than twenty years. (Rev., s. 3765; 1895, c. 204, s. 2; C. S. 4266.)

§ 14-89. Attempted train robbery.—If any person shall stop, or cause to be stopped, or impede, or cause to be impeded, or conspire with others for that purpose, any locomotive engine or car on any railroad in this state, by intimidation of those in charge thereof or by force, threats or otherwise, for the purpose of taking therefrom or causing to be delivered up to such person so forcing, threatening or intimidating, anything of value, to be appropriated to his own use, he shall be guilty of attempting train robbery, and, on conviction thereof, shall be punished by confinement in the state's prison for not less than two years nor more than twenty years. (Rev., s. 3766; 1895, c. 204, s. 1; C. S. 4267.)

Art. 18. Embezzlement.

§ 14-90. Embezzlement of property received by virtue of office or employment.—If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of sixteen years, of any person, shall

embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make way with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, which shall have come into his possession or under his care, he shall be guilty of a felony, and shall be punished as in cases of larceny. (Rev., s. 3406; Code, s. 1014; 21 Hen. VII, c. 7; 1871-2, c. 145, s. 2; 1889, c. 226; 1891, c. 188; 1897, c. 31; 1919, c. 97, s. 25; 1931, c. 158; 1939, c. 1; 1941, c. 31; C. S. 4268.)

§ 14-91. Embezzlement of state property by public officers and employees.—If any officer, agent or employee of the state, or other person having or holding in trust for the same any bonds issued by the state, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons aiding and abetting, or otherwise assisting therein, shall be guilty of a felony, and shall be fined not less than ten thousand dollars, or imprisoned in the state's prison not less than twenty years, or both, at the discretion of the court. (Rev., s. 3407; Code, s. 1015; 1874-5, c. 52; C. S. 4269.)

§ 14-92. Embezzlement of funds by public officers and trustees.—If any officer, agent, or employee of any city, county or incorporated town, or of any penal, charitable, religious or educational institution; or if any person having or holding any moneys or property in trust for any city, county, incorporated town, penal, charitable, religious or educational institution, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be guilty of a felony, and shall be fined and imprisoned in the state's prison in the discretion of the court. If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county or town of the state shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be guilty of a felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The punishment shall be imprisonment in the state's prison or county jail, or fine in the discretion of the court. (Rev., s. 3408; Code, s. 1016; 1891, c. 241; 1876-7, c. 47; C. S. 4270.)

§ 14-93. Embezzlement by treasurers of charitable and religious organizations.—If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, in the discretion of the court. (Rev., s. 3409; Code, s. 1017; 1879, c. 105; C. S. 4271.)

§ 14-94. Embezzlement by officers of railroad companies.—If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer, agent or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same for the use or benefit of himself or any other person, state or corporation, other than the company of which he is president, secretary, treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be imprisoned in the state's prison not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars. (Rev., s. 3403; Code, s. 1018; 1870-1, c. 103, s. 1; C. S. 4272.)

§ 14-95. Conspiring with officers of railroad companies to embezzle.—If any person shall agree, combine, collude or conspire with the president, secretary, treasurer, director, engineer or agent of any railroad company to commit any offense specified in § 14-94, such person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of a county through which the railroad of any company against which such offense may be perpetrated passes, shall be imprisoned in the state's prison for not less than three nor more than ten years, and fined not less than one thousand nor more than ten thousand dollars. (Rev., s. 3404; Code, s. 1019; 1870-1, c. 103, s. 2; C. S. 4273.)

§ 14-96. Embezzlement by insurance agents and brokers.—If any insurance agent or broker who acts in negotiating a contract of insurance by an insurance company, association or fraternal order or society, lawfully doing business in this state, embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitute for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, he shall be deemed guilty of larceny. (Rev., s. 3489; 1889, c. 54, s. 103; 1911, c. 196, s. 8; C. S. 4274.)

§ 14-97. Appropriation of partnership funds by partner to personal use.—Any person engaged in a partnership business in the state of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his co-partners of the use thereof, shall be guilty of a misdemeanor. Any person or persons violating the provisions of this section, upon conviction, shall be punished as is now done in cases of misdemeanor. (1921, c. 127; C. S. 4274(a).)

§ 14-98. Embezzlement by surviving partner.—If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be guilty of a felony, and upon conviction shall be punished by fine or imprisonment in the state's prison in the discretion of the court. (Rev., s. 3405; 1901, c. 640, s. 9; C. S. 4275.)

§ 14-99. Embezzlement of taxes by officers.—If any officer appropriates to his own use the state, county, school, city or town taxes, he shall be guilty of embezzlement, and may be punished by confinement in the state's prison not exceeding five years, at the discretion of the court. (Rev., s. 3410; Code, s. 3705; 1883, c. 136, s. 49; C. S. 4276.)

Art. 19. False Pretenses and Cheats.

§ 14-100. Obtaining property by false tokens and other false pretenses.—If any person shall knowingly and designedly, by means of any forged or counterfeited paper, in writing or in print, or by any false token, or other false pretense whatsoever, obtain from any person or corporation within the state any money, goods, property or other thing of value, or any bank-note, check or order for the payment of money, issued by, or drawn on, any bank or other society or corporation within this state or any of the United States, or any treasury warrant, debenture, certificate of stock or public security, or any order, bill of exchange, bond, promissory note or other obligation, either for the payment of money or for the delivery of specific articles, with intent to cheat or defraud any person or corporation of the same, such person shall be guilty of a felony, and shall be imprisoned in the state's prison not less than four months nor more than ten years, or fined, in the discretion of the court: Provided, that if, on the trial of any one indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny, he shall not, by reason thereof, be entitled to be acquitted of the felony; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny upon the same facts: Provided further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security; and, on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud. (Rev., s. 3432; Code, s. 1025; R. C., c. 34, s. 67; 1811, c. 814, s. 2; 33 Hen. VIII, c. 1, ss. 1, 2; 30 Geo. II, c. 24, s. 1; C. S. 4277.)

§ 14-101. Obtaining signatures or property by false pretenses.—If any person, with intent to defraud or cheat another, shall designedly, by color of any false token or writing, or by any other false pretense, obtain the signature of any person to any written instrument, the false making of which would be punishable as forgery, or obtain from any person any money, goods, wares, merchandise or other property or valuable thing whatsoever, he shall be punishable by fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the state's prison for a term of not less than one year nor more than five years, or both, at the discretion of the court. (Rev., s. 3433; Code, s. 1026; 1871-2, c. 92; C. S. 4278.)

§ 14-102. Obtaining property by false representation of pedigree of animals.—If any person shall, with intent to defraud or cheat, knowingly represent any animal for breeding purposes as being of greater degree of any particular strain of blood than such animal actually possesses, and by such representation obtain from any other person money or other thing of value, he shall be guilty of a misdemeanor, and upon conviction thereof shall for each offense be punished by a fine of not less than sixty dollars nor more than three hundred dollars, or by imprisonment for a term not exceeding six months. (Rev., s. 3307; 1891, c. 94, s. 2; C. S. 4279.)

§ 14-103. Obtaining certificate of registration of animals by false representation.—If any person shall, by any false representation or pretense, with intent to defraud or cheat, obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a certificate of registration of any animal in the herd register of any such association, society or company, or a transfer of any such registration, upon conviction thereof he shall be punished by imprisonment for a term not exceeding three months or a fine not exceeding one hundred dollars, or by both such fine and imprisonment. (Rev., s. 3308; 1891, c. 94, s. 1; C. S. 4280.)

§ 14-104. Obtaining advances under promise to work and pay for same.—If any person, with intent to cheat or defraud another, shall obtain any advances in money, provisions, goods, wares or merchandise of any description from any other person or corporation upon and by color of any promise or agreement that the person making the same will begin any work or labor of any description for such person or corporation from whom the advances are obtained, and the person making the promise or agreement shall willfully fail, without a lawful excuse, to commence or complete such work according to contract, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3431; 1889, c. 444; 1891, c. 106; 1905, c. 411; C. S. 4281.)

§ 14-105. Obtaining advances under written

promise to pay therefor out of designated property.—If any person shall obtain any advances in money, provisions, goods, wares or merchandise of any description from any other person or corporation, upon any written representation that the person making the same is the owner of any article of produce, or of any other specific chattel or personal property, which property, or the proceeds of which the owner in such representation thereby agrees to apply to the discharge of the debt so created, and the owner shall fail to apply such produce or other property, or the proceeds thereof, in accordance with such agreement, or shall dispose of the same in any other manner than is so agreed upon by the parties to the transaction, the person so offending shall be guilty of a misdemeanor, whether he shall or shall not have been the owner of any such property at the time such representation was made. (Rev., s. 3434; Code, s. 1027; 1879, cc. 185, 186; 1905, c. 104; C. S. 4282.)

§ 14-106. Obtaining property in return for worthless check, draft or order.—Every person who, with intent to cheat and defraud another, shall obtain money, credit, goods, wares or any other thing of value by means of a check, draft or order of any kind upon any bank, person, firm or corporation, not indebted to the drawer, or where he has not provided for the payment or acceptance of the same, and the same be not paid upon presentation, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. The giving of the aforesaid worthless check, draft, or order shall be prima facie evidence of an intent to cheat and defraud. (1907, c. 975; 1909, c. 647; C. S. 4283.)

Local Modification.—New Hanover: Pub. Loc. 1927, c. 636.

§ 14-107. Worthless checks.—It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor. [If the amount due on such check is not over fifty dollars, the punishment shall not exceed a fine of fifty dollars or imprisonment for thirty days.]

The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft. The part of this section in brackets shall only apply to Pitt county, Robeson county, Iredell county, Martin county, Lee county, Rutherford county, Bladen county, Cumberland county, Mecklenburg county, Catawba county, Sampson county, Alleghany county, Lenoir county, Randolph county, Gaston county, Hoke county, Madison county, Burke county, Transylvania county, Rockingham county, Halifax county, Hertford county, Richmond county, Chatham county, Pamlico county, Wake county, Haywood county, Granville county, Davidson county, Anson county, Carteret county, Davie county, Forsyth county, Greene county, Jackson county, Henderson county, Stokes county, Onslow county, Macon county, Currituck county, Chowan county, Vance county, Edgecombe county, Northampton county, Stanly county, Cabarrus county, Mitchell county, Yancey county, Avery county, Alamance county, Franklin county, Yadkin county, Caldwell county, Gates county, Ashe county, Washington county, Nash county, Johnston county, Duplin county, Wayne county, Guilford county, Rowan county, Bertie county, Moore county, Harnett county, Columbus county, Watauga county, Lincoln county, Caswell county, Orange county, Buncombe county, Wilkes county, Hyde county, Swain county, Clay county, Graham county, Cherokee county, Scotland county, Union county, and Surry county. (1925, c. 14; 1927, c. 62; 1929, c. 273, ss. 1, 2; 1931, cc. 63, 138; 1933, cc. 43, 64, 93, 170, 265, 362, 458; 1939, c. 346.)

Local Modification.—For an act amending an Act that was never passed by the legislature, and applying only to Durham County, see Public Laws 1931, c. 292.

§ 14-108. Obtaining property or services from slot machines, etc., by false coins or tokens.—Any person who shall operate, or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated any automatic vending machine, slot machine, coin-box telephone or other receptable designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph or other property, without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, or in the discretion of the court, by both. (1927, c. 68, s. 1.)

§ 14-109. Manufacture, sale, or gift of devices for cheating slot machines, etc.—Any person who, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any automatic vending machine, slot machine, coin-box telephone or other receptacle, depository or contrivance designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, or who, knowing that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device or substance whatsoever intended or calculated to be placed or de-

posited in any such automatic vending machine, slot machine, coin-box telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, or in the discretion of the court, by both. (1927, c. 68, s. 2.)

§ 14-110. Obtaining entertainment at hotels and boarding-houses without paying therefor.—Any person who obtains any lodging, food or accommodation at an inn, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn, boarding-house or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at an inn, boarding-house or lodging-house, absconds and surreptitiously removes his baggage therefrom without paying for his food, accommodation or lodging, shall be guilty of a misdemeanor, and shall upon conviction be fined or imprisoned at the discretion of the court. (1907, c. 816; C. S. 4284.)

§ 14-111. Fraudulently obtaining credit at hospitals and sanatoriums.—Any person who obtains accommodation at any public or private hospital or sanatorium without paying therefor, with intent to defraud the said hospital or sanatorium, or who obtains credit at such hospital or sanatorium by the use of any false pretense, or who, after obtaining credit or accommodation at a hospital or sanatorium, absconds and surreptitiously removes his baggage therefrom without paying for the accommodation or credit, shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned at the discretion of the court. (1931, c. 214.)

§ 14-112. Obtaining merchandise on approval.—If any person, with intent to cheat and defraud, shall solicit and obtain from any merchant any article of merchandise on approval, and shall thereafter, upon demand, refuse or fail to return the same to such merchant in an unused and undamaged condition, or to pay for the same, such person so offending shall be guilty of a misdemeanor. Evidence that a person has solicited a merchant to deliver to him any article of merchandise for examination or approval and has obtained the same upon such solicitation, and thereafter, upon demand, has refused or failed to return the same to such merchant in an unused and undamaged condition, or to pay for the same, shall constitute prima facie evidence of the intent of such person to cheat and defraud, within the meaning of this section: Provided, this section shall not apply to merchandise sold upon a written contract which is signed by the purchaser. (1911, c. 185; 1941, c. 242; C. S. 4285.)

§ 14-113. Obtaining money by false representation of physical defect.—It shall be unlawful for any person to falsely represent himself or herself in any manner whatsoever as blind, deaf, dumb, or crippled or otherwise physically defective for the purpose of obtaining money or other thing of value or of making sales of any character of personal property. Any person so falsely representing himself or herself as blind, deaf, dumb, crippled or otherwise physically defective, and securing aid or assistance on account of such representation, shall be deemed guilty of a misdemeanor. (1919, c. 104; C. S. 4286.)

Art. 20. Frauds.

§ 14-114. Fraudulent disposal of mortgaged personal property.—If any person, after executing a chattel mortgage, deed of trust or other lien for a lawful purpose, shall make any disposition of any personal property embraced in such mortgage, deed of trust or lien, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit such deed was made, every person so offending and every person with a knowledge of the lien buying the property embraced in any such deed or lien, and every person assisting, aiding or abetting the unlawful disposition of such property, with intent to hinder, delay or defeat the rights of any person to whom or for whose benefit any such deed or lien was made, shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, in the discretion of the court. In all indictments for violations of the provisions of this section it shall not be necessary to allege or prove the person to whom any sale or disposition of the property was made, but proof of the possession of the property embraced in such chattel mortgage, deed of trust or lien, by the grantor thereof, after the execution of said chattel mortgage, deed of trust, or lien, and while it is in force, the further proof of the fact that the sheriff or other officer charged with the execution of process cannot after due diligence find such property under process directed to him for his seizure, for the satisfaction of such chattel mortgage, deed of trust or lien, or that the mortgagee demanded the possession thereof of the mortgagor for the purpose of sale to foreclose said mortgage, deed of trust or lien, after the right to such foreclosure had accrued, and that the mortgagor failed to produce, deliver or surrender the same to the mortgagee for that purpose, shall be prima facie proof of the fact of the disposition or sale of such property, by the grantor, with the intent to hinder, delay or defeat the rights of the person to whom said chattel mortgage, deed of trust or lien was made. (Rev., s. 3435; Code, s. 1089; 1887, c. 14; 1873-4, c. 31; 1874-5, c. 215; 1883, c. 61; C. S. 4287.)

§ 14-115. Secreting property to hinder enforcement of lien.—Any person removing, exchanging or secreting any personal property on which a lien exists, with intent to prevent or hinder the enforcement of the lien, shall be guilty of a misdemeanor. (Rev., s. 3436; 1887, c. 14; C. S. 4288.)

Local Modification.—Pitt: 1941, c. 284.

§ 14-116. Fraudulent entry of horses at fairs.—If any person shall knowingly enter or cause to be entered in competition for any purse, prize, premium, stake or sweepstake offered or given by any agricultural or other society, association or person in this state, any horse, mare, gelding, colt or filly under an assumed name or out of its proper class, he shall be punished by a fine not less than one hundred nor more than one thousand dollars, or by imprisonment in the state's prison for not less than one nor more than five years, or by both fine and imprisonment, at the discretion of the court. (Rev., s. 3429; 1893, c. 387; C. S. 4289.)

§ 14-117. Fraudulent and deceptive advertising.—It shall be unlawful for any person, firm, corporation or association, with intent to sell or in anywise to dispose of merchandise, securities, service or any other thing offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, to make public, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or any other thing so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading: Provided, that such advertising shall be done willfully and with intent to mislead. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1915, c. 218; C. S. 4290.)

§ 14-118. Blackmailing.—If any person shall knowingly send or deliver any letter or writing demanding of any other person, with menaces and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or by imprisonment in the state's prison, with the intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of a misdemeanor. (Rev., s. 3428; Code, s. 989; R. C., c. 34, s. 110; C. S. 4291.)

Art. 21. Forgery.

§ 14-119. Forgery of bank-notes, checks and other securities.—If any person shall falsely make, forge or counterfeit, or cause or procure the same to be done, or willingly aid or assist therein, any bill or note in imitation of, or purporting to be, a bill or note of any incorporated bank in this state, or in any of the United States, or in any of the territories of the United States; or any order or check on any such bank or corporation, or on the cashier thereof; or any of the securities purporting to be issued by or on behalf of the state, or by or on behalf of any corporation, with intent to injure or defraud any person, bank or corporation, or the state, the person so offending shall be guilty of a felony and shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years, or by a fine in the discretion of the court. (Rev., s. 3419; Code, s. 1030; R. C., c. 34, s. 60; 1819, c. 994, s. 1; C. S. 4293.)

§ 14-120. Uttering forged paper.—If any person, directly or indirectly, whether for the sake of gain or with intent to defraud or injure any other person, shall utter or publish any such false, forged or counterfeited bill, note, order, check or security as is mentioned in the preceding section; or shall pass or deliver, or attempt to pass or deliver, any of them to another person (knowing the same to be falsely forged or counterfeited), the person so offending shall be punished by imprisonment in the county jail or state's prison not less than four months nor more than ten years. (Rev., s. 3427; Code, s. 1031; R. C., c. 34, s. 61; 1819, c. 994, s. 2; 1909, c. 666; C. S. 4294.)

§ 14-121. Selling of certain forged securities.—If any person shall sell, by delivery, indorsement or otherwise, to any other person, any judgment for the recovery of money purporting to have been rendered by a justice of the peace, or any bond, promissory note, bill of exchange, order, draft or liquidated account purporting to be signed by the debtor (knowing the same to be forged), the person so offending shall be punished by imprisonment in the state's prison or county jail for not less than four months nor more than ten years. (Rev., s. 3425; Code, s. 1033; R. C., c. 34, s. 63; C. S. 4295.)

§ 14-122. Forgery of deeds, wills and certain other instruments.—If any person, of his own head and imagination, or by false conspiracy or fraud with others, shall wittingly and falsely forge and make, or shall cause or wittingly assent to the forging or making of, or shall show forth in evidence, knowing the same to be forged, any deed, lease or will, or any bond, writing obligatory, bill of exchange, promissory note, endorsement or assignment thereof; or any acquittance or receipt for money or goods; or any receipt or release for any bond, note, bill or any other security for the payment of money; or any order for the payment of money or delivery of goods, with intent, in any of said instances, to defraud any person or corporation, and thereof shall be duly convicted, the person so offending shall be punished by imprisonment in the state's prison or county jail not less than four months nor more than ten years, or fined in the discretion of the court. (Rev., s. 3424; Code, s. 1029; R. C., c. 34, s. 59; 1801, c. 572; 5 Eliz., c. 14, ss. 2, 3; 21 James I, c. 26; C. S. 4296.)

§ 14-123. Forging names to petitions and uttering forged petitions.—If any person shall willfully sign, or cause to be signed, or willfully assent to the signing of the name of any person without his consent, or of any deceased or fictitious person, to any petition or recommendation with the intent of procuring any commutation of sentence, pardon or reprieve of any person convicted of any crime or offense, or for the purpose of procuring such pardon, reprieve or commutation to be refused or delayed by any public officer, or with the intent of procuring from any person whatsoever, either for himself or another, any appointment to office, or to any position of honor or trust, or with the intent to influence the official action of any public officer in the management, conduct or decision of any matter affecting the public, he shall be guilty of a felony, and shall be fined not exceeding one thousand dollars, or imprisoned in the county jail or state's prison not exceeding five years, or both, at the discretion of the court; and if any person shall willfully use any such paper

for any of the purposes or intents above recited, knowing that any part of the signatures to such petition or recommendation has been signed thereto without the consent of the alleged signers, or that names of any dead or fictitious persons are signed thereto, he shall be guilty of a felony, and shall be punished in like manner. (Rev., s. 3426; Code, s. 1034; 1883, c. 275; C. S. 4297.)

§ 14-124. Forging certificate of corporate stock and uttering forged certificates.—If any officer or agent of a corporation shall, falsely and with a fraudulent purpose, make, with the intent that the same shall be issued and delivered to any other person by name or as holder or bearer thereof, any certificate or other writing, whereby it is certified or declared that such person, holder or bearer is entitled to or has an interest in the stock of such corporation, when in fact such person, holder or bearer is not so entitled, or is not entitled to the amount of stock in such certificate or writing specified; or if any officer or agent of such corporation, or other person, knowing such certificate or other writing to be false or untrue, shall transfer, assign or deliver the same to another person, for the sake of gain, or with the intent to defraud the corporation, or any member thereof, or such person to whom the same shall be transferred, assigned or delivered, the person so offending shall be imprisoned in the county jail or state's prison not less than four months nor more than ten years. (Rev., s. 3421; Code, s. 1032; R. C., c. 34, s. 62; C. S. 4298.)

§ 14-125. Forgery of bank-notes and other instruments by connecting genuine parts. — If any person shall fraudulently connect together different parts of two or more bank-notes, or other genuine instruments, in such a manner as to produce another note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, and the instrument so produced a forged note, or forged instrument, in like manner as if each of them had been falsely made or forged. (Rev., s. 3420; Code, s. 1037; R. C., c. 34, s. 66; C. S. 4299.)

SUBCHAPTER 6. CRIMINAL TRESPASS.

Art. 22. Trespasses to Land and Fixtures.

§ 14-126. Forcible entry and detainer.—No one shall make entry into any lands and tenements, or term for years, but in case where entry is given by law; and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; and if any man do the contrary, he shall be guilty of a misdemeanor. (Rev., s. 3670; Code, s. 1028; R. C., c. 49, s. 1; 5 Ric. II, c. 8; C. S. 4300.)

§ 14-127. Malicious injury to real property.—If any person shall maliciously commit any damage, injury or spoil upon any real property whatsoever, either of a public or private nature, for which no punishment is provided by any existing law, every person so offending shall be guilty of a misdemeanor: Provided, that nothing herein shall extend to any case where the party trespassing or doing the injury acted under a fair and reasonable belief that he had a right to do the act complained of, nor to any trespass, not being willful and malicious, committed in hunting, fishing or the pursuit of game. When the owner, or one of the owners, of an estate in possession shall complain of the injury before a justice of the peace of the county in which the offense is charged to have been committed before the regular term of the superior court next after the commission of the offense, and shall fail to state in his complaint that the damage exceeds ten dollars, the punishment, upon conviction of the offense, shall not exceed a fine of fifty dollars or imprisonment for thirty days. (Rev., s. 3677; Code, s. 1081; R. C., c. 34, s. 111; 1873-4, c. 176, s. 5; C. S. 4301.)

§ 14-128. Injury to trees, woods, crops, etc., near highway; depositing trash near highway.—Any person, not being on his own lands, or without the consent of the owner thereof, who shall, within one hundred yards of any State highways of North Carolina or within a like distance of any other public road or highway, willfully commit any damage, injury, or spoliation to or upon any tree, wood, underwood, timber, garden, crops, vegetables, plants, lands, springs, or any other matter or thing growing or being thereon, or who cuts, breaks, injures, or removes any tree, plant, or flower within such limits, or shall deposit any trash, debris, garbage, or litter within such limits, shall be guilty of a misdemeanor, and upon conviction fined not exceeding fifty dollars ($50) or imprisoned not exceeding thirty days: Provided, however, that this section shall not apply to the officers, agents, and employees of the State Highway and Public Works Commission or county road authorities while in the discharge of their duties. (Ex. Sess. 1924, c. 54.)

§ 14-129. Taking, etc., of certain wild plants from land of another.—No person, firm or corporation shall dig up, pull up or take from the land of another or from any public domain, the whole or any part of any trailing arbutus, American holly, white pine, red cedar, hemlock or other coniferous trees, or any flowering dogwood, any mountain laurel, any rhododendron, or any ground pine, or any Christmas greens, or any Judas tree, or any leucothea, or any azalea, without having in his possession a permit to dig up, pull up or take such plants, signed by the owner of such land, or by his duly authorized agent. Any person convicted of violating the provisions of this section shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each offense. The provisions of this section shall not apply to the counties of Avery, Cabarrus, Carteret, Catawba, Cherokee, Chowan, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gaston, Granville, Hertford, McDowell, Mitchell, Pamlico, Pender, Person, Richmond, Rockingham, Rowan, Swain and Warren. (1941, c. 253.)

§ 14-130. Trespass on public lands.—If any person shall erect a building on any public lands before the same shall have been sold or granted by the state, or on any lands belonging to the state board of education before the same shall have been sold and conveyed by them, or cultivate or remove timber from any of such lands, he shall be guilty of a misdemeanor. Moreover, the state board of education can recover from any person cutting timber on its land three times the value of the timber which is cut. When any person shall be

in possession of any part of such land, it shall be the duty of the sheriff of the county in which the land is situated, and he is hereby required, to give notice in writing to such person, commanding him to depart therefrom forthwith; and if the person in possession, upon being so notified, shall not, within two weeks after the time of notice, remove therefrom, the sheriff is required to remove him immediately, and if necessary, he shall summon the power of the county to assist him in so doing. (Rev., s. 3746; Code, s. 1121; R. C., c. 34, s. 42; 1823, c. 1190; 1842, c. 36, s. 4; 1909, c. 891; C. S. 4302.)

§ 14-131. Trespass on land under option by the federal government.—On lands under option which have formally or informally been offered to and accepted by the North Carolina department of conservation and development by the acquiring federal agency and tentatively accepted by said department for administration as state forests, state parks, state game refuges or for other public purposes, it shall be unlawful to cut, dig, break, injure or remove any timber, lumber, firewood, trees, shrubs or other plants; or any fence, house, barn or other structure; or to pursue, trap, hunt or kill any bird or other wild animals or take fish from streams or lakes within the boundaries of such areas without the written consent of the local official of the United States having charge of the acquisition of such lands.

Any person, firm or corporation convicted of the violation of this section shall be guilty of a misdemeanor and shall be subject to a fine of not more than fifty dollars or to imprisonment for not to exceed thirty days, or to both such fine and imprisonment.

The department of conservation and development through its legally appointed forestry, fish and game wardens is hereby authorized and empowered to assist the county law enforcement officers in the enforcement of this section. (1935, c. 317.)

§ 14-132. Disorderly conduct in and injuries to public buildings.—If any person shall make any rude or riotous noise or be guilty of any disorderly conduct in or near any of the public buildings of the state, or of any county or municipality, or shall write or scribble on, mark, deface, besmear, or injure the walls of any of the public buildings of the state or of any county or municipality, or any statue or monument, or shall do or commit any nuisance in or near any public building of the state or of any county or municipality, he shall be guilty of a misdemeanor. The keeper of the capitol or any person in charge of any of such public buildings shall have authority to arrest summarily and without warrant for a violation of this section. The words "public building," as used in this section, shall include the grounds around such buildings. (Rev., s. 3742; Code, s. 2308; R. C., c. 103, ss. 7, 8; 1829, c. 29, ss. 1, 2; 1842, c. 47; 1915, c. 269; C. S. 4303.)

§ 14-133. Erecting artificial islands and lumps in public waters.—If any person shall erect artificial islands or lumps in any of the waters of the state east of the Atlantic Coast Line Railroad running from Wilmington to Weldon by way of Burgaw, Warsaw, Goldsboro, Wilson, Rocky Mount, and Halifax (formerly the Wilmington and Weldon Railroad) and running from Weldon to the North Carolina-Virginia state boundary by way of Garysburg and Pleasant Hill (formerly the Petersburg and Weldon Railroad), he shall be guilty of a misdemeanor. (Rev., s. 3543; Code, s. 986; 1883, c. 109; C. S. 4304.)

§ 14-134. Trespass on land after being forbidden; license to look for estrays.—If any person after being forbidden to do so, shall go or enter upon the lands of another, without a license therefor, he shall be guilty of a misdemeanor, and on conviction, shall be fined not exceeding fifty dollars, or imprisoned not more than thirty days: Provided, that if any person shall make a written affidavit before a justice of the peace of the county that any of his cattle or other livestock (which shall be specially described in such affidavit) have strayed away, and that he has good reason to believe that they are on the lands of a certain other person, then the justice may, in his discretion, allow the affiant to enter on the premises of such person with one or more servants, without firearms, in the daytime (Sunday excepted), between the hours of sunrise and sunset, and make search for his estrays for such limited time as to the justice shall appear reasonable. The only effect of such license shall be to protect the persons entering from indictment therefor, and the license shall have this effect only where it is made bona fide and the entry is effected without any damage except such as may be necessary to conduct the search. (Rev., s. 3688; Code, s. 1120; 1866, c. 60; C. S. 4305.)

§ 14-135. Cutting, injuring, or removing another's timber.—If any person, not being the bona fide owner thereof, shall knowingly and willfully cut down, injure or remove any standing, growing or fallen tree or log, the property of another, he shall be guilty of a misdemeanor, and shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than thirty days. (Rev., s. 3687; 1889, c. 168; C. S. 4306.)

Local Modification.—Burke, Caldwell, Cherokee, McDowell, Mitchell, Watauga, Wilkes, Yadkin: C. S. 4307, 4308; Duplin: 1929, c. 174.

§ 14-136. Setting fire to grass and brush lands and woodlands.—If any person shall intentionally set fire to any grass land, brush land or woodland, except it be his own property, or in that case without first giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and without also taking care to watch such fire while burning and to extinguish it before it shall reach any lands near to or adjoining the lands so fired, he shall for every such offense be guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for a period of not less than sixty days nor more than four months for the first offense, and for a second or any subsequent similar offense shall be imprisoned not less than four months nor more than one year. This section shall not prevent an action for the damages sustained by the owner of any property from such fires. For the purposes of this section, the term "woodland" is to be taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that

have at one time been cultivated. Any person who shall furnish to the state evidence sufficient for the conviction of a violation of this statute shall receive the sum of fifty dollars, to be taxed as part of the court costs. (Rev., s. 3346; Code, ss. 52, 53; R. C., c. 16, ss. 1, 2; 1777, c. 123, ss. 1, 2; 1915, c. 243, ss. 8, 11; 1919, c. 318; 1925, c. 61, s. 1; C. S. 4309.)

Local Modification.—Graham: Pub. Loc. 1933, c. 301; Onslow: 1929, c. 185, 1939, c. 160.

§ 14-137. Wilfully or negligently setting fire to woods and fields.—If any person, firm or corporation shall wilfully or negligently set on fire, or cause to be set on fire, any woods, lands or fields, whatsoever, every such offender, upon conviction, shall be fined or imprisoned in the discretion of the court. This section shall apply only in those counties under the protection of the state forest service in its work of forest fire control. It shall not apply in the case of a landowner firing, or causing to be fired, his own open, non-wooded lands, or fields in connection with farming or building operations at the time and in the manner now provided by law: Provided, he shall have confined the fire at his own expense to said open lands or fields. (1907, c. 320, ss. 4, 5; 1925, c. 61, s. 2; 1941, c. 258; C. S. 4310.)

§ 14-138. Setting fire to woodlands and grass lands with campfires.—Any wagoner, hunter, camper or other person who shall kindle a campfire or shall authorize another to kindle such fire, unless all combustible material for the space of ten feet surrounding the place where such fire is kindled has been removed, or shall leave a campfire without fully extinguishing it, or who shall accidentally or negligently by the use of any torch, gun, match or other instrumentality, or in any manner whatever, start any fire upon any grass land, brush land or woodland without fully extinguishing the same, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment not exceeding thirty days. For the purposes of this section the term "woodland" is to be taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated. (Rev., s. 3347; Code, s. 54; 1885, c. 126; 1913, c. 8; 1915, c. 243, ss. 9, 11; C. S. 4311.)

Local Modification.—Graham: Pub. Loc. 1933, c. 301.

§ 14-139. Starting fires within five hundred feet of areas under protection of state forest service.—It shall be unlawful for any person, firm or corporation to start or cause to be started any fire or ignite any material in any of the areas of woodlands under the protection of the state forest service or within five hundred feet of any such protected area, between the first day of February and the first day of June, inclusive or between the first day of October and the thirtieth day of November, inclusive, in any year, without first obtaining from the state forester or one of his duly authorized agents a permit to set out fire or ignite any material in such above mentioned protected areas; no charge shall be made for the granting of said permits. This section shall not apply to any fires started or caused to be started within five hundred feet of a dwelling house. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty (50) dollars, or imprisoned for a period of not more than thirty (30) days. (1937, c. 207; 1939, c. 120.)

§ 14-140. Certain fires to be guarded by watchman.—All persons, firms or corporations who shall burn any tar kiln or pit of charcoal, or set fire to or burn any brush, grass or other material, whereby any property may be endangered or destroyed, shall keep and maintain a careful and competent watchman in charge of such kiln, pit, brush or other material while burning. Any person, firm or corporation violating the provisions of this section shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment for not exceeding thirty days. Fire escaping from such kiln, pit, brush or other material while burning shall be prima facie evidence of neglect of these provisions. (1915, c. 243, s. 10; C. S. 4312.)

Local Modification.—Graham: Pub. Loc. 1933, c. 301.

§ 14-141. Burning or otherwise destroying crops in the field.—If any person shall willfully burn or destroy any other person's corn, cotton, wheat, barley, rye, oats, buckwheat, rice, tobacco, hay, straw, fodder, shucks or other provender in a stack, hill, rick or pen, or secured in any other way out of doors, or grass or sedge standing on the land, he shall be guilty of a felony, and shall be punished by imprisonment in the county jail or state's prison for not less than four months nor more than five years. (Rev., s. 3339; 1885, c. 42; 1874-5, c. 133; Code, s. 985, subsec. 2; C. S. 4313.)

§ 14-142. Injuries to dams and water channels of mills and factories.—If any person shall cut away, destroy or otherwise injure any dam, or part thereof, or shall obstruct or damage any race, canal or other water channel erected, opened, used or constructed for the purpose of furnishing water for the operation of any mill, factory or machine works, or for the escape of water therefrom, he shall, upon conviction, be fined or imprisoned, or both, at the discretion of the court. (Rev., s. 3678; Code, s. 1087; 1866, c. 48; C. S. 4315.)

§ 14-143. Taking unlawful possession of another's house.—If any person shall enter upon the lands of another and take possession of any house or other building thereon, without permission of the owner or his agent and without a bona fide claim of right or title so to enter and take possession, and shall fail or refuse to vacate such premises within ten days after being notified personally in writing to do so, he shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court. (Rev., s. 3685; 1893, c. 347; C. S. 4316.)

Local Modification.—Durham: 1929, c. 109.

§ 14-144. Injuring houses, churches, fences and walls.—If any person shall, by any other means than burning or attempting to burn, unlawfully and willfully demolish, destroy, deface, injure or damage any of the houses or other buildings mentioned in this chapter in the article entitled Arson and Other Burnings; or shall unlawfully and willfully burn, demolish, pull down, destroy, deface, damage or injure any church, uninhabited house,

outhouse or other house or building not mentioned in such article; or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other inclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used, every person so offending shall be guilty of a misdemeanor. (Rev., s. 3673; Code, s. 1062; R. C., c. 34, s. 103; C. S. 4317.)

§ 14-145. Unlawful posting of advertisements.—Any person who in any manner paints. prints, places, or affixes, or causes to be painted, printed, placed, or affixed, any business or commercial advertisement on or to any stone, tree, fence, stump, pole, automobile building, or other object, which is the property of another without first obtaining the written consent of such owner thereof, or who in any manner paints, prints, places, puts, or affixes, or causes to be painted, printed, placed, or affixed, such an advertisement on or to any stone, tree, fence, stump, pole, mile-board, mile-stone, danger-sign, danger-signal, guide-sign, guide-post, automobile building or other object within the limits of a public highway, shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars ($50) or imprisoned not exceeding thirty (30) days. (1924, c. 109.)

§ 14-146. Injuring bridges.—If any person shall unlawfully and willfully demolish, destroy, break, tear down, injure or damage any bridge across any of the creeks or rivers or other streams in the state, he shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court. (Rev., s. 3771; Code, s. 993; 1883, c. 271; C. S. 4318.)

§ 14-147. Removing, altering or defacing landmarks.—If any person, firm or corporation shall knowingly remove, alter or deface any landmark in anywise whatsoever, or shall knowingly cause such removal, alteration or defacement to be done. such person, firm or corporation shall be guilty of a misdemeanor. This section shall not apply to landmarks, such as creeks and other small streams, which the interest of agriculture may require to be altered or turned from their channels, nor to such persons, firms or corporations as own the fee simple in the lands on both sides of the lines designated by the landmarks removed, altered or defaced. Nor shall this section apply to those adjoining landowners who may by agreement remove, alter or deface landmarks in which they alone are interested. (Rev., s. 3674; Code, s. 1063; 1858-9, c. 17; 1915, c. 248; C. S. 4319.)

§ 14-148. Removing or defacing monuments and tombstones.—If any person shall, unlawfully and on purpose, remove from its place any monument of marble, stone, brass, wood or other material, erected for the purpose of designating the spot where any dead body is interred, or for the purpose of preserving and perpetuating the memory, name, fame, birth, age or death of any person, whether situated in or out of the common burying ground, or shall unlawfully and on purpose break or deface such monument, or alter the letters, marks or inscription thereof, he shall be guilty of a misdemeanor. (Rev., s. 3680; Code, s 1088; R. C., c. 34, s. 102; 1840, c. 6; C. S. 4320.)

§ 14-149. Interfering with graveyards.—If any person shall unlawfully take away any stone, brick, iron or other material that encloses private graveyards, or shall cut or keep open any ditch or drainway, or put any permanent log or other obstruction not intended as a monument to a grave in such graveyards, or knowingly plow over and tear up any grave, or shall remove or change the location of any fence around such graveyard without the consent of such person or persons as may have parents, children or brothers or sisters buried therein, he shall be guilty of a misdemeanor, and on conviction shall be fined not more than ten dollars or imprisoned not more than thirty days. (Rev., s. 3681; 1889, c. 130; 1919, c. 218; C. S. 4321.)

§ 14-150. Disturbing graves.—If any person shall, without due process of law, or the consent of the surviving husband or wife or the next of kin of the deceased, and of the person having the control of such grave, open any grave for the purpose of taking therefrom any dead body, or any part thereof buried therein, or anything interred therewith, he shall be guilty of a felony, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (Rev., s. 3672; 1885, c. 90; C. S. 4322.)

§ 14-151. Interfering with gas, electric and steam appliances.—If any person shall willfully, with intent to injure or defraud, commit any of the acts set forth in the following subsections, he shall be guilty of a misdemeanor:

1. Connect a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for conducting or supplying illuminating gas, fuel, natural gas or electricity in such a manner as to supply such gas or electricity to any burner, orifice, lamp or motor where the same is or can be burned or used without passing through the meter or other instrument provided for registering the quantity consumed; or,

2. Obstruct, alter, injure or prevent the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas or electricity consumed in a house or apartment, or at an orifice or burner, lamp or motor, or by a consumer or other person other than an employee of the company owning any gas or electric meter, who willfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any meter so detached or disconnected; or,

3. In any manner whatever change, extend or alter any service or other pipe, wire or attachment of any kind, connecting with or through which natural or artificial gas or electricity is furnished from the gas mains or pipes of any person, without first procuring from said person written permission to make such change, extension or alterations; or,

4. Make any connection or reconnection with the gas mains, service pipes or wires of any person, furnishing to consumers natural or artificial gas or electricity, or turn on or off or in any manner interfere with any valve or stop-cock or other appliance belonging to such person, and connected

with his service or other pipes or wires, or enlarge the orifice of mixers, or use natural gas for heating purposes except through mixers, or electricity for any purpose without first procuring from such person a written permit to turn on or off such stop-cock or valve, or to make such connection or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stop-cocks, wires or other appliances of such, as the case may be; or,

5. Retain possession of or refuse to deliver any mixer, meter, lamp or other appliance which may be leased or rented by any person, for the purpose of furnishing gas, electricity or power through the same, or sell, lend or in any other manner dispose of the same to any person other than such person entitled to the possession of the same; or,

6. Set on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person in conveying gas to consumers, or interfere in any manner with the wells, pipes, mains, gate-boxes, valves, stop-cocks, wires, cables, conduits or any other appliances, machinery or property of any person engaged in furnishing gas to consumers unless employed by or acting under the authority and direction of such person; or,

7. Open or cause to be opened, or reconnect or cause to be reconnected any valve lawfully closed or disconnected by a district steam corporation; or,

8. Turn on steam or cause it to be turned on or to reënter any premises when the same has been lawfully stopped from entering such premises. (Rev., s. 3666; 1901, c. 735; C. S. 4323.)

§ 14-152. Injuring fixtures and other property of gas companies; civil liability.—If any person shall willfully, wantonly or maliciously remove, obstruct, injure or destroy any part of the plant, machinery, fixtures, structures or buildings, or anything appertaining to the works of any gas company, or shall use, tamper or interfere with the same, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days for such offense. Such person shall also forfeit and pay to the company so injured, to be sued for and recovered in a civil action, double the amount of the damages sustained by any such injury. (Rev., s. 3671; 1889 (Pr.), c. 35, s. 3; C. S. 4324.)

§ 14-153. Tampering with engines and boilers.—If any person shall willfully turn out water from any boiler or turn the bolts of any engine or boiler, or meddle or tamper with such boiler or engine, or any other machinery in connection with any boiler or engine, causing loss, damage, danger or delay to the owner in the prosecution of his work, he shall be guilty of a misdemeanor. (Rev., s. 3667; 1901, c. 733; C. S. 4325.)

§ 14-154. Injuring wires and other fixtures of telephone, telegraph and electric-power companies.—If any person shall willfully injure, destroy or pull down any telegraph, telephone or electric-power-transmission pole, wire, insulator or any other fixture or apparatus attached to a telegraph, telephone or electric-power-transmission line, he shall be guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court. (Rev., s. 3847; Code, s. 1118; 1881, c. 4; 1883, c. 103; 1907, c. 827, s. 1; C. S. 4326.)

§ 14-155. Making unauthorized connections with telephone and telegraph wires.—It shall be unlawful for any person to tap or make any connection with any wire or apparatus of any telephone or telegraph company operating in this state, except such connection as may be authorized by the person or corporation operating such wire or apparatus. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days for each offense. Each day's continuance of such unlawful connection shall be a separate offense. (1911, c. 113; C. S. 4327.)

§ 14-156. Injuring fixtures and other property of electric-power companies.—It shall be unlawful for any person willfully and wantonly, and without the consent of the owner, to take down, remove, injure, obstruct, displace or destroy any line erected or constructed for the transmission of electrical current, or any poles, towers, wires, conduits, cables, insulators or any support upon which wires or cables may be suspended, or any part of any such line or appurtenances or apparatus connected therewith, or to sever any wire or cable thereof, or in any manner to interrupt the transmission of electrical current over and along any such line, or to take down, remove, injure or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current, or to wantonly or willfully cause injury to any of the property mentioned in this section by means of fire. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned not longer than one year, or both fined and imprisoned, in the discretion of the court. (1907, c. 919; C. S. 4328.)

§ 14-157. Felling trees on telephone and electric-power wires.—If any person shall negligently and carelessly cut or fell any tree, or any limb or branch therefrom, in such a manner as to cause the same to fall upon and across any telephone, electric light or electric-power-transmission wire, from which any injury to such wire shall be occasioned, he shall be guilty of a misdemeanor, and shall also be liable to penalty of fifty dollars for each and every offense. (Rev., s. 3849; 1903, c. 616; 1907, c. 827, s. 2; C. S. 4329.)

§ 14-158. Interfering with telephone lines.—If any person shall unnecessarily disconnect the wire or in any other way render any telephone line, or any part of such line, unfit for use in transmitting messages, or shall unnecessarily cut, tear down, destroy or in any way render unfit for the transmission of messages any part of the wire of a telephone line, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned for a term not exceeding two years, in the discretion of the court. (Rev., s. 3845; 1901, c. 318; C. S. 4330.)

§ 14-159. Injuring buildings or fences; taking

possession of house without consent.—If any person shall deface, injure or damage any house, uninhabited house or other building belonging to another; or deface, damage, pull down, injure, remove or destroy any fence or wall enclosing, in whole or in part, the premises belonging to another; or shall move into, take possession of and/or occupy any house, uninhabited house or other building situated on the premises belonging to another, without having first obtained authority so to do and consent of the owner or agent thereof, he shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (1929, c. 192, s. 1.)

Art. 23. Trespasses to Personal Property.

§ 14-160. Malicious injury to personal property.—If any person shall wantonly and willfully injure the personal property of another, he shall be guilty of a misdemeanor, whether the property be destroyed or not, and shall be punished by fine or imprisonment, or both, in the discretion of the court. (Rev., s. 3676; Code, s. 1082; 1885, c. 53; 1876-7, c. 18; C. S. 4331.)

§ 14-161. Malicious removal of packing from railway coaches and other rolling stock.—If any person shall willfully and maliciously take or remove the waste or packing from the journal box of any locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon any railroad whether the same be operated by steam or electricity, he shall upon conviction thereof be fined or imprisoned in the jail or state's prison, in the discretion of the court. (Rev., s. 3759; 1905, c. 335; C. S. 4332.)

§ 14-162. Removing boats or their fixtures and appliances.—If any person shall take away from any landing or other place where the same shall be, or shall loose, unmoor, or turn adrift from the same, any boat, canoe, pettiaugua, oars, paddles, sails or tackle belonging to or in the lawful custody of any person; or if any person shall direct the same to be done without the consent of the owner, or the person having the custody or possession of such property, he shall forfeit and pay to such owner, or person having the custody and possession as aforesaid, the sum of two dollars, and shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court. The owner may also have his action for such injury. The penalties aforesaid shall not extend to any person who shall press any such property by public authority. (Rev., s. 3544; Code, s. 2288; 1889, c. 378; R. C., c. 14, ss. 1, 3; C. S. 4333.)

§ 14-163. Injuring livestock not inclosed by lawful fence.—If any person shall willfully and unlawfully kill or abuse any horse, mule, hog, sheep or other cattle, the property of another, in any enclosure not surrounded by a lawful fence, such person shall be guilty of a misdemeanor, and fined or imprisoned, at the discretion of the court. (Rev., s. 3313; Code, s. 1003; 1868-9, c. 253; C. S. 4334.)

§ 14-164. Taking away or injuring exhibits at fairs.—If any person, without the license of the owner, or any agricultural or other society, shall unlawfully carry away, remove, destroy, mar, deface or injure anything, animate or inanimate, while on exhibition on the grounds of any such society, or going to or returning from the same, he shall be guilty of a misdemeanor. It shall be sufficient in any indictment for any such offense, or for the larceny of any such thing, animate or inanimate as aforesaid, to charge that the thing so carried away, destroyed, marred, injured or feloniously stolen is the property of the society to which the said thing shall be forwarded for exhibition. (Rev., s. 3668; Code, s. 2796; 1870-1, c. 184, s. 4; C. S. 4335.)

Art. 24. Vehicles and Draft Animals.—Protection of Bailor against Acts of Bailee.

§ 14-165. Malicious or wilful injury to hired personal property.—Any person who shall rent or hire from any person, firm or corporation, any horse, mule or like animal, or any buggy, wagon, truck, automobile, or other like vehicle, for temporary use, who shall maliciously or wilfully injure or damage the same by in any way using or driving the same in violation of any statute of the State of North Carolina, or who shall permit any other person so to do, shall be guilty of a misdemeanor and subject to punishment as hereinafter provided. (1927, c. 61, s. 1.)

§ 14-166. Sub-letting of hired property.—Any person who shall rent or hire, for temporary use, any horse, mule, or other like animal, or any buggy, wagon, truck, automobile, or other like vehicle, who shall, without the permission of the person, firm or corporation from whom such property is rented or hired, sub-let or rent the same to any other person, firm or corporation, shall be guilty of a misdemeanor and punished as hereinafter provided. (1927, c. 61, s. 2.)

§ 14-167. Failure to return hired property.—Any person who shall rent or hire, for temporary use, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, and who shall wilfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a misdemeanor and punished as hereinafter provided. (1927, c. 61, s. 3.)

§ 14-168. Hiring with intent to defraud.—Any person who shall, with intent to cheat and defraud the owner thereof of the rental price therefor, hire or rent for temporary use any horse or mule or any other like animal, or any buggy, wagon, truck, automobile or other like vehicle, or who shall obtain the possession of the same by false and fraudulent statements made with intent to deceive, which are calculated to deceive, and which do deceive, shall be guilty of a misdemeanor and punished as hereinafter provided. (1927, c. 61, s. 4.)

§ 14-169. Violation made misdemeanor.—Any person violating the provisions of this article shall be guilty of a misdemeanor and punished at the discretion of the court. (1927, c. 61, s. 5; 1929, c. 38, s. 1.)

Art. 25. Regulating the Leasing of Storage Batteries.

§ 14-170. "Rental battery" defined; identification of rental storage batteries.—As used in this article the words "rental battery" are defined as an electric storage battery loaned, rented or furnished for temporary use by any person, firm or corporation engaged in the business of buying, selling, repairing or recharging electric storage batteries. All such persons, firms or corporations may mark any such rental batteries belonging to them with the word "rental," or any other word of similar meaning, printed or stamped upon or attached to such battery together with such words as shall identify such batteries as the property of the person, firm or corporation so marking the same. It shall be unlawful for any person, firm or corporation to so mark any such batteries which are not the property of such person, firm or corporation. (1933, c. 185, s. 1.)

§ 14-171. Defacing word "rental" prohibited.—It is unlawful for any person, firm or corporation to remove, deface, alter or destroy the word "rental" on any rental battery or any other word, mark or character printed, painted or stamped upon or attached to any rental battery to identify the same as belonging to or being the property of any person, firm or corporation. (1933, c. 185, s. 2.)

§ 14-172. Sale, etc., of rental battery prohibited. — It is unlawful for any person, firm or corporation other than the owner thereof to sell, dispose of, deliver, rent or give to any other person, firm or corporation any rental battery marked by the owner as provided by section 14-170. (1933, c. 185, s. 3.)

§ 14-173. Repairing another's rental battery prohibited.—It is unlawful for any person, firm or corporation engaged in the business of buying, selling, repairing or recharging electric storage batteries to recharge or repair any rental battery not owned by such person, firm or corporation marked by the owner thereof as provided by section 14-170. (1933, c. 185, s. 4.)

§ 14-174. Time limit on possession of rental battery without written consent.—It is unlawful for any person, firm or corporation to retain in his, their or its possession for a longer period than ten (10) days, without the written consent of the owner, any rental battery marked as such by the owner as provided by section 14-170. Demand must be made on any person who so retains a rental battery in his possession at least five days before a prosecution can be instituted: Provided, however, that proof of a registered letter having been sent to the person so offending at his last known address shall be accepted as conclusive evidence of such demand. (1933, c. 185, s. 5.)

§ 14-175. Violation made misdemeanor.—Any person, firm or corporation, and the officers, agents, employees, and members of any firm or corporation violating any of the provisions of sections 14-170—14-174 shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding fifty dollars or be imprisoned for a term of not exceeding thirty days in the discretion of the court. (1933, c. 185, s. 6.)

§ 14-176. Rebuilding storage batteries out of old parts and sale of, regulated.—Any person, firm or corporation who assembles or rebuilds an electric storage battery for use on automobiles, in whole or in part, out of second-hand or used material such as containers, separators, plates, groups or other battery parts, and sells same or offers same for sale in the state of North Carolina without the word "rebuilt" placed in the side of the container, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two hundred and fifty dollars or imprisoned for a term not exceeding six months or both. (1933, c. 535.)

SUBCHAPTER 7. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY.

Art. 26. Offenses against Public Morality and Decency.

§ 14-177. Crime against nature.—If any person shall commit the abominable and detestable crime against nature, with mankind or beast, he shall be imprisoned in the state's prison not less than five nor more than sixty years. (Rev., s. 3349; Code, s. 1010; R. C., c. 34, s. 6; 1868-9, c. 167, s. 6; 5 Eliz., c. 17; 25 Hen. VIII, c. 6; C. S. 4336.)

§ 14-178. Incest between certain near relatives.—In all cases of carnal intercourse between grandparent and grandchild, parent and child, and brother and sister of the half or whole blood, the parties shall be guilty of a felony, and shall be punished for every such offense by imprisonment in the state's prison for a term not exceeding fifteen years, in the discretion of the court. (Rev., s. 3351; Code, s. 1060; 1879, c. 16, s. 1; 1911, c. 16; C. S. 4337.)

§ 14-179. Incest between uncle and niece and nephew and aunt.—In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a misdemeanor, and shall be punished by a fine or imprisonment, in the discretion of the court. (Rev., s. 3352; Code, s. 1061; 1879, c. 16, s. 2; C. S. 4338.)

§ 14-180. Seduction.—If any man shall seduce an innocent and virtuous woman under promise of marriage, he shall be guilty of a felony, and upon conviction shall be fined or imprisoned at the discretion of the court, and may be imprisoned in the state prison not exceeding the term of five years: Provided, the unsupported testimony of the woman shall not be sufficient to convict: Provided further, that marriage between the parties shall be a bar to further prosecution hereunder. But when such marriage is relied upon by the defendant, it shall operate as to the costs of the case as a plea of nolo contendere, and the defendant shall be required to pay all the costs of the action or be liable to imprisonment for nonpayment of the same. (Rev., s. 3354; 1885, c. 248; 1917, c. 39; C. S. 4339.)

§ 14-181. Miscegenation.—All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive, are forever prohibited, and

shall be void. Any person violating this section shall be guilty of an infamous crime, and shall be punished by imprisonment in the county jail or state's prison for not less than four months nor more than ten years, and may also be fined, in the discretion of the court. (Rev., s. 3369; Code, s. 1084; Const., Art. XIV, s. 8; R. C., c. 68, s. 7; 1834, c. 24; 1838-9, c. 24; C. S. 4340.)

§ 14-182. Issuing license for marriage between white person and negro; performing marriage ceremony.—If any register of deeds shall knowingly issue any license for marriage between any person of color and a white person; or if any clergyman, minister of the gospel or justice of the peace shall knowingly marry any such person of color to a white person, the person so offending shall be guilty of a misdemeanor. (Rev., s. 3370; Code, s. 1085; R. C., c. 34, s. 80; 1830, c. 4, s. 2; C. S. 4341.)

§ 14-183. Bigamy.—If any person, being married, shall marry any other person during the life of the former husband or wife, every such offender, and every person counseling, aiding or abetting such offender, shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail for any term not less than four months nor more than ten years. Any such offense may be dealt with, tried, determined and punished in the county where the offender shall be apprehended, or be in custody, as if the offense had been actually committed in that county. If any person, being married, shall contract a marriage with any other person outside of this state, which marriage would be punishable as bigamous if contracted within this state, and shall thereafter cohabit with such person in this state, he shall be guilty of a felony and shall be punished as in cases of bigamy. Nothing contained in this section shall extend to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to have been living within that time; nor to any person who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage; nor to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction. (Rev., s. 3361; Code, s. 988; R. C., c. 34, s. 15; 1790, c. 323; 1809, c. 783; 1829, c. 9; 1913, c. 26. See 9 Geo. IV, c. 31, s. 22; C. S. 4342.)

§ 14-184. Fornication and adultery.—If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other. (Rev., s. 3350; Code, s. 1041; R. C., c. 34, s. 45; 1805, c. 684; C. S. 4343.)

§ 14-185. Inducing female persons to enter hotels or boarding-houses for immoral purposes.—Any person who shall knowingly persuade, induce or entice, or cause to be persuaded, induced or enticed, any woman or girl to enter a hotel, public inn or boarding-house for the purpose of prostitution or debauchery or for any other immoral purpose, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in the discretion of the court. (1917, c. 158, s. 1; C. S. 4344.)

§ 14-186. Opposite sexes occupying same bedroom at hotel for immoral purposes; falsely registering as husband and wife.—Any man and woman found occupying the same bedroom in any hotel, public inn or boarding-house for any immoral purpose, or any man and woman falsely registering as, or otherwise representing themselves to be, husband and wife in any hotel, public inn or boarding-house, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in the discretion of the court. (1917, c. 158, s. 2; C. S. 4345.)

§ 14-187. Permitting unmarried female under eighteen in house of prostitution.—Whoever, being the keeper of a house of prostitution, or assignation house, building or premises in this state where prostitution, fornication or concubinage is allowed or practiced, shall suffer or permit any unmarried female under the age of eighteen years to live, board, stop, or room in such house, building or premises, shall be guilty of a misdemeanor. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 18; C. S. 4346.)

§ 14-188. Certain evidence relative to keeping disorderly houses admissible; keepers of such houses defined.—On a prosecution in any court for keeping a disorderly house or bawdy-house, or permitting a house to be used as a bawdy-house, or used in such a way as to make it disorderly, or a common nuisance, evidence of the general reputation or character of the house shall be admissible and competent; and evidence of the lewd, dissolute and boisterous conversation of the inmates and frequenters, while in and around such house, shall be prima facie evidence of the bad character of the inmates and frequenters, and of the disorderly character of the house. The manager or person having the care, superintendency or government of a disorderly house or bawdy-house is the "keeper" thereof, and one who employs another to manage and conduct a disorderly house or bawdy-house is also "keeper" thereof. (1907, c. 779; C. S. 4347.)

§ 14-189. Obscene literature.—It shall be unlawful for any person, firm or corporation to exhibit for the purpose of gain, or display for sale, lend or hire, or otherwise publish or sell for the purpose of gain, or exhibit in any school, college, or other institution of learning, or have in his possession for the purpose of sale or distribution, any obscene literature, as determined and defined in the postal laws and regulations of the United States post office department, in the form of book, paper-writing, print, drawing, or other representation, at any newsstand, book store, drug store or other public or private places; or if any person shall post any indecent placards, writings, pictures or drawings on walls, fences, billboards or other public or private places, he shall be guilty of a misdemeanor. (Rev., s. 3731; 1885, c. 125; 1907, c. 502; 1935, c. 57; C. S. 4348.)

§ 14-190. Indecent exposure; immoral shows, etc.—Any person who in any place wilfully exposes his person, or private parts thereof, in the presence of one or more persons of the opposite

sex whose person, or the private parts thereof, are similarly exposed, or who aids or abets in any such act, or who procures another so as to expose his person, or the private parts thereof, or take part in any immoral show, exhibition or performance where indecent, immoral or lewd dances or plays are conducted in any booth, tent, room or other public or private place to which the public is invited; or any person, who, as owner, manager, lessee, director, promoter or agent, or in any other capacity, hires, leases or permits the land, buildings, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for any such immoral purposes, shall be guilty of a misdemeanor. Any person who shall wilfully make any indecent public exposure of the private parts, of his or her person in any public place or highway shall be guilty of a misdemeanor. (Rev., s. 3731; 1885, c. 125; 1907, c. 502; 1935, c. 57; 1941, c. 273; C. S. 4348(a).)

§ 14-191. Sheriffs and deputies to report violations of two preceding sections.—It shall be the duty of the sheriffs and their deputies of the various counties to see that the provisions of §§ 14-189 and 14-190 are enforced by reporting violations of said sections to the presiding judge of a superior court, county or municipal court, or justice of the peace, who shall have warrants issued to cause such violators to come before their courts for immediate trial. (1935, c. 57.)

§ 14-192. Cutting or painting obscene words or pictures near public places.—It shall be unlawful for any person to write, cut or carve any indecent word, or to paint, cut or carve any obscene or lewd picture or representation, on any tree or other object near the public highways or other public places. Any person guilty of violating this section shall be fined not more than fifty dollars, or imprisoned not more than thirty days. (1907, c. 344; C. S. 4349.)

§ 14-193. Exhibition of obscene or immoral pictures; posting of advertisements.—If any person, firm, or corporation shall, for the purpose of gain or otherwise, exhibit any obscene or immoral motion pictures; or if any person, firm or corporation shall post any obscene or immoral placard, writings, pictures, or drawings on walls, fences, billboards, or other places, advertising theatrical exhibitions or moving picture exhibitions or shows; or if any person, firm, or corporation shall permit such obscene or immoral exhibitions to be conducted in any tent, booth, or other place or building owned or controlled by said person, firm, or corporation, the person, firm, or corporation performing either one or all of the said acts shall be guilty of a misdemeanor, and punishable in the discretion of the court. For the purpose of enforcing this statute any spectator at the exhibition of an obscene or immoral moving picture may make the necessary affidavit upon which the warrant for said offense is issued. (1921, c. 212; C. S. 4349(a).)

§ 14-194. Circulating publications barred from the mails.—It shall be unlawful for any news agent, news dealer, book-seller, or any other person, firm, or corporation to offer for sale, sell, or cause to be circulated within the State of North Carolina any magazine, periodical, or other publication which is now or may hereafter be excluded from the United States mails.

It shall be unlawful for any person, firm, or corporation to offer for sale, sell, or give to any person under the age of twenty-one years any such magazine, periodical, or other publication which is now or may hereafter be excluded from the United States mails.

This section shall not be construed to in any way conflict with or abridge the freedom of the press, and shall in no way affect any publication which is permitted to be sent through the United States mails.

Any person, firm, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (1924, c. 45.)

§ 14-195. Using profane or indecent language on passenger trains.—It shall be unlawful for any person to curse or use profane or indecent language on any passenger train. Any person so offending shall upon conviction be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 470, ss. 1, 2; C. S. 4350.)

§ 14-196. Using profane or indecent language to female telephone operators.—It shall be unlawful for any person to use any lewd or profane words, or any words of vulgarity, or to use indecent language to any female telephone operator operating any telephone, switchboard, circuit or line. Any person violating this section shall upon conviction be guilty of a misdemeanor. (1913, c. 35; 1915, c. 41; C. S. 4351.)

§ 14-197. Using profane or indecent language on public highways, counties exempt.—If any person shall, on any public road or highway and in the hearing of two or more persons, in a loud and boisterous manner, use indecent or profane language, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. The following counties shall be exempted from the provisions of this section: Beaufort, Brunswick, Camden, Cleveland, Craven, Dare, Macon, Martin, Orange, Pasquotank, Pitt, Stanly, Swain, Transylvania, Tyrell, Washington and Wautauga. (1913, c. 40; Pub. Loc. Ex. Sess. 1924, c. 65; 1933, c. 309; 1937, c. 9; 1939, c. 73; C. S. 4352.)

§ 14-198. Lewd women within three miles of colleges and boarding-schools.—If any loose woman or woman of ill-fame shall commit any act of lewdness with or in the presence of any student, who is under twenty-one years old, of any boarding-school or college, within three miles of such school or college, she shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Upon the trial of any such case students may be competent but not compellable to give evidence. No prosecution shall be had under this section after the lapse of six months. (Rev., s. 3353; 1889, c. 523; C. S. 4353.)

§ 14-199. Obstructing way to places of public worship.—If any person shall maliciously stop up or obstruct the way leading to any place of public worship, or to any spring or well commonly used by the congregation, he shall be guilty of a mis-

demeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s 3776; Code, s. 3669; R. C., c. 97, s. 5; 1785, c. 241; C. S. 4354.)

§ 14-200. Disturbing religious assembly by certain exhibitions.—If any person shall bring within half a mile of any place where the people are assembled for divine worship, and stop for exhibition, any stallion or jack, or shall bring within that distance any natural or artificial curiosities and there exhibit them, he shall forfeit and pay to any one who will sue therefor the sum of twenty dollars and shall also be guilty of a misdemeanor: Provided, that nothing herein shall be construed to prohibit such exhibitions at any time if made within the limits of any incorporated town, or without such limits if made before the hour of ten o'clock in the forenoon or after three o'clock in the afternoon. (Rev., s. 3705; Code, s. 3670; R. C., c. 97, s. 6; 1809, c. 779, s. 1; 1907, c. 412; C. S. 4355.)

Local Modification.—Dare, Hatteras township: C. S. 4355.

§ 14-201. Permitting stone-horses and stone-mules to run at large.—If any person shall let any stone-horse or stone-mule of two years old or upwards run at large, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3323; Code, s. 2325; R. C., c. 17, s. 6; 1907, c. 412; C. S. 4356.)

Local Modification.—Dare, Hatteras township: C. S. 4356.

§ 14-202. Secretly peeping into room occupied by woman.—Any person who shall peep secretly into any room occupied by a woman shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1923, c. 78; C. S. 4356(a).)

Art. 27. Prostitution.

§ 14-203. Definition of terms.—The term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse for hire, and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire. The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or any act in furtherance of such appointment or engagement. (1919, c. 215, s. 2; C. S. 4357.)

§ 14-204. Prostitution and various acts abetting prostitution unlawful.—It shall be unlawful:

1. To keep, set up, maintain, or operate any place, structure, building or conveyance for the purpose of prostitution or assignation.

2. To occupy any place, structure, building, or conveyance for the purpose of prostitution or assignation; or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution or assignation, with knowledge or reasonable cause to know that the same is, or is to be, used for such purpose.

3. To receive, or to offer or agree to receive any person into any place, structure, building, or conveyance for the purpose of prostitution or assignation, or to permit any person to remain there for such purpose.

4. To direct, take, or transport, or to offer or agree to take or transport, any person to any place, structure, or building or to any other person, with knowledge or reasonable cause to know that the purpose of such directing, taking, or transporting is prostitution or assignation.

5. To procure, or to solicit, or to offer to procure or solicit for the purpose of prostitution or assignation.

6. To reside in, enter, or remain in any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution or assignation.

7. To engage in prostitution or assignation, or to aid or abet prostitution or assignation by any means whatsoever. (1919, c. 215, s. 1; C. S. 4358.)

§ 14-205. Prosecution: in what courts.—Prosecutions for the violation of any of the provisions of this article shall be tried in the courts of this state wherein misdemeanors are triable except those courts the jurisdiction of which is so limited by the constitution of this state that such jurisdiction cannot by statute be extended to include criminal actions of the character herein described. (1919, c. 215, s. 6; C. S. 4359.)

§ 14-206. Reputation and prior conviction admissible as evidence.—In the trial of any person charged with a violation of any of the provisions of this article, testimony of a prior conviction, or testimony concerning the reputation of any place, structure, or building, and of the person or persons who reside in or frequent the same, and of the defendant, shall be admissible in evidence in support of the charge. (1919, c. 215, s. 3; C. S. 4360.)

§ 14-207. Degrees of guilt.—Any person who shall be found to have committed two or more violations of any of the provisions of § 14-204 of this article within a period of one year next preceding the date named in an indictment, information, or charge of violating any of the provisions of such section, shall be deemed guilty in the first degree. Any person who shall be found to have committed a single violation of any of the provisions of such section shall be deemed guilty in the second degree. (1919, c. 215, s. 4; C. S. 4361.)

§ 14-208. Punishment; probation; parole.—Any person who shall be deemed guilty in the first degree, as set forth in § 14-207, shall be guilty of a misdemeanor, and may be fined or imprisoned in the discretion of the court, or may be committed to any penal or reformatory institution in this state: Provided, that in case of a commitment to a reformatory institution, the commitment shall be made for an indeterminate period of time of not less than one nor more than three years in duration, and the board of managers or directors of the reformatory institution shall have authority to discharge or to place on parole any person so committed after the service of the minimum term or any part thereof, and to require the return to said institution for the balance of the maximum term of any person who shall violate the terms or conditions of the parole.

Any person who shall be deemed guilty in the second degree, as set forth in § 14-207, shall be guilty of a misdemeanor, and shall be fined or imprisoned at the discretion of the court: Provided,

that the defendant may be placed on probation in the care of a probation officer designated by law, or theretofore appointed by the court.

Probation or parole shall be granted or ordered in the case of a person infected with venereal disease only on such terms and conditions as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

No girl or woman who shall be convicted under this article shall be placed on probation or on parole in the care or charge of any person except a woman probation officer. (1919, c. 215, s. 5; 1921, c. 101; C. S. 4362.)

SUBCHAPTER 8. OFFENSES AGAINST PUBLIC JUSTICE.

Art. 28. Perjury.

§ 14-209. Punishment for perjury.—If any person shall willfully and corruptly commit perjury, on his oath or affirmation, in any suit, controversy, matter or cause, depending in any of the courts of the state, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, every person so offending shall be guilty of a felony and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail or state's prison not less than four months nor more than ten years. (Rev., s. 3615; Code, s. 1092; R. C., c. 34, s. 49; 1791, c. 338, s. 1; C. S. 4364.)

§ 14-210. Subornation of perjury.—If any person shall, by any means, procure another person to commit such willful and corrupt perjury as is mentioned in § 14-209, the person so offending shall be punished in like manner as the person committing the perjury. (Rev., s. 3616; Code, s. 1093; R. C., c. 34, s. 50; 1791, c. 338, s. 2; C. S. 4365.)

§ 14-211. Perjury before legislative committees.—If any person shall willfully and corruptly swear falsely to any fact material to the investigation of any matter before any committee of either house of the general assembly, he shall be subject to all the pains and penalties of willful and corrupt perjury, and, on conviction in the superior court of Wake county, shall be confined in the state's prison for the time prescribed by law for perjury. (Rev., s. 3611; Code, s. 2857; 1869-70, c. 5, s. 4; C. S. 4366.)

§ 14-212. Perjury in court-martial proceedings.—If any person shall willfully and corruptly swear falsely before any court-martial, touching and concerning any matter or thing cognizable before such court-martial, he shall be liable to the pains and penalties of perjury. (Rev., s. 3612; Code, s. 3235; R. C., c. 70, s. 73; 1812, c. 828, s. 3; C. S. 4367.)

§ 14-213. False oath to statement of insurance company.—Any person who shall make oath to a willfully false statement in the annual report or other statement required by law from an insurance company shall be guilty of perjury. (Rev., s. 3493; 1899, c. 54, s. 97; C. S. 4368.)

§ 14-214. False oath to procure benefit of insurance policy or certificate.—Any person who shall wilfully and knowingly present or cause to be presented a false or fraudulent claim, or any proof in support of such claim, for the payment of a loss, or other benefits, upon a contract of insurance; or prepares, makes or subscribes to a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such claim, shall be punishable by imprisonment for not more than five years or by a fine of not more than five hundred ($500.00) dollars, or by both such fine or imprisonment within the discretion of the court. (Rev., s. 3487; 1899, c. 54, s. 60; 1913, c. 89, s. 28; 1937, c. 248; C. S. 4369.)

§ 14-215. False oath to statement required of fraternal benefit societies.—Any person who shall willfully make any false statement in any verified report or declaration under oath, required or authorized by law from fraternal benefit societies, shall be guilty of perjury. (1913, c. 89, s. 28; C. S. 4370.)

§ 14-216. False oath to certificate of mutual fire insurance company.—Any person taking a false oath in respect to the certificate required by law before issuing policies in a mutual fire insurance company, that every subscription for insurance is genuine and made with an agreement that every subscriber will take the policies subscribed for by him within thirty days after granting a license to such company, shall be guilty of perjury. (Rev., ss. 4738, 4834; 1899, c. 54, s. 32; 1901, c. 391, ss. 3, 4; 1903, c. 438, s. 4; C. S. 4371.)

Art. 29. Bribery.

§ 14-217. Bribery of officials.—If any person holding office under the laws of this state who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be guilty of a felony, and shall be punished by imprisonment in the state's prison for a term not exceeding five years, or fined not exceeding five thousand dollars, or both, in the discretion of the court. (Rev., s. 3568; Code, s. 991; 1868-9, c. 176, s. 2; C. S. 4372.)

§ 14-218. Offering bribes.—If any person shall offer a bribe, whether it be accepted or not, he shall be guilty of a felony, and shall be punished by imprisonment for a term not less than one year nor more than five years in the state's prison or county jail, in the discretion of the court. (Rev., s. 3569; Code, s. 992; 1870-1, c. 232; C. S. 4373.)

§ 14-219. Bribery of legislators.—If any person shall directly or indirectly promise, offer or give, or cause or procure to be promised, offered or given, any money, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right of action, bribe, present or reward, or any other valuable thing whatever, to any member of the senate or house of representatives of this state after his election as such member, and either before or after he shall have qualified

and taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may then be pending before the general assembly, or which may come before him for action in his capacity as a member of the general assembly, such person so offering, promising or giving, or causing or procuring to be promised, offered or given any such money, goods, bribe, present or reward, or any bond, contract, undertaking, obligation or security for the payment or delivery of any money, goods, bribe, present or reward, or other valuable thing whatever, and the member-elect who shall in anywise accept or receive the same or any part thereof, shall be guilty of a felony, and shall be fined not exceeding double the amount so offered, promised or given, and imprisoned in the state's prison not exceeding five years, and the person convicted of so accepting or receiving the same, or any part thereof, shall forfeit his seat in the general assembly and shall be forever disqualified to hold any office of honor, trust or profit under this state. (Rev., s. 3570; Code, s. 2852; 1868-9, c. 176, s. 5; C. S. 4374.)

§ 14-220. Bribery of jurors.—If any juror, either directly or indirectly, shall take anything from the plaintiff or defendant in a civil suit, or from any defendant in a state prosecution, or from any other person, to give his verdict, every such juror, and the person who shall give such juror any fee or reward to influence his verdict, or induce or procure him to make any gain or profit by his verdict, shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail not less than four months nor more than ten years. (Rev., s. 3697; Code, s. 990; R. C., c. 34, s. 34; 5 Edw. III, c. 10; 34 Edw. III, c. 8; 38 Edw. III, c. 12; C. S. 4375.)

Art. 30. Obstructing Justice.

§ 14-221. Breaking or entering jails with intent to injure prisoners.—If any person shall conspire to break or enter any jail or other place of confinement of prisoners charged with crime or under sentence, for the purpose of killing or otherwise injuring any prisoner confined therein; or if any person shall engage in breaking or entering any such jail or other place of confinement of such prisoners with intent to kill or injure any prisoner, he shall be guilty of a felony, and upon conviction, or upon a plea of guilty, shall be fined not less than five hundred dollars, and imprisoned in the state's prison or the county jail not less than two nor more than fifteen years. (Rev., s. 3698; 1893, c. 461, s. 1; C. S. 4376.)

§ 14-222. Refusal of witness to appear or to testify in investigations of lynchings.—If any person summoned as a witness in the investigation of a charge of lynching shall willfully fail to attend as a witness in obedience to the process served on him, or if, after being sworn, he shall refuse to answer questions pertinent to the matter being investigated before any tribunal, he shall be guilty of a misdemeanor, and, on conviction, shall be fined or imprisoned, or both, at the discretion of the court. (Rev., s. 3699; 1893, c. 461, s. 3; C. S. 4377.)

§ 14-223. Resisting officers.—If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a misdemeanor. (Rev., s. 3700; 1889, c. 51, s. 1; C. S. 4378.)

§ 14-224. Failing to aid police officers.—If any person, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, he shall be guilty of a misdemeanor. (Rev., s. 3701; 1889, c. 51, s. 2; C. S. 4379.)

§ 14-225. False, etc., reports to police radio broadcasting stations.—Any person who shall willfully make or cause to be made to a police radio broadcasting station any false, misleading or unfounded report, for the purpose of interfering with the operation thereof, or to hinder or obstruct any peace officer in the performance of his duty, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than one year or by a fine of not more than five hundred dollars ($500.00), or by both such fine and imprisonment, in the discretion of the court. (1941, c. 363.)

§ 14-226. Intimidating or interfering with jurors and witnesses.—If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a juror or witness in any of the courts of this state, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such juror or witness from attendance upon such court, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (Rev., s. 3696; 1891, c. 87; C. S. 4380.)

§ 14-227. Failing to attend as witness before legislative committees.—If any person shall willfully fail or refuse to attend or produce papers, on summons of any committee of investigation of either house of the general assembly, either select or committee of the whole, he shall be guilty of a misdemeanor, and on conviction in the superior court of the county in which such witness may reside or be found, he shall be fined not less than five hundred dollars nor more than one thousand dollars, and shall be subject to imprisonment at the discretion of the court. (Rev., s. 3692; Code, s. 2854; 1869-70, c. 5, s. 2; C. S. 4381.)

Art. 31. Misconduct in Public Office.

§ 14-228. Buying and selling offices.—If any person shall bargain away or sell an office or deputation of an office, or any part or parcel thereof, or shall take money, reward or other profit, directly or indirectly, or shall take any promise, covenant, bond or assurance for money, reward or other profit, for an office or the deputation of an office, or any part thereof, which office, or any part thereof, shall touch or concern the administration or execution of justice, or the receipt, collection, control or disbursement of the public revenue, or shall concern or touch any clerkship in any court of record wherein justice is administered; or if any person shall give or pay money, reward or other profit, or shall make any promise, agreement, bond or assurance for any of such offices, or for the de-

putation of any of them, or for any part of them, the person so offending in any of the cases aforesaid shall be guilty of a misdemeanor, and on conviction thereof shall forfeit all his right, interest and estate in such office, and every part and parcel thereof, and shall be imprisoned and fined at the discretion of the court. (Rev., s. 3571; Code, s. 998; R. C., c. 34, s. 33; 5, 6 Edw. VI, c. 16, ss. 1, 5; C. S. 4382.)

§ 14-229. Acting as officer before qualifying as such.—If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a misdemeanor and shall be ejected from his office. (Rev., s. 3565; Code, s. 79; C. S. 4383.)

§ 14-230. Willfully failing to discharge duties.—If any clerk of any court of record, sheriff, justice of the peace, county commissioner, county surveyor, coroner, treasurer, constable or official of any of the state institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense, and shall also be fined or imprisoned in the discretion of the court. (Rev., s. 3592; 1901, c. 270, s. 2; C. S. 4384.)

§ 14-231. Failing to make reports and discharge other duties.—If any state or county officer shall fail, neglect or refuse to make, file or publish any report, statement or other paper, or to deliver to his successor all books and other property belonging to his office, or to pay over or deliver to the proper person all moneys which come into his hands by virtue or color of his office, or to discharge any duty devolving upon him by virtue of his office and required of him by law, he shall be guilty of a misdemeanor. (Rev., s. 3576; C. S. 4385.)

§ 14-232. Swearing falsely to official reports.—If any clerk, sheriff, register of deeds, county commissioner, county treasurer, justice of the peace, constable or other county officer shall willfully swear falsely to any report or statement required by law to be made or filed, concerning or touching the county, state or school revenue, he shall be guilty of a misdemeanor. (Rev., s. 3605; Code, s. 731; 1874-5, c. 151, s. 4; 1876-7, c. 276, s. 4; C. S. 4386.)

§ 14-233. Making of false report by bank examiners; accepting bribes.—If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank, which shall have been examined by him, with the intent to aid or abet the officers, owners, or agents of such bank in continuing to operate an insolvent bank, or if any such examiner shall keep or accept any bribe or gratuity given for the purpose of inducing him not to file any report of examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state prison for not less than four months nor more than ten years. (Rev., s. 3324; 1903, c. 275, s. 24; 1921, c. 4, s. 79; C. S. 4387.)

§ 14-234. Director of public trust contracting for his own benefit.—If any person, appointed or elected a commissioner or director to discharge any trust wherein the state or any county, city or town may be in any manner interested, shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor. Provided, that this section shall not apply to public officials transacting business with banks or banking institutions in regular course of business: Provided further, that such undertaking or contracting shall be authorized by said governing board. (Rev., s. 3572; Code, s. 1011; R. C., c. 34, s. 38; 1825, c. 1269; 1826, c. 29; 1929, c. 19, s. 1; C. S. 4388.)

§ 14-235. Speculating in claims against towns, cities and the state.—If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or state officer shall engage in the purchasing of any county, city, town or state claim, including teacher's salary voucher, at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation on any such claim, he shall be guilty of a misdemeanor and shall be fined or imprisoned, and shall be liable to removal from office at the discretion of the court. (Rev., s. 3575; Code, s. 1009; 1868-9, c. 260; 1923, c. 136, s. 208; C. S. 4389.)

§ 14-236. Acting as agent for those furnishing supplies for schools and other state institutions.—If any member of any board of directors, board of managers, board of trustees of any of the educational, charitable, eleemosynary or penal institutions of the state, or any member of any board of education, or any county or district superintendent or examiner of teachers, or any trustee of any school or other institution supported in whole or in part from any of the public funds of the state, or any officer, agent, manager, teacher or employee of such boards, shall have any pecuniary interest, either directly or indirectly, proximately or remotely in supplying any goods, wares or merchandise of any nature or kind whatsoever for any of said institutions or schools; or if any of such officers, agents, managers, teachers or employees of such institution or school or state or county officer shall act as agent for any manufacturer, merchant, dealer, publisher or author for any article of merchandise to be used by any of said institutions or schools; or shall receive, directly or indirectly, any gift, emolument, reward or promise of reward for his influence in recommending or procuring the use of any manufactured article, goods, wares or merchandise of any nature or

kind whatsoever by any of such institutions or schools, he shall be forthwith removed from his position in the public service, and shall upon conviction be deemed guilty of a misdemeanor and fined not less than fifty dollars nor more than five hundred dollars and be imprisoned, in the discretion of the court. (Rev., s. 3833; 1899, c. 732, s. 73; 1897, c. 543; C. S. 4390.)

§ 14-237. Buying school supplies from interested officer.—If any county board of education or school committee shall buy school supplies in which any member has a pecuniary interest, the members of such board shall be removed from their positions in the public service and shall, upon conviction, be deemed guilty of a misdemeanor. (Rev., s. 3835; 1901, c. 4, s. 69; C. S. 4391.)

§ 14-238. Soliciting during school hours without permission of school head.—No person, agent, representative or salesman shall solicit or attempt to sell or explain any article of property or proposition to any teacher or pupil of any public school on the school grounds or during the school day without having first secured the written permission and consent of the superintendent, principal or person actually in charge of the school and responsible for it.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1933, c. 220.)

§ 14-239. Allowing prisoners to escape; burden of proof.—If any person charged with a crime or sentenced by the court upon conviction of any offense, shall be legally committed to any sheriff, constable or jailer, or shall be arrested by any sheriff, deputy sheriff or coroner acting as sheriff, by virtue of any capias issuing on a bill of indictment, information or other criminal proceeding, and such sheriff, deputy sheriff, coroner, constable or jailer, willfully or negligently, shall suffer such person, so charged or sentenced and committed, to escape out of his custody, the sheriff, deputy sheriff, coroner, constable or jailer so offending, being thereof convicted, shall be removed from office, and shall be fined or imprisoned, or both, at the discretion of the court before whom the trial may be had; and in all such cases it shall be sufficient, in support of the indictment against such sheriff or other officer, to prove that the person so charged or sentenced was committed to his custody, and it shall lie upon the defendant to show that such escape was not by his consent or negligence, but that he had used all legal means to prevent the same, and acted with proper care and diligence: Provided, that such removal of a sheriff shall not affect his duty or power as a collector of the public revenue, but he shall proceed on such duty and be accountable as if such conviction and removal had not been had. (Rev., s. 3577; Code, s. 1022; R. C., c. 34, s. 35; 1791, c. 343, s. 1; 1905, c. 350; C. S. 4393.)

§ 14-240. Solicitor to prosecute officer for escape.—It shall be the duty of solicitors, when they shall be informed or have knowledge of any felon, or person otherwise charged with any crime or offense against the state, having within their respective districts escaped out of the custody of any sheriff, deputy sheriff, coroner, constable or jailer, to take the necessary measures to prosecute such sheriff or other officer so offending. (Rev., s. 2822; Code, s. 1023; R. C., c. 34, s. 36; 1791, c. 343, s. 2; C. S. 4394.)

§ 14-241. Disposing of public documents or refusing to deliver them over to successor.—It shall be the duty of the clerk of the superior court of each county, and every other person to whom the acts of the general assembly, supreme court reports or other public documents are transmitted or deposited for the use of the county or the state, to keep the same safely in their respective offices; and if any such person having the custody of such books and documents, for the uses aforesaid, shall negligently and willfully dispose of the same, by sale or otherwise, or refuse to deliver over the same to his successor in office, he shall be guilty of a misdemeanor, and shall be punished by a fine or imprisonment, or both, at the discretion of the court. (Rev., s. 3598; Code, s. 1073; 1881, c. 151; C. S. 4395.)

§ 14-242. Failing to return process or making false return.—If any sheriff, constable or other officer, whether state or municipal, or any person who shall presume to act as any such officer, not being by law authorized so to do, refuse or neglect to return any precept, notice or process, to him tendered or delivered, which it is his duty to execute, or make a false return thereon, he shall forfeit and pay to anyone who will sue for the same one hundred dollars, and shall moreover be guilty of a misdemeanor. (Rev., s. 3604; Code s. 1112; R. C., c. 34, s. 118; 1818, c. 980, s. 3; 1827, c. 20, s. 4; C. S. 4396.)

§ 14-243. Failing to surrender tax-list for inspection and correction.—If any sheriff or tax collector shall refuse or fail to surrender his tax-list for inspection or correction upon demand by the authorities imposing the tax, or their successors in office, he shall be guilty of a misdemeanor, and shall be imprisoned not more than five years, and fined not exceeding one thousand dollars, at the discretion of the court. (Rev., s. 3788; Code, s. 3823; 1870-1, c. 177, s. 2, C. S. 4397.

§ 14-244. Failing to file report of fines or penalties.—If any officer who is by law required to file any report or statement of fines or penalties with the county board of education shall fail so to do at or before the time fixed by law for the filing of such report, he shall be guilty of a misdemeanor. (Rev., s. 3579; 1901, c. 4, s. 62; C. S. 4398.)

§ 14-245. Justices of the peace soliciting official business or patronage.—If any justice of the peace shall solicit official business, and/or patronage for his or her office, he or she shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1935, c. 58.)

§ 14-246. Failure of ex-justice of the peace to turn over books and papers.—If any justice of the peace, on expiration of his term of office, or if any personal representative of a deceased justice of the peace shall, after demand upon him by the clerk of the superior court, willfully fail and refuse to deliver to the clerk of the superior court all dockets, all law and other books, and all official papers which came into his hands by virtue or color of his office, he shall be guilty of a mis-

demeanor. (Rev., s. 3578; Code, ss. 828, 829; 1885, c. 402; C. S. 4399.)

§ 14-247. Private use of publicly owned vehicle.—It shall be unlawful for any officer, agent or employee of the State of North Carolina, or of any county or of any institution or agency of the State, to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the State, or to any county, or to any institution or agency of the State. (1925, c. 239, s. 1.)

§ 14-248. Obtaining repairs and supplies for private vehicle at expense of State.—It shall be unlawful for any officer, agent or employee to have any privately owned motor vehicle repaired at any garage belonging to the State or to any county, or any institution or agency of the State, or to use any tires, oils, gasoline or other accessories purchased by the State, or any county, or any institution or agency of the State, in or on any such private car. (1925, c. 239, s. 2.)

§ 14-249. Limitation of amount expended for vehicle.—It shall be unlawful for any officer, agent, employee or department of the State of North Carolina, or of any county, or of any institution or agency of the State, to expend from the public treasury an amount in excess of fifteen hundred dollars ($1,500) for any motor vehicle other than motor trucks; except upon the approval of the Governor and Council of State: Provided, that nothing in §§ 14-247 through 14-251 shall be construed to authorize the purchase or maintenance of an automobile at the expense of the State by any State officer unless he is now authorized by statute to do so. (1925, c. 239, s. 3.)

§ 14-250. Publicly owned vehicle to be marked—It shall be the duty of the executive head of every department of the State Government, and of any county, or of any institution or agency of the State, to have painted on every motor vehicle owned by the State, or by any county, or by any institution or agency of the State, a statement with letters of not less than three inches in height, that such car belongs to the State, or to some county, or institution or agency of the State, and that such car is "for official use only." Provided, however, that no automobile used by any officer or official in any county in the State for the purpose of transporting, apprehending or arresting persons charged with violations of the laws of the State of North Carolina, shall be required to be so lettered. (1925, c. 239, s. 4; 1929, c. 303, s. 1.)

§ 14-251. Violation made misdemeanor.—Any person, firm or corporation violating any of the provisions of sections 14-247 to 14-250 shall be guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars ($100), nor more than one thousand dollars ($1,000), or imprisonment in the discretion of the court. Nothing in §§ 14-247 through 14-251 shall apply to the purchase, use or up-keep or expense account of the car for the executive mansion and the Governor. (1925, c. 239, s. 5.)

§ 14-252. Five preceding sections applicable to cities and towns.—Sections 14-247 through 14-251 in every respect shall also apply to cities and incorporated towns. (1931, c. 31.)

Art. 32. Misconduct in Private Office.

§ 14-253. Failure of certain railroad officers to account with successors.—If the president and directors of any railroad company, and any person acting under them, shall, upon demand, fail or refuse to account with the president and directors elected or appointed to succeed them, and to transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company, they shall be guilty of a felony, and shall be punished by imprisonment in the state's prison for not less than one nor more than five years, and be fined at the discretion of the court. All persons conspiring with any such president, directors or their agents to defeat, delay or hinder the execution of this section shall be guilty of a misdemeanor, and shall be punished in like manner. The governor is hereby authorized, at the request of the president, directors and other officers of any railroad company, to make requisition upon the governor of any other state for the apprehension of any such president failing to comply with this section. (Rev., s. 3760; Code, ss. 2001, 2002; 1870-1, c. 72, ss. 1-3; C. S. 4400.)

§ 14-254. Malfeasance of corporation officers and agents.—If any president, director, cashier, teller, clerk or agent of any corporation shall embezzle, abstract or willfully misapply any of the moneys, funds or credits of the corporation, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment or decree, or make any false entry in any book, report or statement of the corporation with the intent in either case to injure or defraud or to deceive any officer of the corporation, or if any person shall aid and abet in the doing of any of these things, he shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison for not less than four months nor more than fifteen years, and likewise fined, at the discretion of the court. (Rev., s. 3325; 1903, c. 275, s. 15; C. S. 4401.)

Art. 33. Prison Breach and Prisoners.

§ 14-255. Escape of hired prisoners from custody.—If any prisoner, who shall be removed from the prison of the respective counties, cities and towns under the law providing for the hiring out of prisoners by counties and towns, shall escape from the person or company having him in custody, he shall be guilty of a misdemeanor, and shall be imprisoned at hard labor not more than thirty days, or fined not more than fifty dollars. (Rev., s. 3658; Code, s. 3455; 1876-7, c. 196, s. 4; C. S. 4403.)

§ 14-256. Prison breach and escape.—If any person shall break prison, being lawfully confined therein, or shall escape from the custody of any superintendent, guard or officer, he shall be guilty of a misdemeanor. (Rev., s. 3657; Code, s. 1021; R. C., c. 34, s. 19; 1 Edw. II, st. 2d; 1909, c. 872; C. S. 4404.)

§ 14-257. Permitting escape of or maltreating hired convicts.—If any person charged in any way with the control or management of convicts,

hired for service outside of the state's prison, shall negligently permit them to escape, or shall maltreat them, he shall be guilty of a misdemeanor; but this provision shall not be held to relieve any person from any criminal liability. (Rev., s. 3659; Code, s. 3450; 1881, c. 127, s. 2; C. S. 4405.)

§ 14-258. Conveying messages and weapons to or trading with convicts and other prisoners.—If any person shall convey to or from any convict any letters or oral messages, or shall convey to any convict or person imprisoned, charged with crime and awaiting trial any weapon or instrument by which to effect an escape, or that will aid him in an assault or insurrection, or shall trade with a convict for his clothing or stolen goods, or shall sell to him any article forbidden him by prison rules, he shall be guilty of a misdemeanor: Provided, that when a murder, an assault or an escape is effected with the means furnished, the person convicted of furnishing the means shall be sentenced to not less than four years hard labor in the state's prison. (Rev., s. 3662; Code, s. 3441; 1873-4, c. 158, s. 12; 1911, c. 11; C. S. 4406.)

§ 14-259. Harboring or aiding escaped prisoners.—It shall be unlawful for any person knowing, or having reasonable cause to believe, that any other person has escaped from any prison, jail, reformatory, or from the criminal insane department of any state hospital, or from the custody of any peace officer who had such person in charge, or that such person is a convict or prisoner whose parole has been revoked, to conceal, hide, harbor, feed, clothe, or offer aid and comfort in any manner to any such person.

Every person who shall conceal, hide, harbor, feed, clothe, or offer aid and comfort to any other person in violation of this section shall be guilty of a felony, if such other person has been convicted of, or was in custody upon the charge of a felony, and shall be punished by imprisonment in the state prison not more than five years; and shall be guilty of a misdemeanor, if such other person had been convicted of, or was in custody upon a charge of a misdemeanor, and shall be punished in the discretion of the court.

The provisions of this section shall not apply to members of the immediate family of such escapee. For the purposes of this section "immediate family" shall be defined to be the mother, father, brother, sister, wife, husband and child of said escapee. (1939, c. 72.)

§ 14-260. Injury to prisoner by jailer.—If the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured, but shall be guilty of a misdemeanor. (Rev., s. 3661; Code, s. 3463; R. C., c. 87, s. 8; 1795, c. 433, s. 6; C. S. 4407.)

§ 14-261. Confining prisoners to improper apartments.—If the sheriff or jailer shall wantonly or unnecessarily confine those committed to his custody in any apartment, other than that provided and designated by law for persons of the description of the prisoner, he shall be guilty of a misdemeanor. (Rev., s. 3660; Code, s. 3471; R. C., c. 87, s. 16; 1795, c. 433, s. 4; C. S. 4408.)

§ 14-262. Requiring female prisoners to work in chain-gang.—If any officer, either judicial, executive or ministerial, shall order or require the working of any female on the streets or roads in any group or chain-gang in this state, he shall be deemed guilty of a misdemeanor. (Rev., s. 3596; 1897, c. 270; C. S. 4409.)

§ 14-263. Classification and commutation of time for prisoners other than state prisoners.—The board of county commissioners, or such governing body as may have charge of prisoners in any county, city or town in the State of North Carolina, shall divide all prisoners into three classes, or grades, as follows:

In the first class shall be included all those prisoners who have given evidence that they will, or who it is believed will observe the rules and regulations and work diligently and are likely to maintain themselves by honest industry after their discharge. These shall be known as Grade A prisoners and shall receive a commutation of their sentences at the rate of one hundred and four days for each year served.

In the second class shall be included those prisoners who have not as yet given evidence that they can be trusted entirely, but are reasonably obedient to the rules and regulations. These shall be known as Class B prisoners and shall receive a commutation of their sentences of seventy-eight days for each year served.

In the third class shall be those prisoners who have demonstrated that they are incorrigible, have no respect for the rules and regulations and seriously interfere with the discipline and the effectiveness of the labor of the other prisoners. Such prisoners shall receive no commutation of their sentences.

All prisoners shall be admitted into Class B except where it is known by the superintendent of the prison that a prisoner is serving for a second offense. In such cases the superintendent may put the prisoner in Class C in his discretion.

Prisoners of Class A shall be known as honor prisoners and shall be worked in the discretion of the superintendent of the prison without guards. When in prison camps or in any other place of detention they may not be chained or under armed guards.

Prisoners in Class B shall be under guard and may or may not be chained in the discretion of the superintendent.

Prisoners in Class C shall wear chains during the day or night as in the opinion of the superintendent may be necessary.

Preference in assignment of work shall be given Class A prisoners.

The purpose of §§ 14-263 through 14-265 is to unify the regulations pertaining to county prisoners and to encourage industriousness among the prisoners. (1927, c. 178, s. 1; 1937, c. 88, s. 2.)

§ 14-264. Record to be kept; items of record.—The superintendent or other person having charge of prisoners shall keep a record showing, the name, age, date of sentence, length of sentence, crime for which convicted, home address, next of kin, and the conduct of each prisoner received. (1927, c. 178, s. 2.)

§ 14-265. Commutation of sentences for Sunday work.—All prisoners in the State's Prison, or in any county jail or county convict camp,

who shall be assigned to regular work which requires the performance of the same, or substantially the same duties on Sundays as on other days of the week, shall be allowed a commutation of their sentences for each Sunday, or fractional part of a Sunday on which they shall be required to perform the duties of the task assigned to them. The commutation of sentence provided for in this section shall be in addition to all other commutations of sentence allowed such prisoners under existing statutes and laws of the State. (1931, c. 198, s. 1.)

Art. 34. Custodial Institutions.

§ 14-266. Persuading inmates to escape. — It shall be unlawful for any parent, guardian, brother, sister, uncle, aunt, or any person whatsoever to persuade or induce to leave, carry away, or accompany from any state institution, except with the permission of the superintendent or other person next in authority, any boy or girl, man or woman, who has been legally committed or admitted under suspended sentence to said institution, by juvenile, recorder's, superior, or any other court of competent jurisdiction. (1935, c. 307, s. 1; 1937, c. 189, s. 1.)

§ 14-267. Harboring fugitives.—It shall be unlawful for any person to harbor, conceal, or give succor to, any known fugitive from any institution whose inmates are committed by court or are admitted under suspended sentence. (1935, c. 307, s. 2; 1937, c. 189, s. 2.)

§ 14-268. Violation made misdemeanor. — Any person violating the provision of this article, shall be guilty of a misdemeanor, and fined or imprisoned, in the discretion of the court. (1935, c. 307, s. 3.)

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

Art. 35. Offenses against the Public Peace.

§ 14-269. Carrying concealed weapons.—If any one, except when on his own premises, shall carry concealed about his person any bowie-knife, dirk, dagger, slung shot, loaded cane, brass, iron or metallic knuckles or razor or other deadly weapon of like kind, he shall be guilty of a misdemeanor, and shall be fined or imprisoned at the discretion of the court. If any one, except on his own premises, shall carry concealed about his person any pistol or gun, he shall be guilty of a misdemeanor and shall be fined not less than fifty dollars, nor more than two hundred dollars, or imprisoned not less than thirty days nor more than two years, at the discretion of the court. Upon conviction or submission the deadly weapon with reference to which the defendant shall have been convicted shall be condemned and ordered confiscated and destroyed by the judge presiding at the trial. If any one, not being on his own lands, shall have about his person any such deadly weapon, such possession shall be prima facie evidence of the concealment thereof. This section shall not apply to the following persons: officers and soldiers of the United States army when in discharge of their official duties as such and acting under orders requiring them to carry arms or weapons, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia and the state guard when called into actual service, officers of the state, or of any county, city, or town, charged with the execution of the laws of the state, when acting in the discharge of their official duties. (Rev., s. 3708; Code, s. 1005; 1917, c. 76; 1919, c. 197, s. 8; 1923, c. 57; Ex. Sess. 1924, c. 30; 1929, cc. 51, 224; C. S. 4410.)

Local Modification.—Caswell: 1941, c. 90; Durham: 1923, c. 48; Franklin: 1923, c. 57, Ex. Sess. 1924, c. 30.

§ 14-270. Sending, accepting or bearing challenges to fight duels.—If any person shall send, accept or bear a challenge to fight a duel, though no death ensue, he, and all such as counsel, aid and abet him, shall be guilty of a misdemeanor, and shall, moreover, be ineligible to any office of trust, honor or profit in the state, any pardon or reprieve notwithstanding. (Rev., s. 3628; Code, s. 1012; R. C., c. 34, s. 48; 1802, c. 608, s. 1; C. S. 4411.)

§ 14-271. Engaging in and betting on prize fights.—If any two or more persons engage in a prize fight, sparring match or glove or fist contest for money or other valuable prize or stake; or if any person bet or lay a wager on the result thereof or advise, aid or abet in any way whatever in promoting the same, he shall be fined not less than five hundred dollars, or imprisoned in the state's prison or jail for not less than one year nor more than five years, or both, in the discretion of the court. (Rev., s. 3707; 1895, c. 28, ss. 1-4; C. S. 4412.)

Local Modification.—Robeson: Pub. Loc. 1925, c. 270; Vance: Pub. Loc. 1927, c. 497.

§ 14-272. Disturbing picnics, entertainments and other meetings.—If any person shall willfully interrupt or disturb any picnic, excursion party, school entertainment, political meeting, or any meeting or other organization whatsoever lawfully and peaceably held, either at, within or without the place where such picnic, excursion party, school entertainment, political meeting or other meeting or organization is held, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, in the discretion of the court. (Rev., s. 3704; 1897, c. 213; C. S. 4413.)

§ 14-273. Disturbing schools and scientific and temperance meetings· injuring property of schools and temperance societies.—If any person shall willfully interrupt or disturb any public or private school or temperance society or organization or any meeting lawfully and peacefully held for the purpose of literary and scientific improvement, or for the discussion of temperance or question of moral reform, either within or without the place where such meeting or school is held, or injure any school building, or deface any school furniture, apparatus or other school property, or property of any temperance society or organization, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (Rev., s. 3838; Code, s. 2592; 1885, c. 140; 1901, c. 4, s. 28; C. S. 4414.)

§ 14-274. Disturbing students at schools for women.—It shall be unlawful for any male person to willfully disturb, annoy or harass the students of any boarding school or college for women situ-

ated anywhere in North Carolina by rude conduct or by persisting unnecessary presence on or near the property of the school or college; or by the willful addressing or communicating orally or otherwise with said students while on school property, or while elsewhere when in charge of a teacher, officer or student of said school. The violation of this section shall be deemed a misdemeanor punishable by a fine of not less than five dollars ($5) nor more than fifty dollars ($50), or by imprisonment not to exceed thirty days. (1925, c. 189, s. 1.)

§ 14-275. Disturbing religious congregations.—If any person shall be intoxicated or shall be guilty of any rude and disorderly conduct at any place where people are accustomed to meet for divine worship, and while the people are there assembled for such worship, whether such worship should have begun or not, he shall be guilty of a misdemeanor, and shall, upon conviction, be fined or imprisoned in the discretion of the court. (Rev., s. 3706; 1901, c. 738; C. S. 4415.)

§ 14-276. Detectives going armed in a body.—If any body of men composed of more than three persons, calling themselves detectives or claiming to be in the employ of any detective agency or known and designated as detectives, shall go armed, they shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (Rev., s. 3703; 1893, c. 191; C. S. 4416.)

§ 14-277. Impersonation of peace officers.—It shall be unlawful for any person other than duly authorized peace officers or officers of the court to represent to any person that they are duly authorized peace officers, and acting upon such representation to arrest any person, search any building, or in any way impersonate a peace officer or act in accordance with the authority delegated to duly authorized peace officers. Nothing in this section shall be construed to prohibit a private citizen in whose presence a felony has been committed from arresting such person or persons participating in the commission of said felony when such arrest is deemed necessary, or to prohibit any private citizen in whose presence an act, which would constitute a breach of the peace and for which an indictment would lie, is committed from arresting such person or persons committing said breach of the peace when such arrest is deemed necessary. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction may be fined or imprisoned at the discretion of the court. (1927, c. 229.)

SUBCHAPTER X. OFFENSES AGAINST THE PUBLIC SAFETY.

Art. 36. Offenses against the Public Safety.

§ 14-278. Malicious injury of property of railroads and other carriers; causing death or other physical injury thereby.—If any person shall willfully and maliciously put or place any matter or thing upon, over or near any railroad track; or shall willfully and maliciously destroy, injure or remove the road-bed, or any part thereof, or any rail, sill or other part of the fixture appurtenant to or constituting or supporting any portion of the track of such railroad; or shall willfully and maliciously do any other thing with intent to obstruct, stop, hinder, delay or displace the cars traveling on such road, or to stop, hinder or delay the passengers or others passing over the same; or shall wilfully and maliciously injure the road-bed or the fixtures aforesaid, or any part thereof, with any other intent whatsoever, such person so offending shall be guilty of a felony and shall be fined not exceeding one thousand dollars nor less than two hundred dollars, and be imprisoned in the state's prison or county jail not less than four months nor more than ten years, and shall be committed to jail till he find surety for his good behavior, for a space of time of not less than three nor more than seven years. If it shall happen that by reason of the commission of the offenses aforesaid, or any of them, any engine or car shall be displaced from the track, or shall be stopped, hindered or delayed, so that any one thereby be instantly killed, or so wounded or hurt as to die therefrom in twelve calendar months thereafter, or shall thereby be maimed or be disabled in the use of any limb or member, then, and in every such case, the party so offending, his counselors, aiders and abettors, on conviction, shall suffer death, if the person is killed, and shall be imprisoned in the state's prison not less than five nor more than sixty years if the person is maimed or disabled. If any person shall maliciously destroy or injure any plank-road, turnpike or canal, or any appurtenance or fixture belonging thereto or used therewith, or shall maliciously destroy or injure any lock, dam or sluice, the same being a part of any work erected or made for the purpose of navigation, or improving the navigation of any water, the person so offending shall be guilty of a misdemeanor, and shall suffer the like punishment as in this section is provided for maliciously injuring a railroad. (Rev., s. 3754; Code, s. 1098; R. C., c. 34, ss. 99, 100; 1838, c. 38; 1879, c. 255, s. 2; 1911, c. 200; C. S. 4417.)

§ 14-279. Injuring without malice property of railroads and other carriers; causing death or other physical injury thereby. — If any person, unlawfully, and on purpose, but without malice, shall commit any of the offenses mentioned in § 14-278, he shall be guilty of a misdemeanor. If it shall happen that by reason of the commission of any such offense any person shall be instantly killed, or so wounded or hurt as to die therefrom in twelve calendar months thereafter, or shall thereby be maimed or disabled in the use of any limb or member, then, and in every such case, the party so offending, his counselors, aiders and abettors, shall be imprisoned not less than twelve months, and fined at the discretion of the court. (Rev., s. 3755; Code, s. 1099; R. C., c. 34, s. 101; C. S. 4418.)

§ 14-280. Shooting or throwing at trains or passengers.—If any person shall willfully and unlawfully cast, throw or shoot any stone, rock, bullet, shot, pellet or other missile at, against, or into any railroad car, locomotive or train, or any person thereon, while such car or locomotive shall be in progress from one station to another, or while such car, locomotive or train shall be stopped for any purpose, the person so offending shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment in the county jail or

state's prison, at the discretion of the court. (Rev., s. 3763; Code, s. 1100; 1887, c. 19; 1876-7, c. 4; 1911, c. 179; C. S. 4419.)

§ 14-281. Operating trains and street cars while intoxicated.—Any train dispatcher, telegraph operator, engineer, fireman, flagman, brakeman, switchman, conductor, motorman, or other employee of any steam, street, suburban or interurban railway company, who shall be intoxicated while engaged in running or operating, or assisting in running or operating, any railway train, shifting-engine, or street or other electric car, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (Rev., s. 3758; Code, s. 1972; 1891, c. 114; 1871-2, c. 138, s. 38; 1907, c. 330; C. S. 4420.)

§ 14-282. Displaying false lights on seashore.—If any person shall make or display, or cause to be made or displayed, any false light or beacon on or near the seacoast, for the purpose of deceiving and misleading masters of vessels, and thereby putting them in danger of shipwreck, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than four months nor more than ten years. (Rev., s. 3430; Code, s. 1024; R. C., c. 34, s. 58; 1831, c. 42; C. S. 4421.)

§ 14-283. Exploding dynamite cartridges and bombs.—If any person shall fire off or explode, or cause to be fired off or exploded, except for mechanical purposes in a legitimate business, any dynamite cartridge, bomb or other explosive of a like nature, he shall be guilty of a misdemeanor. (Rev., s. 3794; 1887, c. 364, s. 53; C. S. 4423.)

§ 14-284. Keeping for sale or selling explosives without a license.—If any dealer or other person shall sell or keep for sale any dynamite cartridges, bombs or other combustibles of a like kind, without first having obtained from the board of commissioners of the county where such person or dealer resides a license for that purpose, he shall be guilty of a misdemeanor. (Rev., s. 3817; 1887, c. 364, ss. 1, 4; C. S. 4425.)

§ 14-285. Failing to enclose marl beds.—If any person shall open any marl bed without surrounding it with a lawful fence, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this shall not apply to any person whose marl bed is situated inside his own inclosure. (Rev., s. 3796; 1887, cc. 235, 268; C. S. 4426.)

§ 14-286. Giving false fire alarms; molesting fire alarm system.—It shall be unlawful for any person or persons to wantonly and willfully give or cause to be given, or to advise, counsel, or aid and abet any one in giving a false alarm of fire, or to break the glass key protector, or to pull the slide, arm, or lever of any station or signal box of any municipal fire alarm system, except in case of fire, or in any way to willfully interfere with, damage, deface, molest, or injure any part or portion of the fire alarm system of any municipality. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1921, c. 46; C. S. 4426(a).)

§ 14-287. Leaving unused well open and exposed.—It shall be unlawful for any person, firm or corporation, after discontinuing the use of any well, to leave said well open and exposed; said well, after the use of same has been discontinued, shall be carefully and securely filled: Provided, that this shall not apply to wells on farms that are protected by curbing or board walls. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1923, c. 125; C. S. 4426(c).)

§ 14-288. Unlawful to pollute any bottles used for beverages.—It shall be unlawful for any person, firm or corporation having custody for the purpose of sale, distribution or manufacture of any beverage bottle, to place, cause or permit to be placed therein turpentine, varnish, wood alcohol, bleaching water, bluing, kerosene, oils, or any unclean or foul substance, or other offensive material, or to send, ship, return and deliver or cause or permit to be sent, shipped, returned or delivered to any producer of beverages, any bottle used as a container for beverages, and containing any turpentine, varnish, wood alcohol, bleaching water, bluing, kerosene, oils, or any unclean or foul substance, or other offensive material. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined on the first offense, one dollar for each bottle so defiled, and for any subsequent offense not more than ten dollars for each bottle so defiled. (1929, c. 324, s. 1.)

SUBCHAPTER XI. GENERAL POLICE REGULATIONS.

Art. 37. Lotteries and Gaming.

§ 14-289. Advertising lotteries.—If any one, by writing or printing or by circular or letter or in any other way, advertise or publish an account of a lottery, whether within or without this state, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a misdemeanor. (Rev., s. 3725; 1887, c. 211; C. S. 4427.)

§ 14-290. Dealing in lotteries.—If any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known; or if any person shall, by such way and means, expose or set to sale any house, real estate, goods, chattels, cash, written evidence of debt, certificates of claims or any other thing of value whatsoever, every person so offending shall be guilty of a misdemeanor, and shall be fined not exceeding two thousand dollars or imprisoned not exceeding six months, or both, in the discretion of the court. Any person who engages in disposing of any species of property whatsoever, including money and evidences of debt, or in any manner distributes gifts or prizes upon tickets, bottle crowns, bottle caps, seals on containers, other devices or certificates sold for that purpose, shall be held liable to prosecution under this section. Any person who shall have in his possession any tickets, certificates or orders used in the operation of

any lottery shall be held liable under this section, and the mere possession of such tickets shall be prima facie evidence of the violation of this section. (Rev., s. 3726; Code, s. 1047; R. C., c. 34, s. 69; 1834, c. 19, s. 1; 1874-5, c. 96; 1933, c. 434; 1937, c. 157; C. S. 4428.)

§ 14-291. Selling lottery tickets and acting as agent for lotteries.—If any person shall sell, barter or otherwise dispose of any lottery ticket or order for any number or shares in any lottery, or shall in anywise be concerned in such lottery, by acting as agent in the state for or on behalf of any such lottery, to be drawn or paid either out of or within the state, such person shall be guilty of a misdemeanor, and shall be punished as provided for in § 14-290. (Rev., s. 3727; Code, s. 1048; R. C., c. 34, s. 70; 1834, c. 19, s. 2; C. S. 4429.)

§ 14-292. Gambling.—If any person play at any game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, both those who play and those who bet thereon shall be guilty of a misdemeanor. (Rev., s. 3715; 1891, c. 29; C. S. 4430.)

§ 14-293. Allowing gambling in houses of public entertainment; duty of police officers; penalty.—If any keeper of an ordinary or other house of entertainment, or of a house wherein liquors are retailed, shall knowingly suffer any game, at which money or property, or anything of value, is bet, whether the same be in stake or not, to be played in any such house, or in any part of the premises occupied therewith; or shall furnish persons so playing or betting either on said premises or elsewhere with drink or other thing for their comfort or subsistence during the time of play, he shall be guilty of a misdemeanor, and shall be fined not less than five hundred dollars and be imprisoned not less than six months. Any person who shall be convicted under this section shall, upon such conviction, forfeit his license to do any of the businesses mentioned in this section, and shall be forever debarred from doing any of such businesses in this state. The court shall embody in its judgment that such person has forfeited his license, and no board of county commissioners, board of town commissioners or board of aldermen shall thereafter have power or authority to grant to such convicted person or his agent a license to do any of the businesses mentioned herein. It shall be the duty of every police officer of the cities, towns and villages of this state to make diligent inquiry and to exercise constant watchfulness to discover whether any of the offenses enumerated in this section are being committed, and to report once a week under oath to the mayor or other chief officer of his city, town or village, whether such offenses are being committed, and all the facts within his knowledge, or of which he has information relating thereto. If any such police officer shall know or have information that such offenses are being committed and shall fail or neglect to report the same to such mayor or other chief officer, together with all the information known to him, as to the person or persons committing the same, the time and place of the commission and the names of the witnesses thereto, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court, and shall forfeit his office. It shall be the duty of such mayor or other chief officer to require the report herein provided for, and to require that the same shall be verified by the oath of such policeman, and if it appear upon such report that any of the said offenses have been committed, it shall be the duty of such mayor or other chief officer to issue his warrant for the arrest of the offender. Any such mayor or other chief officer of any city, town or village who shall fail or neglect to require the reports herein mentioned, or shall fail or neglect to require of such police officer to verify the same upon oath, or who shall refuse or neglect, upon its appearing from such reports that there is probably cause to believe that any of the said offenses have been committed, to issue his warrant for the arrest of the offender, shall be guilty of a misdemeanor. Any person committing any of the offenses mentioned in this section shall be liable to a penalty of five hundred dollars, to be recovered by suit in the superior court in the county in which such offense may have been committed, one-half thereof to the use of the person bringing such suit and one-half to the school fund for the county. (Rev., s. 3716; Code, s. 1043; 1901, c. 753; R. C., c. 34, s. 76; 1799, c. 526; 1801, c. 581; 1831, c. 26; C. S. 4431.)

§ 14-294. Gambling with faro-banks and tables.—If any person shall open, establish, use or keep a faro-bank, or a faro-table, with the intent that games of chance may be played thereat, or shall play or bet thereat any money, property or other thing of value, whether the same be in stake or not, he shall be guilty of a misdemeanor, and shall be fined at least two hundred dollars and imprisoned not less than three months. (Rev., s. 3717; Code, s. 1044; R. C., c. 71; 1848, c. 34; 1856-7, c. 25; C. S. 4432.)

§ 14-295. Keeping gaming tables, illegal punchboards or slot machines, or betting thereat.—If any person shall establish, use or keep any gaming table (other than a faro-bank), by whatever name such table may be called, an illegal punch board or an illegal slot machine, at which games of chance shall be played, he shall on conviction thereof be fined not less than two hundred dollars and shall be imprisoned not less than thirty days; and every person who shall play thereat or thereat bet any money, property or other thing of value, whether the same be in stake or not, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars. (Rev., s. 3718; Code, s. 1045; R. C., c. 34, s. 72; 1791, c. 336; 1798, c. 502, s. 2; 1931, c. 14, s. 2; C. S. 4433.)

§ 14-296. Illegal slot machines and punchboards defined.—An illegal slot machine or punchboard within the contemplation of §§ 14-295 through 14-298 is defined as one that shall not produce for or give to the person who places coin or money or the representative of either, the same return in market value each and every time such machine is operated by placing money or coin or the representative of either therein. (1931, c. 14, s. 1.)

§ 14-297. Allowing gaming tables, illegal punchboards or slot machines on premises. — If any person shall knowingly suffer to be opened, kept or used in his house or on any part of the

premises occupied therewith, any of the gaming tables prohibited by §§ 14-289 through 14-300 or any illegal punch board or illegal slot machine, he shall forfeit and pay to any one who will sue therefor two hundred dollars, and shall also be guilty of a misdemeanor and fined and imprisoned. (Rev., s. 3719; Code s. 1046; R. C., c. 34, s. 73; 1798, c. 502, s. 3; 1800, c. 5, s. 2; 1931, c. 14, s. 3; C. S. 4434.)

§ 14-298. Gaming tables, illegal punchboards and slot machines to be destroyed by justices and police officers. — All justices of the peace, sheriffs, constables and officers of police are hereby authorized and directed, on information made to them on oath that any gaming table prohibited to be used by §§ 14-289 through 14-300, or any illegal punchboard or illegal slot machine is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction. (Rev., s. 3720; Code, s. 1049; R. C., c. 34, s. 74; 1791, c. 336; 1798, c. 502, s. 2; 1931, c. 14, s. 4; C. S. 4435.)

§ 14-299. Property exhibited by gamblers to be seized; disposition of same.—All moneys or other property or thing of value exhibited for the purpose of alluring persons to bet on any game shall be liable to be seized by any justice of the peace, or by any person acting under his warrant. Of the moneys or other property or thing which shall be so seized one-half shall belong to the person seizing them, and the other half shall go to the use of the poor. (Rev., s. 3722; Code, s. 1051; R. C., c. 34, s. 77; 1798, c. 502, s. 3; C. S. 4436.)

§ 14-300. Opposing destruction of gaming tables and seizure of property.—If any person shall oppose the destruction of any prohibited gaming table, or the seizure of any moneys, property or other thing staked on forbidden games, or shall take and carry away the same or any part thereof after seizure, he shall forfeit and pay to the person so opposed one thousand dollars, for the use of the state and the person so opposed, and shall, moreover, be guilty of a misdemeanor. (Rev., s. 3723; Code, s. 1052; R. C., c. 34, s. 78; 1798, c. 502; s. 4; C. S. 4437.)

§ 14-301. Operation or possession of slot machine; separate offenses.—It shall be unlawful for any person, firm or corporation to operate, keep in his possession or in the possession of any other person, firm or corporation, for the purpose of being operated, any slot machine that shall not produce for or give to the person who places coin or money, or the representative of either, the same return in market value each and every time such machine is operated by placing money or coin or the representative of either therein. Each time said machine is operated as aforesaid shall constitute a separate offense. (1923, c. 138, ss. 1, 2; C. S. 4437(a).)

§ 14-302. Punchboards, vending machines, and other gambling devices; separate offenses.—It shall be unlawful for any person, firm or corporation to operate or keep in his possession, or the possession of any other person, firm or corporation, for the purpose of being operated, any punchboard, machine for vending merchandise, or other gambling device, by whatsoever name known or called, that shall not produce for or give to the person operating, playing or patronizing same, whether personally or through another, by paying money or other thing of value for the privilege of operating, playing or patronizing same, whether through himself or another, the same return in market value, each and every time such punchboard, machine for vending merchandise, or other gambling device, by whatsoever name known or called, is operated, played or patronized by paying of money or other thing of value for the privilege thereof. Each time said punch-board, machine for vending merchandise, or other gambling device, by whatsoever name known or called, is operated, played, or patronized by the paying of money or other thing of value therefor, shall constitute a separate violation of this section as to operation thereunder. (1923, c. 138, ss. 3, 4; C. S. 4437(b).)

§ 14-303. Violation of two preceding sections a misdemeanor.—A violation of any of the provisions of §§ 14-301, 14-302 shall be a misdemeanor punishable by a fine or imprisonment, or, in the discretion of the court, by both. (1923, c. 138, s. 5; C. S. 4437(c).)

§ 14-304. Manufacture, sale, etc., of slot machines and devices.—It shall be unlawful to manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or to permit the operation of, or for any person to permit to be placed, maintained, used or kept in any room, space or building owned, leased or occupied by him or under his management or control, any slot machine or device. (1937, c. 196, s. 1.)

§ 14-305. Agreements with references to slot machines or devices made unlawful.—It shall be unlawful to make or permit to be made with any person any agreement with reference to any slot machines or device, pursuant to which the user thereof may become entitled to receive any money, credit, allowance, or anything of value or additional chance or right to use such machines or devices, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value. (1937, c. 196, s. 2.)

§ 14-306. Slot machine or device defined.—Any machine, apparatus or device is a slot machine or device within the provisions of §§ 14-304 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or other object, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or in the playing of which the operator or user has a chance to make varying scores or tallies upon the outcome of

which wagers might be made, irrespective of whether it may, apart from any element of chance or unpredictable outcome of such operation, also sell, deliver or present some merchandise, indication or weight, entertainment or other thing of value. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies. (1937, c. 196, s. 3.)

§ 14-307. Issuance of license prohibited.—There shall be no state, county, or municipal tax levied for the privilege of operating the machines or devices the operation of which is prohibited by §§ 14-304 through 14-309. (1937, c. 196, s. 4.)

§ 14-308. Declared a public nuisance.—An article or apparatus maintained or kept in violation of §§ 14-304 through 14-309 is a public nuisance. (1937, c. 196, s. 5.)

§ 14-309. Violation made misdemeanor. — Any person who violates any provision of §§ 14-304 through 14-309 is guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1937, c. 196, s. 6.)

Art. 38. Marathon Dances and Similar Endurance Contests.

§ 14-310. Dance marathon and walkathons prohibited.—It shall be unlawful for any person, firm, association or corporation to promote, advertise or conduct any marathon dance contests, walkathon contests and/or similar endurance contests, by whatever name called, of walking or dancing, and it shall be unlawful for any person to participate in any marathon dance contest, walkathon contest, and/or similar physical endurance contest by walking and dancing continuing or intended to continue for a period of more than eight consecutive hours, whether or not an admission is charged and/or a prize awarded, and it shall be unlawful for any person to participate in more than one such contest or performance within any period of forty-eight hours. (1935, c. 13, s. 1.)

§ 14-311. Penalty for violation.—Any persons violating the provisions of this article shall be guilty of a misdemeanor and shall be punishable by imprisonment in the county or municipal jail for not less than thirty days nor more than ninety days, or by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment in the discretion of the court. (1935, c. 13, s. 2.)

§ 14-312. Each day made separate offense.—Each and every day that any person, firm or corporation shall continue such a contest or engage in any such activities and/or each day's participation in such contest or advertisement of the same or do any act in violation of the provisions of this article shall be and constitute a distinct and separate offense. (1935, c. 13, s. 3.)

Art. 39. Protection of Minors.

§ 14-313. Selling cigarettes to minors.—If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years; or if any person shall aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court. (Rev., s. 3804; 1891, c. 276; C. S. 4438.)

§ 14-314. Aiding minors in procuring cigarettes; duty of police officers.—If any person shall aid or assist any minor child under seventeen years old in obtaining the possession of cigarettes, or tobacco in any form used as a substitute therefor, by whatsoever name it may be called, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

It shall be the duty of every police officer, upon knowledge or information that any minor under the age of seventeen years is or has been smoking any cigarette, to inquire of any such minor the name of the person who sold or gave him such cigarette, or the substance from which it was made, or who aided and abetted in effecting such gift or sale. Upon receiving this information from any such minor, the officer shall forthwith cause a warrant to be issued for the person giving or selling, or aiding and abetting in the giving or selling of such cigarette or the substance out of which it was made, and have such person dealt with as the law directs. Any such minor who shall fail or refuse to give to any officer, upon inquiry, the name of the person selling or giving him such cigarette, or the substance out of which it was made, shall be guilty of a misdemeanor. (Rev., s. 3805; 1891, c. 276, s. 2; 1913, c. 185; C. S. 4439.)

§ 14-315. Selling or giving weapons to minors.—If any person shall knowingly sell, offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie-knife, dirk, loaded cane or sling-shot, he shall be guilty of a misdemeanor. (Rev., s. 3832; 1893, c. 514; C. S. 4440.)

§ 14-316. Permitting young children to use dangerous firearms.—Any person, being the parent or guardian of, or standing in loco parentis to, any child under the age of twelve years, who shall

knowingly permit such child to have the possession or custody of, or use in any manner whatever, any gun, pistol or other dangerous firearm, whether such firearm be loaded or unloaded, or any other person who shall knowingly furnish such child any such firearm, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1913, c. 32; C. S. 4441.)

§ 14-317. Permitting minors to enter barrooms, billiard rooms and bowling alleys.—If the keeper or owner of any barroom, billiard room or bowling alley shall allow any minor to enter or remain in such barroom, billiard room or bowling alley, where before such minor enters or remains in such barroom, billiard room or bowling alley, the owner or keeper thereof has been notified by the parents or guardian of such minor not to allow him to enter or remain in such barroom, billiard room or bowling alley, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3729; 1897, c. 278; C. S. 4442.)

§ 14-318. Exposing children to fire.—If any person shall leave any child of the age of seven years or less locked or otherwise confined in any dwelling, building or enclosure, and go away from such dwelling, building or enclosure without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire, the person so offending shall be guilty of a misdemeanor, and shall be punished at the discretion of the court. (Rev., s. 3795; 1893, c. 12; C. S. 4443.)

§ 14-319. Marrying females under fourteen years old.—If any person shall marry a female under the age of fourteen years, he shall be guilty of a misdemeanor. (Rev., s. 3368; Code, s. 1083; R. C., c. 34, s. 46; 1820, c. 1041, ss. 1, 2; C. S. 4444.)

§ 14-320. Separating child under six months old from mother.—It shall be unlawful for any person to separate or aid in separating any child under six months old from its mother for the purpose of placing such child in a foster home or institution, or with the intent to remove it from the state for such purpose, unless the consent in writing for such separation shall have been obtained from the clerk of the superior court and the county health officer of the county in which the mother resides, or of the county in which the child was born; and it shall be unlawful for any mother to surrender her child for such purpose without first having obtained such consent; provided, that in every instance the county superintendent of public welfare shall have made proper investigation of the condition and situation of said mother and child and shall make a written report of same to the clerk of court and the county health officer before they take action. Any person violating this section shall, upon conviction, be fined not exceeding five hundred dollars or imprisoned for one year, or both, in the discretion of the court. (1917, c. 59; 1919, c. 240; 1939, c. 56; C. S. 4445.)

§ 14-321. Failing to pay minors for doing certain work.—Whenever any person, having a contract with any corporation, company or person for the manufacture or change of any raw material by the piece or pound, shall employ any minor to assist in the work upon the faith of and by color of such contract, with intent to cheat and defraud such minor, and, having secured the contract price, shall willfully fail to pay the minor when he shall have performed his part of the contract work, whether done by the day or by the job, the person so offending shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3428a; 1893, c. 309; C. S. 4446.)

Art. 40. Protection of the Family.

§ 14-322. Abandonment of family by husband.—If any husband shall willfully abandon his wife without providing adequate support for such wife, and the children which he may have begotten upon her, he shall be guilty of a misdemeanor: Provided, that the abandonment of children by the father shall constitute a continuing offense and shall not be barred by any statute of limitations until the youngest living child shall arrive at the age of eighteen years. (Rev., s. 3355; Code, s. 970; 1868-9, c. 209, s. 1; 1873-4, c. 176, s. 10; 1879, c. 92; 1925, c. 290; C. S. 4447.)

§ 14-323. Evidence that abandonment was willful.—If the fact of abandonment of and failure to provide adequate support for the wife and children shall be proved, or, while being with such wife, neglect by the husband to provide for the adequate support of such wife or children shall be proved, then the fact that such husband neglects applying himself to some honest calling for the support of himself and family, and is found sauntering about, endeavoring to maintain himself by gaming or other undue means, or is a common frequenter of drinking houses, or is a known common drunkard, shall be presumptive evidence that such abandonment and neglect is willful. (Rev., s. 3356; Code, s. 971; 1868-9, c. 209, s. 3; C. S. 4448.)

§ 14-324. Order to support from husband's property or earnings.—Upon any conviction for abandonment, any judge or any recorder having jurisdiction thereof may, in his discretion, make such order as in his judgment will best provide for the support, as far as may be necessary, of the deserted wife or children, or both, from the property or labor of the defendant. (1917, c. 259; C. S. 4449.)

§ 14-325. Failure of husband to provide adequate support for family.—If any husband, while living with his wife, shall willfully neglect to provide adequate support of such wife or the children which he has begotten upon her, he shall be guilty of a misdemeanor. Upon conviction of any husband as herein provided, the court having jurisdiction thereof may in his discretion make such order as in his judgment will best provide for the support of such wife or children, and may commit the said husband to the common jail of the county, to be hired out by the county commissioners for such length of time as the court may deem proper, which said wage or salary shall be paid to the said wife or children, to be used toward their support. (Rev., s. 3357; Code, s. 972; 1868-9, c. 209, s. 2; 1873-4, c. 176, s. 11; 1879, c. 92; 1921, c. 103; C. S. 4450.)

§ 14-326. Abandonment of child by mother.—If any mother shall willfully abandon her child or children, whether legitimate or illegitimate, and under sixteen years of age, she shall be guilty of a misdemeanor. (1931, c. 57, s. 1.)

Art. 41. Intoxicating Liquors.

§ 14-327. Adulteration of liquors.—If any person shall adulterate any spirituous, alcholic, vinous or malt liquors by mixing the same with any substance of whatever kind, except as provided in the following section, or if any person shall sell or offer to sell any spirituous, alcoholic, vinous or malt liquors, knowing the same to be thus adulterated, or shall import into this state any spirituous or intoxicating liquors, and sell or offer to sell such liquor, knowing the same to be adulterated, he shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the discretion of the court. (Rev., s. 3512; Code, s. 982; 1858-9, c. 57, ss. 1, 4; C. S. 4451.)

§ 14-328. Selling recipe for adulterating liquors.—If any person shall sell or offer for sale any recipe or formula whatever for adulterating any spirituous or alcoholic liquors, by mixing the same with any substance of whatever kind, except as is herein provided, he shall be guilty of a felony, and shall be fined or imprisoned as is provided in the preceding section: Provided, that this section and the two sections that immediately precede and follow it respectively shall not be so construed as to prevent druggists, physicians and persons engaged in the mechanical arts from adulterating liquors for medical and mechanical purposes. (Rev., s. 3513; Code, s. 984; 1858-9, c. 57, ss. 2, 3; C. S. 4452.)

§ 14-329. Manufacturing or selling poisonous liquors.—If any person shall manufacture, sell, or in any way deal out spirituous liquors, of any name or kind, to be used as a drink or beverage, and the same shall be found to contain any foreign properties or ingredients poisonous to the human system, he shall be guilty of a felony and shall be imprisoned in the state's prison not less than five years, and may be fined in the discretion of the court. It shall be competent for any citizen, after making purchase of any spirituous liquor, to cause the same to be analyzed by some known competent chemist, and if upon such analysis it shall be found to contain any foreign poisonous matter, it shall be prima facie evidence against the party making such a sale. (Rev., s. 3522; Code, s. 983; 1873-4, c. 180, ss. 1, 2; C. S. 4453.)

§ 14-330. Selling or giving away liquor near political speaking.—If any person shall sell or give away, either directly or indirectly, any spirituous liquors, wine or bitters containing alcohol, within two miles of any place at which political public speaking shall be advertised to take place, and does take place, during the day on which such speaking shall take place, he shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than twenty dollars, or imprisoned not exceeding twenty days. (Rev., s. 3528; Code, s. 1079; 1879, c. 212; C. S. 4454.)

§ 14-331. Giving intoxicants to unmarried minors under seventeen years old.—If any person shall give intoxicating drinks or liquors to any unmarried minor under the age of seventeen years; or if any person shall aid, assist or abet any other person in giving such drinks or liquors to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court; but nothing in this section shall prevent any parent or other person standing in loco parentis from giving or administering any such drinks or liquors to his minor child for medicinal purposes, nor any physician from giving or administering such drinks or liquors to any minor patient under his care; nor shall this section apply to the giving or using of wine in the administration of the sacrament. (1915, c. 82; C. S. 4455.)

§ 14-332. Selling or giving intoxicants to unmarried minors by dealers; liability for exemplary damages.—If any dealer in intoxicating drinks or liquors sell, or in any manner part with for a compensation therefor, either directly or indirectly, or give away such drinks or liquors, to any unmarried person under the age of twenty-one years, knowing such person to be under the age of twenty-one years he shall be guilty of a misdemeanor; and such sale or giving away shall be prima facie evidence of such knowledge. Any person who keeps on hand intoxicating drinks or liquors for the purpose of sale or profit shall be considered a dealer within the meaning of this section.

The father, or if he be dead, the mother, guardian or employer of any minor to whom a sale or gift shall be made in violation of this section, shall have a right of action in a civil suit against the person so offending by such sale or gift, and upon proof of such illicit sale or gift shall recover from the party so offending such exemplary damages as a jury may assess: Provided, that such assessment shall not be less than twenty-five dollars. (Rev., ss. 3524, 3525; Code, ss. 1077, 1078; 1873-4, c. 68; 1881, c. 242; C. S. 4456.)

Art. 42. Public Drunkenness.

§ 14-333. Public drinking on railway passenger cars; copy of section to be posted.—Any person who shall publicly engage in the drinking of intoxicating liquors in the presence of passengers on any passenger car shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned not to exceed thirty days. This section shall not apply to any smoking compartment or to any closet, dining or buffet car. It shall be the duty of all railway companies to have posted a copy of this section in all passenger coaches used for transporting passengers within the state. (1907, c. 455; C. S. 4457.)

§ 14-334. Public drunkenness and disorderliness.—It shall be unlawful for any person to be drunk and disorderly in any public place or on any public road or street in North Carolina; person or persons convicted of a violation hereof shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days in the discretion of the court. (1921, c. 211; C. S. 4457(a).)

§ 14-335. Local: Public drunkenness.—If any person shall be found drunk or intoxicated on the

public highway, or at any public place or meeting, in any county, township, city, town, village or other place herein named, he shall be guilty of a misdemeanor, and upon conviction shall be punished as is provided in this section:

1. By a fine of not more than fifty dollars, or by imprisonment for not more than thirty days, in the counties of Alamance, Ashe, Avery, Brunswick, Burke, Catawba, Cherokee, Clay, Cleveland, Dare, Davie, Duplin, Franklin, Gaston, Graham, Greene, Haywood, Henderson, Hyde, Johnston, Lincoln, Madison, McDowell, Mecklenburg, Mitchell, Moore, Northampton, Orange, Pitt, Richmond, Rutherford, Scotland, Stanly, Union, Vance, Warren, Washington, Wayne, Wilkes and Yadkin, in the townships of Fruitville and Poplar branch in Currituck county, and at Pungo in Beaufort county. (1907, cc. 305, 785, 900, 976; 1908, c. 113; 1909, c. 815; Pub. Loc. 1915, c. 790; Pub. Loc. 1917, cc. 447, 475; Pub. Loc. 1919, cc. 148, 200; Ex. Sess. 1924, c. 5; 1929, c. 135; 1931, c. 219; 1935, c. 49, s. 1; 1935, c. 208; 1937, cc. 46, 96, 286, 329, 443; 1941, cc. 334, 336; C. S. 4458.)

2. From and after February 28, 1935, it shall be lawful for any justice of the peace in Cherokee, Jackson and Clay counties, or any mayor of any incorporated city or town in said counties, in imposing the prison sentence provided for in this section as amended, to sentence the defendant to thirty days in prison to be assigned to work on the highways of the state of North Carolina under the supervision of the State Highway and Public Works Commission, and in any case where any such defendant is so sentenced for as much as thirty days it shall be lawful for, and the duty of, the State Highway and Public Works Commission to receive and work such prisoner, as is now provided by law in case of sentences by judges of the superior court. (1935, c. 49, s. 4; 1939, c. 55.)

3. By a fine of not less than three dollars nor more than fifty dollars, or by imprisonment for not more than thirty days, in Yancey county. (1909, c. 256; C. S. 4458.)

4. By a fine of not less than two dollars and fifty cents nor more than fifty dollars, or by imprisonment for not more than thirty days, in Buncombe county. (1909, c. 271; C. S. 4458.)

5. By a fine of not less than five dollars nor more than ten dollars in Wake county. (1907, c. 908; C. S. 4458.)

6. By a fine of not less than five dollars nor more than fifty dollars, or by imprisonment for not more than ten days, in the village of Kannapolis, or on the premises or within one mile of the Kannapolis cotton mills. (1909, c. 46, s. 2; C. S. 4458.)

7. By a fine, for the first offense, of not less than ten nor more than twenty dollars; for second and further offense, not less than twenty nor more than thirty dollars, or imprisoned for not more than twenty days, in Transylvania county. (Pub. Loc. 1919, c. 190; Rev., 3733; 1897, c. 57; 1899, cc. 87, 208, 608, 638; 1901, c. 445; 1903, cc. 116, 124, 523, 758; C. S. 4458.)

8. By a fine of fifteen dollars or imprisonment for ten days for the first offense; by a fine of twenty-five dollars or imprisonment for twenty days for the second offense; by a fine of fifty dollars or imprisonment for thirty days for the third and subsequent offenses, in the King high school district, Stokes county. (1933, c. 287.)

9. By a fine of not less than five dollars or more than fifty dollars or by imprisonment for not more than thirty days, in the discretion of the court in Swain county. (1933, c. 10.)

10. By a fine of not less than five nor more than fifty dollars or by imprisonment not more than thirty days in Nash and Wilson counties. (1935, cc. 284, 350.)

11. In Guilford and Surry counties, by a fine, for the first offense, of not more than fifty dollars, or imprisonment for not more than thirty days; for the second offense within a period of twelve months by a fine of not more than one hundred dollars, or imprisonment for not more than sixty days; and for the third offense within any twelve months' period, such third offense to be declared a misdemeanor, punishable as a misdemeanor, within the discretion of the court. (1935, c. 207; 1937, c. 203; 1941, cc. 82, 150.)

12. In Edgecombe county, by a fine, for the first offense, of not more than fifty dollars ($50.00), or imprisonment for not more than thirty days; for the second offense within a period of twelve months, by a fine of not more than one hundred dollars ($100.00), or imprisonment for not more than sixty days; and for the third offense within any twelve months' period such offense is declared a misdemeanor, punishable as a misdemeanor within the discretion of the court. (1937, c. 95.)

13. In Jackson and Macon counties, any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be punished in the discretion of the court. Provided, that in the event the county commissioners of Jackson county abolish the recorder's court of said county, then, and in that event, the first sentence of this subsection shall not apply to Jackson county. (Pub. Loc. 1927, c. 17; Pub. Loc. 1931, c. 413.)

Art. 43. Vagrants and Tramps.

§ 14-336. Persons classed as vagrants.—If any person shall come within any of the following classes, he shall be deemed a vagrant, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, however, that this limitation of punishment shall not be binding except in cases of a first offense, and in all other cases such person may be fined or imprisoned, or both, in the discretion of the court:

1. Persons wandering or strolling about in idleness who are able to work and have no property to support them.

2. Persons leading an idle, immoral or profligate life, who have no property to support them and who are able to work and do not work.

3. All persons able to work having no property to support them and who have not some visible and known means of a fair, honest and reputable livelihood.

4. Persons having a fixed abode who have no visible property to support them and who live by stealing or by trading in, bartering for or buying stolen property.

5. Professional gamblers living in idleness.

6. All able-bodied men having no other visible means of support who shall live in idleness upon the wages or earnings of their mother, wife or

minor children, except of male children over eighteen years old.

7. Keepers and inmates of bawdy-houses, assignation houses, lewd and disorderly houses, and other places where illegal sexual intercourse is habitually carried on: Provided, that nothing here is intended or shall be construed as abolishing the crime of keeping a bawdy-house, or lessening the punishment by law for such crime. (Rev., s. 3740; 1905, c. 391; 1907, c. 1012, s. 1; 1913, c. 75; 1915, c. 1; C. S. 4459.)

§ 14-337. Police officers to furnish list of disorderly houses; inmates competent and compellable to testify.—It shall be the duty of the chief of police, marshal, constable or other chief ministerial officer of each city and town in this state to furnish every thirty days to the police justice, recorder, mayor or other trial officer of such city or town a list of the bawdy, assignation, lewd and disorderly houses and other places where illegal sexual intercourse is carried on, together with the names of the keepers and inmates of such houses and places, in such city or town; and it shall be the duty of such police justice, recorder, mayor or other trial officer, upon the filing of such list, to issue his warrant for the persons declared in subsection seven of § 14-336 to be vagrants, and to punish in accordance with the provisions of that section such of them as may be found guilty. In all trials under said subsection seven of § 14-336 any keeper or inmate of any of the houses or places named, or his employees, shall be competent and compellable to give evidence of the character and nature of such house or place and of the character and acts of the keepers and inmates thereof; but the person so testifying shall not be prosecuted or punished for the commission of any crime about which he shall have been required to testify.

If any chief of police, marshal, constable or other chief ministerial officer of any city or town shall fail to furnish the list of houses and places provided for in this section, or shall suppress the name of any person whom he is required herein to report, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. (1907, c. 1012, ss. 2, 3; C. S. 4460.)

§ 14-338. Tramp defined and punishment provided; certain persons excepted.—If any person shall go about from place to place begging or subsisting on charity, he shall be denominated a tramp, and shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days: Provided, that any person who shall furnish satisfactory evidence of good character shall be discharged without cost. Any act of begging or vagrancy by any person, unless a well-known object of charity, shall be evidence that the person committing the same is a tramp. This section shall not apply to any woman, to any minor under the age of fourteen years, or to any blind person. (Rev., s. 3735; Code, ss. 3828, 3829, 3831, 3833; 1897, c. 268; 1879, c. 198, ss. 1, 4, 6; C. S. 4461.)

§ 14-339. Trespassing and the carrying of dangerous weapons by tramps.—If any tramp shall enter any dwelling-house or kindle any fire on the land of another without the consent of the owner or occupant thereof, or shall kindle a fire on any highway, or shall be found carrying any firearm or other dangerous weapon, or shall threaten to do any injury to the person, or to the real or personal estate, of another, he shall be punished by imprisonment, at the discretion of the court, not to exceed twelve months. (Rev., s. 3736; Code, s. 3829; 1879, c. 198, s. 2; C. S. 4462.)

§ 14-340. Malicious injuries by tramps to persons and property.—If any tramp shall willfully and maliciously do any injury to the person, or to the real or personal estate, of another, he shall be punished by imprisonment, at the discretion of the court, not to exceed three years. (Rev., s. 3737; Code, s. 3830; 1879, c. 198, s. 3; C. S. 4463.)

§ 14-341. Arrest of tramps by persons who are not officers.—Any person, upon a view of any offense described in §§ 14-338 through 14-340, shall cause the offender to be arrested upon a warrant and taken before some justice of the peace, or he may apprehend the offender and take him before a justice of the peace, for examination, and, on his conviction, he shall be entitled to the same fee as a sheriff. (Rev., s. 3738; Code, s. 3832; 1879, c. 198, s. 5; C. S. 4464.)

Art. 44. Regulation of Sales.

§ 14-342. Selling or offering to sell meat of diseased animals.—If any person shall knowingly and willfully slaughter any diseased animal and sell or offer for sale any of the meat of such diseased animal for human consumption, or if any person knows that the meat offered for sale or sold for human consumption by him is that of a diseased animal, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court. (Rev., s. 3442; 1905, c. 303; C. S. 4465.)

§ 14-343. Unauthorized dealing in railroad tickets.—If any person shall sell or deal in tickets issued by any railroad company, unless he is a duly authorized agent of the railroad company, or shall refuse upon demand to exhibit his authority to sell or deal in such tickets, he shall be guilty of a misdemeanor. (Rev., s. 3764; 1895, c. 83, s. 1; C. S. 4466.)

§ 14-344. Sale of athletic contest tickets in excess of printed price.—It shall be unlawful for any person, firm or corporation to sell or offer for sale any ticket of admission to any baseball, basketball, football game or other athletic contest of any kind in excess of the sale price written or printed on such ticket or tickets. Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1941, c. 180.)

§ 14-345. Sale of cotton at night under certain conditions.—If any person shall buy, sell, deliver or receive, for a price, or for any reward whatever, any cotton in the seed, or any unpacked lint cotton, brought or carried in a basket, hamper or sheet, or in any mode where the quantity is less than what is usually baled, or where the cotton is not baled, between the hours of sunset and sunrise, such person so offending shall be guilty of a misdemeanor. (Rev., s. 3813; Code, s. 1006;

1873-4, c. 62; 1874-5, c. 70; 1905, c. 417; C. S. 4467.)

Local Modification.—Mecklenburg, Nash: C. S. 4467.

§ 14-346. Sale of convict-made goods prohibited.—Except as hereinafter provided, the sale anywhere within the state of North Carolina of any and all goods, wares and merchandise manufactured, produced or mined wholly or in part, by convicts or prisoners, except by convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions is hereby prohibited and declared to be unlawful.

The provisions of this section shall not apply to sales or exchanges between the state penitentiary and other penal, charitable, educational and/or custodial institutions, maintained wholly or in part by the state, or its political subdivisions, for use in said institution or by the wards thereof; nor shall the provisions of this section apply to the sale of cotton, corn, grain or other processed or unprocessed agricultural products, including seed for growing purposes, or to the sale of stone, quarried by convict labor, or to the sale of coal or chert mined by convict labor, in any mine operated by the state: Provided that this section shall apply with equal force to sales to the state or any political subdivision thereof by any state penal or correctional institution, including the state highway: Provided further that the state of North Carolina shall have the right of manufacturing in any of its penal or correctional institutions products to be used exclusively by the state or any of its agencies.

This section shall apply equally to convict or prison-made goods, wares or merchandise, whether manufactured, produced or mined within or without the state of North Carolina.

Any person, firm or corporation selling, undertaking to sell, or offering for sale any such prison-made or convict-made goods, wares or merchandise, anywhere within the State, in violation of the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to fine, or imprisonment, or both, in the discretion of the court. Each sale or offer to sell, in violation of the provisions of this section, shall constitute a separate offense. (1933, c. 146, ss. 1-4.)

Art. 45. Regulation of Employer and Employee.

§ 14-347. Enticing servant to leave master.—If any person shall entice, persuade and procure any servant by indenture, or any servant who shall have contracted in writing or orally to serve his employer, to leave unlawfully the service of his master or employer; or if any person shall knowingly and unlawfully harbor and detain, in his own service and from the service of his master or employer, any servant who shall unlawfully leave the service of such master or employer, then, in either case, such person and servant shall be guilty of a misdemeanor and shall be fined not exceeding one hundred dollars or imprisoned not exceeding six months. (Rev., s. 3365; Code, ss. 3119, 3120; 1866, c. 58; 1866-7, c. 124; 1881, c. 303; C. S. 4469.)

§ 14-348. Local: Hiring servant who has unlawfully left employer.—If any person shall knowingly hire, employ, harbor or detain in his own service any servant, employee, tenant, or wage hand of any other person, who shall have contracted in writing, or orally, for a fixed period of time to serve his employer, and who shall have left the service of his employer in violation of his contract, he shall be guilty of a misdemeanor, and shall be civilly liable in damages to the party so aggrieved. This section shall apply to the following counties: Beaufort, Edgecombe, Person, Pitt, Washington, Warren, Vance, Pender, Halifax, Guilford, Granville, Hertford, Richmond, Wake, Wayne and Caswell. (Rev., s. 3374; 1901, c. 682; 1903, c. 365; 1907, c. 238, s. 2; 1907, c. 402; 1919, c. 274; C. S. 4470.)

§ 14-349. Enticing seamen from vessel.—If any person shall induce any seaman, in the employment of any domestic or foreign vessel, in any of the ports of North Carolina, to leave any such vessel before his term of service shall have expired, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3555; Code, s. 1108; 1879, c. 219, s. 1; 1881, c. 256, s. 1; C. S. 4471.)

§ 14-350. Secreting or harboring deserting seamen.—If any person shall secrete or harbor any seaman who has deserted from any domestic or foreign vessel, knowing that such seaman has deserted, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days; and if such seaman be found concealed or secreted by any person on his premises, such concealment and secretion shall be deemed prima facie evidence that such person knew that such seaman was a deserter. (Rev., s. 3556; Code, s. 1109; 1879, c. 219, s. 2; 1881, c. 256, s. 2; C. S. 4472.)

§ 14-351. Search warrants for deserting seamen.—If any credible witness shall complain, upon oath before any justice of the peace, that any person has concealed on his premises any seaman who has deserted from any such domestic or foreign vessel, it shall be lawful for such justice to grant a search warrant to be executed within the limits of his county to any proper officer, authorizing him to search for such seaman, and to arrest the person on whose premises he may be found; and the person on whose premises such seaman shall be found shall be adjudged to pay the costs of the search warrant, if on examination it shall appear that such seaman was secreted or concealed by such person; otherwise the costs shall be paid by the party making the complaint. (Rev., s. 3557; Code, s. 1110; 1881, c. 256, s. 3; C. S. 4473.)

§ 14-352. Appeal in cases of deserting seamen regulated.—In all cases arising under §§ 14-349 through 14-351, if any appeal is prayed by either party at the time of the trial, it shall be granted; but no appeal shall be granted by any justice at any time after the final hearing of the case. In case an appeal is prayed at the trial, it shall be the duty of the justice to proceed immediately to reduce to writing the testimony of any witness whose testimony is material (if such witness shall be master, officer or seaman on board of any vessel), in the presence of the adverse party, who may cross-question such witness, which testimony shall be subscribed by such witness and returned by the justice with the papers in the case; and on the

hearing in the appellate court, the testimony so taken and reduced to writing by the justice shall be read, heard and accepted as the true and lawful testimony of such witness, as if such person were in person present to give evidence. For reducing such testimony to writing the justice shall receive the same fees as are allowed for taking depositions. (Rev., s. 3558; Code, s. 1111; 1881, c. 256, ss. 4, 5; C. S. 4474.)

§ 14-353. Influencing agents and servants in violating duties owed employers.—Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever with intent to influence his action in relation to his principal's, employer's or master's business; any agent, employee or servant who requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business; any agent, employee or servant who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commission, discount or bonus, shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1913, c. 190, s. 1; C. S. 4475.)

§ 14-354. Witness required to give self-criminating evidence; no suit or prosecution to be founded thereon.—No person shall be excused from attending, testifying or producing books, papers, contracts, agreements and other documents before any court, or in obedience to the subpœna of any court, having jurisdiction of the crime denounced in § 14-353, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or to subject him to a penalty or to a forfeiture; but no person shall be liable to any suit or prosecution, civil or criminal, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before such court or in obedience to its subpœna or in any such case or proceeding: Provided, that no person so testifying or producing any such books, papers, contracts, agreements or other documents shall be exempted from prosecution and punishment for perjury committed in so testifying. (1913, c. 190, s. 2; C. S. 4476.)

§ 14-355. Blacklisting employees.—If any person, agent, company or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company or corporation, such person, agent or corporation shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars; and such person, agent, company or corporation shall be liable in penal damages to such discharged person, to be recovered by civil action. This section shall not be construed as prohibiting any person or agent of any company or corporation from furnishing in writing, upon request, any other person, company or corporation to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge. (1909, c. 858, s. 1; C. S. 4477.)

§ 14-356. Conspiring to blacklist employees.—It shall be unlawful for two or more persons to agree together to blacklist any discharged employee or to attempt, by words or writing or any other means whatever, to prevent such discharged employee, or any employee who may have voluntarily left the service of his employer, from obtaining employment with any other person or company. Persons violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the discretion of the court. (1909, c. 858, s. 2; C. S. 4478.)

§ 14-357. Issuing nontransferable script to laborers.—If any person who employs laborers by the day, week or month shall issue in payment for the services of such laborers any ticket, certificate or other script bearing upon its face the word "nontransferable," or shall issue such ticket, certificate or other script in any form that would render it void by transfer from the person to whom issued, or shall refuse to pay to the person holding the same its face value, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars for each offense, or imprisoned not more than thirty days. (Rev., s. 3730; 1889, c. 280; 1891, cc. 46, 78, 167, 370, 456; 1895, c. 127; C. S. 4479.)

Art. 46. Regulation of Landlord and Tenant.

§ 14-358. Local: Violation of certain contracts between landlord and tenant.—If any tenant or cropper shall procure advances from his landlord to enable him to make a crop on the land rented by him, and then willfully abandon the same without good cause and before paying for such advances; or if any landlord shall contract with a tenant or cropper to furnish him advances to enable him to make a crop, and shall willfully fail or refuse, without good cause, to furnish such advances according to his agreement, he shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Any person employing a tenant or cropper who has violated the provisions of this section, with knowledge of such violation, shall be liable to the landlord furnishing such advances for the amount thereof, and shall also be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall apply to the following counties only: Wayne, Lenoir, Greene, Johnston, Jones, Onslow, Craven, Cleveland, Sampson, Pitt, Duplin, Gates, Cumberland, Perquimans, Chowan, Robeson, Bladen, Nash, Harnett, Edgecombe, Hertford, Wilson, Rockingham, Pender, Currituck, Gaston, Stokes, Surry, Alamance, Northampton, Beaufort, Chatham, Tyrrell, Mecklenburg, Halifax, Caswell, Camden, Cabarrus, Columbus, Martin, Washington, Wake, Alexander, Mont-

gomery, Pamlico, Rowan, Rutherford, Bertie, Vance, Warren, Lincoln, Randolph and Lee. (Rev., s. 3366; 1905, cc. 297, 383, 445, 820; 1907, c. 84, s. 1; 1907, c. 595, s. 1; 1907, cc. 8, 639, 719, 869; Ex. Sess. 1920, c. 26; 1925, c. 285, s. 2; Pub. Loc. 1925, c. 211; Pub. Loc. 1927, c. 614; 1931, c. 136, s. 1; C. S. 4480.)

§ 14-359. Local: Tenant neglecting crop; landlord failing to make advances; harboring or employing delinquent tenant.—If any tenant or cropper shall procure advances from his landlord to enable him to make a crop on the land rented by him, and then willfully refuse to cultivate such crops or negligently or willfully abandon the same without good cause and before paying for such advances; or if any landlord who induces another to become tenant or cropper by agreeing to furnish him advances to enable him to make a crop, shall willfully fail or refuse without good cause to furnish such advances according to his agreement; or if any person shall entice, persuade or procure any tenant, lessee or cropper, who has made a contract agreeing to cultivate the land of another, to abandon or to refuse or fail to cultivate such land, or after notice shall harbor or detain on his own premises, or on the premises of another, any such tenant, lessee or cropper, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not more than thirty days. Any person who employs a tenant or cropper who has violated the provisions of this section, with knowledge of such violation, shall be liable to the landlord furnishing such advances for the amount thereof. This section shall apply only to the following counties: Washington, Cabarrus, Alamance, Davidson, Harnett, Wake, Hyde, Anson, Hertford, Sampson, Franklin, Union, Richmond, Moore, Lincoln, Rowan, Rutherford, Halifax, Rockingham, Vance, Lee, Stokes, Granville, Randolph, Person and Stanly. (Rev., s. 3367; 1905, c. 299, ss. 1-7; 1907, c. 84, s. 2; 1907, c. 238, s. 1; 1907, c. 595, s. 2; 1907, cc. 543, 810; Ex. Sess. 1920, cc. 20, 26; 1923, c. 32; 1925, c. 285, s. 3; Pub. Loc. 1927, c. 614; 1929, c. 5, s. 1; 1931, c. 44; 1931, c. 136, s. 2; 1939, c. 95; C. S. 4481.)

Art. 47. Cruelty to Animals.

§ 14-360. Cruelty to animals; construction of section.—If any person shall willfully overdrive, overload, wound, injure, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill or cause or procure to be overdriven, overloaded, wounded, injured, tortured, tormented, deprived of necessary sustenance, cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or animal, every such offender shall for every such offense be guilty of a misdemeanor. In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit lawful shooting of birds, deer and other game for human food. (Rev., s. 3299; Code, ss. 2482, 2490; 1891, c. 65; 1881, c. 34, s. 1; 1881, c. 368, ss. 1, 15; 1907, c. 42; C. S. 4483.)

§ 14-361. Instigating or promoting cruelty to animals.—If any person shall willfully set on foot, or instigate, or move to, carry on, or promote, or engage in, or do any act towards the furtherance of any act of cruelty to any animal, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3300; Code, s. 2487; 1891, c. 65; 1881, c. 368, s. 6; C. S. 4484.)

§ 14-362. Bear-baiting, cock-fighting and similar amusements.—If any person shall keep, or use, or in any way be connected with, or interested in the management of, or shall receive money for the admission of any person to, any place kept or used for the purpose of fighting, or baiting any bull, bear, dog, cock, or other animal; or if any person shall encourage, aid or assist therein, or shall permit or suffer any place to be so kept or used, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3301; Code, s. 2483; 1891, c. 65; 1881, c. 368, s. 2; C. S. 4485.)

§ 14-363. Conveying animals in a cruel manner.—If any person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a cruel or inhuman manner, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. Whenever an offender shall be taken into custody therefor by any officer, the officer may take charge of such vehicle or other conveyance and its contents, and deposit the same in some safe place of custody. The necessary expenses which may be incurred for taking charge of and keeping and sustaining the vehicle or other conveyance shall be a lien thereon, to be paid before the same can be lawfully reclaimed; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of such animal in an action therefor. (Rev., s. 3302; Code, s. 2486; 1891, c. 65; 1881, c. 368, s. 5; C. S. 4486.)

Art. 48. Animal Diseases.

§ 14-364. Selling, using or exposing diseased animals.—If any person shall sell, offer for sale, use or expose, or cause or procure to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or any other contagious or infectious disease known by such person to be dangerous to the life, or which shall be diseased past recovery, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3295; Code, s. 2488; 1891, c. 65; 1881, c. 368, s. 7; C. S. 4487.)

Art. 49. Protection of Livestock Running at Large.

§ 14-365. Failing to show hide and ears of livestock killed while running at large.—If any person shall kill any neat cattle, sheep or hogs in the woods or range, and shall for two days fail to show the hide and ears to the nearest justice or to two freeholders, he shall be guilty of a misdemeanor.

(Rev., s. 3315; Code, s. 2318; R. C., c. 17, s. 2; 1901, c. 546; 1907, c. 821; C. S. 4493.)

Local Modification.—Tyrrell: C. S. 4493.

§ 14-366. Molesting or injuring livestock.—If any person shall unlawfully and on purpose drive any livestock, lawfully running at large in the range, from said range, or shall kill, maim or injure any livestock, lawfully running at large in the range or in the field or pasture of the owner, whether done with actual intent to injure the owner, or to drive the stock from the range, or with any other unlawful intent, every such person, his counselors, aiders, and abettors, shall be guilty of a misdemeanor: Provided, that nothing herein contained shall prohibit any person from driving out of the range any stock unlawfully brought from other states or places. In any indictment under this section it shall not be necessary to name in the bill or prove on the trial the owner of the stock molested, maimed, killed or injured. (Rev., s. 3314; Code, s. 1002; 1885, c. 383; 1887, c. 368; 1895, c. 190; R. C., c. 34, s. 104; 1850, c. 94, ss. 1, 2; C. S. 4494.)

Local Modification.—Graham, Haywood, Jackson, Swain, Transylvania: C. S. 4494.

§ 14-367. Altering the brands of and misbranding another's livestock.—If any person shall knowingly alter or deface the mark or brand of any other person's horse, mule, ass, neat cattle, sheep, goat, or hog, or shall knowingly mismark or brand any such beast that may be unbranded or unmarked, not properly his own, with intent to defraud any other person, the person so offending shall be guilty of a felony, and shall be punished as if convicted of larceny. (Rev., s. 3317; Code, s. 1001; R. C., c. 34, s. 57; 1797, c. 485, s. 2; C. S. 4495.)

§ 14-368. Placing poisonous shrubs and vegetables in public places.—If any person shall throw into or leave exposed in any public square, street, lane, alley or open lot in any city, town or village, or in any public road, any mockorange or other poisonous shrub, plant, tree or vegetable, he shall be liable in damages to any person injured thereby and shall also be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. (Rev., s. 3318; 1887, c. 338; C. S. 4496.)

§ 14-369. Wounding, capturing or killing of homing pigeons prohibited.—It shall be unlawful for any person or persons at any time or in any manner to hurt, pursue, take, capture, wound, maim, disfigure or kill any homing pigeon then and there owned by another person, or to trap the same by use of any pit, pitfall, scaffold, cage, snare, trap, net, baited hook or similar trapping device, or make use of any drug, poison, explosive or chemical for the purpose of injuring, capturing or killing any such homing pigeon. Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished in the discretion of the court. (1941, c. 10.)

Art. 50. Protection of Letters, Telegrams, and Telephone Messages.

§ 14-370. Wrongfully obtaining or divulging knowledge of telephonic messages.—If any person wrongfully obtains, or attempts to obtain, any knowledge of a telephonic message by connivance with a clerk, operator, messenger or other employee of a telephone company, or, being such clerk, operator, messenger or employee, willfully divulges to any but the person for whom it was intended, the contents of a telephonic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, he shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court. (Rev., s. 3848; 1903, c. 599; C. S. 4497.)

§ 14-371. Violating privacy of telegraphic messages; failure to transmit and deliver same promptly.—If any person wrongfully obtains, or attempts to obtain, any knowledge of a telegraphic message by connivance with a clerk, operator, messenger, or other employee of a telegraph company, or, being such clerk, operator, messenger, or other employee, willfully divulges to any but the person for whom it was intended, the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or willfully refuse or neglect duly to transmit or deliver the same, he shall be guilty of a misdemeanor. (Rev., s. 3846; 1889, c. 41, s. 1; C. S. 4498.)

§ 14-372. Unauthorized opening, reading or publishing of sealed letters and telegrams.—If any person shall willfully, and without authority, open or read, or cause to be opened or read, a sealed letter or telegram, or shall publish the whole or any portion of such letter or telegram, knowing it to have been opened or read without authority, he shall be guilty of a misdemeanor. (Rev., s. 3728; 1889, c. 41, s. 2; C. S. 4499.)

Art. 51. Protection of the Game of Baseball.

§ 14-373. Bribery of baseball players, umpires, and officials.—If any person shall bribe or offer to bribe, any baseball player with the intent to influence his play, action or conduct in any baseball game, or if any person shall bribe or offer to bribe any umpire of a baseball game, with intent to influence his decision or bias his opinion or judgment, in relation to any baseball game, or if any person shall bribe or offer to bribe any manager, or other official of a baseball club, league, or association by whatsoever named called conducting said game of baseball, such person shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment in the state penitentiary for not less than one nor more than five years. (1921, c. 23, s. 1; C. S. 4499(a).)

§ 14-374. Acceptance of bribes by baseball players, umpires, or officials.—If any baseball player shall accept, or agree to accept, a bribe offered for the purpose of influencing his play, action or conduct in any baseball game, or if any umpire of a baseball game shall accept or agree to accept a bribe offered for the purpose of influencing his decision or biasing his opinions, rulings or judgment, or if any manager of a baseball club, or club or league official shall accept or agree to accept any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in § 14-373 of this article, such baseball player, manager, official, or umpire shall be

guilty of a felony, and upon conviction, shall be punished by confinement in the state penitentiary for not less than one year nor more than five years. (1921, c. 23, s. 2; C. S. 4499(b).)

§ 14-375. Completion of offenses set out in sections 14-373, 14-374.—To complete the offenses mentioned in §§ 14-373, 14-374, it shall not be necessary that the baseball player, manager, umpire, or official, shall, at the time, have been actually employed, selected, or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of the probable employment, selection or appointment of the person to whom the bribe is offered or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered, or accepted in view of his or their possibly participating therein. (1921, c. 23, s. 3; C. S. 4499(c).)

§ 14-376. "Bribe" defined.—By a "bribe" as used in this article, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in this article need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. (1921, c. 23, s. 4; C. S. 4499(d).)

§ 14-377. Intentional losing of baseball game or aiding therein.—If any baseball player, manager or club official shall commit any willful act of omission or commission in playing or directing the playing of a baseball game with intent to cause the ball club with which he is affiliated to lose a baseball game; or if any umpire officiating in a baseball game, or league official, shall commit any willful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game which it would not otherwise have won or lost under the rules governing the playing of said game, he or they shall be guilty of a felony, and upon conviction, shall be punished by imprisonment in the state penitentiary for not less than one nor more than five years. (1921, c. 23, s. 5; C. S. 4499(e).)

§ 14-378. Venue.—In all prosecutions under this article the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in § 14-377 committed. (1921, c. 23, s. 6; C. S. 4606(c).)

§ 14-379. Bonus or extra compensation.—Nothing in this article shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. (1921, c. 23, s. 7; C. S. 4499(f).)

§ 14-380. Application of article. — This article shall apply only to baseball league and club officials, umpires, managers and players who are officials of, or employed by, baseball clubs who are members of "The National Association of Professional Baseball Leagues." (1921, c. 23, s. 7a; C. S. 4499(g).)

Art. 52. Miscellaneous Police Regulations.

§ 14-381. Desecration of state and national flag.—Any person who in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag, standard, color or ensign of the United States or state flag or ensign of this state, or shall expose or cause to be exposed to public view any such flag, standard, color or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any word, figure, mark, picture, design or drawing or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away, or for use for any purpose, any article or substance of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, color or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance upon which it is so placed, or who shall publicly mutilate, deface, defile, or defy, trample upon or cast contempt, either by words or act, upon any such flag, standard, color or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars or by imprisonment for not more than thirty days. Any person violating this section shall also forfeit a penalty of fifty dollars for each offense, to be recovered with costs in a civil action or suit in any court having jurisdiction. Such action or suit may be brought by and in the name of any citizen of this state, and such penalty, when collected, less the costs and expenses of the action or suit, shall be paid one-half to the person suing and one-half to the school fund of the county in which suit was brought; and two or more penalties may be sued for and recovered in the same action or suit.

The words, flag, standard, color or ensign, as used in this section, shall include any flag, standard, color, ensign, or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be a flag, standard, color or ensign of the United States of America, or a picture or a representation of any of them, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe it to represent the flag, colors, standard or ensign of the United States of America.

The possession by any person other than a public officer, as such, of a flag, standard, color, ensign,

article, substance, or thing, on which there is anything made unlawful by this section, shall be presumptive evidence that the same is in violation of this section. (1917, c. 271; C. S. 4500.)

§ 14-382. Pollution of water or lands used for dairy purposes.—It shall be unlawful for any person, firm, or corporation owning lands adjoining the lands of any person, firm, or corporation which are or may be used for dairy purposes or for grazing milk cows, to dispose of or permit disposal of any animal, mineral, chemical, or vegetable refuse, sewage or other deleterious matter in such way as to pollute the water on the lands so used or which may be used for dairy purposes or for grazing milk cows, or to render unfit or unsafe for use the milk produced from cows feeding upon the grasses and herbage growing on such lands. This section shall not apply to incorporated towns maintaining a sewer system. Anyone violating the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned for not more than thirty days, or both, and each day that such pollution is committed or exists shall constitute a separate offense. (1919, c. 222; C. S. 4501.)

§ 14-383. Cutting timber on town watershed without disposing of boughs and debris; misdemeanor.—Any person, firm or corporation owning lands or the standing timber on lands within four hundred feet of any watershed held or owned by any city or town, for the purpose of furnishing a city or town water supply, upon cutting or removing the timber or permitting the same cut or removed from lands so within four hundred feet of said watershed, or any part thereof, shall, within three months after cutting, or earlier upon written notice by said city or town, remove or cause to be burned under proper supervision all tree-tops, boughs, laps and other portions of timber not desired to be taken for commercial or other purposes, within four hundred feet of the boundary line of such part of such watershed as is held or owned by such town or city, so as to leave such space of four hundred feet immediately adjoining the boundary line of such watershed, so held or owned, free and clear of all such tree-tops, laps, boughs and other inflammable material caused by or left from cutting such standing timber, so as to prevent the spread of fire from such cutover area and the consequent damage to such watershed. Any such person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor. (1913, c. 56; C. S. 4502.)

§ 14-384. Injuring notices and advertisements.—If any person shall wantonly or maliciously mutilate, deface, pull or tear down, destroy or otherwise damage any notice, sign or advertisement, unless immoral or obscene, whether put up by an officer of the law in performance of the duties of his office or by some other person for a lawful purpose, before the object for which such notice, sign or advertisement was posted shall have been accomplished, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding twenty-five dollars or imprisoned not exceeding thirty days at the discretion of the court. Nothing herein contained shall apply to any person mutilating, defacing, pulling or tearing down, destroying or otherwise damaging notices, signs or advertisements put upon his own land or lands of which he may have charge or control, unless consent of such person to put up such notice, sign or advertisement shall have first been obtained, except those put up by an officer of the law in the performance of the duties of his office. (Rev., s. 3709; 1885, c. 302; C. S. 4503.)

§ 14-385. Defacing or destroying public notices and advertisements.—If any person shall willfully and unlawfully deface, tear down, remove or destroy any legal notice or advertisement authorized by law to be posted by any officer or other person, the same being actually posted at the time of such defacement, tearing down, removal or destruction, during the time for which such legal notice or advertisement shall be authorized by law to be posted, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3710; Code, s. 981; 1876-7, c. 215; C. S. 4504.)

§ 14-386. Erecting signals and notices in imitation of those of railroads.—No person, firm or corporation other than a railroad or street railway company shall, for advertisement or other purposes, erect and maintain on or near any highway any cross-arm post or other post or standard containing the words "Stop! Look! Listen!" or other such words or combinations of words in imitation of railroad signals or notices. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, in the discretion of the court. (1917, c. 230; C. S. 4505.)

§ 14-387. Operating automobile while intoxicated.—Any person who shall, while intoxicated or under the influence of intoxicating liquors or bitters, morphine or other opiates, operate a motor vehicle upon any public highway or cartway or other road, over which the public has a right to travel, of any county or the streets of any city or town in this State, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned not less than thirty days, or both, at the discretion of the court, and the judge shall upon conviction, deny said person or persons the right to drive a motor vehicle on any of the roads defined in this section for a period of not more than twelve months nor less than ninety days. (1919, c. 234; 1925, c. 283; 1927, c. 230, s. 1; C. S. 4506.)

Local Modification.—Gates: Pub. Loc. 1925, c. 41; Bertie: Pub. Loc. 1925, c. 27.

§ 14-388. Operation of motor vehicle by person under 16 years of age.—Any person who, being the owner, or in charge of any motor vehicle, authorizes or knowingly permits a person under the age of sixteen years to operate such motor vehicle along any public street or public highway in the state of North Carolina shall be guilty of a misdemeanor, and shall be punished by a fine not in excess of the sum of fifty dollars ($50.00). The term "motor vehicle," as used in this section, shall be construed to mean those vehicles it is construed to mean in § 20-38. (1923, c. 202; C. S. 4506(a).)

§ 14-389. Sale of Jamaica ginger.—It shall be unlawful for any person, firm, or corporation to sell the compound known as Jamaica ginger except upon the prescription of a duly licensed and regularly practicing physician; the person, firm, or corporation selling Jamaica ginger upon prescription shall keep a list of said prescriptions, and shall allow said list to be examined by any officer of the law, and no prescription shall ever be filled but once; it shall be unlawful for any physician to give a prescription for Jamaica ginger except to a person directly under his care, and then only in good faith for medicinal purposes only. (1919, c. 288; Pub. Loc. 1913, c. 761; C. S. 4507.)

§ 14-390. Furnishing intoxicants, poisons or firearms to inmates of charitable and penal institutions.—If any person shall sell or give to any inmate of any charitable or penal institution any intoxicating drink or any narcotic, poison or poisonous substance, except upon the prescription of a physician, or shall give or sell to any such inmate any deadly weapon, or any cartridge or ammunition for firearms of any kind, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned at the discretion of the court; and if he be an officer or employee of any institution of the state, he shall be dismissed from his office. (Rev., s. 3517; 1899, c. 1, s. 52; C. S. 4508.)

§ 14-391. Usurious loans on household and kitchen furniture or assignments of wages.—Any person, firm or corporation who shall lend money in any manner whatsoever by note, chattel mortgage, conditional sale or otherwise, upon any article of household or kitchen furniture or upon any assignment or sale of wages, earned or to be earned, and shall take, receive, reserve or charge a greater rate of interest than six per cent, either before or after the interest may accrue, or who shall refuse to give receipts for payments on interest or principal of such loan, or who shall fail and refuse to surrender the note and security when the same is paid off or a new note and mortgage is given in renewal, unless such new mortgage shall state the amount still due by the old note or mortgage and that the new one is given as additional security, shall be guilty of a misdemeanor, and in addition thereto shall forfeit double the interest which has been theretofore paid. (1907, c. 110; 1927, c. 72; C. S. 4509.)

§ 14-392. Digging ginseng on another's land during certain months.—All persons shall be allowed to dig ginseng at any time of the year for the purpose of replanting the same. If any person dig ginseng, except on his own premises, or for the purpose of replanting the same, between the first day of April and the first day of September, he shall forfeit and pay the sum of ten dollars for each day's or part of a day's digging, and shall also be guilty of a misdemeanor. (Rev., ss. 3502, 3714; Code, s. 1053; 1866-7, c. 60; 1905, c. 211; C. S. 4510.)

§ 14-393. Purchase of ginseng; register to be kept; details.—Every person, firm or corporation buying ginseng in any quantity shall keep a register, and shall keep therein a true and accurate record of each purchase, showing the amount of the ginseng, the name and residence of the person from whom purchased, the source from which obtained, and amount paid for the same and the date of the purchase. A failure to comply with the above requirements, or the making of a false entry in regard to the purchasing of such ginseng, shall be a misdemeanor, punishable in the discretion of the court. (1923, c. 199; C. S. 4510(a).)

§ 14-394. Anonymous or threatening letters, mailing or transmitting.—It shall be unlawful for any person, firm, or corporation, or any association of persons in this state, under whatever name styled, to write and transmit any letter, note, or writing, whether written, printed, or drawn, without signing his, her, their, or its true name thereto, threatening any person or persons, firm or corporation, or officers thereof with any personal injury or violence or destruction of property of such individuals, firms, or corporations, or using therein any language or threats of any kind or nature calculated to intimidate or place in fear any such person, firms or corporations, or officers thereof, as to their personal safety or the safety of their property, or using vulgar or obscene language, or using such language which if published would bring such persons into public contempt and disgrace, and any person, firm, or corporation violating the provisions of this section shall be fined or imprisoned, or both, in the discretion of the court. (1921, c. 112; C. S. 4511(a).)

§ 14-395. Commercialization of American Legion emblem; wearing by non-members.—It shall be unlawful for any one not a member of the American Legion, an organization consisting of ex-members of the army, navy and marine corps, who served as members of such organizations in the recent world war, to wear upon his or her person the recognized emblem of the American Legion, or to use the said emblem for advertising purposes, or to commercialize the same in any way whatsoever; or to use the said emblem in display upon his or her property or place of business, or at any place whatsoever. Any one violating the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars ($50.00) or imprisoned not more than thirty days. (1923, c. 89; C. S. 4511(b).)

§ 14-396. Dogs on "Capitol Square" worrying squirrels.—It shall be unlawful for any owner or keeper of a dog to permit the same to run at large on the Capitol grounds known as "Capitol Square" or to be thereon unless on leash or otherwise in the immediate physical control of said owner or keeper, or to pursue, worry or harass any squirrel or other wild animal kept on said grounds. Any person violating the provisions of this section shall be guilty of a misdemeanor punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (1925, c. 289.)

§ 14-397. Use of name of denominational college in connection with dance hall.—It shall be unlawful for any person, firm, corporation, club or society, by whatsoever name called, to use in connection with any dance, or dance hall, by advertisement, announcement, or otherwise, the name of any college, or any class or organization of any college operated and conducted by a religious denomination, unless the written permission of the Dean of such college is given, permitting

and allowing the use of the name of such denominational college, or a class or organization of the same in connection with such dance, or dance hall. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and subject to a fine of not less than one hundred dollars ($100) or imprisonment for not less than sixty days. (1927, c. 6.)

§ 14-398. Theft or destruction of property of public libraries, museums, etc.—Any person who shall steal or unlawfully take or detain, or wilfully or maliciously or wantonly write upon, cut, tear, deface, disfigure, soil, obliterate, break or destroy, or who shall sell or buy or receive, knowing the same to have been stolen, any book, document, newspaper, periodical, map, chart, picture, portrait, engraving, statue, coin, medal, apparatus, specimen, or other work of literature or object of art or curiosity deposited in a public library, gallery, museum, collection, fair or exhibition, or in any department or office of state or local government, or in a library, gallery, museum, collection, or exhibition, belonging to any incorporated college or university, or any incorporated institution devoted to educational, scientific, literary, artistic, historical or charitable purposes, shall, if the value of the property stolen, detained, sold, bought or received knowing same to have been stolen, or if the damage done by writing upon, cutting, tearing, defacing, disfiguring, soiling, obliterating, breaking or destroying any such property, shall not exceed twenty dollars ($20.00), be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. If the value of the property stolen, detained, sold or received knowing same to have been stolen, or the amount of damage done in any of the ways or manners hereinabove set out, shall exceed the sum of twenty dollars ($20.00), the person committing same shall be guilty of a felony, and shall upon conviction be punished in accordance with the laws applicable thereto. (1935, c. 300.)

§ 14-399. Placing trash, refuse, etc., within one hundred and fifty yards of hard-surfaced highway.—It shall be unlawful for any person, firm, organization, private corporation, or the governing body, or its agents and/or employees of any municipal corporation, to cause to be placed, dumped or left, or to place, dump or leave temporarily or permanently any trash, refuse, garbage, scrapped automobiles, trucks or parts thereof, of any nature whatsoever except domestic garbage or trash placed for further removal, and junk yards the property of bona fide junk dealers but which junk yards shall be properly screened or fenced from view of persons traveling the hard-surfaced highway, within one hundred and fifty yards of any hard-surfaced highway, outside of an incorporated town unless said trash, refuse, garbage, scrapped automobiles, trucks or parts thereof is concealed by some obstruction from the view of persons on such highway; and the causing to be placed, dumped or left, or placing, dumping or leaving of trash, refuse, garbage, automobiles, trucks, or parts thereof, of any nature whatsoever, as above set forth for each day or portion thereof shall constitute a separate offense.

Any person, firm, organization, private corporation or the governing body or its agents and/or employees of any municipal corporation, convicted of violation of this section shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each and every offense.

Provided however, this section shall not apply to the counties of Alleghany, Ashe, Avery, Brunswick, Columbus, Davidson, Duplin, Forsyth, Franklin, Granville, Halifax, Lincoln, Madison, Mitchell, Montgomery, Moore, Person, Richmond, Rockingham, Scotland, Stanly, Stokes, Surry, Swain, Vance, Watauga, Warren, Wilson and Yancey, Macon, Jackson, Gates, Lenoir, Bertie, Cabarrus, Buncombe, Transylvania, Martin, Caswell, Rowan, Guilford, and Hyde. (1935, c. 457; 1937, c. 446.)

§ 14-400. Tattooing prohibited.—It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under twenty-one years of age. Any one violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1937, c. 112, ss. 1, 2.)

§ 14-401. Putting poisonous foodstuffs, etc., in certain public places, prohibited.—It shall be unlawful for any person, firm or corporation to put or place any strychnine, other poisonous compounds or ground glass on any beef or other foodstuffs of any kind in any public square, street, lane, alley or on any lot in any village, town or city or on any public road, open field or yard in the country. Any person, firm or corporation who violates the provisions of this section shall be liable in damages to the person injured thereby and also shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. This section shall not apply to the poisoning of insects or worms for the purpose of protecting crops or gardens by spraying plants, crops or trees, nor to poisons used in rat extermination. (1941, c. 181.)

§ 14-401(1). Misdemeanor to tamper with examination questions.—Any person who purloins, steals, buys, receives, or sells, gives or offers to buy, give, or sell any examination questions or copies thereof of any examination provided and prepared by law before the date of the examination for which they shall have been prepared, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 146, s. 10; C. S. 5658.)

Art. 53. Sale of Weapons.

§ 14-402. Sale of certain weapons without permit forbidden.—It shall be unlawful for any person, firm, or corporation in this state to sell, give away, or dispose of, or to purchase or receive, at any place within the state from any other place within or without the state, unless a license or permit therefor shall have first been obtained by such purchaser or receiver from the clerk of the superior court of the county in which such purchase, sale, or transfer is intended to be made, any pistol, so-called pump-gun, bowie knife, dirk, dagger or metallic knucks.

It shall be unlawful for any person or persons to receive from any postmaster, postal clerk, em-

ployee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee, within the state of North Carolina any pistol, so-called pump-gun, bowie knife, dirk, dagger or metalic knucks without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same, the permit from the clerk of the superior court as provided in section 14-403. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned not less than thirty days nor more than six months, or both, in the discretion of the court. (1919, c. 197, s. 1; 1923, c. 106; C. S. 5106.)

§ 14-403. Permit issued by clerk of court; form of permit.—The clerks of the superior courts of any and all counties of this state are hereby authorized and directed to issue to any person, firm, or corporation in any such county a license or permit to purchase or receive any weapon mentioned in this article from any person, firm, or corporation offering to sell or dispose of the same, which said license or permit shall be in the following form, to wit:

North Carolina,

.....County.

I,....., clerk of the Superior Court of said county, do hereby certify that..... whose place of residence is..... Street, in ..... (or) in ..... Township.....County, North Carolina, having this day satisfied me as to his, her (or) their good moral character, and that the possession of one of the weapons described is necessary for self-defense or the protection of the home, a license or permit is therefore hereby given said ..... to purchase one pistol. (or if any other weapon is named strike out the word pistol).....from any person, firm or corporation authorized to dispose of the same.

This.....day of....., 19.....

.....

Clerk Superior Court.

(1919, c. 197, s. 2; C. S. 5107.)

§ 14-404. Applicant must be of good moral character; weapon for defense of home; clerk's fee.—Before the clerk of the superior court shall issue any such license or permit he shall fully satisfy himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor, and that such person, firm, or corporation requires the possession of the weapon mentioned for protection of the home. If said clerk shall not be so fully satisfied, he shall refuse to issue said license or permit: Provided, that nothing in this article shall apply to officers authorized by law to carry firearms. The clerk shall charge for his services upon issuing such license or permit a fee of fifty cents. (1919, c. 197, s. 3; C. S. 5108.)

§ 14-405. Record of permits kept by clerk.—The clerk of the superior court shall keep a book, to be provided by the board of commissioners of each county, in which he shall keep a record of all licenses or permits issued under this article, including the name, date, place of residence, age, former place of residence, etc., of each such person, firm, or corporation to whom or which a license or permit is issued. (1919, c. 197, s. 4; C. S. 5109.)

§ 14-406. Dealer to keep record of sales.—Every dealer in pistols, pistol cartridges and other weapons mentioned in this article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made, which record shall be open to the inspection of any duly constituted state, county or police officer, within this state. (1919, c. 197, s. 5; C. S. 5110.)

§ 14-407. Weapons to be listed for taxes.—During the period of listing taxes in each year the owner or person in possession or having the custody or care of any weapon mentioned in this article is required to list the same specifically, as is now required for listing personal property for taxes. Any person listing any such weapon for taxes shall be required to designate his place of residence, including local street address. (1919, c. 197, s. 6; C. S. 5111.)

§ 14-408. Violation of sections 14-406 or 14-407 a misdemeanor.—Any person, firm, or corporation violating any of the provisions of §§ 14-406 or 14-407 shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1919, c. 197, s. 7; C. S. 5112.)

§ 14-409. Machine guns and other like weapons.—It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, sub-machine guns, or other like weapons: Provided, however, that this section shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the clerk of the superior court of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States army, when in discharge of their official duties, officers and soldiers of the militia and the state guard when called into actual service, officers of the state, or of any county, city or town, charged with the execution of the laws of the state, when acting in the discharge of their official duties: Provided, further, that automatic shotguns and pistols or other automatic weapons that shoot less than sixteen shots shall not be construed to be or mean a machine gun or sub-machine gun under this act; and that any bona fide resident of this state who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the clerk of the superior court of the county in which said person lives.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than five hundred ($500.00) dollars, or imprisoned for not less than six months, or both, in the discretion of the court. (1933, c. 261, s. 1.)

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Art. 1. General Provisions.

§ 15-1. Statute of limitations for misdemeanors.—All misdemeanors, and petit larceny where the value of the property does not exceed five dollars, except the offenses of perjury, forgery, malicious mischief, and other malicious misdemeanors, deceit, and the offense of being accessory after the fact, now made a misdemeanor, shall be presented or found by the grand jury within two years after the commission of the same, and not afterwards: Provided, that in case any of the misdemeanors, hereby required to be prosecuted within two years, shall have been committed in a secret manner, the same may be prosecuted within two years after the discovery of the offender: Provided, further, that if any indictment found within that time shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the state. (Rev., s. 3147; Code, s. 1177; R. C., c. 35, s. 8; 1826, c. 11; 1907, c. 408; C. S. 4512.)

§ 15-2. Issue and return of criminal process.—All process, warrants and precepts, issued by any judge or justice of the peace, or clerk of any court, on any criminal prosecution, may issue at any time, and be made returnable to any day of the term of the court, to which such warrant, process, or precept is returnable. (Rev., s. 3148; Code, s. 1178; R. C., c. 35, s. 9; 1777, c. 115, s. 15; C. S. 4513.)

§ 15-3. Date of receipt and service indorsed on process.—Every sheriff or other officer shall indorse on all process and subpœnas issuing in criminal cases, whether for the state or defendant, the day when such process and subpœnas came to hand, and also the day of their execution; and on failure of any sheriff or other officer to perform either of said duties he shall forfeit and pay the sum of ten dollars for every case of neglect, to be recovered for the use of the state, in the same manner as forfeitures are recovered against sheriffs by parties in civil suits for failure to make due return of process delivered to them. (Rev., s. 3149; Code, s. 1179; R. C., c. 35, s. 10; 1850-1, c. 57; C. S. 4514.)

§ 15-4. Accused entitled to counsel.—Every person, accused of any crime whatsoever, shall be entitled to counsel in all matters which may be necessary for his defense. (Rev., s. 3150; Code, s. 1182; R. C., c. 35, s. 13; 1777, c. 115, s. 85; C. S. 4515.)

§ 15-5. Fees allowed counsel assigned to defend in capital case. — Whenever an attorney is appointed by the judge to defend a person charged with a capital crime, he shall receive such fee for performing this service as the judge may allow; but the judge shall not allow any fee until he is satisfied that the defendant charged with the capital crime is not able to employ counsel. The fees so allowed by the judge shall be paid by the county in which the indictment was found. (1917, c. 247; 1937, c. 226; C. S. 4516.)

Local Modification.—Buncombe: 1941, c. 206; Franklin: 1941, c. 211; Wayne: 1941, c. 33.

§ 15-6. Imprisonment to be in county jail.—No person shall be imprisoned by any judge, court, justice of the peace, or other peace officer except in the common jail of the county, unless otherwise provided by law: Provided, that whenever the sheriff of any county shall be imprisoned, he may be imprisoned in the jail of any adjoining county. (Rev., s. 3151; Code, s. 1174; R. C., c. 35, s. 6; 1797, c. 474, s. 3; 1879, c. 12; C. S. 4517.)

§ 15-7. Post-mortem examinations directed.—In all cases of homicide, any officer prosecuting for the state may, at any time, direct a post-mortem examination of the deceased to be made by one or more physicians to be summoned for the purpose; and the physicians shall be paid a reasonable compensation for such examination, the amount to be determined by the court and taxed in the costs, and if not collected out of the defendant the same shall be paid by the county. (Rev., s. 3152; Code, s. 1214; R. C., c. 35, s. 49; C. S. 4518.)

§ 15-8. Stolen property returned to owner.—Upon the conviction of any felon for robbing or stealing any money, goods, chattels, or other estate of any description whatever, the person from whom such goods, money, chattels or other estate were robbed or stolen shall be entitled to restitution thereof; and the court may award restitution of the articles so robbed or stolen, and make all such orders and issue such writs of restitution or otherwise as may be necessary for that purpose. (Rev., s. 3153; Code, s. 1201; R. C., c. 35, s. 34; 21 Hen. VIII, c. 11; C. S. 4519.)

§ 15-9. Magistrate may associate another with him.—Any magistrate, to whom any complaint may be made, or before whom any prisoner may be brought, as by law provided, may associate with himself any other magistrate of the same county; and the powers and duties herein mentioned may be executed by the two magistrates so associated. (Rev., s. 3154; Code, s. 1159; 1868-9, c. 178, subc. 3, s. 28; C. S. 4520.)

§ 15-10. Speedy trial or discharge on commitment for felony.—When any person who has been committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer in open court to be brought to his trial, shall not be indicted some time in the next term of the superior or criminal court ensuing such commitment, the judge of the court, upon notice in open court on the last day of the term, shall set at liberty such prisoner upon bail, unless it appear upon oath that the witnesses for the state could not be produced at the same term; and if such prisoner, upon his prayer as aforesaid, shall not be indicted and tried at the second term of the court, he shall be discharged from his imprisonment: Provided, the judge presiding may, in his discrecretion, refuse to discharge such person if the time between the first and second terms of the court be less than four months. (Rev., s. 3155; Code, s. 1658; 1868-9, c. 116, s. 33; 1913, c. 2; C. S. 4521.)

Art. 2. Record and Disposition of Seized, etc., Articles.

§ 15-11. Sheriffs, etc., to maintain register of personal property confiscated, seized or found.—Each sheriff, police department and constable in this state is hereby required to keep and maintain a book or register, and it shall be the duty of each sheriff, police department and constable to keep a record therein of all articles of personal property which may be seized or confiscated by him or it, or of which he or it may have become possessed in any way in the discharge of his duty. Said sheriffs, police departments and constables shall cause to be kept in said registers a description of such property, the name of the person from whom it was seized, if such name be known, the date and place of its seizure, and, where the article was not taken from the person of a suspect or prisoner, a brief recital of the place and circumstances concerning the possession thereof by such sheriff, police department, or constable. Such sheriff, police department and constable shall also keep in said register appropriate entries showing the manner, date, and to whom said articles are disposed of or delivered, and, if sold as hereinafter provided, a record showing the disposition of the proceeds arising from such sale. (1939, c. 195, s. 1.)

§ 15-12. Publication of notice of unclaimed property.—Unless otherwise provided herein, whenever such articles in the possession of any sheriff, police department or constable have remained unclaimed by the person who may be entitled thereto for a period of one hundred eighty (180) days after such seizure, confiscation, or receipt thereof in any other manner, by such sheriff, police department or constable, the said sheriff, police department or constable in whose possession said articles are may cause to be published one time in some newspaper published in said county a notice to the effect that such articles are in the custody of such officer or department, and requiring all persons who may have or claim any interest therein to make and establish such claim or interest not later than thirty (30) days from the date of the publication of such notice or in default thereof, such articles will be sold and disposed of. Such notice shall contain a brief description of the said articles and such other information as the said officer or department may consider necessary or advisable to reasonably inform the public as to the kind and nature of the article about which the notice relates. (1939, c. 195, s. 2.)

§ 15-13. Public sale thirty days after publication of notice.—If said articles shall remain unclaimed or satisfactory evidence of ownership thereof not be presented to the sheriff, police department or constable, as the case may be, for a period of thirty (30) days after the publication of the notice provided for in § 15-12, then the said sheriff, police department, or constable in whose custody such articles may be, is hereby authorized and empowered to sell the same at public auction for cash to the highest bidder, either at the courthouse door of the county, or at the police headquarters of the municipality in which the said articles of property are located, and at such sale to deliver the same to the purchaser or purchasers thereof. (1939, c. 195, s. 3.)

§ 15-14. Notice of sale.—Before any sale of said property is made under the provisions of this article, however, the said sheriff, police department, or constable making the same shall first advertise the sale by publishing a notice thereof in some newspaper published in the said county at least one time not less than ten days prior to the date of sale, and by posting a notice of the sale at the courthouse door and at three other public places in the said county. Said notice shall specify the time and place of sale, and contain a sufficient description of the articles of property to be sold. It shall not be required that the sale lay

open for increase bids or objections, but it may be deemed closed when the purchaser at the sale pays the amount of the accepted bid. (1939, c. 195, s. 4.)

§ 15-15. Disbursement of proceeds of sale.—From the proceeds realized from the sale of said property, the sheriff, police department, constable or other officer making the same shall first pay the costs and expenses of the sale, and all other necessary expenses incident to a compliance with this article, and any balance then remaining from the proceeds of said sale shall be paid within thirty days after the sale to the treasurer of the county board of education of the county in which such sale is made, for the benefit of the fund for maintaining the free public schools of such county. (1939, c. 195, s. 5.)

§ 15-16. Non-liability of officers.—No sheriff, police department, constable, or other officer, shall be liable for any damages or claims on account of any such sale or disposition of such property, as provided in this article. (1939, c. 195, s. 6.)

§ 15-17. Construction of article.—This article shall not be construed to apply to the seizure and disposition of whiskey distilleries, game birds, and other property or articles which have been or may be seized, where the existing law now provides the method, manner, and extent of the disposition of such articles or of the proceeds derived from the sale thereof. (1939, c. 195, s. 7.)

Art. 3. Warrants.

§ 15-18. Who may issue warrant.—The following persons respectively have power to issue process for the apprehension of persons charged with any offense, and to execute the powers and duties conferred in this chapter, namely: The chief justice and the associate justices of the supreme court, the judges of the superior court, judges of criminal courts, presiding officers of inferior courts, justices of the peace, mayors of cities, or other chief officers of incorporated towns. (Rev., s. 3156; Code, s. 1132; 1868-9, c. 178, subc. 3, s. 1; C. S. 4522.)

§ 15-19. Complainant examined on oath.—Whenever complaint is made to any such magistrate that a criminal offense has been committed within this state, or without this state and within the United States, and that a person charged therewith is in this state, it shall be the duty of such magistrate to examine on oath the complainant and any witnesses who may be produced by him. (Rev., s. 3157; Code, s. 1133; 1868-9, c. 178, subc. 3, s. 2; C. S. 4523.)

§ 15-20. Warrant issued; contents.—If it shall appear from such examination that any criminal offense has been committed, the magistrate shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it is directed forthwith to take the person accused of having committed the offense, and bring him before a magistrate, to be dealt with according to law. A justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county. (Rev., s. 3158; Code, s. 1134; 1901, c. 668; 1868-9, c. 178, subc. 3, s. 3; C. S. 4524.)

§ 15-21. Where warrant may be executed.—Warrants issued by any justice of the supreme court, or by any judge of the superior court, or of a criminal court, may be executed in any part of this state; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town, may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless indorsed as prescribed in § 15-22. (Rev., s. 3159; Code, s. 1135; 1868-9, c. 178, subc. 3, s. 4; C. S. 4525.)

§ 15-22. Warrant indorsed and served in another county.—If the person against whom any warrant is issued by a justice of the peace or chief officer of a city or town shall escape, or be in any other county out of the jurisdiction of such justice or chief officer, it shall be the duty of any justice of the peace, or any other magistrate within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting of the magistrate or chief officer issuing the warrant, to indorse his name on the same, and thereupon the person, or officer to whom the warrant was directed, may arrest the offender in that county: Provided, that an officer to whom a warrant charging the commission of a felony is directed, who is in the actual pursuit of a person known to him to be the one charged with the felony, may continue the pursuit without such indorsement. The justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county, and such warrant when so indorsed as herein prescribed shall authorize and compel the sheriff or other officer of any county in the state, in which such indorsement is made, to execute the same. (Rev., s. 3160; Code, s. 1136; 1917, c. 30; 1901, c. 668; 1868-9, c. 178, subc. 3, s. 5; C. S. 4526.)

§ 15-23. Magistrate not liable for indorsing warrant.—No magistrate shall be liable to any indictment, action for trespass or other action for having indorsed any warrant pursuant to the provisions of § 15-22, although it should afterwards appear that such warrant was illegally or improperly issued. (Rev., s. 3161; Code, s. 1137; 1868-9, c. 178, subc. 3, s. 6; C. S. 4527.)

§ 15-24. Before what magistrate a warrant returned.—Persons arrested under any warrant issued for any offense, where no provision is otherwise made, shall be brought before the magistrate who issued the warrant; or, if he be absent, or from any cause unable to try the case, before the nearest magistrate in the same county; and the warrant by virtue of which the arrest shall have been made, with a proper return indorsed thereon and signed by the officer or person making the arrest, shall be delivered to such magistrate. (Rev., s. 3162; Code, s. 1143; 1868-9, c. 178, subc. 3, s. 12; C. S. 4528.)

Art. 4. Search Warrants.

§ 15-25. In what cases issued, and where executed.—If any credible witness shall prove, upon oath, before any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, that there is a reasonable cause to suspect that any person has in his possession, or on his

premises, any property stolen, or any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling, or any false or counterfeit coin resembling, or apparently intended to resemble, or pass for, any current coin of the United States, or of any other state, province or country, or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of any such coin; or any false and counterfeit notes, bills or bonds of the United States, or of the state of North Carolina, or of any other state or country, or of any county, city or incorporated town; or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of such note, bill or bond, it shall be lawful for such justice, mayor or chief magistrate of any incorporated town to grant a warrant, to be executed within the limits of his county or of the county in which such city or incorporated town is situated, to any proper officer, authorizing him to search for such property, and to seize the same, and to arrest the person having in possession or on whose premises may be found such stolen property, or any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling, counterfeit coin, counterfeit notes, bills or bonds, or the instruments, tools or engines for making the same, and to bring them before any magistrate of competent jurisdiction, to be dealt with according to law. (Rev., s. 3163; Code, s. 1171; 1868-9, c. 178, subc. 3, s. 38; 1941, c. 53; C. S. 4529.)

§ 15-26. Nature of warrant and procedure thereon.—Such search warrant shall describe the article to be searched for with reasonable certainty, and by whom the complaint is made, and in whose possession the article to be searched for is supposed to be; it shall be made returnable as other criminal process is by law required to be. and the proceedings thereupon shall be as required in other cases of criminal complaint. (Rev., s. 3164; Code, s. 1172; 1868-9, c. 178, subc. 3, s. 39; C. S. 4530.)

§ 15-27. Warrant issued without affidavit and examination of complainant or other person; evidence discovered thereunder incompetent. — Any officer who shall sign and issue or cause to be signed and issued a search warrant without first requiring the complainant or other person to sign an affidavit under oath and examining said person or complainant in regard thereto shall be guilty of a misdemeanor; and no facts discovered by reason of the issuance of such illegal search warrant shall be competent as evidence in the trial of any action. (1937, c. 339, s. 1½.)

Art. 5. Peace Warrants.

§ 15-28. Officers authorized to issue peace warrants.—The following magistrates have power to cause to be kept all the laws made for the preservation of the public peace, and in execution of that power to require persons to give security to keep the peace, in the manner provided in this chapter, namely: The chief justice and associate justices of the supreme court, the judges of the superior courts, and of any special courts which may hereafter be created, the justices of the peace, the mayors or other chief officers of all cities and towns. (Rev., s. 3165; Code, s. 1216; 1868-9, c. 178, subc. 2, s. 1; C. S. 4531.)

§ 15-29. Complaint and examination. — Whenever complaint is made in writing, and upon oath, to any such magistrate that any person has threatened to commit any offense against the person or property of another, it shall be the duty of such magistrate to examine such complainant and any witnesses who may be produced on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined. (Rev., s. 3166; Code, s. 1217; 1868-9, c. 178, subc. 2, s. 2; C. S. 4532.)

§ 15-30. Warrant issued.—If it shall appear from such examination that there is just reason to fear the commission of any such offense by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without a seal, reciting the complaint, and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such magistrate or some other magistrate authorized to issue such warrant. (Rev., s. 3167; Code, s. 1218; 1868-9, c. 178, subc. 2, s. 3; C. S. 4533.)

§ 15-31. To whom warrant directed.—The warrant shall be directed to the sheriff, coroner or any constable, each of whom shall have power to execute the same within his county; and if no sheriff, coroner or constable can conveniently be found, the warrant may be directed to any person whatever, who shall have power to execute the same within the county in which it is issued. No justice of the peace, or mayor, or other chief officer of any city or town shall direct his warrant to any officer outside the county of said justice or chief officer. (Rev., s. 3169; Code, s. 1219; 1868-9, c. 178, subc. 2, s. 4; C. S. 4534.)

§ 15-32. Defendant recognized to keep the peace. —Whenever any person complained of on a peace warrant is brought before a justice of the peace, such person may be required to enter into a recognizance, payable to the state of North Carolina, in such sum, not exceeding one thousand dollars, as such justice shall direct, with one or more sufficient sureties, to appear before some justice of the peace within a period not exceeding six months, and not depart the court without leave, and in the meanwhile to keep the peace and be of good behavior towards all the people of the state, and particularly towards the person requiring such security. (Rev., s. 3170; Code, ss. 894, 1220; 1879, c. 92, s. 9; C. S. 4535.)

§ 15-33. Defendant discharged, or new recognizance required.—If the complainant does not appear, the party recognized shall be discharged, unless good cause be shown to the contrary. If the respective parties appear, the court shall hear their allegations and proofs, and may either discharge the recognizance taken or they may require a new recognizance, as the circumstances of the case may require, for such time as may appear necessary, not exceeding one year. (Rev., s. 3171; Code, s. 1226; 1868-9, c. 178, subc. 2, s. 12; C. S. 4536.)

§ 15-34. Defendant imprisoned for want of secu-

rity.—If such recognizance is given, the party complained of shall be discharged; if such person fails to find such security, it shall be the duty of the magistrate to commit him to prison until he shall find the same, specifying in the mittimus the cause of commitment and the sum in which such security was required. (Rev., s. 3172; Code, s. 1221; 1868-9, c. 178, subc. 2, s. 6; C. S. 4537.)

§ 15-35. How discharged from imprisonment.—Any person committed for not finding sureties of the peace as above provided, may be discharged by any magistrate upon giving such security as was originally required of such person, or by a justice of the supreme court, or judge of the superior or criminal court, by giving such other security as may seem sufficient. (Rev., s. 3174; Code, 1222; 1868-9, c. 178, subc. 2, s. 7; C. S. 4538.)

§ 15-36. Defendant may appeal.—In all proceedings on peace warrants the defendant may appeal from the decision of the justice of the peace to the superior court by giving the bond required by the justice of the peace to keep the peace, in addition to the appeal bond, when the case shall be heard by the judge holding the court in the county. (Rev., s. 3173; 1901, c. 66; C. S. 4539.)

§ 15-37. Breach of peace in presence of court.—Every person who in the presence of any magistrate specified in the first section of this article, or in the presence of any court of record, shall make any affray, or threaten to kill or beat another, or to commit any offense against his person or property; and all persons who, in the presence of such magistrate or court, shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified, and in case of failure so to do, may be committed as above provided. (Rev., s. 3168; Code, s. 1224; 1868-9, c. 178, subc. 2, s. 9; C. S. 4540.)

§ 15-38. Recognizance returned to superior court.—Every recognizance taken pursuant to the provisions of this article shall be transmitted by the magistrate taking the same to the next term of the superior court for the county in which the offense is charged to have been committed. (Rev., s. 3175; Code, s. 1223; 1868-9, c. 178, subc. 2, s. 8; C. S. 4541.)

Art. 6. Arrest.

§ 15-39. Persons present may arrest for breach of peace.—Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and, if necessary for that purpose, shall arrest the offenders. (Rev., s. 3176; Code, s. 1124; 1868-9, c. 178, subc. 1, s. 1; C. S. 4542.)

§ 15-40. Arrest for felony, without warrant.—Every person in whose presence a felony has been committed may arrest the person whom he knows or has reasonable ground to believe to be guilty of such offense, and it shall be the duty of every sheriff, coroner, constable or officer of the police, upon information, to assist in such arrest. (Rev., s. 3177; Code, s. 1129; 1868-9, c. 178, subc. 1, s. 6; C. S. 4543.)

§ 15-41. When officer may arrest without warrant.—Every sheriff, coroner, constable, officer of police, or other officer, entrusted with the care and preservation of the public peace, who shall know or have reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, and shall have reasonable ground to believe that any particular person is guilty, and shall apprehend that such person may escape if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest. (Rev., s. 3178; Code, s. 1126; 1868-9, c. 178, subc. 1, s. 3; C. S. 4544.)

§ 15-42. Sheriffs and deputies granted power to arrest felons anywhere in state.—When a felony is committed in any county in this State, and upon the commission of the felony, the person or persons charged therewith flees or flee the county, the sheriff of the county in which the crime was committed, and/or his bonded deputy or deputies, either with or without process, is hereby given authority to pursue the person or persons so charged, whether in sight or not, and apprehend and arrest him or them anywhere in the State. (1935, c. 204.)

§ 15-43. House broken open to prevent felony.—All persons are authorized to break open and enter a house to prevent a felony about to be committed therein. (Rev., s. 3179; Code, s. 1127; 1868-9, c. 178, subc. 1, s. 4; C. S. 4545.)

§ 15-44. When officer may break and enter houses.—If a felony or other infamous crime has been committed, or a dangerous wound has been given and there is reasonable ground to believe that the guilty person is concealed in a house, it shall be lawful for any sheriff, coroner, constable, or police officer, admittance having been demanded and denied, to break open the door and enter the house and arrest the person against whom there shall be such ground of belief. (Rev., s. 3180; Code, s. 1128; 1868-9, c. 178, subc. 1, s. 5; C. S. 4546.)

§ 15-45. Persons summoned to assist in arrest.—Every person summoned by a judge, justice, mayor, intendant, chief officer of any incorporated town, sheriff, coroner or constable, to aid in suppressing any riot, rout, unlawful assembly, affray or other breach of the peace, or to arrest the persons engaged in the commission of such offenses, or to prevent the commission of any felony or larceny which may be threatened or begun, shall do so. (Rev., s. 3181; Code, s. 1125; 1868-9, c. 178, subc. 1, s. 2; C. S. 4547.)

§ 15-46. Procedure on arrest without warrant.—Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law. (Rev., s. 3182; Code, s. 1130; 1868-9, c. 178, subc. 1, s. 7; C. S. 4548.)

§ 15-47. Arresting officer to inform offender of charge, allow bail except in capital cases, and permit communication with counsel or friends.—Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this state,

with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him, and it shall further be the duty of the officer making said arrest, except in capital cases, to have bail fixed in a reasonable sum, and the person so arrested shall be permitted to give bail bond; and it shall be the duty of the officer making the arrest to permit the person so arrested to communicate with counsel and friends immediately, and the right of such persons to communicate with counsel and friends shall not be denied.

Any officer who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1937, c. 257, ss. 1, 2.)

Art. 7. Fugitives from Justice.

§ 15-48. Outlawry for felony.—In all cases where any two justices of the peace, or any judge of the supreme, superior, or criminal courts shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of the law, the judge, or the two justices, being justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any judge, empowering and requiring the sheriff of any county in the state in which such fugitive shall be, and when issued by two justices, empowering and requiring the sheriff of the county of the justices, to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the courthouse of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the judge or justices shall direct; and if any person against whom proclamation has been thus issued, continue to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the state may capture, arrest and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime. (Rev., s. 3183; Code, s. 1131; 1868-9, c. 178, subc. 1, s. 8; 1866, c. 62; C. S. 4549.)

§ 15-49. Fugitives from another state arrested.—Any justice of the supreme court, or any judge of the superior court or of any criminal court, or any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, on satisfactory information laid before him that any fugitive or other person in the state has committed, out of the state and within the United States, any offense which, by law of the state in which the offense was committed, is punishable either capitally or by imprisonment for one year or upwards in any state prison, has full power and authority, and is hereby required, to issue a warrant for such fugitive or other person and commit him to any jail within the state for the space of six months, unless sooner demanded by the public authorities of the state wherein the offense may have been committed, pursuant to the act of congress in that case made and provided. If no demand be made within that time the fugitive or other person shall be liberated, unless sufficient cause be shown to the contrary. (Rev., s. 3184; Code, s. 1165; 1895, c. 103; 1868-9, c. 178, subc. 3, s. 34; C. S. 4550.)

§ 15-50. Record kept, and copy sent to governor.—Every magistrate committing any person under section 15-49, shall keep a record of the whole proceedings before him, and immediately transmit a copy thereof to the governor for such action as he may deem fit therein under the law. (Rev., s. 3185; Code, s. 1166; 1868-9, c. 178, subc. 3, s. 35; C. S. 4551.)

§ 15-51. Duty of governor.—The governor shall immediately inform the governor of the state or territory in which the crime is alleged to have been committed, or the president of the United States, if it be alleged to have been committed within the District of Columbia, of the proceedings had in such case. (Rev., s. 3186; Code, s. 1167; 1868-9, c. 178, subc. 3, s. 36; C. S. 4552.)

§ 15-52. Person surrendered on order of governor.—Every sheriff or jailer in whose custody any person so committed shall be, upon the order of the governor, shall surrender him to the person named in such order. (Rev., s. 3187; Code, s. 1168; 1868-9, c. 178, subc. 3, s. 37; C. S. 4553.)

§ 15-53. Governor may employ agents, and offer rewards.—The governor, on information made to him of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the state, and of having fled out of the jurisdiction thereof, or who conceals himself within the state to avoid arrest, or who, having been convicted, has escaped and cannot otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding four hundred dollars, according to the nature of the case, as in his opinion may be sufficient for the purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place as in the proclamation shall be directed. (Rev., s. 3188; Code, s. 1169; 1891, c. 421; R. C., c. 35, s. 4; 1800, c. 561; 1866, c. 28; 1868-9, c. 52; 1870-1, c. 15; 1871-2, c. 29; 1925, c. 275, s. 6; C. S. 4554.)

§ 15-54. Officer entitled to reward.—Any sheriff or other officer who shall make an arrest of any person charged with crime for whose apprehension a reward has been offered, is entitled to such reward, and may sue for and recover the same in any court in this state having jurisdiction: Provided, that no reward shall be paid to any sheriff or other officer for any arrest made for a crime committed within the county of such sheriff or officer making such arrest. (1913, c. 132; 1917, c. 8; C. S. 4555.)

Local Modification.—Wake: C. S. 4555.

Art. 8. Extradition.

§ 15-55. Definitions.—Where appearing in this

article the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America. (1937, c. 273, s. 1.)

§ 15-56. Duty of governor as to fugitives from justice of other states.—Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state. (1937, c. 273, s. 2.)

§ 15-57. Form of demand for extradition.—No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 15-60, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. (1937, c. 273, s. 3.)

§ 15-58. Governor may cause investigation to be made.—When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. (1937, c. 273, s. 4.)

§ 15-59. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.—When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 15-77 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. (1937, c. 273, s. 5.)

§ 15-60. Extradition of persons not present in demanding state at time of commission of crime.—The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 15-57 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. (1937, c. 273, s. 6.)

§ 15-61. Issue of governor's warrant of arrest; its recitals.—If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. (1937, c. 273, s. 7.)

§ 15-62. Manner and place of execution of warrant.—Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this article to the duly authorized agent of the demanding state. (1937, c. 273, s. 8.)

§ 15-63. Authority of arresting officer.—Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. (1937, c. 273, s. 9.)

§ 15-64. Rights of accused person; application for writ of habeas corpus. — No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of

his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. (1937, c. 273, s. 10.)

§ 15-65. Penalty for non-compliance with preceding section.—Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to § 15-64, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars ($1,000.00) or be imprisoned not more than six months, or both. (1937, c. 273, s. 11.)

§ 15-66. Confinement in jail when necessary.—The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. (1937, c. 273, s. 12.)

§ 15-67. Arrest prior to requisition.—Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under section 15-60, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state, and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under § 15-60, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. (1937, c. 273, s. 13.)

§ 15-68. Arrest without a warrant.—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in § 15-67; and thereafter his answer shall be heard as if he had been arrested on a warrant. (1937, c. 273, s. 14.)

§ 15-69. Commitment to await requisition; bail.—If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under § 15-60, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in § 15-70, or until he shall be legally discharged. (1937, c. 273, s. 15.)

§ 15-70. Bail in certain cases; conditions of bond.—Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state. (1937, c. 273, s. 16.)

§ 15-71. Extension of time of commitment; adjournment.—If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in § 15-70, but within a period not to exceed sixty days after the date of such new bond. (1937, c. 273, s. 17.)

§ 15-72. Forfeiture of bail.—If the prisoner is

admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. (1937, c. 273, s. 18.)

§ 15-73. Persons under criminal prosecution in this state at time of requisition.—If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. (1937, c. 273, s. 19.)

§ 15-74. Guilt or innocence of accused, when inquired into.—The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime. (1937, c. 273, s. 20.)

§ 15-75. Governor may recall warrant or issue alias.—The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. (1937, c. 273, s. 21.)

§ 15-76. Fugitives from this state; duty of governors.—Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. (1937, c. 273, s. 22.)

§ 15-77. Application for issuance of requisition; by whom made; contents.—I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein. at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. (1937, c. 273, s. 23.)

§ 15-78. Costs and expenses.—When the crime shall be a felony, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the actual traveling and subsistence costs of the agent of the demanding state, together with such legal fees as were paid to the officers of the state on whose governor the requisition is made. In every case the officer entitled to these expenses shall itemize the same and verify them by his oath for presentation, either to the governor of the state, in proper cases, or to the board of county commissioners, in cases in which the county pays such expenses. (1937, c. 273, s. 24.)

§ 15-79. Immunity from service of process in certain civil actions.—A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned until he has been convicted in the criminal proceeding or, if acquitted until he has had reasonable opportunity to return to the state from which he was extradited. (1937, c. 273, s. 25.)

§ 15-80. Written waiver of extradition proceedings. — Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service

of the warrant provided for in §§ 15-61 and 15-62 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: Provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in § 15-64.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. (1937, c. 273, s. 25a.)

§ 15-81. Non-waiver by this state.—Nothing in this article contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this article which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. (1937, c. 273, s. 25b.)

§ 15-82. No right of asylum; no immunity from other criminal prosecution while in this state.—After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. (1937, c. 273, s. 26.)

§ 15-83. Interpretation.—The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. (1937, c. 273, s. 27.)

§ 15-84. Short title.—This article may be cited as the Uniform Criminal Extradition Act. (1937, c. 273, s. 30.)

Art. 9. Preliminary Examination.

§ 15-85. Waiver of examination.—If any person arrested desires to waive examination and give bail, it is the duty of the officer making the arrest to take him before any magistrate of the county in which the offense is charged to have been committed, or before any judge of the supreme or superior court. (Rev., s. 3190; Code, ss. 1138, 1139; 1868-9, c. 178, subc. 3, ss. 7, 8; C. S. 4557.)

§ 15-86. Procedure, when justice has not final jurisdiction.—In all cases where a justice of the peace has not final jurisdiction of the offense, he shall desist from any final determination of the action or complaint, and proceed as hereinafter provided. (Rev., s. 3191; Code, s. 896; 1868-9, c. 178, subc. 4, s. 7; 1879, c. 302, s. 2; C. S. 4558.)

§ 15-87. Duty of examining magistrate.—The magistrate before whom any such person shall be brought shall proceed, as soon as may be, to examine the complainant and the witnesses produced in support of the prosecution on oath, in the presence of the prisoner, in regard to the offense charged, and in regard to any other matters connected with such charge which such magistrate may deem pertinent. The defendant shall be allowed a reasonable time before the hearing begins in which to send for and advise with counsel. (Rev., s. 3192; Code, ss. 1144, 1145; 1868-9, c. 178, subc. 3, s. 13; C. S. 4559.)

§ 15-88. Testimony reduced to writing; right to counsel.—The evidence given by the several witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively. If desired by the person arrested, his counsel shall be present during the examination of the complainant and the witnesses on the part of the prosecution, and during the examination of the prisoner; and the prisoner or his counsel shall be allowed to cross-examine the complainant and the witnesses for the prosecution. (Rev., s. 3193; Code, ss. 1146, 1150; 1868-9, c. 178, subc. 3, ss. 14, 19; C. S. 4560.)

§ 15-89. Prisoner examined; advised of rights.—The magistrate shall then proceed to examine the prisoner in relation to the offense charged. Such examination shall not be on oath; and before it is commenced, the prisoner shall be informed by the magistrate of the charge made against him, and that he is at liberty to refuse to answer any question that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings. (Rev., s. 3194; Code, ss. 1145, 1146; 1868-9, c. 178, subc. 3, ss. 14, 15; C. S. 4561.)

§ 15-90. Exclusion of witnesses at examination.—The witnesses produced on the part either of the prisoner or of the prosecution shall not be present at the examination of the prisoner; and while any witness is under examination the magistrate may exclude from the place in which such examination is had all witnesses who have not been examined, and may cause the witnesses to be kept separate and prevented from conversing with each other until they shall have been examined. (Rev., s. 3195; Code, s. 1149; 1868-9, c. 178, subc. 3, s. 18; C. S. 4562.)

§ 15-91. Answers in writing, read to prisoner, signed by magistrate.—The answer of the prisoner to the several interrogatories shall be reduced to writing by the magistrate, or under his direction. They shall be read to the prisoner, who may correct or add to them; and when made conformable to what he declares is the truth, shall be certified and signed by the magistrate. (Rev., s. 3196; Code, s. 1147; 1868-9, c. 178, subc. 3, s. 16; C. S. 4563.)

§ 15-92. Witnesses for defendant examined.—After the examination of the prisoner is complete, his witnesses, if he have any, shall be sworn and examined, and he may have the assistance of counsel in such examination. (Rev., s. 3197; Code, s. 1148; 1868-9, c. 178, subc. 3, s. 17; C. S. 4564.)

§ 15-93. Examination of prisoner not required in misdemeanors.—Nothing contained in the preceding sections shall be construed to require any magistrate, before whom a prisoner charged with a misdemeanor shall be brought, to take the examination of such prisoner, except where such magistrate shall deem it material so to do, or where such examination shall be required by the prisoner. (Rev., s. 3198; Code, s. 1153; 1868-9, c. 178, subc. 3, s. 22; C. S. 4565.)

§ 15-94. When prisoner discharged.—If, upon examination of the whole matter, it shall appear to the magistrate either that no offense has been committed by any person or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner. (Rev., s. 3199; Code, s. 1151; 1868-9, c. 178, subc. 3, s. 20; C. S. 4566.)

§ 15-95. When prisoner held to answer charge.—If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner to be guilty thereof, if the offense be bailable, and the prisoner offers sufficient bail, such bail shall be taken and the prisoner discharged; if no bail be offered, or the offense be not bailable, the prisoner shall be committed to prison. (Rev., s. 3202; Code, ss. 1152, 1156; 1868-9, c. 178, subc. 3, ss. 21, 25; C. S. 4567.)

§ 15-96. Witnesses against prisoner recognized.—The magistrate shall bind by recognizances the prosecutor and all the material witnesses against such prisoner to appear and testify at the next term of the court having jurisdiction for the county in which the offense is alleged to have been committed. (Rev., s. 3203; Code, s. 1152; 1868-9, c. 178, subc. 3, s. 21; C. S. 4568.)

§ 15-97. Witnesses required to give security for appearance.—Whenever the magistrate is satisfied by the proof that there is good reason to believe that any such witness will not fulfill the conditions of the recognizance unless security be required, he may order the witness to enter into a recognizance with such sureties as he shall deem meet for his appearance at such court. (Rev., s. 3204; Code, s. 1154; 1868-9, c. 178, subc. 3, s. 23; C. S. 4569.)

§ 15-98. Investigation in case of lynching.—Whenever the solicitor of any judicial district ascertains that the crime of lynching has been committed in any county in his judicial district, it is his duty to go to such county at the earliest possible moment, and at once institute proceedings for the investigation of the crime before the coroner of the county, some judge of the superior court, or justice of the peace, and for the apprehension of the offender. In the performance of this duty he shall cause to be issued subpœnas or other process to compel the attendance of witnesses and examine such witnesses on oath as to their knowledge or information touching the crime being investigated. In all cases where, upon preliminary investigation, it appears probable that any person is guilty of the crime charged, it shall be the duty of the coroner, judge or justice before whom the case is heard to bind such person, with good security, for his appearance at the next ensuing term of the superior or criminal court of some county adjoining the county in which the crime was committed for trial, and in default of bail to commit him to the jail of such adjoining county for safekeeping, and all necessary witnesses shall be recognized to appear at such term as witnesses for the state. (Rev., s. 3200; 1893, c. 461, s. 2; C. S. 4570.)

§ 15-99. Witnesses in lynching not privileged.—In all investigations before a justice of the peace, coroner, judge, grand jury, or courts and jury, on the trial of the cause, as authorized by § 15-98 or under existing law, no person shall be excused from testifying touching his knowledge or information in regard to the offense being investigated, upon the ground that his answer might tend to subject him to prosecution, pains or penalties, or that his evidence might tend to criminate himself; but no discovery made by such witness upon any such examination shall be used against him in any court or in any penal or criminal prosecution, and he shall, when so examined as a witness for the state, be altogether pardoned of any and all participation in any crime arising under the provisions of § 15-98, or under existing law, concerning which he is required to testify. (Rev., ss. 1638, 3201; 1893, c. 461, s. 5; C. S. 4571.)

§ 15-100. Proceedings certified to court; used as evidence.—All examinations and recognizances taken pursuant to the provisions of this chapter shall be certified by the magistrate taking the same to the court at which the witnesses are bound to appear, within twenty days after the taking of such examinations and recognizances: Provided, that any criminal case tried within twenty days before the sitting of criminal court shall be returned on Saturdays before the court convenes. The examinations taken and subscribed as herein prescribed may be used as evidence before the grand jury, and on the trial of the accused, provided he was present at the taking thereof and had an opportunity to hear the same and to cross-examine the disposing witness, if such witness be dead or so ill as not to be able to travel, or by procurement or connivance of the defendant has removed from the state, or is of unsound mind. (Rev., s. 3205; Code, s. 1157; 1913, c. 24; 1868-9, c. 178, subc. 3, s. 26; C. S. 4572.)

§ 15-101. Penalty for failing to return.—If any magistrate shall refuse or neglect to return to the proper court any such examination or recognizance by him taken, he may be compelled by rule of court forthwith to return the same, and in case of disobedience of such rule, may be proceeded against by attachment as for contempt of court as provided by law. (Rev., s. 3206; Code, s. 1158; 1868-9, c. 178, subc. 3, s. 27; C. S. 4573.)

Art. 10. Bail.

§ 15-102. Officers authorized to take bail, before imprisonment.—Officers before whom persons charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to take bail as follows:

1. Any justice of the supreme court, or a judge of a superior court, in all cases.

2. Any justice of the peace or chief magistrate of any incorporated city or town, in all cases of misdemeanor, and in all cases of felony not capital. (Rev., s. 3209; Code, s. 1160; 1868-9, c. 178, subc. 3, s. 29; 1871-2, c. 37; C. S. 4574.)

§ 15-103. Officers authorized to take bail, after imprisonment.—Any justice of the supreme court or any judge of a superior court has power to bail persons committed to prison charged with crime in all cases; any justice of the peace or chief magistrate of any incorporated city or town has the same power in all cases where the punishment is not capital. (Rev., s. 3210; Code, s. 1161; 1868-9, c. 178, subc. 3, s. 30; C. S. 4575.)

§ 15-104. Recognizance filed with the clerk.—Whenever a prisoner is bailed by any officer under § 15-103, such officer shall immediately cause the recognizance taken by him to be filed with the clerk of the superior court of the county to which the prisoner is recognized. (Rev., s. 3211; Code, s. 1162; 1868-9, c. 178, subc. 3, s. 31; C. S. 4576.)

§ 15-105. Bail allowed on preliminary examination.—If the offense charged in the warrant be not punishable with death, the magistrate may take from the person so arrested a recognizance with sufficient sureties for his appearance at the next term of the court having jurisdiction, to be held in the county where the offense is alleged to have been committed. (Rev., s. 3207; Code, s. 1139; 1868-9, c. 178, subc. 3, s. 8; 1871-2, c. 37, s. 1; C. S. 4577.)

§ 15-106. Duty of magistrate granting bail.—Any magistrate taking bail shall certify on the warrant the fact of his having let the defendant to bail, and shall deliver the same, together with the recognizance taken by him, to the officer or other person having charge of the prisoner, who shall deliver the same without unnecessary delay to the clerk of the court in which the prisoner has been recognized to appear. (Rev., s. 3212; Code, s. 1140; 1868-9, c. 178, subc. 3, s. 9; C. S. 4578.)

§ 15-107. Sheriff or deputy may take bail.—When any sheriff or his deputy arrests the body of any person, in consequence of the writ of capias issued to him by the clerk of a court of record on an indictment found, the sheriff or deputy, if the crime is bailable, shall recognize the offender, and take sufficient bail in the nature of a recognizance for his appearing at the next succeeding court of the county where he ought to answer, which recognizance shall be returned with the capias; and the sheriff shall in no case become bail himself.

No sheriff, deputy sheriff, constable, jailer or assistant jailer or the wife of any sheriff, deputy sheriff, constable, jailer or assistant jailer shall in any case become bail for any prisoner for money or property; nor shall any sheriff, deputy sheriff, constable, jailer or assistant jailer, or their wives become bail as agents for any bonding company or professional bondsmen. Any violation of this paragraph shall constitute a misdemeanor punishable by a fine or by imprisonment in the discretion of the court, or by both such fine and imprisonment; provided that the provisions of this paragraph shall not apply to Caswell, Currituck, Dare, Granville, Greene, Hertford, Hyde, Lenoir, Martin, Moore, Nash, Pamlico, Perquimans, Person, Pitt, Rockingham, Stokes, Transylvania and Warren counties. (Rev., s. 3208; Code, s. 1180; R. C., c. 35, s. 11; 1797, c. 474, s. 4; 1939, c. 47; C. S. 4579.)

§ 15-108. Sheriff may take bail of prisoner in custody.—If any person for want of bail shall be lawfully committed to jail at any time before final judgment, the sheriff, or other officer having him in custody, may take sufficient justified bail and discharge him; and the bail bond shall be regarded, in every respect, as other bail bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond, at the first court which is held after it is taken. (Rev., s. 3228; Code, s. 1232; R. C., c. 11, s. 8; C. S. 4580.)

§ 15-109. Bail on continuance before a justice.—Upon the continuance of any criminal action returned before any justice of the peace for trial, in which the justice is authorized to take bail on a finding of probable cause or in which he has final jurisdiction, it is the duty of the justice of the peace to take bond for his appearance, payable to the state, on the same being tendered by the accused, with such surety as in his opinion will be sufficient to insure the appearance of the accused for trial at a time and place mentioned in the bond. (Rev., s. 3213; 1889, c. 133; C. S. 4581.)

Art. 11. Forfeiture of Bail.

§ 15-110. In recognizance to keep the peace.—Every person who shall have entered into a recognizance to keep the peace shall appear according to the obligation thereof; and if he fail to appear the court shall forfeit his recognizance and order it to be prosecuted, in the manner provided by law, unless reasonable excuse for his default be given. (Rev., s. 3214; Code, s. 1225; 1868-9, c. 178, subc. 2, s. 10; C. S. 4582.)

§ 15-111. When recognizance deemed broken.—No recognizance taken under this chapter shall be deemed to be broken except in the failure of the principal in such recognizance to appear and answer according to the obligation thereof, unless such principal be convicted of some offense amounting in judgment of law to a breach of such recognizance. (Rev., s. 3215; Code, s. 1227; 1868-9, c. 178, subc. 2, s. 12; C. S. 4583.)

§ 15-112. Recognizance prosecuted.—Whenever evidence of such conviction shall be produced in the court in which the recognizance is filed, it shall be the duty of such court to order the recognizance to be prosecuted, and the solicitor shall cause the proper proceedings to be thereupon taken. (Rev., s. 3216; Code, s. 1228; 1868-9, c. 178, subc. 2, s. 13; C. S. 4584.)

§ 15-113. Notice of judgment nisi before execution.—No execution shall issue upon a forfeited recognizance, or to collect a fine imposed nisi, until a notice has issued against the person who has forfeited his recognizance or upon whom the fine has been imposed, and his sureties. (Rev., s. 3217; Code, s. 1208; R. C., c. 35, s. 43; 1777, c. 115, s. 48; C. S. 4585.)

Local Modification.—Forsyth: 1935, c. 83.

§ 15-114. What notice must contain.—When any recognizance, acknowledged by a principal and sureties, shall be forfeited by two or more of the

recognizors, the notice issued thereon shall be jointly against them all, designating which of them are principals and which sureties, and when they are bound in different sums, stating the amount forfeited by each one, and the clerk shall have no greater fee on such notice than is due when it is issued against one defendant. (Rev., s. 3218; Code, s. 1209; R. C., c. 35, s. 44; 1812, c. 836, s. 1; C. S. 4586.)

§ 15-115. Service of notice.—All notices issuing upon forfeited recognizances shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And in case he cannot be found, and has no known place of abode, and the matter be returned, then a notice shall issue, and on the like return the same shall be deemed duly served. (Rev., s. 3219; Code, s. 1210; R. C., c. 35, s. 45; 1812, c. 836, s. 2; C. S. 4587.)

§ 15-116. Judges may remit forfeited recognizances.—The judges of the superior courts may hear and determine the petition of all persons who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit, the same, and do all and anything therein as they shall deem just and right and consistent with the welfare of the state and the persons praying such relief, as well before as after final judgment entered and execution awarded. (Rev., s. 3220; Code, s. 1205; R. C., c. 35, s. 38; 1788, c. 292, s. 1; C. S. 4588.)

§ 15-117. Money refunded by clerk.—The clerk of the superior court, on the remission of any forfeited recognizance which has been paid into his office, shall refund the same, or so much thereof as shall be remitted. (Rev., s. 3221; Code, s. 1206; R. C., c. 35, s. 39; 1795, c. 442, s. 1; C. S. 4589.)

§ 15-118. Money refunded by treasurer.—If the money has been paid to the county treasurer, he shall refund it to the person entitled, on his producing an attested copy of the record from the clerk of the court, certifying that such recognizance has been remitted or lessened, signed with his own proper name, with the seal of the court affixed thereto. (Rev., s. 3222; Code, s. 1207; R. C., c. 35, s. 40; 1795, c. 442, s. 2; C. S. 4590.)

§ 15-119. Forfeiture of bond before justice.—On the failure of the accused to appear at the time and place mentioned in any bond taken by any justice of the peace for a continuance of any cause pending before him, and answer the charge, or, having appeared, on his departing the court without leave thereof first had and obtained, it shall be the duty of the justice of the peace then presiding to enter judgment nisi against the principal and his sureties in the bond for the amount mentioned therein, if the sum does not exceed the sum of two hundred dollars; and immediately issue notice to the principal and the sureties in the bond, giving ten days time, specifying time and place, to appear and show cause, if any they have, why the judgment nisi shall not be made final. (Rev., s. 3223; 1889, c. 133, s. 2; C. S. 4591.)

§ 15-120. Judgment final, rendered and enforced.—If the defendant shall fail to appear and show satisfactory reasons for not complying with the provisions of the bond, it shall then be the duty of the justice of the peace to render a final judgment thereon for the amount of the same, and immediately make and transmit to the clerk of the superior court a transcript thereof, which shall be entered upon the judgment docket of the court, and the clerk shall issue execution on the final judgment against the principal and his sureties for the collection of the amount thereof as in other judgments in behalf of the state. (Rev., s. 3224; 1889, c. 133, s. 3; C. S. 4592.)

§ 15-121. Forfeiture over two hundred dollars before justice.—If the bond shall exceed the sum of two hundred dollars, and the accused shall fail to appear as therein provided to answer the charge, or, having appeared, shall depart the court without leave first had and obtained, it shall be the duty of the justice to have the accused called, and enter upon the bond that the defendant was called and failed to answer, and immediately return the original papers in the case, together with the bond, to the clerk of the court having jurisdiction to try such action, who shall immediately enter the case upon the criminal docket of his court and enter judgment nisi for the amount of the bond, and issue notice to the accused and his sureties to appear at the next term to show cause why the judgment should not be made final and proceeded in as other cases of forfeited bonds in behalf of the state in such court. The entry on the bond by the justice of the peace shall be prima facie evidence that the principal therein had been called and failed to answer. Nothing in this section shall be so construed as to prevent justices of the peace from remitting the penalty of the bond or the right of appeal from the justice of the peace to the superior court by the defendant or his surety. (Rev., s. 3225; 1889, c. 133, s. 4; C. S. 4593.)

§ 15-122. Right of bail to surrender principal.—The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such execution awarded, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given: Provided, that in criminal proceedings the surrender by the bail, after the recognizance has been forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for. (Rev., s. 3226; Code, s. 1230; R. C., c. 11, s. 5; 1777, c. 115, s. 20; 1848, c. 7; C. S. 4594.)

§ 15-123. New bail given upon surrender; liability of sheriff.—Any person surrendered in the manner specified in § 15-122, shall have liberty, at any time before final judgment against him, to give bail; and in case of such surrender, the sheriff shall take the bail bond or recognizance to the succeeding court; and in case the sheriff shall release such person without bail, or the bail returned be held insufficient, on exception taken, the same term to which such bail bond shall be returned, and allowed by the court, the sheriff, hav-

ing due notice thereof in criminal cases, shall forfeit to the state the sum of one hundred dollars, to be recovered on motion in like manner as forfeitures for not returning process, and be subject to be indicted for misdemeanor in office; and it shall be the duty of the prosecuting officer to collect the forfeiture; and, in case of a release, the sheriff shall be liable for an escape, and may be prosecuted and punished as provided for in the chapter entitled Crimes and Punishments. (Rev., s. 3227; Code, s. 1231; R. C., c. 11, s. 6; 1827, c. 40; C. S. 4595.)

§ 15-124. Defenses open to bail.—Every matter which would entitle the principal to be discharged from arrest may be pleaded by the bail in exoneration of his liability. (Rev., s. 3229; Code, s. 1233; R. C., c. 11, s. 9; C. S. 4596.)

Art. 12. Commitment to Prison.

§ 15-125. Order of commitment.—Every commitment to prison of a person charged with crime shall state:

1. The name of the person charged.
2. The character of the offense with which he is charged.
3. The name and office of the magistrate committing him.
4. The manner in which he may be discharged; if upon giving recognizance or bail, the amount of the recognizance, the condition on the performance of which it shall be discharged, and the persons or magistrate before whom the bail may justify.
5. The court before which the prisoner shall be sent for trial. (Rev., s. 3230; Code, s. 1163; 1868-9, c. 178, subc. 3, s. 32; C. S. 4597.)

§ 15-126. Commitment to county jail.—All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offense is charged to have been comitted: Provided, if the jails of these counties are unsafe, or injurious to the health of prisoners, the committing magistrate may commit to the jail of any other convenient county. And every sheriff or jailer to whose jail any person shall be committed by any court or magistrate of competent jurisdiction shall receive such prisoner and give a receipt for him, and be bound for his safe-keeping as prescribed by law. (Rev., s. 3231; Code, s. 1164; 1868-9, c. 178, subc. 2, s. 33; C. S. 4598.)

§ 15-127. Commitment of witnesses.—If any witness required to enter into a recognizance, either with or without sureties, shall refuse to comply with such order, it shall be the duty of such magistrate to commit him to prison until he shall comply with such order, or be otherwise discharged according to law. (Rev., s. 3232; Code, s. 1155; 1868-9, c. 178, subc. 3, s. 24; C. S. 4599.)

Art. 13. Venue.

§ 15-128. In case of lynching.—The superior court of any county which adjoins the county in which the crime of lynching shall be committed shall have full and complete jurisdiction over the crime and the offender to the same extent as if the crime had been committed in the bounds of such adjoining county; and whenever the solicitor of the district has information of the commission of such a crime, it shall be his duty to furnish such information to the grand juries of all adjoining counties to the one in which the crime was committed from time to time until the offenders are brought to justice. (Rev., s. 3233; 1893, c. 461, s. 4; C. S. 4600.)

§ 15-129. In offenses on waters dividing counties.—When any offense is committed on any water, or water-course, whether at high or low water, which water or water-course, or the sides or shores thereof, divides counties, such offense may be dealt with, inquired of, tried and determined, and punished at the discretion of the court, in either of the two counties which may be nearest to the place where the offense was committed. (Rev., s. 3234; Code, s. 1193; R. C., c. 35, s. 24; C. S. 4601.)

§ 15-130. Assault in one county, death in another.—In all cases of felonious homicide when the assault has been made in one county within the state, and the person assaulted dies in any other county thereof, the offender shall be indicted and punished for the crime in the county wherein the assault was made. (Rev., s. 3235; Code, s. 1196; R. C., c. 35, s. 27; 1831, c. 22, s. 1; C. S. 4602.)

§ 15-131. Assault in this state, death in another.—In all cases of felonious homicide, when the assault has been made within this state, and the person assaulted dies without the limits thereof, the offender shall be indicted and punished for the crime in the county where the assault was made, in the same manner, to all intents and purposes, as if the person assaulted had died within the limits of this state. (Rev., s. 3236; Code, s. 1197; R. C., c. 35, s. 28; 1831, c. 22, s. 2; C. S. 4603.)

§ 15-132. Person in this state injuring one in another.—If any person, being in this state, unlawfully and willfully puts in motion a force from the effect of which any person is injured while in another state, the person so setting such force in motion shall be guilty of the same offense in this state as he would be if the effect had taken place within this state. (Rev., s. 3237; 1895, c. 169; C. S. 4604.)

§ 15-133. In county where death occurs.—If a mortal wound is given or other violence or injury inflicted or poison is administered on the high seas or land, either within or without the limits of this state, by means whereof death ensues in any county thereof, the offense may be prosecuted and punished in the county where the death happens. (Rev., s. 3238; 1891, c. 68; C. S. 4605.)

§ 15-134. Improper venue met by plea in abatement; procedure. — Because the boundaries of many counties are either undetermined or unknown, by reason whereof high offenses go unpunished; therefore, for the more effectual prosecution of offenses committed on land near the boundaries of counties, in the prosecution of all offenses it shall be deemed and taken as true that the offense was committed in the county in which by the indictment it is alleged to have taken place, unless the defendant shall deny the same by plea in abatement, the truth whereof shall be duly verified on oath or otherwise both as to substance and fact, wherein shall be set forth the proper county in which the supposed offense, if any, was committed; whereupon the court may, on motion of the state, commit the defendant, who may enter

into recognizance, as in other cases, to answer the offense in the county averred by his plea to be the proper county; and, on his prosecution in that county, it shall be deemed, conclusively, to be the proper county. But if the state, upon the plea aforesaid, will join issue, and the matter be found for the defendant, he shall be required to enter into recognizance as in other cases to answer the offense in the county averred by his plea to be the proper county, provided the offense be bailable; and, if not bailable, he shall be committed for trial in the county; and, if it be found for the state, the court in all offenses or misdemeanors shall proceed to pronounce judgment against the defendant, as upon conviction; and, in all cases of felony, the defendant shall be at liberty to plead to the indictment, and be tried on his plea of not guilty. (Rev., s. 3239; Code, s. 1194; R. C., c. 35, s. 25; C. S. 4606.)

§ 15-135. Removal of indictment with consent of defendant; pleas.—Whenever an indictment, charging the commission of a capital or other felony, is returned a true bill, the judge holding the court in which such indictment is found shall have the power, with the written consent of the defendant or defendants charged in said bill, to remove such indictment for trial to some adjacent county prior to the arraignment or plea of the defendant or defendants in such indictment, without the presence in person of the defendant or defendants, and upon such removal the pleas of the defendant or defendants may be entered in such adjacent county. (1921, c. 12, s. 1; C. S. 4606(a).)

§ 15-136. Jurisdiction of grand jury. — Upon the removal of any indictment under section 15-135, if it shall be found that there is any defect in such indictment, the grand jury of the county to which the same is removed for trial shall have as full and ample jurisdiction and power to find another indictment for the same offense as would the grand jury of the county from which the indictment was removed. (1921, c. 12, s. 2; C. S. 4606(b).)

Art. 14. Presentment.

§ 15-137. No arrest nor trial on presentment.—No person shall be arrested on a presentment of the grand jury, or put on trial before any court, but on indictment found by the grand jury, unless otherwise provided by law. (Rev., s. 3240; Code, s. 1175; R. C., c. 35, s. 6; 1797, c. 474, s. 3; 1879, c. 12; C. S. 4607.)

§ 15-138. Names of witnesses indorsed on presentment.—When a presentment shall be made of any offense by a grand jury, upon the knowledge of any of their body, or upon the testimony of witnesses, the names of such grand jurors and witnesses shall be indorsed thereon. (Rev., s. 3241; Code, s. 1176; R. C., c. 35, s. 7; 1797, c. 474, s. 2; C. S. 4608.)

§ 15-139. Subpœna for witnesses on presentment.—In issuing subpoenas for witnesses whose names are indorsed on presentments made by the grand jury, the clerk of the court shall name therein the first Tuesday of the term of court as the time for such witnesses to appear and give evidence. And no clerk shall issue a subpœna for any such witness to appear on Monday, except upon written order of the solicitor of the district. (1913, c. 168; C. S. 4609.)

Art. 15. Indictment.

§ 15-140. Waiver of bill of indictment.—No waiver of the finding and return into court of a bill of indictment in any criminal action shall be allowed in the superior courts of this state except in cases wherein the offense charged is a misdemeanor which does not include or contain the element of fraud, deceit or malice; nor shall such waiver be made in any such action except upon a plea of guilty, or a submission, or a plea of nolo contendere by the defendant in the same. No such waiver of a bill of indictment shall be allowed by the court unless by the consent of the defendant's counsel in such action, who shall be one either employed by the defendant to defend him in the action or one appointed by the court to examine into the defendant's case and report as to the same to the court; which service by an attorney so appointed by the court shall be rendered without fee or reward. (1907, c. 71; C. S. 4610.)

§ 15-141. Bills returned by foreman except in capital cases.—Grand juries shall return all bills of indictment in open court through their acting foreman, except in capital felonies, when it shall be necessary for the entire grand jury, or a majority of them, to return their bills of indictment in open court in a body. (Rev., s. 3242; 1889, c. 29; C. S. 4611.)

§ 15-142. Substance of judicial proceedings set forth.—In every indictment, information, or impeachment in which, by the common law, it may be necessary to set forth at length the judicial proceedings had in any case then or formerly pending in any court, civil or military, or before any justice of the peace, it is sufficient to set forth the substance only of the proceedings, or the substance of such part thereof as makes, or helps to make, the offense prosecuted. (Rev., s. 3243; Code, s. 1184; R. C., c. 35, s. 15; C. S. 4612.)

§ 15-143. Bill of particulars.—In all indictments when further information not required to be set out therein is desirable for the better defense of the accused, the court, upon motion, may, in its discretion, require the solicitor to furnish a bill of particulars of such matters. (Rev., s. 3244; C. S. 4613.)

§ 15-144. Essentials of bill for homicide.—In indictments for murder and manslaughter, it is not necessary to allege matter not required to be proved on the trial; but in the body of the indictment, after naming the person accused, and the county of his residence, the date of the offense, the averment "with force and arms," and the county of the alleged commission of the offense, as is now usual, it is sufficient in describing murder to allege that the accused person feloniously, willfully, and of his malice aforethought, did kill and murder (naming the person killed), and concluding as is now required by law; and it is sufficient in describing manslaughter to allege that the accused feloniously and willfully did kill and slay (naming the person killed), and concluding as aforesaid; and any bill of indictment containing the averments and allegations herein named shall be good and

sufficient in law as an indictment for murder or manslaughter, as the case may be. (Rev., s. 3245; 1887, c. 58; C. S. 4614.)

§ 15-145. Form of bill for perjury.—In every indictment for willful and corrupt perjury it is sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom, the oath was taken (averring such court or person to have competent authority to administer the same), together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than aforesaid, and without setting forth the commission or authority of the court or person before whom the perjury was committed. In indictments for perjury the following form shall be sufficient, to wit:

The jurors for the state, on their oath, present, that A. B., of .....County, did unlawfully commit perjury upon the trial of an action in .....court, in .....County, wherein .....was plaintiff and.....was defendant, by falsely asserting, on oath (or solemn affirmation) (here set out the statement or statements alleged to be false), knowing the said statement, or statements, to be false, or being ignorant whether or not said statement was true. (Rev., ss. 3246, 3247; Code, s. 1185; R. C., c. 35, s. 16; 1842, c. 49, s. 1; 1889, c. 83; C. S. 4615.)

§ 15-146. Bill for subornation of perjury.—In every indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit willful and corrupt perjury, it is sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration or any part of any record or proceedings, and without setting forth the commission or authority of the court or person before whom the perjury was committed or was agreed or promised to be committed. (Rev., s. 3248; Code, s. 1186; R. C., c. 35, s. 17; 1842, c. 49; s. 2; C. S. 4616.)

§ 15-147. Former conviction alleged in bill for second offense.—In any indictment for an offense which, on the second conviction thereof, is punished with other or greater punishment than on the first conviction, it is sufficient to state that the offender was, at a certain time and place, convicted thereof, without otherwise describing the previous offense; and a transcript of the record of the first conviction, duly certified, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction. (Rev., s. 3249; Code, s. 1187; R. C., c. 35, s. 18; C. S. 4617.)

§ 15-148. Manner of alleging joint ownership of property.—In any indictment wherein it is necessary to state the ownership of any property whatsoever, whether real or personal, which belongs to, or is in the possession of, more than one person, whether such persons be partners in trade, joint tenants or tenants in common, it is sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others as the case may be; and whenever, in any such indictment, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants or tenants in common, it is sufficient to describe them in the manner aforesaid; and this provision shall extend to all joint-stock companies and trustees. (Rev., s. 3250; Code, s. 1188; R. C., c. 35, s. 19; C. S. 4618.)

§ 15-149. Description in bill for larceny of money.—In every indictment in which it is necessary to make any averment as to the larceny of any money, or United States treasury note, or any note of any bank whatsoever, it is sufficient to describe such money, or treasury note, or bank note, simply as money, without specifying any particular coin, or treasury note, or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin, or treasury note, or bank note, although the particular species of coin, of which such amount was composed, or the particular nature of the treasury note, or bank note, shall not be proven. (Rev., s. 3251; Code, s. 1190; 1876-7, c. 68; C. S. 4619.)

§ 15-150. Description in bill for embezzlement.—In indictments for embezzlement, except when the offense relates to a chattel, it is sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved. (Rev., s. 3252; Code, s. 1020; 1871-2, c. 145, s. 2; C. S. 4620.)

§ 15-151. Intent to defraud; larceny and receiving.—In any case where an intent to defraud is required to constitute the offense of forgery, or any other offense whatever, it is sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city, town, or parish, or body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person. The defendant may be charged in the same indictment in several counts with the separate offenses of receiving stolen goods, knowing them to be stolen, and larceny. (Rev., s. 3253; Code, s. 1191; R. C., c. 35, ss. 21, 23; 1852, c. 87, s. 2; 1874-5, c. 62; C. S. 4621.)

§ 15-152. Separate counts; consolidation.—When there are several charges against any person for the same act or transaction or for two or more acts or transactions connected together, or for two or more transactions of the same class of crimes or offenses, which may be properly joined, instead of several indictments, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court will order them to be consolidated: Provided, that in such consolidating cases the defendant shall be taxed the solicitor's full fee for the first count, and a half fee for only one subsequent count upon which conviction is had or plea of guilty entered: Provided, this section shall not be construed to

reduce the punishment or penalty for such offense or offenses. (1917, c. 168; 1921, c. 100; C. S. 4622.)

§ 15-153. Bill or warrant not quashed for informality.—Every criminal proceeding by warrant, indictment, information, or impeachment is sufficient in form for all intents and purposes if it express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in the bill or proceeding, sufficient matter appears to enable the court to proceed to judgment. (Rev., s. 3254; Code, s. 1183; R. C., c. 35, s. 14; 37 Hen. VIII, c. 8; 1784, c. 210, s. 2; 1811, c. 809; C. S. 4623.)

§ 15-154. No quashal for grand juror's failure to pay taxes or being party to suit.—No indictment shall be quashed nor shall judgment thereon be arrested by reason of the fact that any member of the grand jury finding such bills of indictment had not paid his taxes for the preceding year, or was a party to any suit pending and at issue. (1907, c. 36; C. S. 4624.)

§ 15-155. Defects which do not vitiate.—No judgment upon any indictment for felony or misdemeanor, whether after verdict, or by confession, or otherwise, shall be stayed or reversed for the want of the averment of any matter unnecessary to be proved, nor for omission of the words "as appears by the record," or of the words "with force and arms," nor for the insertion of the words "against the form of the statutes" instead of the words "against the form of the statute," or vice versa; nor for omission of the words "against the form of the statute" or "against the form of the statutes," nor for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened; nor for want of a proper and perfect venue, when the court shall appear by the indictment to have had jurisdiction of the offense. (Rev., s. 3255; Code, s. 1189; R. C., c. 35, s. 20; 7 Hen. VIII, c. 8; C. S. 4625.)

Art. 16. Trial before Justice.

§ 15-156. In cases of final jurisdiction.—When the justice is satisfied that he has jurisdiction, if no jury is asked for, he shall proceed to determine the case, and shall either acquit the accused or find him guilty, and sentence him to such punishment as the case may require, not to exceed in any case a fine of fifty dollars or imprisonment in the county jail for thirty days. (Rev., s. 3256; Code, s. 897; 1868-9, c. 178, subc. 4, s. 8; C. S. 4626.)

§ 15-157. Trial by jury, if demanded.—If either the complainant or the accused shall ask for it, the justice shall allow a trial by jury, as is provided in civil actions before justices of the peace. (Rev., s. 3257; Code, s. 898; 1868-9, c. 178, subc. 4, s. 9; C. S. 4627.)

§ 15-158. What submitted to jury.—In case a trial by jury is had, the justice shall submit to the jury in each case simply the question of the guilt or innocence of the accused of the offense charged, and shall enter the verdict on his docket, and adjudge accordingly. (Rev., s. 3258; Code, s. 899; 1868-9, c. 178, subc. 4, s. 10; C. S. 4628.)

§ 15-159. Commitment after judgment. — The commitment to the county prison shall set forth—

1. The name of the guilty person.
2. The nature of the offense of which he is convicted and the date of the trial.
3. The period of his imprisonment.
4. It shall be directed to the sheriff of the county, or to the keeper of the county jail, and shall direct him to keep the prisoner for the time stated, or until discharged by law.
5. The name of the constable or other officer required to execute it.
6. It shall be signed by the justice and be dated. (Rev. s. 3259; Code, s. 1238; 1868-9, c. 178, subc. 4, s. 17; C. S. 4629.)

§ 15-160. Parties entitled to copy of papers; bar to indictment.—The justice shall give to either party on request, and on payment of his lawful fee, a copy of the complaint and of his finding and sentence. Such finding and sentence may be pleaded in bar of any indictment subsequently found for the same offense. (Rev., s. 3260; Code, ss. 902, 903; 1868-9, c. 178, subc. 4, ss. 13, 14; C. S. 4630.)

§ 15-161. Justice to make return of cases to superior court.—It is the duty of each justice of the peace on or before Monday of every term of the superior court of his county, to furnish the clerk of the court with a list of the names and offenses of all parties tried and finally disposed of by such justice of the peace, together with the papers in each case, in all criminal actions, since the last term of the superior court. The clerk of the court shall hand a copy of such list to the solicitor and to the grand jury at each term of court; and no indictment shall be found against any party whose case has been so finally disposed of by any justice of the peace: Provided, that this section shall not be deemed to extend or enlarge or otherwise affect the jurisdiction of justices of the peace, except as provided by law. (Rev., s. 3261; Code, s. 906; 1869-70, c. 110; C. S. 4631.)

Art. 17. Trial in Superior Court.

§ 15-162. Prisoner standing mute, plea "not guilty" entered.—If any person, being arraigned upon or charged in any indictment for any crime, shall stand mute of malice or will not answer directly to the indictment, the court shall order the plea of "not guilty" to be entered on behalf of such person; and the plea so entered shall have the same force and effect as if such person had pleaded the same. (Rev., s. 3262; Code, s. 1198; R. C., c. 35, s. 29; R. S., c. 35, s. 16; C. S. 4632.)

§ 15-163. Peremptory challenges of jurors by defendant.—Every person on joint or several trial for his life may make a peremptory challenge of fourteen jurors and no more; and in all joint or several trials for crimes and misdemeanors, other than capital, every person on trial shall have the right of challenging peremptorily, and without showing cause, six jurors and no more. And to

enable defendants to exercise this right, the clerk in all such trials shall read over the names of the jurors on the panel, in the presence and hearing of the defendants and their counsel, before the jury shall be impaneled to try the issue; and the judge or other presiding officer of the court shall decide all questions as to the competency of jurors. (Rev., s. 3263; Code, s. 1199; 1913, c. 31, s. 3; 1887, c. 53; R. C., c. 35, s. 32; 1871-2, c. 39; R. S., c. 35, ss. 19, 21; 1777, c. 115, s. 85; 1812, c. 833; 1801, c. 592, s. 1; 1826, c. 9; 22 Hen. VIII, c. 14, s. 6; 1935, c. 475, s. 2; C. S. 4633.)

§ 15-164. Peremptory challenges by the state.—In all capital cases the prosecuting officer on behalf of the state shall have the right to challenge peremptorily six jurors for each defendant, but shall not have the right to stand any jurors at the foot of the panel. The challenge must be made before the juror is tendered to the prisoner, and if he will challenge more than six jurors he shall assign for his challenge a cause certain; and in all other cases of a criminal nature a challenge of four jurors shall be allowed in behalf of the state for each defendant, and challenge also for a cause certain, and in all cases of challenge for cause certain the same shall be inquired of according to the custom of the court. (Rev., s. 3264; Code, s. 1200; 1913, c. 31, s. 4; 1907, c. 415; 1887, c. 53; R. C., c. 35, s. 33; 1827, c. 10; 33 Edw. I, c. 4; 1935, c. 475, s. 3; C. S. 4634.)

§ 15-165. Challenge to special venire same as to tales jurors.—In the trial of all criminal cases, where a special venire shall be ordered, the same causes of challenge to the jurors summoned on the special venire shall be allowed as exist to tales jurors. (Rev., s. 3265; 1887, c. 53; C. S. 4635.)

§ 15-166. Exclusion of bystanders in trials for rape.—In the trial of cases for rape and of assault with the intent to commit rape, the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the court-room all persons except the officers of the court, the defendant and those engaged in the trial of the case; and upon the preliminary hearing before a justice of the peace of the offenses above named, that officer may adopt a like course. (1907, c. 21; C. S. 4636.)

§ 15-167. Term expiring during trial extended.—In case the term of a court shall expire while a trial for felony shall be in progress, and before judgment shall be given therein, the judge shall continue the term as long as in his opinion it shall be necessary for the purposes of the case; and he may in his discretion exercise the same power in the trial of any other cause under the same circumstances, except civil actions begun after Thursday of the last week. (Rev., s. 3266; Code, s. 1229; 1893, c. 226; C. C. P., s. 397; R. C., c. 31, s. 16; 1830, c. 22; C. S. 4637.)

§ 15-168. Justification as defense to libel.—Every defendant who is charged by indictment with the publication of a libel may prove on the trial for the same the truth of the facts alleged in the indictment; and if it shall appear to the satisfaction of the jury that the facts are true, the defendant shall be acquitted of the charge. (Rev., s. 3267; Code, s. 1195; R. C., c. 35, s. 26; C. S. 4638.)

§ 15-169. Conviction of assault, when included in charge.—On the trial of any person for rape, or any felony whatsoever, when the crime charged includes an assault against the person, it is lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding; and when such verdict is found the court shall have power to imprison the person so found guilty of an assault, for any term now allowed by law in cases of conviction when the indictment was originally for the assault of a like character. (Rev., s. 3268; 1885, c. 68; C. S. 4639.)

§ 15-170. Conviction for a less degree or an attempt.—Upon the trial of any indictment the prisoner may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime. (Rev., s. 3269; 1891, c. 205, s. 2; C. S. 4640.)

§ 15-171. Burglary in the first degree charged, verdict for second degree.—When the crime charged in the bill of indictment is burglary in the first degree the jury, upon the finding of facts sufficient to constitute burglary in the first degree as defined by statute, may elect to render a verdict of guilty of burglary in the second degree if they deem it proper so to do. The judge in his charge shall so instruct the jury. (Rev., s. 3270; 1889, c. 434, s. 3; 1941, c. 7, s. 1; C. S. 4641.)

§ 15-172. Verdict for murder in first or second degree.—Nothing contained in the statute law dividing murder into degrees shall be construed to require any alteration or modification of the existing form of indictment for murder, but the jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree. (Rev., s. 3271; 1893, c. 85, s. 3; C. S. 4642.)

§ 15-173. Demurrer to the evidence.—When on the trial of any criminal action in the superior court, or in any criminal court, the state has produced its evidence and rested its case, the defendant may move to dismiss the action or for judgment of nonsuit. If the motion is allowed, judgment shall be entered accordingly; and such judgment shall have the force and effect of a verdict of "not guilty" as to such defendant. If the motion is refused, the defendant may except; and if the defendant introduces no evidence, the case shall be submitted to the jury as in other cases, and the defendant shall have the benefit of his exception on appeal to the supreme court.

Nothing in this section shall prevent the defendant from introducing evidence after his motion for nonsuit has been overruled; and he may again move for judgment of nonsuit after all of the evidence in the case is concluded. If the motion is then refused, upon consideration of all of the evidence, the defendant may except; and, after the jury has rendered its verdict, he shall have the benefit of such latter exception on appeal to the supreme court. If defendant's motion for judgment of nonsuit be granted, or be sustained on appeal to the supreme court, it shall in all cases have the force and effect of a verdict of "not guilty." (1913, c. 73; Ex. Sess. 1913, c. 32; C. S. 4643.)

§ 15-174. New trial to defendant.—The courts may grant new trials in criminal cases when the defendant is found guilty, under the same rules and regulations as in civil cases. (Rev., s. 3272; Code, s. 1202; R. C., c. 35, s. 35; 1815, c. 895; C. S. 4644.)

§ 15-175. Nol. pros. after two terms; when capias and subpœnas to issue.—A nolle prosequi "with leave" shall be entered in all criminal actions in which the indictment has been pending for two terms of court and the defendant has not been apprehended and in which a nolle prosequi has not been entered, unless the judge for good cause shown shall order otherwise. The clerk of the superior court shall issue a capias for the arrest of any defendant named in any criminal action in which a nolle prosequi has been entered when he has reasonable ground for believing that such defendant may be arrested or upon the application of the solicitor of the district. When any defendant shall be arrested it shall be the duty of the clerk to issue a subpœna for the witnesses for the state indorsed on the indictment. (Rev., s. 3273; 1905, c. 360, ss. 1, 3, 4; C. S. 4645.)

§ 15-176. Prisoner not to be tried in prison uniform.—It shall be unlawful for any sheriff, jailer or other officer to require any person imprisoned in jail to appear in any court for trial dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with shaven or clipped head. And no person charged with a criminal offense shall be tried in any court while dressed in the uniform or dress of a prisoner or convict, or in any uniform or apparel other than ordinary civilian's dress, or with head shaven or clipped by or under the direction and requirement of any sheriff, jailer or other officer, unless the head was shaven or clipped while such person was serving a term of imprisonment for the commission of a crime.

Any sheriff, jailer or other officer who violates the provisions of this section shall be guilty of a misdemeanor. (1915, c. 124; C. S. 4646.)

Art. 18. Appeal.

§ 15-177. Appeal from justice, trial de novo.—The accused may appeal from the sentence of the justice to the superior court of the county. On such appeal being prayed, the justice shall recognize both the prosecutor and the accused, and all the material witnesses, to appear at the next term of the court, in such sums as he shall think proper; and he may require the accused to give sureties for his appearance as aforesaid. In all cases of appeal, the trial shall be anew, without prejudice from the former proceedings. (Rev., s. 3274; Code, s. 900; 1868-9, c. 178, subc. 4, s. 11; 1879, c. 92, s. 10; C. S. 4647.)

§ 15-178. Justice to return papers and findings to superior court.—In every case in which an appeal shall be prayed the justice shall forthwith transmit to the clerk of the superior court of the county all papers in the case, together with a copy of the verdict, if any, of his determination of the facts if there shall have been no trial by jury, and of the sentence, in which shall be set forth all the facts found by him, as well as his finding of those which were alleged in the complaint and which were found by him not to be proved. (Rev., s. 3275; Code, s. 901; 1868-9, c. 178, subc. 4, s. 12; C. S. 4648.)

§ 15-179. When state may appeal.—An appeal to the supreme court may be taken by the state in the following cases, and no other. Where judgment has been given for the defendant—

1. Upon a special verdict.
2. Upon a demurrer.
3. Upon a motion to quash.
4. Upon arrest of judgment. (Rev., s. 3276; Code, s. 1237; C. S. 4649.)

§ 15-180. Appeal by defendant to supreme court.—In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the supreme court; and the appeal shall be perfected and the case for the supreme court settled, as provided in civil actions. (Rev., s. 3277; Code, s. 1234; R. C., c. 4, s. 21; 1818, c. 962, s. 4; C. S. 4650.)

§ 15-181. Defendant may appeal without security for costs.—In all cases of conviction in the superior courts, the defendant shall have the right to appeal without giving security for costs, upon filing an affidavit that he is wholly unable to give security for the costs, and is advised by counsel that he has reasonable cause for the appeal prayed, and that the application is in good faith.

And where it shall appear to the presiding judge that a defendant who has been convicted of a capital felony, or having been tried upon a bill of indictment charging a capital felony, has been convicted of a less offense, and who has prayed an appeal to the supreme court from the sentence of death or other sentence pronounced against him upon such conviction, is unable to defray the cost of perfecting his appeal on account of his poverty, it shall be the duty of the county in which the alleged capital felony was committed, upon the order of such judge, to pay the necessary cost of obtaining a transcript of the proceedings had and the evidence offered on the trial from the court reporter for the use of the defendant and the necessary cost of preparing the requisite copies of the record and briefs which the defendant is required to file in the supreme court under the rules of said court.

The judge may fix the reasonable value of the services rendered in furnishing such transcript and preparing such copies of the record and briefs, and said copies of the record and briefs shall be prepared in the manner prescribed by the rules of the supreme court in pauper appeals. Provided, that this paragraph shall apply only to those cases in which counsel has been assigned by the court. (Rev., s. 3278; Code, s. 1235; 1869-70, c. 196, s. 1; 1933, c. 197; 1937, c. 330; C. S. 4651.)

§ 15-182. Appeal granted; bail for appearance.—The affidavit required in the preceding section may be filed at any time during the term or within ten days from the adjournment of the term either with the Judge or the clerk, and it shall be the duty of the Judge or the Clerk on filing the affidavit to grant the appeal without security for costs, and for any bailable offense the Judge shall require the defendant to enter into recogni-

zance in a reasonable sum to make his appearance at the first term of the Superior Court to be held in the county and to further answer the charge preferred. (Rev., s. 3279; Code, s. 1236; 1869-70, c. 196, s. 2; 1929, c. 236, s. 1; C. S. 4652.)

§ 15-183. Bail pending appeal.—When any person convicted of a misdemeanor and sentenced by the court, shall appeal, the court shall allow such person to give bail pending appeal. (Rev., s. 3280; Code, s. 1181; R. C., c. 35, s. 12; 1850-1, c. 2; C. S. 4653.)

§ 15-184. Appeal not to vacate judgment; stay of execution.—In criminal cases an appeal to the supreme court shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or in forma pauperis, there shall be a stay of execution during the pendency of the appeal. The clerk of the superior court shall, as soon as may be after execution is stayed, as provided in this section, notify the attorney-general thereof. Said notice shall give the name of defendant, the crime of which he was convicted, and, if the statutory time for perfecting the appeal has been extended by agreement, the time of such extension. If for any reason the defendant should wish to withdraw his appeal before the same is docketed in the supreme court, he may go, or be taken, before the clerk of the superior court in which he was convicted, and said clerk shall enter such withdrawal upon the record of the case, and notify the sheriff, who shall proceed forthwith to execute the sentence. (Rev., s. 3281; 1887, c. 191, s. 1; 1887, c. 192, s. 4; 1919, c. 5; C. S. 4654.)

§ 15-185. Judgment for fines docketed; lien and execution.—When the sentence in whole or in part directs the payment of a fine, the judgment shall be docketed by the clerk and be a lien on the real estate of the defendant in the same manner as judgments in civil actions, and executions thereon shall only be stayed, upon an appeal taken, by security being given in like manner as is required in civil cases. Should the judgment be affirmed upon appeal to the supreme court, the clerk of the superior court, on receipt of the certificate from the supreme court, shall issue execution on such judgment. (Rev., s. 3282; 1887, c. 191, s. 3; C. S. 4655.)

§ 15-186. Procedure upon receipt of certificate of supreme court.—The clerk of the superior court, in all cases where the judgment has been affirmed (except where the conviction is a capital felony), shall forthwith on receipt of the certificate of the opinion of the supreme court notify the sheriff, who shall proceed to execute the sentence which was appealed from. In criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing term of the court after the receipt of such certificate. (Rev., s. 3283; 1887, c. 192, s. 3; C. S. 4656.)

Art. 19. Execution.

§ 15-187. Death by administration of lethal gas.—Death by electrocution under sentence of law is hereby abolished and death by the administration of lethal gas substituted therefor. (1909, c. 443, s. 1; 1935, c. 294, s. 1; C. S. 4657.)

§ 15-188. Manner and place of execution.—The mode of executing a death sentence must in every case be by causing the convict or felon to inhale lethal gas of sufficient quantity to cause death, and the administration of such lethal gas must be continued until such convict or felon is dead; and when any person, convict or felon shall be sentenced by any court of the state having competent jurisdiction to be so executed, such punishment shall only be inflicted within a permanent death chamber which the superintendent of the state penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the state penitentiary shall also cause to be provided, in conformity with this article and approved by the governor and council of state, the necessary appliances for the infliction of the punishment of death in accordance with the requirements of this article. 1909, c. 443, s. 2; 1935, c. 294, s. 2; C. S. 4658.)

§ 15-189. Sentence of death; prisoner taken to penitentiary.—Upon the sentence of death being pronounced against any person in the state of North Carolina convicted of a crime punishable by death it shall be the duty of the judge pronouncing such death sentence to make the same in writing, which shall be filed in the papers in the case against such convicted person, and a certified copy thereof shall be transmitted by the clerk of the superior court in which such sentence is pronounced to the warden of the state penitentiary at Raleigh, North Carolina, not more than twenty nor less than ten days before the time fixed in the judgment of the court for the execution of the sentence; and in all cases where there is no appeal from the sentence of death and in all cases where the sentence is pronounced against a prisoner convicted of the crime of rape it shall be the duty of the sheriff, together with at least one deputy, to convey to the penitentiary at Raleigh such condemned felon or convict forthwith upon the adjournment of the court in which the felon was tried, and deliver the convict or felon to the warden of the penitentiary: Provided, that in all cases where an appeal is taken from the death sentence by any person convicted of a crime punishable by death, except the crime of rape, such convicted felon or convict shall not be taken or conveyed to the penitentiary unless, in the judgment of the sheriff of the county in which the felon was tried and the solicitor prosecuting the felon, it shall be deemed necessary for the safety and safekeeping of the convicted person or felon during the pendency of the appeal. (1909, c. 443, s. 3; C. S. 4659.)

§ 15-190. A guard or guards or other person to be named and designated by the warden to execute sentence.—Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be asphyxiated as provided by this article and all amendments thereto. The asphyxiation shall be under the general supervision and contol of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sen-

tence has been pronounced to be asphyxiated as provided by this article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in his stead; the surgeon or physician of the penitentiary and six respectable citizens, the counsel and any relatives of such person, convict or felon and a minister or ministers of the gospel may be present if they so desire, and the board of directors of the penitentiary may provide for and pay the fee for each execution not to exceed thirty-five dollars ($35.00). (1909, c. 443, s. 4; 1925, c. 123; 1935, c. 294, s. 3; C. S. 4660.)

§ 15-191. Pending sentences unaffected.—Nothing in §§ 15-187, 15-188, and 15-190 shall be construed to alter in any manner the execution of the sentence of death imposed on account of any crime or crimes committed before July 1, 1935. (1935, c. 294, s. 4.)

§ 15-192. Certificate filed with clerk. — The warden, together with the surgeon or physician of the penitentiary, shall certify the fact of the execution of the condemned person, convict or felon to the clerk of the superior court in which such sentence was pronounced, and the clerk shall file such certificate with the papers of the case and enter the same upon the records thereof. (1909, c. 443, s. 5; C. S. 4661.)

§ 15-193. Notice of reprieve or new trial.—Should the condemned person, convict or felon be granted a reprieve by the governor or obtain a writ of error, or a new trial be granted by the supreme court of the state of North Carolina, or should the execution of the sentence be stayed by any competent judicial tribunal or proceeding, notice of such reprieve, new trial, appeal, writ of error or stay of execution shall be served upon the warden or deputy warden of the penitentiary by the sheriff of Wake County, in case such condemned person is confined in the penitentiary, or upon any sheriff having the custody of any such condemned person, also upon the condemned person himself. (1909, c. 443, s. 6; C. S. 4662.)

§ 15-194. Judgment sustained on appeal, reprieve, time for execution.—In case of an appeal, should the Supreme Court find no error in the trial, or should the stay of execution granted by any competent judicial tribunal or proceeding, or reprieve by the Governor, have expired or terminated, such condemned person, convict or felon shall be executed, in the manner heretofore provided in this article, upon the third Friday after the filing of the opinion or order of the Supreme Court or other competent judicial tribunal as aforesaid, or, in case of a reprieve by the Governor, such condemned person, convict or felon shall be executed in the manner heretofore provided in this article upon the third Friday after the expiration or termination of such reprieve; and it shall be the duty of the clerk of the Supreme Court, and of any other competent tribunal, as aforesaid, or the clerk thereof, to notify the warden of the penitentiary of the date of the filing of the opinion or order of such court or other judicial tribunal, and in case of a reprieve by the Governor, it shall be the duty of the Governor to give notice to the warden of the State Penitentiary of the date of the expiration of such reprieve. (1909, c. 443, s. 6; 1925, c. 55; C. S. 4663.)

§ 15-195. New trial granted, prisoner taken to place of trial.—Should a new trial be granted the condemned person, convict or felon against whom sentence of death has been pronounced, after he has been conveyed to the penitentiary, he shall be conveyed back to the place of trial by such guard or guards as the warden of the penitentiary shall direct, their expenses to be paid as is now provided by law for the conveyance of convicts to the penitentiary. (1909, c. 443, s. 7; C. S. 4664.)

§ 15-196. Disposition of body.—Upon application, written or verbal, of any relative as near as the degree of fourth cousin of the person executed, made at any time prior to the execution or on the morning thereof, the body, after execution, shall be prepared for burial under the supervision of the warden or deputy warden and shall be returned to the nearest railroad station of the relative or relatives asking for such body. In the event that no relative asks for the body of such executed person, convict or felon, the same shall be disposed of as other bodies of convicts dying in the penitentiary. (1909, c. 443, s. 9; 1925, c. 275, s. 6; C. S. 4665.)

Art. 20. Suspension of Sentence and Probation.

§ 15-197. Suspension of sentence and probation.—After conviction or plea of guilty or nolo contendere for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal jurisdiction may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. (1937, c. 132, s. 1.)

§ 15-198. Investigation by probation officer.—When directed by the court the probation officer shall fully investigate and report to the court in writing the circumstances of the offense and the criminal record, social history, and present condition of the defendant, including, whenever practicable, the findings of a physical and mental examination of the defendant. When the services of a probation officer are available to the court, no defendant charged with a felony, and, unless the court shall direct otherwise in individual cases, no other defendant shall be placed on probation or released under suspension of sentence until the report of such investigation shall have been presented to and considered by the court. (1937, c. 132, s. 2.)

§ 15-199. Conditions of probation.—The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following, or any other: That the probationer shall:

(a) Avoid injurious or vicious habits;

(b) Avoid persons or places of disreputable or harmful character;

(c) Report to the probation officer as directed;

(d) Permit the probation officer to visit at his home or elsewhere;

(e) Work faithfully at suitable employment as far as possible;

(f) Remain within a specified area;

(g) Pay a fine in one or several sums as directed by the court;

(h) Make reparation or restitution to the aggrieved party for the damage or loss caused by his

offense, in an amount to be determined by the court;

(i) Support his dependents. (1937, c. 132, s. 3.)

§ 15-200. Termination of probation, arrest, subsequent disposition.—The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended, terminated or suspended by the court at any time, within the above limit. Upon the satisfactory fulfillment of the conditions of probation or suspension of sentence the court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer, or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer without a warrant. In case of an arrest without a warrant the arresting officer shall have a written statement signed by said probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation; and said statement shall be sufficient warrant for the detention of said probationer in the county jail, or other appropriate place of detention, until said probationer shall be brought before the judge of the court. Such probation officer shall forthwith report such arrest and detention to the judge of the court, or in superior court cases to the judge holding the courts of the district, or the resident judge, or any judge commissioned at the time to hold court in said district, and submit in writing a report showing in what manner the probationer has violated probation. Upon such arrest, with or without warrant, the court shall cause the defendant to be brought before it in or out of term and may revoke the probation or suspension of sentence, and shall proceed to deal with the case as if there had been no probation or suspension of sentence. (1937, c. 132, s. 4; 1939, c. 373.)

§ 15-201. Establishment and organization of a state probation commission.—There is hereby established a state probation commission to be composed of five members, who shall be appointed by the governor and shall serve without a salary as members of such commission, but shall receive their actual traveling expenses while in the performance of their official duties. The first appointments shall be made within thirty days after March 13, 1937, and shall be made in such manner that the term of one member of the state probation commission shall expire each year. Their successors shall be appointed by the governor within thirty days thereafter for terms of five years each. All vacancies occurring among the members shall be filled as soon as practicable thereafter by the governor for the unexpired terms. This commission shall be deemed a "commission for special purpose" within the meaning of the language of section seven of Article XIV of the Constitution, and the membership thereof may be composed of persons holding other official positions in the state, if the governor shall so elect.

The state probation commission shall organize immediately after the appointment of the first members thereof, and elect a chairman from its members. Thereafter a chairman shall be elected annually between January fifteenth and January thirtieth of each year. (1937, c. 132, s. 5.)

§ 15-202. Duties and powers of the commission; meetings; appointment of director of probation; qualifications.—With respect to the administration of probation in the state, except cases within the jurisdiction of the juvenile courts, the state probation commission shall exercise general supervision; formulate policies; adopt general rules, not inconsistent with law, to regulate methods of procedure; and set standards for personnel. It shall meet at stated times to be fixed by it not less often than once every three months, and on call of its chairman, to consider any matters relating to probation in the state.

The state probation commission, with the approval of the governor, shall appoint a director of probation, who shall serve as its executive secretary, and shall receive a salary of not less than three thousand six hundred ($3,600.00) dollars nor more than four thousand five hundred ($4,500.00) dollars per annum and who shall give his entire time to the work. When the necessity of the service requires, it shall appoint one or more assistants and fix their salaries.

The person appointed as director of probation shall be qualified by education, training, experience and temperament for the duties of the office. (1937, c. 132, s. 6.)

§ 15-203. Duties of the director of probation; appointment of probation officers; reports.—The director of probation shall appoint, subject to the approval of the state probation commission, such probation officers as are required for service in the state and such clerical assistance as may be necessary: Provided, that before any persons other than the director of probation shall be appointed, the state probation commission shall make up and submit to the governor a budget covering its proposed organization and expenditures, and no fund shall be available to carry out the purpose of this article except to the extent that said budget is approved first by the state highway and public works commission, and then by the director of the budget.

The director of probation shall direct the work of the probation officers appointed under this article. He shall consult and coöperate with the courts and institutions in the development of methods and procedure in the administration of probation, and shall arrange conferences of probation officers and judges. He shall make an annual written report with statistical and other information to the probation commission and the governor. (1937, c. 132, s. 7.)

§ 15-204. Assignment and compensation and oath of probation officers.—Probation officers appointed under this article shall be assigned to serve in such courts or districts or otherwise as the director of probation may determine. They shall be paid annual salaries to be fixed by the probation commission, and shall also be paid traveling and other necessary expenses incurred in the performance of their official duties as probation officers when such expense accounts have been authorized and approved by the director of probation.

Each person appointed as a probation officer shall take an oath of office before the judge of the

court or courts in which he is to serve, which oath shall be as follows:

"I, ..., do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God,"

and shall be noted of record by the clerk of the court. (1937, c. 132, s. 8.)

§ 15-205. Duties and powers of the probation officers.—A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the director of probation, and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the director of probation may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court, or the director of probation, to aid and encourage persons on probation to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the director of probation as he may require; and shall perform such other duties as the director of probation may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this state. (1937, c. 132, s. 9.)

§ 15-206. Co-operation with commissioner of parole and officials of local units.—It shall be the duty of the director of probation and the commissioner of parole to co-operate with each other to the end that the purposes of probation and parole may be more effectively carried out. When requested, each shall make available to the other case records in his possession, and in cases of emergency, where time and expense can be saved, shall provide investigation service.

It is hereby made the duty of every city, county, or state official or department to render all assistance and co-operation within his or its fundamental power which may further the objects of this article. The state probation commission, the director of probation, and the probation officers are authorized to seek the co-operation of such officials and departments, and especially of the county superintendents of public welfare and of the state board of charities and public welfare. (1937, c. 132, s. 10.)

§ 15-207. Records treated as privileged information.—All information and data obtained in the discharge of official duty by any probation officer shall be privileged information, shall not be receivable as evidence in any court, and shall not be disclosed directly or indirectly to any other than the judge or to others entitled under this article to receive reports, unless and until otherwise ordered by a judge of the court or the director of probation. (1937, c. 132, s. 11.)

§ 15-208. Payment of salaries and expenses.—All salaries and expenses necessary for carrying out the provisions of this article shall be fixed in accordance with the Executive Budget Act and the Personnel Act, and shall be paid by the state highway and public works commission out of the state highway funds, under direction of the director of the budget. (1937, c. 132, s. 12.)

§ 15-209. Accommodations for probation officers.—The county commissioners in each county in which a probation officer serves shall provide, in or near the courthouse, suitable office space for such officer. (1937, c. 132, s. 13.)

Chapter 16. Gaming Contracts and Futures.

Art. 1. Gaming Contracts.

Sec.
16-1. Gaming and betting contracts void.
16-2. Players and betters competent witnesses.

Art. 2. Contracts for "Futures."

16-3. Certain contracts as to "futures" void.
16-4. Entering into or aiding contract for "futures" misdemeanor.
16-5. Opening office for sales of "futures" misdemeanor.
16-6. Evidence in prosecutions under this article.

Art. 1. Gaming Contracts.

§ 16-1. Gaming and betting contracts void.—All wagers, bets or stakes made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event whatever, shall be unlawful; and all contracts, judgments, conveyances and assurances for and on account of any money or property, or thing in action, so wagered, bet or staked, or to repay, or to secure any money, or property, or thing in action, lent or advanced for the purpose of such wagering, betting, or staking as aforesaid, shall be void. (Rev., s. 1687; Code, ss. 2841, 2842; R. C., c. 51, ss. 1, 2; 1810, c. 796; C. S. 2142.)

§ 16-2. Players and betters competent witnesses. — No person shall be excused or incapacitated from confessing or testifying touching any money or property, or thing in action, so wagered, bet or staked, or lent for such purpose, by reason of his having won, played, bet or staked upon any game, lot or chance, casualty, or unknown or contingent event aforesaid; but

the confession or testimony of such person shall not be used against him, in any criminal prosecution, on account of such betting, wagering or staking. (Rev., s. 1688; Code, s. 2843; R. C., c. 51, s. 3; C. S. 2143.)

Art. 2. Contracts for "Futures."

§ 16-3. Certain contracts as to "futures" void. — Every contract, whether in writing or not, whereby any person shall agree to sell and deliver any cotton, indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef, cattle, sugar, coffee, stocks, bonds, and choses in action, at a place and at a time specified and agreed upon therein, to any other person, whether the person to whom such article is so agreed to be sold and delivered shall be a party to such contract or not, when, in fact, and notwithstanding the terms expressed of such contract, it is not intended by the parties thereto that the articles or things so agreed to be sold and delivered shall be actually delivered, or the value thereof paid, but it is intended and understood by them that money or other thing of value shall be paid to the one party by the other, or to a third party, the party to whom such payment of money or other thing of value shall be made to depend, and the amount of such money or other thing of value so to be paid to depend upon whether the market price or value of the article so agreed to be sold and delivered is greater or less at the time and place so specified than the price stipulated to be paid and received for the articles so to be sold and delivered, and every contract commonly called "futures" as to the several articles and things hereinbefore specified, or any of them, by whatever other name called, and every contract as to the said several articles and things, or any of them, whereby the parties thereto contemplate and intend no real transaction as to the article or thing agreed to be delivered, but only the payment of a sum of money or other thing of value, such payment and the amount thereof and the person to whom the same is to be paid to depend on whether or not the market price or value is greater or less than the price so agreed to be paid for the said article or thing at the time and place specified in such contract, shall be utterly null and void; and no action shall be maintained in any court to enforce any such contract, whether the same was made in or out of the state, or partly in and partly out of this state, and whether made by the parties thereto by themselves or by or through their agents, immediately or mediately; nor shall any party to any such contract, or any agent of any such party, directly or remotely connected with any such contract in any way whatever, have or maintain any action or cause of action on account of any money or other thing of value paid or advanced or hypothecated by him or them in connection with or on account of such contract and agency; nor shall the courts of this state have any jurisdiction to entertain any suit or action brought upon a judgment based upon any such contract. This section shall not be construed so as to apply to any person, firm or corporation, or his or their agents, engaged in the business of manufacturing or wholesale merchandising in the purchase and/or sale of the necessary commodities required in the ordinary course of their business; nor shall this section be construed so as to apply to any contract with respect to the purchase and/or sale for future delivery of any of the articles or things mentioned and referred to in this section, where such purchase and/or sale is made on any exchange on which any such article or things are regularly bought and sold, or contracts therefor regularly entered into, and the rules and regulations of such exchange are such that either party to such contract may require delivery thereof: Provided, such contract is made in accordance with such rules and regulations. (Rev., s. 1689; 1889, c. 221, s. 1; 1905, c. 538, s. 7; 1909, c. 853, s. 1; 1931, c. 236, s. 1; C. S. 2144.)

§ 16-4. Entering into or aiding contract for "futures" misdemeanor.—If any person shall become a party to any contract declared void in this article; or if any person shall be the agent, directly or indirectly, of any party in making or furthering or effectuating the same; or if any agent or officer of a corporation shall in any manner knowingly aid in making or furthering any such contract to which the corporation is a party, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the discretion of the court.

If any person shall, while in this state, consent to become a party to any such contract made in another state, and if any person shall, as agent of any person or corporation, become a party to any such contract made in another state, or in this state do any act or in any way aid in the making or furthering of any such contract so made in another state, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than two hundred dollars, and may be imprisoned in the discretion of the court. (Rev., ss. 3823, 3824; 1889, c. 221, ss. 3, 4; C. S. 2147.)

§ 16-5. Opening office for sales of "futures" misdemeanor.—If any person, corporation or other association of persons, either as principal or agent, shall establish or open an office or place of business in this state for the purpose of carrying on or engaging in making such contracts as are forbidden in this article, he shall be guilty of a misdemeanor, and shall on conviction be fined and imprisoned in the discretion of the court. (Rev., s. 3825; 1905, c. 538, ss. 1, 2; C. S. 2148.)

§ 16-6. Evidence in prosecutions under this article.—No person shall be excused on any prosecution under the provisions of this article from testifying touching anything done by himself or others contrary to the provisions thereof, but no discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him. In all such prosecutions proof that the defendant was a party to a contract, as agent or principal, to sell and deliver any article, thing or property specified or named in this article, or that he was the agent, directly or indirectly, of any party in making, furthering or effectuating the same, or that he was the agent or officer of

any corporation or association or person in making, furthering or effectuating the same, and that the article, thing or property agreed to be sold and delivered was not actually delivered, and that settlement was made or agreed to be made upon the difference in value of said article, thing or property, shall constitute against such defendant prima facie evidence of guilt. Proof that any person, corporation or other association of persons, either as principal or agent, has established an office or place where are posted or published from information received the fluctuating prices of grain, cotton, provisions, stocks, bonds and other commodities, or of any one or more of the same, shall constitute prima facie evidence of being guilty of violating the provisions of this article. (Rev., s. 3826; 1905, ss. 3, 4, 5; C. S. 2149.)

Chapter 17. Habeas Corpus.

Art. 1. Constitutional Provisions.

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Art. 1. Constitutional Provisions.

§ 17-1. Remedy without delay for restraint of liberty.—Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed. (Rev., s. 1819; Const., Art. I, s. 18; C. S. 2203.)

§ 17-2. Habeas corpus not to be suspended.—The privileges of the writ of habeas corpus shall not be suspended. (Rev., s. 1820; Const., Art. I, s. 21; C. S. 2204.)

Art. 2. Application.

§ 17-3. Who may prosecute writ.—Every person imprisoned or restrained of his liberty within this state, for any criminal or supposed criminal matter, or on any pretense whatsoever, except in cases specified in § 17-4, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and, if illegal, to be delivered therefrom. (Rev., s. 1821; Code, s. 1623; 1868-9, c. 116, s. 1; C. S. 2205.)

§ 17-4. When application denied.—Application to prosecute the writ shall be denied in the following cases:

1. Where the persons are committed or detained by virtue of process issued by a court of the United States, or a judge thereof, in cases

where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts.

2. Where persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such final order, judgment or decree.

3. Where any person has willfully neglected, for the space of two whole terms after his imprisonment, to apply for the writ to the superior court of the county in which he may be imprisoned, such person shall not have a habeas corpus in vacation time for his enlargement.

4. Where no probable ground for relief is shown in the application. (Rev., s. 1822; Code, s. 1624; 1868-9, c. 116, s. 2; C. S. 2206.)

§ 17-5. By whom application is made.—Application for the writ may be made either by the party for whose relief it is intended or by any person in his behalf. (Rev., s. 1823; Code, s. 1625; 1868-9, c. 116, s. 3; C. S. 2207.)

§ 17-6. To judge of supreme or superior court; in writing.—Application for the writ shall be made in writing, signed by the applicant—

1. To any one of the justices of the supreme court.

2. To any one of the superior court judges, either at term time or in vacation. (Rev., s. 1824; Code, s. 1626; 1868-9, c. 116, s. 4; C. S. 2208.)

§ 17-7. Contents of application.—The application must state, in substance, as follows:

1. That the party, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is imprisoned or restrained, naming both parties, if their names are known, or describing them if they are not known.

2. The cause or pretense of such imprisonment or restraint, according to the knowledge or belief of the applicant.

3. If the imprisonment is by virtue of any warrant or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand for such copy could not be made.

4. If the imprisonment or restraint is alleged to be illegal, the application must state in what the alleged illegality consists; and that the legality of the imprisonment or restraint has not been already adjudged, upon a prior writ of habeas corpus, to the knowledge or belief of the applicant.

5. The facts set forth in the application must be verified by the oath of the applicant, or by that of some other credible witness, which oath may be administered by any person authorized by law to take affidavits. (Rev., s. 1825; Code, s. 1627; 1868-9, c. 116, s. 5; C. S. 2209.)

§ 17-8. Issuance of writ without application.—When the supreme or superior court, or any judge of either, has evidence from any judicial proceeding before such court or judge that any person within this state is illegally imprisoned or restrained of his liberty, it is the duty of said court or judge to issue a writ of habeas corpus for his relief, although no application be made for such writ. (Rev., s. 1826; Code, s. 1632; 1868-9, c. 116, s. 10; C. S. 2210.)

Art. 3. Writ.

§ 17-9. Writ granted without delay.—Any court or judge empowered to grant the writ, to whom such applications may be presented, shall grant the writ without delay, unless it appear from the application itself or from the documents annexed that the person applying or for whose benefit it is intended is, by this chapter, prohibited from prosecuting the writ. (Rev., s. 1827; Code, s. 1628; 1868-9, c. 116, s. 6; C. S. 2211.)

§ 17-10. Penalty for refusal to grant.—If any judge authorized by this chapter to grant writs of habeas corpus refuses to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved two thousand five hundred dollars. (Rev., s. 1828; Code, s. 1631; 1868-9, c. 116, s. 9; C. S. 2212.)

§ 17-11. Sufficiency of writ; defects of form immaterial.—No writ of habeas corpus shall be disobeyed on account of any defect of form. It shall be sufficient—

1. If the person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or, if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person.

2. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described by an assumed appellation or in any other way, so as to designate the person intended. (Rev., s. 1829; Code, ss. 1629, 1630; 1868-9, c. 116, ss. 7, 8; C. S. 2213.)

§ 17-12. Service of writ.—The writ of habeas corpus may be served by any qualified elector of this state thereto authorized by the court or judge allowing the same. It may be served by delivering the writ, or a copy thereof, to the person to whom it is directed; or, if such person cannot be found, by leaving it, or a copy, at the jail, or other place in which the party for whose relief it is intended is confined, with some under officer or other person of proper age; or, if none such can be found, or if the person attempting to serve the writ be refused admittance, by affixing a copy thereof in some conspicuous place on the outside, either of the dwelling-house of the party to whom the writ is directed or of the place where the party is confined for whose relief it is sued out. (Rev., s. 1833; Code, s. 1657; 1868-9, c. 116, s. 32; C. S. 2214.)

Art. 4. Return.

§ 17-13. When writ returnable. — Writs of habeas corpus may be made returnable at a certain time, or forthwith, as the case may require. If the writ be returnable at a certain time, such return shall be made and the party shall be produced at the time and place specified therein.

(Rev., s. 1830; Code, s. 1656; 1868-9, c. 116, s. 31; C. S. 2215.)

§ 17-14. Contents of return; verification.—The person or officer on whom the writ is served must make a return thereto in writing, and, except where such person is a sworn public officer and makes his return in his official capacity, it must be verified by his oath. The return must state plainly and unequivocally—

1. Whether he has or has not the party in his custody or under his power or restraint.

2. If he has the party in his custody or power, or under his restraint, the authority and the cause of such imprisonment or restraint, setting forth the same at large.

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return; and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable.

4. If the person or officer upon whom such writ is served has had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place. (Rev., s. 1831; Code, s. 1633; 1868-9, c. 116, s. 11; C. S. 2216.)

§ 17-15. Production of body if required.—If the writ requires it, the officer or person on whom the same has been served shall also produce the body of the party in his custody or power, according to the command of the writ, except in the case of the sickness of such party, as hereinafter provided. (Rev., s. 1832; Code, s. 1636; 1868-9, c. 116, s. 14; C. S. 2217.)

Art. 5. Enforcement of Writ.

§ 17-16. Attachment for failure to obey.—If the person or officer on whom any writ of habeas corpus has been duly served refuses or neglects to obey the same, by producing the body of the party named or described therein, and by making a full and explicit return thereto, within the time required, and no sufficient excuse is shown for such refusal or neglect, it is the duty of the court or judge before whom the writ has been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person or officer, directed to the sheriff of any county within this state, and commanding him forthwith to apprehend such person or officer and bring him immediately before such court or judge. On being so brought such person or officer shall be committed to close custody in the jail of the county where such court or judge may be, without being allowed the liberties thereof, until such person or officer make return to such writ and comply with any order that may be made by such court or judge in relation to the party for whose relief the writ has been issued. (Rev., s. 1834; Code, s. 1637; 1868-9, c. 116, s. 15; C. S. 2218.)

§ 17-17. Liability of judge refusing attachment.—If any judge willfully refuses to grant the writ of attachment, as provided for in § 17-16, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars. (Rev., s. 1835; Code, s. 1638; 1870-1, c. 221, s. 2; C. S. 2219.)

§ 17-18. Attachment against sheriff to be directed to coroner; procedure.— If a sheriff has neglected to return the writ agreeably to the command thereof, the attachment against him may be directed to the coroner or to any other person to be designated therein, who shall have power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own. (Rev., s. 1836; Code, s. 1639; 1868-9, c. 116, s. 16; C. S. 2220.)

§ 17-19. Precept to bring up party detained.—The court or judge by whom any such attachment may be issued may also at the same time, or afterwards, direct a precept to any sheriff, coroner, or other person to be designated therein, commanding him to bring forthwith before such court or judge the party, wherever to be found, for whose benefit the writ of habeas corpus has been granted. (Rev., s. 1837, Code, s. 1640; 1868-9, c. 116, s. 17; C. S. 2221.)

§ 17-20. Liability of judge refusing precept.—If any judge refuses to grant the precept provided for in § 17-19, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars. (Rev., s. 1838; Code s. 1641; 1870-1, c. 221, s. 3; C. S. 2222.)

§ 17-21. Liability of judge conniving at insufficient return.—If any judge grants the attachment, or the precept, and gives the officer or other person charged with the execution of the same verbal or written instructions not to execute the same, or to make any evasive or insufficient return, or any return other than that provided by law; or shall connive at the failing to make any return or any evasive or insufficient return, or any return other than that provided by law, he shall be liable to impeachment, and moreover shall forfeit to the party aggrieved twenty-five hundred dollars. (Rev., s. 1839; Code, s. 1642; 1870-1, c. 221, s. 4; C. S. 2223.)

§ 17-22. Power of county to aid service.—In the execution of any such attachment, precept or writ, the sheriff, coroner, or other person to whom it may be directed, may call to his aid the power of the county, as in other cases. (Rev., s. 1840; Code, s. 1643; 1868-9, c. 116, s. 18; C. S. 2224.)

§ 17-23. Obedience to order of discharge compelled.—Obedience to a judgment or order for the discharge of a prisoner or person restrained of his liberty, pursuant to the provisions of this chapter, may be enforced by the court or judge by attachment in the same manner and with the same effect as for a neglect to make return to a writ of habeas corpus; and the person found guilty of such disobedience shall forfeit to the party aggrieved two thousand five hundred dollars, besides any special damages which such party may have sustained. (Rev., s. 1841; Code, s. 1649; 1868-9, c. 116, s. 24; C. S. 2225.)

§ 17-24. No civil liability for obedience.—No officer or other person shall be liable to any civil

action for obeying a judgment or order of discharge upon writ of habeas corpus. (Rev., s. 1842; Code, s. 1650; 1868-9, c. 116, s. 25; C. S. 2226.)

§ 17-25. Recommittal after discharge; penalty.—If any person shall knowingly again imprison or detain one who has been set at large upon any writ of habeas corpus, for the same cause, other than by the legal process or order of the court wherein he is bound by recognizance to appear, or of any other court having jurisdiction in the case, he shall be guilty of a misdemeanor. (Rev., s. 3581; Code, s. 1651; 1868-9, c. 116, s. 26; C. S. 2227.)

§ 17-26. Disobedience to writ or refusing copy of process; penalty.—If any person to whom a writ of habeas corpus is directed shall neglect or refuse to make due return thereto, or to bring the body of the party detained according to the command of the writ without delay, or shall not, within six hours after demand made therefor, deliver a copy of the commitment or cause of detainer, such person shall, upon conviction on indictment, be fined one thousand dollars, or imprisoned not exceeding twelve months, and if such person be an officer, shall moreover be removed from office. (Rev., s. 3597; Code, s. 1652; 1868-9, c. 116, s. 27; C. S. 2228.)

§ 17-27. Penalty for false return.—If any person shall make a false return to a writ of habeas corpus, he shall be guilty of a misdemeanor. (Rev., s. 3582; Code, s. 1653; 1868-9, c. 116, s. 28; C. S. 2229.)

§ 17-28. Penalty for concealing party entitled to writ.—If any one having in his custody, or under his power, any party who, by law, would be entitled to a writ of habeas corpus, or for whose relief such writ shall have been issued, shall, with intent to elude the service of such writ, or to avoid the effect thereof, transfer the party to the custody, or put him under the power or control, of another, or shall conceal or change the place of his confinement, or shall knowingly aid or abet another in so doing, he shall be guilty of a misdemeanor. (Rev., s. 3583; Code, ss. 1654, 1655; 1868-9, c. 116, ss. 29, 30; C. S. 2230.)

Art. 6. Proceedings and Judgment.

§ 17-29. Notice to interested parties.—When it appears from the return to the writ that the party named therein is in custody on any process, or by reason of any claim of right, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it appears that the person so interested, or his attorney, if he have one, has had reasonable notice of the time and place at which such writ is returnable. (Rev., s. 1843; Code, s. 1634; 1868-9, c. 116, s. 12; 1870-1, c. 221, s. 1; C. S. 2231.)

§ 17-30. Notice to solicitor.—When it appears from the return that such party is detained upon any criminal accusation, the court or judge may, if he thinks proper, make no order for the discharge of such party until sufficient notice of the time and place at which the writ has been returned, or is made returnable, is given to the solicitor of the district in which the person prosecuting the writ is detained. (Rev., s. 1844; Code, s. 1635; 1868-9, c. 116, s. 13; C. S. 2232.)

§ 17-31. Subpœnas to witnesses.—Any party to a proceeding on a writ of habeas corpus may procure the attendance of witnesses at the hearing, by subpœna, to be issued by the clerk of any superior court, under the same rules, regulations and penalties prescribed by law in other cases. (Rev., s. 1845; Code, s. 1659; 1868-9, c. 116, s. 34; C. S. 2233.)

§ 17-32. Proceedings on return; facts examined; summary hearing of issues.—The court or judge before whom the party is brought on a writ of habeas corpus shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same has been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the allegations and proofs on both sides, and to do what to justice appertains in delivering, bailing or remanding such party. (Rev., s. 1846; Code, s. 1644; 1868-9, c. 116, s. 19; C. S. 2234.)

§ 17-33. When party discharged.—If no legal cause is shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held. But if it appears on the return to the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

1. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.
2. Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.
3. Where the process is defective in some matter of substance required by law, rendering such process void.
4. Where the process, though in proper form, has been issued in a case not allowed by law.
5. Where the person, having the custody of the party under such process, is not the person empowered by law to detain him.
6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law. (Rev., s. 1847; Code, s. 1645; 1868-9, c. 116, s. 20; C. S. 2235.)

§ 17-34. When party remanded.—It is the duty of the court or judge forthwith to remand the party, if it appears that he is detained in custody, either—

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction.
2. By virtue of the final judgment or decree

of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree.

3. For any contempt specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged.

4. That the time during which such party may be legally detained has not expired. (Rev., s. 1848; Code, s. 1646; 1868-9, c. 116, s. 21; C. S. 2236.)

§ 17-35. When the party bailed or remanded.—If it appears that the party has been legally committed for any criminal offense, or if it appears by the testimony offered with the return of the writ, or upon the hearing thereof, that the party is guilty of such an offense, although the commitment is irregular, the court or judge shall proceed to let such party to bail, if the case is bailable and good bail is offered; if not, the court or judge shall forthwith remand such party to the custody or place him under the restraint from which he was taken, if the person or officer, under whose custody or restraint he was, is legally entitled thereto; if not so entitled, the court or judge shall commit such party to the custody of the officer or person legally entitled thereto. Rev., s. 1849; Code, s. 1647; 1868-9, c. 116, s. 22; C. S. 2237.)

§ 17-36. Party held in execution not to be discharged.—When a writ of habeas corpus cum causa issues and the sheriff or other officer to whom it is directed returns upon the same that the prisoner is condemned, by judgment given against him, and held in custody by virtue of an execution issued against him, the prisoner shall not be let to bail but shall be presently remanded, where he shall remain until discharged in due course of law. (Rev., s. 1850; Code, s. 937; R. C., c. 31, s. 111; 2 Hen. V, c. 2; C. S. 2238.)

§ 17-37. When party ill, cause determined in his absence.—When, from the illness or infirmity of the person directed to be produced by a writ of habeas corpus, such person cannot, without danger, be brought before the court or judge where the writ is made returnable, the party in whose custody he is may state the fact in his return to the writ; and if the court or judge is satisfied of the truth of the allegation, and the return is otherwise sufficient, the court or judge shall proceed to decide on such return and to dispose of the matter in the same manner as if the body had been produced. (Rev., s. 1851; Code, s. 1648; 1868-9, c. 116, s. 23; C. S. 2239.)

§ 17-38. No second committal after discharged; penalty.—No person who has been set at large upon any writ of habeas corpus shall be again imprisoned or detained for the same cause by any person whatsoever other than by the legal order or process of the court wherein he shall be bound by recognizance to appear or of any other court having jurisdiction in the case, under the penalty of two thousand five hundred dollars to the party aggrieved thereby. (Rev., s. 1852; Code, s. 1651; 1868-9, c. 116, s. 26; C. S. 2240.)

Art. 7. Habeas Corpus for Custody of Children in Certain Cases.

§ 17-39. Custody as between parents in certain cases; modification of order.—When a contest shall arise on a writ of habeas corpus between any husband and wife, who are living in a state of separation, without being divorced, in respect to the custody of their children, the court or judge, on the return of such writ, may award the charge or custody of the child or children so brought before it either to the husband or to the wife, for such time, under such regulations and restrictions, and with such provisions and directions as will, in the opinion of such court or judge, best promote the interest and welfare of the children. At any time after the making of such orders the court or judge may, on good cause shown, annul, vary or modify the same; provided, that where the father is a non-resident of North Carolina and the custody of the child has been awarded, by an order of a court of this State, to the mother who is a resident of North Carolina, no motion on the part of such non-resident father may be heard or entertained by the court for a modification of the order of the court, unless such father has first shown under oath that, since the making of the original order, he has regularly contributed to the support of said child according to his means and according to the needs of the child, and, if said motion is heard and at said hearing such fact is not established to the satisfaction of the court, the motion for a modification of the order shall be denied, unless the court shall find that, at the time of said hearing the mother is not a fit and proper person to have the custody of said child. Provided, that the last two provisos shall only apply after the case has been reopened on time. (Rev., s. 1853; Code, s. 1661; 1858-9, c. 53; 1868-9, c. 116, s. 36; 1929, c. 270, s. 1; C. S. 2241.)

§ 17-40. Appeal to supreme court.—In all cases of habeas corpus, where a contest arises in respect to the custody of minor children, either party may appeal to the supreme court from the final judgment. (Rev., s. 1854; Code, s. 1662; 1858-9, c. 53, s. 2; C. S. 2242.)

Art. 8. Habeas Corpus Ad Testificandum.

§ 17-41. Authority to issue the writ.—Every court of record has power, upon the application of any party to any suit or proceeding, civil or criminal, pending in such court, to issue a writ of habeas corpus, for the purpose of bringing before the said court any prisoner who may be detained in any jail or prison within the state, for any cause, except a prisoner under sentence for a capital felony, to be examined as a witness in such suit or proceeding in behalf of the party making the application.

Such writ of habeas corpus may be issued by any justice of the peace or clerk of the superior court, upon application as provided in this section, to bring any person confined in the jail or prison of the same county where such justice or clerk may reside, to be examined as a witness before such justice or clerk.

In cases where the testimony of any prisoner is needed in a proceeding before a justice of the peace, or a clerk, and such person is confined in a county in which such justice or clerk does not reside, application for habeas corpus to testify may be made to any judge of the supreme or superior court. (Rev., ss. 1855, 1856; Code, ss. 1663, 1664; 1868-9, c. 116, ss. 37, 38; C. S. 2243.)

§ 17-42. Contents of application.—The application for the writ shall be made by the party to the suit or proceeding in which the writ is required, or by his agent or attorney. It must be verified by the applicant, and shall state—

1. The title and nature of the suit or proceeding in regard to which the testimony of such prisoner is desired.

2. That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes. (Rev., s. 1857; Code, s. 1665; 1868-9, c. 116, s. 39; C. S. 2244.)

§ 17-43. Service of writ.—The writ of habeas corpus to testify shall be served by the same person, and in like manner in all respects, and enforced by the court or officer issuing the same as prescribed in this chapter for the service and enforcement of the writ of habeas corpus cum causa. (Rev., s. 1858; Code, s. 1666; 1868-9, c. 116, s. 40; C. S. 2245.)

§ 17-44. Applicant to pay expenses and give bond to return.—The service of the writ shall not be complete, however, unless the applicant for the same tenders to the person in whose custody the prisoner may be, if such person is a sheriff, coroner, constable or marshal, the fees and expenses allowed by law for bringing such prisoner, nor unless he also gives bond, with sufficient security, to such sheriff, coroner, constable or marshal, as the case may be, conditioned that such applicant will pay the charges of carrying back such prisoner. (Rev., s. 1859; Code, s. 1667; 1868-9, c. 116, s. 41; C. S. 2246.)

§ 17-45. Duty of officer to whom writ delivered or on whom served. — It is the duty of the officer to whom the writ is delivered or upon whom it is served, whether such writ is directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ according to the exigency thereof upon pain, on refusal or neglect, to forfeit to the party on whose application the same has been issued the sum of five hundred dollars. (Rev., s. 1860; Code, s. 1668; 1868-9, c. 116, s. 42; C. S. 2247.)

§ 17-46. Prisoner to be remanded.—After having testified, the prisoner shall be remanded to the prison from which he was taken. (Rev., s. 1861; Code, s. 1669; 1868-9, c. 116, s. 43; C. S. 2248.)

Chapter 18. Regulation of Intoxicating Liquors.

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Art. 1. The Turlington Act.

§ 18-1. Definitions; application of article. — When used in this article—

(1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented liquors, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per centum or more of alcohol by volume, which are fit for use for beverage purposes: Provided, that the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process of which beer, ale, porter, or wine is produced, if it contains less than one-half of one per cent of alcohol by volume, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, sealed and labeled bottles, casks, or containers, and is made in accordance with the regulations set forth in Title II of "The Volstead Act," an act of Congress enacted October twenty-eight, one thousand nine hundred and nineteen, and an act supplemental to the National Prohibition Act, "H. R. 7294," an act of Congress approved November twenty-third, one thousand nine hundred and twenty-one.

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.

(3) This article shall not make unlawful any acts authorized or permitted by §§ 18-100 through 18-104, as amended, authorizing cultivation and manufacture of light domestic wines; by §§ 18-36 through 18-62, the Alcoholic Beverage Control Act of 1937 as amended; by §§ 18-63 through 18-92, the Beverage Control Act of 1939 as amended; and by §§ 18-94 through 18-99, the Fortified Wine Control Act of 1941. (1923, c. 1; s. 1; C. S. 3411(a).)

§ 18-2. Manufacture, sale, etc., forbidden; construction of law; nonbeverage liquor.—No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, purchase, or possess any intoxicating liquor except as authorized in this article; and all the provisions of this article shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished, and possessed, but only as provided by Title II of "The Volstead Act," act of congress enacted October twenty-eighth, one thousand nine hundred and nineteen, an act supplemental to the National Prohibition Act, "H. R. 7294," an act of congress approved November twenty-third, one thousand nine hundred and twenty-one. (1923, c. 1, s. 1; C. S. 3411(b).)

§ 18-3. Advertisements, signs, and billboards.—It shall be unlawful to advertise, anywhere or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the means, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises: Provided, the foregoing provision shall not prohibit newspaper, radio, billboard or other forms of advertising for sale of beer, lager beer, ale, porter, fruit juices and/or other light wines containing not more than 3.2 per cent of alcohol by weight. (1923, c. 1, s. 3; 1933, cc. 216, 229; C. S. 3411(c).)

§ 18-4. Advertising, etc., of utensils, etc., for use in manufacturing liquor.—It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or receipt advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this article, or which has been so used, and no property rights shall exist in any such liquor or property. (1923, c. 1, s. 4; C. S. 3411(d).)

§ 18-5. Soliciting orders for liquor.—No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order for liquor or give any information of how liquor may be obtained in violation of this article. (1923, c. 1, s. 5; C. S. 3411(e).)

§ 18-6. Seizure of liquor or conveyance; arrests; sale of property.—When any officer of the law shall discover any person in the act of transporting, in violation of the law, intoxicating liquor in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquor found therein being transported contrary to law. Whenever intoxicating liquor transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this article in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court, upon the conviction of the person so arrested, shall order the liquor destroyed, and, unless the claimant can show that the property seized is his property, and that the same was used in transporting liquor without his knowledge and consent, with the right on the part of the claimant to have a jury pass upon his claim, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used for illegal transportation of liquor, and shall pay the balance of the proceeds to the treasurer or the proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the treasurer or proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county: Provided, that nothing in this section shall be construed to authorize any officer to search any automobile or other vehicle or baggage of any person without a search warrant duly issued, except where the officer sees or has absolute personal knowledge that there is intoxicating liquor in such vehicle or baggage. (1923, c. 1, s. 6; C. S. 3411(f).)

§ 18-7. Use of seized property forbidden.—It shall be unlawful for any State, county, township or municipal officer to use or cause to be used for any purpose whatsoever any automobile or other article of personal property seized by said officer for the reason that the owner of said property or one in possession thereof at time of seizure has violated the terms of the State or Federal prohibition laws, or any other laws, until the respective rights of the owner, or person in possession at time of seizure, or mortgagee if one should intervene, are passed upon by the proper court, and final order is made as to proper disposition of said personal property so seized.

It shall be the duty of the officer seizing said automobile or other personal property to store same in a safe and suitable place, until final disposition is ordered.

Any officer or officers violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars or imprisoned not to exceed thirty days. (1927, c. 18.)

§ 18-8. Witnesses; self crimination; immunity.—No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpœna of any court in any suit or proceeding based upon or growing out of any alleged violation of this article, but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence; but no person shall be exempt from prosecution and punishment for perjury committed in so testifying. (1923, c. 1, s. 7; C. S. 3411(g).)

§ 18-9. Place of sale and delivery; place of prosecution.—In case of a sale of liquor where the delivery thereof was made by a common or other carrier, the sale and delivery shall be deemed to be made in the county wherein the delivery was made by such carrier or the consignee, his agent or employee, or in the county wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in either county. (1923, c. 1, s. 8; C. S. 3411(h).)

§ 18-10. Uniting separate offenses in indictment, etc.; bill of particulars; trial.—In any affidavit, information, warrant, or indictment for the violation of this article, separate offenses may be united in separate counts, and the defendant may be tried on all at one trial, and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, warrant, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful; but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so. (1923, c. 1, s. 9; C. S. 3411(i).)

§ 18-11. Possession prima facie evidence of keeping for sale.—The possession of liquor by any person not legally permitted under this article to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this article. But it shall not be unlawful to possess liquor in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such liquor is for use only for the personal consumption of the owner thereof, and his family residing in such dwelling, and of his bona fide guests when entertained by him therein. (1923, c. 1, s. 10; C. S. 3411(j).)

§ 18-12. Summons on citizens having interest in property.—In all cases wherein the property of any citizen is proceeded against or wherein a judgment affecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued in due form and served personally, if said person is to be found within the jurisdiction of the court. (1923, c. 1, s. 11; C. S. 3411(k).)

§ 18-13. Search warrants; disposal of liquor seized.—Upon the filing of a complaint under oath by a reputable citizen or information furnished under oath by an officer charged with the execution of the law, before a justice of the peace, recorder, mayor, or other officer authorized by the law to issue warrants, that he has reason to believe that any person has in his possession, at a place or places specified, liquor for the purpose of sale, a warrant shall be issued commanding the officer to whom it is directed to search the place or places described in such complaint or information; and if such liquor be found in any such place or places, to seize and take into his custody all such liquor, and to seize and take into his custody all glasses, bottles, jugs, pumps, bars, or other equipment used in the business of selling intoxicating liquor which may be found at such place or places, and to keep the same subject to the order of the court. The complaint or information shall describe the place or places to be searched with sufficient particularity to identify the same, and shall describe the intoxicating liquor or other property alleged to be used in carrying on the business of selling intoxicating liquor as particularly as practicable, and any description, however general, that will enable the officer executing the warrant to identify the property seized shall be deemed sufficient. All liquor seized under this section shall be held and shall upon the acquittal of the person so charged be returned to the established owner, and shall within ten days from conviction or default of appearance of such person be destroyed: Provided that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes, or sell it to legalized alcoholic beverage control stores within the state of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it. (1923, c. 1, s. 12; 1939, c. 12; 1941, c. 310; C. S. 3411(l).)

§ 18-14. Grand jury, witnesses before; effect

of evidence.—When the solicitor of any judicial district has good reason to believe that liquor has been manufactured or sold contrary to law within a county in his district, and believes that any person has knowledge of the existence and establishment of any illicit distillery, or that any person has sold liquor illegally, then it is lawful for the solicitor to apply to the clerk of the superior court of the county wherein the offense is supposed to have been committed to issue a subpœna for the person so having knowledge of said offense to appear before the next grand jury drawn for the county, there to testify upon oath what he may know touching the existence, establishment, and whereabouts of said distillery, or persons who have sold intoxicating liquor contrary to law, who shall give the names and personal description of the keepers thereof, and of any person who has sold liquor unlawfully; and such evidence, when so obtained, shall be considered and held in law as an information on oath upon which the grand jury shall make presentment, as provided by law in other cases. If any officer shall fail or refuse to use due diligence in the execution of the provisions of this section he shall be guilty of laches in office, and such failure be cause for removal from office. (1923, c. 1, s. 13; C. S. 3411(m).)

§ 18-15. Clubrooms and other places for keeping, etc., of liquor.—No corporation, club, association, or person shall directly or indirectly keep or maintain, alone or by association with others, or by any other means, or shall in any manner aid, assist, or abet others in keeping or maintaining a clubroom or other place where intoxicating liquor is received, kept, or stored for barter, sale, exchange, distribution, or division among the members of any such club or association or aggregation of persons, or to or among any other persons by any means whatever, or shall act as agents in ordering, procuring, buying, storing, or keeping intoxicating liquor for any such purpose. (1923, c. 1, s. 14; C. S. 3411(n).)

§ 18-16. Records of transportation companies; evidence.—All express companies, railroad companies, or other transportation companies doing business in this state are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or, if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which book shall be open for inspection to any officer or citizen of the state, county, or municipality any time during business hours of the company, and such book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this state. Any express company, railroad company, or other transportation company, or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor. (1923, c. 1, s. 15; C. S. 3411(o).)

§ 18-17. Indictments; allegations of sale; circumstantial evidence.—In indictments for violating any provisions of this article it shall not be necessary to allege a sale to a particular person, and the violation of law may be proved by circumstantial evidence as well as by direct evidence. (1923, c. 1, s. 16; C. S. 3411(p).)

§ 18-18. Serving liquor with meals.—It is unlawful for any person to serve with meals, or otherwise, any liquor or intoxicating bitters, where any charge is made for such meal or service. (1923, c. 1, s. 17; C. S. 3411(q).)

§ 18-19. Sale by druggists or pharmacists. — It is unlawful for any druggist or pharmacist to sell, or otherwise dispose of for gain, any intoxicating liquor. (1923, c. 1, s. 18; C. S. 3411(r).)

§ 18-20. Grain alcohol for use in medicine or surgery; manufacture or sale of cider.—The provisions of this article shall not apply to grain alcohol, received by duly licensed physicians, druggists, dental surgeons, college, university, and state laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes, when obtained as hereinbefore provided: Provided, however, that nothing contained in this article shall prohibit the importation into the state of North Carolina and the delivery and possession in the state for use in industry, manufactures, and arts of any denatured alcohol or other denatured spirits which are compounded and made in accordance with the formulae prescribed by acts of Congress of the United States and regulations made under authority thereof by the Treasury Department of the United States and the commissioner of internal revenue thereof, and which are not now subject to internal revenue tax levied by the Government of the United States: Provided further, that this article shall not apply to wines and liquors required and used by hospitals or sanatoriums bona fide established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoriums for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing: Provided, further, that this article shall not prohibit the manufacture or sale of cider or vinegar. (1923, c. 1, s. 19; C. S. 3411(s).)

§ 18-21. Wine for sacramental purposes. — It is lawful for any ordained minister of the gospel who is in charge of a church and at the head of a congregation in this state to receive in the space of ninety consecutive days a quantity of vinous liquor not greater than five gallons, for use in sacramental purposes only, and it shall be lawful for him to receive same in one or more packages or one or more receptacles. (1923, c. 1, s. 20; 1935, c. 114; C. S. 3411(t).)

§ 18-22. Sheriffs and police to search for and seize distilleries; confiscation; disposal of property. — It is the duty of the sheriff of each

county in the state and of the police of each incorporated town or city in the state to search for and seize any distillery or apparatus used for the manufacture of intoxicating liquor in violation of the laws of North Carolina, and to deliver same, with any materials used for making such liquor found on the premises, to the board of county commissioners, who shall confiscate the same and shall cause the distillery to be cut up and destroyed, in their presence or in the presence of a committee of the board, and who may dispose of the material, including the copper or other material from the destroyed still or apparatus, in such manner as they may deem proper. (1923, c. 1, s. 21; C. S. 3411(u).)

§ 18-23. Destruction of liquor at distillery; persons arrested.—It is the duty of the sheriff and other officers mentioned in § 18-22 to seize and then and there destroy any and all liquor which may be found at any distillery for the manufacture of intoxicating liquor in violation of law, and to arrest and hold for trial all persons found on the premises engaged in distilling or aiding or abetting in the manufacture or sale of intoxicating liquor. (1923, c. 1, s. 22; C. S. 3411(v).)

§ 18-24. Laches of officers; removal from office.—If any officer mentioned in §§ 18-22, 18-23, shall fail or refuse to use diligence in the execution of the provisions of such sections, after being informed of violation thereof, he shall be guilty of laches in office, and such failure shall be cause for removal therefrom. (1923, c. 1, s. 23; C. S. 3411(w).)

§ 18-25. Rewards for seizure of still.—For every distillery seized under this article the sheriff or other police officer shall receive such sum as the board of county commissioners of the county in which the seizure was made shall, in the discretion of such board, allow, which sum shall not be less than five dollars nor more than twenty dollars: Provided, that the commissioners shall not pay any amount if they are satisfied, after due investigation, that the seizure of the distillery was not bona fide made: Provided further, that when the sheriff of a county captures a distillery he shall receive the fee for his own use, regardless of whether he be on fees or salary. (1923, c. 1, s. 24; C. S. 3411(x).)

Local Modification.—Sheriff's fees for seizure of stills were prior to 1923 regulated by C. S. 3401, 3402, § 18-25, part of the Turlington Act, would seem to supersede C. S. 3401, 3402, since it sets a different fee, and 1933, c. 480 specifically repealed C. S. 3401, 3402, except in three counties. However, many local laws have been passed with reference to C. S. 3401, as well as to §§ 18-25 and 18-26. Citations to all of these laws which have been discovered are listed here, not as a statement of the present status of the law in any county, but merely as an aid in tracing down the fees in the counties named. These citations are: Alamance, Avery, Caswell, Chowan, Graham, Greene, Jackson, Northampton, Surry, Wilson, Yadkin: C. S. 3401, 3402; 1933, c. 480; Anson: 1937, c. 442; Burke: 1933, c. 136; Haywood, Lincoln, Pitt, Transylvania: C. S. 3909; Ex. Sess. 1908, c. 97; Pub. Loc. 1919, c. 30; Lenoir: 1933, c. 246; Moore: 1933, c. 246; 1935, c. 253; Nash: 1931, c. 91; Surry: 1925, c. 173; Union: Pub. Loc. 1933, c. 160; Warren: 1933, c. 230.

§ 18-26. Same—In certain counties.—The Board of Commissioners of the several counties in the State, hereinafter named, shall pay by way of reward to the sheriff or other officers in the various counties for the capture and destruction of stills used in the manufacture of spirituous liquors, the sum of twenty dollars ($20.00) and no more, upon the production of a certificate from the Clerk of the Superior Court or other court having final jurisdiction, that one or more operators of the still captured and destroyed were by the sheriff or other officer apprehended, captured and have been convicted and that no appeal has been taken from the judgment rendered, which said twenty dollars ($20.00) shall be in lieu of any and all other rewards authorized by law to be paid for the capture and destruction of stills to the sheriff or other officers in the counties hereinafter named.

This section shall apply to the following counties only: Alleghany, Ashe, Avery, Bladen, Buncombe, Caswell, Catawba, Chowan, Craven, Duplin, Forsyth, Beaufort, Hyde, Hoke, Lee, Lenoir, Lincoln, Mecklenburg, New Hanover, Onslow, Pamlico, Pender, Perquimans, Richmond, Rockingham, Sampson, Vance, Wake, Washington, Watauga, Wilkes, Wilson and Yancey. (1927, c. 42; Pub. Loc. 1933, c. 160.)

§ 18-27. Officers given power to compel evidence; effect of evidence; process; immunity to witnesses.—When any justice of the peace, magistrate, recorder, mayor of a town, or judge of the superior courts or supreme court shall have good reason to believe that any person within his jurisdiction has knowledge of the unlawful sale of liquor or the existence and establishment of any place where intoxicating liquor is sold or manufactured contrary to law, in any town or county within his jurisdiction, such person not being minded to make voluntary information thereof on oath, then it shall be lawful for such justice of the peace, magistrate, recorder, mayor, or judge to issue to the sheriff of the county or to any constable of the town or township in which such place where intoxicating liquor is sold or manufactured contrary to law is supposed to be, a subpœna, capias ad testificandum, or other summons in writing, commanding such person to appear immediately before such justice of the peace, magistrate, recorder, mayor, or judge, and give evidence on oath as to what he may know touching the existence, establishment, and whereabouts of such place where intoxicating liquor is sold or manufactured contrary to law, and the name and personal description of the keeper thereof, or person selling or manufacturing liquor. Such evidence, when obtained, shall be considered and held in law as an information under oath, and the justice, magistrate, recorder, mayor, or judge may thereupon proceed to seize and arrest such keeper or person selling, manufacturing, or having liquor contrary to law, and issue such process as is provided by law. No discovery made by the witness upon such examination shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him. (1923, c. 1, s. 25; C. S. 3411(y).)

§ 18-28. Distilling or manufacturing liquor; first offense misdemeanor.—It is unlawful for any person to distill, manufacture, or in any manner make, or for any person to aid, assist, or abet any such person in distilling, manufacturing, or in any manner making any spirituous or malt liq-

uors or intoxicating bitters within the state of North Carolina. Any person or persons violating the provisions of this section shall, for the first conviction, be guilty of a misdemeanor and, upon conviction or confession of guilt, punished in the discretion of the court; for the second or any subsequent conviction, said person or persons shall be guilty of a felony, and upon conviction or confession in open court shall be imprisoned in the state prison for not less than four months and not exceeding five years, in the discretion of the court. (1923, c. 1, s. 26; C. S. 3411(z).)

§ 18-29. Misdemeanor; punishment; effect of previous punishment by federal court.—Any person violating any of the provisions of this article, except as otherwise specified in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court: Provided, that no person shall be punished who has been previously punished for the same offense by a federal court. (1923, c. 1, s. 27; C. S. 3411(aa).)

§ 18-30. Laws repealed; local laws.—All laws in conflict with this article are hereby repealed, but nothing in this article shall operate to repeal any of the local acts of the general assembly of North Carolina prohibiting the manufacture or sale or other disposition of any liquor mentioned in this article, or any laws for the enforcement of the same, but all such acts shall continue in full force and effect and in concurrence herewith, and indictment or prosecution may be had either under this article or under any local act relating to the same subject. (1923, c. 1, s. 28; C. S. 3411(bb).)

Art. 2. Miscellaneous Regulations.

§ 18-31. Unlawful sale through agents.—If any person unlawfully and illegally procures and delivers any spirituous or malt liquors to another, he shall be deemed and held in law to be the agent of the person selling said spirituous and malt liquors, and shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (Rev., ss. 3526, 3534; 1905, c. 498, ss. 6, 7, 8; C. S. 3371.)

§ 18-32. Keeping liquor for sale; evidence.—It is unlawful for any person, firm, association or corporation, by whatever name called, to have or keep in possession, for the purpose of sale, except as otherwise authorized by law, any spirituous, vinous or malt liquors, and proof of any one of the following facts shall constitute prima facie evidence of the violation of this section:

1. The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or

2. The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or

3. The possession of more than three gallons of vinous liquors at any one time, whether in one or more places; or

4. The possession of more than five gallons of malt liquors at any one time, whether in one or more places; or

5. The delivery to such person, firm, association or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within any four successive weeks, whether in one or more places; or

6. The possession of intoxicating liquors as samples to obtain orders thereon: Provided, that this section shall not prohibit any person from keeping in his possession wines and ciders in any quantity where such wines and ciders have been manufactured from grapes or fruit grown on the premises of the person in whose possession such wines and ciders may be. (1913, c. 44, s. 2; 1915, c. 97, s. 8; C. S. 3379.)

§ 18-33. Unlawful to handle draft connected with receipt for liquor.—It is unlawful for any bank incorporated under the laws of this state, or national bank, or any individual, firm or association, to present, collect or in any wise handle any draft, bill of exchange or order to pay money, to which draft, bill of exchange or order to pay money is attached a bill of lading, or order, or receipt for intoxicating liquors, or which draft is enclosed with, connected with, or in any way related to, directly or indirectly, any bill of lading, order, or receipt for intoxicating liquors. Provided, this section shall not apply to such instruments issued in connection with the sale or purchase of intoxicating liquors when such sale or purchase is not prohibited by the laws of this state. (1913, c. 44, s. 4; C. S. 3381.)

§ 18-34. Allowing distillery to be operated on land.—If any person shall knowingly permit or allow any distillery or other apparatus for the making or distilling of spirituous liquors to be set up for operation or to be operated on lands in his possession or control, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (Rev., s. 3533; 1905, c. 498, s. 2; C. S. 3407.)

§ 18-35. Federal license as evidence.—The possession of a license or the issuance to any person of a license to manufacture, rectify or sell, at wholesale or retail, spirituous liquors by the United States government or any officer thereof in any county, city or town where the manufacture, sale or rectification of spirituous liquors is forbidden by the laws of this state shall be prima facie evidence that the person having such license, or to whom the same was issued, is guilty of doing the act permitted by such license in violation of the laws of this state. On the trial of any person charged with the violation of any such laws, it shall be competent to prove that such a license is in the possession of or has been issued to such person, by the testimony of any witness who has personally examined the records of the government office where the official record of such licenses is kept. (Rev., s. 2060; 1905, c. 339, s. 5; 1907, c. 931; C. S. 3408.)

Art. 3. Alcoholic Beverage Control Act of 1937.

§ 18-36. Purposes of article.—The purpose and intent of this article is to establish a system of control of the sale of certain alcoholic beverages in North Carolina, and to provide the administrative features of the same, in such a manner as to insure, as far as possible, the proper administration of the sale of certain alcoholic beverages under a uniform system throughout the state. (1937, c. 49, s. 1.)

§ 18-37. State board of alcoholic control cre-

ated; membership; compensation.—A state board of alcoholic control is hereby created, to consist of a chairman and two associate members. The members of said board shall be men well known for their character and ability and business acumen and success. The chairman of said board shall devote his whole time to his official duties and shall receive a salary of six thousand ($6,000.00) dollars per annum, payable monthly, together with necessary traveling expenses, and the two associate members of said board shall receive for the time actually engaged in their official duties, seven dollars ($7.00) per day and necessary traveling expenses. (1937, c. 49, s. 2, c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5.)

§ 18-38. Members of board appointed by governor; terms of office.—The members of said state board shall be appointed by the governor, and the first appointees shall serve as follows:

The chairman shall serve for a period of three years from the date of his appointment and one associate member shall serve for a period of two years from the date of his appointment and the other associate member shall serve for a period of one year from the date of his appointment, and the subsequent appointments of all of the members of the said board shall be for a term of three years from the date of each appointment. (1937, c. 49, s. 3.)

§ 18-39. Powers and authority of board.—Said state board of alcoholic control shall have power and authority as follows, to wit:

(a) To see that all the laws relating to the sale and control of alcoholic beverages are observed and performed.

(b) To audit and examine the accounts, records, books and papers relating to the operation of county stores herein provided for, or to have the same audited.

(c) To approve or disapprove the prices at which the several county stores may sell alcoholic beverages and it shall be the duty of said board to require the store or stores in the several counties coming under the provisions of this article to fix and maintain uniform prices and to require sales to be made at such prices as shall promote temperate use of such beverages and as may facilitate policing.

(d) To remove any member, or members, of county boards whenever in the opinion of the state board, such member, or members, of the county board, or boards, may be unfit to serve thereon.

(e) To test any and all alcoholic beverages which may be sold, or proposed to be sold to the county stores, and to install and operate such apparatus, laboratories, or other means or instrumentalities, and employ to operate the same such experts, technicians, employees and laborers, as may be necessary to operate the same, in accordance with the opinion of the said board. In lieu of establishing and operating laboratories as above directed, the board may, with the approval of the governor and the commissioner of agriculture, arrange with the state chemist to furnish such information and advice, and to perform such analyses and other laboratory services as the board may consider necessary, or may, if they deem advisable, cause such tests to be made otherwise.

(f) To supervise purchasing by the county boards when said state board is of the opinion that it is advisable for it to exercise such power in order to carry into effect the purpose and intent of this article, with full power to disapprove any such purchase and at all times shall have the right to inspect all invoices, papers, books and records in the county stores or boards relating to purchases.

(g) To exercise the power to approve or disapprove in its discretion all regulations adopted by the several county stores for the operation of said stores and the enforcement of alcoholic beverage control laws which may be in violation of the terms or spirit of this article.

(h) To require that a sufficient amount shall be so allocated as to insure adequate enforcement and the amount shall, in no instance, be less than five per cent, nor more than ten per cent of the net profits arising from the sale of alcoholic beverages.

(i) To remove in case of violation of the terms or spirit of this article, officers employed, elected or appointed in the several counties where county stores may be operated.

(j) To approve or disapprove, in its discretion, the opening of county stores, except each county that may be entitled to operate stores for the sale of alcoholic beverages shall be entitled to operate at least one store for such purpose, at the county seat therein, or at such other place as may be selected by the said county board, provided that in the location of control stores in any county in which a majority of the votes have been cast for liquor control stores due consideration shall be given to communities or towns in which a majority of the votes were cast against control, but nothing herein contained shall be construed so as to abridge any of the provisions elsewhere contained relative to the opening, closing or locating such stores. As to all additional stores in each of said counties the same shall not be opened until and unless the opening of the same and the place of location thereof shall first be approved by the said state board, which at any time may withdraw its approval of the operation of any additional county store when the said store is not operated efficiently and in accordance with the alcoholic beverage control laws and all valid regulations prescribed therefor, or whenever, in the opinion of the said state board, the operation of any county store shall be inimical to the morals or welfare of the community in which it is operated or for such other cause, or causes, as may appear to said state board sufficient to warrant the closing of any county store.

(k) To require the use of a uniform accounting system in the operation of all county stores hereunder and to provide in said system for the keeping therein and the record of all such information as may, in the opinion of the said state board, be necessary or useful in its auditing of the affairs of the said county stores, as well as in the study of such problems and subjects as may be studied by said state board in the performance of its duties.

(l) To grant, to refuse to grant, or to revoke, permits for any person, firm or corporation to do business in North Carolina in selling alcoholic beverages to or for the use of any county store and to provide and to require that such informa-

tion be furnished by such person, firm or corporation as a condition precedent to the granting of such permit, or permits, and to require the furnishing of such data and information as it may desire during the life of such permit, or permits, and for the purpose of determining whether such permit, or permits, shall be continued, revoked or regranted after expiration dates. No permit, however, shall be granted by said state board, to any person, firm or corporation when the said state board has reason sufficient unto itself to believe that such person, firm or corporation has furnished to it any false or inaccurate information or is not fully, frankly and honestly cooperating with the said state board and the several county boards in the observance and performance of all alcoholic beverage laws which may now or hereafter be in force in this state, or whenever the said board shall be of opinion that such permit ought not to be granted or continued for any cause.

(m) The said state board shall have all other powers which may be reasonably implied from the granting of express powers herein named, together with such other powers as may be incidental to, or convenient for, the carrying out and performance of the powers and duties herein given to said board.

(n) To permit the establishment of warehouses for the storage of alcoholic beverages within the state, the storage of alcoholic beverages in warehouses already established, and to prescribe rules and regulations for the storage of such beverages and the withdrawal of the same therefrom. Such warehousing or bailment of alcoholic beverages as may be made hereunder shall be for the convenience of delivery to alcoholic boards of control authorized to purchase the same and shall be under the strict supervision and subject to all of the rules and regulations of the state board of control relating thereto. (1937, c. 49, s. 4, cc. 237, 411.)

§ 18-40. Removal of member by governor; vacancy appointments.—The governor shall at all times have full power and authority to remove any and all members of the said state board, upon notice to such member or members, in his discretion, for any cause that appears to him to be sufficient, and to reappoint his successor or successors to the removed members, observing, however, the terms of office of each of them, as herein set forth, and whenever a vacancy shall occur for any cause then the appointment to fill such vacancy shall be for the unexpired portion of the term of the predecessor of each appointee. (1937, c. 49, s. 5.)

§ 18-41. County boards of alcoholic control.—In each county which may be permitted to engage in the sale of alcoholic beverages, there is hereby created a county board of alcoholic control, to consist of a chairman and two other members. The members of said board shall be well known for their character, ability and business acumen. The members of said board shall be selected in each respective county in a joint meeting of the board of county commissioners, the county board of health and the county board of education, and each member present shall have only one vote, notwithstanding the fact that there may be instances in which some members are members of another board.

The terms of office of the members of said county boards shall be as follows: The chairman, who shall be so designated by the appointing boards, shall serve for his first term a period of three years and one member shall serve for his first term a period of two years and the other member shall serve for a period of one year, all terms beginning with the date of their appointment and after the said term shall have expired their successors in office shall serve for a period of three years and shall be appointed in the same manner as herein provided in this section.

Any member of any of the county boards herein above referred to in this section may be removed at any time by such composite board consisting of the board of county commissioners, the board of education and the board of health, whenever such composite board may find by a majority vote of its entire membership such member or members unfit to serve thereon, each member having only one vote as above provided for the selection of such members of county boards. In the event any member of the county board shall be removed hereunder, his successor shall be selected to serve out the time for which such member was originally selected.

Upon the death or resignation of the chairman or any other member of the county board of alcoholic control, whether selected under the provisions of this article or under the provisions of chapter four hundred and eighteen or chapter four hundred and ninety-three of the Public Laws of one thousand nine hundred and thirty-five, before the expiration of the term of office for which said chairman or member has been appointed, elected or selected, his successor to fill out such unexpired term shall be selected at a joint meeting of the board of county commissioners, the county board of health and the county board of education, which joint meeting shall be held within ten (10) days after such resignation or death, which meeting shall be called by the chairman or some other member of the county board of alcoholic control, by giving notice to each member of the time and place of holding such meeting. (1937, c. 49, s. 6, cc. 411, 431.)

Local Modification.—Bertie: 1937, c. 310; Dare: 1939, c. 168; Halifax: 1937, c. 302; Pasquotank: 1939, c. 131.

§ 18-42. Compensation for members of county boards.—The salaries of the members of the said county board shall be fixed by the joint meeting of the several boards that appoint them and shall be fixed with the view to securing the very best members available, with due regard to the fact that such salaries shall be adequate compensation, but shall not be large enough to make said positions unduly attractive or the objects of political aspirations. (1937, c. 49, s. 7.)

§ 18-43. Persons disqualified for membership on boards.—No person shall be appointed a member of either the state board or of any county board or employed thereby who shall be a stockholder in any brewery or the owner of any interest therein in any manner whatsoever, or interested therein directly or indirectly, or who is likewise interested in any distillery or other enterprise that produces, mixes, bottles or sells alcoholic beverages, or who is related to any person

likewise interested or associated in business with any person likewise interested and neither of said boards shall employ any person who is interested in, directly or indirectly, or related to, any person interested in any firm, person or corporation permitted to sell alcoholic beverages in this state. (1937, c. 49, s. 8, c. 411.)

§ 18-44. Bonds required of members of county boards.—The several members of the county board shall give bond for the faithful performance of their duties, in the penal sum of five thousand ($5,000.00) dollars, and the said bond shall be payable to the state of North Carolina and to the county in which said board performs its duties, with some corporate surety, which surety shall be satisfactory to, and approved by, the county attorney of said county, and the chairman of the state board, and shall be deposited with the chairman of the state board. The state board for and on behalf of the state of North Carolina, and the county named in said bond, shall each be secured therein to the full amount of the penalty thereof and the recovery or payment of any sums due thereunder to either shall not diminish or affect the right of the other obligee in said bond to recover the full amount of the said penalties thereof, and the giving and the approval of such bond shall be a part of the qualification of said members and no member shall be entitled to exercise any of the functions or powers incident to his appointment until and unless the said bond shall have been given and approved as herein provided. The three joint boards referred to in § 18-41 shall be authorized to relieve any member of the county boards who does not handle any money or funds from furnishing such bond, and shall be further authorized to require bond in excess of five thousand dollars ($5,000) of any member of the board handling money or funds in the event said joint boards deem it advisable to increase such bond. (1937, ch. 49, s. 9; 1939, c. 202.)

§ 18-45. Powers and duties of county boards.—The said county boards shall each have the following powers and duties:

(a) Control and jurisdiction over the importation, sale and distribution of alcoholic beverages within its respective county.

(b) Power to buy and to have in its possession and to sell alcoholic beverages within its county.

(c) Power and authority to adopt rules and regulations governing the operation of stores within its county and relating to the carrying out of the provisions and purposes of this article.

(d) To prescribe and regulate and direct the duties and services of all employees of said county board.

(e) To fix the hours for the opening and closing of stores operated by it. No store, however, shall be permitted to remain open between the hours of nine o'clock p. m. and nine o'clock a. m.

(f) To require any county stores to close on such days as it may designate, but all stores in any county operating under the provisions of this article shall remain closed on Sundays, election days, New Year's Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving and Christmas Day.

(g) To import, transport, receive, purchase, sell and deliver and have in its possession for sale for present and future delivery alcoholic beverages.

(h) To purchase or lease property, furnish and equip buildings, rooms and accommodations as and when required for the storage and sale of alcoholic beverages and for distribution to all county stores within said county.

(i) To borrow money, guarantee the payment thereof and the interest thereon, in such manner as may be required or permitted by law, and to issue, sign, endorse and accept checks, promissory notes, bills of exchange and other negotiable instruments and to do all such other and necessary things as may be required or may be convenient in the conduct of liquor stores in its county.

(j) To investigate and aid in the prosecution of violations of this article and other liquor laws, by whatever name called, and to seize alcoholic beverages in said county sold, kept, imported or transported illegally and to apply for confiscation thereof and to cooperate in the prosecution of offenders in any court in said county.

(k) To regulate and to prescribe rules and regulations that may be necessary or feasible for the obtaining of purity in all alcoholic beverages, including true statements of contents and the proper labeling thereof.

(l) To fix and maintain the prices of all alcoholic beverages sold by liquor stores in said county and to prescribe to whom the same may be sold.

The provisions of this article shall not apply to ethyl alcohol intended for use and/or used for the following purposes:

For scientific, chemical, mechanical, industrial, medicinal and culinary purposes.

For use by those authorized to procure the same tax free, as provided by the acts of congress and regulations promulgated thereunder.

In the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder.

In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products unfit for beverage purposes.

In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

(m) To exercise the power to buy, purchase and sell and to fix the prices at which all alcoholic beverages may be purchased from it, but nothing herein contained shall give said board the power to purchase or sell or deal in alcoholic beverages which contain less than five per centum of alcohol by weight.

(n) To locate stores in its county and to provide for the management thereof and to appoint and employ at least one person for each store conducted by it, who shall be known as "manager" thereof. The duty of such manager shall be to conduct the said store under directions of the county board and to carry out the law applying thereto, and such manager shall give bond for the faithful performance of his duties in such sum as may be fixed by said county board, with sufficient corporate surety and said surety, or sureties thereon, shall be approved by the said county board as a part of the qualifications of

such manager for his appointment, and the said county board shall have the right to sue on said bond and to recover for all failures on the part of said manager faithfully to perform his duties as such manager, to the extent of any loss occasioned by such manager on his part, but as against the surety, or sureties, thereon, such aggregate recovery, or recoveries, shall not exceed the penalty of said bond.

(o) To expend for law enforcement a sum not less than five per cent nor more than ten per cent of the total profits to be determined by quarterly audits and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards. The persons so appointed shall, after taking the oath prescribed by law for the peace officers, have the same powers and authorities within their respective counties as other peace officers. And any person so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this state, shall have the right to go into any other county of the state and arrest such offender therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officers. Any law enforcement officer appointed by such county boards and any other peace officer is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition law therein, and while so acting shall have such powers as a peace officer as are granted to him in his own county and be entitled to all the protection provided for said officer while acting in his own county.

(p) To discontinue the operation of any store in its county whenever it shall appear to said board that the operation thereof is not sufficiently profitable to justify a continuance of its operation, or when, in its opinion, the operation of any store is inimical or hurtful to the morals or welfare of the community in which it is operated, or when said county board may be directed to close any store by the state board.

All the powers and duties herein conferred upon county boards, or required of them, shall be subject to the powers herein conferred upon the state board and whenever or wherever herein the state board has been given power to approve or disapprove anything in respect to county stores or county boards, then no power on the part of the county boards and no act of any county board shall be exercisable or valid until and unless the same has been approved by the state board. (1937, c. 49, s. 10, cc. 411, 431; 1939, c. 98.)

Local Modification.—Moore: 1937, c. 49, s. 10(p).

§ 18-46. No sales except during hours fixed by county boards; sales to minors, habitual drunkards, etc.; discretion of managers and employees; list of persons convicted of drunkenness, etc.; unlawful to buy for person prohibited.—No alcoholic beverage shall be sold knowingly by any county store or the manager thereof or any employee therein at any time other than within the opening and closing hours for said store, as fixed in the manner herein provided, and otherwise as prescribed by the said county board. No alcoholic beverage shall be sold knowingly to any minor, or to any person who has been convicted of public drunkenness or of driving any motor vehicle while under the influence of intoxicating liquors, or has been convicted of any crime wherein the court or judge shall find as a fact that such person committed said crime or aided and abetted in the commission thereof as a result of the influence of intoxicating liquors (within one year of any such conviction), or to any person known to be an habitual drunkard or who has within one year been confined in the inebriate ward of any state institution. The manager and employees of and in any county store may, in their discretion, refuse to sell alcoholic beverage to any individual applicant, and such power and the duty to exercise the same shall vest in and apply to such manager and employees, regardless of the failure of the county boards to make any regulations providing for the same, and in their discretion may refuse to sell more than four quarts at any one time in any one day to any person.

The various clerks of the superior court and of any inferior courts in counties coming under the provisions of this article shall furnish to the chairman of the control board of their county a list of all persons convicted of public drunkenness or convicted of driving an automobile while intoxicated; and the state motor vehicle department shall furnish to the chairmen of all the control boards in this state a list of all persons whose driving licenses have been revoked for driving an automobile while intoxicated, or for the illegal use of whiskey.

It shall be unlawful for any person to buy any alcoholic beverage if he be within the class prohibited from purchasing same as set out in this section, and it shall further be unlawful for any person to buy any alcoholic beverage for any person who may be prohibited from purchasing for himself under any of the provisions of this article. (1937, c. 49, s. 11, c. 411.)

§ 18-47. Drinking upon premises prohibited; stores closed on Sundays, election days, etc.—No alcoholic beverage shall be drunk upon the premises of any county store or warehouse, or room or building occupied or used by any county board or any of its employees for the purpose of performing their duties in respect to alcoholic beverages, and such county boards, managers and employees shall not permit alcoholic beverages to be drunk upon said premises and all county stores shall be closed on Sundays and election days, and such other days as the state board may designate. (1937, c. 49, s. 12.)

§ 18-48. Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence.—It shall be unlawful for any firm, person or corporation to have in his or its possession any alcoholic beverages as defined herein upon which the taxes imposed by the laws of congress of the United States or by the laws of this state, have not been paid and any person convicted of the violation of this section shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court and the alcoholic beverage shall be seized and forfeited, together

with any vehicle, vessel, aeroplane or other equipment used in the transportation and to carry the said alcoholic beverages, and the procedure pointed out in § 18-6 for the seizure, arrest, confiscation and sale of such vehicle, vessel, aeroplane or other means of transportation shall be used and the provisions of said § 18-6 are hereby declared to be in full force and effect in any of the counties of the state which shall operate under the provisions of this article, and the possession of such alcoholic beverages in a container which does not bear either a revenue stamp of the federal government or a stamp of any of the county boards of the state of North Carolina shall constitute prima facie evidence of the violation of this section. (1937, c. 49, s. 13.)

§ 18-49. Transportation, not in excess of one gallon, authorized; transportation in course of delivery to stores.—It shall not be unlawful for any person to transport a quantity of alcoholic beverages not in excess of one gallon from a county in North Carolina coming under the provisions of this article to or through another county in North Carolina not coming under the provisions of this article: Provided, said alcoholic beverages are not being transported for the purposes of sale, and provided further that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken. Nothing contained in this article shall be construed to prevent the transportation through any county not coming under the provisions of this article, of alcoholic beverages in actual course of delivery to any alcoholic beverage control board established in any county coming under the provisions of this article. (1937, c. 49, s. 14.)

§ 18-50. Possession for sale and sales of illicit liquors; sales of liquors purchased from stores.—The possession for sale, or sales, of illicit liquors, or the sale of any liquors purchased from the county stores, is hereby prohibited and a violation of this section shall constitute a crime and shall be punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 15.)

§ 18-51. Drinking or offering drinks on premises of stores, and public roads or streets; drunkenness, etc., at athletic contests or other public places.—It shall be unlawful for any person to drink alcoholic beverages or to offer a drink to another person, or persons, whether accepted or not, at the place where the same is purchased from the county store, or the premises thereof, or upon any premises used or occupied by county boards for the purpose of carrying out the provisions of this article, or on any public road or street, and it shall be unlawful for any person or persons to be or become intoxicated or to make any public display of any intoxicating beverages at any athletic contest or other public place in North Carolina. The violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not exceeding fifty ($50.00) dollars or imprisoned for not more than thirty days in the discretion of the court. (1937, c. 49, s. 16, c. 411.)

§ 18-52. Advertising permitted in newspapers, magazines and periodicals.—It shall be lawful for newspapers, magazines and periodicals to accept and publish advertisements relating to wines, beers and other alcoholic beverages permitted to be sold and distributed under the laws of North Carolina. (1935, c. 465.)

§ 18-53. Advertising by county A. B. C. stores and on billboards prohibited.—It shall be unlawful for any county store to advertise anywhere, or by any means or method, alcoholic beverages which it has for sale and it shall not advertise or post its prices, other than in the store, or stores, which it operates, and in such stores it shall only state the brands or kinds of beverages and the price of each kind and such price list shall only be posted for public view in said store.

It shall be unlawful for any person, firm or corporation to erect or set up, or permit to be set up, any sign or bill-board, or other device, containing any advertisement of alcoholic beverages as defined herein on his premises, and if the same shall be set up by any other person, then such owner or lessee of such premises shall not permit the same to remain thereon.

It shall be unlawful for any person, firm, or corporation to display, or permit to be displayed, upon any billboard, signboard, or any other similar advertising medium, any advertisement of any alcoholic beverages or any spirituous liquors as defined herein. (1937, c. 49, s. 17; 1937, c. 398.)

§ 18-54. Advertising by radio broadcasts prohibited.—No firm, person or corporation in this state shall broadcast, or permit to be broadcast, any statement, speech, or any other message by whatsoever name called, over any radio broadcasting system doing business in this state, when such advertising matter tends to advertise alcoholic beverages as defined herein and the broadcast thereof originates in this state. (1937, c. 49, s. 18.)

§ 18-55. Additional regulations as to advertising.—The several county boards by and with the consent and approval of the state board, shall have power to make such other rules and regulations as will prevent and tend to prevent advertisement of alcoholic beverages otherwise than is expressly prohibited herein and to publish such rules and regulations and to take effective measures to enforce the same. (1937, c. 49, s. 19.)

§ 18-56. Salaries and expenses paid from proceeds of sales.—All salaries and expenses incurred under the provisions of this article except those provided for in § 18-37 shall be paid out of the proceeds of the sales of the alcoholic beverages referred to in this article. All salaries and expenses of county boards and their employees shall be paid out of the receipts for their sales as operating expenses. (1937, c. 49, s. 20.)

§ 18-57. Net profits to be paid into general fund of the various counties.—After deducting the amount required to be expended for enforcement as herein provided and retaining sufficient and proper working capital, the amount to be determined by the board, and except as hereinbefore provided in chapters four hundred ninety-three and four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five, the entire net profits derived from any stores shall be paid

quarterly to the general fund of each respective county wherein county stores are operated. (1937, c. 49, s. 21; c. 411.)

Local Modification.—Brunswick: 1937, c. 269; Cumberland: 1941, c. 48; Franklin: 1937, c. 250, s. 2; New Hanover: 1941, c. 135.

§ 18-58. Transportation into state; and purchases, other than from stores, prohibited.—It shall be unlawful for any person, firm, or corporation, to purchase in, or to bring in this state, any alcoholic beverage from any source, except from a county store operated in accordance with this article, except a person may purchase legally outside of this state and bring into the same for his own personal use not more than one gallon of such alcoholic beverage. A violation of this section shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 22.)

§ 18-59. Violations by member or employee of boards, cause for removal and punishable as misdemeanor.—A violation of any of the provisions of this article by any person, firm or corporation, and the violation of any provision of this article, or any regulation adopted by any county board or by the state board, by any member of the state board, or any member of any county board, or any employee of either of said boards, shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court, and in addition thereto shall constitute sufficient cause for the removal of such person from either of said boards, or from his employment under either of said boards and in addition to the powers of the state board to remove any of its employees or any member of any county board and the power of any county board to remove any of its employees from such employment, the court in which the said conviction is had shall have the power upon such conviction and as a part of its judgment thereon to remove such person from either of said boards or from the employment of either. (1937, c. 49, s. 23.)

§ 18-60. Definition of "alcoholic beverage."—The term "alcoholic beverage", as used in this article, is hereby defined to be and to mean alcoholic beverages of any and all kinds which shall contain more than fourteen per centum of alcohol by volume, and this article is not intended to apply to, or regulate, the possession, sale, manufacture or transportation of beer, wines or ales containing a lower alcoholic content than above specified, and whenever the term alcoholic beverages is used in this article, it shall be construed as defined in this section. (1937, c. 49, s. 24, c. 411; 1941, c. 339, s. 3.)

§ 18-61. County elections as to liquor control stores; application of Turlington Act; time of elections.—No county liquor store shall be established, maintained or operated in this state, in any county thereof, until and unless there shall have been held in such county an election, under the same rules and regulations which apply to elections for members of the general assembly, and at said election there shall be submitted to the qualified voters of such county the question of setting up and operating in such county a liquor store, or stores, as herein provided, and those favoring the setting up and operation of liquor stores in such county shall mark in the voting square to the left of the words, "for county liquor control stores" printed on the ballot, and those opposed to setting up and operating liquor stores in such county shall mark in the voting square to the left of the words, "against county liquor control stores," printed on the same ballot, and if a majority of the votes cast in such election shall be for county liquor stores, then a liquor store, or liquor stores, may be set up and operated in such county as herein provided, and if a majority of the votes cast at said election shall be against county liquor stores, then no liquor stores shall be set up or operated in said county under the provisions of this article.

Such election shall be called in such county by the board of elections of such county only upon the written request of the board of county commissioners therein, or upon a petition to said board of elections signed by at least fifteen per centum of the registered voters in said county that voted in the last election for governor. In calling for such special liquor election the county board of elections shall give at least twenty days public notice of same prior to the opening of the registration books, and the registration books shall remain open for the same period of time before such special liquor election as is required by law for them to remain open for a regular election. A new registration of voters for such special liquor election is not required and all qualified electors who are properly registered prior to the registration for the special election, as well as those electors who register in said special liquor election, shall be entitled to vote in said election.

If any county while operating any such control store under the provisions of chapter four hundred ninety-three or four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five or under the terms of this article shall hereafter under the provisions of this article hold an election and at such election a majority of the votes shall be cast "against county liquor control stores," then the county control board in such county shall within three (3) months from the canvassing of such vote and the declaration of the result thereof, close said stores and shall thereafter cease to operate the same. During this period of time, the county control board shall dispose of all alcoholic beverages on hand, all fixtures and all other property in the hands and under the control of the county control board and convert the same into money and shall, after making a true and faithful accounting, turn all money in its hands over to the general fund of the county. Thereafter, chapter one of the Public Laws of one thousand nine hundred twenty-three [§ 18-1 et seq.], being commonly known as the Turlington Act, shall be in full force and effect in such county, until and unless another election is held under the provisions of this aticle, in which a majority of the votes shall be cast "for county liquor control stores," except as modified by this article or any acts amendatory hereof.

No election under this section shall be held on the day of any biennial election for county officers, or within sixty days of such an election, and the date of such elections under this section shall be fixed by the board of elections of the county wherein the same is held.

No other election shall be called and held in any of the counties in the state under the provisions of this article within three years from the holding of the last election under this article. In any county in which an election was held either under the provisions of chapter four hundred ninety-three or chapter four hundred eighteen of the Public Laws of one thousand nine hundred thirty-five, an election may be called under the provisions of this article, provided no such election shall be called within three years of the holding of the last election. (1937, c. 49, s. 25, c. 431.)

§ 18-62. Elections in counties now operating stores, not required for continued operation.—Nothing herein contained shall be so construed as to require counties in which liquor stores have been established under chapters four hundred eighteen or four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five to have any further election in order to enable such counties to establish liquor stores, and as to such counties in which liquor stores are now being operated under chapters four hundred eighteen or four hundred ninety-three of the Public Laws of one thousand nine hundred thirty-five, such stores shall from February 22, 1937 be operated under the terms of this article. (1937, c. 49, s. 26.)

Local Modification.—Moore: 1937, c. 49, s. 26.

Art. 4. Beverage Control Act of 1939.

§ 18-63. Title.—This article shall be known as the Beverage Control Act of one thousand nine hundred thirty-nine. (1939, c. 158, s. 500.)

Local Modification.—The following laws are amendments to or modifications of 1933, c. 216, of which the Beverage Control Act of 1939 is a successor: Alamance (Elon College, Sylvan High School, and Cane Creek Church): 1933, cc. 381, 417; Bladen (Frenches Creek Township): 1933, c. 475; Buncombe (Ridgecrest, Montreat, town of Weaverville): 1933, c. 396; Caswell (village of Yanceyville and Pelham M. E. Church, South): 1933, cc. 472, 508; Dare (Stumpy Point voting precinct): 1933, c. 455; Guilford (Guilford College and Oak Ridge Military Institute): 1933, cc. 369, 370, 406; Harnett (Campbell College): 1933, c. 398; Madison (Mars Hill College): 1933, c. 396; Mecklenburg (Davidson College): 1933, c. 313; Mitchell (town of Bakersville): 1933, c. 416; Moore (Quaker Children's Home): 1933, c. 454; Randolph (village of Worthville): 1933, c. 512; Sampson (Pineland Junior College): 1933, c. 358; Union (Wingate Junior College): 1933, c. 454; Wake (Wake Forest College): 1933, c. 564; Warren (village of Macon): 1933, c. 395.

§ 18-64. Definitions.—The term "beverages" as used in this article shall include:

(a) Beer, lager beer, ale, porter, and other brewed or fermented beverages containing one-half of one per cent (1%) of alcohol by volume but not more than five per cent (5%) of alcohol by weight as authorized by the laws of the United States of America.

(b) Unfortified wines, as used in this article, shall mean wine of an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar and having an alcoholic content of not less than five per centum (5%) and not more than fourteen per centum (14%) of absolute alcohol, the per centum of alcohol to be reckoned by volume.

The term "person" used in this article shall mean any individual, firm, partnership, association, corporation, or other groups or combination acting as a unit.

The term "sale" as used in this article shall include any transfer, trade, exchange or barter in any manner or by any means whatsoever, for a consideration. (1939, c. 158, s. 501; 1941, c. 339, s. 4.)

§ 18-65. Regulations; statement required on container; application of other law.—The beverages enumerated in § 18-64 may be manufactured, transported, or sold in this state in the manner and under the regulations hereinafter set out: Provided, however, that, except as otherwise provided by law, no wines shall be transported or sold in this state unless there be firmly fastened or impressed on the barrel, bottle, or other container in which the same may be a written statement showing that the same are not fortified and that the alcoholic content thereof reckoned by volume, is not more than fourteen per cent.

The possession, transportation, or sale of wines defined in § 18-64, subsection (b) without such statement, and any misrepresentation made in any such statement, shall constitute a misdemeanor and be punished as provided in § 18-91. Except as otherwise provided by law, the manufacture, possession, transportation or sale of wines other than those defined in § 18-64, subsection (b), including fortified wines, shall be subject to all the provisions of chapter one of the Public Laws of one thousand nine hundred and twenty-three, commonly called the Turlington Act, as amended and supplemented, codified as § 18-1 et seq. (1939, c. 158, s. 502; 1941, c. 339, s. 4.)

§ 18-66. Transportation. — The beverages enumerated in § 18-64 may be transported into, out of or between points in this state by railroad companies, express companies or by steamboat companies engaged in public service as common carriers and having regularly established schedules of service upon condition that such companies shall keep accurate records of the character and volume of such shipments, the character and number of packages or containers, shall keep records open at all times for inspection by the commissioner of revenue of this state or his authorized agent, and upon condition that such common carrier shall make report of all shipments of such beverages into, out of or between points in this state at such times and in such detail and form as may be required by the commissioner of revenue.

The beverages enumerated in § 18-64 may be transported into, out of or between points in this state over the public highways of this state by motor vehicles upon condition that every person intending to make such use of the highways of this state shall as a prerequisite thereto register such intention with the commissioner of revenue in advance of such transportation, with notice of the kind and character of such products to be transported and the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of this article, the commissioner of revenue shall without charge therefor issue a numbered certificate to each such owner or operator for each motor vehicle intended to be used for such transportation, which numbered cer-

tificate shall be prominently displayed on the motor vehicle used in transporting the products named in § 18-64. Every person transporting such products over any of the public highways of this state shall during the entire time he is so engaged have in his possession an invoice or bill of sale or other record evidence, showing the true name and address of the person from whom he has received such beverages, the character and contents of containers, the number of bottles, cases or gallons of such shipment, the true name and address of every person to whom deliveries are to be made. The person transporting such beverages shall, at the request of any representative of the commissioner of revenue, produce and offer for inspection said invoice or bill of sale or record evidence. If said person fails to produce invoice or bill of sale or record evidence, or if when produced, it fails to clearly and accurately disclose said information, the same shall be prima facie evidence of the violation of this article. Every person engaged in transporting such beverages over the public highways of this state shall keep accurate records of the character and volume of such shipments, the character and number of packages or containers, shall keep records open at all times for inspection by the commissioner of revenue of this state, or his authorized agent, and upon condition that such person shall make report of all shipments of such beverages into, out of or between points in this state at such times and in such detail and form as may be required by the commissioner of revenue.

The purchase, transportation and possession of beverages enumerated in § 18-64 by individuals for their own use is permitted without restriction or regulation. The provisions of this section as to transportation of beverages enumerated in § 18-64 by motor vehicles over the public highways of this state shall in like manner apply to the owner or operator of any boat using the waters of the state for such transportation, and all of the provisions of this section with respect to permit for such transportation and reports to the commissioner of revenue by the operators of motor vehicles on public highways shall in like manner apply to the owner or operator of any boat using the waters of this state. (1939, c. 158, s. 503.)

§ 18-67. Manufacture.—The brewing or manufacture of beverages for sale enumerated in section 18-64 shall be permitted in this state upon the payment of an annual license tax to the commissioner of revenue in the sum of five hundred dollars ($500.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. Persons licensed under this section may sell such beverages in barrels, bottles, or other closed containers only to persons licensed under the provisions of this article for resale, and no other license tax shall be levied upon the business taxed in this section. The sale of malt, hops, and other ingredients used in the manufacture of beverages for sale enumerated in § 18-64 is hereby permitted and allowed: Provided, that any person engaged in the business of manufacturing in this state the wines described in § 18-64, subsection (b) shall be required to pay the following tax based on the number of gallons manufactured:

Where not more than one hundred gallons are manufactured for sale	$ 5.00
Where one hundred gallons and not more than two hundred gallons are manufactured for sale	10.00
Where two hundred gallons and not more than five hundred gallons are manufactured for sale	25.00
Where five hundred gallons and not more than one thousand gallons are manufactured for sale	50.00
Where one thousand gallons and not more than two thousand five hundred gallons are manufactured for sale	200.00
Where two thousand five hundred gallons or more are manufactured for sale	250.00

Nothing in this article shall be construed to impose any tax upon any resident citizen of this state who makes native wines for the use of himself, his family and guests from fruits, grapes and berries cultivated or grown wild upon his own land. (1939, c. 158, s. 504.)

§ 18-68. Bottler's license.—Any person who shall engage in the business of receiving shipments of the beverages enumerated in § 18-64, subsection (a) in barrels or other containers, and bottling the same for sale to others for resale, shall pay an annual license tax of two hundred fifty dollars ($250.00); and any person who shall engage in the business of bottling the beverages described in § 18-64, subsection (b), shall pay an annual license tax of two hundred fifty dollars ($250.00): Provided, however, that any person engaged in the business of bottling the beverages described in § 18-64, subsection (a) and also the beverages described in § 18-64, subsection (b), or either, shall pay an annual license tax of four hundred dollars ($400.00). No other license tax shall be levied upon the businesses taxed in this section, but licensees under this section shall be liable for the payment of the taxes imposed by § 18-81 in the manner therein set forth. (1939, c. 158, s. 505; 1941, c. 339, s. 4.)

§ 18-69. Wholesaler's license.—License to sell at wholesale, which shall authorize licensees to sell beverages described in § 18-64, subsection (a) in barrels, bottles, or other containers, in quantities of not less than one case or container to a customer, shall be issued as a state-wide license by the commissioner of revenue. The annual license under this section shall be one hundred and fifty dollars ($150.00) and shall expire on the next succeeding thirtieth day of April. The license issued under this section shall be revocable at any time by the commissioner of revenue for failure to comply with any of the conditions of this article with respect to the character of records required to be kept, reports to be made or payment of other taxes hereinafter set out.

Licensees to sell at wholesale the beverages described in section 18-64, subsection (b) shall pay an annual license tax of one hundred fifty dollars ($150.00): Provided, that a licensee to sell at wholesale the beverages described in § 18-64, subsection (a) and the beverages described in § 18-64, subsection (b) shall pay an annual license tax of two hundred fifty dollars ($250.00).

If any wholesaler maintains more than one place of business or storage warehouse from which orders are received or beverages are distributed a separate license shall be paid for each separate place of business or warehouse.

The owner or operator of every distributing warehouse selling, distributing or supplying to retail stores beverages enumerated in § 18-64 shall be deemed a wholesale distributor within the meaning of this article and shall be liable for the tax imposed in this section and shall comply with the conditions imposed in this article upon wholesale distributors of beverages with respect to payment of taxes levied in this article and bond for the payment of such taxes.

No county shall levy a tax on any business under the provisions of this section, nor shall any city or town, in which any person, firm, corporation or association taxed hereunder has its principal place of business levy and collect more than one-fourth of the state tax levied under this section; nor shall any tax be levied or collected by any county, city or town on account of delivery of the products, beverages or articles enumerated in § 18-64. (1939, c. 158, s. 506; 1941, c. 339, s. 4.)

§ 18-70. Sales on railroad trains.—The sale of beverages enumerated in § 18-64 shall be permitted on railroad trains in this state to be sold only in dining cars, buffet cars, Pullman cars, or club cars, and for consumption on such cars upon payment to the commissioner of revenue of one hundred dollars ($100.00) for each railroad system over which such cars are operated in this state for an annual state-wide license expiring on the next succeeding thirtieth day of April. No other license shall be levied upon licensees under this section, but every licensee under this section shall make a report to the commissioner of revenue on or before the tenth day of each calendar month covering sales for the previous month and payment of the tax on such sales at the rate of tax levied in this article. (1939, c. 158, s. 507.)

§ 18-71. Salesman's license.—License for salesmen, which shall authorize the licensee to offer for sale within the state or solicit orders for the sale of within the state beverages enumerated in this article, shall be issued by the commissioner of revenue upon the payment of an annual license tax of twelve dollars and fifty cents ($12.50) to the commissioner of revenue, such license to expire on the next succeeding thirtieth day of April. License to salesmen shall be issued only upon the recommendation of the vendor whom they represent, and no other license tax shall be levied under this section. (1939, c. 158, s. 508.)

§ 18-72. Character of license.—License issued under authority of § 18-64, subsection (a) shall be of two kinds:

(1) "On premises" license which shall be issued for bona fide restaurants, cafes, cafeterias, hotels, lunch stands, drug stores, filling stations, grocery stores, cold drink stands, tea rooms, or incorporated or chartered clubs. Such license shall authorize the licensee to sell at retail beverages for consumption on the premises designated in the license, and to sell the beverages in original packages for consumption off the premises.

(2) "Off premises" license which shall authorize the licensee to sell at retail beverages for consumption only off the premises designated in the license, and only in the immediate container in which the beverages was received by the licensee.

In a municipality the governing board of such municipality shall determine whether an applicant for license is entitled to a "premises" license under the terms of this article, and outside of municipalities such determination shall be by the board of commissioners of the county. (1939, c. 158, s. 509.)

§ 18-73. Retail license issued for sale of wines.—License issued under authority of section 18-64, subsection (b) shall be of two kinds:

1. "On premises" licenses shall be issued to bona fide hotels, cafeterias, cafes and restaurants and shall authorize the licensees to sell at retail for consumption on the premises designated in the license; provided no such license shall be issued except to hotels, cafeterias, cafes and restaurants where prepared food is customarily sold and to such only as are licensed under the provisions of § 105-62 and which, at the time of the application for such license, have been given a grade A or B rating by the state department of health.

2. "Off premises" license shall authorize the licensee to sell said beverages at retail for consumption off the premises designated in the license, and all such sales shall be made in the immediate container in which the beverage was purchased by the licensee, and every such container shall have the tax stamp displayed thereon, as provided in § 18-81. (1939, c. 158, s. 509½; 1941, c. 339, s. 4.)

§ 18-74. Amount of retail license tax.—The license tax to sell at retail under § 18-64, subsection (a) for municipalities shall be:

(1) For "on premises" license, fifteen dollars ($15.00).

(2) For "off premises" license, ten dollars ($10.00).

The license tax to sell at retail under section 18-64, subsection (b), or both, shall be:

(1) For "on premises" license, fifteen dollars ($15.00).

(2) For "off premises" license, ten dollars ($10.00).

The rate of license tax levied in this section shall be for the first license issued to one person and for each additional license issued to one person an additional tax of ten per cent (10%) of the base tax, such increase to apply progressively for each additional license issued to one person. (1939, c. 158, s. 510.)

§ 18-75. Who may sell at retail.—Every person making application for license to sell at retail beverages enumerated in § 18-64, if the place where such sale is to be made is within a municipality, shall make application first to the governing board of such municipality, and the application shall contain:

(1) Name and residence of the applicant and the length of his residence within the state of North Carolina.

(2) The particular place for which the license is desired, designating the same by a street and

number, if practicable; if not, by such other apt description as definitely locates it.

(3) The name of the owner of the premises upon which the business licensed is to be carried on.

(4) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction.

(5) A statement that the applicant is a citizen and resident of North Carolina and not less than twenty-one years of age; that he has never been convicted of a felony or other crime involving moral turpitude; and that he has not, within the last two years prior to the filing of the application, been adjudged guilty of violating the prohibition laws, either state or federal. The application must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant or otherwise that he has at any time been convicted of a felony or other crime involving moral turpitude, or that he has, within the two years prior to the filing of the application, been adjudged guilty of violating the prohibition laws, either state or federal, or that he has within two years prior to the filing of the application completed a sentence for violation of the prohibition laws, such license shall not be granted. If it appears that any false statement is knowingly made in any part of the application and license is received thereon, the license shall be revoked and the applicant subjected to the penalty provided by law for misdemeanors. Before issuing a license, the governing body of the municipality shall be satisfied that the statements required by subsections (1), (2), (3), (4), and (5) of this section are true.

Neither the state nor any county or city shall issue a license under this article to any person, or firm, or corporation who has not been a bona fide resident of North Carolina for one year. No resident of the state shall obtain a license under this article and employ or receive aid from a nonresident for the purpose of defeating this requirement. Any person violating this paragraph shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not more than thirty days or fined not more than two hundred dollars ($200.00). (1939, c. 158, s. 511.)

§ 18-76. County license to sell at retail.—License to sell at retail shall be issued by the board of commissioners of the county, and application for such license shall be made in the same manner and contain the same information set out in § 18-75 with respect to municipal license. If the application is for license to sell within a municipality, the application must also show that license has been granted the applicant by the governing board of such municipality. The granting of a license by the governing board of a municipality shall determine the right of an applicant to receive a county license upon compliance with the conditions of this article.

If the application is for license to sell outside of a municipality within the county, the application shall also show the distance to the nearest church or public or private school from the place at which the applicant purposes to sell at retail. No license shall be granted to sell within three hundred feet of any public or private school buildings or church building outside of incorporated cities and towns: Provided, the restriction set forth in this sentence shall not apply to unincorporated towns and villages having police protection.

The clerk of the board of commissioners of each county shall make prompt report to the commissioner of revenue of each license granted by the board of commissioners of such county. The county license fee shall be fixed at twenty-five dollars ($25.00), for the sale of beverages described in § 18-64, subsection (a), and twenty-five dollars ($25.00), for the sale of beverages described in § 18-64, subsection (b) and the same shall be placed in the county treasury, for the use of the county. (1939, c. 158, s. 512; 1941, c. 339, s. 4.)

Local Modification.—Anson: 1941, c. 331; Currituck (Poplar Branch Township): 1937, c. 390.

§ 18-77. Issuance of license mandatory; sales during religious services.—It shall be mandatory that the governing body of a municipality or county issue license to any person applying for the same when such person shall have complied with requirements of this article: Provided, no person shall dispense beverages herein authorized to be sold, within fifty feet of a church building in an incorporated city or town, or in a city or town having police protection whether incorporated or not, while religious services are being held in such church, or within three hundred feet of a church building outside the incorporate limits of a city or town while church services are in progress: And provided further that this section shall not apply in any territory where the sale of wine and/or beer prohibited by special legislative act. And provided further, that such governing bodies in the counties of Watauga, Ashe, Jackson, Haywood, Duplin, Alexander, Robeson, McDowell, Yadkin, Wilkes, Sampson, Greene, Montgomery, Transylvania, Randolph, Chatham, Alamance, Clay, Madison, Pender, Avery, Nash, Granville and the Town of Aulander, or any municipality therein shall be authorized in their discretion to decline to issue the "on premises" licenses provided for in subsection one of § 18-73. The governing bodies in the counties of Watauga, Ashe, Jackson, Haywood, Duplin, Alexander, Robeson, McDowell, Yadkin, Wilkes, Sampson, Greene, Montgomery, Transylvania, Randolph, Chatham, Alamance, Clay, Madison, Pender, Avery, Nash, Granville and the town of Aulander or municipalities therein, shall be authorized to prohibit the sale of beer and/or wine between the hours of 12:01 A. M. on Sundays and midnight Sunday night. (1939, c. 158, s. 513; 1939, c. 405.)

§ 18-78. Revocation of license.—If any licensee violates any of the provisions of this article or any rules and regulations under authority of this article or fails to superintend in person or through a manager, the business for which the license was issued, or allows the premises with respect to which the license was issued to be used for any unlawful, disorderly, or immoral purposes, or knowingly employs in the sale or distribution of beverages any person who has been convicted of a felony involving moral turpitude or adjudged guilty of violating the prohibition laws within two years or otherwise fails to

carry out in good faith the purposes of this article, the license of any such person may be revoked by the governing board of the municipality or by the board of county commissioners after the licensee has been given an opportunity to be heard in his defense. Whenever any person, being duly licensed under this article, shall be convicted of the violation of any of the prohibition laws on the premises herein licensed, it shall be the duty of the court to revoke said license. Whenever any license which has been issued by any municipality, any board of county commissioners, or by the commissioner of revenue has been revoked, it shall be unlawful to reissue said license for said premises to any person for a term of six months after the revocation of said license. (1939, c. 158, s. 514.)

§ 18-79. State license.—Every person who intends to engage in the business of retail sale of the beverages enumerated in § 18-64, subsection (a) shall also apply for and procure a state license from the commissioner of revenue.

For the first license issued to each licensee five dollars ($5.00), and for each additional license issued to one person an additional tax of ten per cent (10%) of the five dollars base tax shall be charged. That is to say, that for the second license issued the tax shall be five dollars and fifty cents ($5.50) annually, for third license six dollars ($6.00) annually, and an additional fifty cents (50c.) per annum for each additional license issued to such person. (1939, c. 158, s. 515.)

§ 18-80. State license to sell wine at retail.—Every person who intends to engage in the business of selling wines as defined in § 18-64, subsection (b) shall procure a state license for such business which license shall in all cases be issued under the same restrictions, rules and regulations as set out in this article for the issuance of license for the sale of beverages described in § 18-64, subsection (a) and for which license the following schedule of taxes is hereby levied:

(1) For "on premises" license twenty-five dollars $25.00
(2) For "off premises" license five dollars 5.00

Such retail license shall authorize the sale of the beverages described in this section only on the premises described in the license, and if the same person operates more than one place at which said beverages are sold at retail, he shall obtain a license for each such place and pay therefor the license tax provided in this section.

If the license issued to any person by any municipality or county to sell the beverages referred to in this article shall be revoked by the proper officers of such municipality or county, or by any court, it shall be the duty of the commissioner of revenue to revoke the state license of such licensee; and in such event, the licensee shall not be entitled to a refund of any part of the license tax paid.

It shall be unlawful for any wholesale licensee to make any sale or delivery of the beverages described in § 18-64, subsection (b) to any person except persons who have been licensed to sell such beverages at retail, as prescribed in this article.

It shall be unlawful for any retail licensee to purchase any of the beverages described in § 18-64, subsection (b) from any person except wholesale licensees maintaining a place of business within this state and duly licensed under the provisions of this article. (1939, c. 158, s. 516; 1941, c. 339, s. 4.)

§ 18-81. Additional tax.—(a) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages enumerated in § 18-64, subsection (a) of three dollars and seventy-five cents ($3.75) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than twelve ounces, a tax of one and one-quarter cents per bottle or container: Provided fruit cider of alcoholic content not exceeding that provided in this article may be sold in bottles or other containers of not more than six ounces at a tax of five-eighths of a cent per bottle or container.

(b) The payment of the tax imposed by the preceding subsection shall be evidenced as to containers of not more than six ounces by the affixing of crowns or lids to such containers in which beverages are placed, received, stored, shipped, or handled, and upon which the tax has been paid at the rate of five-eighths of a cent per bottle or container. And the payment of the tax imposed by the preceding subsection shall be evidenced as to containers of more than six ounces and not more than twelve ounces by the affixing of crowns or lids to such containers in which beverages are placed, received, stored, shipped, or handled, and upon which a tax has been paid of one and one-quarter cents per bottle or container.

(c) Except as may be otherwise provided herein, each manufacturer or bottler manufacturing, selling or delivering beverages in this state shall, within twenty-four hours after the beverages are placed in original containers or bottles, and prior to delivery of any container of beverages to any wholesaler, distributor, retailer, jobber, or any other person whatsoever in this state, affix the proper crown or lid to each container.

(d) Except as may be otherwise provided herein, and unless such crowns or lids have been previously affixed, such crowns or lids shall be affixed as herein provided by each distributor or wholesaler in this state within twenty-four hours after such beverages come into the possession of such wholesaler and prior to the delivery of any container thereof to any retailer or other person in this state.

(e) The commissioner of revenue shall prescribe, prepare, furnish and sell the crowns or lids provided for in this section under rules and regulations prescribed by him, and all such crowns and lids shall carry the following words: "N. C. Tax Paid," and shall be so designed as to enable the manufacturer or bottler to place his brand or trade mark thereon, and they shall be purchased by the manufacturer or bottler or other person after the payment of the tax imposed by this article, only from such persons, firms or corporations as may be designated as manufacturers of such crowns and lids by the commissioner of revenue. The commissioner of revenue is authorized to enter into contracts on behalf of the state with one or more manufacturers for the manufacture, sale and distribution of such crowns or lids and

shall require of such persons, firms and corporations so manufacturing, selling and distributing such crowns or lids a bond or bonds with a company authorized to do business in this state as surety payable to the state of North Carolina in such penalty and upon such conditions as in the opinion of the commissioner of revenue will adequately protect the state. The crowns and lids shall be manufactured, sold and distributed at the cost of the taxpayer. No manufacturer or bottler will be allowed to purchase the crowns or lids prescribed by this section unless such bottler or manufacturer has a valid permit from the federal government and the state of North Carolina, or the state in which such manufacturer or bottler is located, to manufacture, bottle, or sell the beverages herein described. The crowns and lids shall be sold by the commissioner of revenue at a discount of two per cent (2%) as sole compensation for North Carolina tax-paid crown and lid losses sustained in the process of production of malt beverages. No compensation or refund shall be made for tax-paid malt beverages given as free goods, or advertising, and losses, sustained by spoilage and breakage incident to the sale and distribution of malt beverages.

(f) At the time of delivering beverages to any person, firm or corporation in this state, each manufacturer or bottler shall make a true duplicate invoice showing the date of delivery, the amount and value of each shipment of beverages delivered, and the name of the purchaser to whom the delivery is made, and shall retain the same for a period of two years, subject to the use and inspection of the commissioner of revenue or his agents.

(g) Persons operating boats, dining cars, buffet cars or club cars upon or in which beverages are sold shall not be required to evidence the payment of the tax herein provided for by affixing crowns or lids as herein provided, but instead shall keep such records of the sales of such beverages in this state as the commissioner of revenue shall prescribe and shall submit monthly reports of such sales to the commissioner of revenue upon a form prescribed therefor by the commissioner of revenue, and shall pay the tax levied under this article at the time such reports are filed.

(h) It is the intent and purpose of this section to require all manufacturers and bottlers and other persons, except as herein provided, to affix the crowns or lids provided for herein to all original containers in which beverages are normally placed, prepared for market, received, sold or handled, before such beverages are sold, offered for sale, or held for sale within this state.

(i) Any person, firm or corporation, except as herein provided, who shall sell the beverages enumerated in § 18-64, subsection (a) to wholesalers, retailers, or consumers which do not have affixed thereto the crowns or lids required by this section, or who shall purchase, receive, transport, store, or possess any beverage in containers to which the crowns or lids required herein are not affixed, shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court, and, in addition thereto, such person shall be liable for double the amount of the tax due under this article and the commissioner of revenue shall have authority to assess said tax and penalty and cause the same to be collected in the same manner provided for the collection of other taxes levied in this article.

(j) Manufacturers, bottlers, or vendors of beverages enumerated in § 18-64, subsection (a), from without this state, shall affix the crowns or lids to original containers of such beverages to be sold, offered for sale, held for sale, delivered or transported for delivery in this state.

(k) The commissioner of revenue shall promulgate rules and regulations to relieve manufacturers or bottlers of beverages from the liability to affix crowns or lids to such containers of such beverages as are intended to be shipped and are thereafter shipped out of this state by such manufacturers or bottlers for resale out of this state.

(l) Any person who falsely or fraudulently makes, forges, alters, or counterfeits any crowns or lids prescribed by the commissioner of revenue under the provisions of this section, or causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such crowns or lids, or knowingly or wilfully utters, passes or tenders as true any such false, forged, altered, or counterfeited crowns or lids, or uses more than once any crown or lid provided for and required by this article, or uses a crown or lid other than that prescribed herein for the purpose of evading the tax imposed under this article, or for the purpose of aiding or abetting others to evade the tax imposed under this article, shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the state's prison for not more than five years, or by a fine of not more than five thousand dollars ($5,000.00), or by both such fine and imprisonment in the discretion of the court.

(m) Any person, firm or corporation having in his possession a container or containers of beverages not bearing the crowns or lids required to be affixed to such container, or who fails to produce upon demand by the commissioner of revenue or his agent, invoices of all beverages purchased or received by him within two years prior to such demand, unless upon satisfactory proof it is shown that such non-production is due to providential or other causes beyond his control, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(n) Any person who shall fail, neglect, or refuse to comply with or shall violate any provisions of this section, for which no specific penalty is provided, or who shall refuse to permit the commissioner of revenue or his agents to examine his books, papers, invoices and other records, his store of beverages in and upon any premises where the same are manufactured, bottled, stored, sold, offered for sale, or held for sale, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(o) The commissioner of revenue is hereby charged with the enforcement of the provisions of this section and hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this section, and

the collection of taxes, penalties, and interest imposed by this article.

(p) The commissioner of revenue is hereby authorized to prescribe, adopt, promulgate, and enforce the rules and regulations relating to the transportation of beverages enumerated in § 18-64 through this state, and from points outside of this state to points within this state, and to prescribe, adopt, promulgate and enforce rules and regulations reciprocal to those of, or laws of, any other state or territory affecting the transportation of beverages manufactured in this state.

(q) The commissioner of revenue shall have authority at any time after March 24, 1939, to make provisions for the furnishing of crowns or lids required by this section.

(r) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages described in section 18-64, subsection (b) of ten cents (10c.) per gallon.

The taxes levied under this section shall be paid through the use of wine revenue stamps, as hereinafter provided, by affixing stamps of proper denominations to the bottle or container in which or from which said wines are normally sold at retail. The stamps shall be affixed by the manufacturer, winery, bottler, wholesaler, or distributor in such a manner that their removal will require continued application of water or steam. The commissioner of revenue shall design, issue, sell, and distribute such stamps, of such denominations as are customary in the trade and as may be necessary, and shall require of every manufacturer, winery, bottler, wholesaler, and distributor that such stamps be purchased and affixed to each and every bottle or container of wine sold within this state. Stamps for said wine bottles or containers of more or less than one gallon shall be proportioned to the tax levied in this subsection upon the wine defined in § 18-64, subsection (b), but the stamp on any single bottle or container shall not be less than one cent (1c.).

It shall be unlawful for any dealer, either wholesale or retail, to have exposed for sale or in his possession, either in storage or on display, any wines taxable under this article without having attached to each bottle or other container the proper stamp indicating the payment of the tax herein levied, and in addition to other penalties for violation of this provision it shall be lawful for the department of revenue, through any of its authorized agents, to confiscate any stock on hand, on display, or in storage, of any dealer who has not complied with the provisions of this section. The taxes levied in this section are in addition to the taxes levied in Schedule E of the Revenue Act. (1939, c. 158, s. 517; c. 370, s. 1; 1941, c. 50, s. 7; c. 339, s. 4.)

§ 18-82. By whom tax payable.—The tax levied in § 18-81 upon the sale of beverages enumerated in § 18-64, subsection (a) shall be paid to the commissioner of revenue by the manufacturer or bottler of such beverages, and the tax levied in § 18-81 upon the sale of the beverages enumerated in § 18-64, subsection (b) shall be paid to the commissioner of revenue by the wholesale distributor or bottler of such beverages. As a condition precedent to the granting of license by the commissioner of revenue to any wholesale distributor, manufacturer or bottler of beverages under this article, the commissioner of revenue shall require each such wholesale distributor, manufacturer or bottler to furnish bond in an indemnity company licensed to do business under the insurance laws of this state in such sums as the commissioner of revenue shall find adequate to cover the tax liability of each such wholesale distributor, manufacturer or bottler, proportioned to the volume of business of each such wholesale distributor, manufacturer or bottler, but in no event to be less than one thousand dollars ($1,000.00), or to deposit federal, state, county or municipal bonds in required amounts, such county and municipal bonds to be approved by the commissioner of revenue. The commissioner of revenue may grant such extension of time for compliance with this condition as may be found to be reasonable. (1939, c. 158, s. 518; 1941, c. 339, s. 4.)

§ 18-83. Nonresident manufacturers and wholesale dealers to be licensed. — From and after April thirtieth, one thousand nine hundred thirty-nine, every non-resident desiring to engage in the business of making sales of the beverages described in § 18-64, to wholesale dealers licensed under the provisions of this article, shall first apply to the commissioner of revenue for a permit so to do. The commissioner of revenue may require of every such applicant that a bond in a sum not to exceed two thousand dollars ($2,000.00) be executed by such applicant and deposited with the commissioner, conditioned upon the faithful compliance by such applicant with the provisions of this article, and particularly that such applicant shall not make sales of any of the beverages described in section 18-64 to any person in this state except a duly licensed wholesale dealer. Upon the payment of a license tax of one hundred fifty dollars ($150.00), if the commissioner is satisfied that said applicant is a bona fide manufacturer or distributor of the beverages defined in § 18-64, he shall then issue a permit to such applicant which shall bear a serial number. Every holder of such non-resident permit and license shall thereafter put the number of such permit on every invoice for any quantity of beverages sold by such licensee to any wholesale dealer in North Carolina. Upon the failure of any such licensee to comply with all the provisions of this article, the commissioner of revenue may revoke such permit or license.

Any resident manufacturer licensed under § 18-67 shall not be required to post the bond required by this section. (1939, c. 158, s. 518½.)

§ 18-84. Payment of tax by retailers.—The granting of license by any municipality or county under this article to any person to sell at retail the beverages enumerated under § 18-64 shall not be valid license for such sale at retail until such person shall have filed with the commissioner of revenue a bond in a surety company licensed by the insurance department to do business in this state in such sum as the commissioner of revenue may find to be sufficient to cover the tax liability of every such person, but in no event to be less than one thousand dollars ($1,000.00). The commissioner of revenue may waive the requirement of this section for indemnity bond with respect to any such person who may file a satisfactory contract or agreement

with the commissioner of revenue that such person will purchase and sell beverages enumerated in § 18-64 only from wholesale distributors or bottlers licensed by the commissioner of revenue under this article who pay the tax under § 18-81 upon all such beverages sold to retail dealers in this state. The violation of the terms of any such contract or agreement between any such retail dealer and the commissioner of revenue by the purchase or sale of any of the beverages enumerated in § 18-64 from any one other than a licensed wholesale distributor or bottler under this article shall automatically cancel the license of any such retail dealer and shall be prima facie evidence of intent to defraud, and any person guilty of violation of any such contract or agreement shall be guilty of a misdemeanor. (1939, c. 158, s. 519.)

§ 18-85. Tax on fortified wines and spirituous liquors; sale of fortified wines in A. B. C. stores.—In addition to other taxes levied in this article, and in lieu of taxes levied in Schedule E of the Revenue Act on the sale of fortified wines and spirituous liquors, there is hereby levied a tax of eight and one-half per cent (8½%) on the retail price of fortified wines and spirituous distilled liquors of every kind that may be sold in this state, including liquors sold in county liquor stores. Provided, however, that in no event shall the amount paid under this section exceed one-half of the net profits from liquors sold through such stores in any county. The taxes levied in this section shall be payable monthly, at the same time and in the same manner as taxes levied in Schedule E of the Revenue Act, and the liability for such tax shall be subject to all the rules, regulations and penalties provided in Schedule E and in other sections of the Revenue Act for the payment of taxes. One-fourteenth of the taxes collected under this section are intended to pay the necessary expenses of the state alcoholic control board, and for other necessary expenses in connection with the enforcement of such laws as may be enacted by this general assembly for the sale of alcoholic liquors and to meet such appropriations there is hereby appropriated and made available for the purpose above set forth one-fourteenth of the amount of taxes collected under this section, such sum to be allocated for such purpose by the director of the budget upon request of the state alcohol control board and expended and accounted for as other state funds, and the director of the budget is hereby given authority to estimate the revenues to be received under this section, to the end that a sufficient sum shall be made available for the purpose of defraying the expenses of the state alcoholic control board until sufficient revenues have been collected as provided hereunder for said purposes.

Spirituous liquors, as referred to in this section, shall be deemed to include any alcoholic beverages containing an alcoholic content of more than twenty-four per cent (24%) by volume.

Fortified wines may be sold in county alcoholic beverage control stores duly established under the authority of article 3 of this chapter. (1939, c. 158, s. 519½; 1941, c. 339, s. 4.)

§ 18-86. Books, records, reports.—Every person licensed under any of the provisions of this article shall keep accurate records of purchase and sale of all beverages taxable under this article, such records to be kept separate from all purchases and sales of merchandise taxable under this article, including a separate file and record of all invoices. The commissioner of revenue or any authorized agent, shall at any time during business hours, have access to such records. The commissioner of revenue may also require regular or special reports to be made by every such person, at such times and in such form as the commissioner may require. (1939, c. 158, s. 520.)

§ 18-87. No license for sales upon school property.—No license shall be issued for the sale of beverages enumerated in § 18-64 upon the campus or property of any public or private school or college in this state. (1939, c. 158, s. 521.)

§ 18-88. License shall be posted.—Each form of license required by this article shall be kept posted in a conspicuous place at each place where the business taxable under this article is carried on, and a separate license shall be required for each place of business. (1939, c. 158, s. 522.)

§ 18-89. Administrative provisions. — The commissioner of revenue and the authorized agents of the state department of revenue shall have and exercise all the rights, duties, powers, and responsibilities in enforcing this article that are enumerated in the Revenue Act in administering taxes levied in Schedule B of that act. (1939, c. 158, s. 523.)

§ 18-90. Appropriation for administration. — For the efficient administration of this article an appropriation is hereby made for the use of the department of revenue in addition to the appropriation in the Appropriation Bill of a sum equal to three per cent (3%) of the total revenue collections under this article to be expended under allotments made by the budget bureau of such part of the whole of such appropriation as may be found necessary for the administration of this article. The budget bureau may estimate the yield of revenue under this article and make advance apportionment based upon such estimate. (1939, c. 158, s. 524.)

§ 18-90(1). Sale to minors under 18 a misdemeanor.—It shall be unlawful for any person, firm, or corporation to sell or give any of the products authorized to be sold by this article to any minor under eighteen years of age. (1933, c. 216, s. 8.)

§ 18-91. Violation made misdemeanor; revocation of permits; forfeiture of license.—Whosoever violates any of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. If any licensee is convicted of the violation of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, the court shall immediately declare his permit revoked, and notify the county commissioners accordingly, and no permit shall thereafter be granted to him within a period of three years thereafter. Any licensee who shall sell or permit the sale on his premises or in connection with his business, or otherwise, of any alcoholic bev-

erages not authorized under the terms of this article, unless otherwise permitted by law, shall, upon conviction thereof, forfeit his license in addition to any punishment imposed by law for such offense. (1939, c. 158, s. 525.)

§ 18-92. Effective date.—All taxes levied in this article shall be in effect from and after April thirtieth, one thousand nine hundred thirty-nine. (1939, c. 158, s. 528.)

§ 18-93. Adoption of federal regulations.—The "Standards of Identity for Wine" and the regulations relating to "Labeling and Advertising of Wine" promulgated by the Federal Alcohol administration of the United States Treasury Department, and known respectively as Regulation Number Four, Article II, and Regulation Number Four, Articles III and VI, are hereby adopted by North Carolina. (1937, c. 335, s. 2.)

Art. 5. Fortified Wine Control Act of 1941.

§ 18-94. Title of article. — The title of this article shall be the "Fortified Wine Control Act of one thousand nine hundred and forty-one." (1941, c. 339, s. A.)

§ 18-95. Purpose of article.—The purpose of this article is to prevent and prohibit sales of fortified wines at any places in the state except through county operated alcoholic beverage control stores and to regulate such sales. (1941, c. 339, s. B.)

§ 18-96. Definition of "fortified wines."—Fortified wines shall mean any wine or alcoholic beverage made by fermentation of grapes, fruit and berries and fortified by the addition of brandy or alcohol or having an alcoholic content of more than fourteen per cent of absolute alcohol, reckoned by volume. (1941, c. 339, s. 1.)

§ 18-97. Certain sales, etc., prohibited; names of persons ordering wines furnished police or sheriff.—It shall be unlawful for any person, firm or corporation, except alcoholic beverage control stores operated in North Carolina, to sell, or possess for sale, any fortified wines as defined herein. It shall be unlawful for any person to purchase on order and receive by mail or express from any such alcoholic beverage control store fortified wines in quantities not in excess of one gallon at any one time. Upon the request of any chief of police or sheriff any alcoholic beverage control system shall furnish the names of any persons ordering such wines, and the dates and amounts of such orders. Nothing herein contained shall be construed to permit any person to order and receive by mail or express any spirituous liquors. (1941, c. 339, s. 2.)

§ 18-98. Violation made misdemeanor. — The violation of § 18-97 by any person, firm or corporation shall constitute a misdemeanor punishable as provided in § 18-91. (1941, c. 339, s. 5.)

§ 18-99. Application of other laws; sale of sweet wines; licensing of wholesale distributors.—The provisions of article 3 of this chapter shall apply to fortified wines: Provided, that it shall be legal to sell sweet wines in hotels, grade A restaurants, drug stores and grocery stores in any county in which the operation of alcoholic beverage control stores is authorized by law; such sales, however, shall be subject to the rules and regulations of the state alcoholic beverage control board. For the purpose of this article as amended, sweet wines shall be any wine made by fermentation from grapes, fruits or berries, to which nothing but pure brandy has been added, which brandy is made from the same type of grape, fruit or berry, which is contained in the base wine to which it is added, and having an alcoholic content of not less than fourteen per centum (14%) and not more than twenty per centum (20%) of absolute alcohol, reckoned by volume: Provided further that the state alcoholic control board shall approve and authorize the licensing of wholesale wine distributors in such counties where alcoholic board control stores are operated. (1941, c. 339, s. 6.)

Local Modification.—Mitchell: Pub. Loc. 1937, c. 394; 1941, c. 339, s. 6; Yancey: Pub. Loc. 1937, c. 579; 1941, c. 339, s. 6.

Art. 6. Light Domestic Wines; Manufacture and Regulation.

§ 18-100. Manufacture of domestic wines permitted.—It shall be lawful for any person growing crops, either wild or cultivated, of grapes, fruits or berries to make therefrom light domestic wines or wines having only such alcoholic content as natural fermentation may produce, for the use of his family and guests. (1935, c. 393, s. 1.)

§ 18-101. Manufacture by any person, firm or corporation authorized to do business in State. — Any person, firm or corporation authorized to do business in the state may, subject to the requirements of the Beverage Control Act, under regulations prescribed by the commissioner of agriculture and approved by the governor, engage in the business of manufacturing and producing wines and ciders by natural fermentation from the juices of fruits, grapes and berries grown within the state, and such wines and ciders shall be classified and recognized as food and distributed as such. (1935, c. 393, s. 3, c. 466, s. 1.)

§ 18-102. Rules and regulations of commissioner of agriculture.—The commissioner of agriculture shall promulgate and publish such reasonable rules and regulations, with the approval of the governor, for the regulation of such wineries as may be established, and such rules and regulations shall have the force and effect of laws, after the same have been approved by the governor. (1935, c. 393, s. 4.)

§ 18-103. Information furnished farmers. — It shall be the duty of the department of agriculture to disseminate to the farmers of the State in an economical way the best information it can get of the best methods of cultivation of such crops, and the making of such light domestic wines. (1935, c. 393, s. 7.)

§ 18-104. Fruit ciders included.—All the provisions of this article shall also apply to the manufacture of fruit ciders. (1935, c. 393, s. 7½.)

Chapter 19. Offenses against Public Morals.

Sec.
19-1. What are nuisances under this chapter.
19-2. Action for abatement; injunction.
19-3. When triable; evidence; dismissal of complaint.
19-4. Violation of injunction; punishment.
19-5. Order abating nuisance; what it shall contain.
19-6. Application of proceeds of sale.
19-7. How order of abatement may be canceled.
19-8. Attorney's fees may be taxed as costs.

§ 19-1. What are nuisances under this chapter.—Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, prostitution, gambling, or illegal sale of whiskey is guilty of nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, prostitution, gambling, or illegal sale of liquor is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 25; C. S. 3180.)

§ 19-2. Action for abatement; injunction.—Whenever a nuisance is kept, maintained, or exists as defined in this chapter, the city prosecuting attorney, the solicitor, or any citizen of the county may maintain civil action in the name of the state of North Carolina upon the relation of such city prosecuting attorney, solicitor, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor, alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as complainant may elect, unless the judge, by previous order, shall have directed the form and manner in which it shall be presented. When an injunction has been granted it shall be binding on the defendant throughout the county in which it was issued, and any violation of the provisions of injunction herein provided shall be a contempt, as hereinafter provided. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 26; C. S. 3181.)

§ 19-3. When triable; evidence; dismissal of complaint.—The action when brought shall be triable at the first term of court after service of the summons has been made, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reason why the action should be dismissed, and the dismissal approved by the city prosecuting attorney, or solicitor, in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the city prosecuting attorney, or the solicitor, to prosecute said action to judgment; and if the action continued more than one term of court, any citizen of the county, or the county attorney, may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause of said action, the costs may be taxed to such citizen. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 27; C. S. 3182.)

§ 19-4. Violation of injunction; punishment.—In case of the violation of any injunction granted under the provisions of this chapter, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred or more than one thousand dollars, or by imprisonment in the county jail not less than three or more than six months, or by both fine and imprisonment. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 28; C. S. 3183.)

§ 19-5. Order abating nuisance; what it shall contain.—If the existence of the nuisance be established in an action as provided in this chapter, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the cause, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter, or use said building, erection, or place so directed to be closed, he shall be punished as for contempt, as provided in the preceding section. For moving and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 29; C. S. 3184.)

§ 19-6. Application of proceeds of sale.—The proceeds of the sale of the personal property as provided in § 19-5 shall be applied in the payment of the costs of action and abatement, and the balance, if any, shall be paid to the defendant. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 30; C. S. 3185.)

§ 19-7. How order of abatement may be canceled.—If the owner appears and pays all cost of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk of the superior court, conditioned that he will immediately abate said nui-

sance, and prevent the same from being established or kept within a period of one year thereafter, the court may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as same may relate to said property; and if the proceeding be a civil action, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 31; C. S. 3186.)

§ 19-8. Attorney's fees may be taxed as costs. —The court shall tax as part of the cost in any action brought hereunder such fee for the attorney prosecuting the action or proceedings as may in the court's discretion be reasonable remuneration for the services performed by such attorney. (1919, c. 288; Pub. Loc. 1913, c. 761, s. 32; C. S. 3187.)

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Chapter 20. Motor Vehicles.

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Art. 1. Department of Motor Vehicles.

§ 20-1. Department of motor vehicles created; power and duties.—A department of the government of this state, to be known as the department of motor vehicles, is hereby created. It is the intent and purpose of this article, and it shall be liberally construed to accomplish that purpose, to transfer and consolidate under one administrative head in the department of motor vehicles agencies now operated under the department of revenue and dealing with the subject of the regulation of motor vehicular traffic, whether such activities are at present handled directly by the commissioner of revenue or by the motor vehicle bureau, the auto theft bureau, the division of highway safety, the major of the state highway patrol, the officials handling the Uniform Drivers License Act; and the department of motor vehicles shall succeed to and is hereby vested with all the powers, duties and jurisdiction now vested by law in any of said agencies; provided, however, all powers, duties and functions relating to the collection of motor fuel taxes, the inspection of gasoline and oil, and the collection of the gasoline and oil inspection taxes, and the duties, powers and functions arising by virtue of §§ 119-41 and 119-42, relating to the issuance of permits to vehicles engaged in the transportation of petroleum products, shall not be affected by such transfer, but shall continue to be vested in and exercised by the commissioner of revenue, and wherever it is now provided by law that reports shall be filed with the commissioner or department of revenue as a basis for collecting the motor fuel or gasoline and oil inspection taxes, or enforcing any of the laws regarding the motor fuel or gasoline and oil inspection taxes, such reports shall continue to be made to the department of revenue and

the commissioner of motor vehicles shall make available to the commissioner of revenue all information from the files of the department of motor vehicles which the commissioner of revenue may request to enable him to better enforce the law with respect to the collection of such taxes: Provided, further, nothing in this article shall deprive the utilities commissioner of any of the duties or powers now vested in him with regard to the regulation of motor vehicle carriers. (1941, c. 36, s. 1.)

§ 20-2. Commissioner of motor vehicles.—The department of motor vehicles shall be under control of an executive officer to be designated as the commissioner of motor vehicles, who shall be appointed by the governor and be responsible directly to the governor and subject to removal by the governor at his discretion and without requirement of the assignment of any cause. The commissioner shall be paid an annual salary to be fixed by the governor, with the approval of the advisory budget commission, payable in monthly installments, and shall likewise be allowed his traveling expenses when away from Raleigh on official business. (1941, c. 36, s. 2.)

§ 20-3. Organization of department; operating funds.—The commissioner shall organize the department in such manner as he may deem necessary properly to segregate and conduct the work of the department; but the work of the department is hereby divided into at least two divisions, to be known respectively as the division of registration and the division of highway safety and patrol. The commissioner shall, as soon as practicable after appointment, prepare a general plan for the organization of the department, which plan shall not be put into effect until approved by the governor and the advisory budget commission, subject to such changes as may be recommended by the governor and approved by the advisory budget commission. The plan of organization herein provided for may increase or decrease the number of persons now assigned to any of the activities transferred to this department, and the titles may be changed. (1941, c. 36, s. 3.)

§ 20-4. Clarification of conflicts as to transfer of functions.—In the event that there shall arise any conflict as to the transfer of any functions from the department of revenue to the department of motor vehicles, the governor of the state is hereby authorized to issue an executive order clarifying and making certain the issue thus arising. (1941, c. 36, s. 5.)

Art. 2. Uniform Driver's License Act.

§ 20-5. Title of article.—This article may be cited as the Uniform Driver's License Act. (1935, c. 52, s. 31.)

§ 20-6. Definitions.—Terms used in this article shall be construed as follows, unless another meaning is clearly apparent from the language or context or unless such construction is inconsistent with the manifest intention of the legislature.

"Highway" shall include any trunk line highway, state aid road or other public highway, road, street, avenue, alley, driveway, parkway, or place, under the control of the state or any political subdivision thereof, dedicated, appropriated or opened to public travel or other use.

"Motor vehicle" shall mean any rubber-tired vehicle propelled or drawn by any power other than muscular, except aircraft, road rollers, street sprinklers, ambulances owned by municipalities, baggage trucks, and tractors used about railroad stations and yards, agricultural tractors, industrial tractors used in and around warehouses and yards, and such vehicles as run only upon rails or tracks.

"Non-resident" shall mean any person whose legal residence is in some state other than North Carolina or in a foreign country.

"Operator" shall mean any person other than a "chauffeur" who shall operate a motor vehicle or who shall be in the driver's seat of a motor vehicle when the engine is running or who shall steer or direct the course of a motor vehicle which is being towed or pushed by another motor vehicle.

"Chauffeur" shall mean every person who is employed for the principal purpose of operating a passenger motor vehicle, except school busses, and every person who drives any motor vehicle while in use as a public or common carrier for persons or property, and this shall apply to city delivery motor vehicles.

"Person" shall include any individual, corporation, association, co-partnership, company, firm or other aggregation of individuals.

"Vehicle" shall include any device suitable for use on the highways for the conveyance, drawing or other transportation of persons or property, except those propelled or drawn by muscular power or those used exclusively upon tracks.

"Department" shall mean the department of motor vehicles. (1935, c. 52, s. 1; 1941, c. 36.)

§ 20-7. Operators and chauffeurs must be licensed. — (a) No person except those expressly exempted under § 20-8 shall operate a motor vehicle upon any highway in this State unless such person upon application has been licensed as an operator or chauffeur by the department under the provisions of this article. Provided, that any person over sixteen (16) years of age who has not been refused such license or who has not had such license suspended or revoked may, for a period not exceeding thirty days, operate a motor vehicle, during daylight hours, while under the instruction of and accompanied by a licensed operator or chauffeur, who shall have full control of and responsibility for the motor vehicle as provided by law.

(b) Every application for an operator's or chauffeur's license shall be made upon the approved form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. All members of the state highway patrol are hereby authorized and directed to administer oaths in the administration of this article, and no fee shall be charged by them for such service.

(c) Before granting an operator's or chauffeur's license to any applicant who has not had previous experience in the operation of a motor vehicle, the department shall require such applicant to demonstrate personally in such manner and to such person or persons as the department may direct, that such applicant is a proper person to operate a motor vehicle, has sufficient knowledge of the mechanism of motor vehicles to insure

their safe operation by him, and a satisfactory knowledge of the laws concerning motor vehicles and the rules of the road pertaining to same. Provided that when such applicant shall have held a license from a state where a similar examination is required, the department may waive part or all of such examination, in its discretion. Provided, further, that until November first, one thousand nine hundred and thirty-five, one year's driving experience and freedom from conviction of traffic violations during such year shall be considered prima facie qualification for license as operator.

(d) When the department is satisfied as to the ability and competency of any applicant, it shall issue to him a license, either unlimited or containing such limitations as the department shall deem advisable. If any applicant shall suffer from physical defect or from any disease which might affect the operation by him of a motor vehicle, the department may require a certificate of such applicant's condition signed by medical authority designated by the department, which certificate shall in all cases be treated as confidential. A license containing such limitations as the department shall deem advisable may be issued in any case, but nothing in this section shall be construed to prevent the department from refusing a license, either limited or unlimited, to any person deemed to be incapable of operating a motor vehicle with safety to himself and to the public. Provided nothing herein shall prohibit deaf persons from operating a motor vehicle who in every other way meet the requirements.

(e) Every operator's or chauffeur's license issued by the department shall bear thereon the distinguishing number assigned to the licensee and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. However no person charged with failing to so carry such license shall be convicted, if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

(f) Every chauffeur before operating a motor vehicle as a public or common carrier of persons or property shall apply for and receive from the department a chauffeur's badge and at all times, while so operating a motor vehicle, shall display the same upon his person where it will be plainly visible. Such badges shall be furnished by the department, each bearing thereon the distinguishing number assigned to the licensee.

(g) Any person operating a motor vehicle in violation of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this article. (1935, c. 52, s. 2.)

§ 20-8. Persons exempt from license.—The following are exempt from license hereunder:

(a) Any person while operating a motor vehicle the property of, and in the service of the Army, Navy or Marine Corps of the United States. This shall not be construed to exempt any chauffeurs or operators of the United States Civilian Conservation Corps motor vehicles;

(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;

(c) A non-resident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country, may operate a motor vehicle in this state only as an operator;

(d) A non-resident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur except any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state;

(e) Any non-resident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of operators may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year if the motor vehicle so operated is duly registered in the home state or country of such non-resident;

(f) Any non-resident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of chauffeurs may operate a motor vehicle as a chauffeur for a period of not more than ten days in any calendar year if the motor vehicle so operated is duly registered in the home state or country of such non-resident. (1935, c. 52, s. 3.)

§ 20-9. What persons shall not be licensed.—(a) An operator's license shall not be issued to any person under the age of sixteen (16) years, and no chauffeur's license shall be issued to any person under the age of eighteen (18) years.

(b) The department shall not issue an operator's or chauffeur's license to any person whose license, either as operator or chauffeur, has been suspended, during the period for which license was suspended; nor to any person whose license, either as operator or chauffeur, has been revoked under the provisions of this article, until the expiration of one year after such license was revoked.

(c) The department shall not issue an operator's or chauffeur's license to any person whom it has determined is an habitual drunkard or is addicted to the use of narcotic drugs.

(d) No operator's or chauffeur's license shall be issued to any applicant who has been previously adjudged insane or an idiot, imbecile, grand mal epileptic, or feeble-minded, and who has not at the time of such application been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent, nor then unless the department is satisfied that such person is competent to operate a motor vehicle with safety to persons and property.

(e) The department shall not issue an operator's or chauffeur's license to any person when in the opinion of the department such person is afflicted with or suffering from such physical or mental

disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs. (1935, c. 52, s. 4.)

§ 20-10. Age limits for drivers of public passenger-carrying vehicles.—It shall be unlawful for any person, whether licensed under this article or not, who is under the age of twenty-one years to drive a motor vehicle while in use as a public passenger-carrying vehicle. (1935, c. 52, s. 5.)

§ 20-11. Application of minors. — The department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license unless such application is signed by the father of the applicant, if the father is living and has custody of the applicant, otherwise by the mother or guardian having the custody of such minor, or in the event a minor under the age of eighteen years has no mother, father, or guardian, then the operator's license shall not be granted to the minor unless his application therefor is signed by his employer. (1935, c. 52, s. 6.)

§ 20-12. Instruction. — Any licensed operator or chauffeur may instruct a person who is sixteen or more years of age, during daylight hours, in the operation of a motor vehicle. Any person so instructing another shall be seated as to be within reach of the controls of the motor vehicle and shall be responsible for the operation thereof. (1935, c. 52, s. 7.)

§ 20-13. Expiration of license.—(a) Every operator's license issued hereunder shall be valid until suspended or revoked as provided in this article except that the department shall hereafter, but not more often than once every three years and after public notice, cancel all outstanding operators' licenses and issue in lieu thereof new operators' licenses to persons applying therefor and entitled thereto under the provision of this article. Such licenses shall be issued without fee and without examination except in those instances when the department has reason to believe that the applicant may not be qualified to hold an operator's license under this article.

(b) Every chauffeur's license shall expire June thirtieth each year and shall be renewed annually upon application and payment of fees required by law, provided that the department may in its discretion waive the examination of any such applicant previously licensed as a chauffeur under this article. (1935, c. 52, s. 8.)

§ 20-14. Duplicate certificates and chauffeurs' badges.—In the event that an operator's or chauffeur's license or badge issued under the provisions of this article is lost or destroyed, the person to whom the same was issued may, upon payment of a fee of fifty cents ($.50), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that such license or badge has been lost or destroyed. (1935, c. 52, s. 9.)

§ 20-15. Authority of department to cancel license.—(a) The department shall have authorty to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled, together with chauffeur's badge, if any, to the department. (1935, c. 52, s. 10.)

§ 20-16. Authority of department to suspend license.—(a) The department shall have authority to suspend the license of any operator or chauffeur without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;

2. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage, which accident is obviously the result of the negligence of such driver;

3. Is an habitually reckless or negligent driver of a motor vehicle;

4. Is incompetent to drive a motor vehicle;

5. Is an habitual violator of the traffic laws;

6. Has permitted an unlawful or fraudulent use of such license;

7. Has committed an offense in another state, which if committed in this state would be grounds for suspension or revocation; or

8. Has been convicted of illegal transportation of intoxicating liquors.

(b) Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the duly authorized agents of the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the department shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license or revoke such license. (1935, c. 52, s. 11.)

§ 20-17. Mandatory revocation of license by department. — (a) The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for any of the following offenses when such conviction has become final:

1. Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.

3. Any felony in the commission of which a motor vehicle is used.

4. Failure to stop and render aid as required under the laws of this State in the event of a motor vehicle accident.

5. Perjury or the making of a false affidavit or

statement under oath to the department under this article or under any other law relating to the ownership of motor vehicles.

6. Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving committed within a period of twelve months.

7. Conviction, or forfeiture of bail not vacated, upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(b) The department, upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of such person is suspended or revoked, shall immediately extend the period of such first suspension or revocation for an additional like period. (1935, c. 52, s. 12.)

§ 20-18. Conviction for failure to dim, etc., lights not ground for suspension or revocation.—Conviction of the offense of failure to shift, depress, deflect, tilt or dim the beams of the head lamps whenever a motor vehicle meets another vehicle on the highways of this state shall not be cause for the suspension or revocation of the operator's or chauffeur's license under the terms of this article. (1939, c. 351, s. 2.)

§ 20-19. Period of suspension or revocation.—The department shall not suspend a license for a period of more than one year and upon revoking a license shall not in any event grant application for a new license until the expiration of one year. (1935, c. 52, s. 13.)

§ 20-20. Surrender and return of license and badge.—The department upon suspending or revoking a license shall require that such license and the badge of any chauffeur whose license is suspended or revoked shall be surrendered to and be retained by the department except that at the end of a period of suspension such license and any chauffeur's badge so surrendered shall be returned to the licensee. (1935, c. 52, s. 14.)

§ 20-21. No operation under foreign license during suspension or revocation in this state.—Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this article shall not operate a motor vehicle in this State under a license, permit or registration issued by another jurisdiction or otherwise during such suspension, or after such revocation until a new license is obtained when and as permitted under this article. (1935, c. 52, s. 15.)

§ 20-22. Suspending privileges of nonresidents and reporting convictions.—(a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

(b) The department is further authorized, upon receiving a record of the conviction in this State of a non-resident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. (1935, c. 52, s. 16.)

§ 20-23. Suspending resident's license upon conviction in another state.—The department is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. (1935, c. 52, s. 17.)

§ 20-24. When court to forward license to department and report convictions.—(a) Whenever any person is convicted of any violation of the motor vehicle laws of this State, a notation of such conviction shall be entered by the court upon the license of the person so convicted. Whenever any person is convicted of any offense for which this article makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the department.

(b) Every court having jurisdiction over offenses committed under this article, or any other law of this State regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) For the purpose of this article the term "conviction" shall mean a final conviction. Also, for the purposes of this article a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) Pending an appeal, the court from which the appeal is taken shall make such recommendation to the department relative to suspension of license until the appeal shall have been finally determined, as to it may seem just and proper under the circumstances.

(e) After November 1, 1935, no operator's or chauffeur's license shall be suspended or revoked except in accordance with the provisions of this article. (1935, c. 52, s. 18.)

§ 20-25. Right of appeal to court.—Any person denied a license or whose license has been cancelled, suspended or revoked by the department, except where such cancellation is mandatory under the provisions of this article, shall have a right to file a petition within thirty (30) days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon thirty (30) days written notice to the department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled

to a license or is subject to suspension, cancellation or revocation of license under the provisions of this article. (1935, c. 52, s. 19.)

§ 20-26. Records.—The department shall keep a record of proceedings and orders pertaining to all licenses granted, refused, suspended or revoked by the department. It shall furnish without charge, for official use only, certified copies of certificates and licenses and documents relating thereto, to officials of the State, counties and municipalities or to any court in this State. A charge not to exceed one dollar ($1.00) shall be made by the department for copies furnished for other than official use. (1935, c. 52, s. 20.)

§ 20-27. Availability of records. — All records of the department pertaining to application and to operator's and chauffeur's license, except the confidential medical report referred to in section 20-7, of the current or previous five years shall be open to public inspection at any reasonable time during office hours. (1935, c. 52, s. 21.)

§ 20-28. Unlawful to drive while license suspended or revoked.—Any person whose operator's or chauffeur's license has been suspended or revoked, as provided in this article, and who shall drive any motor vehicle upon the highways of this State while such license is suspended or revoked, may be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than six months, and there may be imposed in addition thereto a fine of not more than five hundred dollars ($500.00). (1935, c. 52, s. 22.)

§ 20-29. Surrender of license.—Any person operating or in charge of a motor vehicle, when requested by an officer in uniform, or, in the event of accident in which the vehicle which he is operating or in charge of shall be involved, when requested by any other person, who shall refuse to write his name for the purpose of identification or to give his name and address and the name and address of the owner of such vehicle, or who shall give a false name or address, or who shall refuse, on demand of such officer or such other person, to produce his license and exhibit same to such officer or such other person for the purpose of examination, or who shall refuse to surrender his license on demand of the department, or fail to produce same when requested by a court of this State, shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this article. (1935, c. 52, s. 23.)

§ 20-30. Violations of license provisions.—It shall be unlawful for any person to commit any of the following acts:

(a) To display or cause to be displayed or to have in possession any operator's or chauffeur's license, knowing the same to be fictitious or to have been cancelled, revoked, suspended or altered.

(b) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, any operator's or chauffeur's license.

(c) To display or to represent as one's own a license not issued to the person so displaying same.

(d) To fail or refuse to surrender to the department upon demand any license or the badge of any chauffeur whose license has been suspended, cancelled or revoked as provided by law.

(e) To use a false or fictitious name or give a false or fictitious address in any application for an operator's or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application. Any license procured as aforesaid shall be void from the issuance thereof, and any monies paid therefor shall be forfeited to the State. (1935, c. 52, s. 24.)

§ 20-31. Making false affidavits perjury. — Any person who shall make any false affidavit, or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this article to be sworn to or affirmed shall be guilty of perjury and upon conviction shall be punished by fine or imprisonment as other persons committing perjury are punishable under the laws of this State. (1935, c. 52, s. 25.)

§ 20-32. Unlawful to permit unlicensed minor to drive motor vehicle.—It shall be unlawful for any person to cause or knowingly permit any minor over sixteen and under the age of eighteen years to drive a motor vehicle upon a highway as an operator, unless such minor shall have first obtained a license to so drive a motor vehicle under the provisions of this article. (1935, c. 52, s. 26.)

§ 20-33. Unlawful to employ unlicensed chauffeur.—No person shall employ any chauffeur to operate a motor vehicle who is not licensed as provided by this article. (1935, c. 52, s. 27.)

§ 20-34. Unlawful to permit violations of this article.—No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven by any person who has no legal right to do so or in violation of any of the provisions of this article. (1935, c. 52, s. 28.)

§ 20-35. Penalties for misdemeanor. — (a) It shall be a misdemeanor to violate any of the provisions of this article unless such violation is by this article or other law of this State declared to be a felony.

(b) Unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this article shall be punished by a fine of not more than five hundred ($500.00) dollars or by imprisonment for not more than six (6) months. (1935, c. 52, s. 29.)

§ 20-36. Fees.—(a) The fees charged for the licenses herein provided for shall be as follows:

For an operator's license the sum of one ($1.00) dollar, which shall continue the license in effect until revoked or cancelled; chauffeur's license two ($2.00) dollars annually, or until revoked: Provided, that no charge shall be made for any private operator's license which shall be applied for prior to November first, one thousand nine hundred and thirty-five.

(b) All fees collected under the provisions of this article shall be paid by the commissioner of revenue to the state treasurer to be credited by him to the state highway fund. (1935, c. 52, s. 30.)

§ 20-37. Limitations on issuance of licenses. —There shall be no operator's or chauffeur's license issued within this State other than that pro-

vided for in this article, nor shall there be any other examination required. (1935, c. 52, s. 34.)

Art. 3. Motor Vehicle Act of 1937.

Part 1. General Provisions.

§ 20-38. Definition of words and phrases.—The following words and phrases when used in this article shall, for the purpose of this article, have the meanings respectively prescribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) Business District.—The territory contiguous to a highway where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business purposes.

(b) Commissioner.—Commissioner, when herein referred to, shall refer to the commissioner of motor vehicles.

(c) Department.—Department herein used shall mean the department of motor vehicles acting directly or through its duly authorized officers and agents.

(d) Dealer.—Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semi-trailers in this state, having an established place of business in this state and being subject to the tax levied by § 105-89.

(e) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(f) Established Place of Business.—The place actually occupied either continuously or at regular periods by a dealer or manufacturer, where his books and records are kept and a large share of his business is transacted.

(g) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous presses are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(h) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(i) Foreign Vehicle.—Every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this state.

(j) House Trailer.—Any trailer or semi-trailer so designed and equipped as to provide living and/or sleeping facilities and drawn by a motor vehicle.

(k) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(l) Intersection.—The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

(m) Local Authorities.—Every county, municipality, or other territorial district with local board or body having authority to adopt local police regulations under the constitution and laws of this state.

(n) Manufacturer.—Every person engaged in the business of manufacturing motor vehicles, trailers or semi-trailers.

(o) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.

(p) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.

(q) Passenger Vehicles. — (1) Excursion passenger vehicles.

Passenger vehicles kept in use for the purpose of transporting persons on sight-seeing or travel tours.

(2) For hire passenger vehicles.

Passenger motor vehicles engaged in the business of transporting passengers for compensation; but this classification shall not include motor vehicles of seven-passenger capacity or less operated by the owner where the cost of operation is shared by neighbor fellow workmen between their homes and the place of regular daily employment, when operated for not more than two trips each way per day.

(3) Franchise bus carriers.

Passenger motor vehicles operated under a franchise certificate issued by the utilities commission under §§ 62-103 to 62-121, for operation on the public highways of this state between fixed termini or over a regular route for the transportation of persons or property for compensation.

(4) Motorcycle.

Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(5) U-Drive-It passenger vehicles.

Passenger motor vehicles used for the purpose of rent or lease to be operated by the lessee.

(6) Private passenger vehicles.

All other passenger vehicles not included in the above definitions.

(r) Property-Hauling Vehicles. — (1) Contract hauler vehicles.

Motor vehicles used for the transportation of property for hire, but not licensed as franchise hauler vehicles under the provisions of §§ 62-103 to 62-121: Provided, it shall not be construed to include the transportation of farm crops or products, including logs, bark, pulp and tannic acid wood delivered from farms and forests to the first or primary market. Provided further, that the term "for hire" as used herein shall include every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for

the transportation of the property of another for compensation, subject to the exemptions aforesaid. Provided, however, that the term "for hire" shall not include motor vehicles whose sole operation in carrying the property of others is limited to the transportation of T. V. A. or A. A. A. phosphate, and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States agricultural adjustment administration.

(2) Franchise hauler vehicles.

Every motor vehicle used for the transportation of property between fixed termini, or over a regular route, with the right to make occasional trips off said route as provided in §§ 62-103 to 62-121: Provided, only such vehicles shall be so classified as the utilities commission shall determine to be reasonably necessary for the proper handling of the business on said route, and the determination so arrived at shall be duly certified by the utilities commissioner to the motor vehicle bureau.

(3) Private hauler vehicles.

All motor vehicles used for the transportation of property not falling within one of the above defined classifications.

(4) Semi-Trailer.

Every vehicle without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of its weight and/or its load rests upon or is carried by the pulling vehicle.

(5) Trailers.

Every vehicle without motive power designed for carrying property or persons wholly on its own structure and to be drawn by a motor vehicle. This shall include so-called pole trailers or a pair of wheels used primarily to balance a load, rather than for purposes of transportation.

(s) Non-Resident.—Every person who is not a resident of this state.

(t) Owner.—A person who holds the legal title of a vehicle or, in the event a vehicle is subject to an agreement for conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the original vendee or lessee; or, in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this article.

(u) Person.—Every natural person, firm, copartnership, association, corporation, or governmental agency.

(v) Pneumatic Tire.—Every tire in which compressed air is designed to support the load.

(w) Private Road or Driveway.—Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(w)1. Residential District.—The territory contiguous to a highway not comprising a business district, where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business purposes.

(x) Reconstructed Vehicle.—Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(y) Road Tractor.—Every motor vehicle designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(z) Safety Zone.—The area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(aa) Specially Constructed Vehicles. — Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(bb) Special Mobile Equipment.—Every vehicle not designed or used primarily for the transportation of persons or property, but incidentally operated or moved over the highways, such as farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other vehicles which are within the general terms of this section.

(cc) Street and Highway.—The entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic.

(dd) Solid Tire.—Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(ee) Truck Tractor. — Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(ff) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this article bicycles shall be deemed vehicles, and every rider of a bicycle upon a highway shall be subject to the provisions of this article applicable to the driver of a vehicle except those which by their nature can have no application. (1937, c. 407, s. 2; 1939, c. 275; 1941, cc. 22, 36, 196.)

Part 2. Authority and Duties of Commissioner and Department.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal.—(a) The commissioner is hereby vested with the power and is charged with the duty of administering and enforcing the provisions of this article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the department.

(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this article and any other laws the enforcement and administration of which are vested in the department.

(c) The commissioner is authorized to designate and appoint such agents, field deputies, and clerks

as may be necessary to carry out the provisions of this article.

(d) The commissioner shall adopt an official seal for the use of the department. (1937, c. 407, s. 4.)

§ 20-40. Offices of department.—The commissioner shall maintain an office in Raleigh, North Carolina, and in such places in the state as he shall deem necessary to properly carry out the provisions of this article. (1937, c. 407, s. 5.)

§ 20-41. Commissioner to provide forms required.—The commissioner shall provide suitable forms for applications, certificates of title and registration cards, registration number plates and all other forms requisite for the purpose of this article, and shall prepay all transportation charges thereon. (1937, c. 407, s. 6.)

§ 20-42. Authority to administer oaths and certify copies of records.—(a) Officers and employees of the department designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the department as he may designate are hereby authorized to prepare under the seal of the department and deliver upon request a certified copy of any record of the department, charging a fee of fifty cents (50c) for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof. (1937, c. 407, s. 7.)

§ 20-43. Records of department.—(a) All records of the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours.

(b) The commissioner may destroy any registration records of the department which have been maintained on file for three years which he may deem obsolete and of no further service in carrying out the powers and duties of the department. (1937, c. 407, s. 8).

§ 20-44. Authority to grant or refuse applications.—The department shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle and for a certificate of title therefor, and of any other application lawfully made in the department, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. (1937, c. 407, s. 9.)

§ 20-45. Seizure of documents and plates.—The department is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used. (1937, c. 407, s. 10.)

§ 20-46. Distribution of synopsis of laws.—The department may publish a synopsis or summary of the laws of this state regulating the operation of vehicles, and deliver to any person on request a copy thereof without charge. (1937, c. 407, s. 11.)

§ 20-47. Department may summon witnesses and take testimony.—(a) The commissioner and officers of the department designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the department. Such summons may require the production of relevant books, papers, or records.

(b) Every such summons shall be served at least five days before the return date, either by personal service made by any person over eighteen years of age or by registered mail, but return acknowledgment is required to prove such latter service. Failure to obey such a summons so served shall constitute a misdemeanor. The fees for the attendance and travel of witnesses shall be the same as for witnesses before the superior court.

(c) The superior court shall have jurisdiction, upon application by the commissioner, to enforce all lawful orders of the commissioner under this section. (1937, c. 407, s. 12.)

§ 20-48. Giving of notice.—Whenever the department is authorized or required to give any notice under this article or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the department. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the department or affidavit of any person over twenty-one years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. (1937, c. 407, s. 13.)

§ 20-49. Police authority of department.—The commissioner and such officers and inspectors of the department as he shall designate and all members of the highway patrol shall have the power:

(a) Of peace officers for the purpose of enforcing the provisions of this article and of any other law regulating the operation of vehicles or the use of the highways.

(b) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this article or other laws regulating the operation of vehicles or the use of the highways.

(c) At all times to direct all traffic in conformance with law, and in the event of a fire or other emergency or to expedite traffic or to insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.

(d) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this article or of any other law regulating the operation of vehicles to require the driver thereof to stop and exhibit his driver's li-

cense and the registration card issued for the vehicle, and submit to an inspection of such vehicle, the registration plates and registration card thereon or to an inspection and test of the equipment of such vehicle.

(e) To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.

(f) To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.

(g) To investigate traffic accidents and secure testimony of witnesses or of persons involved.

(h) To investigate reported thefts of motor vehicles, trailers and semi-trailers. (1937, c. 407, s. 14.)

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. Owner to secure registration and certificate of title.—Every owner of a vehicle intended to be operated upon any highway of this state and required by this article to be registered shall, before the same is so operated, apply to the department for and obtain the registration thereof, the registration plates therefor, and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in § 20-79: Provided, that nothing herein contained shall require the application for or the issuance of a certificate of title for a trailer, or semi-trailer, though, before operating a trailer or semi-trailer upon the highways of the state, the owner thereof must obtain the registration thereof and pay the registration fees as now provided by part seven of this article. (1937, c. 407, s. 15.)

§ 20-51. Exempt from registration.—The following shall be exempt from the requirement of registration and certificate of title: (a) Any such vehicle driven or moved upon a highway in conformance with the provisions of this article relating to manufacturers, dealers, or nonresidents.

(b) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(c) Any implement of husbandry, whether of a type otherwise subject to registration hereunder or not, which is only incidentally operated or moved upon a highway.

(d) Any special mobile equipment as herein defined.

No certificate of title need be obtained for any vehicle of a type subject to registration owned by the government of the United States. (1937, c. 407, s. 16.)

§ 20-52. Application for registration and certificate of title.—(a) Every owner of a vehicle subject to registration hereunder shall make application to the department for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the department, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain:

1. The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation;

2. A description of the vehicle, including, in so far as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether new or used, and if a new vehicle, the date of sale and actual date of delivery of vehicle by the manufacturer or dealer to the person intending to operate such vehicle;

3. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest;

4. Such further information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

(b) When such application refers to a new or foreign vehicle purchased from a dealer, the application shall be accompanied by an application for certificate of title in the name of the dealer containing the description of vehicle, statement of dealer's title and all liens or encumbrances upon said vehicle, the name and address of person to whom sold, date of sale, actual date vehicle was delivered to purchaser, and such other information as may be required by the department. (1937, c. 407, s. 17.)

§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.—(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this state, the owner shall surrender to the department all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in sub-division (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the department in its discretion, and upon a proper showing, shall register said vehicle in this state but shall not issue a certificate of title for such vehicle. (1937, c. 407, s. 18.)

§ 20-54. Authority for refusing registration or certificate of title.—The department shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(a) That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this article;

(b) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(c) That the department has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon such vehicle;

(d) That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

(e) That the required fee has not been paid. (1937, c. 407, s. 19.)

§ 20-55. Examination of registration records and index of stolen and recovered vehicles.—The department, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application against the indexes of registered motor vehicles, and against the index of stolen and recovered motor vehicles required to be maintained by this article. (1937, c. 407, s. 20.)

§ 20-56. Registration indexes.—The department shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof in suitable books or on index cards as follows:

(a) Under a distinctive registration number assigned to the vehicle;

(b) Alphabetically, under the name of the owner;

(c) Under the motor number, if available; otherwise any other identifying number of the vehicle: and

(d) In the discretion of the department, in any other manner it may deem advisable. (1937, c. 407, s. 20½.)

§ 20-57. The department to issue certificate of title and registration card.—(a) The department upon registering a vehicle shall issue a registration card and a certificate of title as separate documents.

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for owner's signature, the registration number assigned to the vehicle, and such description of the vehicle as determined by the commissioner, and upon the reverse side a form for endorsement of notice to the department upon transfer of the vehicle.

(c) Every owner, upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers, or shall be carried by the person operating or in control of such vehicle, who shall display the same upon demand of any peace officer or any officer of the department.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card, and in addition thereto the date of issuance and a statement of the owner's title and of all liens and encumbrances upon the vehicle therein described, and whether possession is held by the owner under a lease, contract or conditional sale, or other like agreement.

(e) The certificate of title shall also contain upon the reverse side form of assignment of title or interest and warranty thereof, with space for notation of liens and encumbrances upon such vehicle at the time of a transfer.

(f) Certificates of title upon which liens or encumbrances are shown shall be delivered or mailed by the department to the holder of the first lien or encumbrance.

(g) Certificates of title shall bear thereon the seal of the department.

(h) Certificates of title need not be renewed annually, but shall remain valid until canceled by the department for cause or upon a transfer of any interest shown therein. (1937, c. 407, s. 21.)

§ 20-58. Release by lien holder to owner.—(a) A person holding a lien or encumbrance as shown upon a certificate of title upon a vehicle may release such lien or encumbrance or assign his interest to the owner without affecting the registration of said vehicle. The department, upon receiving a certificate of title upon which a lien holder has released or assigned his interest to the owner or upon receipt of a certificate of title not so endorsed, but accompanied by a legal release from a lien holder of his interest in or to a vehicle, shall issue a new certificate of title as upon an application for duplicate certificate of title.

(b) Any lien in favor of any person, firm or corporation which, since notice of such lien to the department has dissolved, ceased to do business, or gone out of business for any reason whatsoever, and which shall remain of record in the department as a notice of lien of such person, firm or corporation for a period of more than three years from the date of notice, shall become null and void and of no further force and effect as it relates to the issuance or transfer of title by the department. (1937, c. 407, s. 22.)

§ 20-59. Unlawful for lienor who holds certificate of title not to surrender same when lien satisfied.—It shall be unlawful and constitute a misdemeanor for a lienor who holds a certificate of title as provided in this article to refuse or fail to surrender such certificate of title to the person legally entitled thereto, when called upon by such person, within ten days after his lien shall have been paid and satisfied, and any person convicted under this section shall be fined not more than fifty dollars ($50.00) or imprisoned not more than thirty days. (1937, c. 407, s. 23.)

§ 20-60. Owner after transfer not liable for negligent operation.—The owner of a motor vehicle who has made a bona fide sale or transfer of his title or interest, and who has delivered possession of such vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee, shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another. (1937, c. 407, s. 24.)

§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration. — Any owner dismantling or wrecking any vehicle shall forward to the department the certificate of title,

registration card and/or other proof of ownership, and the registration plate or plates last issued for such vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. (1937, c. 407, s. 25.)

§ 20-62. Sale of motor vehicles to be dismantled.—Any owner who sells a motor vehicle as scrap or to be dismantled or destroyed shall assign the certificate of title thereto to the purchaser, and shall deliver such certificate so assigned to the department with an application for a permit to dismantle such vehicle. The department shall thereupon issue to the purchaser a permit to dismantle the same, which shall authorize such person to possess or transport such vehicle or to transfer ownership thereto by endorsement upon such permit. A certificate of title shall not again be issued for such motor vehicle in the event it is scrapped, dismantled, or destroyed. In any case, where the owner for any reason fails to send in title for a junked or dismantled vehicle, the department shall have authority to take possession of such title for cancellation. (1937, c. 407, s. 26.)

§ 20-63. Registration plates to be furnished by the department.—(a) The department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semi-trailer and two registration plates for every other motor vehicle. Registration plates issued by the department under this article shall be and remain the property of the state, and it shall be lawful for the commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same.

(b) Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of the state of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

(c) Such registration plate and the required numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer or semi-trailer shall be attached thereto, one in the front and the other in the rear. The registration plate issued for a motorcycle, trailer or semi-trailer shall be attached to the rear thereof.

(e) Preservation and cleaning of registration plates: It shall be the duty of each and every registered owner of a motor vehicle to keep the registration plates assigned to such motor vehicle reasonably clean and free from dust and dirt, and such registered owner, or any person in his employ, or who operates such motor vehicle by his authority, shall, upon the request of any proper officer, immediately clean such registration plates so that the numbers thereon may be readily distinguished, and any person who shall neglect or refuse to so clean a registration plate, after having been requested to do so, shall be guilty of a misdemeanor, and fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty days.

(f) Operating with false numbers. Any person who shall wilfully, and with intent to defraud the state of registration fees, operate a motor vehicle with a registration plate which has been repainted or altered or forged, or which was issued by the commissioner for a motor vehicle other than the one on which used, shall be guilty of a misdemeanor.

(g) Alteration, disguise, or concealment of numbers. Any operator of a motor vehicle who shall wilfully and with intent to conceal the identity of such motor vehicle or the identity of the registered owner thereof, mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a misdemeanor. (1937, c. 407, s. 27.)

§ 20-64. Transfer of registration plates. — (a) Registration plates issued by the department for vehicles privately owned and operated shall not be transferred from one vehicle to another, but shall be assigned and transferred from one owner to another, upon the assignment of title as required by this article, and shall remain on the vehicle for which originally issued.

(b) Registration plates issued by the department for vehicles owned and operated by the state or any department thereof, or by any county, city or town, school district or other political subdivision of the state, shall not be assigned and transferred from one owner to another, but shall be retained by the owner to whom originally issued, and may be used by the owner on another vehicle: Provided, that the owner shall make application to the department for said transfer and comply with the requirements of this article relative to certificate of title for vehicle the registration plates are to be transferred to.

(c) Registration plates issued by the department for vehicles operated for hire shall be subject to the same transfer provision as of vehicles owned by the state or any department thereof as set forth in subsection (b) of this section. (1937, c. 407, s. 28.)

§ 20-65. Expiration of registration.—Every vehicle registration under this article and every registration card and registration plate issued hereunder shall expire at midnight on the thirty-first day of December of each year. (1937, c. 407, s. 29.)

§ 20-66. Application for renewal of registration.—(a) Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law.

(b) The department may receive applications for renewal of registration and grant the same, and issue new registration cards and plates at any

time prior to expiration of registration, but no person shall display upon a vehicle the new registration plates prior to December first. (1937, c. 407, s. 30.)

§ 20-67. Notice of change of address or name.—(a) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, shall move from the address named in the application or shown upon a registration card or certificate of title, such person shall within ten days thereafter notify the department in writing of his old and new addresses.

(b) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall within ten days notify the department of such former and new name. (1937, c. 407, s. 31.)

§ 20-68. Replacement of lost or damaged certificates, cards and plates.—(a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the department, upon the applicant's furnishing under oath information satisfactory to the department and payment of required fee.

(b) When a dealer acquires a motor vehicle which has been previously licensed, he should advise the party from whom he acquires the vehicle as to the provisions of the law which require that party to report to the motor vehicle bureau the sale or disposal of the vehicle. If the dealer wishes to have the license transferred to his name he may do so, but this is optional with him. However, should the license plate or plates be lost or destroyed while the vehicle is in the possession of the dealer, no replacement may be issued unless and until license and title has been transferred to the dealer. Nor shall any subsequent owner secure replacement plates until application for transfer of title and license has been made.

(c) In the event any certificate of title is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may obtain a duplicate upon the applicant furnishing under oath information satisfactory to the department and payment of required fee. Upon issuance of any duplicate certificate of title the previous certificate last issued shall be void. (1937, c. 407, s. 32.)

§ 20-69. Department authorized to assign new engine number.—The owner of a motor vehicle upon which the engine number or serial number has become illegible or has been removed or obliterated shall immediately make application to the department for a new engine or serial number for such motor vehicle. The department, when satisfied that the applicant is the lawful owner of the vehicle referred to in such application is hereby authorized to assign a new engine or serial number thereto, and shall require that such number, together with the name of this state, or a symbol indicating this state, be stamped upon the engine, or in the event such number is a serial number, then upon such portion of the motor vehicle as shall be designated by the department. (1937, c. 407, s. 33.)

§ 20-70. Department to be notified when another engine is installed.—(a) Whenever a motor vehicle registered hereunder is altered by the installation of another engine in place of an engine, the number of which is shown in the registration records, the owner of such motor vehicle shall immediately give notice to the department in writing on a form prepared by it, which shall state the number of the former engine and the number of the newly installed engine, the registration number of the motor vehicle, the name of the owner and any other information which the department may require. Whenever another engine has been substituted as provided in this section, and the notice given as required hereunder, the department shall insert the number of the newly installed engine upon the registration card and certificate of title issued for such motor vehicle.

(b) Whenever a new engine or serial number has been assigned to and stamped upon a motor vehicle as provided in section 20-69, or whenever a new engine has been installed as provided in this section, the department shall require the owner to surrender to the department the registration card and certificate of title previously issued for said vehicle. The department shall also require the owner to make application for a duplicate registration card and a duplicate certificate of title showing the new motor or serial number thereon, and upon receipt of such application and fee, as for any other duplicate title, the department shall issue to said owner a duplicate registration and a duplicate certificate of title showing thereon the new number in place of the original number. (1937, c. 407, s. 34.)

§ 20-71. Altering or forging certificate of title a felony.—Any person who shall alter with fraudulent intent any certificate of title or registration card issued by the department, or forge or counterfeit any certificate of title or registration card purporting to have been issued by the department under the provisions of this article, or who shall alter or falsify with fraudulent intent or forge any assignment thereof, or who shall hold or use any such certificate, registration card or assignment knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court. (1937, c. 407, s. 35.)

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner.—(a) Whenever the owner of a registered vehicle transfers or assigns his title or interest thereto, he shall endorse upon the reverse side of the registration card issued for such vehicle the name and address of the transferee and the date of transfer, and shall immediately forward such card to the department.

(b) The owner of any vehicle registered under the foregoing provisions of this article, transferring or assigning his title or interest thereto, shall also endorse an assignment and warranty of title

in form approved by the department upon the reverse side of the certificate of title or execute an assignment and warranty of title of such vehicle and a statement of all liens or encumbrances thereon, which statement shall be verified under oath by the owner, who shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle, except that where a deed of trust, mortgage, conditional sale or title retaining contract is obtained from purchaser or transferee in payment of purchase price or otherwise, the lien holder shall forward such certificate of title papers to the department within twenty days, together with necessary fees, or deliver such papers to the purchaser at the time of delivering the vehicle, as he may elect, but in either event the penalty provided in section 20-74 shall apply if application for transfer is not made within twenty days. (1937, c. 407, s. 36.)

§ 20-73. New owner to secure transfer of registration and new certificate of title.—The transferee within twenty days after the purchase shall apply to the department for a transfer of registration of the vehicle and shall present the certificate of title endorsed and assigned as hereinbefore provided to the department, and make application for and obtain a new certificate of title for such vehicle except as otherwise permitted in sections 20-75 and 20-76. (1937, c. 407, s. 37; 1939, c. 275.)

§ 20-74. Penalty for failure to make application for transfer within the time specified by law.—It is the intent and purpose of this article that every new owner or purchaser of a vehicle previously registered shall make application for transfer of title and registration within twenty days after acquiring same, or see that such application is sent in by the lien holder with proper fees, and responsibility for such transfer shall rest on the purchaser. Any person, firm or corporation failing to do so shall pay a penalty of two dollars ($2.00) in addition to the fees otherwise provided in this article. It is further provided that any dealer or owner who shall knowingly make any false statement in any application required by this department as to the date a vehicle was sold or acquired shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than thirty days. All moneys collected under this section shall go to the state highway fund. (1937, c. 407, s. 38; 1939, c. 275.)

§ 20-75. When transferee is a dealer.—When the transferee of a vehicle is a dealer who holds the same for resale and operates the same only for purposes of demonstration under a dealer's number plate such transferee shall not be required to register such vehicle nor forward the certificate of title to the department as provided in section 20-73, but such transferee, upon transferring his title or interest to another person, shall give notice of such transfer to the department and shall execute and acknowledge an assignment and warranty of title in form approved by the department, and deliver the same to the person to whom such transfer is made at the same time the vehicle is delivered, except as provided in section 20-72, sub-section (b). (1937, c. 407, s. 39.)

§ 20-76. Title lost or unlawfully detained.—Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the department is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the department is satisfied that the applicant is entitled thereto is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fee for duplicate title and/or replacement. (1937, c. 407, s. 40.)

§ 20-77. Transfer by operation of law.—(a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a transfer of registration to himself and a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases: Provided, however, transfers of registration shall only be made as provided for in § 20-64, sub-sections (a), (b) and (c).

(b) In the event of transfer as upon inheritance, devise or bequest, the department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. However, if no administrator has qualified or the clerk of the superior court refuses to issue a certificate, the department may upon affidavit showing satisfactory reasons therefor effect such transfer, but the new title so issued shall not affect the validity nor be in prejudice of any creditor's lien.

(c) Mechanic's or Storage Lien.—In any case where a vehicle is sold under a mechanic's or storage lien, the department shall be given a thirty-day notice as provided in § 20-114. (1937, c. 407, s. 41.)

§ 20-78. When department to tansfer registration and issue new certificate.—(a) The department, upon receipt of a properly endorsed certificate of title and application for transfer of registration, accompanied by the required fee, shall transfer the registration thereof under its registration number to the new owner, and shall issue a new registration card and certificate of title as upon an original registration.

(b) The department shall retain and appropriately file every application for certificate of title upon which certificate of title was issued and every surrendered certificate of title, such file to be so maintained as to permit the tracing of title of the vehicle designated therein. (1937, c. 407, s. 42.)

Part 5. Issuance of Special Plates.

§ 20-79. Registration by manufacturers and dealers.—(a) A manufacturer of or dealer in motor vehicles, trailers or semi-trailers, owning or operating any such vehicle or any vehicle known as a wrecker upon any highway, in lieu of registering such vehicle, may obtain from the department, upon application therefor upon the proper official forms and payment of the fees required by law, and attach to each such vehicle, two number plates, which plates shall each bear thereon a distinctive number, also the name of this state, which may be abbreviated, and the year for which issued, together with the word "dealer" or a distinguishing symbol indicating that such plate or plates are issued to a dealer may, during the calendar year for which issued, be transferred from one such vehicle to another owned and operated by such manufacturer or dealer.

(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in his possession a certificate of title issued by the department to such manufacturer or dealer of each vehicle, owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required for any new vehicle to be sold as such by a manufacturer or dealer prior to the sale of such vehicle by the manufacturer or dealer; and except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semi-trailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing of motor vehicles, trailers and semi-trailers, of collecting accounts, contacting prospective customers and generally carrying on routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealer's demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the commissioner from the dealer, which shall be valid for not more than forty-eight hours: Provided further, that motor vehicles, trailers and semi-trailers sold by dealers may be operated for a period not exceeding ten days from the date of sale by the purchaser thereof with dealer's demonstration plates, provided the purchasers have in their possession receipts from the dealers upon which the dealer has certified that the necessary amount of money to pay for titles and licenses has been paid by the purchasers to the dealers to be forwarded to the motor vehicle bureau, either direct or through one of its branch offices, on such form as approved by the commissioner.

(c) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person to be operated or moved upon a public highway without there being displayed upon such vehicle a number plate or plates issued to such person, either under section 20-63 or under this section.

(d) No manufacturer of or dealer in motor vehicles, trailers or semi-trailers shall cause or permit any such vehicle owned by such person or by any person in his employ, which is in the personal use of such person or employee, to be operated or moved upon a public highway with a "dealer" plate attached to such vehicle.

(e) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43.)

§ 20-80. National guard plates.—The commissioner shall cause to be made each year a sufficient number of automobile license plates to furnish each officer of the North Carolina National Guard with a set thereof, said license plates to be in the same form and character as other license plates now or hereafter authorized by law to be used upon private passenger vehicles registered in this state, except that such license plates shall bear on the face thereof the following words, "National Guard." The said license plates shall be issued only to officers of the North Carolina National Guard, and for which license plates the commissioner shall collect fees in an amount equal to the fees collected for the licensing and registering of private vehicles. The adjutant general of North Carolina shall furnish to the commissioner each year, prior to the date that licenses are issued, a list of the officers of the North Carolina National Guard, which said list shall contain the rank of each officer listed in the order of his seniority in the service, and the said license plates shall be numbered, beginning with the number two hundred and one and in numerical sequence thereafter up to and including the number five hundred, according to seniority, the senior officer being issued the license bearing the numerals two hundred and one. Upon transfer of the ownership of a private passenger vehicle upon which there is a license plate bearing the words national guard, said plates shall be removed and the authority to use the same shall thereby be canceled; however, upon application to the commissioner, he shall reissue said plate to the officer of the national guard to whom the same were originally issued, and upon said reissue the commissioner shall collect fees in an amount equal to the fees collected for the original licensing and registering of said private passenger vehicle as is now or may be prescribed by law. (1937, c. 407, s. 44; 1941, c. 36.)

§ 20-81. Official license plates.—Official license plates issued as a matter of courtesy to state officials shall be subject to the same transfer provisions as provided in section 20-80. (1937 c. 407, s. 45.)

§ 20-82. Manufacturer or dealer to give notice of sale or transfer.—Every manufacturer or dealer, upon transferring a motor vehicle, trailer or semi-trailer, whether by sale, lease or otherwise, to any person other than the manufacturer or dealer shall, on or before the tenth of each month, give

written report of all such transfers made during the preceding calendar month to the department upon the official form provided by the department. Every such report shall contain the date of such transfer, the names and addresses of the transferer and transferee and such description of the vehicle as may be called for in such official form. Every manufacturer or dealer shall keep a record of all vehicles received or sold containing such information regarding same as the department may require. (1937, c. 407, s. 46.)

Part 6. Vehicles of Non-Residents of States, etc.

§ 20-83. Registration by non-residents. — (a) Nonresidents of this state, except as otherwise provided in this article, will be exempt from the provisions of this article as to the registration of motor vehicles for the same time and to the same extent as like exemptions are granted residents of this state under laws of another state, district or territory: Provided, that they shall have complied with the provisions of the law of the state, district or territory of their residence relative to the registration and equipment of their motor vehicles, and shall conspicuously display the registration plates as required thereby, and have in their possession the registration certificates issued for such motor vehicles, and that nothing herein contained shall be construed to permit a bona fide resident of this state to use any registration plate or plates from a foreign state, district or territory, under the provisions of this section. The commissioner shall determine what exemptions the non-resident vehicle operators of the several states, districts or territories, are entitled to under the provisions of this section, and ordain and publish rules and regulations for making effective the provisions of this section, which rules and regulations shall be observed and enforced by all the officers of this state whose duties require the enforcement of the automobile registration laws, and any violations of such rules and regulations shall constitute a misdemeanor.

(b) Motor vehicles duly registered in a state or territory which are not allowed exemptions by the commissioner, as provided for in the preceding paragraph, desiring to make occasional trips into or through the state of North Carolina, or operate in this state for a period not exceeding thirty days, may be permitted the same use and privileges of the highways of this state as provided for similar vehicles regularly licensed in this state, by procuring from the commissioner trip licenses upon forms and under rules and regulations to be adopted by the commissioner, good for use for a period of thirty days upon the payment of a fee in compensation for said privilege equivalent to one-tenth of the annual fee which would be chargeable against said vehicle if regularly licensed in this state: Provided, however, that nothing in this provision shall prevent the extension of the privileges of the use of the roads of this state to vehicles of other states under the reciprocity provisions provided by law: Provided further, that nothing herein contained shall prevent the owners of vehicles from other states from licensing such vehicles in the state of north Carolina under the same terms and the same fees as like vehicles are licensed by owners resident in this state.

(c) Every non-resident, including any foreign corporation carrying on business within this state and owning and operating in such business any motor vehicle, trailer or semi-trailer within this state, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. (1937, c. 407, s. 47; 1941, cc. 99, 365.)

Local Modification.—Buncombe, Catawba, Lee, New Hanover, Pender, Sampson, Wake: 1941, c. 99, s. 2.

§ 20-84. Vehicles owned by state, municipalities or orphanages, etc.—The department, upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the state or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage, shall collect one dollar for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the state or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the state or some department thereof, or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church owned bus used exclusively for transporting children and parents to Sunday School and church services and for no other purpose. (1937, c. 407, s. 48; 1939, c. 275.)

Part 7. Title and Registration Fees.

§ 20-85. Schedule of fees.—There shall be paid to the department for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:

(a) Each application for certificate of title	$ .50
(b) Each application for duplicate certificate of title	.50
(c) Each application of repossessor for certificate of title	.50
(d) Each transfer of registration	1.00
(e) Each set of replacement registration plates	1.00

(1937, c. 407, s. 49.)

§ 20-86. Penalty for engaging in a "for hire" business without proper license plates. — Any person, firm or corporation engaged in the business of transporting persons or property for compensation, except as otherwise provided in this article, shall, before engaging in such business, pay the license fees prescribed by this article and secure the license plates provided for vehicles operated for hire. Any person, firm or corporation operating vehicles for hire without having paid the tax prescribed or using private plates on such vehicles shall be liable for an additional tax of twenty-five dollars ($25.00) for each vehicle in addition to the normal fees provided in this article. (1937, c. 407, s. 50.)

§ 20-87. Passenger vehicle registration fees.—There shall be paid to the department annually, as of the first day of January, for the registration and

licensing of passenger vehicles, fees according to the following classifications and schedules:

(a) Franchise Bus Carriers.—Franchise bus carriers shall pay an annual license tax of ninety cents per hundred pounds weight of each vehicle unit, and in addition thereto six per cent of the gross revenue derived from such operation: Provided, said additional six per cent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax of ninety cents per hundred pounds: Provided further, that franchise bus carriers operated between point or points within this state and point or points without this state shall be required to account as compensation for the use of the highways of this state and the special privileges extended such carriers by this state in computing the six per cent tax, only on that proportion of the gross revenue, earned both within and without this state, which corresponds to the proportion of mileage in this state as compared with the total mileage, but in no event shall the tax paid by such franchise bus carriers be less than ninety cents per hundred pounds weight for each vehicle; provided, further, that for the purpose of determining the maximum weight to be allowed for passenger busses to be operated upon the highways of this state in lieu of the provisions of § 20-118, the commissioner shall require, prior to the issuance of license, a certificate showing the weight of such bus when fully equipped for the road and no such bus shall be licensed except busses heretofore in use in this state if the weight fully equipped shall exceed twenty-two thousand five hundred (22,500) pounds; and no special permit shall be issued for any bus in excess of the limits herein specified; and the operation upon the highways of this state of a bus in excess of such limit shall be unlawful, and any person guilty thereof upon conviction shall be fined one thousand dollars ($1,000.00).

(b) U-Drive-It Passenger Vehicles.—U-drive-it passenger vehicles shall pay the following tax:

Motorcycles: 1-passenger capacity $12.00
2-passenger capacity 15.00
3-passenger capacity 18.00

Automobiles: $1.90 per hundred pounds weight of each vehicle.

(c) For Hire Passenger Vehicles.—For hire passenger vehicles shall be taxed at the rate of $1.90 per hundred pounds of weight.

(d) Excursion Passenger Vehicles.—Excursion passenger vehicles shall be taxed at the rate of $8.00 per passenger capacity, with a minimum charge of $25.00, but such vehicles operating under a certificate as a restricted common carrier under §§ 62-103 to 62-121, shall also be liable to the gross revenue six per cent tax to the extent it exceeds the tax herein levied under the same provisions provided for franchise bus carriers.

(e) Private Passenger Vehicles.—Private passenger vehicles shall be taxed at thirty-five cents per hundred pounds of weight or major fraction thereof, according to the manufacturer's shipping weight: Provided, that no fee for any private passenger vehicles shall be less than $7.00.

(f) Private Passenger Motorcycles. — Private passenger motorcycles shall pay for each motorcycle $5.00, and for each side car $5.00.

(g) Manufacturers and Motor Vehicle Dealers. —Manufacturers and dealers in motor vehicles for demonstration tags shall pay as a registration fee and for one set of plates $25.00, and for each additional set of plates $1.00.

(h) Driveaway Companies.—Any person, firm or corporation engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this state for compensation shall pay as a registration fee and for one set of plates one hundred dollars ($100.00) and for each additional set of plates five dollars ($5.00). (1937, c. 407, s. 51; 1939, c. 275.)

§ 20-88. Property hauling vehicles. — (a) Determination of Weight.—For the purpose of licensing, the weight of the several classes of motor vehicles used for transportation of property shall be the gross weight and load, to be determined by the manufacturer's gross weight capacity as shown in an authorized national publication, such as "Commercial Car Journal" or the statistical issue of "Automotive Industries," all such weights subject to verification by the commissioner or his authorized deputy, and if no such gross weight on any vehicle is available in such publication, then the gross weight shall be determined by the commissioner or his authorized agent: Provided, that any determination of weight shall be made only in units of one thousand pounds or major fraction thereof, weights of over five hundred pounds being counted as one thousand and weights of five hundred pounds or less being disregarded. Semi-trailers licensed for use in connection with a truck or truck-tractor shall in no case be licensed for less gross weight capacity than the truck or truck-tractor with which it is to be operated.

(b) There shall be paid to the department annually, as of the first day of January, for the registration and licensing of trucks, truck-tractors, trailers and semi-trailers, fees according to the following classifications and schedules:

Schedule of Weights and Rates

Rate per hundred pounds gross weight:

	Private Hauler	Contract Hauler	Franchise Hauler (Deposit)
Gross weight not over 4,500 pounds	$0.30	$0.75	$0.60
4,501 pounds to 8,500 inclusive	.40	.75	.60
8,501 pounds to 12,500 pounds inclusive	.50	1.00	.60
12,501 pounds to 16,500 inclusive	.70	1.15	.60
Over 16,500 pounds	.80	1.40	.60

(c) The minimum rate for any vehicle licensed under this section shall be twelve dollars ($12.00), except that the license fee for a trailer having not more than two wheels with a gross weight of vehicle and load not exceeding fifteen hundred (1500) pounds and towed by a passenger car shall be two dollars ($2.00) for any part of the license year for which said license is issued, and the license fee for a two-wheel trailer with gross weight for vehicle and load of more than fifteen hundred (1500) pounds but not more than twenty-five hundred (2500) pounds and towed by a passenger car shall be ten dollars ($10.00) for the entire year, subject to the provision for quarterly

license as provided for other vehicles: Provided, however, that any such trailers operated for hire shall be taxed at the same rate as contract hauler vehicles: Provided, further, that in addition to the motor vehicle licenses authorized to be issued pursuant to the provisions of this chapter, the department shall issue, upon application therefor, a license plate for trucks marked "farmer", which shall be issued upon evidence satisfactory to the department that the applicant is a farmer and is actually engaged in the growing, raising and producing of farm products as an occupation. License plates issued under authority of this section shall be placed upon motor trucks engaged exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies, and not engaged in hauling for hire: Provided further that the department shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" license plates issued hereunder when trucks bearing such shall be sold and/or transferred. Applicants for license plates herein authorized shall pay therefor at a rate equal to one-half the present registration fee provided for trucks by this chapter; provided that the minimum rate for any vehicle licensed under this proviso shall be ten dollars ($10.00): and provided, further, persons applying for "farmer" license under the provisions of this section shall not be entitled to the benefits of § 20-95. The term "farmer" as used in this section means any person engaged in the raising, growing and producing of farm products on a farm not less than ten acres in area, and who does not engage in the business of buying farm products for resale; and the term "farm products" means any food crop, cattle, hogs, poultry, dairy products and other agricultural products designed and to be used for food purposes.

(d) Rates on trucks, trailers and semi-trailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Franchise Haulers.—Franchise haulers shall pay an annual license tax as per the above schedule of rates for each vehicle unit, and in addition thereto six per cent of the gross revenue derived from such operation, except on vehicles licensed for inter-state routes and used exclusively for inter-state business where more than fifty per cent of the designated route lies outside of the state of North Carolina, the required deposit may be reduced by the commissioner to fifty per cent of the above schedule of rates as to deposit only: Provided, said additional six per cent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax or deposit per the above schedule: Provided further, that franchise haulers operating between point or points within this state and point or points without this state shall be required to account as compensation for the use of the highway of this state and the special privileges extended such carriers by this state in computing the six per cent tax only on that proportion of the gross revenue earned both within and without this state which corresponds to the proportion of the mileage in this state as compared to the total mileage, but in no event shall the tax paid by such franchise hauler be less than the license tax or deposit shown on the above schedule, except where a franchise is hereafter issued by the utilities commission for service over a route within the state which is not now served by any franchise hauler the six per cent gross revenue tax may be reduced to four per cent for the first two years only.

(f) Non-resident motor vehicle carriers which do not operate in intrastate commerce in this state, and the title to whose vehicles are not required to be registered under the provisions of this article, shall be taxed for the use of the roads in this state and shall pay the same fees therefor as are required with reference to like vehicles owned by residents of this state: Provided, that if any such fees as applied to non-residents shall at any time become inoperative, such carriers shall be taxed for the use of the roads of this state as franchise haulers as provided above: Provided further, that this provision shall not prevent the extension to vehicles of other states of the benefits of the reciprocity provisions provided by law.

(g) Contract haulers under the definitions of this article who receive and operate under a certificate or permit or other authority from the utilities commissioner as restricted common carriers under the provisions of §§ 62-103 to 62-121, shall, in addition to the rate of tax for contract carriers provided above, be subject to the gross six per cent tax to the extent that it exceeds the rate for contract haulers to be levied and collected in the same manner provided for franchise haulers, and the tax in the schedule provided for contract haulers shall be deemed a deposit only.

(h) Every person operating a motor vehicle upon the highways of the state equipped with motors of the Diesel type shall make a report to the commissioner upon forms to be prescribed and furnished by the commissioner at least four times a year on dates to be designated by the commissioner; and such reports shall show, among other things, the purchases of motor fuel for use in said Diesel type motor and whether or not the tax levied upon motor fuels has been paid or assumed by the person from whom bought; and it shall be unlawful to operate any such motor equipment upon the highways of this state except with fuel upon which the tax has been paid. It shall be unlawful for any person, firm, or corporation operating such Diesel type motor to fail, refuse, or neglect to make returns in accordance with the forms prescribed by the commissioner; and any person knowingly making false returns shall be guilty of a felony. (1937, c. 407, s. 52; 1939, c. 275; 1941, cc. 36, 227.)

§ 20-89. Method of computing gross revenue of franchise bus carriers and haulers.—In computing the gross revenue of franchise bus carriers and franchise haulers, revenue derived from the transportation of United States mail or other United States government services shall not be included. All revenue earned both within and without this state from the transportation of persons or property, except as herein provided, collected by franchise bus carriers and franchise haulers, whether on fixed schedule routes or by special trips or by auxiliary vehicles not licensed as franchise haulers, whether owned by the franchise hauler or hired from another for the transportation of persons or property within the limits of the designated franchise route shall be

included in the gross revenue upon which said tax is based. (1937, c. 407, s. 53.)

§ 20-90. Due date of franchise tax.—The six per cent additional tax on franchise bus carriers and franchise haulers shall become due and payable on or before the twentieth day of the month following the month in which it accrues. (1937, c. 407, s. 54.)

§ 20-91. Records and reports required of franchise carriers.—(a) Every franchise bus carrier and franchise hauler shall keep a record of all business transacted and all revenue received on such forms as may be prescribed by or satisfactory to the commissioner, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the commissioner or his deputies or such other agents as may be duly authorized by the commissioner. Any operator of such a franchise line failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) All franchise bus carriers and franchise haulers shall, on or before the twentieth day of each month, make a report to the department of gross revenue earned and gross mileage operated during the month previous, in such manner as the department may require and on such forms as the department shall furnish.

(c) It shall be the duty of the commissioner, by competent auditors, to have the books and records of every franchise bus carrier and franchise hauler examined at least once each year to determine if such operators are keeping complete records as provided by this section of this article, and to determine if correct reports have been made to the state department of motor vehicles covering the total amount of tax liability of such operators.

(d) If any franchise bus carrier or franchise hauler shall fail, neglect, or refuse to keep such records or to make such reports as required, and within the time provided in this article, the commissioner shall immediately inform himself as best he may as to all matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of the tax due the state from such delinquent operator for the period covering the delinquency, adding to the tax so determined and as a part thereof an amount equal to five per cent (5%) of the tax, to be collected and paid. The said commissioner shall proceed immediately to collect the tax including the additional five per cent (5%). (1937, c. 407, s. 55; 1939, c. 275; 1941, c. 36.)

§ 20-92. Revocation of franchise registration.—The failure of any franchise bus carrier or any franchise hauler to pay any tax levied under this article, and/or to make reports as is required, shall constitute cause for revocation of registration and franchise, and the commissioner is hereby authorized to seize the registration plates of any such delinquent carrier and require the cessation of the operation of such vehicles. (1937, c. 407, s. 56.)

§ 20-93. Bond or deposit required.—The commissioner, before issuing any registration plates to a franchise bus carrier or a franchise hauler, shall either satisfy himself of the financial responsibility of such carrier or require a bond or deposit in such amount as he may deem necessary to insure the collection of the tax imposed by this section. (1937, c. 407, s. 57.)

§ 20-94. Partial payments.—In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars ($400.00), half of such payment may be deferred until April first in any calendar year upon the execution to the commissioner of a draft upon any bank or trust company upon forms to be provided by the commissioner in an amount equivalent to one-half of such tax, plus a carrying charge of two per cent (2%): Provided, that any person using any tag so purchased after the first day of April in any such year, without having first provided for the payment of such draft, shall be guilty of a misdemeanor. Any such drafts being dishonored and not paid shall be immediately turned over by the commissioner to his duly authorized agents and/or the state highway patrol, to the end that this provision may be enforced. (1937, c. 407, s. 58.)

§ 20-95. Licenses for less than a year.—Licenses issued on or after April first of each year and before July first for all vehicles, except franchise haulers and two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be three-fourths of the annual fee. Licenses issued on or after July first and before October first, except two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be one-half the annual fee. Licenses issued on or after October first, except on two-wheel trailers under one thousand five hundred pounds weight pulled by passenger cars, shall be one-fourth of the annual fee. (1937, c. 407, s. 59.)

§ 20-96. Overloading. — The commissioner, or his authorized agent, may allow any owner of a motor vehicle for transportation of property to overload said vehicle by paying the fee at the rate per hundred pounds which would be assessed against such vehicle if its gross weight capacity provided for such load; but such calculation shall be made only in units of one thousand pounds or major fraction thereof, excessive weights of five hundred pounds or less being disregarded and weights of more than five hundred pounds and not more than one thousand pounds being counted as one thousand. It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover any overload which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highways carrying an overload in excess of one ton over the weight for which such vehicle is licensed, shall pay in addition to the normal tax levied in this article an additional tax of three dollars ($3.00) per each thousand pounds in excess of the licensed weight of such vehicle. (1937, c. 407, s. 60.)

§ 20-97. Taxes compensatory; no additional tax.—(a) All taxes levied under the provisions of this article are intended as compensatory taxes for the use and privileges of the public highways of this state, and shall be paid by the commissioner to the

state treasurer, to be credited by him to the state highway fund; and no county or municipality shall levy any license or privilege tax upon the use of any motor vehicle licensed by the state of North Carolina, except that cities and towns may levy not more than one dollar ($1.00) per year upon any such vehicle resident therein.

(b) No additional franchise tax, license tax, or other fee shall be imposed by the state against any franchise motor vehicle carrier taxed under this article nor shall any county, city or town impose a franchise tax or other fee upon them.

(c) In addition to the appropriation carried in the Appropriations Act there shall be appropriated to the motor vehicle department the additional sum of fifteen thousand dollars ($15,000.00) from the state highway fund: Provided, that such additional sum shall be made available only in the event that the regular appropriation is insufficient and it shall be determined by the director of the budget that such additional amount is necessary to carry out the provisions of this article. (1937, c. 407, s. 61; 1941, c. 36.)

§ 20-98. Tax lien.—In the distribution of assets in case of receivership or insolvency of the owner against whom the tax herein provided is levied and in the order of payment thereof, the state shall have priority over all other debts or claims except prior recorded liens or liens given by statute an express priority. (1937, c. 407, s. 62.)

§ 20-99. Sale under execution; franchise canceled.—Whenever any tax imposed by this article shall be in default for a period of ten days, it shall be the duty of the commissioner to certify the same to the sheriff of any county of this state in which such delinquent motor vehicle operator is operating, which said certificate to said sheriff shall have all the force and effect of a judgment and execution, and the said sheriff is hereby authorized and directed to levy upon any property in said county owned by said delinquent motor vehicle operator and to sell the same for the payment of said tax as other property is sold in the state for the nonpayment of taxes; and for such services the sheriff shall be allowed the fees now prescribed by law for sales under execution, and the cost in such cases shall be paid by the delinquent taxpayer or out of the proceeds of the said property, and upon the filing of said certificate with the sheriff, in the event the delinquent taxpayer shall be the operator of any franchise bus carrier or franchise hauler vehicle, the franchise certificate issued to such operator shall become null and void and shall be canceled by the utilities commissioner, and it shall be unlawful for any such franchise bus carrier or the operator of any franchise hauler vehicle to continue the operation under said franchise. (1937, c. 407, s. 63.)

§ 20-100. Vehicles junked or destroyed by fire or collision.—Upon satisfactory proof to the commissioner that any motor vehicle, duly licensed, has been completely destroyed by fire or collision, or has been junked and completely dismantled so that the same can no longer be operated as a motor vehicle, the owner of such vehicle may be allowed on the purchase of a new license for another vehicle a credit equivalent to the unexpired proportion of the cost of the original license, dating from the first day of the next month after the date of such destruction. (1937, c. 407, s. 64; 1939, c. 369, s. 1.)

§ 20-101. Vehicles to be marked. — All motor vehicles licensed as franchise bus carriers, franchise hauler vehicles and contract hauler vehicles, shall have printed on the side thereof in letters not less than three inches in height the name and home address of the owner, or such other identification as the utilities commissioner may approve. (1937, c. 407, s. 65.)

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102. Report of stolen and recovered motor vehicles.—Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the department. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the department. (1937, c. 407, s. 66.)

§ 20-103. Reports by owners of stolen and recovered vehicles.—The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement. Every owner or other person who has given any such notice must notify the department of the recovery of such vehicle. (1937, c. 407, s. 67.)

§ 20-104. Action by department on report of stolen or embezzled vehicles.—(a) The department, upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided, shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

(b) The department shall at least once each month compile and maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding month, and such lists shall be open to inspection by any peace officer or other persons interested in any such vehicle. (1937, c. 407, s. 68.)

§ 20-105. Unlawful taking of a vehicle.—Any person who drives a vehicle, not his own, without the consent of the owner thereof, and with intent to temporarily deprive said owner of his possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor. (1937, c. 407, s. 69.)

§ 20-106. Receiving or transferring stolen ve-

hicles.—Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony. (1937, c. 407, s. 70.)

§ 20-107. Injuring or tampering with vehicle.—(a) Any person who either individually or in association with one or more other persons wilfully injures or tampers with any vehicles or brakes or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor.

(b) Any person who, with intent to steal, commit any malicious mischief, injury or other crime, climbs into or upon a vehicle, whether it is in motion or at rest, or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended, is guilty of a misdemeanor. (1937, c. 407, s. 71.)

§ 20-108. Vehicles without manufacturer's numbers.—Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine removed from a motor vehicle, from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the department has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor. (1937, c. 407, s. 72.)

§ 20-109. Altering or changing engine or other numbers.—No person shall with fraudulent intent deface, destroy, or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a motor vehicle, nor shall any person place or stamp any serial, engine, or other number or mark upon a motor vehicle, except one assigned thereto by the department. Any violation of this provision is a misdemeanor. (1937, c. 407, s. 73.)

§ 20-110. When registration shall be rescinded.—(a) The department shall rescind and cancel the registration of any vehicle which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law.

(b) The department shall rescind and cancel the registration of any vehicle whenever the person to whom the registration card or registration number plates therefor have been issued shall make or permit to be made any unlawful use of the said card or plates or permit the use thereof by a person not entitled thereto.

(c) The department shall rescind and cancel the license of any dealer to whom such license has been issued when such dealer allows his registration number plates to be used for other than demonstration purposes except as provided by § 20-79, fails to carry out the provisions of § 20-79 and § 20-82, or is convicted of a felony. (1937, c. 407, s. 74.)

§ 20-111. Violation of registration provisions.—It shall be unlawful for any person to commit any of the following acts:

(a) To operate or for the owner thereof knowingly to permit the operation upon a highway of any motor vehicle, trailer, or semi-trailer which is not registered or for which a certificate of title has not been issued, or which does not have attached thereto and displayed thereon the registration number plate or plates assigned thereto by the department for the current registration year, subject to the exemption mentioned in § 20-79.

(b) To display or cause or permit to be displayed or to have in possession any registration card, certificate of title or registration number plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(c) The giving, lending, or borrowing of a license plate for the purpose of using same on some motor vehicle other than that for which issued shall make the giver, lender, or borrower guilty of a misdemeanor, and upon conviction he shall be fined not more than fifty dollars ($50.00), or imprisoned not more than thirty days. Where license plate is found being improperly used, such plate or plates shall be revoked or canceled, and new license plates must be purchased before further operation of the motor vehicles.

(d) To fail or refuse to surrender to the department, upon demand, any title certificate registration card or registration number plate which has been suspended, canceled or revoked as in this article provided.

(e) To use a false or fictitious name or address in any application for the registration of any vehicle or for a certificate of title or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application. (1937, c. 407, s. 75.)

§ 20-112. Making false affidavit perjury. — Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this article to be sworn or affirmed to shall be guilty of perjury, and upon conviction shall be punishable by a fine and imprisonment as other persons committing perjury are punishable. (1937, c. 407, s. 76.)

§ 20-113. Licenses protected.—No person, partnership, association or corporation shall maintain an office or place of business in which or through which persons desiring transportation for themselves or their baggage are brought into contact by advertisement or otherwise with persons owning or operating motor vehicles and willing to transport other persons, or baggage, for compensation, or on a division of expense basis, unless the owner or operator of such motor vehicles furnishing the transportation has qualified under the tax provisions of this article for the class of service he holds himself out to perform. (1937, c. 407, s. 77.)

§ 20-114. Duty of officer; manner of enforcement.—(a) For the purpose of enforcing the provisions of this article, it is hereby made the

duty of every police officer, every marshal, deputy marshal, or watchman of any incorporated city or village, and every sheriff, deputy sheriff, and all other lawful officers of any county, and every constable of any township, to arrest within the limits of their jurisdiction any person known personally to any such officer, or upon the sworn information of a creditable witness, to have violated any of the provisions of this article, and to immediately bring such offender before any justice of the peace or officer having jurisdiction, and any such person so arrested shall have the right of immediate trial, and all other rights given to any person arrested for having committed a misdemeanor. Every officer herein named who shall neglect or refuse to carry out the duties imposed by this chapter shall be liable on his official bond for such neglect or refusal as provided by law in like cases.

(b) It shall be the duty of all sheriffs, police officers, deputy sheriffs, deputy police officers, and all other officers within the state to co-operate with and render all assistance in their power to the officers herein provided for, and nothing in this article shall be construed as relieving said sheriffs, police officers, deputy sheriffs, deputy police officers, and other officers of the duties imposed on them by this chapter.

(c) It shall also be the duty of every sheriff of every county of the state and of every police or peace officer of the state to make immediate report to the commissioner of all motor vehicles reported to him as abandoned or that are seized by him for being used for illegal transportation of intoxicating liquors or other unlawful purposes, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice shall have been given the commissioner at least thirty days before the date of such sale. (1937, c. 407, s. 78.)

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-115. Scope and effect of regulations in this title.—It shall be unlawful and constitute a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the commission adopted pursuant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this article. (1937, c. 407, s. 79.)

§ 20-116. Size of vehicles and loads.—(a) The total outside width of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in this section.

(b) No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(c) No vehicle unladen or with load shall exceed a height of twelve feet, six inches.

(d) No vehicle shall exceed a length of thirty-five feet extreme over-all dimension, inclusive of front and rear bumpers. A truck-tractor and semi-trailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(e) No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of forty-five feet exclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at night-time by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided, that the state highway and public works commission shall have authority to designate any highways upon the state system as light-traffic roads when, in the opinion of the commission, such roads are inadequate to carry and will be injuriously affected by the maximum load, size, and/or width of trucks or busses using such roads as herein provided for, and all such roads so designated shall be conspicuously posted as light-traffic roads and the maximum load, size and/or width authorized shall be displayed on proper signs erected thereon. The operation of any vehicle whose gross load, size and/or width exceed the maximum shown on such signs over the roads thus posted shall constitute a misdemeanor: Provided further, that no standard concrete highway, or other highway built of material of equivalent durability, and not less than eighteen feet in width, shall be designated as a light-traffic road: Provided further, that the limitations placed on any road shall not be less than eighty per cent (80%) of the standard weight, unless there shall be available an alternate improved route of not more than twenty per cent (20%) increase in the distance.

(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle, if it is equipped with such a bumper.

(g) No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(h) Wherever there exist two highways of the state system of approximately equivalent construction, convenience and distance between two or more points, the state highway and public works commission shall have authority, when in the opinion of the commission the public interest is

served thereby, to designate one of said roads for heavy or truck-line traffic between said points, and to prohibit the use of the other or parallel road by heavy or truck-line traffic thereon; and in such instances the roads selected for heavy or truck-line traffic shall be so designated by signs conspicuously posted thereon, and the roads upon upon which heavy or truck-line traffic is prohibited shall likewise be so designated by signs conspicuously posted thereon showing the maximum load authorized for said roads. The operation of any vehicle whose gross load exceeds the maximum load shown on such signs over the road thus posted shall constitute a misdemeanor: Provided, that nothing herein shall prohibit a truck or other motor vehicle whose gross load exceeds that prescribed for the light traffic roads from using said light traffic road when the destination of said truck is located solely upon said light traffic road: Provided, further, that nothing herein shall prohibit passenger or other light traffic vehicles from using any road or roads so designated for heavy or truck-line traffic. (1937, c. 246; 1937, c. 407, s. 80.)

§ 20-117. Flag or light at end of load.—Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red flag not less than twelve inches both in length and width, except that between one-half hour after sunset and one-half hour before sunrise there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle. (1937, c. 407, s. 81.)

§ 20-118. Weight of vehicles and load. — No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below:

(a) When the wheel is equipped with high-pressure pneumatic, solid rubber or cushion tire, eight thousand pounds.

(b) When the wheel is equipped with low-pressure pneumatic tire, nine thousand pounds.

(c) The gross weight on any one axle of the vehicle when the wheels attached to said axle are equipped with high-pressure solid rubber or cushion tires, sixteen thousand pounds.

(d) When the wheels attached to said axle are equipped with low-pressure pneumatic tires, eighteen thousand pounds.

(e) For the purposes of this section an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than forty inches apart.

(f) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than one hundred pounds pressure shall be deemed a low-pressure pneumatic tire, and every pneumatic tire inflated to one hundred pounds pressure or more shall be deemed a high-pressure pneumatic tire.

(g) No vehicle shall be operated on any highway the weight of which, resting on the surface of such highway, exceeds six hundred pounds upon any inch of tire roller or other support.

(h) Subject to the foregoing limitations, the gross weight of any vehicle having two axles shall not exceed twenty thousand pounds.

(i) Subject to the foregoing limitations, the gross weight of any vehicle or combination of vehicles having three or more axles shall not exceed forty thousand pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. (1937, c. 407, s. 82.)

§ 20-118(1). Peace officer may weigh vehicle and require removal of excess load.—Any peace officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to weigh the same either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales in the event such scales are within two miles. The officer may then require the drive to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum therefor specified in this article. (1927, c. 148, s. 37.)

§ 20-119. Special permits for vehicles of excessive size or weight.—The state highway and public works commission may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant for seasonal operations to operate or move a vehicle of a size or weight exceeding a maximum specified in this article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer; and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided, the authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or width exceeding the maximum expressed in this article. (1937, c. 407, s. 83.)

§ 20-120. Operation of flat trucks on state highways regulated.—It shall be unlawful for any person, firm or corporation to operate, or have operated on any public highway in the state any open, flat truck loaded with logs, cotton bales, boxes or other load piled on said truck, without having the said load securely fastened on said truck. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1939, c. 114.)

§ 20-121. When authorities may restrict right to use highways. — The state highway and public works commission or local authorities may prohibit the operation of vehicles upon or impose restrictions as to the weight thereof, for a total period not to exceed ninety days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which the body adopting the ordinance is responsible, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be damaged unless the use of vehicles thereon is prohibited or the permissible weights thereof re-

duced. The local authority enacting any such ordinance shall erect, or cause to be erected and maintained, signs designating the provisions of the ordinance at each end of that portion of any highway to which the ordinance is applicable, and the ordinance shall not be effective until or unless such signs are erected and maintained. (1937, c. 407, s. 84.)

§ 20-122. Restrictions as to tire equipment.—(a) Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one and a half inches thick above the edge of the flange of the entire periphery.

(b) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway and except, also, that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to slide or skid.

(c) The state highway and public works commission or local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugation upon the periphery of such movable tracks or farm tractors or other farm machinery.

(d) It shall not be unlawful to drive farm tractors on dirt roads from farm to farm: Provided, in doing so they do not damage said dirt roads or interfere with traffic. (1937, c. 407, s. 85; 1939, c. 266.)

§ 20-123. Trailers and towed vehicles.—(a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semi-trailer.

(b) No trailer or semi-trailer shall be operated over the highways of the state unless such trailer or semi-trailer be firmly attached to the rear of the motor vehicle drawing same, and unless so equipped that it will not shake, but will travel in the path of the wheels of the vehicle drawing such trailer or semi-trailer, which equipment shall at all times be kept in good condition. (1937, c. 407, s. 86.)

§ 20-124. Brakes. — (a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop such vehicle or vehicles, and such brakes shall be maintained in good working order and shall conform to regulations provided in this section.

(b) No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the hand brake thereon, stopping the motor and turning the front wheels into the curb or side of the highway.

(c) On a dry, hard, approximately level stretch of highway free from loose material, the service (foot) brake shall be capable of stopping the motor vehicle at a speed of twenty miles per hour within a distance of twenty-five feet with four wheel brakes or forty-five feet with two wheel brakes. The hand brake shall be capable of stopping the vehicle under like conditions of this section within a distance of not more than seventy-five feet.

(d) Motor trucks and tractor-trucks with semi-trailers attached shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within the following distances: thirty feet with both hand and service brake applied simultaneously and fifty feet when either is applied separately, except that vehicles maintained and operated permanently for the transportation of property and which were registered in this or any other state or district prior to August, nineteen hundred and twenty-nine, shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within a distance of fifty feet with both hand and service brake applied simultaneously, and within a distance of seventy-five feet when either applied separately.

(e) Every semi-trailer, or trailer, or separate vehicle, attached by a draw-bar or coupling to a towing vehicle, and having a gross weight of two tons, and all house trailers of one thousand pounds gross weight or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in sub-section (d) of this section and shall be of a type approved by the commissioner. (1937, c. 407, s. 87.)

§ 20-125. Horns and warning devices. — (a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped with or for any person to use upon a vehicle any siren, compression or spark plug whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonable loud or harsh sound by means of a horn or other warning device. All such horns and warning devices shall be maintained in good working order and shall conform to regulation not inconsistent with this section to be promulgated by the commissioner.

(b) Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren or exhaust whistle of a type approved by the commissioner. (1937, c. 407, s. 88.)

§ 20-126. Mirrors. — No person shall drive a motor vehicle on a highway which motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position, unless such vehicle is equipped with a mirror of a type to be approved by the commissioner so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. (1937, c. 407, s. 89.)

§ 20-127. Windshields must be unobstructed. —(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster

or other non-transparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law.

(b) Every permanent windshield on a motor vehicle shall be equipped with a device for cleaning snow, rain, moisture or other matter from the windshield directly in front of the operator, which device shall be so constructed as to be controlled or operated by the operator of the vehicle. The device required by this sub-section shall be of a type approved by the commissioner. (1937, c. 407, s. 90.)

§ 20-128. Prevention of noise, smoke, etc.; muffler cut-outs regulated.—(a) No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens.

(b) It shall be unlawful to use a "muffler cut-out" on any motor vehicle upon a highway. (1937, c. 407, s. 91.)

§ 20-129. Required lighting equipment of vehicles.—(a) When vehicles must be equipped: Every vehicle upon a highway within this state during the period from a half hour after sunset to a half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet ahead, shall be equipped with lighted front and rear lamps as in this section respectively required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in § 20-134.

(b) Head Lamps on Motor Vehicles: Every motor vehicle other than a motorcycle, road-roller, road machinery, or farm tractor shall be equipped with two head lamps, no more and no less, at the front of and on opposite sides of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in §§ 20-131 or 20-132.

(c) Head Lamps on Motorcycles: Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations set forth in § 20-131 or 20-132.

(d) Rear Lamps: Every motor vehicle and every trailer or semi-trailer which is being drawn at the end of a train of vehicles shall carry at the rear a lamp of a type which has been approved by the commissioner and which exhibits a red light plainly visible under normal atmospheric conditions from a distance of five hundred feet to the rear of such vehicle, and so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be so illuminated by a white light as to be read from a distance of fifty feet to the rear of such vehicle, and every trailer or semi-trailer shall carry at the rear, in addition to a rear lamp as above specified, a red reflector of a type which has been approved by the commissioner and which is so designed, located as to a height and maintained as to be visible for at least five hundred feet when opposed by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Such reflector shall be placed at the extreme end of the load.

(e) Clearance Lamps: Every motor vehicle having a width at any part in excess of eighty inches shall carry two clearance lamps at the front, one at each side reflecting an amber light plainly visible under normal atmospheric conditions from a distance of five hundred feet to the front of said vehicle and two clearance lamps at the rear, one on each side and reflecting a red light visible under like conditions from a distance of five hundred feet to the rear of the vehicle. As relates to truck-trailer or tractor-trailer combinations, such lights shall be required only at the front and rear of the overall dimensions.

(f) Lamps on Bicycles: Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least three hundred feet in front of such bicycle, and shall also be equipped with a reflex mirror or lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least two hundred feet to the rear of such bicycle, when used at night.

(g) Lights on Other Vehicles: All vehicles not heretofore in this section required to be equipped with specified lighted lamps shall carry on the left side one or more lighted lamps or lanterns projecting a white light, visible under normal atmospheric conditions from a distance of not less than five hunded feet to the front of such vehicle and visible under like conditions from a distance of not less than five hundred feet to the rear of such vehicle, or in lieu of said lights shall be equipped with reflectors of a type which is approved by the commissioner. (1937, c. 407, s. 92; 1939, c. 275.)

§ 20-130. Additional permissible light on vehicle.—(a) Spot Lamps: Any motor vehicle may be equipped with not to exceed two spot lamps, except that a motorcycle shall not be equipped with more than one spot lamp, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle. No spot lamps shall be used on the rear of any vehicle.

(b) Auxiliary Driving Lamps: Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in § 20-131, subsection (c).

(c) Restrictions on Lamps: Any device, other than head lamps, spot lamps, or auxiliary driving lamps, which projects a beam of light of an intensity greater than twenty-five candle power, shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than fifty feet from the vehicle. (1937, c. 407, s. 93.)

§ 20-131. Requirements as to head lamps and auxiliary driving lamps.—(a) The head lamps of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in sub-section (c) of this section, they will at all times mentioned in § 20-129, and under normal atmospheric conditions and on a level road, produce a driving light sufficient to render clearly discernible

a person two hundred feet ahead, but any person operating a motor vehicle upon the highways, when meeting another vehicle, shall so control the lights of the vehicle operated by him by shifting, depressing, deflecting, tilting, or dimming the headlight beams in such manner as shall not project a glaring or dazzling light to persons in front of such head lamp.

(b) Head lamps shall be deemed to comply with the foregoing provisions prohibiting glaring and dazzling lights if none of the main bright portion of the head lamp beams rises above a horizontal plane passing through the lamp centers parallel to the level road upon which the loaded vehicle stands, and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle.

(c) Whenever a motor vehicle is being operated upon a highway, or portion thereof, which is sufficiently lighted to reveal a person on the highway at a distance of two hundred feet ahead of the vehicle, it shall be permissible to dim the head lamps or to tilt the beams downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps, subject to the restrictions as to tilted beams and auxiliary driving lamps set forth in this section.

(d) Whenever a motor vehicle meets another vehicle on any highway it shall be permissible to tilt the beams of the head lamps downward or to substitute therefor the light from an auxiliary driving lamp or pair of such lamps subject to the requirement that the tilted head lamps or auxiliary lamp or lamps shall give sufficient illumination under normal atmospheric conditions and on a level road to render clearly discernible a person seventy-five feet ahead, but shall not project a glaring or dazzling light to persons in front of the vehicle: Provided, that at all times required in § 20-129 at least two lights shall be displayed on the front of and on opposite sides of every motor vehicle other than a motorcycle, roadroller, road machinery, or farm tractor.

(e) No city or town shall enact an ordinance in conflict with this section. (1937, c. 407, s. 94; 1939, c. 351, s. 1.)

§ 20-132. Acetylene lights.—Motor vehicles may be equipped with two acetylene head lamps of approximately equal candle power when equipped with clear plane glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners not more and not less and which do not project a glaring or dazzling light into the eyes of approaching drivers. (1937, c. 407, s. 95.)

§ 20-133. Enforcement of provisions.—(a) The commissioner is authorized to designate, furnish instructions to and to supervise official stations for adjusting head lamps and auxiliary driving lamps to conform with the provisions of § 20-129. When head lamps and auxiliary driving lamps have been adjusted in conformity with the instructions issued by the commissioner, a certificate of adjustment shall be issued to the driver of the motor vehicle on forms issued in duplicate by the commissioner and showing date of issue, registration number of the motor vehicle, owner's name, make of vehicle and official designation of the adjusting station.

(b) The driver of any motor vehicle equipped with approved head lamps, auxiliary driving lamps, rear lamps or signal lamps, who is arrested upon a charge that such lamps are improperly adjusted or are equipped with bulbs of a candle power not approved for use therewith, shall be allowed forty-eight hours within which to bring such lamps into conformance with the requirements of this article. It shall be a defense to any such charge that the person arrested produce in court or submit to the prosecuting attorney a certificate from an official adjusting station showing that within forty-eight hours after such arrest such lamps have been made to conform with the requirements of this article. (1937, c. 407, s. 96.)

§ 20-134. Lights on parked vehicles.—Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in § 20-129, there shall be displayed upon such vehicle one or more lamps projecting a white light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of two hundred feet upon such highway. (1937, c. 407, s. 97.)

§ 20-135. Safety glass.—(a) It shall be unlawful to operate knowingly, on any public highway or street in this state, any motor vehicle which is registered in the state of North Carolina and which shall have been manufactured or assembled on or after January first, one thousand nine hundred and thirty-six, unless such motor vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields, wings or partitions; or for a dealer to sell a motor vehicle manufactured or assembled on or after January first, one thousand nine hundred and thirty-six, for operation upon the said highways or streets unless it be so equipped. The provisions of this article shall not apply to any motor vehicle if such motor vehicle shall have been registered previously in another state by the owner while the owner was a bona fide resident of said other state.

(b) The term "safety glass" as used in this article shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by glass when the glass is cracked or broken.

(c) The department of motor vehicles shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this article, and in accordance with standards recognized by the United States bureau of standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(d) The owner of any motor vehicle which is operated knowingly or any dealer who sells a motor vehicle in violation of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars or be imprisoned

not more than thirty days, or both, in the discretion of the court. (1937, c. 407, s. 98; 1941, c. 36.)

§ 20-136. Smoke screens.—(a) It shall be unlawful for any person or persons to drive, operate, equip or be in the possession of any automobile or other motor vehicle containing, or in any manner provided with, a mechanical machine or device designed, used or capable of being used for the purpose of discharging, creating or causing, in any manner, to be discharged or emitted, either from itself or from the automobile or other motor vehicle to which attached, any unusual amount of smoke, gas or other substance not necessary to the actual propulsion, care and keep of said vehicle, and the possession by any person or persons of any such device, whether the same is attached to any such motor vehicle, or detached therefrom, shall be prima facie evidence of the guilt of such person or persons of a violation of this section.

(b) Any person or persons violating the provisions of this section shall be guilty of a felony, and upon conviction shall be imprisoned in the state's prison for a period of not less than one year or not more than ten years, in the discretion of the court. (1937, c. 407, s. 99.)

§ 20-137. Unlawful display of emblem or insignia.—It shall be unlawful for any person to display on his motor vehicle, or to allow to be displayed on his motor vehicle, any emblem or insignia of any organization, association, club, lodge, order, or fraternity, unless such person be a member of the organization, association, club, lodge, order, or fraternity, the emblem or insignia of which is so displayed.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine not exceeding fifty dollars ($50) or imprisonment for a period not exceeding thirty days. (1924, c. 63.)

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138. Persons under the influence of intoxicating liquor or narcotic drugs.—It shall be unlawful and punishable, as provided in § 20-179, for any person, whether licensed or not, who is a habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs, to drive any vehicle upon the highways within this state. (1937, c. 407, s. 101.)

§ 20-139. Operation upon driveways of public or private institutions while under the influence of intoxicating liquors, etc.—Any person who shall wilfully operate a motor vehicle over any drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, school, or any of the state institutions, maintained and kept up by the state of North Carolina, or any of its subdivisions, while under the influence of intoxicating liquors, opiates, or narcotic drugs, shall be guilty of a misdemeanor and shall be punished as now or hereafter provided by law for the punishment of operators of motor vehicles upon the public highways while under the influence of intoxicating liquors. (1939, c. 292.)

§ 20-140. Reckless driving. — Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving, and upon conviction shall be punished as provided in § 20-180. (1937, c. 407, s. 102.)

§ 20-141. Speed restrictions. — (a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Where no special hazard exists the following speeds shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

1. Twenty miles per hour in any business district;
2. Twenty-five miles per hour in any residence district;
3. Thirty-five miles per hour for motor vehicles designed, equipped for, or engaged in transporting property, and thirty miles per hour for such vehicles to which a trailer is attached: Provided the speed of forty miles per hour shall be lawful for three-quarter ton trucks and the speed limit of forty-five miles per hour shall be lawful for one-half ton or pick-up trucks;
4. Forty-five miles per hour under other conditions.
5. Notwithstanding the foregoing prima facie limits it shall be unlawful to drive any vehicle at a speed in excess of sixty (60) miles per hour, except those exempted in § 20-145.

(c) The fact that the speed of a vehicle is lower than the foregoing prima facie limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care. It shall be unlawful to violate any provision of this section, and upon conviction the violator shall be punished as provided in § 20-180.

(d) Whenever the state highway and public works commission shall determine upon the basis of an engineering and traffic investigation that any prima facie speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said commission shall determine and declare a reasonable and safe prima facie speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway.

(e) The foregoing provisions of this section shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident.

(f) Whenever local authorities within their respective jurisdictions determine, upon the basis

of an engineering and traffic investigation that the prima facie speed permitted under this article at any intersection is greater than is reasonable or safe under the conditions found to exist at such intersection, such local authority shall determine and declare a reasonable and safe prima facie speed limit thereat, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or upon the approaches thereto.

(g) Local authorities in their respective jurisdictions may, in their discretion, authorize by ordinance higher prima facie speeds than those stated in subsection (b) herein upon through highways or upon highways or portions thereof where there are no intersections or between widely spaced intersections: Provided, signs are erected giving notice of the authorized speed, but local authorities shall not have authority to modify or alter the basic rules set forth in sub-section (a) herein, or in any event to authorize by ordinance a speed in excess of forty-five miles per hour.

(h) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law. Police officers are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent wilful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith, the continued slow operation by a driver shall be a misdemeanor.

(i) The state highway and public works commission shall have authority to designate and appropriately mark certain highways of the state as truck routes, and any truck of a gross weight in excess of three tons for each axle operating on any highway in the state not designated by the state highway and public works commission as a truck route shall at no time exceed a speed limit of twenty miles per hour. Any person violating the provisions of this subsection shall be guilty of a misdemeanor. (1937, c. 297, s. 2; 1937, c. 407, s. 103; 1939, c. 275; 1941, c. 347.)

§ 20-142. Railroad warning signals must be obeyed.—Whenever any person driving a vehicle approaches a highway and interurban or steam railway grade crossing, and a clearly visible and positive signal gives warning of the immediate approach of a railway train or car, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing. (1937, c. 407, s. 104.)

§ 20-143. Vehicles must stop at certain railway grade crossings. — The road governing body (whether state or county) is hereby authorized to designate grade crossings of steam or interurban railways by state and county highways, at which vehicles are required to stop, respectively, and such railways are required to erect signs thereat notifying drivers of vehicles upon any such highway to come to a complete stop before crossing such railway tracks, and whenever any such crossing is so designated and sign-posted it shall be unlawful for the driver of any vehicle to fail to stop within fifty feet, but not closer than ten feet, from such railway tracks before traversing such crossing. No failure so to stop, however, shall be considered contributory negligence per se in any action against the railroad or interurban company for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff was guilty of contributory negligence: Provided, that all school trucks and passenger busses be required to come to a complete stop at all railroad crossings. (1937, c. 407, s. 105.)

§ 20-144. Special speed limitation on bridges. —It shall be unlawful to drive any vehicle upon any public bridge, causeway or viaduct at a speed which is greater than the maximum speed which can with safety to such structure be maintained thereon, when such structure is sign-posted as provided in this section.

The state highway and public works commission, upon request from any local authorities, shall, or upon its own initiative may conduct an investigation of any public bridge, causeway or viaduct, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this article, the commissioner shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet beyond each end of such structure. The findings and determination of the commission shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon. (1937, c. 407, s. 106.)

§ 20-145. When speed limit not applicable. —The speed limitations set forth in this article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (1937, c. 407, s. 107.)

§ 20-146. Drive on right side of highway. —Upon all highways of sufficient width, except upon one-way streets, the driver of a vehicle shall drive the same upon the right half of the highway, and shall drive a slow-moving vehicle as closely as possible to the right-hand edge or curb of such highway, unless it is impracticable to travel on such side of the highway and except when overtaking and passing another vehicle subject to the limitations applicable in overtaking and passing, set forth in §§ 20-149 and 20-150. (1937, c. 407, s. 108.)

§ 20-147. Keep to the right in crossing intersections or railroads.—In crossing an intersection of highways or the intersection of a highway by a railroad right-of-way, the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the highway unless such right side is obstructed or impassable. (1937, c. 407, s. 109.)

§ 20-148. Meeting of vehicles.—Drivers of vehicles proceeding in opposite directions shall pass

each other to the right, each giving to the other at least one-half of the main-traveled portion of the roadway as nearly as possible. (1937, c. 407, s. 110.)

§ 20-149. Overtaking a vehicle.—(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle.

(b) The driver of an overtaking motor vehicle not within a business or residence district, as herein defined, shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction. (1937, c. 407, s. 111.)

§ 20-150. Limitations on privilege of overtaking and passing.—(a) The driver of a vehicle shall not drive to the left side of the center of a highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of five hundred feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any steam or electric railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer.

(d) The driver of a vehicle shall not drive to the left side of the center line of a highway upon the crest of a grade or upon a curve in the highway where such center line has been placed upon such highway by the state highway and public works commission, and is visible. (1937, c. 407, s. 112.)

§ 20-151. Driver to give way to overtaking vehicle.—The driver of a vehicle upon a highway about to be overtaken and passed by another vehicle approaching from the rear, shall give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (1937, c. 407, s. 113.)

§ 20-152. Following too closely. — (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.

(b) The driver of any motor truck, when traveling upon a highway outside of a business or residence district, shall not follow another motor truck within one hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another. (1937, c. 407, s. 114.)

§ 20-153. Turning at intersection.—(a) Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the right-hand side of the highway, and in turning shall keep as closely as practicable to the right-hand curb or edge of the highway, and when intending to turn to the left shall approach such intersection in the lane for the traffic to the right of and nearest to the center of the highway, and in turning shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left.

(b) For the purpose of this section, the center of the intersection shall mean the meeting point of the medial lines of the highways intersecting one another.

(c) Local authorities in their respective jurisdiction may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers or other directions signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed when such direction signs are authorized by local authorities. (1937, c. 407, s. 115.)

§ 20-154. Signals on starting, stopping or turning.—(a) The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any approved mechanical or electrical signal device, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the department.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn—hand and arm horizontal, forefinger pointing.

Right turn—hand and arm pointed upward.

Stop—hand and arm pointed downward.

All signals to be given from left side of vehicle during last fifty feet traveled. (1937, c. 407, s. 116.)

§ 20-155. Right-of-way.—(a) When two vehicles approach or enter an intersection and/or junction at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right except as otherwise provided in § 20-156.

(b) The driver of a vehicle approaching, but not having entered an intersection and/or junction, shall yield the right-of-way to a vehicle within such intersection and turning therein to the left across the line of travel of such first mentioned vehicle: Provided, the driver of the vehicle turning left has given a plainly visible signal of intention to turn as required in § 20-154.

(c) The driver of any vehicle upon a highway within a business or residence district shall yield

the right-of-way to a pedestrian crossing such highway within any clearly marked cross-walk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices. (1937, c. 407, s. 117.)

§ 20-156. Exceptions to the right-of-way rule.—(a) The driver of a vehicle entering a public highway from a private road or drive shall yield the right-of-way to all vehicles approaching on such public highway.

(b) The driver of a vehicle upon a highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances when the latter are operated upon official business and the drivers thereof sound audible signal by bell, siren or exhaust whistle. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way. (1937, c. 407, s. 118.)

§ 20-157. What to do on approach of police or fire department vehicles. — (a) Upon the approach of any police or fire department vehicle giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until the police or fire department vehicle shall have passed.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm. (1937, c. 407, s. 119.)

§ 20-158. Vehicles must stop at certain through highways.—(a) The state highway and public works commission, with reference to state highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to designate main traveled or through highways by erecting at the entrance thereto from intersecting highways signs notifying drivers of vehicles to come to full stop before entering or crossing such designated highway, and whenever any such signs have been so erected it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto. No failure so to stop, however, shall be considered contributory negligence per se in any action at law for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff in such action was guilty of contributory negligence.

(b) This section shall not interfere with the regulations prescribed by towns and cities.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days. (1937, c. 407, s. 120; 1941, c. 83.)

§ 20-159. Passing street cars.—(a) The driver of a vehicle shall not overtake and pass upon the left any street car proceeding in the same direction, whether actually in motion or temporarily at rest, when a travelable portion of the highway exists to the right of such street car.

(b) The driver of a vehicle overtaking any railway, interurban or street car stopped or about to stop for the purpose of receiving or discharging any passenger, shall bring such vehicle to a full stop not closer than ten feet to the nearest exit of such street car and remain standing until any such passenger has boarded such car or reached the adjacent sidewalk, except that where a safety zone has been established, then a vehicle may be driven past any such railway, interurban or street car at a speed not greater than ten miles per hour and with due caution for the safety of pedestrians. (1937, c. 407, s. 121.)

§ 20-160. Driving through safety zone prohibited.—The driver of a vehicle shall not at any time drive through or over a safety zone as defined in part one of this article. (1937, c. 407, s. 122.)

§ 20-161. Stopping on highway.—(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of a business or residence district, when it is practicable to park or leave such vehicle standing off of the paved or improved or main traveled portion of such highway: Provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred feet in both directions upon such highway: Provided further, that in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway bridge: Provided further that in the event that a truck, trailer or semi-trailer be disabled upon the highway that the driver of such vehicle shall display, not less than two hundred feet in the front or rear of such vehicle, a warning signal; that during the hours from sunup to sundown a red flag shall be displayed, and after sundown red flares or lanterns. These warning signals shall be displayed as long as such vehicle is disabled upon the highways.

(b) Whenever any peace officer shall find a vehicle standing upon a highway in violation of the provisions of this section, he is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

(c) The provisions of this section shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position. (1937, c. 407, s. 123.)

§ 20-162. Parking in front of fire hydrant, fire station or private driveway.—No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway in front of a private driveway or within fifteen feet in either direction of a fire hydrant or the entrance to a fire station, nor within twenty-five feet from the intersection of curb lines or if none, then within fifteen feet of the intersection of property lines at an intersection of highways; provided, that local authorities may by ordinance decrease the distance within which a vehicle may park in either direction of a fire hydrant. (1937, c. 407, s. 124; 1939, c. 111.)

§ 20-163. Motor vehicle left unattended; brakes to be set and engine stopped.—No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle, and, when standing upon any grade, without turning the front wheels of such vehicle to the curb or side of the highway. (1937, c. 407, s. 125.)

§ 20-164. Driving on mountain highways.—The driver of a motor vehicle traversing defiles, canyons or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible, and upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with a horn or other warning device. (1937, c. 407, s. 126.)

§ 20-165. Coasting prohibited.—The driver of a motor vehicle when traveling upon a down grade upon any highway shall not coast with the gears of such vehicle in neutral. (1937, c. 407, s. 127.)

§ 20-166. Duty to stop in event of accident.—(a) The driver of any vehicle involved in an accident resulting in injury or death to any person shall immediately stop such vehicle at the scene of such accident, and any person violating this provision shall upon conviction be punished as provided in § 20-182.

(b) The driver of any vehicle involved in an accident resulting in damage to property and in which there is not involved injury or death of any person, shall immediately stop such vehicle at the scene of the accident, and any person violating this provision shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court.

(c) The driver of any vehicle involved in any accident resulting in injury or death to any person or damage to property shall also give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the person struck or the driver or occupants of any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, and it shall be unlawful for any person to violate this provision, and such violator shall be punishable as provided in § 20-182.

(d) The driver of any vehicle involved in any accident resulting in injuries or death to any person, or property damage to an apparent extent of ten dollars ($10.00) or more, shall, within twenty-four hours, file or cause to be filed a report of such accident with the department, except that when such accident occurs within a city such report shall be made within twenty-four hours to the police department of such city. Every police department shall forward on the fifth day of each month every such report received during the previous calendar month, or a copy thereof, so filed with it to the main office of the department. All accident reports shall be made on forms approved by the department. With respect to any such accident involving a collision between any common carrier and another vehicle, such common carrier shall also make a report of the accident to the department, such report to be filed on or before the tenth day of the month following the accident.

(e) Where a person required to report an accident by the preceding subsection is physically incapable of making such report, and there is another occupant in the vehicle at the time of the accident, such occupant shall make the report.

The department may require drivers, or common carriers involved in accidents, to file supplemental reports, and may require witnesses of accidents to render reports to it upon forms furnished by it whenever the original report is insufficient in the opinion of the department.

All accident reports together with all supplemental reports above mentioned shall be without prejudice and shall be for the use of the department, and shall not be used in any manner whatsoever as evidence, or for any other purpose in any trial, civil or criminal, arising out of such accident: Provided, however, that all reports made by state, city or county police shall be subject to inspection by members of the general public at all reasonable times. The department shall be required to furnish, upon demand of any court, a properly executed certificate stating that a specific accident report has or has not been filed with the department solely to prove a compliance with this section.

(f) The department shall prepare and shall upon request supply to police, coroners, sheriffs and other suitable agencies, or individuals, forms for accident reports calling for sufficiently detailed information to disclose with reference to a highway accident the cause, conditions then existing, and the persons and vehicles involved.

The department shall receive accident reports required to be made by this section and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway accidents.

Based upon its findings after such analysis, the department may conduct further necessary detailed research to more fully determine the cause and control of highway accidents. It may further conduct experimental field tests within areas of the state from time to time to prove the practicability of various ideas advanced in traffic control and accident prevention.

(g) Every person holding the office of coroner in this state shall, on the tenth day of each month, report to the department the death of any person during the preceding calendar month as the result of an accident involving a motor vehicle and the

circumstances of such accident. (1937, c. 407, s. 128; 1939, c. 10, ss. 1, 1½.)

§ 20-167. Vehicles transporting explosives. — Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

(b) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The commissioner is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as he shall deem advisable for the protection of the public. (1937, c. 407, s. 129.)

§ 20-168. Drivers of state, county and city vehicles subject to provisions of this article.—The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by this state or any political sub-divisions thereof, or of any city, town or district, except persons, teams, motor vehicles and other equipment while actually engaged in work on the surface of the road, but not when traveling to or from such work. (1937, c. 407, s. 130.)

§ 20-169. Powers of local authorities. — Local authorities, except as expressly authorized by § 20-141, subsection (g) and § 20-158, shall have no power or authority to alter any speed limitations declared in this article or to enact or enforce any rule or regulations contrary to the provisions of this article, except that local authorities shall have power to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous and may prohibit other than one-way traffic upon certain highways, and may regulate the use of the highways by processions or assemblages and except that local authorities shall have the power to regulate the speed of vehicles on highways in public parks, but signs shall be erected giving notices of such special limits and regulations. (1937, c. 407, s. 131.)

§ 20-170. This article not to interfere with rights of owners of real property with reference thereto.—Nothing in this article shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as matter of right from prohibiting such use nor from requiring other or different or additional conditions than those specified in this article or otherwise regulating such use as may seem best to such owner. (1937, c. 407, s. 132.)

§ 20-171. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.—Every person riding an animal or driving any animal drawing a vehicle upon a highway shall be subject to the provisions of this article applicable to the driver of a vehicle, except those provisions of the article which by their nature can have no application. (1939, c. 275.)

Part 11. Pedestrians' Rights and Duties.

§ 20-172. Pedestrians subject to traffic control signals.—Pedestrians shall be subject to traffic control signals at intersections as heretofore declared in this article, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in part eleven of this article. (1937, c. 407, s. 133.)

§ 20-173. Pedestrians' right-of-way at cross-walks.—(a) Where traffic control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked cross-walk or within any unmarked cross-walk at an intersection, except as otherwise provided in part eleven of this article.

(b) Whenever any vehicle is stopped at a marked cross-walk or at any unmarked cross-walk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (1937, c. 407, s. 134.)

§ 20-174. Crossing at other than cross-walks. —(a) Every pedestrian crossing a roadway at any point other than within a marked cross-walk or within an unmarked cross-walk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked cross-walk.

(d) It shall be unlawful for pedestrians to walk along the traveled portion of any highway except on the extreme left-hand side thereof, and such pedestrians shall yield the right-of-way to approaching traffic.

(e) Notwithstanding the provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (1937, c. 407, s. 135.)

§ 20-175. Pedestrians soliciting rides.—No person shall stand in the travel portion of the highway for the purpose of soliciting a ride from the driver of any private vehicle. (1937, c. 407, s. 136.)

Part 12. Penalties.

§ 20-176. Penalty for misdemeanor. — (a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this article unless such violation is by this article or other law of this state declared to be a felony.

(b) Unless another penalty is in this article or by the laws of this state provided, every person convicted of a misdemeanor for the violation of

any provision of this article shall be punished by a fine of not more than one hundred dollars ($100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment: Provided, that upon conviction for the following offenses—operating motor vehicles without displaying registration number plates issued therefor; permitting or making any unlawful use of registration number plates, or permitting the use of registration by a person not entitled thereto, and violation of §§ 20-116, 20-117, 20-118, 20-122, 20-123, 20-124, 20-125, 20-126, 20-127, 20-128, 20-129, 20-130, 20-131, 20-132, 20-133, 20-134, 20-142, 20-143, 20-144, 20-146, 20-147, 20-148, 20-150, 20-151, 20-152, 20-153, 20-154, 20-155, 20-156, 20-157, 20-159, 20-160, 20-161, 20-162, 20-163, 20-165—the punishment therefor shall be a fine not to exceed fifty dollars ($50.00) and not less than ten dollars ($10.00), or imprisonment not to exceed thirty days for each offense. (1937, c. 407, s. 137.)

§ 20-177. Penalty for felony.—Any person who shall be convicted of a violation of any of the provisions of this article herein or by the laws of this state declared to constitute a felony shall, unless a different penalty is prescribed herein or by the laws of this state, be punished by imprisonment in the state prison for a term not less than one year nor more than five years, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both fine and imprisonment. (1937, c. 407, s. 138.)

§ 20-178. Penalty for bad check.—When any person, firm, or corporation shall tender any uncertified check for payment of any tax or fees found to be due by him under the provisions of this article, and such check shall have been returned to the commissioner unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, then in that event an additional tax shall be imposed equal to ten per cent of the fees due, and in no case shall the increase of said tax, because of said failure, be less than one dollar ($1.00), and the said additional tax shall not be waived or diminished by the commissioner. (1937, c. 407, s. 139.)

§ 20-179. Penalty for driving while under the influence of intoxicating liquor or narcotic drugs.—Every person who is convicted of violation of § 20-138, relating to habitual users of narcotic drugs or driving while under the influence of intoxicating liquor or narcotic drugs, shall be punished by imprisonment in the county or municipal jail for not less than thirty days nor more than one year, or by fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment. On a second or subsequent conviction for the same offense he shall be punished by imprisonment for not more than two years or fined not more than one thousand dollars ($1,000.00), or by both fine and imprisonment, in the discretion of the court. (1937, c. 407, s. 140.)

§ 20-180. Penalty for reckless driving.—Every person convicted of reckless driving under section 20-140 shall be punished by imprisonment in the county or municipal jail for a period of not more than six months, or by fine of not more than five hundred dollars ($500.00), or by both such fine and imprisonment, and on a second or subsequent conviction of such offense shall be punished by imprisonment for not more than one year or by a fine of not less than fifty dollars nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment. (1937, c. 407, s. 141.)

§ 20-181. Penalty for failure to dim, etc., beams of headlamps.—Any person operating a motor vehicle on the highways of this state, who shall fail to shift, depress, deflect, tilt or dim the beams of the head lamps thereon whenever another vehicle is met on such highways shall, upon conviction thereof, be fined not more than ten ($10.00) dollars or imprisoned for not more than ten (10) days. (1939, c. 351, s. 3.)

§ 20-182. Penalty for failure to stop in event of accident involving injury or death to a person.—Every person convicted of wilfully violating § 20-166, relative to the duties to stop in the event of accidents, except as otherwise provided, involving injury or death to a person, shall be punished by imprisonment for not less than one nor more than five years, or in the state prison for not less than one nor more than five years, or by fine of not less than five hundred dollars or by both such fine and imprisonment. The commissioner shall revoke the operator's or chauffeur's license of the person so convicted. In no case shall the court have power to suspend judgment upon payment of costs. (1937, c. 407, s. 142.)

§ 20-183. Duties and powers of law enforcement officers.—It shall be the duty of the law enforcement officers of the state and of each county, city, or other municipality to see that the provisions of this article are enforced within their respective jurisdictions, and any such officer shall have the power to arrest on sight or upon warrant any person found violating the provisions of this article. Such officers within their respective jurisdictions shall have the power to stop any motor vehicle upon the highways of the state for the purpose of determining whether the same is being operated in violation of any of the provisions of this article. (1937, c. 407, s. 143.)

Art. 4. State Highway Patrol.

§ 20-184. Patrol under supervision of department of motor vehicles.—The commissioner of motor vehicles, under the direction of the governor, shall have supervision, direction and control of the state highway patrol. The commissioner shall establish in the department of motor vehicles a division of highway safety and patrol, prescribe regulations governing said division, and assign to the division such duties as he may deem proper. (1935, c. 324, s. 2; 1939, c. 387, s. 1; 1941, c. 36.)

§ 20-185. Personnel; appointment; salaries.—The state highway patrol shall consist of one person to be designated as major, and such additional subordinate officers and men as the commissioner of motor vehicles, with the approval of the governor and advisory budget commission, shall direct. Members of the state highway patrol shall be appointed by the commissioner with the approval of the governor, and shall serve at the pleasure of the governor and commissioner. The

major, other officers, and members of the state highway patrol shall be paid such salaries as may be established by the division of personnel of the budget bureau. (1929, c. 218, s. 1; 1931, c. 381; 1935, c. 324, s. 1; 1937, c. 313, s. 1; 1941, c. 36.)

§ 20-186. Oath of office; bond.—Each member of the highway patrol shall subscribe and file with the commissioner of motor vehicles an oath of office for the faithful performance of his duties, and shall give a bond with good surety payable to the state of North Carolina in a sum not less than one thousand dollars ($1000.00) and not more than two thousand five hundred dollars ($2500.00) to be fixed by the commissioner of motor vehicles, conditioned as well for the faithful discharge of his duty as patrolman as for his diligently endeavoring to collect faithfully and pay over all sums of money received. The bond shall be duly approved and filed in the office of the insurance commissioner, and copies of the bond certified by the insurance commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1929, c. 218, s. 2; 1937, c. 339, s. 1; 1941, c. 36.)

§ 20-187. Orders and rules for organization and conduct.—The commissioner of motor vehicles is authorized and empowered to make all necessary orders, rules and regulations for the organization, assignment, and conduct of the members of the state highway patrol. Such orders, rules and regulations shall be subject to the approval of the governor. (1929, c. 218, ss. 1, 3; 1931, c. 381; 1933, c. 214, ss. 1, 2; 1939, c. 387, s. 2; 1941, c. 36.)

§ 20-188. Duties of highway patrol.—The state highway patrol shall be subject to such orders, rules and regulations as may be adopted by the commissioner of motor vehicles, with the approval of the governor, and shall regularly patrol the highways of the state and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the state and all laws for the protection of the highways of the state. To this end, the members of the patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the state having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the state regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the state, irrespective of county lines.

The state highway patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The state highway patrol shall be required to perform such other and additional duties as may be required of it by the commissioner of motor vehicles in connection with the work of the department of motor vehicles, and such other and additional duties as may be required of it from time to time by the governor. (1929, c. 218, s. 4; 1933, c. 214, ss. 1, 2; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36.)

§ 20-189. Patrolman assigned to governor's office.—The commissioner of motor vehicles, at the request of the governor, shall assign and attach one member of the state highway patrol to the office of the governor, there to be assigned such duties and perform such services as the governor may direct. The salary of the state highway patolman so assigned to the office of the governor shall be paid from appropriations made to the office of the governor and shall be fixed in an amount to be determined by the governor and the advisory budget commission. (1941, cc. 23, 36.)

§ 20-190. Uniforms; furnishing motor vehicles.—The department of motor vehicles shall adopt some distinguishing uniform for the members of said state highway patrol, and furnish each member of the patrol with an adequate number of said uniforms and each member of said patrol force when on duty shall be dressed in said uniform. The department of motor vehicles shall likewise furnish each member of the patrol with a suitable motor vehicle, and necessary arms, and provide for all reasonable expense incurred by said patrol while on duty. (1929, c. 218, s. 5; 1941, c. 36.)

§ 20-191. Establishment of district headquarters.—The department of motor vehicles shall supply at its various district offices, or at some other point within the district if it shall be deemed advisable, suitable district headquarters, and the necessary clerical assistance for the major of the force at his headquarters in Raleigh and at the several district headquarters. (1929, c. 218, s. 6; 1937, c. 313, s. 1; 1941, c. 36.)

§ 20-192. Shifting of patrolmen from one district to another.—The major of the state highway patrol under such rules and regulations as the department of motor vehicles may prescribe shall have authority from time to time to shift the forces from one district to another, or to consolidate more than one district force at any point for special purposes. (1929, c. 218, s. 7; 1937, c. 313, s. 1; 1941, c. 36.)

§ 20-193. Fees for service of process by patrolmen to revert to county.—All fees for arrests or service of process that may be taxed in the bill of costs for the various courts of the state on account of the official acts of the members of the state highway patrol shall be remitted to the general fund in the county in which the said cost is taxed. (1929, c. 218, s. 8.)

§ 20-194. Expense of administration. — All expenses incurred in carrying out the provisions of this article shall be paid out of the maintenance funds of the state highway and public works commission. (1929, c. 218, s. 9; 1941, c. 36.)

§ 20-195. Co-operation between patrol and local officers.—The commissioner of motor vehicles with the approval of the governor, through the division of highway safety and patrol, shall encourage the co-operation between the highway patrol and the several municipal and county peace officers of the state for the enforcement of all traffic laws and the proper administration of the Uniform Drivers'

License Law, and arrangements for compensation of special services rendered by such local officers out of the funds allotted to the division of highway safety and patrol may be made, subject to the approval of the director of the budget. (1935, c. 324, s. 5; 1939, c. 38, s. 3.)

§ 20-196. State-wide radio system authorized; use of telephone lines in emergencies.—The commissioner of motor vehicles, through the division of highway safety and patrol is hereby authorized and directed to set up and maintain a state-wide radio system, with adequate broadcasting stations so situate as to make the service available to all parts of the state for the purpose of maintaining radio contact with the members of the state highway patrol and other officers of the state, to the end that the traffic laws upon the highways may be more adequately enforced and that the criminal use of the highways may be prevented.

If the director of the budget shall find that the appropriation provided for the department is not adequate to take care of the entire cost of the radio service herein provided for, after providing for the administration of other provisions of this law, the state highway and public works commission, upon the order of the director of the budget approved by the advisory budget commission, shall make available such additional sum as the said budget commission may find to be necessary to make the installation and operation of such radio service possible; and the sum so provided by the state highway and public works commission shall constitute a valid charge against the appropriation item of betterments for state and county roads.

The commissioner of motor vehicles is likewise authorized and empowered to arrange with the various telephone companies of the state for the use of their lines for emergency calls by the members of the state highway patrol, if it shall be found practicable to arrange apparatus for temporary contact with said telephone circuits along the highways of the state.

In order to make this service more generally useful, the various boards of county commissioners and the governing boards of the various cities and towns are hereby authorized and empowered to provide radio receiving sets in the offices and vehicles of their various officers, and such expenditures are declared to be a legal expenditure of any funds that may be available for police protection. (1935, c. 324, s. 6; 1941, c. 36.)

Art. 5. Enforcement of Collection of Judgments against Irresponsible Drivers of Motor Vehicles.

§ 20-197. Certain words defined.—The following words, as used in this article, shall have the following meanings:

(a) The singular shall include the plural; the masculine shall include the feminine and neuter, as requisite.

(b) "Person" shall include individuals, partnerships, corporations, receivers, referees, trustees, executors and administrators; and shall also include the owner of any motor vehicle as requisite; but shall not include the State or any political subdivisions thereof.

(c) "Motor Vehicle" shall include trailers, motorcycles and tractors. (1931, c. 116, s. 13.)

§ 20-198. Suspension of driver's license and registration certificates for failure to pay tort judgment. — In the event of the failure of any person, firm or corporation, to satisfy any judgment which shall have hereafter become final, by expiration, without appeal, of the time within which appeal might have been perfected, or by final affirmance, on appeal, rendered against him, by a court of competent jurisdiction in this State, within thirty days thereafter for damages on account of personal injuries, or deaths, or damage to property in excess of one hundred dollars ($100.00) resulting from the ownership, maintenance, use or operation of a motor vehicle, the said operator's license and all of the registration certificates of the said person, firm or corporation shall be forthwith suspended by the commissioner of motor vehicles of North Carolina, upon receiving a certified copy or transcript of such final judgment, from the court in which the same was rendered, showing such judgment or judgments to have been still unsatisfied more than thirty days after the same became final, as aforesaid, and shall remain so suspended and shall not be renewed, nor shall any motor vehicle be thereafter registered in the name of the said person, firm or corporation while any such judgment remains unstayed, unsatisfied and subsisting and until every such judgment is satisfied or discharged, or until the said person gives proof of his ability to respond in damages, as hereinafter required, for future accidents. It shall be the duty of the Clerk of the Superior Court in any county in which any such judgment is rendered, to forward immediately after the expiration of said thirty days, as aforesaid, to the Commissioner of motor vehicles, a certified copy of such judgment or a transcript thereof as aforesaid. (1931, c. 116, s. 1; 1941, c. 36.)

§ 20-199. Proof of ability to respond in damages; surety bond; withdrawal of license to operate automobile.—The proof of the ability of any person, firm or corporation to respond in damages for any liability incurred may be established by the execution of a bond of a surety company, duly authorized to transact business within this State or a bond, with at least two individual sureties, each owning real estate within this State, which real estate shall be scheduled in the bond and which bond shall be approved by a Clerk of the Superior Court. The said bond to be conditioned for any liability thereafter incurred resulting from the ownership, maintenance, use or operation thereafter of a motor vehicle for personal injury to or death of any one person in the amount of at least five thousand dollars ($5,000.00) and, subject to the aforesaid limit for any one person injured or killed, of at least ten thousand dollars ($10,000.00) for personal injury to or the death of two or more persons in any one accident, and for damage to property in the amount of at least one thousand dollars ($1,000.00) resulting from any one accident. Additional evidence of ability to respond in damages, as required by this article, shall be furnished the commissioner of motor vehicles at any time upon his demand.

Provided, however, anything in this article to the contrary notwithstanding, that

(1) When five thousand dollars ($5,000.00)

has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident; or

(2) When, subject to the limit of five thousand dollars ($5,000.00) for any one person so injured or killed, the sum of ten thousand dollars ($10,000.00) has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident; or

(3) When one thousand dollars ($1,000.00) has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident; resulting from the ownership, maintenance, use or operation of a motor vehicle, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this article only.

If any such motor vehicle owner or operator shall not be a resident of this State, the privilege of operating any motor vehicle in this State and the privilege of operation within the State of any motor vehicle owned by him shall be withdrawn while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than thirty (30) days, as aforesaid, and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him or any motor vehicle registered in his name until every such judgment shall be stayed, satisfied or discharged as herein provided, and until such person shall have given proof of his ability to respond in damages for future accidents. (1931, c. 116, s. 2; 1941, c. 36.)

§ 20-200. Proof of ability by insurance carrier's certificate.—Proof of ability to respond in damages, when required by this article, may be evidenced by the written certificate or certificates of any insurance carrier duly authorized to do business within the State, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy or policies in the form hereinafter prescribed, which, at the date of the certificate or certificates, is or are in full force and effect, and designating therein by explicit description or by other adequate reference, all motor vehicles to which the policy or policies apply. The commissioner of motor vehicles shall not accept any certificate or certificates unless the same shall cover all motor vehicles then registered in this State in the name of the person furnishing such proof. Additional certificates, as aforesaid, shall be required as a condition precedent to the registration of any additional motor vehicle or motor vehicles in the name of such person required to furnish proof as aforesaid. Said certificate or certificates shall certify that the motor vehicle liability policies therein cited shall not be cancelled or expire except as hereinafter provided. If such person be a non-resident, a certificate, as aforesaid, of an insurance carrier authorized to transact business in the State in which the motor vehicle or motor vehicles described in such certificate is registered, or if none be described, then in the State in which the insured resides, shall be accepted if (a) such carrier shall execute a power of attorney authorizing the commissioner of motor vehicles to accept service of notice or process in any action arising out of a motor vehicle accident in this State, and (b) its governing executive authority shall duly adopt a resolution providing that its policies shall be deemed to be varied to comply with the law of this State relating to the terms of motor vehicle liability policies issued therein, and (c) such carrier shall agree to accept as final and binding any final judgment duly rendered in any action arising out of a motor vehicle accident in any court of competent jurisdiction in this State: Provided, however, that the provisions of this section shall be operative as to such insurance carriers (organized and existing under the laws of such State and not licensed to transact business in this State) only to the extent and under the same terms and conditions that under the laws of such State where such motor vehicle is registered or in which the insured resides, like recognition, if a law of like effect is in force and effect, is granted to certificates of insurance carriers, organized and existing under and by virtue of the laws of this State. If, under the laws of such State, in which a law of like effect is in force and effect, certificates of insurance carriers organized and existing under or by virtue of the laws of this State are not accepted, the certificates of insurance carriers of such State shall not be accepted under the provisions of this article.

The commissioner of motor vehicles shall be notified by the insurance carrier or sureties of the cancellation or expiration of any motor vehicle liability policy or bond certified under the provisions of the article at least ten (10) days before the effective date of such cancellation or expiration and until such notice is duly given, such policy shall continue in full force and effect.

The commissioner of motor vehicles shall require proof of ability to respond in damages, within the limits herein specified, from and after the effective date of this article, of all taxicab, jitney and for-hire operators not covered or embraced within the provisions of the present law or such laws as may be enacted at this session of the General Assembly affecting other motor vehicle operators transporting passengers or property upon the highways for compensation. (1931, c. 116, s. 3; 1941, c. 36.)

§ 20-201. Bond to satisfy execution.—A bond, filed by or on behalf of any person under the provision of this article shall be held by the commissioner of motor vehicles to satisfy, in accordance with the provisions of this article, any execution issued against such person on a judgment for damages, as aforesaid, arising out of the ownership, maintenance, use or operation of a motor vehicle, as aforesaid. If such a judgment rendered against the principal on the surety company bond or real estate individual bond, given under the provisions of this article, shall not be satisfied within thirty (30) days after it has become final as hereinbefore provided, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the State against the company or persons executing such bond. (1931, c. 116, s. 4; 1941, c. 36.)

§ 20-202. Abstracts of operating record furnished on request.—The commissioner of motor vehicles shall upon request furnish any insurance carrier, person, or surety a certified abstract of the operating record of any person subject to the provisions of this article, which abstract shall fully designate the motor vehicles (if any), registered in the name of such person, and if there shall be no record of any conviction of such person of a violation of any provision of any statute relating to the operating of a motor vehicle or of any injury or damage caused by such person as herein provided, the commissioner of motor vehicles shall so certify. The commissioner of motor vehicles shall collect for each such certificate the sum of one dollar. (1931, c. 116, s. 5; 1941, c. 36.)

§ 20-203. Commissioner to furnish other information on request.—The commissioner of motor vehicles shall furnish any person who may have been injured in person or property by any motor vehicle, upon written request, with all information of record in his office pertaining to the evidence of the ability of any operator or owner of any motor vehicle to respond in damages. (1931, c. 116, s. 6; 1941, c. 36.)

§ 20-204. Return by operator of licenses, number plates upon request of commissioner. — Any operator or any owner, whose operator's license or certificate of registration shall have been suspended as herein provided, or whose policy of insurance or surety bond shall have been cancelled or terminated, or who shall neglect to furnish additional evidence of ability to respond in damages upon request of the commissioner of motor vehicles, shall immediately return to the commissioner of motor vehicles his operator's license, certificate of registration and the number plates issued thereunder. If any person shall wilfully fail to return to the commissioner of motor vehicles the operator's license, certificate or certificates of registration and the number plates issued thereunder as provided herein, the commissioner of motor vehicles shall forthwith direct any State policeman or other police officer to secure possession thereof and to return the same to the office of the commissioner of motor vehicles. Any person wilfully failing to return such operator's license or such certificate or certificates and number plates shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) and such penalty shall be in addition to any penalty imposed for any violation of the Motor Vehicle Laws of North Carolina. (1931, c. 116, s. 7; 1941, c. 36.)

§ 20-205. Cancellation or return of bond by commissioner.—The commissioner of motor vehicles shall cancel such bond or return such proof of insurance to the person furnishing the same at any time after three years shall have elapsed since the filing of such bond or proof or the making of such deposit: Provided, that no suit or judgment against him for damages as aforesaid arising from the ownership, maintenance, use or operation hereafter of a motor vehicle shall then be pending or outstanding and unstayed or unsatisfied, as aforesaid; and the affidavit of such person, showing fulfillment of these requirements shall be sufficient proof thereof in the absence of evidence to the contrary before the commissioner. (1931, c. 116, s. 8; 1941, c. 36.)

§ 20-206. Fraudulent transfer of registration certificate. — If any owner's certificate of registration has been suspended under the provisions of this article, such certificate shall not be transferred nor the motor vehicle in respect of which such certificate was issued, registered in another name, whether the commissioner of motor vehicles has reasonable grounds to believe that such transfer of registration is proposed for the purpose or will have the effect of defeating the purpose of this article. Provided, however, that such transfer of registration shall be permitted upon the furnishing of proof of financial responsibility to the commissioner of motor vehicles by such transferee whenever the commissioner shall deem it necessary in furtherance of the purpose of this section. (1931, c. 116, s. 9; 1941, c. 36.)

§ 20-207. Present policies of automobile insurance unaffected.—Nothing in this article contained shall be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by special act, and such policies, if endorsed to conform to the requirements of this article, shall be accepted as proof of financial responsibility when required under this article; nor shall anything in this article contained be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance, operation or use by other persons in the insured's employ or in his behalf of motor vehicles not owned by the insured. (1931, c. 116, s. 10.)

§ 20-208. Fraudulent proof of ability to respond in damages.—Any person who shall forge, or without authority, sign any evidence of ability to respond in damages as required by the commissioner of motor vehicles in the administration of this article and any nonresident who shall operate a motor vehicle in this State from whom the privilege of operating any motor vehicle has been withdrawn as provided in § 20-199, shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) or imprisoned not more than thirty days, or both. (1931, c. 116, s. 11; 1941, c. 36.)

§ 20-209. Motor vehicle liability policy.—"Motor vehicle liability policy," as used in this article, shall be taken to mean a policy of liability insurance issued by an insurance carrier authorized to transact business in this State or issued by an insurance carrier authorized to transact business in the State in which the motor vehicle or motor vehicles therein described is registered, or if none be described, then in the State in which the insured resides, to the person therein named as insured, which policy shall either (1) designate, by explicit description or other adequate reference, all motor vehicles with respect to which coverage is intended to be granted by said policy, and shall insure the insured named therein and any other person using or responsible for the use of any such motor vehicle with the consent, express or implied, of such insured against loss from the liability imposed by law

upon such insured or upon such other person for injury to or death of any person, other than such insured and such person or persons as may be covered, as respects such injury or death, by any workmen's compensation law, and/or for damage to property, except property of others in charge of the insured or of his employees or other agents growing out of the ownership, maintenance, use or operation of any such motor vehicle within the continental limits of the United States of America; or which policy shall, in the alternative, (2) insure the person therein named as insured against loss from the liability imposed by law upon such insured for injury to or death of any person, other than such insured and such person or persons as may be covered as respects such injury or death by any workmen's compensation law, and/or for damage to property, except property of others in charge of the insured or of his employees or other agents, and except a motor vehicle registered in the name of such insured, growing out of the maintenance, operation or use by such insured of any motor vehicle, and occurring while such insured is personally in control, as driver or occupant, of such motor vehicle within the continental limits of the United States of America; and which policy, in either alternative, shall provide insurance to the amount or limit of five thousand dollars ($5,000.00), exclusive of interest and costs, on account of injury to or death of any one person, and, subject to the same limit as respects injury to or death of any one person, of ten thousand dollars ($10,000.00), exclusive of interest and costs, on account of any one accident resulting in injury to or death of more than one person; and of one thousand dollars ($1,000.00) for damage to property of others, as herein provided, resulting from any one accident; or a binder pending the issuance of any such policy, or an endorsement to an existing policy both as hereinafter provided: Provided, however, that this section shall not be construed as preventing an insurance carrier from granting in a "motor vehicle liability policy" any lawful coverage in excess of or in addition to the coverage herein provided for or from embodying in such policy and agreements, provisions or stipulations not contrary to the provisions of this article and not otherwise contrary to law. And: Provided, further, that separate concurrent policies, whether issued by one or several carriers, covering, respectively, (a) personal injury or death, as aforesaid, and (b) property damage, as aforesaid, shall be termed "a motor vehicle liability policy," within the meaning of this article.

Except as in section 20-207 provided, no motor vehicle liability policy shall be issued or delivered in this State until a copy of the form of policy shall have been on file with the Commissioner of Insurance for at least thirty (30) days, unless sooner approved in writing by such Commissioner, nor if within said period of thirty (30) days such Commissioner shall have notified the carrier in writing that in his opinion, specifying the reasons therefor, the form of policy does not comply with the provisions of this article. The Commissioner of Insurance shall approve any form of policy which specifies the name, address and business, if any, of the insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and contains an agreement that the insurance thereunder is provided in accordance with the coverage defined in this section, as respects personal injury and death or property damage or both, and is subject to all the provisions of this article.

Every such motor vehicle liability policy shall be subject to the following provisions, whether or not contained therein:

(a) The liability of the insurance carrier under a motor vehicle liability policy shall become absolute whenever loss or damage covered by such policy occurs, and the satisfaction by the assured of a final judgment for such loss or damage shall not be a condition precedent to the right or obligation of the carrier to make payment on account of such loss or damage. No such policy shall be cancelled or annulled as respects any loss or damage, by any agreement between the carrier and the insured after the said insured has become responsible for such loss or damage, and any such cancellation or annulment shall be void.

The policy may provide that the insured, or any other person covered by the policy, shall reimburse the insurance carrier for payments made on account of any loss or damage claim or suit involving a breach of the terms, provisions or conditions of the policy; and further, if the policy shall provide for limits in excess of the limits specified in this section, the insurance carrier may plead against any plaintiff, with respect to the amount of such excess limits of liability, any defenses which it may be entitled to plead against the insured, and any such policy may further provide for the prorating of the insurance thereunder with other applicable valid and collectible insurance.

(b) The policy, the written application therefor, if any, and any rider or endorsement which shall not conflict with the provisions of this article shall constitute the entire contract between the parties.

(c) The insurance carrier shall, upon the request of the insured, deliver to the insured for filing, or at the request of the insured shall file direct, with the commissioner of motor vehicles an appropriate certificate in conformity with the provisions of § 20-200.

(d) Any carrier authorized to issue motor vehicle liability policies may, pending the issue of such a policy, execute an agreement, to be known as a "binder;" or may, in lieu of such a policy, issue an endorsement to an existing policy. Every such binder or endorsement shall be subject to the provisions of this section and shall be construed to provide indemnity or insurance in like manner and to the same extent as a motor vehicle liability policy. (1931, c. 116, s. 12; 1941, c. 36.)

§ 20-210. Rules and regulations.—The commissioner of motor vehicles shall make rules and regulations necessary for the administration of this article. (1931, c. 116, s. 14; 1941, c. 36.)

§ 20-211. Reliance on other security unaffected.—Nothing herein shall be construed as preventing the plaintiff in any action at law from relying for security upon the other processes provided by law. (1931, c. 116, s. 15.)

Art. 6. Giving Publicity to Highway Traffic Laws through the Public Schools.

§ 20-212. State highway commission to prepare digest.—The state highway and public works commission shall cause to be prepared a digest of the traffic laws of the State suitable for use in the public schools of the State and have published in pamphlet form and delivered on or before the first day of August, one thousand nine hundred and twenty-seven, to the State Superintendent of Public Instruction, a sufficient number of said pamphlets to supply at least one copy each to all of the public high school teachers of the State. (1927, c. 242, s. 1; 1933, c. 172, s. 17.)

§ 20-213. State superintendent of public instruction to distribute pamphlet. — The State Superintendent of Public Instruction shall cause to be delivered to the superintendents or principals of the various high schools of the State sufficient number of said pamphlets to supply one to each of the teachers engaged for said schools. (1927, c. 242, s. 2.)

§ 20-214. Pamphlets brought to attention of children. — The superintendents or principals, or other persons in charge of the public high schools of the state, shall cause the contents of said pamphlets to be brought to the attention of all the children in attendance upon the said high schools in the form of lessons of at least one each week until the entire contents of said pamphlet shall have been read and explained. (1927, c. 242, s. 3.)

§ 20-215. Practice to be continued; highway commission to supply additional copies yearly.—This practice shall be continued during each school year and the state highway and public works commission is directed annually on or before the first Monday of August, to supply, as hereinbefore provided, such additional copies of the said pamphlet having the same revised from time to time to meet any amendments of the traffic laws of the State, as the State Superintendent of Public Instruction may ascertain and report to the state highway and public works commission to be necessary. (1927, c. 242, s. 4.)

Art. 7. Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-216. Driving regulations; frightened animals; crossings. — A person operating or driving a motor vehicle shall, on signal by raising the hand, from a person riding, leading, or driving a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or other animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or other animal: Provided, that in case such horse or other animal appears badly frightened, and the person operating such motor vehicle is so signaled to do, such person shall cause the motor of the motor vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others; and it shall also be the duty of any male chauffeur or driver of any motor vehicle and other male occupants thereof over the age of sixteen years while passing any horse, horses or other draft animals which appear frightened, upon the request of the person in charge thereof and driving such horse or horses or other draft animals, to give such assistance as would be reasonable to insure the safety of all persons concerned and to prevent accident. (1917, c. 140, s. 15; C. S. 2616.)

§ 20-217. Duty of driver passing school bus.—No person operating any motor vehicle on the public roads shall pass, or attempt to pass, any public school bus, while the same is standing on the said public road taking on or putting off school children, without first bringing said motor vehicle to a full stop at a distance of not less than fifty feet from said school bus.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars, or imprisoned not to exceed thirty days. (1925, c. 265.)

§ 20-218. Standard qualifications for school bus drivers; speed limit.—No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from the highway patrol of North Carolina and the chief mechanic in charge of school busses in said county showing that he has been examined by a member of the said highway patrol and said chief mechanic in charge of school busses, in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the state.

It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than thirty-five miles per hour.

Any person violating paragraph two of this section shall, upon conviction, be fined not more than fifty dollars ($50.00) or imprisoned not more than thirty days. (1937, c. 397, ss. 1-3; 1941, c. 21.)

§ 20-219. Refund to counties of costs of prosecuting theft cases.—Whenever the Motor Vehicle Department of the State has caused to be instituted criminal prosecutions in the Superior Court of any county of the State for violation of the automobile theft laws, and the county wherein such case was tried has incurred court costs incident thereto, upon certificate of the Clerk of the Superior Court of said county showing an itemized statement thereof, and that the same has been paid, upon the approval of the commissioner of motor vehicles and the Attorney General, the sum or sums so paid shall be refunded to said county, the same to be paid from the highway maintenance fund from receipts from the motor vehicle registration title fees.

This section shall apply to costs incurred in the prosecution of automobile theft cases only. (1929, c. 275; 1941, c. 36.)

Art. 8. Sales of Used Motor Vehicles Brought into State.

§ 20-220. Dealers required to register vehicles with department of revenue and furnish bond.—Every dealer in used, or second-hand, motor ve-

hicles who is a nonresident of the state of North Carolina or who does not have a permanent place of business in this State, and every person, firm or corporation who bring any used, or second-hand, motor vehicles into the state of North Carolina for the purpose of sale or re-sale, except as a trade-in on a new motor vehicle or another used car, shall, before offering the same for sale, within ten days from the date of entry of said motor vehicle into the limits of the state of North Carolina, register such motor vehicle with the department of revenue on a form to be provided by said department and under such rules and regulations as may be promulgated by said department from time to time, and shall, before said used or second-hand car is offered for sale, or sold, execute a bond with two good sufficient sureties, or with a surety company duly authorized to do business in the state of North Carolina as a surety or sureties thereon, payable to the state of North Carolina, for the use and benefit of the purchaser and his vendees, conditioned to pay all loss, damages and expenses that may be sustained by the purchaser, and/or vendees, that may be occasioned by reason of the failure of the title of such vendor or by reason of any fraudulent misrepresentations or breaches of warranty as to freedom from liens, quality, condition, use or value of the motor vehicle being sold. Said bond shall be in the full amount of the sale price of each of such motor vehicles, but in no event to exceed the sum of one thousand ($1,000.00) dollars for any one motor vehicle, and shall be filed with the department of revenue of the state of North Carolina by the vendor and be approved by it as to amount, form and as to the solvency of the surety or sureties, and for which service by said department, in registering said vehicle, the vendor shall pay the regular registration fee charged for the registration of motor vehicles and in addition thereto a fee of ten ($10.00) dollars for each bond so filed and approved, which sums shall be paid into the state treasury to the credit of the general fund and expended as provided by law. (1937, c. 62, s. 1.)

§ 20-221. Titles to all used cars to be furnished upon delivery.—Every person, firm or corporation, upon the sale and delivery of any used or second-hand motor vehicle, shall, at the time of the delivery of said vehicle, deliver to the vendee a certificate of title issued to the vendor by the North Carolina state department of revenue, duly endorsed in order that the vendee may obtain a title therefor. (1937, c. 62, s. 2.)

§ 20-222. Non-compliance defeats right of action; violations a misdemeanor. — No action, nor right of action to recover any such motor vehicle, nor any part of the selling price thereof shall be maintained in the courts of this state by any such dealer or vendor, his successors or assigns, in any case wherein such vendor or dealer shall have failed to comply with the terms and provisions of this article, and, in addition thereto, such vendor or dealer, upon conviction for the violation of any of the provisions of this article, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred ($100.00) dollars and not more than five hundred ($500.00) dollars, or by imprisonment for not less than thirty days, or more than six months, or by both such fine and imprisonment. (1937, c. 62, s. 3.)

§ 20-223. "Dealers" and "vendors," defined. —The terms "dealers" and "vendors" herein used shall be construed to include every individual, partnership, corporation or trust whose business, in whole or in part, is that of selling used motor vehicles not taken in exchange for vehicles sold in this state, and likewise shall be construed to include every agent, representative, or consignee of any such dealer as defined above as fully as if same had been herein expressly set out, except that no agent, representative or consignee of such dealer or vendor shall be required to make and file the said bond if such dealer or vendor for whom such agent, representative or consignee acts fully complies in each instance with the provisions of this article. (1937, c. 62, s. 4.)

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Chapter 21. Bills of Lading.

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Art. 1. Definitions.

§ 21-1. General definitions.—In this chapter, unless the context of subject-matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading governed by this chapter.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee and to take as pledgee. (1919, c. 65, s. 42; C. S. 280.)

§ 21-2. Definition of straight bill.—A bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill. (1919, c. 65, s. 2; C. S. 284.)

§ 21-3. Definition of order bill.—A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void, and shall not affect its negotiability within the meaning of this chapter unless upon its face and in writing agreed to by the shipper. (1919, c. 65, s. 3; C. S. 285.)

Art. 2. Issue of Bills of Lading.

§ 21-4. Bills governed by this chapter.—Bills of lading issued by any common carrier for the transportation of goods from one point in North Carolina to another shall be governed by this chapter. (1919, c. 65, s. 1; C. S. 283.)

§ 21-5. Order bills must not be issued in sets.—Order bills issued in North Carolina for transportation of goods from one point to another in North Carolina shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. (1919, c. 65, s. 4; C. S. 286.)

§ 21-6. Duplicate order bills must be so marked.—When more than one order bill is issued in North Carolina for the same goods to be transported to any place in North Carolina, the word "duplicate" or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. (1919, c. 65, s. 5; C. S. 287.)

§ 21-7. Straight bill shall be marked "nonnegotiable."—A straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character. (1919, c. 65, s. 6; C. S. 288.)

§ 21-8. Insertion of name of person to be notified.—The insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. (1919, c. 65, s. 7; C. S. 289.)

Art. 3. Obligations and Rights of Carriers upon Bills of Lading.

§ 21-9. Obligation of carrier to deliver.—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

1. An offer in good faith to satisfy the carrier's lawful lien upon the goods;

2. Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods if the bill is an order bill; and

3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. (1919, c. 65, s. 8; C. S. 290.)

§ 21-10. Justification of carrier in delivery.—A carrier is justified, subject to the provisions of §§ 21-11, 21-12 and 21-13, in delivering goods to one who is—

1. A person lawfully entitled to the possession of the goods; or

2. The consignee named in a straight bill for the goods; or

3. A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee. (1919, c. 65, s. 9; C. S. 291.)

§ 21-11. Carrier's liability for misdelivery.—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions 2 and 3 of § 21-10; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

1. Had been requested by or on behalf of a person having a right of property or possession in the goods, not to make such delivery; or

2. Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. (1919, c. 65, s. 10; C. S. 292.)

§ 21-12. Carrier's liability on order bill not cancelled on delivery.—Except as provided in § 21-27, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto. (1919, c. 65, s. 11; C. S. 293.)

§ 21-13. Carrier's liability on order bill unmarked to show partial delivery.—Except as provided in § 21-27, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails, either—

1. To take up and cancel the bill, or

2. To place plainly upon it a statement that a portion of the goods has been delivered with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. (1919, c. 65, s. 12; C. S. 294.)

§ 21-14. Altered bills.—Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, whether in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. (1919, c. 65, s. 13; C. S. 295.)

§ 21-15. Lost or destroyed bills.—Where an order bill has been lost, stolen, or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss,

theft, or destruction, and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also, in its discretion, order the payment of the carrier's reasonable costs and counsel fees: Provided, a voluntary indemnifying bond without an order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been, or shall be, negotiated for value without notice of the proceedings or of the delivery of the goods. (1919, c. 65, s. 14; C. S. 296.)

§ 21-16. Effect of duplicate bills.—A bill, upon the face of which the word "duplicate," or some other word or words indicating that the document is not an original bill, is placed plainly, shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. (1919, c. 65, s. 15; C. S. 297.)

§ 21-17. When title or right of carrier excuses liability for non-delivery.—No title to the goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of the bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. (1919, c. 65, s. 16; C. S. 298.)

§ 21-18. Interpleader of adverse claimants.—If more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate. (1919, c. 65, s. 17; C. S. 299.)

§ 21-19. Carrier has reasonable time to determine validity of claims.—If some one other than the consignee or the person in possession of the bill has claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (1919, c. 65, s. 18; C. S. 300.)

§ 21-20. Adverse title is no defense except as above provided.—Except as provided in the preceding sections of this article, no right or title of of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand. (1919, c. 65, s. 19; C. S. 301.)

§ 21-21. Carriers not to insert "shipper's weight, load and count" when goods loaded by carrier.—When goods are loaded by a carrier, such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity, if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation or tariff, "shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or, in case of bulk freight and freight not concealed by packages, the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. (1919, c. 65, s. 20; C. S. 302.)

§ 21-22. Liability for nonreceipt or misdescription of goods loaded by shipper.—When package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also, by inserting in the bill of lading the words "shipper's weight, load, and count," or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and, if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: Provided, however, where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carrier shall not in such case insert in the bill of lading the words "shipper's weight," or other words of like purport; and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. (1919, c. 65, s. 21; C. S. 303.)

§ 21-23. Liability for nonreceipt or misdescription of goods.—If a bill of lading has been issued by a carrier, or on his behalf by an agent or employee, the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several states and with foreign nations, the carrier shall be liable to—

1. The owner of goods covered by a straight bill, subject to existing right of stoppage in transit; or

2. The holder of an order bill, who has given value in good faith, relying upon the description

therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. (1919, c. 65, s. 22; C. S. 304.)

§ 21-24. Attachment or levy upon goods for which an order bill has been issued.—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. (1919, c. 65, s. 23; C. S. 305.)

§ 21-25. Creditor's remedy to reach order bills.—A creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (1919, c. 65, s. 24; C. S. 306.)

§ 21-26. Liens for charges under order bill.—If an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. (1919, c. 65, s. 25; C. S. 307.)

§ 21-27. Effect of sale.—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill. (1919, c. 65, s. 26; C. S. 308.)

Art. 4. Negotiation and Transfer of Bills.

§ 21-28. Negotiation of order bills by delivery.—An order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. (1919, c. 65, s. 27; C. S. 309.)

§ 21-29. Negotiation of order bills by indorsement.—An order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. (1919, c. 65, s. 28; C. S. 310.)

§ 21-30. Transfer of bills.—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill cannot be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right. (1919, c. 65, s. 29; C. S. 311.)

§ 21-31. Who may negotiate an order bill.—An order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. (1919, c. 65, s. 30; C. S. 312.)

§ 21-32. Rights of person to whom an order bill has been negotiated.—A person to whom an order bill has been duly negotiated acquires thereby—

1. Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

2. The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. (1919, c. 65, s. 31; C. S. 313.)

§ 21-33. Rights of person to whom a bill has been transferred.—A person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods. (1919, c. 65, s. 32; 1919, c. 290; C. S. 314.)

§ 21-34. Right to compel indorsement of negotiable bill.—Where an order bill is transferred for value by delivery, and the indorsement of the

transferor is essential for negotation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (1919, c. 65, s. 33; C. S. 315.)

§ 21-35. Warranties on sale of bill.—A person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

1. That the bill is genuine;

2. That he has a legal right to transfer it;

3. That he has knowledge of no fact which would impair the validity or worth of the bill;

4. That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby. (1919, c. 65, s. 34; C. S. 316.)

§ 21-36. Indorser not a guarantor.—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorser of the bill to fulfill their respective obligations. (1919, c. 65, s. 35; C. S. 317.)

§ 21-37. No warranty implied from accepting payment of a debt.—A mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt, or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described. (1919, c. 65, s. 36; C. S. 318.)

§ 21-38. When negotiation not impaired by fraud, accident, mistake, duress, conversion, etc.—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion. (1919, c. 65, s. 37; C. S. 319.)

§ 21-39. Subsequent negotiation.—Where a person, having sold, mortgaged or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. (1919, c. 65, s. 38; C. S. 320.)

§ 21-40. Negotiation defeats vendor's lien.—Where an order bill has been issued for goods no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transit. Nor shall the carrier be obliged to deliver or be justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. (1919, c. 65, s. 39; C. S. 321.)

§ 21-41. When rights and remedies under mortgages and liens are not limited.—Except as provided in § 21-40, nothing in this chapter shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this chapter, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien, and obtained possession of them. (1919, c. 65, s. 40; C. S. 322.)

Art. 5. Criminal Offenses.

§ 21-42. Issuing false bills or violating chapter made felony.—Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment in this state, or with intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing, or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates or fails to comply with, or aids in any violation of, or failure to comply with any provision of this chapter, shall be guilty of a felony and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or both. (1919, c. 65, s. 41; 1919, c. 290; C. S. 323.)

Chapter 22. Contracts Requiring Writing.

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22-1. Contracts charging representative personally; promise to answer for debt of another.
22-2. Contract for sale of land; leases.
22-3. Contracts with Cherokee Indians.
22-4. Promise to revive debt of bankrupt.

§ 22-1. Contracts charging representative personally; promise to answer for debt of another.—No action shall be brought whereby to charge an executor, administrator or collector upon a special promise to answer damages out of his own estate or to charge any defendant upon a special promise to answer the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party charged therewith or some other person thereunto by him lawfully authorized. (Rev., s. 974; Code, s. 1552; R. C., c. 50, s. 15; 1826, c. 10; 29 Charles II, c. 3, s. 4; C. S. 987.)

§ 22-2. Contract for sale of land; leases.—All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration; and all other leases and contracts for leasing lands exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized. (Rev., s. 976; Code, ss. 1554, 1743; R. C., c. 50, s. 11; 29 Ch. II, c. 3, ss. 1, 2, 3; 1819, c. 1016; 1844, c. 44; 1868, c. 156, ss. 2, 33; C. S. 988.)

§ 22-3. Contracts with Cherokee Indians.—All contracts and agreements of every description made with any Cherokee Indian, or any person of Cherokee Indian blood within the second degree, for an amount equal to ten dollars or more, shall be void, unless some note or memorandum thereof be made in writing and signed by such Indian or person of Indian blood, or some other person by him authorized, in the presence of two witnesses, who shall also subscribe the same: Provided, that this section shall not apply to any person of Cherokee Indian blood or any Cherokee Indian who understands the English language and who can speak and write the same intelligently. (Rev., s. 975; Code, s. 1553; R. C., c. 50, s. 16; 1907, c. 1004, s. 1; C. S. 989.)

§ 22-4. Promise to revive debt of bankrupt.—No promise to pay a debt discharged by any decree of a court of competent jurisdiction, in any proceeding in bankruptcy, shall be received in evidence unless such promise is in writing and signed by the party to be charged therewith. (Rev., s. 978; 1899, c. 57; C. S. 990.)

Chapter 23. Debtor and Creditor.

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Art. 1. Assignments for Benefit of Creditors.

§ 23-1. Debts mature on execution of assignment; no preferences.—Upon the execution of any voluntary deed of trust or deed of assignment for the benefit of creditors, all debts of the maker thereof shall become due and payable at once, and no such deed of trust or deed of assignment shall contain any preferences of one creditor over another, except as hereinafter stated. (Rev., s. 967; 1893, c. 453; 1909, c. 918, s. 1; C. S. 1609.)

§ 23-2. Trustee to file schedule of property.—Upon the execution of such deed of trust, the trustee, whether named therein or appointed as hereafter provided for, shall file with the clerk of the superior court of the county in which said deed of trust is registered, within ten days after the registration thereof, and inventory under oath, giving a complete, full and perfect account of all property that has come into his hands or to the hands of any person for him, by virtue of such deed of trust, and when further property of any kind not included in any previous return comes to the hands or knowledge of such trustee he shall return the same as hereinbefore prescribed within ten days after the possession or discovery thereof. (Rev., s. 968; 1893, c. 453, s. 2; C. S. 1610.)

§ 23-3. Trustee to recover property conveyed fraudulently or in preference.—It is the duty of the trustee to recover, for the benefit of the estate, property which was conveyed by the grantor or assignor in fraud of his creditors, or which was conveyed or transferred by the grantor or assignor for the purpose of giving a preference. A preference, under this section, shall be deemed to have been given when property has been transferred or conveyed within four months next preceding the registration of the deed of trust or deed of assignment in consideration of the payment of a pre-existing debt, when the grantee or transferee of such property knows or has reasonable ground to believe that the grantor or assignor was insolvent at the time of making such conveyance or transfer. (1909, c. 918, s. 2; C. S. 1611.)

§ 23-4. Substitute for incompetent trustee appointed in special proceeding.—When a trustee named in a deed of assignment for the benefit of creditors has died or resigned or has in any way become incompetent to execute the trust, the clerk of the superior court of the county wherein said deed of assignment has been registered is authorized and empowered, in a special proceeding in which all persons interested have been made parties, to appoint some discreet and competent person to act as such trustee and to execute all the trusts created in the original deed of assignment, according to its true intent and as fully as if originally appointed trustee therein. (1915, c. 176, s. 1; C. S. 1612.)

§ 23-5. Insolvent trustee removed unless bond given; substitute appointed.—Upon the complaint of any creditor of the assignor or trustee in such deed of trust, alleging under oath that the trustee named therein is insolvent, and asking that he be required to give bond or be removed, it is the duty of the clerk of the superior court of the county in which such deed of trust is registered, upon a notice of not more than ten days to such trustee, to hear the complaint. If upon such hearing the clerk is satisfied that such trustee is insolvent, he shall remove such trustee and appoint some competent person to execute the provisions of such deed of trust, unless such insolvent trustee shall file with the clerk a good and sufficient bond, to be approved by him, in a sum double the value of the property in the deed of trust, payable to the state of North Carolina, and conditioned that such trustee shall faithfully execute and carry into effect the provisions of said deed of trust. (Rev., s. 969; 1893, c. 453, s. 3; C. S. 1613.)

§ 23-6. Trustee removed on petition of creditors; substitute appointed.—Upon the written petition of one-fourth of the number of the creditors of the grantor or assignor whose claims aggregate more than fifty per cent of the total indebtedness of said grantor or assignor, the clerk of the superior court of the county in which said deed of trust or deed of assignment is registered, upon a notice of not more than ten days to said trustee of said petition, shall remove said trustee and appoint some competent person to execute the provisions of such deed of trust or deed of assignment. (1909, c. 918, s. 3; C. S. 1614.)

§ 23-7. Substituted trustee to give bond.—Upon the removal or resignation of any trustee it is the duty of the clerk to require the person ap-

pointed to execute the provisions of such deed of trust, before entering upon his duties, to file with the clerk a good and sufficient bond, to be approved by him in a sum double the value of the property in said deed of trust, payable to the state of North Carolina, and conditioned that such person shall faithfully execute and carry into effect the provisions of said deed of trust. (Rev., s. 970; 1893, c. 453, s. 3; 1909, c. 918, s. 4; 1915, c. 176, s. 2; C. S. 1615.)

§ 23-8. Only perishable property sold within ten days of registration.—It is unlawful for any trustee, whether named in such deed of trust or appointed by a clerk of the superior court, to sell any part of the property described in such deed of trust within ten days from the registration thereof, unless such property or some part thereof be perishable, in which case he may sell such property as is perishable, according to the powers conferred upon him in said deed of trust. (Rev., s. 971; 1893, c. 453, s. 4; C. S. 1616.)

§ 23-9. Creditors to file verified claims with clerk; false swearing misdemeanor.—All creditors of the maker of such deed of trust shall, before receiving payment of any amount from the said trustee, file with the clerk of the superior court a statement under oath that the amount claimed by him is justly due, after allowing all credits and offsets, to the best of his knowledge and belief. Any creditor who shall knowingly swear falsely in such statement shall be guilty of a misdemeanor. (Rev., ss. 972, 3617; 1893, c. 453, ss. 6, 7; C. S. 1617.)

§ 23-10. Priority of payments by trustee.—The trustee, after paying the necessary costs of the administration of the trust, shall pay as speedily as possible (1) all debts which are a lien upon any of the trust property in his hands, to the extent of the net proceeds of the property upon which such debt is a lien; (2) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before registration of said deed of trust or deed of assignment, and (3) all other debts equally ratable. (1909, c. 918, s. 5; C. S. 1618.)

§ 23-11. Trustee to account quarterly; final account in twelve months.—The trustee, whether named in the deed of trust or appointed by a clerk of a superior court, shall within three months from the registration of such deed of trust, and at each succeeding period of three months, file with the clerk of the superior court of the county in which the same is registered an account under oath, stating in detail his receipts and disbursements and his action as trustee, and within twelve months he shall file his final account of his administration of his trust. The clerk may upon good cause shown extend the time within which the quarterly and final accounts herein provided for are to be filed. (Rev., s. 973; 1893, c. 453, s. 5; C. S. 1619.)

§ 23-12. Trustee violating duties guilty of misdemeanor.—If any trustee in a deed of trust for the benefit of creditors shall fail to file his inventory as required by law, or shall knowingly make any false statement in such inventory, or shall knowingly fail to include any property therein, or shall sell any part of the property described in the deed of trust within ten days unless such property so sold be perishable, or shall fail to file either of the quarterly accounts or the final accounts as required by law, or shall knowingly make any false statement in such quarterly or final account, or shall knowingly fail to include any property, money or disbursement in such quarterly or final account, he shall, in either case, be guilty of a misdemeanor. (Rev., s. 3689; 1893, c. 453, s. 8; C. S. 1620.)

Art. 2. Petition of Insolvent for Assignment for Creditors.

§ 23-13. Petition; schedule; inventory; affidavit.—Every insolvent debtor may present a petition in the superior court, praying that his estate may be assigned for the benefit of all his creditors, and that his person may thereafter be exempt from arrest or imprisonment on account of any judgment previously rendered or of any debts previously contracted. On presenting such petition, every insolvent shall deliver therewith a schedule containing an account of his creditors and an inventory of his estate, which inventory shall contain—

1. A full and true account of his creditors, with the place of residence of each, if known, and the sum owing to each creditor, whether on written security, on account, or otherwise.

2. A full and true inventory of his estate, real and personal, with the encumbrances existing thereon, and all books, vouchers and securities relating thereto.

3. A full and true inventory of all property, real and personal, claimed by him as exempt from sale under execution.

He shall annex to his petition and schedule the following affidavit, which must be taken and subscribed by him before the clerk of the superior court, and must be certified by such officer:

I, ..., do swear (or affirm) that the account of my creditors, with the places of their residence, and the inventory of my estate, which are herewith delivered, are in all respects just and true; that I have not at any time or in any manner disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view that they, or any of them, should abstain or desist from opposing my discharge: so help me, God. (Rev., s. 1930; Code, ss. 2942, 2943, 2944; 1868-9, c. 162, ss. 1, 2, 3; C. S. 1621.)

§ 23-14. Clerk to give notice of petition.—On receiving the petition, schedule and affidavit, the clerk of the superior court shall make an order requiring all the creditors of such insolvent to show cause before said officer, within thirty days after publication of the order, why the prayer of the petitioner should not be granted, and shall post a notice of the contents of the order at the courthouse door and three other public places in the county where the application is made for four successive weeks; or, in lieu thereof, shall publish the same for three successive weeks in any newspaper published in said county, or in

an adjoining county. (Rev., s. 1931; Code, ss. 2945, 2946; 1868-9, c. 162, ss. 4, 5; C. S. 1622.)

§ 23-15. Order of discharge and appointment of trustee.—If no creditor oppose the discharge of the insolvent, the clerk of the superior court before whom the hearing of the petition is had shall enter an order of discharge and appoint a trustee of all the estate of such insolvent. (Rev., s. 1932; Code, s. 2947; 1868-9, c. 162, s. 6; C. S. 1623.)

§ 23-16. Terms and effect of order of discharge.—The order of discharge shall declare that the person of such insolvent shall forever thereafter be exempted from arrest or imprisonment on account of any judgment, or by reason of any debt due at the time of such order, or contracted for before that time, though payable afterwards. But no debt, demand, judgment or decree against any insolvent, discharged under this chapter, shall be affected or impaired by such discharge, but the same shall remain valid and effectual against all the property of such insolvent acquired after his discharge and the appointment of a trustee; and the lien of any judgment or decree upon the property of such insolvent shall not be in any manner affected by such discharge. (Rev., s. 1933; Code, s. 2950; 1868-9, c. 162, s. 9; C. S. 1624.)

§ 23-17. Suggestion of fraud by opposing creditor.—Every creditor opposing the discharge of the insolvent may suggest fraud and set forth the particulars thereof in writing, verified by his oath; but the insolvent shall not be compelled to answer the suggestions of fraud in more than one case, though as many creditors as choose may make themselves parties to the issues in such cases. (Rev., s. 1934; Code, s. 2948; 1868-9, c. 162, s. 7; C. S. 1625.)

Art. 3. Trustee for Estate of Debtor Imprisoned for Crime.

§ 23-18. Persons who may apply for trustee for imprisoned debtor.—When any debtor is imprisoned in the penitentiary for any term, or in a county jail for any term more than twelve months, application by petition may be made by any creditor, the debtor, or by his wife, or any of his relatives, for the appointment of a trustee to take charge of the estate of such debtor. (Rev., s. 1943; Code, s. 2974; 1868-9, c. 162, s. 40; C. S. 1626.)

§ 23-19. Superior court appoints; copy of sentence to be produced.—The application must be made to the superior court of the county where the debtor was convicted; and upon producing a copy of the sentence of such debtor, duly certified by the clerk of the court, together with an affidavit of the applicant that such debtor is actually imprisoned under such sentence, and is indebted in any sum, the clerk or the judge may immediately appoint a trustee of the estate of such debtor. (Rev., s. 1944; Code, s. 2975; 1868-9, c. 162, ss. 41, 42; C. S. 1627.)

§ 23-20. Duties of trustee; accounting; oath.—The trustee of the imprisoned debtor shall pay his debts pro rata. After paying such debts, the trustee shall apply the surplus, from time to time, to the support of the wife and children of the debtor, under the direction of the superior court. When the imprisoned debtor is lawfully discharged from his imprisonment, the trustee shall deliver to him all the estate, real and personal, of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor. The trustee shall make his returns and have his accounts audited and settled by the clerk of the superior court of the county where the proceeding was had, in like manner as provided for personal representatives. Before proceeding to the discharge of his duty, the trustee shall take and subscribe an oath, well and truly to execute his trust according to his best skill and understanding. The oath must be filed with the clerk of the superior court. (Rev., ss. 1945, 1946, 1947; Code, ss. 2976, 2978, 2979; 1868-9, c. 162, ss. 43, 45, 46; C. S. 1628.)

§ 23-21. Court may appoint several trustees.—The court has power, when deemed necessary, to appoint more than one person trustee under this chapter; but in reference to the rights, authorities and duties conferred herein, all such trustees shall be deemed one person in law. (Rev., s. 1948; Code, s. 2980; 1868-9, c. 162, s. 47; C. S. 1629.)

§ 23-22. Court may remove trustee and appoint successor.—In case of the death, removal, resignation or other disability of a trustee, the court making the appointment may from time to time supply the vacancy; and all proceedings may be continued by the successor in office in like manner as in the first instance. (Rev., s. 1949; Code, s. 2981; 1868-9, c. 162, s. 48; C. S. 1630.)

Art. 4. Discharge of Insolvent Debtors.

§ 23-23. Insolvent debtor's oath.—Prisoners in order to be entitled to discharge from imprisonment under the provisions of this article shall take the following oath:

I, ..., do solemnly swear (or affirm) that I have not the worth of fifty dollars in any worldly substance, in debts, money or otherwise whatsoever, and that I have not at any time since my imprisonment or before, directly or indirectly, sold or assigned, or otherwise disposed of, or made over in trust for myself or my family, any part of my real or personal estate, whereby to have or expect any benefit, or to defraud any of my creditors: so help me, God. (Rev., s. 1918a; Code, s. 2972; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, c. 797, c. 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 31; 1881, c. 76; C. S. 1631.)

§ 23-24. Persons imprisoned for nonpayment of costs in criminal cases.—The following persons may be discharged from imprisonment upon complying with this article and § 153-194:

Every person committed for the fine and costs of any criminal prosecution. (Rev., s. 1915; Code, s. 2967; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, cc. 797, 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 26; 1933, c. 228, s. 9; C. S. 1632.)

§ 23-25. Petition; before whom; notice; service.—Every such person, having remained in prison for twenty days, may apply by petition to the court where the judgment against him was en-

tered, praying to be brought before such court at a time and place to be named in the petition, and to be discharged upon taking the oath hereinbefore prescribed. The applicant shall cause ten days notice of the time and place of filing the petition to be served on the sheriff or other officer by whom he was committed. In cases of conviction before a justice of the peace the clerk of the superior court of the county where the convicted person confined for costs is, may administer the oath and discharge the prisoner. (Rev., s. 1916; Code, ss. 2968, 2969; 1891, c. 195; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, cc. 797, 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 28; 1874-5, c. 11; 1868-9, c. 162, s. 27; 1873-4, c. 90; C. S. 1633.)

§ 23-26. Warrant issued for prisoner.—The clerk of the superior court, or justice of the peace, before whom such petition is presented shall forthwith issue a warrant to the sheriff, or keeper of the prison, requiring him to bring the prisoner before the court, at the time and place named for the hearing of the case, which warrant every such sheriff or keeper shall obey. (Rev., s. 1917; Code, s. 2970; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, cc. 797, 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 29; C. S. 1634.)

§ 23-27. Proceeding on application. — At the hearing of the petition, if the prisoner has no visible estate, and takes and subscribes the oath or affirmation prescribed in this article, the clerk of the superior court, or justice of the peace, before whom he is brought, shall administer the oath or affirmation to him, and discharge him from imprisonment; of which an entry shall be made in the docket of the court, and, where the proceeding is before a justice of the peace, the justice shall return the petition and orders thereon into the office of the clerk of the superior court to be filed. (Rev., s. 1918; Code, s. 2971; R. C., c. 59, s. 1; 1773, c. 100, s. 1; 1808, c. 746, s. 2; 1810, cc. 797, 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 30; C. S. 1635.)

§ 23-28. Suggestion of fraud.—The chairman of the board of commissioners, and every officer interested in the fee bill taxed against such prisoner, may oppose his taking the insolvent debtor's oath above prescribed, and file particulars of the suggestion in writing, in the court where the same shall stand for trial as prescribed in this chapter in other cases of fraud or concealment. (Rev., s. 1919; Code, s. 2973; 1868-9, c. 162, s. 32; C. S. 1636.)

§ 23-29. Persons taken in arrest and bail proceedings, or in execution.—The following persons also are entitled to the benefit of this article as hereinafter provided:

1. Every person taken or charged on any order of arrest for default or bail, or on surrender of bail in any action.

2. Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever. (Rev., s. 1920; Code, s. 2951; 1868-9, c. 162, s. 10; C. S. 1637.)

§ 23-30. When petition may be filed.—Every person taken or charged as in the preceding section specified may, at any time after his arrest or imprisonment, petition the court from which the process issued on which he is arrested or imprisoned, for his discharge therefrom, on his compliance with this chapter. (Rev., s. 1921; Code, s. 2952; R. C., c. 59, s. 3; 1868-9, c. 162, s. 11; C. S. 1638.)

§ 23-31. Petition; contents; verification. — The petition shall set forth the cause of the imprisonment, with the writ or process and complaint on which the same is founded, and shall have annexed to it a just and true account of all his estate, real and personal, and of all charges affecting such estate, as they exist at the time of filing his petition, together with all deeds, securities, books or writings whatever relating to the estate and the charges thereon; and also what property, real and personal, the petitioner claims as exempt from sale under execution, and shall have annexed to it an oath or affirmation, subscribed by the petitioner and taken before any person authorized by law to administer oaths, to the effect following:

I, ..., the within named petitioner, do swear (or affirm) that the within petition and account of my estate, and of the charges thereon, are, in all respects, just and true; and that I have not at any time or in any manner disposed of or made over any part of my property, with a view to the future benefit of myself or my family, or with an intent to injure or defraud any of my creditors: so help me, God. (Rev., s. 1922; Code, ss. 2953, 2954; R. C., c. 59, s. 3; 1868-9, c. 162, ss. 12, 13; C. S. 1639.)

§ 23-32. Notice; length of notice and to whom given.—Twenty days notice of the time and place at which the petition will be filed, together with a copy of such petition and the account annexed thereto, shall be personally served by such debtor on the creditor or creditors at whose suit he is arrested or imprisoned, and such other creditors as the debtor may choose, or their personal representatives or attorneys. If the person to be notified reside out of the state, and has no agent or attorney in the state, the notice may be served on the officer having the claim to collect, or by two weekly publications in any newspaper in the state. (Rev., s. 1923; Code, s. 2955; R. C., c. 59, ss. 3, 20; 1773, c. 100, s. 8; 1868-9, c. 162, s. 14; C. S. 1640.)

§ 23-33. Who may suggest fraud.—Every creditor upon whom the notice directed in § 23-32 is served may suggest fraud upon the hearing of the petition, and the issues made up respecting the fraud shall stand for trial as in other cases. (Rev., s. 1924; Code, s. 2956; R. C., c. 59, s. 13; 1822, c. 1131, s. 4; 1835, c. 12; 1868-9, c. 162, s. 15; C. S. 1641.)

§ 23-34. Where no suggestion of fraud, discharge granted.—If no creditor suggests fraud or opposes the discharge of the debtor, the justice of the peace or the clerk of the superior court before whom the petition is heard shall forthwith discharge the debtor, and, if he surrenders any estate for the benefit of his creditors, shall appoint a trustee of such estate. The order of discharge and appointment shall be entered in the

docket of the court, and if granted by a justice of the peace a copy thereof shall be certified by him to the clerk of the superior court, where the same shall be recorded, and filed. (Rev., s. 1925; Code, s. 2957; R. C., c. 59, s. 1; 1773, c. 100; 1808, c. 746, s. 2; 1810, c. 797, c. 802; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; 1868-9, c. 162, s. 16; C. S. 1642.)

§ 23-35. Continuance granted for cause.—When it appears to the court that any debtor, who may have given bond for his appearance under this chapter, is prevented from attending court by sickness or other sufficient cause, the case shall be continued to another day, or to the next term, when the same proceedings shall be had as if the debtor had appeared according to the condition of his bond, and in the event of his death in the meantime, his bond shall be discharged. (Rev., s. 1926; Code, s. 2959; R. C., c. 59, s. 10; 1822, c. 1131, s. 1; 1868-9, c. 162, s. 18; C. S. 1643.)

§ 23-36. Where fraud in issue, discharge only after trial.—After an issue of fraud or concealment is made up, the debtor shall not discharge himself as to the creditors in that issue, except by trial and verdict in the same, or by a discharge by consent. (Rev., s. 1927; Code, s. 2962; R. C., c. 59, s. 17; 1868-9, c. 162, s. 21; C. S. 1644.)

§ 23-37. If fraud found, debtor imprisoned.—If, on the trial, the jury finds that there is any fraud or concealment, the judgment shall be that the debtor be imprisoned until a full and fair disclosure and account of all his money, property or effects be made by the debtor. (Rev., s. 1928; Code, s. 2961; R. C., c. 59, s. 14; 1822, c. 1131, s. 4; 1835, c. 12; 1868-9, c. 162, s. 20; C. S. 1645.)

§ 23-38. Effect of order of discharge.—The order of discharge under the last four articles of this chapter, whether granted upon a nonsuggestion of fraud, upon the finding of a jury in favor of the debtor, or otherwise, shall be in like terms and have like effect as prescribed in § 23-16; except that the body of such debtor shall be free from arrest or imprisonment at the suit of every creditor, and as to him only, to whom the notice required may have been given; and the notices, or copies thereof, shall in all cases be filed in the office of the superior court clerk. (Rev., s. 1929; Code, s. 2960; R. C., c. 59, s. 11; 1822, c. 1131, s. 4; 1835, c. 12; 1868-9, c. 162, s. 19; C. S. 1646.)

Art. 5. General Provisions under Articles 2, 3, and 4.

§ 23-39. Superior court tries issue of fraud.—In every case where an issue of fraud is made up as provided in this chapter, the case shall be entered in the trial docket of the superior court, and stand for trial as other causes; and upon a finding by the jury in favor of the petitioner the judge shall discharge the debtor; if the finding is against the petitioner he shall be committed to jail until he makes full disclosure. (Rev., s. 1935; Code, s. 2949; 1868-9, c. 162, s. 8; C. S. 1647.)

§ 23-40. Insolvent released on giving bond.—Every debtor entitled under the provisions of this chapter to discharge as an insolvent may, at the time of filing his application for a discharge or at any time afterwards, tender to the sheriff or other officer having his body in charge, a bond, with sufficient surety, in double the amount of the sum due any creditor or creditors at whose suit he was taken or charged, conditioned for the appearance of such debtor before the court where his petition is filed, at the hearing thereof, and to stand to and abide by the final order or decree of the court in the case. If such bond be satisfactory to the sheriff, he shall forthwith release such debtor from custody. (Rev., s. 1936; Code, s. 2958; R. C., c. 59, s. 27; 1868-9, c. 162, s. 17; C. S. 1648.)

§ 23-41. Surety in bond may surrender principal.—The surety in any bond conditioned for the appearance of any person under this chapter may surrender the principal, or such principal may surrender himself, in discharge of the bond, to the sheriff or other officer of any court where such principal is bound to appear, in the manner provided in the chapter entitled Civil Procedure, article Arrest and Bail. (Rev., s. 1937; Code, s. 2963; R. C., c. 59, s. 23; 1793, c. 100, s. 7; 1793, c. 380, s. 1; 1822, c. 1131, s. 3; 1868-9, c. 162, s. 22; C. S. 1649.)

§ 23-42. Creditor liable for jail fees.—When any debtor is actually confined within the walls of a prison, on an order of arrest in default of bail or otherwise, the jailer must furnish him with necessary food during his confinement, if the prisoner requires it, for which the jailer shall have the same fees as for keeping other prisoners. If the debtor is unable to discharge such fees, the jailer may recover them from the party at whose instance the debtor was confined. And at any time after the arrest, the sheriff or jailer may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees that accrue after such notice, and if the plaintiff fails to give such security then the sheriff may discharge the debtor out of custody. (Rev., s 1938; Code, s. 2965; R. C., c. 69, s. 5; 1773, c. 100, ss. 8, 9; 1821, c. 1103; 1868-9, c. 162, s. 24; C. S. 1650.)

§ 23-43. False swearing; penalty.—If any insolvent or imprisoned debtor takes any oath prescribed in this chapter falsely and corruptly, and upon indictment for perjury is convicted thereof, he shall suffer all the pains of perjury, and he shall never after have any of the benefits of this chapter, but may be sued and imprisoned as though he had never been discharged. (Rev., ss. 1940, 3614; Code, s. 2964; R. C., c. 59, s. 25; 1793, c. 100, s. 10; 1868-9, c. 162, s. 23; C. S. 1651.)

§ 23-44. Powers of trustees hereunder. — Any trustee appointed under the last four articles of this chapter, as therein contemplated, is hereby declared a trustee of the estate of the debtor, in respect to whose property such trustee is appointed for the benefit of creditors, and is invested from the time of appointment with all the powers and authority, and subject to the control, obligations and responsibilities prescribed by law in relation to personal representatives over the estates of deceased persons; but all debts shall be paid by the trustees pro rata. (Rev., s. 1941; Code, s. 2977; R. C., c. 59, ss. 21, 22; 1773, c. 100, ss 5, 6; 1827, c. 44; 1830, c. 26, s. 2; 1868-9, c. 162, s. 44; C. S. 1652.)

§ 23-45. Jail bounds.—Any imprisoned debtor may take the benefit of the prison bounds by giving security, as required by law, except as follows:

1. A debtor against whom an issue of fraud is found.

2. Any debtor who, for other cause, is adjudged to be imprisoned until he makes a full and fair disclosure or account of his property. (Rev., s. 1942; Code, s. 2966; R. C., c. 59, s. 27; 1818, c. 964; 1868-9, c. 162, s. 25; C. S. 1653.)

Art. 6. Practice in Insolvency and Certain Other Proceedings.

§ 23-46. Unlawful to solicit claims of creditors in proceedings. — It shall be unlawful for any individual, corporation, or firm or other association of persons, to solicit of any creditor any claim of such creditor in order that such individual, corporation, firm or association may represent such creditor or present or vote such claim, in any bankruptcy or insolvency proceeding, or in any action or proceeding for or growing out of the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors. (1931, c. 208, s. 1.)

§ 23-47. Violation of preceding section a misdemeanor.—Any individual, corporation, or firm or other association of persons violating any provision of § 23-46 shall be guilty of a misdemeanor. (1931, c. 208, s. 3.)

Art. 7. Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages.

§ 23-48. Local units authorized to avail themselves of provisions of bankruptcy law. — With the approval of the local government commission of North Carolina and with the consent of the holders of such percentage or percentages of its indebtedness as may be required by Public Act Number three hundred two of the Seventy-fifth Congress, First Session, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July first, one thousand eight hundred ninety-eight and Acts amendatory thereof and supplementary thereto," approved August sixteenth, one thousand nine hundred thirty-seven, as amended, any taxing district, local improvement district, school district, county, city, town or village in the state of North Carolina is authorized to avail itself of the provisions of said act of congress as said act now exists or may be hereafter amended. (1939, c. 203.)

Chapter 24. Interest.

Sec.
24-1. Legal rate is six per cent.
24-2. Penalty for usury; corporate bonds may be sold below par.
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§ 24-1. Legal rate is six per cent.—The legal rate of interest shall be six per cent per annum for such time as interest may accrue, and no more. (Rev., s. 1950; Code, s. 3835; 1895, c. 69; 1876-7, c. 91; C. S. 2305.)

§ 24-2. Penalty for usury; corporate bonds may be sold below par.—The taking, receiving, reserving or charging a greater rate of interest than six per centum per annum, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid, may recover back twice the amount of interest paid in an action in the nature of action for debt. In any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it is lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest. Nothing contained in this section or in § 24-1, however, shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof. (Rev., s. 1951; Code, s. 3836; 1895, c. 69; 1903, c. 154; 1876-7, c. 91; C. S. 2306.)

§ 24-3. Time from which interest runs.—Interest is due and payable on instruments, as follows:

1. All bonds, bills, notes, bills of exchange, liquidated and settled accounts shall bear interest from the time they become due, provided such liquidated and settled accounts be signed by the debtor, unless it is specially expressed that interest is not to accrue until a time mentioned in the said writings or securities.

2. All bills, bonds, or notes payable on demand shall be held and deemed to be due when demandable by the creditor, and shall bear interest from the time they are demandable, unless otherwise expressed.

3. All securities for the payment or delivery of specific articles shall bear interest as moneyed contracts; and the articles shall be rated by the jury at the time they become due.

4. Bills of exchange drawn or indorsed in the state, and which have been protested, shall carry interest, not from the date thereof, but from the time of payment therein mentioned. (Rev., s. 1952; Code, ss. 44, 45, 46, 47; R. C., c. 13; 1786, c. 248; 1828, c. 2; C. S. 2307.)

§ 24-4. Obligations due guardians to bear compound interest.—Guardians shall have power to lend any portion of the estate of their wards upon bond with sufficient security, to be repaid with interest annually, and all the bonds, notes or other obligations which he shall take as guardian shall bear compound interest, for which he must account, and he may assign the same to the ward on settlement with him. (Rev., s. 1953; Code, s. 1592; R. C., c. 54, s. 23; 1762, c. 69; 1816, c. 925; 1868-9, c. 201, s. 29; C. S. 2308.)

§ 24-5. Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.—All sums of money due by contract of any kind, excepting money due on penal bonds, shall bear interest, and when a jury shall render a verdict therefor they shall distinguish the principal from the sum allowed as interest; and the principal sum due on all such contracts shall bear interest from the time of rendering judgment thereon until it is paid and satisfied. In like manner, the amount of any judgment or decree, except the costs, rendered or adjudged in any kind of action, though not on contract, shall bear interest till paid, and the judgment and decree of the court shall be rendered according to this section. (Rev., s. 1954; Code, s. 530; R. C., c. 31, s. 90; 1786, c. 253; 1789, c. 314, s. 4; 1807, c. 721; C. S. 2309.)

§ 24-6. Judgment by default final, clerk ascertains.—When a suit is instituted on a single bond, a covenant for the payment of money, bill of exchange, promissory note, or a signed account, and the defendant does not plead to issue thereon, upon judgment, the clerk of the court shall ascertain the interest due by law, without a writ of inquiry, and the amount shall be included in the final judgment of the court as damages, which judgment shall be rendered therein in the manner prescribed by § 24-5. (Rev., s. 1956; Code, s. 531; R. C., c. 31, s. 91; 1797, c. 475; C. S. 2310.)

§ 24-7. Interest from verdict to judgment added as costs.—When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto. (Rev., s. 1955; Code, s. 529; C. S. 2311.)

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Art. 1. General Provisions.

§ 25-1. Definitions.—In this chapter, unless the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and setoff.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print. (Rev., s. 2340; 1899, c. 733, s. 191; C. S. 2976.)

§ 25-2. Person primarily liable on instrument.—The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable. (Rev., s. 2342; 1899, c. 733, s. 192; C. S. 2977.)

§ 25-3. What constitutes reasonable time.—In determining what is reasonable time or an unreasonable time regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. (Rev., s. 2343; 1899, c. 733, s. 193; C. S. 2978.)

§ 25-4. When law merchant governs.—In any case not provided for in this chapter the rules of the law merchant shall govern. (Rev., s. 2344; 1899, c. 733, s. 196; C. S. 2979.)

§ 25-5. Acts to be done on Sunday or holiday.—Where the day, or the last day, for doing any act herein required or permitted to be done falls

sumed name.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (Rev., s. 2167; 1899, c. 733, s. 18; C. S. 2999.)

§ 25-25. Signature by agent; how authority shown. — The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. (Rev., s. 2168; 1899, c. 733, s. 19; C. S. 3000.)

§ 25-26. Liability of person signing as agent.—Where the instrument contains, or a person adds to his signature, words indicating that he signed for or on behalf of the principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. (Rev., s. 2169; 1899, c. 733, s. 20; C. S. 3001.)

§ 25-27. Effect of signature by procuration.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent so signing acted within the actual limits of his authority. (Rev., s. 2170; 1899, c. 733, s. 21; C. S. 3002.)

§ 25-28. Effect of forged signature.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Rev., s. 2171; 1899, c. 733, s. 23; C. S. 3003.)

Art. 3. Consideration.

§ 25-29. Presumption of consideration.—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. (Rev., s. 2172; 1899, c. 733, s. 24; C. S. 3004.)

§ 25-30. What constitutes consideration.—Value is any consideration sufficient to support a simple contract. An antecedent or preëxisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time. (Rev., s. 2173; 1899, c. 733, s. 25; C. S. 3005.)

§ 25-31. What constitutes a holder for value.—Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time. (Rev., s. 2174; 1899, c. 733, s. 26; C. S. 3006.)

§ 25-32. When lien on instrument constitutes holder for value.—Where the holder has a lien on the instrument arising either from contract or by implication of law he is deemed a holder for value to the extent of his lien. (Rev., s. 2175; 1899, c. 733, s. 27; C. S. 3007.)

§ 25-33. Effect of want of consideration.—Absence or failure of consideration is matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. (Rev. s. 2176; 1899, c. 733, s. 28; C. S. 3008.)

§ 25-34. Liability of accommodation party.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (Rev., s. 2177; 1899, c. 733, s. 29; C. S. 3009.)

Art. 4. Negotiation.

§ 25-35. What constitutes negotiation.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, and completed by delivery. (Rev., s. 2178; 1899, c. 733, s. 30; C. S. 3010.)

§ 25-36. How indorsement made.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. (Rev., s. 2179; 1899, c. 733, s. 31; C. S. 3011.)

§ 25-37. Effect of indorsement by infant or corporation.—The indorsement or assignment of the instrument by a corporation, an infant, or married woman passes the property therein, notwithstanding that from want of capacity the corporation, infant, or married woman may incur no liability thereon. (Rev., s. 2180; 1899, c. 733, s. 22; C. S. 3012.)

§ 25-38. Indorsement must be of entire instrument.—An indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue. (Rev., s. 2181; 1899, c. 733, s. 32; C. S. 3013.)

§ 25-39. Kinds of indorsement. — An indorsement may be either in blank or special, and it may also be either restrictive or qualified or conditional. (Rev., s. 2182; 1899, c. 733, s. 33; C. S. 3014.)

§ 25-40. Special indorsement; indorsement in blank.—A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negoti-

ated by delivery. (Rev., s. 2183; 1899, c. 733, s. 34; C. S. 3015.)

§ 25-41. How blank indorsement changed to special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Rev., s. 2184; 1899, c. 733, s. 35; C. S. 3016.)

§ 25-42. When indorsement restrictive.—An indorsement is restrictive which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for, or to the use of, some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Rev., s. 2185; 1899, c. 733, s. 36; C. S. 3017.)

§ 25-43. Effect of restrictive indorsement; rights of indorsee.—A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. (Rev., s. 2186; 1899, c. 733, s. 37; C. S. 3018.)

§ 25-44. Qualified indorsement. — A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (Rev., s. 2187; 1899, c. 733, s. 38; C. S. 3019.)

§ 25-45. Conditional indorsement. — Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally. (Rev., s. 2188; 1899, c. 733, s. 39; C. S. 3020.)

§ 25-46. Indorsement of instrument payable to bearer.—Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. (Rev., s. 2189; 1899, c. 733, s. 40; C. S. 3021.)

§ 25-47. Indorsement of instrument payable to two or more persons.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. (Rev., s. 2190; 1899, c. 733, s. 41; C. S. 3022.)

§ 25-48. Effect of instrument drawn or indorsed to a person as cashier.—Where an instrument is drawn or indorsed to a person as cashier or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer. (Rev., s. 2191; 1899, c. 733, s. 42; C. S. 3023.)

§ 25-49. Indorsement, where payee's name misspelled.—Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as there described, adding, if he think fit, his proper signature. (Rev., s. 2192; 1899, c. 733, s. 43; C. S. 3024.)

§ 25-50. Indorsement in representative capacity.—Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability. (Rev., s. 2193; 1899, c. 733, s. 44; C. S. 3025.)

§ 25-51. Presumption as to time of indorsement.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. (Rev., s. 2194; 1899, c. 733, s. 45; C. S. 3026.)

§ 25-52. Presumption as to place of indorsement.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. (Rev., s. 2195; 1899, c. 733, s. 46; C. S. 3027.)

§ 25-53. Continuation of negotiable character.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (Rev., s. 2196; 1899, c. 733, s. 47; C. S. 3028.)

§ 25-54. Striking out indorsement.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument. (Rev., s. 2197; 1899, c. 733, s. 48; C. S. 3029.)

§ 25-55. Effect of transfer without indorsement.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires in addition the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (Rev., s. 2198; 1899, c. 733, s. 49; C. S. 3030.)

§ 25-56. When prior party may negotiate instrument.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (Rev., s. 2199; 1899, c. 733, s. 50; C. S. 3031.)

Art. 5. Rights of Holder.

§ 25-57. Right of holder to sue; payment.—The holder of a negotiable instrument may sue

sumed name.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (Rev., s. 2167; 1899, c. 733, s. 18; C. S. 2999.)

§ 25-25. Signature by agent; how authority shown. — The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. (Rev., s. 2168; 1899, c. 733, s. 19; C. S. 3000.)

§ 25-26. Liability of person signing as agent.—Where the instrument contains, or a person adds to his signature, words indicating that he signed for or on behalf of the principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. (Rev., s. 2169; 1899, c. 733, s. 20; C. S. 3001.)

§ 25-27. Effect of signature by procuration.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent so signing acted within the actual limits of his authority. (Rev., s. 2170; 1899, c. 733, s. 21; C. S. 3002.)

§ 25-28. Effect of forged signature.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Rev., s. 2171; 1899, c. 733, s. 23; C. S. 3003.)

Art. 3. Consideration.

§ 25-29. Presumption of consideration.—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. (Rev., s. 2172; 1899, c. 733, s. 24; C. S. 3004.)

§ 25-30. What constitutes consideration.—Value is any consideration sufficient to support a simple contract. An antecedent or preëxisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time. (Rev., s. 2173; 1899, c. 733, s. 25; C. S. 3005.)

§ 25-31. What constitutes a holder for value.—Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time. (Rev., s. 2174; 1899, c. 733, s. 26; C. S. 3006.)

§ 25-32. When lien on instrument constitutes holder for value.—Where the holder has a lien on the instrument arising either from contract or by implication of law he is deemed a holder for value to the extent of his lien. (Rev., s. 2175; 1899, c. 733, s. 27; C. S. 3007.)

§ 25-33. Effect of want of consideration.—Absence or failure of consideration is matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. (Rev. s. 2176; 1899, c. 733, s. 28; C. S. 3008.)

§ 25-34. Liability of accommodation party.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (Rev., s. 2177; 1899, c. 733, s. 29; C. S. 3009.)

Art. 4. Negotiation.

§ 25-35. What constitutes negotiation.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, and completed by delivery. (Rev., s. 2178; 1899, c. 733, s. 30; C. S. 3010.)

§ 25-36. How indorsement made.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. (Rev., s. 2179; 1899, c. 733, s. 31; C. S. 3011.)

§ 25-37. Effect of indorsement by infant or corporation.—The indorsement or assignment of the instrument by a corporation, an infant, or married woman passes the property therein, notwithstanding that from want of capacity the corporation, infant, or married woman may incur no liability thereon. (Rev., s. 2180; 1899, c. 733, s. 22; C. S. 3012.)

§ 25-38. Indorsement must be of entire instrument.—An indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part it may be indorsed as to the residue. (Rev., s. 2181; 1899, c. 733, s. 32; C. S. 3013.)

§ 25-39. Kinds of indorsement. — An indorsement may be either in blank or special, and it may also be either restrictive or qualified or conditional. (Rev., s. 2182; 1899, c. 733, s. 33; C. S. 3014.)

§ 25-40. Special indorsement; indorsement in blank.—A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negoti-

ated by delivery. (Rev., s. 2183; 1899, c. 733, s. 34; C. S. 3015.)

§ 25-41. How blank indorsement changed to special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Rev., s. 2184; 1899, c. 733, s. 35; C. S. 3016.)

§ 25-42. When indorsement restrictive.—An indorsement is restrictive which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for, or to the use of, some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Rev., s. 2185; 1899, c. 733, s. 36; C. S. 3017.)

§ 25-43. Effect of restrictive indorsement; rights of indorsee.—A restrictive indorsement confers upon the indorsee the right (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. (Rev., s. 2186; 1899, c. 733, s. 37; C. S. 3018.)

§ 25-44. Qualified indorsement. — A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (Rev., s. 2187; 1899, c. 733, s. 38; C. S. 3019.)

§ 25-45. Conditional indorsement. — Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same or the proceeds thereof subject to the rights of the person indorsing conditionally. (Rev., s. 2188; 1899, c. 733, s. 39; C. S. 3020.)

§ 25-46. Indorsement of instrument payable to bearer.—Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. (Rev., s. 2189; 1899, c. 733, s. 40; C. S. 3021.)

§ 25-47. Indorsement of instrument payable to two or more persons.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. (Rev., s. 2190; 1899, c. 733, s. 41; C. S. 3022.)

§ 25-48. Effect of instrument drawn or indorsed to a person as cashier.—Where an instrument is drawn or indorsed to a person as cashier or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer. (Rev., s. 2191; 1899, c. 733, s. 42; C. S. 3023.)

§ 25-49. Indorsement, where payee's name misspelled.—Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as there described, adding, if he think fit, his proper signature. (Rev., s. 2192; 1899, c. 733, s. 43; C. S. 3024.)

§ 25-50. Indorsement in representative capacity.—Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability. (Rev., s. 2193; 1899, c. 733, s. 44; C. S. 3025.)

§ 25-51. Presumption as to time of indorsement.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. (Rev., s. 2194; 1899, c. 733, s. 45; C. S. 3026.)

§ 25-52. Presumption as to place of indorsement.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. (Rev., s. 2195; 1899, c. 733, s. 46; C. S. 3027.)

§ 25-53. Continuation of negotiable character.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (Rev., s. 2196; 1899, c. 733, s. 47; C. S. 3028.)

§ 25-54. Striking out indorsement.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument. (Rev., s. 2197; 1899, c. 733, s. 48; C. S. 3029.)

§ 25-55. Effect of transfer without indorsement.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires in addition the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (Rev., s. 2198; 1899, c. 733, s. 49; C. S. 3030.)

§ 25-56. When prior party may negotiate instrument.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (Rev., s. 2199; 1899, c. 733, s. 50; C. S. 3031.)

Art. 5. Rights of Holder.

§ 25-57. Right of holder to sue; payment.—The holder of a negotiable instrument may sue

thereon in his own name, and payment to him in due course discharges the instrument. (Rev., s. 2200; 1899, c. 733, s. 51; C. S. 3032.)

§ 25-58. What constitutes holder in due course.—A holder in due course is a holder who has taken the instrument under the following conditions: (1) That the instrument is complete and regular upon its face; (2) that he became the holder of it before it was overdue and without notice that it has been previously dishonored, if such was the fact; (3) that he took it for good faith and value; (4) that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Rev., s. 2201; 1899, c. 733, s. 52; C. S. 3033.)

§ 25-59. When person not deemed holder in due course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (Rev., s. 2202; 1899, c. 733, s. 53; C. S. 3034.)

§ 25-60. Notice before full amount paid. — Where the transferee has received notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. (Rev., s. 2203; 1899, c. 733, s. 54; C. S. 3035.)

§ 25-61. When title defective.—The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress or force and fear or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud. (Rev., s. 2204; 1899, c. 733, s. 55; C. S. 3036.)

§ 25-62. What constitutes notice of defect.—To constitute a notice of an infirmity in the instrument or defect in the title of the person negotiating the same the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith. (Rev., s. 2205; 1899, c. 733, s. 56; C. S. 3037.)

§ 25-63. Rights of holder in due course. — A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (Rev., s. 2206; 1899, c. 733, s. 57; C. S. 3038.)

§ 25-64. When subject to original defenses.—In the hands of any holder other than a holder in due course a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course and who is not himself a party to any fraud or illegality affecting the instrument has all the rights of such former holder in respect of all parties prior to the latter. (Rev., s. 2207; 1899, c. 733, s. 58; C. S. 3039.)

§ 25-65. Who deemed holder in due course.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (Rev., s. 2208; 1899, c. 733, s. 59; C. S. 3040.)

Art. 6. Liabilities of Parties.

§ 25-66. Liability of maker.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. (Rev., s. 2209; 1899, c. 733, s. 60; C. S. 3041.)

§ 25-67. Liability of drawer.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder. (Rev., s. 2210; 1899, c. 733, s. 61; C. S. 3042.)

§ 25-68. Liability of acceptor. — The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits (1) existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument; and (2) the existence of the payee and his then capacity to indorse. (Rev., s. 2211; 1899, c. 733, s. 62; C. S. 3043.)

§ 25-69. When person deemed indorser. — A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. (Rev., s. 2212; 1899, c. 733, s. 63; C. S. 3044.)

§ 25-70. Liability of irregular indorser.—Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties; (2) if the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer; (3) if he signs for the accomodation of the payee he is liable to all parties subsequent to the payee. (Rev., s. 2213; 1899, c. 733, s. 64; C. S. 3045.)

§ 25-71. Warranty, where negotiation by delivery.—Every person negotiating an instrument by delivery or by a qualified indorsement warrants (1) that the instrument is genuine and in all re-

spects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes. (Rev., s. 2214; 1899, c. 733, s. 65; C. S. 3046.)

§ 25-72. Liability of general indorser. — Every indorser who indorses without qualification warrants to all subsequent holders in due course (1) the matters and things mentioned in subdivisions one, two and three of § 25-71; and (2) that the instrument is at the time of his indorsement valid and subsisting. And in addition he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. (Rev., s. 2215; 1899, c. 733, s. 66; C. S. 3047.)

§ 25-73. Liability of indorser, where paper negotiable by delivery.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. (Rev., s. 2216; 1899, c. 733, s. 67; C. S. 3048.)

§ 25-74. Order in which indorsers are liable.—As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. (Rev., s. 2217; 1899, c. 733, s. 68; C. S. 3049.)

§ 25-75. Liability of agent or broker.—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by § 25-71, unless he discloses the name of his principal and the fact that he is acting only as agent. (Rev., s. 2218; 1899, c. 733, s. 69; C. S. 3050.)

Art. 7. Presentment for Payment.

§ 25-76. Effect of want of demand on principal debtor.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is by its terms payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. (Rev., s. 2219; 1899, c. 733, s. 70; C. S. 3051.)

§ 25-77. Presentment, where the instrument is not payable on demand.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (Rev., s. 2220; 1899, c. 733, s. 71; C. S. 3052.)

§ 25-78. What constitutes a sufficient presentment.—Presentment for payment to be sufficient must be made (1) by the holder or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined: (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made. (Rev., s. 2221; 1899, c. 733, s. 72; C. S. 3053.)

§ 25-79. Place of presentment. — Presentment for payment is made at the proper place (1) where a place of payment is specified in the instrument and it is there presented; (2) where no place of payment is specified, but the address of the person to make the payment is given in the instrument, and it is there presented; (3) where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) in any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. (Rev., s. 2222; 1899, c. 733, s. 73; C. S. 3054.)

§ 25-80. Instrument must be exhibited. — The instrument must be exhibited to the person from whom payment is demanded, and, when it is paid, must be delivered up to the party paying it. (Rev., s. 2223; 1899, c. 733, s. 74; C. S. 3055.)

§ 25-81. Presentment where instrument payable at bank.—Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. (Rev., s. 2224; 1899, c. 733, s. 75; C. S. 3056.)

§ 25-82. Presentment where principal debtor is dead.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found. (Rev., s. 2225; 1899, c. 733, s. 76; C. S. 3057.)

§ 25-83. Presentment to persons liable as partners.—Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. (Rev., s. 2226; 1899, c. 733, s. 77; C. S. 3058.)

§ 25-84. Presentment to joint debtors.—Where there are several persons not parties primarily liable on the instrument and no place of payment is specified, presentment must be made to them all. (Rev., s. 2227; 1899, c. 733, s. 78; C. S. 3059.)

§ 25-85. When presentment not required to charge the drawer.—Presentment for payment is

not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. (Rev., s. 2228; 1899, c. 733, s. 79; C. S. 3060.)

§ 25-86. When presentment not required to charge the indorser.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. (Rev., s. 2229; 1899, c. 733, s. 80; C. S. 3061.)

§ 25-87. When delay in presentment is excused.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence. (Rev., s. 2230; 1899, c. 733, s. 81; C. S. 3062.)

§ 25-88. When presentment may be dispensed with.—Presentment for payment is dispensed with (1) where after the exercise of reasonable diligence presentment as required by this chapter cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied. (Rev., s. 2231; 1899, c. 733, s. 82; C. S. 3063.)

§ 25-89. When instrument dishonored by nonpayment.—The instrument is dishonored by nonpayment when (1) it is duly presented for payment and payment is refused or cannot be obtained; or (2) presentment is excused and the instrument is overdue and unpaid. (Rev., s. 2232; 1899, c. 733, s. 83; C. S. 3064.)

§ 25-90. Liability of persons secondarily liable when instrument dishonored. — Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. (Rev., s. 2233; 1899, c. 733, s. 84; C. S. 3065.)

§ 25-91. Time of maturity. — Every negotiable instrument is payable at the time fixed therein without grace, except as allowed by the succeeding section. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. (Rev., s. 2234; 1899, c. 733, s. 85; 1907, c. 897; 1909, c. 800, s. 1; C. S. 3066.)

§ 25-92. When days of grace allowed.—All bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect and not otherwise, shall be entitled to days of grace as the same are allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or sight, but no days of grace shall be allowed on any bill of exchange, promissory note, or draft payable on demand. (Rev., s. 2235; Code, s. 43; 1905, c. 327; 1907, c. 861; C. S. 3067.)

§ 25-93. How time is computed.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment. (Rev., s. 2236; 1899, c. 733, s. 86; C. S. 3068.)

§ 25-94. Rule where instrument is payable at bank.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (Rev., s. 2237; 1899, c. 733, s. 87; C. S. 3069.)

§ 25-95. What constitutes payment in due course.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. (Rev., s. 2238; 1899, c. 733, s. 88; C. S. 3070.)

Art. 8. Notice of Dishonor.

§ 25-96. To whom notice of dishonor must be given.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. (Rev., s. 2239; 1899, c. 733, s. 89; C. S. 3071.)

§ 25-97. By whom notice given.—The notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay to the holder, and who upon taking it up would have a right to reimbursement from the party to whom notice is given. (Rev., s. 2240; 1899, c. 733, s. 90; C. S. 3072.)

§ 25-98. Notice given by agent.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (Rev., s. 2241; 1899, c. 733, s. 91; C. S. 3073.)

§ 25-99. Effect of notice given on behalf of holder.—Where notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. (Rev., s. 2242; 1899, c. 733, s. 92; C. S. 3074.)

§ 25-100. Effect, where notice is given by party entitled thereto.—Where notice is given by or on behalf of a party entitled to give notice it inures to the benefit of the holder and all parties subsequent to the party by whom notice is given. (Rev., s. 2243; 1899, c. 733, s. 93; C. S. 3075.)

§ 25-101. When agent may give notice.—Where the instrument has been dishonored in the hands of an agent he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. (Rev., s. 2244; 1899, c. 733, s. 94; C. S. 3076.)

§ 25-102. When notice sufficient.—A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate it unless the party to whom the notice is given is in fact misled

thereby. (Rev., s. 2245; 1899, c. 733, s. 95; C. S. 3077.)

§ 25-103. Form of notice.—The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. (Rev., s. 2246; 1899, c. 733, s. 96; C. S. 3078.)

§ 25-104. To whom notice may be given.—Notice of dishonor may be given either to the party himself or to his agent in that behalf. (Rev., s. 2247; 1899, c. 733, s. 97; C. S. 3079.)

§ 25-105. Notice when party is dead.—When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative if there be one, and if with reasonable diligence he can be found. If there is no personal representative, notice may be sent to the last residence or last place of business of the deceased. (Rev., s. 2248; 1899, c. 733, s. 98; C. S. 3080.)

§ 25-106. Notice to partners.—When the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. (Rev., s. 2249; 1899, c. 733, s. 99; C. S. 3081.)

§ 25-107. Notice to persons jointly liable.—Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others. (Rev., s. 2250; 1899, c. 733, s. 100; C. S. 3082.)

§ 25-108. Notice to bankrupt.—Where a party has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee. (Rev., s. 2251; 1899, c. 733, s. 101; C. S. 3083.)

§ 25-109. Time within which notice must be given.—Notice may be given as soon as the instrument is dishonored, and, unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter. (Rev., s. 2252; 1899, c. 733, s. 102; C. S. 3084.)

§ 25-110. Notice where parties reside in the same place.—When the person giving and the person to receive notice reside in same place notice must be given within the following times: (1) If given at the place of business of the person to receive notice it must be given before the close of business hours on the day following; (2) if given at his residence it must be given before the usual hours of rest on the day following; (3) if sent by mail it must be deposited in the post office in time to reach him in the usual course on the day following. (Rev., s. 2253; 1899, c. 733, s. 103; C. S. 3085.)

§ 25-111. Notice where parties reside in different places.—Where the person giving and the person to receive notice reside in different places the notice must be given within the following times: (1) If sent by mail it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the post office, then within the time that notice would have been received in due course of mail if it had been deposited in the post office within the time specified in the last subdivision. (Rev., s. 2254; 1899, c. 733, s. 104; C. S. 3086.)

§ 25-112. When sender deemed to have given due notice.—Where notice of dishonor is duly addressed and deposited in the post office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. (Rev., s. 2255; 1899, c. 733, s. 105; C. S. 3087.)

§ 25-113. What constitutes deposit in postoffice.—Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter-box under the control of the postoffice department. (Rev., s. 2256; 1899, c. 733, s. 106; C. S. 3088.)

§ 25-114. Time of notice to antecedent parties.—Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. (Rev., s. 2257; 1899, c. 733, s. 107; C. S. 3089.)

§ 25-115. Where notice must be sent.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence or to the postoffice where he is accustomed to receive his letters; or (2) if he lives in one place and has his place of business in another, notice may be sent to either place; or (3) if he be sojourning in another place notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this chapter it will be sufficient, though not sent in accordance with requirements of this section. (Rev., s. 2258; 1899, c. 733, s. 108; C. S. 3090.)

§ 25-116. Waiver of notice.—Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied. (Rev., s. 2259; 1899, c. 733, s. 109; C. S. 3091.)

§ 25-117. Who affected by waiver.—Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only. (Rev., s. 2260; 1899, c. 733, s. 110; C. S. 3092.)

§ 25-118. Waiver of protest.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor. (Rev., s. 2261; 1899, c. 733, s. 111; C. S. 3093.)

§ 25-119. When notice is dispensed with.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. (Rev., s. 2262; 1899, c. 733, s. 112; C. S. 3094.)

§ 25-120. Delay in giving notice.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. (Rev., s. 2263; 1899, c. 733, s. 113; C. S. 3095.)

§ 25-121. When notice need not be given to drawer.—Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and the drawee are the same person; (2) Where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment. (Rev., s. 2264; 1899, c. 733, s. 114; C. S. 3096.)

§ 25-122. When notice need not be given to indorser.—Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) where the indorser is the person to whom the instrument is presented for payment; (3) where the instrument was made or accepted for his accommodation. (Rev., s. 2265; 1899, c. 733, s. 115; C. S. 3097.)

§ 25-123. Notice of nonpayment where acceptance refused.—Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary unless in the meantime the instrument has been accepted. (Rev., s. 2266; 1899, c. 733, s. 116; C. S. 3098.)

§ 25-124. Effect of omission to give notice of nonacceptance.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. (Rev., s. 2267; 1899, c. 733, s. 117; C. S. 3099.)

§ 25-125. When protest need not be made; when it must be made.—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be, but protest is not required except in the case of foreign bills of exchange. (Rev., s. 2268; 1899, c. 733, s. 118; C. S. 3100.)

Art. 9. Discharge.

§ 25-126. How instrument discharged.—A negotiable instrument is discharged (1) by payment in due course by or on behalf of the principal debtor; (2) by payment in due course by the party accommodated, where the instrument is made or accepted for accommodation; (3) by the intentional cancellation thereof by the holder; (4) by any other act which will discharge a simple contract for the payment of money; (5) when the principal debtor becomes the holder of the instrument at or after maturity in his own right. (Rev., s. 2269; 1899, c. 733, s. 119; C. S. 3101.)

§ 25-127. Discharge of person secondarily liable.—A person secondarily liable on the instrument is discharged (1) by any act which discharges the instrument; (2) by the intentional cancellation of his signature by the holder; (3) by the discharge of a prior party; (4) by a valid tender of payment made by a prior party; (5) by a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved; (6) by any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved. (Rev., s. 2270; 1899, c. 733, s. 120; C. S. 3102.)

§ 25-128. Right of party paying instrument.—When the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except (1) where it is payable to the order of the third person and has been paid by the drawer; and (2) where it was made or accepted for accommodation and has been paid by the party accommodated. (Rev., s. 2271; 1899, c. 733, s. 121; C. S. 3103.)

§ 25-129. Renunciation by holder.—The holder may expressly renounce his rights against any party to the instrument before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. (Rev., s. 2272; 1899, c. 733, s. 122; C. S. 3104.)

§ 25-130. Unintentional cancellation; burden of proof.—A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative, but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority. (Rev., s. 2273; 1899, c. 733, s. 123; C. S. 3105.)

§ 25-131. Effect of alteration of instrument.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration he may enforce payment thereof according to its original tenor. (Rev., s. 2274; 1899, c. 733, s. 124; C. S. 3106.)

§ 25-132. What constitutes a material alteration.—Any alteration which changes (1) the date; (2) the sum payable either for principal or interest; (3) the time or place of payment; (4) the number or the relation of the parties; (5) the medium or currency in which payment is to be made;

or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. (Rev., s. 2275; 1899, c. 733, s. 125; C. S. 3107.)

Art. 10. Bills of Exchange.

§ 25-133. Bill of exchange defined.—A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. (Rev., s. 2276; 1899, c. 733, s. 126; C. S. 3108.)

§ 25-134. Bill not an assignment of funds in hands of drawee.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. (Rev., s. 2277; 1899, c. 733, s. 127; C. S. 3109.)

§ 25-135. Bill addressed to more than one drawee.—A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or in succession. (Rev., s. 2278; 1899, c. 733, s. 128; C. S. 3110.)

§ 25-136. Inland and foreign bills of exchange.—An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill. (Rev., s. 2279; 1899, c. 733, s. 129; C. S. 3111.)

§ 25-137. When bill may be treated as promissory note.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. (Rev., s. 2280; 1899, c. 733, s. 130; C. S. 3112.)

§ 25-138. Referee in case of need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need: that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. (Rev., s. 2281; 1899, c. 733, s. 131; C. S. 3113.)

Art. 11. Acceptance.

§ 25-139. Acceptance defined; how made.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. (Rev., s. 2282; 1899, c. 733, s. 132; C. S. 3114.)

§ 25-140. Holder entitled to acceptance on face of bill.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored. (Rev., s. 2283; 1899, c. 733, s. 133; C. S. 3115.)

§ 25-141. Acceptance by separate instrument.—Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. (Rev., s. 2284; 1899, c. 733, s. 134; C. S. 3116.)

§ 25-142. When promise to accept equivalent to acceptance.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. (Rev., s. 2285; 1899, c. 733, s. 135; C. S. 3117.)

§ 25-143. Time allowed drawee to accept.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill, but the acceptance, if given, dates as of the day of presentation. (Rev., s. 2286; 1899, c. 733, s. 136; C. S. 3118.)

§ 25-144. Liability of drawee retaining or destroying bill.—Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same. (Rev., s. 2287; 1899, c. 733, s. 137; C. S. 3119.)

§ 25-145. Acceptance of incomplete bill. — A bill may be accepted before it has been signed by the drawer or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. (Rev., s. 2288; 1899, c. 733, s. 138; C. S. 3120.)

§ 25-146. Kinds of acceptances.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. (Rev., s. 2289; 1899, c. 733, s. 139; C. S. 3121.)

§ 25-147. What constitutes a general acceptance.—An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only, and not elsewhere. (Rev., s. 2290; 1899, c. 733, s. 140; C. S. 3122.)

§ 25-148. What constitutes a qualified acceptance.—An acceptance is qualified which is (1) conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn; (3) local; that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of the drawees, but not of all. (Rev., s. 2291; 1899, c. 733, s. 141; C. S. 3123.)

§ 25-149. Rights of parties as to qualified acceptance.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. When a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance he must, within a reasonable time, express his dissent to the holder or he will be deemed to have assented thereto. (Rev., s. 2292; 1899, c. 733, s. 142; C. S. 3124.)

Art. 12. Presentment for Acceptance.

§ 25-150. When presentment for acceptance must be made. — Presentment for acceptance must be made (1) where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) where the bill expressly stipulates that it shall be presented for acceptance; or (3) where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable. (Rev., s. 2293; 1899, c. 733, s. 143; C. S. 3125.)

§ 25-151. Failure to present in reasonable time discharges drawer and indorsers. — Except as herein otherwise provided the holder of a bill which is required by § 25-71 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so the drawer and all indorsers are discharged. (Rev., s. 2294; 1899, c. 733, s. 144; C. S. 3126.)

§ 25-152. How presentment made. — Presentment for acceptance must be made by or on behalf of the holder, at a reasonable hour on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and (1) where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) where the drawee is dead, presentment may be made to his personal representative; (3) where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. (Rev., s. 2295; 1899, c. 733, s. 145; C. S. 3127.)

§ 25-153. On what days presentment may be made.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of this chapter. (Rev., s. 2296; 1899, c. 733, s. 146; 1909, c. 800, s. 1; C. S. 3128.)

§ 25-154. Presentment where time is insufficient.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. (Rev., s. 2297; 1899, c. 733, s. 147; C. S. 3129.)

§ 25-155. Where presentment is excused.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases: (1) Where the drawee is dead or has absconded or is a fictitious person or a person not having capacity to contract by bill; (2) where after the exercise of reasonable diligence presentment cannot be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground. (Rev., s. 2298; 1899, c. 733, s. 148; C. S. 3130.)

§ 25-156. When dishonored by nonacceptance.—A bill is dishonored by nonacceptance (1) when it is duly presented for acceptance and such an acceptance as is prescribed in this chapter is refused or cannot be obtained; or (2) when a presentment for acceptance is excused and the bill is not accepted. (Rev., s. 2299; 1899, c. 733, s. 149; C. S. 3131.)

§ 25-157. Duty of holder, where bill not accepted.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. (Rev., s. 2300; 1899, c. 733, s. 150; C. S. 3132.)

§ 25-158. Rights of holder, where bill not accepted.—When a bill is dishonored by nonacceptance an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary. (Rev., s. 2301; 1899, c. 733, s. 151; C. S. 3133.)

Art. 13. Protest.

§ 25-159. In what cases protest necessary.—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance; and where such a bill which had not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest in case of dishonor is unnecessary. (Rev., s. 2302; 1899, c. 733, s. 152; C. S. 3134.)

§ 25-160. How protest made.—The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify (1) the time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. (Rev., s. 2303; 1899, c. 733, s. 153; C. S. 3135.)

§ 25-161. By whom protest made.—Protest may be made by (1) a notary public; or (2) by any

respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. Rev., s. 2304; 1899, c. 733, s. 154; C. S. 3136.)

§ 25-162. When protest to be made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted the protest may be subsequently extended as of the date of the noting. (Rev., s. 2305; 1899, c. 733, s. 155; C. S. 3137.)

§ 25-163. Where protest made.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for the payment to or demand on the drawee is necessary. (Rev., s. 2306; 1899, c. 733, s. 156; C. S. 3138.)

§ 25-164. Protest both for nonacceptance and nonpayment.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. (Rev., s. 2307; 1899, c. 733, s. 157; C. S. 3139.)

§ 25-165. Protest before maturity, where acceptor insolvent.—Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. (Rev., s. 2308; 1899, c. 733, s. 158; C. S. 3140.)

§ 25-166. When protest dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. (Rev., s. 2309; 1899, c. 733, s. 159; C. S. 3141.)

§ 25-167. Protest where bill is lost.—Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. (Rev., s. 2310; 1899, c. 733, s. 160; C. S. 3142.)

Art. 14. Acceptance for Honor.

§ 25-168. When a bill may be accepted for honor.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party. (Rev., s. 2311; 1899, c. 733, s. 161; C. S. 3143.)

§ 25-169. How acceptance for honor made.—An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (Rev., s. 2312; 1899, c. 733, s. 162; C. S. 3144.)

§ 25-170. When deemed an acceptance for honor of drawer. — Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. (Rev., s. 2313; 1899, c. 733, s. 163; C. S. 3145.)

§ 25-171. Liability of acceptor for honor.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (Rev., s. 2314; 1899, c. 733, s. 164; C. S. 3146.)

§ 25-172. Agreement of acceptor for honor.—The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee; and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. (Rev., s. 2315; 1899, c. 733, s. 165; C. S. 3147.)

§ 25-173. Maturity of bill payable after sight accepted for honor.—Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. (Rev., s. 2316; 1899, c. 733, s. 166; C. S. 3148.)

§ 25-174. Protest of bill accepted for honor.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. (Rev., s. 2317; 1899, c. 733, s. 167; C. S. 3149.)

§ 25-175. How presentment for payment to acceptor for honor made.—Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity; (2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time in this chapter specified. (Rev., s. 2318; 1899, c. 733, s. 168; C. S. 3150.)

§ 25-176. When delay in making presentment excused.—The provisions of § 25-87 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. (Rev., s. 2319; 1899, c. 733, s. 169; C. S. 3151.)

§ 25-177. Dishonor of bill by acceptor for honor.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. (Rev., s. 2320; 1899, c. 733, s. 170; C. S. 3152.)

Art. 15. Payment for Honor.

§ 25-178. Who may make payment for honor.—Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon or

for the honor of the person for whose account it was drawn. (Rev., s. 2321; 1899, c. 733, s. 171; C. S. 3153.)

§ 25-179. How payment for honor must be made.—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it. (Rev., s. 2322; 1899, c. 733, s. 172; C. S. 3154.)

§ 25-180. Declaration before payment for honor.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. (Rev., s. 2323; 1899, c. 733, s. 173; C. S. 3155.)

§ 25-181. Preference of parties offering to pay for honor.—Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill is to be given the preference. (Rev., s. 2324; 1899, c. 733, s. 174; C. S. 3156.)

§ 25-182. Effect on subsequent parties, where bill is paid for honor.—Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. (Rev., s. 2325; 1899, c. 733, s. 175; C. S. 3157.)

§ 25-183. Where holder refuses to receive payment supra protest.—Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment. (Rev., s. 2326; 1899, c. 733, s. 176; C. S. 3158.)

§ 25-184. Rights of payer for honor.—The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest. (Rev., s. 2327; 1899, c. 733, s. 177; C. S. 3159.)

Art. 16. Bills in a Set.

§ 25-185. Bills in a set constitute one bill.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. (Rev., s. 2328; 1899, c. 733, s. 178; C. S. 3160.)

§ 25-186. Rights of holders, where different parts are negotiated.—Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. (Rev., s. 2329; 1899, c. 733, s. 179; C. S. 3161.)

§ 25-187. Liability of holder who indorses two or more parts of a set to different persons.—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as is such parts were separate bills. (Rev., s. 2330; 1899, c. 733, s. 180; C. S. 3162.)

§ 25-188. Acceptance of bills drawn in sets.—The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. (Rev., s. 2331; 1899, c. 733, s. 181; C. S. 3163.)

§ 25-189. Payment by acceptor of bills drawn in sets.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. (Rev., s. 2332; 1899, c. 733, s. 182; C. S. 3164.)

§ 25-190. Effect of discharging one of a set.—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. (Rev., s. 2333; 1899, c. 733, s. 183; C. S. 3165.)

Art. 17. Promissory Notes and Checks.

§ 25-191. Negotiable promissory note defined.—A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him. (Rev., s. 2334; 1899, c. 733, s. 184; C. S. 3166.)

§ 25-192. Check defined.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided the provisions of this chapter that are applicable to a bill of exchange payable on demand apply to a check. (Rev., s. 2335; 1899, c. 733, s. 185; C. S. 3167.)

§ 25-193. Within what time a check must be presented.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. (Rev., s. 2336; 1899, c. 733, s. 186; C. S. 3168.)

§ 25-194. Bank may refuse to honor check more than six months old in the absence of contrary instructions.—Where a check or other instrument payable on demand at any bank or trust company doing business in this State is presented for payment more than six months from its date, such bank or trust company, may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by non-payment. (1929, c. 341, s. 3; C. S. 3168.)

§ 25-195. Effect of certification of check.—Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance. (Rev., s. 2337; 1899, c. 733, s. 187; C. S. 3169.)

§ 25-196. Effect, where holder of check procures

it to be certified.—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. (Rev., s. 2338; 1899, c. 733, s. 188; C. S. 3170.)

§ 25-197. Check not assignment of funds.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. (Rev., s. 2339; 1899, c. 733, s. 189; C. S. 3171.)

§ 25-198. When stop-payment order given to bank expires.—No revocation, countermand or stop-payment order relating to the payment of any check or draft against an account of a depositor in any bank or trust company doing business in this State shall remain in effect for more than six months after the service thereof on the bank, unless the same be renewed, which renewals shall be in writing and which renewals shall be in effect for not more six months from date of service thereof on the bank or trust company, but such renewals may be made from time to time. (1929, c. 341, s. 1.)

§ 25-199. Application to present orders. — No notice affecting a check upon which revocation, countermand or stop-payment order has been made prior to March 19, 1929, shall be deemed to continue for a period of more than six months thereafter. (1929, c. 341, s. 2.)

Chapter 26. Suretyship.

Sec.

26-1. Surety and principal distinguished in judgment and execution.
26-2. Principal liable on execution before surety.
26-3. Summary remedy of surety against principal.
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26-5. Contribution among sureties.
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26-9. Failure of creditor to sue discharges surety; exceptions.
26-10. Cancellation of contract of suretyship in case of common carrier and employee.
26-11. Cancellation of judgment as to surety.

§ 26-1. Surety and principal distinguished in judgment and execution.—In the trial of actions upon contracts either of the defendants may show in evidence that he is surety, and if it be satisfactorily shown, the jury in their verdict, or the justice of the peace in his judgment, shall distinguish the principal and surety, which shall be indorsed on the execution by the clerk or justice of the peace issuing it. (Rev., s. 2840; Code, s. 2100; R. C., c. 31, s. 124; 1826, c. 31, s. 1; C. S. 3961.)

§ 26-2. Principal liable on execution before surety.—When an execution, indorsed as aforesaid, shall come to the hands of any officer for collection, he shall levy on all the property of the principal, or so much thereof as shall be necessary to satisfy the execution, and, for want of sufficient property of the principal, also on the property of the surety, and make sale of all the property of the principal levied on before that of the surety. (Rev., s. 2841; Code, s. 2101; R. C., c. 31, s. 125; 1826, c. 31, s. 2; C. S. 3962.)

§ 26-3. Summary remedy of surety against principal.—Any person who may have paid money for and on account of those for whom he became surety, upon producing to the superior court, or any justice of the peace having jurisdiction of the same, a receipt, and showing that an execution has issued, and he has satisfied the same, and making it appear by sufficient testimony that he has laid out and expended any sum of money as the surety of such person, may move the court or justice of the peace, as the case may be, for judgment against his principal for the amount which he has actually paid; a citation having previously issued against the principal to show cause why execution should not be awarded; and should the principal not show sufficient cause, the court or justice shall award execution against the estate of the principal. (Rev., s. 2842; Code, s. 2093; R. C., c. 110, s. 1; 1797, c. 487, s. 1; C. S. 3963.)

§ 26-4. Subrogation of surety paying debt of deceased principal. — Whenever a surety, or his representative, shall pay the debt of his deceased principal, the claim thus accruing shall have such priority in the administration of the assets of the principal as had the debt before its payment. (Rev., s. 2843; Code, s. 2096; R. C., c. 110, s. 4; 1829, c. 23; C. S. 3964.)

§ 26-5. Contribution among sureties. — Where there are two or more sureties for the performance of a contract, and one or more of them may have been compelled to perform and satisfy the same, or any part thereof, and the principal shall be insolvent, or out of the state, such surety may have and maintain an action against every other surety for a just and ratable proportion of the sum which may have been paid as aforesaid, whether of principal, interest or cost. (Rev., s. 2844; Code, s. 2094; R. C., c. 110, s. 2; 1807, c. 722; C. S. 3965.)

§ 26-6. Dissenting surety not liable to surety on stay of execution.—Whenever any judgment shall be obtained before a justice against a principal and his surety, and the principal debtor shall desire to stay the execution thereon, but the surety is unwilling that such stay shall be had, the surety may cause his dissent thereto to be entered

by the justice, which shall absolve him from all liability to the surety who may stay the same. And the constable or other officer, who may have the collection of the debt, shall make the money out of the property of the principal debtor, and that of the surety for the stay of execution, if he can, before he shall sell the property of the surety before judgment. (Rev., s. 2845; Code, s. 2095; R. C. c. 110, s. 3; 1829, c. 6, ss. 1, 2; C. S. 3966.)

§ 26-7. Surety may notify creditor to sue.—In all cases where any surety or indorser on any note, bill, bond, or other written obligation shall consider himself in danger of loss in consequence of his contingent liability, either from the insolvency or misconduct of the principal, in the note, bill, bond, or other written obligation, or from the negligence of the payee or holder of any such instrument, it shall be lawful for such surety or indorser, at any time after such note, bill, bond, or other written obligation becomes due and payable, to cause written notice to be given to the payee or holder of any such paper or obligation, requiring him to bring suit on such obligation, and to use all reasonable diligence to save harmless such surety or indorser: Provided, nothing herein contained shall apply to official bonds, or bonds given by any person acting in a fiduciary capacity. (Rev., s. 2846; Code, s. 2097; 1868-9, c. 232, s. 1; C. S. 3967.)

§ 26-8. How notice served.—Such notice shall be served by the sheriff or his deputy, who shall return it to the party for whose benefit the notice was issued, which shall be evidence of the fact in all courts. (Rev., s. 2848; Code, s. 2099; 1868-9, c. 232, s. 3; C. S. 3968.)

§ 26-9. Failure of creditor to sue discharges surety; exceptions.—Should the payee or holder of any such note, bond, bill, or other written obligation refuse or fail, within thirty days from the service of such notice, to bring suit in the appropriate court in an effort to save harmless such surety or indorser, such refusal or failure to sue shall operate as a discharge of such surety or indorser, from all liability whatever, on any such note, bond, bill, or other written obligation: Provided, that this notice shall not have the effect to discharge from liability any cosurety who does not join in such notice, or who has not given a separate notice: Provided further, that this and § 26-8 shall not apply to holders of such note, bond, bill, or obligation, who hold the same as collateral security or in trust. (Rev., s. 2847; Code, s. 2098; 1868-9, c. 232, s. 2; C. S. 3969.)

§ 26-10. Cancellation of contract of suretyship in case of common carrier and employee.—Whenever an employee of a common carrier authorized to do business in this state is required to give a bond or undertaking of any nature whatever with a bonding company or companies, as surety thereon, any such employee who shall have given such bond or undertaking shall, upon the breach of any of the conditions thereof by the other party or parties thereto, have the power to cancel the same by giving the surety or sureties thereon, for the benefit of whom same shall have been made, at least ten days notice in writing, setting out in full the reason for canceling the same. Any such notice to a company, corporation or association may be served by leaving the same with any person upon whom service of legal process upon such company, corporation or association may be had. Any surety on any such bond or undertaking shall, upon the breach of any of the conditions thereof by the common carrier employee for whom same shall have been made, have power to cancel the same by giving such employee at least ten days notice in writing, and, upon demand, set out in full the reasons for canceling same, the notice to be signed by an agent or manager of such surety. Nothing herein shall affect any right of action accruing to any person upon the breach of a contract; nor shall any bonding company furnishing the information which causes it to withdraw from the bond be liable in any action at the instance of the party aggrieved for damages, nor be required to disclose to the party aggrieved the sources of information that caused it to withdraw from the bond. But any bonding company may be required to give evidence in any action brought by the party aggrieved against the party or person furnishing the information causing the company to withdraw as surety.

Any person, officer or manager, company, corporation, association or firm who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than five hundred dollars nor more than one thousand dollars. (1913, c. 17; C. S. 3970.)

§ 26-11. Cancellation of judgment as to surety.—Whenever a judgment shall be rendered in any court in accordance with the provisions of § 26-1 and the surety, endorser or other person shown in said judgment to be secondarily liable thereon and having the rights as by this chapter prescribed against the person or persons primarily liable, and the surety, endorser or other person so shown in the judgment to be secondarily liable, shall pay the said judgment or shall be compelled to pay an execution issued thereon and such fact shall appear to the satisfaction of the clerk of the Superior Court of the county in which the said judgment is rendered and docketed, such judgment shall be canceled as to said surety, endorser or other person secondarily liable and shall cease to be a lien upon his real estate and other property, but such cancellation shall not have the force and effect nor operate as a cancellation and discharge of the judgment as to any other person against whom the said judgment shall be rendered and the person so paying the said judgment shall have all the rights given to a surety who has been compelled to pay a judgment against the principal debtor and cosureties which are given in this chapter, notwithstanding the cancellation of the said judgment as herein provided for. (1925, c. 38.)

Chapter 27. Warehouse Receipts.

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Art. 1. General Provisions.

§ 27-1. Name of chapter.—This chapter may be cited as the Uniform Warehouse Receipts act. (1917, c. 37, s. 62; C. S. 4036.)

§ 27-2. Terms defined.—In this chapter, unless the context or subject-matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership of two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preëxisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. (1917, c. 37, s. 58; C. S. 4037.)

§ 27-3. Uniform construction. — This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1917, c. 37, s. 57; C. S. 4038.)

§ 27-4. General law applied.—In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepre-

sentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (1917, c. 37, s. 56; C. S. 4039.)

Art. 2. Issue of Warehouse Receipts.

§ 27-5. Who may issue receipts. — Warehouse receipts may be issued by any warehouseman. (1917, c. 37, s. 1; C. S. 4041.)

§ 27-6. What receipt must contain. — Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

1. The location of the warehouse where the goods are stored.
2. The date of issue of the receipt.
3. The consecutive number of the receipt.
4. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.
5. The rate of storage charges.
6. A description of the goods or of the packages containing them.
7. The signature of the warehouseman, which may be made by his authorized agent.
8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is at the time of the issue of the receipt unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred, and the purpose thereof, is sufficient. A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required. (Rev., s. 3032; 1917, c. 37, s. 2; C. S. 4042.)

§ 27-7. Other terms inserted; exceptions. — A warehouseman may insert in a receipt issued by him any other terms and conditions, provided that such terms and conditions shall not—

1. Be contrary to the provisions of this chapter.
2. In anywise impair his obligation to exercise that degree of care in the safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (1917, c. 37, s. 3; C. S. 4043.)

§ 27-8. Nonnegotiable receipts. — A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. (1917, c. 37, s. 4; C. S. 4044.)

§ 27-9. Nonnegotiable receipts marked. — A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. (Rev., s. 3032; 1917, c. 37, s. 7; C. S. 4045.)

§ 27-10. Negotiable receipts. — A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provisions shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void. (Rev., s. 3032; 1917, c. 37, s. 5; C. S. 4046.)

§ 27-11. Duplicate negotiable receipts.—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. (1917, c. 37, s. 6; C. S. 4047.)

Art. 3. Obligations and Rights of Warehousemen on Receipts.

§ 27-12. Delivery of goods on proper demand.—A warehouseman, in the absence of some lawful excuse provided by this chapter, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

1. An offer to satisfy the warehouseman's lien;
2. An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and
3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. (1917, c. 37, s. 8; C. S. 4048.)

§ 27-13. To whom goods may be delivered.—A warehouseman is justified in delivering the goods, subject to the provisions of §§ 27-14, 27-15, and 27-16, to one who is—

1. The person lawfully entitled to the possession of the goods, or his agent;
2. A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods or who has written authority from the person so entitled, either indorsed upon the receipt or written upon another paper; or
3. A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. (1917, c. 37, s. 9; C. S. 4049.)

§ 27-14. Liability for wrong delivery.—Where a warehouseman delivers the goods to one who

is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (2) and (3) of the preceding section, and though he delivered the goods as authorized by said subdivisions, he shall be so liable if prior to such delivery he had either—

1. Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or
2. Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. (1917, c. 37, s. 10; C. S. 4050.)

§ 27-15. Liability on receipt not taken up on delivery.—Except as hereafter provided in this article, when the goods may have been sold to satisfy warehouseman's charges or because of their perishable or hazardous nature, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable, to any one who purchases for value and in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. (1917, c. 37, s. 11; C. S. 4051.)

§ 27-16. Liability on receipt for partial delivery.—Except when goods may have been sold to satisfy warehouseman's lien or because of their perishable or hazardous nature, as hereafter provided in this article, where a warehouseman delivers a part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel the receipt or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. (1917, c. 37, s. 12; C. S. 4052.)

§ 27-17. Effect of alteration of receipt.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

1. Immaterial,
2. Authorized, or
3. Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. (1917, c. 37, s. 13; C. S. 4053.)

§ 27-18. Delivery in case of lost receipt.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also, in its discretion, order the payment of the warehouseman's reasonable costs. The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (1917, c. 37, s. 14; C. S. 4054.)

§ 27-19. Effect of issuing duplicate receipt.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. (1917, c. 37, s. 15; C. S. 4055.)

§ 27-20. Claim of title no defense for nondelivery; exceptions.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (1917, c. 37, s. 16; C. S. 4056.)

§ 27-21. Interpleader in conflicting claims.—If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate, require all known claimants to interplead. (1917, c. 37, s. 17; C. S. 4057.)

§ 27-22. Reasonable time to investigate conflicting claims.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (1917, c. 37, s. 18; C. S. 4058.)

§ 27-23. Title in third person no defense; ex-

ceptions.—Except as provided in §§ 27-21 and 27-22 and except when the goods may have been delivered to the person authorized to have such delivery, as heretofore provided in this article, or when the goods may have been sold to satisfy the warehouseman's lien or because of their perishable or hazardous nature, as hereafter provided in this article, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. (1917, c. 37, s. 19; C. S. 4059.)

§ 27-24. Failure to deliver goods as described.—A warehouseman shall be liable to the holder of a receipt issued by him or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of warehouse receipts, for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. (1917, c. 37, s. 20; 1931, c. 358, s. 1; C. S. 4060.)

§ 27-25. Liability for negligence.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise; but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. (1917, c. 37, s. 21; C. S. 4061.)

§ 27-26. Goods kept separate.—Except as provided in § 27-27, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. (1917, c. 37, s. 22; C. S. 4062.)

§ 27-27. Effect of confusion of goods.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. (Rev., s. 3034; 1917, c. 37, s. 23; C. S. 4063.)

§ 27-28. Liability of warehouseman when goods confused.—The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. (1917, c. 37, s. 24; C. S. 4064.)

§ 27-29. Goods not subject to attachment or execution.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. (1917, c. 37, s. 25; C. S. 4065.)

§ 27-30. Creditor's remedy against receipt.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (1917, c. 37, s. 26; C. S. 4066.)

§ 27-31. Warehouseman's lien.—Subject to the subsequent provisions of this article specifying what liens may be enforced against a negotiable receipt, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. (1917, c. 37, s. 27; C. S. 4067.)

§ 27-32. Against what goods lien enforced.—Subject to the subsequent provisions of this article specifying what liens may be enforced against a negotiable receipt, a warehouseman's lien may be enforced—

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. (1917, c. 37, s. 28; C. S. 4068.)

§ 27-33. Loss of lien.—A warehouseman loses his lien upon goods—

1. By surrendering possession thereof, or

2. By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this chapter. (1917, c. 37, s. 29; C. S. 4069.)

§ 27-34. What liens enforced against negotiable

receipts. — If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerate other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms for a warehouseman's lien as heretofore provided in this article, although the amount of the charges so enumerated is not stated in the receipt. (1917, c. 37, s. 30; C. S. 4070.)

§ 27-35. Right to retain until liens satisfied.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. (1917, c. 37, s. 31; C. S. 4071.)

§ 27-36. Other legal remedies for warehouseman.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. (1917, c. 37, s. 32; C. S. 4072.)

§ 27-37. Enforcement of liens.—A warehouseman's lien for a claim which has become due may be satisfied as follows:

1. Notice given. The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

a. An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

b. A brief description of the goods against which the lien exists;

c. A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered or from the time when the notice should reach its destination according to the due course of post if the notice is sent by mail; and

d. A statement that unless the claims are paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

2. Sale of goods. In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

3. Right of claimant to pay charges. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this chapter, to the possession of the goods on payment of charges thereon. Otherwise, the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. (Rev., ss. 3036, 3037, 3038; 1917, c. 37, s. 33; C. S. 4073.)

§ 27-38. Sale of perishable goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods and to remove them from the warehouse; and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of § 27-37. (Rev., ss. 3039, 3040; 1917, c. 37, s. 34; C. S. 4074.)

§ 27-39. Other remedies not excluded. — The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. (Rev., s. 3041; 1917, c. 37, s. 35; C. S. 4075.)

§ 27-40. Liability discharged by sale for liens.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor or owner of the goods, or

to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. (1917, c. 37, s. 36; C. S. 4076.)

Art. 4. Negotiation and Transfer of Receipts.

§ 27-41. Negotiation by delivery.—A negotiable receipt may be negotiated by delivery—

1. Where by the terms of the receipt the warehouseman undertakes to deliver the goods to the bearer; or

2. Where by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where by the terms of a negotiable receipt the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. (1917, c. 37, s. 37; C. S. 4077.)

§ 27-42. Negotiation by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are by the terms of the receipt deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner. (1917, c. 37, s. 38; C. S. 4078.)

§ 27-43. Transfer of nonnegotiable receipts.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right. (1917, c. 37, s. 39; C. S. 4079.)

§ 27-44. Who may negotiate a receipt.—A negotiable receipt may be negotiated by any person in possession of the same however such possession may have been acquired, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of such person or if at the time of negotiation the receipt is in such form that it may be negotiated by delivery. (1917, c. 37, s. 40; 1931, c. 358, s. 2; C. S. 4080.)

§ 27-45. Rights acquired by negotiation. — A person to whom a negotiable receipt has been duly negotiated acquires thereby—

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. (1917, c. 37, s. 41; C. S. 4081.)

§ 27-46. Rights acquired by transfer.—A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferrer, the title of the goods, subject to the terms of any agreement with the transferrer. If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferrer or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. (1917, c. 37, s. 42; C. S. 4082.)

§ 27-47. Right to compel indorsement.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (1917, c. 37, s. 43; C. S. 4083.)

§ 27-48. Warranties in negotiation and transfer.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

1. That the receipt is genuine;

2. That he has a legal right to negotiate or transfer it;

3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and

4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a receipt the goods represented thereby. (1917, c. 37, s. 44; C. S. 4084.)

§ 27-49. Indorser not liable for failure of prior parties.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. (1917, c. 37, s. 45; C. S. 4085.)

§ 27-50. No warranty by collection of debt secured by receipt. — A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. (1917, c. 37, s. 46; C. S. 4086.)

§ 27-51. Rights of bona fide holder not affected by fraud.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, or duress or conversion. (1917, c. 37, s. 47; 1931, c. 358, s. 3; C. S. 4087.)

§ 27-52. Subsequent purchasers protected. — Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. (1917, c. 37, s. 48; C. S. 4088.)

§ 27-53. Right of purchaser superior to seller's lien.—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. (1917, c. 37, s. 49; C. S. 4089.)

Art. 5. Criminal Offenses.

§ 27-54. Issuing receipt for goods not stored.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (1917, c. 37, s. 50; C. S. 4090.)

§ 27-55. Issuing receipt with false statement.—A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (1917, c. 37, s. 51, C. S. 4091.)

§ 27-56. Issuing fraudulent duplicates.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings for delivery as heretofore provided in this chapter, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (1917, c. 37, s. 52; C. S. 4092.)

§ 27-57. Failure to state in receipt the interest of warehouseman.—Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (1917, c. 37, s. 53; C. S. 4093.)

§ 27-58. Delivering goods without obtaining receipt. — A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, except in the cases heretofore provided for in this chapter for the delivery of goods upon a lost receipt and for the sale of goods to satisfy the warehouseman's lien or because of their perishable or hazardous nature, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (1917, c. 37, s. 54; C. S. 4094.)

§ 27-59. Fraudulent deposit and negotiation.—Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (1917, c. 37, s. 55; C. S. 4095.)

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Art. 1. Probate Jurisdiction.

§ 28-1. Clerk of superior court has probate jurisdiction.—The clerk of the superior court of each county has jurisdiction, within his county, to take proof of wills and to grant letters testamentary, letters of administration with the will annexed, and letters of administration in cases of intestacy, in the following cases:

1. Where the decedent at, or immediately previous to, his death was domiciled in the county of such clerk, in whatever place such death may have happened.

2. Where the decedent at his death had his fixed place of domicile in more than one county, the clerk of any such county has jurisdiction.

3. Where the decedent, not being domiciled in this state, died out of the state, leaving assets in the county of such clerk, or assets of such decedent thereafter come into the county of such clerk.

4. Where the decedent, not being domiciled in this state, died in the county of such clerk, leaving assets in the state, or assets of such decedent thereafter come into the state.

Provided, that in all cases where the clerk of the superior court is interested in an estate, the judge of the superior court resident in the district or the judge of the superior court holding the courts of the county by regular or special assignment shall have jurisdiction to take proof of wills and grant letters testamentary, letters of administration with the will annexed and letters of administration in cases of intestacy, to audit and approve the accounts of executors and administrators, to make orders and to do any and all things in connection with the administration of estates which the clerk of the superior court might or could have done, had he not been interested in the estate. (Rev., s. 16; Code, s. 1374; C. C. P., s. 433; R. C., c. 46, s. 1; 1868-9, c. 113, s. 115; 1931, c. 165; C. S. 1.)

§ 28-2. Exclusive in clerk who first gains.—The clerk who first gains and exercises jurisdiction under this chapter thereby acquires sole and exclusive jurisdiction over the decedent's estate. (Rev., s. 17; Code, s. 1375; C. C. P., s. 434; C. S. 2.)

Art. 2. Necessity for Letters and Their Form.

§ 28-3. Letters must issue; immediate rights of family.—No person shall enter upon the administration of any decedent's estate until he has obtained letters therefor, under the penalty of one hundred dollars, one-half to the use of the informer and the other half to the state; but nothing herein contained shall prevent the family of the deceased from using so much of the crop, stock and provisions on hand as may be necessary, until the widow's year's support is assigned therefrom, as prescribed by law. (Rev., s. 1; Code, s. 1522; 1868-9, c. 113, s. 93; C. S. 3.)

§ 28-4. Executor de son tort.—Every person who receives goods or debts of any person dying intestate, or any release of a debt due the intestate, upon a fraudulent intent, or without such valuable consideration as amounts to the value or thereabout, is chargeable as executor of his own wrong, so far as such debts and goods, coming to his hands, or whereof he is released, will satisfy. (Rev., s. 2; Code, s. 1494; 1868-9, c. 113, s. 67; 43 Eliz., c. 8; C. S. 4.)

§ 28-5. Form of letters.—All letters must be issued in the name of the state, and tested in the name of the clerk of the superior court, signed by him, and sealed with his seal of office, and shall have attached thereto copies of the section

of this chapter requiring an inventory to be filed within three months, and of the section requiring annual accounts to be filed. (Rev., s. 36; Code, ss. 1399, 2172; C. C. P., ss. 471, 478; 1871-2, c. 46; C. S. 5.)

Art. 3. Right to Administer.

§ 28-6. Order in which persons entitled.—Letters of administration, in case of intestacy, shall be granted to the persons entitled thereto and applying for the same, in the following order:

1. To the husband or widow, except as hereinafter provided.
2. To the next of kin in the order of their degree, where they are of different degrees; if of equal degree, to one or more of them, at the discretion of the clerk.
3. To the most competent creditor who resides within the state, and proves his debt on oath before the clerk.
4. To any other person legally competent. (Rev., s. 3; Code, s. 1376; C. C. P., s. 456; R. C., c. 46, ss. 2, 3; 1868-9, c. 113, s. 115; C. S. 6.)

§ 28-7. Husband to administer wife's estate; right in surplus.—If any married woman dies wholly or partially intestate, the surviving husband shall be entitled to administer on her personal estate, and shall hold the same, subject to the claims of her creditors and others having rightful demands against her, to his own use, except as hereinafter provided. If the husband dies after his wife, but before administering, his executor or administrator or assignee shall receive the personal property of the said wife, as a part of the estate of the husband, subject as aforesaid, and except as provided by law. (Rev., s. 4; Code, s. 1479; 1871-2, c. 193, s. 32; C. S. 7.)

§ 28-8. Disqualifications enumerated.—The clerk shall not issue letters of administration or letters testamentary to any person who, at the time of appearing to qualify—

1. Is under the age of twenty-one years.
2. Is a nonresident of this state; but a nonresident may qualify as executor.
3. Has been convicted of a felony.
4. Is adjudged by the clerk incompetent to execute the duties of such trust by reason of drunkenness, improvidence or want of understanding.
5. Fails to take the oath or give the bond required by law.
6. Has renounced his right to qualify. (Rev., s. 5; Code, ss. 1377, 1378, 2162; C. C. P., s. 457; C. S. 8.)

§ 28-9. Effect of disqualification of person entitled.—Where an executor named in the will, or any person having a prior right to administer, is under the disqualification of nonage, or is temporarily absent from the state, such person is entitled to six months, after coming of age or after his return to the state, in which to make application for letters testamentary, or letters of administration. (Rev., s. 6; Code, ss. 1379, 2165; C. C. P., ss. 452, 460; R. C., c. 46, s. 12; C. S. 9.)

§ 28-10. Divorce a vinculo or felonious slaying is forfeiture.—When a marriage is dissolved a vinculo, the parties respectively, or when either party is convicted of the felonious slaying of the other, or of being accessory before the fact of such felonious slaying, the party so convicted shall thereby lose all his or her right to administer on the estate of the other, and to a distributive share in the personal property of the other, and every right and estate in the personal estate of the other. (Rev., s. 7; Code, s. 1480; 1889, c. 499; 1871-2, c. 193, s. 42; C. S. 10.)

§ 28-11. Elopement and adultery of wife is forfeiture.—If any married woman elopes with an adulterer, and shall not be living with her husband at his death, she shall thereby lose all right to a distributive share in the personal property of her husband, and all right to administer on his estate. (Rev., s. 8; Code, s. 1481; 1871-2, c. 193, s. 44; C. S. 11.)

§ 28-12. Husband's conduct forfeiting rights in wife's estate.—If any husband shall separate himself from his wife, and be living in adultery at her death, or if she has obtained a divorce a mensa et thoro, and shall not be living with her husband at her death, or if the husband has abandoned his wife, or has maliciously turned her out of doors, and shall not be living with her at her death, he shall thereby lose all his right and estate of whatever character in and to her personal property, and all right to administer on her estate. (Rev., s. 9; Code, s. 1482; 1871-2, c. 193, s. 45; C. S. 12.)

§ 28-13. Executor may renounce.—Any person appointed an executor may renounce the office by a writing signed by him, and on the same being acknowledged or proved to the satisfaction of the clerk of the superior court, it shall be filed. (Rev., s. 10; Code, s. 2163; C. C. P., s. 450; C. S. 13.)

§ 28-14. Renunciation of prior right required.—When any person applies for administration, and any other person has prior right thereto, a written renunciation of the person or persons having such prior right must be produced and filed with the clerk. (Rev., s. 11; Code, s. 1378; C. C. P., s. 459; C. S. 14.)

§ 28-15. Failure to apply as renunciation.—If any person, entitled to letters of administration, fails or refuses to apply for such letters within thirty days after the death of the intestate, the clerk, on application of any party interested, shall issue a citation to such person to show cause, within twenty days after service of the citation, why he should not be deemed to have renounced. If, within the time named in the citation, he neglects to answer or to show cause, he shall be deemed to have renounced his right to administer, and the clerk must enter an order accordingly, and proceed to grant letters to some other person. If no person entitled to administer applies for letters of administration on the estate of a decedent within six months from his death, then the clerk may, in his discretion, deem all prior rights renounced and appoint some suitable person to administer such estate. (Rev., s. 12; Code, s. 1380; C. C. P., s. 460(a); 1868-9, c. 203; C. S. 15.)

§ 28-16. Person named as executor failing to qualify or renounce.—If any person appointed an executor does not qualify or renounce within sixty days after the will is admitted to probate, the clerk of the superior court, on the application

of any other executor named in the same will, or any party interested, shall issue a citation to such person to show cause why he should not be deemed to have renounced. If, upon service of the citation, he does not qualify or renounce within such time, not exceeding thirty days, as is allowed in the citation, an order must be entered by the clerk decreeing that such person has renounced his appointment as executor.

Where more than one executor is appointed in any last will and testament duly probated in any court of this State, and one or more of such executors shall have qualified before the clerk of such court, and the other executor or executors shall have failed, within thirty days thereafter to qualify or shall have renounced in writing, then the qualifying executor or executors shall be clothed with all the powers, rights and duties, and be subject to all the obligations imposed upon all of said executors, in and by the terms of said will and the laws of this State, in like manner as if the non-qualifying executor or executors had not been named in said will. This paragraph shall apply to all wills heretofore or hereafter probated. (Rev., s. 13; Code, s. 2164; C. C. P., s. 451; 1931, c. 183; C. S. 16.)

Art. 4. Public Administrator.

§ 28-17. Appointment and term.—There may be a public administrator in every county, appointed by the clerk of the superior court for the term of four years. (Rev., s. 18; Code, s. 1389; 1868-9, c. 113; 1925, c. 253; C. S. 17.)

§ 28-18. Oath.—The public administrator shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties of his trust; and the oath so taken and subscribed must be filed in the office of the clerk of the superior court. (Rev., s. 19; Code, s. 1393; 1868-9, c. 113, ss. 2, 5; C. S. 18.)

§ 28-19. Bond.—The public administrator shall enter into bond, payable to the state of North Carolina, with two or more sufficient sureties to be justified before and approved by the clerk, or with a duly authorized surety company, in the penal sum of four thousand dollars ($4,000.00), conditioned upon the faithful performance of the duties of his office and obedience to all lawful orders of the clerk or other court touching the administration of the several estates that may come into his hands and such bonds, if executed by individual sureties, shall be renewed every two years. Whenever the aggregate value of the personal property belonging to the several estates in the hands of the public administrator exceeds one-half of his bond, if the bond is signed by personal sureties, or three-fourths of his bond, if the bond shall be executed by a duly authorized surety company, the clerk shall require him to enlarge his bond in an amount so as to cover at all times at least double the aggregate of the assets of the estates in the hands of said public administrator if the bond is signed by personal sureties or one and one-third times the assets if the bond shall be executed by a duly authorized surety company. If the personal property of any decedent is insufficient to pay his debts and the charges of administration and it becomes necessary for the said public administrator to apply for the sale of real estate for assets, upon the signing of a judgment ordering the said sale by the clerk of the superior court, or any other court, the clerk shall include the value of the real estate proposed to be sold in the aggregate value of the property belonging to the several estates in the hands of the public administrator. Whenever the aggregate value of the personal property and the real estate that the said administrator has been authorized to sell exceeds one-half of his bond, if the bond is executed by personal surety, or three-fourths of his bond if the bond shall be executed by a duly authorized surety company, the clerk shall require him to enlarge his bond as hereinbefore provided as though the aggregate consisted only of personal property. (Rev., s. 320; Code, ss. 1390, 1391, 1392; 1868-9, c. 113, ss. 2, 3, 4; 1915, c. 216; 1941, c. 243; C. S. 19.)

§ 28-20. When to obtain letters.—The public administrator shall apply for and obtain letters on the estates of deceased persons in the following cases:

1. When the period of six months has elapsed from the death of any decedent, and no letters testamentary, or letters of administration or collection, have been applied for and issued to any person.

2. When any stranger, or person without known heirs, shall die intestate in any county.

3. When any person entitled to administration shall request, in writing, the clerk to issue the letters to the public administrator. (Rev., s. 20; Code, s. 1394; 1868-9, c. 113, s. 6; C. S. 20.)

§ 28-21. Powers generally and on expiration of term.—The public administrator shall have, in respect to the several estates in his hands, all the rights and powers, and be subject to all the duties and liabilities of other administrators. On the expiration of the term of office of a public administrator, or his resignation, he may continue to manage the several estates committed to him prior thereto until he has fully administered the same, if he then enters into a bond as required by law for administrators. (Rev., s. 21; Code, s. 1395; 1868-9, c. 113, s. 7; 1876-7, c. 239; C. S. 21.)

Art. 5. Administrator with Will Annexed.

§ 28-22. When letters c. t. a. issue.—If there is no executor appointed in the will, or if, at any time, by reason of death, incompetency adjudged by the clerk of the superior court, renunciation, actual or decreed, or removal by order of the court, or on any other account there is no executor qualified to act, the clerk of the superior court shall issue letters of administration with the will annexed to one or more of the legatees named in said will; but if no legatee qualifies, then letters may be issued to some suitable person or persons in the order prescribed in this chapter. (Rev., s. 14; Code, s. 2166; C. C. P., s. 453; 1923, c. 63; C. S. 22.)

§ 28-23. Qualifications and bond.—Administrators with the will annexed shall have the same qualifications and give the same bond as other administrators; but the executor of an executor shall not be entitled to qualify as executor of the first testator. (Rev., s. 15; Code, s. 2167; C. C. P., s. 454; 1905, c. 286; C. S. 23.)

§ 28-24. Administrator c. t. a. must observe will.—In all cases where letters of administration with

the will annexed are granted, the will of the testator must be observed and performed by the administrator with the will annexed, both in respect to real and personal property, and an administrator with the will annexed has all the rights and powers, and is subject to the same duties, as if he had been named executor in the will. (Rev., s. 3146; Code s. 2168; C. C. P., s. 455; C. S. 4170.)

Art. 6. Collectors.

§ 28-25. Appointment of collectors.—When, for any reason, a delay is necessarily produced in the admission of a will to probate, or in granting letters testamentary, letters of administration, or letters of administration with the will annexed, the clerk may issue to some discreet person or persons, at his option, letters of collection, authorizing the collection and preservation of the property of the decedent. When, for any reason, a delay is necessary in the production of positive proof of the death of any one who may have disappeared under circumstances indicating death of such person, any person interested in the estate of such person so disappearing as heir at law, prospective heir at law, a creditor, a next friend, or any other person or persons interested, either directly or indirectly, in the estate of such person so disappearing, may file with the clerk of the superior court of the county in which the person so disappearing last resided, or in case such person so disappearing was at the time of his disappearance a nonresident of the State of North Carolina, with the clerk of the superior court of any county in which any property was or might have been located at the time of such disappearance, a petition for the appointment of a collector of the estate of such person so disappearing, or the property of such person so disappearing, located within the county of the clerk to whom application is made, which petition shall set forth the facts and circumstances surrounding the disappearance of such person, and which petition shall be duly verified and supported by affidavit of persons having knowledge of the circumstances under which such person so disappeared, and if from such petition and such affidavits it should appear to the clerk that the person so disappearing is probably dead, then it shall be the duty of the clerk to so find and to issue to some discreet person or persons, at his option, letters of collection authorizing the collection and the preservation of the property of such person so disappearing. (Rev., s. 22; Code, s. 1383; C. C. P., s. 463; R. C., c. 46, s. 9; 1868-9, c. 113, s. 115; 1924, c. 43; C. S. 24.)

§ 28-26. Qualifications and bond.—Every collector shall have the qualifications and give the bond prescribed by law for an administrator. (Rev., s. 23; Code, s. 1384; C. C. P., s. 464; C. S. 25.)

§ 28-27. Powers of collectors.—Every collector has authority to collect the personal property, preserve and secure the same, and collect the debts and credits of the decedent, and for these purposes he may commence and maintain or defend suits, and he may sell, under the direction and order of the clerk, any personal property for the preservation and benefit of the estate. He may be sued for debts due by the decedent, and he may pay funeral expenses and other debts. (Rev., s. 24; Code, s. 1385; C. C. P., s. 465; R. C., c. 46, s. 6; 1868-9, c. 113, s. 115; C. S. 26.)

§ 28-28. When collector's powers cease; duty to account.—When letters testamentary, letters of administration or letters of administration with the will annexed are granted, the powers of such collector shall cease, but any suit brought by the collector may be continued by his successor, the executor or the administrator, in his own name. Such collector must, on demand, deliver to the executor or administrator all the property, rights and credits of the decedent under his control, and render an account, on oath, to the clerk of all his proceedings. Such delivery and account may be enforced by citation, order or attachment. (Rev., s. 25; Code, s. 1386; C. C. P., s. 466; R. C., c. 46, s. 7; 1868-9, c. 113, s. 115; C. S. 27.)

Art. 7. Appointment and Revocation.

§ 28-29. Facts to be shown on applying for administration.—On application for letters of administration, the clerk must ascertain by affidavit of the applicant or otherwise—

1. The death of the decedent and his intestacy.

2. That the applicant is the proper person entitled to administration, or that he applies after the renunciation of the person or persons so entitled.

3. The value and nature of the intestate's property, the names and residence of all parties entitled as heirs or distributees of the estate, if known, or that the same cannot, on diligent inquiry, be procured; which of said parties are minors, and whether with or without guardians, and the names and residences of such guardians, if known. Such affidavit or other proof must be recorded and filed by the clerk. (Rev., s. 26; Code, s. 1381; C. C. P., s. 461; C. S. 28.)

§ 28-30. Right to contest application for letters; proceedings. — Any person interested in the estate may, on complaint filed and notice to the applicant, contest the right of such applicant to letters of administration, and on any issue of fact joined, or matter of law arising on the pleadings, the cause may be transferred to the superior court for trial, or an appeal be taken, as in other special proceedings. (Rev., s. 27; Code, s. 1382; C. C. P., s. 462; C. S. 29.)

§ 28-31. Letters of administration revoked on proof of will.—If, after the letters of administration are issued, a will is subsequently proved and letters testamentary are issued thereon; or if, after letters testamentary are issued, a revocation of the will or a subsequent testamentary paper revoking the appointment of executors is proved and letters are issued thereon, the clerk of the superior court must thereupon revoke the letters first issued, by an order in writing to be served on the person to whom such first letters were issued; and, until service thereof, the acts of such person, done in good faith, are valid. (Rev., s. 37; Code, s. 2170; C. C. P., s. 469; C. S. 30.)

§ 28-32. Letters revoked on application of surviving husband or widow or next of kin, or for disqualification or default. — If, after any letters have been issued, it appears to the clerk, or if complaint is made to him on affidavit, that the surviving husband or widow or next of kin in the order of priority set out in subsections one and two of § 28-6 applies for letters of administration

on said estate, and notwithstanding said applicants may have renounced their right to administer, if otherwise qualified, or that any person to whom they were issued is legally incompetent to have such letters, or that such person has been guilty of default or misconduct in the due execution of his office, or that issue of such letters was obtained by false representations made by such person, the clerk shall issue an order requiring such person to show cause why the letters should not be revoked. On the return of such order, duly executed, if the objections are found valid, the letters issued to such person must be revoked and superseded, and his authority shall thereupon cease. (Rev., s. 38; Code, s. 2171; C. C. P., s. 470; 1921, c. 98; C. S. 31.)

§ 28-33. On revocation, successor appointed and estate secured.—In all cases of the revocation of letters, the clerk must immediately appoint some other person to succeed in the administration of the estate; and pending any suit or proceeding between parties respecting such revocation, the clerk is authorized to make such interlocutory order as, without injury to the rights and remedies of creditors, may tend to the better securing of the estate. (Rev., s. 35; Code, s. 1521; 1868-9, c. 113, s. 92; C. S. 32.)

Art. 8. Bonds.

§ 28-34. Bond; approval; condition; penalty. — Every executor from whom a bond is required by law, and every administrator and collector, before letters are issued, must give a bond payable to the state, with two or more sufficient sureties, to be justified before and approved by the clerk, conditioned that such executor, administrator or collector shall faithfully execute the trust reposed in him and obey all lawful orders of the clerk or other court touching the administration of the estate committed to him. Where such bond is executed by personal sureties, the penalty of such bond must be, at least, double the value of all the personal property of the deceased, but where such bond shall be executed by a duly authorized surety company, the penalty in such bond may be fixed at not less than one and one-fourth times the value of all the personal property of the deceased. The value of said personal property shall be ascertained by the clerk by examination, on oath, of the applicant or of some other competent person. If the personal property of any decedent is insufficient to pay his debts and the charges of administration, and it becomes necessary for his executor or administrator to apply for the sale of real estate for assets, and the bond previously given is not double the value of both the real and personal estate of the deceased, such executor (if bond is required of him by law) or administrator shall, before or at the time of filing his petition for such sale, give another bond payable and conditioned as the one above prescribed and with like security, in double the value of the real estate for the sale of which application is made, provided, however, that where such bond shall be executed by a duly authorized surety company, the penalty of said bond need not exceed one and one-fourth times the value of said real estate. (Rev., s. 319; Code, s. 1388; 1870-1, c. 93; C. C. P., s. 468; 1935, c. 386; C. S. 33.)

§ 28-35. When executor to give bond.—Executors shall give bond as prescribed by law in the following cases:

1. Where the executor resides out of the state. Except in the cases otherwise provided in this chapter, no foreign executor has any authority to intermeddle with the estate, until he has entered into bond, and the bond must be given not later than one year after the death of the testator.

Local Modification.—Buncombe, Madison, Yancey: Pub. Loc. Ex. Sess. 1924, c. 202.

2. When a man marries a woman who is an executrix, and if the husband in such case fail to give bond, the clerk, on application of any creditor or other party interested in the estate, shall revoke the letters issued to the wife and grant letters of administration with the will annexed to some other person.

3. Where an executor, other than such as may have already given bond, obtains an order to sell any portion of the real estate for the payment of debts, as hereinafter provided, the court or clerk to whom application is made shall require, before granting any order of sale, such executor to enter into bond. (Rev., s. 28; Code, s. 1515; R. C., c. 46, ss. 12, 13; C. S. 34.)

§ 28-36. When executor may give bond after one year.—Where a nonresident of the state by will sufficient according to the laws of the state, and duly probated and recorded in the proper county, devises real property situated in this state, the executor acting under the will, if he has not intermeddled with the property devised in the will, and if no letters of administration in this state on the estate have been issued subsequent to the probate of the will, may, after the expiration of one year from the testator's death, give bond in double the value of the property devised, and he shall then be entitled to all the rights, powers and privileges of a resident executor. (1909, c. 825; C. S. 35.)

§ 28-37. No bond in certain cases of executor with power to convey.—Where a citizen or subject of a foreign country, or of any other state of the United States, by will sufficient according to the laws of this state, and duly probated and recorded in the proper county, devises to his executor, with power to sell and convey, real property situated in this state in trust for a person named in the will, the power being vested in the executor as such trustee, the executor may execute the power without giving bond in this state. (1909, c. 901; 1925, c. 284; C. S. 36.)

§ 28-38. No bond where will does not require bond and co-executor a resident.—A nonresident executor appointed under a will which does not require the executor's bond shall not be required to give bond, if a resident of the state is appointed and qualifies as co-executor, unless the clerk of the court of the county where the will is first probated shall, upon the petition of the creditors or beneficiaries of the estate, deem the bond of the nonresident executor necessary for the protection of the creditors or beneficiaries. This section applies to nonresident executors who qualified before its enactment as well as to those qualifying afterwards. (1911, c. 176; Ex. Sess. 1920, c. 86; C. S. 37.)

§ 28-39. Certain executor's deeds without bond before 1911 validated.—Where prior to January first, one thousand nine hundred and eleven, a nonresident executor has sold and conveyed lands in this state under a power in the will of a citizen of another state or of a foreign country, and the will was executed according to the laws of this state and was duly proved and recorded in the state or foreign country where the testator and his family and the executor resided, the sale and conveyance is valid although the executor prior to the execution of the deed had not given bond or obtained letters in this state. (1911, c. 90; C. S. 38.)

§ 28-40. Oath and bond required before letters issue.—Before letters testamentary, letters of administration with the will annexed, letters of administration or letters of collection are issued to any person, he must give the bond required by law and must take and subscribe an oath or affirmation before the clerk, or before any other officer of any state or country authorized by the laws of North Carolina to administer oaths, that he will faithfully and honestly discharge the duties of his trust, which oath must be filed in the office of the clerk. (Rev., s. 29; Code, ss. 1387, 1388, 2169; C. C. P., ss. 467, 468; 1870-1, c. 93; 1923, c. 56; C. S. 39.)

§ 28-41. Oath before notary; curative statute.—In all cases prior to January the first, one thousand nine hundred and twenty-two, in which any foreign executor qualified or attempted to qualify as such executor by taking and subscribing the oath or affirmation required by law, before a notary public of this or any other state or territory of the United States, instead of taking and subscribing said oath or affirmation before the clerk, and having in all other respects complied with the laws of North Carolina prescribed for and pertaining to the qualification and appointment of foreign executors, such qualification and the letters testamentary issued in all such cases are hereby validated and made legal and binding. In all cases mentioned in this section, wherein such foreign executor has entered upon the discharge of the duties of such office and has performed any duty or exercised the powers and authority of such office regularly and according to law, except for the defect in the qualification and issuance of letters testamentary, then all such acts of any such foreign executor are validated and are declared to be legal and binding. (1925, c. 19.)

§ 28-42. Right of action on bond.—Every person injured by the breach of any bond given by an executor, administrator or collector may put the same in suit and recover such damages as he may have sustained. (Rev., s. 30; Code, s. 1516; 1868-9, c. 113, s. 87; C. S. 40.)

§ 28-43. Rights of surety in danger of loss.—Any surety on the bond of an executor, administrator or collector, who is in danger of sustaining loss by his suretyship, may exhibit his petition on oath to the clerk of the superior court wherein the bond was given, setting forth particularly the circumstances of his case, and asking that such executor, administrator or collector be removed from office, or that he give security to indemnify the petitioner against apprehended loss, or that the petitioner be released from responsibility on account of any future breach of the bond. The clerk shall issue a citation to the principal in the bond, requiring him, within ten days after service thereof, to answer the petition. If, upon the hearing of the case, the clerk deem the surety entitled to relief, he may grant the same in such manner and to such extent as may be just. And if the principal in the bond gives new or additional security, to the satisfaction of the clerk, within such reasonable time as may be required, the clerk may make an order releasing the surety from liability on the bond for any subsequent act, default or misconduct of the principal. (Rev., s. 33; Code, s. 1519; 1868-9, c. 113, s. 90; C. S. 41.)

§ 28-44. On revocation of letters, bond liable to successors.—When the letters of an executor, administrator or collector are revoked, his bond may be prosecuted by the person or persons succeeding to the administration of the estate, and a recovery may be had thereon to the full extent of any damage, not exceeding the penalty of the bond, sustained by the estate of the decedent by the acts or omissions of such executor, administrator or collector, and to the full value of any property received and not duly administered. Moneys so recovered shall be assets in the hands of the person recovering them. (Rev., s. 31; Code, s. 1517; 1868-9, c. 113, s. 88; C. S. 42.)

§ 28-45. When new bond or new sureties required.—If complaint be made on affidavit to the clerk of the superior court that the surety on any bond of an executor, administrator or collector is insufficient, or that one or more of such sureties is or is about to become a nonresident of this state, or that the bond is inadequate in amount, the clerk must issue an order requiring the principal in the bond to show cause why he should not give a new bond, or further surety, as the case may be. On the return of the order duly executed, if the objections in the complaint are found valid, the clerk shall make an order requiring the party to give further surety or a new bond in a larger amount within a reasonable time. (Rev., s. 32; Code, s. 1518; 1868-9, c. 113, s. 89; C. S. 43.)

§ 28-46. On failure to give new bond, letters revoked.—If any person required to give a new bond, or further security, or security to indemnify, under §§ 28-43 and 28-45, fails to do so within the time specified in any such order, the clerk must forthwith revoke the letters issued to such person, whose right and authority, respecting the estate, shall thereupon cease. (Rev., s. 34; Code, s. 1520; 1868-9, c. 113, s. 91; C. S. 44.)

Art. 9. Notice to Creditors.

§ 28-47. Advertisement for claims.—Every executor, administrator and collector, within twenty days after the granting of letters, shall notify all persons having claims against the decedent to exhibit the same to such executor, administrator or collector, at or before a day to be named in such notice; which day must be twelve months from the day of the first publication of such notice. The notice shall be published once a week for six weeks in a newspaper, if any there be published in the county. If there is no news-

paper published in the county, then the notice shall be posted at the courthouse and four other public places in the county. (Rev., s. 39; Code, ss. 1421, 1422; 1868-9, c. 113, s. 29; 1881, c. 278, s. 2; C. S. 45.)

§ 28-48. Proof of advertisement.—A copy of the advertisement directed to be posted or published in pursuance of § 28-47, with an affidavit, taken before some person authorized to administer oaths, of the proprietor, editor or foreman of the newspaper wherein the same appeared, to the effect that such notice was published for six weeks in said newspaper, or an affidavit stating that such notices were posted, shall be filed in the office of the clerk by the executor, administrator or collector. The copy so verified or affidavit shall be deemed a record of the court, and a copy thereof, duly certified by the clerk, shall be received as conclusive evidence of the fact of publication in all the courts of this state. (Rev., s. 40; Code, s. 1423; 1868-9, c. 113, s. 31; C. S. 46.)

§ 28-49. Personal notice to creditor.—The executor, administrator or collector may cause the notice to be personally served on any creditor, who shall, thereupon, within six months after personal service thereof, exhibit his claim, or be forever barred from maintaining any action thereon. (Rev., s. 41; Code, s. 1424; 1868-9, c. 113, s. 32; 1885, c. 96; C. S. 47.)

Art. 10. Inventory.

§ 28-50. Inventory within three months.—Every executor, administrator and collector, within three months after his qualification, shall return to the clerk, on oath, a just, true and perfect inventory of all the real estate, goods and chattels of the deceased, which have come to his hands, or to the hands of any person for him, which inventory shall be signed by him and be recorded by the clerk. He shall also return to the clerk, on oath, within three months after each sale made by him, a full and itemized account thereof, which shall be signed by him and recorded by the clerk. (Rev., s. 42; Code, s. 1396; R. C., c. 46, s. 16; 1868-9, c. 113, s. 8; C. S. 48.)

§ 28-51. Compelling the inventory.—If the inventory and account of sale specified in § 28-50 are not returned as therein prescribed, the clerk must issue an order requiring the executor, administrator or collector to file the same within the time specified in the order, which shall not be less than twenty days, or to show cause why an attachment should not be issued against him. If, after due service of the order, the executor, administrator, or collector does not, on the return day of the order, file such inventory or account of sale, or obtain further time to file the same, the clerk shall have power to vacate the office of administrator, executor or collector. And under all proceedings provided for in this section, the defaulting executor, administrator or collector shall be personally liable for the costs of such proceeding to be taxed against him by the clerk of the superior court, or deducted from any commissions which may be found due such executor, administrator or collector upon final settlement of the estate. And the sheriffs of the several counties to whom a process is directed under the provisions of this section shall serve the same without demanding their fees in advance. (Rev., s. 43; Code, s. 1397; 1868-9, c. 113, s. 9; 1929, c. 9, s. 1; 1933, c. 100; C. S. 49.)

§ 28-52. New assets inventoried.—When further property of any kind, not included in any previous return, comes to the hands or knowledge of any executor, administrator or collector, he must cause the same to be returned, as hereinbefore prescribed, within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as in the case of the first inventory. (Rev., s. 44; Code, s. 1398; 1868-9, c. 113, s. 10; C. S. 50.)

§ 28-53. Trustees in wills to file inventories and accounts.—Trustees appointed in any will admitted to probate in this state, into whose hands assets come under the provisions of the will, shall file in the office of the clerk of the county where the will is probated inventories of the assets and annual and final accounts thereof, such as are required of executors and administrators. The power of the clerk to enforce the filing and his duties in respect to audit and record shall be the same as in such cases. This section shall not apply to any will in which a different provision is made for filing inventories and accounts. (1907, c. 804; C. S. 51.)

Art. 11. Assets.

§ 28-54. Distinction between legal and equitable assets abolished.—The distinction between legal and equitable assets is abolished, and all assets shall be applied in the discharge of debts in the manner prescribed by this chapter. (Rev., s. 45; Code, s. 1406; 1868-9, c. 113, s. 14; C. S. 52.)

§ 28-55. Trust estate in personalty.—If any trustee, or any person interested in any trust estate, dies leaving any equitable interest in personal estate which shall come to his executor, administrator or collector, the same estate shall be deemed personal assets. (Rev., s. 46; Code, s. 1403; 1868-9, c. 113, s. 11; C. S. 53.)

§ 28-56. Crops ungathered at death.—The crops of every deceased person, remaining ungathered at his death, shall, in all cases, belong to the executor, administrator or collector, as part of the personal assets, and shall not pass to the widow with the land assigned as dower; nor to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will. (Rev., s. 47; Code, s. 1407; 1868-9, c. 113, s. 15; C. S. 54.)

§ 28-57. Proceeds of real estate sold to pay debts are personal assets.—All proceeds arising from the sale of real property, for the payment of debts, as hereinafter provided, shall be deemed personal assets in the hands of the executor, administrator or collector, and applied as though the same were the proceeds of personal estate. (Rev., s. 48; Code, s. 1404; 1868-9, c. 113, s. 12; C. S. 55.)

§ 28-58. Surplus of proceeds of realty sold for debts is real asset.—All proceeds from the sale of real estate, as hereinafter provided, which may not be necessary to pay debts and charges of administration, shall, notwithstanding, be considered real assets, and as such shall be paid by the executor, administrator or collector to such persons as would have been entitled to the land had it not

been sold. (Rev., s. 49; Code, s. 1405; 1868-9, c. 113, s. 13; C. S. 56.)

§ 28-59. Personalty fraudulently conveyed recoverable.—If there are not sufficient real and personal assets of the deceased to satisfy all the debts and liabilities of deceased, together with the costs and charges of administration, the personal representative shall have the right to sue for and recover any and all personal property which the deceased may in any wise have transferred or conveyed with intent to hinder, delay, or defraud his creditors, and any money or property so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts. But if the fraudulent alienee of deceased has sold the property or estate so fraudulently acquired by him to a bona fide purchaser for value without notice of the fraud, then such fraudulent alienee shall be liable to the personal representative for the value of the property and estate so acquired and disposed of. If the whole recovery from any fraudulent alienee of a decedent shall not be necessary for the payment of the debts of decedent and the costs and charges of administration of his estate, the surplus shall be returned to such fraudulent alienee or his assigns. (Rev., s. 50; C. S. 57.)

§ 28-60. Debt due from executor not discharged by appointment.—The appointing of any person executor shall not be a discharge of any debt or demand due from such person to the testator. (Rev., s. 51; Code, s. 1431; 1868-9, c. 113, s. 40; C. S. 58.)

§ 28-61. Joint liability of heirs, etc., for debts.—All persons succeeding to the real or personal property of a decedent, by inheritance, devise, bequest or distribution, shall be liable jointly, and not separately, for the debts of such decedent. (Rev., s. 52; Code, s. 1528; 1868-9, c. 113, s. 99; C. S. 59.)

§ 28-62. Extent of liability of heirs, etc.—No person shall be liable, under § 28-61, beyond the value of the property so acquired by him, or for any part of a debt that might by action or other due proceeding have been collected from the executor, administrator or collector of the decedent, and it is incumbent on the creditor to show the matters herein required to render such person liable. (Rev., s. 53; Code, s. 1529; 1868-9, c. 113, s. 100; C. S. 60.)

§ 28-63. Judgment against heirs, etc., apportioned; costs.—In any such action the recovery must be apportioned in proportion to the assets or property received by each defendant, and judgment against each must be entered accordingly. Costs in such actions must be apportioned among the several defendants, in proportion to the amount of the recovery against each of them. (Rev., s. 54; Code, s. 1530; 1868-9, c. 113, s. 101; C. S. 61.)

§ 28-64. Persons liable for debts to observe priorities.—Every person who is liable for the debts of a decedent must observe the same preferences in the payment thereof as are established in this chapter; nor shall the commencement of an action by a creditor give his debt any preference over others. (Rev., s. 55; Code, s. 1531; 1868-9, c. 113, s. 102; C. S. 62.)

§ 28-65. Existence of other debts of prior or equal class.—The defendants in such action may show that there are unsatisfied debts of a prior class or of the same class with that in suit. If it appears that the value of the property acquired by them does not exceed the debts of a prior class, judgment must be rendered in their favor. If it appears that the value of the property acquired by them exceeds the amount of debts which are entitled to a preference over the debt in suit, the whole amount which the plaintiff shall recover is only such a portion of the excess as is a just proportion to the other debts of the same class with that in suit. (Rev., s. 56; Code, s. 1532; 1868-9, c. 113, s. 103; C. S. 63.)

§ 28-66. Debts paid taken as unpaid as against heirs, etc.—If any debts of a prior class to that in which the suit is brought, or of the same class, have been paid by any defendant, the amount of the debts so paid shall be estimated, in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in § 28-65. (Rev., s. 57; Code, s. 1533; 1868-9, c. 113, s. 104; C. S. 64.)

§ 28-67. Compelling contribution among heirs, etc.—The remedy to compel contribution shall be by petition or action in the superior court or before the judge in term time against the personal representatives, devisees, legatees, and heirs also of the decedent if any part of the real estate be undevised, within two years after probate of the will, and setting forth the facts which entitle the party to relief; and the costs shall be within the discretion of the court. (Rev., s. 58; Code, s. 1534; 1868-9, c. 113, s. 106; C. S. 65.)

§ 28-68. Payment to clerk of sums not exceeding $300 due and owing intestates.—Where any person dies intestate and at the time of his or her death there is a sum of money owing to the said intestate not in excess of three hundred dollars, such sum may be paid into the hands of the clerk of the superior court, whose receipt for same shall be a full and complete release and discharge for such debt or debts, and the said clerk of the superior court is authorized and empowered to pay out such sum or sums in the following manner: First, for satisfaction of widow's year's allowance, after same has been assigned in accordance with law, if such be claimed; second, for payment of funeral expenses, and if there be any surplus the same to be disposed of as is now provided by law. This section shall apply to the counties of Randolph, Guilford, Edgecombe, Cabarrus, Iredell, Moore, Anson, Watauga, Wilson, Craven, Cumberland, Johnston, Rutherford, Stanly, Davidson, Currituck, Yadkin, Alexander, Stokes, Clay, Greene, Wayne, Franklin, Macon, Beaufort, Swain, Haywood, Caldwell, Burke, Gates, Rockingham, Graham, Lee, Person, Catawba, Dare, Tyrrell, Perquimans, Transylvania, Duplin, Hyde, Pender, Surry, Alamance, Lincoln, Granville, Chowan, Hoke, Vance, Montgomery, Durham, Wake, Harnett, Buncombe, Union, Onslow, Nash, Halifax, Hertford, Mecklenburg, Robeson, Orange, Pasquotank, McDowell, Rowan, New Hanover, Martin, Forsyth, Polk, and Warren. (1921, c. 93; Ex. Sess. 1921, c. 65; Ex. Sess. 1924, cc. 15, 58; 1927, c. 7; 1929, cc. 63, 71, 121; 1931, c. 21; 1933, cc. 16, 94; 1935, cc. 69, 96; 367; 1937, cc. 13, 31, 55, 121,

336, 377; 1939, cc. 383, 384; 1941, c. 176; C. S. 65(a).)

Local Modification.—Pitt: 1937, c. 336; 1939, cc. 169, 383, 384.

Art. 12. Discovery of Assets.

§ 28-69. Examination of persons or corporations believed to have possession of property of decedent. — Whenever an executor or administrator makes oath before the clerk of the superior court of the county where the party to be examined resides or does business that he has reasonable ground to believe, setting forth the grounds of his belief, that any person, firm or corporation has in his or its possession any property of any kind belonging to the estate of his decedent, said clerk shall issue a notice to said person or the member of the firm or officer, agent or employee of the firm or corporation designated in the affidavit, to appear before said clerk at his office at a time fixed in said notice, not less than three days after the issuance of said notice, and be examined under oath by said executor or administrator or his attorney concerning the possession of said property. If upon such examination the person examined admits that he or the firm or corporation for which he works has in his or its possession any property belonging solely to the decedent, and fails to show any satisfactory reason for retaining possession of said property, the clerk of the superior court shall issue an order requiring said person, firm or corporation forthwith to deliver said property to said executor or administrator, and may enforce compliance with said order by an attachment for contempt of court, and commit said person to jail until he shall deliver said property to said executor or administrator: Provided, that in the case of a firm or corporation, whenever any person other than a partner or executive officer of such firm or corporation is examined, no such order shall be made until at least three days after service of notice upon a partner or executive officer of such firm or corporation to show cause why such order should not be made. (1937, c. 209, s. 1.)

§ 28-70. Right of appeal.—Any person aggrieved by the order of the clerk of the superior court may, within five days, appeal to the judge holding the next term of the superior court of the county after said order is made or to the resident judge of the district, but as a condition precedent to his appeal he shall give a justified bond in a sum at least double the value of the property in question, conditioned upon the safe delivery of the property and the payment of damages for its detention, to the executor or administrator in the event that the order of the clerk should be finally sustained. When said bond is executed and delivered to the court no attachment shall be served upon the appealing party, or, if he has already been committed, he shall be released pending the final determination of the appeal. If the appellant fails to have his appeal heard at the next term of the superior court held in his county, or by the resident judge of the district, within thirty days after giving notice of appeal, the clerk of the court may recommit the appellant to jail until he shall deliver the property to the executor or administrator as aforesaid. (1937, c. 209, s. 2.)

§ 28-71. Costs.—The party against whom the final judgment is rendered shall be adjudged to pay the costs of the proceedings hereunder. (1937, c. 209, s. 3.)

§ 28-72. Remedies supplemental.—The remedies provided in this article shall not be exclusive, but shall be in addition to any remedies which are now or may hereafter be provided. (1937, c. 209, s. 4.)

Art. 13. Sales of Personal Property.

§ 28-73. Executor or administrator may sell without court order.—Every executor and administrator shall have power in his discretion and without any order, except as hereinafter provided, to sell, as soon after his qualification as practicable, all the personal estate of his decedent. (Rev., s. 62; Code, s. 1408; 1868-9, c. 113, s. 16; C. S. 66.)

§ 28-74. Collector may sell only on order of court.—All sales of personal property by collectors shall be made only upon order obtained, by motion, from the clerk of the superior court, who shall specify in his order a descriptive list of the property to be sold. (Rev., s. 61; Code, s. 1409; 1868-9, c. 113, s. 17; C. S. 67.)

§ 28-75. Terms and notice of public sale.—All public sales of personal estate by executors, administrators or collectors shall be made on credit or for cash after twenty days' notification posted at the court house and four public places in the county. (Rev., s. 63; Code, ss. 1410, 1411; 1868-9, c. 113, ss. 18, 19; C. S. 68.)

§ 28-76. Clerk may order private sale in certain cases; advance bids.—Whenever the executor or administrator of any estate shall be of the opinion that the interests of said estate will be promoted and conserved by selling the personal property belonging to it at private sale instead of selling same at public sale, such executor or administrator may, upon a duly verified application to the clerk of the Superior Court, obtain an order to sell, and may sell, such personal property at private sale for the best price that can be obtained, and shall report such sales to the clerk for confirmation; and upon satisfactory proof that said personal property has been sold for a fair and adequate price, such sale shall be confirmed by the said clerk.

The said sale or sales of personal property shall not be deemed closed under ten days from the filing of such report; and if in ten days from the filing of such report the sale price is increased by the deposit of ten (10) per cent with the said clerk, the said clerk shall order a new sale thereof. The clerk may in his discretion, require the person making such advance bid to execute a good and sufficient bond in a sufficient amount to guarantee compliance with his said offer. If no advance bid is offered for the property and if no exception is filed thereto within said period of ten (10) days, the same shall be confirmed.

Where the estate consists in whole or in part of perishable property the executor or administrator may sell such perishable property at private sale without order or confirmation by the clerk of the Superior Court.

Where the property to be sold consists of stocks, bonds, or other securities, having a known

or readily ascertainable market value, and which are bought or sold on any stock or securities exchange, supervised or regulated by the United States government or any of its agencies or departments, the executor or administrator may, upon first obtaining an order approving the sale from the clerk of superior court having jurisdiction of the estate, sell the same privately at the current market price, and such sale shall be valid and final. (Rev., s. 64; 1893, c. 346; 1919, c. 66; 1925, c. 267; 1939, c. 167; C. S. 69.)

§ 28-77. Confirmation required on objection of interested party.—When any person interested, either as creditor or legatee, on the day of sale objects to the completion of any sale on account of the insufficiency of the amount bid, title to such property shall not pass until the sale is reported to and confirmed by the clerk. (Rev., s. 63; Code, s. 1411; 1868-9, c. 113, s. 19; C. S. 70.)

§ 28-78. Security required; representative's liability for collection.—The proceeds of all sales of personal estate and rentings of real property by public auction or privately shall be secured by bond and good personal security, and such proceeds shall be collected as soon as practicable; otherwise the executor, administrator or collector shall be answerable for the same. (Rev., s. 65; Code, s. 1413; 1893, c. 346, s. 2; 1868-9, c. 113, s. 21; C. S. 71.)

§ 28-79. Hours of public sale; penalty.—All public sales or rentings provided for in this chapter shall be between the hours of ten o'clock a. m. and four o'clock p. m. of the day on which the sale or renting is to be made, except that in towns or cities of more than five thousand inhabitants public sales of goods, wares, and merchandise may be continued until the hour of ten o'clock p. m. Provided, a certain hour for such sales shall be named and the sale shall begin within one hour after the time fixed, unless postponed as provided by law, or delayed by other sales; and every executor, administrator or collector who otherwise makes any sale or renting shall forfeit and pay two hundred dollars to any person suing for the same. (Rev., s. 66; Code, s. 1414; 1893, c. 346, s. 3; 1868-9, c. 113, s. 22; 1927, c. 19, s. 2; C. S. 72.)

§ 28-80. Debts uncollected after year may be sold; list filed.—Every executor, administrator and collector, at any time after one year from the grant of letters, is authorized to sell at public auction, in the manner prescribed in this chapter, all bills, bonds, notes, accounts, or other evidences of debt belonging to the decedent, which he has been unable to collect or which may be deemed insolvent. Before offering such evidences of debt at public sale he shall file with the clerk a descriptive list thereof, and obtain an order of sale therefor from the clerk, and shall make return of the proceeds of such sale as in other cases of assets. (Rev., s. 67; Code, s. 1412; 1868-9, c. 113, s. 20; C. S. 73.)

Art. 14. Sales of Real Property.

§ 28-81. Sales of realty ordered, if personalty insufficient for debts.—When the personal estate of a decedent is insufficient to pay all his debts, including the charges of administration, the executor, administrator or collector may, at any time after the grant of letters, apply to the superior court of the county where the land or some part thereof is situated, by petition, to sell the real property for the payment of the debts of such decedent. When there is dower or right of dower in the land petitioned to be sold as aforesaid, the person entitled thereto shall be made a party to said proceeding, and on a decree of sale, the interest of one-third of the proceeds shall be secured and paid to her annually; or in lieu of such annual interest, at her election, the value of an annuity of six per cent, on such third, during her probable life or expectancy, shall be ascertained and paid to her absolutely out of the proceeds: Provided, that nothing herein contained shall be construed to deprive the widow from claiming her dower by metes and bounds in her husband's land.

Proceedings for the sale of the real estate of a decedent brought by his personal representative to create assets with which to pay debts must be instituted in the county where the land or some part thereof lies. If the land to be sold consists of one or more contiguous tracts lying in more than one county or consists of two or more separate tracts lying in different counties, proceedings may be instituted in any county in which a part of the land is situate, and the court of such county wherein the proceedings for sale are first brought shall have jurisdiction to proceed to a final disposition of said proceedings as if all of said land were situate in the county where the proceedings were instituted unless the court making the order of sale shall fix some place other than at the courthouse door of the county in which the proceeding was instituted; the place and time of sale shall be as directed in the order of the court. Where the land to be sold consists of one or more contiguous tracts lying in more than one county, said land shall be advertised in all counties in which any part of said land lies, but the sale shall be conducted at the courthouse door of the county in which the proceeding was instituted. Where the land consists of two or more distinct tracts lying in different counties, each tract shall be advertised in and sold at the courthouse door of the county in which it lies. Certified copies of the proceedings under the seal of the court of the county in which the proceedings were instituted, together with certified copies of the letters testamentary or letters of administration of the personal representative, shall be filed in the office of the clerk of superior court of each county wherein any part of the land lies and shall be recorded in the record of orders and decrees in special proceedings in said office. (Rev., s. 68; Code, s. 1436; 1868-9, c. 113, s. 42; 1923, c. 55; 1935, c. 43; 1937, c. 70; C. S. 74.)

§ 28-82. When representatives authorized to rent, borrow or mortgage.—Such executor, administrator or collector, in lieu of asking for an order for the immediate sale of real estate, may ask for an order authorizing him to rent out the same for a term of not exceeding three years, and if it appears to the court that the best interests of the heirs at law and devisees of the deceased will be promoted by granting such order and that it is probable that the rents derived from the real estate during the term will be sufficient to pay off

and discharge the debts and the costs of the administration, the superior court may, with the consent of the creditors, make such order upon such terms as may be best for the heirs at law, devisees and creditors of the estate; or if it is made to appear to the court that such executor, administrator or collector is able to borrow sufficient money with which to pay off and discharge all valid and just claims against the estate of the deceased, then the court shall have the power to authorize said executor or administrator to borrow money for the purpose of paying off and discharging such claims and authorizing him to rent the real estate for a term not exceeding three years and to apply the rents to the repayment of the money thus borrowed, and the said estate shall be and remain liable for the payment of such sums as may be borrowed under such order of the court to the same extent and no further as the estate was liable for the indebtedness of the deceased to pay off and discharge the debt for which the said sums were borrowed. All orders made by the court pursuant to this section shall be approved by the judge residing in or holding the courts of the district in which such county is situated.

In lieu of renting said property or borrowing on the general credit of the estate, as hereinbefore authorized, the said executor, or administrator, may apply by petition, verified by oath, to the Superior Court, showing that the interest of the beneficiaries of the estate, for which he is executor or administrator, would be materially promoted by mortgaging the said estate, in whole or in part to secure funds to be used for the benefit of said estate, setting out the application to be made of the proceeds of said loan and if all or a part of its creditors have agreed to accept an amount less than the full amount of their debt that fact shall appear, which proceeding shall be conducted as in other cases of special proceedings; and the truth of the matter alleged in the petition having been ascertained by satisfactory proof, a decree may thereupon be made that a mortgage be made by such executor, or administrator, in his representative capacity, in such way and on such terms as may be most advantageous to the interest of said estate; but no mortgage shall be made until approved by the judge of the court, nor shall the same be valid unless the order or decree therefor is confirmed and directed by the judge and the proceeds of the mortgage shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify: Provided, the proceeds from said sale shall be used exclusively for the discharge of all existing creditors, except such as shall file a writing in said cause agreeing to other terms set out in said writing.

The said executor or administrator shall not mortgage the property of said estate for a term of years in excess of the term fixed by the court in its decree. The word "mortgage" wherever used herein, shall be construed to include "deeds of trust." (Acts 1913, c. 49, s. 1; 1927, c. 222, s. 1; C. S. 75.)

§ 28-83. Conveyance of lands by heirs within two years voidable.—All conveyances of real property of any decedent made by any devisee or heir at law within two years of the death of the decedent shall be void as to the creditors, executors, administrators and collectors of such decedent but such conveyances to bona fide purchasers for value and without notice, if made after two years from the death of the decedent, shall be valid even as against creditors. Provided, that if the decedent was a non-resident, such conveyances shall not be valid unless made after two years from the grant of letters. But such conveyances shall be valid, if made five years from the death of a non-resident decedent, notwithstanding no letters testamentary or letters of administration shall have been granted. (Rev., s. 70; Code, s. 1442; 1868-9, c. 113, s. 105; 1935, c. 355; 1939, c. 16; C. S. 76.)

§ 28-84. Conveyance by deceased in fraud of creditors.—The real estate subject to sale under this chapter shall include all the deceased may have conveyed with intent to defraud his creditors, and all rights of entry and rights of action and all other rights and interest in lands, tenements and hereditaments which he may devise, or by law would descend to his heirs: Provided, that lands so fraudulently conveyed shall not be taken from any one who purchased them for a valuable consideration and without a knowledge of the fraud. (Rev., s. 72; Code, s. 1446; 1868-9, c. 113, s. 51; C. S. 77.)

§ 28-85. Effect of bona fide purchase from fraudulent grantee.—When an executor, administrator or collector files his petition to sell lands which have been fraudulently conveyed, and of which there has been a subsequent bona fide sale, whereby he cannot have a decree of sale of the land, the court may give judgment in favor of such executor, administrator or collector for the value of the land, against all persons who may have fraudulently purchased the same; and if the whole recovery is not necessary to pay the debts and charges, the residue shall be restored to the person of whom the recovery was made. (Rev., s. 73; Code, s. 1447; 1868-9, c. 113, s. 52; C. S. 78.)

§ 28-86. Contents of petition for sale.—The petition, which must be verified by the oath of the applicant, shall set forth, as far as can be ascertained:

1. The amount of debts outstanding against the estate.

2. The value of the personal estate, and the application thereof.

3. A description of all the legal and equitable real estate of the decedent, with the estimated value of the respective portions or lots.

4. The names, ages and residences, if known, of the devisees and heirs at law of the decedent. (Rev., s. 77; Code, s. 1437; 1868-9, c. 113, s. 43; C. S. 79.)

§ 28-87. Heirs and devisees necessary parties.—No order to sell real estate shall be granted till the heirs or devisees of the decedent have been made parties to the proceeding, by service of summons, either personally or by publication, as required by law: Provided, that in any proceedings for the sale of land to make assets, when there are heirs of said decedent, or there may be heirs of said decedent whose names and residences are unknown, and it is desired to make all

unknown heirs of said decedent parties to said proceedings, and the personal representative shall make such representation in his petition, then all unknown heirs of the said decedent shall be made parties defendant in the same as the unknown heirs of said decedent naming him, and as thus denominated and under this name all said unknown heirs shall be served with summons by publication as now regularly provided by law for the service of summons by publication in the Superior Court, and upon such service being had, the court shall appoint some discreet person as guardian ad litem, for said unknown heirs, and summons shall issue to him as such. Said guardian ad litem shall file answer for said unknown heirs, and defend for them, and he may be paid such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing of the answer by said guardian ad litem, all said unknown heirs shall be before the court for the purposes of the action to the same extent as if each had been served with summons by name, and any claim that they may make to said real estate so sold shall be transferred to the funds in the hands of the personal representative to the same extent as other distributees of said estate and no further. This proviso shall apply to actions now pending, and all proceedings to sell land for assets heretofore had, where unknown heirs have been summoned by publication, are hereby validated. (Rev., s. 74; Code, s. 1438, 1868-9, c. 113, s. 44; Ex. Sess. 1924, c. 3, s. 1; C. S. 80.)

§ 28-88. Adverse claimant to be heard.—When the land, which is sought to be sold, is claimed by another person under any pretense whatsoever, such claimant shall be admitted to be heard as a party to the proceeding, upon affidavit of his claim, and if the issue be found for the petitioner he shall have his writ of possession and order of sale accordingly. (Rev., s. 76; Code, s. 1441; 1868-9, c. 113, s. 47; C. S. 81.)

§ 28-89. Upon issues joined, transferred to term.—When an issue of law or fact is joined between the parties, the course of the procedure shall be as prescribed in such cases for other special proceedings. (Rev., s. 78; Code, s. 1440; 1868-9, c. 113, s. 46; C. S. 82.)

§ 28-90. Order granted, if petition not denied.—As soon as all proper parties are made to the proceeding, the clerk of the superior court before whom it is instituted, if the allegations in the petition are not denied or controverted, shall have power to hear the same summarily, and to decree a sale. (Rev., s. 79; Code, s. 1443; 1868-9, c. 113, s. 48; C. S. 83.)

§ 28-91. Notice of sale as on execution.—Notice of sale under this proceeding shall be the same as for the sale of real estate by sheriffs on execution: Provided, however, that in case a re-sale of such real property shall become necessary under such proceeding, that such real property shall then be re-sold only after notice of re-sale has been duly posted at the courthouse door in the county for fifteen days immediately preceding the re-sale and also published at any time during such fifteen day period once a week for two successive weeks of not less than eight days in some newspaper published in the county, if a newspaper is published in the county, but if there be no newspaper published in said county the notice of re-sale must be posted at the courthouse door and three other public places in the county for fifteen days immediately preceding the re-sale. (Rev., s. 81; Code, s. 1445; 1868-9, c. 113, s. 50; 1933, c. 187; C. S. 84.)

§ 28-92. Court fixes terms of sale; title on confirmation.—The court may decree a sale of the whole or any specified parcel of the premises in such a manner, as to size of lots, place of sale, terms of credit, and security for payment of purchase money, as may be most advantageous to the estate, and may also authorize and empower the petitioner or any commissioner appointed by the court to subdivide the land in question, or any part thereof, in such manner as he may deem proper and for the best interest of the estate, and in making such division, to dedicate to the public such parts thereof as he may find necessary for public streets, alleys, and highways, and to sell such premises, either in bulk or in separate lots, with such streets, alleys, and highways excepted or reserved; but no sale, whether public or private, shall be concluded until reported to and approved and confirmed by the court. When any order for a public sale hereunder has been made or may hereafter be made by the court and the personal representative of a decedent, a commissioner or any other person is or has been appointed by the court to make such sale the provisions of § 45-28 shall apply and the provisions of § 1-404 shall not apply. Upon the coming in of the report of the sale and the confirmation thereof, title shall be made by such person, and at such time as the court may prescribe, and in all cases where the persons in possession have been made parties to the proceeding, the court may grant an order for possession. (Rev., s. 80; Code, s. 1444; 1868-9, c. 113, s. 49; 1917, c. 127, s. 1; 1935, c. 72; C. S. 85.)

§ 28-93. Court may order private sale; terms; sale reopened.—If it is made to appear to the court by petition and by satisfactory proof that it will be more for the interest of said estate to sell such real estate by private sale, the court may authorize said petitioner, or any commissioner appointed by the court, to sell the same at private sale, either in whole or in part, for cash in hand, or upon deferred payments, with interest from date of sale, in such a manner as to size of lots, place of sale, terms of credit and security for payment of purchase money as shall be fixed in the order of sale, and if upon a time sale the deferred payments to be secured by mortgage or deed of trust upon the property, or by the retention of the title thereto until the purchase money is paid. When any order for private sale has been or may hereafter be made by any superior court of the state, the provisions of § 45-28, not inconsistent with this section shall apply; and the court may also, upon motion of any person interested in the proceeds of such sale, filed in writing within ten days from the date and report of said sale, together with satisfactory proof that said real property has not been sold for its real value, require the sale to be reopened, and thereupon the court may issue an order for the sale of such premises at public sale, as required by § 45-28, and in such order the court may require such

premises to be sold in such parcels and on such terms as to the court may seem most advantageous to the estate. All sales of land conducted prior to February 10, 1927 under authority of this section in which the deferred payments were extended over a period longer than two years, are hereby validated. (1917, c. 127, s. 2; 1927, c. 16; C. S. 86.)

§ 28-94. Undevised realty first sold.—When any part of the real estate of the testator descends to his heirs by reason of its not being devised or disposed of by the will, such undevised real estate shall be first chargeable with payment of debts, in exoneration, as far as it will go, of the real estate that is devised, unless from the will it appears otherwise to be the wish of the testator. (Rev., s. 69; Code, s. 1430; 1868-9, c. 113, s. 39; C. S. 87.)

§ 28-95. Specifically devised realty; contribution.—If, upon the hearing of any petition for the sale of real estate to pay debts, under this chapter, the court decrees a sale of any part that may have been specifically devised, the devisee shall be entitled to contribution from other devisees, according to the principles of equity in respect to contribution among legatees. And the children and issue provided for in this chapter shall be regarded as specific devisees in such contribution. (Rev., s. 86; Code, s. 1535; 1868-9, c. 113, s. 107; C. S. 88.)

§ 28-96. Under power in will, sales public or private.—Sales of real property made pursuant to authority given by will, unless the will otherwise directs, may be public or private, and on such terms as, in the opinion of the executor, are most advantageous to those interested therein. (Rev., s. 84; Code, s. 1503; 1868-9, c. 113, s. 75; C. S. 89.)

§ 28-97. Where executor with power dies, power executed by survivor, etc.—When any or all of the executors of a person making a will of lands to be sold by his executors die, fail or for any cause refuse to take upon them the administration; or, after having qualified, shall die, resign, or for any cause be removed from the position of executor; or when there is no executor named in a will devising lands to be sold, in every such case such executor or executors as survive or retain the burden of administration, or the administrator with the will annexed, or the administrator de bonis non, may sell and convey such lands; and all such conveyances which have been or shall be made by such executors or administrators shall be effectual to convey the title to the purchaser of the estate so devised to be sold. (Rev., s. 82; Code, s. 1493; 1889, c. 461; C. S. 90.)

§ 28-98. Death of vendor under contract; representative to convey.—When any deceased person has bona fide sold any lands, and has given a bond or other written contract to the purchaser to convey the same, and the bond or other written contract has been duly proved and registered in the county where the lands are situated, if within the state, or, if not in the state, shall be proved before the clerk of the superior court and registered in the county where the obligee lives or obligor died, his executor, administrator or collector may execute a deed to the purchaser conveying such estate as shall be specified in the bond or other written contract; and such deed shall convey the title as fully as if it had been executed by the deceased obligor: Provided, that no deed shall be made but upon payment of the price, if that be the condition of the bond or other written contract. (Rev., s. 83; Code, s. 1492; 1868-9, c. 113, s. 65; 1874-5, c. 251; C. S. 91.)

§ 28-99. Title in representative for estate; he or successor to convey.—When land is conveyed to a personal representative for the benefit of the estate he represents, he may sell and convey same upon such terms as he may deem just and for the advantage of said estate; which sale shall be public, after due advertisement, as for judicial sales, unless the conveyance is made to the party entitled to the proceeds. If such land is not conveyed by such personal representative during his life or term of office, his successor may sell and convey such land as if the title had been made to him: Provided, if the predecessor has contracted in writing to sell said lands, but fails to convey same, his successor in office may do so upon payment of the purchase price. (Rev., s. 71; 1905, c. 342; C. S. 92.)

§ 28-100. Sales of realty devised upon contingent remainder, executory devise or other limitation validated.—In all cases where real property devised upon contingent remainder, executory devise, or other limitation, shall have been sold and conveyed for a fair price in good faith by the executor named in said will, or by an administrator with the will annexed, for the purpose of making assets with which to pay the debts of said estate, under the mistaken belief that said will authorized such sale, and the proceeds of such sale shall have been applied to the payment of the indebtedness of such estate, and it shall be made to appear in any action brought by the purchaser of said land, or those claiming under such purchaser, that such executor, or other personal representative would have been entitled in a proper proceeding brought for that purpose to an order of court to sell said land for the purpose of making assets with which to pay the indebtedness of such estate, then such sale so made by such executor, or other representative, shall be valid and binding upon all such contingent remaindermen, executory devisees, or other person, who would have taken such property under said will upon the contingency or contingencies therein mentioned, notwithstanding said sale shall have been made by such executor or other personal representative without obtaining such order of the court. And in any such action instituted by the purchaser of such land, or those claiming under him, for the purpose of removing a cloud from the title thereto all contingent remaindermen, executory devisees, or other persons entitled to claim under any limitation in said will, if in being, and known to be residents of this state, shall be made parties defendant to such action, and served with summons as in other civil actions; all nonresidents, or persons whose names and residences are unknown, shall be served with summons by publication as now required by law, or such service in lieu of publication as now provided by law. In cases where the contingent remainder, executory devise, or other limitation will, or may, go to minors, or persons under

other disabilities, or to persons not in being, or whose names and residences are not known, or who may in any contingency become interested in said land, but because of such contingency cannot be ascertained, the judge of the superior court shall, in any such action brought for the purpose aforesaid, after due inquiry of persons who are in no way interested in or connected with such proceedings, designate and appoint some discreet person as guardian ad litem to represent such contingent remaindermen, or executory devisees, upon whom summons shall be served in such action as provided by law for other guardians ad litem, and it shall be the duty of such guardian ad litem to defend such action, and when counsel is needed to represent him, to make this known to the judge, who shall by an order give instructions as to the employment of counsel and the payment of fees. And all contingent remaindermen, executory devisees, or other persons, who may be entitled to claim a contingent interest in said land, whether known or unknown, in being or not in being, shall be conclusively bound by any final judgment entered in such action, if made parties thereto, and represented therein in the manner hereinbefore provided: Provided, however, that this law shall not apply to any sale of land made in which the executor or other personal representative shall have been either directly or indirectly the purchaser thereof. (1923, c. 70, s. 1; C. S. 92(a).)

§ 28-101. Presumption; burden of proof. — Where the purchaser of any lands made under the circumstances narrated in § 28-100, or any person holding or claiming the same under or through such purchaser, shall have been in the peaceable possession thereof for more than twenty years without any adverse claim having been asserted to the same by any person claiming under such will, and the records of the administration of the said estate do not affirmatively show what disposition has been made of the proceeds of the sale of such land, then it shall be presumed, prima facie, that the proceeds of the sale of the said land have been applied to the payment of the necessary indebtedness of the said estate and the cost of the administration thereof, and the burden of proof to the contrary shall be upon the defendants in said action. (1923, c. 70, s. 2; C. S. 92(b).)

§ 28-102. Application of sections 28-100 and 28-101.—Sections 28-100 and 28-101 shall apply only to sales of lands made under the circumstances narrated in those sections, occurring prior to January 1, 1925. (1923, c. 70, s. 3; 1925, c. 48; C. S. 92(c).)

§ 28-103. Validation of certain bona fide sales of real estate to pay debts made without order of court.—In all cases where sales of real estate have been made by administrators of deceased persons, in good faith and upon a valuable consideration, to obtain assets to pay debts of the estate, and deeds have been executed by such administrators to the purchasers, who have paid the purchase price thereof, and no action has been taken by the heirs of such deceased persons to annul such sales by litigation or otherwise, such sales are hereby validated. The recitals contained in such a deed that the sale was made under order or license of the court for the purpose of obtaining assets to pay debts of the estate and that the proceeds of sale of said land have been applied to the payment of the necessary indebtedness of the estate and the cost of administration thereof shall be presumed to be prima facie correct: Provided, however, that this section shall not apply to any sale of land in which the administrator of such deceased person shall have been directly or indirectly the purchaser thereof, and nothing herein shall prevent such sale from being impeached for fraud.

This section shall only apply to sales by administrators made prior to January 1, 1920. (1931, c. 146; 1935, c. 31.)

§ 28-104. Validation of sales of realty by administrators d. b. n. of deceased trustees.—In all cases, prior to January first, nineteen hundred thirty-one, where a sale of real estate has been made by an administrator de bonis non of a deceased trustee in a deed in trust, and such administrator de bonis non advertised and conducted such sale prior to his qualification as administrator de bonis non of the deceased trustee, but qualified as such before the execution of the trustee's deed made pursuant to such sale, said sale and deed shall be valid and as effectual as though such advertisement and sale had occurred after the qualification of such administrator de bonis non. (1935, c. 381.)

Art. 15. Proof and Payment of Debts of Decedent.

§ 28-105. Order of payment of debts. — The debts of the decedent must be paid in the following order:

First class. Debts which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses.

Third class. Taxes assessed on the estate of the deceased previous to his death.

Fourth class. Dues to the United States and to the state of North Carolina.

Fifth class. Judgments of any court of competent jurisdiction within this state, docketed and in force, to the extent to which they are a lien on the property of the deceased at his death.

Sixth class. Wages due to any domestic servant or mechanical or agricultural laborer employed by the deceased, which claim for wages shall not extend to a period of more than one year next preceding the death; or if such servant or laborer was employed for the year current at the decease, then from the time of such employment; for medical services within the twelve months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such deceased person during the last illness of such person, said period of last illness not to exceed twelve months.

Seventh class. All other debts and demands. (Rev., s. 87; Code, s. 1416; 1868-9, c. 113, s. 24; 1941, c. 271; C. S. 93.)

§ 28-106. No preference within class.—No executor, administrator or collector shall give to any debt any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class. (Rev., s. 88; Code, ss. 1417, 1418; 1868-9, c. 113, ss. 25, 26; C. S. 94.)

§ 28-107. When payment out of class held valid.—Where any executor or administrator has paid any debt of his testator or intestate before all the debts of higher dignity have been paid and satisfied, and the estate of such testator or intestate was at the time of such payment solvent, but has since been rendered insolvent by the insolvency of the debtors of the estate, or other cause, without any fault or want of diligence on the part of the executor or administrator, in all such cases payments thus made shall be deemed and held valid in law, and shall be allowed to such executor or administrator in all suits by creditors of the estate seeking to charge such executor or administrator with assets of the estate or with devastavit thereof, without regard to the dignity of the debt thus paid, or on which such suit may be brought. (Rev., s. 96; Code, s. 1496; 1869-70, c. 150; C. S. 95.)

§ 28-108. Debts due representative not preferred.—No property or assets of the decedent shall be retained by the executor, administrator or collector in satisfaction of his own debt, in preference to others of the same class; but such debt must be established upon the same proof and paid in like manner and order as required by law in case of other debts. (Rev., s. 89; Code, s. 1420; 1868-9, c. 113, s. 28; C. S. 96.)

§ 28-109. Debts not due rebated.—Debts not due may be paid on a rebate of interest thereon for the time unexpired. (Rev., s. 90; Code, s. 1419; 1868-9, c. 113, s. 27; C. S. 97.)

§ 28-110. Affidavit of debt may be required.—Upon any claim being pesented against the estate, the executor, administrator or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if any payments have been made, or any offsets exist, their nature and amount must be stated in such affidavit. (Rev., s. 91; Code, s. 1425; 1868-9, c. 113, s. 33; C. S. 98.)

§ 28-111. Disputed debt may be referred.—If the executor, administrator or collector doubts the justness of any claim so presented, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against it. (Rev., s. 92; Code, s. 1426; 1868-9, c. 113, s. 34; 1872-3, c. 141; C. S. 99.)

§ 28-112. Disputed debt not referred, barred in six months.—If a claim is presented to and rejected by the executor, administrator or collector, and not referred as provided in § 28-111, the claimant must, within six months, after due notice in writing of such rejection, or after some part of the debt becomes due, commence an action for the recovery thereof, or be forever barred from maintaining an action thereon. (Rev., s. 93; Code, s. 1427; 1868-9, c. 113, s. 35; 1913, c. 3, s. 1; C. S. 100.)

§ 28-113. If claim not presented in twelve months, representative discharged as to assets paid.—In an action brought on a claim which was not presented within twelve months from the first publication of the general notice to creditors, the executor, administrator or collector shall not be chargeable for any assets that he may have paid in satisfaction of any debts, legacies or distributive shares before such action was commenced; nor shall any costs be recovered in such action against the executor, administrator or collector. (Rev., s. 94; Code, s. 1428; 1868-9, c. 113, s. 37; C. S. 101.)

§ 28-114. No lien by suit against representative.—No lien shall be created by the commencement of a suit against an executor, administrator or collector. (Rev., s. 95; Code, s. 1432; 1868-9, c. 113, s. 41; C. S. 102.)

§ 28-115. When costs against representative allowed.—No costs shall be recovered in any action against an executor, administrator or collector, unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy, in which case the court may award such costs against the defendant personally, or against the estate, as may be just. (Rev., s. 97; Code, s. 1429; 1868-9, c. 113, s. 38; C. S. 103.)

§ 28-116. Obligations binding heirs collected as other debts.—Bonds and other obligations in which the ancestor has bound his heirs shall not be put in suit against the heirs or devisees of the deceased, but shall be paid as other debts of the same class in the manner provided in this chapter. (Rev., s. 98; Code, s. 1404; 1868-9, c. 113, s. 12; C. S. 104.)

Art. 16. Accounts and Accounting.

§ 28-117. Annual accounts.—Every executor, administrator and collector shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file, in the office of the clerk of the superior court, an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The clerk may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and, having carefully revised and audited such account, if he approve the same, he must endorse his approval thereon, which shall be deemed prima facie evidence of correctness. (Rev., s. 99; Code, s. 1399; C. C. P., s. 478; 1871-2, c. 46; C. S. 105.)

§ 28-118. Clerk may compel account.—If any executor, administrator or collector omits to ac-

count, as directed in § 28-117, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such executor, administrator or collector to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such executor, administrator or collector fail to appear or refuse to exhibit such account, the clerk may issue an attachment against him for a contempt and commit him till he exhibit such account, and may likewise remove him from office. And the sheriffs of the several counties to whom a process is directed under the provisions of this section shall serve the same without demanding their fees in advance. (Rev., s. 100; Code, s. 1400; C. C. P., s. 479; 1933, c. 99; C. S. 106.)

§ 28-119. Vouchers' presumptive evidence. — Vouchers are presumptive evidence of disbursement, without other proof, unless impeached. If lost, the accounting party must, if required, make oath to that fact, setting forth the manner of loss, and state the contents and purport of the voucher. And this section shall apply to guardians, collectors, trustees and to all other persons acting in a fiduciary character. (Rev., s. 101; Code, s. 1401; C. C. P., s. 480; C. S. 107.)

§ 28-120. Gravestones authorized.—It is lawful for executors and administrators to provide suitable gravestones to mark the graves of their testators or intestates, and to pay for the cost of erecting the same, and the cost thereof shall be paid as funeral expenses and credited as such in final accounts. The cost thereof shall be in the sound discretion of the executor or administrator, having due regard to the value of the estate and to the interests of creditors and needs of the widow and distributees of the estate. Where the executor or administrator desires to spend more than one hundred dollars for such purpose he shall file his petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. Provided, however, that if the net estate is of a value in excess of fifteen thousand dollars ($15,000), the executor or administrator may, in his discretion, expend not more than five hundred dollars ($500) for this purpose without securing the order of court required herein. (Rev., s. 102; 1905, c. 444; 1925, c. 4; 1941, c. 102; C. S. 108.)

§ 28-121. Final accounts.—An executor or administrator may be required to file his final account for settlement in the office of the clerk of the superior court by a citation directed to him, at any time after two years from his qualification, at the instance of any person interested in the estate; but such account may be filed voluntarily at any time; and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk. (Rev., s. 103; Code, s. 1402; C. C. P., s. 481; C. S. 109.)

§ 28-122. Creditor's proceeding for accounting. —Any creditor of a deceased person may, within the times prescribed by law, prosecute a special proceeding or a civil action before the judge in his own name and in behalf of himself and all other creditors of the deceased without naming them, against the personal representative of the deceased, to compel him to an account of his administration, and to pay the creditors what may be payable to them respectively. (Rev., s. 104; Code, s. 1448; 1871-2, c. 213; 1876-7, c. 241, s. 6; C. S. 110.)

§ 28-123. Rules which govern creditor's proceeding.—The special proceeding shall be governed by the rules of practice prescribed for special proceedings, except so far as the same are modified by this chapter. (Rev., s. 105; Code, s. 1449; 1871-2, c. 213, s. 2; C. S. 111.)

§ 28-124. When and where summons returnable. —The summons in said special proceeding shall be returnable before the clerk of the superior court of the county in which letters testamentary or of administration were granted, and on a day not less than forty nor more than one hundred days from the issuing thereof, and not less than twenty days after the service thereof. (Rev., s. 106; Code, s. 1450; 1871-2, c. 213, s. 3; C. S. 112.)

§ 28-125. Clerk to advertise for creditors.—On issuing the summons, the clerk shall advertise for all creditors of the deceased to appear before him on or before the return day and file the evidences of their claims. (Rev., s. 107; Code, s. 1451; 1871-2, c. 213, s. 4; C. S. 113.)

§ 28-126. Publication of advertisement. — The advertisement shall be published at least once a week for not less than four weeks in some newspaper which may be thought by the clerk the most likely to inform all the creditors, and shall also be posted at the courthouse door for not less than thirty days. If, however, the estate does not exceed three thousand dollars in value, and the creditors are supposed by the clerk all to reside within the county or to be known, publication in a newspaper may be omitted, and in lieu thereof the advertisement shall be posted at four public places in the county, besides the courthouse door. Proof of personal service on a creditor or that a copy of the advertisement was sent to him by mail at his usual address shall be as to him equivalent to publication. (Rev., s. 108; Code, s. 1452; 1903, c. 134; 1871-2, c. 213, s. 5; C. S. 114.)

§ 28-127. Creditors to file claims and appoint agent.—The creditors of the deceased on or before the required day shall file with the clerk the evidences of their demands, and every creditor on filing such claim shall endorse thereon or otherwise name some person or place within the town in which the court is held, upon whom or where notices in the cause may be served or left; otherwise he shall be deemed to have notice of all motions, orders and proceedings in the cause filed or made in the clerk's office. (Rev., s. 109; Code, s. 1453; 1871-2, c. 213, s. 6; C. S. 115.)

§ 28-128. Proof of claims.—If the evidence of the demand is other than a judgment, or some writing signed by the deceased, it shall be accompanied by the oath of the creditor, or, if he be nonresident or infirm or absent, or in any other proper case, of some witness of the transaction, or of some agent of the creditor, that to the best of his knowledge and belief the claim is just, and that all due credits have been given. (Rev., s. 110; Code, s. 1454; 1871-2, c. 213, s. 7; C. S. 116.)

§ 28-129. Representative to file claims; notice to creditors.—On the day of his appearance the personal representative shall on oath give to the clerk a list of all claims against the deceased of which he has received notice or has any knowledge, with the names and residences of the claimants to the best of his knowledge and belief; and if any person so named has failed to file evidence of his claim, the clerk shall immediately cause a notice requiring him to do so to be served on him, which may be done by posting the same, directed to him at his usual address. (Rev., s. 111; Code, s. 1455; 1871-2, c. 213, s. 8; C. S. 117.)

§ 28-130. Clerk to exhibit to representative claims filed.—On the day fixed for the appearance of the personal representative, the clerk shall exhibit to him a list of all the claims filed in his office, with the evidences thereof. (Rev., s. 112; Code, s. 1456; 1871-2, c. 213, s. 9; C. S. 118.)

§ 28-131. If representative denies claim, creditor notified.—Within five days thereafter the personal representative shall state in writing on said list, or on a separate paper, which of said claims he disputes in whole or in part. The clerk shall then notify the creditor, as above provided, that his claim is disputed, and the creditor shall thereupon file in the office of the clerk a complaint founded on his said claim, and the pleadings shall be as in other cases. (Rev., s. 113; Code, s. 1457; 1871-2, c. 213, s. 10; C. S. 119.)

§ 28-132. Issues joined; cause sent to superior court.—If the issues joined be of law, the clerk shall send the papers to the judge of the superior court for trial, as is provided for by the chapter on Civil Procedure in like cases. If the issue shall be of fact, the clerk shall send so much of the record as may be necessary to the next term of the superior court for trial. (Rev., s. 114; Code, s. 1458; 1871-2, c. 213, s. 11; C. S. 120.)

§ 28-133. When representative personally liable for costs.—If any personal representative denies the liability of his deceased upon any claim evidenced as is provided in this chapter, and the issue is finally decided against him, the costs of the trial shall be paid by him personally, and not allowed out of the estate, unless it appears that he had reasonable cause to contest the claim and did so bona fide. (Rev., s. 115; Code, s. 1459; 1871-2, c. 213, s. 12; C. S. 121.)

§ 28-134. Court may permit representative to appear after return day.—If the personal representative fails to appear on the return day, the clerk or judge of the superior court may permit him afterward to appear and plead on such terms as may be just. (Rev., s. 116; Code, s. 1460; 1871-2, c. 213, s. 13; C. S. 122.)

§ 28-135. Clerk to state account.—Immediately after the return day the clerk or judge shall proceed to hear such evidence as shall be brought before him, and to state an account of the dealings of the personal representative with the estate of his deceased according to the course of his court. (Rev., s., 117; Code, s. 1461; 1871-2, c. 213, s. 14; C. S. 123.)

§ 28-136. Exception to report; final report and judgment.—After the clerk has stated the account and prepared his report, he shall notify all the parties to examine and except to the same. Any party may then except to the same in whole or in part. The clerk shall then pass on the exceptions and prepare and sign his final report and judgment, of which the parties shall have notice. (Rev., s. 118; Code, s. 1462; 1871-2, c. 213, s. 15; C. S. 124.)

§ 28-137. Appeal from judgment; security for costs.—Any party may appeal from a final judgment of the clerk to the judge of the superior court in term time, on giving an undertaking with surety, or making a deposit, to pay all costs which shall be recovered against him. If any creditor appeals and gives such security, his appeal shall be deemed an appeal by all who are damaged by the judgment, and no other creditor shall be required to give any undertaking. (Rev., s. 119; Code, s. 1464; 1871-2, c. 213, s. 17; C. S. 125.)

§ 28-138. Papers on appeal filed and cause docketed.—On an appeal the clerk shall file his report and judgment and all the papers in his office as clerk of the superior court, and enter the case on his trial docket for the next term. (Rev., s. 120; Code, s. 1465; 1871-2, c. 213, s. 18; C. S. 126.)

§ 28-139. Prior creditors not affected by appeal may docket judgments.—If the exceptions and questions, from the decision on which the appeal is taken, affect only the creditors in one or more classes, the creditors in the prior classes by the leave of the clerk, or of the judge of the superior court, may docket their judgments and issue execution thereon. (Rev., s. 121; Code, s. 1466; 1871-2, c. 213, s. 19; C. S. 127.)

§ 28-140. Judgment where assets sufficient to pay a class.—If upon taking the account it is admitted, or is found, without appeal, that the defendant has assets sufficient, after the deduction of all proper costs and charges, to pay all the claims which have been presented of any one or more of the classes, the clerk shall give judgment in favor of the creditors whose debts of such classes have been admitted, or adjudged by any competent court; and if any claim in any preferred class is in litigation, the amount of such claim, with the probable cost of the litigation, shall be left in the hands of the personal representative, and not carried to the credit of any subsequent class until the litigation is ended. (Rev., s. 122; Code, s. 1467; 1871-2, c. 213, s. 20; C. S. 128.)

§ 28-141. Judgment where assets insufficient to pay a class.—If the assets are insufficient to pay in full all the claims of any class, the amounts thereof having been found or admitted as aforesaid, the clerk may adjudge payment of a certain part of such claims, proportionate to the assets applicable to debts of that class. (Rev., s. 123; Code, s. 1468; 1871-2, c. 213, s. 21; C. S. 129.)

§ 28-142. Contents of judgment; execution.—All judgments given by a judge or clerk of the superior court against a personal representative for any claim against his deceased shall declare—

1. The certain amount of the creditor's demand.

2. The amount of assets which the personal representative has applicable to such demand. Execution may issue only for this last sum with

interest and costs. (Rev., s. 124; Code, s. 1469; 1871-2, c. 213, s. 22; C. S. 130.)

§ 28-143. When judgment to fix with assets.—No judgment of any court against a personal representative shall fix him with assets, except a judgment of the judge or clerk, rendered as aforesaid, or the judgment of some appellate court rendered upon an appeal from such judgment. All other judgments shall be held merely to ascertain the debt, unless the personal representative by pleading expressly admits assets. (Rev., s. 125; Code, s. 1470; 1871-2, c. 213, s. 23; C. S. 131.)

§ 28-144. Form and effect of execution.—All executions issued upon the order or judgment of the judge or clerk or of any appellate court against any personal representative, rendered as aforesaid, shall run against the goods and chattels of the deceased, and if none, then against the goods and chattels, lands and tenements of the representative. And all such judgments docketed in any county shall be a lien on the property for which execution is adjudged as fully as if it were against him personally. (Rev., s. 126; Code, s. 1471; 1871-2, c. 213, s. 24; C. S. 132.)

§ 28-145. Report is evidence of assets only at date.—The account and report and adjudication by the judge, clerk or any appellate court shall not be evidence as to the assets except on the day to which such adjudication relates. (Rev., s. 127; Code, s. 1472; 1871-2, c. 213, s. 25; C. S. 133.)

§ 28-146. Creditor giving security may show subsequent assets.—Any creditor may afterwards, on filing an affidavit by himself or his agent that he believes that assets have come to the hands of the personal representative since that day, and on giving an undertaking, with surety, or making a deposit for the costs of the personal representative, sue out a summons against him alleging subsequent assets, and the proceedings thereon shall be as hereinbefore prescribed, so far as the same may be necessary. (Rev., s. 128; Code, s. 1473; 1871-2, c. 215, s. 26; C. S. 134.)

§ 28-147. Suits for accounting at term.—In addition to the remedy by special proceeding, actions against executors, administrators, collectors and guardians may be brought originally to the superior court at term time; and in all such cases it is competent for the court in which said actions are pending to order an account to be taken by such person or persons as said court may designate, and to adjudge the application or distribution of the fund ascertained, or to grant other relief, as the nature of the case may require. (Rev., s. 129; Code, ss. 215, 1511; 1876-7, c. 241, s. 6; C. S. 135.)

§ 28-148. Proceedings against land, if personal assets fail.—If it appears at any time during, or upon, or after the taking of the account of a personal representative that his personal assets are insufficient to pay the debts of the deceased in full, and that he died seized of real property, it is the duty of the judge or clerk, at the instance of any party, to issue a summons in the name of the personal representative or of the creditors generally, to the heirs, devisees and others in possession of the lands of the deceased, to appear and show cause why said lands should not be sold for assets. Upon the return of the summons the proceeding shall be as is directed in other like cases. (Rev., ss. 130, 131; Code, ss. 1474, 1475; 1871-2, c. 213, ss. 27, 28; C. S. 136.)

Art. 17. Distribution.

§ 28-149. Order of distribution.—The surplus of the estate, in case of intestacy, shall be distributed in the following manner, except as hereinafter provided:

1. If there are not more than two children, one-third part to the widow of the intestate, and all the residue by equal portions to and among the children of the intestate and such persons as legally represent such children as may then be dead.

2. If there are more than two children, then the widow shall share equally with all the children and be entitled to a child's part.

3. If there is no child nor legal representative of a deceased child, then one-half the estate shall be allotted to the widow, and the residue be distributed equally to every of the next of kin of the intestate, who are in equal degree, and to those who legally represent them.

4. If there is no widow, the estate shall be distributed, by equal portions, among all the children, and such persons as legally represent such children as may be dead.

5. If there is neither widow nor children, nor any legal representative of the children, the estate shall be distributed equally to every of the next of kin of the intestate, who are in equal degree, and those who legally represent them.

6. If, in the lifetime of its father and mother, a child dies intestate, without leaving husband, wife or child, or the issue of a child, its estate shall be equally divided between the father and mother. If one of the parents is dead at the time of the death of the child, the surviving parent shall be entitled to the whole of the estate. The terms "father" and "mother" shall not apply to a step-parent, but shall apply to a parent by adoption: Provided, that a parent, or parents, who has willfully abandoned the care, custody, nurture and maintenance of such child to its kindred, relatives or other person, shall forfeit all and every right to participate in any part of said child's estate under the provisions of this section.

7. If there is no child nor legal representative of a deceased child nor any of the next of kin of the intestate, then the widow, if there is one, shall be entitled to all the personal estate of such intestate.

8. If a married woman die intestate leaving one child and a husband, the estate shall be equally distributed between the child and husband; if she leaves more than one child and a husband, the estate shall be distributed in equal portions and the husband shall receive a child's part, the child or children of any child or children of the intestate, who may have died prior to the mother, to represent his, her, or their parent in such distribution.

9. If a married woman dies intestate, leaving a husband but no children, the surviving husband shall be entitled to all the personal estate of which his wife died intestate. (Rev., s. 132; Code, s. 1478; R. C., c. 64, s. 1; R. S., c. 64, s. 1; 1893, c.

82; 1868-9, c. 113, s. 53; 1913, c. 166; 1915, c. 37; 1921, c. 54; 1927, c. 231; C. S. 7, 137.)

§ 28-150. Advancements to be accounted for.—Children who shall have any estate by the settlement of the intestate, or shall be advanced by him in his lifetime, shall account with each other for the same in the distribution of the estate in the manner as provided by the second rule in the chapter entitled descents, and shall also account for the same to the widow of the intestate in ascertaining her child's part of the estate. (Rev., s. 133; Code, s. 1483; 1868-9, c. 113, s. 54; C. S. 138.)

§ 28-151. Children advanced to render inventory; effect of refusal.—Where any parent dies intestate, who had in his or her lifetime given to, or put in the actual possession of, any of his or her children any personal property of what nature or kind soever, such child shall cause to be given to the administrator or collector of the estate an inventory, on oath, setting forth therein the particulars by him or her received of the intestate in his or her lifetime. In case any child who had, in the lifetime of the intestate, received a part of said estate, refuses to give such inventory, he shall be considered to have had and received his full share of the deceased's estate, and shall not be entitled to receive any further part or share. (Rev., ss. 134, 135; Code, ss. 1484, 1485; 1868-9, c. 113, ss. 55, 56; C. S. 139.)

§ 28-152. Illegitimates next of kin to mother and to each other.—Every illegitimate child of the mother dying intestate, or the issue of such illegitimate child deceased, shall be considered among her next of kin, and as such shall be entitled to a share of her personal estate as prescribed in this chapter. Illegitimate children, born of the same mother, shall be considered legitimate as between themselves and their representatives, and their personal estate shall be distributed in the same manner as if they had been born in lawful wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock. (Rev., ss. 136, 137; Code, ss. 1486, 1487; 1868-9, c. 113, ss. 57, 58; C. S. 140.)

§ 28-153. Allotment to after-born child in real estate.—The share of an after-born child in real estate shall be allotted to him out of any lands not devised, if there is enough for that purpose; and if there is none undevised, or not enough, then the whole share, or the deficiency, as the case may be, shall be made up of the lands devised; and so much thereof shall be taken from the several devisees according to their respective values, as near as may be convenient, as will make the proper share of such child. (Rev., s. 138; Code, s. 1536; 1868-9, c. 113, s. 108; C. S. 141.)

§ 28-154. Allotment to after-born child in personal property.—The share of an after-born child in the personal estate shall be paid and delivered to him out of any such estate not bequeathed, if there is enough for that purpose; and if there is none undisposed of, or not enough, then the whole share or the deficiency, as the case may be, shall be made up from the estate bequeathed; and so much shall be taken from the several legacies, according to their respective values, as will make the proper share of such child. (Rev., s. 139; Code, s. 1537; 1868-9, c. 113, s. 109; C. S. 142.)

§ 28-155. Allotment of personalty from proceeds of realty.—If, after satisfaction of the child's share of real estate out of undevised lands, there is a surplus of such lands, and there is no personal estate undisposed of, or not enough to make up his share of such estate, then the surplus of undevised land, or as much as be necessary, shall be sold and the proceeds applied to making up his share of personal estate. And if, after satisfaction of the child's share of personal estate out of property undisposed of by the will, there is a surplus of such property, then the surplus thereof shall be applied, as far as it will go, in exoneration of land, both devised and descended; and the same shall be set apart and secured as real estate to such child, if an infant or non compos. (Rev., s. 140; Code, s. 1538; 1868-9, c. 113, s. 110; C. S. 143.)

§ 28-156. Effect of allotment of realty; contribution to equalize burden.—Upon the allotment to such child of any real estate in the manner aforesaid, he shall thenceforth be seised thereof in fee simple; and the court shall give judgment severally, in favor of such of the devisees and legatees of whose lands and legacies more has been taken away than in proportion to the respective values of said lands and legacies, against such of said devisees and legatees of whose lands and legacies a just proportion has not been taken away, for such sums as will make the contribution on the part of each and every of them equitable, and in the ratio of the values of the several devises and legacies. (Rev., s. 141; Code, s. 1539; 1868-9, c. 113, s. 111; C. S. 144.)

§ 28-157. After-born child on allotment deemed devisee or legatee.—An after-born child after such decrees shall be considered and deemed in law a legatee and devisee as to his portion, shall be styled as such in all legal proceedings, and shall be liable to all the obligations and duties by law imposed on such: Provided, that all judgments or decrees bona fide obtained against the devisees and legatees previously to the preferring of any petition, and which were binding upon or ought to operate upon the lands and chattels devised or bequeathed, shall be carried into execution and effect notwithstanding, and the petitioner shall take his portion completely subject thereto: Provided further, that any suit instituted against the devisees and legatees previously to such petition shall not be abated or abatable thereby nor by the decree thereon, but shall go on as instituted, and the judgment and decree, unless obtained by collusion, be carried into execution; but on the filing of the petition, during the pendency of such suit, the petitioner, by guardian, if an infant, may become a defendant in the suit. (Rev., s. 142; Code, s. 1540; 1868-9, c. 113, s. 112; C. S. 145.)

§ 28-158. Before settlement executor may have claimants' shares in estate ascertained.—In case no petition is filed within two years, as herein prescribed, the executor or administrator with the will annexed, before he shall pay or deliver the legacies in the will given, or before paying to the next of kin of the testator any residue undisposed of by the will, shall call upon the legatees, dev-

isees, heirs and next of kin, and the said after-born child, by petition in the superior court, to litigate their respective claims, and shall pray the court to ascertain the share to which said child shall be entitled, and to apportion the shares and sums to which the legatees, devisees, heirs or next of kin shall severally contribute toward the share to be allotted to said child, and the court shall adjudge and decree accordingly. (Rev., s. 143; Code, s. 1541; 1868-9, c. 113, s. 113; C. S. 146.)

§ 28-159. Legacy or distributive share recoverable after two years.—Legacies and distributive shares may be recovered from an executor, administrator or collector by petition preferred in the superior court, at any time after the lapse of two years from his qualification, unless the executor, administrator or collector shall sooner file his final account for settlement. The suit shall be commenced and the proceeding therein conducted as prescribed in other cases of special proceedings. (Rev., s. 144; Code, s. 1510; 1868-9, c. 113, s. 83; C. S. 147.)

§ 28-160. Payment to clerk after one year discharges representative pro tanto.—It is competent for any executor, administrator or collector, at any time after twelve months from the date of letters testamentary or of administration, to pay into the office of the clerk of the superior court of the county where such letters were granted, any moneys belonging to the legatees or distributees of the estate of his testator or intestate, and such payment shall have the effect to discharge such executor, administrator or collector and his sureties on his official bond to the extent of the amount so paid. (Rev., s. 145; Code, s. 1543; 1881, c. 305, s. 1; C. S. 148.)

§ 28-161. On payment clerk to sign receipt.—It is the duty of the clerk, in the cases provided for in § 28-160, to receive such money from any executor, administrator or collector, and to execute a receipt for the same under the seal of his office. (Rev., s. 146; Code, s. 1544; 1881, c. 305, s. 3; C. S. 149.)

Art. 18. Settlement.

§ 28-162. Representative must settle after two years. — No executor, administrator, or collector, after two years from his qualification, shall hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements and such debts as he shall legally pay; but all such estate so remaining shall, immediately after the expiration of two years, be divided and be delivered and paid to the person to whom the same may be due by law or the will of the deceased; and the clerk of the superior court in each county shall require settlement of the balance in hand due distributees as shown by the final account of any administrator, executor, or guardian, and shall audit same: Provided, that the several clerks of the superior courts of this State may, in their discretion, for good cause shown, extend the time for the final settlement of any administrator or executor; provided, that nothing herein contained shall relieve any such administrator or executor of the duty of administering and distributing such funds and property in his hands as may be available for such purposes; provided, further, that any party having an interest in any such estate may, within ten days from the entry of an order extending the time for final settlement, appeal from such order to the resident or presiding judge of the district, which appeal shall be heard as is now or may hereafter be prescribed by law for the hearing of other appeals from the clerk. (Rev., s. 147; Code, s. 1488; 1868-9, c. 113, s. 59; 1919, c. 69; 1933, c. 188; 1935, c. 377; C. S. 150.)

§ 28-163. Extension of time for final accounts when funds are in closed banks.—Where as much as twenty-five per cent of the estate of any decedent is represented by deposits in a bank or trust company in course of liquidation, the personal representative of such decedent shall, in the discretion of the clerk of the superior court, have ninety days after the payment of the final dividend in which to file his final account. The several clerks of the superior court of this State may, in their discretion, upon good cause shown, extend the time for the final settlement of any executor or administrator: Provided, that this section shall not relieve any personal representative of the duty of administering and distributing other funds and property in his hands, as now required by law. (1935, c. 244.)

§ 28-164. Retention of funds to satisfy claims not due or in litigation.—If, on a final accounting before the judge or clerk, it appears that any claim exists against the estate which is not due, or on which suit is pending, the judge or clerk shall allow a sum sufficient to satisfy such claim, or the proportion to which it may be entitled, to be retained in the hands of the executor, administrator or collector, for the purpose of being applied to the payment when due or when recovered, with the expense of contesting the same. The order allowing such sum to be retained must specify the amount and nature of the claim. (Rev., s. 148; Code, s. 1489; 1868-9, c. 113, s. 60; C. S. 151.)

§ 28-165. After final account representative may petition for settlement.—An executor, administrator or collector, who has filed his final account for settlement, may, at any time thereafter, file his petition against the parties interested in the due administration of the estate, in the superior court of the county in which he qualified, or before the judge in term time, setting forth the facts, and praying for an account and settlement of the estate committed to his charge. The petition shall be proceeded on in the manner prescribed by law, and, at the final hearing thereof, the judge or clerk may make such order or decree in the premises as shall seem to be just and right. (Rev., s. 150; Code, s. 1525; 1868-9, c. 113, s. 96; C. S. 152.)

§ 28-166. Payment into court of fund due absent defendant or infant.—When any balance of money or other estate which is due an absent defendant or infant without guardian is found in the hands of an executor, administrator or collector who has preferred his petition for settlement, the court or judge may direct such money or other estate to be paid into court, to be invested upon interest, or otherwise managed under the direction of the judge, for the use of such absent person or infant. (Rev., s. 151; Code,

s. 1526; 1868-9, c. 113, s. 97; 1893, c. 317; C. S. 153.)

§ 28-167. Procedure where person entitled unheard of for seven years.—When the party entitled to the money has not been heard of for seven years or more, the fund shall be distributed among the next of kin of the absent deceased person as prescribed by statute, in the following manner: An administrator shall be appointed and made a party to a special proceeding in which a verified petition shall be filed setting forth the facts, with names of the parties entitled, and such other evidence as may be required by the clerk in whose office said fund was deposited, and the proceedings conducted as other special proceedings; and the order disposing of the fund shall be approved and confirmed by the judge, either at term or at chambers. (Rev., s. 151; Code, s. 1526; 1868-9, c. 113, s. 97; 1893, c. 317; C. S. 154.)

§ 28-168. Parties to proceeding for settlement.—In all actions and proceedings by administrators or executors for a final settlement of their estates and trusts, whether at the instance of distributees, legatees or creditors or of themselves, if the personal representative dies or is removed pending such actions or proceedings, the administrator de bonis non or administrator with the will annexed, as the case may be, shall be made party as provided in other cases, or in such way as the court may order, and the action or proceeding shall be conducted to its end, and such judgment shall be rendered on the confirmation of the report, or upon the terms of settlement, if any shall be agreed upon by the parties, as will fully protect and discharge all parties to the record. (Rev., s. 154; 1893, c. 206; C. S. 155.)

§ 28-169. When legacies may be paid in two years.—It is in the power of the judge or court, on petition or action, within two years from the qualification of an executor, administrator or collector, to adjudge the payment in full or partially, of legacies and distributive shares, on such terms as the court deems proper, when there is no necessity for retaining the fund. (Rev., s. 155; Code, s. 1512; C. S. 156.)

§ 28-170. Commissions allowed representatives.—Executors, administrators, testamentary trustees, collectors, or other personal representatives or fiduciaries shall be entitled to commissions to be fixed in the discretion of the clerk not to exceed five per cent upon the amount of receipts, including the value of all personalty when received, and upon the expenditures made in accordance with law, which commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. In determining the amount of such commissions, both upon personalty received and upon expenditures made, the clerk shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where land is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies. The clerk may make allowances on account of commissions on receipts of personalty and expenditures at any time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit herein fixed. Nothing in this section shall prevent the clerk allowing reasonable sums for necessary charges and disbursements incurred in the management of the estate. Nothing in this section shall be construed to allow commissions on allotment of dower, on distribution of the shares of heirs, on distribution of the shares of distributees of personal property or on distribution of shares of legatees; and nothing herein contained shall be construed to abridge the right of any interested party to such administration to appeal from the clerk's order to the judge of the superior court. (Rev., s. 149; Code, s. 1524; 1868-9, c. 113, s. 95; 1869-70, c. 189; 1941, c. 124; C. S. 157.)

§ 28-171. Liability and compensation of clerk.—Every clerk of the superior court who may be intrusted with money or other estate in such case shall be liable on his official bond for the faithful discharge of the duties enjoined upon him by the judge in relation to said estate, and he may receive such compensation for his services as the judge may allow. (Rev., s. 152; Code, s. 1527; 1868-9, c. 113, s. 98; C. S. 158.)

Art. 19. Actions by and against Representative.

§ 28-172. Action survives to and against representative.—Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as hereinafter provided, shall survive to and against the executor, administrator or collector of his estate. (Rev., s. 156; Code, s. 1490; 1868-9, c. 113, s. 63; C. S. 159.)

§ 28-173. Death by wrongful act; recovery not assets; dying declarations.—When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured party had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their executors, administrators, collectors or successors shall be liable to an action for damages, to be brought within one year after such death, by the executor, administrator or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, but shall be disposed of as provided in this chapter for the distribution of personal property in case of intestacy.

In all actions brought under this section the dying declarations of the deceased as to the cause of his death shall be admissible in evidence in like manner and under the same rules as dying declarations of the deceased in criminal actions for homicide are now received in evidence. (Rev., s. 59; Code, ss. 1498, 1500; 1868-9, c. 113, ss. 70, 72, 115; R. C., c. 46, ss. 8, 9; 1919, c. 29; 1933, c. 113; C. S. 160.)

§ 28-174. Damages recoverable for death by

wrongful act.—The plaintiff in such action may recover such damages as are a fair and just compensation for the pecuniary injury resulting from such death. (Rev., s. 60; Code, s. 1499; 1868-9, c. 113, s. 71; R. C., c. 1, s. 10; C. S. 161.)

§ 28-175. Actions which do not survive.—The following rights of action do not survive:

1. Causes of action for libel and for slander, except slander of title.
2. Causes of action for false imprisonment and assault and battery.
3. Causes where the relief sought could not be enjoyed, or granting it would be nugatory, after death. (Rev., s. 157; Code, s. 1491; 1868-9, c. 113, s. 64; 1915, c. 38; C. S. 162.)

§ 28-176. To sue or defend in representative capacity.—All actions and proceedings brought by or against executors, administrators or collectors, upon any cause of action or right to which the estate is the real party in interest, must be brought by or against them in their representative capacity. (Rev., s. 160; Code, s. 1507; 1868-9, c. 113, s. 79; C. S. 164.)

§ 28-177. Service on or appearance by one binds all.—In actions against several executors, administrators or collectors they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the plaintiff may proceed against those served, and if he recovers, judgment may be entered against all. (Rev., s. 161; Code, s. 1508; 1868-9, c. 113, s. 81; C. S. 165.)

§ 28-178. When creditors may sue on claim; execution in such action.—An action may be brought by a creditor against an executor, administrator or collector on a demand at any time after it is due, but no execution shall issue against the executor, administrator or collector on a judgment therein against him without leave of the court, upon notice of twenty days and upon proof that the defendant has refused to pay such judgment its ratable part, and such judgment shall be a lien on the property of the defendant only from the time of such leave granted. (Rev., s. 162; Code, s. 1509; 1868-9, c. 113, s. 82; C. S. 166.)

§ 28-179. Service by publication on executor without bond.—Whenever process may issue against an executor who has not given bond, and the same cannot be served upon him by reason of his absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions. (Rev., s. 163; Code, s. 1523; 1868-9, c. 113, s. 94; C. S. 167.)

§ 28-180. Execution by successor in office.—Any executor, administrator or collector may have execution issued on any judgment recovered by any person who preceded him in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done. (Rev., s. 164; Code, s. 1513; 1868-9, c. 113, s. 84; C. S. 168.)

§ 28-181. Action to continue, though letters revoked.—In case the letters of an executor, administrator or collector are revoked, pending an action to which he is a party, the adverse party may, notwithstanding, continue the action against him in order to charge him personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the executor, administrator or collector in the administration of the estate, in the same manner as in case of death. (Rev., s. 165; Code, s. 1514; 1868-9, c. 113, s. 85; C. S. 169.)

Art. 20. Representative's Powers, Duties and Liabilities.

§ 28-182. Representative may maintain appropriate suits and proceedings.—Executors, administrators or collectors may maintain any appropriate action or proceeding to recover assets, and to recover possession of the real property of which executors are authorized to take possession by will; and to recover for any injury done to such assets or real property at any time subsequent to the death of the decedent. (Rev., s. 159; Code, s. 1501; 1868-9, c. 113, s. 73; C. S. 170.)

§ 28-183. Representative may purchase for estate to prevent loss.—At any auction sale of real property belonging to the estate, the executor, administrator or collector may bid in the property and take a conveyance to himself as executor, administrator or collector for the benefit of the estate when, in his opinion, this is necessary to prevent a loss to the estate. (Rev., s. 85; Code, s. 1505; 1868-9, c. 113, s. 77; C. S. 171.)

§ 28-184. Representatives hold in joint tenancy.—Every estate vested in executors, administrators or collectors, as such, shall be held by them in joint tenancy. (Rev., s. 166; Code, s. 1502; 1868-9, c. 113, s. 74; C. S. 172.)

§ 28-185. Representatives liable for devastavit.—The executors and administrators of persons who, as rightful executors or as executors in their own wrong, or as administrators, shall waste or convert to their own use any estate or assets of any person deceased, shall be chargeable in the same manner as their testator or intestate might have been. (Rev., s. 167; Code, s. 1495; 1868-9, c. 113, s. 68; C. S. 173.)

§ 28-186. Nonresident executor or guardian to appoint process agent.—A nonresident qualifying in the state as an executor or guardian shall at the time of his qualification appoint in writing a resident agent in the county of his qualification, on whom may be served citations, notices, and all processes required by law to be served on such executor or guardian. The executor or guardian shall file the appointment with the clerk in the county of his qualification, and the clerk shall record it in the record book immediately after the record of qualification, and shall properly index it in the record book. All citations, notices, and processes served on such process agent shall be as effective as if served on the executor or guardian, but the return date shall not be sooner than ten days from the date of the issuance of the citation, notice, or process. No letters shall be granted to an executor nor shall a guardian be permitted to qualify, unless the process agent is named simultaneously with the application for letters or for qualification. (1917, c. 198, ss. 1, 2, 3; C. S. 174.)

§ 28-187. Executor or guardian removing from state to appoint process agent. — When a resi-

dent executor or guardian removes from the state, he shall, before removing or within thirty days thereafter, appoint a process agent in the manner as provided in the case of a nonresident, and upon failure to make the appointment within thirty days, the clerk shall remove him and appoint an administrator with the will annexed, or a new guardian, as the case may be. (1917, c. 198, s. 4; C. S. 175.)

§ 28-188. Nonresident's failure to obey process ground for removal.—The clerk may remove any nonresident executor or guardian who fails or refuses to obey any citation, notice or process served on the process agent appointed as provided in §§ 28-186, 28-187, and appoint a resident. (1917, c. 198, s. 5; C. S. 176.)

§ 28-189. Power to renew obligation; no personal liability.—Whenever a decedent is a maker, a surety, an endorser, or a guarantor of any note, bond or other obligation for the payment of money which is due at his death, or thereafter becomes due prior to the settlement of his estate, such obligation may be renewed under the following conditions:

(1) The executor, administrator or collector of the decedent's estate may execute in his official capacity a new obligation, in the same capacity as decedent was obligated, for an amount equal to or less but not greater than the sum due on the original obligation, which shall be in lieu of the original obligation of decedent, whether made payable to the original holder or another; and the executor, administrator or collector may renew the obligation from time to time, and it shall bind the decedent's estate in the same manner and to the same extent as the original obligation; but the maturity of the obligation or any renewal thereof by the executor, administrator or collector shall not extend beyond a period of two years from the qualification of the original executor, administrator or collector, except as hereinafter provided.

(2) If the court finds that it is for the best interest of the estate that the maturity of any such obligation be extended beyond two years from the qualification of the original executor, administrator or collector, the court in its discretion may authorize the executor, administrator or collector to renew the obligation for such additional period as the court may deem best. This additional period shall be for not more than two years unless the time for final settlement of the estate is extended, in which case, paragraph three, below, applies.

(3) When the time for final settlement of the decedent's estate has been extended from year to year for a longer period by order of the clerk of the superior court, approved by the resident judge of the superior court, the obligation may likewise be further extended, but not beyond the period authorized by the court for the final settlement of the decedent's estate.

(4) No obligation executed under this section shall bind the executor, administrator or collector personally. (1925, c. 86; 1933, cc. 161, 196, 498.)

Local Modification.—Mecklenburg, Pamlico, 1933, c. 161, s. 2.

§ 28-190. Continuance of farming operations of deceased persons. — When any person shall die while engaged in farming operations, his executor or administrator shall be authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested: Provided, that only the net income from such farming operations shall be assets of the estate, and any indebtedness incurred in connection with such farming operations shall be a preferred claim as to any heir, legatee, devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of an executor under the terms of a will. (1935, c. 163.)

Art. 21. Construction and Application of Chapter.

§ 28-191. Where no time specified, reasonable time allowed; extension.—If no length of notice, or no time for the doing of an act, is stated in this chapter, the time shall be reasonable, and in any case it may be enlarged by the clerk from time to time, or by the judge of the superior court, on application to him or on appeal to him from the clerk. (Rev., s. 169; Code, s. 1463; 1871-2, c. 213, s. 16; C. S. 177.)

§ 28-192. Powers under will not affected.—Nothing in this chapter shall be construed to affect the discretionary powers, trusts and authorities of an executor or other trustee acting under a will, provided creditors be not delayed thereby nor the order changed in which by law they are entitled to be paid. (Rev., s. 170; Code, s. 1415; 1868-9, c. 113, s. 23; R. C., c. 46, ss. 12, 13; C. S. 178.)

Chapter 29. Descents.

Sec.
29-1. Rules of descent.

§ 29-1. Rules of descent. — When any person dies seized of any inheritance, or of any right thereto, or entitled to any interest therein, not having devised the same, it shall descend under the following rules: (Rev., s. 1556; Code, s. 1281; R. C., c. 38, s. 1; C. S. 1654.)

Rule 1, Lineal descent. Every inheritance shall lineally descend forever to the issue of the person who died last seized, entitled or having any interest therein, but shall not lineally ascend, except as hereinafter provided. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 1; C. S. 1654.)

Rule 2, Females inherit with males, younger with older children; advancements. Females shall inherit equally with males, and younger with older children: Provided, that when a parent dies intestate, having in his or her lifetime settled upon or advanced to any of his or her children any real

or personal estate, such child so advanced in real estate shall be utterly excluded from any share in the real estate descended from such parent, except so much thereof as will, when added to the real estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And any child so advanced in personal estate shall be utterly excluded from any share in the personal estate of which the parent died possessed, except so much thereof as will, when added to the personal estate advanced, make the share of him who is advanced equal to the share of those who may not have been advanced, or not equally advanced. And in case any one of the children has been advanced in real estate of greater value than an equal share thereof which may come to the other children, he or his legal representatives shall be charged in the distribution of the personal estate of such deceased parent with the excess in value of such real estate so advanced as aforesaid, over and above an equal share as aforesaid. And in case any of the children has been advanced in personal estate of greater value than an equal share thereof which shall come to the other children, he or his legal representatives shall be charged in the division of the real estate, if there be any, with the excess in value, which he may have received as aforesaid, over and above an equal distributive share of the personal estate. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, s. 1, Rule 2; 1784, c. 204, s. 2; 1808, c. 739; 1844, c. 51, ss. 1, 2; C. S. 1654.)

Rule 3, Lineal descendant represents ancestor. The lineal descendants of any person deceased shall represent their ancestor, and stand in the same place as the person himself would have done had he been living. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 3; 1808, c. 739; C. S. 1654.)

Rule 4, Collateral descent of estate derived from ancestor. On failure of lineal descendants, and where the inheritance has been transmitted by descent from an ancestor, or has been derived by gift, devise or settlement from an ancestor, to whom the person thus advanced would, in the event of such ancestor's death, have been the heir or one of the heirs, the inheritance shall descend to the next collateral relations, capable of inheriting, of the person last seized, who were of the blood of such ancestor, subject to the two preceding rules. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 4; 1808, c. 739; C. S. 1654.)

Rule 5, Collateral descent of estate not derived from ancestor. On failure of lineal descendants, and where the inheritance has not been transmitted by descent or derived as aforesaid from an ancestor, or where, if so transmitted or derived, the blood of such ancestor is extinct, the inheritance shall descend to the next collateral relation, capable of inheriting, of the person last seized, whether of the paternal or maternal line, subject to the second and third rules. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 5; 1808, c. 739; C. S. 1654.)

Rule 6, Half blood inherits with whole; parents from child. Collateral relations of the half blood shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed according to the rules which prevail in descents at common law: Provided, that in all cases where the person last seized leaves no issue capable of inheriting, nor brother, nor sister, nor issue of such, the inheritance shall vest in the father and mother, as tenants in common if both are living, and if only one of them is living, then in such survivor. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 6; 1808, c. 739; 1915, c. 9, s. 1; C. S. 1654.)

Rule 7, Unborn infant may be heir. No inheritance shall descend to any person, as heir of the person last seized, unless such person shall be in life at the death of the person last seized, or shall be born within ten lunar months after the death of the person last seized. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 7; 1823, c. 1210; C. S. 1654.)

Rule 8, Widow or husband may take as heir. When any person dies intestate, leaving none who can claim as heir to such deceased person, but leaving surviving a widow or husband, such widow or husband shall be deemed his heir and as such inherit his estate. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 8; 1801, c. 575, s. 1; 1925, c. 7; C. S. 1654.)

Rule 9, Illegitimate children inherit from mother. Every illegitimate child of the mother and the descendants of any such child deceased shall be considered an heir: Provided, however, that where the mother leaves legitimate and illegitimate children such illegitimate child or children shall not be capable of inheriting of such mother any land or interest therein which was conveyed or devised to such mother by the father of the legitimate child or children; but such illegitimate child or descendant shall not be allowed to claim, as representing such mother, any part of the estate of her kindred, either lineal or collateral. (Rev., s. 1556, Rule 9; Code, s. 1281; R. C., c. 38, Rule 10; 1799, c. 522; 1913, c. 71; C. S. 1654.)

Rule 10, Heirs of illegitimate. Illegitimate children shall be considered legitimate as between themselves and their representatives, and their estates shall descend accordingly in the same manner as if they had been born in wedlock. And in case of the death of any such child or his issue, without leaving issue, his estate shall descend to such person as would inherit if all such children had been born in wedlock: Provided, that when any illegitimate child dies without issue, his inheritance shall vest in the mother in the same manner as is provided in rule six of this chapter. Provided, further, that when any illegitimate child dies without issue and his mother shall have predeceased said child and left legitimate children, his inheritance shall vest in the legitimate children of his mother in the same manner as provided in rule six of this chapter but nothing herein shall be construed to allow such illegitimates to inherit from legitimates of the same mother: Provided, further, that when any illegitimate child dies without any of the foregoing but his mother left brothers and sisters, his inheritance shall vest in said brothers and sisters of his mother, or their legal representatives. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 11; 1935, c. 256; C. S. 1654.)

Rule 11, Estate for life of another, not devised, deemed inheritance. Every estate for the life of another, not devised, shall be deemed an inheritance of the deceased owner, within the meaning

and operation of this chapter. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 12; C. S. 1654.)

Rule 12, Seizin defined. Every person, in whom a seizin is required by any of the provisions of this chapter, shall be deemed to have been seized, if he may have had any right, title or interest in the inheritance. (Rev., s. 1556; Code, s. 1281; R. C., c. 38, Rule 13; C. S. 1654.)

Rule 13, Issue of certain colored persons to inherit. The children of colored parents born at any time before the first day of January, one thousand eight hundred and sixty-eight, of persons living together as man and wife, are declared legitimate children of such parents or either one of them, with all the rights of heirs at law and next of kin, with respect to the estate or estates of any such parents, or either one of them. If such children be dead, their issue shall represent them with all the rights of heirs at law and next of kin provided by this section for their deceased parents or either of them if they had been living; and the provision of this section shall apply to the estates of such children as are now deceased or otherwise. (Rev., s. 1556; Code, s. 1281; 1897, c. 153; 1879, c. 73; C. S. 1654.)

Chapter 30. Widows.

Sec.

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Art. 1. Dissent from Will.

§ 30-1. Time and manner of dissent. — Every widow may dissent from her husband's will before the clerk of the superior court of the county in which such will is proved, at any time within six months after the probate. The dissent may be in person, or by attorney authorized in writing, executed by the widow and attested by at least one witness and duly proved. The dissent, whether in person or by attorney, shall be filed as a record of court. If the widow be an infant or insane, she may dissent by her guardian. (Rev., s. 3080; Code, s. 2108; 1868-9, c. 93, s. 37; C. S. 4096.)

§ 30-2. Effect of dissent.—Upon such dissent, the widow shall have the same rights and estates in the real and personal property of her husband as if he had died intestate. (Rev., s. 3081; Code, s. 2109; R. C., c. 118, s. 12; 1868-9, c. 93, s. 38; C. S. 4097.)

§ 30-3. Widow's interest not liable for husband's debts.—The dower or right of dower of a widow, and such lands as may be devised to her by his will, if such lands do not exceed the quantity she would be entitled to by right of dower, although she has not dissented from such will, shall not be subject to the payment of debts due from the estate of her husband, during the term of her life. (Rev., s. 3082; Code, ss. 2104, 2105; R. C., c. 118, s. 8; 1868-9, c. 93, s. 34; 1791, c. 351, s. 4; C. S. 4098.)

Art. 2. Dower.

§ 30-4. Who entitled to dower.—Widows shall be endowed as at common law as in this chapter defined: Provided, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the felonious slaying of her husband, or being accessory before the fact to the felonious slaying of her husband, she shall thereby lose all right to dower in the lands and tenements of her husband; and any such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of dower. (Rev., s. 3083; Code, s. 2102; 1889, c. 499; 1868-9, c. 93, s. 32; 1871-2, c. 193, s. 44; C. S. 4099.)

§ 30-5. In what property widow entitled to dower.—Subject to the provision in § 30-4, every married woman, upon the death of her husband intestate, or in case she shall dissent from his will, shall be entitled to an estate for her life in one-third in value of all the lands, tenements and hereditaments whereof her husband was seized and possessed at any time during the coverture, in which third part shall be included the dwelling-house in which her husband usually resided, together with offices, out-houses, buildings and improvements thereunto belonging or appertaining; she shall in like manner be entitled to such an estate in all legal rights of redemption and equities of redemption or other equitable estates in lands, tenements and hereditaments whereof her husband was seized in fee at any time during the coverture, subject to all valid encumbrances existing before the coverture or made during it with her free consent lawfully appearing thereto. The jury summoned for the purpose of assigning dower to a widow shall not be restricted to assign the same in every separate and distinct tract of land, but may allot her dower in one or more tracts, having a due regard to the interest of the heirs as well as to the right of the widow. This section shall not be construed so as to compel the jury selected to allot dower to allot the dwelling-house in which the husband usually resided, when the widow shall request that the same be allotted in other property. (Rev., s. 3084; Code, s. 2103; R. C., c. 118, s. 3; R. S., c. 121, s. 3; 1827, c. 46; 1869-70, c. 176; 1883, c. 175; 1908, c. 132; C. S. 4100.)

§ 30-6. Dower not affected by conveyance of husband; exception.—No alienation of the husband alone, with or without covenant of warranty, shall have any other or further effect than to pass his interest in such estate, subject to the dower right of his wife: Provided, that a mortgage or trust deed by the husband to secure the purchase money, or any part thereof, of land bought by him, shall, without the wife executing the deed, be effectual to pass the whole interest according to the provisions of the said deed. (Rev., s. 3085; Code, s. 2106; 1868-9, c. 93, s. 35; C. S. 4101.)

§ 30-7. Dower conveyed by wife's joinder in deed.—The right to dower under this chapter shall pass and be effectual against any widow or person claiming under her upon the wife joining with her husband in the deed of conveyance and being privately examined as to her consent thereto in the manner prescribed by law. (Rev., s. 3086; Code, s. 2107; 1868-9, c. 93, s. 36; C. S. 4102.)

§ 30-8. Conveyance of home site with wife's assent.—No deed or other conveyance, except to secure purchase money, made by the owner of a home site, which shall include the residence and other buildings together with the particular lot or tract of land upon which the residence is situated, whether actually occupied by said owner or not, shall be valid to pass possession or title during the lifetime of the wife without the voluntary signature and assent of his wife, signified on her private examination according to law: Provided, the wife does not commit adultery, or has not abandoned and does not abandon the husband and live separate and apart from him. Provided further, that all married women under the age of twenty-one shall have the same privilege to renounce their dower rights in and to the home site as is now conferred upon married women twenty-one years and over, and the deed or other conveyances thereof made by the owner of a home site with the voluntary signature and assent of his wife, signified on her private examination according to law, even though the wife be under twenty-one years of age, shall be valid and immediately pass possession and title thereto as though said married women were twenty-one years or over: Provided further, that all conveyances of a home site, as defined in this section, made prior to February 27, 1937, by the owner thereof, with the voluntary signature and assent of his wife, signified on her private examination according to law, shall be valid and pass the title and possession thereto as of the date thereof, even though the wife of said owner was under twenty-one years of age at the time of such signature and assent. (1919, c. 123; 1937, c. 69; C. S. 4103.)

§ 30-9. Conveyance without joinder of insane wife; certificate of lunacy.—Every man whose wife is a lunatic or insane may bargain, sell, lease, mortgage, transfer and convey any of his real estate by deed, mortgage deed, deed of trust, or lease, without the signature or private examination of his wife: Provided, that the clerk of the superior court of the county in which the wife was adjudged a lunatic or declared insane, or the superintendent of an insane institution of the state, or any other state, shall certify under his hand and seal that she has been adjudged a lunatic or declared insane, and that her sanity has not been declared restored as is provided by law, and this certificate must be attached to the husband's deed, mortgage deed, deed of trust, or lease. Such deed, mortgage deed, deed of trust or lease executed, probated and registered in accordance with law shall convey all the estate and interest as therein intended of the grantor in the land conveyed, free and exempt from the dower rights and all other interests of his wife: Provided, this section shall not apply to the homestead of the husband which has been actually allotted. (1923, c. 65, s. 1; C. S. 4103(a).)

§ 30-10. Renouncement of dower. — All married persons under the age of twenty-one years shall have the same privilege to renounce their dower rights and rights of curtesy and to give their written assent to conveyances of real property as are now conferred upon married persons twenty-one years old and over. (1923, c. 67, c. 2; 1935, c. 18; C. S. 4103(b).)

Art. 3. Allotment of Dower.

§ 30-11. By agreement between widow and heir.—If the personal property of a decedent be sufficient to pay his debts and charges of administration, the heir or devisee with the widow may, by deed, agree to an assignment of her dower. (Rev., s. 3087; Code, s. 2110; 1868-9, c. 93, s. 39; C. S. 4104.)

§ 30-12. Petition filed in superior court.—If no such agreement be made, the widow may apply for assignment of dower by petition in the superior court, and, if she fail to make such application within three months after the death of her

husband, any heir or devisee may file a petition reciting the facts that the widow is entitled to dower on certain lands and has not applied for it, and demand that her dower be assigned to her. In all cases the widow and all heirs and devisees and persons in possession of, or claiming estates in, the lands shall be made parties, and the court shall hear and pass upon the petition in like manner as in other cases of special proceedings. (Rev., s. 3088; Code, ss. 2111, 2112; 1891, c. 133; 1868-9, c. 93, ss. 40, 41; C. S. 4105.)

§ 30-13. Assignment of dower.—If dower be adjudged, it shall be assigned by a jury of three persons qualified to act as jurors, unless one of the parties demand a greater number, not exceeding twelve, who shall be summoned by the sheriff to meet on the premises or some part thereof, and being duly sworn by the sheriff or other person authorized to administer oaths, shall proceed to allot and set apart to the widow her dower in said premises according to law and make report of their proceedings under their hands within five days to the clerk of the superior court.

When the husband dies seized and possessed of lands in any other county than that in which dower is to be assigned, the clerk of the superior court of the county in which dower is to be assigned shall, upon application of the widow entitled to dower, issue a commission to the sheriff of such other county requiring him to summons three or more persons, as may be asked in said application, qualified to act as jurors, to go upon the lands of said husband in the county of said sheriff and assess the value of the same after being duly sworn by the sheriff for that purpose, and report their assessment under their hands and seals through the sheriff, who shall countersign the same as their report to the clerk issuing said commission; and said report in the hands of the jury summoned to assign the dower shall be considered by them a true valuation of the lands mentioned in the report, and said last-mentioned jury shall be deemed to have met on the lands thus assessed and shall assign the dower accordingly. But if agreeable to and convenient to the jury summoned or appointed, as the case may be, in the county where the proceeding is pending, for the allotment of dower, said jury may go upon, view and assign and allot the land which lies in any other county or counties; and when so viewed, assessed and allotted, if it or any part of it be allotted as dower, their acts shall be valid and their allotment of dower be as valid, as if all of the land of the deceased husband lay in the county where the proceeding was brought and pending, upon properly certified copy of such allotment being filed and recorded in such other county or counties, other than the county in which the original proceedings were instituted, in which lands acted upon do lie.

If either party to the proceeding shall demand it, the clerk shall appoint three persons qualified to act as jurors, unless one of the parties demands a greater number, and then not exceeding twelve, who shall meet on the premises or some part thereof, and after being duly sworn by the clerk or someone authorized to administer oaths, shall proceed to allot and set apart to the widow her dower in said premises according to law and make report of their proceedings under their hands, or the hands of a majority of them, within five days to the clerk of the Superior Court; and when the jurors are so appointed the sheriff will not countersign the report nor take any part in the proceedings, except that the clerk may cause notice to be served on the jurors so appointed, if he deems or finds it necessary. (Rev., s. 3089; Code, s. 2113; 1893, c. 314; 1868-9, c. 93, s. 42; 1931, c. 393; 1939, c. 339; C. S. 4106.)

§ 30-14. Notice to parties of meeting of jury.—The parties to such proceeding, or their attorneys, if within the county, shall be notified of the time and place of meeting of the jury appointed to assign dower, at least five days before the meeting. (Rev., s. 3090; Code, s. 2114; 1868-9, c. 93, s. 43; C. S. 4107.)

Art. 4. Year's Allowance.

Part 1. Nature of Allowance.

§ 30-15. When widow entitled to allowance.—Every widow of an intestate, or of a testator from whose will she has dissented, shall, unless she has forfeited her right thereto as provided by §§ 52-19 and 52-20, be entitled, in addition to her distributive share in her husband's personal estate, to an allowance therefrom of the value of five hundred dollars for her support for one year after his decease. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the husband. (Rev., s. 3091; Code, s. 2116; 1868-9, c. 93, s. 81; 1871-2, c. 193, s. 44; 1880, c. 42; 1889, c. 499, s. 2; C. S. 4108.)

§ 30-16. Duty of personal representative or justice to assign allowance.—It shall be the duty of every administrator, collector, or executor of a will from which the widow of the testator has dissented, on application in writing, signed by the widow, at any time within one year after the decease of the husband, to assign to her the year's allowance as provided in this chapter, deducting therefrom the value of any articles consumed by her between the death of her husband and the time of the assignment.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a justice of the peace, as provided in § 30-20, for ten days after the widow has filed the aforesaid request, or if the widow is the personal representative, the widow may make the application to the justice, and it shall be the duty of the justice to proceed in the same manner as though the application had been made by the personal representative.

Where the widow and personal effects of the deceased husband shall have been removed from the township or county where the deceased husband resided before his death, the widow may apply to any justice of the peace of the township or county where such personal property is located, and it shall be the duty of such justice to assign the year's allowance as if the husband had resided and died in that township. (Rev., ss. 3096, 3098; Code, ss. 2120, 2122; 1868-9, c. 93, s. 12; 1870-1, c. 263; 1889, cc. 496, 531; 1891, c. 13; C. S. 4108.)

§ 30-17. When children entitled to an allowance.—Whenever any parent dies leaving any child under the age of fifteen years, including an adopted child, or a child with whom the widow may be pregnant at the death of her husband, or any other

person under the age of fifteen years residing with the deceased parent at the time of the death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled, besides its distributive share of the personal estate of such deceased parent, to an allowance of one hundred fifty dollars ($150.00) for its support for the year next ensuing the death of such parent, less, however, the value of any articles consumed by said child since the death of said parent. Such allowance shall be exempt from any lien, by judgment or execution against the property of such parent. The personal representative of the deceased parent, within one year after the parent's death, shall assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within ten days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a justice of the peace, upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper writing. If the child does not reside with a parent when the allowance is paid, it shall be paid to its general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child. (Rev., s. 3094; 1889, c. 496; 1939, c. 396; C. S. 4111.)

§ 30-18. From what property assigned.—Such allowance shall be assigned from the crop, stock and provisions or any other personal property of the deceased in his possession at the time of his death, if there be a sufficiency thereof in value; and if there be a deficiency, it shall be made up by the personal representative from the personal estate of the deceased. (Rev., s. 3095; Code, s. 2117; 1868-9, c. 93, s. 9; 1925, c. 92; C. S. 4112.)

Part 2. Assigned by Justice of the Peace.

§ 30-19. Value of property ascertained. — The value of stock, crop and provisions or any other personal property assigned to the widow and children, as well as that of the articles consumed, shall be ascertained by a justice of the peace and two persons qualified to act as jurors of the county in which administration was granted or the will proved. (Rev., s. 3097; Code, s. 2121; 1868-9, c. 93, s. 13; C. S. 4114.)

§ 30-20. Procedure for assignment.—Upon the application of the widow, or whenever it shall appear that a child is entitled to an allowance as provided by § 30-17, the personal representative of the deceased shall apply to a justice of the peace of the township in which the deceased resided, or some adjoining township, to summon two persons qualified to act as jurors, who, having been sworn by the justice to act impartially as commissioners shall, with him, ascertain the person or persons entitled to an allowance according to the provisions of this chapter, and examine the crop, stock, and provisions and any other personal property on hand, and assign to the widow and to the children, if any, so much thereof as they shall be entitled to by law. Any deficiencies shall be made up from any of the personal estate of the deceased, and also from any debt or debts known to be due the deceased. Such assignment shall vest in the widow and children such property, and the right to collect the debts thus allotted. (Rev., s. 3098; Code, s. 2122; 1870-1, c. 263; 1891, c. 13; 1899, c. 531; C. S. 4115.)

§ 30-21. Report of commissioners. — The commissioners shall make and sign three lists of the articles assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the widow, one of these lists shall be delivered to her. Where the allowance is to a child, one of these lists shall be delivered to the widow or surviving parent with whom the child is living; or to the child's guardian or next friend if the child is not living with said widow or surviving parent; or to the child if said child is not living with the widow or surviving parent and has no guardian or next friend. One list shall be delivered to the personal representative. One list shall be returned by the justice, within twenty days after the assignment, to the Superior Court of the county, and the clerk shall file and record the same and enter judgment against the personal representative, to be paid when assets shall come into his hands, for any residue found in favor of the person entitled to the allowance. (Rev., s. 3099; Code, s. 2123; 1868-9, c. 93, s. 15; C. S. 4116.)

§ 30-22. Fees of commissioners. — Any person appointed by any justice of the peace to allot or set apart to any widow and/or child a year's allowance under the statute, and who shall serve, shall be paid the sum of one dollar a day or fraction of a day engaged, and the same shall be taxed as a part of the bill of costs of the proceeding. (1907, c. 223; 1913, c. 18; C. S. 3900.)

§ 30-23. Right of appeal.—The personal representative, or the widow, or child by his guardian or next friend, or any creditor, legatee or distributee of the deceased, may appeal from the finding of the commissioners to the superior court of the county, and, within ten days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding ten days after the service of the citation. (Rev., s. 3100; Code, s. 2124; 1868-9, c. 93, s. 16; 1897, c. 442; C. S. 4117.)

§ 30-24. Hearing on appeal.—At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided as other issues are directed to be. When the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the commissioners. (Rev., s. 3101; Code, s. 2125; 1868-9, c. 93, s. 17; C. S. 4118.)

§ 30-25. Personal representative entitled to credit.—Upon the settlement of the accounts of the personal representative, he shall be credited with

the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him. (Rev., s. 3102; Code, s. 2126; 1868-9, c. 93, s. 18; C. S. 4119.)

§ 30-26. When above allowance is in full.—If the estate of a deceased be insolvent, or if his personal estate does not exceed two thousand dollars, the allowances for the year's support of his widow and the children shall not, in any case, exceed the value prescribed above; and the allowances made to them as above prescribed shall preclude them from any further allowances. (Rev., s. 3103; Code, s. 2127; 1868-9, c. 93, s. 19; C. S. 4120.)

Part 3. Assigned in Superior Court.

§ 30-27. Widow or child may apply to superior court.—It shall not, however, be obligatory on a widow or child to have the support assigned as above prescribed. Without application to the personal representative, the widow, or the child through his guardian or next friend, may, at any time within one year after the decedent's death, apply to the superior court of the county in which administration was granted to have a year's support assigned. (Rev., s. 3104; Code, s. 2128; 1868-9, c. 93, s. 20; C. S. 4121.)

§ 30-28. Nature of proceeding; parties. — The application shall be by summons, as is prescribed for special proceedings, in which the personal representative of the deceased, if there be one other than the plaintiff, the largest known creditor, or legatee, or some distributee of the deceased, living in the county, shall be made defendant, and the proceedings shall be as prescribed for special proceedings between parties. (Rev., s. 3105; Code, s. 2129; 1868-9, c. 93, s. 21; C. S. 4122.)

§ 30-29. What complaint must show.—In the complaint the plaintiff shall set forth, besides the facts entitling plaintiff to a year's support and the value of the support claimed, the further facts that the estate of the decedent is not insolvent, and that the personal estate of which he died possessed exceeded two thousand dollars, and also whether or not an allowance has been made to plaintiff and the nature and value thereof; and if no allowance has been made, the quantities and values of the articles consumed by plaintiff since the death of decedent. (Rev., s. 3106; Code, s. 2130; 1868-9, c. 93, s. 22; C. S. 4123.)

§ 30-30. Judgment and order for commissioners. —If the material allegations of the complaint be found true, the judgment shall be that plaintiff is entitled to the relief sought; and the court shall thereupon issue an order to the sheriff or other proper officer of the county, commanding him to summon a justice of the peace and two indifferent persons qualified to act as jurors of the county, to assign to the plaintiff from the crop, stock and provisions, or any other personal property of the decedent on hand, a sufficiency for plaintiff's support for one year from decedent's death; and, if there be a deficiency, to assess such deficiency, to be paid by the personal representative from any other personal assets of the decedent, deducting, nevertheless, in all cases from such allowance the articles, or the value thereof, consumed by plaintiff before such assignment and also any sum previously assigned. (Rev., s. 3107; Code, s. 2131; 1868-9, c. 93, s. 23; C. S. 4124.)

§ 30-31. Duty of commissioners; amount of allowance.—The said commissioners shall be sworn by the justice and shall proceed as prescribed in this chapter, except that they may assign to the plaintiff a value sufficient for the support of plaintiff according to the estate and condition of the decedent and without regard to the limitations set forth in this chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one-half of the average annual net income of the deceased for three years next preceding his death. This report shall be returned by the justice to the court. (Rev., s. 3108; Code, s. 2132; 1868-9, c. 93, s. 24; C. S. 4125.)

§ 30-32. Exceptions to the report.—The personal representative, or any creditor, distributee or legatee of the deceased, within twenty days after the return of the report, may file exceptions thereto. The plaintiff shall be notified thereof and cited to appear before the court on a certain day, within twenty and not less than ten days after service of the notice, and answer the same; the case shall thereafter be proceeded in, heard and decided as provided in special proceedings between parties. (Rev., s. 3109; Code, s. 2133; 1868-9, c. 93, s. 25; C. S. 4126.)

§ 30-33. Confirmation of report; execution.—If the report shall be confirmed, the court shall so declare, and execution shall issue to enforce the judgment as in like cases. (Rev., s. 3110; Code, s. 2134; 1868-9, c. 93, s. 26; C. S. 4127.)

Chapter 31. Wills.

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31-44. Gifts to children dying before testator pass to their issue.
31-45. After-born children share in testator's estate.

Art. 1. Execution of Will.

§ 31-1. Infants incapable.—No person shall be capable of disposing of real or personal estate by will until he shall have attained the age of twenty-one years. (Rev., s. 3111; Code, s. 2137; R. C., c. 119, s. 2; 1811, c. 280; C. S. 4128.)

§ 31-2. Married woman capable. — A married woman owning real or personal property may dispose of the same by will. (Rev., s. 3112; Code, s. 2138; R. C., c. 119, s. 3; 1844, c. 88, s. 8; C. S. 4129.)

§ 31-3. Formal execution. — No last will or testament shall be good or sufficient, in law, to convey or give any estate, real or personal, unless such last will shall have been written in the testator's life time, and signed by him, or by some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least, no one of whom shall be interested in the devise or bequest of the estate, except as hereinafter provided; or, unless such last will and testament be found among the valuable papers and effects of any deceased person, or shall have been lodged in the hands of any person for safekeeping, and the same shall be in the handwriting of such deceased person, with his name subscribed thereto or inserted in some part of such will; and if such handwriting shall be proved by three credible witnesses, who verily believe such will and every part thereof is in the handwriting of the person whose will it appears to be, then such will shall be sufficient to give and convey real and personal estate. (Rev., s. 3113; Code, s. 2136; R. C., c. 119, s. 1; 1784, c. 204, s. 11; 1784, c. 225, s. 5; 1840, c. 62; 1846, c. 54; C. S. 4131.)

§ 31-4. Execution of power of appointment by will.—No appointment, made by will in the exercise of any power, shall be valid unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity. (Rev., s. 3114; Code, s. 2139; R. C., c. 119, s. 4; 1844, c. 88, s. 9; C. S. 4132.)

Art. 2. Revocation of Will.

§ 31-5. Revocation by writing or by cancellation or destruction.—No will or testament in writing, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same, by the testator himself, or in his presence and by his direction and consent; but all wills or testaments shall remain and continue in force until the same be burnt, canceled, torn, or obliterated by the testator, or in his presence and by his consent and direction; or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the testator, signed by him, or some other person in his presence and by his direction, and subscribed in his presence by two witnesses at least; or unless the same be altered or revoked by some other will or codicil in writing, or other writing of the testator, all of which shall be in the handwriting of the testator, and his name subscribed thereto or inserted

therein, and lodged by him with some person for safe-keeping, or left by him in some secure place, or among his valuable papers and effects, every part of which will or codicil or other writing shall be proved to be in the handwriting of the testator, by three witnesses at least. (Rev., s. 3115; Code, s. 2176; R. C., c. 119, s. 22; 1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; C. S. 4133.)

§ 31-6. Revocation by marriage; exception. — All wills shall be revoked by subsequent marriage of the maker except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his heirs, executor or administrator, or the person entitled as his next of kin, under the statute of distributions. (Rev., s. 3116; Code, s. 2177; R. C., c. 119, s. 23; 1844, c. 88, s. 10; C. S. 4134.)

§ 31-7. No revocation by altered circumstances. —No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. (Rev., s. 3117; Code, s. 2178; R. C., c. 119, s. 24; 1844, c. 88, s. 11; C. S. 4135.)

§ 31-8. No revocation by subsequent conveyance.—No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death. (Rev., s. 3118; Code, s. 2179; R. C., c. 119, s. 25; 1844, c. 88, s. 2; C. S. 4136.)

Art. 3. Witnesses to Will.

§ 31-9. Executor competent witness.—No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. (Rev., s. 3119; Code, s. 2146; R. C., c. 119, s. 9; C. S. 4137.)

§ 31-10. Beneficiary competent; interest rendered void.—If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, estate, interest, legacy, or appointment of or affecting any real or personal estate shall be thereby given or made, such devise, estate, interest, legacy, or appointment shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person, or any person claiming under such person, or wife or husband, be void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof. (Rev., s. 3120; Code, s. 2147; R. C., c. 119, s. 10; C. S. 4138.)

Art. 4. Depository for Wills.

§ 31-11. Depositories in offices of clerks of superior court where living persons may file wills. —The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who desires to do so may file his or her will for safe keeping; and the clerk shall make a charge of fifty cents (50c) for the filing of such will, and shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of any one other than the testator or his duly authorized agent until such time as the said will shall be offered for probate. (1937, c. 435, s. 1.)

Local Modification.—Guilford: 1937, c. 435, s. 2.

Art. 5. Probate of Will.

§ 31-12. Executor may apply for probate; jurisdiction when clerk interested party. — Any executor named in a will may, at any time after the death of the testator, apply to the clerk of the superior court, having jurisdiction, to have the same admitted to probate. Such will shall not be valid or effective to pass real estate or personal property as against innocent purchasers for value and without notice, unless it is probated or offered for probate within two years after the death of the testator or devisor. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an action or proceeding shall be commenced within two years from the death of the testator or devisor to obtain said will or establish the same as provided by law, then the limitation herein set out shall only begin to run from the termination of said action or proceeding, but not otherwise. If the clerk of the superior court having jurisdiction to probate any will be a subscribing witness thereto, or a devisee or legatee therein, or if said clerk shall have any pecuniary interest in the property disposed of by said will, then the clerk of the superior court of any adjoining county shall have jurisdiction to probate said will, and upon petition filed before him by any one interested in any way in said will, he shall proceed to have said will produced before him, and the said will shall thereupon be probated, recorded, and filed as provided by this chapter, and a duly certified copy of the said will, together with the probate of the same, and the said petition, under the hand and seal of the said clerk, shall be filed and recorded in the book of wills, in the office of the clerk of the superior court of the county whose clerk was a subscribing witness thereto, or a devisee or legatee therein, or who had a pecuniary interest in the property disposed of by said will and the clerk in said last mentioned county is hereby authorized to issue letters to personal representatives, who may qualify and administer the estate in said will as if originally probated in said county, and the title to all property, both real and personal, conveyed and devised in said will, shall be as good and effectual as if the said will had been originally probated and recorded in said last mentioned county. (Rev., s. 3122; Code, s. 2151; C. C. P., s. 439; 1919, c. 15; 1921, c. 99; 1923, c. 14; C. S. 4139.)

§ 31-13. Executor failing, beneficiary may apply.—If no executor apply to have the will proved within sixty days after the death of the testator, any devisee or legatee named in the will, or any other person interested in the estate, may make such application, upon ten days notice thereof to the executor. (Rev., s. 3123; Code, s. 2152; C. C. P., s. 440; C. S. 4140.)

§ 31-14. Clerk to notify legatees and devisees of probate of wills. — The clerks of the superior court of the state are hereby required and directed to notify by mail, all legatees and devisees whose addresses are known, designated in wills filed for probate in their respective counties. All expense incident to such notification shall be deemed a proper charge in the administration of the respective estates. (1933, c. 133.)

§ 31-15. Clerk may compel production of will.— Every clerk of the superior court having jurisdiction, on application by affidavit setting forth the facts, shall, by summons, compel any person in the state, having in possession the last will of any decedent, to exhibit the same in his court for probate; and whoever being duly summoned refuses, in contempt of the court, to produce such will, or (the same having been parted with by him) refuses to inform the court on oath where such will is, or in what manner he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail of the county, there to remain without bail till such will be produced or accounted for, and due submission made for the contempt. (Rev., s. 3124; Code, s. 2154; C. C. P., s. 442; C. S. 4141.)

§ 31-16. What shown on application for probate. —On application to the clerk of the superior court, he must ascertain by affidavit of the applicant—

1. That such applicant is the executor, devisee or legatee named in the will, or is some other person interested in the estate, and how so interested.

2. The value and nature of the testator's property, as near as can be ascertained.

3. The names and residences of all parties entitled to the testator's property, if known, or that the same on diligent inquiry cannot be discovered; which of the parties in interest are minors, and whether with or without guardians, and the names and residences of such guardians, if known. Such affidavit shall be recorded with the will and the certificate of probate thereof, if the same is admitted to probate. (Rev., s. 3125; Code, s. 2153; C. C. P., s. 441; C. S. 4142.)

§ 31-17. Proof and examination in writing.— Every clerk of the superior court shall take in writing the proofs and examinations of the witnesses touching the execution of a will, and he shall embody the substance of such proofs and examinations, in case the will is admitted to probate, in his certificate of the probate thereof, which certificate must be recorded with the will. The proofs and examinations as taken must be filed in the office. (Rev., s. 3126; Code, s. 2149; C. C. P., s. 437; C. S. 4143.)

§ 31-18. Manner of probate.—Wills and testaments must be admitted to probate only in the following manner:

1. In case of a written will, with witnesses, on the oath of at least two of the subscribing witnesses, if living; but when any one or more of the subscribing witnesses to such will are dead, or reside out of the state, or cannot after due diligence be found within the state, or are insane or otherwise incompetent to testify, then such proof may be taken of the handwriting, both of the testator and of the witness or witnesses so dead, absent, insane or incompetent, and also of such other circumstances as will satisfy the clerk of the superior court of the genuineness and the due execution of such will. In all cases where the testator executed the will by making his mark, and where any one or more of the subscribing witnesses are dead or reside out of the state, or are insane or otherwise incompetent to testify, it shall not be necessary to prove the handwriting of the testator, but proof of the handwriting of the subscribing witness or witnesses so dead, absent, insane or incompetent shall be sufficient. The probate of all wills heretofore taken in compliance with the requirements of this section are hereby declared to be valid.

2. In case of a holograph will, on the oath of at least three credible witnesses, who state that they verily believe such will and every part thereof is in the handwriting of the person whose will it purports to be, and whose name must be subscribed thereto, or inserted in some part thereof. It must further appear on the oath of some one of the witnesses, or of some other credible person, that such will was found among the valuable papers and effects of the decedent, or was lodged in the hands of some person for safe-keeping.

3. In case of a nuncupative will, on the oath of at least two credible witnesses present at the making thereof, who state that they were specially required to bear witness thereto by the testator himself. It must also be proved that such nuncupative will was made in the testator's last sickness, in his own habitation, or where he had been previously resident for at least ten days, unless he died on a journey or from home. No nuncupative will shall be proved by the witnesses after six months from the making thereof, unless it was put in writing within ten days from such making; nor shall it be proved till a citation has been first issued or publication been made for six weeks in some newspaper published in the state, to call in the widow and next of kin to contest such will if they think proper. (Rev., s. 3127; Code, s. 2148; 1893, c. 269; 1901, c. 276; C. C. P., s. 435; C. S. 4144.)

Local Modification.—Burke, Scotland: C. S. 4154; Cleveland, Henderson, Transylvania, Wake: C. S. 4156; 1929, c. 313; 1939, c. 34; Halifax: 1924, c. 10; 1929, c. 313; 1939, c. 34; Haywood: C. S. 4157; Lee: 1929, c. 313; 1939, c. 34.

§ 31-19. Probate conclusive until vacated; substitution of consolidated bank as executor or trustee under will.—Such record and probate is conclusive in evidence of the validity of the will, until it is vacated on appeal or declared void by a competent tribunal. Provided, that whenever in a will so probated or recorded a bank or trust company shall be named executor and/or trustee and shall have at the time of such probate and recording become absorbed by or consolidated with another bank or trust company or shall have sold and transferred all its assets and liabilities to another bank or trust company doing business in North Carolina, such latter bank or trust company shall be deemed substituted for and shall have all the rights and powers of the former bank or trust company. (Rev., s. 3128; Code, s. 2150; C. C. P., c. 438; 1929, c. 150; 1941, c. 79; C. S. 4145.)

§ 31-20. Wills filed in clerk's office.—All original wills shall remain in the clerk's office, among

the records of the court where the same shall be proved, and to such wills any person may have access, as to the other records. If said will contains a devise of real estate, outside said county where said will is probated, then a copy of the said will, together with the probate of the same, certified under the hand and seal of the clerk of the superior court of said county may be recorded in the book of wills and filed in the office of the clerk of the superior court of any county in the state in which said land is situated with the same effect as to passing the title to said real estate as if said will had originally been probated and filed in said county and the clerk of the superior court of said last mentioned county had had jurisdiction to probate the same. (Rev., s. 3129; Code, s. 2173; R. C., c. 119, s. 19; 1777, c. 115, s. 59; 1921, c. 108, s. 1; C. S. 4146.)

§ 31-21. Validation of wills heretofore certified and recorded.—All wills which have prior to March 9, 1921, been certified and recorded in the office of the clerk of the superior court of any county, substantially following the provisions of § 31-20 are hereby validated and approved as to the conveyance and transfer of any title to real estate as contained therein, to the same extent as if said wills had originally been probated and filed in said county, and the clerk of the superior court of said county had had jurisdiction to probate the same, provided the probates and witnesses to the said wills are sufficient and according to law. (1921, c. 108, s. 2; C. S. 4146(a).)

§ 31-22. Certified copy of will proved in another state or country.—When a will, made by a citizen of this state, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this state, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original. (Rev., s. 3130; Code, s. 2157; C. C. P., s. 445; R. C., c. 44, s. 9; 1802, c. 623; C. S. 4147.)

§ 31-23. Probate of will made out of the state; probate when witnesses out of state.—Whenever it is suggested to the clerk of the superior court, by affidavit or otherwise, that a will has been made without the state, or that a will has been made in the state and the witnesses thereto have moved out of the state, disposing of or charging land or other property within the state, the clerk of the superior court of the county where the property is situated may issue a commission to such person as he may select, authorizing the commissioner to take the examination of such witnesses as may be produced, touching the execution thereof, and upon return of such commission, with the examination, he may adjudge the will to be duly proved or otherwise, as in cases on the oral examination of witnesses before him, and if duly proved, such will shall be recorded. (Rev., s. 3131; Code, s. 2155; 1899, c. 55; C. C. P., s. 443; C. S. 4148.)

§ 31-24. Probate when witnesses are nonresident; examination before notary public.—Where one or more of the subscribing witnesses to the will of a testator, resident in this state, reside in another state, or in another county in this state than the one in which the will is being probated, the examination of such witnesses may be had, taken and subscribed in the form of an affidavit, before a notary public residing in the county and state in which the witnesses reside; and the affidavits, so taken and subscribed, shall be transmitted by the notary public, under his hand and official seal, to the clerk of the court before whom the will has been filed for probate. If such affidavits are, upon examination by the clerk, found to establish the facts necessary to be established before the clerk to authorize the probate of the will if the witnesses had appeared before him personally, then it shall be the duty of the clerk to order the will to probate, and record the will with the same effect as if the subscribing witnesses had appeared before him in person and been examined under oath. (1917, c. 183; 1933, c. 114; C. S. 4149.)

§ 31-25. Probate when witnesses in another county.—When a will is offered for probate in one county of this state and the witnesses reside in another county, the clerk of the court before whom such will is offered shall have power and authority to issue a subpoena for the witnesses requiring them to appear before him and prove the will; and the clerk shall likewise have power and authority to issue a commission to take the deposition of such witnesses when they reside more than seventy-five miles from the place where the will is to be probated, such deposition and commission to be returned and the clerk to adjudge the will to be duly proven. Also, when it shall be found as a fact upon affidavit or other proof, by the clerk of any county where a will is to be probated, that any witness to the will resides outside of the county, or inside of the county, and seventy-five miles or less from the place where the will is to be probated, and that the witness is so infirm of body as to be unable to appear in person before the clerk to prove the will, then the clerk shall have the power and authority to issue a commission to take the deposition of the witness, the commission and deposition of the witness to be returned, and the clerk to adjudge the will to be duly proved thereon as if the witness had appeared in person before him. (Rev., s. 3132; 1899, c. 55; 1911, c. 13; 1923, c. 59; C. S. 4150.)

§ 31-26. Probate of wills of soldiers and sailors.—In addition to the methods already provided in existing statutes therefor, the will of a soldier or sailor, executed while in the actual service of the United States, shall be admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either of them, is out of the state at the time said will is offered for probate) upon the oath of at least three credible witnesses that the signature to said will is in the handwriting of the person whose will it purports to be. Such will so proven shall be effective to devise real property as well as to bequeath personal estate of all kinds.

The provisions of this section shall expire by limitation on April sixth, one thousand nine

hundred and twenty-two. (1919, c. 216; Ex. Sess. 1921, s. 39; C. S. 4151.)

§ 31-27. Certified copy of will of nonresident recorded.—Whenever any will made by a citizen or subject of any other state or country is duly proven and allowed in such state or country according to the laws thereof, a copy or exemplification of such will and of the proceedings had in connection with the probate thereof, duly certified, and authenticated by the clerk of the court in which such will has been proved and allowed, if within the United States, or by any ambassador, minister, consul or commercial agent of the United States under his official seal, when produced or exhibited before the clerk of the superior court of any county wherein any property of the testator may be, shall be allowed, filed and recorded in the same manner as if the original and not a copy had been produced, proved and allowed before such clerk. But when any will contains any devise or disposition of real estate in this state, such devise or disposition shall not have any validity or operation unless the will is executed according to the laws of this state, and that fact must appear affirmatively from the testimony of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise, in such certified copy or exemplification of the will and probate proceedings, and if it does not so appear, the clerk before whom the copy is exhibited shall have power to issue a commission for taking proofs touching the execution of the will, as prescribed in § 31-22, and the same may be adjudged duly proved, and shall be recorded as herein provided. (Rev., s. 3133; Code, s. 2156; 1885, c. 393; C. C. P., s. 444; 1883, c. 144; 1941, c. 381; C. S. 4152.)

§ 31-28. Probates validated where proof taken by commissioner or another clerk.—In all cases of the probate of any will made prior to March 8, 1899 in common form before any clerk of the superior courts of this state, where the testimony of the subscribing witnesses has been taken in the state or out of if by any commissioner appointed by said clerk or taken by any other clerk of the superior court in any other county of this state, and the will admitted to probate upon such testimony, the proceedings are validated. (Rev., s. 3134; 1899, c. 680; C. S. 4153.)

§ 31-29. Probates in another state before 1860 validated. — In all cases where any will devises land in this state, and the original will was duly admitted to probate in some other state prior to the year one thousand eight hundred and sixty, and a certified copy of such will and the probate thereof has been admitted to probate and record in any county in this state, and it in any way appears from such recorded copy that there were two subscribing witnesses to such will, and its execution was proved by the examination of such witnesses when the original was admitted to probate, such will shall be held and considered, and is hereby declared to be, good and valid for the purpose of passing title to the lands devised thereby, situated in this state, as fully and completely as if the original will had been duly executed and admitted to probate and recorded in this state in accordance with the laws of this state. (1913, c. 93, s. 1; C. S. 4155.)

§ 31-30. Validation of wills recorded without probate by subscribing witnesses.—In all cases where wills and testaments were executed prior to the first day of January, one thousand eight hundred and seventy-five (1875), and which appear as recorded in the record of last wills and testaments to have had two (2) or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this state prior to the first day of January, one thousand eight hundred and eighty-eight (1888), without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this state where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two (2) subscribing witnesses thereto in the manner provided by law of this state. Nothing herein shall be construed to prevent such wills from being impeached for fraud. (1921, c. 66; C. S. 4157(a).)

§ 31-31. Validation of wills admitted on oath of one subscribing witness.—In all cases where last wills and testaments which appear as recorded in the record of last wills and testaments to have had two witnesses thereto and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this state prior to the first day of January, one thousand eight hundred and ninety (1890) upon the oath and examination of one of the witnesses, such proof being taken in writing and recorded, and the certificate of probate of the Clerk of the Court states that such a will is proven by one of the subscribing witnesses thereto and the handwriting of the other subscribing witness being a non-resident is proven under oath, and such a will and certificate has been recorded in the record of wills of the proper county, such probate is hereby validated as fully as if the proof of the handwriting of the non-resident witness had been taken in regular form in writing and recorded. (1929, c. 41, ss. 1, 2.)

Art. 6. Caveat to Will.

§ 31-32. When and by whom caveat filed.—At the time of application for probate of any will, and the probate thereof in common form, or at any time within seven years thereafter, any person entitled under such will, or interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will: Provided, that if any person entitled to file a caveat be within the age of twenty-one years, or insane, or imprisoned, then such person may file a caveat within three years after the removal of such disability. (Rev., s. 3135; Code, s. 2158; C. C. P., s. 446; 1907, c. 862; 1925, c. 81; C. S. 4158.)

§ 31-33. Bond given and cause transferred to trial docket.—Upon any caveator giving bond, with

sufficient surety to be approved by the clerk, in the sum of two hundred dollars, payable to the propounder of the will, conditioned to pay all costs which may be adjudged against such caveator in the superior court by reason of his failure to prosecute his suit with effect, or deposit the money or give a mortgage in lieu of such bond, or shall file affidavits and satisfy the clerk of his inability to give such bonds or secure such costs, the clerk shall transfer the cause to the superior court for trial; and he shall also forthwith issue a citation to all devisees, legatees or other parties in interest within the state, and cause publication to be made, for four weeks, in some newspaper printed in the state, for nonresidents to appear at the term of the superior court, to which the proceeding is transferred and to make themselves proper parties to the proceeding, if they choose. At the term of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the persons so cited, either those who make themselves parties with the caveators or whose interests appear to him antagonistic to that of the propounders of the will, and who shall appear to him to be able so to do, to file such bond within such time as he shall direct and before trial; and on failure to file such bond the judge shall dismiss the proceeding. (Rev., s. 3136; Code, s. 2159; 1899, c. 13; 1901, c. 748; C. C. P., s. 447; 1909, c. 74; C. S. 4159.)

§ 31-34. Prosecution bond required in actions to contest wills.—When any action is instituted to contest a will the clerk of the superior court will require the prosecution bond required in other civil actions: Provided, however, that provisions for bringing suit in forma pauperis shall also apply to the provisions of this section. (1937, c. 383.)

§ 31-35. Affidavit of witness as evidence. — Whenever the subscribing witness to any will shall die, or be absent beyond the state, it shall be competent upon any issue of devisavit vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will. (Rev., s. 3121; 1899, c. 680, s. 2; C. S. 4160.)

§ 31-36. Caveat suspends proceedings under will.—Where a caveat is entered and bond given, the clerk of the superior court shall forthwith issue an order to any personal representative, having the estate in charge, to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts and payment of all taxes and debts that are a lien upon the property of the decedent, as may be allowed by order of the clerk of the superior court, until a decision of the issue is had. (Rev., s. 3137; Code, s. 2160; C. C. P., s. 448; 1927, c. 119; C. S. 4161.)

§ 31-37. Superior court clerks to enter notice of caveat on will book; final judgment also to be entered.—Wherever a caveat is filed with the clerk of the superior court of any county in the state to any last will and testament which has been admitted to probate in said office, it shall be the duty of such clerk, and he is hereby directed to give notice of the filing of such caveat by making an entry upon the page of the will book where such last will and testament is recorded, evidencing that such caveat has been filed and giving the date of such filing. When such caveat and proceedings resulting therefrom shall have resulted in final judgment with respect to such will, the clerk of the court shall make a further entry upon the page of the will book where such last will and testament is recorded to the effect that final judgment has been entered, either sustaining or setting aside such will. (1929, c. 81.)

Art. 7. Construction of Will.

§ 31-38. Devise presumed to be in fee.—When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity. (Rev., s. 3138; Code, s. 2180; R. C., c. 119, s. 26; 1784, c. 204, s. 12; C. S. 4162.)

§ 31-39. Probate necessary to pass title; recordation in county where land lies; rights of innocent purchasers.—No will shall be effectual to pass real or personal estate unless it shall have been duly proved and allowed in the probate court of the proper county, and a duly certified copy thereof shall be recorded in the office of the superior court clerk of the county wherein the land is situate, and the probate of a will devising real estate shall be conclusive as to the execution thereof, against the heirs and devisees of the testator, whenever the probate thereof, under the like circumstances, would be conclusive against the next of kin and legatees of the testator: Provided, that the probate and registration of any will shall not affect the rights of innocent purchasers for value from the heirs at law of the testator when such purchase is made more than two years after the death of such testator, unless the will has been fraudulently withheld from probate. (Rev., s. 3139; Code, s. 2174; R. C., c. 119, s. 20; 1784, c. 225, s. 6; 1915, c. 219; C. S. 4163.)

§ 31-40. What property passes by will.—Any testator, by his will duly executed, may devise, bequeath, or dispose of all real and personal estate which he shall be entitled to at the time of his death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon his heirs at law, or upon his executor or administrator; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal estate, whether the testator may or may not be the person or one of the persons in whom the same may become vested, or whether he may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

(Rev., s. 3140; Code, s. 2140; R. C., c. 119, s. 5; 1844, c. 88, s. 1; C. S. 4164.)

§ 31-41. Will relates to death of testator. — Every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. (Rev., s. 3141; Code, s. 2141; R. C., c. 119, s. 16; 1844, c. 88, s. 3; C. S. 4165.)

§ 31-42. Lapsed and void devises pass under residuary clause.—Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will: Provided, there shall be no lapse of the devise or legacy by reason of the death of the devisee or legatee during the life of the testator, if such devisee or legatee would have been an heir at law or distributee of such testator had he died intestate, and if such devisee or legatee shall leave issue surviving him; and if there is issue surviving, then the said issue shall have the devise or bequest named in the will. (Rev., s. 3142; Code, s. 2142; R. C., c. 119, s. 7; 1844, c. 88, s. 4; 1919, c. 28; C. S. 4166.)

§ 31-43. General gift by will an execution of power of appointment.—A general devise of the real estate of the testator, or of his real estate in any place or in the occupation of any person mentioned in the will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property, described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will. (Rev., s. 3143; Code, s. 2143; R. C., c. 119, s. 8; 1844, c. 88, s. 5; C. S. 4167.)

§ 31-44. Gifts to children dying before testator pass to their issue.—When any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect and vest a title to such estate in the issue surviving, if there be any, in the same manner, proportions and estates as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. (Rev., s. 3144; Code, s. 2144; 1868-9, c. 113, s. 61; C. S. 4168.)

§ 31-45. After-born children share in testator's estate.—Children born after the making of the parent's will, and whose parent shall die without making any provision for them, shall be entitled to such share and proportion of the parent's estate as if he or she had died intestate, and the rights of any such after-born child shall be a lien on every part of the parent's estate, until his several share thereof is set apart in the manner prescribed in §§ 28-153 to 28-158. (Rev., s. 3145; Code, s. 2145; 1868-9, c. 113, s. 62; C. S. 4169.)

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Chapter 32. Fiduciaries.

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§ 32-1. Short title.—This chapter may be cited as the Uniform Fiduciaries Act. (1923, c. 85, s. 14; C. S. 1864(d).)

§ 32-2. Definition of terms.—1. In this chapter unless the context or subject-matter otherwise requires:

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

2. A thing is done "in good faith" within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not. (1923, c. 85, s. 1; C. S. 1864(e).)

§ 32-3. Application of payments made to fiduciaries.—A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (1923, c. 85, s. 2; C. S. 1864(f).)

§ 32-4. Registration of transfer of securities held by fiduciaries.—If a fiduciary in whose name are registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only when registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith. (1923, c. 85, s. 3; C. S. 1864(g).)

§ 32-5. Transfer of negotiable instrument by fiduciary.—If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by a fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (1923, c. 85, s. 4; C. S. 1864(h).)

§ 32-6. Check drawn by fiduciary payable to third person.—If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (1923, c. 85, s. 5; C. S. 1864(i).)

§ 32-7. Check drawn by and payable to fidu-

ciary.—If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowlege of such breach or with knowlege of such facts that his action in taking the instrument amounts to bad faith. (1923, c. 85, s. 6; C. S. 1864(j).)

§ 32-8. Deposit in name of fiduciary as such. —If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith.

If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (1923, c. 85, s. 7; C. S. 1864(k).)

§ 32-9. Deposit in name of principal. — If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (1923, c. 85, s. 8; C. S. 1864(l).)

§ 32-10. Deposit in fiduciary's personal account. —If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary or of checks payable to him as fiduciary or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. (1923, c. 85, s. 9; C. S. 1864(m).)

§ 32-11. Deposit in names of two or more trustees.—When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (1923, c. 85, s. 10; C. S. 1864(n).)

§ 32-12. Cases not provided for in chapter.— In any case not provided for in this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply. (1923, c. 85, s. 12; C. S. 1864(p).)

§ 32-13. Uniformity of interpretation. — This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1923, c. 85, s. 13; C. S. 1864(q).)

Chapter 33. Guardian and Ward.

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Art. 1. Creation and Termination of Guardianship.

§ 33-1. Jurisdiction in clerk of superior court.—The clerks of the superior court within their respective counties have full power, from time to time, to take cognizance of all matters concerning orphans and their estates and to appoint guardians in all cases of infants, idiots, lunatics, inebriates, and inmates of the Caswell training school: Provided, that guardians shall be appointed by the clerks of the superior courts in the counties in which the infants, idiots, lunatics, or inebriates reside, unless the guardians be the next of kin of such incompetents or a person designated by such next of kin in writing filed with the clerk, in which case, guardians may be appointed by the clerk of the superior court in any county in which is located a substantial part of the estates belonging to such incompetents. (Rev., s. 1766; Code, s. 1566; R. C., c. 54, s. 2; 1762, c. 69, ss. 5, 7; 1868-9, c. 201, s. 4; 1917, c. 41, s. 1; 1935, c. 467; C. S. 2150.)

§ 33-2. Appointment by parents; effect; powers and duties of guardian.—Any father, though he be a minor, may, by deed executed in his lifetime and with the written consent and privy examination of the mother, if she be living, or by his last will and testament in writing, if the mother be dead, dispose of the custody and tuition of any of his infant children, being unmarried, and whether born at his death or in ventre sa mere, for such time as the children may remain under twenty-one years of age, or for any less time. Or in case the father is dead and has not exercised his said right of appointment, or has willfully abandoned his wife, then the mother, whether of full age or minor, may do so. Every such appointment shall be good and effectual against any person claiming the custody and tuition of such child or children. Every guardian by deed or will shall have the same powers and rights and be subject to the same liabilities and regulations as other guardians: Provided, however, that in the event it is so specifically directed in said deed or will such guardian so appointed shall be permitted to qualify and serve without giving bond, unless the clerk of the superior court having jurisdiction of said guardianship shall find as a fact and adjudge that the interest of such minor or incompetent would be best served by requiring such guardian to give bond. (Rev., ss. 1762, 1763, 1764; Code, ss. 1562, 1563, 1564; R. C., c. 54; 1762, c. 69; 1868-9, c. 201;

1881, c. 64; 1911, c. 120; Ex. Sess. 1920, c. 21; 1941, c. 26; C. S. 2151.)

§ 33-3. Mother's guardianship on death of father.—In case of the death of the father of an infant, the mother of such child surviving such father shall immediately become the natural guardian of such child to the same extent and in the same manner, plight and condition as the father would be if living; and the mother in such case shall have all the powers, rights and privileges, and be subject to all the duties and obligations of a natural guardian. But this shall not be construed as abridging the powers of the courts over minors and their estates and over the appointment of guardians. (Rev., s. 1765; Code, s. 1565; 1883, c. 364; C. S. 2152.)

§ 33-4. Appointment on divorce of parents.—When parents are divorced and a child is entitled to any estate, the court granting the divorce must certify that fact to the clerk of the superior court, to the end that he may appoint a fit and proper person to take the care and management of such estate, whose powers and duties shall be the same in all respects as other guardians, except that a guardian so appointed shall not have any authority over the person of such child, unless the guardian be the father or mother. (Rev., s. 1770; Code, s. 1571; R. C., c. 54, s. 4; 1838, c. 16; 1868-9, c. 201, s. 9; C. S. 2153.)

§ 33-5. Appointment when father living.—The clerk of the superior court may appoint a guardian of the estate of any minor, although the father of such minor be living. And the guardian so appointed shall be governed in all respects by the laws relative to guardians of the estate in other cases, but shall have no authority over the person of such minor. (Rev., s. 1771; Code, s. 1572; R. C., c. 54, ss. 4, 7; 1806, c. 707; 1868-9, c. 201, s. 10; C. S. 2154.)

§ 33-6. Separate appointment for person and estate; yearly support specified; payments allowed in accounting.—Instead of granting general guardianship to one person, the clerk of the superior court may commit the tuition and custody of the person to one and the charge of his estate to another, whenever at any time during minority, inebriety, idiocy or lunacy, it appears most conducive to the proper care of the orphan's, inebriate's, idiot's, or lunatic's estate, and to his suitable maintenance, nurture and education. In such cases the clerk must order what yearly sums of money or other provisions shall be allowed for the support and education of the orphan, or for the maintenance of the idiot, lunatic or inebriate, and must prescribe the time and manner of paying the same; but such allowance may, upon application and satisfactory proof made, be reduced or enlarged, or otherwise modified, as the ward's condition in life and the kind and value of his estate may require. All payments made by the guardian of the estate to the tutor of the person, according to any such order, shall be deemed just disbursements and be allowed in the settlement of his accounts; but for the payment thereof by the one and the receipt thereof by the other merely, no commissions shall be allowed to either, though commissions may be allowed to the tutor of the person on his disbursements only. (Rev., ss. 1767, 1768, 1769; Code, ss. 1567, 1568, 1569; R. C., c. 54, s. 3; 1840, c. 31; 1868-9, c. 201, ss. 6, 7; C. S. 2155.)

§ 33-7. Proceedings on application for guardianship.—On application to any clerk of the superior court for the custody and guardianship of any infant, idiot, inebriate, lunatic, or inmate of the Caswell training school, it is the duty of such clerk to inform himself of the circumstances of the case on the oath of the applicant, or of any other person, and if none of the relatives of the infant, idiot, inebriate, lunatic, or inmate of the Caswell training school are present at such application, the clerk must assign, or for any other good cause he may assign, a day for the hearing; and he shall thereupon direct notice thereof to be given to such of the relatives and to such other persons, if any, as he may deem it proper to notify. On the hearing he shall ascertain, on oath, the amount of the property, real and personal, of the infant, idiot, inebriate, lunatic, or inmate of the Caswell training school, and the value of the rents and profits of the real estate, and he may grant or refuse the application, or commit the guardianship to some other person, as he may think best for the interest of the infant, idiot, inebriate, lunatic, or inmate of the Caswell training school. (Rev., s. 1772; Code, s. 1620; C. C. P., s. 474; 1917, c. 41, s. 2; C. S. 2156.)

§ 33-8. Letters of guardianship.—The clerk of the superior court must issue to every guardian appointed by him a letter of appointment, which shall be signed by him and sealed with the seal of his office. (Rev., s. 1773; Code, s. 1621; C. C. P., c. 475; C. S. 2157.)

§ 33-9. Removal by clerk.—The clerks of the superior court have power, on information or complaint made, at all times to remove guardians and appoint successors, to make and establish rules for the better ordering, managing and securing infants' estates, and for the better education and maintenance of wards; and it is their duty to do so in the following cases:

1. Where the guardian wastes or converts the money or estate of the ward to his own use.

2. Where the guardian in any manner mismanages the estate.

3. Where the guardian neglects to educate or maintain the ward in a manner suitable to his or her degree.

4. Where the guardian is legally disqualified to act as a person would be to be appointed administrator.

5. Where the guardian or his sureties are likely to become insolvent or nonresidents of the state. (Rev., s. 1774; Code, s. 1583; R. C., c. 54, ss. 2, 13; 1762, c. 69; 1868-9, c. 201, s. 20; C. C. P., ss. 470, 476; C. S. 2158.)

§ 33-10. Interlocutory orders on revocation.—In all cases where the letters of a guardian are revoked, the clerk of the superior court may, from time to time, pending any controversy in respect to such removal, make such interlocutory orders and decrees as will tend to the better securing the estate of the ward, or other party seeking relief by such revocation. (Rev., s. 1775; Code, s. 1607; 1868-9, c. 201, s. 44; C. S. 2159.)

§ 33-11. Resignation; effect; accounting on resignation.—Any guardian wishing to resign his trust may apply in writing to the superior court, setting forth the circumstances of his case. If, at the time of making the application, he also exhibits his final account for settlement, and if the clerk of the superior court is satisfied that the guardian has been faithful and has truly accounted, and if a competent person can be procured to succeed in the guardianship, or the clerk of the superior court may be appointed receiver of the estate of the ward, and if so appointed the clerk of the superior court may accept the resignation of the guardian and discharge him from the trust. But the guardian so discharged and his sureties are still liable in relation to all matters connected with the trust before the resignation. (Rev., s. 1776; Code, s. 1608; 1868-9, c. 201, s. 45; 1921, c. 95; C. S. 2160.)

Art. 2. Guardian's Bond.

§ 33-12. Bond to be given before receiving property.—No guardian appointed for an infant, idiot, lunatic, insane person or inebriate, shall be permitted to receive property of the infant, idiot, lunatic, insane person or inebriate until he shall have given sufficient security, approved by a judge, or the court, to account for and apply the same under the direction of the court. (Rev., s. 1777; Code, s. 1573; C. C. P., s. 355; C. S. 2161.)

§ 33-13. Terms and conditions of bond; increased on sale of realty. — Every guardian of the estate, before letters of appointment are issued to him, must give a bond payable to the state, with two or more sufficient sureties, to be acknowledged before and approved by the clerk of the superior court, and to be jointly and severally bound. Where such bond is executed by personal sureties the penalty in such bond must be double, at least, the value of all personal property and the rents and profits issuing from the real estate of the ward, which value is to be ascertained by the clerk of the superior court by the examination, on oath, of the applicant for guardianship, or any other person, but where such bond shall be executed by a duly authorized surety company, the penalty in such bond may be fixed at not less than one and one-fourth times the value of all personal property and the rents and profits issuing from the real estate of the ward. Provided, however, the clerk of the superior court may accept bond in estates, where the value of all personal property and rents and profits from real estate exceeds the sum of one hundred thousand dollars, in a sum equal to the value of all the personal property and rents and profits from real estate, plus ten per cent of the value of all the personal property and rents and profits from real estate belonging to the estate. The bond must be conditioned that such guardian shall faithfully execute the trust reposed in him as such, and obey all lawful orders of the clerk or judge touching the guardianship of the estate committed to him. If, on application by the guardian, the court or judge shall decree a sale for any of the causes prescribed by law of the property of such infant, idiot, lunatic or insane person, before such sale be confirmed, the guardian shall be required to file a bond as now required in double the amount of the real property so sold, except where such bond is executed by a duly authorized surety company, in which case the penalty of said bond need not exceed one and one-fourth times the amount of said real property so sold. (Rev., ss. 323, 1778; Code, s. 1574; R. C., c. 54, s. 5; 1762, c. 69, s. 7; 1825, c. 1285, s. 2; 1833, c. 17; 1868-9, c. 201, s. 11; 1874-5, c. 214; 1925, c. 131; 1935, c. 385; C. S. 2162.)

Local Modification.—Craven: 1935, c. 147.

§ 33-14. To be recorded in clerk's office; action on bond.—The bond so taken shall be recorded in the office of the clerk of the superior court appointing the guardian; and any person injured by a breach of the condition thereof may prosecute a suit thereon, as in other actions. (Rev., s. 1779; Code, s. 1575; R. C., c. 54, s. 5; 1868-9, c. 201, s. 12; C. S. 2163.)

§ 33-15. Where several wards with estate in common, one bond sufficient. — When the same person is appointed guardian to two or more minors, idiots, lunatics or insane persons possessed of one estate in common, the clerk of the superior court may take one bond only in such case, upon which each of the minors or persons for whose benefit the bond is given, or their heirs or personal representatives, may have a separate action. (Rev., s. 1780; Code, s. 1576; R. C., c. 54, s. 8; 1822, c. 1161; 1868-9, c. 201, s. 13; C. S. 2164.)

§ 33-16. Renewal of bond every three years; enforcing renewal. — Every guardian shall renew his bond before the clerk of the superior court every three years, during the continuance of the guardianship. The clerk of the superior court shall issue a citation against every guardian failing to renew his bond, requiring such guardian to renew his bond within twenty days after service of the citation; and on return of the citation duly served and failure of the guardian to comply therewith, the clerk shall remove him and appoint a successor. (Rev., ss. 324, 1781, 1782; Code, ss. 1581, 1582; R. C., c. 54, s. 10; 1762, c. 69, s. 15; 1868-9, c. 201, ss. 18, 19; C. S. 2165.)

§ 33-17. Relief of endangered sureties. — Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may file his complaint before the clerk of the superior court where the guardianship was granted, setting forth the circumstances of his case and demanding relief; and thereupon the guardian shall be required to answer the complaint within twenty days after service of the summons. If, upon the hearing, the clerk of the superior court deem the surety entitled to relief, the same may be granted by compelling the guardian to give a new bond, or to indemnify the surety against apprehended loss, or by the removal of the guardian from his trust; and in case the guardian fail to give a new bond or security to indemnify when required to do so within reasonable time, the clerk of the superior court must enter a peremptory order for his removal, and his authority as guardian shall thereupon cease. (Rev., s. 1783; Code, s. 1606; R. C., c. 54, s. 35; 1762, c. 69, ss. 21, 22; 1868-9, c. 201, s. 43; C. S. 2166.)

§ 33-18. Liability of clerk for taking insufficient bond.—If any clerk of the superior court shall commit the estate of an infant, idiot, luna-

tic, insane person or inebriate to the charge or guardianship of any person without taking good and sufficient security for the same as directed by law, such clerk shall be liable, on his official bond, at the suit of the party aggrieved, for all loss and damages sustained for want of security being taken; but if the sureties were good at the time of their being accepted, the clerk of the superior court shall not be liable. (Rev., s. 1784; Code, s. 1614; R. C., c. 54, s. 2; 1762, c. 69, ss. 5, 6; 1868-9, c. 201, s. 51; C. S. 2167.)

§ 33-19. Liability of clerk for other defaults.— If any clerk of the superior court shall willfully or negligently do, or omit to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, he shall be liable therefor as directed in § 33-18. (Rev., s. 1785; Code, s. 1615; 1868-9, c. 201, s. 52; C. S. 2168.)

Art. 3. Powers and Duties of Guardian.

§ 33-20. To take charge of estate. — Every guardian shall take possession, for the use of the ward, of all his estate, and may bring all necessary actions therefor. (Rev., s. 1786; Code, s. 1588; R. C., c. 54, s. 21; 1762, c. 69, s. 3; 1868-9, c. 201, s. 25; C. S. 2169.)

§ 33-21. How sales and rentals made. — All sales and rentings by guardians shall be publicly made, between the hours of ten o'clock a. m. and four o'clock p. m., after twenty days notice posted at the courthouse and four other public places in the county. But, upon petition by the guardian, the clerk of the superior court of the county in which the land of the ward is situated, or of the county wherein the guardian has qualified, may make an order, on satisfactory evidence, upon the oath of at least two disinterested freeholders acquainted with the said land, that the best interests of the said ward will be subserved by a private renting of said land, allowing the guardian to rent the land privately. The terms of all such rentings shall be reported to said clerk of the superior court and be approved by him. The proceeds of all sales of personal estate and rentings of real property, except the rentings of lands leased for agricultural purposes, when not for cash, shall be secured by bond and good security. (Rev., s. 1788; Code, s. 1590; 1891, c. 83; 1901, c. 97; R. C., c. 54, s. 26; 1793, c. 391; C. S. 2171.)

§ 33-22. When lands may be leased. — The guardian may lease the lands of an infant for a term not exceeding the end of the current year in which the infant shall become of age, or die in nonage. But no guardian, without leave of the clerk of the superior court, shall lease any land of his ward without impeachment of waste, or for a term of more than three years, unless at a rent not less than three per centum on the assessed taxable value of the land. (Rev., s. 1789; Code, s. 1591; R. C., c. 54, s. 25; 1762, c. 69, s. 13; 1794, c. 413, s. 2; C. S. 2172.)

§ 33-23. When guardians to cultivate lands of wards. — Where any parent of a minor child qualifies as guardian of such child, and the ward owns or is entitled to the possession of any real estate used or which may be used for agricultural purposes, such guardian may make application to the clerk of the superior court of the county wherein the land is situate for permission to cultivate it, and the petition shall set forth the nature, extent and location of the same. It shall then be the duty of the clerk to appoint three disinterested resident freeholders, who shall go upon the land and, after being sworn to act impartially, assess the annual rental value thereof. The commissioners shall report their proceedings and findings to the clerk within ten days after the notification of their appointment, and if the clerk shall deem the same to be the interest of the ward he shall make an order allowing the guardian to cultivate the land for a term not exceeding three years at the annual rental value assessed by the commissioners to be paid to the ward by the guardian. The term, however, shall not extend beyond the minority of the minor. The commissioners shall receive as compensation for said services the same fees as are allowed commissioners in partition of real estate. (1909, c. 57; C. S. 2173.)

§ 33-24. Guardians' powers enlarged to permit cultivation of ward's lands or continuation of ward's business.—In addition to the powers given to guardians under the general laws of the State, all guardians may, upon presentation of satisfactory evidence, with approval of the clerk of superior court, which approval must be concurred in by the resident judge or other regular or special judge holding courts in the district, cause lands to be cultivated and make such contracts with reference thereto as said guardian may deem to the best interest of his ward's estate, and under the direction of the clerk of superior court, with the approval of the resident judge or other regular or special judge holding courts in the district, continue to operate any business or business enterprise of his ward and make such contract, agreements, and settlements with reference thereto as the clerk of superior court, with the approval of said resident judge or other regular or special judge holding courts in the district, may determine necessary or find to be to the best interest of the estate. (1935, c. 24.)

§ 33-25. Guardians and other fiduciaries authorized to buy real estate foreclosed under mortgages executed to them.—On application of the guardian or other fiduciary of any idiot, inebriate, lunatic, non compos mentis or any person incompetent from want of understanding to manage his own affairs for any cause or reason, or any minor or infant, or any other person for whom such guardian or fiduciary has been appointed, by petition, verified upon oath, to the superior court, showing that the purchase of real estate is necessary to avoid a loss to the said ward's estate by reason of the inadequacy of the amount bid at foreclosure sale under a mortgage or deed of trust securing the re-payment of funds previously loaned the mortgagor by said guardian or other fiduciary, and that the interest of the ward would be materially promoted by said purchase the proceeding shall be conducted as in other cases of special proceedings; and the truth of the matter alleged in the petition being ascertained by satisfactory proof, or by affidavit of three disinterested

freeholders over twenty-one years of age who reside in the county in which said land lies, a decree may thereupon be made that said real estate be purchased by such person; but no purchase of real estate shall be made until approved by a judge of the superior court, nor shall the same be valid, nor any conveyance of the title made, unless confirmed and directed by a judge, and then only in compliance with the terms and conditions set out in said order and judgment. (1935, c. 156.)

§ 33-26. Plate and jewelry to be kept. — All plate and jewelry shall be preserved and delivered to the ward at age, in kind, according to weight and quantity. (Rev., s. 1791; Code, s. 1597; 1895, c. 74; 1868-9, c. 201, s. 34; C. S. 2175.)

§ 33-27. Personal representative of guardian to pay over to clerk.—In all cases where a guardian of any minor child or of an idiot, lunatic, inebriate or insane person dies, it is competent for the executor or admininistrator of such deceased guardian, at any time after the grant of letters testamentary or of administration, to pay into the office of the clerk of the superior court of the county where such deceased guardian was appointed, any moneys belonging to any such minor child, idiot, lunatic, insane person or inebriate, and any such payment shall have the effect to discharge the estate of said deceased guardian and his sureties upon his guardian bond to the extent of the amount so paid. (Rev., s. 1794; Code, s. 1622; 1881, c. 301, s. 2; C. S. 2176.)

§ 33-28. Collection of claims; duty and liability. —Every guardian shall diligently endeavor to collect, by all lawful means, all bonds, notes, obligations or moneys due his ward when any debtor or his sureties are likely to become insolvent, on pain of being liable for the same. (Rev., s. 1795; Code, s. 1593; R. C., c. 54, s. 23; 1762, c. 69, s. 10; 1868-9, c. 201, s. 30; C. S. 2177.)

§ 33-29. Liability for lands sold for taxes.—If any guardian suffer his ward's lands to lapse or become forfeited or be sold for nonpayment of taxes or other dues, he shall be liable to answer for the full value thereof to his ward. (Rev., s. 1796; Code, s. 1595; R. C., c. 54, s. 27; 1762, c. 69, s. 14; 1868-9, c. 201, s. 32; C. S. 2178.)

§ 33-30. Liability for costs.—All fees and costs of the superior court for issuing orders, citations, summonses or other process against guardians for their supposed defaults shall be paid by the party found in default. (Rev., s. 1797; Code, s. 1611; 1868-9, c. 201, s. 48; C. S. 2179.)

Art. 4. Sales of Ward's Estate.

§ 33-31. Special proceedings to sell; judge's approval required.—On application of the guardian by petition, verified upon oath, to the superior court, showing that the interest of the ward would be materially promoted by the sale or mortgage of any part of his estate, real or personal, the proceeding shall be conducted as in other cases of special proceedings; and the truth of the matter alleged in the petition being ascertained by satisfactory proof, a decree may thereupon be made that a sale or mortgage be had by such person, in such way and on such terms as may be most advantageous to the interest of the ward; but no sale or mortgage shall be made until approved by the judge of the court, nor shall the same be valid, nor any conveyance of the title made, unless confirmed and directed by the judge, and the proceeds of the sale or mortgage shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify. The guardian may not mortgage the property of his ward for a term of years in excess of the term fixed by the court in its decree. The word "mortgage" whenever used herein shall be construed to include deeds in trust. (Rev., s. 1798; Code, s. 1602; R. C., c. 54, ss. 32, 33; 1827, c. 33, 1868-9, c. 201, s. 39; 1917, c. 258, s. 1; 1923, c. 67, s. 1; C. S. 2180.)

§ 33-32. Fund from sale has character of estate sold and subject to same trusts. — Whenever, in consequence of any sale under § 33-31, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all sales by guardians whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, alienated, devised or bequeathed, and shall descend and be distributed, as by law the property sold might and would have been had it not been sold, until it be reconverted from the character thus impressed upon it by some act of the owner and restored to its character proper. (Rev., s. 1799; Code, s. 1603; R. C., c. 54, s. 33; 1827, c. 33, s. 2; 1868-9, c. 201, s. 40; C. S. 2181.)

§ 33-33. Sale of ward's estate to make assets.— When a guardian has notice of a debt or demand against the estate of his ward, he may apply by petition, setting forth the facts, to the clerk of the superior court wherein the guardianship was granted, for an order to sell so much of the personal or real estate as may be sufficient to discharge such debt or demand; and the order of the court shall particularly specify what property is to be sold and the terms of sale; but no real estate shall be sold under this section, in any case, without the revision and confirmation of the order therefor by the judge of the superior court. The proceeds of sale under this section shall be considered as assets in the hands of the guardian for the benefit of creditors, in like manner as assets in the hands of a personal representative; and the same proceedings may be had against the guardian with respect to such assets as might be taken against an executor, administrator or collector in similar cases. (Rev., ss. 1800, 1801; Code, ss. 1604, 1605; R. C., c. 54, s. 34; 1789, c. 311, s. 5; 1868-9, c. 201, ss. 41, 42; C. S. 2182.)

§ 33-34. To sell perishable goods on order of clerk. — Every guardian shall sell, by order of the clerk of the superior court, all such goods and chattels of his ward as may be liable to perish or be the worse for keeping. Every such order shall be entered in the order record of the superior court and must contain a descriptive list of the property to be sold, with the terms of sale. (Rev., s. 1787; Code, s. 1589; R. C., c. 54, s. 22; 1762, c. 69, s. 10; 1868-9, c. 201, s. 26; C. S. 2170.)

§ 33-35. When timber may be sold.—In case the land cannot be rented for enough to pay the taxes and other dues thereof, and there is not money sufficient for that purpose, the guardian, with the consent of the clerk of the superior court, may annually dispose of or use so much of the lightwood, and box or rent so many pine trees, or sell so much of the timber on the same, as may raise enough to pay the taxes and other duties hereon, and no more. (Rev., s. 1790; Code, s. 1596; R. C., c. 54, s. 27; 1762, c. 69, s. 14; 1868-9, c. 201, s. 33; C. S. 2174.)

Art. 5. Returns and Accounting.

§ 33-36. Return within three months.—Every guardian, within three months after his appointment, shall exhibit an account, upon oath, of the estate of his ward, to the clerk of the superior court; but such time may be extended by the clerk of the superior court, on good cause shown, not exceeding six months. (Rev., s. 1802; Code, s. 1577; R. C., c. 54, s. 11; 1762, c. 69, s. 9; 1868-9, c. 201, s. 14; C. S. 2183.)

§ 33-37. Procedure to compel return.—In cases of default to exhibit the return required by § 33-36, the clerk of the superior court must issue an order requiring the guardian to file such return forthwith, or to show cause why an attachment should not issue against him. If, after due service of the order, the guardian does not, on the return day of the order, file such return, or obtain further time to file the same, the clerk of the superior court shall issue an attachment against him, and commit him to the common jail of the county till he files such return. (Rev., s. 1803; Code, s. 1578; R. C., c. 54, s. 12; 1762, c. 69, s. 15; 1868-9, c. 201, s. 15; C. S. 2184.)

§ 33-38. Additional assets to be returned.—Whenever further property of any kind, not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in § 33-37. (Rev., s. 1804; Code, s. 1579; 1868-9, c. 201, s. 16; C. S. 2185.)

§ 33-39. Annual accounts.—Every guardian shall, within twelve months from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file in the office of the clerk of the superior court an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. He must produce vouchers for all payments. The clerk of the superior court may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must indorse his approval thereon, which shall be deemed prima facie evidence of correctness. (Rev., s. 1805; Code, s. 1617; R. C., c. 54, ss. 11, 12; 1762, c. 69, ss. 9, 15; 1871-2, c. 46; C. S. 2186.)

§ 33-40. Procedure to compel accounting.—If any guardian omit to account, as directed in § 33-39, or renders an insufficient and unsatisfactory account, the clerk of the superior court shall forthwith order such guardian to render a full and satisfactory account, as required by law, within twenty days after service of the order. Upon return of the order, duly served, if such guardian fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against him for contempt and commit him till he exhibits such account, and may likewise remove him from office. And in all proceedings hereunder the defaulting guardian will be liable personally for the costs of the said proceeding, including the costs of service of all notices or writs incidental to, or thereby accruing, or the amount of the costs of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate. Where a corporation is guardian, the president, cashier, trust officer or the person or persons having charge of the particular estate for said corporation, or the person to whom the duty of making reports of said estate has been assigned by the officers or directors of said corporation, may be proceeded against and committed to jail as herein provided as if he or they were the guardian or guardians personally: Provided, it is found as a fact that the failure or omission to file such account or to obey the order of the court in reference thereto is willful on the part of the officer charged therewith: Provided further, the corporation itself may also be fined and/or removed as such guardian for such failure or omission. (Rev., s. 1806; Code, s. 1618; C. C. P., s. 479; 1929, c. 9, s. 2; 1933, c. 317; C. S. 2187.)

§ 33-41. Final account.—A guardian may be required to file such account at any time after six months from the ward's coming of full age or the cessation of the guardianship; but such account may be filed voluntarily at any time, and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk of the superior court. (Rev., s. 1807; Code, s. 1619; C. C. P., s. 481; C. S. 2188.)

§ 33-42. Expenses and disbursements credited to guardian.—Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he has really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward. (Rev., s. 1808; Code, s. 1612; R. C., c. 54, s. 28; 1762, c. 69, ss. 18, 19; 1799, c. 536, s. 2; 1868-9, c. 201, s. 49; C. S. 2189.)

§ 33-43. Commissions.—The superior court shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors. (Rev., s. 1809; Code, s. 1613; R. C., c. 54, s. 28; 1762, c. 69, ss. 18, 19; 1868-9, c. 201, s. 50; C. S. 2190.)

Art. 6. Public Guardians.

§ 33-44. Appointment; term; oath.—There may be in every county a public guardian, to be appointed by the clerk of the superior court for a term of eight years. The public guardian shall take and subscribe an oath (or affirmation) faithfully and honestly to discharge the duties imposed upon him; the oath so taken and subscribed shall be filed in the office of the clerk of the superior court. (Rev., ss. 1758, 1759; Code, ss. 1556, 1560; 1874-5, c. 221, ss. 1, 5; C. S. 2191.)

§ 33-45. Bond of public guardian; increasing bond.—The public guardian shall enter into bond with three or more sureties, approved by the clerk in the penal sum of six thousand dollars, payable to the state of North Carolina, conditioned faithfully to perform the duties of his office and obey all lawful orders of the superior or other courts touching said guardianship of all wards, money or estate that may come into his hands. Whenever the aggregate value of the real and personal estate belonging to his several wards exceeds one-half the bond herein required the clerk of the superior court shall require him to enlarge his bond in amount so as to cover at least double the aggregate amount under his control as guardian. (Rev., ss. 321, 322; Code, ss. 1557, 1558; 1874-5, c. 221, ss. 2, 3; C. S. 2192.)

§ 33-46. Powers, duties, liabilities, compensation.—The powers and duties of said public guardian shall be the same as other guardians, and he shall be subject to the same liabilities as other guardians under the existing laws, and shall receive the same compensation as other guardians. (Rev., s. 1761; Code, s. 1561; 1874-5, c. 221, ss. 6, 7; C. S. 2193.)

§ 33-47. When letters issue to public guardian.—The public guardian shall apply for and obtain letters of guardianship in the following cases:

1. When a period of six months has elapsed from the discovery of any property belonging to any minor, idiot, lunatic, insane person or inebriate, without guardian.

2. When any person entitled to letters of guardianship shall request in writing the clerk of the superior court to issue letters to the public guardian; but it is lawful and the duty of the clerk of the superior court to revoke said letters of guardianship at any time after issuing the same upon application in writing by any person entitled to qualify as guardian, setting forth a sufficient cause for such revocation. (Rev., s. 1760; Code, s. 1561; 1874-5, c. 221, ss. 6, 7; C. S. 2194.)

Art. 7. Foreign Guardians.

§ 33-48. Right to removal of ward's personalty from state.—Where any ward, idiot, lunatic or insane person, residing in another state or territory, or in the District of Columbia, or Canada, or other foreign country, is entitled to any personal estate in this state, or personal property substituted for realty by decree of court, or to any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this state, or of any executor, administrator or other person holding for the ward, idiot, lunatic or insane person, or if the same (not being adversely held and claimed) be not in the lawful possession or control of any person, the guardian of the ward, idiot, lunatic or insane person, duly appointed at the place where such ward, idiot, lunatic or insane person resides, or in the event no guardian has been appointed the court or officer of the court authorized by the laws of the state or territory or for the District of Columbia or Canada or other foreign country to receive moneys belonging to any infants, idiots, lunatics or insane persons when no guardian has been appointed for such person, may apply to have such estate removed to the residence of the infant, idiot, lunatic or insane person by petition filed before the clerk of the superior court of the county in which the property or some portion thereof is situated; which shall be proceeded with as in other cases of special proceedings. (Rev., s. 1816; Code, ss. 1598, 1601; R. C., c. 54, s. 29; 1820, c. 1044; 1842, c. 38; 1868-9, c. 201, ss. 35, 38; 1874-5, c. 168; 1913, c. 86, s. 1; 1937, c. 307; C. S. 2195.)

§ 33-49. Contents of petition; parties defendant.—The petitioner must show to the court a copy of his appointment as guardian and bond duly authenticated, and must prove to the court that the bond is sufficient, as well in the ability of the sureties as in the sum mentioned therein, to secure all the estate of the ward wherever situated. Any person may be made a party defendant to the proceeding who may be made a party defendant in civil actions under the provisions of the chapter entitled Civil Procedure. (Rev., ss. 1817, 1818; Code, ss. 1599, 1600; R. C., c. 54, s. 30; 1820, c. 1044, s. 2; 1842, c. 38; 1868-9, c. 201, ss. 36, 37; C. S. 2196.)

Art. 8. Estates without Guardian.

§ 33-50. Duty of grand jury as to orphans and guardians.—The grand jury of every county is charged with and shall present to the superior court the names of all orphan children that have no guardian or are not bound out to some trade or employment. They shall further inquire of all abuses, mismanagement and neglect of all such guardians as are appointed by the clerk of the superior court. The clerk of the superior court shall, at each term of the superior court, lay before the grand jury a list of all the guardians acting in his county or appointed by him. (Rev., s. 1810; Code, s. 1609; R. C., c. 54, s. 18; 1762, c. 69, s. 17; 1868-9, c. 201, s. 46; C. S. 2197.)

§ 33-51. Solicitor to apply for receiver for orphans' estates.—Whenever the name of an orphan, having any estate and for whom no suitable person will become guardian, is presented by a grand jury, the clerk of the superior court must give notice thereof forthwith to the solicitor of the state for the judicial district, who shall apply in behalf of the orphan to the judge of the superior court of the county where such presentment was made, to the end that a receiver be appointed. (Rev., s. 1811; Code, s. 1610; R. C., c. 54, s. 19; 1846, c. 43; 1868-9, c. 201, s. 47; C. S. 2198.)

§ 33-52. Solicitor to prosecute bond of guardian removed without a successor.—Whenever any

guardian is removed, and no person is appointed to succeed in the guardianship, the clerk of the superior court shall certify the name of such guardian and his sureties to the solicitor of the judicial district, who shall forthwith institute an action on the bond of the guardian in the superior court, for securing the estate of the ward. (Rev., s. 1812; Code, s. 1584; R. C., c. 54, s. 14; 1844, c. 41; 1868-9, c. 201, s. 21; C. S. 2199.)

§ 33-53. Judge to appoint receiver; his rights and duties.—The judge of the superior court, either residing in or presiding over the courts of the district, before whom such action is brought, shall have power to appoint the clerk of the superior court or some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due to him, to secure, lend, invest or apply the same for the benefit and advantage of the ward, under the direction and subject to such rules and orders in every respect as the said judge may from time to time make in regard thereto; and the accounts of such receiver shall be returned, audited and settled as the judge may direct. The receiver shall be allowed such amounts for his time, trouble and responsibility as seem to the judge reasonable and proper; and such receivership may be continued until a suitable person can be procured to take the guardianship. (Rev., s. 1813; Code, s. 1585; R. C., c. 54, s. 15; 1844, c. 41, s. 2; 1868-9, c. 201, s. 22; C. S. 2200.)

§ 33-54. When receiver to pay over estate.—When another guardian is appointed, he may apply by motion, on notice, to the judge of the superior court for an order upon the receiver to pay over all the money, estate and effects of the ward; and if no such guardian is appointed, then the infant, on coming of age, or in case of his death, his executor, administrator or collector, and the heir or personal representative of the idiot, lunatic or insane person, shall have the like remedy against the receiver. (Rev., s. 1814; Code, s. 1587; R. C., c. 54, s. 17; 1844, c. 41, s. 4; 1868-9, c. 201, s. 24; C. S. 2201.)

§ 33-55. Duties of solicitor.—The solicitor shall prosecute the action and take all necessary orders therein. (Rev., s. 1815; Code, s. 1586; 1895, c. 14; R. C., c. 54, s. 16; 1844, c. 41, s. 3; 1868-9, c. 201, s. 23; C. S. 2202.)

Art. 9. Guardians of Estates of Missing Persons.

§ 33-56. Appointment.—When it shall be made to appear to the satisfaction of the clerk of the superior court, or a judge of the superior court having jurisdiction of the appointment of guardians, that any person has disappeared from the community of his residence, and his whereabouts remains unknown in such community for a period of three (3) months, and cannot, after diligent inquiry, be ascertained; and that such person has property in the state and property rights within its jurisdiction which may be affected by his absence, or may need protection and administration; and that such person has made no provision for the management of his affairs; such clerk of the superior court or judge of the superior court may appoint a guardian of the estate and property of such person as may, by law be done in the case of minors and persons non compos mentis, and with the like powers and duties with respect to such estate. (1933, c. 49, s. 1.)

§ 33-57. Jurisdiction.—The clerk of the superior court of the county of the last residence of such absent person shall have prior right to jurisdiction of such appointment, but the appointment may be made by the clerk of the superior court of any county in the state where such person has property, after the expiration of six months from the time of such disappearance, if no prior appointment has been made. (1933, c. 49, s. 2.)

§ 33-58. Powers and duties; bond. — The guardian, so appointed, shall have all the powers and duties with respect to the property and estate of such absent person as are now, or may be hereafter, conferred by law upon guardians generally; and before entering into the discharge of the duties of his guardianship, he shall be required to enter into such bond as is now required by law in such cases, for the faithful performance of his trust and for the accounting of the property, moneys and assets of the estate coming into his hands as guardian. (1933, c. 49, s. 3.)

§ 33-59. General laws applicable. — The public laws relating to guardianships, and particularly this chapter, as far as by their terms they may be applicable, and as far as they are not modified by this article, shall apply to guardians so appointed. (1933, c. 49, s. 3.)

§ 33-60. Other managerial powers conferred.—In addition to the powers given to guardians under the general laws of the state, such guardians may, by approval of the court, apply funds in his hands to the satisfaction of obligations of such absent person, renew notes and other obligations, pledge property for loans necessary in carrying on or liquidating the affairs of such absent person; cause lands to be cultivated, where such business was previously carried on, and make such contracts with reference thereto as he may deem to the best interest of the estate, and, under the direction of the court and with its approval, continue to operate any business or business enterprise of such person, and make such contracts, agreements and settlements in reference thereto as may be necessary, or to the best interests of the estate. (1933, c. 49, s. 4.)

§ 33-61. Discharge of guardian upon return of missing person.—Upon the return of such absent person, and within six months from the filing of the petition by such person to be restored to his property and to the management of his estate, the clerk of the superior court having jurisdiction of the said guardianship shall require a settlement of the estate by the guardian so appointed, and shall cause to be turned over to such person all of the said estate then in the hands of the said guardian, after the payment of such reasonable costs and commissions as may be authorized by law, and, upon the filing of a financial account by the said guardian, he shall be discharged. (1933, c. 49, s. 5.)

§ 33-62. Guardian not liable except for misconduct.—No action shall be maintained against

such guardian, or the sureties on his bond, by reason of his appointment, taking over and managing the property of such absent person, or any of his acts with respect to the said estate, where it appears that they were done under authority of this article, but only for recovery because of the misconduct in office or bad faith of such guardian, or the waste of the assets of the estate through mismanagement, amounting to gross carelessness or in violation of the law. (1933, c. 49, s. 6.)

Chapter 34. Veterans' Guardianship Act.

Sec.

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34-18. Construction of chapter.

§ 34-1. Title.—This chapter shall be known as "The Veterans' Guardianship Act." (1929, c. 33, s. 1.)

§ 34-2. Definitions.—In this chapter:

The term "person" includes a partnership, corporation or an association.

The term "Bureau" means the United States Veterans' Bureau or its successor.

The terms "estate" and "income" shall include only moneys received by the guardian from the Bureau and all earnings, interests and profits derived therefrom.

The term "benefits" shall mean all moneys payable by the United States through the Bureau.

The term "Director" means the Director of the United States Veterans' Bureau or his successor.

The term "State Service Officer" means such appointee of the North Carolina Commissioner of Labor as provided by § 95-4.

The term "ward" means a beneficiary of the Bureau.

The term "guardian" as used herein shall mean any person acting as a fiduciary for a ward. (1929, c. 33, s. 2.)

§ 34-3. Appointment of guardian for wards entitled to benefits from United States Veterans' Bureau.—Whenever, pursuant to any law of the United States or regulation of the Bureau, the Director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided. (1929, c. 33, s. 3.)

§ 34-4. Guardian may not be named for more than five wards; exceptions; banks and trust companies, or where wards are members of same family.—Except as hereinafter provided it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. If any case, upon presentation of a petition by an attorney of the Bureau under this section alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in said case.

The limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five wards if they are all members of the same family. (1929, c. 33, s. 4.)

§ 34-5. Petition for appointment of guardian.—A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a petition within thirty days after mailing of notice by the Bureau to the last known address of such person indicating the necessity for the same a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State.

The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the Bureau and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the Bureau in accordance with the laws and regulations governing the Bureau. (1929, c. 33, s. 5.)

§ 34-6. Certificate of Director prima facie evidence of necessity for appointment.—Where a petition is filed for the appointment of a guardian of a minor ward a certificate of the Director, or his representative, setting forth the age of such minor as shown by the records of the Bureau and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Bureau, shall be prima facie evidence of the necessity for such appointment. (1929, c. 33, s. 6.)

§ 34-7. Same in regard to guardianship of mentally incompetent wards.—Where a petition is filed for the appointment of a guardian of a mentally incompetent ward a certificate of the Director, or his representative, setting forth the fact that such person has been rated incompetent by the Bureau on examination in accordance with the laws and regulations governing such Bureau; and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the Bureau, shall be prima facie evidence of the necessity for such appointment. (1929, c. 33, s. 7.)

§ 34-8. Notice of filing of petition.—Upon the filing of a petition for the appointment of a guardian, under the provisions of this chapter, the court shall cause such notice to be given as provided by law. (1929, c. 33, s. 8.)

§ 34-9. Qualifications of guardian; surety bond.—Before making an appointment under the provisions of this chapter the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a surety bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this state. The court shall have power from time to time to require the guardian to file an additional bond.

No bond shall be required of the banks and trust companies licensed to do trust business in North Carolina. (1929, c. 33, s. 9.)

§ 34-10. Guardian's accounts to be filed; hearing on accounts.—Every guardian, who shall receive on account of his ward any moneys from the bureau, shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the bureau having jurisdiction over the area in which such court is located.

At the time such account is filed the clerk of superior court shall require the guardian to exhibit to the court all investments and bank statements showing cash balance and the clerk of superior court shall certify on the original account and the certified copy which the guardian sends the bureau that an examination was made of all investments and cash balance and that same are correctly stated in the account. If objections are raised to such an accounting, the court shall fix a time and place for the hearing thereon not less than fifteen days nor more than thirty days from the date of filing such objections, and notice shall be given by the court to the aforesaid bureau office and state service officer by mail not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall also be given to the guardian. (1929, c. 33, s. 10; 1933, c. 262, s. 1.)

§ 34-11. Failure to file account cause for removal.—If any guardian shall fail to file any account of the moneys received by him from the Bureau on account of his ward within thirty days after such account is required by either the court or the Bureau, or shall fail to furnish the Bureau a copy of his accounts as required by this chapter, such failure shall be grounds for removal. (1929, c. 33, s. 11.)

§ 34-12. Compensation at 5 per cent; additional compensation; premiums on bonds.—Compensation payable to guardians shall not exceed 5 per cent of the income of the ward during any year. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor, payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the Bureau and the State Service Officer in the manner provided in § 34-10. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond. (1929, c. 33, s. 12.)

§ 34-13. Investment of funds.—Every guardian shall invest the funds of the estate in any of the following securities:

(a) United States government bonds.

(b) State of North Carolina bonds issued since the year one thousand eight hundred seventy-two.

(c) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty per cent (50%) of the actual appraised or assessed value, whichever may be lower, and said loans when made to be evidenced by a note, or notes, or bond, or bonds, under seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages shall secure a certificate of title from some reputable attorney certifying that the same is the first lien on real estate and also setting forth the tax valuation thereof for the current year: Provided, said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of superior court, said order to be approved by the resident or

presiding judge of the superior court, and provided further that copy of said petition shall be forwarded to said bureau before consideration thereof by said court.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the superior court, either residing in or presiding over the courts of the district, the clerk of the superior court may authorize the guardian to extend from time to time, the time for sale or collection of any such investments; that no extension shall be made to cover a period of more than one year from the time the extension is made.

The clerk of the superior court of any county in the state or any guardian who shall violate any of the provisions of this section shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court. (1929, c. 33, s. 13; 1933, c. 262, s. 2.)

§ 34-14. Application of ward's estate.—A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper officer of the Bureau and the State Service Officer in the manner provided in § 34-10. (1929, c. 33, s. 14.)

§ 34-15. Certified copy of record required by Bureau to be furnished without charge.—Whenever a copy of any public record is required by the Bureau or State Service Officer to be used in determining the eligibility of any person to participate in benefits made available by such Bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such Bureau or State Service Officer with a certified copy of such record. (1929, c. 33, s. 15.)

§ 34-16. Provision for commitment into Government hospital of any veteran needing treatment.—Whenever it appears that a veteran of any war, military occupation or expedition is eligible for treatment in a United States Veterans' Bureau Hospital and commitment to such hospital is necessary for the proper care and treatment of such veteran, the courts of this state are hereby authorized to communicate with the Director or his representative with reference to available facilities in the United States Veterans' Hospitals and the eligibility of the veteran, and upon receipt of a certificate of admission from the Director or his representative the court may then direct such veteran's commitment to such United States Veterans' Hospital in or without the State of North Carolina. Thereafter such veteran upon admission shall be subject to the rules and regulation of such hospital and the officials of such hospital shall be vested with the same powers now exercised by superintendents of state hospitals for mental diseases within this state with reference to the retention of custody of the veteran so committed. Notice of such pending proceedings shall be furnished the person to be committed and his right to appear and defend shall not be denied. (1929, c. 33, s. 16.)

§ 34-17. Discharge of guardian.—When a minor ward for whom a guardian has been appointed under the provisions of this chapter or other laws of this state shall have attained his or her majority, and if incompetent shall be declared competent by the Bureau and the court, and when any incompetent ward, not a minor, shall be declared competent by said Bureau and the court, the guardian shall upon making a satisfactory accounting be discharged upon a petition filed for that purpose. (1929, c. 33, s. 17.)

§ 34-18. Construction of chapter.—This chapter shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Bureau. (1929, c. 33, s. 18.)

Chapter 35. Insane Persons and Incompetents.

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Art. 1. Inebriates.

§ 35-1. Inebriates defined. — Any person who habitually, whether continuously or periodically, indulges in the use of intoxicating liquors, narcotics or drugs to such an extent as to stupefy his mind and to render him incompetent to transact ordinary business with safety to his estate, or who renders himself, by reason of the use of intoxicating liquors, narcotics or drugs, dangerous to person or property, or who, by the frequent use of liquor, narcotics or drugs, renders himself cruel and intolerable to his family, or fails from such cause to provide his family with reasonable necessities of life, shall be deemed an inebriate: Provided, the habit of so indulging in such use is at the time of inquisition of at least one year's standing. (Rev., s. 1892; Code, s. 1671; 1891, c. 15, s. 7; 1903, c. 543; 1879, c. 329; C. S. 2284.)

Art. 2. Guardianship and Management of Estates of Incompetents.

§ 35-2. Inquisition of lunacy; appointment of guardian. — Any person, in behalf of one who is deemed an idiot, inebriate, or lunatic, or incompetent from want of understanding to manage his own affairs by reason of the excessive use of intoxicating drinks, or other cause, may file a petition before the clerk of the superior court of the county where such supposed idiot, inebriate or lunatic resides, setting forth the facts, duly verified by the oath of the petitioner; whereupon such clerk shall issue an order, upon notice to the supposed idiot, inebriate or lunatic, to the sheriff of the county, commanding him to summon a jury of twelve men to inquire into the state of such supposed idiot, inebriate or lunatic. Upon the return of the sheriff summoning said jury, the clerk of the superior court shall swear and organize said jury and shall preside over said hearing, and the jury shall make return of their proceedings under their hand to the clerk, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate, lunatic, or incompetent person by inquisition of a jury, as in cases of orphans.

Either the applicant or the supposed idiot, inebriate, lunatic, or incompetent person may appeal from the finding of said jury to the next term of the superior court, when the matters at issue shall be regularly tried de novo before a jury, and pending such appeal, the clerk of the superior court shall not appoint a guardian for the said supposed idiot, inebriate, lunatic, or incompetent person, but the resident judge of the district, or the judge presiding in the district, may in his discretion appoint a temporary receiver for the alleged incompetent pending the appeal. The trial of said appeal in the superior court shall have precedence over all other causes.

The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same; and he shall proceed to appoint a guardian of any person so found to be an idiot, inebriate, lunatic or incompetent person by inquisition of a jury, as in cases of orphans. If the person so adjudged incompetent shall be an inebriate within the definition of section 35-1, the clerk shall proceed to commit said inebriate to the department for inebriates at the state hospital in Raleigh for treatment and cure. He shall for-

ward to the superintendent of said state hospital a copy of the record required herein to be made, together with the commitment, and these shall constitute the authority to said superintendent to receive and care for and cure said inebriate. The expenses of the care and cure of said inebriate shall constitute a charge against the estate in the care of his guardian. If, however, such estate is not large enough to pay such expenses, the same shall be a valid charge against the county from which said inebriate is sent. Provided, where the person is found to be incompetent from want of understanding to manage his affairs, by reason of physical and mental weakness on account of old age and/or disease and/or other like infirmities, the clerk may appoint a trustee instead of guardian for said person. The trustee appointed shall be subject to the laws now or which hereafter may be enacted for the control and handling of estates by guardians. The clerks of the superior courts who have heretofore appointed guardians for persons described in this proviso are hereby authorized and empowered to change said appointment from guardian to trustee. The sheriffs of the several counties to whom a process is directed under the provisions of this section shall serve the same without demanding their fees in advance. And the juries of the several counties upon whom a process is served under the provisions of this section shall serve and make their returns without demanding their fees in advance. (Rev., s. 1890; Code, s. 1670; C. C. P., s. 473; 1919, c. 54; 1921, c. 156, s. 1; 1929, c. 203, s. 1; 1933, c. 192; C. S. 2285.)

§ 35-3. Guardian appointed on certificate from hospital for insane.—If any person is confined in any State, territorial or Governmental asylum or hospital for the insane in this State, or in any other state or territory, or in the District of Columbia, or in any hospital licensed and supervised by the State of North Carolina, the certificate of the superintendent of such hospital declaring such person to be of insane mind and memory, which certificate shall be sworn to and subscribed before the clerk of the Superior Court or any notary public, or the clerk of any court of record in the county, in which such hospital is situated and certified under the seal of court, shall be sufficient evidence to authorize to appoint a guardian for such idiot, lunatic or insane person. Further, the clerks of the different counties of this State are also authorized to appoint guardians for any person entitled to the benefits of the War Risk Insurance Act, as amended, and the World War Veterans' Act of nineteen hundred and twenty-four as amended, where it shall appear from the certificate of the Regional Medical Officer of the United States Veterans' Bureau of North Carolina that such veteran of the World War has been declared by the United States Government as incompetent to receive the funds to be paid to him under said Acts of Congress, and such certificate shall be all the proof required as to the incapacity of said veteran to receive such funds and as to the necessity of a guardian. Guardians for such veterans shall be subject to the same provisions of law as guardians of idiots, inebriates, lunatics, and incompetent persons in this State.

Any guardian or trustee appointed prior to April 3, 1939, under the provisions of this section on certificate issued by the superintendent of any hospital licensed and supervised by the State of North Carolina, and any and all proceedings based thereon are hereby validated. (Rev., ss. 1891, 4609; Code, s. 1673; 1860-1, c. 22; 1907, c. 232; 1927, c. 160, s. 1; 1939, c. 330; C. S. 2286.)

§ 35-4. Restoration to sanity or sobriety; effect; how determined. — When any insane person or inebriate becomes of sound mind and memory, or becomes competent to manage his property, he is authorized to manage, sell and control all his property in as full and ample a manner as he could do before he became insane or inebriate, and a petition in behalf of such person may be filed before the clerk of the superior court of the county of his residence, or before the clerk of the superior court of the county wherein such person is confined or held; provided, however, that in all cases where a guardian has been appointed the cause of action shall be tried in the county where the guardianship is pending, and said guardian shall be made a party to such action before final determination thereof, setting forth the facts, duly verified by the oath of the petitioner (the petition may be filed by the person formerly adjudged to be insane, lunatic, inebriate or incompetent; or by any friend or relative of said person; or by the guardian of said person), whereupon the clerk shall issue an order, upon notice to the person alleged to be no longer insane or inebriate, to the sheriff of the county, commanding him to summon a jury of six freeholders to inquire into the sanity of the alleged sane person, formerly a lunatic, or the sobriety of such alleged restored person, formerly an inebriate. The jury shall make return of their proceedings under their hands to the clerk, who shall file and record the same, and if the jury find that the person whose mental or physical condition inquired of is sane and of sound mind and memory, or is no longer an inebriate, as the case may be, the said person is authorized to manage his affairs, make contracts and sell his property, both real and personal, as if he had never been insane or inebriate. (Rev., s. 1893; Code, s. 1672; 1901, c. 191; 1903, c. 80; 1879, c. 324, s. 4; 1937, c. 311; 1941, c. 145; C. S. 2287.)

§ 35-5. Legal rights restored upon certificate of sanity by superintendent of hospital. — Any person who has been declared of unsound mind and memory under § 35-3, and for whom a guardian has been appointed, may be fully restored to his rights to manage his or her property by a certificate from the superintendent of the hospital where such person of unsound mind and memory has been confined stating that such insane person has been restored to sound mind and memory. This certificate shall be sworn to and subscribed before the clerk of the superior court or notary public for the county in which the hospital wherein such person had been confined is located, and certified under the seal of said court to the clerk of the superior court of the county wherein said person had his legal residence immediately before being declared of unsound mind and memory. The clerk of such resident county shall record the certificate and immediately issue a notice to

the guardian of such person, requiring him to file his final account within sixty days from the date of service of the notice. From the date of docketing the record of such certificate the person formerly of unsound mind and memory shall be restored to all his legal rights. (1909, c. 176; C. S. 2288.)

§ 35-6. Estates without guardian managed by clerk. — When any person is declared to be of nonsane mind or inebriate, and no suitable person will act as his guardian, the clerk shall secure the estate of such person according to the law relating to orphans whose guardians have been removed. (Rev., s. 1894; Code, s. 1676; R. C., c. 57, s. 6; 1846, c. 43, s. 1; C. S. 2289.)

§ 35-7. Allowance to abandoned insane wife. —When any insane wife is abandoned by her husband, she may, by her guardian, or next friend, in case there be no guardian, apply to the clerk of the superior court for support and maintenance, which the clerk may decree as in cases of alimony, out of any property or estate of her husband. (Rev., s. 1895; Code, s. 1686; 1858-9, c. 52, s. 1; C. S. 2290.)

§ 35-8. Renewal of obligations by guardians.— In all cases where a guardian has been appointed for a person who has been judicially declared to be an inebriate, lunatic, or incompetent from want of understanding to manage his or her own affairs by reason of the excessive use of intoxicating drink or other causes, and said person is the maker or one of the makers, a surety or one of the sureties, an indorser or one of the indorsers of any note, bond, or other obligation for the payment of money, which is due or past due at the time of the appointment of the guardian, or shall thereafter become due prior to the settlement of the estate of said ward, the guardian of said ward's estate is hereby authorized and empowered to execute, as such guardian, a new note, bond, or other obligation for the payment of money, in the same capacity as the ward was obligated, for the same amount or less, but not greater than the sum due on the original obligation. Such new note shall be in lieu of the original obligation of the ward, whether made payable to the original holder or to another. Such guardian is authorized and empowered to renew said note, bond, or other obligation for the payment of money from time to time; and said note, bond, or other obligation so executed by such guardian shall be binding upon the estate of said ward to the same extent and in the same manner and with the same effect that the original bond, note, or other obligation executed by the ward was binding upon his estate: Provided, the time for final payment of the note, bond, or other obligation for the payment of money, or any renewal thereof by said guardian shall not extend beyond a period of two years from the qualification of the original guardian as such upon the estate of said ward. (1927, c. 45, s. 1.)

§ 35-9. Guardian not liable.—The execution of any note, bond or other obligation for the payment of money mentioned in § 35-8 by the guardian of the inebriate, lunatic, or incompetent, shall not be held or construed to be binding upon the said guardian personally. (1927, c. 45, s. 2.)

Art. 3. Sales of Estates.

§ 35-10. Clerk may order sale, renting or mortgage.—When it appears to any clerk of the superior court by report of the guardian of any idiot, inebriate or lunatic, that his personal estate has been exhausted, or is insufficient for his support, and that he is likely to become chargeable on the county, the clerk may make an order for the sale, mortgage or renting of his personal or real estate, or any part thereof, in such manner and upon such terms as he may deem advisable. Such order shall specify particularly the property thus to be disposed of, with the terms of renting or sale or mortgage, and shall be entered at length on the records of the court; and all sales and rentings and conveyances by mortgages or deeds in trust made under this section shall be valid to convey the interest and estate directed to be sold or conveyed by mortgage or deed in trust, and the title thereof shall be conveyed by such person as the clerk may appoint on confirming the sale; or the clerk may direct the guardian to file his petition for such purpose. (Rev., s. 1896; Code, s. 1674; R. C., c. 57, s. 4; 1801, c. 589; 1931, c. 184, s. 1; C. S. 2291.)

§ 35-11. Purposes for which estate sold or mortgaged; parties; disposition of proceeds. — When it appears to the clerk, upon the petition of the guardian of any idiot, inebriate or lunatic, that a sale or mortgage of any part of his real or personal estate is necessary for his maintenance, or for the discharge of debts unavoidably incurred for his maintenance, or when the clerk is satisfied that the interest of the idiot, inebriate or lunatic would be materially and essentially promoted by the sale or mortgage of any part of such estate; or when any part of his real estate is required for public purposes, the clerk may order a sale thereof to be made by such person, in such way and on such terms as he shall adjudge. The clerk, if it be deemed proper, may direct to be made parties to such petition the next of kin or presumptive heirs of such nonsane person or inebriate. And if on the hearing the clerk orders such sale or mortgage, the same shall be made and the proceeds applied and secured, and shall descend and be distributed in like manner as is provided for the sale of infants' estates decreed in like cases to be sold on application of their guardians, as directed in the chapter entitled Guardian and Ward. The word "mortgage" whenever used herein shall be construed to include deeds in trust. (Rev., s. 1897; Code, s. 1675; R. C., c. 57, s. 5; 1931, c. 184, s. 2; C. S. 2292.)

§ 35-12. Sale of land of wife of lunatic upon petition.—Where the wife of a lunatic owns real estate in her own right the sale of which will promote her interest, a sale of the same may be made upon the order of the clerk of the superior court of the county where the land lies, upon the petition of the wife of said lunatic and the guardian of the lunatic husband, and the proceeds of said sale shall be paid to the wife of said lunatic. (Rev., s. 1898; Code, s. 1687; 1881, c. 361; C. S. 2293.)

§ 35-13. Wife of insane person entitled to special proceeding for sale of his property. — Every

woman whose husband is a lunatic or insane and is confined in an asylum in this state, and who was living with her husband at the time he was committed to such asylum, if she be in needy circumstances, shall have the right to bring a special proceeding before the clerk of the superior court to sell the property of her insane husband, or so much thereof as is deemed expedient, and have the proceeds applied to her support: Provided, that said proceeding shall be approved by the judge of the superior court holding the courts of the judicial district where the said property is situated. When the deed of the commissioner appointed by the court, conveying the lands belonging to the insane husband is executed, probated, and registered, it conveys a good and indefeasible title to the purchaser. (1911, c. 142, ss. 1, 2; C. S. 2294.)

Art. 4. Mortgage or Sale of Estates Held by the Entireties.

§ 35-14. Where one spouse or both incompetent; special proceeding before clerk.—In all cases where a husband and wife shall be seized of property as an estate by the entireties, and the wife or the husband or both shall be or become mentally incompetent to execute a conveyance of the estate so held, and the interest of said parties shall make it necessary or desirable that such property be mortgaged or sold, it shall be lawful for the mentally competent spouse and/or the guardian of the mentally incompetent spouse, and/or the guardians of both (where both are mentally incompetent) to file a petition with the clerk of the superior court in the county where the lands are located, setting forth all facts relative to the status of the owners, and showing the necessity or desirability of the sale or mortgage of said property, and the clerk, after first finding as a fact that either the husband or wife, or both, are mentally incompetent, shall have power to authorize the interested parties and/or their guardians to execute a mortgage, deed of trust, deed, or other conveyance of such property, provided it shall appear to said clerk's satisfaction that same is necessary or to the best advantage of the parties, and not prejudicial to the interest of the mentally incompetent spouse. (1935, c. 59, s. 1.)

§ 35-15. General law applicable; approved by judge.—The proceedings herein provided for shall be conducted under and shall be governed by laws pertaining to special proceedings, and it shall be necessary for any sale or mortgage or other conveyance herein authorized to be approved by the resident judge or the judge holding the courts in the judicial district wherein the property is located. (1935, c. 59, s. 2.)

§ 35-16. Proceeding valid in passing title. — Any mortgage, deed, or deed of trust executed under authority of this article by a regularly conducted special proceeding as provided shall have the force and effect of passing title to said property to the same extent as a deed executed jointly by husband and wife, where both are mentally capable of executing a conveyance. (1935, c. 59, s. 3.)

§ 35-17. Clerk may direct application of funds; purchasers and mortgages protected.—In all cases conducted under this article it shall be competent for the court, in its discretion, to direct the application of funds arising from a sale or mortgage of such property in such manner as may appear necessary or expedient for the protection of the interest of the mentally incompetent spouse: Provided, however, this section shall not be construed as requiring a purchaser or any other party advancing money on the property to see to the proper application of such money, but such purchaser or other party shall acquire title unaffected by the provisions of this section. (1935, c. 59, s. 4.)

§ 35-18. Prior sales and mortgages validated.—Any and all special proceedings under which estates by the entireties have been sold or mortgaged prior to March 5, 1935, under circumstances contemplated in this article are hereby in all respects ratified and confirmed, provided that such proceeding or proceedings are otherwise regular and conformable to law. (1935, c. 59, s. 5.)

Art. 5. Surplus Income and Advancements.

§ 35-19. Income of insane widowed mother used for children's support.—When a father dies leaving him surviving minor children and a widow who is the mother of such children, but leaving no sufficient estate for the support and maintenance and education of such minor children, and the mother is or becomes insane and is so declared according to law, and such insanity continues for twelve months thereafter, and she has an estate which is placed in the hands of a guardian or other person, as provided by law, the estate of such insane mother shall in such cases as are provided for in § 35-20 be made liable for the support, maintenance and education of the class of persons mentioned in said section to the same extent, in the same manner and under the same rules and regulations as applies to estates of fathers thereunder. (Rev., s. 1899; 1905, c. 546; C. S. 2295.)

§ 35-20. Advancement of surplus income to certain relatives.—When any nonsane person, of full age, and not having made a valid will, has children or grandchildren (such grandchildren being the issue of a deceased child), and is possessed of an estate, real or personal, whose annual income is more than sufficient abundantly and amply to support himself, and to support, maintain and educate the members of his family, with all the necessaries and suitable comforts of life, it is lawful for the clerk of the superior court for the county in which such person has his residence to order from time to time, and so often as may be judged expedient, that fit and proper advancements be made, out of the surplus of such income, to any such child, or grandchild, not being a member of his family and entitled to be supported, educated and maintained out of the estate of such person. Whenever any nonsane person of full age, not being married and not having issue, be possessed, or his guardian be possessed for him, of any estate, real or personal, or of an income which is more than sufficient amply to provide for such person, it shall be lawful for the clerk of the Superior Court for the county in which such person resided prior to insanity to order from time to time, and so often as he may deem expedient, that fit and proper advancements be made, out of the surplus of such estate or in-

come, to his or her parents, brothers and sisters, or grandparents to whose support, prior to his insanity, he contributed in whole or in part. (Rev., s. 1900; Code, s. 1677; R. C., c. 57, s. 9; Ex. Sess. 1924, c. 93; C. S. 2296.)

§ 35-21. Advancement to adult child or grandchild.—When such nonsane person is possessed of a real or personal estate in excess of an amount more than sufficient to abundantly and amply support himself with all the necessaries and suitable comforts of life and has no minor children nor immediate family dependent upon him for support, education or maintenance, such advancements may be made out of such excess of the principal of his estate to such child or grandchild of age for the better promotion or advancement in life or in business of such child or grandchild: Provided, that the order for such advancement shall be approved by the resident or presiding judge of the district who shall find the facts in said order of approval. (1925, c. 136, s. 1.)

§ 35-22. For what purpose and to whom advanced. — Such advancements shall be ordered only for the better promotion in life of such as are of age, or married, and for the maintenance, support and education of such as are under the age of twenty-one years and unmarried; and in all cases the sums ordered shall be paid to such persons as, in the opinion of the clerk, will most effectually execute the purpose of the advancement. (Rev., s. 1901; Code, s. 1678; R. C., c. 57, s. 10; C. S. 2297.)

§ 35-23. Distributees to be parties to proceeding for advancement.—In every application for such advancements, the guardian of the nonsane person and all such other persons shall be parties as would at that time be entitled to a distributive share of his estate if he were then dead. (Rev., s 1902; Code, s. 1679; R. C., c. 57, s. 11; C. S. 2298.)

§ 35-24. Advancements to be equal; accounted for on death.—The clerk, in ordering such advancements, shall, as far as practicable, so order the same as that, on the death of the nonsane person, his estate shall be distributed among his distributees in the same equal manner as if the advancements had been made by the person himself; and on his death every sum advanced to a child or grandchild shall be an advancement, and shall bear interest from the time it may be received. (Rev., s. 1903; Code, s. 1680; R. C., c. 57, s. 12; C. S. 2299.)

§ 35-25. Clerk may select those to advance.—When the surplus aforesaid or advancement from the principal estate is not sufficient to make distribution among all the parties, the clerk may select and decree advancement to such of them as may most need the same, and may apportion the sum decreed in such amounts as are expedient and proper. (Rev., s. 1904; Code, s. 1681; R. C., c. 57, s. 13; 1925, c. 136, s. 2; C. S. 2300.)

§ 35-26. Advancements to be secured against waste.—It is the duty of the clerk to withhold advancements from such persons as will probably waste them, or so to secure the same, when they may have families, that it may be applied to their support and comfort; but any sum so advanced shall be regarded as an advancement to such persons. (Rev., s. 1905; Code, s. 1682; R. C., c. 57, s. 14; C. S. 2301.)

§ 35-27. Appeal; removal to superior court.—Any person made a party may appeal from any order of the clerk; or may, when the pleadings are finished, require that all further proceedings shall be had in the superior court. (Rev., s. 1906; Code, s. 1683; R. C., c. 57, s. 15; C. S. 2302.)

§ 35-28. Advancements only when insanity permanent. — No such application shall be allowed under this chapter but in cases of such permanent and continued insanity as that the nonsane person shall be judged by the clerk to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion. (Rev., s. 1907; Code, s. 1684; R. C., c. 57, s. 16; C. S. 2303.)

§ 35-29. Decrees suspended upon restoration of sanity.—Upon such insane person being restored to sanity, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same. (Rev., s. 1908; Code, s. 1685; R. C., c. 57, s. 17; C. S. 2304.)

Art. 6. Detention, Treatment, and Cure of Inebriates.

§ 35-30. "Inebriate" defined.—For the purposes of this article, the word "inebriate" is defined to be a person habitually so addicted to alcoholic drinks or narcotic drugs as to be a proper subject for restraint, care, and treatment. (1921, c. 156, s. 2; C. S. 2304(a).)

§ 35-31. Petition for examination; warrant for hearing; action without petition; evidence.—Upon petition of any two of the following persons, to-wit, the wife, husband, parent, child, committee of the estate of an inebriate, or next friends of such person, or, if there be no such persons, then of two citizens of the county wherein the alleged inebriate resides, the clerk of the superior court of the county in which the said alleged inebriate resides shall issue his warrant requiring the inebriate, on a day fixed, to be brought into court for a hearing. The petition shall not be considered unless it sets forth that the person named therein is an inebriate within the scope of this article, and unless it be accompanied by the affidavit or affidavits of at least two reputable physicians, stating that they have examined the alleged inebriate, and that he is a proper subject for restraint, care, and treatment, or the clerk may, on his own initiative, where he has information and reasonable grounds to believe that a particular person is an inebriate and is a fit subject for restraint, care, and treatment, cause such person to be brought before him and proceed to hear and try the question of whether or not he is an inebriate within the definition of § 35-30. If two reputable physicians shall certify before him that such person is an inebriate, he may commit such an inebriate as herein provided to the department of the state hospital at Raleigh provided for the care and treatment of such inebriate. (1921, c. 156, s. 3; 1941, c. 226; C. S. 2304(b).)

§ 35-32. Commitment for treatment; discharge.—If after such hearing the clerk is satisfied that the alleged inebriate is a proper subject for restraint, care, and treatment, he shall commit the

inebriate to the department for inebriates at the state hospital in Raleigh, where he shall be treated, subject to the same rules and regulations as provided for the treatment and cure of curable insane persons, and he shall be discharged therefrom under the same rules and regulations. (1921, c. 156, s. 4; C. S. 2304(c).)

§ 35-33. Inquiry as to estate of inebriate; minors; costs; expenses.—After the clerk shall determine that an inebriate is a fit subject to be committed to the department for inebriates as aforesaid, he shall go further and inquire as to whether said inebriate is indigent or not in such way that he has not in his own right sufficient estate or property to bear the cost and expense of his restraint, care, and treatment while in the institution. If he is so indigent, then he shall inquire further whether or not the petitioning wife or husband has sufficient estate to pay such costs. If the inebriate is a minor he shall determine whether his particular guardian or parent has sufficient estate of the inebriate or his own, if a parent, to pay such costs. In any of these instances, if sufficient estate or property is found to pay such costs, the clerk shall adjudge the payment from such estate, and in all cases, if the petitioning parent has property sufficient to pay, he shall be adjudged to pay costs of the treatment of his minor child. But if in none of these cases sufficient property is found to pay such costs and expenses, the inebriate shall be declared indigent and the actual cost and expense of restraint, care, and treatment of indigent inebriates as herein defined shall be borne and paid by the county from which the inebriate is committed: Provided, that there shall not be included in such cost and expense any charge except for board and clothing. (1921, c. 156, s. 5; C. S. 2304(d).)

§ 35-34. Inebriate submitting himself for treatment.—Any inebriate within the definition of § 35-30 who wishes to submit himself for care and treatment in the department for inebriates at the state hospital in Raleigh, may be received therein as a patient upon his presentation of himself personally at the institution and making arrangements with the superintendent for the actual cost of his detention and treatment. He shall signify his desire in writing, and promise therein to submit himself to the rules and regulations for the government of the institution. When this is done he shall be detained therein and given adequate care and attention. After he has been so detained for thirty days he may secure his release and discharge by ten days notice in writing to the superintendent, or to any one of the assistant physicians in charge of such institution: Provided, said physician or physicians are satisfied that said inebriate has sufficiently recovered to return to his home and not become a menace or charge to society. (1921, c. 156, s. 6; C. S. 2304(e).)

§ 35-35. Department for inebriates. — It shall be the duty of trustees and superintendent of the state hospital at Raleigh to prepare and set apart a department for such inebriates on or before the first day of May, one thousand nine hundred and twenty-two: Provided that, if in the course of care and treatment of said inebriates it developes that they have criminal, mental, or other symptoms indicating they can not be properly taken care of in this department, the superintendent of the hospital is hereby authorized to transfer such patients to any other department under his care, that, in his opinion, the circumstances may justify. (1921, c. 156, s. 7; 1933, c. 341; C. S. 2304(f).)

Art. 7. Sterilization of Persons Mentally Defective.

§ 35-36. State institutions authorized to sterilize mental defectives.—The governing body or responsible head of any penal or charitable institution supported wholly or in part by the state of North Carolina, or any subdivision thereof, is hereby authorized and directed to have the necessary operation for asexualization, or sterilization, performed upon any mentally diseased, feebleminded or epileptic inmate or patient thereof, as may be considered best in the interest of the mental, moral, or physical improvement of the patient or inmate, or for the public good: Provided, however, that no operation described in this section shall be lawful unless and until the provisions of this article shall first be complied with. (1933, c. 224, s. 1.)

§ 35-37. Operations on mental defectives not in institutions.—It shall be the duty of the board of commissioners of any county of North Carolina, at the public cost and expense, to have one of the operations described in § 35-36, performed upon any mentally diseased, feeble-minded or epileptic resident of the county, not an inmate of any public institution, upon the request and petition of the superintendent of public welfare or other similar public official performing in whole or in part the functions of such superintendent, or of the next of kin, or the legal guardian of such mentally defective person: Provided, however, that no operation described in this section shall be lawful unless and until the provisions of this article shall be first complied with. (1933, c. 224, s. 2.)

§ 35-38. Restrictions on such operations. — No operation under this article shall be performed by other than a duly qualified and registered North Carolina physician or surgeon, and by him only upon a written order signed after complete compliance with the procedure outlined in this article by the responsible executive head of the institution or board, or the superintendent of public welfare, or other similar official performing in whole or in part the functions of such superintendent, or the next of kin or legal guardian having custody or charge of the feeble-minded, mentally defective or epileptic inmate, patient or non-institutional individual. (1933, c. 224, s. 3.)

§ 35-39. Prosecutors designated; duties.—If the person upon whom the operation is to be performed is an inmate or patient of one of the institutions mentioned in § 35-36, the executive head of such institution or his duly authorized agent shall act as prosecutor of the case. The county superintendent of public welfare may act as prosecutor or petitioner in instituting sterilization proceedings in the case of any feeble-minded, epileptic, or mentally diseased person who is on parole from a state institution, and in the case of any such person who is an inmate of a state institution, when authorized to do so by the super-

intendent of such institution. If the person upon whom the operation is to be performed is an inmate or patient of a charitable or penal institution supported by the county, the executive head of such institution or his duly authorized agent, or the county superintendent of welfare or such other official performing in whole or in part the functions of such superintendent of the county in which such county institution is situated, shall act as petitioner in instituting proceedings before the eugenics board. If the person to be operated upon is not an inmate of any such public institution, then the superintendent of welfare or such other official performing in whole or in part the functions of such superintendent of the county of which said inmate, patient, or non-institutional individual to be sterilized is a resident, shall be the prosecutor. It shall be the duty of such prosecutor promptly to institute proceedings as provided by this article in any or all of the following circumstances:

1. When in his opinion it is for the best interest of the mental, moral or physical improvement of the patient, inmate, or non-institutional individual, that he or she be operated upon.

2. When in his opinion it is for the public good that such patient, inmate or non-institutional individual be operated upon.

3. When in his opinion such patient, inmate, or non-institutional individual would be likely, unless operated upon, to procreate a child or children who would have a tendency to serious physical, mental, or nervous disease or deficiency.

4. When requested to do so in writing by the next of kin or legal guardian of such patient, inmate or non-institutional individual.

5. In all cases as provided for in § 35-55. (1933, c. 224, s. 4; 1935, c. 463, s. 1; 1937, c. 243.)

§ 35-40. Eugenics board of N. C. created.—There is hereby created the eugenics board of North Carolina. All proceedings under this article shall be begun before the said eugenics board. This board shall consist of five members and shall be composed of: (1) the commissioner of public welfare of North Carolina, (2) the secretary of the state board of health of North Carolina, (3) the chief medical officer of an institution for the feebleminded or insane of the state of North Carolina, not located in Raleigh, (4) the chief medical officer of the state hospital at Raleigh, (5) the attorney general of the state of North Carolina. Any one of these officials may for the purpose of a single hearing delegate his power to act as a member of said board to an assistant: Provided, said delegation is made in writing, to be included as a part of the permanent record in said case. The said board shall from time to time elect a chairman from its own membership and adopt and from time to time modify rules governing the conduct of proceedings before it, and from time to time select the member of the said board designated above as the chief medical officer of an institution for the feebleminded or insane of the state of North Carolina not located in Raleigh. (1933, c. 224, s. 5.)

§ 35-41. Quarterly meetings. — The board of eugenics shall meet at least quarterly in each year in Raleigh for the purpose of hearing all cases that may be brought before it and shall continue in session with appropriate adjournments until all current applications and other pending business have been disposed of. The members shall receive no additional compensation for their services. (1933, c. 224, s. 6.)

§ 35-42. Secretary of board and duties.—The board shall appoint a secretary not a member of the board who shall conduct the business of the board between the times of the regular meetings. Such secretary shall receive all petitions, keep the records, call meetings, and in general act as the executive of said board in such matters as may be delegated to him by said board. (1933, c. 224, s. 7.)

§ 35-43. Proceedings before board. — Proceedings under this article shall be instituted by the petition of said petitioner to the eugenics board. Such petition shall be in writing, signed by the petitioner and duly verfied by his affidavit to the best of his knowledge and belief. It shall set forth the facts of the case and the grounds of his opinion. The petition shall also contain a statement of the mental and physical status of the patient verified by the affidavit of at least one physician who has had actual knowledge of the case and who in the cases of inmates or patients of institutions described in § 35-36 may be a member of the medical staff of said institution. The eugenics board may require that the petitioner submit additional social and medical history in regard to the inmate, patient or individual resident and his family. The prayer of said petition shall be that an order be entered by said board authorizing the petitioner to perform, or to have performed by some competent physician or surgeon to be designated by him in the petition or by said board in its order upon said inmate, patient or individual resident named in said petition in its discretion that the operation of sterilization or asexualization as specified in § 35-36 which shall be best suited to the interests of the said inmate or patient or to the public good. (1933, c. 224, s. 8; 1935, c. 463, s. 2.)

§ 35-44. Copy of petition served on patient.—A copy of said petition, duly certified by the secretary of the said board to be correct, must be served upon the inmate, patient or individual resident, together with a notice in writing signed by the secretary of the said board designating the time and place not less than fifteen days before the presentation of such petition to said board when and where said board will hear and act upon such petition. It shall be sufficient service if the copy of said petition and notice in writing be delivered to said inmate, patient or individual resident, and it shall not be necessary to read the above mentioned document to said patient, inmate or individual resident.

A copy of said petition, duly certified to be correct, and the said notice must also be served upon the legal or natural guardian and next of kin of the inmate, patient or individual resident. If no near relative is known, the copy and notice shall be sent to the solicitor of the county in which the inmate, patient or individual resident resides, and it shall be his duty to protect the rights and best interests of the said inmate, patient or individual resident.

If there is no next of kin and no solicitor in

said county, or if there is no known guardian of said inmate, patient, or individual resident and the said inmate, patient or individual resident is of such mental condition as not to be competent reasonably to conduct his own affairs, then the said prosecutor shall apply to the superior court of the county in which the inmate, patient or individual resident resides or to the judge thereof in vacation, who shall appoint some suitable person to act as guardian of the said inmate during and for the purposes of proceedings under this article, to defend the rights and interests of the said inmate, patient or individual resident. And such guardian shall be served likewise with a copy of the aforesaid petition and notice, and shall under all circumstances be given at least fifteen days' notice of said hearing. Such guardian may be removed or discharged at any time by the said court or the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the said inmate or patient be under twenty-one years of age and have a living parent or parents whose names and addresses are known or can by reasonable investigation be learned by said prosecutor, they or either of them, as the case may be, shall be served likewise with a copy of said petition and notice and shall be entitled to at least fifteen days' notice of the said hearing: Provided, that the procedure described in this section shall not be necessary in the case of any operation for sterilization or asexualization provided for in this article if the parent, legal or natural guardian, or spouse or next of kin of the inmate, patient or non-institutional individual shall submit to the superintendent of the institution of which the subject is a patient or inmate or to the superintendent of public welfare of the county in which the subject is residing, regardless of whether the subject is a legal resident of such county, a duly witnessed petition requesting that sterilization or asexualization be performed upon said inmate, patient or non-institutional individual, provided the other provisions of this article are complied with. Any operation authorized in accordance with this proviso may be performed immediately upon receipt of the authorization from the eugenics board. (1933, c. 224, s. 9; 1935, c. 463, ss. 3, 6.)

§ 35-45. Consideration of matter by board.—The said board at the time and place named in said notice, with such reasonable continuances from time to time and from place to place as the said board may determine, shall proceed to hear and consider the said petition and evidence offered in support of and against the same: Provided, that the said board shall give opportunity to said inmate, patient or individual resident to attend the said hearings in person if desired by him or if requested by his guardian or next of kin, or the solicitor.

The said board may receive and consider as evidence at the said hearings the commitment papers and other records of the said inmate or patient with or in any of the aforesaid institutions as certified by the superintendent or executive official, together with such other evidence as may be offered by any party to the proceedings.

Any member of the said board shall have power for the purposes of this article to administer oaths to any witnesses at such hearing.

Depositions may be taken, as in other civil cases, by any party after due notice and read in evidence, if otherwise pertinent.

Any party to the said proceedings shall have the right to be represented by counsel at such hearings.

A stenographic transcript of the proceedings at such hearings duly certified by the petitioner and the inmate, patient or individual resident, or his guardian or next of kin, or the solicitor, shall be made and preserved as part of the records of the case. (1933, c. 224, s. 10.)

§ 35-46. Board may deny or approve petition.—The said board may deny the prayer of the said petition or if, in the judgment of the board, the case falls within the intent and meaning of one or more of the circumstances mentioned in § 35-39, and an operation of asexualization or sterilization seems to said board to be for the best interest of the mental, moral or physical improvement of the said patient, inmate or individual resident or for the public good, it shall be the duty of the board to approve said recommendation in whole or in part or to make such order as under all the circumstances of the case may seem appropriate, within fifteen days after the conclusion of said hearings, and to send to the prosecutor a written order, signed by at least three members of the board, directing him to proceed with the operation as provided in this article. Said order shall contain the name of the specific operation which is to be performed and the date when said operation is to be performed.

If the board disapproves the petition, the case may not be brought up again except on the request of the inmate, patient, or individual resident, or his guardian, or one or more of his next of kin, husband, wife, father, mother, brother, or sister, until one year has elapsed.

Nothing in this article shall be construed to empower or authorize the board to interfere in any manner with the right of the patient, inmate, or individual resident, or his guardian or next of kin to select a competent physician of his own choice for consultation or operation at his own expense. (1933, c. 224, s. 11.)

§ 35-47. Orders may be sent parties by registered mail; consenting to operation.—Any order granting the prayer of the petition, in whole or in part, may be delivered to the petitioner by registered mail, return receipt demanded, to all parties in the case, including the legal guardian, the solicitor and the next of kin of the inmate, patient, or individual resident. It shall be the duty of the said guardian, the solicitor and the next of kin to protect by such measures as may seem to them in their sole discretion sufficient and appropriate the rights and best interests of the said inmate, patient, or individual resident.

If the inmate, patient or individual resident, or the next of kin, legal guardian, solicitor of the county, and guardian appointed as herein provided, after the said hearing but not before, shall consent in writing to the operation as ordered by the board, such operation shall take place at such time as the said prosecutor petitioning shall designate. (1933, c. 224, s. 12.)

§ 35-48. Right of appeal to superior court.—If it appears to the inmate, patient or individual resident, or to his or her representative, guard-

ian, parent or next of kin, or to the solicitor, that the proceedings taken are not in accordance with the law, or that the reasons given for asexualization or sterilization are not adequate or well founded, or for any other reason the order is not legal, or is not legal as applied to this inmate, patient or individual resident, he or she may within fifteen days from the date of such order have an appeal of right to the superior court of the county in which said inmate or patient resided prior to admission to the institution, or the county in which the non-institutional individual resides. This appeal may be taken by giving notice in writing to any member of the board and to the other parties to the proceeding, including the doctor who is designated to perform the said operation. Upon the giving of this notice the petitioner within fifteen days thereafter shall cause a copy of the petition, notice, evidence and orders of the said board certified by any member thereof to be sent to the clerk of the said court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The presiding judge of said superior court may hear the appeal upon affidavit or oral evidence and in determining such an appeal may consider the record of the proceedings before the eugenics board, including the evidence therein appearing together with such other legal evidence as may be offered to the said judge by any party to the appeal. In hearing such an appeal the general public may be excluded and only such persons admitted thereto as have direct interest in the case.

Upon such appeal the said superior court may affirm, revise, or reverse the orders of the said board appealed from and may enter such order as it deems just and right and which it shall certify to the said board.

The pendency of such appeal shall automatically, and without more, stay proceedings under the order of the said board until the appeal be completely determined. Should the decision of the superior court uphold the plaintiff's objection, such decision unless appealed from will annul the order of the board to proceed with the operation, and the matter may not be brought up again until one year has elapsed except by the consent of the plaintiff or his next of kin, or his legal representatives. Should the court affirm the order of the board, then, if no notice of appeal to the supreme court is filed within ten days after such decision, said board's recommendation as affirmed shall be put into effect at a time fixed by the original prosecutor or his successor in office and the inmate, patient or individual shall be asexualized or sterilized as provided in this article.

In this appeal the person for whom an order of asexualization or sterilization has been issued shall be designated as the plaintiff, and the prosecutor presenting the original petition shall be designated as defendant. (1933, c. 224, s. 13; 1935, c. 463, s. 4.)

§ 35-49. Appeal costs. — The cost of appeal, if any, to the superior or higher courts, shall be taxed as in civil cases. If the case is finally determined in favor of the plaintiff, the costs shall be paid by the county. (1933, c. 224, s. 14; 1935, c. 463, s. 5.)

§ 35-50. Appeal to supreme court.—Any party to such appeal to the superior court may, within ten days after the date of the final order therein, apply for an appeal to the supreme court, which shall have jurisdiction to hear and determine the same upon the record of the proceedings in the superior court and to enter such order as it may find the superior court should have entered.

The pendency of an appeal in the supreme court shall operate as a stay of proceedings under any orders of the said board and the superior court until the appeal be determined by the said supreme court. (1933, c. 224, s. 15.)

§ 35-51. Civil or criminal liability of parties limited. — Neither the said petitioner nor any other person legally participating in the execution of the provisions of this article shall be liable, either civilly or criminally, on account of such participation, except in case of negligence in the performance of said operation. (1933, c. 224, s. 16.)

§ 35-52. Necessary medical treatment unaffected by article.—Nothing contained in this article shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this state, by a physician or surgeon licensed in this state, which treatment may incidentally involve the nullification or destruction of the reproductive functions. (1933, c. 224, s. 17.)

§ 35-53. Permanent records of proceedings before board.—Records in all cases arising under this article shall be filed permanently with the secretary of the said eugenics board. Such records shall not be open to public inspection except for such purposes as the court may from time to time approve. (1933, c. 224, s. 18.)

§ 35-54. Construction of terms.—Where the inmates, patients, or non-institutional individuals are referred to in this article as of the masculine or feminine gender, the same shall be construed to include the feminine or masculine gender as well. Wherever the term individual resident appears in this article, it shall be construed to mean non-institutional individual. (1933, c. 224, s. 19.)

§ 35-55. Discharge of patient from institution. —Before any inmate or patient designated in §§ 35-36 and 35-39, shall be released, paroled or discharged, it shall be the duty of the governing body or responsible head of any institution above mentioned to comply with the procedure set out in this article, whenever a written request for the asexualization or sterilization of said inmate or patient is filed with the governing body or responsible head of the institution in which such inmate or patient has been legally confined. This written request may be made by any public official or by the legal guardian or next of kin of any inmate or patient not later than thirty days prior to the date of said parole or discharge. Upon the receipt of the signed approval of the eugenics board as described in this article, it shall be the duty of said governing board or responsible head to issue an order for the performance of the operation upon said inmate or patient, and the operation must be performed before the release, parole

or discharge of any such inmate or patient. (1933, c. 224, s. 20.)

§ 35-56. Existing rights of surgeons unaffected.—Nothing in Public Laws 1935, chapter 463 shall, in any way, interfere with any surgeon in the removal of diseased pathological tissue from any patient. (1935, c. 463, s. 7.)

§ 35-57. Temporary admission to state hospitals for sterilization.—Any feeble-minded, epileptic, or mentally diseased person, for whom the eugenics board of North Carolina has authorized sterilization, may be admitted to the appropriate state hospital for the performance of such operation. The order of the eugenics board authorizing a surgeon on the regular or consulting staff of the hospital to perform the operation will be sufficient authority to the superintendent of such hospital to receive, restrain, and control the patient until such time as it is deemed wise to release such patient. All such admissions shall be at the discretion of the superintendent of the state hospital, and in making any agreement with any county or any state institution to perform such operations, the state hospital may collect a fee which shall not be greater than the cost of such operation and the cost of care and maintenance for the duration of the operation and the time required for the patient to recuperate.

The order of the eugenics board and the agreement of the superintendent of the state hospital to admit such patient shall be full and sufficient authority for the prosecutor or the sheriff of the county to deliver such patient to the proper state hospital. (1937, c. 221.)

Art. 8. Temporary Care and Restraint of Inebriates, Drug Addicts and Persons Insane.

§ 35-58. Hospitals and sanatoriums may restrain and treat alcohol and drug addicts.—The superintendent, manager, or owner of any public or private hospital, sanatorium, or institution, upon the written request of two duly licensed physicians, not connected with any hospital, public or private, and the husband, wife, guardian, or in the case of an unmarried person having no guardian, by some one of the next of kin, may receive, care for and restrain in such hospital, sanatorium, or institution, as a patient, for a period not exceeding twenty days. any insane person needing immediate care and treatment; or any person needing immediate care, restraint and treatment because such person has become addicted to the intemperate use of narcotics, hypnotic drugs or alcoholic drinks, to such an extent that he has lost the power of self control. Such request for the admission of such patient shall be in writing and filed at such hospital, sanatorium, or institution, at the time of the reception of such patient, or within twenty-four hours thereafter, and such written request shall be held and considered as a commitment of such patient or person to said hospital, sanatorium, or institution, for a period of not exceeding twenty days. The superintendent, manager, or owner of such hospital, sanatorium, or institution shall not detain or restrain any person received as above provided for more than twenty days and shall not be liable in damages to such person or his personal representative or guardian on account of such restraint: Provided, the same is exercised and administered in a humane manner, without violence or personal injury. (1933, c. 213, s. 1.)

§ 35-59. Use of restraining devices limited. — No restraint in the form of muffs or mitts with lock buckles, or waist straps, wristlets, anklets, or camisoles, head-straps, protection sheets or simple sheets when used for restraint or other device interfering with freedom shall be imposed upon any patient in such hospital, sanatorium, or institution, unless applied in the presence of the superintendent, or of the physician, or of an assistant physician of such hospital, sanatorium, or institution. Such device shall be applied only in cases of extreme violence, active homicidal or suicidal intent, physical exhaustion, infectious disease, or following an operation, or accident which has caused serious bodily injury, or to prevent injury to such patient or others, except that in cases of emergency restraint may be imposed without the presence of the superintendent, physician or assistant physician; every such emergency case, after the imposition of such restraint, shall immediately be reported to the superintendent, or manager, physician, or assistant physician of such hospital, sanatorium or institution, who shall immediately investigate the case and approve or disapprove the restraint imposed. (1933, c. 213, s. 2.)

§ 35-60. Civil liability for corrupt admissions.—Nothing contained in this article shall be held or construed to relieve from liability in any suit or action, instituted in the courts of this state, any husband, wife, guardian, physician, or assistant physician, to such person or patient on account of collusion of such husband, wife, guardian, physician or assistant physician to unlawfully, wrongfully and corruptly commit any such person or patient to such hospital, sanatorium, or institution, under the provisions of this article. (1933, c. 213, s. 3.)

Chapter 36. Trusts and Trustees.

Art. 1. Investment and Deposit of Trust Funds.

Sec.

36-1. Certain investments deemed cash.
36-2. Investment of trust funds in county, city, town, or school district bonds.
36-3. Investment in building and loan and federal savings and loan associations.
36-4. Investment in registered securities.
36-5. Trust funds deposited at trustee's risk.

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Art. 1. Investment and Deposit of Trust Funds.

§ 36-1. Certain investments deemed cash. — Guardians, executors, administrators, and others acting in a fiduciary capacity, having surplus funds of their wards, estates and cestuis que trustent to loan, may invest in United States bonds, or any securities for which the United States are responsible, farm loan bonds issued by Federal land banks, or in bonds of the state of North Carolina issued since the year one thousand eight hundred and seventy-two; or in drainage bonds duly issued under the provisions of article 8 of chapter entitled Drainage; and in settlements by guardians, executors, administrators, trustees, and others acting in a fiduciary capacity, such bonds or other securities of the United States, and such bonds of the state of North Carolina, and such drainage bonds, shall be deemed cash to the amount actually paid for same, including the premium, if any, paid for such bonds or other securities, and may be paid as such by the transfer thereof to the persons entitled. (Rev., s. 1792; Code, s. 1594; 1870-1, c. 197; 1885, c. 389; 1917, c. 6, s. 9; 1917, c. 67, s. 1; 1917, c. 152, s. 7; 1917, c. 191, s. 1; 1917, c. 269, s. 5; C. S. 4018.)

§ 36-2. Investment of trust funds in county, city, town, or school district bonds.—Guardians, executors, administrators, trustees, and others acting in a fiduciary capacity, are authorized to invest funds in their hands as such fiduciaries in bonds issued by any county, city, town or school district, of the state of North Carolina subsequent to January first, one thousand nine hundred and fifteen, provided that the net debt of such county, city, town or school district does not exceed ten (10%) per cent of the assessed valuation of the property therein subject to taxation for the payment of such bonds, in the same manner, to the same extent and with the same legal consequence as fiduciaries are now authorized to invest such funds in bonds of the state of North Carolina under the provisions of § 36-1. (Ex. Sess. 1921, c. 63; 1931, c. 257; C. S. 4018(a).)

§ 36-3. Investment in building and loan and federal savings and loan associations.—Guardians, executors, administrators, clerks of the superior court and others acting in a fiduciary capacity may invest funds in their hands as such fiduciaries in stock of any building and loan association organized and licensed under the laws of this state: Provided, that no such funds may be so invested unless and until authorized by the insurance commissioner. Provided further, that such funds may be invested in stock of any federal savings and loan association organized under the laws of the United States, upon approval of an officer of the Home Loan Bank at Winston-Salem, or such other governmental agency as may hereafter have supervision of such associations. (1933, c. 549, s. 1; 1937, c. 14.)

§ 36-4. Investment in registered securities. — Any guardian having in hand surplus funds belonging to a minor ward may, if he so elects, invest the same in registered securities within the classes designated by §§ 36-1 and 36-2, the registration of said securities as to principal only to be in the name of said minor ward.

Upon delivery of such registered securities to the clerk of the superior court of the county in which the estate of said minor ward is being administered, said clerk of the superior court shall give said guardian a receipt for the same and said clerk of the superior court shall thereafter hold said securities for said ward, subject only to final disposition thereof to be approved by the resident judge or presiding judge of the superior court: Provided, however, all income accruing therefrom

shall be paid to said guardian in the same manner and for the same purposes as any other income of said estate derived from other sources.

Whenever any guardian shall have delivered to the clerk of the superior court registered securities as hereinbefore provided, he shall be entitled to credit in his account as guardian for the amount actually expended for such securities, and his bond as such guardian shall thereupon be reduced in an amount equal to twice the amount of the funds actually invested in said securities. (1935, c. 449.)

Local Modification.—Craven: 1935, c. 449.

§ 36-5. Trust funds deposited at trustee's risk.—No provision in any charter or certificate of organization of any corporation permitting deposits therein by any guardian, executor or other trustee or fiduciary, or by any county, bonded or other officer, shall operate or be construed to relieve or discharge them, or either of them, from official responsibility, or to relieve them, or either of them, or their sureties, from liability on their official bonds. (Rev., s. 1793; 1889, c. 470; C. S. 4019.)

Art. 2. Removal of Trust Funds from State.

§ 36-6. Proceeding to remove trust funds of nonresidents.—When any personal estate in this state is vested in a trustee resident therein, and those having the beneficial interest in the said estate are nonresidents of this state, the clerk of the superior court of the county in which the said trustee resides may, on a petition filed for that purpose, order him or his personal representative to pay, transfer, and deliver the said estate, or any part of it, to a nonresident trustee appointed by some court of record in the state in which the said beneficiary or beneficiaries reside. No such order of any clerk shall be valid and in force until approved by the resident judge of said judicial district, or the judge holding court in such district. (1911, c. 161, s. 1; C. S. 4020.)

§ 36-7. Removal ordered on notice; bond of nonresident trustee. — No such order shall be made, in the case of a petition, until notice of the application shall have been given to all persons interested in such trust estate, as now required by law in other special proceedings, nor until the court shall be satisfied by authentic documentary evidence that the nonresident trustee, appointed as aforesaid, has given bond, with sufficient surety, for the faithful execution of the trust, nor until it is satisfied that the payment and removal of such estate out of the state will not prejudice the right of any person interested or to become interested therein. (1911, c. 161, s. 2; C. S. 4021.)

§ 36-8. Order of removal discharges resident trustee.—When any guardian or committee, trustee or other person in this state, shall pay over, transfer, or deliver any estate in his hands or vested in him, under any order or decree made in pursuance of this article, he shall be discharged from all responsibility therefor. (1911, c. 161, s. 3; C. S. 4022.)

Art. 3. Resignation of Trustee.

§ 36-9. Clerk's power to accept resignations.—The clerks of the superior courts of this state have power and jurisdiction to accept the resignation of executors, administrators, guardians, trustees, and other fiduciaries and to appoint their successors in the manner provided by this article. (1911, c. 39, s. 1; C. S. 4023.)

§ 36-10. Petition; contents and verification. — When any executor, administrator, guardian, trustee, or other fiduciary desires to resign his trust, he shall file his petition in the office of the clerk of the superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualification of the applicant as such fiduciary, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the cestuis que trustent and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the fiduciary and due the estate, together with a full statement of the reasons why the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant. (1911, c. 39, s. 2; C. S. 4024.)

§ 36-11. Parties; hearing; successor appointed. —Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the fiduciary as plaintiff and the cestuis que trustent as defendants, and shall issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The cestuis que trustent, creditors, or any other person interested in the trust estate, have the right to answer said petition or traverse the same and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the cestuis que trustent demand that the resignation of the fiduciary be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the cestuis que trustent, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this article. (1911, c. 39, s. 3; C. S. 4025.)

§ 36-12. Resignation allowed; costs; judge's approval.—In making an order allowing the fiduciary to resign the clerk shall make such order concerning the costs of the proceedings and commissions to the fiduciary as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same become effective. (1911, c. 39, s. 3; C. S. 4026.)

§ 36-13. Appeal; stay effected by appeal.—Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If the clerk allows the resignation, and an appeal is taken from his decision, such appeal shall have the effect to stay the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken. (1911, c. 39, s. 4; C. S. 4027.)

§ 36-14. On appeal judge determines facts.—Upon an appeal taken from the clerk to the judge, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the supreme court. (1911, c. 39, s. 5; C. S. 4028.)

§ 36-15. Final accounting before resignation.—No executor, administrator, guardian, trustee, or other fiduciary shall be allowed or permitted to resign his trust until he shall first file with the court his final account of the trust estate, and until the court shall be satisfied that the said account is true and correct. (1911, c. 39, s. 6; C. S. 4029.)

§ 36-16. Resignation effective on settlement with successor.—In case the resignation of the fiduciary is accepted by the court, the same shall not go into effect, or release or discharge the fiduciary from liability, until he shall have accounted to his successor in full for all moneys, securities, property or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate. (1911, c. 39 s. 6; C. S. 4030.)

§ 36-17. Court to appoint successor; bond required.—If the court shall allow any executor, administrator, guardian, trustee, or other fiduciary to resign his trust upon compliance with the provisions of this article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such executor, administrator, guardian, trustee or other fiduciary; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court, in a sum double the value of the property to come into his hands, conditioned upon the faithful performance of his duties as such fiduciary and for the payment to the persons entitled to receive the same of all moneys, assets, or other things of value which may come into his hands. All bonds executed under the provisions of this article shall be filed with the clerk, and shall be recorded in his office in a book kept for that purpose. (1911, c. 39, s. 7; C. S. 4031.)

§ 36-18. Rights and duties devolve on successor.—Upon the acceptance by the court of the resignation of any executor, administrator, guardian, trustee, or other fiduciary, and upon the appointment by court of his successor in the manner provided by this article, the substituted trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee. (1911, c. 39, s. 8; C. S. 4032.)

Art. 4. Charitable Trusts.

§ 36-19. Trustees to file accounts.—When real or personal property has been granted by deed, will, or otherwise, for such charitable purposes as are allowed by law, it shall be the duty of those to whom are confided the management of the property and the execution of the trust, to deliver in writing a full and particular account thereof to the clerk of the superior court of the county where the charity is to take effect, on the first Monday in February in each year, to be filed among the records of the court, and spread upon the record of accounts. (Rev., s. 3922; Code, s. 2342; R. C., c. 18, s. 1; 1832, c. 14, s. 1; 43 Eliz., c. 4; C. S. 4033.)

§ 36-20. Action for account; court to enforce trust.—If § 36-19 be not complied with, or there is reason to believe that the property has been mismanaged through negligence or fraud, it shall be the duty of the clerk of the superior court to give notice thereof to the attorney-general or solicitor who represents the state in the superior court for that county; and it shall be his duty to bring an action in the name of the state against the grantees, executors, or trustees of the charitable fund, calling on them to render a full and minute account of their proceedings in relation to the administration of the fund and the execution of the trust. The attorney-general or solicitor may also, at the suggestion of two reputable citizens, commence an action as aforesaid; and, in either case, the court may make such order and decree as shall seem best calculated to enforce the performance of the trust. (Rev., s. 3923; Code, ss. 2343, 2344; R. C., c. 18, ss. 2, 3; 1832, c. 14, ss. 2, 3; C. S. 4034.)

§ 36-21. Not void for indefiniteness; title in trustee; vacancies.—No gift, grant, bequest or devise, whether in trust or otherwise, to religious, educational, charitable or benevolent uses or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, shall be invalid by reason of any indefiniteness or uncertainty of the objects or beneficiaries of such trust, or because said instrument confers upon the trustee or trustees discretionary powers in the selection and designation of the objects or beneficiaries of such trust or in carrying out the purpose thereof, or by reason of the same in contravening any statute or rule against perpetuities. If a trustee or trustees are named in the instrument creating such a gift, grant, bequest or devise, the legal title to the property given, granted, bequeathed or devised for such purpose shall vest in such trustee or trustees and its or their successor or successors duly appointed in accordance with the terms of such instrument. If no trustee or trustees be named in said instrument, or if a vacancy or vacancies shall occur in the trusteeship, and no method is provided in such instrument for filling such vacancy or vacancies, then the Superior Court of the proper county shall appoint a trustee or trustees, pursuant to § 36-9, to execute said trust in accordance with the true intent and meaning of the instrument creating the same. Such trustee or trustees when so appointed shall be vested with all the power and authority, discretionary or otherwise, conferred by such instrument. (1925, c. 264, s. 1.)

§ 36-22. Trusts created in other states valid.—Every such religious, educational or charitable trust created by any person domiciled in another state, which shall be valid under the laws of the state of the domicile of such creator or donor, shall be deemed and held in all respects valid under the laws of this State, even though one or more of the trustees named in the instrument creating said trust shall be domiciled in another state or one or more of the beneficiaries named in said trust shall reside or be located in a foreign state. (1925, c. 264, s. 2.)

§ 36-23. Application of section 36-22.—Section 36-22 shall apply to all trusts heretofore or hereafter created in which one or more of the beneficiaries or objects of such trust shall reside or be located in this State. (1925, c. 264, s. 3.)

Art. 5. Uniform Trusts Act.

§ 36-24. Definitions. — As used in this article unless the context or subject matter otherwise requires:

1. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest.

2. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee.

3. "Relative" means a spouse, ancestor, descendant, brother or sister.

4. "Affiliate" means any person directly or indirectly controlling or controlled by another person, as hereinabove defined, or any person under direct or indirect common control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.

5. "Trust" means an express trust only. (1939, c. 197, s. 1.)

§ 36-25. Bank account to pay special debts.—1. Whenever a bank account shall, by entries made on the books of the depositor and the bank at the time of the deposit, be created exclusively for the purpose of paying dividends, interest or interest coupons, salaries, wages, or pensions or other benefits to employees, and the depositor at the time of opening such account does not expressly otherwise declare, the depositor shall be deemed a trustee of such account for the creditors to be paid therefrom, subject to such power of revocation as the depositor may have reserved by agreement with the bank.

2. If any beneficiary for whom such a trust is created does not present his claim to the bank for payment within one year after it is due, the depositor who created such trust may revoke it as to such creditor. (1939, c. 197, s. 2.)

§ 36-26. Loan of trust funds.—Except as provided in § 36-27, no corporate trustee shall lend trust funds to itself or an affiliate, or to any director, officer, or employee of itself or of an affiliate; nor shall any noncorporate trustee lend trust funds to himself, or to his relative, employer, employee, partner, or other business associate. (1939, c. 197, s. 3.)

§ 36-27. Funds held by bank for investment or distribution.—Funds received or held by a bank as fiduciary awaiting investment or distribution shall be promptly invested, distributed or deposited to the credit of the trust department as a demand deposit in the commercial department of the bank or another bank: Provided, that the bank or the commercial department shall first deliver to the trust department, as collateral security, securities eligible for the investment of the sinking funds of the state of North Carolina equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per cent (125%) of the funds so deposited; and such collateral security shall be held by the trust department in trust and for the special benefit of the estate or fund for which the deposit was made, or, in case the deposit consists of uninvested or undistributed funds belonging to several estates or trust funds, then in trust for the special benefit of said estates or funds in proportion to their respective interest in such deposits. The said securities shall at all times be kept separate and apart from the other assets of the trust department and proper records shall be kept by the proper officer in connection therewith. If such funds are deposited in a bank insured under the provisions of the Federal Deposit Insurance Corporation, the above collateral security will be required only for that portion of uninvested balances of each trust which are not fully insured under the provisions of that corporation. "Investment" and/or "invested" shall not be construed to include savings accounts or certificates or deposits in any bank. (1939, c. 197, s. 4.)

§ 36-28. Trustee buying from or selling to self.—No trustee shall directly or indirectly buy or sell any property for the trust from or to itself or an affiliate; or from or to a director, officer, or employee of such trustee or of an affiliate; or from or to a relative, employer, partner, or other business associate. (1939, c. 197, s. 5.)

§ 36-29. Trustee selling from one trust to another trust.—No trustee shall as trustee of one trust sell property to itself as trustee of another trust. (1939, c. 197, s. 6.)

§ 36-30. Corporate trustee buying its own stock.—No corporate trustee shall purchase for a trust shares of its own stock, or its bonds or other securities, or the stock, bonds or other securities of an affiliate. (1939, c. 197, s. 7.)

§ 36-31. Voting stock.—A trustee owning corporate stock may vote it by proxy, but shall be liable for any loss resulting to the beneficiaries from a failure to use reasonable care in deciding how to vote the stock and in voting it. (1939, c. 197, s. 8.)

§ 36-32. Banks holding stock in name of nominee.—A bank holding stock as fiduciary may hold it in the name of a nominee, without mention of the trust in the stock certificate or stock registration book: Provided, that (1) the trust records and all reports or accounts rendered by the fiduciary clearly show the ownership of the stock by the fiduciary and the facts regarding its holdings; (2) the nominee shall not have possession of the

stock certificate or access thereto except under the immediate supervision of the fiduciary. The fiduciary shall personally be liable for any loss to the trust resulting from any act of such nominee in connection with such stock so held. (1939, c. 197, s. 9.)

§ 36-33. Powers attached to office.—Unless it is otherwise provided by the trust instrument, or an amendment thereof, or by court order, all powers of a trustee shall be attached to the office and shall not be personal. (1939, c. 197, s. 10.)

§ 36-34. Powers exercisable by majority. — 1. Unless it is otherwise provided by the trust instrument, or an amendment thereof, or by court order, any power vested in three or more trustees may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power shall be liable to the beneficiaries or to others for the consequences of such exercise, nor shall a dissenting trustee be liable for the consequences of an act in which he joins at the direction of the majority trustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of such joinder.

2. Nothing in this section shall excuse a cotrustee from liability for inactivity in the administration of the trust nor for failure to attempt to prevent a breach of trust. (1939, c. 197, s. 11.)

§ 36-35. Contracts of trustee. — 1. Whenever a trustee shall make a contract which is within his powers as trustee, or a predecessor trustee shall have made such a contract, and a cause of action shall arise thereon, the party in whose favor the cause of action has accrued may sue the trustee in his representative capacity, and any judgment rendered in such action in favor of the plaintiff shall be collectible (by execution) out of the trust property. In such an action the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

2. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty days after the beginning of such action, or within such other time as the court may fix, and more than thirty days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee who then had a present interest, or in the case of a charitable trust the attorney general and any corporation which is a beneficiary or agency in the performance of such charitable trust, of the existence and nature of the action. Such notice shall be given by mailing copies thereof in postpaid envelopes addressed to the parties to be notified at their last known addresses. The trustee shall furnish the plaintiff a list of the parties to be notified, and their addresses, within ten days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section. Any beneficiary, or in the case of charitable trusts the attorney general and any corporation which is a beneficiary or agency in the performance of such charitable trust, may intervene in such action and contest the right of the plaintiff to recover.

3. The plaintiff may also hold the trustee who made the contract personally liable on such contract, if the contract does not exclude such personal liability. The addition of the word "trustee" or the words "as trustee" after the signature of a trustee to a contract shall be deemed prima facie evidence of an intent to exclude the trustee from personal liability. (1939, c. 197, s. 12.)

§ 36-36. Exoneration or reimbursement for torts. —1. A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property if he has not discharged the claim, or to be reimbursed therefor out of trust funds if he has paid the claim, if (1) the tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust or, (2) although the tort was not a common incident of such activity if neither the trustee nor any officer or employee of the trustee was guilty of personal fault in incurring the liability.

2. If a trustee commits a tort which increases the value of the trust property, he shall be entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though he would not otherwise be entitled to exoneration or reimbursement.

3. Nothing in this section shall be construed to change the existing law with regard to the liability of trustees of charitable trusts for torts of themselves or their employees. (1939, c. 197, s. 13.)

§ 36-37. Tort liability of trust estate.—1. Where a trustee of his predecessor has incurred personal liability for a tort committed in the course of his administration, the trustee in his representative capacity may be sued and collection had from the trust property, if the court shall determine in such action that (1) the tort was a common incident of the kind of business activity in which the trustee or his predecessor was properly engaged for the trust; or (2) that, although the tort was not a common incident of such activity, neither the trustee nor his predecessor, nor any officer or employee of the trustee or his predecessor, was guilty of personal fault in incurring the liability; or (3) that, although the tort did not fall within classes (1) or (2) above, it increased the value of the trust property. If the tort is within classes (1) or (2) above, collection may be had of the full amount of damage proved; and if the tort is within class (3) above, collection may be had only to the extent of the increase in the value of the trust property.

2. In an action against the trustee in his representative capacity under this section the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

3. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty days after the beginning of the action, or within such other period as the court may fix and more than thirty days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustees who then had a present interest of the existence and nature of the action. Such notice shall be given by mailing copies thereof in postpaid envelopes addressed to such beneficiaries at their last known addresses. The trustees shall furnish the plaintiff a list of such beneficiaries and their addresses, within ten days after written demand therefor, and notification of the persons on such list shall constitute compli-

ance with the duty placed on the plaintiff by this section. Any beneficiary may intervene in such action and contest the right of the plaintiff to recover.

4. The trustee may also be held personally liable for any tort committed by him, or by his agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement provided in § 36-36.

5. Nothing in this section shall be construed to change the existing law with regard to the liability of trustees of charitable trusts for torts of themselves or their employees. (1939, c. 197, s. 14.)

§ 36-38. Withdrawals from mingled trust funds.—Where a person who is a trustee of two or more trusts has mingled the funds of two or more trusts in the same aggregate of cash, or in the same bank or brokerage account or other investment, and a withdrawal is made therefrom by the trustee for his own benefit, or for the benefit of a third person not a beneficiary or creditor of one or more of the trusts, or for an unknown purpose, such a withdrawal shall be charged first to the amount of cash, credit, or other property of the trustee in the mingled fund, if any, and after the exhaustion of the trustee's cash, credit, or other property, then to the several trusts in proportion to their several interests in the cash, credit, or other property at the time of the withdrawal. (1939, c. 197, s. 15.)

§ 36-39. Unenforceable oral trust created by deed.—1. When an interest in real property is conveyed by deed to a person on a trust which is unenforceable on account of the statute of frauds and the intended trustee or his successor in interest still holds title but refuses to carry out the trust on account of the statute of frauds, the intended trustee or his successor in interest, except to the extent that the successor in interest is a bona fide purchaser of a legal interest in the real property in question, shall be under a duty to convey the interest in real property to the settlor or his successor in interest. A court having jurisdiction may prescribe the conditions upon which the interest shall be conveyed to the settlor or his successor in interest.

2. Where the intended trustee has transferred part or all of his interest and it has come into the hands of a bona fide purchaser, the intended trustee shall be liable to the settlor or his successor in interest for the value of the interest thus transferred at the time of its transfer, less such offsets as the court may deem equitable. (1939, c. 197, s. 16.)

§ 36-40. Power of settlor.—The settlor of any trust affected by this article may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve his trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed upon him by this article; or alter or deny to his trustee any or all of the privileges and powers conferred upon the trustee by this article; or add duties, restrictions, liabilities, privileges, or powers, to those imposed or granted by this article; but no act of the settlor shall relieve a trustee from the duties, restrictions, and liabilities imposed upon him by §§ 36-26, 36-27 and 36-28. (1939, c. 197, s. 17.)

§ 36-41. Power of beneficiary.—Any beneficiary of a trust affected by this article may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee relieve the trustee as to such beneficiary from any or all of the duties, restrictions, and liabilities which would otherwise be imposed on the trustee by this article, except as to the duties, restrictions, and liabilities imposed by §§ 36-26, 36-27 and 36-28. Any such beneficiary may release the trustee from liability to such beneficiary for past violations of any of the provisions of this article. (1939, c. 197, s. 18.)

§ 36-42. Power of the court.—A court of competent jurisdiction may, for cause shown and upon notice to the beneficiaries, relieve a trustee from any or all of the duties and restrictions which would otherwise be placed upon him by this article, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for violations of the provisions of this article. (1939, c. 197, s. 19.)

§ 36-43. Liabilities for violations of article.—If a trustee violates any of the provisions of this article, he may be removed and denied compensation in whole or in part; and any beneficiary, cotrustee, or successor trustee may treat the violation as a breach of trust. (1939, c. 197, s. 20.)

§ 36-44. Uniformity of interpretation. — This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1939, c. 197, s. 21.)

§ 36-45. Short title.—This article may be cited as the Uniform Trusts Act. (1939, c. 197, s. 22.)

§ 36-46. Time of taking effect. — This article shall take effect the first day of July, one thousand nine hundred and thirty-nine and shall apply in the construction of and operation under (a) all agreements containing trust provisions entered into subsequent to March 15, 1941; (b) all wills made by testators who shall die subsequent to March 15, 1941; and (c) all other wills and trust agreements and trust relations in so far as such terms do not impair the obligation of contract or deprive persons of property without due process of law under the Constitution of the State of North Carolina or of the United States of America. (1939, c. 197, s. 25; 1941, c. 269.)

Art. 6. Uniform Common Trust Fund Act.

§ 36-47. Establishment of common trust funds.—Any bank or trust company qualified to act as fiduciary in this state may establish one or more common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and another or others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust fund or funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship or by an amendment thereof, and if, in the case of co-fiduciaries, the bank or trust com-

pany procures the consent of its co-fiduciary or co-fiduciaries to such investment. (1939, c. 200, s. 1.)

§ 36-48. Court accountings. — Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts. (1939, c. 200, s. 2.)

§ 36-49. Supervision of state banking commission.—All common trust funds established under the provisions of this article shall be subject to the rules and regulations of the state banking commission. (1939, c. 200, s. 3.)

§ 36-50. Uniformity of interpretation. — This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1939, c. 200, s. 4.)

§ 36-51. Short title.—This article may be cited as the Uniform Common Trust Fund Act. (1939, c. 200, s. 5.)

§ 36-52. Time of taking effect. — This article shall be in full force and effect on and after July first, one thousand nine hundred thirty-nine and shall apply to fiduciary relationships then in existence or thereafter established. (1939, c. 200, s. 8.)

Chapter 37. Uniform Principal and Income Act.

Sec.
37-1. Definition of terms.
37-2. Application of the chapter; powers of settlor.
37-3. Income and principal; disposition.
37-4. Apportionment of income.
37-5. Corporate dividends and share rights.
37-6. Premium and discount bonds.
37-7. Principal used in business.
37-8. Principal comprising animals.
37-9. Disposition of natural resources.
37-10. Principal subject to depletion.
37-11. Unproductive estate.
37-12. Expenses; trust estates.
37-13. Expenses; non-trust estates.
37-14. Uniformity of interpretation.
37-15. Short title.

§ 37-1. Definition of terms.—"Principal" as used in this chapter means any realty or personalty which has been so set aside or limited by the owner thereof or a person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person;

"Income" as used in this chapter means the return derived from principal;

"Tenant" as used in this chapter means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution;

"Remainderman" as used in this chapter means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law;

"Trustee" as used in this chapter includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee. (1937, c. 190, s. 1.)

§ 37-2. Application of the chapter; powers of settlor.—This chapter shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen, in all cases where a principal has been established with, or, unless otherwise stated hereinafter, without the interposition of a trust; except that in the establishment of the principal provision may be made touching all matters covered by this chapter, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this chapter. (1937, c. 190, s. 2.)

§ 37-3. Income and principal; disposition. — (1) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this chapter.

(2) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, or property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal unless otherwise expressly provided in this chapter. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon principal.

(3) All income after payment of expenses prop-

erly chargeable to it shall be paid and delivered to the tenant or retained by him if already in his possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established, while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law. (1937, c. 190, s 3.)

§ 37-4. Apportionment of income. — Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal. (1937, c. 190, s. 4.)

§ 37-5. Corporate dividends and share rights. —(1) All dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations, other than the declaring corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend, either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursements of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) Where a corporation succeeds another by merger, consolidation or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or in default thereof the date of declaration of the dividend. (1937, c. 190, s. 5.)

§ 37-6. Premium and discount bonds.—Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or inure to the principal. (1937, c. 190, s. 6.)

§ 37-7. Principal used in business.—(1) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(4) Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been

exhausted, shall fall upon principal. (1937, c. 190, s. 7.)

§ 37-8. Principal comprising animals. — Where any part of the principal consists of animals employed in business, the provisions of § 37-7 shall apply; and in other cases where the animals are held as a part of the principal, partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income. (1937, c. 190, s. 8.)

§ 37-9. Disposition of natural resources.—Where any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas or other natural resources, and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds, if received as rent on a lease, shall be deemed income, but if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural resources from the lands, shall be deemed principal to be invested to produce income. Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit. (1937, c. 190, s. 9.)

§ 37-10. Principal subject to depletion.—Where any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five per centum per annum of its fair inventory value, or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal. (1937, c. 190, s. 10.)

§ 37-11. Unproductive estate.—(1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year, and until disposed of as hereinafter stated, has not produced an average net income of at least one per centum per annum of its fair inventory value, or in default thereof its market value at the time the principal was established, or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of five per centum per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property, less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one year after the trustee first received the property if then unproductive, otherwise one year after it became unproductive.

(4) If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

(5) In the case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income. (1937, c. 190, s. 11.)

§ 37-12. Expenses; trust estates.—(1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation except commissions computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in § 37-11, shall be paid out of principal, subject to the provisions of sub-section two of § 37-11.

(2) All other expenses, including trustee's commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and cost of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under the terms of sub-section two of § 37-3 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to

sub-section one which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in sub-section two, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement. (1937, c. 190, s. 12.)

§ 37-13. Expenses; non-trust estates.—(1) The provisions of § 37-12, so far as applicable and excepting those dealing with costs of, or special taxes, or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate, and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in sub-section one the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, where such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the "American Experience Tables of Mortality," and no other evidence of duration or expectancy shall be considered. (1937, c. 190, s. 13.)

§ 37-14. Uniformity of interpretation. — This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1937, c. 190, s. 14.)

§ 37-15. Short title.—This chapter may be cited as the Uniform Principal and Income Act. (1937, c. 190, s. 15.)

Division VIII. Real and Personal Property.

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Chapter 38. Boundaries.

Sec.
38-1. Special proceeding to establish.
38-2. Occupation sufficient ownership.
38-3. Procedure.
38-4. Surveys in disputed boundaries.

§ 38-1. Special proceeding to establish. — The owner of land, any of whose boundary lines are in dispute, may establish any of such lines by special proceedings in the superior court of the county in which the land or any part thereof is situated. (Rev., s. 325; 1893, c. 22; C. S. 361.)

§ 38-2. Occupation sufficient ownership. — The occupation of land constitutes sufficient ownership for the purposes of this chapter. (Rev., s. 326; 1893, c. 22; 1903, c. 21; C. S. 362.)

§ 38-3. Procedure. — 1. Petition; Summons; Hearing.—The owner shall file his petition under oath stating therein facts sufficient to constitute the location of such line as claimed by him and making defendants all adjoining owners whose interest may be affected by the location of said line. The clerk shall thereupon issue summons to the defendants as in other cases of special proceedings. If the defendants fail to answer, judgment shall be given establishing the line according to petition. If the answer deny the location set out in the petition, the clerk shall issue an order to the county surveyor or, if cause shown, to any competent surveyor to survey said line or lines according to the contention of both parties, and make report of the same with a map at a time to be fixed by the clerk, not more than thirty days from date of order; to which time the cause shall be continued. The cause shall then be heard by the clerk upon the location of said line or lines and judgment given determining the location thereof.

2. Appeal to Term.—Either party may within ten days after such determination by the clerk serve notice of appeal from the ruling of the clerk determining the said location. When notice of appeal is served it shall be the duty of the clerk to transmit the issues raised before him to the next term of the superior court of the county for trial by a jury, when the question shall be heard de novo.

3. Survey After Judgment.—When final judgment is given in the proceeding the court shall issue an order to the surveyor to run and mark the line or lines as determined in the judgment. The surveyor shall make report including a map of the line as determined, which shall be filed with the judgment roll in the cause and entered with the judgment on the special proceedings docket.

4. Procedure as in Special Proceedings.—The procedure under this chapter, the jurisdiction of the court, and the right of appeal shall, in all respects, be the same as in special proceedings except as herein modified. (Rev., s. 326; 1893, c. 22; 1903, c. 21; C. S. 363.)

§ 38-4. Surveys in disputed boundaries.—When in any suit pending in the superior court the boundaries of lands are drawn in question, the court may, if deemed necessary, order a survey of the lands in dispute, agreeable to the boundaries and lines expressed in each party's titles, and such other surveys as shall be deemed useful; which surveys shall be made by two surveyors appointed by the court, one to be named by each of the parties, or by one surveyor, if the parties agree; and the surveyors shall attend according to the order of the court, and make the surveys, and shall make as many accurate plans thereof as shall be ordered by the court; and for such surveys the court shall make a proper allowance, to be taxed as among the costs of the suit. (Rev., s. 1504; Code, s. 939; R. C., c. 31, s. 119; 1779, c. 157; 1786, c. 252; C. S. 364.)

Chapter 39. Conveyances.

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Art. 1. Construction and Sufficiency.

§ 39-1. Fee presumed, though word "heirs" omitted.—When real estate is conveyed to any person, the same shall be held and construed to be a conveyance in fee, whether the word "heir" is used or not, unless such conveyance in plain and express words shows, or it is plainly intended by the conveyance or some part thereof, that the grantor meant to convey an estate of less dignity. (Rev., s. 946; Code, s. 1280; 1879, c. 148; C. S. 991.)

§ 39-2. Vagueness of description not to invalidate.—No deed or other writing purporting to convey land or an interest in land shall be declared void for vagueness in the description of the thing intended to be granted by reason of the use of the word "adjoining" instead of the words "bounded by," or for the reason that the boundaries given do not go entirely around the land described: Provided, it can be made to appear to the satisfaction of the jury that the grantor owned at the time of the execution of such deed or paper-writing no other land which at all corresponded to the description contained in such deed or paper-writing. (Rev., s. 948; 1891, c. 465, s. 2; C. S. 992.)

§ 39-3. Conveyances to slaves.—When it is made to appear that any gift or conveyance has been made to any person, while a slave, of any lands or tenements, whether the same was conveyed by deed or parol, and the bargainee or donee has been placed in actual possession of the same, such gift or conveyance shall have the force and effect of transferring the legal title to the lands and tenements to such bargainee or donee: Provided, such possession shall have continued for the term of ten years prior to the ninth day of March, one thousand eight hundred and seventy: Provided, further, that any absence from the premises from the first day of May, one thousand eight hundred and sixty-one, to the first day of January, one thousand eight hundred and sixty-six, shall not be held as an abandonment or discontinuance of the possession: Provided, also, that this section shall not affect the interest of a bona fide purchaser for value from the grantor or bargainor of the lands or tenements in dispute. (Rev., s. 949; Code, s. 1278; 1869-70, c. 77; C. S. 993.)

§ 39-4. Conveyances by infant trustees.—When an infant is seized or possessed of any estate in trust, whether by way of mortgage or otherwise, for another person who may be entitled in law to have a conveyance of such estate, or may be declared to be seized or possessed, in the course of any proceeding in the superior court, the court may decree that the infant shall convey and assure such estate, in such manner as it may direct, to such other person; and every conveyance and assurance made in pursuance of such decree shall be as effectual in law as if made by a person of full age. (Rev., s. 1036; Code, s. 1265; R. C., c. 37, s. 27; 1821, c. 1116, ss. 1, 2; C. S. 994.)

§ 39-5. Official deed, when official selling or empowered to sell is not in office.—When a sheriff, coroner, constable or tax collector, in virtue of his office, sells any real or personal property and goes out of office before executing a proper deed therefor, he may execute the same after his term of office has expired; and when he dies or removes from the state before executing the deed, his successor in office shall execute it. When a sheriff or tax collector dies having a tax list in his hands for collection, and his personal representative or surety, in collecting the taxes, makes sale according to law, his successor in office shall execute the conveyance for the property to the person entitled. (Rev., ss. 950, 951; Code, s. 1267; R. C., c. 37, s. 30; 1891, c. 242; C. S. 995.)

§ 39-6. Revocation of deeds of future interest made to persons not in esse.—The grantor in any voluntary conveyance in which some future interest in real estate is conveyed or limited to a person not in esse may, at any time before he comes into being, revoke by deed such interest so conveyed or limited. This deed of revocation shall be registered as other deeds; and the grantor of like interest for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner. The grantor, maker or trustor who has heretofore created or may hereafter create a voluntary trust estate in real or personal property for the use and benefit of himself or of any other person or persons in esse with a future contingent interest to some person or persons not in esse or not determined until the happening of a future event may at any time, prior to the happening of the contingency vesting the future estates, revoke the grant of the interest to such person or persons not in esse or not determined by a proper instrument to that effect; and the grantor of like interest for a valuable consideration may, with the joinder of the

person from whom the consideration moved, revoke said interest in like manner: Provided that in the event the instrument creating such estate has been recorded, then the deed of revocation of such estate shall be likewise recorded before it becomes effective. (Rev., s. 1045; 1893, c. 498; 1929, c. 305; 1941, c. 264; C. S. 996.)

Art. 2. Conveyances by Husband and Wife.

§ 39-7. Instruments affecting married woman's title; husband to execute; privy examination. — Every conveyance, power of attorney or other instrument affecting the estate, right or title of any married woman in lands, tenements or hereditaments must be executed by such married woman and her husband, and due proof or acknowledgment thereof must be made as to the husband and due acknowledgment thereof must be made by the wife, and her private examination, touching her voluntary assent to such instrument, shall be taken separate and apart from her husband, and such acknowledgment or proof as to the execution by the husband and such acknowledgment by the wife and her private examination shall be taken and certified as provided by law. Any conveyance, power of attorney, contract to convey, mortgage, deed of trust or other instrument executed by any married woman in the manner by this chapter provided, and executed by her husband also, shall be valid in law to pass, bind or charge the estate, right, title and interest of such married woman in and to all such lands, tenements and hereditaments or other estate, real or personal, as shall constitute the subject-matter or be embraced within the terms and conditions of such instrument or purport to be passed, bound, charged or conveyed thereby. (Rev., s. 952; Code, s. 1256; 1899, c. 235, s. 9; C. C. P., s. 429, subsec. 6; 1868-9, c. 277, s. 15; C. S. 997.)

§ 39-8. Acknowledgment at different times and places; before different officers; order immaterial. —In all cases of deeds or other instruments executed by husband and wife and requiring registration, the probate of such instruments as to the husband and acknowledgment and private examination of the wife may be taken before different officers authorized by law to take probate of deeds, and at different times and places, whether both of said officials reside in this state or only one in this state and the other in another state or country. And in taking the probate of such instruments executed by husband and wife, including the private examination of the wife, it is immaterial whether the execution of the instrument was proven as to or acknowledged by the husband before or after the acknowledgment and private examination of the wife. (Rev., s. 953; 1899, c. 235, s. 9; 1895, c. 136; C. S. 998.)

§ 39-9. Absence of wife's examination does not affect deed as to husband.—When an instrument purports to be signed by a husband and wife the instrument may be ordered registered, if the acknowledgment of the husband is duly taken, whether the private examination of the wife is properly taken or not, but no such instrument shall be the act or deed of the wife unless her private examination is taken according to law. (Rev., s. 954; 1899, c. 235, s. 8; 1901, c. 637; C. S. 999.)

§ 39-10. Officers authorized to take privy examination.—The officials authorized by law to take proofs and acknowledgments of the execution of any instrument are empowered to take the private examination of any married woman, when her private examination is necessary, touching her free and voluntary assent to the execution of any instrument to which her assent is or may be necessary, and to certify the fact of such private examination. (Rev., s. 955; 1899, c. 235, s. 6; C. S. 1000.)

§ 39-11. Certain conveyances not affected by fraud if privy examination regular. — No deed conveying lands nor any instrument required or allowed by law to be registered, executed by husband and wife since the eleventh of March, one thousand eight hundred and eighty-nine, if the private examination of the wife is thereto certified as prescribed by law, shall be invalid because its execution or acknowledgment was procured by fraud, duress or undue influence, unless it is shown that the grantee or person to whom the instrument was made participated in the fraud, duress or undue influence, or had notice thereof before the delivery of the instrument. Where such participation or notice is shown, an innocent purchaser for value under the grantee or person to whom the instrument was made shall not be affected by such fraud, duress or undue influence. (Rev., s. 956; 1889, c. 389; 1899, c. 235, s. 10; C. S. 1001.)

§ 39-12. Power of attorney of married woman.— All conveyances which may be made by any person under a power of attorney from any feme covert, freely executed by her with her husband, shall be valid to all intents and purposes to pass the estate, right and title which said feme covert may have in such lands, tenements and hereditaments as are mentioned or included in such power of attorney. (Rev., s. 957; Code, s. 1257; R. C., c. 37, s. 11; 1798, c. 510; C. S. 1002.)

§ 39-13. Wife need not join in purchase-money mortgage. — The purchaser of real estate who does not pay the whole of the purchase money at the time when he takes a deed for title may make a mortgage or deed of trust for securing the payment of such purchase money, or such part thereof as may remain unpaid, which shall be good and effectual against his wife as well as himself, without requiring her to join in the execution of such mortgage or deed of trust. (Rev., s. 958, Code, s. 1272; 1868-9, c. 204; 1907, c. 12; C. S. 1003.)

§ 39-14. Wife insane, husband's deed transfers her interest.—Every man whose wife is a lunatic or insane and whose homestead has been allotted, may bargain, sell, lease, mortgage, transfer and convey any of his real estate by deed, mortgage deed, deed of trust or lease, except his homestead, without the signature or private examination of his wife: Provided, that the clerk of the superior court of the county in which the wife was adjudged a lunatic or declared insane, or the superintendent of an insane institution of the state, or any other state, shall certify under his hand and seal that she has been adjudged a lunatic or declared insane, and that her sanity has not been declared restored as is provided by law, and

this certificate must be attached to the husband's deed, mortgage deed, deed of trust, or lease.

Such deed, mortgage deed, deed of trust or lease executed, probated and registered in accordance with law shall convey all the estate and interest as therein intended of the grantor in the land conveyed free and exempt from the dower rights and all other interests of his wife: Provided, this section shall not apply to the homestead of the husband. (Rev., s. 959; 1905, c. 138, ss. 1, 3; 1919, c. 20; Ex. Sess. 1920, c. 94; C. S. 1004.)

Art. 3. Fraudulent Conveyances.

§ 39-15. Conveyance with intent to defraud creditors void.—For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised of fraud, to the purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed or defrauded) to be utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and in all actions by creditors to set aside gifts, grants, alienations and conveyances of lands and tenements and judgments purporting to be liens on the same on the ground that such gifts, grants, alienations, conveyances and judgments are feigned, covinous and fraudulent hereunder, it shall be no defense to the action to allege and prove that the lands and tenements alleged to be so conveyed or encumbered do not exceed in value the homestead allowed by law as an exemption: Provided, that nothing in this section shall be construed to authorize the sale under execution or other final process, obtained on any debt during the continuance of the homestead, of any interest in such land as may be exempt as a homestead. (Rev., s. 960; Code, s. 1545; 1893, c. 78; R. C., c. 50, s. 1; 50 Edw. III, c. 6; 13 Eliz., c. 5, s. 2; 1715, c. 7, s. 4; C. S. 1005.)

§ 39-16. Conveyance with intent to defraud purchasers void.—Every conveyance, charge, lease or encumbrance of any lands or hereditaments, goods and chattels, if the same be made with the actual intent in fact to defraud such person who has purchased or shall purchase in fee simple or for lives or years the same lands or hereditaments, goods and chattels, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed utterly void against such person and others claiming under him who shall purchase for the full value thereof the same lands or hereditaments, goods and chattels, or rents or profits out of the same, without notice before and at the time of his purchase of the conveyance, charge, lease or encumbrance, by him alleged to have been made with intent to defraud; and possession taken or held by or for the person claiming under such alleged fraudulent conveyance, charge, lease or encumbrance shall be always deemed and taken as notice in law of the same. (Rev., s. 961; Code, s. 1546; R. C., c. 50, s. 2; 27 Eliz., c. 4, s. 2; 1840, c. 28, ss. 1, 2; C. S. 1006.)

§ 39-17. Voluntary conveyance evidence of fraud as to existing creditors.—No voluntary gift or settlement of property by one indebted shall be deemed or taken to be void in law, as to creditors of the donor or settler prior to such gift or settlement, by reason merely of such indebtedness, if property, at the time of making such gift or settlement, fully sufficient and available for the satisfaction of his then creditors, be retained by such donor or settler; but the indebtedness of the donor or settler at such time shall be held and taken, as well with respect to creditors prior as creditors subsequent to such gift or settlement, to be evidence only from which an intent to delay, hinder or defraud creditors may be inferred; and in any trial shall, as such, be submitted by the court to the jury, with such observations as may be right and proper. (Rev., s. 962; Code, s. 1547; R. C., c. 50, s. 3; 1840, c. 28, ss. 3, 4; C. S. 1007.)

§ 39-18. Marriage settlements void as to existing creditors.—Every contract and settlement of property made by any man and woman in consideration of a marriage between them, for the benefit of such man or woman, or of their issue, whether the same be made before or after marriage, shall be void as against creditors of the parties making the same respectively, existing at the time of such marriage if the same is antenuptial, or at the time of making such contract or settlement if the same is postnuptial. (Rev., s. 963; Code, ss. 1270, 1820; 1871-2, c. 193, s. 11; R. C., c. 37, s. 25; 1785, c. 238, s. 2; C. S. 1008.)

§ 39-19. Purchasers for value and without notice protected.—Nothing contained in the preceding sections shall be construed to impeach or make void any conveyance, interest, limitation of use or uses, of or in any lands or tenements, goods or chattels, bona fide made, upon and for good consideration, to any person not having notice of such fraud. (Rev., s. 964; Code, s. 1548; R. C., c. 50, s. 4; 13 Eliz., c. 5, s. 6; 1785, c. 7, s. 6; C. S. 1009.)

§ 39-20. Bona fide purchaser of mortgaged property not affected by illegal consideration of note secured.—No conveyance or mortgage, made to secure the payment of any debt or the performance of any contract or agreement, shall be deemed void as against any purchaser for valuable or other good consideration of the estate or property conveyed, sold, mortgaged or assigned, by reason that the consideration of such debt, contract or agreement is forbidden by law, if such purchaser, at the time of his purchase, did not have notice of the unlawful consideration of such debt, contract or agreement. (Rev., s. 965; Code, s. 1549; R. C., c. 50, s. 5; 1842, c. 70; C. S. 1010.)

§ 39-21. Bona fide purchaser of fraudulently

conveyed property treated as creditor.—Purchasers of estates previously conveyed in fraud of creditors or purchasers shall have like remedy and relief as creditors might have had before the sale and purchase. (Rev., s. 966; Code, s. 1550; R. C., c. 50, s. 6; C. S. 1011.)

§ 39-22. Persons aiding debtor to remove to defraud creditors liable for debts.—If any person removes or aids and assists in removing any debtor out of any county in which he has resided for the space of six months, or more, with the intent, by such removing, aiding or assisting, to delay, hinder or defraud the creditors, or any of them, of such debtor, the person so removing, aiding or assisting therein, and his executors or administrators, shall be liable to pay all the debts which the debtor removed may justly owe in the county from which he was so removed; and the same may be recovered by the creditors, their executors or administrators, by a civil action. (Rev., s. 1939; Code, s. 1551; R. C., c. 50, s. 14; 1820, c. 1063; C. S. 1012.)

§ 39-23. Sales in bulk presumed fraudulent.—The sale in bulk of a large part or the whole of a stock of merchandise, otherwise than in the ordinary course of trade and in regular and usual prosecution of the seller's business, shall be prima facie evidence of fraud, and void as against the creditors of the seller, unless the seller, at least seven days before the sale, makes an inventory showing the quantity and, so far as possible, the cost price to the seller of such articles included in the sale, and shall seven days before the proposed sale notify the creditors of the proposed sale, and the price, terms and conditions thereof. If the owner of said stock of goods shall at any time before the sale execute a good and sufficient bond, to a trustee therein named, in an amount equal to the actual cash value of the stock of goods, and conditioned that the seller will apply the proceeds of the sale, subject to the right of the owner or owners to retain therefrom the personal property exemption or exemptions as are allowed by law, so far as they will go in payment of debts actually owing by the owner or owners, then the provisions of this section shall not apply. Such sale of merchandise in bulk shall not be presumed to be a fraud as against any creditor or creditors who shall not present his or their claim or make demand upon the purchaser in good faith of such stock of goods and merchandise, or to the trustee named in any bond given as provided herein, within twelve months from the date of maturity of his claim, and any creditor who does not present his claim or make demand either upon the purchaser in good faith or on the trustee named in a bond within twelve months from the date of its maturity shall be barred from recovering on his claim on such bond, or as against the purchaser, in good faith, of such stock of goods in bulk. Nothing in this section shall prevent voluntary assignments or deeds of trust for the benefit of creditors as now allowed by law, or apply to sales by executors, administrators, receivers or assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or by any public officers under judicial process. (1907, c. 623; 1913, c. 30, s. 1; Ex. Sess. 1913, c. 66, s. 1; 1933, c. 190; C. S. 1013.)

Art. 4. Voluntary Organizations and Associations.

§ 39-24. Authority to acquire and hold real estate.—Voluntary organizations and associations of individuals organized for charitable, fraternal, religious, or patriotic purposes, when organized for the purposes which are not prohibited by law, are hereby authorized and empowered to acquire real estate and to hold the same in their common or corporate names: Provided, that voluntary organizations and associations of individuals, within the meaning of this article, shall not include associations, partnerships or copartnerships which are organized to engage in any business, trade, or profession. (1939, c. 133, s. 1.)

§ 39-25. Title vested; conveyance; probate. — Where real estate has been or may be hereafter conveyed to such organizations or associations in their common or corporate name the said title shall vest in said organizations, and may be conveyed by said organization in its common name, when such conveyance is authorized by resolution of the body duly constituted and held, by a deed signed by its chairman or president, and its secretary or treasurer, or such officer as is the custodian of its common seal with its official seal affixed, the said conveyance to be proven and probated in the same manner as provided by law for deeds by corporations, and conveyances thus made by such organizations, and associations shall convey good and fee simple title to said land. (1939, c. 133, s. 2.)

§ 39-26. Effect as to conveyances by trustees.—Nothing in this article shall be deemed in any manner to change the law with reference to the holding and conveyance of land by the trustees of churches or other voluntary organizations where such land is conveyed to and held by such trustees. (1939, c. 133, s. 3.)

§ 39-27. Prior deeds validated.—All deeds heretofore executed in conformity with this article are declared to be sufficient to pass title to real estate held by such organizations. (1939, c. 133, s. 4.)

Art. 5. Sale of Building Lots in North Carolina.

§ 39-28. Application for permit to sell.—After March 9, 1927, before a building lot or lots in a new sub-division of real estate is offered for sale or sold in North Carolina wherein it is represented or agreed that streets, sidewalks, water, sewer, lights or other improvements are to be made for the benefit of the purchaser or purchasers, the person, firm or corporation desiring to offer the same for sale shall first apply to the Clerk of the Superior Court of the county wherein the building lot or lots are situated for a permit to so sell said lots. (1927, c. 210, s. 1.)

§ 39-29. Contents of application.—The application for a permit to sell must state the location of the lots or lot with an estimate of the cost of the improvement proposed to be made on each lot as a whole; the estimate of cost so made shall be certified as approximately correct by a civil engineer or county surveyor licensed to practice in the State of North Carolina. (1927, c. 210, s. 2.)

§ 39-30. Investigation by clerk; bond. — Upon

the filing of said application and the certificate of the cost of the improvement, the clerk of the court shall satisfy himself that the land or lots are located in his county and he shall also satisfy himself of the genuineness of the application and certificate of the engineer or county surveyor, and shall, if so satisfied, require a good and sufficient bond, in a sum equal to the amount certified by the engineer or county surveyor as the approximate cost of the improvement or improvements, with a corporation licensed to do business in the State of North Carolina as surety thereon, conditioned to save the purchaser or purchasers of each lot or lots harmless to the amount of the estimated and certified cost of the proposed improvement on each lot or lots so purchased. (1927, c. 210, s. 3.)

§ 39-31. Application, certificate, bond and order filed as permanent record.—The clerk of the Superior Court shall preserve the application, certificate and bond and his orders thereon as a permanent record for the benefit of any party whose rights are affected thereby and shall, when the provisions of this article have been fully complied with, and when a filing fee of one dollar has been paid, issue a permit to the applicant to sell said lot or lots. (1927, c. 210, s. 4.)

§ 39-32. Penalty for violation. — Any person, firm or corporation selling or offering for sale any building lot or lots in violation of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1927, c. 210, s. 5.)

Chapter 40. Eminent Domain.

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Art. 1. Right of Eminent Domain.

§ 40-1. Corporation in this chapter defined.—For the purposes of this chapter, unless the context clearly indicates the contrary, the word "corporation" includes the bodies politic and natural persons, enumerated in the following section, which possess the power of eminent domain. (C. S. 1705.)

§ 40-2. By whom right may be exercised.—The right of eminent domain may, under the pro-

visions of this chapter, be exercised for the purpose of constructing their roads, canals, pipe lines originating in North Carolina for the transportation of petroleum products, lines of wires, or other works, which are authorized by law and which involve a public use or benefit, by the bodies politic, corporation, or persons following:

1. Railroads, street railroads, plankroad, tramroad, turnpike, canal, pipe lines originating in North Carolina for the transportation of petroleum products, telegraph, telephone, electric power or lighting, public water supply, flume, or incorporated bridge companies.

2. Municipalities operating water systems and sewer systems and all water companies operating under charter from the state or license from municipalities, which may maintain public water supplies, for the purpose of acquiring and maintaining such supplies.

3. Person or persons, firms, corporations or copartnerships operating or authorized by law to operate electric light plants, or distributing electric current for lights or power, or for the purpose of constructing wires, poles or other necessary things, and for such purposes or things.

4. Public institutions of the state for the purpose of providing water supplies, or for other necessary purposes of such institutions.

5. School committees of public school districts, county boards of education, boards of trustees or of directors of any corporation holding title to real estate upon which any public school, private school, high school, academy, university or college is situated, in order to obtain a pure and adequate water supply for such school, college or university.

6. The department of conservation and development in the administration of the laws relating to fish and fisheries.

7. Any educational, penal, hospital or other institution incorporated or chartered by the state of North Carolina, for the furtherance of any of its purposes, such institution being wholly or partly dependent upon the state for maintenance, and such institution shall be in need of land for its location, or such institution shall be in need of adjacent land for necessary enlargement or extension, or for land for the building of a road or roads or a side-track for railroads, necessary to the proper operations and completion of any such institution, and shall so declare through its board of directors, trustees or other governing boards by a resolution inserted in the minutes at a regular meeting or special meeting called for that purpose, such institution shall have all the powers, rights and privileges of eminent domain given under this chapter, to condemn and procure such land, and shall follow the procedure established under this chapter.

8. Franchised motor vehicle carriers or union bus station companies organized by authority of the utilities commission, for the purpose of constructing and operating union bus stations: Provided, that this subsection shall not apply to any city or town having a population of less than sixty thousand. (Rev., s. 2575; Code, s. 1698; R. C., c. 61, s. 9; 1852, c. 92, s. 1; 1874-5, c. 83; 1907, cc. 39, 458, 783; 1911, c. 62, ss. 25, 26, 27; 1917, cc. 51, 132; 1923, c. 205; Ex. Sess. 1924, c. 118; 1937, c. 108, s. 1; 1939, c. 228, s. 4; 1941, c. 97, s. 1; 1941, c. 254; C. S. 1706.)

§ 40-3. Right to enter on and purchase lands.—Such bodies politic, corporation, or persons, may at any time enter upon the lands through which they may desire to conduct the roads or works authorized under § 40-2 and lay out the same, and they may also enter upon such contiguous land along the route as may be necessary for depots, warehouses, engine sheds, workshops, water stations, tool-houses, and other buildings necessary for the accommodation of their officers, servants and agents, horses, mules and other cattle, and for the protection of their property; and shall pay to the proprietors of the land so entered on such sum as may be agreed on between them. (Rev., s. 2575; Code, s. 1698; R. C., c. 61, s. 9; 1852, c. 92, s. 1; 1874-5, c. 83; C. S. 1707.)

§ 40-4. Power of railroad companies to condemn land for union depots, double-tracking, etc.—Any railroad company operating a line of railroad in North Carolina whenever it shall find it necessary to occupy any land for the purpose of getting to a union depot which has been ordered by the utilities commission, or for the purpose of maintaining, operating, improving, or of straightening its line, or of altering its location, or of constructing double tracks, or of enlarging its yard or terminal facilities, or of connecting two of its lines already in operation not more than six miles apart, shall have the power to condemn all lands needed for such purpose under the provisions of this chapter. More than two acres may be condemned for yard or terminal facilities if required for due operation of the railroad. No lands in any incorporated towns shall be condemned under this section until approved by the utilities commission, nor shall any yard, garden or dwelling-house be condemned, unless the utilities commission, upon petition filed by the railroad seeking to condemn, shall, after due inquiry, find that the railroad company cannot make the desired improvement without condemning the yard, garden or dwelling-house, except at an excessive cost. The power to condemn land under this section shall be enforceable and matters arising in regard thereto shall be tried only in the courts created by or under the constitution of this state. No rights granted or acquired under the provisions of this section shall in any way destroy or abridge the rights of the state to regulate or control such railroad company or to exclude foreign corporations from doing business in this state. (1907, c. 458, ss. 1, 2, 3; 1933, c. 134, s. 8; 1941, c. 97, s. 1; C. S. 1708.)

§ 40-5. Condemning land for industrial sidings.—Any railroad company doing business in this state, whether such railroad be a domestic or foreign corporation, which has been or shall be ordered by the utilities commission to construct an industrial siding as provided in § 62-45, is empowered to exercise the right of eminent domain for such purpose, to condemn property as provided in this chapter, and to acquire such right of way as may be necessary to carry out the orders of the

utilities commission. Whenever it is necessary for any railroad company doing business in this state to cross the streets or streets in a town or city in order to carry out the orders of the utilities commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the state: Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city. (1911, c. 203; 1933, c. 134, s. 8; 1941, c. 97, s. 1; C. S. 1709.)

§ 40-6. Condemnation by schools for water supply.—If the school authorities mentioned in subsection 5 of § 40-2 shall be unable to agree with the owners of any lands which, or the use of which, it is necessary to appropriate in obtaining a pure and adequate water supply for the school, they shall file a petition for the condemnation of such lands in conformity with the provisions of this chapter. In addition to the particulars required to be set out in § 40-12, the petition shall state whether the water supply is desired to be obtained from a spring, from a stream, or by digging artesian wells. The proceedings for such condemnation shall conform to the requirements of this chapter. No greater amount of land in area or width shall be condemned under this section than is necessary to obtain a pure and adequate water supply.

Any person holding title to land upon which any school, public or private, is located is empowered to obtain water supplies from the springs, streams or artesian wells the use of which is acquired under this section by building intakes, reservoirs, digging ditches, laying pipes or doing such other things as may be needful to obtain the water supply. (1907, c. 671; C. S. 1710.)

§ 40-7. Condemnation for steamboat wharves and warehouses.—Upon the order of the utilities commission that any steamboat company provide wharf and warehouse facilities as may be deemed reasonable and just, at any particular point, such company shall have power to condemn land for such purpose in accordance with the provisions of this chapter. (Ex. Sess. 1913, c. 52; 1933, c. 134, s. 8; 1941, c. 97, s. 1; C. S. 1711.)

§ 40-8. May take material from adjacent lands.—For the purpose of constructing and operating its works and necessary appurtenances thereto, or of repairing them after they shall have been made, or of enlarging or otherwise altering them, the corporation entitled to exercise the powers of eminent domain may, at any time, enter on any adjacent lands, and cut, dig, and take therefrom any wood, stone, gravel, water or earth, which may be deemed necessary: Provided, that they shall not, without the consent of the owner, destroy or injure any ornamental or fruit trees. (Rev., s. 2576; Code, s. 1702; R. C., c. 61, s. 22; 1874-5, c. 83; 1907, c. 39, s. 2; C. S. 1712.)

§ 40-9. How material paid for.—If for the value of the damages done to the owner by reason of the acts mentioned in § 40-8 the parties may be unable to agree, the same shall be valued in the manner hereinafter provided. (Rev., s. 2577; Code, s. 1703; R. C., c. 61, s. 23; 1874-5, c. 83; C. S. 1713.)

§ 40-10. Dwelling-houses and burial grounds cannot be condemned.—No such corporation shall be allowed to have condemned to its use, without the consent of the owner, his dwelling-house, yard, kitchen, garden or burial ground, unless condemnation of such property is expressly authorized in its charter or by some provision of this code. (Rev., s. 2578; C. S. 1714.)

Art. 2. Condemnation Proceedings.

§ 40-11. Proceedings when parties cannot agree.—If any corporation, enumerated in § 40-2, possessing by law the right of eminent domain in this state, is unable to agree for the purchase of any real estate required for purposes of its incorporation or for the purposes specified in this chapter, it shall have the right to acquire title to the same in the manner and by the special proceedings herein prescribed. (Rev., s. 2579; Code, ss. 1943, 2009; 1885, c. 168; 1893, c. 63; 1901, cc. 6, 41, s. 2; 1899, c. 64; 1903, cc. 562, 159, s. 16; 1871-2, c. 138, s. 13; C. S. 1715.)

§ 40-12. Petition filed; contains what; copy served.—For the purpose of acquiring such title the corporation, or the owner of the land sought to be condemned, may present a petition to the clerk of the superior court of the county in which the real estate described in the petition is situated, praying for the appointment of commissioners of appraisal. Such petition shall be signed and verified according to the rules and practice of such court; and if filed by the corporation it must contain a description of the real estate which the corporation seeks to acquire; and it must, in effect, state that the corporation is duly incorporated, and that it is its intention in good faith to conduct and carry on the public business authorized by its charter, stating in detail the nature of such public business, and the specific use of such land; that the land described in the petition is required for the purpose of conducting the proposed business, and that the corporation has not been able to acquire title thereto, and the reason of such inability. The petition, whether filed by the corporation or the owner of the land, must also state the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate; and if any such persons are infants, their ages, as near as may be, must be stated; and if any such persons are idiots or persons of unsound mind or are unknown, that fact must be stated, together with such other allegations and statements of liens or encumbrances on said real estate as the corporation or the owner may see fit to make. A summons as in other cases of special proceedings, together with a copy of the petition, must be served on all persons whose interests are to be affected by the proceedings, at least ten days prior to the hearing of the same by the court. (Rev., s. 2580; Code, s. 1944; 1893, c. 396; 1871-2, c. 138, s. 14; 1907, c. 783, s. 3; C. S. 1716.)

§ 40-13. How process served.—The summons and a copy of the petition shall be served in the same manner as in special proceedings. (Rev., s. 2581; Code, s. 1944; 1871-2, c. 138, s. 14; C. S. 1717.)

§ 40-14. Service where parties unknown.—If the

person on whom such service of summons and petition is to be made is unknown, or his residence is unknown and cannot by reasonable diligence be ascertained, then such service may be made under the direction of the court, by publishing a notice, stating the time and place within which such person must appear and plead, the object thereof, with a description of the land to be affected by the proceedings, in a paper, if there be one, printed in the county where the land is situated, once in each week, for four weeks previous to the time fixed by the court, and if there be no paper printed in such county, then in a newspaper printed in the city of Raleigh. (Rev., s. 2582; Code, s. 1944, subsec. 5; C. S. 1718.)

§ 40-15. Orders served as in special proceedings in absence of other provisions.—In all cases not herein otherwise provided for, service of orders, notices, and other papers in the special proceedings authorized by this chapter may be made as in other special proceedings. (Rev., s. 2583; Code, s. 1944, subsec. 7; C. S. 1719.)

§ 40-16. Answer to petition; hearing; commissioners appointed.—On presenting such petition to the superior court, with proof of service of a copy thereof, and of the summons, all or any of the persons whose estates or interests are to be affected by the proceedings may answer such petition and show cause against granting the prayer of the same, and may disprove any of the facts alleged in it. The court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of three disinterested and competent freeholders who reside in the county where the premises are to be appraised, for the purposes of the company, and shall fix the time and place for the first meeting of the commissioners. (Rev., s. 2584; Code, s. 1945; 1871-2, c. 138, s. 15; C. S. 1720.)

§ 40-17. Powers and duties of commissioners.—The commissioners, before entering upon the discharge of their duties, shall take and subscribe an oath that they will fairly and impartially appraise the lands mentioned in the petition. Any one of them may issue subpœnas, administer oaths to witnesses, and any two of them may adjourn the proceedings before them from time to time, in their discretion. Whenever they meet, except by the appointment of the court or pursuant to adjournment, they shall cause ten days notice of such meeting to be given to the parties who are to be affected by their proceedings, or their attorney or agent. They shall view the premises described in the petition, hear the proofs and allegations of the parties, and reduce the testimony, if any is taken by them, to writing; and after the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, a majority of them all being present and acting, shall ascertain and determine the compensation which ought justly to be made by the corporation to the party or parties owning or interested in the real estate appraised by them. They shall report the same to the court within ten days. (Rev., s. 2585; Code, s. 1946; 1871-2, c. 138, ss. 16-18; 1891, c. 160; C. S. 1721.)

§ 40-18. Form of commissioners' report.—When the commissioners shall have assessed the damages, they shall forthwith make and subscribe a written report of their proceedings, in substance as follows:

To the Clerk of the Superior Court of ..... County:

We, ..., commissioners appointed by the court to assess the damages that have been and will be sustained by ....., the owner of certain land lying in the county of ....., which the ..... corporation proposes to condemn for its use, do hereby certify that we met on ..... (or the day to which we were regularly adjourned), and, having first been duly sworn, we visited the premises of the owner, and after taking into full consideration the quality and quantity of the land aforesaid, the additional fencing likely to be occasioned by the work of the corporation, and all other inconveniences likely to result to the owner, we have estimated and do assess the damages aforesaid at the sum of $.....

We have estimated the special benefits which the said owner will receive from the construction of said works to be the sum of $.....

Given under our hands, the ..... day of ....., A. D. 19..... (Rev., s. 2586; Code, s. 1700; R. C., c. 61, s. 17; 1874-5, c. 83; C. S. 1722.)

§ 40-19. Exceptions to report; hearing; appeal; when title vests; restitution.—Within twenty days after filing the report the corporation or any person interested in the said land may file exceptions to said report, and upon the determination of the same by the court, either party to the proceedings may appeal to the court at term, and thence, after judgment, to the supreme court. The court or judge on the hearing may direct a new appraisal, modify or confirm the report, or make such order in the premises as to him shall seem right and proper. If the said corporation, at the time of the appraisal, shall pay into court the sum appraised by the commissioners, then and in that event the said corporation may enter, take possession of, and hold said lands, notwithstanding the pendency of the appeal, and until the final judgment rendered on said appeal. And if there shall be no appeal, or if the final judgment rendered upon said petition and proceedings shall be in favor of the corporation, and upon the payment by said corporation of the sum adjudged, together with the costs and counsel fees allowed by the court, into the office of the clerk of the superior court, then and in that event all persons who have been made parties to the proceedings shall be divested and barred of all right, estate and interest in such easement in such real estate during the corporate existence of the corporation aforesaid. A certified copy of such judgment under the seal of the court shall be registered in the county where the land is situated, and a copy of the same, or the original certified, may be given in evidence in all actions and proceedings as deeds for land are now allowed to be read in evidence. All real estate acquired by any corporation under and pursuant to the provisions of this chapter for its purposes shall be deemed to be acquired for the public use. But if the court shall refuse to condemn the land, or any portion thereof, to the use of such corpora-

tion, then, and in that event, the money paid into court, or so much thereof as shall be adjudged, shall be refunded to the corporation. And the corporation shall have no right to hold said land not condemned, but shall surrender the possession of the same, on demand, to the owner or owners, or his or their agent or attorney. And the court or judge shall have full power and authority to make such orders, judgments and decrees, and issue such executions and other process as may be necessary to carry into effect the final judgment rendered in such proceedings. If the amount adjudged to be paid the owner of any property condemned under this chapter shall not be paid within one year after final judgment in the proceeding, the right under the judgment to take the property or rights condemned shall ipso facto cease and determine, but the claimant under the judgment shall still remain liable for all amounts adjudged against him except the consideration for the property. (Rev., s. 2587; Code, s. 1946; 1893, c. 148; 1915, c. 207; C. S. 1723.)

§ 40-20. Provision for jury trial on exceptions to report.—In any action or proceeding by any railroad or other corporation to acquire rights of way or real estate for the use of such railroad or corporation, and in any action or proceeding by any city or town to acquire rights of way for streets, any person interested in the land, or the city, town, railroad or other corporation shall be entitled to have the amount of damages assessed by the commissioners or jurors heard and determined upon appeal before a jury of the superior court in term, if upon the hearing of such appeal a trial by a jury be demanded. (Rev., s. 2588; 1893, c. 148; C. S. 1724.)

§ 40-21. When benefits exceed damage, corporation pays costs.—In any case where the benefits to the land caused by the erection of the railroad, street railway, telephone, telegraph, water supply, bridge, or electric power or lighting plant or other structure, are ascertained to exceed the damages to the land, then the corporation acquiring the same by right of eminent domain shall pay the costs of the proceeding except as provided by law, and shall not have a judgment for the excess of benefits over the damage. (Rev., s. 2589; 1891, c. 160; C. S. 1725.)

§ 40-22. Title of infants, persons non compos, and trustees without power of sale, acquired.—In case any title or interest in real estate required by any corporation for its purposes shall be vested in any trustee not authorized to sell, release and convey the same, or in any infant, idiot, or person of unsound mind, the superior court shall have power, by a special proceeding, on petition, to authorize and empower such trustee or the general guardian or committee of such infant, idiot, or person of unsound mind, to sell and convey the same to such corporation, on such terms as may be just; and in case any such infant, idiot, or person of unsound mind has no general guardian or committee, the said court may appoint a special guardian or committee for the purpose of making such sale, release or conveyance, and may require such security from such general or special guardian or committee as said court may deem proper. But before any conveyance or release authorized by this section shall be executed, the terms on which the same is to be executed shall be reported to the court on oath; and if the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report and direct the proper conveyance or release to be executed, which shall have the same effect as if executed by an owner of said land having legal power to sell and convey the same. (Rev., s. 2590; Code, s. 1956; 1871-2, c. 138, s. 28; C. S. 1726.)

§ 40-23. Rights of claimants of fund determined.—If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into the said court by the corporation, and may determine who is entitled to the same and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made. (Rev., s. 2591; Code, s. 1947; 1871-2, c. 138, s. 19; C. S. 1727.)

§ 40-24. Attorney for unknown parties appointed; pleadings amended; new commissioners appointed.—The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent, and shall make an allowance to said attorney for his services, which shall be taxed in the bill of costs. The court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this chapter as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest as it deems proper; and also to appoint other commissioners in place of any who shall die, refuse or neglect to serve or be incapable of serving. (Rev., s. 2592; Code, s. 1948; 1871-2, c. 138, s. 20; C. S. 1728.)

§ 40-25. Court may make rules of procedure in.—In all cases of appraisal under this chapter where the mode or manner of conducting all or any of the proceedings to the appraisal and the proceedings consequent thereon are not expressly provided for by the statute, the courts before whom such proceedings may be pending shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this chapter, and the practice in such cases shall conform as near as may be to the ordinary practice in such courts. (Rev., s. 2593; Code, s. 1949; 1871-2, c. 138, s. 21; C. S. 1729.)

§ 40-26. Change of ownership pending proceeding.—When any proceedings of appraisal shall have been commenced, no change of ownership by voluntary conveyance or transfer of the real estate or other subject-matter of the appraisal, or any interest therein, shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made or attempted to

be made. (Rev., s. 2594; Code, s. 1950; 1871-2, c. 138, s. 22; C. S. 1730.)

§ 40-27. Defective title; how cured.—If at any time after an attempt to acquire title by appraisal of damages or otherwise it shall be found that the title thereby attempted to be acquired is defective, the corporation may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made, and at any stage of such new proceedings the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession and use such real estate during the pendency and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the corporation on account thereof, on such corporation paying into court a sufficient sum or giving security as the court may direct to pay the compensation therefor when finally ascertained, and in every such case the party interested in such real estate may conduct the proceedings to a conclusion if the corporation delays or omits to prosecute the same. (Rev., s. 2595; Code, s. 1951; 1871-2, c. 138, s. 23; C. S. 1731.)

§ 40-28. Title to state lands acquired.—The secretary of state shall have power to grant to any railroad company any land belonging to the people of this state which may be required for the purposes of its road, on such terms as may be agreed on by them, or such company may acquire title thereto by appraisal, as in the case of lands owned by individuals; and if any land belonging to a county or town is required by any company for the purposes of the road, the county or town officers having the charge of such land may grant such land to such company for such compensation as may be agreed upon. (Rev., s. 2596; Code, s. 1955; 1871-2, c. 138, s. 27; C. S. 1732.)

§ 40-29. Quantity which may be condemned for certain purposes:

1. Right of way of railroad.—The width of the land condemned for any railroad shall not be less than eighty feet nor more than one hundred, except where the road may run through a town, when it may be of less width; or where there may be deep cuts or high embankments, when it may be of greater width.

2. Plankroads, etc.—No greater width of land than sixty feet shall be condemned for the use of any plankroad, tramroad, canal, street railway or turnpike; or greater width than sixteen feet for the use of any flume.

3. Depot or station.—No greater quantity of land than two acres, contiguous to any railroad, plankroad, tramroad, turnpike, flume, or canal, shall be condemned at one place for a depot or station. (Rev., s. 2597; Code, ss. 1707, 1708, 1709; R. C., c. 61, ss. 27, 28, 29; 1852, c. 92; 1874-5, c. 83; 1907, c. 39; C. S. 1733.)

Art. 3. Public Works Eminent Domain Law.

§ 40-30. Title of article.—This article may be referred to as the "Public Works Eminent Domain Law." (1935, c. 470, s. 1.)

§ 40-31. Finding and declaration of necessity.—(a) It is hereby declared that widespread unemployment exists throughout the State, making it impossible for many people in the State to support themselves and their families; that these conditions create a public emergency and constitute a menace to the health, safety, morals and welfare of the people of the State; that it is essential that public works projects, financed in whole or in part by the United States of America or by the State, be commenced as soon as possible in order to reduce and relieve this unemployment and prevent irreparable injury to the people of the State; that to this end, it is necessary to provide a method for the expeditious acquisition of any lands necessary for such public works projects; that such public works projects are hereby declared to be in furtherance of the public welfare and to be public uses and purposes for which public money may be spent and private property acquired; and the necessity in the public interest for the provision hereinafter enacted is hereby declared as a matter of legislative determination.

(b) Without limitation upon the generality of the foregoing paragraph hereof, it is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State and that consequently many persons of low income are forced to reside therein; that these conditions cause an increase in and spread of disease and crime, constitute a menace to the health, safety, morals and welfare of the citizens of the State, impair economic values and are not being, and cannot within a reasonable time be corrected by the investment of private capital available for profit-making enterprises; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe conditions exist and the provision of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired. (1935, c. 470, s. 2.)

§ 40-32. Definitions.—The following terms whenever used or referred to in this article shall have the following respective meanings unless a different meaning clearly appears from the context:

(a) "Public works project" shall mean any work or undertaking which is financed in whole or in part by a federal agency, as herein defined, or by a state public body, as herein defined.

(b) "Federal agency" shall mean the United States of America, the federal emergency administration of public works, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(c) "State public body" shall mean this State or any county, city, town, municipal corporation, authority, or any other subdivision, agency, or instrumentality, corporate or otherwise, thereof.

(d) "Authorized corporation" shall mean any corporation or association engaged or about to engage in any public works project, as herein defined, for a public use: Provided, that the construction of said public works project and its conduct thereafter by the corporation or association shall be subject to regulation or supervision by a federal agency, as heretofore defined, or a state public body, as herein defined, whether by virtue of an agreement, provision of law, or otherwise.

(e) "Real property" or "property" or "land" shall include all lands, including improvements

and fixtures thereon, lands under water, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and all rights, interests, privileges, easements, encumbrances, and franchises relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise.

(f) "Court" shall mean the court in which jurisdiction over proceedings hereunder is vested by the provisions of § 40-33.

(g) "Petitioner" shall mean the one by whom proceedings for the acquisition of real property, as herein defined, are instituted hereunder pursuant to the provisions of § 40-33. (1935, c. 470, s. 3.)

§ 40-33. Filing of petition; jurisdiction of court; entry upon land by petitioner. — Any federal agency, state public body or authorized corporation may institute proceedings hereunder for the acquisition of any real property necessary for any public works project.

Such proceedings may be instituted in the superior court in any county in which any part of the real property or of the proposed public works project is situate. The court, whether during a term or during a vacation, shall cause said proceedings to be heard and determined without delay. All condemnation proceedings shall be preferred cases, and shall be entitled to precedence over all other civil cases.

The petitioner may enter upon the land proposed to be acquired for the purpose of making a survey and of posting any notice thereon which is required by this article: Provided, that such survey and posting of notice shall be done in such manner as will cause the least possible inconvenience to the owners of the real property. (1935, c. 470, s. 4.)

§ 40-34. Form of petition.—A proceeding may be instituted hereunder by the filing of a petition which shall be sufficient if it sets forth:

(a) The name of the petitioner.

(b) A description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof.

(c) A statement that the acquisition of such property by the petitioner is necessary for a public works project and a brief general description of said public works project.

(d) A statement that the proceedings are being instituted under this article.

(e) A suitable prayer for relief. (1935, c. 470, s. 5.)

§ 40-35. Inclusion of several parcels. — Any number of parcels of land, whether owned by the same or different persons and whether contiguous or not, may be included and condemned in one proceeding: Provided, such parcels are to be used for a single public works project. (1935, c. 470, s. 6.)

§ 40-36. Notice of proceedings.—Notice of such proceedings shall be given by one publication in a newspaper having a general circulation in each county in which any part of the property sought to be condemned is located. Such publication shall be at least twenty days and not more than thirty days prior to the date set for the hearing of the validity of the proceedings. Such notice shall be in substantially the following form (the blanks being appropriately filled):

TO WHOM IT MAY CONCERN:

Notice is hereby given that..... (here insert name of petitioner) has filed a petition in the above court under the Public Works Eminent Domain Law to acquire by condemnation for ..... (here give brief general description of the public works project for which the land is sought to be acquired) the following described land:

(Here describe the land sufficiently for the identification thereof. Such description may be by use of a plat or map.)

Notice is further given that on.....(here insert date of hearing, which must be at least twenty days and not more than thirty days after the date of publication) there will be a hearing in this court, at the opening thereof, for (1) determining the validity of said proceedings and the right of the petitioner, if it so elects, to take title to and possession of such property prior to final judgment, as authorized by § 40-45, of the Public Works Eminent Domain Law, and any persons having any interest in or lien upon the above described property shall be deemed to have waived their rights thereafter to object to the court's decision with respect to such issues, unless prior to said date they shall have filed in writing with the clerk of said court their objections thereto; (2) the appointment of a special master to determine the compensation to be awarded for such property and the persons entitled thereto; (3) the fixing of the date and place at which said special master shall hear and determine the compensation to be paid for such property and the person entitled thereto.

Notice is further given that all claims or demands for compensation because of the taking and condemnation of such property must be filed with the above court before.....(here insert date fifteen days after the date above specified for the court hearing), or the same shall be deemed waived.

Dated, the.....day of....., A. D., ...

.....
Clerk of said Court.

Notice of such proceedings shall also be given (a) by posting a copy of the above notice in conspicuous places on the real property sought to be condemned, (b) by filing a copy thereof in the office of the clerk of the court in which such proceedings are pending, and (c) by filing a copy thereof in the proper office or offices for the filing of lis pendens in each county in which any part of the real property is situated.

Such publication, posting and filing shall constitute a legal and sufficient notice to all persons having any interest in or lien upon the property described in said notice. The filing of such notice in the aforesaid county office shall also be a constructive notice of the proceeding to any person who subsequently acquires any interest in or lien upon said property, and the petitioner shall take all property condemned under this article free of the claims of any such person. (1935, c. 470, s. 7.)

§ 40-37. Determination of issues raised by objections; waiver by failure to file; final judgment; guardian ad litem.—All persons who have not filed written objections with the court prior to the time of the hearing specified in the notice prescribed by § 40-36 shall be deemed to have waived the right to file objections as to the sufficiency and validity of the petition, the proceedings and the relief sought thereby, and as to the right of the petitioner to take title and possession prior to final judgment, as authorized by § 40-45.

The court, at the time specified in said notice, after hearing and determining all issues of fact and law raised by the objections which have been filed, if any there be, shall enter a final judgment with respect to such issues, and thereafter there shall remain for determination only the amount of the compensation to be paid and the persons entitled thereto.

If any infant or other person under a legal disability shall not have appeared in the proceedings by his duly authorized legal representative, the court shall appoint a guardian ad litem to represent such person's interest in the proceedings before the special master. (1935, c. 470, s. 8.)

§ 40-38. Appointment of special master.—The court, at the time of said hearing, shall appoint a special master to fix the amount of damages and compensation for the taking and condemnation of the property described in the petition and the persons entitled thereto, and to report thereon to the court. The special master shall be a disinterested person not related to any one having an interest in or lien upon the property sought to be condemned. The compensation of said special master shall not exceed fifteen ($15.00) dollars per day plus travel and subsistence expenses. The special master immediately after his appointment shall subscribe to an oath that to the best of his ability he will truly find and return the compensation for the taking and condemnation of the property and the persons entitled thereto. (1935, c. 470, s. 9.)

§ 40-39. Notice of hearing by special master.—Immediately after his appointment and taking of oath, the special master shall cause notice to be sent by registered mail to all persons who have appeared in the proceedings or to their attorneys of record and to all others having any interest in or lien upon the property sought to be condemned, as shown by the record of the proper county office or offices for the recording of documents pertaining to such real estate, and to all guardians ad litem appointed pursuant to the provisions of § 40-37, such notice to be addressed to such persons at their respective last known addresses. Such notice shall be substantially in the following form (with the blanks appropriately filled):

IN THE.....COURT FOR THE..... OF.....

TO WHOM IT MAY CONCERN:

Notice is hereby given that..... (here insert name of petitioner) has filed a petition in the above court under the Public Works Eminent Domain Law to acquire by condemnation for ..... (here give brief general description of the public works project for which the land is sought to be acquired), the following described land:

(Here describe the land sufficiently for the identification thereof. Such description may be by use of a plat or map.)

All persons having an interest in or lien upon the above described property, for which compensation will be demanded, are hereby notified that all claims or demands for compensation by reason of the taking and condemnation of such property shall be filed in writing with said court before ..... (here insert date at least fifteen days after the date set for the court hearing in the notice specified in § 40-36 hereof), and shall be deemed waived unless so filed, and that on..... .....a hearing will be held by the special master at..... (insert time and place fixed by the court for such hearing in blanks) with respect to (1) the amount of compensation to be paid for the property sought to be condemned, and (2) the persons entitled to such compensation.

Dated.....day of ....., A. D., ...

.....

Special master appointed by said Court.

The special master shall also cause a copy of said notice to be posted in conspicuous places on the property sought to be condemned.

After such notice by mailing and posting, the special master, on the date for hearing specified in the aforesaid notice, shall proceed immediately to hear and determine the question of just compensation for the taking and condemnation of the property and the persons entitled to such compensation. To this end, the special master may issue subpoenas, administer oaths to witnesses, and receive evidence and cause same to be recorded. (1935, c. 470, s. 10.)

§ 40-40. Evidence admissible; increase in value; improvements.—For the purpose of determining the value of the land sought to be condemned and fixing just compensation therefor, the following evidence (in addition to other evidence which is relevant, material and competent) shall be relevant, material and competent and shall be admitted and considered by the special master:

(a) Evidence that a building or improvement is unsafe or insanitary or a public nuisance, or is in a state of disrepair, and of the cost to correct any such condition, notwithstanding that no action has been taken by local authorities to remedy any such condition.

(b) Evidence that any state public body, charged with the duty of abating or requiring the correction of nuisances or like conditions or demolishing unsafe or insanitary structures, issued an order directing the abatement or correction of any conditions existing with respect to said building or improvement or the demolition of said building or improvement, and of the cost which compliance with any such order would entail.

(c) Evidence of the last assessed valuation of the property for purposes of taxation and of any affidavits or tax returns made by the owner in connection with such assessment which state the value of such property and of any income tax returns of the owner showing sums deducted on account of obsolescence or depreciation of such property.

(d) Evidence that such buildings and improvements are being used for illegal purposes or are being so overcrowded as to be dangerous or injurious to the health, safety, morals or welfare of the occupants thereof and the extent to which the rentals therefrom are enhanced by reason of such use.

(e) Evidence of the price and other terms upon any sale or the rent reserved and other terms of any lease or tenancy relating to such property or to any similar property in the vicinity when the sale or leasing occurred or the tenancy existed within a reasonable time of the hearing.

The award of compensation shall not be increased by reason of any increase in the value of the property resulting from the public works project to be placed thereon.

No allowance shall be made for improvements begun on property after the publication of the notice specified in § 40-36, except upon good cause being shown. (1935, c. 470, s. 11.)

§ 40-41. Report of special master. — The report of the special master must be filed with the clerk of the court in which said proceeding is pending within thirty days after the date of the taking of the oath, unless further time is granted by the court. The court shall grant additional time for the filing of the report only on a showing that the report cannot, with all due diligence, be prepared within the time fixed. (1935, c. 470, s. 12.)

§ 40-42. Notice of report. — Upon the filing of such report by the special master, the court, without delay, shall fix a date for the hearing of any objections filed thereto. Notice that said report has been filed, that all objections thereto must be filed with the court within ten days after the date of the mailing of such notice and that the court has fixed a certain date (which shall be stated therein) for the hearing of such objections, shall be given by sending a copy of such notice by registered mail to all persons who have appeared in the proceeding or their attorneys of record at their last known addresses. Upon the expiration of ten days after the mailing of such notice, all objections to the report shall be deemed waived by all persons who have not filed written objections with the court. (1935, c. 470, s. 13.)

§ 40-43. Hearing of objections by the court. —If no objections are filed to the special master's report, the court (but only on motion of the petitioner unless title to the property has vested in the petitioner) shall enter a final judgment fixing the compensation to be paid for the property and the persons entitled to such compensation. If any objections are filed to the special master's report, the court on the date specified in the aforesaid order shall hear and determine such questions of law and fact as are raised by such exceptions and may approve, disapprove or modify the special master's findings or may reject the special master's report in toto. In the event the special master's report is rejected in toto, the court shall at once appoint another special master in the same manner that the first special master was appointed, and such special master shall have the same powers and duties as the special master first appointed, except that notice of the time for filing claims and of the hearing of the special master may be given by registered mail to all persons who have appeared in the proceedings or their attorneys of record at their last known addresses, and no other notice shall be necessary. If the court shall approve the special master's report, with or without modification, the court (but only on motion of the petitioner unless title to the property has previously vested in the petitioner) shall enter a final judgment, fixing the compensation to be paid for such property and the persons entitled to such compensation.

If title to said property has not previously been vested in the petitioner, the title and right to possession of said property shall vest in the petitioner immediately upon the entry of such final judgment and upon the deposit in court by the petitioner of the amount of the judgment fixed by the court as the compensation for such property. Upon the entry of such judgment and the vesting of title aforesaid, the court shall designate the day (not exceeding thirty days thereafter, except upon good cause shown) on which the parties in possession of said property shall be required to surrender possession to the petitioner. (1935, c. 470, s. 14.)

§ 40-44. Certified copy of judgment. — Upon the rendition of the final judgment vesting title in the petitioner, the clerk of the court shall make and certify, under the seal of the court, a copy or copies of such judgment, which shall be filed or recorded in the proper county office or offices for the recording of documents pertaining to the real property described therein, and such filing or recording shall constitute notice to all persons of the contents thereof. A copy of the judgment certified by the clerk of the court as aforesaid shall be competent and admissible evidence in any proceedings at law or in equity. (1935, c. 470, s. 15.)

§ 40-45. Declaration of taking; property deemed condemned; fixing day for surrender of property; security for compensation and payment of award. —At any time at or after the filing of the petition referred to in § 40-34, and before the entry of final judgment, the petitioner may file with the clerk of the court a declaration of taking signed by the duly authorized officer or agent of the petitioner declaring that all or any part of the property described in said petition is to be taken for the use of the petitioner.

Said declaration of taking shall be sufficient if it sets forth: (1) a description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof; (2) a statement of the estate or interest in said property being taken; and (3) a statement of the sum of money estimated by the petitioner to be just compensation for the property taken.

Upon the filing of said declaration of taking and the deposit in court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration title to the property specified in said declaration shall vest in the petitioner and said property shall be deemed to be condemned and taken for the use of the petitioner, and the right to just compensation for the same shall vest in the persons entitled thereto. Upon the filing of the declaration of taking, the court shall designate a day (not exceeding thirty days after such filing, except upon good cause

shown) on which the parties in possession shall be required to surrender possession to the petitioner. In the event that the petitioner is an authorized corporation, the court, prior to directing surrender of possession to the petitioner, shall require such security to be given, in addition to the amount deposited in court, as will reasonably assure the payment of any amount ultimately determined as the compensation to be paid.

The ultimate amount of compensation shall be fixed in the manner heretofore specified. If the amount so fixed shall exceed the amount so deposited in court by the petitioner, the court shall enter judgment against the petitioner in the amount of such deficiency, together with interest at the rate of six per centum per annum on such deficiency from the date of the vesting of title to the date of the entry of the final judgment (subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the petitioner) and the court shall order the petitioner to deposit the amount of such deficiency in court. (1935, c. 470, s. 16.)

§ 40-46. Right to dismiss petition. — At any time prior to the vesting of title to the property in the petitioner, the petitioner may withdraw or dismiss its petition with respect to any or all of the property therein described. (1935, c. 470, s. 17.)

§ 40-47. Divesting title of owner.—Upon vesting of title to any property in the petitioner, all the right, title and interest of all persons having any interest therein or lien thereupon shall be divested immediately, and such persons thereafter shall be entitled only to receive compensations for such property. (1935, c. 470, s. 18.)

§ 40-48. Payment of award into court and disbursement thereof.—The payment into court by the petitioner of the amount of any award or the deposit into court by the petitioner of the amount of any award or the deposit in court of the amount estimated by the petitioner to be the just compensation for the property taken or condemned shall be deemed to be a payment or deposit of money for the use of the persons entitled thereto. Such payment or deposit shall constitute a payment to the persons entitled thereto to the extent of the moneys so paid or deposited into court.

Any such payment shall be as valid and effectual in all respects as if it were made by the petitioner directly to the person entitled thereto or, in the case of a person under legal disability, to his guardian, whether or not (a) such person or his whereabouts is known or unknown, (b) such person is under a legal disability, or (c) there are adverse or conflicting claims to such awards.

The money paid into court shall be secured in such manner as may be directed by the court and shall be paid out by the special master to the persons found to be entitled thereto by the final judgment of the court. (1935, c. 470, s. 19.)

§ 40-49. Recovery of award.—If an award shall be paid to a person not entitled thereto, the sole recourse of the person to whom it should have been paid shall be against the person to whom it shall have been paid. In such event the person entitled to the award may sue for and recover the same, with the lawful interest and costs of suit, as such money had and received to his use by the person to whom the same shall have been paid. (1935, c. 470, s. 20.)

§ 40-50. Appeal.—Any time within thirty days from the filing of any interlocutory or final order or judgment by the court, any person or persons of record in the proceedings, who shall have filed exceptions at any stage of the proceedings within the time and in the manner specified, may appeal therefrom, but only with respect to those questions or issues which were raised by such exceptions.

The taking of an appeal shall not operate to stay the proceedings under this article except when the person or persons appealing shall have obtained a stay of the execution of the judgment or order appealed from, in which event the proceedings shall be stayed only with respect to the person or persons appealing and their respective interests in the proceedings. Upon the taking of an appeal the proceedings shall be deemed severed as to the person or persons appealing and their respective interests in the proceedings.

Any interlocutory or final order or judgment shall be final and conclusive upon all persons affected thereby who have not appealed within the time herein prescribed.

Any petitioner, other than an authorized corporation, may appeal without giving bond; but any other person or persons appealing shall give bond, with good and sufficient surety, to be approved by the court, conditioned to pay all costs taxed against appellant on such appeal. (1935, c. 470, s. 21.)

§ 40-51. Costs.—If the petitioner, prior to the making of the award, shall have tendered to an interested person for his property or deposited in court for such property an amount which such interested person refused to accept or agree to as just compensation, all costs shall be assessed against such person in the event that the aforesaid amount tendered or deposited is equal to or in excess of the award fixed or confirmed by the court with respect to such parcel. (1935, c. 470, s. 22.)

§ 40-52. Powers conferred are supplemental.—The powers conferred by this article shall be in addition and supplemental to and not in substitution for the power conferred by any other law. The power of eminent domain may be exercised hereunder, notwithstanding that any other law may provide for the exercise of said power for like purposes and without regard to the requirements, restrictions or procedural provisions contained in any other law.

Procedure hereunder, which is not prescribed herein, shall be that which is otherwise prescribed by the law of the State. (1935, c. 470, s. 23.)

§ 40-53. Necessity for certificate of public convenience and necessity from utilities commission. — Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceed-

ings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 470, s. 25.)

Chapter 41. Estates.

Sec.
41-1. Fee tail converted into fee simple.
41-2. Survivorship in joint tenancy abolished; proviso as to partnership.
41-3. Survivorship among trustees.
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41-5. Unborn infant may take by deed or writing.
41-6. "Heirs" construed "children" in certain limitations.
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41-8. Collateral warranties abolished; warranties by life tenants deemed covenants.
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41-11. Sale, lease or mortgage in case of remainders.
41-12. Sales or mortgages of contingent remainders validated.
41-13. Freeholders in petition for special taxes defined.

§ 41-1. Fee tail converted into fee simple. — Every person seized of an estate in tail shall be deemed to be seized of the same in fee simple. (Rev., s. 1578; Code, s. 1325; R. C., c. 43, s. 1; 1784, c. 204, s. 5; C. S. 1734.)

§ 41-2. Survivorship in joint tenancy abolished; proviso as to partnership.— In all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in tne heirs, executors, or administrators, or assigns, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors, administrators and assigns respectively of such deceased partner all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners. (Rev., s. 1579; Code, s. 1326; R. C., c. 43, s. 2; 1784, c. 204, s. 6; C. S. 1735.)

§ 41-3. Survivorship among trustees. — In all cases where only a naked trust not coupled with a beneficial interest has been created or exists, or shall be created, and the conveyance is to two or more trustees, the right to perform the trust and make estates under the same shall be exercised by any one of such trustees, in the event of the death of his cotrustee or cotrustees or the refusal or inability of the cotrustee or cotrustees to perform the trust; and in cases of trusts herein named the trustees shall hold as joint tenants, and in all respects as joint tenants held before the year one thousand seven hundred and eighty-four. (Rev., s. 1580; 1885, c. 327, s. 1; C. S. 1736.)

§ 41-4. Limitations on failure of issue.—Every contingent limitation in any deed or will, made to depend upon the dying of any person without heir or heirs of the body, or without issue or issues of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person dies not having such heir, or issue, or child, or offspring, or descendant, or other relative (as the case may be) living at the time of his death, or born to him within ten lunar months thereafter, unless the intention of such limitation be otherwise, and expressly and plainly declared in the face of the deed or will creating it: Provided, that the rule of construction contained in this section shall not extend to any deed or will made and executed before the fifteenth of January, one thousand eight hundred and twenty-eight. (Rev., s. 1581; Code, s. 1327; R. C., c. 43, s. 3; 1827, c. 7; C. S. 1737.)

§ 41-5. Unborn infant may take by deed or writing.—An infant unborn, but in esse, shall be deemed a person capable of taking by deed or other writing any estate whatever in the same manner as if he were born. (Rev., s. 1582; Code, s. 1328; R. C., c. 43, s. 4; C. S. 1738.)

§ 41-6. "Heirs" construed "children" in certain limitations.—A limitation by deed, will, or other writing, to the heirs of a living person, shall be construed to be to the children of such person, unless a contrary intention appear by the deed or will. (Rev., s. 1583; Code, s. 1329; R. C., c. 43, s. 5; C. S. 1739.)

§ 41-7. Possession transferred to use in certain conveyances.—By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or deed operating by way

of covenant to stand seized to use, or otherwise, by any manner or means whatsoever it be, the possession of the bargainor, releasor, or covenanter shall be deemed to be transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person shall have in the use, as perfectly as if the bargainee, releasee or person entitled to the use had been enfeoffed at common law with livery of seizin of the land intended to be conveyed by such deed or covenant. (Rev., s. 1584; Code, s. 1330; R. C., c. 43, s. 6; 27 Hen. VIII, c. 10; C. S. 1740.)

§ 41-8. Collateral warranties abolished; warranties by life tenants deemed covenants.—All collateral warranties are abolished; and all warranties made by any tenant for life of lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void; and all such warranties, as aforesaid, shall be deemed covenants only, and bind the covenanter in like manner as other obligations. (Rev., s. 1587; Code, s. 1334; R. C., c. 43, s. 10; 4 Anne, c. 16, s. 21; 1852, c. 16; C. S. 1741.)

§ 41-9. Spendthrift trusts. — It is lawful for any person by deed or will to convey any property, which does not yield at the time of the conveyance a clear annual income exceeding five hundred dollars, to any other person in trust to receive and pay the profits annually or oftener for the support and maintenance of any child, grandchild or other relation of the grantor, for the life of such child, grandchild or other relation, with remainder as the grantor shall provide; and the property so conveyed shall not be liable for or subject to be seized or taken in any manner for the debts of such child, grandchild or other relation, whether the same be contracted or incurred before or after the grant. (Rev., s. 1588; Code, s. 1335; 1871-2, c. 204, s. 1; C. S. 1742.)

§ 41-10. Titles quieted. — An action may be brought by any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claims; and by any man or woman against his or her wife or husband or alleged wife or husband who have not lived together as man and wife within the two years preceding, and who at the death of such plaintiff might have or claim to have an interest in his or her estate, and a decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff then owned or afterwards acquired: Provided, that no such relief shall be granted against such husband or wife or alleged wife or husband, except in case the summons in said action is personally served on such defendant.

If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs. In any case in which judgment has been or shall be docketed, whether such judgment is in favor of or against the person bringing such action, or is claimed by him, or affects real estate claimed by him, or whether such judgment is in favor of or against the person against whom such action may be brought, or is claimed by him, or affects real estate claimed by him, the lien of said judgment shall be such claim of an estate or interest in real estate as is contemplated by this section. (Rev., s. 1589; 1893, c. 6; 1903, c. 763; 1907, c. 888; C. S. 1743.)

§ 41-11. Sale, lease or mortgage in case of remainders.—In all cases where there is a vested interest in real estate, and a contingent remainder over to persons who are not in being, or when the contingency has not yet happened which will determine who the remaindermen are, there may be a sale, lease or mortgage of the property by a proceeding in the superior court, which proceeding shall be conducted in the manner pointed out in this section. Said proceeding may be commenced by summons by any person having a vested interest in the land, and all persons in esse who are interested in said land shall be made parties defendant and served with summons in the way and manner now provided by law for the service of summons in other civil actions, as provided by § 1-94, and service of summons upon nonresidents, or persons whose names and residences are unknown, shall be by publication as now required by law or such service in lieu of publication as now provided by law. In cases where the remainder will or may go to minors, or persons under other disabilities, or to persons not in being, or whose names and residences are not known, or who may in any contingency become interested in said land, but because of such contingency cannot be ascertained, the clerk of the superior court shall, after due inquiry of persons who are in no way interested in or connected with such proceeding, designate and appoint some discreet person as guardian ad litem, to represent such remainderman, upon whom summons shall be served as provided by law for other guardians ad litem, and it shall be the duty of such guardian ad litem to defend such actions, and when counsel is needed to represent him, to make this known to the clerk, who shall by an order give instructions as to the employment of counsel and the payment of fees.

The court shall, if the interest of all parties require or would be materially enhanced by it, order a sale of such property or any part thereof for reinvestment, either in purchasing or in improving real estate, less expense allowed by the court for the proceeding and sale, and such newly acquired or improved real estate shall be held upon the same contingencies and in like manner as was the property ordered to be sold. The court may authorize the loaning of such money subject to its approval until such time when it can be reinvested in real estate. And after the sale of such property in all proceedings hereunder, where there is a life estate in lieu of said interest or investment of proceeds to which the life tenant would be entitled to, or to the use of, the court may in its discretion order the value of said life tenants' share during the probable life of such life tenant, to be ascertained as now provided by law, and paid out of the proceeds of such sale absolutely, and the remainder of such proceeds be reinvested as herein provided. Any person or persons owning a life estate in lands which are unproductive and from which the income is insufficient to pay the taxes on and reasonable upkeep of said lands

shall be entitled to maintain an action, without the joinder of any of the remaindermen or reversioners as parties plaintiff, for the sale of said property for the purpose of obtaining funds for improving other non-productive and unimproved real estate so as to make the same profit-bearing, all to be done under order of the court, or reinvestment of the funds under the provisions of this section, but in every such action when the rights of minors or other persons not sui juris are involved, a competent and disinterested attorney shall be appointed by the court to file answer and represent their interests. The provisions of the preceding sentence, being remedial, shall apply to cases where any title in such lands shall have been acquired before, as well as after, its passage—March 7, 1927.

The clerk of the superior court is authorized to make all orders for the sale, lease or mortgage of property under this section, and for the reinvestment or securing and handling of the proceeds of such sales, but no sale under this section shall be held or mortgage given until the same has been approved by the resident judge of the district, or the judge holding the courts of the district at the time said order of sale is made.

The court may authorize the temporary reinvestment, pending final investment in real estate, of funds derived from such sale in coupon or registered bonds of the United States of America (commonly called liberty bonds) issued incident to the late war between the United States and the imperial German government or bonds of the state of North Carolina issued since the year one thousand eight hundred and seventy-two; but in the event of such reinvestment, the commissioners, trustees or other officers appointed by the court to hold such funds shall hold the bonds in their possession and shall pay to the life tenant and owner of the vested interest in the lands sold only the interest accruing on the bonds, and the principal of the bonds shall be held subject to final reinvestment and to such expense only as is provided in this section. Temporary reinvestments, as aforesaid, in liberty bonds or state bonds heretofore made with the approval of the court of all or a part of the funds derived from such sales are ratified and declared valid.

The court shall, if the interest of the parties require it and would be materially enhanced by it, order such property mortgaged for such term and on such condition as to the court seems proper and to the best interest of the interested parties. The proceeds derived from the mortgage shall be used for the purpose of adding improvements to the property or to remove existing liens on the property as the court may direct, but for no other purpose. The mortgagees shall not be held responsible for determining the validity of the liens, debts and expenses where the court directs such liens, debts and expenses to be paid. In all cases of mortgages under this section the court shall authorize and direct the guardian representing the interest of minors and the guardian ad litem representing the interest of those persons unknown or not in being to join in the mortgage for the purpose of conveying the interest of such person or persons. In all cases of mortgages under this section the owner of the vested interest or his or her legal representative shall within six months from the date of the mortgage file with the court an itemized statement showing how the money derived from the said mortgage has been expended, and shall exhibit to the court receipts for said money. Said report shall be audited in the same manner as provided for the auditing of guardian's accounts. The owner of the vested interest or his or her legal representative shall collect the rents and income from the property mortgaged and apply the proceeds first to taxes and discharge of interest on the mortgage and the annual curtailment as provided thereby, or if said person uses or occupies said premises he or she shall pay the said taxes, interest and curtailments and said party shall enter into a bond to be approved by the court for the faithful performance of the duties hereby imposed, and such person shall annually file with the court a report and receipts showing that taxes, interest and the curtailment as provided by the mortgage have been paid.

The mortgagee shall not be held responsible for the application of the funds secured or derived from the mortgage. The word mortgage whenever used herein shall be construed to include deeds in trust. (Rev., s. 1590; 1903, c. 99; 1905, c. 548; 1907, cc. 956, 980; 1919, c. 17; Ex. Sess. 1921, c. 88; 1923, c. 69; 1925, c. 281; 1927, cc. 124, 186; 1933, c. 123; 1935, c. 299; 1941, c. 328; C. S. 1744.)

§ 41-12. Sales or mortgages of contingent remainders validated.—In all cases where property has been conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitations, where a judgment of a superior court has been rendered authorizing the sale or mortgaging, including execution of deeds of trust, of such property discharged of such contingent remainder, executory devise, or other limitations in actions or special proceedings where all persons in being who would have taken such property if the contingency had then happened were parties, such judgment shall be valid and binding upon the parties thereto and upon all other persons not then in being or whose estates had not then vested: Provided, that nothing herein contained shall be construed to impair or destroy any vested right or estate. (Rev., s. 1591; 1905, c. 93; 1923, c. 64; 1935, c. 36; C. S. 1745.)

§ 41-13. Freeholders in petition for special taxes defined.—In all cases where a petition by a specific number of freeholders is required as a condition precedent to ordering an election to provide for the assessment or levy of taxes upon realty, all residents of legal age owning realty for life or longer term, irrespective of sex, shall be deemed freeholders within the meaning of such requirement. (1915, c. 22; C. S. 1746.)

Chapter 42. Landlord and Tenant.

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Art. 1. General Provisions.

§ 42-1. Lessor and lessee not partners. — No lessor of property, merely by reason that he is to receive as rent or compensation for its use a share of the proceeds or net profits of the business in which it is employed, or any other uncertain consideration, shall be held a partner of the lessee. (Rev., s. 1982; Code, s. 1744; 1868-9, c. 156, s. 3; C. S. 2341.)

§ 42-2. Attornment unnecessary on conveyance of reversions, etc.—Every conveyance of any rent, reversion, or remainder in lands, tenements or hereditaments, otherwise sufficient, shall be deemed complete without attornment by the holders of particular estates in said lands: Provided, no holder of a particular estate shall be prejudiced by any act done by him as holding under his grantor, without notice of such conveyance. (Rev., s. 947; Code, s. 1764; 4 Anne, c. 16, s. 9; 1868-9, c. 156, s. 17; C. S. 2342.)

§ 42-3. Term forfeited for nonpayment of rent. —In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within ten days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reëntry in the lease. (1919, c. 34; C. S. 2343.)

§ 42-4. Recovery for use and occupation. — When any person occupies land of another by the permission of such other, without any express agreement for rent, or upon a parol lease which is void, the landlord may recover a reasonable compensation for such occupation, and if by such parol lease a certain rent was reserved, such reservation may be received as evidence of the value of the occupation (Rev., s. 1986; Code, s. 1746; 1868-9, c. 156, s. 5; C. S. 2344.)

§ 42-5. Rent apportioned, where lease terminated by death.—If a lease of land, in which rent is reserved, payable at the end of the year or other certain period of time, is determined by the death of any person during one of the periods in which the rent was growing due, the lessor or his personal representative may recover a part of the rent which becomes due after the death, proportionate to the part of the period elapsed before the death, subject to all just allowances; and if any security was given for such rent it shall be apportioned in like manner. (Rev., s. 1987; Code, s. 1747; 1868-9, c. 156, s. 6; C. S. 2345.)

§ 42-6. Rents apportioned, where right to payment terminated by death.—In all cases where rents, rent charges, annuities, pensions, dividends, or any other payments of any description, are made payable at fixed periods to successive owners under any instrument, or by any will, and where the right of any owner to receive payment is terminable by a death or other uncertain event, and where such right so terminates during a period in

which a payment is growing due, the payment becoming due next after such terminating event, shall be apportioned among the successive owners according to the parts of such periods elapsing before and after the terminating event. (Rev., s. 1988; Code, s. 1748; 1868-9, c. 156, s. 7; C. S. 2346.)

§ 42-7. In lieu of emblements, farm lessee holds out year, with rents apportioned.—When any lease for years of any land let for farming on which a rent is reserved determines during a current year of the tenancy, by the happening of any uncertain event determining the estate of the lessor, or by a sale of said land under any mortgage or deed of trust, the tenant in lieu of emblements shall continue his occupation to the end of such current year, and shall then give up such possession to the succeeding owner of the land, and shall pay to such succeeding owner a part of the rent accrued since the last payment became due, proportionate to the part of the period of payment elapsing after the termination of the estate of the lessor to the giving up such possession; and the tenant in such case shall be entitled to a reasonable compensation for the tillage and seed of any crop not gathered at the expiration of such current year from the person succeeding to the possession. (Rev., s. 1990; Code, s. 1749; 1868-9, 156, s. 8; 1931, c. 173, s. 1; C. S. 2347.)

§ 42-8. Grantees of reversion and assigns of lease have reciprocal rights under covenants.—The grantee in every conveyance of reversion in lands, tenements or hereditaments has the like advantages and remedies by action or entry against the holders of particular estates in such real property, and their assigns, for nonpayment of rent, and for the nonperformance of other conditions and agreements contained in the instruments by the tenants of such particular estates, as the grantor or lessor or his heirs might have; and the holders of such particular estates, and their assigns, have the like advantages and remedies against the grantee of the reversion, or any part thereof, for any conditions and agreements contained in such instruments, as they might have had against the grantor or his lessors or his heirs. (Rev., s. 1989; Code, s. 1765; 32 Hen. VIII, c. 34; 1868-9, c. 156, s. 18; C. S. 2348.)

§ 42-9. Agreement to rebuild, how construed in case of fire.—An agreement in a lease to repair a demised house shall not be construed to bind the contracting party to rebuild or repair in case the house shall be destroyed or damaged to more than one-half of its value, by accidental fire not occurring from the want of ordinary diligence on his part. (Rev., s. 1985; Code, s. 1752; 1868-9, c. 156, s. 11; C. S. 2349.)

§ 42-10. Tenant not liable for accidental damage.—A tenant for life, or years, or for a less term, shall not be liable for damage occurring on the demised premises accidentally, and notwithstanding reasonable diligence on his part, unless he so contract. (Rev., s. 1991; Code, s. 1751; 1868-9, C. 156, s. 10; C. S. 2350.)

§ 42-11. Willful destruction by tenant misdemeanor.—If any tenant shall, during his term or after its expiration, wilfully and unlawfully demolish, destroy, deface, injure or damage any tenement house, uninhabited house or other outhouse, belonging to his landlord or upon his premises by removing parts thereof or by burning, or in any other manner, or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other inclosure or any part thereof, built or standing upon the premises of such landlord, or shall wilfully and unlawfully cut down or destroy any timber, fruit, shade or ornamental tree belonging to said landlord, he shall be guilty of a misdemeanor. (Rev., s. 3686; Code, s. 1761; 1883, c. 224; C. S. 2351.)

§ 42-12. Lessee may surrender, where building destroyed or damaged.—If a demised house, or other building, is destroyed during the term, or so much damaged that it cannot be made reasonably fit for the purpose for which it was hired, except at an expense exceeding one year's rent of the premises, and the damage or destruction occur without negligence on the part of the lessee or his agents or servants, and there is no agreement in the lease respecting repairs, or providing for such a case, and the use of the house damaged or destroyed was the main inducement to the hiring, the lessee may surrender his estate in the demised premises by a writing to that effect delivered or tendered to the landlord within ten days from the damage or destruction, and by paying or tendering at the same time all rent in arrear, and a part of the rent growing due at the time of the damage or destruction, proportionate to the time between the last period of payment and the occurrence of the damage or destruction, and the lessee shall be thenceforth discharged from all rent accruing afterwards; but not from any other agreement in the lease. This section shall not apply if a contrary intention appear from the lease. (Rev., s. 1992; Code, s. 1753; 1868-9, c. 156, s. 12; C. S. 2352.)

§ 42-13. Wrongful surrender to other than landlord misdemeanor.—Any tenant or lessee of lands who shall willfully, wrongfully and with intent to defraud the landlord or lessor, give up the possession of the rented or leased premises to any person other than his landlord or lessor, shall be guilty of a misdemeanor. (Rev., s. 3682; Code, s. 1760; 1883, c. 138; C. S. 2353.)

§ 42-14. Notice to quit in certain tenancies.—A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. (Rev., s. 1984; Code, s. 1750; 1891, c. 227; 1868-9, c. 156, s. 9; C. S. 2354.)

Local Modification.—Forsyth: 1935, c. 119; Halifax: 1935, c. 22; Hertford: 1939, c. 367; Montgomery: 1925, c. 196, s. 2; Perquimans: 1935, c. 472; Pitt: 1925, c. 196, s. 2; Randolph: 1925, c. 196, s. 2; Wake: 1931, c. 20.

Art. 2. Agricultural Tenancies.

§ 42-15. Landlord's lien on crops for rents, advances, etc., enforcement. — When lands are rented or leased by agreement, written or oral, for agricultural purposes, or are cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or

his assigns at all times, until the rents for said lands are paid and until all the stipulations contained in the lease or agreement are performed, or damages in lieu thereof paid to the lessor or his assigns, and until said party or his assigns is paid for all advancements made and expenses incurred in making and saving said crops. A landlord, to entitle himself to the benefit of the lien herein provided for, must conform as to the prices charged for the advance to the provisions of the article Agricultural Liens, in the chapter Liens.

This lien shall be preferred to all other liens, and the lessor or his assigns is entitled, against the lessee or cropper, or the assigns of either, who removes the crop or any part thereof from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop or any part thereof, to the remedies given in an action upon a claim for the delivery of personal property.

Provided, that when advances have been made by the federal government or any of its agencies, to any tenant or tenants on lands under the control of any guardian, executor and/or administrator for the purpose of enabling said tenant or tenants to plant, cultivate and harvest crops grown on said land, the said guardian, executor, and/or administrator may waive the above lien in favor of the federal government, or any of its agencies, making said advances. (Rev., s. 1993; Code, s. 1754; 1876-7, c. 283; 1917, c. 134; 1933, c. 219; C. S. 2355.)

§ 42-16. Rights of tenant. — When the lessor or his assigns gets the actual possession of the crop or any part thereof otherwise than by the mode prescribed in § 42-15, and refuses or neglects, upon a notice, written or oral, of five days, given by the lessee or cropper or the assigns of either, to make a fair division of said crop, or to pay over to such lessee or cropper or the assigns of either, such part thereof as he may be entitled to under the lease or agreement, then and in that case the lessee or cropper or the assigns of either is entitled to the remedies against the lessor or his assigns given in an action upon a claim for the delivery of personal property to recover such part of the crop as he, in law and according to the lease or agreement, may be entitled to. The amount or quantity of such crop claimed by said lessee or cropper or the assigns of either, together with a statement of the grounds upon which it is claimed, shall be fully set forth in an affidavit at the beginning of the action. (Rev., s. 1994; Code, s. 1755; 1876-7, c. 283, s. 2; C. S. 2356.)

§ 42-17. Action to settle disputes between parties.—When any controversy arises between the parties, and neither party avails himself of the provisions of this chapter, it is competent for either party to proceed at once to have the matter determined in the court of a justice of the peace, if the amount claimed is two hundred dollars or less, or in the superior court of the county where the property is situate if the amount so claimed is more than two hundred dollars. (Rev., s. 1995; Code, s. 1756; 1876-7, c. 283, s. 3; C. S. 2357.)

§ 42-18. Tenant's undertaking on continuance or appeal.—In case there is a continuance or an appeal from the justice's decision to the superior court, the lessee or cropper, or the assigns of either, shall be allowed to retain possession of said property upon his giving an undertaking to the lessor or his assigns, or the adverse party, in a sum double the amount of the claim, if such claim does not amount to more than the value of such property, otherwise to double the value of such property, with good and sufficient surety, to be approved by the justice of the peace or the clerk of the superior court, conditioned for the faithful payment to the adverse party of such damages as he shall recover in said action. (Rev., s. 1995; Code, s. 1756; 1876-7, c. 283, s. 3; C. S. 2358.)

§ 42-19. Crops delivered to landlord on his undertaking. — In case the lessee or cropper, or the assigns of either, at the time of the appeal or continuance mentioned in § 42-18, fails to give the undertaking therein required, then the constable or other lawful officer shall deliver the property into the actual possession of the lessor or his assigns, upon the lessor or his assigns giving to the adverse party an undertaking in double the amount of said property, to be justified as required in § 42-18, conditioned for the forthcoming of such property, or the value thereof, in case judgment is pronounced against him. (Rev., s. 1996; Code, s. 1757; 1876-7, c. 283, s. 4; C. S. 2359.)

§ 42-20. Crops sold, if neither party gives undertaking.—If neither party gives the undertaking described in § 42-18 and § 42-19, it is the duty of the justice of the peace or the clerk of the superior court to issue an order to the constable or sheriff, or other lawful officer, directing him to take into his possession all of said property, or so much thereof as may be necessary to satisfy the claimant's demand and costs, and to sell the same under the rules and regulations prescribed by law for the sale of personal property under execution, and to hold the proceeds thereof subject to the decision of the court upon the issue or issues pending between the parties. (Rev., s. 1997; Code, s. 1758; 1876-7, c. 283, s. 5; C. S. 2360.)

§ 42-21. Tenant's crop not subject to execution against landlord.—Whenever servants and laborers in agriculture shall by their contracts, oral or written, be entitled, for wages, to a part of the crops cultivated by them, such part shall not be subject to sale under executions against their employers, or the owners of the land cultivated. (Rev., s. 1998; Code, s. 1796; C. S. 2361.)

§ 42-22. Unlawful seizure by landlord or removal by tenant misdemeanor.—If any landlord shall unlawfully, willfully, knowingly and without process of law, and unjustly seize the crop of his tenant when there is nothing due him, he shall be guilty of a misdemeanor. If any lessee or cropper, or the assigns of either, or any other person, shall remove a crop, or any part thereof, from land without the consent of the lessor or his assigns, and without giving him or his agent five days notice of such intended removal, and before satisfying all the liens held by the lessor or his assigns, on said crop, he shall be guilty of a misdemeanor. (Rev., ss. 3664, 3665; Code, s. 1759; 1876-7, c. 283, s. 6; 1883, c. 83; C. S. 2362.)

§ 42-23. Terms of agricultural tenancies in cer-

tain counties.—All agricultural leases and contracts hereafter made between landlord and tenant for a period of one year or from year to year, whether such tenant pay a specified rental or share in the crops grown, such year shall be from December first to December first, and such period of time shall constitute a year for agricultural tenancies in lieu of the law and custom heretofore prevailing, namely from January first to January first. In all cases of such tenancies a notice to quit of one month as provided in § 42-14 shall be applicable. If on account of illness or any other good cause, the tenant is unable to harvest all the crops grown on lands leased by him for any year prior to the termination of his lease contract on December first, he shall have a right to return to the premises vacated by him at any time prior to December thirty-first of said year, for the purpose only of harvesting and dividing the remaining crops so ungathered. But he shall have no right to use the houses or outbuildings or that part of the lands from which the crops have been harvested prior to the termination of the tenant year, as defined in this section.

This section shall only apply to the counties of Anson, Ashe, Bladen, Brunswick, Columbus, Cumberland, Duplin, Gaston, Lincoln, Pender, Robeson, Sampson, and Yadkin. (Pub. Loc. 1929, c. 40; Pub. Loc. 1935, c. 288; Pub. Loc. 1937, cc. 96, 600; Pub. Loc. 1941, c. 41.)

§ 42-24. Turpentine and lightwood leases.—This chapter shall apply to all leases or contracts to lease turpentine trees, or use lightwood for purposes of making tar, and the parties thereto shall be fully subject to the provisions and penalties of this chapter. (Rev., s. 1999; Code, s. 1762; 1893, c. 517; 1876-7, c. 283, s. 7; C. S. 2363.)

§ 42-25. Mining and timber land leases. — If in a lease of land for mining, or of timbered land for the purpose of manufacturing the timber into goods, rent is reserved, and if it is agreed in the lease that the minerals, timber or goods, or any portion thereof, shall not be removed until the payment of the rent, in such case the lessor shall have the rights and be entitled to the remedy given by this chapter. (Rev., s. 2000; Code, s. 1763; 1868-9, c. 156, s. 16; C. S. 2364.)

Art. 3. Summary Ejectment.

§ 42-26. Tenant holding over may be dispossessed in certain cases.—Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

1. When a tenant in possession of real estate holds over after his term has expired.

2. When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

3. When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated. (Rev., s. 2001; Code, ss. 1766, 1777; 4 Geo. II, c. 28; 1868-9, c. 156, s. 19; 1905, cc. 297, 299, 820; C. S. 2365.)

Local Modification.—Johnston: 1933, c. 390.

§ 42-27. Local: Refusal to perform contract ground for dispossession.—When any tenant or cropper who enters into a contract for the rental of land for the current or ensuing year willfully neglects or refuses to perform the terms of his contract without just cause, he shall forfeit his right of possession to the premises. This section applies only to the following counties: Alleghany, Anson, Beaufort, Bertie, Bladen, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Duplin, Edgecombe, Franklin, Gaston, Gates, Greene, Guilford, Halifax, Harnett, Hertford, Hyde, Jackson, Johnston, Jones, Lenoir, Martin, Mecklenburg, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Pitt, Polk, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Swain, Tyrrell, Union, Wake, Wayne, Washington, Wilson, Yadkin, Moore, Surry and Stokes. (Rev., s. 2001, subsec. 4; Code, ss. 1766, 1777; 4 Geo. II, c. 28; 1868-9, c. 156, s. 19; 1905, cc. 297, 299, 820; 1907, cc. 43, 153; 1909, cc. 40, 550; Pub. Loc. Ex. Sess. 1924, c. 66; 1931, cc. 50, 194, 446; 1933, cc. 86, 485; 1935, c. 39; C. S. 2366.)

§ 42-28. Summons issued by justice on verified complaint.—When the lessor or his assigns, or his or their agent or attorney, makes oath in writing, before any justice of the peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases described in § 42-26 and § 42-27, and describing the premises and asking to be put in possession thereof, the justice shall issue a summons reciting the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney), to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrear, and damage for the occupation of the premises since the cessation of the estate of the lessee: Provided, the sum claimed shall not exceed two hundred dollars; but if he omits to make such claim, he shall not be thereby prejudiced in any other action for their recovery. (Rev., s. 2002; Code, s. 1767; 1868-9, c. 156, s. 20; 1869-70, c. 212; C. S. 2367.)

§ 42-29. Service of summons.—The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there; or, if the defendant has no usual place of residence in the county and cannot be found therein, by fixing a copy on some conspicuous part of the premises claimed. (Rev., s. 2003; Code, s. 1768; 1868-9, c. 156, s. 21; C. S. 2368.)

§ 42-30. Judgment by default or confession.—The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if the defendant fails to appear, or admits the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be. (Rev., s. 2004; Code, s. 1769; 1868-9, c. 156, s. 22; C. S. 2369.)

§ 42-31. Trial by justice; jury trial; judgment; execution.—If the defendant by his answer denies any material allegation in the oath of the plaintiff, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party demands a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury finds that the allegation in the plaintiff's oath, which entitles him to be put in possession, is true, the justice shall give judgment that the defendant be removed from and the plaintiff put in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury, and for costs; and shall issue his execution to carry the judgment into effect. (Rev., s. 2005; Code, s. 1770; 1868-9, c. 156, s. 23; C. S. 2370.)

§ 42-32. Damages assessed to trial.—On appeal to the superior court, the jury trying the issue joined shall assess the damages of the plaintiff for the detention of his possession to the time of the trial in that court, and judgment for the rent in arrear and for the damages assessed may, on motion, be rendered against the sureties to the appeal. (Rev., s. 2006; Code, s. 1775; 1868-9, c. 156, s. 28; C. S. 2371.)

§ 42-33. Rent and costs tendered by tenant.—If, in any action brought to recover the possession of demised premises upon a forfeiture for the nonpayment of rent, the tenant, before judgment given in such action, pays or tenders the rent due and the costs of the action, all further proceedings in such action shall cease. If the plaintiff further prosecutes his action, and the defendant pays into court for the use of the plaintiff a sum equal to that which shall be found to be due, and the costs, to the time of such payment, or to the time of a tender and refusal, if one has occurred, the defendant shall recover from the plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into court for his use, and the proceedings shall be stayed. (Rev., s. 2007; Code, s. 1773; 4 Geo. II, c. 28, s. 4; 1868-9, c. 156, s. 26; C. S. 2372.)

§ 42-34. Undertaking on appeal; when to be increased.—Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except the cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided, further, that the presiding judge, in his discretion, may take up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed. (Rev., s. 2008; Code, s. 1772; 1868-9, c. 156, s. 25; 1883, c. 316; 1921, c. 90; Ex. Sess., 1921, c. 17; 1933, c. 154; 1937, c. 294; C. S. 2373.)

Local Modification.—Burke: Pub. Loc. 1927, c. 57, Davie, Granville, Iredell, Mecklenburg, Swain, Watauga: C. S. 2373.

§ 42-35. Restitution of tenant, if case quashed, etc., on appeal.—If the proceedings before the justice are brought before a superior court and quashed, or judgment is given against the plaintiff, the superior or other court in which final judgment is given shall, if necessary, restore the defendant to the possession, and issue such writs as are proper for that purpose. (Rev., s. 2009; Code, s. 1774; 1868-9, c. 156, s. 27; C. S. 2374.)

§ 42-36. Damages to tenant for dispossession, if proceedings quashed, etc.—If, by order of the justice, the plaintiff is put in possession, and the proceedings shall afterwards be quashed or reversed, the defendant may recover damages of the plaintiff for his removal. (Rev., s. 2010; Code, s. 1776; 1868-9, c. 156, s. 30; C. S. 2375.)

Art. 4. Forms.

§ 42-37. Forms sufficient.—The following forms, or substantially similar, shall be sufficient in all proceedings under this chapter:

Oath of Plaintiff

North Carolina, ... County.

A. B., plaintiff, against C. D., defendant. } Summary proceedings in ejectment.

The plaintiff (his agent or attorney) maketh oath that the defendant entered into the possession of a piece of land in said county (describe the land) as a lessee of the plaintiff (or as lessee of E. F., who, after the making of the lease, assigned his estate to the plaintiff, or otherwise, as

the fact may be); that the term of the defendant expired on the....day of.....19.... (or that his estate has ceased by nonpayment of rent, or otherwise, as the fact may be); that the plaintiff has demanded the possession of the premises of the defendant, who refused to surrender it, but holds over; that the estate of the plaintiff is still subsisting, and the plaintiff asks to be put in possession of the premises.

The plaintiff claims.....dollars for rent of the premises from the.....day of ..... 19....to the.....day of.....19...., and also.....dollars for the occupation of the premises since the ..... day of ..... 19.... to the date hereof.

A. B., plaintiff.

Subscribed and sworn to before me, this..... day of .....19....

J. K., J. P.

Summons

North Carolina,.....County.

A. B., plaintiff, against C. D., defendant. } Summary proceedings in ejectment.

A. B. (his agent or attorney) having made and subscribed before me the oath, a copy of which is annexed, you are required to appear before me on the....day of.....,19...., at....., then and there to answer the complaint; otherwise judgment will be given that you be removed from the possession of the premises.

Witness my hand and seal this ..... day of....., 19.....

J. K., J. P. (Seal).

To C. D., defendant.

The justice attaches the oath of the plaintiff to the summons and delivers them, and a copy of both of them to the officer, and makes the following entry on his docket, or varies it according to the facts:

Docket Entries

A. B., plaintiff, against C. D., defendant. } Summary proceedings in ejectment for (describe the premises.)

Oath of plaintiff (his agent or attorney) filed on the....day of.....19....

Plaintiff claims.....dollars for rent from .....to....., and.....dollars for occupation from.....to.....

Summons issued the....day of....., 19...., to....., constable (or sheriff, as the case may be).

The officer serves the summons and returns it to the justice with the oath of the plaintiff, and with his return indorsed:

Return of Officer

On this day I served the within summons on the defendant, C. D., by delivering to him a copy thereof, and of the oath of A. B., annexed (or by leaving a copy thereof and of the oath of A. B., annexed, at the usual place of residence of the defendant, C. D., with an adult found there) (or the said C. D. not being found in my county, and having no usual or last place of residence therein) (or no adult person being found at his usual or last place of residence, by posting a copy of the summons and of the oath of A. B., annexed, on a conspicuous part of the premises claimed).

N. M., Constable.

The....day of ....., 19.....

Record to Be Entered on Docket

A. B., plaintiff, against C. D., defendant. } Summary proceedings in ejectment.

It appearing that the summons, with a copy of the oath of the plaintiff (his agent or attorney), was duly served on defendant,* and whereas the defendant fails to appear (or admits the allegations of the plaintiff), I adjudge that the defendant be removed from and the plaintiff put in possession of the premises described in the oath of the plaintiff. I also adjudge that the plaintiff recover of defendant.....dollars for rent from the ..... day of ....., 19.....to the .... day of....., 19...., and....., dollars for damages for occupation of the premises from the....day of....., 19...., to this day, and.....dollars for his costs; the....day of....., 19.....

If the defendant admits part of the allegations of plaintiff, but not all, the judgment must be varied accordingly; for example: follow the foregoing to the asterisk (*), and then proceed:

And whereas the defendant appears and admits the first and second allegations of the plaintiff, and denies the residue; and whereas both parties waived a trial by jury, I heard evidence upon the matters in issue, and find (here state the findings on the matters in issue separately).

Supposing the findings are for the plaintiff, the record would proceed:

I therefore adjudge that the defendant (and so on from the asterisk (*). If either party demands a jury, the record will proceed from the asterisk (*) as follows:

And whereas the plaintiff (or defendant, as the case may be) demanded a trial of the issues joined by a jury, I caused a jury to be summoned, to wit: (here give the names of the jurors summoned) from whom the following jury was duly impaneled, to wit: (here state the names of the six jurors impaneled), who find (here state the verdict of the jury; if they find all the issues for the plaintiff, say so; if any particular issues, say so; also state the sums assessed by them for rent and for occupation to trial). Therefore, I adjudge, etc. (as in form No. 5, from asterisk (*).

If either party appeals, the justice will enter on his docket as follows, altering the entry according to the facts:

Record of Appeal

From the foregoing judgment the plaintiff (or defendant, as the case may be) prayed an appeal to the next superior court of said county, which is allowed.

Execution on Judgment for Plaintiff

A. B., plaintiff, against C. D., defendant. } ..... County.

The State of North Carolina, to any lawful officer of said county—Greeting:

You are hereby commanded to remove C. D.

from, and put A. B. in, the possession of a certain piece of land (here describe it as in the oath of plaintiff). You shall also make out of the goods and chattels, lands and tenements, of said defendant ..... dollars, with interest from the ..... day of ....., 19....., to the day of payment, which the plaintiff lately recovered of the defendant as rent and damages, and the further sum of ..... dollars as costs, in said action. Return this writ, with a statement of your proceedings thereon, before me (state when and where according to general law respecting justices' executions).

Witness my hand and seal, this ..... day of ....., 19....

..... (Seal.)

Bond to Stay Execution

We, the undersigned, ... and ....., acknowledge ourselves indebted to ..... in the sum of ..... dollars:

Witness our hands and seals, this the ..... day of ....., A. D. 19....

Whereas on the .... day of ....., A. D. 19...., before ..... a justice of the peace for ..... county, A. B. recovered a judgment against C. D. for ..... and for..... dollars damages for the detention of said real estate from the ..... day of ....., A. D. 19...., to the ..... day of ....., A. D. 19....; and whereas the said ..... ha.... prayed an appeal to the superior court from said judgment, and also asks that execution on said judgment shall be suspended: Now, therefore, if the said ..... shall pay any judgment which, in this or in any other action, the said ..... may recover for the rent of said premises, and for damages for detention thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Stay of Execution

The State of North Carolina, to any officer having an execution in favor of A. B., plaintiff,

v. C. D., defendant, in a summary proceeding in ejectment, signed by .....

The defendant having given bond to me, as required by law, on his appeal to the superior court of ..... county, in the above case, you will stay further proceedings upon said execution and immediately return the same to me, with a statement of your action under it.

Witness my hand and seal this .... day of ....., 19....

C. D., defendant ....., J. P. (Seal.)

Certificate on Return of Appeal

The annexed are the original oath, summons and other papers, and a copy of the record of the proceedings in the case of a summary proceeding in ejectment, A. B., plaintiff, v. C. D., defendant. ....., J. P. (Seal.)

(Here state all the costs, to whom paid or due, and by whom.)

(All the papers must be attached.) (Rev., s. 2011; Code, s. 1780; C. S. 2376.)

Chapter 43. Land Registration.

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Art. 1. Nature of Proceeding.

§ 43-1. Jurisdiction in superior court.—For the purpose of enabling all persons owning real estate within this state to have the title thereto settled and registered, as prescribed by the provisions of this chapter, the superior court of the county in which the land lies in the state shall have exclusive original jurisdiction of all petitions and proceedings had thereupon, under the rules of practice and procedure prescribed for special proceedings except as herein otherwise provided. (1913, c. 90, s. 1; C. S. 2377.)

§ 43-2. Proceedings in rem; vests title. — The proceedings under any petition for the registration of land, and all proceedings in the court in relation to registered land, shall be proceedings in rem against the land, and the decrees of the court shall operate directly on the land, and vest and establish title thereto in accordance with the provisions of this chapter. (1913, c. 90, s. 2; C. S. 2378.)

§ 43-3. Rules of practice prescribed by attorney-general. — The attorney-general, with the approval of the supreme court, shall from time to time make, change, revise and revoke rules of practice in the superior court for the administration of this chapter. He shall in like manner prescribe forms for use in such court, and in the notation of the registry of titles of memorials, claims, liens, lis pendens, and all other involuntary charges upon and to such registered lands. Whenever a question shall arise in the administration of this chapter as to the proper method of protecting or asserting any right or interest under the law, and the method of procedure is in doubt, it shall be the duty of the clerk or register of deeds to notify the attorney-general, who, with the approval of the supreme court, shall prescribe a rule covering such case. (1913, c. 90, s. 31; C. S. 2379.)

Art. 2. Officers and Fees.

§ 43-4. Examiners appointed by clerk. — The clerk of the superior court of each county shall appoint three or more examiners of titles, who shall be licensed attorneys at law, residing in the state of North Carolina. They shall qualify by taking oath before the clerk to faithfully discharge the duties of such office, which oath shall be filed in the office of the clerk. The term of office shall be two years. Examiners of titles shall have and exercise the jurisdiction and perform the duties hereinafter prescribed, and receive the fees herein provided. They shall not appear in or have any connection with any proceeding instituted under the provisions of this chapter, and they shall be subject to removal at will by such clerk or judge of the superior court. (1913, c. 90, s. 3; 1917, c. 63; C. S. 2380.)

§ 43-5. Fees of officers.—The fees to be allowed the clerks and sheriffs in this proceeding shall be the same as now allowed by law to clerks and sheriffs in other special proceedings. The examiner hereinbefore provided for shall receive, as may be allowed by the clerk, a minimum fee of five dollars for such examination of each title of property assessed upon the tax books at the amount of five thousand dollars or less; for each additional thousand dollars of assessed value of property so examined he shall receive fifty cents; for examination outside of the county he shall receive a reasonable allowance. There shall be allowed to the register of deeds for copying the plot upon registration of titles book one dollar; for issuing the certificate and new certificates under this chapter, fifty cents for each; for noting the entries or memorandum required and for the entries noting the cancellation of mortgages and all other entries, if any, herein provided for, a total of twenty-five cents for the entry or entries connected with one transaction. The county or other surveyor employed under the provisions of this chapter shall not be allowed to charge more than forty cents per hour for his time actually employed in making the survey and the map, except by agreement with the petitioner: Provided, however, that a minimum fee of two dollars in any case may be allowed.

There shall be no other fees allowed of any nature except as herein provided, and the bond of the register, clerk and sheriff shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this chapter in as full a manner as such bond is now liable by law. (1913, c. 90, s. 30; C. S. 2381.)

Art. 3. Procedure for Registration.

§ 43-6. Who may institute proceedings.—Any person, being in the peaceable possession of land

within the state and claiming an estate of inheritance therein, may prosecute a special proceeding in rem against all the world in the superior court for the county in which such land is situate, to establish his title thereto, to determine all adverse claims and have the title registered. Any number of the separate parcels of land claimed by the petitioner may be included in the same proceeding, and any one parcel may be established in several parts, each of which shall be clearly and accurately described and registered separately, and the decree therein shall operate directly upon the land and establish and vest an indefeasible title thereto. Any person in like possession of lands within the state, claiming an interest or estate less than the fee therein, may have his title thereto established under the provisions of this chapter, without the registration and transfer features herein provided. (1913, c. 90, s. 4; C. S. 2382.)

§ 43-7. Land lying in two or more counties.—In every proceeding to register title, in which it is alleged in the petition or made to appear that the land therein described, whether in one or more parcels, is situated partly in one county and partly in another, or is situated in two or more counties, that is to say, when an entire tract, or two or more entire tracts, are situated in two or more counties (but not separate or several tracts situated in different counties) it shall be competent to institute the proceedings before the clerk of the superior court of any county in which any part of such tract lying in two or more counties is situated, and said clerk shall have jurisdiction both of the parties and of the subject-matter as fully as if said land was situated wholly in his county; but upon the entry of a final decree of registration of title, the clerk by or before whom the same was rendered shall certify a copy thereof to the register of deeds of every county in which said land or any part thereof is situated, and the same shall be there filed and recorded; and every such register of deeds, upon demand of the person entitled and payment of requisite fees therefor, shall issue and deliver a certificate of title for that part of said land situated in his county. This section shall apply and become effective in all cases or proceedings heretofore conducted before any clerk of the superior court of this state for registration of title, as in this chapter authorized, when the land described in the petition as an entire tract was situated in two or more counties, as aforesaid; and upon the filing and recording of a certified copy of the final decree or decree of registration therein, the register of deeds shall issue and deliver a certificate of title to the present owner or person entitled to the same, for that part of the land situated in his county, as aforesaid, upon payment or tender of proper fees therefor. (1919, c. 82, s. 1; C. S. 2383.)

§ 43-8. Petition filed; contents.—Suit for registration of title shall be begun by a petition to the court by the persons claiming, singly or collectively, to own or have the power of appointing or disposing of an estate in fee simple in any land, whether subject to liens or not. Infants and other persons under disability may sue by guardian or trustee, as the case may be, and corporations as in other cases now provided by law; but the person in whose behalf the petition is made shall always be named as petitioner. The petition shall be signed and sworn to by each petitioner, and shall contain a full description of the land to be registered as hereinafter provided, together with a plot of same by metes and bounds, corners to be marked by permanent markers of iron, stone or cement; it shall show when, how and from whom it was acquired, and whether or not it is now occupied, and if so, by whom; and it shall give an account of all known liens, interests, equities and claims, adverse or otherwise, vested or contingent, upon such land. Full names and addresses, if known, of all persons who may be interested by marriage or otherwise, including adjoining owners and occupants, shall be given. If any person shall be unable to state the metes and bounds, the clerk may order a preliminary survey. (1913, c. 90, s. 5; C. S. 2384.)

§ 43-9. Summons issued and served; disclaimer.—The clerk of the court shall issue a summons directed to the sheriff of every county in which persons named as interested may reside, such persons being made defendants, and the summons shall be returnable as in other cases of special proceedings, except that the return shall be at least sixty days from the date of the summons. The summons shall be served at least ten days before the return thereof and the return recorded in the same manner as in other special proceedings; and all parties under disabilities shall be represented by guardian, either general or ad litem. If the persons named as interested are not residents of the state of North Carolina, and their residence is known, which must appear by affidavit, the summons must be served on such nonresidents as is now prescribed by law for service of summons on nonresidents.

Any party defendant to such proceeding may file a disclaimer of any claim or interest in the land described in the petition, which shall be deemed an admission of the allegations of the petition, and the decree shall bar such party and all persons thereafter claiming under him, and such party shall not be liable for any costs or expenses of the proceeding except such as may have been incurred by reason of his delay in pleading. (1913, c. 90, s. 6; C. S. 2385.)

§ 43-10. Notice of petition published.—In addition to the summons issued, prescribed in the foregoing section, the clerk of the court shall, at the time of issuing such summons, publish a notice of the filing thereof containing the names of the petitioners, the names of all persons named in the petition, together with a short but accurate description of the land and the relief demanded, in some secular newspaper published in the county wherein the land is situate, and having general circulation in the county; and if there be no such paper, then in a newspaper in the county nearest thereto and having general circulation in the county wherein the land lies, once a week for eight issues of such paper. The notice shall set forth the title of the cause and in legible or conspicuous type the words "To whom it may concern," and shall give notice to all persons of the relief demanded and the return day of the summons: Pro-

vided, that no final order or judgment shall be entered in the cause until there is proof and adjudication of publication as in other cases of publication of notice of summons. The provisions of this section, in respect to the issuing and service of summons and the publication of the notice, shall be mandatory and essential to the jurisdiction of the court to proceed in the cause: Provided, that the recital of the service of summons and publication in the decree or in the final judgment in the cause, and in the certificate issued to the petitioner as hereinafter provided, shall be conclusive evidence thereof. The clerk of the court shall also record a copy of said notice in the lis pendens docket of his office and cross-index same as other notices of lis pendens and shall also certify a copy thereof to the Superior Court of each county in which any part of said land lies, and the clerk thereof shall record and cross index same in the lis pendens records of his office as other notices of lis pendens are recorded and cross-indexed. (1913, c. 90, s. 7; 1915, c. 128, s. 1; 1919, c. 82, s. 2; 1925, c. 287; C. S. 2386.)

§ 43-11. Hearing and decree.—1. Referred to Examiner.—Upon the return day of the summons the petition shall be set down for hearing upon the pleadings and exhibits filed. If any person claiming an interest in the land described in the petition, or any lien thereon, shall file an answer, the petition and answer, together with all exhibits filed, shall be referred to the examiner of titles, who shall proceed, after notice to the petitioner and the persons who have filed answer or answered, to hear the cause upon such parol or documentary evidence as may be offered or called for and taken by him, and in addition thereto make such independent examination of the title as may be necessary. Upon his request the clerk shall issue a commission under the seal of the court for taking such testimony as shall be beyond the jurisdiction of such examiner.

2. Examiner's Report.—The examiner shall, within thirty days after such hearing, unless for good cause the time shall be extended, file with the clerk a report of his conclusions of law and fact, setting forth the state of such title, any liens or encumbrances thereon, by whom held, amount due thereon, together with an abstract of title to the lands and any other information in regard thereto affecting its validity.

3. Exceptions to Report.—Any of the parties to the proceeding may, within twenty days after such report is filed, file exceptions, either to the conclusions of law or fact. Whereupon the clerk shall transmit the record to the judge of the superior court for his determination thereof; such judge may on his own motion certify any issue of fact arising upon any such exceptions to the superior court of the county in which the proceeding is pending, for a trial of such issue by jury, and he shall so certify such issue of fact for trial by jury upon the demand of any party to the proceeding. If, upon consideration of such record, or the record and verdict of issues to be certified and tried by jury, the title be found in the petitioner, the judge shall enter a decree to that effect, ascertaining all limitations, liens, etc., declaring the land entitled to registration accordingly, and the same, together with the record, shall be docketed by the clerk of the court as in other cases, and a copy of the decree certified to the register of deeds of the county for registration as hereinafter provided. Any of the parties may appeal from such judgment to the supreme court, as in other special proceedings.

4. No Judgment by Default.—No judgment in any proceeding under this chapter shall be given by default, but the court must require an examination of the title in every instance except as respects the rights of parties who, by proper pleadings, admit the petitioner's claim. If, upon the return day of the summons and the day upon which the petition is set down for hearing, no answer be filed, the clerk shall refer the same to the examiner of titles, who shall, after notice to the petitioner, proceed to examine the title, together with all liens or encumbrances set forth or referred to in the petition and exhibits, and shall examine the registry of deeds, mortgages, wills, judgments, mechanic liens and other records of the county, and upon such examination he shall, as hereinbefore provided, report to the clerk the condition of the title, with a notice of liens or encumbrances thereon. The examiner shall have power to take and call for evidence in such case as fully as if the application were being contested. If the title shall be found to be in the petitioner, the clerk shall enter a decree to that effect and declaring the land entitled to registration, with entry of any limitations, liens, etc., and shall certify the same for registration, as hereinbefore provided, after approval by the judge of the superior court. (1913, c. 90, s. 8; C. S. 2387.)

§ 43-12. Effect of decree; approval of judge.—Every decree rendered as hereinbefore provided shall bind the land and bar all persons and corporations claiming title thereto or interest therein; quiet the title thereto, and shall be forever binding and conclusive upon and against all persons and corporations, whether mentioned by name in the order of publication, or included under the general description, "to whom it may concern"; and every such decree so rendered, or a duly certified copy thereof, as also the certificate of title issued thereon to the person or corporation therein named as owner, or to any subsequent transferee or purchaser, shall be conclusive evidence that such person or corporation is the owner of the land therein described, and no other evidence shall be required in any court of this state of his or its right or title thereto. It shall not be an exception to such conclusiveness that the person is an infant, lunatic or is under any disability, but such person may have recourse upon the indemnity fund hereinafter provided for, for any loss he may suffer by reason of being so concluded. Such decrees shall not be binding on and include the State of North Carolina or the State Board of Education unless notice of said proceeding and copy of petition, etc., as provided in this chapter, are served on the Governor and on the State Board of Education severally and personally. Such decree shall, in addition to being signed by the clerk of the court, be approved by the judge of the superior court, who shall review the whole proceeding and have power to require any reformation of the process,

pleading, decrees or entries. (1913, c. 90, s. 9; 1919, c. 82, s. 3; 1925, c. 263; C. S. 2388.)

Art. 4. Registration and Effect.

§ 43-13. Manner of registration.—The county commissioners of each county shall provide for the register of deeds in the county a book, to be called Registration of Titles, in which the register shall enroll, register and index, as hereinafter provided, the decree of title before mentioned and the copy of the plot contained in the petition, and all subsequent transfers of title, and note all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered thereon. If the title be subject to trust, condition, encumbrance or the like, the words "in trust," "upon condition," "subject to encumbrance," or like appropriate insertion shall indicate the fact and fix any person dealing with such certificate with notice of the particulars of such limitations upon the title as appears upon the registry. No erasure, alteration, or amendment shall be made upon the registry after entry and issuance of a certificate of title except by order of a court of competent jurisdiction. (1913, c. 90, s. 10; 1919, c. 236, s. 1; C. S. 2389.)

§ 43-14. Cross-indexing of lands by registers of deeds. — Where any land is brought into the Torrens' System and under said system is registered in the public records of the register's office, said register shall cross-index the registration in the general cross-index for deeds in his office. (1931, c. 286, s. 2.)

§ 43-15. Certificate issued. — Upon the registration of such decree the register of deeds shall issue an owner's certificate of title, under the seal of his office, which shall be delivered to the owner or his agent duly authorized, and shall be substantially as follows:

State of North Carolina—County of .....

The certificate of .....

I hereby certify that the title is registered in the name of ..... to and situate in said county and state, described as follows: (Here describe land as in decree.)

Estate ..... (here name the estate and any limitation or encumbrance thereon, as fee simple, upon condition, in trust, subject to incumbrance, and the like).

Under decree of the land court of ..... county, entitled .....

Registered No. ...., Book No. ....., page .....

Witness my hand and seal, at office at ....., this ..... day of ....., A. D. 19..... (Seal) ..... Register of Deeds. (1913, c. 90, s. 10; C. S. 2390.)

§ 43-16. Certificates numbered; entries thereon.—All certificates of title to land in the county shall be numbered consecutively, which number shall be retained as long as the boundaries of the land remain unchanged, and a separate page or more, with appropriate space for subsequent entries, shall be devoted to each title in the registration of titles book for the county. Every entry made upon any certificate of title in such book or upon the owner's certificate, under any of the provisions of this chapter, shall be signed by the register of deeds and minutely dated in conformity with the dates shown by the entry book. (1913, c. 90, s. 11; C. S. 2391.)

§ 43-17. New certificate issued, if original lost. —Whenever an owner's certificate of title is lost or destroyed, the owner or his personal representative may petition the court for the issuance of a new certificate. Notice of such petition shall be published once a week for four successive weeks, under the direction of the court, in some convenient newspaper, and noted upon the registry of titles, and upon satisfactory proof having been exhibited before it that the certificate has been lost or destroyed the court may direct the issuance of a new certificate, which shall be appropriately designated and take the place of the original, but at least thirty full days shall elapse between the filing of the petition and making the decree for such new certificate. (1913, c. 90, s. 24; C. S. 2392.)

§ 43-18. Registered owner's estate free from adverse claims; exceptions.—Every registered owner of any estate or interest in land bought under this chapter shall, except in cases of fraud to which he is a party or in which he is a privy, without valuable consideration paid in good faith, and except when any registration has been procured through forgery, hold the land free from any and all adverse claims, rights or encumbrances not noted on the certificate of title, except (1) liens, claims or rights arising or existing under the laws or constitution of the United States which the statutes of this state cannot require to appear of record under registry laws; (2) taxes and assessments thereon due the state or any county, city or town therein, but not delinquent; (3) any lease for a term not exceeding three years, under which the land is actually occupied. (1913, c. 90, s. 25; C. S. 2393.)

§ 43-19. Adverse claims existing at initial registry; affidavit; limitation of action.—Any person making any claim to or asserting any lien or charge upon registered land, existing at the initial registry of the same and not shown upon the register or adverse to the title of the registered owner, and for which no other provision is herein made for asserting the same in the registry of titles, may make an affidavit thereof setting forth his interest, right, title, lien or demand, and how and under whom derived, and the character and nature thereof. The affidavit shall state his place of residence and designate a place at which all notices relating thereto may be served. Upon the filing of such affidavit in the office of the clerk of the superior court, the clerk shall order a note thereof as in the case of charges or encumbrances, and the same shall be entered by the register of deeds. Action shall be brought upon such claim within six months after the entry of such note, unless for cause shown the clerk shall extend the time. Upon failure to commence such action within the time prescribed therefor, the clerk shall order a cancellation of such note. If any person shall wantonly or maliciously or without reasonable cause procure such notation to be entered upon the registry of titles, having the

effect of a cloud upon the registered owner's title, he shall be liable for all damages the owner may suffer thereby. (1913, c. 90, s. 25; C. S. 2394.)

§ 43-20. Decree and registration run with the land.—The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and the same shall ever remain registered land, subject to the provisions of this chapter and all amendments thereof. (1913, c. 90, s. 26; C. S. 2395.)

§ 43-21. No right by adverse possession.—No title to nor right or interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession. (1913, c. 90, s. 27; C. S. 2396.)

§ 43-22. Jurisdiction of courts; registered land affected only by registration.—Except as otherwise specially provided by this chapter, registered land and ownership therein shall be subject to the jurisdiction of the courts in the same manner as if it had not been registered; but the registration shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument or record to be registered is duly filed in the office of the register of deeds, subject to the provisions of this chapter; no voluntary or involuntary transaction shall affect the title to registered lands until registered in accordance with the provisions of this chapter: Provided, that all mortgages, deeds, surrendered and canceled certificates, when new certificates are issued for the land so deeded, the other paper-writings, if any, pertaining to and affecting the registered estate or estates herein referred to, shall be filed by the register of deeds for reference and information, but the registration of titles book shall be and constitute sole and conclusive legal evidence of title, except in cases of mistake and fraud, which shall be corrected in the methods now provided for the correction of papers authorized to be registered. (1913, c. 90, s. 28; C. S. 2397.)

§ 43-23. Priority of right.—In case of conflicting claims between the registered owners the right, title or estate derived from or held under the older certificate of title shall prevail. (1913, c. 90, s. 29; C. S. 2398.)

§ 43-24. Compliance with this chapter due registration. — When the provisions of this chapter have been complied with, all conveyances, deeds, contracts to convey or leases shall be considered duly registered, as against creditors and purchasers, in the same manner and as fully as if the same had been registered in the manner heretofore provided by law for the registration of conveyances. (1913, c. 90, s. 32; C. S. 2399.)

§ 43-25. Release from registration.—Whenever the record owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this chapter, desires to have such estate released from the provisions of said chapter in so far as said chapter relates to the form of conveyance, so that such estate may ever thereafter be conveyed, either absolutely or upon condition or trust, by the use of any desired form of conveyance other than the certificate of title prescribed by said chapter, such owner may present his owner's certificate of title to such registered estate to the register of deeds of the county wherein such land lies, with a memorandum or statement written by him on the margin thereof in the words following, or words of similar import, to wit: "I (or we), ..., being the owner (or owners) of the registered estate evidenced by this certificate of title, do hereby release said estate from the provisions of chapter forty-three of the North Carolina Code in so far as said chapter relates to the form of conveyance, so that hereafter the said estate may, and shall be forever until again hereafter registered in accordance with the provisions of said chapter and acts amendatory thereof, conveyed, either absolutely or upon condition or trust, by any form of conveyance other than the certificate of title prescribed by said chapter, and in the same manner as if said estate had never been registered." Which said memorandum or statement shall further state that it is made pursuant to the provisions of this section, and shall be signed by such record owner and attested by the register of deeds under his hand and official seal, and a like memorandum or statement so entered, signed and attested upon the margin of the record of the said owner's certificate of title in the registration of titles book in said register's office, with the further notation made and signed by the register of deeds on the margin of the certificate of title in the registration of titles book showing that such entry has been made upon the owner's certificate of title; and thereafter any conveyance of such registered estate, or any part thereof, by such owner, his heirs or assigns, by means of any desired form of conveyance other than such certificate of title shall be as valid and effectual to pass such estate of the owner according to the tenor and purport of such conveyance in the same manner and to the same extent as if such estate had never been so registered. (1924, c. 40.)

Art. 5. Adverse Claims and Corrections after Registration.

§ 43-26. Limitations. — No decree of registration heretofore entered, and no certificate of title heretofore issued pursuant thereto, shall be adjudged invalid, revoked, or set aside, unless the action or proceeding in which the validity of such decree of registration or certificate of title issued pursuant thereto is attacked or called in question be commenced or the defense alleging the invalidity thereof be interposed within twelve months from March 10, 1919.

No decree of registration hereafter entered and no certificate of title hereafter issued pursuant thereto shall be adjudged invalid or revoked or set aside, unless the action or proceeding in which the validity of such decree or of the certificate of title issued pursuant thereto is attacked or called in question be commenced or the defense alleging the invalidity thereof be interposed within twelve months from the date of such decree.

No action or proceeding for the recovery of any right, title, interest, or estate in registered land adverse to the title established and adjudicated by any decree of registration heretofore entered shall be maintained unless such action or

proceeding be commenced within twelve months from the date last mentioned; and no action or proceeding for the recovery of any right, title, interest, estate in registered land, adverse to the right established by any decree of registration hereafter shall be maintained unless such action or proceeding be commenced within twelve months from the date of such decree.

No action or proceeding for the enforcement or foreclosure of any lien upon or charge against registered land which existed at the date when any decree of registration was heretofore entered, and which was not recognized or established by such decree, shall be maintained, unless such action or proceeding be commenced within twelve months from the date above mentioned; and no action or proceeding for the enforcement or foreclosure of any lien upon or charge against registered land in existence at the date of any decree of registration hereafter entered, and which is not recognized and established by such decree, shall be maintained, unless such action or proceeding be commenced within twelve months from the date of such decree. (1919, c. 236, s. 1; C. S. 2400.)

§ 43-27. Adverse claim subsequent to registry; affidavit of claim prerequisite to enforcement; limitation. — Any person claiming any right, title, or interest in registered land adverse to the registered owner thereof, arising subsequent to the date of the original decree of registration, may, if no other provision is made for registering the same, file with the register of deeds of the county in which such decree was rendered or certificate of title thereon was issued, a verified statement in writing, setting forth fully the right, title, or interest so claimed, how or from whom it was acquired, and a reference to the number, book, and page of the certificate of title of the registered owner, together with a description of the land by metes and bounds, the adverse claimant's place of residence and his post-office address, and, if a nonresident, he shall designate or appoint the said register of deeds to receive all notices directed to or to be served upon such adverse claimant in connection with the claim by him made, and such statement shall be noted and filed by said register of deeds as an adverse claim; but no action or proceeding to enforce such adverse claim shall be maintained unless the same be commenced within six months of the filing of the statement thereof. (1919, c. 236, s. 1; C. S. 2401.)

§ 43-28. Suit to enforce adverse claim; summons and notice necessary. — Upon the institution of any action or proceeding to enforce such adverse claim, notice thereof shall be served upon the register of deeds, who shall enter upon the registry a memorandum that suit has been brought or proceeding instituted to determine the validity of such adverse claim; and summons or notice shall be served upon the holder or claimant of the registered title or certificate or other person against whom such adverse claim is alleged, as provided by law for the institution of suits or proceedings in the courts of this state.

If no notice of the institution of an action or proceeding to enforce an adverse claim be served upon the register of deeds and upon the holder of the registered title or certificate, or other person, as aforesaid, within seven months from the date of filing the statement of adverse claim, the register of deeds shall cancel upon the registry the adverse claim so filed and make a memorandum setting out that no notice of suit or proceeding to enforce the same had been served upon him within seven months as herein required, and that such adverse claim was therefore canceled; and thereafter no action or proceeding shall be begun or maintained to enforce such adverse claim in any of the courts of this state. (1919, c. 236, s. 1; C. S. 2402.)

§ 43-29. Judgment in suit to enforce adverse claim; register to file. — The court shall certify its judgment to the register of deeds; if such adverse claim be held valid, the register of deeds shall make such entry upon the registry and upon the owner's certificate of title as may be directed by the court, or he may file and record a certified copy of the judgment or order of the court thereon; if such adverse claim be held invalid the register of deeds shall cancel such adverse claim upon the registry, noting thereon that the same was done by order or judgment of the court, or he may file and record a certified copy of the judgment or order of the court thereon. (1919, c. 236, s. 1; C. S. 2403.)

§ 43-30. Correction of registered title; limitation of adverse claims. — Any registered owner or other claimant under the registered title may at any time apply to the court in which the original decree was entered, by petition, setting out that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased, or that new interests have arisen or been created which do not appear upon the certificate, or that any error or omission was made in entering or issuing the certificate or any duplicate thereof, or that the name of any person on the certificate has been changed, or that the registered owner had married or, if registered as married, that the marriage has been terminated, or that a corporation which owned registered lands has been dissolved, without conveying the same or transferring its certificate within three years after the dissolution, or any other reasonable and proper ground of correction or relief; and such court may hear and determine the petition after notice to all parties in interest, and may make such order or decree as may be appropriate and lawful in the premises; but nothing in this section shall be construed to authorize any such court to open any original decree of registration which was entered more than twelve months prior to the filing of such petition, and nothing shall be done or ordered by the court to divest or impair the title or other interest of a purchaser who holds a transfer or certificate of title for value and in good faith. No action or proceeding shall be commenced or maintained to set up or establish any right, claim, interest or estate adverse to the order or decree or certificate of title issued thereon made or entered upon any petition or other proceeding authorized by this section, unless the same shall be brought and instituted within six months from the date of such order or

decree authorized by this section. (1919, c. 236, s. 1; C. S. 2404.)

Art. 6. Method of Transfer.

§ 43-31. When whole of land conveyed.—Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance upon or attached to the certificate substantially as follows:

A B and wife (giving the names of the parties owning land described in the certificate and their wives) hereby, in consideration of ..... dollars, sell and convey to C D (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached.

The same shall be signed and properly acknowledged by the parties and their wives and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the deed, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this chapter, and certificate of title so presented shall be cancelled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled. (1913, c. 90, s. 12; C. S. 2405.)

§ 43-32. Conveyance of part of registered land.—The transfer of any part of a registered estate, either of an undivided interest therein or of a separate lot or parcel thereof, shall be made by an instrument of the transfer or conveyance similar in form to that herein provided for the transfer of the whole of any registered estate, to which shall be attached the certificate of title of such registered estate. In case of the transfer of an undivided interest in a registered estate, such instrument or transfer or conveyance shall accurately specify and describe the extent and amount of the interest transferred and of the interest retained, respectively. In case of a transfer of a separate lot or parcel of a registered estate, such instrument of transfer or conveyance shall describe the lot or parcel transferred either by metes and bounds or by reference to the map or plat attached thereto, and shall in every case be accompanied by a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate and of the lot or parcel to be transferred. (1919, c. 82, s. 4; C. S. 2406.)

§ 43-33. Duty of register of deeds upon part conveyance. — Upon presentation to the register of deeds of an instrument of transfer or conveyance of an undivided interest in a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of title attached thereto and to issue to each owner a new certificate of title, each bearing the same number as the original certificate of title and accurately specifying and describing the extent and the amount of the interest retained or of the interest transferred, as the case may be. Upon presentation to the register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of the title attached thereto and to issue to each owner a new certificate of title bearing a new number and describing the separate lot or parcel retained or transferred, as the case may be, either by metes and bounds or by reference to a map or plat thereto attached. (1919, c. 82, s. 4; C. S. 2407.)

§ 43-34. Subdivision of registered estate.—Any owner of a registered estate who may desire to subdivide the same may make application in writing to the register of deeds for the issuance of a new certificate of title for each subdivision, to which application shall be attached a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate in question and of each lot or parcel for which he desires a new certificate of title. Thereupon it shall be the duty of the register of deeds, upon payment by such applicant of necessary surveyor's fees, if any are required, and of the amount herein provided for issuing the certificates of title and recording the map, to cancel the certificate of title attached to said application and to issue to such owner new certificates of title, each bearing a new number, for each lot or parcel shown upon the said map, describing such lot or parcel in such certificates either by metes and bounds or by reference to a map or plat attached thereto. (1919, c. 82, s. 4; C. S. 2408.)

§ 43-35. References and cross-references entered on register. — In all cases the register of deeds shall place upon the registry of title books and upon the certificate of title of such registered estate therein, references and cross-references to the new certificates issued as above provided, in accordance with the provisions of this article, and the new certificates issued shall fully refer by number and by name of the holder to the canceled certificate in place of which they are issued. (1919, c. 82, s. 4; C. S. 2409.)

§ 43-36. When land conveyed as security. — 1. Whole land conveyed. Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

A B and wife (giving names of all owners or holders of certificates and their wives) hereby transfer to C. D. the tract or lot of land described as No. ..... in registration of titles book for ..... county, a certificate for the title for same being hereto attached, to secure a debt of ..... dollars, due to ....., of ..... county and state, on the .... day of ....., 19...., evidenced by bond (or otherwise as the case may be) dated the .... day of ....., 19..... In case of default in payment of said debt with accrued interest, ... days notice of sale required.

The same shall be signed and properly acknowledged by the parties making same, and shall be presented, together with the owner's

certificate, to the register of deeds, whose duty it shall be to note upon the owner's certificate and upon the certificate of title in the registration of titles book the name of the trustee, the amount of debt, and the date of maturity of same.

2. Part of land conveyed. When a part of the registered estate shall be so conveyed, the register of deeds shall note upon the book and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his hand and seal, setting out the portion so conveyed.

3. Effect of transfer. All transfers by such short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county, or adjourning county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein.

4. Other encumbrances noted. All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue to be noted, not only upon the certificate of title in the registration book, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certificate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided in this article.

5. Other forms of conveyance may be used. Nothing in this section nor this chapter shall be construed to prevent the owner from conveying such land, or any part of the same, as security for a debt by deed of trust or mortgage in any form which may be agreed upon between the parties thereto, and having such deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: Provided, that the book and page of the record at which such deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on the registration of titles book.

6. Sale under lien; new certification. Upon foreclosure of such deed of trust or mortgage, or sale under execution for taxes or other lien on the land, the fact of such foreclosure or sale shall be reported by the trustee, mortgagee or other person authorized to make the same, to the register of deeds of the county in which the land lies, and, upon satisfactory evidence thereof, it shall be his duty to call in and cancel the outstanding certificate of title for the land so sold, and to issue a new certificate in its place to the purchaser or other person entitled thereto; and the production of such outstanding certificate and its surrender by the holder thereof may be compelled, upon notice to him, by motion before and order of the clerk of the superior court in the original proceeding or the clerk of the superior court of the county in which the land lies; but the right of appeal from such order may be exercised and shall be allowed as in other special proceedings, and pending any such appeal the rights of all parties shall be preserved. (1913, c. 90, s. 14; 1915, c. 245; 1919, c. 82, s. 5; C. S. 2410.)

§ 43-37. Owner's certificate presented with transfer. — In voluntary transactions the owner's certificate of title must be presented along with the writing or instrument conveying or effecting the sale, and thereupon and not otherwise the register shall be authorized to register the conveyance or other transaction upon proof of payment of all delinquent taxes or liens, if any, or if such payment be not shown the entry and new certificate shall note such taxes or liens as having priority thereto. (1913, c. 90, s. 15; C. S. 2411.)

§ 43-38. Transfers probated; partitions; contracts. — All transfers of registered land shall be duly executed and probated as required by law upon like conveyances of other lands, and in all cases of change in boundary by partition, subtraction or addition of land there shall be an accurate survey and permanent marking of boundaries and accurate plots, showing the courses, distances and markings of every portion thereof, which shall be duly proved and registered as upon the initial registration. Such transfers shall be presented to the register of deeds for entry upon the registration of titles book and upon the owner's certificate within thirty days from the date thereof, or become subject to any rights which may accrue to any other person by a prior registration. All leases or contracts affecting land for a period exceeding three years shall be in writing, duly proved before the clerk of the superior court, recorded in the register's office, and noted upon the registry and upon the owner's certificate. (1913, c. 90, ss. 15, 32; C. S. 2412.)

§ 43-39. Certified copy of order of court noted. —In voluntary transactions a certificate from the proper state, county or court officer, or certified copy of the order, decree or judgment of any court of competent jurisdiction shall be authority for him to order a proper notation thereof upon the registration of titles book, and for the register of deeds to note the transaction under the direction of the court. (1913, c. 90, s. 16; C. S. 2413.)

§ 43-40. Production of owner's certificate required. — Whenever owner's certificate is not presented to the register along with any writing, instrument or record filed for registration under this chapter, he shall forthwith send notice by registered mail to the owner of such certificate, requesting him to produce the same in order that a memorial of the transaction may be made thereon; and such production may be required by subpœna duces tecum or by other process of the court, if necessary. (1913, c. 90, s. 17; C. S. 2414.)

§ 43-41. Registration notice to all persons. — Every voluntary or involuntary transaction, which if recorded, filed or entered in any clerk's office would affect unregistered land, shall, if duly registered in the office of the proper register as the case may be, and not otherwise, be notice to all persons from the time of such registration, and operate, in accordance with law and the provisions of this chapter, upon any regis-

tered land in the county of such registration. (1913, c. 90, s. 18; C. S. 2415.)

§ 43-42. Conveyance of registered land in trust. —Whenever a writing, instrument or record is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate, but it shall be sufficient to enter in the book and upon the certificates a memorial thereof by the terms "in trust" or "upon condition" or in other apt words, and to refer by number to the writing, instrument or record authorizing or creating the same. And if express power is given to sell, encumber or deal with the land in any manner, such power shall be noted upon the certificates by the term "with power to sell" or "with power to encumber," or by other apt words. (1913, c. 90, s. 19; C. S. 2416.)

§ 43-43. Authorized transfer of equitable interests registered. — No writing or instrument for the purpose of transferring, encumbering or otherwise dealing with equitable interests in registered land shall be registered unless the power thereto enabling has been expressly conferred by or has been reserved in the writing or instrument creating such equitable instrument, or has been declared to exist by the decree of some court of competent jurisdiction, which decree must also be registered. (1913, c. 90, s. 20; C. S. 2417.)

§ 43-44. Validating conveyance by entry on margin of certificate. — In all cases where the owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this chapter, has before August 21, 1924, and subsequent to such registration made any conveyance of such estate, or any portion thereof, by any form of conveyance sufficient in law to pass the title thereto if the title to said lands had not been so registered, the record owner and holder of the certificate of title covering such registered estate may enter upon the margin of his certificate of title in the registration of titles book a memorandum showing that such registered estate, or a portion thereof, has been so conveyed, and further showing the name of the grantee or grantees and the number of the book and the page thereof where such conveyance is recorded in the office of the register of deeds, and make a like entry upon the owner's certificate of title held by him, both of such entries to be signed by him and witnessed by the register of deeds, and attested by the seal of office of the register of deeds upon said owner's certificate, with the further notation made and signed by the register of deeds on the margin of the certificate of title in the registration of titles book showing that such entry has been made upon the owner's certificate of title, and thereupon such conveyance shall become and be as valid and effectual to pass such estate of the owner according to the tenor and purport of such conveyance as if the title to said lands had never been so registered, whether such conveyance be in form absolute or upon condition of trust; and in all cases where such conveyance has been made before August 21, 1924, upon the making of the entries herein authorized by the record owner and holder of such owner's certificate of title, the grantee and his heirs and assigns shall thereafter have the same right to convey the said estate or any part of the same in all respects as if the title to said lands had never been so registered. (1924, c. 41.)

Art. 7. Liens upon Registered Lands.

§ 43-45. Docketed judgments.—Whenever any judgment of the superior court of the county in which the registered estate is situated shall be duly docketed in the office of the clerk of the superior court, it shall be the duty of the clerk to certify the same to the register of deeds. The register of deeds shall thereupon enter the certificate of title, the date, and the amount of the judgment, and the same shall be a lien upon such land as fully as such docketed judgment would be a lien upon unregistered lands of the judgment debtor. (1913, c. 90, s. 22; C. S. 2418.)

§ 43-46. Notice of delinquent taxes filed. — It shall be the duty of the sheriff or other collector of taxes or assessments of each county and town, not later than the first day of March in each year, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including the penalty therefor, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and such sheriff or other collector of taxes and his sureties shall be liable for the payment of the taxes and assessments with the penalty and interest thereon. (1913, c. 90, s. 21; C. S. 2419.)

§ 43-47. Sale of land for taxes; redemption.— Whenever any sale of registered land is made for delinquent taxes or levies, it shall be the duty of the sheriff or other officer making such sale to file forthwith a memorandum thereof for registration in the office of the register of deeds; and thereupon the registered owner shall be required to produce his certificate for cancellation, and a new owner's certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within ninety days after date of such sale; but a note shall be entered upon the certificate of title and also upon any such new owner's certificate, reserving the privilege of redemption in accordance with the law. In case of any redemption under this section of land sold for taxes, a note of the fact shall be duly registered, and if an owner's certificate has been issued to any purchaser, the same shall be canceled and a new one shall be issued to the person who has redeemed. (1913, c. 90, ss. 22, 23; C. S. 2420.)

§ 43-48. Sale of unredeemed land; application of proceeds. — If there be no redemption of land under the preceding section, in accordance with the law, it shall be the duty of the sheriff or other collector of taxes in the county or town in which

the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the state, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars; third, to the payment of a commission to the officer making the sale of five per centum on the first three hundred dollars and two per centum on the residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon. (1913, c. 90, s. 23; C. S. 2421.)

Art. 8. Assurance Fund.

§ 43-49. Assurance fund provided; investment.—Upon the original registration of land and also upon the entry of certificate showing the title as registered owners in heirs or devisees, there shall be paid to the clerk of the court one-tenth of one per cent of the assessed value of the land for taxes, as an assurance fund, which shall be paid over to the state treasurer, who shall be liable therefor upon his official bond as for other moneys received by him in his official capacity. He shall keep all the principal and interest of such fund invested, except as required for the payment of indemnities, in bonds and securities of the United States, of this state, or of counties and other municipalities within the state. Such investment shall be made upon the advice and concurrence of the governor and council of state, and he shall make report of such funds and the investment thereof to the general assembly biennially. (1913, c. 90, s. 33; C. S. 2422.)

§ 43-50. Action for indemnity.—Any person who, without negligence on his part, sustains loss or damage or is deprived of land, or of any estate or interest therein, through fraud or negligence or in consequence of any error, omission, mistake, misfeasance, or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who, by the provisions of this chapter, is barred or in any way precluded from bringing an action for the recovery of such land or interest or estate therein or claim upon same, may bring an action in the superior court of the county in which the land is situate for the recovery of compensation for such loss or damage from the assurance fund. Such action shall be against the state treasurer and all other persons who may be liable for the fraud, negligence, omission, mistake or misfeasance; but if such claimant has the right of action or other remedy for the recovery of the land, or of the estate or interest therein, or of the claim upon same, he shall exhaust such remedy before resorting to the assurance fund. (1913, c. 90, s. 34; C. S. 2423.)

§ 43-51. Satisfaction by third person or by treasurer.—If there are defendants other than the state treasurer, and judgment is rendered in favor of the plaintiff and against the treasurer and some or all of the other defendants, execution shall first be issued against the other defendants, and if such execution is returned unsatisfied in whole or in part, and the officer returning the same shall certify that it cannot be collected from the property and effects of the other defendants, or if the judgment be against the treasurer only, the clerk of the court shall certify the amount due on the execution to the state auditor, who shall issue his warrant therefor upon the state treasurer, and the same shall be paid. In all such cases the treasurer may employ counsel who shall receive reasonable compensation for his services from the assurance fund. (1913, c. 90, s. 35; C. S. 2424.)

§ 43-52. Payment by treasurer, if assurance fund insufficient.—If the assurance fund shall be insufficient at any time to meet the amount called for by any such certificate, the treasurer shall pay the same from any funds in the treasury not otherwise appropriated; and in such case any amount thereafter received by the treasurer on account of the assurance fund shall be transferred to the general funds of the treasury until the amount advanced shall have been paid. (1913, c. 90, s. 36; C. S. 2425.)

§ 43-53. Treasurer subrogated to right of claimant.—In every case of payment by the treasurer from the assurance funds under the provisions of this chapter the treasurer shall be subrogated to all the rights of the plaintiff against all and every other person or property or securities to a trustee, or by the improper exercise of any power of sale in benefit of the assurance fund. (1913, c. 90, s. 37; C. S. 2426.)

§ 43-54. Assurance fund not liable for breach of trust; limit of recovery.—The assurance fund shall not be liable to pay any loss, damage or deprivation occasioned by a breach of trust, whether expressed, constructive or implied, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage or deed of trust. Nor shall any plaintiff recover as compensation under the provisions of this chapter more than the fair market value of the land at the time when he suffered the loss, damage or deprivation thereof. (1913, c. 90, s. 38; C. S. 2427.)

§ 43-55. Statute of limitation as to assurance fund.—Action for compensation from the assurance fund shall be begun within three years from the time the cause of action accrued. In cases of infancy or other disability now recognized by law, persons under such disability shall have one year after the removal of such disability within which to begin the action. (1913, c. 90, s. 39; C. S. 2428.)

Art. 9. Removal of Land from Operation of Torrens Law.

§ 43-56. Proceedings.—Any land brought under the provisions and operation of this chapter before April 16, 1931, may be removed and excluded therefrom by a motion in writing filed in the original cause wherein said land was brought under the provisions and operation of said chapter, and upon the filing of a petition therein showing the names of all persons owning an interest in said land and of all lien holders, mortgagees and trustees of record, and the description of said land. Upon the filing of said petition the Clerk of the Superior Court shall issue a citation to all parties interested and named in the petition, and upon the return date of said citation and upon the hearing of said motion, the said Clerk of the Superior Court may enter a decree in said cause removing and excluding said land from the provisions and operation of this chapter, and transfer and conveyance of said land may be made thereafter as other common law conveyances. (1931, c. 286, s. 1.)

§ 43-57. Existing liens unaffected.—Nothing in § 43-56 shall be construed to impair or remove any lien or encumbrance existing against said land. (1931, c. 286, s. 3.)

Chapter 44. Liens.

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44-65. Filing notice of lien.
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44-67. Certificate of discharge.
44-68. Purpose of article.

Art. 1. Mechanics', Laborers' and Materialmen's Liens.

§ 44-1. On buildings and property, real and personal.—Every building built, rebuilt, repaired or improved, together with the necessary lots on which such building is situated, and every lot, farm or vessel, or any kind of property, real or personal, not herein enumerated, shall be subject to a lien for the payment of all debts contracted for work done on the same, or material furnished. (Rev., 2016; Code, s. 1781; 1901, c. 617; 1869-70, c. 206, s. 1; C. S. 2433.)

§ 44-2. On personal property repaired. — Any mechanic or artisan who makes, alters or repairs any article of personal property at the request of the owner or legal possessor of such property has a lien on such property so made, altered or repaired for his just and reasonable charge for his work done and material furnished, and may hold and retain possession of the same until such just and reasonable charges are paid; and if not paid for within thirty days, if it does not exceed fifty dollars, or within ninety days if over fifty dollars, after the work was done, such mechanic or artisan may proceed to sell the property so made, altered or repaired at public auction, by giving two weeks public notice of such sale by advertising in some newspaper in the county in which the work may have been done, or if there is no such newspaper, then by posting up notice of such sale in three of the most public places in the county, town or city in which the work was done, and the proceeds of the said sale shall be applied first to the discharge of the said lien and the expenses and costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof. (Rev., s. 2017; Code, s. 1783; 1869-70, c. 206, s. 3; C. S. 2435.)

§ 44-3. Laborer's lien on lumber and its products.—Every person doing the work of logging or of cutting or sawing logs into lumber, or of getting out wood pulp, acid wood or tan bark, has a lien upon the said logs or lumber for the amount of wages due him, and the said lien shall have priority over all other claims or liens upon said lumber, except as against a purchaser for full value and without notice thereof: Provided, any such laborer whose wages for thirty or less number of days performed are due and unpaid shall file notice of such claim before the nearest justice of the peace in the county in which said work has been done, stating the number of days of labor performed, the price per day, and the place where the lumber is situate, and the person for whom said labor was performed, which said statement shall be signed by the said laborer or his attorney, and the said laborer shall also give to the owner thereof, within five days after the lien has been filed with the justice of the peace, as aforesaid, a copy of said notice as filed with the said justice of the peace. If the owner cannot be located, then notice shall be given by attaching said notice on the logs or lumber, wood pulp, acid wood or tan bark upon which the labor sued for was performed, and any person buying said lumber or logs, wood pulp, acid wood or tan bark after such notice has been filed with the nearest justice of the peace, shall be deemed to have bought the same with notice thereof, but no action shall be maintained against the owner of said logs or lumber, wood pulp, acid wood or tan bark or the purchaser thereof under the provisions of this section unless same is commenced within thirty days after notice is filed with the justice of the peace by such laborer, as above provided. (1913, c. 150, s. 6; 1929, c. 69; C. S. 2436.)

Local Modification.—Avery, Mitchell, Yancey: 1941, c. 129.

§ 44-4. Lien for processing certain goods. — All persons, firms, partnerships and corporations engaged in the business of finishing, bleaching, mercerizing, manufacturing, dyeing, weighing and printing or otherwise processing cotton, wool, silk, artificial silk or goods of which cotton, wool, silk, or artificial silk forms a component part, shall be entitled to a lien upon the property and goods of others, which may come into their possession for work, labor, and materials furnished in any of said processing and said lien shall extend to any unpaid balance on account for work, labor and materials furnished in the course of any of said processing in respect to any of said goods of the same owner whereof the lienor's possession is terminated. The word "owner", as used in this and the following sections shall include a factor, consignee, or other agent entrusted with the possession of the goods held under said lien or with the bill of lading consigning the same to him with authority to sell the same or to deliver them to the lienor for the purpose of being processed. (1931, c. 48, s. 1.)

§ 44-5. Sale of goods at public auction. — If any part of the amount for which goods are held under said lien remains unpaid for a period of sixty days after the earliest item of said amount became due and payable the lienor may sell such goods at public auction first publishing a notice of the time and place of said sale once in each of two successive weeks in a newspaper published in the town, if any, otherwise in the

county, in which the said goods are situated and at the court house door, the last publication not to be less than five days prior to the sale, and also giving five days' notice of said sale by posting in five or more public places in said county, one whereof shall be in the town or city ward in which said goods are situated, and, if the residence or past address of owner of said goods is known or can be established, sending by registered mail a copy of said notice to said owner at said address at least five days before the date of sale: Provided, that if said goods are readily divisible no more thereof shall be so sold than is necessary to discharge the underlying indebtedness and to cover the expenses of the sale. The proceeds of sale shall be applied to payment of said indebtedness and said expenses, and the balance, if any, shall be paid to the owner or person entitled thereto. The remedy herein provided to enforce said lien shall be in addition to any other provided by law. (1931, c. 48, s. 2.)

Art. 2. Subcontractors', etc., Liens and Rights against Owners.

§ 44-6. Lien given subcontractors, etc., on real estate.—All subcontractors and laborers who are employed to furnish or who do furnish labor or material for the building, repairing or altering any house or other improvement on real estate, have a lien on said house and real estate for the amount of such labor done or material furnished, which lien shall be preferred to the mechanics' lien now provided by law, when notice thereof shall be given as hereinafter provided, which may be enforced as other liens in this chapter, except where it is otherwise provided; but the sum total of all the liens due subcontractors and material men shall not exceed the amount due the original contractor at the time of notice given. (Rev., s. 2019; Code, ss. 1801, 1803; 1880, c. 44, ss. 1, 3; C. S. 2437.)

§ 44-7. Notice to owner; liability. — Any subcontractor, laborer or material man, who claims a lien as provided in § 44-6, may give notice to the owner or lessee of the real estate who makes the contract for such building or improvement at any time before the settlement with the contractor, and if the said owner or lessee refuses or neglects to retain out of the amount due the said contractor under the contract as much as is due or claimed by the subcontractor, laborer or material man, the subcontractor, laborer, or material man may proceed to enforce his lien, and after such notice is given, no payment to the contractor shall be a credit on or discharge of the lien herein provided. (Rev., s. 2020; Code, s. 1802; 1880, c. 44, s. 2; C. S. 2438.)

§ 44-8. Statement of contractor's indebtedness to be furnished to owner; effect. — When any contractor, architect or other person makes a contract for building, altering or repairing any building or vessel, or for the construction or repair of a railroad, with the owner thereof, it is his duty to furnish to the owner or his agent, before receiving any part of the contract price, as it may become due, an itemized statement of the amount owing to any laborer, mechanic or artisan employed by such contractor, architect or other person, or to any person for materials furnished, and upon delivery to the owner or his agent of the itemized statement aforesaid, it is the duty of the owner to retain from the money then due the contractor a sum not exceeding the price contracted for, which will be sufficient to pay such laborer, artisan or mechanic for labor done, or such person for material furnished, which said amount the owner shall pay directly to the laborer, mechanic, artisan or person furnishing materials. The owner may retain in his hands until the contract is completed such sum as may have been agreed on between him and the contractor, architect or other person employing laborers, as a guaranty for the faithful performance of the contract by such contractor. When such contract has been performed by the contractor such fund reserved as a guaranty shall be liable to the payment of the sum due the laborer, mechanic or artisan for labor done, or the person furnishing the materials as hereinbefore provided. (Rev., s. 2021; 1887, c. 67; 1891, c. 203; 1899, c. 335; 1903, c. 478; C. S. 2439.)

§ 44-9. Laborer, etc., may furnish statement of claim to owner; effect. — Any laborer, mechanic, artisan or person furnishing materials may furnish to such owner or his agents before he shall have paid the contractor an itemized statement of the amount owing to such laborer, mechanic or artisan employed by said contractor, architect or other person for work or labor on such building, vessel or railroad, and any person may furnish to such owner or his agents an itemized statement of the amount due him for materials furnished for such purposes. Upon the delivery of such notice to such owner or his agent the person giving such notice is entitled to all the liens and benefits conferred by law in as full and ample a manner as though the statement was furnished by the contractor, architect or such other person. And after the notice herein provided is given, no payment to the contractor shall be a credit or a discharge of the lien herein provided. (Rev., s. 2021; 1891, c. 203; 1899, c. 335; 1903, c. 478; 1913, c. 150, s. 4; C. S. 2440.)

§ 44-10. Sums due by statement to constitute lien. — The sums due to the laborer, mechanic or artisan for labor done, or due the person furnishing materials, as shown in the itemized statement rendered to the owner, shall be a lien on the building, vessel or railroad built, altered or repaired, without any lien being filed before a justice of the peace or the superior court. (Rev., s. 2022; 1887, c. 67, s. 2; C. S. 2441.)

§ 44-11. Where sums due contractor from owner insufficient; payment pro rata. — If the amount due the contractor by the owner is insufficient to pay in full the laborer, mechanic or artisan, for his labor, and the person furnishing materials, for materials furnished, it is the duty of the owner to distribute the amount pro rata among the several claimants, as shown by the itemized statement furnished the owner, or of which notice has been given the owner by the claimant. (Rev., s. 2023; 1887, c. 67, s. 3; 1913, c. 150, s. 5; C. S. 2442.)

§ 44-12. Contractor failing to furnish statement, or not applying owner's payments to laborer's claims, misdemeanor. — If any contractor or

architect shall fail to furnish to the owner an itemized statement of the sums due to every one of the laborers, mechanics or artisans employed by him, or the amount due for materials, before receiving any part of the contract price, he shall be guilty of a misdemeanor. If any contractor shall fail to apply the contract price paid him by the owner or his agent to the payment of bills for labor and material, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (Rev., s. 3663; 1887, c. 67, s. 4; 1913, c. 150, s. 8; C. S. 2443.)

§ 44-13. Laborer for railroad contractor may sue company; conditions of action. — As often as any contractor for the construction of any part of a railroad which is in progress of construction is indebted to any laborer for thirty or less number of days labor performed in constructing said road, or is indebted for more than thirty days to any person furnishing material for the construction of said road, such laborer or material man may give notice of such indebtedness to said company in a manner herein provided, and said company shall thereupon become liable to pay such laborer or material man the amount so due for labor or material, and action may be maintained against said company therefor. Such notice shall be given by said laborer to said company within twenty days after the performance of the number of days labor for which the claim is made, and such notice shall be given by the material man to said company within thirty days after the materials have been furnished. Such notice to be given by the laborer shall be in writing and shall state the amount and the number of days labor and the time when the labor was performed for which the claim is made, and the name of the contractor from whom due, and shall be signed by such laborer or his attorney; and such notice of the material man shall be in writing and shall state the amount of material furnished and when furnished, and the name of the contractor to whom furnished and by whom due, and shall be signed by such material man or his attorney. The notice shall be served on an engineer, agent or superintendent employed by said company having charge of the section of road on which such labor was performed or material furnished, personally or by leaving the same at the office or usual place of business of said engineer, agent, or superintendent, with some person of suitable age. But no action shall be maintained against any company under the provisions of this section unless the same is commenced within ninety days after notice is given to the company by such laborer or material man as above provided. (Rev., s. 2018; Code, s. 1942; 1871-2, c. 138, s. 12; 1913, c. 150, s. 1; C. S. 2444.)

§ 44-14. Contractor on municipal building to give bond; action on bond. — Every county, city, town or other municipal corporation which lets a contract for the building, repairing or altering any building, public road, or street, shall require the contractor for such work (when the contract price exceeds five hundred dollars) to execute bond with one or more solvent sureties before beginning any work under said contract, payable to said county, city, town or other municipal corporation, and conditioned for the payment of all labor done on and material and supplies furnished for the said work under a contract or agreement made directly with the principal contractor or subcontractor. The amount of the said bond to be given by said contractor shall be equal to the contract price up to two thousand dollars, and when the contract price is between two and ten thousand dollars the amount of said bond shall be two thousand dollars plus thirty-five per cent of the excess of the contract price over two thousand dollars and under ten thousand; when the contract is over ten thousand dollars, the amount of the said bond shall be two thousand dollars plus twenty-five per cent of the excess of the contract price over the sum of two thousand dollars. If the official of the said county, city, town or other municipal corporation, whose duty it is to take said bond, fails to require the said bond herein provided to be given, he is guilty of a misdemeanor. Any laborer doing work on said building and material man furnishing material therefor and used therein, under a contract or agreement between said laborer or material man and the principal contractor or subcontractor has the right to sue on said bond, the principal and sureties thereof, in the courts of this state having jurisdiction of the amount of said bond, and any number of laborers or material men whose claims are unpaid for work done and material furnished in said building have the right to join in one suit upon said bond for the recovery of the amounts due them respectively. Every bond given by any contractor to any county, city, town or other municipal corporation for the building, repairing or altering of any building, public road or street, as required by this section, shall be conclusively presumed to have been given in accordance therewith, whether such bond be so drawn as to conform to the statute or not, and this statute shall be conclusively presumed to have been written into every such bond so given. Only one action or suit may be brought upon such bond, which said suit or action shall be brought in the county in which the building, road, or street is located, and not elsewhere. In all suits instituted under the provisions of this statute, the plaintiff or plaintiffs shall give notice to all persons, informing them of the pendency of the suit, the name of the parties, with a brief recital of the purposes of the action, which said notice shall be published at least once a week for four successive weeks in some newspaper published and circulating in the county in which the action is brought, and if there be no newspaper, then by posting at the courthouse door and three other public places in such county for thirty days. Proof of such service shall be made by affidavit as provided in case of the service of summons by publication. All persons entitled to bring and prosecute an action on the bond shall have the right to intervene in said action, set up their respective claims, provided that such intervention shall be made within six months from the bringing of the action, and not later. If the recovery on the bond shall be inadequate to pay the amounts found due to all of the claimants, judgment shall be given to each claimant pro rata of the amount of the recovery.

The surety on such bond may pay into court for distribution among the claimants the full amount of his liability, to wit, the penalty named in the bond, and upon so doing, such surety shall be relieved from further liability. (1913, c. 150, s 2; 1915, c. 191, s. 1; 1923, c. 100; 1927, c. 151; 1935, c. 55; C. S. 2445.)

Art. 3. Liens on Vessels.

§ 44-15. For towage and for supplies at home port. — Every vessel, boat, scow, lighter, flat, raft or other water craft is subject to a lien for the payment of towage done by any steamboat or tugboat; and every vessel and boat is subject to a lien for debts due for materials and supplies furnished to such vessel or boat in her home port. These liens shall be filed and enforced as is provided for other liens. (Rev., s. 2040; 1893, c. 357; 1909, c. 147; C. S. 2446.)

§ 44-16. For labor in loading and unloading.— Every vessel, her tackle, apparel and furniture, is subject to a lien for all labor done by contractors or others in loading or discharging the cargo of such vessel, and also for all labor done by any subcontractor or laborer employed in discharging or loading any such vessel, when such labor is done under contract with a contractor or stevedore who may be employed by the master, agent or owner of such vessel. (Rev., s. 2041; Code, s. 1804; 1881, c. 356, s. 1; C. S. 2447.)

§ 44-17. Filing lien; laborer's notice to master. —The liens provided for in the preceding sections shall be filed as is provided for other liens. The subcontractor or laborer may give notice to the master, agent or owner of such vessel, that the contractor or stevedore is or will become indebted to him. It shall then be the duty of such master, agent or owner of such vessel to retain out of the amount due to such contractor or stevedore under his contract as much as is due or claimed by the person giving the notice, and after such notice is given no payment to the contractor or stevedore shall be a credit on or a discharge of the lien herein provided. (Rev., s. 2042; Code, s. 1805; 1881, c. 356, s. 2; C. S. 2448.)

§ 44-18. Enforcement of lien. — The enforcement of such lien shall be by summons against the contractor or stevedore, and also against the master, agent or owner of such vessel, who made the contract with such contractor or stevedore, if over two hundred dollars, to be issued by the clerk of the superior court, and if under two hundred dollars, by a justice of the peace. (Rev., s. 2043; Code, s. 1806; 1881, c. 356, s. 3; C. S. 2449.)

§ 44-19. Judgment against contractor binds master and vessel. — The judgment against the contractor or stevedore shall also be a judgment against the master, agent or owner of such vessel, and also against such vessel itself, her tackle, apparel and furniture, which shall be seized, held and sold under execution for the satisfaction of such judgment. (Rev., s. 2044; Code, s. 1807; 1881, c. 356, s. 4; C. S. 2450.)

§ 44-20. Liens not to exceed amount due contractor. — The sum total of all the liens due to different subcontractors and laborers, performed for any contractor or stevedore under any contract with any master, agent or owner of any vessel, shall not exceed the amount due to the contractor or stevedore at the time of notice given to the owner, agent or master, or the amount due to the contractor or stevedore at the time of the service of summons upon the master, agent or owner, when no notice has been given. (Rev., s. 2045; Code, s. 1808; 1881, c. 356, s. 5; C. S. 2451.)

§ 44-21. Owner to see laborers paid. — In all cases where steamships or vessels of any kind are loaded or unloaded or where any work is done in or about the same by the contractors to do the same known as stevedores or "boss stevedores," who in doing the same employ laborers to assist or do the work by the hour, day, week or month, it is the duty of the owner or agent of the vessel to see that the laborers employed in or about the same by the stevedore, contractor or "boss stevedore" are fully paid the wages that may be due such laborer before he makes final settlement with the contractor, stevedore or "boss stevedore." (Rev., s. 2046; 1887, c. 145, s. 1; C. S. 2452.)

§ 44-22. Owner may refuse to settle with contractor till laborers paid.—Any owner or agent referred to in the preceding section may refuse final settlement with the "boss stevedore" or contractor until he or they satisfy the said owner or agent, by written oath if necessary, that the same has been done. (Rev., s. 2047; 1887, c. 145, s. 2; C. S. 2453.)

§ 44-23. Owner may pay orders for wages.—It is lawful for the owner or agent of such vessel to pay off from time to time such orders for wages as may be due and given therefor in favor of the laborers by the contractor or stevedore, which on final settlement may be deducted from the contract price. (Rev., s. 2048; 1887, c. 145, s. 3; C. S. 2454.)

§ 44-24. Laborer's right of action against owner. —Any owner or agent of such vessel who neglects or refuses to comply with the preceding provisions is liable to such laborer in a civil action for the amount of the wages so due him by the contractor, stevedore or "boss stevedore." (Rev., s. 2049; 1887, c. 145, s. 4; C. S. 2455.)

§ 44-25. Stevedore's false oath punishable as perjury.—If any contractor, stevedore or boss stevedore shall make any false oath or false representation with intent to wrong, cheat or defraud any laborer in violation of the four preceding sections, he shall be guilty of a misdemeanor and on conviction thereof shall be punished as is now prescribed by law for perjury. (Rev., s. 3613; 1887, c. 145, s. 5; C. S. 2456.)

§ 44-26. Stevedores to be licensed; omission misdemeanor.—No person shall engage in the business of loading or unloading vessels upon contract, nor shall any person solicit or make any contract for himself or for any other person to load or unload any vessel either by day's work or by the job, without having previously obtained a license therefor, in the manner provided by law for other licenses for trades and occupations. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, at the dis-

cretion of the court. (Rev., ss. 2050, 3791; 1891, c. 450; 1899, c. 595; C. S. 2457.)

§ 44-27. Tax and bond on procuring license.—Before the sheriff shall issue the said license the applicant shall pay to the sheriff an annual tax of fifty dollars, and shall execute a bond with two or more approved sureties in the sum of two thousand dollars, payable to the state of North Carolina, and conditioned for the faithful performance of his duties and the due and lawful payment of all sums due to laborers assisting in the work of loading or unloading any vessels upon which the applicant may be engaged. And every bond so taken shall be renewed annually, and shall be filed with and preserved by the register of deeds in trust for every person that shall be injured by the breach of his contracts, who may severally bring suit thereon for the damages by each one sustained. (Rev., s. 2051; 1891, c. 450; C. S. 2458.)

Art. 4. Warehouse Storage Liens.

§ 44-28. Liens on goods stored for charges.—Every person, firm or corporation who furnishes storage room for furniture, tobacco, goods, wares or merchandise and makes a charge for storing the same, has the right to retain possession of and a lien upon all furniture, tobacco, goods, wares or merchandise until such storage charges are paid. (1913, c. 192, s. 1; 1915, c. 190, s. 1; C. S. 2459.)

§ 44-29. Enforcement by public sale.—If such charges are not paid within ten days after they become due, then such person, firm or corporation is authorized to sell said furniture, tobacco, goods, wares or merchandise at the county courthouse door, after first advertising such sale for ten days at said courthouse door and three other public places in said county, or in some newspaper published in said county where the goods or tobacco are stored, and out of the proceeds of such sale to pay the costs and expenses of sale and all costs and charges due for storage, and the surplus, if any, pay to the owner of such furniture, tobacco, goods, wares or merchandise. (1913, c. 192, s. 2; 1915, c. 190, s. 2; C. S. 2460.)

Art. 5. Liens of Hotel, Boarding and Lodging-House Keeper.

§ 44-30. Lien on baggage.—Every hotel, boarding-house keeper and lodging-house keeper who furnishes board, bed or room to any person has the right to retain possession of and a lien upon all baggage or other property of such person that may have been brought to such hotel, boarding-house or lodging-house, until all reasonable charges for such room, bed and board are paid. (Rev., s. 2037; 1899, c. 645, s. 1; 1917, c. 26, s. 1; C. S. 2461.)

§ 44-31. Baggage may be sold.—If such charges are not paid within ten days after they become due, then the hotel, boarding-house or lodging-house keeper is authorized to sell said baggage or other property at the courthouse door, or in front of any public building in the town in which the lien attaches, after first advertising such sale for ten days at said courthouse door and three other public places in the county, and out of the proceeds of sale to pay the costs and expenses of sale and all costs and charges due for said board, bed or room, and the surplus, if any, pay to the owner of said baggage or other property. (Rev., s. 2038; 1899, c. 645, s. 2; 1917, c. 26, s. 2; 1935, c. 364; C. S. 2462.)

§ 44-32. Notice of sale.—Written notice of such sale shall be served on the owner of such baggage or other property ten days before such sale, if he is a resident of the state; but if he is a nonresident of the state, or if his residence is unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same. (Rev., s. 2039; 1887, c. 645, s. 3; C. S. 2463.)

Art. 6. Liens of Livery-Stable Keepers.

§ 44-33. Lien for ninety days keep on animals in possession. — Every keeper of livery, sale, or boarding stables has a lien upon and the right to retain the possession of every horse, mule, or other animal belonging to the owner or person contracting for the board and keep of any horse, mule, or other animal, for any and all unpaid amounts due for board of any horse, mule, or other animal. This lien shall not attach for amounts accruing for a longer period than ninety days from the reception of such property or from the last full settlement; nor does this lien apply if the property is removed from the possession of said keeper of said livery, sale, or boarding stable (1911, c. 141, s. 1; C. S. 2464.)

§ 44-34. Enforcement by public sale.—If such charges are not paid within fifteen days after they become due and demand is made for the same, then the keeper of such livery, sale or boarding stable is authorized to sell the property at the county courthouse door, after first advertising said sale for ten days at the county courthouse door and three other public places in said county, and out of the proceeds of such sale to pay the costs and charges due for the board and keep of said horse, mule, or other animal, including the charges for keeping said animal until said sale, and the surplus, if any, pay to the owner of said animal. (1911, c. 141, s. 2; C. S. 2465.)

§ 44-35. Notice of sale to owner.—Written notice of such sale shall be served on the owner of such horse, mule, or other animal ten days before such sale, if he is a resident of the state; but if he be a nonresident of the state, or if his residence is unknown, the publication of such notice for ten days at the county courthouse door and three other public places in the county shall be sufficient service of the same. (1911, c. 141, s. 3; C. S. 2466.)

Art. 7. Liens on Colts, Calves and Pigs.

§ 44-36. Season of sire a lien.—In all cases where the owner, or any agent for or employee of the owner, of any mare, jennet, cow or sow, turns the same to a studhorse, jack, bull, or boar, for the purpose of raising colts, calves, or pigs, the price charged for the season of the studhorse, jack, bull, or boar constitutes a lien on the colt, calf, or pigs until the price so charged for the season is paid. (Rev., s. 2024; Code, s. 1797; 1885, c. 72; 1887, c. 14; 1872-3, c. 94, s. 1; 1915, c. 18, s. 1; C. S. 2467.)

§ 44-37. Colts, etc., not exempt from execution for season price.—The colt, calf, or pigs shall not be exempt from execution for the payment of said season price by reason of the operation of the personal property exemption: Provided, the person claiming such lien institutes action to enforce the same within twelve months from the foaling of the colt, dropping the calf, or farrowing of the pigs. (Rev., s. 2025; Code, s. 1798; 1885, c. 72; 1872-3, c. 94, s. 2; 1879, c. 47; 1915, c. 18; 1917, c. 229; C. S. 2468.)

Art. 8. Perfecting, Enforcing and Discharging Liens.

§ 44-38. Claim of lien to be filed; place of filing.—All claims against personal property, of two hundred dollars and under, may be filed in the office of the nearest justice of the peace; if over two hundred dollars or against any real estate or interest therein, in the office of the superior court clerk in any county where the labor has been performed or the materials furnished; but all claims shall be filed in detail, specifying the materials furnished or labor performed, and the time thereof. If the parties interested make a special contract for such labor performed, or if such material and labor are specified in writing, in such cases it shall be decided agreeably to the terms of the contract, provided the terms of such contract do not affect the lien for such labor performed or materials furnished. (Rev., s. 2026; Code, s. 1784; 1869-70, c. 206, s. 4; 1876-7, c. 53, s. 1; C. S. 2469.)

§ 44-39. Time of filing notice.—Notice of lien shall be filed as hereinbefore provided, except in those cases where a shorter time is prescribed, at any time within six months after the completion of the labor or the final furnishing of the materials, or the gathering of the crops. (Rev., s. 2028; Code, s. 1789; 1868-9, c. 117, s. 4; 1876-7, c. 53, s. 2; 1881, c. 65; 1883, c. 101; 1909, c. 32; 1913, c. 150, s. 7; C. S. 2470.)

§ 44-40. Date of filing fixes priority.—The liens created and established by this chapter shall be paid and settled according to the priority of the notice of the lien filed with the justice or the clerk. (Rev., s. 2035; Code, s. 1792; 1868-9, c. 117, s. 11; C. S. 2471.)

§ 44-41. Laborer's crop lien dates from work begun.—The lien for work on crops given by this chapter shall be preferred to every other lien or encumbrance which attached to the crops subsequent to the time at which the work was commenced. (Rev., s. 2034; Code, s. 1782; 1869-70, c. 206, s. 2; C. S. 2472.)

§ 44-42. Duly filed claims of prior creditors not affected.—Nothing in this chapter shall be construed to affect the rights of any person to whom any debt may be due for any work done for which priority of claim is filed with the proper officer. (Rev., s. 2036; Code, s. 1786; 1869-70, c. 206, s. 6; C. S. 2473.)

§ 44-43. Action to enforce lien.—Action to enforce the lien created must be commenced in the court of a justice of the peace, and in the superior court, according to the jurisdiction thereof, within six months from the date of filing the notice of the lien. But if the debt is not due within six months, but becomes due within twelve months, suit may be brought or other proceedings instituted to enforce the lien in thirty days after it is due. (Rev., s. 2027; Code, ss. 1785, 1790; 1868-9, c. 117, s. 7; 1869-70, c. 206, s. 5; 1876-7, c. 250; 1876-7, c. 251; C. S. 2474.)

§ 44-44. When attachment available to plaintiff.—In all cases where the owner or employer attempts to remove the crop, houses or appurtenances from the premises, without the permission, or with the intent to defraud the lienor of his lien, the claimant may have a remedy by attachment. (Rev., s. 2031; Code, s. 1795; 1868-9, c. 117, s. 14; C. S. 2475.)

§ 44-45. Defendant entitled to counterclaim.—The defendant in any suit to enforce the lien is entitled to any set off arising between the contractors during the performance of the contract, or counterclaim allowed by law. (Rev., s. 2032; Code, s. 1788; 1869-70, c. 206, s. 8; C. S. 2476.)

§ 44-46. Execution.—Upon judgment rendered in favor of the claimant, an execution for the collection and enforcement thereof shall issue in the same manner as upon other judgments in actions arising on contract for the recovery of money only, except that the execution shall direct the officer to sell the right, title and interest which the owner had in the premises or the crops thereon, at the time of filing notice of the lien, before such execution shall extend to the general property of the defendant. (Rev., s. 2029; Code, s. 1791; 1868-9, c. 117, s. 9; C. S. 2477.)

§ 44-47. No justice's execution against land.—No execution issued by a justice of the peace, under this chapter, shall be enforced against real estate or any interest therein, but justices' judgments may be docketed on the judgment docket of superior court for the purpose of selling such estate or any interest therein. (Rev., s. 2030; Code, s. 1794; 1868-9, c. 117, s. 13; C. S. 2478.)

§ 44-48. Discharge of liens.—All liens created by this chapter may be discharged as follows:

1. By filing with the justice or clerk a receipt or acknowledgment, signed by the claimant, that the lien has been paid or discharged.

2. By depositing with the justice or clerk money equal to the amount of the claim, which money shall be held by said officer for the benefit of the claimant.

3. By an entry in the lien docket that the action on the part of the claimant to enforce the lien has been dismissed, or a judgment rendered against the claimant in such action.

4. By a failure of the claimant to commence an action for the enforcement of the lien within six months from the notice of lien filed. (Rev., s. 2033; Code, s. 1793; 1868-9, c. 117, s. 12; C. S. 2479.)

Art. 9. Liens upon Recoveries for Personal Injuries to Secure Sums Due for Medical Attention, etc.

§ 44-49. Lien created; applicable to persons non sui juris.—From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this State, the said lien in favor of

any person or corporation to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for drugs, medical supplies, and medical services rendered by any physician, dentist, trained nurse, or hospitalization, or hospital attention and/or services rendered in connection with the injury in compensation for which the said damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, such liens shall attach to the sum recovered as fully and effectively as if the said person were sui juris. (1935, c. 121, s. 1.)

§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.—A like lien shall attach to all funds paid to any person in compensation for or settlement of the said injuries, whether in litigation or otherwise; and it shall be the duty of any person receiving the same before disbursement thereof to retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for such drugs, medical supplies, and medical attention and/or hospital service, after having received and accepted notice thereof: Provided, that evidence as to the amount of such charges shall be competent in the trial of any such action: Provided further, that nothing herein contained shall be construed so as to interfere with any amount due for attorney's services: Provided, further, that the lien hereinbefore provided for shall in no case, exclusive of attorneys' fees, exceed fifty per cent of the amount of damages recovered. (1935, c. 121, s. 2.)

§ 44-51. Disputed claims to be settled before payments.—Whenever the sum or amount or amounts demanded for medical services or hospital fees shall be in dispute, nothing in this article shall have any effect of compelling payment thereof until the claim is fully established and determined, in the manner provided by law: Provided, however, that when such sums are in dispute the amount of the judgment against which the lien shall lie shall in no case exceed the amount of the bills in dispute. (1935, c. 121, s. 3.)

Art. 10. Agricultural Liens for Advances.

§ 44-52. Lien on crops for advances.—If any person makes any advance either in money or supplies to any person who is engaged in or about to engage in the cultivation of the soil, the person making the advances is entitled to a lien on the crops made within one year from the date of the agreement in writing herein required upon the land in the cultivation of which the advance has been expended, in preference to all other liens, except laborer's and landlord's liens, to the extent of such advances. Before any advance is made an agreement in writing for the advance shall be entered into, specifying the amount to be advanced, or fixing a limit beyond which the advance, if made from time to time during the year, shall not go; and this agreement shall be registered in the office of the register of the county or counties where the land is situated on which the crops of the person advanced are to be grown. Provided, that where a county line divides a farm the crop lien may be recorded in the county where the owner of said farm resides; Provided, he resides on said farm; Provided, that the lien shall continue to be good and effective as to any crop or crops which may be harvested after the end of the said year, and referred to in the said lien. (Rev., s. 2052; Code, s. 1799; 1893, c. 9; 1866-7, c. 1, s. 1; 1872-3, c. 133, s. 1; 1925, c. 302, s. 1; 1927, c. 22; 1935, c. 205; C. S. 2480.)

Local Modification.—Bertie: Pub. Loc. 1927, c. 173.

§ 44-53. Contract for advances to mortgagor in possession. — The preceding section shall apply to all contracts made for the advancement of money and supplies, or either, for the purposes herein specified by mortgagors or trustors, their tenants, lessees or croppers, who may be in possession of the lands mortgaged or conveyed in trust at the time of the making of the contract for such advancement of money or supplies, either in case the debts secured in said mortgage or deed of trust be due or not. (Rev., s. 2053; 1889, c. 476; 1931, c. 173, ss. 2, 3; C. S. 2481.)

§ 44-54. Price to be charged for articles advanced limited. — In order to be entitled to the benefits of the lien on crops in favor of landlords and other persons advancing supplies under the article, Agricultural Tenancies, of the chapter, Landlord and Tenant, and under the present article, or on a chattel mortgage on crops, such landlord or person shall charge for such supplies a price or prices of not more than ten per cent over the retail cash price or prices of the article or articles advanced, and the said ten per cent shall be in lieu of interest on the debt for such advances: Provided, however, that coupon books and trade checks commonly used by time merchants shall be considered as supplies advanced, when sold by merchants to customers, and charged for in the same manner. If more than ten per cent over the retail cash price is charged on any advances made under the lien or mortgage given on the crop, then the lien or mortgage shall be null and void as to the article or articles upon which such overcharge is made. At the time of each sale there shall be delivered to the purchaser a memorandum showing the cash prices of the articles advanced. (1917, c. 134, s. 1; 1921, c. 89; C. S. 2482.)

Local Modification.—Columbus and Scotland: 1931, c. 95; Greene: 1941, c. 210; Lenoir: 1929, c. 262; Robeson: 1929, c. 20.

§ 44-55. "Cash prices" defined and determined. —In the case of retail merchants, the retail cash price or prices shall be the regular cash price or prices charged by the same merchant to cash customers for the same article or articles in like quantities at the same time. In the case of advances of supplies by landlords or other persons not engaged in business as retail merchants, or by retail merchants who have no regular cash prices, if the prices charged are called into question by the purchaser the retail cash price or prices of the supplies advanced may be determined by taking the average between the cash price or prices for the same class or classes of goods of two neighboring merchants, one selected by the landlord or other person making the advance and the other by the one to whom

the advance is made. (1917, c. 134, s. 2; C. S. 2483.)

Local Modification.—Columbus and Scotland: 1931, c. 95; Greene: 1941, c. 210; Lenoir: 1929, c. 262; Robeson: 1929, c. 20.

§ 44-56. Person advanced not estopped by agreement. — No agreement or understanding between the parties as to the price or prices to be charged shall work an estoppel against the person to whom supplies have been advanced from showing that the price or prices charged were in fact more than ten per cent over the average retail cash price or prices in that locality at the time the advance or advances were made. If the price or prices charged by the merchants or landlord were in fact more than ten per cent, then the lien shall be null and void as to the article or articles upon which such overcharge is made. (1917, c. 134, s. 2; C. S. 2484.)

Local Modification.—Columbus and Scotland: 1931, c. 95; Greene: 1941, c. 210; Lenoir: 1929, c. 262; Robeson: 1929, c. 20.

§ 44-57. Commission in lieu of interest, where advance in money. — Any person, firm, or corporation, including any bank or credit union, making any advancement in money to any person for the purpose of enabling such person to cultivate a crop, and taking as sole security for the advance so made a lien or mortgage on the crops to be cultivated and the personal property of the person to whom the advances are made, may charge, in lieu of interest, a commission of not more than ten per cent of the amount of money actually advanced: Provided, that money advanced under the provisions of this section shall be advanced in installments agreed upon at the time of the contract, and the ten per cent commission herein allowed shall not be deducted, but shall be added to the amount of money agreed to be advanced. (1917, c. 134, s. 3; C. S. 2485.)

Local Modification.—Lenoir: 1929, c. 262; Robeson: 1929, c. 20.

§ 44-58. Disposition of commission, where advanced by credit union. — In case the money is advanced by a credit union, the funds derived from the ten per cent commission allowed in the preceding section shall be used to pay such interest as the union may pay for the money borrowed by it for the benefit of its members, and to cover losses sustained by the union on account of loans made to members, and to further cover any reasonable expenses incurred by the union in connection with the loans made to members, and the balance of said fund shall be returned to the borrowers at the end of each year. (1917, c. 134, s. 4; C. S. 2486.)

Local Modification.—Lenoir: 1929, c. 262; Robeson: 1929, c. 20.

§ 44-59. Purchasers for value protected. — All liens or mortgages made under the provisions of this article shall be valid for their face value in the hands of purchasers for value and before maturity, even though the charges made are in excess of those allowed herein; but in such cases the party to whom the advances are made has the right to recover from the party making the advances any sum he may be compelled to pay a third party in excess of the charges allowed by this article. (1917, c. 134, ss. 5, 6; C. S. 2487.)

Local Modification.—Lenoir: 1929, c. 262; Robeson: 1929, c. 20.

§ 44-60. Crop seized and sold to preserve lien. —If the person making such advances makes an affidavit before the clerk of the superior court of the county in which such crops are, that the amount secured by said lien for such advances, or any part thereof, is due and unpaid, that the person to whom such advances have been made, or any other person having the said crop in his possession, is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it is lawful for him to issue his warrant, directed to any of the sheriffs of this state, requiring them to seize the said crop, and, after due notice, sell the same for cash and pay over the net proceeds thereof, or so much thereof as may be necessary in the extinguishment of the amount then due. This proceeding shall not affect the rights of landlords or laborers. (Rev., s. 2054; Code, s. 1800; 1893, c. 9; 1866-7, c. 1, s. 2; 1872-3, c. 133, s. 2; 1883, c. 88; C. S. 2488.)

§ 44-61. Lienor's claim disputed; proceeds of sale held; issue made for trial. — If the person to whom the advances have been made, or who claims an interest in the crops, within thirty days after such sale has been made, gives notice in writing to the sheriff, accompanied with an affidavit, to the effect that the amount claimed is not justly due, it is the duty of the sheriff to hold the proceeds of such sale subject to the decision of the court upon an issue which shall be made up and set for trial at the next succeeding term of the superior court for the county in which the person to whom such advances have been made resides. (Rev., s. 2054; Code, s. 1800; 1866-7, c. 1, s. 2; 1872-3, c. 133, s. 2; 1883, c. 88; 1893, c. 9; C. S. 2489.)

§ 44-62. Local: Short form of liens.—For the purpose of creating a valid agricultural lien under the preceding sections for supplies to be advanced, and also to constitute a valid chattel mortgage as additional security thereto, and to secure a pre-existing debt, the following or a substantially similar form shall be deemed sufficient, and for those purposes legally effective, in the counties of Alamance, Alleghany, Anson, Ashe, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Carteret, Caswell, Catawba, Chowan, Columbus, Craven, Cumberland, Davie, Davidson, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Granville, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pender, Pamlico, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Transylvania, Tyrell, Union, Vance, Wake, Watauga, Washington, Wayne and Wilson: North Carolina, ... County.

Whereas, ... ha .... agreed to make advances to ..... for the purpose of enabling said ..... to cultivate the lands hereinafter described during the year 19.., the amount of said advances not to exceed ..... dollars; and,

Whereas, said ..... is indebted to said ..... in the further sum of ..... dollars now due; now, therefore, in order to secure the payment of the same the said ..... do ..... hereby convey to said ..... all the crops of every description which may be raised during the year 19.. on the following lands in ..... County, North Carolina, ... Township, adjoining the lands of ..... and also the following other property, viz.: ....

And if by the ..... day of ....., 19.., said ..... fail ..... to pay said indebtedness, then said ..... may foreclose this lien as provided in § 44-60 of the North Carolina Code or otherwise, and may sell said crops and other property after ten days' notice posted at the courthouse door and three other public places in said county, and apply the proceeds to the payment of said indebtedness and all costs and expenses of executing this conveyance, and pay the surplus to said ....., and the said ..... hereby represents that said crops and other property are the absolute property of ..... and free from encumbrance .....

Witness ..... hand ..... and seal, ... this the ..... day of ....., 19...

Witness: .....

....., owner of the lands described in the foregoing instrument, in consideration of the advances to be made, as therein provided, do ..... hereby agree to waive and release my lien as landlord upon said crops to the extent of said advances made to said .....

This the ..... day of ....., 19...

Witness: .....

..... (Seal.)

North Carolina, ... County.

The due execution of the foregoing instrument was this day proven before me by the oath and examination of ....., the subscribing witness thereto.

This the ..... day of ....., 19...

..... (Seal.)

North Carolina, ... County.

The foregoing certificate of ....., a ..... of ..... County, is adjudged to be correct. Let the instrument with the certificate be registered.

This the ..... day of ....., 19...

....., Clerk Superior Court.

(Rev., s. 2055; 1899, cc. 17, 247; 1901, cc. 329, 704; 1903, c. 489; 1905, cc. 226, 319; 1907, c. 843; 1909, c. 532; P. L. 1913, c. 49; 1925, c. 285, s. 1; 1931, c. 196; 1933, c. 101, s. 6; C. S. 2490.)

Local Modification.—Beaufort: 1933, c. 101.

§ 44-63. Local: Rights on lienee's failure to cultivate. — If any person in the counties mentioned in the preceding section, after executing a lien as aforesaid for advances, fails to cultivate the lands described therein, or does any other act calculated to impair the security therein given, then the person to whom the lien was executed is relieved from any further obligation to furnish supplies, and the debts and advances theretofore made become due and collectible at once, and the person to whom the instrument was executed may proceed to take possession of, cultivate and harvest said crops, and to sell the other property described therein. It is not necessary to incorporate such power in the instrument, but this section is sufficient authority for the same. The sale of any property described in any instrument executed under the provisions of this chapter may be made at any place in the county where such property is situated after ten days notice published at the courthouse door and three other public places in said county. (Rev., s. 2056; 1899, c. 17, s. 3; 1901, c. 329, s. 3; C. S. 2491.)

§ 44-64. Local: Commissioners to furnish blank records.—The board of commissioners of the said counties shall have record books made with the aforesaid forms printed therein, and the cost of said books and of the printing of said forms, and of such other said books as may be hereafter required, shall be paid by the respective counties, and furnished to the register of deeds. (Rev., s. 2057; 1899, c. 17, s. 4; 1901, c. 329, s. 4; C. S. 2492.)

Art. 11. Liens for Internal Revenue.

§ 44-65. Filing notice of lien.—Notices of liens for internal revenue taxes payable to the United States of America and certificates discharging such liens may be filed in the office of the register of deeds of the county or counties within which the property subject to such lien is situated. (1924, c. 44, s. 1.)

§ 44-66. Duty of register of deeds.—When a notice of such tax lien is filed, the register of deeds shall forthwith enter the same in alphabetical Federal lien tax index to be provided by the board of county commissioners, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax and penalty assessed. He shall file and keep all original notices so filed in numerical order in a file or files to be provided by the board of county commissioners and designated Federal tax lien notices. This service shall be performed without fee. (1924, c. 44, s. 2.)

§ 44-67. Certificate of discharge.—When a certificate of discharge of any tax lien, issued by the collector of internal revenue or other proper officer, is filed in the office of the register of deeds where the original notice of lien is filed, said register of deeds shall enter the same with date of filing in said Federal tax lien index on the line where the notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien. This service shall be performed without fee. (1924, c. 44, s. 3.)

§ 44-68. Purpose of article. — This article is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of section three thousand one hundred eighty-six of the Revised Statutes of the United States, as amended by the act of March fourth, one thousand nine hundred thirteen, thirty-seven Statutes at Large, page one thousand sixteen. (1924, c. 44, s. 4.)

Chapter 45. Mortgages and Deeds of Trust.

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Art. 1. Chattel Mortgages: Form and Sufficiency.

§ 45-1. Form of chattel mortgage.—Any person indebted to another in a sum to be secured may execute a chattel mortgage in form substantially as follows:

I, ..., of the county of ..... in the state of North Carolina, am indebted to ....., of ..... county, in said state, in the sum of ..... dollars, for which he holds my note to be due the .... of ....., A. D. 19...., and to secure the payment of the same, I do hereby convey to him these articles of personal property, to wit: ..... but on this special trust, that if I fail to pay said debt and interest on or before the .... day of ....., A. D. 19...., then he may sell said property, or so much thereof as may be necessary, by public auction for cash, first giving twenty days notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me.

Given under my hand and seal this .... day of ....., A. D. 19.....

..... (Seal).

(Rev., s. 1039; Code, s. 1273; 1870-1, c. 277; 1911, c. 69, s. 1; C. S. 2575.)

§ 45-2. Registration. — Chattel mortgages substantially in the form provided in § 45-1 are good to all intents and purposes when the same are duly registered according to law. (Rev., s. 1040; Code, ss. 1273, 1274; 1870-1, c. 277, ss. 1, 2; C. S. 2576.)

§ 45-3. Mortgage of household and kitchen furniture. — All conveyances of household and kitchen furniture by a married man, made to secure the payment of money or other things of value, are void, unless the wife joins therein and her privy examination is taken in the manner prescribed by law in conveyances of real estate, except when said mortgage or conveyance is exe-

cuted for the purchase money thereof. (Rev., s. 1041; 1891, c. 91; 1931, c. 211; C. S. 2577.)

Art. 2. Right to Foreclose or Sell under Power.

§ 45-4. Representative succeeds on death of mortgagee or trustee in deeds of trust; parties to action.—When the mortgagee in a mortgage, or the trustee in a deed in trust, executed for the purpose of securing a debt, containing a power of sale, dies before the payment of the debt secured in such mortgage or deed in trust, all the title, rights, powers and duties of such mortgagee or trustee pass to and devolve upon the executor or administrator or collector of such mortgagee or trustee, including the right to bring an action of foreclosure in any of the courts of this state as prescribed for trustees or mortgagees, and in such action it is unnecessary to make the heirs at law of such deceased mortgagee or trustee parties thereto. (Rev., s. 1031; 1901, c. 186; 1887, c. 147; 1895, c. 431; 1905, c. 425; 1933, c. 199; C. S. 2578.)

§ 45-5. Foreclosures by representatives validated. — In all actions which were brought or prosecuted prior to the fourth day of March, one thousand nine hundred and five, for the foreclosure of any mortgage or deed in trust by any executor or administrator of any deceased mortgagee or trustee where the heirs of the mortgagee were duly made parties and regular and orderly decrees of foreclosure entered by the court and sale had by a commissioner appointed by the court for that purpose and deed made after confirmation, the title so conveyed to purchaser at such judicial sale shall be deemed and held to be vested in such purchaser, whether the heir of such deceased mortgagee or trustee was a party to such foreclosure proceeding or not, and such heir of any deceased mortgagee is estopped to bring or prosecute any further action against such purchaser for the recovery of such property or foreclosure of such mortgage or deed in trust. (Rev., s. 1032; 1905, c. 425, s. 2; C. S. 2579.)

§ 45-6. Renunciation by representative; clerk appoints trustee.—The executor or administrator of any deceased mortgagee or trustee in any mortgage or deed of trust heretofore or hereafter executed may renounce in writing, before the clerk of the superior court before whom he qualifies, the trust under the mortgage or deed of trust at the time he qualifies as executor or administrator, or at any time thereafter before he intermeddles with or exercises any of the duties under said mortgage or deed of trust, except to preserve the property until a trustee can be appointed. In every such case of renunciation the clerk of the superior court of any county wherein the said mortgage or deed of trust is registered has power and authority, upon proper proceedings instituted before him, as in other cases of special proceedings, to appoint some person to act as trustee and execute said mortgage or deed of trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall enter the name of the substituted trustee or mortgagee on the margin of the deed in trust or the mortgage in the book of the office of the register of deeds of said county. (Rev., s. 1038; 1905, c. 128; C. S. 2580.)

§ 45-7. Agent to sell under power may be appointed by parol.—All sales of property, real or personal, under a power of sale contained in any mortgage or deed of trust to secure the payment of money, by any mortgagee or trustee, through an agent or attorney for that purpose, appointed orally or in writing by such mortgagee or trustee, whether such writing has been or shall be registered or not, shall be valid, whether or not such mortgagee or trustee was or shall be present at such sale. (Rev., s. 1035; 1895, c. 117; C. S. 2581.)

§ 45-8. Survivorship among donees of power of sale.—In all mortgages and deeds of trust wherein two or more persons, as trustees or other wise, are given power to sell the property therein conveyed or embraced, and one or more of such persons dies, any one of the persons surviving having such power may make sale of such property in the manner directed in such deed, and execute such assurances of title as are proper and lawful under the power so given; and the act of such person, in pursuance of said power, shall be as valid and binding as if the same had been done by all the persons on whom the power was conferred. (Rev., s. 1033; 1885, c. 327, s. 2; C. S. 2582.)

§ 45-9. Clerk appoints successor to incompetent trustee.—When the sole or last surviving trustee named in a will or deed of trust dies, removes from the county where the will was probated or deed executed and/or recorded and from the state, or in any way becomes incompetent to execute the said trust, or is a nonresident of this state, or has disappeared from the community of his residence and his whereabouts remains unknown in such community for a period of three months and cannot, after diligent inquiry be ascertained, the clerk of the superior court of the county wherein the will was probated or deed of trust was executed and/or recorded is authorized and empowered, in proceedings to which all persons interested shall be made parties, to appoint some discreet and competent person to act as trustee and execute the trust according to its true intent and meaning, and as fully as if originally appointed: Provided, that in all actions or proceedings had under this section prior to January first, one thousand nine hundred, before the clerks of the superior court in which any trustee was appointed to execute a deed of trust where any trustee of a deed of trust has died, removed from the county where the deed was executed and from the state, or in any way become incompetent to execute the said trust, whether such appointment of such trustee by order or decree, or otherwise, was made upon the application or petition of any person or persons ex parte, or whether made in proceedings where all the proper parties were made, are in all things confirmed and made valid so far as regards the parties to said actions and proceedings to the same extent as if all proper parties had originally been made in such actions or proceedings (Rev., s. 1037; Code, s. 1276; 1869-70, c. 188; 1873-4, c. 126; 1901, c. 576; 1933, c. 493; C. S. 2583.)

§ 45-10. Substitution of trustees in mortgages and deeds of trust.—In addition to the rights and remedies now provided by law, the holder and/or

owners of all or a majority, in amount, of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real or personal property, or creating a lien thereon, may exercise the following powers:

To substitute a trustee by the execution of a paper writing whenever it shall appear that the trustee then named in such mortgage, deed of trust, or other instrument, securing the payment of money, whether such then named trustee shall be the original trustee named therein or a substituted trustee, has removed from the State, become incompetent to act mentally or physically, or has been committed to any institution, private or public, on account of inebriacy, or conviction of a criminal offense, or has refused to accept such appointment as trustee or refuses to act or has been declared a bankrupt, or against whom a petition in involuntary bankruptcy has been filed, or against whom a suit has been instituted in any court of this State in which relief is asked against him on account of insolvency, or a cause of action has been asserted against him on account of fraud against his creditors, or has died, and if such named trustee in such mortgage, deed of trust or other instrument as aforesaid, is a corporation and such corporation has ceased to do business, or has ceased to exercise trust powers, or has excluded from its regular business the performance of such trusts, or has been declared a bankrupt, or has been placed in the hands of a receiver, or insolvency proceedings have been instituted in any court of this State or in any court of the United States against it, or any action has been instituted in either of said courts against it in which relief is asked on the ground of insolvency or fraud against its creditors, or when any officer or commission of this State, or any employee of such commission or officer, has taken charge of its affairs for the purpose of liquidation pursuant to any statute, or when it is a foreign corporation, or the trustee is not a resident of this State or cannot be found in this State, or has disappeared from the community of his residence and his whereabouts remains unknown in such community for a period of three months or more. The powers recited in this section shall be construed and held to be cumulative and optional. (1931, c. 78, ss. 1, 2; 1935, c. 227.)

§ 45-11. Appointment of substitute trustee upon application of subsequent or prior lienholders; effect of substitution.—When any person, firm, corporation, county, city or town holding a lien on real or personal property upon which there is a subsequent or prior lien created by a mortgage, deed of trust or other instrument, the mortgagee or trustee therein named being dead or having otherwise become incompetent to act, files a written application with the clerk of the superior court of the county in which said property is located, setting forth the facts showing that said mortgagee or trustee is then dead or has become incompetent to act, the said clerk of the superior court, upon a proper finding of fact that said mortgagee or trustee is dead or has become incompetent to act, shall enter an order appointing some suitable and competent person, firm or corporation as substitute trustee upon whom service of process may be made, and said substitute trustee shall thereupon be vested with full power and authority to defend any action instituted to foreclose said property as fully as if he had been the original mortgagee or trustee named; but the substitute trustee shall have no power to cancel said mortgage or deed of trust without the joinder of the holder of the notes secured thereby. Said application shall not be made prior to the expiration of thirty days from the date the original mortgagee or trustee becomes incompetent to act. (1941, c. 115, s. 1.)

§ 45-12. Certificate by clerk of superior court.—Whenever the powers set out in § 45-10 shall be exercised the clerk of the superior court shall certify that the instrument has been executed by the owner or owners of a majority in amount of the indebtedness, notes, bonds or other instruments secured therein, have executed the same, and that it has been made to appear to him that the cause of substitution as set forth therein is true and that the substituted trustee is a fit and proper person or corporation to perform the duties of said trust, and unless such certificate is attached to said instrument before registration and registered therewith the same shall be invalid and of no effect. (1931, c. 78, s. 3.)

§ 45-13. Right of appeal by any person interested; judge to review findings of clerk de novo.—Whenever the power contained in § 45-10 or in § 45-11 is exercised in respect to any deed of trust, mortgage or other instrument creating the lien which was executed prior to March 4, 1931, then, at any time within twelve months from the registration of the instrument designating the new trustee but within thirty days from actual knowledge of the same, any person interested therein may appeal from the findings of the clerk of the superior court pursuant to § 45-12, and such appeal shall be duly constituted when a written notice signed by, or on behalf of such person, shall have been served in any of the methods of service of summons provided by law on all other parties interested therein, including the said substituted trustee. The notice shall state that a motion will be made before the judge of the superior court of the county of the clerk who made such certificate at the next regular term of such superior court beginning more than ten days after the service of said notice on all interested parties, and the docketing of such notices on the civil issue docket of said county. On the hearing of said motion it shall be open to all parties to contest and defend the findings of said clerk, and the judge shall review said findings de novo and make such findings in respect thereof as shall appear to him from the evidence to be true, and if the said substituted trustee shall be removed at said hearing another trustee shall be substituted in his stead by the court upon a finding that he or it is a proper person or corporation to perform the functions of said trusteeship, but only one such appeal shall be allowed as to each appointment. (1931, c. 78, s. 4; 1941, c. 115, s. 2.)

§ 45-14. Acts of trustee prior to removal not invalidated. — If any such trustee who has been substituted as provided in § 45-10 or in § 45-11 shall have performed any functions as such trustee

and shall thereafter be removed as provided in §§ 45-10 to 45-17, such removal shall not invalidate or affect the validity of such acts in so far as any purchaser or third person shall be affected or interested, and any conveyances made by such trustee before removal if otherwise valid, shall be and remain valid and effectual to all intents and purposes, but if any trustee upon such hearing is declared to have been wrongfully removed, he shall have his right of action against the substituted trustee for any compensation that he would have received in case he had not been wrongfully removed from such trust. (1931, c. 78, s. 5; 1941, c. 115, s. 3.)

§ 45-15. Registration of substitution constructive notice.—The registration of such paper writing designating a new trustee under § 45-10 or under § 45-11 shall be from and after registration, constructive notice to all persons, and no appeal or other proceedings shall be instituted to contest the same after one year from and after such registration. (1931, c. 78, s. 6; 1941, c. 115, s. 4.)

§ 45-16. Register of deeds to make marginal entry of substituted trustee.—Whenever any substituted trustee shall be appointed as provided in §§ 45-10 to 45-17 and such designation of such substituted trustee shall have been registered, together with the certificates required in §§ 45-10 to 45-17, then it shall be the duty of the register of deeds to make an appropriate notation on the margin of the registration of the said mortgage, deed of trust, or other instrument securing the payment of money, indicating the place of registration of such appointment of a substituted trustee, and this shall be done as many times as a trustee may be substituted as provided for in §§ 45-10 to 45-17. It shall be competent for the holder of such deed of trust, or deeds of trust, mortgage or mortgages, wherein the same trustee is named, to execute one instrument applying to all such deeds of trust or mortgages, in the substitution of a trustee for any of the causes set forth in § 45-10, and in said instrument to recite and name the mortgages and/or deeds of trust affected by giving the names of the grantors, the trustee and, if registered, the book and page of such registration. This may be done as many times as a trustee may be substituted as provided for in §§ 45-10 to 45-17, and in which cases the register of deeds shall make, as to each recited instrument, mortgage or deed of trust, the notation provided for in this section. (1931, c. 78, s. 7.)

§ 45-17. Substitution made as often as justifiable.—The powers set out in § 45-10 and in § 45-11 may be exercised as often and as many times as the right to make such substitution may arise under the terms of such section, and all the privileges and requirements and rights to contest the same as set out in §§ 45-10 to 45-17 shall apply to each deed of trust or mortgage and to each substitution. (1931, c. 78, s. 8.)

§ 45-18. Validation of certain acts of substituted trustees.—Whenever before February 3, 1939, a trustee has been substituted in a deed of trust in the manner provided by §§ 45-10 to 45-17, but the instrument executed by the holder and/or owners of all or a majority in amount of the indebtedness, notes, bonds, or other instruments secured by said deed of trust, and the certificate of the clerk of the superior court executed in connection therewith under the provisions of § 45-12, have not been registered as provided by said sections until after the substituted trustee has exercised some or all of the powers conferred by said deed of trust upon the trustee therein, including the advertising of the property conveyed by said deed of trust for sale, the sale thereof, and the execution of a deed by such substituted trustee to the purchaser at such sale, all such acts of said substituted trustee shall be deemed valid and effective in the same manner and to the same extent as if said instrument substituting said trustee, and the clerk's certificate thereon had been registered prior to the performance by said substituted trustee of any one or more of said acts, or other acts authorized by such deed of trust. (1939, c. 13.)

§ 45-19. Mortgage to guardian; powers pass to succeeding guardian.—When a guardian to whom a mortgage has been executed dies or is removed or resigns before the payment of the debt secured in such mortgage, all the rights, powers and duties of such mortgagee shall devolve upon the succeeding guardian. (Rev., s. 1034; 1905, c. 433; C. S. 2584.)

§ 45-20. Sales by mortgagees and trustees confirmed.—All sales of real property made prior to February tenth, nineteen hundred and five, by mortgagees and trustees under powers of sale contained in any mortgage or deed of trust in compliance with the powers, terms, conditions and advertisement set forth and required in any such mortgage or deed of trust, are hereby in all respects ratified and confirmed. (Ex. Sess. 1920, c. 27; C. S. 2584(a).)

§ 45-21. Validation of appointment of and conveyances to corporations as trustees.—In all deeds of trust made prior to March 15, 1941, wherein property has been conveyed to corporations as trustees to secure indebtedness, the appointment of said corporations as trustees, the conveyances to said corporate trustees, and the action taken under the powers of such deeds of trust by said corporate trustees are hereby confirmed and validated to the same extent as if such corporate trustees had been individual trustees. (1941, c. 245, s. 1.)

Art. 3. Mortgage Sales.

§ 45-22. Limitation of time for attacking certain foreclosures on ground trustee was agent, etc., of owner of debt.—1. No action or proceeding shall be brought or defense or counterclaim pleaded later than one year after March 14, 1941 in which a foreclosure sale which occurred prior to January 1, 1941, under a deed of trust conveying real estate as security for a debt is attacked or otherwise questioned upon the ground that the trustee was an officer, director, attorney, agent or employee of the owner of the whole or any part of the debt secured thereby, or upon the ground that the trustee and the owner of the debt or any part thereof have common officers, directors, attorneys, agents or employees.

2. This section shall not be construed to give or create any cause of action where none existed before March 14, 1941, nor shall the limitation provided in subsection one hereof have the effect of barring any cause of action based upon grounds other than those mentioned in said section, unless

the grounds set out in subsection one are an essential part thereof.

3. This section shall not be construed to enlarge the time in which to bring any action or proceeding or to plead any defense or counterclaim; and the limitation hereby created is in addition to all other limitations now existing. (1941, c. 202.)

§ 45-23. Personal property; notice and place of sale.—All personal property sold under the terms of any mortgage or other contract, expressed or implied, whether advertised in some newspaper or otherwise, shall be advertised by posting a notice at some conspicuous place at the courthouse door in the county where the property is situated, such notice to be posted for at least twenty days before the sale, unless a shorter time be expressed in the contract. (Rev., s. 1042; 1889, c. 70; 1909, c. 49, s. 1; C. S. 2585.)

§ 45-24. Foreclosure of conditional sales.—In all sales of personal property wherein the title is retained by the seller to secure the purchase money, or any part thereof, and no power of sale is conferred, and default is made in the payment of said obligation by the purchaser, then in all such cases it is lawful for the owner of such debt thereby secured, without an order of court, to sell such property, or so much thereof as may be necessary to pay off said indebtedness, at public auction for cash, after first giving twenty days notice at three or more public places in the county wherein the sale is to be made, and apply the proceeds of such sale to the discharge of said debt, interest on the same, and costs of foreclosure, and pay any surplus to the person legally entitled thereto. Before making any such sale, in addition to the advertisement above required, the owner of said debt shall, at least ten days before the day of sale, mail a copy of the notice of sale to the last known postoffice address of the original purchaser or his assigns. (1913, c. 60, s. 1; C. S. 2587.)

§ 45-25. Real property; notice of sale must describe premises.—In sales of real estate under deeds of trust or mortgages it is the duty of the trustee or mortgagee making such sale to fully describe the premises in the notice required by law substantially as the same is described in the deed of authority under which said trustee or mortgagee makes such sale. (Rev., s. 1043; 1895, c. 294; C. S. 2588.)

§ 45-26. Real property; power of sale barred when foreclosure barred.—The power of sale of real property contained in any mortgage or deed of trust for the benefit of creditors shall become inoperative, and no person shall execute any such power, when an action to foreclose such mortgage or deed of trust for the benefit of creditors would be barred by the statute of limitations. (Rev., s. 1044; C. S. 2589.)

§ 45-27. Land lying in two or more counties; place of sale.—When a mortgage or deed in trust conveying lands lying partly in two or more counties confers upon the mortgagee or mortgagees, trustee or trustees, therein named, any power for the sale of such lands, without naming the place of sale, or conferring upon such mortgagee or mortgagees, trustee or trustees, the right to select the same, in the exercise of such power, any sale thereunder may be made at the courthouse door of any one of the counties in which such lands are situate, and at no other place except as hereinafter provided; but when such lands consist of two or more detached parcels, lying wholly within the limits of different counties, the sale of each and every one of such parcels shall be made at the courthouse door of the county in which the same is situate. (1911, c. 165, s. 1; C. S. 2590.)

§ 45-28. Reopening judicial sales, etc., on advanced bid.—In the foreclosure of mortgages or deeds of trust on real estate, or by order of court in foreclosure proceedings either in the superior court or in actions at law, or in the case of the public sale of real estate by an executor, administrator, or administrator with the will annexed, or by any person by virtue of the power contained in a will or sale under execution duly issued, the sale shall not be deemed to be closed under ten days. A report of such sale shall be filed in the office of the clerk of the superior court within five days from the date thereof: Provided, that failure to file such report prescribed shall not invalidate said sale. If in ten days from the date of the sale, the sale price is increased ten per cent where the price does not exceed five hundred dollars, and five per cent where the price exceeds five hundred dollars, and the same is paid to the clerk of the superior court, the mortgagee, trustee, executor, or person offering the real estate for sale shall reopen the sale of said property and advertise the same in the same manner as in the first instance. It shall only be necessary to give fifteen days' notice of a resale. The clerk may, in his discretion, require the person making such advance bid to execute a good and sufficient bond in a sufficient amount to guarantee compliance with the terms of sale should the person offering the advance bid be declared the purchaser at the resale. Where the bid or offer is raised as prescribed herein, and the amount paid to the clerk, he shall issue an order to the mortgagee or other person and require him to advertise and resell said real estate. Resales may be had as often as the bid may be raised in compliance with this section. Upon the final sale of the real estate, the clerk shall issue his order to the mortgagee or other person, and require him to make title to the purchaser. If upon any resale the person making an advance bid or his agent shall become the last and highest bidder at such resale and upon confirmation of his bid shall fail to comply therewith within ten days, the clerk shall order a resale of the property; and in such event the deposit made with the clerk of said court shall be forfeited as damages for failure to comply with the bid at such resale and shall be applied, under order of the clerk, first to the payment of all costs and expenses in advertising and conducting the resale, and the balance of said deposit, if any, shall be applied as a credit on the indebtedness on account of which the sale was authorized: Provided, however, that no such forfeiture shall be allowed if, at the resale ordered because of such failure to comply, the property shall sell for an amount equal to or more than said advance bid so offered but not complied with, plus the costs of such resale. The clerk shall make all such orders as may be just and necessary to safeguard the interest of all parties, and

he shall keep a record which will show in detail the amount of each bid, the purchase price, and the final settlement between parties. This section shall not apply to the foreclosure of mortgages or deeds of trust executed prior to April first, nineteen hundred and fifteen. (1915, c. 146; 1917, c. 127, ss. 3, 4; 1919, c. 124; 1929, c. 16; 1931, c. 69; 1933, c. 482; 1939, cc. 36, 397; C. S. 2591.)

§ 45-29. Surplus after sale to be paid to clerk, in certain cases.—It is competent for any trustee or mortgagee who sells any real, personal or mixed property under the power of sale contained in any deed of trust or mortgage of any kind and who has in his hands any surplus money, after paying the debt or debts secured by such deed of trust or mortgage and costs and expenses of such sale, to pay into the office of the clerk of the superior court of the county where the sale was had, any surplus moneys in his hands as aforesaid in all cases where the grantor in such deed of trust or mortgage is dead and there is no executor or administrator of his estate, and in all other cases where such trustee or mortgage is, for any cause, in doubt as to who is the proper party or parties to whom to pay such surplus moneys. Such payment to the clerk shall have the effect to discharge such trustee or mortgagee from all liability to the extent of the amount so paid. The clerk shall receive such money from such trustee or mortgagee and execute a receipt for the same under the seal of his office. The failure of any clerk, however, to place his seal upon such receipt shall not invalidate the receipt if it bears the genuine signature of the clerk. The official bond of such clerk shall be responsible for the safe keeping of such moneys until the same shall be paid to the party or parties entitled thereto, or be paid out under the order of a court of competent jurisdiction. (1913, c. 15, ss. 1, 2; C. S. 2592.)

§ 45-30. Special proceedings to determine ownership of surplus.—Special proceedings may be instituted before the clerk of the superior court to determine who is the rightful party to whom any fund paid into his office under § 45-29 shall be paid. All persons claiming an interest in such funds shall be made parties, and if an answer is filed raising issues as to the ownership of said moneys, the case shall be transferred to the civil issue docket of the superior court for trial. Any party in interest may appeal to the judge of the superior court from any order made by the clerk. The clerk may require bond of parties when action is transferred to civil issue docket, as in other civil actions. The court may, in its discretion, order the costs and a reasonable attorney's fee to be paid out of the funds in controversy. (1913, c. 15, s. 3; 1919, c. 111, ss. 1, 2; C. S. 2593.)

§ 45-31. Orders signed on days other than first and third Mondays validated; force and effect of deeds.—In all actions for the foreclosure of any mortgage or deed of trust which has heretofore been instituted and prosecuted before the clerk of the superior court of any county in North Carolina, wherein the judgment confirming the sale made by the commissioner appointed in said action, and ordering the said commissioner to execute a deed to the purchaser, was signed by such clerk on a day other than the first or third Monday of a month, such judgment of confirmation shall be and is hereby declared to be valid and of the same force and effect as though signed and docketed on the first or third Monday of any month, and any deed made by any commissioner or commissioners in any such action where the confirmation of sale was made on a day other than a first or third Monday of the month shall be and is hereby declared to have the same force and effect as if the same were executed and delivered pursuant to a judgment of confirmation properly signed and docketed by the clerk of the superior court on a first or third Monday of the month. (1923, c. 53, s. 1; C. S. 2593(a).)

§ 45-32. Injunction of mortgage sales on equitable grounds.—Any owner of real estate, or other person, firm or corporation having a legal or equitable interest therein, may apply to a judge of the superior court, prior to the confirmation of any sale of such real estate by a mortgagee, trustee, commissioner or other person authorized to sell the same, to enjoin such sale or the confirmation thereof, upon the ground that the amount bid or price offered therefor is inadequate and inequitable and will result in irreparable damage to the owner or other interested person, or upon any other legal or equitable ground which the court may deem sufficient: Provided, that the court or judge enjoining such sale or the confirmation thereof, whether by a temporary restraining order or injunction to the hearing, shall, as a condition precedent, require of the plaintiff or applicant such bond or deposit as may be necessary to indemnify and save harmless the mortgagee, trustee, cestui que trust, or other person enjoined and affected thereby against costs, depreciation, interest and other damages, if any, which may result from the granting of such order or injunction: Provided further, that in other respects the procedure shall be as is now prescribed by law in cases of injunction and receivership, with the right of appeal to the supreme court from any such order or injunction. (1933, c. 275, s. 1.)

§ 45-33. Ordering resales before confirmation; receivers for property; tax payments.—The court or judge granting such order or injunction, or before whom the same is returnable, shall have the right before, but not after, any sale is confirmed to order a resale by the mortgagee, trustee, commissioner, or other person authorized to make the same in such manner and upon such terms as may be just and equitable: Provided, the rights of all parties in interest, or who may be affected thereby, shall be preserved and protected by bond or indemnity in such form and amount as the court may require, and the court or judge may also appoint a receiver of the property or the rents and proceeds thereof, pending any sale or resale, and may make such order for the payment of taxes or other prior lien as may be necessary, subject to the right of appeal to the supreme court in all cases. (1933, c. 275, s. 2.)

§ 45-34. Right of mortgagor to prove in deficiency suits reasonable value of property by way of defense.—When any sale of real estate or personal property has been made by a mortgagee, trustee, or other person authorized to make the same, at which the mortgagee, payee or other

holder of the obligation thereby secured becomes the purchaser and takes title either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation whose property has been so purchased, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and off-set, but not by way of counter-claim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and, upon such showing, to defeat or off-set any deficiency judgment against him, either in whole or in part: Provided, this section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other obligation secured by such mortgage, deed of trust or other instrument: Provided, further, this section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any sale made and confirmed prior to April 18, 1933. (1933, c. 275, s. 3.)

§ 45-35. Sections 45-32 to 45-35 not applicable to tax suits.—All laws and clauses of laws in conflict with §§ 45-32 to 45-35, to the extent of such conflict only, are hereby repealed, but said sections shall not apply to tax foreclosure suits or tax sales. (1933, c. 275, s. 4.)

§ 45-36. Deficiency judgments abolished where mortgage represents part of purchase price.—In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust executed after February 6, 1933, or where judgment or decree is given for the foreclosure of any mortgage executed after February 6, 1933, to secure payment of the balance of the purchase price of real property, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by the same: Provided, said evidence of indebtedness shows upon the face that it is for balance of purchase money for real estate: Provided, further, that when said note or notes are prepared under the direction and supervision of the seller or sellers, he, it, or they shall cause a provision to be inserted in said note disclosing that it is for purchase money of real estate; in default of which the seller or sellers shall be liable to purchaser for any loss which he might sustain by reason of the failure to insert said provision as herein set out. (1933, c. 36.)

Art. 4. Discharge and Release.

§ 45-37. Discharge of record of mortgages and deeds of trust.—Any deed of trust or mortgage registered as required by law may be discharged and released in the following manner.

1. The trustee or mortgagee or his or her legal representative, or the duly authorized agent or attorney of such trustee, mortagee or legal representative, may, in the presence of the register of deeds or his deputy, acknowledge the satisfaction of the provisions of such deed of trust or mortgage, whereupon the register or his deputy shall forthwith make upon the margin of the record of such deed of trust or mortgage an entry of such acknowledgment of satisfaction, which shall be signed by the trustee, mortgagee, legal representative or attorney, and witnessed by the register or his deputy, who shall also affix his name thereto.

2. Upon the exhibition of any mortgage, deed of trust or other instrument intended to secure the payment of money, accompanied with the bond or note, to the register of deeds or his deputy, where the same is registered, with the endorsement of payment and satisfaction appearing thereon by the payee, mortgagee, trustee, or assignee of the same, or by any chartered active banking institution in the state of North Carolina, when so endorsed in the name of the bank by an officer thereof, the register or his deputy shall cancel the mortgage or other instrument by entry of "satisfaction" on the margin of the record; and the person so claiming to have satisfied the debt may retain possession of the bond or mortgage or other instrument: Provided, that if such mortgage or deed of trust provides in itself for the payment of money and does not call for or recite any note secured by it, then the exhibition of such mortgage or deed of trust alone to the register of deeds or his deputy, with endorsement of payment and satisfaction, shall be sufficient. But if the register or his deputy requires it, he shall file a receipt to him showing by whose authority the mortgage or other instrument was canceled.

3. Upon the exhibition of any mortgage, deed of trust, or other instrument intended to secure the payment of money by the grantor or mortgagor, his agent or attorney, together with the notes or bonds secured thereby, to the register of deeds or his deputy of the county where the same is registered, the deed of trust, mortgage, notes or bonds being at the time of said exhibition more than ten years old, counting from the date of maturity of the last note or bond, the register or his deputy shall make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.

4. Upon the presentation of any deed of trust given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof, to the register of deeds or his deputy of the county in which same is recorded, the said register or his deputy shall cancel such deed of trust by entry of satisfaction upon the record and such entry of satisfaction shall be valid and binding upon all persons: Provided that prior to such presentation and cancellation, any person rightfully entitled to any such deed of trust, or evidences of indebtedness, which have been lost or stolen, may notify the register of deeds, or his deputy, in writing of such loss or theft, and said register, or his deputy, shall make a marginal entry in writing thereof, together with the date such notice is given, upon

the record of the deed of trust concerned, and thereafter same shall not be cancelled as above provided until the ownership of said instruments shall have been lawfully determined: Provided that nothing herein shall be construed so as to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

5. The conditions of every mortgage, deed of trust, or other instrument securing the payment of money shall be conclusively presumed to have been complied with or the debts secured thereby paid as against creditors or purchasers for a valuable consideration from the trustor, mortgagor, or grantor, from and after the expiration of fifteen years from the date when the conditions of such instrument by the terms thereof are due to have been complied with, or the maturity of the last installment of debt or interest secured thereby, unless the holder of the indebtedness secured by such instrument or party secured by any provision thereof shall file an affidavit with the register of deeds of the county where such instrument is registered, in which shall be specifically stated the amount of debt unpaid, which is secured by said instrument, or in what respect any other condition thereof shall not have been complied with, whereupon the register of deeds shall record such affidavit and refer on the margin of the record of the instrument referred to therein the fact of the filing of such affidavit, and a reference to the book and page where it is recorded. Or in lieu of such affidavit the holder may enter on the margin of the record any payments that have been made on the indebtedness secured by such instrument, and shall in such entry state the amount still due thereunder. This entry must be signed by the holder and witnessed by the register of deeds. Provided, however, that this subsection shall not apply to any deed, mortgage, deed of trust or other instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment on rolling stock, or of other personal property.

Every such entry thus made by the register of deeds or his deputy, and every such entry thus acknowledged and witnessed, shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage as if a deed of release or reconveyance thereof had been duly executed and recorded. (Rev., s. 1046; Code, s. 1271; 1870-1, c. 217; 1891, c. 180; 1893, c. 36; 1901, c. 46; 1917, c. 49, s. 1; 1917, c. 50, s. 1; 1923, c. 192, s. 1; 1923, c. 195; 1935, c. 47; C. S. 2594.)

§ 45-38. Entry of foreclosure.—In case of foreclosure of any deed of trust, or mortgage, the trustee or mortgagee shall enter upon the margin of the record thereof the fact of such foreclosure and the date when, and the person to whom, a conveyance was made by reason thereof. (1923, c. 192, s. 2; C. S. 2594(a).)

§ 45-39. Trustees or mortgagees making sales to file accounts.—It shall be the duty of any trustee or mortgagee making sale under the provisions of any power to file an account with the clerk of the superior court in the county where the land lies as is required by commissioners making sales for partition, and for the auditing and recording of said account the clerk shall be allowed the same fees as are provided for auditing accounts of such commissioners. (1923, c. 192, s. 3; C. S. 2594(b).)

§ 45-40. Register to enter satisfaction on index.—When satisfaction of the provisions of any deed of trust or mortgage is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said deed of trust or mortgage, or when the register of deeds or his deputy shall cancel the mortgage or other instrument by entry of satisfaction, then the register of deeds or his deputy shall enter upon the alphabetical indexes kept by him, as required by law, and opposite the names of the grantor and grantee and on a line with the names of said grantor and grantee, the words "satisfied mortgage," if the instrument of which satisfaction has been acknowledged or entered is a mortgage, and the words "satisfied deed of trust," if the instrument of which satisfaction has been acknowledged or entered is a deed of trust. (1909, c. 658, s. 1; C. S. 2595.)

§ 45-41. Recorded deed of release of mortgagee's representative. — The personal representative of any mortgagee or trustee in any mortgage or deed of trust which has heretofore or which may hereafter be registered in the manner required by the laws of this state may discharge and release the same and all property thereby conveyed by deed of quit claim, release or conveyance executed, acknowledged and recorded as is now prescribed by law for the execution, acknowledgment and registration of deeds and mortgages in this state. (1909, c. 283, s. 1; C. S. 2596.)

§ 45-42. Release of corporate mortgages by corporate officers.—All mortgages and deeds in trust executed to a corporation may be satisfied and so marked of record, as by law provided for the satisfaction of mortgages and deeds in trust, by the president, any vice-president, cashier, assistant cashier, secretary, assistant secretary, treasurer, assistant treasurer, trust officer or assistant trust officer of such corporation signing the name of such corporation by him as such officer. Where mortgages or deeds in trust were marked "satisfied" on the records before the twenty-third day of February, nineteen hundred and nine, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded. (1909, c. 283, ss. 2, 3; 1935, c. 271; C. S. 2597.)

Art. 5. Real Estate Mortgage Loans.

§ 45-43. Real estate mortgage loans; commissions.—Any individual or corporation authorized by law to do a real estate mortgage loan business may make or negotiate loans of money on notes secured by mortgages or deeds of trust on real estate bearing legal interest payable semi-annually at maturity or otherwise, and in addition thereto, may charge, collect and receive such commission or fee as may be agreed upon for making or negotiation of any such loan, not exceeding, however,

an amount equal to one and one-half per cent of the principal amount of the loan for each year over which the repayment of the said loan is extended: Provided, however, the repayment of such loan shall be in annual installments extending over a period of not less than three nor more than fifteen years, and that no annual installment, other than the last, shall exceed thirty-three and one-third per cent of the principal amount of loans which are payable in installments extending over a period of as much as three years and less than four years, twenty-five per cent of the principal amount of loans which are payable in installments extending over a period of not less than four years nor more than five years, and fifteen per cent of the principal amount of loans which are payable in installments extending over a period of more than five years and not more than fifteen years. This section shall only apply to the counties of Ashe, Buncombe, Caldwell, Forsyth, Gaston, Henderson, McDowell, Madison, Rutherford, Watauga, and Yancey. (Ex. Sess. 1924, c. 35; 1925, cc. 28, 209; Pub. Loc. 1925, c. 592; modified by 1927, c. 5; Pub. Loc. 1927, c. 187.)

Chapter 46. Partition.

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Art. 1. Partition of Real Property.

§ 46-1. Partition is a special proceeding.—Partition under this chapter shall be by special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein. (Rev., s. 2485; Code, s. 1923; 1868-9, c. 122, s. 33; C. S. 3213.)

§ 46-2. Venue in partition.—The proceeding for partition, actual or by sale, must be instituted in the county where the land or some part thereof lies. If the land to be partitioned consists of one tract lying in more than one county, or consists of several tracts lying in different counties, proceedings may be instituted in either of the counties in which a part of the land is situated, and the court of such county wherein the proceedings for partition are first brought shall have jurisdiction to proceed to a final disposition of said proceedings, to the same extent as if all of said land was situate in the county where the proceedings were instituted. (Rev., s. 2486; Code, s. 1898; 1868-9, c. 122, s. 7; Ex. Sess. 1924, c. 62, s. 1; C. S. 3214.)

§ 46-3. Petition by cotenant. — One or more persons claiming real estate as joint tenants or tenants in common may have partition by petition to the superior court. (Rev., s. 2487; Code, s. 1892; 1886-9, c. 122, s. 1; C. S. 3215.)

§ 46-4. Surface and minerals in separate owners; partitions distinct. — When the title to the mineral interests in any land has become separated from the surface in ownership, the tenants in common or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common or joint tenants of the surface may have partition of the same, in manner provided by law, distinct from the mineral interest and without joining as parties the owner or owners of the mineral interest. In all instances where the mineral interests and surface interests have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interest be compelled to join in a partition of the mineral interest, nor shall the rights of either owner be prejudiced by a partition of the other interests. (Rev., s. 2488; 1905, c. 90; C. S. 3216.)

§ 46-5. Petition by judgment creditor of cotenant; assignment of homestead.—When any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint tenant, and the judgment creditor desires to lay off the homestead of the judgment debtor in the land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before the clerk of the court of the county wherein the land lies a special proceeding for partition of the land between the tenants in common, making the judgment debtor, the other tenants in common and all other interested persons parties to the proceeding by summons. The proceeding shall then be in all other respects conducted as other special proceedings for the partition of land between tenants in common. Upon the actual partition of the land the judgment creditor may sue out execution on his judgment, as allowed by law, and have the homestead of the judgment debtor allotted to him and sell the excess, as in other cases where the homestead is allotted under execution. The remedy provided for in this section shall not deprive the judgment creditor of any other remedy in law or in equity which he may have for the enforcement of his judgement lien. (Rev., s. 2489; 1905, c. 429; C. S. 3217.)

§ 46-6. Unknown parties; summons and representation.—If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If after such general notice by publication any person interested in the premises and entitled to notice fails to appear, the court shall in its discretion appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. (Rev., s. 2490; 1887, c. 284; C. S. 3218.)

§ 46-7. Commissioners appointed. — The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. (Rev., s. 2487; Code, s. 1892; 1868-9, c. 122, s. 1; Ex. Sess. 1924, c. 62, s. 2; C. S. 3219.)

§ 46-8. Oath of commissioners.—The commissioners shall be sworn by a justice of the peace, or other person authorized to administer oaths, to do justice among the tenants in common, in respect to such partition, according to their best skill and ability. (Rev., s. 2492; Code, s. 1893; 1868-9, c. 122, s. 2; C. S. 3220.)

§ 46-9. Delay or neglect of commissioner penalized.—If, after accepting the trust, any of the commissioners unreasonably delay or neglect to execute the same, every such delinquent commissioner shall be liable for contempt and may be removed, and shall be further liable to a penalty of fifty dollars, to be recovered by the petitioner. (Rev., s. 2498; Code, s. 1901; 1868-9, c. 122, s. 10; C. S. 3221.)

§ 46-10. Commissioners to meet and make partition; equalizing shares. — The commissioners, who shall be summoned by the sheriff, or any constable, must meet on the premises and partition the same among the tenants in common, or joint tenants, according to their respective rights and interests therein, by dividing the land into equal shares in point of value as nearly as possible, and for this purpose they are empowered to subdivide the more valuable tracts as they may deem best, and to charge the more valuable dividends with such sums of money as they may think necessary, to be paid to the dividends of inferior value, in order to make an equitable partition. (Rev., s. 2491; Code, s. 1894; 1887, c. 284, s. 2; 1868-9, c. 122, s. 3; C. S. 3222.)

§ 46-11. Owelty to bear interest.—The sums of money due from the more valuable dividends shall bear interest until paid. (Rev., s. 2496; Code, s. 1899; 1868-9, c. 122, s. 8; C. S. 3223.)

§ 46-12. Owelty from infant's share due at majority.—When a minor to whom a more valuable dividend shall fall is charged with the payment of any sum, the money shall not be payable until such minor arrives at the age of twenty-one years, but the general guardian, if there be one, must pay such sum whenever assets shall come into his hands, and in case the general guardian has assets which he did not so apply, he shall pay out of his own proper estate any interest that may

have accrued in consequence of such failure. (Rev., s. 2497; Code, s. 1900; 1868-9, c. 122, s. 9; C. S. 3224.)

§ 46-13. Partition where shareowners unknown or title disputed.—If there are any of the tenants in common, or joint tenants, whose names are not known or whose title is in dispute, the share or shares of such persons shall be set off together as one parcel. If, in any partition proceeding, two or more appear as defendants claiming the same share of the premises to be divided, or if any part of the share claimed by the petitioner is disputed by any defendant or defendants, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding. If two or more tenants in common, or joint tenants, by petition or answer, request it, the commissioners may, by order of the court, allot their several shares to them in common, as one parcel, provided such division shall not be injurious or detrimental to any co-tenant or joint tenant. (Rev., ss. 2491, 2511; Code, s. 1894; 1868-9, c. 122, s. 3; 1887, c. 284, ss. 2, 4; 1937, c. 98; C. S. 3225.)

§ 46-14. Judgments in partition of remainders validated.—In all cases where land has been conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, where a judgment of partition has been rendered by the superior court authorizing a division of said lands upon the petition of the life tenant or tenants and all other persons then in being who would have taken such land if the contingency had then happened, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing a division of said lands among the respective life tenants and remaindermen, or executory devisees, shall be valid and binding upon the parties thereto and upon all other persons not then in being. (1933, c. 215, s. 1.)

§ 46-15. Dower claims settled on partition; dower valued.—When there is dower or right of dower on any land, petitioned to be sold or divided in severalty by actual partition, the woman entitled to dower or right of dower therein may join in the petition. The land to be divided in severalty shall be allotted to the tenants in common, or joint tenants, subject to the dower right or dower, and either may be asked and assigned at the same time that partition thereof is made and by same commissioners. On a decree of sale, the interest of one-third of the proceeds shall be secured and paid to her annually; or in lieu of such annual interest, the value of an annuity of six percent on such third, during her probable life, shall be ascertained and paid to her absolutely out of the proceeds. (Rev., s. 2517; Code, s. 1909; 1893, c. 341; 1868-9, c. 122, s. 18; C. S. 3226.)

§ 46-16. Partial partition; balance sold or left in common.—In all proceedings under this chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder; or a part only of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy. (Rev., s. 2506; 1887, c. 214, s. 1; C. S. 3227.)

§ 46-17. Report of commissioners; contents; filing.—The commissioners, within a reasonable time, not exceeding sixty days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk. (Rev., s. 2494; Code, s. 1896; 1868-9, c. 122, s. 5; C. S. 3228.)

§ 46-18. Map embodying survey to accompany report.—The commissioners are authorized to employ the county surveyor or, in his absence or if he be connected with the parties, some other surveyor, who shall make out a map of the premises showing the quantity, courses and distances of each share, which map shall accompany and form a part of the report of the commissioners. (Rev., s. 2493; Code, s. 1895; 1868-9, c. 122, s. 4; C. S. 3229.)

§ 46-19. Confirmation and impeachment of report.—If no exception to the report of the commissioners is filed within twenty days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby. (Rev., s. 2494; Code, s. 1896; 1868-9, c. 122, s. 5; C. S. 3230.)

§ 46-20. Report and confirmation enrolled and registered; effect.—Such report, when confirmed, together with the decree of confirmation, shall be enrolled and certified to the register of deeds and registered in the office of the county where such real estate is situated, and shall be binding among and between the claimants, their heirs and assigns. (Rev., s. 2495; Code, s. 1897; 1868-9, c. 122, s. 6; C. S. 3231.)

§ 46-21. Clerk to docket owelty charges; no release of land and no lien.—In case owelty of partition is charged in favor of certain parts of said land and against certain other parts, the clerk shall enter on the judgment docket the said owelty charges in like manner as judgments are entered on said docket, persons to whom parts are allotted in favor of which owelty is charged being marked plaintiffs on the judgment docket, and persons to whom parts are alloted against which owelty is charged being marked defendants on said docket; said entry on said docket shall contain the title of the special proceeding in which the land was partitioned, and shall refer to the book and page in which the said special proceeding is recorded; when said owelty charges are paid said entry upon the judgment docket shall be marked satisfied in like manner as judgments are canceled and marked satisfied; and the clerk shall be entitled to the same fees for entering such judgment of owelty as he is entitled to for docketing other judgments: Provided, that the docketing of said owelty charges as hereinbe-

fore set out shall not have the effect of releasing the land from the owelty charged in said special proceeding: Provided, any judgment docketed under this section shall not be a lien on any property whatever, except that upon which said owelty is made a specific charge. (1911, c. 9, s. 1; C. S. 3232.)

Art. 2. Partition Sales of Real Property.

§ 46-22. Sale in lieu of partition.—Whenever it appears by satisfactory proof that an actual partition of the lands cannot be made without injury to some or all of the parties interested, the court shall order a sale of the property described in the petition, or any part thereof. (Rev., s. 2512; Code, ss. 1904, 1921; 1868-9, c. 122, ss. 13, 31; C. S. 3233.)

§ 46-23. Remainder or reversion sold for partition; outstanding life estate.—The existence of a life estate in any land shall not be a bar to a sale for partition of the remainder or reversion thereof, and for the purposes of partition the tenants in common or joint tenants shall be deemed seized and possessed as if no life estate existed. But this shall not interfere with the possession of the life tenant during the existence of his estate. (Rev., s. 2508; 1887, c. 214, s. 2; C. S. 3234.)

§ 46-24. Life tenant as party; valuation of life estate.—In all proceedings for partition of land whereon there is a life estate, the life tenant may join in the proceeding and on a sale the interest on the value of the share of the life tenant shall be received and paid to such life tenant annually; or in lieu of such annual interest, the value of such share during the probable life of such life tenant shall be ascertained and paid out of the proceeds to such life tenant absolutely. (Rev., s. 2509; 1887, c. 214, s. 3; C. S. 3235.)

§ 46-25. Sale of standing timber on partition; valuation of life estate.—When two or more persons own, as tenants in common, joint tenants, or copartners, a tract of land, either in possession, or in remainder or reversion, subject to a life estate, on which there may be standing timber trees, a sale of said timber trees, separate from the land, may be had upon the petition of one or more of said owners, or the life tenant, for partition among the owners thereof, including the life tenant, upon such terms as the court may order, and under like proceedings as are now prescribed by law for the sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant shall be made a party to the proceedings, and shall be entitled to receive his portion of the net proceeds of sales, to be ascertained under the mortuary tables established by law. (Rev., s. 2510; 1895, c. 187; C. S. 3236.)

§ 46-26. Sale of mineral interests on partition.—In case of the partition of mineral interests, in all instances where it is made to appear to the court that it would be for the best interests of the tenants in common, or joint tenants, of such interests to have the same sold, or if actual partition of the same cannot be had without injury to some or all of such tenants (in common), then it is lawful for and the duty of the court to order a sale of such mineral interests and a division of the proceeds as the interests of the parties may appear. (Rev., s. 2507; 1905, c. 90, s. 2; C. S. 3237.)

§ 46-27. Sale of land required for public use on cotenant's petition.—When the lands of joint tenants or tenants in common are required for public purposes, one or more of such tenants, or their guardian for them, may file a petition verified by oath, in the superior court of the county where the lands or any part of them lie, setting forth therein that the lands are required for public purposes, and that their interests would be promoted by a sale thereof. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of such lands, or so much thereof as may be necessary, in the manner and on the terms it deems expedient. The expenses, fees and costs of this proceeding shall be paid in the discretion of the court. (Rev., s. 2518; Code, s. 1907; 1868-9, c. 122, s. 16; C. S. 3238.)

§ 46-28. Manner and terms of partition sale.—The sale shall be made by some person appointed by the court, on such terms as to size of lots, place or manner of sale, time of credit and security for payment of purchase money, as may be most advantageous to the parties concerned. (Rev., s. 2512; Code, ss. 1904, 1921; 1868-9, s. 122, ss. 13, 31; C. S. 3239.)

§ 46-29. Notice of partition sale. — The notice of sale, under this proceeding, shall be the same as required by law on sales of real estate by sheriff under execution: Provided, however, that in case a re-sale of such real property shall become necessary under such proceeding, that such real property shall then be re-sold only after notice of re-sale has been duly posted at the courthouse door in the county for fifteen days immediately preceding the re-sale and also published at any time during such fifteen day period once a week for two successive weeks of not less than eight days in some newspaper published in the county, if a newspaper is published in the county, but if there be no newspaper published in said county the notice of re-sale must be posted at the courthouse door and three other public places in the county for fifteen days immediately preceding the re-sale. (Rev., s. 2514; Code, s. 1905; 1868-9, c. 122, s. 14; 1933, c. 187; C. S. 3240.)

§ 46-30. Title made to purchaser; effect of deed.—On the coming in of the report of sale, and confirmation thereof, and payment of the purchase money, the title shall be made to the purchaser or purchasers at such time and by such person as the court may direct, and in all cases where the persons in possession have been made parties to the proceeding, the court may grant an order for possession. And the deed of the officer or person designated to make such sale shall convey to the purchaser such title and estate in the property as the tenants in common, or joint tenants, had. (Rev., s. 2512; Code, ss. 1904, 1921; 1868-9, c. 122, ss. 13, 31; C. S. 3241.)

§ 46-31. Who appointed to sell. — The court may authorize any officer thereof, or any other competent person, to be designated in the decree

of sale, to sell the real estate under this proceeding; but no clerk of any court shall appoint himself or his deputy to make sale of real property or other property in any proceeding before him. (Rev., s. 2513; Code, s. 1906; 1868-9, c. 122, s. 15; 1899, c. 161; C. S. 3242.)

§ 46-32. Report of sale; filing; confirmation and impeachment. — Such officer or person shall file his report of sale, giving full particulars thereof, within ten days after the sale, in the office of the clerk of the superior court, and if no exception thereto is filed within ten days, the same shall be confirmed. Any party, after the confirmation, shall be allowed to impeach the proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby. (Rev., s. 2513; Code, s. 1906; 1899, c. 161; 1868-9, c. 122, s. 15; 1937, c. 71; C. S. 3243.)

§ 46-33. Shares in proceeds to cotenants secured.—Upon confirmation of the report, the court shall secure to each tenant in common, or joint tenant, his ratable share in severalty of the proceeds of sale. (Rev., s. 2513; Code, s. 1921; 1868-9, c. 122, s. 31; C. S. 3244.)

§ 46-34. Shares to persons unknown or not sui juris secured.—When a sale is made under this chapter, and any party to the proceedings be an infant, non compos mentis, imprisoned, or beyond the limits of the state, or when the name of any tenant in common is not known, it is the duty of the court to decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative. (Rev., s. 2516; Code, s. 1908; 1887, c. 284, s. 3; 1868-9, c. 122, s. 17; C. S. 3245.)

Art. 3. Partition of Lands in Two States.

§ 46-35. Petition to partition lands in two states descended or devised.—Whenever on the death of any person his lands in this state, and in another state, descend or are devised to several persons, who, by the law of this and the other state, hold in the lands undivided estates as tenants in common, or by any other undivided tenancy, and such heirs or devisees cannot, without suit, have partition for want of consent, or because of inability in any of the cotenants, then, if such deceased person was at the time of his death a resident of the state, or not then a resident of any of the states in which his lands lie, and in the last case the most valuable part of such lands lie in this state, such heir or devisee, or any person claiming under him, may file a petition in the superior court for the county where the deceased resided at his death, or where any part of the land lies in this state, setting forth all the lands in which the plaintiff has an undivided estate, without and within the state, described by their names and boundaries, or by the adjoining tracts, and also the estate the deceased had in them, and the supposed value of the lands in each state, and the share, in severalty, to which the plaintiff and each of his cotenants is entitled under the laws of the several states, and praying for partition to be made of all the tracts, according to their respective interests. The material facts set forth in the petition shall be verified by the affidavit of the plaintiff or his guardian, or other person, at the discretion of the court; and all persons concerned in interest in the lands shall be made parties, according to the practice of the superior court in this state. (Rev., s. 2499; Code, s. 1911, 1868-9, c. 122, s. 20; C. S. 3246.)

§ 46-36. Court may decree partition.—On the hearing of the petition, the court may decree a partition; and shall allot in severalty to each tenant his just share of the lands, according to the value of his interest in the same, by the laws of the several states in which they are situated. (Rev., s. 2500; Code, s. 1912; 1868-9, c. 122, s. 21; C. S. 3247.)

§ 46-37. Commissioners appointed; how partition made; report and confirmation.—The court making such decrees shall issue a commission to three respectable freeholders in this or any other state where any part of the land may lie, unconnected by blood or interest with the parties, directing them or a majority of them to make partition between the cotenants, plaintiffs and defendants in said petition, and to assign each his respective share in the value, in severalty, in any tract or tracts, in any or all the states. Before making the allotment the commissioners shall make a valuation of all the lands held by the cotenants in all the said states; and where they cannot, without injury to the value of some shares, make an exact division of the lands, they shall charge the more valuable dividends with money to be paid to the tenants of a less valuable dividend to make equality of partition. They shall report their proceedings as they may be directed, and the report shall contain a valuation of all the estate in this and the other states, and the division among the cotenants according to such valuation. The court may confirm such report, or on sufficient cause shown may correct and alter, or set it aside and order a new commission. (Rev., s. 2501; Code, s. 1913; 1868-9, c. 122, s. 22; C. S. 3248.)

§ 46-38. Provisions as to owelty.—Where any sum is charged on a more valuable dividend, it shall be a charge on the land into whose hands soever it may come, although it may be taken without notice, and shall bear interest at a rate not greater than allowed in this state. The tenant of the larger dividend may discharge himself from accruing interest by paying the whole amount due at any time. The court may direct, if the tenant taking such a dividend is an infant, that the sum charged shall not be paid till a future day. (Rev., s. 2501; Code, s. 1913; 1868-9, c. 122, s. 22; C. S. 3249.)

§ 46-39. Final decree; enrollment and registry; service on parties; effect.—The court shall, upon the confirmation of any report of the commissioners, make a final decree. And where all the parties are within the jurisdiction of this court, the court shall, by the usual proceedings, direct and compel the parties to execute and deliver deeds and assurances, sufficient, by the laws of this state and the other states, to give the partition full force and validity in all the states; and in case any of the parties are under such disabilities that they can-

not execute such assurances, or are without the jurisdiction of the court, then the court, upon receiving evidence from the plaintiff that, by a law of the other state in which lie the parts of the lands described in the petition to be without this state, the decree can have effect thereon, shall direct the decree to be enrolled, and a copy of it shall be registered in the register's office of all the counties within this state where any of the lands lie; and a copy shall also be furnished to the plaintiff or other party interested, duly certified, to the end that, as to the lands without this state, it may be carried into effect in the state in which the said lands may be, in such manner as said state may direct; and on satisfactory evidence being made to the court in this state that the decree may have full effect by the law of such other state, the court in this state shall by its decree declare the partition in the land in this state to be final and conclusive. The decree shall be firm and irreversible, as hereinafter provided; and shall, on registration as aforesaid, pass to the tenants the title in severalty to the lands in this state in the same manner as if all the land mentioned in the decree were situate within this state. (Rev., s. 2501; Code, s. 1913; 1868-9, c. 122, s. 22; C. S. 3250.)

§ 46-40. Effectuating decree of sister state; enrollment; registry and confirmation; effect.—Where real estate may be partly in this state and partly in another state, and the deceased person from whom it was derived by descent or devise was, at the time of his death, a resident of some other state, or was a resident of none of the states in which he held lands, and in this last case the lands of which he was seized in this state were of less value than the lands of which he was seized in any other state, the courts of the state in which such deceased person had his residence at his death, or in which he held lands of greater value than those he held in this state, shall have full power and authority, under any law passed by the legislature of such state substantially in accordance with the provisions herein made on this subject, to decree partition of the lands in this state, together with those within such other state, in the same manner as if the whole real estate were within the jurisdiction of such court, and in the same manner as the courts in this state are directed and authorized to do by the preceding section, as to the lands of deceased persons resident here at their death, or leaving lands of greater value here than in any other state. In case any person having an interest in the final decree, made as aforesaid in another state, as to lands in this state, shall, within twelve months after the same may be entered up in the courts of said state, produce the records and proceedings of such courts of record duly certified to a superior court of any county in this state where any of the lands of this state lie, the court, on petition ex parte in such case, shall order such proceedings to be entered of record in the court of this state, and order that the said decree shall be of the same force and validity as if it had been a decree of the court in this state in which the petition is filed, upon a petition and regular proceedings had thereon, and the decree of the court of such other state, and the proceedings on it by petition in the superior court in this state confirming it and giving it validity, being enrolled in the said court of this state and registered in all the counties where the lands lie in this state, shall pass the lands in this state, according to the decree, and shall vest estates in severalty therein declared, as to said lands, in the same manner and with the same effect in law as if the lands in this state had been so allotted on a petition for partition, according to the provisions of the former sections of this chapter. (Rev., s. 2502; Code, s. 1914; 1868-9, c. 122, s. 23; C. S. 3251.)

§ 46-41. When court may decide whether statute passed in another state.—Where a copy of a decree and proceedings of a suit in any other state is produced, as in § 46-40, and also when it is necessary for a superior court to be certified that its decree of a partition of lands without this state and within the territory of another state can have effect therein, it is competent for the judge of the superior court before which the existence of a law in such other state is to be proved, to decide whether any act of the legislature of such state has been passed. (Rev., s. 2503; Code, s. 1915; 1868-9, c. 122, s. 24; C. S. 3252.)

Art. 4. Partition of Personal Property.

§ 46-42. Personal property may be partitioned; commissioners appointed.—When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within twenty days after notice of their appointment to divide such property as nearly equally as possible among the tenants in common, or joint tenants. (Rev., s. 2504; Code, s. 1917; 1868-9, c. 122, s. 27; C. S. 3253.)

§ 46-43. Report of commissioners. — The commissioners shall report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made. (Rev., s. 2505; Code, s. 1918; 1868-9, c. 122, s. 28; C. S. 3254.)

§ 46-44. Sale of personal property on partition; report of officer.—If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, the court shall order a sale to be made by some officer of the court or other competent person, who shall file his report of sale in the office of the clerk of the court within ten days after sale. (Rev., s. 2519; Code, s. 1919; 1868-9, c. 122, s. 29; C. S. 3255.)

§ 46-45. Confirmation and impeachment of reports of commissioners or officer.—If no exception to the report of the commissioners making partition, or to the report of the officer making sale, as the case may be, is filed within twenty days, the same shall be confirmed. Any party, after confirmation, shall be allowed to impeach the

proceedings and decrees for mistake, fraud or collusion, by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby. (Rev., ss. 2505, 2519; Code, ss. 1918, 1919; 1868-9, c. 122, ss. 28, 29; C. S. 3256.)

§ 46-46. Notice of sale of personal property.—The sale shall be made after twenty days notice, by advertisement in three or more public places in the county, and shall be on such terms as the court may direct. (Rev., s. 2520; Code, s. 1920; 1868-9, c. 122, s. 30; C. S. 3257.)

Chapter 47. Probate and Registration.

Art. 1. Probate.

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Art. 1. Probate.

§ 47-1. Officials of state authorized to take probate.—The execution of all deeds of conveyance, contracts to buy, sell or convey lands, mortgages, deeds of trust, assignments, powers of attorney, covenants to stand seized to the use of another, leases for more than three years, releases and any and all instruments and writings of whatsoever nature and kind which are required or allowed by law to be registered in the office of the register of deeds or which may hereafter be required or allowed by law to be so registered, may be proved or acknowledged before any one of the following officials of this state: the several justices of the supreme court, the several judges of the superior court, commissioners of affidavits appointed by the governor of this state, the clerk of the supreme court, the several clerks of the superior court, the deputy clerks of the superior court, the several clerks of the criminal courts, notaries public, and the several justices of the peace. (Rev., s. 989; Code, s. 1246; 1895, c. 161, ss. 1, 3; 1897, c. 87; 1899, c. 235; C. S. 3293.)

§ 47-2. Officials of the United States, foreign countries, and sister states.—The execution of all such instruments and writings as are permitted or required by law to be registered may be proved or acknowledged before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, of countries under the dominion of the United States and of foreign countries: Any judge of a court of record, any clerk of a court of record, any notary public, any commissioner of deeds, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice consul, consul general, vice consul general, or commercial

agent of the United States, any justice of the peace of any state or territory of the United States. If the proof or acknowledgment of the execution of an instrument is had before a justice of the peace of any state of the United States other than this state or of any territory of the United States, the certificate of such justice of the peace shall be accompanied by a certificate of the clerk of some court of record of the county in which such justice of the peace resides, which certificate of the clerk shall be under his hand and official seal, to the effect that such justice of the peace was at the time the certificate of such justice bears date an acting justice of the peace of such county and state or territory and that the genuine signature of such justice of the peace is set to such certificate. (Rev., s. 990; 1899, c. 235, s. 5; 1905, c. 451; 1913, c. 39, s. 1; Ex. Sess. 1913, c. 72, s. 1; C. S. 3294.)

§ 47-3. Commissioner appointed by clerk for nonresident maker.—When it appears to the clerk of the superior court of any county that any person nonresident of this state desires to acknowledge a power of attorney, deed or other conveyance touching any real estate situated in the county of said clerk, he may issue a commission to a commissioner for receiving such acknowledgment, or taking such proof, and said commissioner may likewise take the acknowledgment and privy examination of a married woman separate and apart from her husband, touching her assent to any power of attorney, deeds or other conveyances, touching real estate in said county. The commissioner shall make certificate of the acknowledgments or proof and privy examination made by him, and shall return the same to the clerk of the superior court, whereupon he shall adjudge that such conveyance, power of attorney or other instrument is duly acknowledged or proved, and that such examination is in due form, and shall order the same to be registered. (Rev., s. 991; Code, s. 1258; 1869-70, c. 185; C. S. 3295.)

§ 47-4. By justice of peace of other than registering county.—If the proof or acknowledgment of any instrument is had before a justice of the peace of any county other than the county in which such instrument is offered for registration, the certificate of proof or acknowledgment made by such justice of the peace shall be accompanied by the certificate of the clerk of the superior court of the county in which said justice of the peace resides, that such justice of the peace was at the time his certificate bears date an acting justice of the peace of such county, and that such justice's genuine signature is set to his certificate. The certificate of the clerk of the superior court herein provided for shall be under his hand and official seal. (Rev., s. 992; 1899, c. 235, s. 4; C. S. 3296.)

§ 47-5. When seal of officer necessary to probate.—When proof or acknowledgment of the execution of any instrument by any maker of such instrument, whether a married woman or other person or corporation, is had before any official authorized by law to take such proof and acknowledgment, and such official has an official seal, he shall set his official seal to his certificate. If the official before whom the instrument is proved or acknowledged has no official seal he shall certify under his hand, and his private seal shall not be essential. When the instrument is proved or acknowledged before the clerk or deputy clerk of the superior court of the county in which the instrument is to be registered, the official seal shall not be necessary. (Rev., s. 993; 1899, c. 235, s. 8; C. S. 3297.)

§ 47-6. Officials may act although land or maker's residence elsewhere.—The execution of all instruments required or permitted by law to be registered may be proved or acknowledged before any of the officials authorized by law to take probates, regardless of the county in this state in which the subject-matter of the instrument may be situated and regardless of the domicile, residence or citizenship of the person who executes such instrument, or of the domicile, residence or citizenship of the person to whom or for whose benefit such instrument may be made. (Rev., s. 994; 1899, c. 235, s. 13; C. S. 3298.)

§ 47-7. Probate where clerk is a party.—All instruments required or permitted by law to be registered to which clerks of the superior court are parties, or in which such clerks are interested, may be proved or acknowledged and privy examination of any married woman may be taken before any justice of the peace or notary public of the county of said clerk, which clerk may then under his hand and official seal certify to the genuineness thereof. Such proofs, acknowledgments and examinations may also be taken before any judge of the superior court or justice of the supreme court, and the instruments may be probated and ordered to be registered by such judge or justice, in like manner as is provided by law for probates by clerks of the superior court in other cases. Provided, that nothing contained herein shall prevent the clerk of the superior court who is a party to any instrument, or who is a stockholder or officer of any bank or other corporation which is a party to any instrument, from adjudicating and ordering such instruments for registration as have been acknowledged or proved before some justice of the peace or notary public. All probates, adjudications, and orders of registration made prior to January first, one thousand nine hundred thirty, by any such clerk of conveyances or other papers in which said clerk is an interested party, or other papers by any corporation in which such clerk also is an officer or stockholder, are hereby validated and declared sufficient for all such purposes. (Rev., s. 995; 1891, c. 102; 1893, c. 3; 1913, c. 148, s. 1; 1921, c. 92; 1921, c. 106, s. 2; 1939, c. 210, s. 1; C. S. 3299.)

§ 47-8. Attorney in action not to probate papers therein.—No practicing attorney at law has power to administer any oaths to a person to any paper writing to be used in any legal proceedings in which he appears as attorney. (Rev., s. 2350; Ex. Sess. 1908, c. 105, s. 2; C. S. 3300.)

§ 47-9. Probates before stockholders in building and loan associations.—No acknowledgment or proof of execution, including the privy examination of any married woman, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any building and loan as-

sociation shall hereafter be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination, is a stockholder in said building and loan association. This section does not authorize any officer or director of a building and loan association to take acknowledgments, proofs and privy examinations. The provisions of this section shall apply to federal savings and loan associations having their principal offices in this state. Acknowledgments and proofs of execution, including private examinations of any married woman taken before March 20, 1939 by an officer who is or was a stockholder in any federal savings and loan association, are hereby validated. (1913, c. 110, ss. 1, 3; 1939, c. 136; C. S. 3301.)

§ 47-10. Probate before stockholders in banking corporations. — No acknowledgment or proof of execution, including privy examination of married women, of any mortgage, or deed of trust executed to secure the payment of any indebtedness to any banking corporation, taken prior to the first day of January, one thousand nine hundred twenty-nine, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination, was a stockholder or director in such banking corporation. (1929, c. 302, s. 1.)

§ 47-11. Subpœnas to maker and subscribing witnesses.—The grantee or other party to an instrument required or allowed by law to be registered may at his own expense obtain from the clerk of the superior court of the county in which the instrument is required to be registered a subpoena for any or all of the makers of or subscribing witnesses to such instrument, commanding such maker or subscribing witness to appear before such clerk at his office at a certain time to give evidence concerning the execution of the instrument. The subpœna shall be directed to the sheriff of the county in which the person upon whom it is to be served resides. If any person refuses to obey such subpœna he is liable to a fine of forty dollars or to be attached for contempt by the clerk, upon its being made to appear to the satisfaction of the clerk that such disobedience was intentional, under the same rules of law as are prescribed in the cases of other defaulting witnesses. (Rev., s. 996; Code, s. 1268; 1899, c. 235, s. 16; 1897, c. 28; C. S. 3302.)

§ 47-12. Proof of attested writing.—If an instrument required or permitted by law to be registered has a subscribing witness and such witness is dead or out of the state, or of unsound mind, the execution of the same may be proved before any official authorized to take the proof and acknowledgment of such instrument by proof of the handwriting of such subscribing witness or of the handwriting of the maker, but this shall not be proof of the execution of instruments by married women. Provided, that no instrument required or permitted by law to be registered shall be proved, probated or ordered to be registered upon the oath and examination of a subscribing witness who is also the grantee named in said instrument, and the registration of any instrument which has been proven and admitted to probate upon the oath and examination of a subscribing witness who is the grantee in said instrument shall be void: Provided further, that nothing herein shall invalidate the registration of any instrument registered prior to the ninth day of April, A.D. one thousand nine hundred and thirty-five. (Rev., s. 997; 1899, c. 235, s. 12; 1935, c. 168; 1937, c. 7; C. S. 3303.)

§ 47-13. Proof of unattested writing.—If an instrument required or permitted by law to be registered has no subscribing witness, the execution of the same may be proved before any official authorized to take the proof and acknowledgment of such instrument by proof of the handwriting of the maker, but this shall not apply to proof of execution of instruments by married women. (Rev., s. 998; 1899, c. 235, s. 11; C. S. 3304.)

§ 47-14. Clerk to pass on certificate and order registration. — When the proof or acknowledgment of the execution of any instrument, required or permitted by law to be registered, is had before any other official than the clerk or deputy clerk of the superior court of the county in which such instrument is offered for registration, the clerk or deputy clerk of the superior court of the county in which the instrument is offered for registration shall, before the same is registered, examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it appears that the instrument has been duly proved or acknowledged and the certificate or certificates to that effect are in due form, he shall so adjudge, and shall order the instrument to be registered, together with the certificates. (Rev., s. 999; 1899, c. 235, s. 7; 1905, c. 414; 1921, c. 91; 1939, c. 210, s. 2; C. S. 3305.)

§ 47-15. Probate of husband's deed where wife insane.—When a deed executed by a married man whose wife is insane or a lunatic, and whose homestead has been allotted, together with the certificate of the clerk of the superior court or with the certificate of the superintendent of the insane institution of the state where the wife is confined in conformity to section 1004 under the chapter Conveyances, is offered for probate before the clerk of the superior court of the county in which the land conveyed is situated, and the execution of such deed is acknowledged or proved, the clerk shall adjudge whether the certificate of the superintendent or the clerk is in due form, and if adjudged to be in due form he shall order the registration of the deed and certificate. (Rev., s. 1000; 1905, c. 138, s. 2; 1919, c. 20; C. S. 3306.)

§ 47-16. Probate of corporate deeds, where corporation has ceased to exist.—It is competent for the clerk of the superior court in any county in this state, on proof before him upon the oath and examination of the subscribing witness to any contract or instrument required to be registered under the laws of this state, to adjudge and order that such contract or instrument be registered as by law provided, when such contract or instrument is signed by any corporation in its corporate name by its president, and when such corporation has been out of existence for more than ten years when the said contract or instrument is offered for probate and registration, and when the grantee and those claiming under any such grantee have been in the uninterrupted possession of the property described in said contract or instru-

ment since the date of its execution; and said contract or instrument so probated and registered shall be as effective to all intents and purposes as if signed, sealed, and acknowledged, or proven, as provided under the existing laws of this state. (1911, c. 44, s. 1; C. S. 3307.)

Art. 2. Registration.

§ 47-17. Probate and registration sufficient without livery.—All deeds, contracts or leases, before registration, except those executed prior to January first, one thousand eight hundred and seventy, shall be acknowledged by the grantor, lessor or the person executing the same, or their signature proven on oath by one or more witnesses in the manner prescribed by law, and all deeds executed and registered according to law shall be valid, and pass title and estates without livery of seizin, attornment or other ceremony. (Rev., s. 979; Code, s. 1245; 1885, c. 147, s. 3; 29, Ch. II, c. 3; R. C., c. 37, s. 1; 1715, c. 7; 1756, c. 58, s. 3; 1838-9, c. 33; 1905, c. 277; C. S. 3308.)

§ 47-18. Conveyances, contracts to convey, and leases of land.—No conveyance of land, or contract to convey, or lease of land for more than three years shall be valid to pass any property, as against creditors or purchasers for a valuable consideration, from the donor, bargainor or lessor, but from the registration thereof within the county where the land lies: Provided, the provisions of this section shall not apply to contracts, leases or deeds executed prior to March first, one thousand eight hundred and eighty-five, until the first day of January, one thousand eight hundred and eighty-six; and no purchase from any such donor, bargainor or lessor shall avail or pass title as against any unregistered deed executed prior to the first day of December, one thousand eight hundred and eighty-five, when the person holding or claiming under such unregistered deed shall be in the actual possession and enjoyment of such land, either in person or by his tenant, at the time of the execution of such second deed, or when the person claiming under or taking such second deed had at the time of taking or purchasing under such deed actual or constructive notice of such unregistered deed, or the claim of the person holding or claiming thereunder. (Rev., s. 980; Code, s. 1245; 1885, c. 147, s. 1; C. S. 3309.)

§ 47-19. Unregistered deeds prior to January, 1890, registered on affidavit.—Any person holding any unregistered deed or claiming title thereunder, executed prior to the first day of January, one thousand eight hundred and ninety, may have the same registered without proof of the execution thereof by making an affidavit, before the officer having jurisdiction to take probate of such deed, that the grantor, bargainor or maker of such deed, and the witnesses thereto, are dead or cannot be found, that he cannot make proof of their handwriting, and that affiant believes such deed to be a bona fide deed and executed by the grantor therein named. Said affidavit shall be written upon or attached to such deed, and the same, together with such deed, shall be entitled to registration in the same manner and with the same effect as if proved in the manner prescribed by law for other deeds. (Rev., s. 981; 1885, c. 147, s. 2; 1905, c. 277; 1913, c. 116; 1915, cc. 13, 90; Ex. Sess. 1924, c. 56; C. S. 3310.)

§ 47-20. Deeds of trust and mortgages, real and personal.—No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor or mortgagor, but from the registration of such deed of trust or mortgage in the county where the land lies; or in case of personal estate, where the donor, bargainor or mortgagor resides; or in case the donor, bargainor or mortgagor resides out of the state, then in the county where the said personal estate, or some part of the same, is situated; or in case of choses in action, where the donee, bargainee or mortgagee resides. For the purposes mentioned in this section the principal place of business of a domestic corporation is its residence. (Rev., s. 982; Code, s. 1254; R. C., c. 37, s. 22; 1829, c. 20; 1909, c. 874, s. 1; C. S. 3311.)

§ 47-21. Blank or master forms of mortgages, etc., embodiment by reference in instruments later filed.—It shall be lawful for any person, firm or corporation to have a blank or master form of mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, filed, indexed and recorded in the office of the register of deeds. When any such blank or master form is filed with the register of deeds, he shall record the same, and shall index the same in the manner now provided by law for the indexing of instruments recorded in his office, except that the name of the person, firm or corporation whose name appears on such blank or master form shall be inserted in the indices as grantor and also as grantee. The fee for filing, recording and indexing such blank or master form shall be five ($5.00) dollars.

When any deed, mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, refers to the provisions, terms, covenants, conditions, obligations, or powers set forth in any such blank or master form recorded as herein authorized, and states the office of recordation of such blank or master form, book and page where same is recorded such reference shall be equivalent to setting forth in extenso in such deed, mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, the provisions, terms, covenants, conditions, obligations and powers set forth in such blank or master form. Provided this section shall not apply to Chowan, Stanly, Iredell, Yates, Watauga, Guilford, Camden, Transylvania, Jackson, Washington, Alleghany, Bladen, Halifax, Ashe, Dare, Beaufort, Moore, Swain, Orange, Granville, Perquimans, Martin, Vance, Columbus, Cartaret, Cleveland, Avery, Sampson counties. (1935, c. 153.)

§ 47-22. Counties may provide for photographic or photostatic registration.—The board of county commissioners of any county is hereby authorized and empowered to provide for photographic or photostatic recording of all instruments filed in the office of the register of deeds and in the office of the clerk of the superior court and in other offices of such county where said board may deem

such recording feasible. The board of county commissioners may also provide for filing such copies of said instruments in loose leaf binders. (1941, c. 286.)

§ 47-23. Conditional sales of personal property. —All conditional sales of personal property in which the title is retained by the bargainor shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages, in the county where the purchaser resides, or, in case the purchaser shall reside out of the state, then in the county where the personal estate or some part thereof is situated, or in case of choses in action, where the donee, bargainee or mortgagee resides. (Rev., s. 983; Code, s. 1275; 1891, c. 240; 1883, c. 342; C. S. 3312.)

§ 47-24. Conditional sales or leases of railroad property. — When any railroad equipment and rolling stock is sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee, or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder, shall have been fully complied with, such contract shall be invalid as to any subsequent judgment creditor, or any subsequent purchaser for a valuable consideration without notice, unless—

1. The same is evidenced by writing duly acknowledged before some person authorized to take acknowledgments of deeds.

2. Such writing is registered as mortgages are registered, in the office of the register of deeds in at least one county in which such vendee, lessee or bailee does business.

3. Each locomotive or car so sold, leased or loaned has the name of the vendor, lessor, or bailor, or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee as the case may be.

This section shall not apply to or invalidate any contract made before the twelfth day of March, one thousand eight hundred and eighty-three. (Rev., s. 984; Code, s. 2006; 1883, c. 416; 1907, c. 150, s. 1; C. S. 3313.)

§ 47-25. Marriage settlements. — All marriage settlements and other marriage contracts, whereby any money or other estate is secured to the wife or husband, shall be proved or acknowledged and registered in the same manner as deeds for lands, and shall be valid against creditors and purchasers for value only from registration. (Rev., s. 985; Code, ss. 1269, 1270, 1281; 1885, c. 147; R. C., c. 37, ss. 24, 25; 1785, c. 238; 1871-2, c. 193, s. 12; C. S. 3314.)

§ 47-26. Deeds of gift.—All deeds of gift of any estate of any nature shall within two years after the making thereof be proved in due form and registered, or otherwise shall be void, and shall be good against creditors and purchasers for value only from the time of registration. (Rev., s. 986; Code, s. 1252; 1885, c. 147; R. C., c. 37, s. 18; 1789, c. 315, s. 2; C. S. 3315.)

§ 47-27. Deeds of easements. — All persons, firms, or corporations now owning or hereafter acquiring any deed or agreement for rights of way and easements of any character whatsoever shall record such deeds and agreements in the office of the register of deeds of the county where the land affected is situated. Where such deeds and agreements may have been acquired, but no use has been made thereof, the person, firm, or corporation holding such instrument, or any assignment thereof, shall not be required to record them until within ninety days after the beginning of the use of the easements granted thereby. If after ninety days from the beginning of the easement granted by such deeds and agreements the person, firm, or corporation holding such deeds or agreements has not recorded the same in the office of the register of deeds of the county where the land affected is situated, then the grantor in the said deed or agreement may, after ten days notice in writing served and returned by the sheriff or other officer of the county upon the said person, firm, or corporation holding such lease or agreement, file a copy of the said lease or agreement for registration in the office of the register of deeds of the county where the original should have been recorded, but such copy of the lease or agreement shall have attached thereto the written notice above referred to, showing the service and return of the sheriff or other officer. The registration of such copy shall have the same force and effect as the original would have had if recorded: Provided, said copy shall be duly probated before being registered.

Nothing in this section shall require the registration of the following classes of instruments or conveyances, to wit:

1. It shall not apply to any deed or instrument executed prior to January first, one thousand nine hundred and ten.

2. It shall not apply to any deed or instrument so defectively executed or witnessed that it cannot by law be admitted to probate or registration, provided that such deed or instrument was executed prior to the ratification of this section.

3. It shall not apply to decrees of a competent court awarding condemnation or confirming reports of commissioners, when such decrees are on record in such courts.

4. It shall not apply to local telephone companies, operating exclusively within the state, or to agreements about alley-ways.

Any person, firm, or corporation knowingly and willfully violating this section shall be guilty of a misdemeanor, and each day's continuance of this violation shall be a separate offense. (1917, c. 148; 1919, c. 107; C. S. 3316.)

Local Modification.—Alleghany, Harnett, Lee, Surry, Wilkes: C. S. 3316; Halifax, Martin: 1939, c. 45.

§ 47-28. Powers of attorney.—Every power of attorney, wherever made or concerning whatsoever matter, may, on acknowledgment or proof of the same before any competent official, be registered in the county wherein the property or estate which it concerns is situate, if such power of attorney relate to the conveyance thereof; if it does not relate to the conveyance of any estate or property, then in the county in which the attorney

resides or the business is to be transacted. (Rev., s. 987; Code, s. 1249; 1899, c. 235, s. 15; C. S. 3317.)

§ 47-29. Recording of bankuptcy records. — A copy of the petition with the schedules omitted beginning a proceeding under the United States Bankruptcy Act, or of the decree of adjudication in such proceeding, or of the order approving the bond of the trustee appointed in such proceeding, shall be recorded in the office of any register of deeds in North Carolina, and it shall be the duty of the register of deeds, on request, to record the same. The register of deeds shall be entitled to the same fees for such registration as he is now entitled to for recording conveyances. (1939, c. 254.)

§ 47-30. Plats and subdivisions.—Any person, firm or corporation owning land in this State may have a plat thereof recorded in the office of the register of deeds of the county in which such land or any part thereof is situated, upon proof upon oath by the surveyor making such plat that the same is in all respects correct and was prepared from an actual survey by him made, giving the date of such survey, or if the surveyor making such plat is dead, or where land has been sold and conveyed according to an unrecorded plat, upon the oath of a duly licensed surveyor that said map is in all respects correct and that the same was actually and fully checked and verified by him, giving the date on which the same was verified and checked. Such plat, when so proven and probated as deeds and other conveyances, shall be recorded either by transcribing a correct copy thereof upon or by permanently attaching the original to the records or in a book to be designated the "Book of Plats"; and when so recorded shall be duly indexed. Reference in any instrument heretofore or hereafter executed to the record of any plat herein authorized or validated shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.

Where any map or plat has been recorded, either by transcribing a correct copy thereof upon or by permanently attaching the original to the records or in a book designated "Book of Plats," such map or plat shall be deemed to have been recorded in full compliance with this section, notwithstanding the fact that the same has not been probated in accordance with the provisions hereof; and the registration of all plats and maps which have been recorded by transcribing a correct copy thereof upon or by permanently attaching the original to the records or in a book designated "Book of Plats" is hereby validated as fully as if the statute had been fully and completely complied with. (1911, c. 55, s. 2; 1923, c. 105; 1935, c. 219; 1941, c. 249; C. S. 3318.)

§ 47-31. Certified copies may be registered; used as evidence.—A duly certified copy of any deed or writing required or allowed to be registered may be registered in any county; and the registry or duly certified copy of any deed or writing when registered in the county where the land is situate may be given in evidence in any court of the state. (Rev., s. 988; Code, s. 1253; 1858-9, c. 18, s. 2; C. S. 3319.)

§ 47-32. Photostatic copies of plats, etc.; fees of clerks.—In all special proceedings in which a plat, map or blue-print shall be filed as a part of the papers, the Clerk of the Superior Court may have a photostatic copy of said plat, map or blue-print made on a sheet of the same size as the leaves in the book in which the special proceeding is recorded, and when made, shall place said photostatic copy in said book at the end of the report of the commissioners or other document referring to said plat, map or blue-print. The Clerk of Superior Court shall be allowed a fee to be fixed by the County Commissioners not exceeding the sum of five dollars to be taxed in the bill of costs, which fee shall cover the cost of making said photostatic copy and all services of the clerk in connection therewith. (1931, c. 171.)

§ 47-33. Certified copies of deeds made by alien property custodian may be registered.—Any copy of a deed made, or purporting to be made, by the United States alien property custodian duly certified pursuant to Title twenty-eight, section six hundred sixty-one of United States Code by the department of justice of the United States, with its official seal impressed thereon, when the said certified copy reveals the fact that the execution of the original was acknowledged by the alien property custodian before a notary public of the District of Columbia, and that the official seal of the alien property custodian by recital was affixed or impressed on the original, and further reveals it to have been approved, as to form, by general counsel, and the copy also shows that the original was signed and approved by the acting chief, division of trusts, and was witnessed by two witnesses, shall, when presented to the register of deeds of any county wherein the land described therein purports to be situate, be recorded by the register of deeds of such county without other or further proof of the execution and/or delivery of the original thereof, and the same when so recorded shall be indexed and cross-indexed by the register of deeds as are deeds made by individuals upon the payment of the usual and lawful fees for the registration thereof. (1937, c. 5, s. 1.)

§ 47-34. Certified copies of deeds made by alien property custodian admissible in evidence. — The record of all such recorded copies of such instruments authorized in § 47-33 shall be received in evidence in all the courts of this state and the courts of the United States in the trial of any cause pending therein, the same as though and with like effect as if the original thereof had been probated and recorded as required by the law of North Carolina, and the record in the office of register of deeds of such recorded copy of such an instrument shall be presumptive evidence that the original of said copy was executed and delivered to the vendee, or vendees therein named, and that the original thereof has been lost or unintentionally destroyed without registration, and in the absence of legal proof to the contrary said so registered copy shall be conclusive evidence that the United States alien property custodian conveyed the lands and premises described in said registered copy to the vendees therein named, as said copy reveals, and title to such land shall pass by such recorded instrument. (1937, c. 5, s. 2.)

§ 47-35. Register to fill in deeds on blank forms with lines.—Registers of deeds shall, in registering deeds and other instruments, where printed skeletons or forms are used by the register, fill all spaces left blank in such skeletons or forms by drawing or stamping a line or lines in ink through such blank spaces. (1911, c. 6, s. 1; C. S. 3320.)

§ 47-36. Errors in registration corrected on petition to clerk.—Every person who discovers that there is an error in the registration of his grant, conveyance, bill of sale or other instrument of writing, may prefer a petition to the clerk of the superior court of the county in which said writing is registered, in the same manner as is directed for petitioners to correct errors in grants or patents, and if on hearing the same before said clerk it appears that errors have been committed, the clerk shall order the register of the county to correct such errors and make the record conformable to the original. The petitioner must notify his grantor and every person claiming title to or having lands adjoining those mentioned in the petition, thirty days previous to preferring the same. Any person dissatisfied with the judgment may appeal to the superior court as in other cases. (Rev., s. 1008; Code, s. 1266; R. C., c. 37, s. 28; 1790, c. 326, ss. 2, 3, 4; C. S. 3321.)

Art. 3. Forms of Acknowledgment, Probate and Order of Registration.

§ 47-37. Adjudication and order of registration.—The form of adjudication and order of registration required by § 47-14 shall be substantially as follows:

North Carolina, ... County.

The foregoing (or annnexed) certificate of (here give name and official title of the officer signing the certificate passed upon) is adjudged to be correct. Let the instrument and the certificate be registered.

This ..... day of ....., A. D.....

(Official seal.)

.....
(Signature of officer.)

But the order of registration may be substantially in the form: "Let the same with this certificate be registered." (Rev., ss. 1001, 1010; 1899, c. 235, s. 7; 1905, c. 344; C. S. 3322.)

§ 47-38. Acknowledgment by grantor.—Where the instrument is acknowledged by the grantor or maker, the form of acknowledgment shall be in substance as follows:

North Carolina, ... County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the grantor or maker) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the .... day of .... (year).

(Official seal.)

.....
(Signature of officer.)

(Rev., s. 1002; C. S. 3323.)

§ 47-39. Private examination of wife.—When an instrument purports to be signed by a married woman, the form of certificate of her acknowledgment and private examination before any officer authorized to take the same shall be in substance as follows:

North Carolina, ... County.

I (here give name of the official and his official title), do hereby certify that (here give name of the married woman who executed the instrument), wife of (here give husband's name), personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument; and the said (here give married woman's name), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and (when an official seal is required by law) official seal, this ..... (day of month), A. D. ..... (year).

(Official seal.)

.....
(Signature of officer.)

(Rev., s. 1003; 1899, c. 235, s. 8; 1901, c. 637; C. S. 3324.)

§ 47-40. Husband's acknowledgment and wife's examination before same officer.—Where the instrument is acknowledged by both husband and wife or by other grantor before the same officer the form of acknowledgment shall be in substance as follows:

North Carolina, ... County.

I (here give name of official and his official title), do hereby certify that (here give name of the grantors whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing (or annexed) instrument, and the said (here give name of the married woman or women), wife (or wives) of (here give name of husband or husbands), being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and (when an official seal is required by law) official seal, this.... (day of month), A. D. ..... (year).

(Official seal.)

.....
(Signature of officer.)

(Rev., s. 1004; 1899, c. 235, s. 8; 1901, c. 299; C. S. 3325.)

§ 47-41. Corporate conveyances.—The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law. If the instrument is executed by the president or presiding member or trustee and two other members

of the corporation, and sealed with the common seal, the following form shall be sufficient:

North Carolina, ... County.

This ..... day of ....., A. D. ....., personally came before me (here give the name and official title of the officer who signs this certificate), A. B. (here give the name of the subscribing witness), who, being by me duly sworn, says that he knows the common seal of the (here give the name of the corporation), and is also acquainted with C. D., who is the president (or presiding member or trustee), and also with E. F. and G. H., two other members of said corporation; and that he, the said A. B., saw the said president (or presiding member or trustee) and the two said other members sign the said instrument, and saw the said president (or presiding member or trustee) affix the said common seal of said corporation thereto, and that he, the said subscribing witness, signed his name as such subscribing witness thereto in their presence. Witness my hand and (when an official seal is required by law) official seal, this.... day of ..... (year).

(Official seal.)

.....
(Signature of officer.)

If the deed or other instrument is executed by the president, presiding member or trustee of the corporation, and sealed with its common seal, and attested by its secretary or assistant secretary, either of the following forms of proof and certificate thereof shall be deemed sufficient:

North Carolina, ... County.

This .... day of ....., A. D. ....., personally came before me (here give name and official title of the officer who signs the certificate) A. B. (here give the name of the attesting secretary or assistant secretary), who, being by me duly sworn, says that he knows the common seal of (here give the name of the corporation), and is acquainted with C. D., who is the president of said corporation, and that he, the said A. B., is the secretary (or assistant secretary) of the said corporation, and saw the said president sign the foregoing (or annexed) instrument, and saw the said common seal of said corporation affixed to said instrument by said president (or that he, the said A. B., secretary or assistant secretary as aforesaid, affixed said seal to said instrument), and that he, the said A. B., signed his name in attestation of the execution of said instrument in the presence of said president of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the ..... day of ..... (year).

(Official seal.)

.....
(Signature of officer.)

North Carolina, ... County.

This is to certify that on the .... day of ....., 19...., before me personally came ..... (president, vice-president, secretary or assistant secretary, as the case may be), with whom I am personally acquainted, who, being by me duly sworn, says that ..... is the president (or vice-president), and ..... is the secretary (or assistant secretary) of the ....., the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said president (or vice-president), and that said president (or vice-president) and secretary (or assistant secretary) subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation. Witness my hand and (when an official seal is required by law) official seal, this the .... day of ..... (year).

(Official seal.)

.....
(Signature of officer.)

If the deed or other instrument is executed by the signature of the president, presiding member or trustee of the corporation, and sealed with its common seal and attested by its secretary, or assistant secretary, the following form of proof and certificate thereof shall be deemed sufficient:

This .... day of ....., A. D. ....., personally came before me (here give name and official title of the officer who signs the certificate) A. B., who, being by me duly sworn, says that he is president (presiding member or trustee) of the ..... Company, and that the seal affixed to the foregoing (or annexed) instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said A. B. acknowledged the said writing to be the act and deed of said corporation.

(Official seal.)

.....
(Signature of officer.)

If the officer before whom the same is proven be the clerk or deputy clerk of the superior court of the county in which the instrument is offered for registration, he shall add to the foregoing certificate the following: "Let the instrument with the certificate be registered."

All corporate conveyances probated and recorded prior to February 14, 1939, wherein the same was attested by the assistant secretary, instead of the secretary, and otherwise regular, are hereby validated as if attested by the secretary of the corporation. (Rev., s. 1005; 1899, c. 235, s. 17; 1901, c. 2, s. 110; 1905, c. 114; 1907, c. 927, s. 1; 1939, c. 20, ss. 1, 2; C. S. 3326.)

§ 47-42. Attestation of banking corporation conveyances by cashier.—In all forms of proof and certificate for deeds and conveyances executed by banking corporations, which corporations have no secretary, the cashier of said banking corporation shall attest such instruments; all deeds and conveyances executed prior to February 14, 1939, by banking corporations, where the cashier of said banking corporation has attested said instruments, which deeds and conveyances are otherwise regular, are hereby validated. (1939, c. 20, s. 2½.)

§ 47-43. Form of certificate of acknowledgment of instrument executed by attorney in fact.—When an instrument purports to be signed by

parties acting through another by virtue of the execution of a power of attorney, the following form of certificate shall be deemed sufficient, but shall not exclude other forms which would be deemed sufficient in law:

"North Carolina, ...County.

I (here give name of the official and his official title), do hereby certify that (here give name of attorney in fact), attorney in fact for (here give names of parties who executed the instrument through attorney in fact), personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of (here give names of parties who executed the instrument through attorney in fact), and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of (here insert name of official in whose office power of attorney is recorded, and the County and State of recordation), on the (day of month, month, and year of recordation), and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said (here give name of attorney in fact) acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said (here give names of parties who executed the instrument through attorney in fact).

WITNESS my hand and official seal, this .... day of ....., (year) .....

(Official Seal). ....."

Signature of Officer

(1941, c. 238.)

§ 47-44. Clerk's certificate upon probate by justice of peace. — When the proof or acknowledgment of any instrument is had before a justice of the peace of some other state or territory of the United States, or before a justice of the peace of this state, but of a county different from that in which the instrument is offered for registration, the form of certificate as to his official position and signature shall be substantially as follows:

North Carolina, ... County.

I, A. B. (here give name and official title of a clerk of a court of record), do hereby certify that C. D. (here give the name of the justice of the peace taking the proof, etc.), was at the time of signing the foregoing (or annexed) certificate an acting justice of the peace in and for the county of ..... and state (or territory) of ....., and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this ..... day of ....., A. D. .....

(Official seal.)

.....

(Signature of officer.)

(Rev., s. 1006; 1899, c. 235, s. 8; C. S. 3327.)

§ 47-45. Clerk's certificate upon probate by nonresident official without seal.—When the proof or acknowledgment of any instrument is had before any official of some other state, territory or country and such official has no official seal, then the certificate of such official shall be accompanied by the certificate of a clerk of a court of record of the state, territory or country in which the official taking the proof or acknowledgment resides, of the official position and signature of such official; such certificate of the clerk shall be under his hand and official seal and shall be in substance as follows:

.....County.

I, A. B. (here give name and official title of the clerk of a court of record as provided herein), do hereby certify that C. D. (here give name of the official taking the proof, etc.) was at the time of signing the foregoing (or annexed) certificate a (here give the official title of the officer taking proof, etc.) in and for the county of .... and state of ..... (or other political division of the state, territory or country, as the case may be), and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and official seal, this .... day of ....., A. D. .....

(Official seal.)

.....

(Signature of Clerk.)

(Rev., s. 1007; 1899, c. 235, s. 8; C. S. 3328.)

§ 47-46. Verification; form of entry.—The registers of deeds in the several counties of the State shall, after each instrument or document has been transcribed on the record, verify the record with the original and the entry of record shall read "Recorded and Verified," and the same shall be without extra charge. (1929, c. 320, s. 1.)

Art. 4. Curative Statutes; Acknowledgments; Probates; Registration.

§ 47-47. Defective order of registration; "same" for "this instrument."—Where instruments were admitted to registration prior to March 2, 1905, and the clerk's order for the registration used the word "same" in place of "this instrument," the said registrations are good and valid. (Rev., s. 1010; 1905, c. 344; C. S. 3329.)

§ 47-48. Clerk's certificate failing to pass on all prior certificates.—When it appears that the clerk of the superior court or other officer having the power to probate deeds, in passing upon deeds or other instruments, and the certificates thereto, having more than one certificate of the same or a prior date, by other officer or officers taking acknowledgment or probating the same, has in his certificate or order mentioned only one or more of the preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed or other instrument to probate, it shall be conclusively presumed that he has passed upon all the certificates of said deed or instrument necessary to the admission of the same to probate, and the certificate of said clerk or other probating officer shall be deemed sufficient and the probate and registration of said deed or instrument is hereby made and declared valid for all intents and purposes. (1917, c. 237; C. S. 3330.)

§ 47-49. Defective certification or adjudication of clerk, etc., admitting to registration. — In all cases where, prior to January first, nineteen hun-

dred and nineteen, instruments by law required or authorized to be registered, with certificates showing the acknowledgment or proof of execution thereof as required by the laws of the state of North Carolina, have been ordered registered by the clerk of the superior court or other officer qualified to pass upon probates and admit instruments to registration, and actually put upon the books in the office of the register of deeds as if properly proven and ordered to be registered, all such probates and registrations are hereby validated and made as good and sufficient as though such instruments had been in all respects properly proved and recorded, notwithstanding the failure of clerks or other officers qualified to pass upon the proofs or acknowledgments of instruments and to admit such instruments to registration to adjudge or certify that said instruments were duly proven, and notwithstanding the failure of such officers to adjudge or certify that the certificates of proof or acknowledgment of said instruments were correct or in due form. (1919, c. 248; C. S. 3331.)

§ 47-50. Order of registration omitted.—In all cases prior to January 1, 1941, where it appears from the records in the office of the register of deeds of any county in this state that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly acknowledged, as required by the laws of the state of North Carolina, and the clerk or deputy clerk of the superior court of such county has properly proved and adjudged that the certificate or certificates of the official before whom such acknowledgment was taken is in due form, except that the order for registration by said clerk was omitted, any and all such probates and registration are hereby validated, and the record of such deeds of conveyance, or other instruments authorized or required to be registered, may be read in evidence upon the trial or hearing of any cause with the same force and effect as if the same had been duly ordered registered. (1911, cc. 91, 166; 1913, c. 61; Ex. Sess. 1913, c. 73; 1915, c. 179, s. 1; 1941, cc. 187, 229; C. S. 3332.)

§ 47-51. Official deeds omitting seals.—All deeds executed prior to July 1, 1939, by any sheriff, commissioner, receiver, or other officer authorized to execute a deed by virtue of his office or appointment, in which the officer has omitted to affix his seal after his signature, shall not be invalid on account of the omission of such seal. (1907, c. 807; 1917, c. 69, s. 1; Ex. Sess. 1924, c. 64; 1941, c. 13; C. S. 3333.)

§ 47-52. Defective acknowledgment on old deeds validated. — The clerk of the superior court may order registered any deed, or other conveyance of land, in all cases where the instrument and probate bears date prior to January first, one thousand nine hundred and seven (1907) where the acknowledgment, private examination, or other proof of execution, has been taken or had before a notary public residing in the county where the land is situate, where said officer failed to affix his official seal, and where the certificate of said officer appears otherwise to be genuine. (1933, c. 439.)

§ 47-53. Probates omitting official seals. — In all cases where the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken or had by or before any commissioner of affidavits and deeds of this state, or clerk or deputy clerk of a court of record, or notary public of this or any other state, territory, or district, and such deed, mortgage, or other instrument has heretofore been recorded in any county in this state, but such commissioner, clerk, deputy clerk, or notary public has omitted to attach his or her official or notarial seal thereto, or it does not appear of record that such seal was attached to the original deed, mortgage, or other instrument, or such commissioner, clerk, deputy clerk, or notary public has certified the same as under his or her "official seal," "notarial seal," or words of similar import, and no such seal appears of record, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and the registration thereof, are hereby made in all respects valid and binding. The provisions of this section apply to acknowledgments, private examinations, or proofs taken prior to January first, 1929. (Rev., s. 1012; 1907, cc. 213, 665, 971; 1911, c. 4; 1915, c. 36; 1929, c. 8, s. 1; C. S. 3334.)

§ 47-54. Registrations by register's clerks or deputies.—All registration of deeds and other instruments heretofore made by the several registers of deeds of the several counties of the state by their deputies and clerks, and signed in the name of the register of deeds by a deputy or clerk, and when said registration is in all other respects regular, are hereby validated and declared of the same force and effect as if signed in the name of the register and not by a deputy or clerk. (1911, c. 184, s. 1; C. S. 3335.)

§ 47-55. Before officer in wrong capacity or out of jurisdiction.—All deeds, conveyances, or other instruments permitted by law to be registered in this state, which have been probated or ordered to be registered previous to January first, one thousand nine hundred and thirteen, before any officer of this or any other state or country, authorized by law to take acknowledgments or to order registration, where the certificate of the probate or order of registration is sufficient in form, but appears to have been certified by the officer in some capacity other than that in which such officer was authorized to act, or appears to have been made out of the county or district authorized by law, but within the state, and where the instrument with such certificate has been recorded in the proper county, are hereby declared to have been duly proved, probated and recorded, and to be valid. (Rev., ss. 1017, 1030; 1913, c. 125, s. 1; C. S. 3336.)

§ 47-56. Before justices of peace, where clerk's certificate or order or registration defective.—In every case where it appears from the record of the office of any register of deeds in this state that a justice of the peace in this state has taken and certified the proof of any instrument required by law to be registered, or the privy examination of a married woman thereto, and the deed and certificate have been registered, prior to the first day of January, one thousand nine hundred and seven,

in the county where the lands described in the instrument are located, without or with a defective certificate of the clerk of the official character of the justice, or as to the genuineness of his signature, or without the order of registration of the clerk, or his adjudication of due probate, or with a defective adjudication thereof, such proofs, certificates and registration are validated; but as against creditors or purchasers from donor, bargainor or lessor, only from February first, nineteen hundred and seven. (1907, c. 83, s. 1; C. S. 3337.)

Local Modification.—Clay: 1933, c. 530.

§ 47-57. Probates on proof of handwriting of maker refusing to acknowledge.—All registrations of instruments, prior to February fifth, one thousand eight hundred and ninety-seven, permitted or required by law to be registered, which were ordered to registration upon proof of the handwriting of the grantor or maker who refused to acknowledge the execution, are hereby validated. (Rev., s. 1026; 1897, c. 28; C. S. 3338.)

§ 47-58. Before judges of supreme or superior courts or clerks before 1889.—Wherever the judges of the supreme or the superior court, or the clerks or deputy clerks of the superior court, or courts of pleas and quarter sessions, mistaking their powers, have essayed previously to the first day of January, one thousand eight hundred and eighty-nine, to take the probate of any instrument required or allowed by law to be registered, and the privy examination of femes covert, whose names are signed to such deeds, and have ordered said deeds to registration, and the same have been registered, all such probates, privy examinations and registrations are validated. (Rev., s. 1009; Code, s. 1260; 1871-2, c. 200, s. 1; 1889, c. 252; 1891, c. 484; C. S. 3339.)

§ 47-59. Before clerks of inferior courts.—All probates and orders of registration made by and taken before any clerk of any inferior or criminal court prior to the twentieth day of February, one thousand eight hundred and eighty-five, and valid in form and substance, shall be valid and effectual, and all deeds, mortgages or other instruments requiring registration, registered upon such probate and order of registration, shall be valid. This section shall apply only to the counties of Halifax, Northampton, Hertford, Buncombe, Mecklenburg, Granville, Beaufort, Lenoir, Robeson, Cumberland, Ashe, Martin, Wayne, Greene, Iredell, Bertie, Edgecombe, Duplin and New Hanover. This section applies to probates and private examinations taken before the clerks of the criminal court of Buncombe prior to February second, one thousand eight hundred and ninety-three. (Rev., ss. 1020, 1021; 1885, cc. 105, 108; 1889, c. 143; 1889, c. 463; C. S. 3340.)

§ 47-60. Order of registration by judge, where clerk party.—All deeds, mortgages or other instruments which prior to the twentieth day of January, one thousand eight hundred and ninety-three, have been probated by a justice of the peace and ordered to registration by a judge of the superior court or justice of the supreme court, to which clerks of the superior court are parties, are hereby confirmed, and the probates and orders for registration declared to be valid. (Rev., s. 1011; 1893, c. 3, s. 2; C. S. 3342.)

§ 47-61. Order of registration by interested clerk.—The probate and registration of all deeds, mortgages and other instruments requiring registration prior to the fifteenth day of January, one thousand nine hundred and thirty-five, to which the clerks of the superior courts are parties, or in which they have an interest, and which have been registered on the order of such clerks or their deputies, or by assistant clerks of the superior courts, on proof of acknowledgment taken before such clerks, assistant clerks, deputy clerks, justices of the peace or notaries public, be, and the same are declared valid. (Rev., s. 1015; 1891, c. 102; 1899, c. 258; 1905, c. 427; 1907, c. 1003, s. 2; Ex. Sess. 1908, c. 105, s. 1; 1935, c. 235; C. S. 3343.)

§ 47-62. Probates before interested notaries.—The proof and acknowledgment of instruments required by law to be registered in the office of the register of deeds of a county, and all privy examinations of a feme covert to such instruments made before any notary public on or since March eleventh, one thousand nine hundred and seven, are hereby declared valid and sufficient, notwithstanding the notary may have been interested as attorney, counsel or otherwise in such instruments. (Ex. Sess. 1908, c. 105, s. 2; C. S. 3344.)

§ 47-63. Probates before officer of interested corporation.—In all cases when acknowledgment or proof of any conveyance has been taken before a clerk of superior court, justice of the peace or notary public, who was at the time a stockholder or officer in any corporation, bank or other institution which was a party to such instrument, the certificates of such clerk, justice of the peace, or notary public shall be held valid, and are so declared. (Rev., s. 1015; 1907, c. 1003, s. 1; C. S. 3345.)

§ 47-64. Probates before officers, stockholders or directors of corporations prior to January 1, 1929.—No acknowledgment or proof of execution, including privy examination of married women, of any deed, mortgage or deed of trust to which instrument a corporation is a party, executed prior to the first day of January, one thousand nine hundred and twenty-nine, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination was an officer, stockholder, or director in said corporation; but such proofs and acknowledgments and the registration thereof, if in all other respects valid, are declared to be valid. Nor shall the registration of any such instrument ordered to be registered be held invalid by reason of the fact that the clerk or deputy clerk ordering the registration was an officer, stockholder or director in any corporation which is a party to any such instrument. (Ex. Sess. 1913, c. 41; 1929, c. 24, s. 1; C. S. 3346.)

§ 47-65. Clerk's deeds, where clerk appointed himself to sell.—All deeds made by any clerk of the superior court of any county or his deputy, prior to the first day of January, one thousand nine hundred and five, in any proceeding before him in which he has appointed himself or his deputy to make sale of real property or other

property are hereby validated. (1911, c. 146, s. 1; C. S. 3347.)

§ 47-66. Certificate of wife's "previous" examination.—All probates of deeds, letters of attorney or other instruments requiring registration to which married women were parties, had and taken prior to the fourteenth day of February, one thousand eight hundred and ninety-three, in which probate it appears that such married women were "previously examined" instead of "privately examined," are hereby validated and confirmed. (Rev., s. 1016; 1893, c. 130; C. S. 3348.)

§ 47-67. Probates of husband and wife in wrong order.—All probates prior to March 6, 1893, of instruments executed by a husband and wife in which the probate as to the husband has been taken before or subsequent to the privy examination of his wife are validated. (Rev., s. 1017; 1893, c. 293; C. S. 3349.)

§ 47-68. Probates of husband and wife before different officers.—Where, prior to the second day of March, one thousand eight hundred and ninety-five, the probate of a deed or other instrument, executed by husband and wife, has been taken as to the husband and the wife by different officers having the power to take probates of deeds, whether both officers reside in this state or one in this state and the other in another state, or foreign country, the said probate, in the cases mentioned, shall be valid to all intents and purposes, and all deeds and other instruments required to be registered, and which have been ordered to registration by the proper officer in this state, and upon such probate or probates, and have been registered, shall be taken and considered as duly registered, and the word "probate," as used in this section, shall include privy examination of the wife. (Rev., s. 1018; 1895, c. 120; 1907, c. 34, s. 1; C. S. 3350.)

§ 47-69. Wife free trader; no examination or husband's assent. — In all cases prior to the twenty-fourth day of September, nineteen hundred and thirteen, where a married woman who was at the time a free trader by her husband's consent has executed and delivered a deed conveying her land, without her privy examination having been taken, and without the written assent of her husband other than his written assent contained in the instrument making her a free trader, such deed shall be valid and effectual to convey her land as if she had been, at the time of the execution and delivery of such deed, a feme sole. This section does not validate such deed where it would affect the title to land or property of purchasers or their grantees or assignees from such married woman and free trader subsequent to the execution of such deed. (Ex. Sess. 1913, c. 54, s. 1; C. S. 3351.)

§ 47-70. By president and attested by treasurer under corporate seal.—All deeds and conveyances for lands in this state, made by any corporation of this state, which have heretofore been proved or acknowledged before any notary public in any other state, or before any commissioner of deeds and affidavits for the state of North Carolina in any other state, and sealed with the common seal of the corporation and attested by the treasurer, are hereby ratified and declared to be good and valid deeds for all purposes. Where such deeds have been executed for the corporation by its president and attested, sealed and acknowledged or probated as aforesaid, and the acknowledgment or probate has been duly adjudged sufficient by any deputy clerk and ordered registered, the acknowledgment, probate and registration are ratified, and said deed is declared valid. Such deeds, or certified copies thereof, may be used as evidence of title to the lands therein conveyed in the trial of any suits in any of the courts of this state where the title of said lands shall come in controversy. (Rev., s. 1028; 1905, c. 307; C. S. 3352.)

§ 47-71. By president and attested by witness before January, 1900.—Any deed or conveyance for land in this state, made prior to January first, one thousand nine hundred, by the president of any corporation duly chartered under the laws of this state, and attested by a witness, is hereby declared to be a good and valid deed by such corporation for all purposes, and shall be admitted to probate and registration and shall pass title to the property therein conveyed to the grantee as fully as if said deed were executed according to provisions and forms of law in force in this state at the date of the execution of said deed. (1909, c. 859, s. 1; C. S. 3353.)

§ 47-72. Corporate name not affixed, but signed otherwise prior to January, 1927.—In all cases prior to the first day of January, one thousand nine hundred and twenty-seven, where any deed conveying lands purported to be executed by a corporation, but the corporate name was in fact not affixed to said deed, but same was signed by the president and secretary of said corporation, or by the president and two members of the governing body of said corporation, and said deed has been registered in the county where the land conveyed by said deed is located, said defective execution above described shall be and the same is hereby declared to be in all respects valid, and such deed shall be deemed to be in all respects the deed of said corporation. (1919, c. 53, s. 1; 1927, c. 126; C. S. 3354.)

§ 47-73. Probated and registered on oath of subscribing witness.—In all cases prior to the first day of January, one thousand nine hundred and nineteen, where any deed conveying lands was executed by a corporation, and said deed was probated and ordered registered upon the oath and examination of a subscribing witness, by the clerk of the superior court of the county in which the land conveyed by said deed is located, and said deed has been duly registered by the register of deeds of said county, such probate and order of registration shall be, and the same is hereby, declared to be in all respects valid. (1919, c. 53, s. 2; C. S. 3355.)

§ 47-74. Certificate alleging examination of grantor instead of witness.—Wherever any deed of conveyance registered prior to January first, eighteen hundred and eighty-six, purports to have been attested by two witnesses and in the certificate of probate and acknowledgment it is stated that the execution of such deed was proven by the oath and examination of one of the grantors

in said deed instead of either of the witnesses named, all such probates and certificates are hereby validated and confirmed, and any such deed shall be taken and considered as duly acknowledged and probated. (1925, c. 84.)

§ 47-75. Proof of corporate articles before officer authorized to probate.—All proofs of articles of agreement for the creation of corporations which were, prior to the eighteenth day of February, one thousand nine hundred and one, made before any officer who was at that time authorized by the law to take proofs and acknowledgments of deeds and mortgages are ratified. (Rev., s. 1027; 1901, c. 170; C. S. 3356.)

§ 47-76. Before officials of wrong state. — In all cases where the acknowledgment, examination and probate of any deed, mortgage, power of attorney or other instrument required or authorized to be registered has been taken before any judge, clerk of a court of record, notary public having a notarial seal, mayor of a city having a seal, or justice of the peace of a state other than the state in which the grantor, maker or subscribing witness resided at the time of the execution, acknowledgment, examination or probate thereof, and such acknowledgment, examination or probate is in other respects according to law, and such instrument has been duly ordered to registration and has been registered, then such acknowledgment, examination, probate and registration are hereby in all respects made valid and binding. This section applies to probates and acknowledgments of deputy clerks of other states when such probate and acknowledgment has been attested by the official seal of said office and adjudged sufficient and in due form of law by the clerk of the court in the state where the instrument is required to be registered. (Rev., s. 1013; 1905, c. 505; C. S. 3357.)

§ 47-77. Before notaries and clerks in other states.—All deeds and conveyances made for lands in this state which have, previous to February fifteenth, one thousand eight hundred and eighty-three, been proved before a notary public or clerk of a court of record, or before a court of record, not including mayor's court, of any other state, where such proof has been duly certified by such notary or clerk under his official seal, or the seal of the court, or in accordance with the act of congress regulating the certifying of records of the courts of one state to another state, or under the seal of such courts, and such deed or conveyance, with the certificate, has been registered in the office of register of deeds in the book of records thereof for the county in which such lands were situate at the time of such registration, are declared to be validly registered, and the proof and registration is adjudged valid. All deeds and conveyances so proved, certified and registered, or certified copies of the same, may be used as evidence of title for the lands on the trial of any suit in any courts where title to the lands come into controversy. (Rev., ss. 1022, 1023; Code, ss. 1262, 1263; 1883, c. 129, ss. 1, 2; 1885, c. 11; 1915, c. 213; C. S. 3358.)

§ 47-78. Acknowledgment by resident taken out of state.—When prior to the ninth day of March, one thousand eight hundred and ninety-five, a deed or mortgage executed by a resident of this state has been proved or acknowledged by the maker thereof before a notary public of any other state of the United States, and has been ordered to be registered by the clerk of the superior court of the county in which the land conveyed is situated, and said deed or mortgage has been registered, such registration is valid. (Rev., s. 1019; 1895, c. 181; C. S. 3359.)

§ 47-79. Before deputy clerks of courts of other states.—Where any deed or conveyance of lands in this state, executed prior to January first, one thousand nine hundred and thirteen, has been acknowledged by the grantor or the privy examination of any married woman has been taken before the deputy clerk of a court of record of any other state, and the certificate of acknowledgment and privy examination is otherwise sufficient under the laws of this state, except that it appears to have been signed in the name of the clerk of said court, by the deputy clerk, and the seal of the court has been affixed thereto, and such certificate has been duly approved by the clerk of the superior court of this state in the county where the lands conveyed are situated and the instrument ordered to be recorded, such certificate and probate and the registration made thereon is validated, and the conveyance, if otherwise sufficient, is declared valid. (1913, c. 57, ss. 1, 2; C. S. 3360.)

§ 47-80. Sister state probates without governor's authentication. — In all cases where any deed concerning lands or any power of attorney for the conveyance of the same, or any other instrument required or allowed to be registered, has been, prior to the twenty-ninth day of January, one thousand nine hundred and one, acknowledged by the grantor therein, or proved and the private examination of any married woman, who was a party thereto, taken according to law, before any judge of a supreme, superior or circuit court of any other state or territory of the United States where the parties to such instrument resided, and the certificate of such judge as to such acknowledgment, probate or private examination, and also the certificate of the secretary of state of said state or territory instead of the governor thereof (as required by the laws of this state then in force) that the judge, before whom the acknowledgment or probate and private examination were taken, was at the time of taking the same a judge as aforesaid, are attached to said deed, or other instrument, and the said deed or other instrument, having said certificates attached, has been exhibited before the former judge of probate, or the clerk of the superior court of the county in which the property is situated, and such acknowledgment, or probate and private examination have been adjudged by him to be sufficient and said deed or other instrument ordered to be registered and has been registered accordingly, such probate and registration shall be valid. Nothing herein contained affects the rights of third parties who are purchasers for value, without notice, from the grantor in such deed or other instrument. (Rev., s. 1014; 1901, c. 39; C. S. 3361.)

§ 47-81. Before commissioners of deeds.—Any deed or other instrument permitted by law to be

registered, and which has prior to the third day of March, one thousand nine hundred and thirteen, been proved or acknowledged before a commissioner of deeds, is validated; and its registration is authorized and validated. (1913, c. 39, s. 2; C. S. 3362.)

§ 47-82. Foreign probates omitting seals.—In all cases where the acknowledgment, privy examination or other proof of the execution of any instrument authorized or required to be registered has been taken by or before any ambassador, minister, consul, vice consul, vice consul general or commercial agent of the United States in any country beyond the limits of the United States, and such instrument has heretofore been recorded in any county in this state, but the official before whom it was taken has omitted to attach his seal of office, or it does not appear of record that such seal was attached to the instrument, or such official has certified the same as under his "official seal" or seal of his office, or words of similar import, and no such seal appears of record, then all such acknowledgments, privy examinations or other proof of such instruments, and the registration thereof, are hereby made in all respects valid, and such instruments, after the ratification hereof, shall be competent to be read in evidence. (1913, c. 69, s. 1; C. S. 3363.)

§ 47-83. Before consuls general.—Any deed or other instrument permitted by law to be registered, and which has prior to the thirteenth day of October, nineteen hundred and thirteen, been proved or acknowledged before a "consul general," is validated; and its registration is authorized and validated. (Ex. Sess. 1913, c. 72, s. 2; C. S. 3364.)

§ 47-84. Before vice consuls and vice consuls general.—The order for registration by the clerk of the superior court and the registration thereof of all deeds of conveyance and other instruments in any county of this state prior to January first, one thousand nine hundred and five, upon the certificate of any vice consul or vice consul general of the United States residing in a foreign country, certifying in due form under his name and the official seal of the United States consul or United States consul general of the same place and country where such vice consul or vice consul general resided and acted, that he has taken the proof or acknowledgments of the parties to such instruments, together with the privy examinations of married women parties thereto, are hereby, together with such proof and acknowledgments, privy examinations and certificates, validated. (Rev., s. 1024; 1905, c. 451, s. 2; C. S. 3365.)

§ 47-85. Before masters in chancery.—All probates, acknowledgments, and private examinations of deeds and conveyances of land heretofore taken before masters in equity or masters in chancery in any other state are declared to be valid, and all registrations of such deeds or conveyances upon such probates, acknowledgments and private examinations, or any of them, are hereby declared to be sufficient. All such deeds and conveyances and registration thereof, and all certified copies of such registrations, shall be received in evidence or otherwise used in the same manner and with the same force and effect as other deeds and conveyances with probates, acknowledgments, or private examinations made in accordance with provisions of statutes of this state in force at the time and as registrations thereof and certified copies of such registrations. Nothing in this section contained shall have effect to deprive any one of any legal rights acquired, before its passage, from the grantors in such deeds or conveyances subsequently to their execution, where the deeds or conveyances by which such rights were acquired have been duly acknowledged or probated and registered. (1911, c. 10; C. S. 3366.)

§ 47-86. Validation of probate of deeds by clerks of courts of record of other states, where official seal is omitted.—In all cases where, prior to the first day of January, one thousand eight hundred and ninety-one, the acknowledgment, privy examination of a married woman, or other proof of the execution of any deed, mortgage, other instrument authorized to be registered has been taken before a clerk of a court of record in another state, and such clerk has failed or neglected to affix his official seal to his certificate of such acknowledgment, privy examination, or other proof of execution, of such deed, mortgage or other instrument, or where such court had no official seal and no official seal was affixed to such certificate by reason of that fact, and such deed, mortgage, or other instrument has been ordered to registration by the clerk of the superior court of any county in this state and has been registered, the probate of any and every such deed, mortgage, or other instrument authorized to be registered shall be and hereby is to all intents and purposes validated. (1921, c. 15, ss. 1, 2; C. S. 3366(a).)

§ 47-87. Validation of probates by different officers of deeds by wife and husband.—In all cases where, prior to the second day of March, one thousand eight hundred and ninety-five, the acknowledgment, privy examination of a married woman, or other proof of the execution of any deed, mortgage, or other instrument, authorized to be registered, executed by husband and wife, has been taken as to the husband and wife in different states and by different officers having power to take acknowledgments, any and every such acknowledgment, privy examination of a married woman, or other proof of execution, and the probate of any and every such deed, mortgage or other instrument shall be and hereby is, to all intents and purposes validated. (1921, c. 19, ss. 1, 4; C. S. 3366(b).)

§ 47-88. Registration without formal order validated. — In all cases where the acknowledgment, privy examination of a married woman, or other proof of the execution of any deed, mortgage or other instrument, authorized to be registered, has been taken before a commissioner in another state appointed by the probate judge of any county of this state, under the provisions of section twenty of chapter thirty-five of Battle's Revisal, during the time said chapter remained in force and effect, and such commissioner has certified to such acknowledgment, privy examination or other proof, and has returned such deed, mortgage or other instrument to said probate judge, with his certificate endorsed thereon, and

such deed, mortgage or other instrument, together with such certificate, has been registered, without any adjudication or order of registration by such probate judge, the probate and registration of any and every such deed shall be, and hereby is, to all intents and purposes validated. (1921, c. 19, ss. 2, 4; C. S. 3366(c).)

§ 47-89. Same.—In all cases where any deed, mortgage or other instrument has heretofore been acknowledged or probated in accordance with the provisions of §§ 47-87 and 47-88, and such deed, mortgage or other instrument has been registered, without any order of registration by the probate judge or clerk of the superior court appearing thereon, the probate and registration of any and every such deed, mortgage or other instrument shall be, and hereby is to all intents and purposes validated. (1921, c. 19, ss. 3, 4; C. S. 3366(d).)

§ 47-90. Validation of acknowledgments taken by notaries public holding other office.—In every case where deeds or other instruments have been acknowledged before a notary public, when the notary public, at the time was also holding some other office, and the deed or other instrument has been duly probated and recorded, such acknowledgment taken by such notary public is hereby declared to be sufficient and valid. (1921, c. 21; C. S. 3366(e).)

§ 47-91. Validation of certain probates of deeds before consular agents of the United States.—In all cases where the acknowledgment, privy examination of a married woman, or other proof of the execution of any deed, mortgage or other instrument authorized or required to be registered has been taken before any consular agent of the United States, during the time chapter thirty-five of Battle's Revisal remained in force and effect, and such acknowledgment, privy examination, or other proof of the execution of such deed, mortgage, or other instrument is in other respects regular and in proper form, and such deed, mortgage, or other instrument has been duly ordered to registration and registered in the proper county, the acknowledgment, probate, and registration of any and every such deed, mortgage, or other instrument is hereby validated as fully and to the same effect as though such acknowledgment, privy examination, or other proof of execution had been taken before one of the officers named in subsection five of section two of said chapter thirty-five of Battle's Revisal. (1921, c. 157; C. S. 3366(f).)

§ 47-92. Probates before stockholders and directors of banks.—No acknowledgment or proof of execution, including privy examination of married women, of any mortgage, or deed of trust executed to secure the payment of any indebtedness to any banking corporation, taken prior to the first day of January, one thousand nine hundred and twenty-three (1923), shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof, or privy examination was a stockholder or director in such banking corporation. (1923, c. 17; C. S. 3366(g).)

§ 47-93. Acknowledgments taken by stockholder, officer, or director of bank.—No acknowledgment or proof of execution, including privy examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any banking corporation taken prior to the first day of January, one thousand nine hundred and twenty-four, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof, or privy examination was a stockholder, officer, or director in such banking corporation. (1924, c. 68.)

§ 47-94. Acknowledgment and registration by officer or stockholder in building and loan association.—All acknowledgments and proofs of execution, including privy examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any building and loan association prior to the first day of January, one thousand nine hundred and twenty-nine, shall not be, nor held to be, invalid by reason of the fact that the clerk of the Superior Court, justice of the peace, notary public, or other officer taking such acknowledgment, proof of execution or privy examination, was an officer or stockholder in such building and loan association; but such proofs and acknowledgments of all such instruments, and the registration thereof, if in all other respects valid, are hereby declared to be valid.

Nor shall the registration of any such mortgage or deed of trust ordered to be registered by the clerk of the Superior Court, or by any deputy or assistant clerk of the Superior Court, be or held to be invalid by reason of the fact that the clerk of the Superior Court, or deputy, or assistant clerk of the Superior Court, ordering such mortgages or deeds of trust to be registered was an officer or stockholder in any building and loan association, whose indebtedness is secured in and by such mortgage or deed of trust. (1924, c. 108; 1929, c. 146, s. 1.)

§ 47-95. Acknowledgments taken by notaries interested as trustee or holding other office.—In every case where deeds and other instruments have been acknowledged and privy examination of wives had before notaries public, or justices of the peace, prior to January 1, 1939, when the notary public or justice of the peace at the time was interested as trustee in said instrument or at the time was also holding some other office, and the deed or other instrument has been duly probated and recorded, such acknowledgment and privy examination taken by such notary public or justice of the peace is hereby declared to be sufficient and valid. (1923, c. 61; 1931, cc. 166, 439; 1939, c. 321; C. S. 3366(h).)

§ 47-96. Validation of instruments registered without probate.—In every case where it shall appear from the records in the office of the register of deeds of any county in the state that any instrument of writing required or allowed by law to be registered prior to January first, eighteen hundred and sixty-nine, without any acknowledgment, proof, privy examination, or probate, or upon a defective acknowledgment, proof, privy examination, or probate, the record of such instrument may, notwithstanding, be read in evidence in any of the courts of this state, if otherwise competent. (1923, c. 215, s. 1; C. S. 3366(i).)

Local Modification.—Cherokee, Graham: 1935, c. 92.

§ 47-97. Validation of corporate deed with mis-

take as to officer's name. — In all cases where the deed of a corporation executed before the first day of January, 1918, is properly executed, properly recorded and there is error in the probate of said corporation's deed as to the name or names of the officers in said probate, said deed shall be construed to be a deed of the same force and effect as if said probate were in every way proper. (1933, c. 412, s. 1.)

§ 47-98. Registration on defective probates beyond state.—In every case where it shall appear from the records in the office of the register of deeds of any county in this state that any instrument required or allowed by law to be registered, bearing date prior to the year one thousand eight hundred and thirty-five, executed by any person or persons residing in any of the United States, other than this state, or in any of the territories of the United States, or in the District of Columbia, has been proven or acknowledged, or the privy examination of any feme covert taken thereto, before any officer or person authorized by any of the laws of this state in force prior to the said year one thousand eight hundred and thirty-five to take such proofs, privy examinations and acknowledgments, and the said instrument has been registered in the proper county without the certificate of the governor of the state or territory in which such proofs, acknowledgments or privy examinations were taken, or of the secretary of state of the United States, when such certificate or certificates were required, as to the official character of the person taking such acknowledgment, proof or privy examination, as aforesaid, and without an order of registration made by a court or judge in this state having jurisdiction to make such order, then and in all such cases such proofs, privy examinations, acknowledgments and registrations are hereby in all respects fully validated and confirmed and declared to be sufficient in law, and such instruments so registered may be read in evidence in any of the courts of this state. (1923, c. 215, ss. 2, 3; C. S. 3366(j).)

§ 47-99. Certificate of clerks without seal.—All certificates of acknowledgment and all verifications of pleadings, affidavits, and other instruments executed by clerks of the Superior Court of the State prior to March 10, 1925, and which do not bear the official seal of such clerks, are hereby validated in all cases in which the instruments bearing such acknowledgment or certification are filed or recorded in any county in the State other than the county in which the clerk executing such certificates of acknowledgment or vertifications resides, and such acknowledgments and verifications are hereby made and declared to be binding, valid and effective to the same extent and in the same manner as if said official seal had been affixed. (1925, c. 248.)

§ 47-100. Acknowledgments taken by officer who was grantor.—In all cases where a deed or deeds dated prior to the first day of January, 1910, purporting to convey lands, have been registered in the office of the Register of Deeds of the county where the lands conveyed in said deed or deeds are located, prior to said first day of January, nineteen hundred and ten, and the acknowledgments or proof of execution of such deed or deeds has been taken as to some of the grantors by an officer who was himself one of the grantors named in such deed or deeds, such defective execution, acknowledgment and proof of execution and probate of such deed or deeds thereon and the registration thereof as above described, shall be, and the same are hereby declared to be in all respects valid, and such deed or deeds shall be declared to be in all respects duly executed, probated and recorded to the same effect as if such officer taking such proof or acknowledgment of execution had not been named as a grantor therein, or in anywise interested therein. (1929, c. 48, s. 1.)

§ 47-101. Seal of acknowledging officer omitted; deeds made presumptive evidence.—In all cases where deeds appear to have been executed for land prior to January 1, 1900, and appear to have been recorded in the offices of the registers of deeds in the proper counties in this state, and the same appear to have been acknowledged before commissioners of affidavits (or deeds) of North Carolina, residing in the District of Columbia or elsewhere in the different states, or appear to have been recorded without any certificate being recorded on the record of such deed or deeds, such record or records shall be presumptive evidence of the execution of such deed or deeds by the grantor or the grantors to the grantee or grantees therein named for the lands therein described, and the record of such deed or deeds may be offered or read in evidence upon the trial or hearing of any cause in any of the courts of this state as if the same had been properly probated and recorded. Provided, however, that nothing herein contained shall prevent such record or records from being attacked for fraud, and provided further that this section shall not apply to creditors or purchasers, but as to them the same shall stand as if this section had not been passed, and shall only apply to deeds executed prior to January first, nineteen hundred. (1929, c. 14, s. 1.)

§ 47-102. Absence of notarial seal.—Any deed executed prior to the first day of January, nineteen hundred and ten, and duly acknowledged before a North Carolina notary public, and the probate recites "witness my hand and notarial seal," or words of similar import, and no seal was affixed to the said deed, shall be ordered registered by the clerk of the superior court of the county in which the land lies, upon presentation to him: Provided, the probate is otherwise in due form. (1935, c. 130.)

§ 47-103. Deeds probated and registered with notary's seal not affixed, validated.—Any deed conveying or affecting real estate executed prior to January 1, 1932, and ordered registered and recorded in the county in which the land lies prior to said date, from which deed and the acknowledgment and privy examination thereof the seal of the notary public taking the acknowledgment or privy examination of the grantor or grantors thereof was omitted, is hereby declared to be sufficient and valid, and the probate and registration thereof are hereby in all respects validated and confirmed to the same effect as if the seal of said notary was affixed to the acknowledgment or privy examination thereof. (1941, c. 20.)

§ 47-104. Acknowledgments of notary holding another office.—In every case where deeds or other instruments have been acknowledged before a notary public, when the notary public at the time was also holding some other office, and the deed or other instrument has been duly probated and recorded, such acknowledgment taken by such notary public is hereby declared to be sufficient and valid. (1935, c. 133; 1937, c. 284.)

§ 47-105. Acknowledgment and private examination of married woman taken by officer who was grantor.—In all cases where a deed or deeds of mortgages or other conveyances of land dated prior to the first (1st) day of January, one thousand nine hundred and twenty-six (1926), purporting to convey lands have been registered in the office of the register of deeds of the county where the lands conveyed in said deeds are located prior to said first (1st) day of January, one thousand nine hundred and twenty-six (1926), and the acknowledgments or proof of execution of such deed or deeds and the private examination of any married woman who is a grantor in such deed or deeds have been taken as to some of the grantors, and the private examination of any married woman grantor in such deed has been taken by an officer who was himself one of the grantors named in such deed or deeds, such defective execution, acknowledgment, proof of execution and the private examination of such married woman, evidenced by the certificate thereof on such deed and the registration thereof as above described and set forth, shall be and the same are hereby declared to be in all respects valid, and such deed or deeds or other conveyances of land are declared to be in all respects duly executed, probated and recorded to the same effect as if such officer taking such proof or acknowledgment of execution or taking the private examination of such married woman and certifying thereto upon such deed or deeds had not been named as grantor therein and had not been interested therein in any way whatsoever. (1937, c. 91.)

§ 47-106. Certain instruments in which clerk of superior court was a party, validated.—In all cases where a deed, or other conveyance of land dated prior to the first day of January, one thousand nine hundred and eighteen, purporting to convey land, wherein the grantor or one of the grantors therein was at the time clerk of the superior court of the county where the land purporting to be conveyed was located, was acknowledged, proof of execution, privy examination of a married woman, and, or, order of registration had and taken before a deputy clerk of the superior court of said county, and the instrument registered upon the order of said deputy clerk of the superior court in the office of the register of deeds of said county, within two years from the date of said instrument, such instrument and its probate are hereby in all respects validated and confirmed; and such instrument, together with such defective acknowledgment, proof of execution, privy examination of a married woman, order of registration, and the certificate of such deputy clerk of the superior court, and the registration thereof, are hereby declared in all respects to be valid and binding upon the parties of such instrument and their privies, and such instrument so probated and recorded together with its certificates may be read in evidence as a muniment of title, for all intents and purposes, in any of the courts of this state. (1939, c. 261.)

§ 47-107. Validation of probate and registration of certain instruments where name of grantor omitted from record.—All deeds, deeds of trust, conveyances or other instruments permitted by law to be registered in this state, which have been registered prior to January first, one thousand nine hundred and twenty-four, and in which a clerk of the superior court has adjudged the certificate of the officer before whom the acknowledgment was taken to be in due form and correct and has ordered the instrument to be recorded, but in which the name of a grantor which appears in the body of the instrument and as a signer of the instrument has been omitted from the record of the certificate of the officer before whom the acknowledgment was taken, are hereby declared to have been duly proved, probated and recorded and to be valid. (1941, c. 30.)

§ 47-108. Acknowledgments before notaries under age.—All acts of notaries public for the state of North Carolina who were not yet twenty-one years of age at the time of the performance of such acts are hereby validated; and in every case where deeds or other instruments have been acknowledged before such notary public who was not yet twenty-one years of age at the time of taking of said acknowledgment, such acknowledgment taken before such notary public is hereby declared to be sufficient and valid. (1941, c. 233.)

Art. 5. Registration of Official Discharges from the Military and Naval Forces of the United States.

§ 47-109. Book for record of discharges in office of register of deeds; specifications.—There shall be provided, and at all times maintained, in the office of the register of deeds of each county in North Carolina a special and permanent book, in which shall be recorded official discharges from the military and naval forces of the United States. Said book shall be securely bound, and the pages of the same shall be printed in the form of discharge papers, with sufficient blank lines for the recording of such dates as may be contained in the discharge papers offered for registration. (1921, c. 198, s. 1; C. S. 3366(k).)

§ 47-110. Registration of official discharge or certificate of lost discharge; fee.—Upon the presentation of any official discharge, or official certificate of lost discharge, from the army, navy, or marine corps of the United States, and the payment of a fee of twenty-five (25) cents therefor, it shall be the duty of the register of deeds of the several counties of the state to record such discharge in the book provided for in the preceding section. (1921, c. 198, s. 2; C. S. 3366(l).)

§ 47-111. Inquiry by register of deeds; oath of applicant.—If any register of deeds shall be in doubt as to whether or not any paper so presented for registration is an official discharge from the army, navy, or marine corps of the United States, or an official certificate of lost discharge, he shall have power to examine, under oath, the person so presenting such discharge, or other-

wise inquire into its validity; and every register of deeds to whom a discharge or certificate of lost discharge is presented for registration shall administer to the person offering such discharge or certificate of lost discharge for registration the following oath, to be recorded with and form a part of the registration of such discharge or certificate of lost discharge:

"I, ..., being duly sworn, depose and say that the foregoing discharge (or certificate of lost discharge) is the original discharge (or certificate of lost discharge) issued to me by the Government of the United States; and that no alterations have been made therein by me, or by any person to my knowledge.

.....

Subscribed and sworn to before me this .....; day of ....., 19 ...."
(1921, c. 198, s. 3; C. S. 3366(m).)

§ 47-112. Forgery or alteration of discharge or certificate; punishment. — Any person who shall forge, or in any manner alter any discharge or certificate of lost discharge issued by the Government of the United States, and offer the same for registration or secure the registration of the same under the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1921, c. 198, s. 4; C. S. 3366(n).)

§ 47-113. Certified copy of registration; fee. —Any person desiring a certified copy of any such discharge, or certificate of lost discharge, registered under the provisions of this article shall apply for the same to the register of deeds of the county in which such discharge or certificate of lost discharge is registered; and it shall be the duty of the register of deeds to furnish such certified copy upon the payment of a fee of fifty (50) cents therefor. (1921, c. 198, s. 5; C. S. 3366(o).)

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Chapter 48. Adoption of Minors.

Sec.
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§ 48-1. Petition for adoption and change of name.—Any proper adult person or husband and wife, jointly, who have legal residence in North Carolina may petition the superior court of the county in which he or they have legal residence or the county in which the child resides, or of the county in which the child had legal residence when it became a public charge, or of the county in which is located any agency or institution operating under the laws of this state having guardianship and custody of the child, for leave to adopt a minor child and for a change of the name of such child. Provided, that in every instance when the parent, guardian or custodian of the child is not a citizen or resident of the state of North Carolina at the time of filing of petition for adoption, or where the child has been brought into the state for the purpose of placement and adoption by a parent, person, agency, institution or association, the provisions of chapter two hundred twenty-six of the Public Laws of one thousand nine hundred and thirty-one [§§ 110-50 to 110-56] must be complied with before the child is eligible for adoption. Such petition for adoption shall be filed in duplicate on standard form to be supplied by the state board of charities and public welfare, one form to be held in the files of the said superior court, and the other to be sent to said state board of charities and public welfare. (1935, c. 243; 1937, c. 422; 1939, cc. 32, 132, s. 1.)

§ 48-2. Use of true name of child unnecessary; identification.—It shall not be necessary in the petition for adoption or other papers, except the report on investigation of the conditions and antecedents of the child, to give the true or legal name of the child to be adopted, but it shall be competent to name or identify the child to be adopted by such name as may be presented in the petition of adoption, and the adoption proceedings shall not be invalidated by reason thereof. In every case, however, the true name of the child proposed to be adopted shall be set forth in, and made known to the court through, the report upon the conditions and antecedents of the child to be made by the superintendent or superintendents of public welfare or duly authorized representative of a child-placing agency as hereinafter provided. (1935, c. 243.)

§ 48-3. Investigation of conditions and antecedents of child and of suitableness of foster home.—Upon the filing of a petition for the adoption of a minor child the court shall instruct the county superintendent of Public Welfare, or a duly authorized representative of a child-placing agency, licensed by the State Board of Charities and Public Welfare, to investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and to make appropriate inquiry to determine whether the proposed foster home is a suitable one for the child; or the court may instruct the superintendent of public welfare of one county to make an investigation of the conditions and antecedents of the child and the superintendent of public welfare of another county or counties to make any other part of the necessary investigation. The county superintendent or superintendents of public welfare or the duly authorized representative of such agency described hereinbefore shall make a written report of his or their findings, on a standard form supplied by the state board of charities and public welfare, for examination by the court of adoption. (1935, c. 243.)

§ 48-4. Necessary parties to proceeding. — The parents or surviving parent or guardian, or the person or persons having charge of such child, or with whom it may reside, must be a party or parties of record to this proceeding: Provided, that where the parents or surviving parent or guardian of the child whose adoption is sought cannot be found within this state for the service of process, that fact shall be made known to the court either by affidavit or return of the sheriff of the county in which such person or persons were last known to reside. It shall be competent to make such service by publication of summons as provided by §§ 1-98, et seq., and such person shall be bound in every respect by such service: Provided, that when the parent, parents, or guardian of the person of the child has signed a release of all rights to the child, the person, agency, or institution to which said rights were released shall be made a party to this proceeding and it shall not be necessary to make the parent, parents or guardian parties: Provided, further, that when such parent, parents, or guardian has consented to an adoption as specified in § 48-5, he shall not be a necessary party of record to this proceeding. (1935, c. 243; 1939, c. 32; 1941, c. 281, s. 1.)

§ 48-5. Tentative approval and order of adop-

tion; completion of adoption within two years.—Upon the examination of the written report of the Superintendent of Public Welfare or of a duly authorized representative of said agency described hereinbefore and with the consent of the parent or parents if living or of the guardian, if any, or of the person with whom such child resides, or who may have charge of such child, except in cases hereinafter provided for, the Court, if it be satisfied that the petitioner is a proper and suitable person and that the child is a proper subject for adoption and that the adoption is for the best interests of the child, may tentatively approve the adoption and issue an order giving the care and custody of the child to the petitioner: Provided, that when the parent, parents, or guardian of the person of the child has in writing surrendered the child to a duly licensed child-placing agency, or the Superintendent of Public Welfare of the County and has in writing consented to adoption of the child by any person or persons to be designated by said agency or officer, this shall be deemed a sufficient consent for the purposes of this chapter, and no further consent of the parent, parents, or guardian to a subsequent specific adoption shall be necessary: Provided, however, that if any child is placed in any home or institution referred to in this chapter by its mother, then said mother shall give her written consent that said child may be adopted without further consent upon her part. Such consent shall not be revocable by the consenting party. For the purpose of this chapter, a parent under the age of twenty-one shall be deemed to have capacity for the purposes of giving consent, releasing rights in the child, and for all other purposes of this chapter, and shall be as fully bound thereby as if the parent had been twenty-one. Within two years of the interlocutory order, but not earlier than one year from the date of such order, the Court shall complete the proceeding by an order granting letters of adoption or, in its discretion, by an order dismissing the proceeding, and the effect of any adoption so completed shall be retroactive to the date of application. During this interval the child shall remain the ward of the Court and shall be subject to such supervision as the Court may direct. Upon making the interlocutory order the written report of the investigation made by the Superintendent or Superintendents of Public Welfare or representative of the child-placing agency described hereinbefore shall be forwarded by the Clerk of the Superior Court to the State Board of Charities and Public Welfare. Upon receipt of the same the said Board shall cause said report to be recorded in a book to be kept for that purpose, which book shall be properly indexed showing the name of the child, the names of its natural parents, the names of its adoptive parents, and the new legal name, if any, given to said child; and said Board shall also cause the original report to be permanently indexed and filed. Neither the original report nor the record thereof in the aforesaid book shall be made public, nor shall any information concerning the contents of either of them be disclosed by any person except upon order of a Judge of the Superior Court, made upon application of any party requiring such information, and when in the opinion of the said Judge it may be to the interests of the said child or to the public to have such information disclosed. It shall be a misdemeanor for any person having charge of the said report or record to allow said report or records to be examined by anyone or to give any information concerning the contents of either except upon order of a Judge of the Superior Court as herein provided. No party to a completed and final adoption proceeding nor anyone claiming under such a party may later question the validity of the adoption proceeding, by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, save for such appeal as may be allowed by law. Further, no adoption may be questioned by reason of any procedural or other defect by anyone not injured by such defect. Such order granting letters of adoption shall have the force and effect of, and shall be entitled to, all the presumptions attaching to a judgment rendered by a court of general jurisdiction in a common law action. A parent who has not consented to nor been made a party to an adoption proceeding where such steps are required may have the adoption vacated provided he bring action to vacate within one year of actual notice of the adoption, and provided he failed to appear in the adoption proceedings because he did not know of such proceedings. In any case where a parent or parents in writing surrenders a child for adoption (other than to a duly licensed child-placing agency or the Superintendent of Public Welfare of the County, which situation is governed by an earlier part of this section), and the child is taken by prospective adoptive parents in reliance thereon and kept for a period of six months or more, the surrender shall not be revocable by the surrendering parent or parents. (1935, c. 243; 1941, c. 281, ss. 2, 3.)

§ 48-6. Form and contents of adoption order; parent-child relationship established; rights of inheritance, etc.—Such order granting letters of adoption shall be made upon a standard form supplied by the state board of charities and public welfare, and shall state whether for the minority or for the life-time of such child and shall have the effect forthwith to establish the relation of parent and child between the petitioner and the child. A child adopted for its minority shall not be deemed a relative of its adopted parents when determining succession of property to, through or from it. But where adoptions are for life succession by, through, and from adopted children and their adoptive parents shall be the same as if the adopted children were the natural, legitimate children of the adoptive parents. Succession by children adopted for life and their lineal descendants from or through their natural parents or by or through the natural parents from such adopted children or their lineal descendants shall take place only where but for such succession the state of North Carolina would succeed to the intestate's property. Further, for all other purposes whatsoever a child adopted for life and his adoptive parents shall be in the same legal position as they would be if he had been born to his adoptive parents. No defect or irregularity, jurisdictional or otherwise, in an adoption proceedings shall prevent inheritance by a child, adopted for life, who has after the adoption continuously lived as the adopted child of the adoptive parents. (1935, c. 243; 1939, c. 132, s. 2; 1941, c. 281, s. 4.)

§ 48-7. Change of name; report to bureau of vital statistics; entry on birth certificate. — For proper cause shown the court may decree that the name of the child shall be changed to such name as may be prayed in the petition: Provided, that whenever the name of any child is so changed, the court shall immediately report such change to the bureau of vital statistics of the state board of health, authorizing said bureau to enter change of name on the original birth certificate of the child and to issue upon request a certificate of birth bearing the new name of a child as shown in the decree of adoption, the name of the foster parents of said child, age, sex, date of birth, but no reference in any certified copy of the birth certificate shall be made to the adoption of the said child. However, original registration of birth shall remain a part of the record of the said bureau of vital statistics. The provisions of this section shall apply to all minors heretofore adopted in accordance with the laws existing at the time of such adoptions in as full a manner as to adoptions hereunder. (1935, c. 243.)

§ 48-8. Surety bond required of petitioner where child with estate is without guardian. — When the court grants the petitioner the custody of the child, if the child is an orphan and without guardian and possesses any estate, the court shall require from the petitioner such bond as is required by law to be given by guardians. (1935, c. 243.)

§ 48-9. Recordation of adoption proceedings; revocation of orders.—All papers, except the report upon the conditions and antecedents of the child and consent of natural parents or guardian to the adoption, shall be recorded in the book or books in which other special proceedings are recorded in the office of the clerk of the superior court in the county in which the adoption is made; and all orders made in the proceedings may be revoked at any time by the court for good cause shown. On issuing such order granting letters of adoption, the clerk of the superior court of the county in which the order is issued shall send a copy of such order to the state board of charities and public welfare and likewise a copy of the revocation of the order to said board to be held as a permanent record. (1935, s. 243.)

§ 48-10. Parents, etc., not necessary parties to adoption proceedings upon finding of unfitness or abandonment.—In all cases where a juvenile court has declared the parent or parents or guardians unfit to have the care and custody of such child, or has declared the child to be an abandoned child, such parent, parents, or guardians shall not be necessary parties to any action or proceeding under this chapter nor shall their consent be required. But in the event that the child be of age beyond the jurisdiction of the juvenile court, and the juvenile court has not theretofore determined that an abandonment has taken place, then on notice to the parent, parents, or guardian the court in the adoption proceedings is hereby authorized to determine that an abandonment has taken place, provided that if the parent, parents, or guardian deny that an abandonment has taken place, this issue of fact shall be determined as provided in § 1-273, and if abandonment be determined, then the consent of the parent, parents, or guardian shall not be required. (1935, c. 243; 1941, c. 281, s. 5.)

§ 48-11. Past adoption proceedings validated. —All proceedings for the adoption of minors in courts of this State are hereby validated and confirmed, and the orders and judgments therein are declared to be binding upon all parties to said proceedings and their privies and all other persons, until the orders or judgments shall be vacated as provided by law. (1935, c. 243.)

§ 48-12. Procuring custody of child by forfeiting parents declared crime.—Any parent whose rights and privileges have been forfeited as provided by § 48-10 and who shall procure the possession and custody of such child, with respect to whom his rights and privileges are forfeited, otherwise than by law provided, shall be guilty of a crime, and shall be punished as for abduction. (1935, c. 243.)

§ 48-13. "Legal resident" defined.—For the purpose of this chapter a legal resident is any person who has had his domicile anywhere in the state of North Carolina for a period of at least twelve consecutive months after entering said state for the purpose of residence. (1939, c. 132, s. 3.)

§ 48-14. Rights of adoptive parents. — When a child is duly adopted pursuant to the provisions of this chapter, the adoptive parents shall not thereafter be deprived of any rights in the child, at the instance of the natural parents or otherwise, except in the same fashion and for the same causes as are applicable in proceedings to deprive natural parents of their children. (1941, c. 281, s. 6.)

§ 48-15. Construction of 1941 Amendment. — The provisions of § 48-6 except for the last sentence, shall apply only to adoptions made after March 15, 1941. All other provisions of chapter 281 of the Public Laws of 1941, amending §§ 48-4, 48-5, 48-10, adding § 48-14, including the last sentence of § 48-6, referred to above, shall apply to all adoptions heretofore and hereafter made. No adoption proceeding had before March 15, 1941, shall be declared void because of procedural defects therein, and all adoption proceedings theretofore conducted substantially in accordance with the provisions of §§ 48-1 to 48-13, are hereby validated and declared to be as binding as if said procedural defects did not exist. (1941, c. 281, s. 8.)

Chapter 49. Bastardy.

Art. 1. Support of Illegitimate Children.

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49-1. Title.
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49-3. Place of birth of child no consideration.
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49-5. Prosecution; indictments; death of mother no bar; determination of fatherhood.
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Art. 2. Legitimation of Illegitimate Children.

49-10. Legitimation.
49-11. Effects of legitimation.
49-12. Legitimation by subsequent marriage.

Art. 1. Support of Illegitimate Children.

§ 49-1. Title.—This article shall be referred to as "An act concerning the support of children of parents not married to each other." (1933, c. 228, s. 11.)

§ 49-2. Non-support of illegitimate child by parents made misdemeanor.—Any parent who willfully neglects or who refuses to support and maintain his or her illegitimate child shall be guilty of a misdemeanor and subject to such penalties as are hereinafter provided. A child within the meaning of this article shall be any person less than fourteen years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain as if such child were the legitimate child of such parent. (1933, c. 228, s. 1; 1937, c. 432, s. 1; 1939, c. 217, ss. 1, 2.)

§ 49-3. Place of birth of child no consideration.—The provisions of this article shall apply whether such child shall have been begotten or shall have been born within or without the state of North Carolina: Provided, that the child to be supported is a bona fide resident of this state at the time of the institution of any proceedings under this article. (1933, c. 228, s. 2.)

§ 49-4. Action must be commenced within three years after birth.—Proceedings under this article to establish the paternity of such child may be instituted at any time within three years next after the birth of the child, and not thereafter: Provided, however, that where the reputed father has acknowledged the paternity of the child by payments for the support of such child within three years from the date of the birth thereof, and not later, then, in such case, prosecution may be brought under the provisions of said sections within three years from the date of such acknowledgment of the paternity of such child by the reputed father thereof. (1933, c. 228, s. 3; 1939, c. 217, s. 3.)

§ 49-5. Prosecution; indictments; death of mother no bar; determination of fatherhood.—Proceedings under this article may be brought by the mother or her personal representative, or, if the child is likely to become a public charge, the superintendent of public welfare or such person as by law performs the duties of such official in said county where the mother resides or the child is found. Indictments under this article may be returned in the county where the mother resides or is found, or in the county where the putative father resides or is found, or in the county where the child is found. The fact that the child was born outside of the state of North Carolina shall not be a bar to indictment of the putative father in any county where he resides or is found, or in the county where the mother resides or the child is found. The death of the mother shall in no wise affect any proceedings under this article. Preliminary proceedings under this article to determine the paternity of the child may be instituted prior to the birth of the child but when the judge or court trying the issue of paternity deems it proper, he may continue the case until the woman is delivered of the child. When a continuance is granted, the courts shall recognize the person accused of being the father of the child with surety for his appearance, either at the next term of the court or at a time to be fixed by the judge or court granting a continuance, which shall be after the delivery of the child. (1933, c. 228, s. 4.)

§ 49-6. Mother not excused on ground of self-incrimination; not subject to penalty.—No mother of an illegitimate child shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a subpoena of any court, in any suit or proceeding based upon or growing out of the provisions of this article, but no such mother shall be prosecuted or subjected to any penalty or forefeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, she may so testify. (1933, c. 228, s. 5; 1939, c. 217, s. 5.)

§ 49-7. Jurisdiction of inferior courts; issues and orders.—Proceedings under this article shall be instituted only in the superior court of any county of this state, or in any court inferior to the superior court of this state, except courts of justices of the peace and courts whose criminal jurisdiction does not exceed that of justices of the peace. Justices of the peace may issue warrants for violations of this article made returnable to any court having jurisdiction of such violations under the terms of this article.

The court before which the matter may be brought shall determine whether or not the defendant is a parent of the child on whose behalf the proceeding is instituted. After this matter has been determined in the affirmative, the court shall proceed to determine the issue as to whether or not the defendant has neglected or refused to support and maintain the child who is the subject of

the proceeding. After this matter shall have been determined in the affirmative, the court shall fix by order, subject to modification or increase from time to time, a specific sum of money necessary for the support and maintenance of the particular child who is the object of the proceedings. The court in fixing this sum shall take into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his or her willingness to cooperate for the welfare of the child. The order fixing the sum shall require the defendant to pay it either as a lump sum or in periodic payments as the circumstances of the case may appear to the court to require. Compliance by the defendant with any or all of the further provisions of this article or the order or orders of the court requiring additional acts to be performed by the defendant shall not be construed to relieve the defendant of his or her responsibility to pay the sum fixed or any modification or increase thereof. (1933, c. 228, s. 6; 1937, c. 432, s. 2; 1939, c. 217, ss. 1, 4.)

§ 49-8. Power of court to modify orders; suspend sentence, etc.—Upon the determination of the issues set out in the foregoing section and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his or her willingness to coöperate, to make an order or orders upon the defendant and to modify such order or orders from time to time as the circumstances of the case may in the judgment of the court require. The order or orders made in this regard may include any or all of the following alternatives:

(a) Commit the defendant to prison for a term not to exceed six months;

(b) Suspend sentence and continue the case from term to term;

(c) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;

(d) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;

(e) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this article. (1933, c. 228, s. 7; 1939, c. 217, s. 6.)

§ 49-9. Bond for future appearance of defendant.—At the preliminary hearing of any case arising under this article it shall be the duty of the court, if it finds reasonable cause for holding the accused for a further hearing, to require a bond in the sum of not less than one hundred dollars, conditioned upon the reappearance of the accused at the further hearing under this article. This bond and all other bonds provided for in this article shall be justified before, and approved by, the court or the clerk thereof. (1933, c. 228, s. 8.)

Art. 2. Legitimation of Illegitimate Children.

§ 49-10. Legitimation.—The putative father of any illegitimate child may apply by petition in writing to the superior court of the county in which he resides, praying that such child may be declared legitimate; and if it appears that the petitioner is reputed the father of the child, the court may thereupon declare and pronounce the child legitimated; and the clerk shall record the decree. (Rev., s. 263; Code, s. 39; C. S. 277.)

§ 49-11. Effects of legitimation.—The effect of such legitimation shall extend no further than to impose upon the father all the obligations which fathers owe to their lawful children, and to enable the child to inherit from the father only his real estate, and also to entitle such child to the personal estate of his father, in the same manner as if he had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall be transmitted and distributed according to the statute of descents and distribution among those who would be his heirs and next of kin in case he had been born in lawful wedlock. (Rev., s. 264; Code, s. 40; C. S. 278.)

§ 49-12. Legitimation by subsequent marriage.—When the mother of any illegitimate child and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall in all respects after such intermarriage be deemed and held to be legitimate and entitled to all the rights in and to the estate, real and personal, of its father and mother that it would have had had it been born in lawful wedlock. (1917, c. 219, s. 1; C. S. 279.)

Chapter 50. Divorce and Alimony.

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50-15. Alimony pendente lite; notice to husband.
50-16. Alimony without divorce.
50-17. Alimony in real estate, writ of possession issued.

§ 50-1. Jurisdiction.—The superior court shall have jurisdiction of complaints for divorce and alimony, or either. (Rev., s. 1557; Code, s. 1282; 1868-9, c. 93, s. 45; C. S. 1655.)

§ 50-2. Bond for costs unnecessary.—It shall not be necessary for either party to a proceeding for divorce or alimony to give any undertaking to the other party to secure such costs as such other party may recover. (Rev., s. 1558; Code, s. 1294; 1871-2, c. 193, s. 41; C. S. 1656.)

§ 50-3. Venue.—In all proceedings for divorce, the summons shall be returnable to the court of the county in which either the plaintiff or defendant resides. (Rev., s. 1559; Code, s. 1289; 1871-2, c. 193, s. 40; 1915, c. 229, s. 1; C. S. 1657.)

§ 50-4. What marriages may be declared void on application of either party.—The superior court in term time, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions contained in the chapter entitled Marriage, or declared void by said chapter, may declare such marriage void from the beginning, subject, nevertheless, to the proviso contained in § 51-3. (Rev., s. 1560; Code, s. 1283; 1871-2, c. 193, s. 33; C. S. 1658.)

§ 50-5. Grounds for absolute divorce. — Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

1. If the husband or wife commits adultery.
2. If either party at the time of the marriage was and still is naturally impotent.
3. If the wife at the time of the marriage is pregnant, and the husband is ignorant of the fact of such pregnancy and is not the father of the child with which the wife was pregnant at the time of the marriage.
4. If there has been a separation of husband and wife, whether voluntary or involuntary, provided such involuntary separation is in consequence of a criminal act committed by the defendant prior to such divorce proceeding, and they have lived separate and apart for two successive years, and the plaintiff in the suit for divorce has resided in this state for one year.
5. If any person shall commit the abominable and detestable crime against nature, with mankind, or beast.

It shall not be necessary to set forth in the affidavit filed with the complaint in suits brought under subsection four of this section that the grounds for divorce have existed at least six months prior to the filing of the complaint, nor to allege or prove such fact. (Rev., s. 1561; Code, s. 1285; 1871-2, c. 193, s. 35; 1879, c. 132; 1887, c. 100; 1889, c. 442; 1899, c. 29; 1903, c. 490; 1905, c. 499; 1907, c. 89; 1911, c. 117; 1913, c. 165; 1917, cc. 25, 57; 1921, c. 63; 1929, c. 6; 1931, c. 397; 1933, c. 71, ss. 1, 2; C. S. 1659.)

§ 50-6. Divorce after separation of two years on application of either party.—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for two years, and the plaintiff in the suit for divorce has resided in the state for a period of one year. This section shall be in addition to other acts and not construed as repealing other laws on the subject of divorce. (1931, c. 72; 1933, c. 163; 1937, c. 100, ss. 1, 2.)

§ 50-7. Grounds for divorce from bed and board.—The superior court may grant divorces from bed and board on application of the party injured, made as by law provided, in the following cases:

1. If either party abandons his or her family.
2. Maliciously turns the other out of doors.
3. By cruel or barbarous treatment endangers the life of the other.
4. Offers such indignities to the person of the other as to render his or her condition intolerable and life burdensome.
5. Becomes an habitual drunkard. (Rev., s. 1562; Code, s. 1286; 1871-2, c. 193, s. 36; C. S. 1660.)

§ 50-8. Affidavit to be filed with complaint; affidavit of intention to file complaint.—The plaintiff in a complaint seeking either divorce or alimony, or both, shall file with his or her complaint an affidavit that the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for divorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint. The plaintiff shall also set forth in such affidavit, either that the facts set forth in the complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint, and that complainant has been a resident of the state for one year next preceding the filing of the complaint; or, if the wife be the plaintiff, that the husband is removing, or about to remove, his property and effects from the state, whereby she may be disappointed in her alimony: Provided, however, that if the cause for divorce is two years separation then it shall not be necessary to set forth in the affidavit that the grounds for divorce have existed at least six months prior to the filing of the complaint, it being the purpose of this proviso to permit a divorce after a separation of two years without waiting an additional six months for filing the complaint. If any wife files in the office of the superior court clerk of the county where she resides an affidavit, setting forth the fact that she intends to file a petition or bring an action for divorce against her husband, and that she has not had knowledge of the facts upon which the petition or action will be based for six months, she may reside separate and apart from her husband. If she fails to file her petition or bring her action for divorce within ninety days after the six months have expired since her knowledge of the facts upon which she intends to file her said petition or bring her said action, then she shall not be entitled any longer to the benefit of this section. (Rev., s. 1563; Code, s. 1287; 1868-9, c. 93, s. 46; 1869-70, c. 184; 1907, c. 1008, s. 1; 1925, c. 93; 1933, c. 71, ss. 2, 3; C. S. 1661.)

§ 50-9. Effect of answer of summons by defendant.—In all cases upon an action for a divorce absolute, where the plaintiff had caused

to be served upon the defendant in person a legal summons, whether by verified complaint or unverified complaint, and such defendant answered such summons, and where the trial of said action was duly and legally had in all other respects and judgments rendered by a Judge of the Superior Court upon issues answered by a judge and jury, in accordance with law, such judgments are hereby declared to have the same force and effect as any judgment upon an action for divorce otherwise had legally and regularly. (1929, c. 290, s. 1.)

§ 50-10. Material facts found by jury; parties cannot testify to adultery.—The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, and on such trial neither the husband nor wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact. (Rev., s. 1564; Code, s. 1288; 1868-9, c. 93, s. 47; C. S. 1662.)

§ 50-11. Effects of absolute divorce.—After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine, and either party may marry again unless otherwise provided by law: Provided, that no judgment of divorce shall render illegitimate any children in esse, or begotten of the body of the wife during coverture; and, Provided further, that a decree of absolute divorce upon the ground of separation for two successive years as provided in § 50-5 or § 50-6 shall not impair or destroy the right of the wife to receive alimony under any judgment or decree of the court rendered before the commencement of the proceeding for absolute divorce. (Rev., s. 1569; Code, s. 1295; 1871-2, c. 193, s. 43; 1919, c. 204; C. S. 1663.)

§ 50-12. Resumption of maiden name authorized; adoptions of name of prior deceased husband validated.—Any woman at any time after the bonds of matrimony theretofore existing between herself and her husband have been dissolved by a decree of absolute divorce, may resume the use of her maiden name or the name of a prior deceased husband, or a name composed of her given name and the surname of a prior deceased husband upon application to the clerk of the court of the county in which she resides, setting forth her intention so to do. Said application shall be addressed to the clerk of the court of the county in which such divorced woman resides, and shall set forth the full name of the former husband of the applicant, the name of the county in which said divorce was granted, and the term of court at which such divorce was granted, and shall be signed by the applicant in her full maiden name. The clerks of court of the several counties of the state shall provide a permanent book in which shall be recorded all such applications herein provided for, which shall be indexed under the name of the former husband of the applicant and under the maiden name of such applicant. The clerk of the court of the county in which said application shall be recorded shall charge a fee of one ($1.00) dollar for such registration. In every case where a married woman has heretofore been granted a divorce and has, since the divorce, adopted the name of a prior deceased husband, or a name composed of her given name and the surname of a prior deceased husband, the adoption by her of such name is hereby validated. (1937, c. 53; 1941, c. 9.)

§ 50-13. Custody of children in divorce.—After the filing of a complaint in any action for divorce, whether from the bonds of matrimony or from bed and board, both before and after final judgment therein, it is lawful for the judge of the court in which such application is or was pending to make such orders respecting the care, custody, tuition and maintenance of the minor children of the marriage as may be proper, and from time to time to modify or vacate such orders, and may commit their custody and tuition to the father or mother, as may be thought best; or the court may commit the custody and tuition of such infant children, in the first place, to one parent for a limited time, and after the expiration of that time, then to the other parent; and so alternately: Provided, that no order respecting the children shall be made on the application of either party without five days notice to the other party, unless it shall appear that the party having the possession or control of such children has removed or is about to remove the children, or himself, beyond the jurisdiction of the court.

Provided, custody of children of parents who have been divorced outside of North Carolina may be determined in a special proceeding instituted by either of said parents in the superior court of the county wherein the petitioner, or the respondent or child at the time of filing said petition, is a resident. The resident judge of the district wherein the petition is filed may hear the facts and determine the custody of said children at any place that may be designated in his district after five days notice of said proceedings to the defendant. Notice of the summons and petition in said proceedings may be served on a nonresident defendant by publishing a notice thereof setting forth the grounds and nature of the proceedings in a newspaper published in the county wherein the petitioner resides once a week for a period of four successive weeks and by posting a copy thereof at the courthouse door of said county for a period of thirty days. Service as aforesaid in said action will be deemed complete thirty days after the date of the first publication of said notice. (Rev., s. 1570; Code, ss. 1296, 1570; 1871-2, c. 193, s. 46; 1939, c. 115; 1941, c. 120; C. S. 1664.)

§ 50-14. Alimony on divorce from bed and board.—When any court adjudges any two married persons divorced from bed and board, it may also decree to the party upon whose application such judgment was rendered such alimony as the circumstances of the several parties may render necessary; which, however, shall not in any case exceed the one-third part of the net annual income from the estate, occupation or labor of the party against whom the judgment shall be rendered. (Rev., s. 1565; Code, s. 1290; 1871-2, c. 193, s. 37; C. S. 1665.)

§ 50-15. Alimony pendente lite; notice to husband.—If any married woman applies to a court for a divorce from the bonds of matrimony, or from bed and board, with her husband, and sets

forth in her complaint such facts, which upon application for alimony shall be found by the judge to be true and to entitle her to the relief demanded in the complaint, and it appears to the judge of such court, either in or out of term, by the affidavit of the complainant, or other proof, that she has not sufficient means whereon to subsist during the prosecution of the suit, and to defray the necessary and proper expenses thereof, the judge may order the husband to pay her such alimony during the pendency of the suit as appears to him just and proper, having regard to the circumstances of the parties; and such order may be modified or vacated at any time, on the application of either party or of any one interested: Provided, that no order allowing alimony pendente lite shall be made unless the husband shall have had five days notice thereof, and in all cases of application for alimony pendente lite under this or § 50-16, whether in or out of term, it shall be admissible for the husband to be heard by affidavit in reply or answer to the allegations of the complaint: Provided further, that if the husband has abandoned his wife and left the state or is in parts unknown, or is about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice is necessary. (Rev., s. 1566; Code, s. 1291; 1871-2, c. 193, s. 38; 1883, c. 67; C. S. 1666.)

§ 50-16. Alimony without divorce.—If any husband shall separate himself from his wife and fail to provide her and the children of the marriage with the necessary subsistence according to his means and condition in life, or if he shall be a drunkard or spendthrift, or be guilty of any misconduct or acts that would be or constitute cause for divorce, either absolute or from bed and board, the wife may institute an action in the superior court of the county in which the cause of action arose to have a reasonable subsistence and counsel fees allotted and paid or secured to her from the estate or earnings of her husband. Pending the trial and final determination of the issues involved in such action, and also after they are determined, if finally determined, in favor of the wife, such wife may make application to the resident judge of the superior court, or the judge holding the superior courts of the district in which the action is brought, for an allowance for such subsistence and counsel fees, and it shall be lawful for such judge to cause the husband to secure so much of his estate or to pay so much of his earnings, or both, as may be proper, according to his condition and circumstances, for the benefit of his said wife and the children of the marriage, having regard also to the separate estate of the wife. Such application may be heard in or out of term, orally or upon affidavit, or either or both. No order for such allowance shall be made unless the husband shall have had five days notice thereof; but if the husband shall have abandoned his wife and left the state, or shall be in parts unknown, or shall be about to remove or dispose of his property for the purpose of defeating the claim of his wife, no notice shall be necessary. The order of allowance herein provided for may be modified or vacated at any time, on the application of either party or of any one interested. In actions brought under this section, the wife shall not be required to file the affidavit provided in § 50-8, but shall verify her complaint as prescribed in the case of ordinary civil actions: Provided further, that in all applications for alimony under this section it shall be competent for the husband to plead the adultery of the wife in bar of her right to such alimony, and if the wife shall deny such plea, and the issue be found against her by the judge, he shall make no order allowing her any sum whatever as alimony, or for her support, but only her reasonable counsel fees. (Rev., s. 1567; Code, s. 1292; 1919, c. 24; 1871-2, c. 193, s. 39; 1921, c. 123; 1923, c. 52; C. S. 1667.)

§ 50-17. Alimony in real estate, writ of possession issued. — In all cases in which the court grants alimony by the assignment of real estate, the court has power to issue a writ of possession when necessary in the judgment of the court to do so. (Rev., s. 1568; Code, s. 1293; 1868-9, c. 123, s. 1; C. S. 1668.)

Chapter 51. Marriage.

Sec.

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Art. 1. General Provisions.

§ 51-1. Requisites of marriage; solemnization.—The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other,

and in the presence of an ordained minister of any religious denomination, minister authorized by his church, or of a justice of the peace, and the consequent declaration by such minister or officer that such persons are man and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this chapter: Provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation. (Rev., s. 2081; Code, s. 1812; 1871-2, c. 193, s. 3; 1908, c. 47; 1909, c. 704, s. 2; 1909, c. 897; C. S. 2493.)

§ 51-2. Capacity to marry.—All unmarried male persons of sixteen years, or upwards, of age, and all unmarried females of sixteen years, or upwards, of age, may lawfully marry, except as hereinafter forbidden: Provided, that females over fourteen years of age and under sixteen years of age may marry under a special license to be issued by the register of deeds, which said special license shall only be issued after there shall have been filed with the register of deeds a written consent to such marriage, signed by one of the parents of the female or signed by that person standing in loco parentis to such female, and the fact of the filing of such written consent shall be set out in said special license: Provided, that when the special license is procured by fraud and misrepresentation, the parent or person standing in loco parentis of the female shall be a proper party plaintiff in an action to annul said marriage: Provided, that all couples resident of the state of North Carolina who marry in another state must file a copy of their marriage certificate in the office of the register of deeds of the home county of the groom within thirty days from the date of their return to the state, as residents, which certificate shall be indexed on the marriage license record of the office of the register of deeds and filed with marriage license in his office; the fee for the filing and indexing said certificate shall be fifty cents: Provided, the failure to file said certificate shall not invalidate the marriage. (Rev., s. 2082; Code, s. 1809; R. C., c. 68, s. 14; 1871-2, c. 193; 1923, c. 75; 1933, c. 269, s. 1; 1939, c. 375; C. S. 2494.)

§ 51-3. Want of capacity; void and voidable marriages.—All marriages between a white person and a negro or indian, or between a white person and person of negro or indian descent to the third generation, inclusive, or between a Cherokee indian of Robeson county and a negro, or between a Cherokee indian of Robeson county and a person of negro descent to the third generation, inclusive, or between any two persons nearer of kin than first cousins, or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time physically impotent, or is incapable of contracting from want of will or understanding, shall be void: Provided, double first cousins may not marry; and Provided further, that no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except for that one of the parties was a white person and the other a negro or indian, or of negro or indian descent to the third generation, inclusive, and for bigamy. (Rev., s. 2083; Code, s. 1810; R. C., c. 68, ss. 7, 8, 9; 1871-2, c. 193, s. 2; 1887, c. 245; 1911, c. 215, s. 2; 1913, c. 123; 1917, c. 135; C. S. 2495.)

§ 51-4. Prohibited degrees of kinship. — When the degree of kinship is estimated with a view to ascertain the right of kinspeople to marry, the half-blood shall be counted as the whole-blood: Provided, that nothing herein contained shall be so construed as to invalidate any marriage heretofore contracted in case where by counting the half-blood as the whole-blood the persons contracting such marriage would be nearer of kin than first cousins; but in every such case the kinship shall be ascertained by counting relations of the half-blood as being only half so near kin as those of the same degree of the whole-blood. (Rev., s. 2084; Code, s. 1811; 1879, c. 78; C. S. 2496.)

§ 51-5. Marriages between slaves validated. — Persons, both or one of whom were formerly slaves, who have complied with the provisions of section five, chapter forty, of the acts of the general assembly, ratified March tenth, one thousand eight hundred and sixty-six, shall be deemed to have been lawfully married. (Rev., s. 2085; Code, s. 1842; 1866, c. 40, s. 5; C. S. 2497.)

Art. 2. Marriage License.

§ 51-6. Solemnization without license unlawful.—No minister or officer shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there is delivered to him a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage is intended to take place, or by his lawful deputy. (Rev., s. 2086; Code, s. 1813; 1871-2, c. 193, s. 4; C. S. 2498.)

§ 51-7. Penalty for solemnizing without license.—Every minister or officer who marries any couple without a license being first delivered to him, as required by law, or after the expiration of such license, or who fails to return such license to the register of deeds within two months after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars to any person who sues therefor, and he shall also be guilty of a misdemeanor. (Rev., ss. 2087, 3372; Code, s. 1817; R. C., c. 68, ss. 6, 13; 1871-2, c. 193, s. 8; C. S. 2499.)

§ 51-8. License issued by register of deeds.—Every register of deeds shall, upon application, issue a license for the marriage of any two persons, if it appears to him probable that there is no legal impediment to such marriage. Where either party to the proposed marriage is under eighteen years of age, and resides with the father, or mother, or uncle, or aunt, or brother, or elder sister, or resides at a school, or is an orphan and resides with a guardian, the register shall not issue a license for such marriage until the consent in writing of the relation with whom such infant resides, or, if he or she resides at a school, of the

person by whom said infant was placed at school, and under whose custody and control he or she is, is delivered to him, and such written consent shall be filed and preserved by the register. When it appears to the register of deeds that it is probable there is a legal impediment to the marriage of any person for whom a license is applied, he has power to administer to the person so applying an oath touching the legal capacity of said parties to contract a marriage. (Rev., s. 2088; Code, s. 1814; 1887, c. 331; 1871-2, c. 193, s. 5; C. S. 2500.)

§ 51-9. Health certificates required of applicants for licenses.—No license to marry shall be issued by the register of deeds of any county to a male or female applicant therefor except upon the following conditions: The said applicant shall present to the register of deeds a certificate executed within thirty days from the date of presentation showing that, by the usual methods of examination made by a regularly licensed physician, no evidence of any venereal disease in the infectious or communicable stage was found. Such certificate shall be accompanied by the original report from a laboratory approved by the state board of health for making such tests showing that the Wassermann or any other approved test of this nature is negative, such tests to have been made within thirty days of the time application for license is made.

Furthermore, such certificate shall state that, by the usual methods of examination made by a regularly licensed physician, no evidence of tuberculosis in the infectious or communicable stage was found.

And, furthermore, such certificate shall state that, by the usual methods of examination made by a regularly licensed physician, the applicant was found to be not subject to epileptic attacks, an idiot, an imbecile, a mental defective, or of unsound mind. (1939, c. 314, s. 1; 1941, c. 218, s. 1.)

§ 51-10. Exceptions to foregoing section.—Exceptions to the above section are permissible only under the conditions hereinafter named:

When the medical history and physical examination of either applicant shows syphilis to be present, or when the laboratory test for syphilis is positive, and provided both applicants are informed that syphilitic infection is present, certificate may be issued and license granted only in the following instances: (1) When the applicant with syphilis has been under continuous weekly treatment with adequate dosage of standard arsenical and bismuth preparation given by a regularly licensed physician for a period of one year, and when such applicant also signs an agreement to continue such treatment until cured or probated. It is specified that the condition stipulated in subparagraph one above may be waived in instances in which the female applicant is pregnant and it is necessary to protect the legitimacy of the offspring. In such a case certificate may be granted and license issued provided the applicant with syphilis signs an agreement to take adequate, approved treatment until cured or probated. (2) When the female applicant is past the childbearing age, and provided the applicant with syphilis signs an agreement to take adequate treatment until cured or probated. (1939, c. 314, s. 2.)

§ 51-11. Who may execute certificate; form; filing copy with department of health.—Such certificate, upon the basis of which license to marry is granted, shall be executed by any reputable physician licensed to practice in the state of North Carolina, whose duty it shall be to examine such applicants and to issue such certificate in conformity with the requirements of §§ 51-9 to 51-14. If applicants are unable to pay for such examination, certificate without charge may be obtained from the local health officer or county physician.

Such certificate form shall be designed by the state board of health and shall be obtained by the register of deeds from the state board of health upon request.

Every examining physician under the provision of §§ 51-9 to 51-14 shall make and immediately file with the department of health of North Carolina a true copy of such certificate. (1939, c. 314, s. 3.)

§ 51-12. Eugenic sterilization for persons adjudged of unsound mind, etc.—If either applicant has been adjudged by a court of competent jurisdiction as being an idiot, imbecile, mental defective, subject to epileptic attacks, or of unsound mind, license to marry shall be granted only after eugenic sterilization has been performed on the applicant in accordance with state laws governing eugenic sterilization. (1939, c. 314, s. 3.)

§ 51-13. Penalty for violation.—Any violation of §§ 51-9 to 51-14, or any part thereof, by any person charged herein with the responsibility of its enforcement shall be declared a misdemeanor and shall be punishable by a fine of fifty dollars ($50.00) or imprisonment for thirty days, or both. (1939, c. 314, s. 3.)

§ 51-14. Compliance with requirement by residents who marry outside of state. — Residents of the state who are married outside of North Carolina, shall, within sixty days after they return to said state, file with the register of deeds of the county in which they live, a certificate showing that they have conformed to the requirements of the examination required by §§ 51-9 to 51-14 for those who are married in the state. (1939, c. 314, s. 2½.)

§ 51-15. Obtaining license by false representation misdemeanor.—If any person shall obtain a marriage license for the marriage of persons under the age of eighteen years by misrepresentation or false pretenses, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days, or both, at the discretion of the court. (Rev., s. 3371; 1885, c. 346; C. S. 2501.)

§ 51-16. Form of license.—License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by his church, or to any justice of the peace for.....county: A. B. having applied to me for a license for the marriage of C. D. (the name of the man to be written in full) of (here state his residence), aged .....years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E. F. (write the name of the woman in full) of (here state her residence),

aged.....years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties is under eighteen years of age, the license shall here contain the following:) And the written consent of G. H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within sixty days from the date hereof, to celebrate the proposed marriage at any place within the said county. You are required, within sixty days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars to the use of any person who shall sue for the same.

Issued this .... day of ....., 19.. L. M.,
Register of Deeds of.....County

Every register of deeds shall designate in every marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white," "colored" or "indian," as the case may be. The certificate shall be filled up and signed by the minister or officer celebrating the marriage, and also be signed by one or more witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N. O., an ordained or authorized minister of (here state to what religious denomination, or justice of the peace, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the ..... day of ....., 19...., at the house of P. R., in (here name the town, if any, the township and county), according to law.

Witness present at the marriage: .....N. O.
S. T., of (here give residence). (Rev., 2089; Code, s. 1815; 1899. c. 541. ss. 1, 2; 1871-2, c. 193, s. 6; 1909, c. 704, s. 3; 1917, c. 38; C. S. 2502.)

Local Modification.—Bladen: 1941, c. 95.

§ 51-17. Penalty for issuing license unlawfully.—Every register of deeds who knowingly or without reasonable inquiry, personally or by deputy, issues a license for the marriage of any two persons to which there is any lawful impediment, or where either of the persons is under the age of eighteen years, without the consent required by law, shall forfeit and pay two hundred dollars to any parent, guardian, or other person standing in loco parentis, who sues for the same. (Rev., s. 2090; Code, s. 1816; 1895, c. 387; 1901, c. 722; R. C., c. 68, s. 13; 1871-2, c. 193, s. 7; C. S. 2503.)

§ 51-18. Record of licenses and returns; originals filed.—Every register of deeds shall keep a book (which shall be furnished on demand by the board of county commissioners of his county) on the first page of which shall be written or printed:

Record of marriage licenses and of returns thereto, for the county of ....., from the ..... day of ....., 19...., to the ..... day of ....., 19...., both inclusive.

In said book shall be entered alphabetically, according to the names of the proposed husbands, the substance of each marriage license and the return thereupon, as follows: The book shall be divided by lines with columns which shall be properly headed, and in the first of these, beginning on the left, shall be put the date of issue of the license; in the second, the name in full of the intended husband, with his residence; in the third, his age; in the fourth, his race and color; in the fifth, the name in full of the intended wife, with her residence; in the sixth, her age; in the seventh, her race and color; in the eighth, the name and title of the minister or officer who celebrated the marriage; in the ninth, the day of the celebration; in the tenth, the place of the celebration; in the eleventh, the names of all or at least three of the witnesses who signed the return as present at the celebration. The original license and return thereto shall be filed and preserved. (Rev., s. 2091; Code, s. 1818; 1899, c. 541, s. 3; 1871-2, c. 193, s. 9; C. S. 2504.)

§ 51-19. Penalty for failure to record.—Any register of deeds who fails to record, in the manner above prescribed, the substance of any marriage license issued by him, or who fails to record, in the manner above prescribed, the substance of any return made thereon, within ten days after such return made, shall forfeit and pay two hundred dollars to any person who sues for the same. (Rev., s. 2092; Code, s. 1819; 1871-2, c. 193, s. 10; C. S. 2505.)

Chapter 52. Married Women.

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52-22. Requisites of writing to make her free trader.
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Art. 1. Powers and Liabilities of Married Women.

§ 52-1. Property of married woman secured to her.—The real and personal property of any female in this state, acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried. (Rev., s. 2093; Const., Art. X, s. 6; C. S. 2506.)

§ 52-2. Capacity to contract.—Subject to the provisions of § 52-12, regulating contracts of wife with husband affecting corpus or income of estate, every married woman is authorized to contract and deal so as to affect her real and personal property in the same manner and with the same effect as if she were unmarried, but no conveyance of her real estate shall be valid unless made with the written assent of her husband as provided by section six of article ten of the constitution, and her privy examination as to the execution of the same taken and certified as now required by law. (Rev., s. 2094; Code, s. 1826; 1871-2, c. 193, s. 17; 1911, c. 109; C. S. 2507.)

§ 52-3. Capacity to draw checks.—Bank deposits made by or in the name of a married woman shall be paid only to her or on her order, and her check, receipt or acquittance shall be valid in law to fully discharge the bank from any and all liability on account thereof. (Rev., s. 2095; 1891, c. 221, s. 30; 1893, c. 344; C. S. 2508.)

§ 52-4. Conveyance or lease of wife's land requires husband's joinder.—No lease or agreement for a lease or sublease or assignment by any married woman of her lands or tenements, or chattels real, to run for more than three years, or to begin in possession more than six months after its execution, or any conveyance of any freehold estate in her real property, shall be valid, unless the same be executed by her and her husband, and proved or acknowledged by them, and her free consent thereto appear on her examination separate from her husband, as is now or may hereafter be required by law in the probate of deeds of femes covert. (Rev., s. 2096; Code, s. 1834; 1871-2, c. 193, s. 26; C. S. 2509.)

§ 52-5. Separation by divorce or deed; husband non compos.—Every woman who is living separate from her husband, either under a judgment of divorce by a competent court or under a deed of separation executed by said husband and wife and registered in the county in which she resides, or whose husband has been declared an idiot or a lunatic, shall be deemed and held, from the docketing of such judgment, or from the registration of such deed, or from the date of such idiocy or lunacy and during its continuance, a free trader, and may convey her personal estate and her real estate without the assent of her husband. (Rev., s. 2116; Code, s. 1831; 1871-2, c. 193, s. 23; 1880, c. 35; C. S. 2529.)

§ 52-6. Abandonment by husband. — Every woman whose husband abandons her, or maliciously turns her out of doors, shall be deemed a free trader, so far as to be competent to contract and be contracted with, and to bind her separate property, but the liability of her husband for her reasonable support shall not thereby be impaired. She may also convey her personal estate and her real estate without the assent of her husband. (Rev., s. 2117; Code, s. 1832; 1871-2, c. 193, s. 24; C. S. 2530.)

§ 52-7. Husband cannot convey, etc., wife's land without her consent; not liable for his debts.—No real estate belonging at the time of marriage to females, married since the third Monday of November, one thousand eight hundred and forty-eight, nor any real estate by them subsequently acquired, nor any real estate acquired on and since the first day of March, one thousand eight hundred and forty-nine, by femes covert, who were such on the said third Monday of November, one thousand eight hundred and forty-eight, shall be subject to be sold or leased by the husband for the term of his own life or any less term of years, except by and with the consent of his wife first had and obtained, to be ascertained and effectuated by deed and privy examination, according to the rules required by law for the sale of lands belonging to femes covert. And no interest of the husband whatever in such real estate shall be subject to sale to satisfy any execution obtained against him; and every such sale is hereby declared null and void. (Rev., s. 2097; Code, s. 1840; R. C., c. 56; 1848, c. 41; C. S. 2510.)

§ 52-8. Capacity to make will.—Every married woman has power to devise and bequeath her real and personal estate as if she were a feme sole; and her will shall be proved as is required of other wills. (Rev., s. 2098; Code, s. 1839; 1871-2, c. 193, s. 31; C. S. 2511.)

§ 52-9. May insure husband's life.—Any feme covert in her own name, or in the name of a trustee with his assent, may cause to be insured for any definite time the life of her husband, for her sole and separate use, and she may dispose of the interest in the same by will, notwithstanding her coverture. (Rev., s. 2099; C. S. 2512.)

§ 52-10. Earnings and damages from personal injury are wife's property.—The earnings of a married woman by virtue of any contract for her personal service, and any damages for personal injuries, or other tort sustained by her, can be recovered by her suing alone, and such earnings or recovery shall be her sole and separate property as fully as if she had remained unmarried. (1913, c. 13, s. 1; C. S. 2513.)

§ 52-11. Savings from separate property; liability of husband for income.—The savings from the income of the separate estate of the wife are her separate property. But no husband who, during the coverture (the wife not being a free trader under this chapter), has received, without objection from his wife, the income of her separate estate, shall be liable to account for such receipt for any greater time than the year next preceding the date of a summons issued against him in an action for such income, or next preceding her death. (Rev., s. 2100; Code, s. 1837; 1871-2, c. 193, s. 29; C. S. 2514.)

§ 52-12. Contracts of wife with husband affecting corpus or income of estate.—No contract between a husband and wife made during coverture shall be valid to affect or change any part of the real estate of the wife, or the accruing income thereof for a longer time than three years next ensuing the making of such contract, or to impair or change the body or capital of the personal estate of the wife, or the accruing income thereof, for a longer time than three years next ensuing the making of such contract, unless such contract is in writing, and is duly proved as is required for conveyances of land; and upon the examination of the wife separate and apart from her husband, as is now or may hereafter be required by law in the probate of deeds of femes covert, it shall appear to the satisfaction of such officer that the wife freely executed such contract, and freely consented thereto at the time of her separate examination, and that the same is not unreasonable or injurious to her. The certificate of the officer shall state his conclusions, and shall be conclusive of the facts therein stated. But the same may be impeached for fraud as other judgments may be. (Rev., s. 2107; Code, s. 1835; 1871-2, c. 193, s. 27; C. S. 2515.)

§ 52-13. Contracts between husband and wife generally; releases.—Contracts between husband and wife not forbidden by § 52-12 and not inconsistent with public policy are valid, and any persons of full age about to be married, and, subject to § 52-12, any married person, may release and quitclaim dower, tenancy by the curtesy, and all other rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estates so released. (Rev., s. 2108; Code, s. 1836; 1871-2, c. 193, s. 28; C. S. 2516.)

§ 52-14. Wife's antenuptial contracts and torts.—The liability of a feme sole for any debts owing, or contracts made or damages incurred by her before her marriage shall not be impaired or altered by such marriage. No man by marriage shall incur any liability for any debts owing, or contracts made, or for wrongs done by his wife before the marriage. (Rev., ss. 2101, 2106; Code, ss. 1822, 1823; 1871-2, c. 193, ss. 13, 14; C. S. 2517.)

§ 52-15. For wife's torts, husband not liable.—No husband shall be liable for damages accruing from any tort committed by his wife, or for any costs or fines incurred in any criminal proceeding against her. (Rev., s. 2105; Code, s. 1833; 1871-2, c. 193, s. 25; 1921, c. 102; C. S. 2518.)

§ 52-16. Estate by the curtesy.—Every man who has married or shall marry a woman, and by her has issue born alive, shall, after her death intestate as to the lands, tenements and hereditaments hereinafter mentioned, be entitled to an estate as tenant by the curtesy during his life, in all the lands, tenements and hereditaments whereof his said wife was beneficially seized in deed during the coverture, wherein the said issue was capable of inheriting, whether the said seizin was of a legal or of an equitable estate; except that when the wife has obtained a divorce a mensa et thoro, and is not living with her husband at her death, or when the husband has abandoned his wife, or has maliciously turned her out of doors, and they are not living together at her death; or if the husband has separated himself from his wife, and is living in adultery at her death, he shall not be tenant by the curtesy of her lands, tenements and hereditaments. (Rev., s. 2102; Code, s. 1838; 1871-2, c. 193, s. 30; C. S. 2519.)

§ 52-17. In actions against wife, husband served and may defend.—In all actions brought against a married woman, who is not a free trader (as hereinafter provided for), the summons shall be served upon the husband also, and on motion to the court in which the action is pending, he may be allowed, with her consent, to defend the same in her name and behalf, but no judgment shall be given against him upon any liability claimed against her arising before the marriage or upon any contract made by her alone after her marriage. (Rev., s. 2103; Code, s. 1824; 1871-2, c. 193, s. 15; C. S. 2520.)

§ 52-18. Discharge of husband from defense; liability for costs.—When a husband is allowed to defend for his wife, he may be ordered to pay costs for any misconduct, and may be discharged from the conduct of her defense, if it shall appear to the court that his defense is not bona fide in her interest. (Rev., s. 2104; Code, s. 1825; 1871-2, c. 193, s. 16; C. S. 2521.)

Art. 2. Acts Barring Reciprocal Property Rights of Husband and Wife.

§ 52-19. Divorce a vinculo and felonious slaying a bar.—When a marriage is dissolved a vinculo, the parties respectively, or when either party is convicted of the felonious slaying of the other or of being accessory before the fact of such felonious slaying, the party so convicted, shall thereby lose all his or her right to an estate by the curtesy, or dower, and all right to any year's provision or distributive share in the personal property of the other, and all right to administer on the estate of the other, and every right and estate in the real or personal estate of the other party, which by settlement before or after marriage

was settled upon such party in consideration of the marriage only. (Rev., s. 2109; Code, s. 1843; 1871-2, c. 193, s. 42; C. S. 2522.)

§ 52-20. Wife's elopement or divorce a mensa at husband's suit a bar.—If a married woman elopes with an adulterer, or willfully and without just cause abandons her husband and refuses to live with him, and is not living with her husband at his death, or if a divorce from bed and board is granted on the application of the husband, she shall thereby lose all right to dower in the lands and tenements of her husband, and also all right to a year's provision, and to a distributive share from the personal property of her husband, and all right to administration on his estate, and also all right and estate in the property of her husband, settled upon her upon the sole consideration of the marriage, before or after marriage; and such elopement may be pleaded in bar of any action, or proceeding, for the recovery of such rights and estates; and in case of such elopement, abandonment, or divorce, the husband may sell and convey his real estate as if he were unmarried, and the wife shall thereafter be barred of all claim and right of dower therein. (Rev., s. 2110; Code, s. 1844; 1893, c. 153, ss. 1, 2, 3; 1871-2, c. 193, s. 44; C. S. 2523.)

§ 52-21. Husband's living in adultery, etc., or divorce a mensa at wife's suit a bar.—If a husband separates from his wife and lives in adultery, or willfully and without just cause abandons his wife and refuses to live with her, and such conduct on his part is not condoned by her, or if a divorce from bed and board is granted on the application of the wife, he shall thereby lose all right to curtesy in the real property of the wife, and also all right and estate of whatever character in and to her personal property, as administrator, or otherwise; and also any right and estate in the property of the wife which may have been settled upon him solely in consideration of the marriage by any settlement before or after marriage, and in case of such adultery and abandonment or divorce, the wife may sell and convey her real property as if she were unmarried, and the husband, if there has been no condonation at the time of the conveyance, shall thereafter be barred of all claim and right to curtesy in such real property. (Rev., s. 2111; Code, s. 1845; 1893, c. 153, s. 4; 1871-2, c. 193, s. 45; C. S. 2524.)

Art. 3. Free Traders.

§ 52-22. Requisites of writing to make her free trader.— Every married woman of the age of twenty-one years or upwards, with the consent of her husband, may become a free trader in the manner following:

1. By antenuptial contract, proved and registered, as hereinafter required; or,

2. By her and her husband signing a writing in the following or some equivalent form:

A. B., of the age of twenty-one years or upwards, wife of C. D., of ..... county, with his consent, testified by his signature hereto, enters herself as a free trader from the date of the registration hereof.

(Signed)

A. B.
C. D.

Witness: E. F.

Registered this ..... day of ....., 19....

The said writing may be proved by the subscribing witness or acknowledged by the parties before any officer authorized to take the probate of deeds, and shall be filed and registered in the office of the register of deeds for the county in which the woman proposes to have her principal or only place of business. (Rev., s. 2112; Code, s. 1827; 1871-2, c. 193, ss. 18, 19; C. S. 2525.)

§ 52-23. Writing effective from registration.— From the time of the registration of the writing mentioned in § 52-22, the married woman therein mentioned shall be a free trader, and authorized to contract and deal as if she were a feme sole. (Rev., s. 2113; Code, s. 1828; 1871-2, c. 193, s. 20; C. S. 2526.)

§ 52-24. Certified copy as evidence.—A copy of such writing, duly proved and registered and certified by the register of the county in which the same is registered, is admissible in evidence as certified copies of registered deeds are or may be allowed to be. (Rev., s. 2114; Code, s. 1829; 1871-2, c. 193, s. 21; C. S. 2527.)

§ 52-25. Revocation by entry on record and publication.—The right of a married woman to act as a free trader may be ended at any time by an entry by her, or by her attorney, in the margin of the registration of the writing above mentioned, to the effect that from the date of such marginal entry she ceases so to act, and by publication to that effect weekly for three weeks in some newspaper published in the county in which she had her principal or only place of business, or if there is none so published, then in any other convenient newspaper. But such entry and publication shall not impair any liabilities incurred previously thereto, nor prevent such married woman from becoming liable afterwards to any person whom she may fraudulently induce to deal with her as a free trader. (Rev., s. 2115; Code, s. 1830; 1871-2, c. 193, s. 22; C. S. 2528.)

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Chapter 53. Banks.

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Art. 1. Definitions.

§ 53-1. "Bank," "surplus," "undivided profits," and other words defined.—The following definitions shall be applied to the terms used in this chapter:

The term "bank" shall be construed to mean any corporation, partnership, firm, or individual receiving, soliciting, or accepting money or its equivalent on deposit as a business: Provided, however, this definition shall not be construed to include building and loan associations, Morris plan companies, industrial banks or trust companies not receiving money on deposit.

The term "surplus" means a fund created pursuant to the provisions of this chapter by a bank from payments by stockholders or from its net earnings or undivided profits which, to the amount specified and by any additions thereto set apart

and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

The term "undivided profits" means the credit balance of the profit and loss account of any bank.

The term "net earnings" means the excess of the gross earnings of any bank over the expenses and losses chargeable against such earnings during any dividend period.

The term "time deposits" means all deposits, the payment of which cannot be legally required within thirty days.

The term "demand deposits" means all deposits, the payment of which can be legally required within thirty days.

The term "insolvency" means: (a) when a bank cannot meet its deposit liabilities as they become due in the regular course of business; (b) when the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors; (c) when its reserve shall fall under the amount required by this chapter, and it shall fail to make good such reserve within thirty days after being required to do so by the commissioner of banks; (d) whenever the undivided profits and surplus shall be inadequate to cover losses of the bank, whereby an impairment of the capital stock is created. (1921, c. 4, s. 1; 1927, c. 47, s. 1; 1931, c. 243, s. 5; C. S. 216(a).)

Art. 2. Creation.

§ 53-2. How incorporated. — Any number of persons, not less than five, who may be desirous of forming a company and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, or engaging in the business of establishing, maintaining, and operating offices of loan and deposits to be known as savings banks, or of establishing, maintaining, and operating banks having departments for both classes of business, or operating banks engaged in doing a trust, fiduciary, and surety business, shall be incorporated in the manner following and in no other way; that is to say, such persons shall, by a certificate of incorporation under their hands and seals set forth:

1. The name of the corporation; no name shall be used already in use by another existing corporation organized under the laws of this state or of the congress, or so nearly similar thereto as to lead to uncertainty or confusion.

2. The location of its principal office in this state.

3. The nature of its business, whether that of a commercial bank, savings bank, trust company, or a combination of two or more or all of such classes of business.

4. The amount of its authorized capital stock which shall be divided into shares of ten, twenty, twenty-five, fifty or one hundred dollars each; the amount of capital stock with which it will commence business, which shall not be less than twenty-five thousand dollars in cities or towns of three thousand population or less; nor less than thirty thousand dollars in cities and towns whose population exceeds three thousand, but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns having a population of more than twenty-five thousand; the population to be ascertained by the last preceding national census: Provided, that this subsection shall not apply to banks organized and doing business prior to its adoption. Provided, further, that fractional shares may be issued for the purpose of complying with the requirements of § 53-88.

5. The names and postoffice addresses of subscribers for stock, and the number of shares subscribed by each; the aggregate of such subscriptions shall be the amount of the capital with which the company will commence business.

6. Period, if any, limited for the duration of the company. (1921, c. 4, s. 2; 1927, c. 47, s. 2; 1929, c. 72, s. 1; C. S. 217(a).)

§ 53-3. Certificate of incorporation; how signed, proved, and filed.—The certificate of incorporation shall be signed by the original incorporators, or a majority of them, and shall be proved or acknowledged before an officer duly authorized under the laws of this state to take proof or acknowledgment of deeds, and shall be filed in the office of the secretary of the state. The secretary of state shall forthwith transmit to the commissioner of banks a copy of said certificate of incorporation, and shall not issue or record the same until duly authorized so to do by the commissioner of banks as hereinafter provided. (1921, c. 4, s. 3; 1931, c. 243, s. 5; C. S. 217(b).)

§ 53-4. Examination by commissioner; when certification to be refused.—Upon receipt of a copy of the certificate of incorporation of the proposed bank, the commissioner of banks shall at once examine into all the facts connected with the formation of such proposed corporation, including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the commissioner of banks shall so certify to the secretary of state, who shall thereupon issue and record such certificate of incorporation. But the commissioner of banks may refuse to so certify to the secretary of state, if upon examination and investigation he has reason to believe that the proposed corporation is formed for any other than legitimate banking business, or that the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said bank is proposed to be located; or that the public convenience and advantage will not be promoted by its establishment, or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted, or appropriated by an existing bank in this state, or so similar thereto as to be likely to mislead the public. (1921, c. 4, s. 4; Ex. Sess. 1921, c. 56, s. 1; 1931, c. 243, s. 5; C. S. 217(c).)

§ 53-5. Certificate of incorporation, when certified.—Upon receipt of such certificate from the commissioner of banks, the secretary of state shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded

in his office in a book to be kept for that purpose, and known as the corporation book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the clerk of the superior court of the county where the principal office of said corporation in this state shall or is to be located, in a book to be known as the record of incorporations, and the other certified copy shall be filed in the office of the commissioner of banks, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the secretary of state or the clerk of the superior court of the county in which the same is recorded, or by the commissioner of banks, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established. The charter of any bank which fails to complete its organization and open for business to the public within six months after the date of filing its certificate of incorporation with the secretary of state shall be void: Provided, however, the commissioner of banks may for cause extend the limitation herein imposed. (1921, c. 4, s. 5; 1931, c. 243, s. 5; C. S. 217(d).)

§ 53-6. Payment of capital stock.—The capital stock of every bank shall be fully paid in, in cash, before it shall be authorized by the commissioner of banks to commence business and the full payment in cash of the capital stock shall be certified to the commissioner of banks under oath by the president and cashier of the said bank. Provided, that the stock sold by any bank in process of organization, or for an increase of the capital stock, shall be accounted for to the bank in the full amount paid for the same. No commission or fee shall be paid to any person, association, or corporation for selling such stock. The commissioner of banks shall refuse authority to commence business to any bank if commissions or fees have been paid, or have been contracted to be paid by it, or by any one in its behalf, to any person, association, or corporation for securing subscriptions for or selling stock in such bank. (1921, c. 4, s. 6; 1927, c. 47, s. 3; 1931, c. 243, s. 5; C. S. 217(e).)

§ 53-7. Statement filed before beginning business. — Before such company shall begin the business of banking, banking and trust, fiduciary, or surety business, there shall be filed with the commissioner of banks a statement under oath by the president or cashier, containing the names of all the directors and officers, with the date of their election or appointment, term of office, residence, and postoffice address of each, the amount of capital stock of which each is the owner in good faith and the amount of money paid in on account of the capital stock. Nothing shall be received in payment of capital stock but money. (1921, c. 4, s. 7; 1931, c. 243, s. 5; C. S. 217(f).)

§ 53-8. Authorized to begin business. — Upon filing of such statement, the commissioner of banks shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination it appears to the commissioner of banks that it is lawfully entitled to commence the business of banking, banking and trust, fiduciary, or surety business, he shall give to such corporation a certificate signed by the commissioner of banks, that such corporation has complied with all the provisions of the law required to be complied with, before commencing the business of banking, and that such corporation is authorized to commence business. (1921, c. 4, s. 8; 1931, c. 243, s. 5; C. S. 217(g).)

§ 53-9. Transactions preliminary to beginning business.—No such corporation shall transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized to do so by the commissioner of banks. (1921, c. 4, s. 9; 1931, c. 243, s. 5; C. S. 217(h).)

§ 53-10. Increase of capital stock.—A corporation doing business under the provisions of this chapter may increase its capital stock as provided by law for other corporations upon a vote in favor of the increase of two-thirds in interest of each class of stockholders in its voting powers. (1921, c. 4, s. 10; C. S. 217(i).)

§ 53-11. Decrease of capital stock.—A corporation doing business under the provisions of this chapter may reduce its capital stock in the manner provided for other corporations upon a vote in favor of the decrease of two-thirds in interest of each class of stockholders with voting powers: Provided, that no bank shall reduce its capital stock to an amount less than the minimum required by law. Such reduction shall not be valid or warrant the cancellation of stock certificates until it has been approved by the commissioner of banks. Such approval shall not be given except upon a finding by the commissioner of banks that the security of existing creditors of the corporation will not be impaired. (1921, c. 4, s. 11; 1931, c. 243, s. 5; C. S. 217(j).)

§ 53-12. Consolidation of banks. — A bank may consolidate with or transfer its assets and liabilities to another bank. Before such consolidation or transfer shall become effective, each bank concerned in such consolidation or transfer shall file, or cause to be filed, with the commissioner of banks, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two-thirds of the stock voted in the affirmative on the proposition of consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the commissioner of banks shall cause to be made an examination of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and that such

consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such consolidation or transfer shall be based upon such examination. No such consolidation or transfer shall be made without the consent of the commissioner of banks. The expense of such examination shall be paid by such banks. Notice of such consolidation or transfer shall be published for four weeks before or after the same is to become effective, at the discretion of the commissioner of banks, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof shall be filed with the commissioner of banks. In case of either transfer or consolidation the rights of creditors shall be preserved unimpaired, and the respective companies deemed to be in existence to preserve such rights for a period of three years. (1921, c. 4, s. 12; 1931, c. 243, s. 5; C. S. 217(k).)

§ 53-13. Consolidated banks deemed one bank.—In case of consolidation when the agreement of consolidation is made, and a duly certified copy thereof is filed with the secretary of state, together with a certified copy of the approval of the commissioner of banks to such consolidation, the banks, parties thereto, shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named in the agreement of consolidation shall serve until the first annual meeting for election of officers and directors, the date for which shall be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such new company, and be as fully its property as they were of the companies parties to the agreement. (1921, c. 4, s. 13; 1931, c. 243, s. 5; C. S. 217(l).)

§ 53-14. Reorganization.—Whenever any bank under the laws of this state or of the United States is authorized to dissolve, and shall have taken the necessary steps to effect dissolution, it shall be lawful for a majority of the directors of such bank, upon authority in writing of the owners of two-thirds of its capital stock, with the approval of the commissioner of banks, to execute articles of incorporation as provided in this chapter, which articles, in addition to the requirements of law, shall further set forth the authority derived from the stockholders of such national bank or state bank, and upon filing the same as hereinbefore provided for the organization of banks, the same shall become a bank under the laws of this state, and thereupon all assets, real and personal, of the dissolved national or state bank shall by operation of law be vested in and become the property of such state bank, subject to all liabilities of such national or state bank not liquidated under the laws of the United States or this State before such reorganization. (1921, c. 4, s. 14; 1931, c. 243, s. 5; C. S. 217(m).)

§ 53-15. Consolidation of banks and building and loan insurance corporations.—Banking corporations, with the approval of the commissioner of banks, and in conformity with such requirements and regulations as the state banking commission may prescribe, and building and loan and insurance corporations, with the approval of the insurance commissioner, and in conformity with such requirements and regulations as he may prescribe may merge and consolidate under the provisions of §§ 55-165 through 55-170. (1925, c. 77, s. 2; 1931, c. 243, s. 5; 1939, c. 91, s. 2.)

§ 53-16. Consolidation of state banks or trust companies with national banking associations.—Any bank or trust company incorporated under the laws of North Carolina may be consolidated with any national banking association, or associations, under the charter of such national banking association or under a new charter issued to such consolidated association, upon such terms and conditions as may be lawfully agreed upon, provided that the laws of North Carolina governing the consolidation of State banks shall be first complied with as to the consolidation of such bank or trust company. When such consolidation shall have been effected and approved, as provided by law, all the rights, franchises and interests of such bank or trust company so consolidated with the national banking association, or national banking associations, in and to every species of property, real, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national banking association into which it is consolidated, without any deed or other transfer, and the said consolidated national banking association shall hold and enjoy the same and all rights of property, franchises and interests, including the right of succession as trustee, executor, administrator, or in any other fiduciary capacity, in the same manner, and to the same extent, as was held and enjoyed by such bank or trust company so consolidated. In case of such consolidation the rights of creditors of such bank or trust company shall be preserved unimpaired and all lawful debts and liabilities of such bank or trust company shall be deemed to have been assumed by such consolidated national banking association. (1929, c. 148, s. 1.)

§ 53-17. Fiduciary powers and liabilities of banks or trust companies merging or transferring assets and liabilities.—Whenever any bank or trust company, organized under the laws of North Carolina or the Acts of Congress, and doing business in this state, shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other bank or trust company doing business in this state, as provided by the laws of North Carolina or the Acts of Congress, all the then existing fiduciary rights, powers, duties and liabilities of such consolidating or merging or transferring bank or banks and/or trust companies, including the rights, powers, duties and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of such consolidation or merger or sale and transfer, vest in, devolve upon, and thereafter be performed by, the transferee bank or the consolidated or merged bank or trust company, and such

latter bank or trust company shall be deemed substituted for and shall have all the rights and powers of the transferring bank or trust company. (1931, c. 207; 1941, c. 80.)

Art. 3. Dissolution and Liquidation.

§ 53-18. Voluntary liquidation. — A bank may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its stockholders owning two-thirds of its stock, such vote to be taken at a meeting of the stockholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each stockholder, or in case of his death, to his legal representative or heirs at law, addressed to his last known residence ten days previous to the date of said meeting. Whenever stockholders shall by such vote at a meeting regularly called for the purpose, notice of which shall be given as herein provided, decide to liquidate such bank, a certified copy of all proceedings of the meeting at which said action shall have been taken, verified by the oath of the president and cashier, shall be transmitted to the commissioner of banks for his approval. If the commissioner of banks shall approve the same, he shall issue to the said bank, under his seal, a permit for such purpose. No such permit shall be issued by the commissioner of banks until said commissioner of banks shall be satisfied that provision has been made by such bank to satisfy and pay off all depositors and all creditors of such bank. If not so satisfied, the commissioner of banks shall refuse to issue a permit, and shall be authorized to take possession of said bank and its assets and business, and hold the same and liquidate said bank in the manner provided in this chapter. When the commissioner of banks shall approve the voluntary liquidation of a bank, the directors of said bank shall cause to be published in a newspaper in the city, town, or county in which such bank is located, a notice that the bank is closing up its affairs and going into liquidation, and notify its depositors and creditors to present their claims for payment. When any bank shall be in process of voluntary liquidation, it shall be subject to examination by the commissioner of banks, and shall furnish such reports from time to time as may be called for by the commissioner of banks. All unclaimed deposits and dividends remaining in the hands of such bank shall be subject to the provisions of this chapter as hereinafter provided. Whenever the commissioner of banks shall approve it, any bank may sell and transfer to any other bank, either State bank or national bank, all of its assets of every kind upon such terms as may be agreed upon and approved by the commissioner of banks and by two-thirds vote of its board of directors. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and cashier, together with a copy of the contract of sale and transfer, shall be filed with the commissioner of banks. Whenever voluntary liquidation shall be approved by the commissioner of banks or the sale and transfer of the assets of any bank shall be approved by the commissioner of banks, a certified copy of such approval under seal of the commissioner of banks, filed in the office of the secretary of state, shall authorize the cancellation of the charter of such bank, subject, however, to its continued existence, as provided by this chapter and the general law relative to corporations. (1921, c. 4, s. 15; 1927, c. 47, s. 4; 1929, c. 73; 1931, c. 243, s. 5; C. S. 218(a).)

§ 53-19. Commissioner of banks may take charge, when.—The commissioner of banks may forthwith take possession of the business and property of any bank to which this chapter is applicable whenever it shall appear that such bank:

1. Has violated its charter or any laws applicable thereto;
2. Is conducting its business in an unauthorized or unsafe manner;
3. Is in an unsafe or unsound condition to transact its business;
4. Has an impairment of its capital stock;
5. Has refused to pay its depositors in accordance with the terms on which such deposits were received, or has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which such certificates of indebtednesss or investment were sold;
6. Has become otherwise insolvent;
7. Has neglected or refused to comply with the terms of a duly issued lawful order of the commissioner of banks;
8. Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination to a duly appointed or authorized examiner of the commissioner of banks;
9. Its officers have refused to be examined upon oath regarding its affairs.
10. Has made a voluntary assignment of its assets to trustees;

Such banks may resume business as provided in § 53-37. (1911, c. 25, s. 4; 1921, c. 4, s. 16; 1931, c. 243, s. 5; C. S. 218(b), 242.)

§ 53-20. Liquidation of banks.—(1) When Commissioner of Banks to Take Possession.—Whenever any State bank shall neglect or refuse for a period of sixty days to make a report to the commissioner of banks, as he may demand, or shall, after demand under seal of the commissioner of banks fail, neglect or refuse to comply with any of the rules, regulations or requirements of the state banking commission, or the provisions of the banking law, or if at any time the commissioner of banks shall find a bank subject to the supervision of the commissioner of banks, in an insolvent, unsafe or unsound condition to transact the business for which it was organized, or in an unsafe, or unsound condition to continue its business, or if such institution shall neglect or refuse to correct any irregularity which may be called to the attention of the president, cashier or board of directors, by the commissioner of banks, or any of his assistants; then, in either of such events, the commissioner of banks, or any duly authorized agent of the commissioner of banks appointed under seal of the commissioner of banks, shall forthwith take possession of such bank, and all of its assets and business and shall retain possession thereof until such bank shall be authorized by the commissioner of banks to resume business, or its af-

fairs shall be fully liquidated as herein provided, or possession thereof shall have been surrendered under order of a judge of the Superior Court under the provisions of this section.

(2) Directors May Act.—Any bank may place its assets and business under the control of the commissioner of banks for liquidation by resolution of a majority of its directors upon notice to the said commissioner of banks, and, upon taking possession of said bank, the commissioner of banks, or duly appointed agent, shall retain possession thereof until such bank shall be authorized by the commissioner of banks to resume business or until the affairs of said bank shall be fully liquidated as herein provided, and no bank shall make any general assignment for the benefit of its creditors save and except by surrendering possession of its assets to the commissioner of banks, as herein provided. Whenever any bank for any reason shall suspend operations for any length of time, said bank shall, immediately upon such suspension of operations, be deemed in the possession of the commissioner of banks and subject to liquidation hereunder.

(3) Notice of Seizure to Court Bar to Attachment, etc.; Transfers Void.—When the commissioner of banks, or duly appointed agent, shall take possession of any bank under paragraph (1) or (2) hereof he shall, within forty-eight hours, file with the Clerk of the Superior Court in the county where said bank is located, a notice of his action which shall state the reason therefor; and such notice shall be deemed the equivalent of a summons and complaint against said bank in an action in the Superior Court except that it shall not be necessary to make service thereof, and the taking possession of any bank shall thereupon date from the time when such authority was exercised and from and after such time all assets and property of such bank, of whatever nature shall be deemed to be in possession of the commissioner of banks, and the exercise of such authority shall operate as a bar to any attachment, or other legal proceeding, against such bank or its assets and, after such exercise of authority, no lien shall be acquired, in any manner binding or affecting any of the assets of such bank and every transfer or assignment made thereafter by such bank, or by its authority, of the whole or any part of its assets, shall be null and void; and the commissioner of banks shall be substituted in place of the bank in all actions in the State or Federal Courts, pending at the time of the exercise of such authority.

(4) Notice to Banks; Corporation and Persons Holding Assets; Liens Not to Accrue.—On taking possession of the assets and business of any bank, the commissioner of banks, or duly appointed agent, shall forthwith give notice, by mail or otherwise, of such action to all banks or other persons or corporations holding, or having in possession, any assets of such bank. No bank or other person or corporation shall have a lien or charge for any payment, advance or clearance made, or liability incurred against any of the assets of said bank after possession has been taken as provided under this section, except as hereinafter provided.

(5) Permission to Resume Business.—After the commissioner of banks has taken possession of any bank, such bank may resume business as provided in § 53-37.

(6) Remedy by Bank for Seizure; Answer to Notice; Injunction, etc., Appeal.—Whenever any bank, of whose assets and business the commissioner of banks has taken possession as aforesaid, except where possession is taken under paragraph (2) hereof, shall deem itself aggrieved thereby, it may, at any time within ten (10) days after the filing of the notice with the clerk of the Superior Court, file an answer to said notice and may also upon notice to the commissioner of banks, apply to the resident or the presiding judge of the district for an injunction to enjoin further proceedings by the said commissioner of banks, and the said judge may cite the said commissioner of banks to show cause within ten days thereafter why further proceedings should not be enjoined, and after hearing the allegations and proof of the parties with respect to the condition of said bank, may dismiss such application for injunction or may enjoin further proceedings under this section by the commissioner of banks. If the judge shall enjoin further action of the commissioner of banks and permit the reopening of the bank, he shall have authority to require of the bank such surety bond as he may deem necessary to insure its solvency, payable to the commissioner of banks for the sole benefit of the general creditors of the bank, and upon such terms as said judge may deem proper. Either party shall have the right to appeal to the Supreme Court as in other actions.

(7) Collection of Debts and Claims; Sale or Compromise of Debts, Claims; Commissioner Succeeds to All Property of Bank.—Upon taking possession of the assets and business of any bank by the commissioner of banks, the commissioner of banks, or the duly appointed agent, is authorized to collect all money due such bank, and to do such other acts as are necessary to conserve its assets and property, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The commissioner of banks, or the duly appointed agent, shall collect all debts due and claims belonging to such bank, by suit, if necessary; and, by motion in the pending action, and upon authority of an order of the presiding or resident judge of the district may sell, compromise or compound any bad or doubtful debt or claim, and may upon such order, sell the real and personal property of such bank on such terms as the order may provide or direct, except that, where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under said authority. Upon taking possession of any bank under this section, the commissioner of banks and/or the duly appointed agent shall have the possession and the right to the possession of all the property, assets, choses in action, rights and privileges of the said bank, including the right to resign the trust or exercise the power in all mortgages, deeds of trust, and all other papers executed to secure the payment of money in any form in which the said bank shall have been named as trustee and/or pledgee, and such property rights and privileges shall vest in the said commissioner and/or duly appointed liquidating agent absolutely, for the purpose of liquidating, and sales and con-

veyance of the same, together with any and all other incidental rights, privileges, and powers necessary and convenient for the enjoyment of the right of conveyance and sale and for the exercise of the same. Upon the motion made, the bank or any person interested, may be heard, but the judge hearing the motion shall enter his order as in his discretion will best serve the parties interested.

The powers granted by the second preceding sentence shall be in addition to and not in derogation of any existing acts ratified at the 1931 session of the General Assemby.

The officers and directors of any bank, or any bank that is in liquidation as provided by law, shall not hereafter exercise any powers herein declared to be vested in the North Carolina commissioner of banks, and/or the duly appointed liquidating agent.

(8) Bond of Commissioner of Banks; Surety; Condition; Minimum Penalty.—Upon taking possession of any bank, the commissioner of banks, or the duly appointed agent, shall execute and file a bond payable to the State of North Carolina, with some surety company as surety thereon, with the clerk of the Superior Court of the county where the bank is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such bank by the said commissioner of banks, or the duly appointed agent, or any agent or assistant assisting in the liquidation of the said bank, the penal sum of said bond to be fixed by order of the commissioner of banks, which in no case shall be less than five thousand ($5,000) dollars. Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge as to the sufficiency of the bond; the judge hearing the motion may thereupon fix the bond; provided, that where such bank under this section is taken possession of by the commissioner of banks, he may, in his discretion with the approval of the state banking commission, appoint as his agent with the powers, duties and responsibilities of such agent under this section, the Federal Deposit Insurance Corporation or any corporation or agency established under and by virtue of the laws of the United States of America which is established for the purposes for which the said Federal Deposit Insurance Corporation was created under the banking act of one thousand nine hundred and thirty-three enacted by congress; and provided further that such appointment may be made when and only when the liabilities of such bank to its depositors are insured by said corporation or agency, either in whole or in part. In the event of such appointment such corporation or agency, with the approval of the commissioner of banks, may serve as such agent without giving the bond required under all other circumstances in this subsection.

(9) Inventory Necessary.—Within thirty days after the filing of the notice of the taking possession of any bank in the office of the clerk of the Superior Court, the commissioner of banks, or the duly appointed agent, shall make and state an inventory of the assets and liabilities of the said bank, and shall file one copy thereof with the clerk of the Superior Court in the pending action and shall keep one copy on file in the said bank. Such inventory shall be open for inspection during the usual banking hours, provided, that nothing herein shall require said bank to remain open unnecessarily.

(10) Notice and Time for Filing Claims; Copies Mailed.—Notice shall be given by advertisement for four weeks in a newspaper published in said county; if no newspaper is published in said county, then in some newspaper having a general circulation in said county, calling on all persons who may have claims against the bank to present the same to the commissioner of banks at the office of the bank, and within the time to be specified in the notice, not less, however, than ninety (90) days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the bank. Affidavit by the commissioner of banks, or agent mailing the notice, to the effect that said notice was mailed shall be conclusive evidence thereof.

(11) Power to Reject Claims; Notice; Affidavit of Service; Action on Claim.—If the commissioner of banks, or the duly appointed agent, doubts the justice and validity of any claim or deposit, he may reject the same and serve notice of such rejection upon the claimant or depositor, either personally or by registered mail, and an affidavit of the service of such notice shall be filed in the office of the Clerk of the Superior Court in the pending action, and shall be conclusive evidence of such notice. Any action or suit upon such claim so rejected must be brought by the claimant against the commissioner of banks in the proper court of the county in which the bank is located within ninety days after such service, or the same shall be barred. Objections to any claim or deposit not rejected by the commissioner of banks, or the duly appointed agent, may be made by any person interested by filing such objection in the pending action and by serving a copy thereof on the commissioner of banks, or duly appointed agent, and the commissioner of banks or duly appointed agent, after investigation, shall either allow such objection and reject the claim or deposit, or disallow the objection. If the objection is not allowed and the claim or deposit not rejected, the commissioner of banks or the duly appointed agent, shall file a notice to this effect in the pending action; and within ten days thereafter, the person filing objection by motion in the pending action, a copy of which notice shall be served upon the person whose claim or deposit is objected to, may present to the court the question of the validity of said claim or deposit; and the questions of law and issues of fact shall thereupon be determined as in other civil actions.

(12) List of Claims Presented and Deposits; Copies; Proviso. — Upon the expiration of the time fixed for presentation of claims, the commissioner of banks, or the duly appointed agent, shall make a full and complete list of the claims presented and of the deposits as shown, including and specifying any claims or deposits which have been rejected by him, and shall file one copy in the office of the clerk of the superior court in the pending action, and shall keep one copy on file with the inventory in the office of the bank for examination. Any indebtedness

against any bank which has been established or recognized as a valid liability of said bank before it went into liquidation, for which no claimant has filed claim, and/or any liability for which claim has been filed and disapproved, shall be listed in the office of the clerk of the superior court of the county in which the bank is located, by the liquidating agent, and the dividends accruing thereto shall be paid into the said office and shall be held for a period of three months after said liquidation is completed, and shall then be paid to the escheator of the University of North Carolina. Any claim which may be presented after the expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the bank in the hands of the commissioner of banks, and undistributed at the time the claim is presented: Provided, that when it is made to appear to the judge of the superior court, resident or presiding in the county, that the claim could not have been filed within said period, said judge may permit those creditors or depositors who subsequently file their claim to share as other creditors.

(13) Declaration of Dividends; Order of Preference in Distribution.—At any time after the expiration of the date fixed by the commissioner of banks, or the duly appointed agent, for the presentation of claims against the bank, and from time to time thereafter, the commissioner of banks, out of the funds in his hands, after the payment of expenses and priorities, may declare and pay dividends to the depositors and other creditors of such bank in the order now or hereafter provided by law; and a dividend shall be declared when and as often as the funds on hand subject to the payment of dividends shall be sufficient to pay ten (10) per centum of all claims entitled to share in such dividends. In paying dividends and calculating the same, all disputed claims and deposits shall be taken into account, but no dividend shall be paid upon such disputed claims and deposits until the same shall have been finally determined. The following shall be the order and preference in the distribution of the assets of any bank liquidated hereunder: (1) Taxes and fees due the commissioner of banks for examination or other services; (2) wages and salaries due officers and employees of the bank, for a period of not more than four months; (3) expenses of liquidation; (4) certified checks and cashier's checks in the hands of a third party as a holder for value and amounts due on collections made and unremitted for or for which final actual payment has not been made by the bank; (5) amounts due creditors other than stockholders. The word "asset" used herein shall not be deemed to include bailments or other property to which such bank has no title. Provided, that when any bank, or any officer, clerk, or agent thereof, receives by mail, express or otherwise, a check, bill of exchange, order to remit, note, or draft for collection, with request that remittance be made therefor, the charging of such item to the account of the drawer, acceptor, indorser, or maker thereof, or collecting any such item from any bank or other party, and failing to remit therefor, or the non-payment of a check sent in payment therefor, shall create a lien in favor of the owner of such item on the assets of such bank making the collection, and shall attach from the date of the charge, entry or collection of any such funds. A statement of all dividends paid shall be filed in the office of the clerk of the Superior Court in the pending action, and said statements shall show the expenses deducted and the disputed claims and deposits considered in determining said dividend.

(14) Deposit of Funds Collected.—All funds collected by the commissioner of banks, in liquidating any bank, shall be deposited from time to time in such bank or banks as may be selected by him, and shall be subject to the check of the commissioner of banks. The payment of interest on the net average of such sums on deposit shall be controlled by the governor and council of state, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon.

(15) Employment of Local Attorneys; Expert Accountants and Other Experts; Compensation.—The commissioner of banks, for the purpose of liquidating banks as herein provided, shall employ such liquidating agents, competent local attorneys, accountants and clerks as may be necessary to properly liquidate and distribute the assets of said bank, and shall fix the compensation for all such agents, attorneys, accountants and clerks, and shall pay the same out of the funds derived from the liquidation of the assets of said bank: Provided, that all expenditure for the purpose herein provided shall be approved by the resident or presiding judge in the pending action at such time as the same may be reported, and such charges shall be a proper charge and lien on the assets of such bank until paid.

(16) Unclaimed Dividends Held in Trust.—The unclaimed dividends remaining in the hands of the commissioner of banks for six months after the order for final distributions shall be held in trust for the several depositors and creditors of the liquidated bank; and the money so held by him shall be paid over to the persons respectively entitled thereto as and when satisfactory evidence of their right to the same is furnished. In case of doubtful or conflicting claims the commissioner of banks shall have authority to apply to the superior court of the county, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the moneys so claimed. When issues of fact are raised by said motion, the same may, upon request of any claimant, be submitted to the jury for determination as other issues of fact are determined. The interest earned on the unclaimed dividend so held shall be applied toward defraying the expenses incurred in the distribution of such unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds of the banking department to the credit of the commissioner of banks.

(17) Report by Commissioner of Banks. — If the assets of any bank when fully collected by the commissioner of banks are not more than sufficient to pay the depositors and creditors of said bank, the commissioner of banks after he shall

have fully distributed as herein provided the sums so collected, then he shall cause to be filed in the office of the Clerk of the Superior Court in the pending action a full and complete report of all his transactions in said liquidation; and the filing of such report shall act as a full and complete discharge of the commissioner of banks from all further liabilities by reason of the liquidation of the bank.

(18) Action by Commissioner of Banks after Full Settlement.—Whenever the commissioner of banks shall have paid all the expenses of liquidation and shall have paid to each and every depositor and creditor of such bank, whose claims shall have been duly proven and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits and disputed claims and deposits, and shall have in hand other assets of said bank, he shall call a meeting of the stockholders of said bank by giving notice thereof by publication once a week for four weeks in a newspaper published in said county, or if no newspaper is published in said county, then in a newspaper having general circulation in said county, and by mailing a copy of such notice to each stockholder addressed to him at his address as the same shall appear upon the books of the bank. Affidavit of the officer mailing the notice herein required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At such meeting any stockholders may be represented by proxy and the stockholders shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the commissioner of banks all the assets of said bank, then remaining in his hands; and the commissioner of banks shall cause to be transferred and delivered to the said agent, or agents, all such assets of said bank. The commissioner of banks shall thereupon cause to be filed in the office of the clerk of the superior court in the pending actions a full and complete report of all his transactions, showing the assets of said bank so transferred, together with the name of the agent or agents receipting for the same; and the filing of such report shall act as a full and complete discharge of the commissioner of banks from all further liabilities by reason of the liquidation of the bank. Such agent, or agents, shall convert the assets coming into his hands, or their hands, into cash, and shall make distribution to the stockholders of said bank as herein provided. Said agent, or agents, shall file semi-annually a report of all transactions with the superior court of the county in which the bank is located, and with the commissioner of banks, and shall be allowed for such services such fees not in excess of five per cent, as may be fixed by the court. In case of death, removal or refusal to act, of any agent or agents elected by the stockholders, the commissioner of banks shall, upon report of such action on the part of such agent or agents to the superior court of the county in which the bank is located, turn over to said superior court for the stockholders of said bank, all the remaining assets of the bank, file his report and be discharged from any and all further liability to the stockholders as herein provided. Said assets, when turned over to the superior court hereunder, shall remain in the hands of the superior court until such time as, by order of Court or by action of the stockholders, distribution shall be provided for.

(19) Annual Report of Commissioner of Banks; Items in Report of; Publication.—The commissioner of banks shall file, as a part of his annual report to the governor, a list of the names of the banks so taken possession of and liquidated; and the commissioner of banks shall, from time to time, compile and make available for public inspection, reports showing the condition of each and all the banks so taken possession of; and the annual report of the commissioner of banks shall show the sum of unclaimed and unpaid deposits, with respect to each bank and shall show all depositories of all sums coming into the hands of the commissioner of banks under the provisions of this section.

(20) Compensation of Commissioner of Banks.—The commissioner of banks, for his services rendered in connection with the liquidation of banks hereunder, shall be entitled to actual expenses incurred in connection with the liquidation of each bank, including therein a reasonable sum for the time of the bank examiners and other agents of the commissioner of banks, which expenses shall be a prior lien on the assets of such bank so liquidated until paid in full; and the commissioner of banks shall have authority to prescribe reasonable rules and regulations for fixing such expenses.

(21) Exclusive Methods of Liquidation.—No bank created under the banking act or the industrial banking act, and under the supervision of the commissioner of banks, shall be liquidated in any other way or manner than that provided herein.

(22) Application of Act.—The applicable provisions of this section as enacted by chapter 113 of the Public Laws of 1927 shall apply to all banks which on March 7, 1927, have suspended operations or are in the process of liquidation but for which no permanent receiver has been appointed by the court.

(23) Liquidation by Commissioner of Banks of All Banks in Receivership Required.—On and after the first day of January, one thousand nine hundred and thirty-six, the provisions of this section shall apply to all banks included in the definition or classification of banking institutions under this chapter, and/or any amendment thereto, which at said time shall be in receivership in the State courts; and the said banks shall be liquidated exclusively in accordance with the provisions of this section and by said banking commissioner. The liquidation of said banks shall be made strictly in accordance with the terms of this section and the words "competent local attorneys," as set forth in subsection sixteen of this section shall be defined to be any attorney or attorneys resident of the county in which the bank is being liquidated. (1921, c. 4, s. 17; 1927, c. 113; 1931, c. 243, s. 5, cc. 385, 405; 1933, c. 175, s. 2, c. 546; 1935, c. 81, s. 4, c. 231, s. 1, c. 277; 1939, c. 91; C. S. 218(c).)

§ 53-21. Sale of stocks of defunct banks validated.—All private sales of stocks in resident cor-

porations, joint stock companies and limited partnerships, made prior to March 20, 1935, by the commissioner of banks or a duly appointed agent in the course of the liquidation of a defunct bank, where such sale was made by and with the approval of a liquidation board duly selected by the creditors and stockholders of such bank and upon authority of an order of the presiding or resident judge of the district in which the principal office of such bank was located, are hereby in all respects validated, ratified and confirmed. (1935, c. 113.)

§ 53-22. Statute relating to receivers applicable to insolvent banks.—Article thirteen, chapter fifty-five relating to receivers, when not inconsistent with the provisions of § 53-20, shall apply to liquidation of insolvent banks. (1921, c. 4, s. 19; 1923, c. 148, s. 4; 1931, c. 215; C. S. 218(e).)

§ 53-23. Books, records, etc., disposition of.—All books, papers, and records of a bank which has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court for the county in which the office of such bank is located, or in such other place as in his judgment will provide for the proper safekeeping and protection of such books, papers, and records. The books, papers, and records herein referred to shall be held subject to the orders of the commissioner of banks and the clerk of the superior court for the county in which such bank was located. (1921, c. 4, s. 20; 1931, c. 243, s. 5; C. S. 218(f).)

§ 53-24. Destruction of records of liquidated insolvent banks.—After the expiration of ten years from the date of filing in the office of the clerk of the superior court of a final order approving the liquidation by the banking department of any insolvent bank and the delivery to the clerk or into his custody of the records of such bank, the said records may be destroyed by the clerk of the superior court holding said records by burning the same in the presence of the register of deeds and the sheriff of said county, who shall join with the clerk in the execution of a certificate as to the destruction of said records. The certificate shall be filed by the clerk in the court records of the liquidation of the bank whose records are thus destroyed.

After ten years from the filing by the commissioner of banks of a final report of liquidation of any insolvent bank, the said commissioner, by and with the consent of the state banking commission or its successor, may destroy by burning the records of any insolvent bank held in the department of the commissioner of banks in connection with the liquidation of such bank: Provided, that in connection with any unpaid dividends the commissioner of banks shall preserve the deposit ledger or other evidence of indebtedness of the bank with reference to the unpaid dividend until the dividend shall have been paid.

Nothing in this section shall be construed to authorize the destruction by the clerk of the superior court of any county or by the commissioner of banks of any of the formal records of liquidation, nor shall the commissioner of banks have authority under this section to destroy any of the records made in his office with reference to the liquidation of any insolvent bank. (1939, c. 91, s. 1; 1939, c. 135.)

§ 53-25. Trust terminated on insolvency of trustee bank.—Whenever any bank or trust company created under the laws of this State, which has heretofore been, or shall hereafter be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be by reason of insolvency, or for any other cause provided by law, taken over for liquidation by the commissioner of banks of this State or by any other legally constituted authority, the powers and duties of such bank or trust company as trustee in any such instrument shall, upon the entry of an order of the Clerk of the superior court appointing a successor trustee, upon a petition as hereinafter provided, immediately cease and determine. (1931, c. 250, s. 1.)

§ 53-26. Petition for new trustee; service upon parties interested.—In all cases of such insolvency and liquidation mentioned in § 53-25, the clerk of the superior court of any county in which such indenture, deed of trust or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in said petition, enter an order directing service on all interested parties either personally or by the publication in some newspaper published in the county, or in some adjoining county if no newspaper is published in the county where such application is made, of a notice directed to all persons concerned, commanding and requiring all persons having any interest in said trust, to be and appear at his office at a day designated in said order and notice, not less than thirty days from the date thereof, and show cause why a new trustee shall not be appointed. (1931, c. 250 s. 2.)

§ 53-27. Publication and contents of notice.—Such notice shall be published in the manner required by law for service of summons by publication, and shall set forth the names of the parties to the indenture, deed of trust or other such instrument, the date thereof, and the place or places where the same is recorded. (1931, c. 250, s. 3.)

§ 53-28. Appointment where no objection made.—If, upon the day fixed in said notice, no person shall appear and object to the appointment of a substitute trustee, the clerk shall, upon such terms as he deems advisable to the best interest of all parties, appoint some competent person, or corporation authorized to act as such, substituted trustee, who shall be vested with and shall exercise all the powers conferred upon the trustee named in said instrument. (1931, c. 250, s. 4.)

§ 53-29. Hearing where objection made; appeal from order.—If objection shall be made to the appointment of a new trustee, the clerk shall hear and determine the matter, and from his decision an appeal may be prosecuted as in case of special proceedings generally. (1931, c. 250, s. 5.)

§ 53-30. Registration of final order.—The final

order of appointment of such new trustees shall be certified by the clerk of the superior court in which such order is entered and shall be recorded in the office of the register of deeds in the county or counties in which the instrument under which such appointment has been made is recorded, and a minute of the same shall be entered by the register of deeds on the margin of the record where said original instrument is recorded. (1931, c. 250, s. 6.)

§ 53-31. Petition and order applicable to all instruments involved.—The petition and the order appointing such new trustee may include and relate and apply to any number of indentures, deeds of trust or other instruments, wherein the same trustee is named. (1931, c. 250, s. 7.)

§ 53-32. Additional remedy.—Sections 53-25 to 53-31 shall be in addition to and not in substitution for any other remedy provided by law. (1931, c. 250, s. 8.)

§ 53-33. Validation of acts of officers of insolvent banks as trustees in deeds of trust.—Whenever any state bank, prior to January first, one thousand nine hundred and thirty-one, shall have become insolvent and its assets and business been placed in the hands of the corporation commission or taken control of by the corporation commission for liquidation, and the board of directors of said bank shall have thereafter by resolution authorized or directed the officers of said bank or some of them to perform or exercise in the name of the bank as trustee any power or duty of such bank as trustee under any deed in trust to it recorded in any county in this State, provided said resolution was passed prior to the eleventh day of May, one thousand nine hundred and thirty-one, the performance or exercise of any such power or duty heretofore or hereafter by any officer or officers so authorized shall be effective and binding on all parties concerned as the act of such bank as trustee as aforesaid, to the same extent and in the same manner as if such bank had not become insolvent and its assets and business had not been placed in the hands of the corporation commission or taken control of by the corporation commission for liquidation. (1931, c. 403.)

§ 53-34. Validation of sales by corporation commission under mortgages, etc., giving banks power of sale.—Whenever it appears that either the North Carolina corporation commission, the chief state bank examiner, or any liquidating agent appointed pursuant to the provisions of § 53-20, has undertaken to exercise the power of sale set up in any mortgage, deed of trust, or other written instrument for the security of the payment of money in which any bank then in liquidation was named trustee, the said acts including the acts of resigning the trust, of the North Carolina corporation commission and/or chief state bank examiner, and/or liquidating agent appointed as aforesaid, are hereby validated and declared to be of the same force and effect as if done by the bank named as trustee in the mortgage, deed of trust, or other instrument. (1931, c. 132.)

§ 53-35. Foreclosures and execution of deeds by commissioner of bank, validated.—Whereas, the commissioner of banks, created by chapter two hundred forty-three of the Public Laws of 1931, was given general supervision over the banks of this state; and

Whereas, the commissioner of banks, under authority of chapter three hundred and eighty-five of the Public Laws of 1931, succeeded to all the property of banks in liquidation, including fiduciary powers under the mortgages and deeds of trust; and

Whereas, the commissioner of banks, in his own name and in the name of a number of conservators or liquidating agents of banks in the process of liquidation under his supervision, has foreclosed a large number of deeds of trust in which such banks were the named trustee, and has executed under the powers contained therein a large number of trustee's deeds under authority thereof: Now, therefore,

All the deeds and acts of the commissioner of banks and/or conservators or liquidating agents of such banks in the process of liquidation, as in the preamble to this section described, are hereby in all respects ratified, validated and confirmed.

This section shall not effect litigation pending April 3, 1939. (1939, c. 368.)

§ 53-36. Commissioner to report to secretary of state certain matters relative to liquidation of closed banks; publication.—The commissioner of banks of the state of North Carolina shall on or before the first day of June, 1933, and on the first day of January and July of each year thereafter file with the secretary of the state of North Carolina a report showing all banks under liquidation in the state of North Carolina, and the names of any and all auditors together with the amounts paid to them for auditing each of said banks, and the names of any and all attorneys employed in connection with the liquidation of said banks together with the amount paid or contracted to be paid to each of said attorneys. If any attorney has been employed on a fee contingent upon recovery said report must state in substance the contract.

Within five days from the receipt of said report the secretary of the state of North Carolina shall cause same to be published one time in some newspaper published in each county in which a bank or banks are under liquidation, if there be a newspaper published in said county. If not, the secretary of the state of North Carolina shall cause a copy of said report to be posted at the courthouse door in said county. (1933, c. 483.)

Art. 4. Reopening of Closed Banks.

§ 53-37. Conditions under which banks may reopen.—Whenever the commissioner of banks has taken in possession any bank, such bank may, with the consent of the commissioner of banks, resume business upon such terms and conditions as may be approved by the state banking commission. When such banks have been taken in possession under the provisions of § 53-20, paragraphs one or two, such conditions shall be fully stated in writing and a copy thereof shall be filed with the clerk of the superior court in the action required to be commenced in such cases against said bank under the provisions of § 53-20, paragraph three: Provided, however, no bank or banking institution which has been taken in possession by the commissioner of banks under the provisions of the

state banking laws shall be reopened to receive deposits or for the transaction of a banking business unless and until:

(a) The bank has been completely restored to solvency;

(b) The capital stock, if impaired, has been entirely restored in cash;

(c) It shall clearly appear to the commissioner of banks that such bank may be reopened with safety to the public and such reopening is necessary to serve the business interests of the community.

(1921, c. 4, s. 16; 1927, c. 113, s. 1; 1931, c. 243, s. 5; 1931, c. 388, s. 1; 1939, c. 91, s. 2; C. S. 218(q).)

§ 53-38. Certain contracts not affected.—Nothing in § 53-37 shall impair or affect any contracts made by banks and depositors of banks reopened prior to May 12, 1931, under the permission of the state banking department. (1931, c. 388, s. 4.)

Art. 5. Stockholders.

§ 53-39. New state banks to set up surplus fund.—The common stockholders of any bank organized after March 17, 1933, under the laws of the state of North Carolina shall pay in, in cash, a surplus fund equal to fifty per centum of its common capital stock before the bank shall be authorized to commence business. (1933, c. 159, s. 2; 1935, c. 79, s. 1.)

§ 53-40. Executors, trustees, etc., not personally liable.—Persons holding stock as executors, administrators, guardians, or trustees shall not personally be subject to any liabilities as stockholders, but the estate and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust fund would be if living and competent to hold stock in his own name. (1921, c. 4, s. 23; C. S. 219(c).)

§ 53-41. Stock sold if subscription unpaid. — Whenever any stockholder, or his assignee, fails to pay any installment on the stock, when the same is required by law to be paid, the directors of the bank shall sell the stock of such delinquent stockholder at public or private sale, as they may deem best, having first given the delinquent stockholder twenty days notice, personally or by mail, at his last known address. If no party can be found who will pay for such stock the amount due thereon to the bank with any additional indebtedness of such stockholder to the bank, the amount previously paid shall be forfeited to the bank, and such stock shall be sold, as the directors may order, within thirty days of the time of such forfeiture, and if not sold, it shall be canceled and deducted from the capital stock of the bank. (1921, c. 4, s. 25; C. S. 219(e).)

§ 53-42. Impairment of capital; assessments, etc.—The commissioner of banks shall notify every bank whose capital shall have become impaired from losses or any other cause, and the surplus and undivided profits of such bank are insufficient to make good such impairment, to make the impairment good within sixty days of such notice by an assessment upon the stockholders thereof, and it shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the pupose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made: Provided, that such bank may reduce its capital to the extent of the impairment, as provided in § 53-11. If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon thirty days notice given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper in the place where the bank is located, and if none therein, a newspaper circulating in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the commissioner of banks, the commissioner of banks may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock, as provided in this section, shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock; but in the event the stock of any stockholder be sold as hereinbefore provided, and the said stock when sold fails to bring the amount of the assessment against said stockholder, then, and in such event, the said stockholder shall be personally liable for the difference between the amount of said assessment and the price brought by the sale of said stock. (Ex. Sess. 1921, c. 56, s. 3; 1925, c. 117; 1931, c. 243, s. 5; C. S. 219(f).)

Art. 6. Powers and Duties.

§ 53-43. General powers.—In addition to the powers conferred by law upon private corporations, banks shall have the power:

1. To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, by loaning money on personal security or real and personal property. Such corporations at the time of making loans or discounts may take and receive interest or discounts in advance.

2. To adopt regulations for the government of the corporation not inconsistent with the constitution and laws of this state.

3. To purchase, hold, and convey real estate for the following purposes:

(a) Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other apartments to rent as a source of income, which investment shall not exceed fifty per cent of its paid-in capital stock and permanent sur-

plus: Provided, that this provision shall not apply to any such investment made before the ninth day of March, one thousand nine hundred and twenty-one. Provided further, that the commissioner of banks may in his discretion authorize the continuance of investments made prior to the first day of February, one thousand nine hundred and twenty-five, of the character described in this paragraph. Provided, further, that the commissioner of banks may, in his discretion, authorize any bank located in a city having a population of more than ten thousand, according to the last United States census, to invest more than fifty per cent of its capital and permanent surplus in its banking houses, furniture, and fixtures.

(b) Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.

(c) Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subsection shall be sold by such bank within one year after it is acquired, unless, upon application by the board of directors, the commissioner of banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this chapter, are hereby repealed.

4. Nothing contained in this section shall be deemed to authorize banking corporations to engage in the business of dealing in investment securities, either directly or through subsidiary corporations: Provided, however, that the term "dealing in investment securities" as used herein, shall not be deemed to include the purchasing and selling of securities without recourse, solely upon order, and for the account of, customers; and provided further, that "investment securities," as used herein, shall not be deemed to include obligations of the United States, or general obligations of any state or of any political subdivision thereof, or of cities, towns, or other corporate municipalities of any state or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the Federal Home Loan Banks or the Home Owners' Loan Corporation.

Any provision in conflict with this subsection contained in the Articles of Incorporation heretofore issued to any banking corporation is hereby revoked.

5. Subject to the approval of the commissioner of banks and on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of one thousand nine hundred and thirty-three (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.

6. Any commercial bank, savings bank, or trust company, heretofore or hereafter organized under any general or special laws of this state and any national bank doing business in this state, shall have power, in addition to such other powers as it may have:

(a) Upon the making of a loan or discount, to deduct in advance, from the proceeds of such loan, interest at a rate not exceeding six per centum (6%) per annum upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in installments: Provided, no loan made under the provisions of subsection 6 shall exceed fifteen hundred ($1,500.00) dollars to any one person, firm, partnership, or corporation.

(b) Nothing in subsection 6 shall be construed as in any wise extending or increasing or decreasing the powers of commercial banks, savings banks, or trust companies or national banks to make loans or discount notes other than as herein or by other laws expressly provided.

7. Maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the state banking commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as may be eligible for the investment of the sinking funds of the state of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per centum of such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The banking commission shall have power to make such rules and regulations as it may deem

necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said commission as well as by this paragraph. (1921, c. 4, s. 26; 1923, c. 148, s. 5; Ex. Sess. 1924, c. 67; 1925, c. 279; 1927, c. 47, s. 5; 1931, c. 243, s. 5; 1933, c. 303; 1935, c. 81, s. 1, c. 82; 1937, c. 154; 1941, c. 77; C. S. 220(a).)

§ 53-44. Investment in bonds guaranteed by United States.—(1) Any bank, building and loan association, land and loan association, savings and loan association, insurance company, title insurance company, land mortgage company, fraternal order or benevolent association, or any other corporation incorporated under the laws of this state, and operating under the supervision of the commissioner of banks, insurance commissioner, or superintendent of savings and loan associations; the state treasurer, as custodian of the assurance fund provided under the Torrens Act, or any officer charged with the investment of sinking funds of the State, any county, city, town, incorporated village, township, school district, school taxing district, or other district or political subdivision of government of the State; the North Carolina State Thrift Society, any clerk of the court holding money by color of his office or as receiver; and any person, firm or corporation acting as executor, administrator, guardian, trustee, or other person acting in a fiduciary capacity may invest in bonds issued, or in bonds which are fully and unconditionally guaranteed as to principal and interest by the United States, to the same extent as the same are now or may be hereafter authorized to invest in any obligation of the United States: Provided that all investments authorized hereunder shall be guaranteed, both as to the payment of principal and interest thereon, by the United States treasury.

(2) Security for Loans and Deposits.—No bank shall be required to maintain a reserve against deposits secured by any of the above mentioned bonds equal in market value to the amount of such deposits, and such bonds shall be valid security for all loans and deposits to the same extent as are any obligations of the United States.

(3) Bonds Deemed Cash in Settlements by Fiduciaries.—In settlements by guardians, executors, administrators, trustees and others acting in a fiduciary capacity, the bonds and securities herein mentioned shall be deemed cash to the amount actually paid for same, including the premium, if any, paid for such bonds, and may be paid as such by the transfer thereof to the persons entitled and without any liability for a greater rate of interest than the amount actually accruing from such bonds. (1935, c. 164; 1937, c. 433.)

§ 53-45. Banks, fiduciaries, etc., authorized to invest in mortgages of federal housing administration, etc.—(1) Insured Mortgages and Obligations of National Mortgage Associations.—It shall be lawful for all commercial and industrial banks, trust companies, building and loan associations, insurance companies, and other financial institutions engaged in business in this state, and for guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this state to invest, to the same extent that such funds may be invested in interest-bearing obligations of the United States, their funds or the moneys in their custody or possession which are eligible for investment, in bonds or notes secured by a mortgage or deed of trust insured by the federal housing administrator, in mortgages on real estate which have been accepted for insurance by the federal housing administrator, and in obligations of national mortgage associations.

(2) Insured Loans. — All such banks, trust companies, building and loan associations and insurance companies, and other financial institutions, and also all such guardians, executors, administrators, trustees or others acting in a fiduciary capacity in this state, may make such loans, secured by real estate, as the federal housing administrator has insured or has made a commitment to insure, and may obtain such insurance.

(3) Eligibility for Credit Insurance.—All banks, trust companies, building and loan associations, insurance companies and other financial institutions, on being approved as eligible for credit insurance by the federal housing administrator, may make such loans as are insured by the federal housing administrator.

(4) Certain Securities Made Eligible for Collaterals, etc.—Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained, consisting of designated securities, bonds, and notes secured by a mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator and obligations of national mortgage associations shall be eligible for such purposes.

(5) General Laws Not Applicable.—No law of this state prescribing the nature, amount or form of security or requiring security upon which loans or investments may be made, or prescribing or limiting the rates or time of payment of the interest any obligation may bear, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs. (1935, cc. 71, 378; 1937, c. 333.)

§ 53-46. Limitations on investments or securities.—The investment in any bonds or other interest-bearing securities of any one firm, individual or corporation, unless it be the interest-bearing obligations of the United States, obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the Federal Home Loan Banks, or the Home Owners' Loan Corporation, state of North Carolina, or other state of the United States, or of some city, town, township, county, school district, or other political subdivision of the state of North Carolina, shall at no time be more than twenty per cent of the unimpaired capital and permanent surplus of any bank to an amount not in excess of two hundred and fifty thousand dollars; and not more than ten per cent of the unimpaired capital and permanent surplus in excess of two hundred and fifty thousand dollars: Provided, that nothing in this section shall be construed to compel any bank to surrender or dispose of any investment in the stocks or bonds of a corporation owning the lands or buildings occupied by such bank as its banking home, if such stocks or bonds were lawfully acquired prior to February 25, 1927. (1921, c. 4, s. 27; 1927,

c. 47, s. 6; 1931, c. 243, s. 5; 1933, c. 359; 1935, c. 199; 1937, c. 186; C. S. 220(b).)

§ 53-47. Stocks, limitations on investment in. —No bank shall make any investment in the capital stock of any other state or national bank: Provided, that nothing herein shall be construed to prevent banks doing business under this chapter from subscribing to or purchasing, upon such terms as may be agreed upon, the capital stock of banks organized under that act of congress known as the "Edge Act" or the capital stock of central reserve banks whose capital stock exceeds one million dollars. To constitute a central reserve bank as contemplated by this chapter, at least fifty per cent of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the act of congress commonly known as the "Edge Act," shall at no time exceed ten per cent of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than fifty per cent of its permanent surplus in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the commissioner of banks if in his judgment it is for the best interest of the bank that such extension be granted; Provided that the limitations imposed in this section on the ownership of stock in or securities of corporations is suspended to the extent (and to that extent only) that any bank operating under the supervision of the commissioner of banks may subscribe for and purchase shares of stock in or debentures, bonds or other types of securities of any corporation organized under the laws of the United States of America for the purpose of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors. (1921, c. 4, s. 28; 1931, c. 243, s. 5; 1935, c. 81, s. 3; C. S. 220(c).)

§ 53-48. Loans, limitations of.—The total direct and indirect liability to a bank for money borrowed incurred by any person, firm (including in the liabilities of a firm the liabilities of the several members thereof), or corporations other than a municipal corporation shall at no time exceed twenty per cent of the unimpaired capital and permanent surplus of the bank if the unimpaired capital and permanent surplus be two hundred and fifty thousand dollars or less; and, if the unimpaired capital and permanent surplus shall exceed two hundred and fifty thousand dollars, the aforesaid liability shall not exceed twenty per cent of two hundred and fifty thousand dollars plus ten per cent of the excess in unimpaired capital and permanent surplus above that amount. Provided, however, that the discount of bills of exchange, drawn in good faith against actual existing values, the discount of solvent trade acceptances, or other solvent commercial or business paper actually owned by the person, firm or corporation negotiating the same and the purchase of any notes, secured by not less than a like face amount of bonds of the United States or State of North Carolina or certificates of indebtedness of the United States, shall not be considered as money borrowed within the meaning of this section. Provided further, that the limitations of this section shall not apply to that portion of a loan or investment secured by a guarantee or a commitment made by the reconstruction finance corporation or by the federal reserve bank, or by them jointly. (1921, c. 4, s. 29; 1923, c. 148, s. 6; 1925, c. 119, s. 1; 1927, c. 47, s. 7; 1937, c. 419; C. S. 220(d).)

§ 53-49. Suspension of investment and loan limitation.—The board of directors of any bank, may by resolution duly passed at a meeting of the board, request the commissioner of banks to suspend temporarily the limitations on loans and investments as the same may apply to any particular loan or investment in excess of the limitations of §§ 53-46, 53-47, and 53-48 which the bank desires to make. Upon receipt of a duly certified copy of such resolution, the commissioner of banks may, in his discretion, suspend the limitations on loans and investments insofar as they would apply to the loan or investment which the bank desires to make: Provided, however, such loan shall be amply secured and shall be for a period not longer than one hundred and twenty days. (1921, c. 4, s. 30; 1931, c. 243, s. 5; 1933, c. 239, s. 1; C. S. 220(e).)

§ 53-50. Reserve. — Every bank shall at all times have on hand or on deposit with approved reserve depositories, instantly available funds in an amount equal to at least fifteen per cent of the aggregate amount of its demand deposits, and five per cent of the aggregate amount of its time deposits. But no reserve shall be required on deposits secured by a deposit of United States bonds or the bonds of the state of North Carolina. Any bank that is now or may hereafter become a member of the Federal Reserve Bank shall maintain the same reserve with respect to deposits as shall be required of other members of such Federal Reserve Bank. (1921, c. 4, s. 31; C. S. 220(f).)

§ 53-51. Reserve and cash defined. — Reserve shall consist of cash on hand and balances payable on demand, due from other approved solvent banks, which have been designated depositories as hereinafter provided in this chapter. Cash includes lawful money of the United States, and exchange of any clearing house association. (Rev., s. 232; 1903, c. 275, s. 29; 1919, c. 58; 1921, c. 4, s. 32; C. S. 220(g).)

§ 53-52. Forged check, payment of. — No bank shall be liable to a depositor for payment by it of a forged check or other order to pay money unless within sixty days after the receipt of such voucher by the depositor he shall notify the bank that such check or order so paid is forged. (1921, c. 4, s. 33; C. S. 220(h).)

§ 53-53. Minor, payment of deposit in the name of.—When money is held on deposit by any

state, industrial or national bank in this state in the name of a minor under fifteen years of age, it may be paid, together with the interest, if there be any interest thereon, upon receipts or checks signed by such minor and one of the minor's parents. When money is held on deposit by any state, industrial or national bank in this state in the name of a minor fifteen years of age or upwards, it may be paid, together with the interest, if there be any interest thereon, upon receipts or checks signed by the minor. A written statement from the minor, if fifteen years of age or upward, or from one of the said minor's parents, if the minor is under fifteen years of age, shall be conclusive evidence of the age of the minor. (1921, c. 4, s. 34; 1939, c. 84; C. S. 220(i).)

§ 53-54. Tranactions not performed during banking hours.—Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours: Provided, that nothing herein shall be construed to compel any bank in this state, which by law or custom is entitled to close at twelve noon on any Saturday, or for the whole or part day of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday, except at its option. (1921, c. 4, s. 35; C. S. 220(j).)

§ 53-55. Commercial and business paper defined.—The term "commercial or business paper," as used in this chapter, is hereby defined to mean a promissory note, and the term "trade acceptance" to mean a draft or bill of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used or are to be used for such purposes, but such definition shall not include notes, drafts, or bills of exchange covering merely investments, or issued or drawn for the purpose of carrying on or trading in stocks, bonds, or other investment securities, except bonds and notes of the government of the United States and state of North Carolina. (1921, c. 4, s. 36; 1923, c. 148, s. 7; 1941, c. 268; C. S. 220(k).)

§ 53-56. Bank acceptances defined.—Any bank doing business under this chapter may accept for payment at a future date, drafts or bills of exchange having not more than six months sight to run, drawn upon it by its customers under acceptance agreements, and which grow out of transactions involving the importation or exportation of goods; and issue letters of credit authorizing the holders thereof to draw upon it or its correspondents, provided that there is a definite bona fide contract for the shipment of goods within a specified reasonable time, and the existence of such contract is certified in the acceptance agreement; or which grow out of transactions involving the domestic shipment of goods, provided that shipping documents, conveying or securing to the accepting bank title to readily marketable goods, are attached or in the hands of an agent of the accepting bank, independent of the drawer, for his account, at the time of acceptance, or which are secured at the time of acceptance by warehouse receipts or other documents conveying or securing to the accepting bank title to readily marketable goods fully covered by insurance, the warehouse receipts or other documents to be those of a responsible warehouse, independent of the drawer, the acceptance to remain secured during the life of the acceptance unless suitable security of same character, or cash, be substituted: Provided, no bank shall accept drafts or bills of exchange under this section to an aggregate amount at any time more than equal to the sum of its capital and permanent surplus: Provided further, that no bank shall accept, whether in a foreign or domestic transaction, for any one person, firm, or corporation, to any amount at any time equal to more than twenty-five per cent of its capital and permanent surplus, unless the accepting bank is secured either by attached documents or those held for its account by its agent, independent of the drawer, or by some other actual security of the same character. Should the accepting bank purchase or discount its own acceptances, such acceptances will be considered as a direct loan to the drawer, and be subject to the limitation on loans hereinbefore provided in this chapter. The state banking commission may issue such further regulations as to such acceptances as it may deem necessary in conformity with this chapter. As used herein, the word "goods" shall be construed to mean and include goods, wares, merchandise, or agricultural products, including livestock. (1921, c. 4, s. 37; 1931, c. 243, s. 5; 1939, c. 91, s. 2; C. S. 220(l).)

§ 53-57. Nonpayment of check in error, liability for.—No bank shall be liable to a depositor because of the nonpayment, through mistake or error, and without malice, of a check which should have been paid had the mistake or error of nonpayment not occurred, except for the actual damage by reason of such nonpayment that the depositor shall prove, and in such event the liability shall not exceed the amount of damage so proven. (1921, c. 4, s. 38; C. S. 220(m).)

§ 53-58. Checks sent direct to bank on which drawn.—Any bank receiving for collection or deposit any check, note, or other negotiable instrument drawn upon or payable at another bank, located in another town or city, whether within or without this state, may forward such instrument for collection, direct to the bank on which it is drawn, or at which it is payable, and such method of forwarding direct to the payer bank shall be deemed due diligence, and the failure of such payer bank, because of its insolvency or other default, to account for the proceeds thereof, shall not render the forwarding bank liable therefor: Provided, however, such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. (1921, c. 4, s. 39; C. S. 220(n).)

§ 53-59. Deposits in trust, payment of. — Whenever any deposits shall be made in any bank or banking institution in this state by any person in trust for any other person who is a minor of the age of fifteen years and upward, and no other

or further notice of the existence and terms of a legal and valid trust shall have been given to the bank, in event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made: Provided, that the amount of said deposit is not in excess of one hundred dollars. (1921, c. 4, s. 40; C. S. 220(o).)

§ 53-60. Farm loan bonds, authorized investment in.—Any bank or insurance company organized under the laws of this state, and any person acting as executor, administrator, guardian, or trustee, may invest in federal farm loan bonds issued by any federal farm loan bank or joint-stock land bank organized pursuant to an act entitled "An act of Congress to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories, and financial agents for the United States, and for other purposes," approved the seventeenth day of July, one thousand nine hundred and sixteen. (1921, c. 4, s. 41; C. S. 220(p).)

§ 53-61. Federal Reserve Bank, authority to join.—The words "Federal Reserve Act," as herein used, shall be held to mean and to include the act of Congress of the United States, approved December twenty-third, nineteen hundred thirteen, as heretofore and hereafter amended. The words "Federal Reserve Board" shall be held to mean the Federal Reserve Board created and described in the Federal Reserve Act. The words "Federal Reserve Banks" shall be held to mean Federal Reserve Banks created and organized under the authority of the Federal Reserve Act. The words "member bank" shall be held to mean any National or State bank or bank and trust company which has become or which becomes a member of one of the Federal Reserve Banks created by the Federal Reserve Act.

(a) Any bank incorporated under the laws of this state shall have the power to subscribe to the capital stock and become a member of a Federal Reserve Bank.

(b) Any bank incorporated under the laws of this state which is, or which may become, a member of the Federal Reserve Bank is by this chapter vested with all powers conferred upon member banks of the Federal Reserve Banks by terms of the Federal Reserve Act as fully and completely as if such powers were specifically enumerated and described therein, and such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, or by regulations of the Federal Reserve Board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers herein conferred.

(c) A compliance on the part of any such bank with the reserve requirements of the Federal Reserve Act shall be held to be a full compliance with the provisions of the laws of this state, which require banks to maintain cash balances in their vaults or with other banks, and no such bank shall be required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act.

(d) Any such bank shall continue to be subject to the supervision and examination required by the laws of this state, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations; and the authorities of this state having supervision over such banks may disclose to the Federal Reserve Board, or to the examiners duly appointed by it, all information in reference to the affairs of any bank which has become, or desires to become, a member of a Federal Reserve Bank. (1921, c. 4, s. 42; C. S. 220(q).)

§ 53-62. Establishment of branches.—Any bank doing business under this chapter may establish branches in the cities in which they are located, or elsewhere, after having first obtained the written approval of the commissioner of banks, which approval may be given or withheld by the commissioner of banks, in his discretion, and shall not be given until he shall have ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch. Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier and such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee shall be responsible for the conduct and management of said branch, but not of the parent bank or of any branch save that of which they are officers, managers, or committee: Provided, that the commissioner of banks shall not authorize the establishment of any branch, the paid-in capital stock of whose parent bank is not sufficient in an amount to provide for the capital of at least twenty-five thousand dollars for the parent bank, and at least twenty-five thousand dollars for each branch which it is proposed to establish in cities or towns of three thousand population or less; nor less than thirty thousand dollars in cities and towns whose population exceeds three thousand, but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand, but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns whose population exceeds twenty-five thousand. All banks operating branches prior to February 18, 1921, shall, within a time limit to be prescribed by the commissioner of banks, cause said branch bank to conform to the provisions of this section: Provided, however, that any bank with a capital stock (including both common and preferred) of one million ($1,000,000.00) dollars or more may without additional capital establish and operate such number of branches or agencies in the state of North Carolina as the commissioner of banks may in his discretion permit; but a bank operating branches under this proviso shall at all times maintain an unimpaired capital of at least one million ($1,000,000.00) dollars: Provided further, that the commissioner of banks shall not permit the establishment of additional branches, and/or agencies unless said bank maintains its capital stock and surplus in ratio of one to

ten to its deposits; Provided that in small communities having no other banking facilities, and upon a finding by the commissioner of banks that the public convenience and advantage will be promoted thereby, the opening of "tellers window agencies or branches" of then existing banks may be permitted, but no more than one such agency or branch may be so opened in any one community nor shall any bank be permitted to open such an agency or branch when its unimpaired capital and surplus in proportion to deposits is below that herein required. (1921, c. 4, s. 43; Ex. Sess. 1921, c. 56, s. 2; 1927, c. 47, s. 8; 1931, c. 243, s. 5; 1933, c. 451, s. 1; 1935, c. 139; C. S. 220(r).)

§ 53-63. Certificate of deposit, unlawful issuing of.—It shall be unlawful for any bank to issue any certificate of deposit or other negotiable instrument of its indebtedness to the holder thereof except for lawful money of the United States, checks, drafts, or bills of exchange which are the actual equivalent of such money; nor shall such moneys, checks, drafts, or bills of exchange be the proceeds of any note given in payment of the purchase price of any stock. Any officer or employee of any bank violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court. (1921, c. 4, s. 44; C. S. 220(s).)

§ 53-64. Bank's own stock, unlawful to loan on.—It shall be unlawful for any bank to make any loan secured by the pledge of its own shares of stock, nor shall any bank be the holder as pledgee, or as purchaser, of any portion of its capital stock unless such stock is purchased or pledged to it to prevent loss upon a debt previously contracted in good faith. Provided, that whenever any bank shall have shares of its own stock sold to, or pledged to it, for the purpose of preventing a loss upon a debt previously contracted, it shall dispose of all such shares of stock within a period of six months from the date such stock was sold or pledged to it and if not so disposed of, the same shall be charged to profit and loss and no longer carried as an asset of the bank. (1921, c. 4, s. 45; 1927, c. 47, s. 9; C. S. 220(t).)

§ 53-65. Deposits payable on demand. — Any bank may receive deposits of funds subject to withdrawal or to be paid upon the checks of the depositor. All deposits in such banks shall be payable on demand, without notice, except when the contract of deposit shall otherwise provide. (1921, c. 4, s. 46; C. S. 220(u).)

§ 53-66. Savings deposits.—Any bank conducting a savings department may receive deposits on such terms as are authorized by its board of directors and agreed to by its depositors. The board of directors shall prescribe the terms upon which such deposits shall be received and paid out, and a passbook shall be issued to each depositor containing the rules and regulations adopted by the board of directors governing such deposits, in which shall be entered each deposit made, the interest allowed thereon, and each payment made to such depositor. By accepting such book the depositor assents and agrees to the rules and regulations therein contained. (1921, c. 4, s. 47; C. S. 220(v).)

§ 53-67. Boards of directors, banks controlled by.—The corporate powers, business, and property of banks doing business under this chapter shall be exercised, conducted, and controlled by its board of directors, which shall meet at least quarterly. Such board shall consist of not less than five directors, to be chosen by the stockholders, and shall hold office for one year, and until their successors are elected and qualified. The annual meeting of stockholders for the election of directors shall be held during the month of January of each year. (1921, c. 4, s. 48; 1925, c. 170; C. S. 220(w).)

§ 53-68. Statements showing deposits of state and state officials.—All banks in which any money is on deposit by the state of North Carolina or any of the officials thereof shall, in their published statements as by law required, show the amount of money on deposit in such bank to the credit of the state or of any official thereof; and no officials of the state shall deposit money in any bank which shall refuse to comply with the provisions of this section. (1923, c. 211, s. 1; C. S. 220(x).)

§ 53-69. Deposits by state departments or institutions.—All moneys collected by any state department or institution shall be deposited with or to the credit of the state treasurer, as and when directed by the governor and council of state. (1923, c. 211, s. 2; C. S. 220(y).)

§ 53-70. Fees on remittances covering checks.—For the purpose of providing for the solvency, protection, and safety of the banking institutions and trust companies chartered by this state and having their principal offices in this state, it shall be lawful for all banks and trust companies in this state to charge a fee, not in excess of one-eighth of one per cent, on remittances covering checks, the minimum fee on any remittance therefor to be ten cents. (1921, c. 20, s. 1; C. S. 220(z).)

§ 53-71. Checks payable in exchange. — In order to prevent accumulation of unnecessary amounts of currency in the vaults of the banks and trust companies chartered by this state, all checks drawn on said banks and trust companies shall, unless specified on the face thereof to the contrary by the maker or makers thereof, be payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank when any such check is presented by or through any Federal Reserve Bank, post office, or express company, or any respective agents thereof. (1921, c. 20, s. 2; C. S. 220(aa).)

§ 53-72. Notation on checks forbidden. — It shall be unlawful for any person, or persons, other than the maker thereof to make, by rubber stamp or otherwise, any notation on any check drawn on any bank or trust company chartered in this state, the effect of which notation shall change or affect any condition or provision thereof, as created by §§ 53-70 through 53-74. Any person or persons violating this section shall be guilty of a misdemeanor, and upon conviction shall pay a fine of not more than two hundred dollars, ($200) or be imprisoned not more than thirty days. (1921, c. 20, s. 3; C. S. 220(bb).)

§ 53-73. Checks exempted.—All checks drawn

on the banks and trust companies in this state in payment of obligations due the state of North Carolina or the federal government shall be exempt from the provisions of §§ 53-70 and 53-71. (1921, c. 20, s. 4; C. S. 220(cc).)

§ 53-74. No protest on checks refused for nonpayment of exchange charges. No action on refusal to pay checks.—No officer in this state shall protest for nonpayment any check or checks drawn on any bank or trust company chartered by this state when payment is refused by the drawee bank solely on account of failure or refusal of the holder or owner thereof to pay exchange charges authorized in §§ 53-70 through 53-74; and there shall be no right of action, either in law or equity, against any bank or trust company chartered by this state, for refusal to pay any such check when such action is based alone on the ground of refusal to pay exchange or collection charges authorized in §§ 53-70 through 53-74. (1921, c. 20, s. 5; C. S. 220(dd).)

§ 53-75. Statement of account from bank to depositor deemed final adjustment if not objected to within five years.—When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's passbook has been written up by the bank showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after the period of five years from the date of its rendition in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the incorrectness of such account for any cause. (1929, c. 188, s. 1.)

§ 53-76. Depositor not relieved from exercising diligence as to errors.—Nothing in the preceding section shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of § 53-52 to cases governed thereby. (1929, c. 188, s. 2.)

§ 53-77. Governor empowered to proclaim banking holidays.—The governor is hereby authorized and empowered, by and with the advice and consent of the council of state, to name and set apart such day or days, as he may from time to time designate, as banking holidays. During such period of holidays, all the ordinary and usual operations and business of all banking corporations, state or national, in this state shall be suspended, and during such period no banking corporation shall pay out or receive deposits, make loans or discounts, transfer credits, or transact any other banking business whatsoever: Provided, however, that during any such holiday, including the holiday validated in this section, the commissioner of banks, with the approval of the Governor, may permit any or all such banking institutions to perform any or all of the usual banking functions.

The banking holiday heretofore proclaimed by the governor of this state for Monday, Tuesday and Wednesday, March sixth, seventh and eighth, one thousand nine hundred and thirty-three, is hereby approved and validated, and the said days are hereby declared to be banking holidays in the state of North Carolina. (1933, c. 120, ss. 1, 2.)

Art. 7. Officers and Directors.

§ 53-78. Executive committee, directors shall appoint.—The board of directors shall appoint an executive committee or committees, each of which shall be composed of at least three of its members with such duties and powers as are defined by the regulations or by-laws, who shall serve until their successors are appointed. Such executive committee or committees shall meet as often as the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all loans and investments. All loans and investments shall be made under such rules and regulations as the board of directors may prescribe. (1921, c. 4, s. 49; C. S. 221(a).)

§ 53-79. Minutes of directors and executive committee meetings.—Minutes shall be kept of all meetings of the board of directors and of the executive committee or committees, and same shall be recorded in a book or books which shall be kept for that purpose; which book or books shall be kept on file in the bank. Such minutes shall show a record of the action taken by the board of directors and executive committee or committees, on all loans, discounts, and investments made, authorized or approved, and such further action as the board of directors and executive committee or committees shall make concerning the conduct, management, and welfare of the bank. The minutes of the executive committee or committees shall be submitted to the board of directors for approval at each meeting of the board. (1921, c. 4, s. 50; C. S. 221(b).)

§ 53-80. Directors, qualifications of. — Every director of a bank doing business under this chapter shall be the owner and holder of shares of stock in the bank having a par value of not less than five hundred dollars, provided, such bank shall have a capital stock of more than fifteen thousand dollars; and not less than two hundred dollars if such bank shall have a capital stock of fifteen thousand dollars or less. And every such director shall hold such shares in his own name unpledged and unencumbered in any way. The office of any director at any time violating any of the provisions of this section shall immediately become vacant, and the remaining directors shall declare his office vacant and proceed to fill such vacancy forthwith. Not less than three-fourths of the directors of every bank doing business under this chapter shall be residents of the state of North Carolina: Provided, that as to banks doing business before February 18, 1921, the requirements as to amount of stock owned by a director shall not apply unless the commissioner of banks shall rule that such director is not bona fide discharging his duties. (1921, c. 4, s. 51; 1931, c. 243, s. 5; C. S. 221(c).)

§ 53-81. Directors shall take oath. — Every director shall, within thirty days after his elec-

tion, take and subscribe, in duplicate, an oath that he will diligently and honestly perform his duties in such office; and that he is the owner in good faith of the shares of stock of the bank required to qualify him for such office, standing in his own name on its books, and one of such oaths shall forthwith be filed with the commissioner of banks, and the other shall be kept on file in the bank. (1921, c. 4, s. 52; 1931, c. 243, s. 5; C. S. 221(d).)

§ 53-82. Directors, liability of. — Any director of any bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such bank, any of the provisions of this chapter shall be held personally and individually liable for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation. Any aggrieved stockholder in any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought. The procedure shall follow as nearly as may be that prescribed by § 44-14, relative to suits on bonds of contractors with municipal corporations. (1921, c. 4, s. 53; 1935, c. 464; C. S. 221(e).)

§ 53-83. Directors, examining committee of. — A committee of at least three directors or stockholders shall be appointed annually to examine, or to superintend the examination of the assets and the liabilities of the bank, and to report to the board of directors the result of such examination. The committee, with the approval of the board of directors, may provide for such examinations by a certified public accountant or clearing-house examiner in any city where such examination is provided for by the rules of such clearing-house association. A copy of such report of examination, which is herein required to be made, attested, and verified under oath by the signature of at least three members of such committee, shall forthwith be filed with the commissioner of banks. (1921, c. 4, s. 54; 1931, c. 243, s. 5; C. S. 221(f).)

§ 53-84. Depositaries, designated by directors. —By resolution of the board of directors, other banks organized under the laws of this state, or of another state, or of the national banking act of the United States, shall be designated as depositaries or reserve banks in which a part of such bank's reserve shall be deposited, subject to payment on demand. A copy of such resolution shall, upon its adoption, be forthwith certified to the commissioner of banks and the depositary so designated shall be subject to the approval of the commissioner of banks. For causes which he may deem adequate, the commissioner of banks shall have authority at any time to withdraw such approval. (1921, c. 4, s. 55; 1931, c. 243, s. 5; C. S. 221(g).)

§ 53-85. Stockholders' book. — The directors shall provide a book in which shall be kept the name and resident address of each stockholder, the number of shares held by each, the time when such person became a stockholder, together with all transfer of stock, stating the time when made, the number of shares and by whom transferred, which book shall be subject to the inspection of the directors, officers, and stockholders of the bank at all times during the usual hours for the transaction of business. (1921, c. 4, s. 56; C. S. 221(h).)

§ 53-86. Directors, officers, etc., accepting fees, etc. — No gift, fee, commission, or brokerage charge shall be received, directly or indirectly, by any officer, director, or employee of any bank doing business under this chapter, on account of any transaction to which the bank is a party. Any officer, director, employee, or agent who shall violate the provisions of this section shall be guilty of a misdemeanor, and shall be and thereafter remain ineligible as an officer, director, or employee of any bank doing business under this chapter. Nothing in this section shall be construed to prevent the payment of necessary and proper attorney's fees to any licensed attorney for professional services rendered. (1921, c. 4, s. 57; C. S. 221(i).)

§ 53-87. Dividends, directors may declare. — The board of directors of any bank may declare a dividend of so much of its undivided profits as they may deem expedient, subject to the requirements hereinafter provided. When the surplus of any bank having a capital stock of fifteen thousand dollars or more is less than fifty per cent of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus twenty-five per cent of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to fifty per cent of the paid-in capital stock. When the surplus of any bank having a capital stock of less than fifteen thousand dollars is less than one hundred per cent of its paid-in capital stock, such bank shall not declare any dividend until it has transferred from undivided profits to surplus fifty per cent of said undivided profits, or any lesser percentage that may be required to restore the surplus to an amount equal to one hundred per cent of the paid-in capital stock. In order to ascertain the undivided profits from which such dividend may be made, there shall be charged and deducted from the actual profits:

(a) All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the bank;

(b) Interest paid or then due on debts which it owes;

(c) All taxes due;

(d) All overdrafts which have been standing on the books of the bank for a period of sixty days or longer;

(e) All losses sustained by the bank. In computing the losses, there shall be included debts owing the bank which have become due and are not in process of collection, and on which interest for one year or more is due and unpaid, unless said debts are well secured; and debts reduced to final judgments which have been unsatisfied for more than one year and on which no interest has been paid for a period of one year, unless said judgments are well secured.

(f) All investments carried on its books, which

are prohibited under the provisions of this chapter, or rules and regulations made by the commissioner of banks, pursuant to the powers conferred under this chapter. (1921, c. 4, s. 58; 1927, c. 47, s. 10; 1931, c. 243, s. 5; C. S. 221(j).)

§ 53-88. Surplus, shall not be used for.—The surplus of any bank doing business under this chapter shall not be used for the purpose of paying expenses or losses until the credit to undivided profits has been exhausted. But any portion of such surplus may be converted into capital stock and distributed as a stock dividend, provided that such surplus shall not thereby be reduced below fifty per cent of the paid-in capital of such bank, having a paid-in capital of fifteen thousand dollars or more. When the surplus of any bank having a capital stock of less than fifteen thousand dollars shall reach an amount equal to one hundred per cent of its paid-in capital, the board of directors of such bank shall declare a dividend of fifty per cent of said surplus and distribute the same as a stock dividend: Provided, that where the distribution of such a stock dividend would increase the capital stock of any bank to an amount greater than fifteen thousand dollars, the board of directors of such bank may, in its discretion, declare a stock dividend of only so much of said surplus as will be necessary to increase the stock of the said bank to fifteen thousand dollars. (1921, c. 4, s. 59; C. S. 221(k).)

§ 53-89. Overdrafts, payment by officer, etc.—Any officer (other than a director), or employee of a bank, who shall permit any customer or other person to overdraw his account, or who shall pay any check or draft, the paying of which shall overdraw any account, unless the same shall be authorized by the board of directors or by a committee of such board authorized to act, shall be personally and individually liable to such bank for the amounts of such overdrafts. (1921, c. 4, s. 60; C. S. 221(l).)

§ 53-90. Officers and employees shall give bond.—The active officers and employees of any bank before entering upon their duties shall give bond to the bank in a bonding company authorized to do business in North Carolina, in the amount required by the directors and upon such form as may be approved by the commissioner of banks, the premium for same to be paid by the bank. The commissioner of banks or directors of such bank may require an increase of the amount of such bond whenever they may deem it necessary. If injured by the breach of any bond given hereunder, the bank so injured may put the same in suit and recover such damages as it may have sustained. (1921, c. 4, s. 61; Ex. Sess., 1921, c. 18; 1927, c. 47, s. 11; 1929, c. 72, s. 2; 1931, c. 243, s. 5; C. S. 221(m).)

§ 53-91. Officers and employees may borrow, when.—No officer or employee of a bank, nor a firm or partnership of which such officer or employee is a member, nor a corporation in which such officer or employee owns a controlling interest, shall borrow any amount whatever from the bank of which he is an officer or employee, except upon good collateral or other ample security or endorsement; and no such loan shall be made until the same has been approved by a majority of the board of directors and a resolution, duly entered upon the minutes of the board of directors and signed by them, showing the amount of the loan, the directors approving the same and a brief description of the security upon which said loan is made; and a certified copy of such resolution shall be attached to the instrument evidencing the indebtedness. Provided, however, this section shall not apply to directors who are neither officers nor employees of the bank. (1921, c. 4, s. 62; 1925, c. 119, s. 2; 1927, c. 47, s. 12; C. S. 221(n).)

Art. 8. Commissioner of Banks and Banking Department.

§ 53-92. Appointment of commissioner of banks; state banking commission.—On or before April first, one thousand nine hundred and thirty-one, after the ratification of this section, and quadrennially thereafter, the governor, with the advice and consent of the senate, shall appoint a commissioner of banks who shall hold his office for a term of four years or until his successor has been appointed and has qualified, subject, however, to the provisions herein made as to his removal. The commissioner of banks shall, before entering upon the discharge of his duties, enter into bond with some surety company authorized to do business in the State of North Carolina, in the sum of not less than fifty thousand dollars, conditioned upon the faithful and honest discharge of all duties and obligations imposed by statute upon him.

There is hereby created, to become effective on April first, one thousand nine hundred and thirty-nine, a state banking commission, which commission shall consist of the state treasurer and the attorney general, who shall serve as ex officio members thereof, and five members to be appointed by the governor, four of which said members shall be practical bankers and one shall be a business man who is not an executive official in any bank, said five members shall be appointed for a term of four years beginning on April first, one thousand nine hundred and thirty-nine; and said appointive members shall receive as compensation the same per diem and expenses paid to the members of the advisory budget commission, which compensation shall be paid from the fees collected for the examination of banks, as provided by law.

The banking commission shall meet at such time or times, and not less than once every three months, as the commission shall, by resolution, prescribe, and the commission may be convened in special session at the call of the governor, or upon the request of the commissioner of banks. The state treasurer shall be chairman of the said commission.

No member of said commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said commission shall divulge or make use of any information coming into his possession as a result of his service on such commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such commission in connection with the condition of

any state banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

The commissioner of banks shall act as the executive officer of the banking commission, but the commission shall provide, by rules and regulations, for hearings before the commission upon any matter or thing which may arise in connection with the banking laws of this state upon the request of any person interested therein, and review any action taken or done by the commissioner of banks.

The banking commission is hereby vested with full power and authority to supervise, direct and review the exercise by the commissioner of banks of all powers, duties, and functions now vested in or exercised by the commissioner of banks under the banking laws of this state. (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1.)

§ 53-93. Powers and duties of commissioner.—The commissioner of banks shall have the powers, duties and functions herein given, and in addition thereto such other powers and rights as may be necessary or incident to the proper discharge of his duties. (1931, c. 243, s. 2.)

§ 53-94. Right to sue and defend in actions involving banks; liability to suit.—As commissioner of banks he is empowered to sue and prosecute or defend in any action or proceeding in any courts of this State or any other state and in any court of the United States for the enforcement or protection of any right or pursuit of any remedy necessary or proper in connection with the subjects committed to him for administration or in connection with any bank or the rights, liabilities, property or assets thereof, under his supervision; but nothing herein shall be construed to render the commissioner of banks liable to be sued except as other departments and agencies of the State may be liable under the general law. (1931, c. 243, s. 3.)

§ 53-95. Commissioner to exercise powers under supervision of banking commission.—All the powers, duties, and functions granted to or imposed upon the commissioner of banks by law shall be exercised by him under the direction and supervision of the banking commission, and wherever provision is made in any law now in effect authorizing and permitting the commissioner of banks to make rules and regulations with respect to any actions or things required to be done under the banking laws of this state, such rules and regulations shall be made by the banking commission, and the words "the commissioner of banks," used in such statutes authorizing him to make rules and regulations, shall be construed to mean the banking commission, and the words "banking commission" substituted in such statutes for "commissioner of banks." (1931, c. 243, s. 4; 1939, c. 91, s. 2.)

§ 53-96. Salary of commissioner; legal assistance and compensation.—The salary of the commissioner of banks shall be fixed by the advisory budget commission. The governor may in his discretion appoint and assign to the commissioner of banks such legal assistance as in his judgment may be necessary; and compensation therefor, when permanent, shall be fixed in like manner. (1931, c. 243, s. 6.)

§ 53-97. Vacancy appointments and removal.—Vacancies existing in the office of commissioner of banks by death, resignation or otherwise shall be filled by the governor; and he shall have the power of removal for sufficient cause. (1931, c. 243, s. 8.)

§ 53-98. Seal of office of commissioner; certification of documents.—The commissioner of banks shall have a seal of office bearing the legend "State of North Carolina—Commissioner of Banks," with such other appropriate device as he may adopt. (1931, c. 243, s. 9.)

§ 53-99. Official records.—The commissioner of banks shall keep a record in his office of his official acts, rulings and transactions: Provided, however, that where any disclosure of the records in his office, or of any report or other transaction, might injuriously affect any bank actually operating, such disclosure shall not be made or required except as may now be done under the provisions of law in similar cases. (1931, c. 243, s. 10.)

§ 53-100. General or special investigations of insolvent banks.—Whenever it may appear to be to the public interest, the governor may cause a general or special investigation to be made of the affairs of any insolvent bank or banks, singly or in related groups, with a view to discovering and establishing the causes of the failure of such bank or banks, and responsibility therefor; and of discovering the dealings with such banks of persons, officers, corporations or municipalities which may have led to such insolvency or which may have endangered or involved any public funds therein. The governor may assign counsel who shall prosecute such inquiry before the commissioner of banks, or a deputy or commissioner appointed by the commissioner of banks for the purpose; and the commissioner of banks is hereby empowered to conduct such investigation either in person or through such commissioner or deputy appointed by him. The inquiry shall be held at the office of commissioner of banks in the city of Raleigh or at any other place or places in the State designated by the commissioner of banks under such rules and regulations as the state banking commission may prescribe and may be adjourned from time to time as convenience may require. Attendance of witnesses and production of papers may be required by subpoena under the hand of the commissioner or his deputy, and on failure of any witness to appear as subpoenaed or his or her failure to produce any books or papers, as called for by such commissioner or deputy on subpoena or other order due notice shall be served, at the instance of such commissioner or deputy, of not less than three days to appear before a judge of the superior court residing in or holding courts within the district wherein such witness is subpoenaed or notified to appear or produce such records or papers, on a day certain and a place named, when such judge shall hear the matter and is authorized to punish such witness as for contempt as he may find on such hearing.

A summary of such investigation shall be made with the findings and recommendations of the commissioner thereon, and a copy thereof submitted to the governor, and when the facts shall

disclose that any person or persons are criminally responsible, a summary shall be sent to the solicitor of the judicial district likely to have jurisdiction of the matter, whose duty it shall be to have the matter presented to the grand jury for its action. The governor may employ counsel to assist in the prosecution of any person or persons criminally responsible and fix his compensation and the manner of its payment. (1931, c. 243, s. 11.)

§ 53-101. Clerical help.—The commissioner of banks is empowered to employ sufficient clerical and secretarial help, and other necessary labor to conduct the affairs of his office with economy and efficiency. Persons so employed shall be paid as other employees in the departments of the State and shall be under the same rules and regulations. (1931, c. 243, s. 12.)

§ 53-102. Suitable offices; transfer of books, records, etc., by corporation commission.—Suitable offices shall be provided for the commissioner of banks in some State owned public building in Raleigh. (1931, c. 243, s. 13.)

§ 53-103. Acceptances. — Banking corporations and banking and trust companies doing a fiduciary business shall have power to accept drafts or bills of exchange drawn upon them, and to endorse drafts or bills of exchange drawn upon another, having not more than six months sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods, or which grow out of transactions involving the domestic shipment of goods. No such banking corporation or banking and trust company doing a fiduciary business shall accept or indorse, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus, unless the banking corporation or banking and trust company doing a fiduciary business is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no such banking corporation or banking and trust company doing a fiduciary business shall accept or indorse such bills or drafts to an amount equal at any one time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus. The commissioner of banks, however, under such general regulations as the state banking commission may prescribe, which shall apply to all banking corporations or banking and trust companies doing a fiduciary business alike regardless of the amount of capital stock and surplus, may authorize any banking corporation or banking and trust company doing a fiduciary business to accept or indorse such bills or drafts to an amount not exceeding at any time in the aggregate one hundred per centum of its paid-up and unimpaired capital stock and surplus: Provided, that the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty per centum of such capital stock and surplus. (1919, c. 76; 1931, c. 243, s. 5; 1939, c. 91, s. 2; C. S. 222.)

§ 53-104. Commissioner of banks shall have supervision over, etc.—Every bank, corporation, partnership, firm, company, or individual, now or hereafter transacting the business of banking, or doing a banking business in connection with any other business, under the laws of and within this state, shall be subject to the provisions of this chapter, and shall be under the supervision of the commissioner of banks. The commissioner of banks shall exercise control of and supervision over the banks doing business under this chapter, and it shall be his duty to execute and enforce through the state bank examiners and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to banks as defined in this chapter. For the more complete and thorough enforcement of the provisions of this chapter, the state banking commission is hereby empowered to promulgate such rules, regulations, and instructions, not inconsistent with the provisions of this chapter, as may in its opinion be necessary to carry out the provisions of the laws relating to banks and banking as herein defined, and as may be further necessary to insure such safe and conservative management of the banks under its supervision as will provide adequate protection for the interests of the depositors, creditors, stockholders, and public in their relations with such banks. All banks doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to banks and banking, and all rules, regulations, and instructions that may be promulgated or issued by the state banking commission. (1921, c. 4, s. 63; 1931, c. 243, s. 5; 1939, c. 91, s. 2; C. S. 222(a).)

§ 53-105. Reports of condition. — Every bank shall make to the commissioner of banks not less than three reports during each year, according to the form which may be prescribed by said commissioner of banks; which report shall be verified by the oath or affirmation of the president, vice-president, cashier, secretary, or treasurer of said bank, and in addition thereto, two of the directors. Each such report shall exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the commissioner of banks specified, and shall be transmitted to the commissioner of banks within ten days after the receipt of a request or requisition therefor from the commissioner of banks; and in a form prescribed by the commissioner of banks; a summary of such report shall be published in a newspaper published in the place where the bank is located, or if there is no newspaper in the place, then in the nearest one published thereto in the county in which such bank is established. Proof of such publication shall be furnished the commissioner of banks in such form as may be prescribed by him. (1921, c. 4, s. 64; 1923, c. 148, s. 2; 1931, c. 243, s. 5; C. S. 222(b).)

§ 53-106. Special reports. — The commissioner of banks may call for special reports whenever in his judgment it is necessary to inform him of the condition of any bank, or to obtain a full and complete knowledge of its affairs. Said reports shall be in and according to the form prescribed by the commissioner of banks, and shall be verified in the manner provided in § 53-105, and

shall be published as therein provided, if required by the commissioner of banks so to be. (1921, c. 4, s. 66; 1931, c. 243, s. 5; C. S. 222(d).)

§ 53-107. Failure to make report, penalty for.—Every bank failing to make and transmit any report which the commissioner of banks is authorized to require by this chapter, and in and according to the form prescribed by said commissioner of banks, within ten days after the receipt of a request or requisition therefor, or failing to publish the reports as required, shall forthwith be notified by the commissioner of banks, and if such failure continue for five days after the receipt of such notice, such delinquent bank shall be subject to a penalty of two hundred dollars. The penalty herein provided for shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the attorney-general to prosecute all such actions. (1921, c. 4, s. 67; 1931, c. 243, s. 5; C. S. 222(e).)

§ 53-108. List of stockholders to be kept. — Every bank doing business under this chapter shall at all times keep a correct record of the names of all its stockholders, and once in each year, or whenever called upon, file in the office of the commissioner of banks a correct list of all its stockholders, the resident address of each, and the number of shares held by each. (1921, c. 4, s. 68; 1931, c. 243, s. 5; C. S. 222(f).)

§ 53-109. Official communications of commissioner of banks. — Each official communication directed by the commissioner of banks, or any state bank examiner, to any bank, or to any officer thereof, relating to an examination or investigation conducted or made by the commissioner of banks, or containing suggestions or recommendations as to the conduct of the bank shall, if required by the authority submitting same, be submitted by the officer or director receiving it, to the executive committee or board of directors of such bank and duly noted in the minutes of such meeting. The receipt and submission of such notice to the executive committee or board of directors shall be certified to the commissioner of banks within such time as he may require, by three members of such committee or board. (1921, c. 4, s. 69; 1931, c. 243, s. 5; C. S. 222(g).)

§ 53-110. Banking commission to prescribe books, records, etc.—Whenever in its judgment it may appear to be advisable, the state banking commission may issue such rules, instructions, and regulations prescribing the manner of keeping books, accounts, and records of banks as will tend to produce uniformity in the books, accounts, and records of banks of the same class. (1921, c. 4, s. 70; 1931, c. 243, s. 5; 1939, c. 91, s. 2; C. S. 222(h).)

§ 53-111. Reserve, when below legal requirement.—When the reserve of any bank falls below the amount required by law, it shall not make new loans or discounts, otherwise than by discounting or purchasing bills of exchange, payable at sight or on demand, nor make dividends of its profits until the reserve required by law is restored. The commissioner of banks shall require any bank whose reserve falls below the amount herein required immediately to make good such reserve. In case the bank fails for thirty days thereafter to make good its reserve, the commissioner of banks may forthwith take possession of the property and business of such bank until its affairs be adjusted or finally liquidated as provided for in this chapter. (1921, c. 4, s. 71; 1931, c. 243, s. 5; C. S. 222(i).)

§ 53-112. Appraisal of assets of doubtful value.—If any assets of a bank are of a doubtful or disputed value, an appraisal of such assets may be had by the commissioner of banks, and for the purpose of making such appraisal the commissioner of banks shall designate one agent as an appraiser and the bank shall designate an agent as an appraiser and the two so chosen shall designate a third. The appraisers so selected shall make an appraisal of the assets so designated as doubtful or disputed and file a written report of their appraisal with the bank and with the commissioner of banks. In making such appraisal the appraisers shall determine the actual cash market value of such assets. Such appraisal, when made, shall be accepted as the value of such assets for the purpose of examination or for the purpose of determining the actual cash market value of such assets. The appraisers designated shall not be interested, in any way, either in the bank or as an employee of the commissioner of banks and all expenses of such appraisal shall be paid by the bank whose assets are appraised. If any bank required to appoint an appraiser hereunder shall fail for ten (10) days to appoint an appraiser, the commissioner of banks may apply to the Clerk of the Superior Court of the county in which the bank is located for the appointment of such an appraiser, and the clerk shall thereupon make the appointment for the bank. (1927, c. 47, s. 13; 1931, c. 243, s. 5.)

§ 53-113. Certified copies of records as evidence.—In all civil actions in the courts of this state wherein are involved as evidence or otherwise any of the records of the commissioner of banks, a certified copy over the signature and under the seal of the commissioner of banks shall be admissible in evidence to the same effect as if produced in court at trial by the proper custodian of the records. (1927, c. 47, s. 14; 1931, c. 243, s. 5.)

§ 53-114. Other powers of state banking commission.—In addition to all other powers conferred upon and vested in the state banking commission, the said commission, with the approval of the governor, is hereby authorized, empowered and directed, whenever in its judgment the circumstances warrant it:

(a) To authorize, permit, and/or direct and require all banking corporations under its supervision, to extend for such period and upon such terms as it deems necessary and expedient, payment of any demand and/or time deposits.

(b) To direct, require or permit, upon such terms as it may deem advisable, the issuance of clearing house certificates or other evidences of claims against assets of such banking institutions.

(c) To authorize and direct the creation, in such banking institutions, of special trust accounts for the receipt of new deposits, which deposits shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separate in cash or on deposit in such banking institutions as it shall designate or invested in such obliga-

tions of the United States and/or the state of North Carolina as it shall designate.

(d) To adopt for such banking institutions such regulations as are necessary in its discretion to enable such banking institutions to comply fully with the federal regulations prescribed for national or state banks. (1933, c. 120, s. 3; 1939, c. 91, s. 2.)

§ 53-115. State banking commission to make rules and regulations.—The state banking commission is hereby authorized, empowered and directed to make all necessary rules and regulations, and to give all necessary instructions with respect to such banking corporations which the commissioner of banks may authorize, permit and/or direct and require to be conducted under the provisions of §§ 53-77, 53-114, 53-115, and 53-116. And it shall be the duty of all such banking corporations and their officers, agents and employees, to comply fully with any and all such rules, regulations and instructions, established and promulgated by the state banking commission with respect to such banking corporations under the terms of §§ 53-77, 53-114, 53-115, and 53-116; and such orders, rules, and regulations shall have the same force and effect as rules, regulations and instructions promulgated under the existing banking laws. (1933, c. 120, s. 4; 1939, c. 91, s. 2.)

§ 53-116. Commissioner need not take over banks failing to meet deposit demands.—The commissioner of banks is authorized and directed not to take possession of any banking corporation under his supervision for failure to meet its deposit liabilities during the period in which such banking corporation is operating under the terms of § 53-114, paragraph (a); and he is hereby relieved from any and all liability for permitting such banking corporations to continue operations under the terms thereof. (1933, c. 120, s. 5.)

Art. 9. Bank Examiners.

§ 53-117. Appointment by commissioner of banks.—The commissioner of banks, for the purpose of carrying out the provisions of this chapter, shall appoint from time to time such state bank examiners, assistant state bank examiners, clerks and stenographers as may be necessary to make a thorough examination of and into the affairs of every bank doing business under this chapter, as often as the commissioner of banks may deem necessary, and at least once each year. The commissioner of banks may at any time remove any person appointed by him under this chapter. (1921, c. 4, s. 72; 1931, c. 243, s. 5; C. S. 223(a).)

§ 53-118. Duties and powers.—It shall be the duty of the examiners to verify all reports made to the commissioner of banks by the officers and directors, members, or individuals conducting any banking institution, as required by this chapter or by the commissioner of banks. The officers of every bank shall submit and surrender its books, assets, papers, and concerns to the examiners appointed under this chapter, who shall retain the custody and possession of such books, assets, papers, and concerns for such length of time as may be required for the purpose of making an examination as required by this chapter. If any officer shall refuse to surrender the books, assets, papers, and concerns as herein provided, or shall refuse to be examined under oath touching the affairs of such bank, the commissioner of banks may forthwith take possession of the property and business of the bank and liquidate its affairs in accordance with the provisions of this chapter. (1921, c. 4, s. 73; 1931, c. 243, s. 5; C. S. 223(b).)

§ 53-119. Officers and employees, removal of.—The commissioner of banks shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any bank doing business under this chapter, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the bank, or who persistently violates the laws of this state or the lawful orders, instructions, and regulations issued by the state banking commission. (1921, c. 4, s. 74; 1931, c. 243, s. 5; 1939, c. 91, s. 2; C. S. 223(c).)

§ 53-120. Examiners may administer oath.—For the purpose of making examinations as required by this chapter, any duly appointed examiner may administer oaths to examine any officer, director, agent, employee, customer, depositor, shareholder of such bank, or any other person or persons, touching its affairs and business. Any examiner may summon in writing any officer, director, agent, employee, customer, depositor, shareholder, or any person or persons resident of this state to appear before him and testify in relation thereto. (1921, c. 4, s. 75; C. S. 223(d).)

§ 53-121. Examiners may make arrest.—When it shall appear to any examiner, by examination or otherwise, that any officer, agent, employee, director, stockholder, or owner of any bank has been guilty of a violation of the criminal laws of this state relating to banks, it shall be his duty, and he is hereby empowered to hold and detain such person or persons until a warrant can be procured for his arrest; and for such purposes such examiner shall have and possess all the powers of peace officers of such county, and may make arrest without warrant for past offenses. Upon report of his action to the commissioner of banks, said commissioner may direct the release of the person or persons so held, or, if in his judgment such person or persons should be prosecuted, the commissioner of banks shall cause the solicitor of the judicial district in which such detention is had to be promptly notified, and the action against such person or persons shall be continued a reasonable time to enable the solicitor to be present at the trial. (1921, c. 4, s. 76; 1931, c. 243, s. 5; C. S. 223(e).)

§ 53-122. Fees for examinations and other services.—For the purpose of paying the salaries and necessary traveling expenses of the commissioner of banks, State bank examiners, assistant State bank examiners, clerks, stenographers and other employees of the commissioner of banks, the following fees shall be paid into the office of the commissioner of banks: (a) Each bank and each branch of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the commissioner of banks and is authorized to do business or is in process of voluntary liquidation shall, within ten days after the assessment has been made, pay into the office of the commissioner of banks according to its total resources as shown by its report of condition made to the commissioner of banks at the

close of business December thirty-first, nineteen hundred and twenty-six, and on the thirty-first day of December, or the date most nearly approximating same of each year thereafter on which a report of condition is made to the commissioner of banks not in excess of the following fees for its annual examination: Fifty dollars for the first one hundred thousand dollars of assets or less, seven dollars for each one hundred thousand dollars or fraction in excess thereof, and two dollars for each one hundred thousand dollars or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such.

(b) All examinations made other than those provided for in subsection (a) hereof shall be deemed special examinations and for such special examination the bank shall pay into the office of the commissioner of banks the following fees for each special examination: Fifty dollars for the first one hundred thousand dollars of assets or less, seven dollars for each one hundred thousand dollars or fraction in excess thereof, and two dollars for each one hundred thousand dollars or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such. The fees paid for special examination shall be based on the assets of the bank examined as of the date of such examination.

(c) For services performed for any bank other than examination, the commissioner of banks may make such charge as in his opinion is fair and just.

(d) In all criminal cases tried in any of the courts of this state wherein any of the employees of the commissioner of banks are used as witnesses, a fee of ten ($10.00) dollars per day and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the commissioner of banks by the clerk of the court of the county in which the case is tried and thereafter charged in bill of costs as are other costs incurred in the trial; and in all civil actions tried in any of the courts of this State, wherein any of the employees of the commissioner of banks are required as witnesses, the party requiring such employee as witness shall deposit with the commissioner of banks when the subpoena is served a sufficient sum to cover the witness fee of ten ($10.00) dollars per day and expenses, and such sums as may thus be advanced shall thereafter be charged in the bill of costs as other costs are charged.

All sums paid under this subsection shall be paid to the commissioner of banks as are fees for examination and used in like manner.

(e) The total compensation and necessary traveling expenses of the employees of the commissioner of banks shall not in any one year exceed the total fees collected under the provisions of this section. (1921, c. 4, s. 77; 1927, c. 47, s. 15; 1931, c. 243, s. 5; C. S. 223(f).)

§ 53-123. Examiners shall make report. — Examiners shall make a full and detailed report in writing to the commissioner of banks of the condition of each bank within ten days after each and every examination made by them. (1921, c. 4, s. 78; 1931, c. 243, s. 5; C. S. 223(g).)

Art. 10. Penalties.

§ 53-124. Examiner making false report. — If any bank examiner shall knowingly and willfully make any false or fraudulent report of the condition of any bank, which shall have been examined by him, with the intent to aid or abet the officers, owners, or agents of such bank in continuing to operate an insolvent bank, or if any such examiner shall keep or accept any bribe or gratuity given for the purpose of inducing him not to file any report of examination of any bank made by him, or shall neglect to make an examination of any bank by reason of having received or accepted any bribe or gratuity, he shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state prison for not less than four months nor more than ten years. (1921, c. 4, s. 79; C. S. 224(a).)

§ 53-125. Examiners disclosing confidential information.—If any bank examiner or other employee of the commissioner of banks fails to keep secret the facts and information obtained in the course of an examination of a bank, except when the public duty of such examiner or employee requires him to report upon or take official action regarding the affairs of such bank, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned not more than twelve months, or both, in the discretion of the court. Nothing in this section shall prevent the proper exchange of information with the representatives of the banking departments of other states, with the Federal Reserve Bank or national bank examiners, or other authorities, with the creditors of such bank or others with whom a proper exchange of information is wise or necessary, or with the clearing-house officials and examiners. (1921, c. 4, s. 80; 1931, c. 243, s. 5; C. S. 224(b).)

§ 53-126. Loans or gratuities forbidden.—No State bank, or any officer, director or employee thereof shall hereafter make any loan or grant any gratuity to the commissioner of banks, any bank examiner or assistant bank examiner of the commissioner of banks of North Carolina. Any such officer, director or employee violating this provision shall be guilty of a misdemeanor and imprisoned not exceeding one year or fined not more than one thousand dollars, or both; and they may be fined a further sum equal to the money so loaned or gratuity given. If the commissioner of banks, or any bank examiner, or assistant bank examiner of the commissioner of banks of North Carolina shall accept a loan or gratuity from any State bank, or from any officer, director or employee thereof, he shall be guilty of a misdemeanor and imprisoned not exceeding one year, or fined not more than one thousand dollars, or both, and may be fined a further sum equal to the money so loaned or gratuity given. (1927, c. 29, s. 1; 1931, c. 243, s. 5.)

§ 53-127. Bank, unauthorized use of the word. —No corporation shall hereafter be chartered under the laws of this state with the words "bank," "banking," "banker," or "trust" as a part of its name except corporations reporting to the commissioner of banks and under his supervision, or under the supervision of the insurance commissioner; nor shall any corporate name be so amended as to include the words "bank," "banking," "banker," or "trust," unless the corporation be under such supervision. No person,

association, firm, or corporation domiciled within the state of North Carolina, except corporations, persons, associations, or firms reporting to and under the supervision of the commissioner of banks, or under the supervision of the insurance commissioner, shall therein advertise or put forth any sign as bank, banking, banker, or trust company, or use the word bank, banking, banker, or trust as a part of its name and title: Provided, that this chapter shall not be held to prevent any individual as such from acting in any trust capacity as heretofore. Any violation of the provisions of this section shall be a misdemeanor, and upon conviction thereof the offender shall be fined in a sum not exceeding five hundred dollars for each offense. (1921, c. 4, s. 81; 1931, c. 243, s. 5; C. S. 224(c).)

§ 53-128. Derogatory reports, willfully and maliciously making.—Any person who shall willfully and maliciously make, circulate, or transmit to another or others any statement, rumor, or suggestion, written, printed, or by word of mouth, which is directly or by inference derogatory to the financial condition, or affects the solvency or financial standing of any bank, or who shall counsel, aid, procure, or induce another to state, transmit, or circulate any such statement or rumor shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court. (1921, c. 4, s. 82; C. S. 224(d).)

§ 53-129. Misapplication, embezzlement of funds, etc. — Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, wilfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificates, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be guilty of a felony and upon conviction thereof shall be fined not more than ten thousand dollars or imprisoned in the State's prison not more than thirty years, or both. (1921, c. 4, s. 83; 1927, c. 47, s. 16; C. S. 224(e).)

§ 53-130. Making false entries in banking accounts; misrepresenting assets and liabilities of banks.—If any person shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any bank, or shall knowingly subscribe to or exhibit false papers, with intent to deceive any person authorized to examine into the affairs of such bank, or shall willfully and knowingly make, state or publish any false statement of the amount of the assets or liabilities of any bank, he shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state's prison not less than four months nor more than ten years. (Rev., s. 3326; 1903, c. 275, s. 27; C. S. 4402.)

§ 53-131. False certification of a check.—Whoever, being an officer, employee, agent, or director of a bank, certifies a check drawn on such bank, and willfully fails to forthwith charge the amount thereof against the account of the drawer thereof, or willfully certifies a check drawn on such bank unless the drawer of such check has on deposit with the bank an amount of money subject to the payment of such check an equivalent to the amount therein specified, shall be guilty of a felony, and upon conviction shall be fined not more than five thousand dollars or imprisoned in the state prison for not more than five years, or both. (1921, c. 4, s. 84; C. S. 224(f).)

§ 53-132. Insolvent banks, receiving deposits in.—Any person, being an officer or employee of a bank, who receives, or being an officer thereof, permits an employee to receive money, checks, drafts, or other property as a deposit therein when he has knowledge that such bank is insolvent, shall be guilty of a felony, and upon conviction thereof shall be fined not more than five thousand dollars or imprisoned in the state prison not more than five years, or both. Provided, that in any indictment hereunder insolvency shall not be deemed to include insolvency as defined under subsection (d) in the definition of insolvency under § 53-1. (1921, c. 4, s. 85; 1927, c. 47, s. 17; C. S. 224(g).)

§ 53-133. Capital stock, advertising larger amount than that paid in.—It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other way, a larger capital stock than has been actually paid in in cash. Any bank violating this section shall be subject to a penalty of five hundred dollars for each and every offense. The penalty herein provided for shall be recovered by the state in a civil action in any court of competent jurisdiction, and it shall be the duty of the attorney-general to prosecute all such actions. (1921, c. 4, s. 86; C. S. 224(h).)

§ 53-134. Offenses declared misdemeanors; prosecution; employment of counsel; punishment.—Any offense against the banking laws of the state of North Carolina which is not elsewhere specifically declared to be a crime, or for which elsewhere a penalty is not specifically provided, is hereby declared to be a misdemeanor, and shall be punishable at the discretion of the court. The commissioner of banks is authorized and directed to prosecute all offenses against the banking laws of the state, and to that end is expressly authorized to employ counsel to prosecute in the inferior courts and to aid the solicitor in the superior

courts. The auditor of the state shall, upon the certificate of the commissioner of banks, accompanied by an itemized statement of the account, draw his warrant upon the state treasurer to compensate the counsel so employed, and the state treasurer shall pay the same out of the funds in the treasury and not otherwise appropriated. (Ex. Sess. 1921, c. 56, s. 4; 1927, c. 47, s. 18; 1931, c. 243, s. 5; C. S. 224(i).)

§ 53-135. General corporation law to apply.— All provisions of the law relating to private corporations, and particularly those enumerated in the chapter entitled "Corporations," not inconsistent with this chapter or with the business of banking, shall be applicable to banks. (1921, c. 4, s. 87; C. S. 224(j).)

Art. 11. Industrial Banks.

§ 53-136. Industrial bank defined. — The term "industrial bank," as used in this article shall be construed to mean any corporation organized, or which may hereafter be organized, under the general corporation laws of this state, which is engaged in lending money to be repaid in weekly, or monthly, or other periodical installments, or principal sums as a business: Provided, however, this definition shall not be construed to include building and loan associations, or commercial or savings banks. (1923, c. 225, s. 1; C. S. 225(a).)

§ 53-137. Manner of organization. — Corporations may be organized under this article in the same manner as provided for corporations authorized under the chapter on corporations. (1923, c. 225, s. 2; C. S. 225(b).)

§ 53-138. Corporate title. — Every corporation incorporated or reorganized pursuant to the provisions of this article shall be known as an industrial bank, and may use the word "bank" as part of its corporate title. (1923, c. 225, s. 3; C. S. 225(c).)

§ 53-139. Capital stock.—The amount of capital stock with which any industrial bank shall commence business shall not be less than twenty-five thousand ($25,000.00), in cities or towns of fifteen thousand population or less; nor less than fifty thousand dollars ($50,000.00), in cities or towns whose population exceeds fifteen thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars ($100,000.00), in cities or towns whose population exceeds twenty-five thousand; the population to be ascertained by the last preceding national census: Provided, that this section shall not apply to industrial banks organized and doing business prior to March 3, 1923. (1923, c. 225, s. 4; C. S. 225(d).)

§ 53-140. Sales of capital stock; accounting; fees.—The capital stock sold by any industrial bank in process of organization, or for an increase of the capital stock, shall be accounted for to the bank in the full amount paid for the same. No commission or fee shall be paid to any person, association, or corporation for selling such stock. The commissioner of banks shall refuse authority to commence business to any industrial bank where commissions or fees have been paid, or have been contracted to be paid by it, or by any one in its behalf to any person, association, or corporation for securing subscriptions for or selling stock in such bank. (1923, c. 225, s. 5; 1931, c. 243, s. 5; C. S. 225(e).)

§ 53-141. Powers.—Industrial banks shall have the powers conferred by paragraphs one, two, three, five and seven of § 55-26, and paragraph three of § 53-43; such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

1. To loan money on real or personal security and reserve lawful interest in advance upon such loans, and to discount or purchase notes, bills of exchange, acceptances or other choses in action.

2. To sell or offer for sale its secured or unsecured evidences or certificates of indebtedness, or investment, and to receive from investors therein or purchasers thereof payments therefor in installments or otherwise, with or without an allowance of interest upon such payments, whether such evidence or certificates of indebtedness or of investment be hypothecated for a loan or not, and to enter into contracts in the nature of a pledge or otherwise with such investors or purchasers with regard to such evidences or certificates of indebtedness, or of investment; and no such transaction shall in any way be construed to affect the rate of interest on such loans.

3. To charge for a loan made pursuant to this section one dollar for each fifty dollars or a fraction thereof loaned, up to and including loans of two hundred and fifty dollars, and for loans in excess of two hundred and fifty dollars, one dollar for each two hundred and fifty dollars excess or fraction thereof, to cover expenses, including any examination or investigation of the character and circumstances of the borrower, comaker, or surety. An additional fee of five dollars may be charged on such loans where same are secured by mortgage on real estate. No charge shall be collected unless a loan shall have been made.

4. To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the state, after having first obtained the written approval of the commissioner of banks, which approval may be given or withheld by the commissioner of banks in his discretion: Provided, that the commissioner of banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for the capital of at least twenty-five thousand dollars ($25,000.00) for the parent bank and at least twenty-five thousand dollars ($25,000.00) for each branch which it is proposed to be established in cities or towns of fifteen thousand population or less; nor less than fifty thousand dollars ($50,000.00) in cities or towns whose population exceeds fifteen thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars ($100,000.00) in towns whose population exceeds twenty-five thousand.

5. Subject to the approval of the commissioner of banks and on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be

available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of one thousand nine hundred and thirty-three (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.

6. To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit. (1923, c. 225, s. 6; 1925, c. 199, s. 1; 1931, c. 243, s. 5; 1935, c. 81, s. 2; 1939, c. 244, ss. 1, 2; C. S. 225(f).)

§ 53-142. Restriction on powers. — No industrial bank shall deposit any of its funds in any banking corporation unless such corporation has been designated as such depositary by a vote of a majority of the directors, or of the executive committee, exclusive of any director who is an officer, director, or trustee of the depositary so designated, present at any meeting duly called at which a quorum is in attendance, and approved by the commissioner of banks. (1923, c. 225, s. 7; 1931, c. 243, s. 5; 1937, c. 220; C. S. 225(g).)

§ 53-143. Limit of loans.—The total liabilities to any industrial bank of any person, corporation, company, or firm, for money borrowed, including in the liabilities of the company or firm the liabilities of the several members thereof, shall at no time exceed ten per cent of the actually paid-up capital and surplus of such industrial bank, but the discount of bona fide bills of exchange or acceptances drawn against actually existing values, and the discount of commercial or business paper actually owned by the person or persons, corporation, company, or firm negotiating the same, shall not be considered money so borrowed. (1923, c. 225, s. 8; C. S. 225(h).)

§ 53-144. Supervision and examination.—Every industrial bank now or hereafter transacting the business of an industrial bank as defined by this article, whether as a separate business or in connection with any other business under the laws of and within this state, shall be subject to the provisions of this article, and shall be under the supervision of the commissioner of banks. The commissioner of banks shall exercise control of and supervision over the industrial banks doing business under this article, and it shall be his duty to execute and enforce, through the state bank examiners and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to industrial banks as defined in this article. For the more complete and thorough enforcement of the provisions of this article, the state banking commission is hereby empowered to promulgate such rules, regulations, and instructions, not inconsistent with the provisions of this article, as may, in its opinion, be necessary to carry out the provisions of the laws relating to industrial banks as in this article defined, and as may be further necessary to insure such safe and conservative management of industrial banks under the supervision of the commissioner of banks as may provide adequate protection for the interest of creditors, stockholders, and the public, in their relations with such institutions. All industrial banks doing business under the provisions of this article shall conduct their business in a manner consistent with all laws relating to industrial banks, and all rules, regulations and instructions that may be promulgated or issued by the state banking commission. (1923, c. 225, s. 11; 1931, c. 243, s. 5; 1939, c. 91, s. 2; C. S. 225(k).)

§ 53-145. Sections of general law applicable.—Sections 53-1, 53-3, 53-4, 53-5, 53-7, 53-8, 53-9, 53-10, 53-11, 53-12, 53-13, 53-18, 53-20, 53-42, 53-47, 53-50, 53-51, 53-54, 53-63, 53-64, 53-67, 53-78, 53-79, 53-80, 53-81, 53-82, 53-83, 53-87, 53-88, 53-90, 53-91, 53-105, 53-106, 53-107, 53-109, 53-110, 53-117, 53-118, 53-119, 53-120, 53-121, 53-122, 53-123, 53-124, 53-125, 53-128, 53-129, 53-132, 53-134, relating to the supervision and examination of commercial banks, shall be construed to be applicable to industrial banks, insofar as they are not inconsistent with the provisions of this article. Sections 53-19, 53-24, 53-37, 53-39, 53-40, 53-41, 53-44, 53-45, 53-75, 53-76, 53-77, 53-86, 53-114, 53-115, 53-116, 53-146, and 53-148 through 53-158, relating to commercial banks, shall be construed to be applicable to industrial banks. (1923, c. 225, s. 13; 1927, c. 141; 1939, c. 244, s. 3; C. S. 225(m).)

Art. 12. Joint Deposits; Assignments as Evidence of Insolvency; Receivers.

§ 53-146. Deposits in two names.—When a deposit has been or is hereafter made in any bank, trust company, banking and trust company, or any other institution transacting business in this state, in the names of two persons, payable to either, or payable to either or the survivor, all or any part of the deposit, or any interest or dividend thereon, may be paid to either of said persons, whether the other is living or not; and the receipt or acquittance of the person so paid is a valid and sufficient discharge to the bank for payment so made. (1917, c. 243, s. 1; C. S. 230.)

§ 53-147. Commissioner of banks to sue and collect from stockholders. — The commissioner of banks, after taking possession of an insolvent bank, is empowered to demand, sue for, and collect by lawful process all indebtedness due from its stockholders, whether they reside within or without the state, and wherever they or their legal representatives may be served with process, or wherever any property belonging to them, or their estate, may be subject to attachment, garnishment, or other lawful process. All indebtedness due from such stockholders, their representatives or estates, is payable to the commissioner of banks as corporate assets, and the title thereto vests in and must be applied by him for the equal benefit of all persons entitled to share in the distribution of the fund and disbursed ratably under the orders of the court. The commissioner of banks may, within three years after an assessment on the stock, institute civil actions against the stockholders to reduce their liability thereon to final judg-

ment, and in any such action the creditors of the bank may be proper, but are not necessary parties plaintiff. (1911, c. 25, ss. 2, 3, 6; 1931, c. 212; C. S. 240.)

Art. 13. Conservation of Bank Assets and Issuance of Preferred Stock.

§ 53-148. Provision for bank conservators; duties and powers.—Whenever he shall deem it necessary, in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the commissioner of banks may (with the approval of the governor), appoint a conservator for such bank and require of such conservator such bond with such security as he may deem necessary and proper. The conservator, under the direction of the commissioner of banks, shall take possession of the books, records and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all such rights, powers and privileges, subject to the commissioner of banks, now possessed by or hereafter given to the commissioner of banks under § 53-20, as amended, as are necessary to conserve the assets of said bank. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto, shall be the same as those provided in § 53-20, as amended. All expenses of any such conservator shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this article or otherwise. The conservator shall receive as salary an amount no greater than that paid at the present time to employees of departments of the state government for similar services. (1933, c. 155, s. 1.)

§ 53-149. Examination of bank.—The commissioner of banks shall cause to be made such examination of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank. (1933, c. 155, s. 2.)

§ 53-150. Termination of conservatorship.—If the commissioner of banks shall become satisfied that it may safely be done, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business, subject to such terms, conditions, restrictions and limitations as he may prescribe. (1933, c. 155, s. 3.)

§ 53-151. Special funds for paying depositors and creditors ratably; new deposits.—While such bank is in the hands of the conservator appointed by the commissioner of banks, the commissioner of banks may require the conservator to set aside from unpledged assets and make available for withdrawal by depositors and payment to other creditors on a ratable basis, such amounts as, in the opinion of the commissioner of banks, may safely be used for this purpose; and the commissioner of banks, may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator (as well as special or trust deposits received by any bank, under the orders of the commissioner of banks, since March 2, 1933), shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of said bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator, as well as the special or trust deposits received since March 2, 1933, shall be kept on hand in cash or on deposit with a federal reserve bank. In being transmitted to the federal reserve bank, said deposits shall be so marked and designated as to indicate to such federal reserve bank that they are special deposits. (1933, c. 155, s. 4.)

§ 53-152. Reorganization on agreement of depositors and stockholders.—By the agreement of (a) depositors and other creditors of any bank representing at least seventy-five per cent in amount of its total deposits and other liabilities as shown by the books of the banks, or (b) stockholders owning at least two-thirds of each class of its outstanding capital stock as shown by the books of the bank, or (c) both depositors and other creditors representing at least seventy-five per cent in amount of the total deposits and other liabilities, and stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank, any bank may effect such reorganization with the consent and approval of the commissioner of banks as by such agreement may be determined: Provided, however, that claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the per cent thereof as above provided.

When such reorganization becomes effective, all books, records and assets of such bank shall be disposed of in accordance with the provisions of the plan, and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the commissioner of banks. In any reorganization which shall have been approved, and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of organization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization: Provided, however, that no reorganization shall affect the lien of secured creditors. (1933, c. 155, s. 5.)

§ 53-153. Segregation of recent deposits not effective after bank turned back to officers; notice of turning bank back to officers. — After fifteen days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in § 53-152 hereof, the provisions of § 53-151 with respect to the segregation of deposits received while it is in the hands of the conservator, and with respect to the use of such deposits to liquidate the indebtedness of such bank, shall no longer be effective: Provided, that before the conservator shall turn back the affairs of the bank to its board of directors, he shall cause to

be published in a newspaper published in the city, town or county in which such bank is located, and if no newspaper is published in such city, town or county, in a newspaper to be selected by the commissioner of banks, a notice in form approved by the commissioner of banks, stating the date on which the affairs of the bank will be returned to its board of directors, and that the said provisions of § 53-151 will not be effective after fifteen days after such date; and on the date of publication of such notice, the conservator shall immediately send to every person who is a depositor in such bank under § 53-151, a copy of such notice by registered mail, addressing it to the last known address of such persons shown by the records of the bank; and the conservator shall send similar notice in like manner to every person making deposit in such bank under § 53-151, after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors. (1933, c. 155, s. 6.)

§ 53-154. Issuance of preferred stock. — Notwithstanding any other provision of this article or any other law, and notwithstanding any of the provisions of its articles of incorporation or by-laws, any bank may, with the approval of the commissioner of banks, and by vote of stockholders owning a majority of the stock of such bank, upon not less than two days' notice given by registered mail pursuant to action taken at a meeting of its board of directors (which may be held upon not less than one day's notice) issue preferred stock in such amount and with such par value as shall be approved by said commissioner of banks. A copy of the minutes of such directors' and stockholders' meetings, certified by the proper officer and under the corporate seal of the bank, and accompanied by the written approval of the commissioner of banks shall be immediately filed in the office of the secretary of state, and when so filed, shall be deemed and treated as an amendment to the articles of incorporation of such bank.

No issue of preferred stock shall be valid until the par value of all stock so issued shall have been paid for in full in cash or in such manner as may be specifically approved by the commissioner of banks. (1933, c. 155, s. 7.)

§ 53-155. Rights and liabilities of preferred stockholders.—The holders of such preferred stock shall be entitled to cumulative dividends payable at a rate not exceeding six per centum per annum, but shall not be held individually responsible as such holders for any debts, contracts or engagements of such bank, and shall not be liable for assessments to restore impairments in the capital of such banks as now provided by law with reference to holders of common stock in banks. Notwithstanding any other provisions of law, the holders of such preferred stock shall have such voting rights and such stock shall be subject to retirement in such manner and on such terms and conditions as may be provided in the articles of incorporation or any amendment thereto, with the approval of the commissioner of banks.

No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and if the bank is placed in liquidation, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock and all accumulated dividends. (1933, c. 155, s. 8.)

§ 53-156. Term "stock" not to include preferred stock; latter not to be used as collateral for loans. —Wherever in existing banking law, the words "stock," "stockholders," "capital" or "capital stock" are used, the same shall not be deemed to include preferred stock: Provided that no bank issuing preferred stock under the provisions hereof, shall be permitted at any time to make loans upon such preferred stock; Provided further that in determining whether or not the minimum capital or capital stock required in §§ 53-2, 53-11, 53-62, 53-139, and 58-116, has been supplied to such bank or banking corporation, the commissioner of banks shall include preferred stock as capital or capital stock. (1933, c. 155, s. 9; 1935, c. 80.)

§ 53-157. Rights and liabilities of conservator.— The conservator appointed pursuant to the provisions of this article shall be subject to the provisions of and to the penalties prescribed by §§ 53-43, 53-129, and 53-131. (1933, c. 155, s. 10.)

§ 53-158. Naming of conservator not liquidation. —No power conferred in this article upon the commissioner of banks, when exercised, shall be deemed an act of possession for the purposes of liquidation; and whenever the commissioner of banks shall, with reference to any bank for which a conservator is appointed, deem that liquidation is necessary, he shall exercise the powers for the purposes of liquidation as provided in § 53-20 as amended. (1933, c. 155, s. 11.)

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SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS.

Art. 1. Organization.

§ 54-1. Application of term.—The term "building and loan association," as used in this subchapter, shall apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to their members only, and of enabling their members to acquire real estate, make improvements thereon and remove incumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes. It shall be unlawful for any corporation, company, society, or association doing business in this state not so conducted to use in its corporate name the term "building and loan association" or "building association," or in any manner or device to hold itself out to the public as a building and loan association. (Rev., s. 3881; 1905, c. 435, s. 16; C. S. 5169.)

§ 54-2. Method of incorporation; powers. — It shall be lawful for any persons in any city, town, or county of this state, under any name by them to be assumed, to associate for the purpose of organizing and establishing a homestead and building and loan association, and, being so associated, they shall, on complying with this subchapter, be a body politic and corporate, and as such be capable in law to hold and dispose of property, both real and personal; may have and use a common seal; may choose a presiding and other officers; may enact by-laws for the regulation of the affairs of such corporation, and compel the due observance of the same by fines and penalties; may sue and be sued, plead and be impleaded, answer and be answered in any court in this state, and do all acts necessary for the well ordering and good government of the affairs of such corporation, and shall exercise all and singular the powers incident to bodies politic and corporate: Provided, that before any such corporation shall be entitled to the privileges of this subchapter it shall file with the clerk of the superior court of the county where such corporation is designed to act a copy of the certificate of incorporation of such corporation, signed by at least seven members, to be recorded in the office of such clerk, and shall pay a tax of twenty-five dollars to the clerk, which tax shall be paid over by the clerk to the treasurer of the county, to the use of the school fund of the county. The clerk shall certify a copy of the charter to the insurance commissioner. The clerk shall not issue or record the same until duly authorized to do so by the Insurance Commissioner as hereinafter provided.

(a) Upon receipt of a copy of the certificate of incorporation of the proposed association, the Insurance Commissioner shall at once examine into

all the facts connected with the formation of such proposed corporation, including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business for which it is organized, the Insurance Commissioner shall so certify to the Clerk of Court in the county in which organized, who shall thereupon issue and record such certificate of incorporation. But the Insurance Commissioner may refuse to so certify, if upon examination and investigation he has reason to believe that the proposed corporation is formed for any purpose other than a mutual building and loan business, or that the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said building and loan association is proposed to be located; or that the public convenience and advantage will not be promoted by its establishment; or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted or appropriated by an existing association in the same county, or so similar thereto as to be likely to mislead the public.

(b) Upon receipt of such certificate from the Insurance Commissioner, the Clerk of Court shall, if said certificate of incorporation be in accordance with law, issue and cause same to be recorded in the records of his office as hereinabove provided. (Rev., s. 3877; 1905, c. 435, s. 1; 1931, c. 73; C. S. 5170.)

§ 54-3. Amendments to certificate.—Any addition, alteration or amendment of the certificate of incorporation of any building and loan association shall be made at any annual or special meeting of such association, held in pursuance of the provisions of § 54-10, by a majority of the shareholders present in person or represented by proxy at any such meeting, and any such addition, alteration or amendment shall be signed, certified, and recorded as is provided in § 54-2. (Rev., s. 3878; 1905, c. 435, s. 2; 1939, c. 128, s. 1; C. S. 5171.)

§ 54-4. Prior amendments validated.—All additions, alterations or amendments of the certificate of any building and loan association made prior to March 17, 1939, and which failed to comply with all of the provisions of the statutes of North Carolina applicable thereto, be, and the same are hereby declared to be sufficient and valid to the same extent as if the provisions of said statutes had been fully complied with. (1939, c. 128, s. 2.)

§ 54-5. Form of certificate.—Substantially the following form shall be used by associations to be formed under this chapter:

Certificate of Incorporation

This is to certify that we, the undersigned citizens of the state of North Carolina, hereby associate ourselves into a building and loan association under and by virtue of the provisions of subchapter I, entitled Building and Loan Associations, of chapter 54 of the North Carolina Code, and by this certificate do set forth:

First. The name of said association is to be .....

Second. The location where its business is to be transacted is in the ..... of ..... in the county of ..... and state of North Carolina, and the principal office of said corporation is to be at No....., ... street, in the ..... of ..... aforesaid.

Third. The object for which said association is formed is to enable the subscribers hereto to assist each other, and all who may become associated with them, in making loans to its members only, and to enable them to acquire real estate, making improvements thereon and removing incumbrances therefrom by the payment of periodical installments, and to accumulate a fund, to be paid by its members who do not obtain loans for the purposes aforesaid when the funds of said association shall amount to the sum of ..... dollars per share of the first and subsequent classes or series.

Fourth. The amount fixed as the value of each share, when matured or full paid, is to be ..... dollars. The number of shares to be subscribed before said association shall begin business shall be ..... The maximum number of shares in this association at any one time to be in force shall be ..... The number of shares subscribed for by the incorporators is...., and the number of shares subscribed for by each of them is as follows:

Name	Number of Shares
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

In witness whereof, we have hereto set our hands and seals, the .... day of ...., A. D. 19..

..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)

Signed, sealed, and delivered in the presence of ..... (Rev., s. 3879; 1905, c. 435, s. 27; C. S. 5172.)

§ 54-6. When to begin business.—Upon filing the certificate of incorporation with the clerk of the superior court of the county where the principal office of the corporation is located, and with the insurance commissioner, the company shall become a body politic and corporate, and shall be authorized to begin business, when licensed by the insurance commissioner. (Rev., s. 3880; Code, s. 2297; 1907, c. 959, s. 1; C. S. 5173.)

§ 54-7. Chapter on corporations applicable. — All of the provisions of law relating to private corporations, and particularly those enumerated in the chapter entitled Corporations, not inconsistent with this subchapter, or with the business of building and loan associations, shall be applicable to building and loan associations. (Rev., s. 3882; C. S. 5174.)

§ 54-8. Charters validated. — The charters of all building and loan associations heretofore organized are hereby in all respects validated and confirmed, and all such associations shall have

the powers and privileges of associations formed under this subchapter. (Rev., s. 3883; 1905, c. 435, s. 27; C. S. 5175.)

§ 54-9. May become members of and hold stock in federal home loan bank.—Any building and loan association heretofore or hereafter organized under the laws of this state may subscribe to, purchase, hold, own and dispose of stock in any federal home loan bank, and may become members of any such bank authorized by or organized under an act of congress entitled "The Federal Home Loan Bank Act," approved July 22, 1932. (1933, c. 20.)

§ 54-10. Annual meetings.—The annual meeting of any such association shall be held at such time and place as shall be fixed in the notice of said meeting. There shall be published once a week for two weeks preceding such meeting, in a newspaper published in the county or town where the association has its principal office, a notice, signed by the secretary, of such meeting, and the time and place where the same is to be held; and such further notice shall be given as the charter or by-laws of the association may require. Notice of special meetings of shareholders shall be given in a like manner. Unless otherwise provided, twenty-five shareholders, present in person or represented by proxy, shall constitute a quorum at any regular or special shareholders' meeting. If no newspaper be published in the county or town in which any association has its principal office, then the notice above provided may be published by posting same at a conspicuous place in the office of the association, and a like notice at the door of the county court house. (1933, c. 19.)

§ 54-11. Conversion of building and loan associations into federal savings and loan associations.—Any corporation organized and existing under the laws of this State and operating as a building and loan association may convert itself into a federal savings and loan association pursuant to an act of Congress, approved June thirteenth, nineteen hundred and thirty-three, entitled "Home Owners' Loan Act of Nineteen Hundred and Thirty-three," and any amendments thereto, with the same force and effect as though originally incorporated under such act of Congress, and the procedure to effect such conversion shall be as follows:

1. The directors shall submit a plan of conversion to the insurance commissioner, and he may approve the same, with or without amendment, or disapprove the plan. If he approve the plan, then same shall be submitted to the shareholders as provided in the next sub-section.

2. A meeting of the shareholders shall be held upon not less than ten days' written notice to each shareholder, served personally or sent by mail to the last known address of such shareholder, postage prepaid, such notice to contain a statement of the time, place and purpose for which such meeting is called. It shall be regarded as sufficient notice of the purpose of said meeting if the call contain the following statement: "The purpose of said meeting being to consider the matter of the conversion of this corporation into a federal savings and loan association, pursuant to act of Congress approved June thirteenth, nineteen hundred and thirty-three." The secretary or other officer of the corporation shall make proof by affidavit at such meeting of due service of the notice or call for said meeting.

3. At the meeting of the shareholders of such corporation, called and held as above provided, such shareholders may, by affirmative vote of a majority of shareholders present, in person or by proxy, declare by resolution the determination to convert said corporation into a federal savings and loan association. A copy of the minutes of the proceedings of such meeting of the shareholders certified by the president or vice-president and secretary or assistant secretary of the corporation shall be filed in the office of the insurance commissioner of this State within five days after such meeting, and a like copy shall also be filed in the office of the clerk of the superior court of the county in which such corporation has its principal office. Each of said certified copies when so filed shall be presumptive evidence of the holding and the action of such meeting.

4. Within a reasonable time after the receipt of a certified copy of the minutes of said meeting the insurance commissioner shall either approve or disapprove the same. If the proceedings be approved by him he shall so endorse the certified copy of the minutes in his office, and shall issue a certificate certifying his approval of the conversion and proceedings, and send same to the corporation. Such certificate shall be recorded in the office of the clerk of superior court of the county in which the corporation has its principal office, and the original shall be held by the corporation. If the commissioner disapproves such proceedings he shall mark the certified copy of minutes in his office disapproved and notify the corporation to that effect.

5. Within sixty days after the approval of the proposed proceedings by the insurance commissioner, the officers of said corporation shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall make it a federal savings and loan association, and there shall thereupon be filed in the office of the insurance commissioner a copy of the charter or authorization issued to such corporation by the federal home loan bank board, or a certificate showing the organization or conversion of such corporation into a federal savings and loan association, and upon such filing with the insurance commissioner the corporation shall cease to be a state corporation and shall be deemed to be converted into a federal savings and loan association.

6. Whenever any such corporation shall so convert itself into a federal savings and loan association it shall thereupon cease to be a corporation under the laws of this State, except that its corporate existence shall be deemed to be extended for the purpose of prosecuting or defending suits by or against it and of enabling it to close its concerns as a state corporation, and to dispose of and convey its property. At the time when such conversion becomes effective all the property of the state corporation, including all its right, title and interest in and to all prop-

erty of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal savings and loan association, which shall have, hold and enjoy the same in its right as fully and to the same extent as the same was possessed, held and enjoyed by the state corporation; and the federal savings and loan association as of the time of the taking effect of such conversion shall succeed to all the rights, obligations and relations of the state corporation.

7. Any such corporation may, instead of effecting the conversion above provided, at a meeting called and held as above outlined, authorize the sale of all or any portion of its assets, subject to the approval of the insurance commissioner, to a federal savings and loan association or to a building and loan association of this state, and subject to the approval of the insurance commissioner, may authorize the taking of stock in the association so buying the assets in payment thereof; and upon liquidation of the selling corporation the stock so received shall be distributed to its shareholders. In the event such sale shall be authorized, and approved by the insurance commissioner, the directors and officers shall have full power and authority to do any and everything necessary to carrying same into effect. (1935, c. 104.)

§ 54-12. Conversion of federal association into state association.—Any federal savings and loan association organized and existing under the Home Owners Loan Act of one thousand nine hundred and thirty-three, as amended, may convert into a building and loan association, pursuant to the provisions of this chapter, with the same force and effect as though originally incorporated under the provisions of this sub-chapter, by complying with the acts of congress and the requirements of federal regulatory authority, and also by following the procedure as set out below:

1. The directors of such federal savings and loan association shall submit a plan of conversion to the federal home loan bank board (hereinafter referred to as "board") or other federal regulatory authority, and also to the insurance commissioner of the state of North Carolina. When such plan has been approved, either with or without amendment by both of said authorities, then said plan shall be submitted to the members of such association as provided in the next sub-section.

2. A meeting of the members shall be held upon not less than ten days' written notice to each member, served personally or sent by mail to the last known address of such member, postage prepaid, such notice to contain a statement of the time, place and purpose for which such meeting is called. It shall be regarded as sufficient notice of the purpose of said meeting if the call contain the following statement: "The purpose of said meeting being to consider the matter of the conversion of this association into a building and loan association, pursuant to the provisions of the laws of the state of North Carolina." The secretary or other officer of the association shall make proof by affidavit at such meeting of the due service of the notice or call for said meeting.

3. At the meeting of the members of such association, called and held as above provided, such members may, by affirmative vote of fifty-one per cent or more of members present, in person or by proxy, declare by resolution the determination to convert said association into a building and loan association operating under the laws of this state. A copy of the minutes of the proceedings of such meeting of the members, certified by the president or vice-president and secretary or assistant secretary of the association, shall be filed with the federal home loan bank board within five days after such meeting. Such certified copy, when so filed, shall be presumptive evidence of the holding and the action of such meeting.

4. Within thirty days after the approval of said proceedings by the board the officers of said association shall file with the clerk of the superior court of the county where such association is designed to act a copy of the certificate of incorporation of such association, signed by at least seven members, to be recorded in the office of such clerk. Such certificate of incorporation shall conform to the provisions of the laws of this state. The clerk shall certify a copy of the certificate to the insurance commissioner, and shall not issue or record the same until duly authorized to do so by the insurance commissioner. Upon receipt of a copy of the certificate of incorporation the insurance commissioner shall at once examine into the facts connected with the conversion of such association, and, if it appears that such association if converted will be lawfully entitled to commence business as a building and loan association pursuant to the laws of this state, the insurance commissioner shall so certify to the clerk of the court in the county in which the association will be located, who shall thereupon issue and record such certificate of incorporation. Upon the issuance and recordation of such certificate of incorporation the association shall file with the board a certified copy of same. Thereupon the association shall cease to be a federal savings and loan association and shall be deemed to be converted into a building and loan association under the laws of this state, whose corporate existence shall be deemed then to begin.

5. At the time when the corporate existence of said state association begins all the property of the said federal association, including all its rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such state association, which shall have, hold and enjoy the same in its own right as fully and to the same extent as if the same was possessed, held or enjoyed by said federal association; and such state association shall be deemed to be a continuation of the entity and of the identity of said federal association, operating under and pursuant to the laws of this state, and all the rights, obligations and

relations of said federal association to or in respect to any person, estate, or creditor, depositor, trustee or beneficiary of any trust, and in or in respect to any executorship or trusteeship or other trust or fiduciary function, shall remain unimpaired, and such state association, as of said beginning of its corporate existence, shall by operation of this section succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust and relation in the same manner as if such state association had itself assumed the trust or relation, including the obligations and liabilities connected therewith. (1937, c. 12.)

Art. 2. Shares and Shareholders.

§ 54-13. Number of shares and entrance fee prescribed.—Any corporation created under and by virtue of this subchapter shall have power to declare in its certificate of incorporation the maximum number of shares of which the corporation shall consist to be in force at any one time, the par value of the same, to prescribe the entrance fee per share to be paid by each shareholder at the time of subscribing, to regulate the amount of the installments to be paid on each share, and the time at which the same shall be paid and payable: Provided, that not more than one per cent of the par value of each share of stock subscribed, may be paid as commissions or other remuneration for the soliciting and sale of stock. (Rev., s. 3887; 1905, c. 435, s. 3; 1931, c. 75; C. S. 5176.)

§ 54-14. Different classes of shares; dividends; reserve fund.—Every building and loan association doing business in this state shall be authorized to issue as many series or classes and kinds of shares and at such stated periods as may be provided for in its charter or by-laws: Provided, the dividends on paid-up stock shall be less than the association is earning, and such stock may have the right to share in the dividends between the rate paid and the earned per centum. Every association shall at all times have on hand and unpledged, investments in obligations of the United States government or the government of the state of North Carolina, or stock in the federal home loan bank, or bonds issued by the federal home loan bank, or on deposit in such bank or banks as may have been approved by a majority of the entire board of directors, an amount equal to at least five per centum of the aggregate amount of paid-up stock outstanding, as shown by the books of the association. When the aggregate of investment or funds in hand or on deposit as herein provided falls below the amount required under this section, the association shall make no new real estate loans until the required amount has been accumulated: Provided, that the refinancing, recasting or renewal of loans previously made, and/or loans made as a result of foreclosure sales under instruments held by the interested building and loan association, shall not be considered as new loans within the meaning of this section. (Rev., s. 3889; 1905, c. 435, s. 6; 1907, c. 959, s. 3; 1919, c. 179, s. 3; 1931, c. 107; 1933, c. 26; 1941, c. 67; C. S. 5177.)

§ 54-15. Certificate issued and payment enforced.—Any such corporation shall have power to issue to each member a certificate of the shares held by him, and to enforce the payment of all installments and other dues due to the corporation from the members or shareholders by such fines and forfeitures as the corporation may from time to time provide in the by-laws or its certificate of incorporation. (Rev., s. 3888; 1905, c. 435, s. 4; C. S. 5178.)

§ 54-16. New members admitted. — Any person applying for membership or shares in any corporation after the end of a month from the date of its incorporation may be required to pay, on subscribing, such sums or assessments as may from time to time be fixed and assessed in the manner provided by the corporation, in order to place such new member or shareholdeer on like footing with the original members and others holding shares at the time of such application. (Rev., s. 3886; 1905, c. 435, s. 5; C. S. 5179.)

§ 54-17. Shareholders equally liable. — All shareholders shall occupy the same relative position as to debts, losses, and profits of the association: Provided, that this shall not prevent the payment of a lesser rate of dividend on paid-up stock as provided in § 54-14, but this provision shall not prevent any association from receiving dues in advance, allowing such a rate of interest for the anticipated payments of dues as may be agreed upon by the directors. No series or class of stock shall be paid off until fully matured: Provided, that this section shall not prevent the cashing in of any stock before maturity. (Rev., s. 3884; 1905, c. 435, s. 7; 1907, c. 959, s. 2; 1919, c. 179, s. 2; 1931, c. 109; C. S. 5180.)

§ 54-18. Minors as shareholders.—Minors of the age of twelve years and upwards are authorized and empowered to become shareholders in and buy, sell, hold, pay dues on, withdraw, transfer, and otherwise deal in the shares in any such association in the same manner and with the same powers, rights, and liabilities, force and effect as though such minors were of full age. The provisions of this section shall apply to federal savings and loan associations having their principal offices in this state. (Rev., s. 3885; 1903, c. 728; 1905, c. 435, s. 1; 1939, c. 179; C. S. 5181.)

Art. 3. Loans.

§ 54-19. Manner of making loans; security required.—At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings at which the funds in the treasury applicable for loans may be loaned: Provided, that between meetings of the board of directors any three members of said board may act as an executive committee and may, by unanimous vote, make such loans. Any loans so made or approved by the executive committee shall be reported to the board of directors at its next meeting. No loans shall be made by such association to any one not a member thereof. Borrowers shall be required to give real estate security, either by way of mortgage or deed of trust, subject only to mortgages or deeds of trust to secure loans made by the association and undue taxes and special assessments: Provided, that the shares of any such association may be received as security for a loan on such shares of an amount not to exceed ninety per centum of the amount

paid in as dues on such shares: Provided, further, that bonds issued as general obligations of the United States government and bonds issued as general obligations of the state of North Carolina may be received as security to an amount not exceeding ninety per centum of the face value of such bonds. (Rev., s. 3890; 1905, c. 435, s. 8; 1907, c. 959, s. 4; 1919, c. 249; 1937, c. 11; 1941, c. 65; C. S. 5182.)

§ 54-20. Direct reduction of principal.—The board of directors of any building and loan association, heretofore or hereafter organized under the laws of this state, may, unless specifically prohibited by the certificate of incorporation, constitution or by-laws of the association, by resolution or by-law, permit borrowing members to repay their indebtedness by a direct monthly or periodical reduction of principal method. In every such case the borrower shall in writing make such agreement with the association relative to the repayment of his indebtedness as the directors may require. The agreement shall stipulate that the borrower or debtor shall make periodical payments, not less frequently than once a month, until such mortgage indebtedness and advances, if any, made by the association for payment of taxes, assessments, insurance premiums and other purposes, as may be owing from the borrower to the association, with interest thereon, shall have been fully paid. The balance of any loan account under such direct reduction of principal method shall be determined monthly, quarterly or semiannually, in order to ascertain the amount then necessary to satisfy in full the mortgage obligation, and when so ascertained such amount shall be the amount due upon said loan at said time to said association or any representative or successor thereof. Any association permitting such method of repayment may adopt a plan by which the interest shall be computed periodically on the preceding balance, and such interest shall be added to that preceding balance, together with any and all advances and other charges above enumerated made for the benefit of the borrower during the said interest period, and then there shall be deducted from the total any and all payments made by the borrower to the association during said period, or since the preceding balance was set up.

All payments made on a loan under such plan of direct periodical reduction shall be applied first to interest, and then to the principal of advances made for the account of the borrower and charged thereto, and to the principal of the loan. The board of directors may adopt any other direct periodic reduction of principal plan that will require complete repayment of such loans: Provided, no plan of payment shall be adopted that will not mature and pay off the loan within twenty years from the date of the making thereof: Provided further, the board of directors may authorize the renewal or extension of the time of repayment of any loan theretofore made. No association shall make any loan upon this plan to any person unless he be a member of such association. (1937, c. 18.)

§ 54-21. Federal housing administration insured loans.—Notwithstanding any provision in this act any building and loan association, whether operating on the serial sinking fund plan or the direct reduction plan incorporated by and under this act, is authorized and empowered to make to its members loans under the provisions of Title I, Class two and three, and Title II of an Act of Congress of the United States entitled "National Housing Act," as amended, and all supplementary legislation thereto. (1941, c. 64.)

§ 54-22. Repayment at any time. — Any member of such association who shall borrow from it shall have the right at any time prior to the maturing of the shares pledged as collateral for such loan to pay off and discharge his loan by paying the amount received by him, including the cost and expenses of making the loan, if the same has been deducted therefrom, with interest at the rate of six per cent per annum on the whole sum received by him to the date of settlement and all fines and dues then remaining unpaid. Upon such settlement he shall be credited with only the withdrawal value of his shares as fixed by the charter or by-laws, or by the directors of such association. In case of default by a shareholder who has borrowed from the association and a foreclosure of his mortgage or deed of trust, the amount of his indebtedness to such association shall be ascertained in the manner provided by this section. (Rev., s. 3891; 1905, c. 435, s. 9; C. S. 5183.)

§ 54-23. Power to borrow money.—Any such association may in its certificate of incorporation, constitution or by-laws authorize the board of directors from time to time to borrow money, and the board of directors may from time to time, by resolution adopted by a vote of at least two-thirds of all the directors and duly recorded on the minutes, borrow money for the association on such terms and conditions as they may deem proper; but the total amount of money so borrowed shall at no time exceed thirty-five per centum of the gross assets of such association. In order to secure obligations for money borrowed under the provisions of this section, any such association may assign its notes, bonds and mortgages and/or other property, including the right to repledge the shares of stock pledged as collateral security, without securing the consent of the owner thereto, as security for the repayment of its indebtedness as evidenced by its bond, obligation or note given for such borrowed money. (Rev., s. 3892; 1905, c. 435, s. 10; 1909, c. 898; 1911, c. 61; 1913, c. 21; 1933, c. 18; 1941, c. 66; C. S. 5184.

Art. 4. Under Control of Insurance Commissioner.

§ 54-24. Power of insurance commissioner. — The insurance commissioner of the state is hereby empowered and directed to perform all the duties and exercise all the powers as to building and loan associations, unless herein otherwise provided. (Rev. s. 3893; 1905, c. 435, s. 24; C. S. 5185.)

§ 54-25. Annual license fees. — All domestic building and loan associations shall pay an annual license fee of twenty-five dollars and may be licensed upon filing with the insurance commissioner an application in such form as he may prescribe. Such license fee shall be used to defray the expenses incurred by the insurance commis-

sioner in supervising building and loan associations. (1919, c. 179, s. 1; C. S. 5186.)

§ 54-26. Statement filed by association. — Every association doing business under this subchapter shall file in the office of the insurance commissioner, on or before the first day of February in each year, in such form as he shall prescribe, a statement of the business standing and financial condition of the applicant on the preceding thirty-first day of December, signed and sworn to by the principal, or chief managing agent, attorney, or officer thereof, before the insurance commissioner, or before a commissioner of affidavits for North Carolina, or before some notary public. (Rev., s. 3894; 1905, c. 435, s. 11; 1907, c. 959, s. 5; C. S. 5187.)

§ 54-27. Statement examined, approved, and published; fees.—It shall be the duty of the insurance commissioner to receive and thoroughly examine each annual statement required by this subchapter, and if made in compliance with the requirements thereof, to publish an abstract of the same in one of the newspapers of the state, to be selected by the general agent or attorney making such statement, and at the expense of his principal. The insurance commissioner shall be entitled to a fee of five dollars, to be paid by the association filing such statement. (Rev., s. 3895; 1905, c. 435, s. 12; C. S. 5188.)

§ 54-28. License revoked.—If the insurance commissioner shall become satisfied at any time that any statements made by any association licensed under this subchapter are untrue, or in case a general agent shall fail or refuse to obey the provisions of this subchapter, or if upon examination the insurance commissioner is of opinion that such association or company is insolvent, or has exceeded its powers, or has failed to comply with any provisions of law, or its mode of business is not feasible for the purposes of carrying out successfully its plan, or that its condition is such as to render its further proceedings hazardous to the stockholders, he shall thereupon have power to revoke and cancel such license. (Rev., s. 3896; 1905, c. 435, s. 13; 1907, c. 959, s. 6; C. S. 5189.)

§ 54-29. Examinations made; expense paid.—If at any time the insurance commissioner has good reason to think that the standing and responsibility of any building and loan association or company doing business in this state, or its mode of business, is of a doubtful character, or in his discretion whenever he deems it prudent to do so, it shall be his duty to examine and investigate everything relating to the business of such company, and to that end he is hereby authorized, if he deem it advisable, to appoint a suitable and competent person to make such investigation, who shall file with the insurance commissioner a full report of his finding in such case. The expenses and cost of such examination shall be defrayed by the company or association subjected to investigation, and each company or association doing business in this state shall stipulate in writing, to be filed with the insurance commissioner, that it will pay all reasonable cost and expenses of such examination when it shall become necessary. (Rev., s. 3897; 1905, c. 435, ss. 14, 15; 1919, c. 179, s. 4; C. S. 5190.)

§ 54-30. Failing to exhibit books or making false statement a misdemeanor.—If any person having in his possession or control any books, accounts, or papers of any building and loan association licensed by law, shall refuse to exhibit the same to the insurance commissioner, or his agents on demand, or shall knowingly or wilfully make any false statement in regard to the same, he shall be guilty of a misdemeanor, and fined and imprisoned, at the discretion of the court. (Rev., s. 3329; 1893, c. 434; 1899, c. 164; C. S. 5191.)

§ 54-31. Agent must obtain certificate.—It shall be unlawful for any person to solicit business or act as agent for any building and loan association or company without having procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent. The fee for such license shall be $2.50, to be paid to the insurance commissioner at the time the certificate is issued; and no other license or fee shall be required for said business of an agent or solicitor so licensed. (Rev., s. 3898; 1895, c. 444, s. 3; 1899, c. 154, s. 2, subsec. 20; 1907, c. 959, s. 7; 1933, c. 17; C. S. 5192.)

§ 54-32. Penalties imposed and recovered.—Every general agent or attorney of any building and loan company or association who shall fail or refuse to perform any duty required of him by this subchapter shall forfeit and pay to the insurance commissioner fifty dollars for the state for every such refusal, to be recovered before any justice of the peace at the suit of the insurance commissioner. (Rev., s. 3899; 1893, c. 434, s. 2300g; 1899, c. 154, s. 2, subsec. 20; C. S. 5193.)

§ 54-33. Notice required before appointment of receivers. — No judge or court shall appoint a receiver for any building and loan association organized and incorporated under the laws of this state unless five days' advance notice of the motion, petition or application for appointment of a receiver shall have been given to such association and to the insurance commissioner of the state. (1933, c. 38.)

Art. 5. Foreign Associations.

§ 54-34. Allowed to do business.—A building and loan association of another state may be admitted to transact business in this state in the manner hereinafter provided, and no association not so admitted shall transact business in this state. (Rev., s. 3900; 1905, c. 435, s. 17; C. S. 5194.)

§ 54-35. Copy of charter and list of officers filed.—Application for authority to transact business in this state shall be made to the insurance commissioner, and on making such application every such association shall file with the insurance commissioner a duly authenticated copy of its charter or certificate of incorporation, its constitution and by-laws, and thereafter certified copies of all amendments thereto, the names and addresses of its officers and directors, the compensation paid each officer, and a report of its condition, in such

form as may be prescribed by the insurance commissioner, which shall be verified by oath of such officers and other persons as the commissioner shall designate, and the commissioner shall furnish blank forms for the report required, and may call for additional reports at such other times as may seem to him expedient. (Rev., s. 3902; 1905, c. 435, s. 19; C. S. 5195.)

§ 54-36. License granted. — If it shall appear to the insurance commissioner by the report aforesaid and by an examination of the affairs of such association that it has good assets of sufficient value to cover all liabilities, and that its methods of doing business are safe and not contrary to the laws governing building and loan associations of this state, it may be admitted to transact business in this state upon a certificate of authority to be issued by the insurance commissioner, which shall only be issued when such association shall have complied with the further requirements of this article. (Rev., s. 3903; 1905, c. 435, s. 20; C. S. 5196.)

§ 54-37. Securities deposited. — The insurance commissioner before issuing the certificate of authority aforesaid shall require every such association to deposit with the commissioner such securities as he may approve, amounting to at least thirty thousand dollars, which securities shall be held by him in trust for the exclusive benefit and security of the creditors and shareholders of such association resident in this state, and he shall have authority to require it to deposit additional securities and to order a change in any of the securities so deposited at any time, and no change or transfer of the same shall be made or be effectual without his consent. Such deposit shall be maintained intact in the full sum required at all times, but the association making such deposit, so long as it shall continue solvent and comply with all the provisions of this subchapter applicable to it, may receive the dividends or interest on the securities deposited, and may from time to time, with the assent of the commissioner, withdraw any of such securities on depositing with the commissioner other like securities the par value of which shall be equal to such as may be withdrawn. (Rev., s. 3904; 1905, c. 435, s. 21; C. S. 5197.)

§ 54-38. Annual certificate; service of process.— Such certificate of authority shall be for the current year only, and shall not be issued until such association shall, by a duly executed instrument filed with the insurance commissioner of the state, constitute the insurance commissioner and his successors in office its true and lawful attorney, upon whom all original process in any action or legal proceedings against it may be served, and therein shall agree that any original process against it which may be served upon the commissioner shall be of the same force and validity as if served on the association, and that the authority thereof shall continue in force irrevocable so long as any liability of the association remains outstanding in this state. The service of such process shall be made by leaving a copy of the same in the office of the insurance commissioner, with a fee of two dollars, to be taxed in the plaintiff's costs. When any original process is thus served, the commissioner, by letter directed to the secretary, shall within two days after such service forward to the secretary a copy of the process served upon him, and such service shall be deemed sufficient service upon the association. The commissioner shall keep a record of all such process, showing the day and hour of service. (Rev., s. 3906; 1905, c. 435, s. 23; C. S. 5198.)

§ 54-39. Agent must have certificate of license; fees.—It shall be unlawful for any person to solicit business or act as agent for any foreign building and loan association or company doing business in this state without having first procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent. The insurance commissioner shall be entitled to a fee of one dollar for issuing each such certificate, to be paid by the company for which the same was issued. Any person violating the provisions of this section shall be guilty of a misdemeanor. (Rev., ss. 3327, 3901; 1895, c. 444, s. 3; 1905, c. 435, s. 18; C. S. 5199.)

§ 54-40. Fees and expenses.—Every such association shall pay for filing a certified copy of its charter or certificate of incorporation twenty dollars; for filing original annual reports, twenty dollars; for certificate of authority, annually, two hundred and fifty dollars; for certificate for each agency, five dollars; and shall defray all expenses incurred in making any examination of its affairs as herein provided for; and the insurance commissioner may maintain an action in the name of the state against such association for the recovery of such expenses in any court of competent jurisdiction. (Rev., s. 3905; 1905, c. 435, s. 22; C. S. 5200.)

§ 54-41. All contracts deemed made in this state. —Any contract made by any foreign association with any citizen of this state shall be deemed and considered a North Carolina contract, and shall be so construed by all the courts of this state according to the laws thereof. (1905, c. 435, s. 26; C. S. 5203.)

Art. 6. Withdrawals.

§ 54-42. Month's notice required for withdrawals.—Any shareholder in a building and loan association may withdraw all or any part of his or her holdings of unpledged or unhypothecated stock in such association by giving to the secretary of such association one month's written notice of his or her intention so to do, and the right of such shareholder to make such withdrawal shall accrue one month after the giving of such notice, subject to the conditions set out in § 54-43. (1933, c. 122, s. 1.)

§ 54-43. Withdrawal or maturity fund. — Whenever any shareholder whose stock has matured or whose right to withdraw his or her stock has accrued, as set out in § 54-42, has not been paid because of insufficiency of funds in the treasury of the association, the secretary of said association shall under instruction from the directors, create a separate fund to be known as the "withdrawal or maturity fund" and into such fund shall be paid one-half of the net receipts of the as-

sociation monthly. Net receipts shall mean the receipts of the association from interest, installments, rent and other revenue producing sources, diminished by the expenses of the association, and by any sums directed by the board of directors to be set apart and held separately for the purpose of meeting bills payable or notes payable at the maturity thereof. From time to time as the board of directors may direct, the secretary shall make an equitable and ratable distribution of the funds in said "withdrawal or maturity fund" to the stockholders whose right to receive payment from said fund has accrued, as hereinbefore provided, at the date of such distribution. One-half of the net receipts of the association shall be added monthly to such fund so long as there remains any shareholder of the association entitled to receive a portion thereof as aforesaid. No shareholder whose stock has matured or whose right to withdraw his stock has accrued as hereinbefore set out, shall have the right to demand or receive any funds in excess of the amount equitably and ratably distributed as hereinbefore set out except on approval of board of directors of such association and/or the insurance commissioner. (1933, c. 122, s. 2.)

Art. 7. Statements of Financial Condition of Associations.

§ 54-44. Derogatory statements.—Any person who shall willfully and maliciously make, circulate, or transmit to another or others any statement, rumor, or suggestion, written, printed, or by word of mouth, which is directly or by inference derogatory to the financial condition, or affects the solvency or financial standing of any building and loan association, or who shall counsel, aid, procure, or induce another to state, transmit, or circulate any such statement or rumor shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court. (1915, c. 273; 1921, c. 4, s. 82; 1931, c. 12; C. S. 4231.)

SUBCHAPTER II. LAND AND LOAN ASSOCIATIONS.

Art. 8. Organization and Powers.

§ 54-45. Application of term.—The term "Land and Loan Associations" shall apply to and include all corporations, companies, societies or associations organized for the purpose of making loans to their members only, and of enabling their members to acquire real estate, make improvements thereon, and remove incumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, where the principles of building and loan associations and their work are adapted to the use of the farmers and the rural population.

It shall be unlawful for any corporation, company, society, or association doing business in this state not so conducted to use in its corporate name the term "land and loan association," or in any manner or device to hold itself out to the public as a land and loan association. (1915, c. 172, s. 1; C. S. 5204.)

§ 54-46. Incorporation and powers.—Land and loan associations shall be incorporated, supervised, and be subject to such regulations and have such privileges as are prescribed for building and loan associations under the laws of this state as they now are or may be hereafter enacted, except as prescribed in this article. (1915, c. 172, s. 2; C. S. 5205.)

§ 54-47. Loans. — The boards of directors of land and loan associations may contract for loans to the amount of seventy-five per cent of the securities used by them as collateral, where the loans are on long time (three or more years), and for at least one per cent less than is charged by such associations on their loans to shareholders; and they may make short loans to their shareholders on their shares and personal indorsement or personal property. (1915, c. 172, s. 3; C. S. 5206.)

§ 54-48. Reserve associations.—Associations to be known as "Reserve Land and Loan Associations" may be chartered and licensed as provided in this article, when they are organized and the stock therein is held by local land and loan associations, and shall have such powers, rights, and privileges as are accorded to other domestic associations, and they may conform to such laws, rules, and regulations as may be prescribed by the laws of the United States, or of this state, to enable them to receive moneys, bonds, or securities to be used in loans and to secure the same. Such reserve associations shall be under the supervision of the insurance commissioner as are building and loan associations. (1915, c. 172, s. 4; C. S. 5207.)

§ 54-49. Land conservation and development bureau; land mortgage associations. — Recognizing that agriculture is the most fundamental wealth-producing occupation of the State and that land is the basis of agriculture, the General Assembly of North Carolina does hereby authorize and direct the State Department of Agriculture to establish as a major division of its organization a land conservation and land development bureau. The function of this bureau shall be to promote conservation, rural home ownership, and the development of the land resources of the State through land mortgage associations under the following provisions. (1925, c. 223, s. 1.)

§ 54-50. Number of incorporators; capital stock. —Any number of persons, resident freeholders of the State, not less than fifteen, may associate to establish an association on the terms and conditions and subject to the liabilities hereinafter prescribed. The aggregate amount of the capital stock of any such association shall not be less than twenty thousand dollars ($20,000). Such association shall mean a corporation organized under the laws of the State for the purpose of making loans upon agricultural lands, forest lands and dwelling houses within this State and known as a land mortgage association. (1925, c. 223, s. 2.)

§ 54-51. Incorporation.—The articles of incorporation shall be in writing signed and acknowledged by the incorporators and shall contain the following:

(1) The declaration that they are associating for the purpose of forming a land mortgage association under the provisions of this article.

(2) The name of such association, which shall be in no material respect similar to any other association in the same county.

(3) The name of the village, town or city, and the county where such association is to be located.

(4) The amount of capital stock, which shall be divided into shares of one hundred dollars each.

(5) The period for which such association is organized. (1925, c. 223, s. 3.)

§ 54-52. Organization. — The incorporators at their first annual meeting shall elect by ballot from their number a board of trustees of not less than six members who shall adopt a code of by-laws and a plan of organization approved by the Commissioner of Agriculture and the Corporation Commission. (1925, c. 223, s. 4.)

§ 54-53. Corporate powers. — Said land mortgage association shall have power: (a) To make loans, the conditions of which shall be approved by the Corporation Commission if the security taken therefor is to be used as the basis for a bond issue under subsection (c) hereof, and to accept as security for any such loan a first mortgage upon improved or partially improved agricultural lands within this State. Such loan shall not exceed, however, sixty-five per cent of the value of such real estate so conveyed, according to the appraisal made as herein provided.

(b) To purchase first mortgages, heretofore or hereafter issued against North Carolina agricultural lands, either improved or partially improved, from persons or firms resident of this State or corporations organized under the laws of this State engaged in the colonization or settlement of North Carolina lands and to whom such mortgages were issued, if, after investigation, the plan of settlement or colonization followed by such person, firm or corporation is approved by the Commissioner of Agriculture as beneficial to the settler or colonist, and if the lands against which such mortgages are issued are found by the said commissioner to be in fact agricultural lands suitable for agricultural purposes and the terms and conditions of the loans made by such person, firm or corporation are just and reasonable, or from banks or trust companies organized under the laws of this State, or of the United States, to do business in this State, to which such mortgages were issued direct by the borrowers. Each such mortgage shall be payable on the amortization plan maturing in not less than twenty years. The request for an investigation leading to such a purchase of mortgages from persons, firms or corporations engaged in the settlement or colonization of North Carolina lands shall be accompanied by a deposit, the amount of such deposit to be determined by the Commissioner of Agriculture. Upon completion of the investigation the Commissioner of Agriculture shall render a statement of expense accompanied by a remittance of any unused balance of such deposit, but no mortgage shall be purchased until the lands against which the same is issued have been appraised as hereinafter provided for the appraisal of land for a loan by the land mortgage association and such mortgage is approved by all members of the loan committee.

(c) To issue bonds secured by the pledge of the mortgage so taken or purchased.

(d) To pledge the notes and mortgages so taken or purchased under the provisions of subdivisions (a) and (b) hereof as security for the bonds of the land mortgage association referred to in subdivision (c) hereof. (1925, c. 223, s. 5.)

§ 54-54. Restrictions.—All mortgage obligations acquired by the company shall be subject to the following restrictions:

(a) Each such mortgage shall be a first and valid lien upon improved or partially improved agricultural lands within the State of North Carolina;

(b) Each such mortgage shall be a first and valid lien upon the whole and undivided fee and upon no lesser estate;

(c) Each such mortgage shall be given to secure a principal indebtedness not exceeding in amount fifteen per cent of the capital and surplus of the company;

(d) All such mortgages shall contain provisions for soil conservation;

(e) All such mortgages shall contain provisions for the time of commencing payments for annual or semiannual reduction of the indebtedness secured thereby, subject to the requirements as to repayment of loans and interest hereinafter provided;

(f) The company shall make no loan secured by mortgage of any real estate in which any officer or trustee of the company is interested either directly or indirectly, except upon the approval of two-thirds of all the trustees;

(g) A sufficient amount of the proceeds of any loan made upon lands upon which are buildings in course of construction or upon which land clearing or other improvements are being made shall be retained by the association and paid out only upon construction or improvement vouchers, countersigned by a duly authorized agent of the association. (1925, c. 223, s. 6.)

§ 54-55. Mortgage forms; approval. — The mortgages to be given to the association, the bonds to be issued and the trust deed executed to secure the bonds shall be in such form and shall contain such conditions as will adequately protect all parties thereto. The trustees shall provide the forms subject to the joint approval of the Corporation Commission and the Attorney-General. (1925, c. 223, s. 7.)

§ 54-56. Repayment of loan and interest. — The prospective borrower may be required to pay all expenses incidental to the examination of title and appraisal of the property. The total amount shall include (a) the rate of interest agreed upon; and (b) a payment. (1925, c. 223, s. 8.)

§ 54-57. Terms of payment. — A borrower may repay his loan by installments of such frequency and amounts as may be agreed upon: Provided, that not less than one per cent of the original amount of the mortgage shall be paid upon the principal thereof annually, and commencing not later than the sixth year succeeding the year in which the loan was made the borrower may

pay a larger installment upon the principal, or the whole of it, at any interest date, such payments to be in amounts equal to additions of one or more principal amortization payments. Such payment may be made in cash, or by tendering at par bonds of the associations. For failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined as the by-laws may prescribe. But the borrower shall never be required to pay more than the specified installment, nor to pay the principal before it is due except as prescribed herein for partial repayment on account of depreciation and for foreclosure by the association. The borrower may on sixty days' notice repay the association his total indebtedness, or, without such notice, upon payment of sixty days' interest upon the principal unpaid. The borrower shall be entitled to a receipt for all installments as paid, and where the repayment is complete to a satisfaction of his note and mortgage. (1925, c. 223, s. 9.)

§ 54-58. Transfer of mortgaged lands.—The acquirer of any lands mortgaged to a land mortgage association shall enter at once, on the acquisition of the land, into a written agreement with the association, attested by a notary, or a justice, and assume the personal responsibility for the indebtedness to the association attaching to such lands. This document must be presented to the trustees within fourteen days after demand. (1925, c. 223, s. 10.)

§ 54-59. Calling in loans before due. — Every land mortgage association shall have the power to call in loans upon sixty days notice:

(a) When the person acquiring the lands upon which money has been loaned does not comply with the provisions of § 54-58 and fulfill the obligations incumbent upon him;

(b) When the debtor does not meet the obligation imposed upon him by his contract and the by-laws of the land mortgage association;

(c) When the mortgaged premises become subject to forced sale;

(d) When the mortgaged premises are depreciating in value because of lack of care, of failure to maintain and conserve or from other cause.

The trustees of the association, whenever necessary, shall provide for an inspection of mortgaged premises by the State Department of Agriculture for an investigation of the care which is being given said premises, and may employ an expert to inspect the soil with a view of determining whether or not the same is being depleted. (1925, c. 223, s. 11.)

§ 54-60. Partial recall of debt.—The association may require a suitable partial repayment of the debt if the mortgaged premises may have at any time become depreciated in value from any cause whatsoever. (1925, c. 223, s. 12.)

§ 54-61. Foreclosure. — Whenever any loan is called in and the borrower shall fail to pay the principal and interest due to the association as required by law and the notices given him, the land mortgage association may then foreclose upon the mortgaged premises as for a past due loan. But in no case shall a borrower be liable for a sum greater than the amount of the unpaid portion of the loan with any accretions of interest thereon and expenses incidental to the collection thereof. (1925, c. 223, s. 13.)

§ 54-62. Appraisal of lands.—Upon application for a loan the land mortgage association shall cause the lands which it is proposed to mortgage to the association to be appraised by a competent appraiser furnished it by the State Department of Agriculture. (1925, c. 223, s. 14.)

§ 54-63. Preference prohibited; association borrowing money. — No land mortgage association, and no officer or agent thereof, shall give any preference to any creditor by pledging any of the assets of such association as collateral security, except that any such association may borrow money for temporary purposes, and may pledge assets of the association as collateral security therefor. Whenever it shall appear that any land mortgage association has borrowed habitually for the purpose of reloaning, the Corporation Commission may require such association to pay off such amount so borrowed. (1925, c. 223, s. 15.)

§ 54-64. Bond issues.

(a) The bonds to be issued by any land mortgage association may be issued for such amounts, bearing such serial number, and date or dates, and be payable at such time and times, bear such rate of interest, and be redeemable at maturity or upon notice at such times and in such manner, as the land mortgage association may, subject to the approval of the banking commission, deem advisable.

(b) Each land mortgage association shall keep a register for the registration and transfer of bonds issued by it in which it shall register, or cause to be registered, all bonds upon presentation thereof for such purpose; and such register shall contain the post office address of all registered holders of bonds and shall, at all reasonable times, be open to the inspection of the banking commission, or any of its deputies, and to the State Treasurer. (1925, c. 223, s. 16.)

§ 54-65. Deed of trust.

(a) To secure the payment of such bonds, the land mortgage association shall issue a collateral deed of trust to the State Treasurer, pledging as security for such bonds the notes and mortgages taken or purchased, as provided herein, in an amount equal to or exceeding the aggregate amount of bonds issued or to be issued.

(b) The total amount of bonds actually outstanding shall not at anytime exceed the total amount unpaid upon the notes secured by the mortgages belonging to the association and pledged for the payment of the bonds, plus such securities and moneys as may be on deposit with the State Treasurer under the provisions hereof.

(c) The aggregate amount of the principal of all bonds issued by land mortgage associations and outstanding at any one time shall not exceed twenty times the amount of the capital and surplus of the company. (1925, c. 223, s. 17.)

§ 54-66. Collaterals deposited with State Treasurer.—All mortgages pledged to secure the payment of the bonds issued hereunder shall be deposited and left with the State Treasurer. The

land mortgage association may, with the approval of the State Treasurer, remove such mortgages from the custody of the State Treasurer, substituting in place thereof other of its mortgages, or money or State of North Carolina bonds or certificates of deposit, endorsed in blank, issued by state or national banks located in North Carolina, farm mortgage bonds issued under the provisions of the Federal Farm Loan Act approved July seventeenth, one thousand nine hundred and sixteen, or obligations of the United States Government, in an amount equal to or greater than the amount unpaid upon the notes secured by the mortgages withdrawn. (1925, c. 223, s. 18.)

§ 54-67. Redemption of bonds.

(a) Notice of redemption of bonds may on no account be given on the part of the holder thereof, but may be given by the association only for the purpose of affecting redemption in accordance with the conditions of the bonds and as provided by law and the by-laws.

(b) If the land mortgage association shall elect to redeem any bond prior to maturity, six months notice of redemption shall be given and shall be effected by personal service upon the owner and holder of the bond, by notice mailed to his address as registered or by advertising the same three times in a newspaper selected by the State Treasurer.

(c) The numbers of the bonds of which notice of redemption is to be given shall be determined by lot, to be drawn by the president or the vice-president at a meeting of the trustees. (1925, c. 223, s. 19.)

§ 54-68. Validity of bonds after maturity.—In case the holder of any bond outstanding shall not have presented the same for payment within the period of two years after its maturity or within two years after the date fixed for the redemption, as the case may be, then such bonds shall cease to be a lien upon the mortgages, moneys, and securities pledged to the State Treasurer and deposited with him as security therefor, but such bond shall still constitute, until the statute of limitation running against such bonds shall have expired, a single legal money claim or demand against the land mortgage association issuing the same, and be recoverable from it in a suit at law, and in no event shall any interest be collectible upon such bond after the maturity thereof or after the date fixed for its redemption. (1925, c. 223, s. 20.)

§ 54-69. Bonds as payment.—If the association gives notice to a debtor for repayment of the mortgage loan the latter must pay to the association in cash or in its bonds at par the face of the same so far as it has not yet been covered by his assets in the amortization and payments. (1925, c. 223, s. 21.)

§ 54-70. Bonds as investments.—The bonds of a land mortgage association shall be a legal investment for savings associations, trust companies, or other financial institutions chartered under the laws of this State and shall also be a legal investment for trustees, executors, administrators, or custodians of public or private funds, or corporations, partnerships or associations. (1925, c. 223, s. 22.)

§ 54-71. Applications of earnings; reserve fund.—The gross earnings of the association shall be ascertained annually, and there shall first be deducted therefrom the expenses incurred by the association for the preceding year and the balance thereof shall be set aside as a reserve fund for the payment of contingent losses, to an amount equal to two per cent of the capital stock outstanding, and until such reserve fund equals twenty per cent of the capital stock of such association. (1925, c. 223, s. 23.)

§ 54-72. Restriction on holding real estate.—No land mortgage association shall acquire real estate (other than for the occupation of its offices) except to protect its interests in case any of the mortgages owned by it are foreclosed and the property therein described sold to pay the indebtedness secured thereby. All real estate so acquired shall be promptly sold. (1925, c. 223, s. 24.)

§ 54-73. Banking laws applicable.—The statutes relating to banks and banking in this State, that is, §§ 53-1 to 53-158, in so far as applicable and not in conflict with the provisions hereof shall apply to land mortgage associations. (1925, c. 223, s. 25.)

SUBCHAPTER III. CREDIT UNIONS.

Art. 9. Superintendent of Credit Unions.

§ 54-74. Office created.—There shall be established in the State Department of Agriculture a superintendent of credit unions and such assistants as may be necessary. (1915, c. 115, s. 1; 1925, c. 73, s. 4; 1935, c. 87; C. S. 5208.)

§ 54-75. Duties of the officer.—The duties of the superintendent of credit unions shall be as follows:

1. To organize and conduct, in the state department of agriculture, a bureau of information in regard to coöperative associations and rural and industrial credits.

2. Upon the application of three persons residing in the state of North Carolina, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any local credit union in the state.

3. To maintain an educational campaign in the state looking to the promotion and organization of credit unions; and upon the written request of twelve bona fide residents of any particular locality in this state expressing a desire to form a local credit union at such locality, the superintendent or one of his assistants shall proceed as promptly as convenient to such locality and advise and assist such organizers to establish the institution in question.

4. To examine at least once a year, and oftener if such examination be deemed necessary by the superintendent or his assistant, the credit unions formed under this subchapter. A report of such examination shall be filed with the state department of agriculture, and a copy mailed to the credit union at its proper address. (1915, c. 115, s. 1; 1925, c. 73, ss. 2, 3, 5, 6; 1935, c. 87; C. S. 5209.)

Art. 10. Incorporation of Credit Unions.

§ 54-76. Applications filed.—Seven or more persons employed or residing in the state may become a credit union by making, signing, and acknowledging a certificate which shall contain:

1. The name of the proposed credit union which shall include the words "credit union."
2. A statement that incorporation is desired under this article.
3. The conditions, whether of residence, of occupation, or otherwise, which shall qualify persons for membership.
4. The par value of the shares, which shall not exceed twenty-five dollars.
5. The city, village, or town in which its principal business office is to be located. If it is to be located in an incorporated city, the street address of the city shall be given. If the condition of its membership is employment by a certain individual, copartnership, or corporation, a statement that its office shall be with such individual, copartnership, or corporation may be substituted for the street address.
6. The number of its directors, not less than five, all of whom must be members of and shareholders in the corporation.
7. The names and postoffice addresses of the directors for the first year.
8. The names and postoffice addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation. (1915, c. 115, s. 2; 1925 c. 73, s. 3; 1935, c. 87; C. S. 5210.)

§ 54-77. By-laws adopted.—At the time of filing the certificate the incorporators shall adopt by-laws which shall provide:

1. The name of corporation.
2. The purposes for which it is formed.
3. Qualifications for membership.
4. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which constitute a quorum at the meetings, and the regulations as to voting.
5. The number of members of the board of directors, their powers and duties, and the compensation and duties of officers elected by the board of directors.
6. The number of members of the credit committee, their powers and duties.
7. The number of members of the supervisory committee, their powers and duties.
8. The par value of shares of capital stock.
9. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
10. The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.
11. The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall, in addition, have power to borrow funds.
12. The manner in which the funds of the corporation shall be invested.
13. The conditions upon which loans may be made and repaid.
14. The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.
15. The method of receipting for money paid on account of shares, deposits, or loans.
16. The manner in which the reserve fund shall be accumulated.
17. The manner in which dividends shall be determined and paid to members.
18. The manner in which a voluntary dissolution of the corporation shall be effected. (1915, c. 115, s. 2; C. S. 5211.)

§ 54-78. Certificate of incorporation. — The by-laws acknowledged to have been adopted by all of the incorporators, together with the certificate of incorporation, shall be filed in the office of the superintendent of credit unions who shall approve the certificate of incorporation if he is satisfied that it is in conformity with this subchapter, and shall approve the by-laws if he is satisfied as to the character of the incorporators and that the by-laws are reasonable and will tend to give assurance that the affairs of the prospective credit union will be administered in accordance with this subchapter. Thereupon, the superintendent of credit unions shall issue to the corporation a certificate of approval, annexed to a duplicate of the certificate of incorporation and of the by-laws, which certificate of approval, together with the attached duplicate certificate of incorporation and duplicate by-laws, shall be filed in the office of the clerk of the superior court of the county in which the office of such credit union is situated, and upon such filing the incorporators shall become and be a corporation. The county clerk shall charge the same filing fee for filing the certificate of approval, certificate of incorporation and by-laws as he is now allowed to charge for filing a certificate of incorporation of a corporation organized under the business corporations law of the state. (1915, c. 115, s. 2; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5212.)

§ 54-79. Amendment of by-laws.—The by-laws adopted by the incorporators and approved by the superintendent of credit unions shall be the by-laws of the corporation, and no amendment to the by-laws shall become operative until such amendment shall have been approved by the superintendent of credit unions, and a copy thereof certified by him, with a certificate of his approval, shall be filed in the office of the clerk of the superior court of the county where the office of the credit union is located. Such approval may be given or withheld by the superintendent of credit unions at his discretion. The county clerk shall receive the same fee for filing as provided in § 54-78. (1915, c. 115, s. 3; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5213.)

§ 54-80. Restriction of use of terms.—The use by any person, copartnership, association, or corporation except corporations formed under the provisions of this subchapter, of any name or title which contains the words "credit union" shall be a misdemeanor: Provided, that the provisions of this section shall not apply to associations or credit union leagues, the membership of which is composed entirely of corporations formed under the provisions of this subchapter. (1915, c. 115, s. 4;

1925, c. 73, s. 3; 1935, c. 87; 1941, c. 236; C. S. 5214.)

§ 54-81. Change of place of business.—A credit union may change its place of business on the written approval of the superintendent of credit unions, which written approval shall be filed in the office of the superintendent of credit unions and a duplicate of the approval in the office of the clerk of the superior court of the county where its office was located, and a second duplicate in the office of the clerk of the superior court of the county in which the new office is to be located. Such approval of the superintendent may be given or withheld at his discretion. (1915, c. 115, s. 25; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5215.)

Art. 11. Powers of Credit Unions.

§ 54-82. General nature of business.—A credit union may receive the savings of its members in payment for shares or on deposit; may loan to its members at reasonable rates of interest not exceeding the legal rate, or may invest as hereinafter provided the funds so accumulated, and may undertake such other activities relating to the purpose of the corporation as its by-laws may authorize. (1915, c. 115, s. 5; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5216.)

§ 54-83. Receive deposits.—A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the by-laws shall provide. (1915, c. 115, s. 16; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5217.)

§ 54-84. Borrowing money.—If the by-laws so provide, a credit union shall have power to borrow money from any source in addition to receiving deposits, but the aggregate amount of such indebtedness shall not at any one time exceed more than four (4) times the sum of its capital, surplus and reserve fund. (1915, c. 115, s. 17; 1925, c. 73, s. 10; 1935, c. 87; C. S. 5218.)

§ 54-85. Authority to execute contracts of guaranty in certain cases.—A credit union may execute such contracts of guaranty as may be necessary to procure credit for its members: Provided, that the said contracts of guaranty shall not place on the said local credit union a liability arising in any one year in excess of ten (10) per cent of the total credit under the said contracts of guaranty handled through that association in a particular year; and provided further, that all such contracts shall be approved by the superintendent of credit unions and each such contract must bear his approval in writing before becoming effective. In assuming such liability the said credit union may require of the individual members being served such security as the board of directors of each such credit union may determine upon. (1925, c. 73, s. 11; 1935, c. 87.)

§ 54-86. Investment of funds.—The capital, deposits, undivided profits and reserve fund of the corporation may be invested in one of the following ways, and in such way only:

1. They may be lent to the members of the corporation in accordance with the provisions of this subchapter.

2. They may be deposited to the credit of the corporation in savings banks, credit unions, building and loan associations, state banks or trust companies, incorporated under the laws of the state, or in National banks located therein. Funds of credit unions deposited in a savings bank, state bank, or trust company which may become insolvent, shall be preferred in the same way that funds of a "credit union" so deposited are preferred under the banking law of the state.

3. A credit union shall keep on deposit at interest in any of such depositories as are enumerated in the next preceding paragraph so much of the reserve fund and capital stock as shall equal five (5) per cent of the total liabilities.

4. Not more than ten per cent of the capital stock and reserve fund of a credit union may be invested in the stock of another local credit union and not more than twenty-five (25) per cent of the capital stock and reserve fund of a local association may be invested in the stock of a central association. (1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3; 1925, c. 73, ss. 12, 13, 14; 1935, c. 87; 1939, c. 400, s. 1; C. S. 5219.)

§ 54-87. Loans.

1. To Members.—A credit union may lend to its members for such purposes and upon such security and terms as the by-laws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of fifty dollars. An indorsed note shall be deemed to be security within the meaning of this section.

2. Installment Loans.— A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of in one sum.

3. Loans to Members of Committee.—The supervisory committee shall appoint a substitute to act on the credit committee in the place of any member in case such member makes application to borrow money from the credit union or becomes surety for any other member whose application for a loan is under consideration.

4. Loans to Persons Not Members Forbidden.—All officers and members of any committees in any way knowingly permitting or participating in making a loan of funds of a credit union to one not a member thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of such illegal loans from the borrower or from any officers or members of committees who knowingly permitted or participated in the making thereof, or from all of them jointly.

5. Repayment of Loans.—A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business. (1915, c. 115, s. 19; 1917, c. 232, s. 4; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5220.)

§ 54-88. Rate of interest; penalty.—No corporation organized pursuant to this subchapter shall directly or indirectly charge or receive any interest, discount, or consideration, other than the entrance fee, greater than the legal rate.

Any corporation, any person, the several officers of any corporation, and the members of committees who shall violate the foregoing prohibition shall be guilty of a misdemeanor. The cor-

poration shall also be subject to procedure by the superintendent of credit unions as prescribed herein in article fourteen. (1915, c. 115, s. 20; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5221.)

§ 54-89. Interest or discount rate charged by agricultural association. — An agricultural credit corporation or association, organized under the laws of the State of North Carolina, may charge and collect by way of interest or discount on all loans made for agricultural purposes to farmers, growers and truckers of staple agricultural crops, fruits and vegetables respectively, or for the purpose of raising, breeding, fattening, or marketing of live stock, a rate of interest or discount not to exceed three per centum per annum in excess of the rate of interest or rediscount rate charged by any Federal intermediate credit bank to such agricultural credit corporation or association when rediscounting or purchasing from it the notes of such farmers, growers and truckers: Provided, that the total rate, both interest and rediscount, to the borrower shall not exceed eight per centum (8%) per annum. (1927, c. 101; 1929, c. 43, s. 1; 1931, c. 329.)

§ 54-90. Reserve fund.—All entrance fees, transfer fees, and fines shall, after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year there shall be set apart to the reserve fund twenty per centum of the net income of the corporation which has accumulated during the year. But upon the recommendation of the board of directors, the members at an annual meeting may increase, and whenever such funds equal the amount of the capital may decrease, the proportion of profits which is required by this section to be set apart to the reserve fund. Nor shall the reserve fund in any case exceed the capital of the corporation plus fifty per centum of its other liabilities.

The reserve fund shall belong to the corporation and shall be held to meet contingencies, and shall not be distributed to the members except upon the dissolution of the corporation. (1915, c. 115, s. 21; 1939, c. 400, s. 2; C. S. 5222.)

§ 54-91. Dividends.—At the close of the fiscal year a credit union may declare a dividend not to exceed six per cent per annum from the income during the year and which remains after the deduction of expenses, losses, interest on deposits, and the amount required to be set apart to the reserve fund. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled to a proportional part of such dividend calculated from the first day of the month following such payment in full. (1915, c. 115, s. 22; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5223.)

§ 54-92. Voluntary dissolution.—At any meeting specially called to consider the subject, three-fourths of the members present and represented may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file in the office of the superintendent of credit unions such consent, attested by its secretary or treasurer and its president or vice-president, with a statement of the names and residences of the existing board of directors of the corporation and the names and residences of its officers duly verified. The superintendent of credit unions, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation, in duplicate, a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by the corporation in the office of the clerk of the superior court of the county in which the corporation has its place of business, and thereupon such corporation shall be dissolved and shall cease to carry on business except for the purpose of adjusting and winding up of its affairs. The corporation, by its board of directors, shall then proceed to adjust and wind up its business and affairs, with power to carry out its contracts, collect its accounts receivable, and to liquidate its assets and apply the same in discharge of debts and obligations of such corporation, and after paying and adequately providing for the payment of such debts and obligations, each share, according to the amount paid thereon, shall be entitled to its proportion of the balance of the assets. The corporation shall continue in existence for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts and obligations until its business and affairs are fully adjusted and wound up. (1915, c. 115, s. 24; 1925, c. 73, ss. 3, 15; 1935, c. 87; C. S. 5224.)

§ 54-93. Savings institution; restriction of taxation.—The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt building and loan associations or institutions for savings from taxation; nor shall any law passed taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this sub-chapter, unless they are specifically named in such law. The shares of credit unions, being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another. (1915, c. 115, s. 26; 1925, c. 73, ss. 3, 16; 1935, c. 87; C. S. 5225.)

Art. 12. Shares in the Corporation.

§ 54-94. Ownership and transfer of shares. — The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on the shares. Shares may be subscribed for and paid in such manner as the by-laws shall prescribe. The credit union shall have a lien on the shares of any member and upon any dividends payable thereon for and to the extent of any loan made to him and of any dues or fines payable by him. The credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the

withdrawal value of such shares towards the liquidation of the member's indebtedness.

A credit union may, if the by-laws so provide, charge an entrance fee for each share subscribed, to be paid by the shareholder upon his election to membership.

Fully paid shares of a credit union may be transferred to any person eligible for membership, upon such terms as the by-laws may provide, and the payment of a transfer fee shall not exceed twenty-five cents per share. (1915, c. 115, s. 13; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5226.)

§ 54-95. Shares and deposits for minors and in trust.—Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, or by his legal representatives. (1915, c. 115, s. 14; C. S. 5227.)

§ 54-96. Fines and penalties.—For failure by any member of a credit union to meet his payments on obligations when due, such fines and other penalties may be imposed upon the delinquent member as the by-laws provide. Such fines shall not exceed two per centum per month or a fraction thereof on amounts due, except that a minimum fine of five cents may be imposed. (1915, c. 115, s. 15; 1925, c. 73, s. 3; 1935, c. 87; 1939, c. 400, s. 3; C. S. 5228.)

§ 54-97. Liability of shareholders. — A shareholder of any such corporation, unless the by-laws so provide, shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed. (1915, c. 115, s. 26; C. S. 5229.)

Art. 13. Members and Officers.

§ 54-98. Who may become members. — The membership of the corporation shall consist of those persons who have been duly elected to membership and who have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the by-laws, and have complied with such other requirements as the by-laws may contain. No credit union shall ever pay any commission or offer compensation for the securing of members or on the sale of shares. (1915, c. 115, s. 6; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5230.)

§ 54-99. Expulsion and withdrawal of members.—The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this subchapter or of the by-laws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him, after reasonable notice, to be heard thereon.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal, shall be paid to such member, but in the order of expulsion or withdrawal and only as funds therefor become available, after deducting any amounts due to the corporation by such member. The member shall have no other or further right in the credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the corporation. (1915, c. 115, s. 23; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5231.)

§ 54-100. Meetings; right of voting.—The fiscal year of every such corporation shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee, and shall be held upon request in writing of ten per cent of the members. Notice of all meetings of the corporation shall be given in the manner prescribed in the by-laws. At all meetings of members or shareholders a member shall have one vote and but one vote, irrespective of the number of shares that may be held by him, and in case of sickness or other unavoidable absence of a member he shall be allowed to vote by proxy in writing, but no member present shall vote more than one such proxy. At any meeting the members may decide upon any question of interest to the corporation, and overrule the board of directors, and by a three-fourths vote of those present and represented, provided the notice of the meeting shall have specified the question to be considered, may vote to amend the by-laws. (1915, c. 115, s. 8; C. S. 5232.)

§ 54-101. Election of directors and committees.

1. Number Elected.—At the annual meeting the members shall elect a board of directors of not less than five members, a credit committee and a supervisory committee of not less than three members each. However, in credit unions whose business offices are located in places other than incorporated cities, the board of directors as such may also be the credit committee. Except as herein specified, no member of the board shall be a member of either of such committees, nor shall one person be a member of more than one of such committees. All members of committees and all directors, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices for such term as may be determined by the by-laws.

2. Oath of Office.—The oath required of each director, officer, and member of committee shall

be the oath of the individual taking the same that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual making it and certified by the officer before whom it is taken, and shall immediately be transmitted to the superintendent of credit unions and filed and preserved in his office. (1915, c. 115, s. 9; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5233.)

§ 54-102. Duties of board of directors.

1. Elect Executive Officers.—At their first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their number a president, vice-president, a secretary, and a treasurer, who shall be the executive officers of the corporation. The offices of secretary and treasurer may, if the by-laws so provide, be held by one person.

2. General Management.—The board of directors shall have the general management of the affairs, funds, and records of the corporation, shall meet as often as may be necessary, and, unless the by-laws shall specifically reserve all or any of these duties to the members, it shall be the special duty of the directors:

1. To act upon all applications for membership and the expulsion of members.

2. To fix the amount of the surety bond which shall be required of each officer having the custody of funds.

3. To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

4. To fix the maximum number of shares which may be held by and the maximum amount which may be lent to any one member; to declare dividends; and to recommend amendments to the by-laws.

5. To fill vacancies in the board of directors or in the credit committees until the election and qualification of successors.

6. To have charge of the investment of the funds of the corporation except loans to members, and to perform such other duties as the members may from time to time authorize.

3. Compensation.—No member of the board of directors or of the credit or supervisory committees shall receive any compensation for his services as a member of the board or committees. But the officers elected by the board of directors may receive such compensation as the members may authorize. (1915, c. 115, s. 10; C. S. 5234.)

§ 54-103. Duties of credit committee.—The credit committee shall approve every loan or advance made by the corporation to members. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it has received the unanimous approval of those members of the committee who were present when it was considered, who shall constitute at least a majority of the committee, nor if any member of the committee shall disapprove thereof; but the applicant for a loan may appeal from the decisions of the credit committee to the board of directors. The credit committee shall meet as often as may be required after due notice has been given to each member. (1915, c. 115, s. 11; C. S. 5235.)

§ 54-104. Duties of supervisory committee.—The supervisory committee shall inspect the securities, cash, and accounts of the corporation and supervise the acts of its board of directors, credit committee, and officers. At any time the supervisory committee, by a unanimous vote, may suspend the credit committee or any member of the board of directors, or any officer elected by the board, and by a majority vote may call a meeting of the shareholders to consider any violation of this subchapter or of the by-laws, or any practice of the corporation which, in the opinion of said committee, is unsafe and unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next regular meeting of the members.

At the close of each fiscal year the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets, and liabilities of the corporation for the fiscal year, and shall make a full report thereon to the directors. This report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation. (1915, c. 115, s. 12; C. S. 5236.)

Art. 14. Supervision and Control.

§ 54-105. Subject to superintendent of credit unions.—Corporations organized under the provisions of this subchapter shall be subject to the supervision of the superintendent of credit unions. (1915, c. 115, s. 7; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5237.)

§ 54-106. Reports; penalties; fees.—1. Every corporation organized under this subchapter shall, in January and in July of each year, make a report of condition to the superintendent of credit unions giving such information as he shall require, which reports shall be verified by oath of the treasurer and by oath of a majority of the supervisory committee, and shall make such other and further reports under like oath as the superintendent shall demand at any time.

2. Each credit union applying on or after July first, one thousand nine hundred forty-one, for a certificate to do business under the provisions of this subchapter shall, before receiving such certificate, pay into the office of the superintendent of credit unions a charter fee of five dollars ($5.00).

3. Each credit union subject to supervision and examination by the superintendent of credit unions, including credit unions in process of voluntary liquidation, shall pay into the office of the superintendent of credit unions supervisory fees as follows: (a) two dollars and fifty cents ($2.50) for the first one thousand dollars ($1,000.00) of

assets and fifty cents ($.50) for each additional thousand dollars ($1,000.00) of assets, or fraction thereof, payable during the month of July each year on the basis of total assets as shown by its report of condition made to the superintendent of credit unions as of the previous June thirtieth, or the date most nearly approximately same of each year; and (b) two dollars and fifty ($2.50) for the first one thousand dollars ($1,000.00) of assets and fifty cents ($.50) for each additional thousand dollars ($1,000.00) of assets, or fraction thereof, payable during the month of January each year on the basis of total assets as shown by its report of condition made to the superintendent of credit unions as of the previous December thirty-first, or the date most nearly approximating same of each year: Provided, that no credit union shall be required to pay any supervisory fee until the expiration of twelve months from the date of the issuance of a certificate of incorporation to such credit union.

4. Any such corporation which neglects to make semi-annual reports as provided in paragraph 1 of this section, or any of the other reports required by the superintendent of credit unions at the time fixed by the superintendent, shall forfeit to the superintendent of credit unions five dollars ($5.00) for each day such neglect continues; and, furthermore, the superintendent of credit unions shall have authority, in his discretion, to revoke the certificate of incorporation and take possession of the assets and business of any corporation failing to pay the fees required in this section after serving notice of at least fifteen (15) days upon such corporation of his intention so to do.

5. Moneys collected under this section shall be deposited with the state treasurer of North Carolina and expended, under the terms of the Executive Budget Act, to defray expenses incurred by the office of the superintendent of credit unions in carrying out its supervisory and auditing functions. (1915, c. 115, s. 7; 1925, c. 73, ss. 3, 7; 1935, c. 87; 1941, c. 235; C. S. 5238.)

§ 54-107. Annual examinations required. — The superintendent of credit unions shall cause every such corporation to be examined once a year and whenever he deems it necessary. The examiners appointed by him shall be given free access to all books, papers, securities, and other sources of information in respect to the corporation; and for the purpose of such examination the superintendent shall have power and authority to subpœna and examine personally, or by one of his deputies or examiners, witnesses on oath and documents, whether such witnesses are members of the corporation or not, and whether such documents are documents of the corporation or not. (1915, c. 115, s. 7; 1925, c. 73, s. 3; 1935, c. 87; C. S. 5239.)

§ 54-108. Revocation of certificate; liquidation.— If any such corporation shall neglect to make its annual report, as provided in this article, or any other report required by the superintendent of credit unions, for more than fifteen days, or shall fail to pay the charges required, including the fines for delay in filing reports, the superintendent of credit unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corporation for such neglect or failure, and if such neglect or failure continues for fifteen days after such notice, the said superintendent shall, at his discretion, revoke the certificate, and he, personally or by one of his deputies, shall take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided in the banking laws of the state. (1915, c. 115, s. 7; 1925, c. 73, ss. 3, 8; 1935, c. 87; C. S. 5240.)

§ 54-109. Deficits supplied; business discontinued.—If it shall appear to the superintendent of credit unions by any examination or report that any such corporation is insolvent, or that it has violated any of the provisions of this subchapter or any other law of the state, he may, by an order made over his hand and official seal, after a hearing or an opportunity for a hearing given the accused corporation, direct any such corporation to discontinue the illegal methods or practices mentioned in the order to make good any deficit. A deficit, in the discretion of the superintendent of credit unions, may be made good by an assessment on the members in proportion to the shares held by each member. If any such corporation shall not comply with such order within the time stipulated after the same shall have been delivered in person or shall have been mailed to the last address filed by such corporation in the office of the superintendent of credit unions (provided, that not more than thirty (30) days shall be allowed) the superintendent shall thereupon take possession of the property and business of such corporation and retain such possession until such time as he may permit it to resume business or its affairs be finally liquidated, as provided in the banking law of the state. (1915, c. 115, s. 7; 1925, c. 73, ss. 3, 9; 1935, c. 87; C. S. 5241.)

Art. 15. Central Associations.

§ 54-110. Central association.—(1) Upon application of seven or more credit unions for a central corporation for the purpose of securing credit and discounting notes with any outside agency, and to act as a clearing house in the settlement of these accounts, the superintendent of credit unions shall, upon receipt and investigation of charters and by-laws signed by the secretary-treasurers of the several credit unions, approve same if he is satisfied they are in conformity with and give reasonable assurance that the affairs of the corporation will be administered in accordance with this article.

(2) The procedure and plan of organization, method of operation, officers and their duties, supervision, liquidation and dissolution shall be the same as with any local credit union; except that the membership of a central credit union shall be institutional and only local credit unions can become members, unless the by-laws otherwise prescribe.

(3) Any local credit union can become a member of a central association by subscribing to any number of shares and paying for same, in whole or in part, not to be in excess of twenty-five per cent (25%) of their share capital and reserve fund.

(4) Deposits in the central association may be

accepted from any source in such amounts and upon such terms as the board of directors may determine and the by-laws shall prescribe.

(5) The secretary-treasurer shall cast the one vote of local member credit unions in its annual election of officers and at all meetings of the member associations unless the by-laws otherwise prescribe.

(6) A central credit union shall not charge more than three-fourths (¾) of one per cent for discounting paper, provided that no discount rate shall make the interest higher than the legal rate.

(7) Section 54-84 shall not apply to a central association, and such an association shall have power to borrow money from any source in amounts not in excess of ten times the amount of its capital and reserve fund.

(8) A central credit union shall not be taxable under any law which shall exempt any local credit union. (1925, c. 73, s. 17; 1935, c. 87.)

SUBCHAPTER IV. CO-OPERATIVE ASSOCIATIONS.

Art. 16. Organization of Associations.

§ 54-111. Nature of the association.—Any number of persons, not less than five, may associate themselves as a mutual association, society, company, or exchange, for the purpose of conducting any agricultural, horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business on the mutual plan. For the purposes of this subchapter, the words association, company, corporation, exchange, society, or union shall be construed to mean the same; Provided, that the membership of agricultural organizations incorporated under this subchapter shall consist of producers of agricultural products, handled by such organizations or by organizations owned and controlled by such producers. (1915, c. 144, s. 1; 1925, c. 179, ss. 1, 2; 1931, c. 447; C. S. 5242.)

§ 54-112. Use of term restricted.—No corporation or association hereinafter organized for doing business for profit in this state shall be entitled to use the term "mutual" as part of its corporate or other business name or title, unless it has complied with the provisions of this subchapter; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any shareholder of any association legally organized under this subchapter. (1915, c. 144, s. 18; 1925, c. 179, s. 1; C. S. 5243.)

§ 54-113. Articles of agreement.—The persons desiring to organize such association shall sign and acknowledge written articles which shall contain the name of the association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association and shall designate the city, town, or village where its principal place of business shall be located. The articles shall also state the amount of authorized capital stock, the number of shares subscribed, and the par value of each. No shareholder in any corporation organized under this subchapter shall be personally liable for any debt of the corporation. (1915, c. 144, s. 2; C. S. 5244.)

§ 54-114. Certificate of incorporation. — The original articles of incorporation of corporations organized under this subchapter, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. A like verified copy of such articles and certificate of the secretary of state, showing the date when such articles were filed with and accepted by the secretary of state, within thirty days of such filing and acceptance, shall be filed with and recorded by the clerk of the superior court of the county in which the principal place of business of the corporation is to be located, and no corporation shall, until such articles be left for record, have legal existence. The clerk of court shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded. Upon a receipt of such certificate, the secretary of state shall issue a certificate of incorporation. (1915, c. 144, s. 3; C. S. 5245.)

§ 54-115. Fees for incorporation. — For filing the articles of incorporation of corporations organized under this subchapter, there shall be paid the secretary of state ten dollars and his fees allowed by law, and for the filing of an amendment to such articles, five dollars and his fees allowed by law: Provided, that when the authorized capital stock of such corporations shall be less than one thousand dollars, such fee for filing either the articles of incorporation or amendments thereto shall be two dollars. For recording copy of such articles, the clerk of court shall receive a fee of fifty cents, to be paid by the person presenting such papers for record. (1915, c. 144, s. 4; C. S. 5246.)

§ 54-116. By-laws adopted. — At the time of making the articles of incorporation the incorporators shall make by-laws which shall provide:

1. The name of the corporation.
2. The purposes for which it is formed.
3. Qualifications for membership.
4. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which shall constitute a quorum at the meetings, and regulations as to voting.
5. The number of members of the board of directors; powers and duties; the compensation and duties of officers elected by the board of directors.
6. In the case of selling agencies or productive societies, regulations for grading.
7. In the case of selling agencies or productive societies, regulations governing the sale of products by the members through the organization.
8. The par value of the shares of capital stock.
9. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
10. The manner in which the reserve fund shall be accumulated.
11. The manner in which the dividends shall be determined and paid to members.
12. Associations, societies, companies or exchanges, organized hereunder to engage in the telephone or electric light business upon a mutual

basis, shall adopt a by-law limiting the patrons and subscribers to members of the association. (1915, c. 144, s. 5; 1925, c. 179, s. 4; C. S. 5247.)

§ 54-117. General corporation law applied; dealing in products of non-members. — All mutual associations shall be maintained in accordance with the general corporation law, except as otherwise provided for in this subchapter. And no corporation or association hereafter organized under this subchapter for doing business in this State shall be permitted to deal in the products of non-members to an amount greater in value than such as are handled by it for members. (1915, c. 144, s. 17; 1925, c. 179, s. 1; 1931, c. 447, s. 2; C. S. 5248.)

§ 54-118. Other corporations admitted.—All mutual corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all of the provisions of this subchapter, and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that the mutual company or association has by a majority vote of its shareholders decided to accept the benefits of and to be bound by the provisions of this subchapter. No association organized under this subchapter shall be required to do or perform anything not specifically required herein, in order to become a corporation. (1915, c. 144, s. 16; 1925, c. 179, s. 1; C. S. 5249.)

Art. 17. Stockholders and Officers.

§ 54-119. Certificate for stock fully paid. — Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as shareholders: Provided, part of the stock subscribed for has been paid in cash. (1915, c. 144, s. 11; C. S. 5250.)

§ 54-120. Ownership of shares limited. — No shareholder in any such association shall own shares of a greater aggregate par value than twenty per cent of the paid-in capital stock, except as hereinafter provided, or be entitled to more than one vote. A mutual association shall reserve the right of purchasing the stock of any member whose stock is for sale, and may restrict the transfer of stock to such persons as are made eligible to membership in the by-laws. (1915, c. 144, s. 9; 1925, c. 179, s. 1; C. S. 5251.)

§ 54-121. Shares issued on purchase of business. —Whenever an association, created under this subchapter, shall purchase the business of another association or person, it may pay for the same in whole or in part by issuing to the selling association or persons shares of its capital stock to an amount which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued. (1915, c. 144, s. 10; C. S. 5252.)

§ 54-122. Absent members voting.—At any regularly called general or special meeting of the shareholders a written vote received by mail from any absent shareholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of such of the shareholders so signing: Provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. In case of sickness or other unavoidable absence of a member, he shall be allowed to vote by proxy in writing; but no member shall vote more than one such proxy. (1915, c. 144, s. 12; C. S. 5253.)

§ 54-123. Directors and other officers. — Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for time for which elected and until their successors are elected and shall enter upon the discharge of such duties as are prescribed in the by-laws; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed shall cease to be a director or officer of the association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and treasurer, who shall be elected annually by the directors, and each of the officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. (1915, c. 144, s. 6; C. S. 5254.)

Art. 18. Powers and Duties.

§ 54-124. Nature of business authorized. — An association created under this subchapter shall have power to conduct any agricultural, horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business, on the mutual plan. (1915, c. 144, s. 8; 1925, c. 179, ss. 1, 3; C. S. 5255.)

§ 54-125. Amendment of articles.—The association may amend its articles of incorporation by a majority vote of its shareholders at any regular shareholders' meeting, or any special shareholders' meeting called for that purpose, on ten days notice to the shareholders. The power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid up capital at the time the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the clerk of court of the county where the principal place of business is located. (1915, c. 144, s. 7; C. S. 5256.)

§ 54-126. Apportionment of earnings. — The directors, subject to revision by the association at any general or special meeting, shall apportion the earnings by first paying dividends on the paid-up capital stock, not exceeding six per cent per

annum, then setting aside not less than ten per cent of the net profits for a reserve fund, until an amount has been accumulated in the reserve fund equal to thirty per cent of the paid-up capital stock, and not less than two per cent thereof for an educational fund to be used in teaching coöperation, and the remainder of the net profits by uniform dividend upon the amount of purchases of shareholders and upon the wages and salaries of employees, and one-half of such uniform dividend to nonshareholders on the amount of their purchase, which may be credited to the account of such nonshareholders on account of capital stock of the association; but in selling agencies such as fruit, truck, peanuts, and cotton growers' associations, and in productive associations such as creameries, canneries, warehouses, factories, and the like, dividends shall be prorated on raw materials delivered instead of on goods purchased. In case the association is both a selling and productive concern, or a service and distributing association the dividends may be on both raw material delivered and on goods or service purchased by patrons. (1915, c. 144, s. 13; 1925, c. 179, s. 5; C. S. 5257.)

§ 54-127. Time of distribution. — The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months. (1915, c. 144, s. 14; C. S. 5258.)

§ 54-128. Annual reports.—Every association organized under the provisions of this subchapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of shareholders, total expenses of operation, amount of indebtedness or liabilities, and its profits and losses. A copy of such report shall also be filed with the division of markets in the Department of Agriculture. (1915, c. 144, s. 15; C. S. 5259.)

SUBCHAPTER V. MARKETING ASSOCIATIONS.

Art. 19. Purpose and Organization.

§ 54-129. Declaration of policy.—In order to promote, foster, and encourage the intelligent and orderly producing and marketing of agricultural products through coöperation, and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing problems of agricultural products this subchapter is enacted. (1921, c. 87, s. 1; 1935, c. 230, s. 1; C. S. 5259(a).)

§ 54-130. Definitions.—As used in this subchapter—

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products;

(b) The term "member" shall include actual members of associations without capital stock and holders of stock in associations organized with capital stock;

(c) The term "association" means any corporation organized under this subchapter; and

(d) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This subchapter shall be referred to as the "Coöperative Marketing Act." (1921, c. 87, s. 2; 1935, c. 436, s. 1; C. S. 5259(b).)

§ 54-131. Who may organize. — Five (5) or more persons engaged in the production of agricultural products may form a nonprofit, coöperative association, with or without capital stock, under the provisions of this subchapter. (1921, c. 87, s. 3; C. S. 5259(c).)

§ 54-132. Purposes. — An association may be organized to engage in any activity in connection with the producing, marketing or selling of the agricultural products of its members and other farmers, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, of the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. (1921, c. 87, s. 4; 1933, c. 350, s. 2; 1935, c. 230, s. 2; C. S. 5259(d).)

§ 54-133. Preliminary investigation. — Every group of persons contemplating the organization of an association under this subchapter is urged to communicate with the chief of the division of markets, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success. (1921, c. 87, s. 5; C. S. 5259(e).)

§ 54-134. Articles of incorporation. — Each association formed under this subchapter must prepare and file articles of incorporation, setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The names and addresses (not less than five) of those who are to serve as directors for the first term or until the election of their successors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the article shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and this association shall have the power to admit new members who shall be entitled to share in the

property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such stock and the number of such shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each.

In addition to the foregoing, the petition for articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; provided that nothing set forth in this paragraph shall be construed as limiting any of the rights or powers otherwise given to such associations.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the chief of the division of markets. (1921, c. 87, s. 8; 1935, c. 230, ss. 3, 4; C. S. 5259(f).)

§ 54-135. Amendments to articles of incorporation.—The articles of incorporation may be altered or amended at any regular meeting, or any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of a quorum of the members attending a meeting of which notice of the proposed amendment shall have been given. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation law of this state. (1921, c. 87, s. 9; 1935, c. 230, s. 5; C. S. 5259(g).)

§ 54-136. By-laws. — Each association incorporated under this subchapter must, within thirty (30) days after its incorporation, adopt for its government and management a code of by-laws, not inconsistent with the powers granted by this subchapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed by-law or by-laws shall have been given, is sufficient to adopt or amend the by-laws. Each association under its by-laws may also provide for any or all of the following matters:

(a) The time, place, and manner of calling and conducting its meetings.

(b) The number of stockholders or members constituting a quorum.

(c) The right of members or stockholders to vote by proxy or by mail, or by both, and the conditions, manner, form, and effects of such votes.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensations, and duties and terms of office of directors and officers; time of their election, and the mode and manner of giving notice thereof.

(f) Penalties for violations of the by-laws.

(g) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.

(h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him, and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(i) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and the time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association, and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal. (1921, c. 87, s. 10; 1935, c. 230, s. 6; C. S. 5259(h).)

§ 54-137. General and special meetings; how called.—In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association, and demand a special meeting at any time. Such meeting must thereupon

be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting: Provided, however, that the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association. (1921, c. 87, s. 11; C. S. 5259(i).)

§ 54-138. Conflicting laws not to apply.—Any provisions of law which are in conflict with this subchapter shall not be construed as applying to the associations herein provided for. (1921, c. 87, s. 20; C. S. 5259(j).)

§ 54-139. Limitation of use of term "coöperative".—No person, firm, or corporation, or association hereafter organized or doing business in this state shall be entitled to use the word "coöperative" as part of its corporate or other business name or title unless it has complied with the provisions of this subchapter. (1921, c. 87, s. 21; C. S. 5259(k).)

§ 54-140. Association heretofore organized may adopt the provisions of this subchapter.—Any corporation or association organized under previously existing statutes may, by a majority vote of its stockholders or members, be brought under the provisions of this subchapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this subchapter. Articles of incorporation shall be filed as required in § 54-134, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation. (1921, c. 87, s. 24; C. S. 5259(l).)

§ 54-141. Associations not in restraint of trade.—No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between the association and its members, or any agreements authorized in this subchapter be considered illegal or in restraint of trade. (1921, c. 87, s. 26; C. S. 5259(m).)

§ 54-142. Application of general corporation laws.—The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this subchapter. (1921, c. 87, s. 28; C. S. 5259(o).)

§ 54-143. Annual license fees.—Each association organized hereunder shall pay an annual license fee of ten dollars ($10), but shall be exempted from all franchise or license taxes. (1921, c. 87, s. 29; C. S. 5259(p).)

§ 54-144. Filing fees.—For filing articles of incorporation, an association organized hereunder shall pay ten dollars ($10); and for filing an amendment to the articles, two dollars and one-half ($2.50). (1921, c. 87, s. 30; C. S. 5259(q).)

Art. 20. Members and Officers.

§ 54-145. Members.—(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder. (1921, c. 87, s. 7; C. S. 5259(r).)

§ 54-146. Directors; election.—(a) The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected according to such districts. In such case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(b) The by-laws shall provide that one or more directors shall be appointed by the director of agricultural extension or any other public official or commission. The directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.

(c) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

(d) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by districts. In such case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy: Provided, that this subsection shall not apply to the director or directors appointed under the provisions of subsection (b) of this section: Pro-

vided further, that any vacancy occurring in the office of a director appointed under subsection (b) of this section shall be filled in the same manner as the original appointment was made. (1921, c. 87, s. 12; C. S. 5259(s).)

§ 54-147. Election of officers.—The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered an officer, but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. (1921, c. 87, s. 13; C. S. 5259(t).)

§ 54-148. Stock; membership certificates; when issued; voting; liability; limitation on transfer of ownership.—

(a) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

(c) Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(d) A coöperative association, incorporated under this subchapter, may fix or limit in its by-laws the amount of stock which one member might own in said association.

(e) No member or stockholder shall be entitled to more than one vote.

(f) Any association organized with stock under this subchapter may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

(g) The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(h) The association may at any time, except when the debts of the association exceed fifty per cent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors, and pay for it in cash within one (1) year thereafter. (1921, c. 87, s. 14; 1935, c. 436, s. 2; C. S. 5259(u).)

§ 54-149. Removal of officer or director.—Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting, and shall have an opportunity at the meeting to be heard in person or by counsel, and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts, with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of that district, the director in question shall be removed from office: Provided, that this section shall not apply to directors appointed under subsection (b) of § 54-146. (1921, c. 87, s. 15; C. S. 5259(v).)

§ 54-150. Referendum.—Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting: Provided, however, that a special meeting may be called for the purpose. (1921, c. 87, s. 16; C. S. 5259(w).)

Art. 21. Powers, Duties, and Liabilities.

§ 54-151. Powers. — Each association incorporated under this subchapter shall have the following powers:

(a) To engage in any activity in connection with the producing, marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members and other farmers; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No such association, during any fiscal year thereof, shall deal in or handle products, machinery, equipment, supplies, and/or perform services for and on behalf of non-members to an amount greater in value than such as are dealt in, handled, and/or performed by it for and on behalf of members during the same period.

(b) To borrow money and to make advances to members and other farmers who deliver agricultural products to the association.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights or ownership in, and to sell, transfer, or pledge shares of the capi-

tal stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association, or engaged in the financing of the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) To do each and everything necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights and powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this subchapter; and to do any such thing anywhere. (1921, c. 87, s. 6; 1933, c. 350, ss. 3, 4; 1935, c. 230, ss. 7-9; C. S. 5259(x).)

§ 54-152. Marketing contract.—(a) The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserve for retiring the stock, if any; and other proper reserves; and interest not exceeding eight per cent per annum upon common stock.

(b) The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. (1921, c. 87, s. 17; C. S. 5259(y).)

§ 54-153. Purchasing business of other associations, persons, firms, or corporations; payment; stock issued.—Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may by agreement with the other party or parties to the transaction discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for shares of stock issued. (1921, c. 87, s. 18; C. S. 5259(z).)

§ 54-154. Annual reports.—Each association formed under this subchapter shall prepare and make out an annual report on forms furnished by the division of markets, containing the name of the association, its principal place of business, and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up, and the number of stockholders of a stock association or the number of members and the amount of membership fees received, if a nonstock association; the total expenses of the operations; the amount of its indebtedness, or liability, and its balance sheets. (1921, c. 87, s. 19; C. S. 5259(aa).)

§ 54-155. Interest in other corporations or associations. — An association may organize, form, operate, own, control, have interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. (1921, c. 87, s. 22; C. S. 5259(bb).)

§ 54-156. Contracts and agreements with other associations.—Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements and contracts and arrangements with any other coöperative corporation, association, or associations, formed in this or in any other state, for the coöperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations

may by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses. (1921, c. 87, s. 23; C. S. 5259(cc).)

§ 54-157. Breach of marketing contract of coöperative association; spreading false reports about the finances or management thereof; misdemeanor.—Any person or persons, or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars ($500) for each such offense: Provided, that this section shall not apply to a bona fide creditor of any member or stockholder of such association, or the agents or attorney of any such bona fide creditor, endeavoring to make collection of the indebtedness. (1921, c. 87, s. 25; C. S. 5259(dd).)

§ 54-158. Coöperative associations may form subsidiaries.—Nothing in this subchapter shall prevent an association organizing, forming, operating, owning, controlling, having an interest in, owning stock of, or being a member of any other corporation (hereinafter referred to as a subsidiary corporation) from including or having included in the charter or by-laws of such subsidiary corporation provisions for the control or management of said subsidiary corporation by such association to such extent as shall by votes of the board of directors of such association, and the majority of the stockholders of such subsidiary corporation, be declared to be for the best interests of said association and said subsidiary corporation respectively. Such provisions may be so included in any such charter or by-laws and may by way of illustration, but not of limitation, include the following:

1. Representation of said association on the board of directors or other governing body of said subsidiary corporation, upon such terms as may be deemed advisable.

2. Ownership by an association of an interest or interests in a subsidiary corporation represented by stock of any class thereof, or otherwise, to such extent and upon such terms, and with such voting power, as may be deemed advisable.

3. Participation by said association in the profits of such subsidiary corporation to such extent and upon such terms as shall be deemed advisable. (1933, c. 350, s. 1.)

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Art. 1. Definitions.

§ 55-1. Definitions.—The following words and phrases where used in this chapter, unless differently defined or described, have the meanings and references stated below:

1. "Corporation" refers to a corporation which may be created and organized under this chapter, or under any other general or any special act.

2. "Certificate of incorporation" is the instrument filed by the incorporators and by which the corporation is formed.

3. The words "special act" refer to the act of the legislature enacted for the purpose of creating the corporation.

4. The word "charter" means either "certificate of incorporation" or "special act," together with all appropriate parts of this chapter and its amendments.

5. "Court," "superior court," or "judge of the superior court" means the judge of the superior court resident in the district or holding the courts of the district in which the corporation affected has its principal place of business.

6. "Receiver" as used in this chapter includes

receivers and trustees appointed by the court, as herein provided. (Rev., ss. 1136, 1222, 1247; Code, s. 668; 1901, c. 2, ss. 7, 74, 111; C. S. 1113.)

Art. 2. Formation.

§ 55-2. How created.—Three or more persons who desire to engage in any business, or to form any company, society, or association, not unlawful, except railroads other than street railways, or banking or insurance, or building and loan associations, may be incorporated in the following manner only (except corporations created for charitable, educational or reformatory purposes that are to be and remain under the patronage and control of the state): Such persons shall, by a certificate of incorporation, under their hands and seals, set forth—

1. The name of the corporation. No name can be assumed which is already in use by (a) a domestic corporation, or (b) a foreign corporation authorized to do business under the laws of this State, or (c) a corporation which has heretofore or may hereafter sell its good will to any other person, firm or corporation, and notice thereof has been or may hereafter be filed in the office of the Secretary of State of North Carolina, and the filing fee of twenty-five dollars paid to the said Secretary of State: Provided, however, that the purchaser of the good will of such corporation, or his or its assigns, may be permitted to use the same name, or one similar thereto, of the corporation whose good will it has purchased. The prohibition of this paragraph shall extend to names so nearly resembling or deceptively similar to such existing corporate names as may be likely to mislead or deceive the public or tend to confusion of identity. The name adopted must end with the word "company," "corporation," "incorporated" or the abbreviation "inc.," and will not be accepted for filing unless approved by the secretary of state.

2. The location of its principal office in the state.

3. The object or objects for which the corporation is to be formed.

4. The amount of the total authorized capital stock, the number of shares into which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes. The provisions of this subsection shall not apply to religious, charitable, nonprofit social or literary corporations, unless they desire to have a capital stock. If they desire to have no capital stock, that fact and the conditions of membership shall be stated.

5. The names and postoffice addresses of the subscribers for stock and the number of shares subscribed for by each; the aggregate of the subscriptions shall be the amount of capital with which the corporation will commence business. If there is to be no capital stock, the certificate must contain the names and postoffice addresses of the incorporators.

6. The period, if any, limited for the duration of the corporation.

7. The certificate of incorporation may also contain any provision, consistent with the laws of this state, for the regulation of the affairs of the corporation, or creating, defining, limiting and regulating its powers, directors and stockholders, or any class or classes of the latter. (Rev., s. 1137; Code, s. 677; 1885, cc. 19, 190; 1889, c. 170; 1891, c. 257; 1893, cc. 244, 318; 1897, c. 204; 1899, c. 618; 1901, c. 2, s. 8, cc. 6, 41, 47; 1903, c. 453; 1911, c. 213, s. 1; 1913, c. 5, s. 1; Const., Art. 8, s. 1; Ex. Sess. 1920, c. 55; 1924, c. 98; 1935, cc. 166, 320; 1939, c. 222; C. S. 1114.)

§ 55-3. Requirements as to certificate of incorporation.—The certificate of incorporation shall be signed by the original stock subscribers, or a majority of them, and must be acknowledged before an officer duly authorized under the laws of this state to take the proof or acknowledgment of deeds. The certificate shall then be filed in the office of the secretary of state, and there remain of record, and he shall, if it is in accordance with law, cause it to be recorded in his office in a book to be kept for that purpose and known as the Corporation Book. Upon the payment of the organization tax and fees, the secretary of state shall certify under his official seal a copy of the certificate of incorporation and probates, which certified copy shall be forthwith recorded in the office of the clerk of the superior court of the county where the principal office of the corporation in this state is, or is to be, established, in a book to be known as the Record of Incorporations. The certificate, or a copy thereof, duly certified by the secretary of state, or by the clerk of the superior court of the county in which it is recorded, is evidence in all courts and places, and in all judicial proceedings is prima facie evidence of the complete incorporation and organization of the corporation purporting thereby to have been established. (Rev., s. 1139; Code, ss. 678, 679, 682; 1901, c. 2, s. 9; 1903, c. 343; C. S. 1115.)

§ 55-4. When incorporators become corporation.—From the date the certificate of incorporation is filed in the office of the secretary of state, the stock subscribers, their successors and assigns, are a body corporate by the name specified in the certificate, subject to amendment and dissolution as provided in this chapter. (Rev., s. 1140; 1901, c. 2, s. 10; C. S. 1116.)

§ 55-5. Incorporators act until directors elected.—Until directors are elected the signers of the certificate of incorporation shall have the direction of the affairs of the corporation, and may take proper steps to obtain the necessary subscription to stock and to perfect the organization of the corporation. (Rev., s. 1141; 1901, c. 2, s. 11; C. S. 1117.)

§ 55-6. First meeting; notice.—The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place, and purpose of the meeting, which notice shall be published at least two weeks before the meeting, in a newspaper of the county where the corporation is established; or the meeting may be called without publication, if two days notice is personally served on all the incorporators; or if all the incorporators in writing waive notice and fix a time and place of meeting, no notice or publication is required. (Rev., s. 1142; Code, s. 665; 1901, c. 2, s. 18; C. S. 1118.)

§ 55-7. Death of incorporators; vacancy filled.—When one or more of the incorporators of any corporation die before the corporation has been organized pursuant to law, the survivor or survivors may, in writing, designate others who may take the place and act instead of the deceased, in the organization; and the organization so effected by their aid is as effectual in law as if it had been effected by all the original incorporators. (Rev., s. 1143; 1901, c. 2, s. 36; C. S. 1119.)

§ 55-8. Errors or omissions in certificate of incorporation.—Whenever in the certificate of incorporation under any general law there is an error or omission in the recital of the act under which the corporation is created or an error or omission of any matter required to be stated therein, it is lawful for the corporation to correct the error or supply the omission in the following manner: The board of directors shall pass a resolution declaring that the error or omission exists and that the corporation desires to correct it, and shall call a meeting of the stockholders to take action upon the resolution. The stockholders' meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice, given personally or by mail. If two-thirds in interest of all the stockholders vote in favor of the correction of the error or omission, a certificate of their action shall be made and signed by the president and secretary under the corporate seal; which certificate shall be acknowledged as in the case of deeds of real estate, and, together with the written consent in person or by proxy of two-thirds in interest of all the stockholders of the corporation, shall be filed in the office of the secretary of state. Upon the filing thereof, in conformity with this section, the certificate of incorporation has the same force and effect as if it had been originally drafted in conformity with the amendment so made. (Rev., s. 1144; 1901, c. 2, s. 109; C. S. 1120.)

§ 55-9. Street railways.—Corporations may be organized under the provisions of this chapter for the purpose of building, maintaining or operating street railways. The term street railways, wherever used in this chapter, includes railways operated either by steam or electricity, or other motive power, used and operated as means of communication between different points in the same municipality, or between points in municipalities lying adjacent or near to each other, or between the municipality in which is the home office of the company and the territory contiguous thereto, and such railways may carry and deliver freights. No such railway may operate a line extending in any direction more than one hundred miles from the municipality in which is located its home office, or in any city or town without the consent of the municipal authorities thereof. (Rev., s. 1138; 1901, cc. 6, 41; 1903, c. 350; Ex. Sess. 1913, c. 70, s. 1; C. S. 1121.)

§ 55-10. Securities and loan companies.—Corporations may be formed under the provisions of this chapter to conduct the business of selling securities and bonds of any kind, including its own bonds and choses in action, on the partial payment, installment, or other plan of payment, and to loan money on mortgage, personal, or other security, and to collect interest in advance on the same, and to charge a fee of $1 for investigating the loan, but no fee shall be charged for a renewal of the loan. A corporation chartered by another state or by a foreign state, kingdom, or government, having in its charter the power to conduct the business described in this section, may become domesticated in this state in the manner and upon the terms and conditions provided in § 55-118; but such company must also file with the secretary of state a statement, verified by its president and secretary, showing that its paid-up cash capital is at least $100,000 and that it has complied with all the requirements of the laws of the state of its creation. The business of such corporation in this state is restricted to the business described in this section. Such corporation is liable to pay the franchise tax imposed by the chapter entitled Taxation, and also an ad valorem tax on all of its real and personal property situate in this state. No foreign corporation domesticated under this section is required to pay any other taxes or license fees than those named herein. (1909, c. 502; 1915, c. 189; C. S. 1122.)

§ 55-11. Public parks and drives.—Three or more persons may be incorporated under this chapter for the purpose of creating and maintaining public parks and drives. It is not necessary, however, to set forth in the certificate of incorporation of any corporation created for such purpose the amount of authorized capital stock, the number of shares into which the same is divided, the par value of such stock, or the amount of capital stock with which it will commence business. Any corporation created hereunder shall have full power and authority to lay out, manage, and control parks and drives within the state, under such rules and regulations as the corporation may prescribe, and shall have power to purchase and hold property and take gifts or donations for such purpose. It may hold property and exercise such powers and trust for any town, city, township, or county, in connection with which said parks and drives shall be maintained. Any city, town, township, or county, holding such property, may vest and transfer the same to any such corporation for the purpose of controlling and maintaining the same as public parks and drives under such regulations and subject to such conditions as may be determined upon by such city, town, township, or county. All such lands as the corporation may acquire shall be held in trust as public parks and drives, and shall be held open to the public under such rules, laws, and regulations as the corporation may adopt through its board of directors; and it shall have power and authority to make and adopt all such laws and regulations as it may determine upon for the reasonable management of such parks and drives. All property owned by it and appropriated exclusively for public parks and drives shall not be subject to taxation, and no such corporation shall be liable in damages on account of the construction or maintenance of any such parks or drives. (1911, c. 155, ss. 1, 2, 3, 4; C. S. 1123.)

Local Modification.—Scotland: 1939, c. 359, s. 1.

§ 55-12. Word "trust" in corporate name.—No corporation may be chartered under the laws of North Carolina with the word "trust" as a part of its name except those reporting to and under the supervision of the commissioner of banks; nor may any corporate name be amended to include the word "trust" unless the corporation is under such supervision. (1915, c. 196, s. 2; 1931, c. 243, ss. 4, 5; C. S. 1124.)

§ 55-13. Certain religious, etc., associations deemed incorporated.—In all cases where a religious, educational or charitable association has been formed prior to January first, one thousand eight hundred and ninety-four, and has since said date been acting as a corporation, exercising the powers and performing the duties of religious, educational or charitable corporations as prescribed by the laws of this state, then such association shall be conclusively presumed to have been duly and regularly organized and existing as a corporation under the laws of this state on January first, one thousand eight hundred and ninety-four, and all of its acts as a corporation from and after said date, if otherwise valid, are hereby declared to be valid corporate acts. (1919, c. 137; C. S. 1125.)

Art. 3. North Carolina State Thrift Society.

§ 55-14. North Carolina state thrift society incorporated.—In order the better to provide for the education of the school children of the state in the principles and practice of thrift and saving and in order to aid them in making better provision for their future advanced education, there is hereby created under the patronage and control of the state a non-stock corporation to be known as the North Carolina state thrift society. (1933, c. 385, s. 1.)

§ 55-15. Charter perpetual.—The charter of the society shall be perpetual. (1933, c. 385, s. 2.)

§ 55-16. Membership and directors.—The membership of the society shall be identical with the membership of the governing board, which shall consist of sixteen directors. The state treasurer, the superintendent of public instruction, the president of the North Carolina bankers association and the president of the University of North Carolina shall throughout their terms of office be ex officio members of the board. The remaining twelve members of the board shall be appointed by the governor for successive terms of four years each, and shall be equally divided between the business and financial and the educational interests of the state, six members to each of the named groups: Provided that at least four of those representing business must be experienced bankers. (1933, c. 385, s. 3.)

§ 55-17. Vacancies.—In the event of a vacancy occurring before the expiration of the terms of office of any director, the board by a majority vote of its full membership, including ex officio members, shall have power to elect persons to fill out the unexpired terms. (1933, c. 385, s. 4.)

§ 55-18. Officers of society.—The officers of the society shall be elected by the board, and shall include a president, vice-president, secretary, treasurer and auditor. The treasurer of the society shall be responsible for the funds of the society, and shall furnish good and sufficient surety in such amount as may be fixed from time to time by the board of directors. (1933, c. 385, s. 5; 1935, c. 489, s. 1.)

§ 55-19. Powers of purchase and sale.—The society shall have power and authority to purchase, lease and otherwise acquire such real and personal property as may be deemed useful to the prosecution of the objects for which it is created. It may sell and dispose of the same and may hold or may sell and convey such property also as may be taken in whole or partial satisfaction of any debt due to it. It may also receive gifts of money and property to be applied to its corporate purposes. (1933, c. 385, s. 6.)

§ 55-20. Deposits of school children.—The society may receive deposits of the funds of children and others attending any of the public schools or colleges of North Carolina, as provided in § 55-25, and subject to repayment on terms established by the board, provided that no individual account may exceed $1,000. (1933, c. 385, s. 7.)

§ 55-21. Depositories.—The funds in the treasurer's hands may be deposited by him, to his credit, with banks which are members of the Federal Deposit Insurance Corporation. In no case may the amount in any one bank exceed the amount covered by insurance. The interest accruing and paid on such deposits shall be added to the funds of the society. (1933, c. 385, s. 8; 1935, c. 489, s. 2.)

§ 55-22. Exemption from taxation.—Neither deposits in the society nor its property, investments and assets shall at any time be subject to taxation by the state of North Carolina or any of its sub-divisions, except that gift, inheritance or estate taxes may be levied on the transfer of private deposits in the society. (1933, c. 385, s. 9.)

§ 55-23. Investments.—The funds of the society may, at the discretion of the board, be invested in obligations of the United States Government, or of the State of North Carolina, or deposited as previously provided in § 55-21. (1933, c. 385, s. 11; 1935, c. 489, s. 4.)

§ 55-24. No expense to state.—Provided, that no liability of any kind shall rest on the state of North Carolina by reason of this article. (1933, c. 385, s. 12; 1935, c. 489, s. 5.)

§ 55-25. Thrift instruction provided by superintendent of public instruction in schools. — Within 150 days from May 13, 1933, the state superintendent of public instruction shall provide in the public schools of the state for instruction in thrift and the principles, practice and advantage of saving.

In connection with the instruction so provided arrangements shall be made at each school for the receiving of students' savings deposits into the North Carolina state thrift society, subject to its rules and on the terms provided therein.

The administration of the system in each school shall be in charge of one or more of the teachers in said school to be designated by the principal.

The savings deposits shall be transmitted to the treasurer of the said society from time to time, in accordance with rules to be established by the governing board of the North Carolina state thrift

society, and shall be held for the purposes declared in the charter of the said society. (1933, c. 481, ss. 1-4; 1935, c. 489, s. 6.)

Art. 4. Powers and Restrictions.

§ 55-26. Express powers.—Every corporation has power—

1. To have succession, by its corporate name, for the period limited in its charter, and when the charter contains no time limit, for a period of sixty years.

2. To sue and be sued in any court.

3. To make, use, and alter a common seal.

4. To purchase, acquire by devise or bequest, hold and convey real and personal property in or out of the state, and to mortgage the same and its franchises.

5. To elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation, and define their duties and obligations. And when there devolves upon an officer or agent of a corporation such duties and responsibilities that a financial loss would result to the corporation from the death and consequent loss of the services of such officer or agent, the corporation has an insurable interest in, and the power to insure the life of, the officer or agent for its benefit and in all cases where a religious, educational or charitable corporation or institution shall be, or has been, named as beneficiary in any policy of life insurance by a friend, student, former student or any person who for any reason is loyal to such corporation or institution and has himself or herself paid the premiums on said policy, then such corporation or institution shall be deemed to have an insurable interest in the life of such person.

6. To conduct business in this state, other states, the District of Columbia, the territories, dependencies and colonies of the United States, and in foreign countries, and have offices in or out of the state.

7. To make by-laws and regulations, consistent with its charter and the laws of the state, for its own government, and for the due and orderly conduct of its affairs and management of its property.

8. To wind up and dissolve itself, or be wound up and dissolved, in the manner hereafter mentioned.

9. To sell, transfer and convey any part of its corporate property in the course of its regular business.

10. To sell, transfer and convey any part of its corporate real or personal property when authorized so to do by its board of directors.

11. To sell, transfer and convey all of its corporate property when authorized so to do by its board of directors and approved by a two-thirds vote of the stock entitled to vote at any stockholders meeting, notice of which contains notice of the proposed sale: Provided, paragraph nine, ten and eleven of this section shall not be construed as authorizing any public utility corporation to sell or convey all of its property otherwise than under the terms prescribed in its charter, or as authorizing the sale of stock in bulk, in violation of the Bulk Sales Law. (Rev., s. 1128; Code, ss. 663, 666, 691, 692, 693; 1893, c. 159; 1901, c. 2, s. 1; 1909, c. 507, s. 1; 1925, c. 235; 1925, c. 298; 1929, c. 269; 1939, c. 279; C. S. 1126.)

§ 55-27. By-laws.—A corporation may, by its by-laws, when consistent with its charter, determine the manner of calling and conducting all meetings; the number of members that constitute a quorum, but in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum, and if the quorum is not so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, constitutes a quorum; the number of shares that will entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the nonpayment of assessments; the tenure of office of the several officers, and the manner in which vacancies in any of the offices shall be filled till a regular election; and they may annex suitable penalties to such by-laws, not exceeding in any case the sum of twenty dollars for any one offense. The power to make and alter by-laws is in the stockholders, but a corporation may, in the certificate of incorporation, confer that power upon the directors. By-laws made by the directors under power so conferred may be altered or repealed by the stockholders. (Rev., ss. 1145, 1146; Code, s. 664; 1901, c. 2, ss. 12, 13; C. S. 1127.)

§ 55-28. Implied powers.—In addition to the powers enumerated in §§ 55-26 and 55-27 and the powers specified in its charter, every corporation, its officers, directors and stockholders, possess all the powers and privileges contained in this chapter so far as they are necessary or convenient to the attainment of the objects set forth in such charter, and shall be governed by the provisions and be subject to the restrictions and liabilities in this chapter contained, so far as they are applicable to and not inconsistent with such charter; and no corporation may possess or exercise any other corporate powers, except such incidental powers as are necessary to the exercise of the powers so given. Nothing in this chapter shall authorize or empower corporations organized under this chapter to lease, operate, maintain, manage or control any railroad except street railways. (Rev., s. 1129; Code, s. 701; 1897, c. 204; 1901, c. 2, s. 4; 1901, c. 6; C. S. 1128.)

§ 55-29. Banking powers not conferred by this chapter.—No corporation created under the provisions of this chapter shall have the power to carry on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold or silver bullion or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan, or for circulation as money; but in the transaction of its business it may make and take and indorse, when necessary, all such bonds, notes and bills of exchange as the business may require. (Rev., s. 1134; Code, s. 684; 1901, c. 2, s. 5; C. S. 1129.)

§ 55-30. Amendments before payment of stock.—The incorporators of a corporation, before the payment of any part of its capital, may file with the secretary of state an amended certificate of incorporation, duly signed and acknowledged by

the incorporators named in the original certificate, changing the original certificate of incorporation, in whole or in part, which amended certificate takes the place of the original one, and when recorded in the proper county is deemed to have been filed and recorded on the date of filing and recording the original certificate. The officers are entitled to the same fees for filing and recording the amended certificate of incorporation as if it were original; but there shall be charged no additional organization tax, except when the certificate is amended by increasing the capital stock, in which event such tax shall be paid upon the increase. (Rev., s. 1174; 1901, c. 2, s. 28; C. S. 1130.)

§ 55-31. Amendments, generally.—A corporation, whether organized under a special act or general laws, and which might now be created under the provisions of this chapter, may, in the manner set out below—

1. Change the nature or relinquish one or more branches of its business, or extend its business to such other branches as might have been inserted in its original certificate of incorporation.
2. Change its name.
3. Extend its corporate existence.
4. Increase or decrease its capital stock.
5. Change the par value of the shares of its capital stock.
6. Create one or more classes of preferred stock.
7. Make any other desired amendment. In all cases the certificate of amendment can contain only such provisions as could be lawfully and properly inserted in an original certificate of incorporation filed at the time of making the amendment.

The board of directors shall pass a resolution declaring that the amendment is advisable, and call a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice, given personally or by mail; if the holders of a majority of the shares of stock with voting powers vote in favor of the amendment, a certificate thereof shall be signed by the president and secretary, under the corporate seal, acknowledged as in the case of deeds to real estate, and this certificate, together with the written assent, in person or by proxy, of said stockholders, shall be filed and recorded in the office of the secretary of state. Upon such filing the secretary of state shall issue a certified copy thereof, which shall be recorded in the office of the clerk of the superior court of the county in which the original certificate of incorporation is recorded, and thereupon the certificate of incorporation is amended accordingly. The certificate of the secretary of state, under his official seal, that such certificate of amendment and assent have been filed in his office, is evidence of the amendment in all courts and places. A corporation which cannot now be created under the provisions of this chapter may, except as otherwise provided by law, in like manner increase or decrease its capital stock, or change its name, or extend its corporate existence: Provided, that before the Secretary of State shall issue a certificate of such amendment to any corporation possessing powers, franchises, privileges or immunities, which could not be obtained under this chapter, he shall forthwith transmit to the Commissioner of Banks or the Utilities Commission, as the case may be, a copy of said certificate and shall not issue or record the same until duly authorized so to do by the Commissioner of Banks or the Utilities Commission, as the case may be, as provided for the issuing of certificates of incorporation of banks in the chapter entitled, "Banks", provided that nothing herein shall be construed to require the increase of the capital stock of a bank renewing its charter over the capital of such bank at the time such renewal is applied for.

Any corporation organized on or after March 4, 1925, may insert a provision in its charter that amendments to said charter may be made or amendments to said charter in certain specified respects may be made only when such amendments shall be approved by the holders of such amount of the stock of the corporation (not less than a majority of the shares of stock with voting powers) or such amount of each class of stock as may be specified in said charter and any corporation heretofore organized may by vote of the holders of a majority of the stock entitled to vote amend its charter at any stockholders' meeting, notice of which contains notice of the proposed amendment so as to provide the vote of stockholders (not less than a majority of the stock entitled to vote) required to enable the corporation to amend its charter or to amend it in certain specified respects: Provided, however, that no new class of stock shall hereafter be created by amendment of the charter or otherwise entitled to dividends or shares in distribution of assets in priority to any class of preferred stock already outstanding except with the consent of the holders of record of two-thirds (or such greater amount as may be specified in the charter) of the number of shares of such outstanding preferred stock having voting powers: Provided, that the provisions of this paragraph shall not apply to banks and building and loan associations. (Rev., ss. 1175, 1178; 1893, c. 380; 1899, c. 618; 1901, c. 2, ss. 29, 30, 37; 1903, c. 516; 1925, c. 118, ss. 1, 2a; 1927, c. 142; 1931, c. 243, ss. 4, 5; 1933, c. 134, ss. 7, 8; 1941, c. 97, s. 5; C. S. 1131.)

§ 55-32. Inadvertent omission to file amendment extending corporate existence.—Any private corporation chartered under the general laws of the State of North Carolina whose period of existence fixed in its charter has expired and which corporation has continued to act and do business as a corporation, but has through inadvertence, omitted to file an amendment extending the period of its corporate existence, may at any time after the expiration of the period of corporate existence set forth in its original charter, file an amended certificate in the office of the Secretary of State as provided by § 55-31 to extend or renew its corporate existence, as provided for in the amended certificate; provided, this section shall not serve to impair the validity of any contract or vested right in existence at the time of the filing of said amended charter. All acts of such a corporation, purporting to be the acts of the corporation, done or performed after the expira-

tion of its period of existence and before the amendment to its charter, shall be legal and valid as the acts and deeds of said corporation. (1929, c. 271; 1935, c. 6.)

§ 55-33. Amendments by charitable, educational, penal, reformatory, etc., corporations.—A charitable, educational, social, ancestral, historical, penal, or reformatory corporation not under the patronage or control of the state, and any corporation, without capital stock, organized for the purpose of aiding in the work of any church, religious society or organization, or fraternal order whether organized under a special act or general laws, may change its name, extend its corporate existence, change the manner in which its directors, trustees or managers are elected or appointed, abolish its present method of electing such officers and create a different method of election, and generally reorganize the manner of conducting such corporation, and make any other amendment of its charter desired, in the following manner: The board of directors, trustees, or managers shall pass a resolution declaring that the amendment is advisable, and call a meeting of trustees, managers, and directors to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days notice given personally or by mail. If two-thirds of the directors, trustees, or managers of the corporation vote in favor of the amendment, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged as provided in the case of deeds to real estate, and such certificate, together with the written assent in person or proxy of two-thirds of the directors, trustees, or managers, shall be filed and recorded in the office of the secretary of state, and upon filing it he shall issue a certified copy thereof, which shall be recorded in the office of the clerk of the superior court of the county in which the original certificate of incorporation is recorded, or in which the corporation is doing business, and thereupon the certificate of incorporation shall be deemed amended accordingly. Such certificate of amendment may contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making the amendment, and the certificate of the secretary of state, under his official seal, that such certificate and assent has been filed in his office shall be taken and accepted as evidence of such amendment in all courts. (1917, c. 62, s. 1; 1925, c. 42; 1925, c. 257; C. S. 1132.)

§ 55-34. Change of location of principal office.—The board of directors of a corporation organized under the laws of this state may, by resolution adopted at a regular or special meeting by a two-thirds vote of its members, change the location of the principal office of the corporation in the state. A copy of the resolution, signed by the president and secretary of the corporation and sealed with the corporate seal, shall be filed in the office of the secretary of state. No certificate need be filed of the removal of an office from one point to another in the same town, city, or township. (Rev., s. 1176; 1901, c. 2, s. 31; C. S. 1133.)

§ 55-35. Curative act; amendments prior to 1901.—All amendments to the plan of incorporation of any corporation organized under the provisions of the general laws of North Carolina prior to the passage of the act entitled "An act to revise the corporation law of North Carolina," being chapter two, public laws of nineteen hundred and one, are declared to be valid in all respects, whether such amendments were made in accordance with the provisions of chapter three hundred and eighty of the public laws of eighteen hundred and ninety-three or in accordance with the provisions of chapter two of the public laws of nineteen hundred and one; but no amendment shall be validated by this section unless it is an amendment of such nature as is authorized to be made under the provisions of chapter two of the public laws of nineteen hundred and one. (Rev., s. 1248; 1905, c. 316; C. S. 1134.)

§ 55-36. Amendment or repeal of this chapter; a part of all charters.—This chapter may be amended or repealed by the legislature, and every corporation is bound thereby; but such amendment or repeal shall not take away or impair any remedy against the corporation, or its officers, for any liability which has been previously incurred. This chapter and all amendments are a part of the charter of every corporation formed hereunder, so far as the same are applicable and appropriate to the objects of the corporation. (Rev., s. 1136; 1901, c. 2, s. 7; C. S. 1135.)

§ 55-37. Name must be displayed.—The name of every corporation must be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof for sixty days the corporation is liable to a penalty of one hundred dollars, to be recovered with costs, by the state, in an action to be prosecuted by or under the direction of the attorney-general. (Rev., s. 1242; 1901, c. 2, s. 50; C. S. 1136.)

§ 55-38. Resident process agent.—Every corporation having property or doing business in this state, whether incorporated under its laws or not, shall have an officer or agent in the state upon whom process in all actions or proceedings against it can be served. A corporation failing to comply with the provisions of this section is liable to a forfeiture of its charter, or to the revocation of its license to do business in this state. In the latter event, process in an action or proceeding against the corporation may be served upon the secretary of state by leaving a true copy thereof with him, and he shall mail the copy to the president, secretary or other officer of the corporation upon whom, if residing in this state, service could be made. For this service to be performed by the secretary, he shall receive a fee of fifty cents, to be paid by the party at whose instance the service was made. (Rev., s. 1243; 1901, c. 5; C. S. 1137.)

§ 55-39. Process agent in county where principal office located; service on inactive corporations.—Every corporation chartered under the laws of North Carolina shall have an officer or agent in the county where its principal office is located upon whom process can be had, and shall at all times keep on file with the secretary of state the name and address of such process officer or agent, and upon the return of any sheriff or

other officer of such county that such corporation or process officer or agent cannot be found, service may be had upon such corporation by leaving a copy with the secretary of state, who shall mail the copy so served upon him to the process agent or officer at the address last given and on file with him, or if none, to the corporation at the address given in its charter; and any such corporation so served shall be in court for all purposes from and after the date of such service on the secretary of state.

For service as above provided to be performed by the secretary of state he shall receive a fee of one dollar ($1.00), to be paid by the party at whose instance the service is made.

This section shall not be in derogation of any other act or law pertaining to the service of summons or process, but shall be in addition thereto. (1937, c. 133, ss. 1-3.)

§ 55-40. Corporate conveyances; when void as to torts.—Any corporation may convey lands, and other property which is transferable by deed, by deed sealed with the common seal and signed in its name by the president, a vice-president, presiding member or trustee, and two other members of the corporation, and attested by a witness, or by deed sealed with the common seal and signed in its name by the president, a vice-president, presiding member or trustee, and attested by the secretary or assistant secretary of the company. But any conveyance of its property, whether absolutely or upon condition, executed by a public service corporation, is void as to torts committed by such corporation prior to the execution of said deed, if persons injured, or their representatives, commence proceedings or actions to enforce their claims against said corporation within sixty days after the registration of said deed as required by law. (Rev., s. 1130; Code, s. 685; 1891, c. 118; 1893, c. 95, s. 2; 1899, c. 235, s. 17; 1901, c. 2, s. 2; 1903, c. 660, s. 1; 1905, c. 114; 1929, cc. 28, 189, 256; 1931, c. 238; C. S. 1138.)

§ 55-41. Certain corporate conveyances validated.—All deeds and conveyances of land in this state, made by any corporation of this state prior to January first, one thousand nine hundred thirty-eight, executed in its corporate name and signed and attested by its proper officers, from which the corporate seal was omitted, shall be good and valid, notwithstanding the failure to attach said corporate seal. (1939, c. 23.)

§ 55-42. Conveyances by corporations owned by the United States government.—The home owners' loan corporation and any corporation, the majority of whose stock is owned by the United States government, may convey lands, and/or other property which is transferable by deed which is duly executed by either an officer, manager, or agent of said corporation, sealed with the common seal and has attached thereto a signed and attested resolution under seal of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal and attest deeds, conveyances and/or other instruments.

All deeds, conveyances and/or other instruments which have been executed prior to March 15, 1941 in the manner prescribed above, if otherwise sufficient, shall be valid, and shall have the effect to pass the title to the real and/or personal property described therein.

To the extent as modified in this section the provisions of § 55-40 shall not apply to conveyances executed by the corporations herein referred to. (1941, c. 294.)

§ 55-43. Conditional sale contracts.—Contracts, in writing, for the purchase of personal property by corporations, providing for a lien on the property or the retention of the title thereto by the vendor as a security for the purchase price, or any part thereof, are sufficiently executed if signed in the name of the corporation by the president, secretary or treasurer in his official capacity, and may be acknowledged and ordered to registration as is provided by law for the execution, acknowledgment and registration of deeds by natural persons. (1909, c. 335, s. 1; C. S. 1139.)

§ 55-44. Mortgaged property subject to execution for labor, clerical services, and torts.—Mortgages of public service corporations upon their property or earnings cannot exempt said property or earnings from execution for the satisfaction of any judgment obtained in courts of the state against such corporations for labor and clerical services performed, or torts committed whereby any person is killed or any person or property injured. (Rev., s. 1131; Code, s. 1255; 1879, c. 101; 1897, c. 334; 1901, c. 2, s. 3; 1915, c. 201, s. 1; 1929, cc. 29, 256; 1931, c. 238; C. S. 1140.)

§ 55-45. Gas and electric power companies.—Gas and electric light and power companies have power to lay, extend, construct, erect, maintain, repair and remove all necessary or convenient towers, poles, cable wires, conductors, lamps, fixtures, appliances, and appurtenances upon, through and over any roads, streets, avenues, lanes, alleys and bridges within and near any city, town or village where said company is located; and all such roads, streets, lanes, alleys and bridges shall be left in as good condition as they were in at the time of using them as aforesaid: Provided, that the rights and privileges conferred in this section shall not be exercised unless the authorities of such city, town or village first give their consent, and afterwards the said authorities shall have full power to control the location of all towers, poles, wires, conductors and all other fixtures, appliances and appurtenances belonging to or operated by any of said companies. (Rev., s. 1133; 1889 (Pr.), c. 35, s. 2; C. S. 1141.)

§ 55-46. Trust companies and word "trust."—No person, firm, association or corporation domiciled in the state of North Carolina, except corporations reporting to and under the supervision of the Commissioner of Banks of this state, may therein advertise any sign as a trust company or in any way solicit or receive deposits or transact business as a trust company, or use the word "trust" as a part of his or its name or title. This section shall not prevent any individual, as such, from acting in any trust capacity as heretofore. A violation of this section is a misdemeanor, and on conviction the offender shall be fined not exceeding five hundred dollars for each offense: Provided, however, that it shall be lawful for any

corporation incorporated prior to January 1, 1905, to retain the word "trust" in the name of said corporation, though it does not transact a banking business or such other business as requires its examination by the Commissioner of Banks. (1915, c. 196, s. 3; 1919, c. 108; 1931, c. 243, ss. 4, 5; C. S. 1142.)

§ 55-47. Actions by attorney-general to prevent ultra vires acts, etc.—In the following cases the attorney-general may, in the name of the state, upon his own information, or upon the complaint of a private party, bring an action against the offending parties for the purpose of—

1. Restraining by injunction a corporation from assuming or exercising any franchise or transacting any business not allowed by its charter.
2. Restraining any person from exercising corporate franchises not granted.
3. Bringing directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care.
4. Removing such officers or trustees upon proof of gross misconduct.
5. Securing, for the benefit of all interested, the said property or funds.
6. Setting aside and restraining improper alienations of the said property or funds.
7. Generally compelling the faithful performance of duty and preventing all fraudulent practices, embezzlement, and waste. (Rev., s. 1197; Code, ss. 607, 686; 1901, c. 2, s. 107; C. S. 1143.)

Art. 5. Directors and Officers.

§ 55-48. Directors.—The business of every corporation shall be managed by its directors, who must be at least three in number, and at all times bona fide stockholders or the guardian of a bona fide stockholder, or the executor or administrator of the estate of a deceased bona fide stockholder, or a director in a corporation which is a bona fide stockholder, in case the corporation is one issuing stock. A corporation may, by its certificate of incorporation or by-laws, determine the number of shares a stockholder must own to qualify him as a director. The directors shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, a corporation may classify its directors in respect to the time for which they will severally hold office, the several classes to be elected for different terms, but no class may be elected for a shorter period than one year, or for a longer period than five years, and the term of office of at least one class must expire in each year. A corporation which has more than one kind of stock may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of such class, to the exclusion of the others. One director of every corporation of this state shall be, and only one need be, an actual resident of the state, notwithstanding the provisions of the charter or any other act. (Rev., ss. 1147, 1148; 1901, c. 2, ss. 14, 44; 1937, c. 179; C. S. 1144.)

§ 55-49. Officers, agents, and vacancies.—Every corporation organized under this chapter shall have a president, secretary, and treasurer, to be chosen either by the directors or stockholders, as the by-laws direct, and they shall hold office until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as are assigned to him; the treasurer may be required to give bond for the faithful discharge of his duty in such sum, and with such surety or sureties, as are required by the by-laws. Any two of these offices may be held by the same person, if the body electing so determine. The corporation may have such other officers and agents, who shall be chosen in the manner and hold office for the terms, and upon the conditions, prescribed by the by-laws or determined by the board of directors. Any vacancy occurring among the directors, or in the office of president, secretary or treasurer, shall be filled in the manner provided for in the by-laws; in the absence of such provision the vacancy shall be filled by the board of directors. (Rev., ss. 1149, 1150, 1151; 1901, c. 2, ss. 15, 16, 17; C. S. 1145.)

§ 55-50. Books to be audited on request of stockholders.—Upon request of twenty-five per cent of the stockholders, or of any stockholder or stockholders owning twenty-five per cent of the capital stock, of a private corporation organized under the laws of North Carolina and doing business in this state, it is the duty of the officers of the corporation to have all of its books audited by a competent accountant, so that its financial status may be ascertained. Upon refusal or failure of the corporation to commence the auditing of its books within thirty days after such request, the requesting stockholder or stockholders, after ten days notice to the corporation, may apply to the judge of the district, or to the judge holding the courts of the district, in which the corporation has its residence, either at chambers or term time, at any place in the district, and the judge shall appoint an auditor and require the books to be audited at the expense of the corporation. The officers of the corporation shall render to the auditor any assistance or information they can, and give him access to all of the assets, books, papers, etc., relating to the affairs of the corporation, in order that a proper audit may be made. Upon completion of the audit the auditor shall render a statement to the corporation, and to the petitioning stockholder or stockholders. (1911, c. 174, s. 1; 1913, c. 76, s. 1; C. S. 1146.)

§ 55-51. Loans to stockholders.—No loan of money may be made to a stockholder or officer of a corporation, and if any is made, the officers who made it or assented thereto are jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum loaned. (Rev., s. 1160; 1901, c. 2, s. 53; C. S. 1147.)

§ 55-52. Forfeiture of corporate charter and organization of new corporation. — Wherever a

corporation created under the laws of the state of North Carolina has, on account of failure to make reports to the different state authorities, for such a length of time as to lose its charter and where thereafter, under the laws of the state of North Carolina, a new charter is issued, in the same name as the original corporation, and on behalf of the same corporation, such new corporation shall succeed to the same properties, to the same rights as the original corporation before losing its charter on account of neglect hereinbefore mentioned.

Whenever such new corporation shall have been created, under the laws of this state, all the title, rights and emoluments to the property held by the original corporation shall inure to the benefit of the newer corporation and the new corporation shall issue its stock to the stockholders in the defunct corporation, in the same number and with the same par value as held by the stockholders of the defunct corporation.

Such new corporation shall have the rights and privileges of maintaining any action or cause of action which the defunct corporation might maintain, bring or defend and to all intents and purposes the new corporation shall take the place of the defunct corporation to the same intent and purposes as if the defunct corporation had never expired by reason of its failure to make the reports hereinbefore referred to. (1933, c. 124.)

§ 55-53. Secretary of state may call for special reports.—The secretary of state has power to call for special reports from corporations, of the same character as their regular reports, at such times as he may deem the public interest requires, but no fees shall be charged for filing these special reports. (Rev., s. 1153; C. S. 1149.)

§ 55-54. Secretary of state to publish list of corporations created. — The secretary of state shall annually compile and publish from the records of his office a complete alphabetical list of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of authorized capital stock, the amount with which business is to be commenced, the amount issued, the date of filing the certificate, and the period for which the corporation is to continue; but the secretary of state and the Commissioner of Banks or the Utilities Commission, as the case may be, shall confer and arrange the statistics so as to prevent the same facts being embodied in the reports of both departments. (Rev., s. 1244; 1901, c. 2, s. 104; 1911, c. 211, s. 10; 1913, c. 198, s. 5; 1931, c. 243, ss. 4, 5; 1933, c. 134, ss. 7, 8; 1941, c. 97, s. 5; C. S. 1150.)

§ 55-55. Liability of officers failing to make reports or making false reports.—If any of the officers neglect or refuse to make any report required of them by law for thirty days after written request so to do by a creditor or stockholder of the corporation, they are jointly and severally liable to the person demanding such report, for the amount of his debt if he is a creditor, or for the amount of his loss if he is a stockholder. If any report or certificate made, or any public notice given, by the officers in pursuance of the provisions of this chapter, is false in any material representation, all the officers who signed the same, knowing it to be false, are jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this state only. (Rev., ss. 1154, 1163; 1901, c. 2, ss. 27, 56; C. S. 1151.)

§ 55-56. Liability for fraud.—In case of fraud by the president, directors, managers, or stockholders, in a corporation, the court shall adjudge personally liable to creditors and others injured thereby the directors and stockholders who were concerned in the fraud. (Rev., s. 1155; Code, s. 686; 1901, c. 2, s. 107; C. S. 1152.)

§ 55-57. Joint and several liability of officers, etc., contribution.—When the officers, directors or stockholders of a corporation are liable to pay its debts, or any part thereof, any person to whom they are liable has a right of action against any one or more of them. And any such officer, director or stockholder has the right of equitable contribution in any action for that purpose against any other officer, director or stockholder who is liable with him for any amount which he has been compelled to pay as provided in this section. (Rev., s. 1156; 1901, c. 2, s. 90; C. S. 1153.)

§ 55-58. Officers paying may enforce exoneration against corporation.—An officer, director or stockholder who pays a debt of a corporation for which he is made liable by the provisions of this chapter may recover the amount paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation is liable to be taken, and not the property of any stockholder, except as provided in the preceding section. (Rev., s. 1157; 1901, c. 2, s. 91; C. S. 1154.)

§ 55-59. Assets of corporation first exhausted.—No sale or other satisfaction shall be had of the property of a director or stockholder for a debt of the corporation of which he is director or stockholder until judgment be obtained therefor against the corporation and execution thereon returned unsatisfied, or until it is shown to the court that the corporation has no property available for the satisfaction of the indebtedness. (Rev., s. 1158; 1901, c. 2, s. 92; C. S. 1155.)

§ 55-60. No personal liability on corporate manager of partnership.—Any corporation created under this chapter which is a member of a partnership may have its interests in such partnership managed, and may be engaged in or have charge of the management and affairs of such partnership, by and through any of its officers, directors, stockholders, agents and servants, and no such person acting as manager of the interests of any corporation in such partnership, or engaged in or having charge of the management and affairs of such partnership, whether as executive, member of an executive committee or board, employee or otherwise, shall be personally subject to any liability for the debts of such partnership or such corporation. (1933, c. 354, s. 2.)

Art. 6. Capital Stock.

§ 55-61. Classes of stock.—Every corporation has power to create two or more kinds of stock

of such classes, with such designations, preferences, and voting powers or restrictions or qualifications thereof as are prescribed by those holding a majority of its outstanding capital stock entitled to vote; and the power to increase or decrease the stock as herein elsewhere provided applies to all or any of the classes of stock; and the preferred stock may, if desired, be made subject to redemption in whole or in part on a pro rata basis at not less than par, at a fixed time or times and price, to be expressed in the certificate thereof; and the holders thereof are entitled to receive, and the corporation is bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, payable quarterly, half-yearly or yearly, before any dividend is set apart or paid on the common stock, and such dividends may be made cumulative. In case of insolvency, its debts or other liabilities shall be paid in preference to the preferred stock. No corporation shall create preferred stock except by authority given to the board of directors by a vote of at least a majority of the stock entitled to vote at a meeting of the stockholders, duly called for that purpose. Provided, that no new class of stock shall hereafter be created entitled to dividends or shares in distribution of assets in priority to any class of preferred stock already outstanding except with the consent of the holders of record of two-thirds (or such greater amount as may be specified in the charter) of the number of shares of such outstanding preferred stock having voting powers. The terms "general stock" and "common stock" are synonymous. (Rev., s. 1159; 1901, c. 2, s. 19; 1903, c. 660, ss. 2, 3; 1923, c. 155; 1925, c. 118, ss. 2, 2a; 1939, c. 199; C. S. 1156.)

§ 55-62. Stock to be paid in money or money's worth; issue for labor or property.—Nothing but money shall be considered as payment for any part of the capital stock of any corporation organized under this chapter, except as herein provided in case of the purchase of property or labor performed. Any corporation may issue stock for labor done or personal property or real estate, or leases thereof, and, in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive. (Rev., ss. 1159, 1160; 1901, c. 2, ss. 19, 53; 1903, c. 660, ss. 2, 3; C. S. 1157.)

§ 55-63. Stock issued for property; how value ascertained; how stock reported.—Any corporation formed under this chapter may purchase any property necessary for its business, and issue stock to the amount of the value thereof in payment therefor. The stock so issued shall be full-paid stock, and not liable to any further call, nor shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of actual fraud the judgment of the directors as to the value of the property shall be conclusive. In all statements and reports of the corporation to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the facts. (Rev., s. 1161; 1901, c. 2, s. 54; C. S. 1158.)

§ 55-64. Construction companies building railroads, etc., may take stock therein; how issued, valued, and reported.—Corporations having for their object the building or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers, or any like works of internal improvement or public use, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed, or materials furnished to, or for, such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock, in full or partial performance of the whole, or any part of such subscription or purchase, and the stock so issued shall be full-paid stock, and not liable to any further call, nor shall the holder thereof be liable for any further payments. And in all statements and reports of the corporation to be published or filed, this stock shall not be stated, or reported, as being issued for cash paid to the corporation, but shall be reported and published in this respect according to the fact. (Rev., s. 1172; 1901, c. 2, s. 55; C. S. 1159.)

§ 55-65. Liability for unpaid stock.—Where the capital stock of a corporation has not been paid in and the assets are insufficient to satisfy its debts and obligations, each stockholder is bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter, or such proportion of that sum as is required to satisfy such debts and obligations; but no person holding stock in any corporation in this state as executor, administrator, guardian, or trustee, or as collateral security, is personally subject to any liability as a stockholder of the corporation; but the person pledging the stock is considered as holding the same, and is liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, is liable in like manner, and to the same extent, as the testator or intestate, or the ward, or the person interested in such fund, would have been had he been living and competent to act and hold the stock in his own name. (Rev., s. 1162; 1893, c. 471; 1901, c. 2, s. 22; C. S. 1160.)

§ 55-66. Decrease of capital stock.—The decrease of capital stock may be effected by—

1. Retiring or reducing any class of the stock.
2. Drawing the necessary number of shares by lot for retirement.
3. The surrender by every stockholder of his shares and the issue to him in place thereof of a decreased number of shares.
4. The purchase at not above par of certain shares for retirement.
5. Retiring shares owned by the corporation.
6. Reducing the par value of shares.

When a corporation decreases the amount of

its capital stock as above provided, the certificate decreasing the same shall be published at least once a week for three successive weeks in a newspaper published in the county in which the principal office of the corporation is located, the first publication to be made within fifteen days after the decrease has been regularly authorized by the stockholders. In default of such publication the directors of the corporation are jointly and severally liable for all debts of the corporation contracted before the filing of the certificate, and the stockholders are also liable for such sums as they respectively receive of the amount so reduced. No such decrease of capital stock decreases the liability of any stockholder whose shares have not been fully paid, for debts of the corporation theretofore contracted. (Rev., s. 1164; 1901, c. 2, s. 32; 1939, c. 221; C. S. 1161.)

§ 55-67. Certificates and duplicates. — Every stockholder shall be entitled to have a certificate signed by the president or a vice-president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation certifying the number of shares owned by him in such corporation. A corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as an indemnity against any claim that may be made against the corporation. A new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper to do so. (Rev., ss. 1165, 1166; 1885, c. 265; 1901, c. 2, s. 94; 1927, c. 173; C. S. 1162.)

§ 55-68. Action to compel issuance of duplicate certificates.—When a corporation has refused to issue a new certificate of stock in place of one theretofore issued by it, or by a corporation of which it is a successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives may maintain a civil action in the superior court of the county in which the principal office of the corporation is located to compel the corporation to issue a duplicate certificate in the place of the one alleged to have been lost or destroyed; and if the issues of fact arising upon the pleadings are found in favor of the plaintiff, the court shall make an order requiring the corporation or other party, within such time as it designates, to issue and deliver to the plaintiff a new certificate for the number of shares of the capital stock of the corporation which have been found to be owned by the plaintiff. In making the order the court shall direct that the plaintiff deposit such security as to the court appears sufficient to indemnify any person other than the plaintiff, who shall thereafter appear to be the lawful owner of such certificate stated to be lost or destroyed; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it deems proper. Any person who thereafter claims any rights under the certificate so lost or destroyed shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order. (Rev., s. 1167; 1901, c. 2, s. 95; C. S. 1163.)

§ 55-69. Transfer of shares.—The shares of stock in a corporation are personal property, and are transferable on the books of the corporation in the manner and under the regulations provided by the by-laws. Whenever a transfer is made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer. (Rev., s. 1168; Code, s. 689; 1901, c. 2, s. 21; C. S. 1164.)

§ 55-70. Assessments, sale, and notice.—The directors of a corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof, remaining unpaid; and the sums assessed shall be paid to the treasurer at such times and by such installments as the directors direct, the directors having given thirty days notice of the assessment and of the time and place of payment, either personally, by mail, or by publication in a newspaper published in the county where the corporation is established. If the owner of any share or shares neglects to pay a sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such share or shares of the delinquent owner as will pay any assessment due from him, with interest, and all necessary incidental charges, and shall transfer the share or shares sold to the purchaser, who is entitled to a certificate therefor. The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same once a week for three successive weeks before the sale in a newspaper published in the county where the principal office of the corporation is located, at the courthouse door, and by mailing a notice thereof to the last known postoffice address of the delinquent stockholder. (Rev., ss. 1169, 1170, 1171; 1901, c. 2, ss. 23, 24, 25; C. S. 1165.)

§ 55-71. One corporation may purchase stock, etc., of another.—A corporation may purchase stock, securities or other evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such may exercise all the rights, powers and privileges of ownership. (Rev., s. 1173; 1903, c. 660, s. 3; C. S. 1166.)

§ 55-72. Mutual corporations may create stock.—A mutual corporation, upon the consent in writing of all its members, may provide for and create a capital stock and may provide for the payment of the stock, and fix and prescribe the rights and privileges of the stockholders therein not inconsistent with law. (Rev., s. 1245; 1901, c. 2, s. 105; C. S. 1167.)

Art. 7. Capital Stock without Nominal or Par Value.

§ 55-73. Corporations which may create shares without nominal or par value. Classes of stock or debentures.—Any corporation heretofore or hereafter organized under the laws of this State,

whether under a special act of Legislature or otherwise, except banks, trust companies and insurance companies, may, in its original certificate of incorporation, articles of association, charter or any amendment thereof, create shares of stock with or without nominal or par value, and may create two or more classes of stock or debentures, any class or classes of which may be with or without nominal or par value, with such designations, preferences, voting powers, restrictions and qualifications as shall be fixed in such certificate of incorporation, articles of association, charter or amendment thereof, or by resolution adopted by those holding two-thirds of the outstanding capital stock entitled to vote. Subject to any provisions so fixed, every share without nominal or par value shall equal every other such share. (1921, c. 116, s. 1; 1925, c. 262, s. 1; C. S. 1167(a).)

§ 55-74. Stock issues; payment for stock; terms and manner of disposition.—The provisions of law relating to the issuance of stock with par value shall apply to the issuance of stock without nominal or par value, and such corporation may issue and dispose of its authorized shares without nominal or par value for such consideration and on such terms and in such manner as may be determined or approved from time to time by the board of directors, subject to such conditions or limitations as may be contained in the certificate of incorporation, articles of association, charter, or any amendment thereof or as may be contained in any vote of the holders of a majority of the stock of the corporation, such consideration to be in the form of cash, property, tangible or intangible, services or expenses. Any and all shares without nominal or par value issued for the consideration determined or approved in accordance with the provisions of this section shall be fully paid and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. (1921, c. 116, s. 2; 1925, c. 262, s. 2; C. S. 1167(b).)

§ 55-75. Statements as to value of shares; reports of amount of stock.—In any case in which the law requires that the par value of the shares of stock of a corporation be stated, it shall be stated, in respect to shares without nominal or par value, that such shares are without nominal or par value, and wherever the amount of stock authorized or issued is required to be stated, if any shares without nominal or par value are authorized, the number of shares authorized or issued of the several classes shall be stated, and it shall also be stated whether such shares are with or without nominal or par value, and what the par value is of such shares as have par value. (1921, c. 116, s. 3; C. S. 1167(c).)

§ 55-76. Amendments to existing charters.—Any corporation, whether organized under a special act of Legislature or otherwise, having outstanding shares either with or without nominal or par value, may amend its certificate of incorporation, articles of association or charter, as follows:

(a) So as to change its shares with nominal or par value or any class thereof into an equal number of shares without nominal or par value; or

(b) So as to provide for the exchange of its shares with nominal or par value, or any class thereof, for an equal or different number of shares without nominal or par value; but all outstanding shares in any class shall be exchanged on the same basis; or

(c) So as to provide for the exchange of its shares without nominal or par value, or any class thereof, for a different number of shares without nominal or par value; but all outstanding shares in any class shall be exchanged on the same basis:

Provided, however, the preferences on liquidation, redemption price, dividend rate and like preferences or limitations lawfully granted or imposed with respect to any class of outstanding stock so changed or exchanged under the provisions hereof, shall not be impaired, diminished or changed as to any nonassenting holders thereof. Such preferences, rights and limitations, however, may be expressed in dollars, or in cents, per share rather than by reference to par value. Whenever such a corporation has heretofore issued shares without nominal or par value, in exchange for an equal or different number of shares with par value, such exchange and the issue of an equal or different number of shares without nominal or par value in consummation of such exchange are hereby validated, ratified and confirmed. (1921, c. 116, s. 4; 1925, c. 262, s. 3; 1931, c. 59; C. S. 1167(d).)

§ 55-77. Tax on certificate of incorporation or amendments.—The tax upon the certificate of incorporation, or extension or renewal or corporate existence, or increase of capital stock without nominal or par value shall be the same as if each share of stock had a par or face value of one hundred dollars. (1921, c. 116, s. 5; C. S. 1167(e).)

§ 55-78. Intent or purpose of law.—The intent and purpose of this article is to require a share of stock to be treated and represented, subject to lawful preferences, rights, limitations, privileges, and restrictions as a mere evidence of an aliquot part or divisional interest in the assets and earnings of the corporation issuing the same, whatever the extent or value of such assets or earnings may be, to the end that misrepresentation or misunderstanding arising through the difference between actual value of a share of stock and the value appearing on the face of the certificate therefor may be eliminated. (1921, c. 116, s. 6; C. S. 1167(f).)

§ 55-79. Laws applicable to corporations.—Except as otherwise provided by this article, corporations issuing shares without any par or face value under the provisions hereof shall be and remain subject to the laws of the state now or hereafter in force relating to the formation, regulation, or reorganization rights, powers, and privileges of such corporations, and all other laws applicable thereto. (1921, c. 116, s. 7; C. S. 1167(g).)

§ 55-80. Provision for future exchange of par value stock for non-par value stock.—Any corporation heretofore or hereafter organized under the laws of this State, whether under a special act of Legislature or otherwise, except banks, trust companies, and insurance companies, may, in its original certificate of incorporation, articles of

association, charter, or any amendment thereof, provide for the exchange of its shares to be issued with nominal or par value for an equal or different number of outstanding shares without nominal or par value. (1929, c. 338, s. 1.)

Art. 8. Uniform Stock Transfer Act.

§ 55-81. How title to certificates and shares may be transferred.—Title to a certificate and to the shares represented thereby can be transferred only:

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (1941, c. 353, s. 1.)

§ 55-82. Powers of those lacking full legal capacity and of fiduciaries not enlarged.—Nothing in this article shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney. (1941, s. 353, s. 2.)

§ 55-83. Corporation not forbidden to treat registered holder as owner.—Nothing in this article shall be construed as forbidding a corporation;

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares. (1941, c. 353, s. 3.)

§ 55-84. Title derived from certificate extinguishes title derived from a separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. (1941, c. 353, s. 4.)

§ 55-85. Delivery of certificate by one without authority or right of possession.—The delivery of a certificate to transfer title in accordance with the provisions of § 55-81, is effectual, except as provided in § 55-87, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (1941, c. 353, s. 5.)

§ 55-86. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in § 55-87, though the indorser or transferor;

(a) was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) has received no consideration. (1941, c. 353, s. 6.)

§ 55-87. Rescission of transfer.—If the indorsement or delivery of a certificate.

(a) was procured by fraud or duress, or

(b) was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) without authority from the owner, or

(d) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless,

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. (1941, c. 353, s. 7.)

§ 55-88. Rescission does not invalidate subsequent transfer by transferee in possession.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (1941, c. 353, s. 8.)

§ 55-89. Delivery of unindorsed certificate imposes obligation to indorse.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorse-

ment. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (1941, c. 353, s. 9.)

§ 55-90. Ineffectual attempt to transfer amounts to a promise to transfer.—An attempted transfer of title to a certificate or to shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (1941, c. 353, s. 10.)

§ 55-91. Warranties on sale of certificate.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appear, warrants;

(a) that the certificate is genuine,

(b) that he has a legal right to transfer it, and

(c) that he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (1941, c. 353, s. 11.)

§ 55-92. No warranty implied from accepting payment of a debt.—A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (1941, c. 353, s. 12.)

§ 55-93. No attachment or levy upon shares unless certificate surrendered or transfer enjoined.—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (1941, c. 353, s. 13.)

§ 55-94. Creditor's remedies to reach certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (1941, c. 353, s. 14.)

§ 55-95. No lien or restriction unless indicated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (1941, c. 353, s. 15.)

§ 55-96. Alteration of certificate does not divest title to shares.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (1941, c. 353, s. 16.)

§ 55-97. Lost or destroyed certificate.—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issues of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate: Provided, nothing in this section shall prevent the issuance of a new stock certificate in the place of a lost or destroyed certificate in accordance with the provisions of § 55-67. (1941, c. 353, s. 17.)

§ 55-98. Rules for cases not provided for by this article.—In any case not provided for by this article, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (1941, c. 353, s. 18.)

§ 55-99. Interpretation of article.—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1941, c. 353, s. 19.)

§ 55-100. Definition of indorsement.—A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. (1941, c. 353, s. 20.)

§ 55-101. Definition of person appearing to be the owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified

person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. (1941, c. 353, s. 21.)

§ 55-102. Other definitions.—(1) In this article, unless the context or subject matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this article.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this article.

"State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not. (1941, c. 353, s. 22.)

§ 55-103. Article does not apply to existing certificates.—The provisions of this article apply only to certificates issued after March 15, 1941. (1941, c. 353, s. 23.)

§ 55-104. Name of article.—This article may be cited as the Uniform Stock Transfer Act. (1941, c. 353, s. 26.)

Art. 9. Meetings, Elections and Dividends.

§ 55-105. Place of stockholders' and directors' meetings.—The meetings of the stockholders of every corporation of this state shall be held at the principal office in this state. The directors may hold their meetings, and have an office and keep the books of the corporation (except the stock and transfer books) outside the state. Every corporation shall maintain a principal office in this state, and have an agent in charge thereof. (Rev., s. 1179; 1901, c. 2, s. 49; C. S. 1168.)

§ 55-106. Meeting called by three stockholders.—When, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three stockholders with voting power may call such meeting by publishing in a newspaper published in the county in which the principal office in this state is located ten days notice of the time, place and purposes of the meeting, and mailing this notice to all stockholders whose postoffice addresses are known or can be ascertained. A meeting so called is a legal meeting of the corporation, and if there are no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the minute book of the corporation. (Rev., s. 1190; 1901, c. 2, s. 51; C. S. 1169.)

§ 55-107. Transfer and stock books.—Every corporation shall keep at its principal and registered office in this state the transfer books, in which the transfer of stock shall be registered, and the stock books, which shall contain the names and addresses of the stockholders, and the number of shares held by them respectively, and shall at all times during the usual hours for business be open to the examination of every stockholder. These books shall be the only evidence as to who are the stockholders entitled to examine them, and to vote at elections. In case the right to vote upon any share of stock is questioned, the stock books of the corporation shall be referred to, to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote. (Rev., ss. 1180, 1181; 1901, c. 2, ss. 38, 45; C. S. 1170.)

§ 55-108. Directors to produce books at election.—The board of directors shall produce at the time and place of elections the transfer books and the stock books, there to remain during the election, and the neglect or refusal of the directors to produce the same after a demand therefor shall render them ineligible to any office at such election. All elections of directors held under this chapter prior to February 28, 1913, where these books were not produced, and no demand was made therefor, are ratified and confirmed and given full legal force and effect. (Rev., s. 1180; 1901, c. 2, s. 38; 1913, c. 14; C. S. 1171.)

§ 55-109. Superior court may require production.—The superior court may, upon proper cause shown, order any or all of the books of the corporation to be forthwith brought within this state, and kept therein at such place and for such time as is designated in such order. The charter of any corporation failing to comply with such order may be declared forfeited by the court making the order, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of the order. (Rev., s. 1179; 1901, c. 2, s. 49; C. S. 1172.)

§ 55-110. Votes stockholders entitled to; cumulative voting.—Unless otherwise provided in the charter or by-laws of a corporation, at every election each stockholder is entitled to one vote in person, or by proxy duly authorized in writing, for each share of the capital stock held by him, but no proxy may be voted after three years from its date; nor may there be voted at any election a share of stock which has been transferred on the books of the corporation within twenty days prior to the election. The certificate of incorporation of any corporation authorized to issue shares of capital stock may provide that at all elections of directors, managers, or trustees, each stockholder is entitled to as many votes as equal the number of his shares of stock multiplied by the number of directors, managers, or trustees to be elected, and that he may cast all of his votes for a

single director, manager, or trustee, or may distribute them among the number to be voted for, or any two or more of them, as he sees fit. This right of cumulative voting may be exercised in the absence of charter provision when at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that more than one-fourth of the capital stock of the corporation is owned or controlled by one person. A stockholder owning or controlling more than twenty-five per cent of the stock has the same right to vote cumulatively as any other stockholder; and no amendment of the charter or by-laws of a corporation can abrogate or abridge any right herein conferred. The right to vote cumulatively cannot be exercised unless some stockholder announces in open meeting, before the voting for directors, trustees, or managers begins, his purpose to exercise such right, and then every other stockholder may likewise vote cumulatively. (Rev., ss. 1183, 1184; 1907, c. 457, s. 1; 1909, c. 827, s. 1; C. S. 1173.)

§ 55-111. Stock held by fiduciary, pledgor, life tenant, or corporation. — Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent it at all meetings of the corporation, and may vote it as a stockholder, with the same effect as if the absolute owner thereof, unless the instrument creating the trust provides to the contrary. Every person who has pledged his stock as collateral security may represent it at all such meetings, and may vote it as a stockholder, unless in the transfer to the pledgee on the books of the corporation he has expressly empowered the pledgee to vote it, in which case only the pledgee or his proxy may represent and vote said stock. Where stock is owned by, or has been transferred on its record books to, one for life and remainder over, the life tenant at all meetings of the corporation may represent and vote the stock in person or by proxy, in the same manner and with the same effect as if he were the absolute owner thereof. Shares of stock of a corporation belonging to the corporation cannot be voted directly or indirectly. (Rev., ss. 1185, 1186, 1187; 1901, c. 2, ss. 42, 43; 1901, c. 474, ss. 1, 2; C. S. 1174.)

§ 55-112. Election of directors.—All elections for directors shall be by ballot, unless otherwise provided in the charter or by-laws, and a majority of the issued and outstanding stock must be present in person or by proxy; the persons receiving the greatest number of votes shall be the directors. (Rev., s. 1182; 1901, c. 2, s. 39; 1927, c. 138; C. S. 1175.)

§ 55-113. Failure to hold election.—If the election for directors of a corporation is not held on the day designated by the charter or by-laws, the directors shall cause the election to be held as soon thereafter as is convenient. No failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation; and if the directors fail or refuse for thirty days after receiving a written request for such election from those owning one-tenth of the outstanding stock, to call a meeting for the election, the judge of the district, or the judge presiding in the courts of the district, in which the principal office of the corporation is located, may, upon the application of any stockholder, and on notice to the directors, order an election or make such other order as justice requires. The proceedings governing the issuance and hearing of injunctions shall, as far as applicable, govern such hearing. (Rev., s. 1188; 1901, c. 2, s. 46; C. S. 1176.)

§ 55-114. Jurisdiction of superior court over corporate elections.—Whenever there shall be any dispute with reference to the election of directors by the stockholders of any corporation in the hands of a receivership, or whenever there shall be any dispute with reference to the election of officers of any corporation by directors or stockholders, if the stockholders elect the officers, the resident or presiding judge of the district may, after ten days' notice to the stockholders, or to the directors as the case may be, hear at chambers, in the county in which the principal office of the corporation is situated, evidence in the form of affidavits as to dispute, and may continue from time to time such hearing for the purpose of establishing facts with reference thereto to his satisfaction; and upon the completion of his hearing may order a new election or may declare the result of the election so held, or may continue the directors or officers, as the case may be, until a new election shall be held: Provided, however, that no order shall be entered temporarily affecting the status of the corporation. With reference to notice, evidence, and the findings by the judge hearing the same, the proceedings shall be, as far as possible, the same as in injunctions. (Rev., s. 1189; 1901, c. 2, s. 47; 1935, c. 413; 1937, c. 347; C. S. 1177.)

§ 55-115. When dividend declared.—The directors of every corporation created under this chapter shall, in January of each year, unless some specific time for that purpose is fixed in its charter, or by-laws, and in that case at the time so fixed, after reserving, over and above its capital stock paid in, as a working capital for the corporation, whatever sum has been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount reserved, and pay it to the stockholders on demand. The corporation may, in its certificate of incorporation or by-laws, give the directors power to fix the amount to be reserved as a working capital. (Rev., s. 1191; 1901, c. 2, s. 52; C. S. 1178.)

§ 55-116. Dividends from profits only; directors' liability for impairing capital. — No corporation may declare and pay dividends except from the surplus or net profits arising from its business, or when its debts, whether due or not, exceed two-thirds of its assets, nor may it reduce, divide, withdraw, or in any way pay to any stockholder any part of its capital stock except according to this chapter; provided, a public service corporation may declare and pay such dividends from the surplus or net profits arising from its business except when its debts, whether due or not, exceed three-fourths of its assets; provided, further, that any corporation, other than a public service corporation, which is a member of a partnership may declare and pay dividends from the surplus or net profits arising from its business when the sum of the corporation's separate debts, whether due or

not, and that part of the partnership debts which is the same proportion of all the partnership debts, whether due or not, as the corporation's interest in the partnership assets is of all such assets, does not exceed two-thirds of the corporation's assets, and in such calculation the amount of its interest in the partnership assets shall be considered assets of the corporation. In case of a violation of any provision of this section, the directors under whose administration the same occurs are jointly and severally liable, at any time within six years after paying such dividend, to the corporation and its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend paid, or capital stock reduced, divided, withdrawn, or paid out, with interest on the same from the time such liability accrued. Any director who was absent when the violation occurred, or who dissented from the act or resolution by which it was effected, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors at the time the action was taken or immediately after he has had notice of it. (Rev., s. 1192; Code, s. 681; 1901, c. 2, ss. 33, 52; 1927, c. 121; 1933, c. 354, s. 1; C. S. 1179.)

Art. 10. Foreign Corporations.

§ 55-117. Powers existing independently of permission to do business.—A corporation created by another state of the United States, or by any foreign state, kingdom, or government may acquire by devise or otherwise, and may hold, mortgage, lease, and convey real estate in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts due to it, but is not eligible or entitled to qualify in this state as executor, administrator, guardian, or trustee under the will of any person domiciled in this state at the time of his death. The right to acquire, hold and convey real estate exists only where at the time of the acquisition, the foreign state, government, or kingdom under whose laws the corporation was created is not at war with the United States. (Rev., s. 1193; 1901, c. 2, s. 93; 1915, c. 196, s. 1; C. S. 1180.)

§ 55-118. Requisites for permission to do business.—Every foreign corporation before being permitted to do business in this state, insurance companies excepted, shall file in the office of the secretary of state a copy of its charter or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this state, the name of the agent in charge of such office, the character of the business which it transacts, and the names and post-office addresses of its officers and directors. And such corporation shall pay to the secretary of state, for the use of the state, forty cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than forty dollars nor more than five hundred dollars; and also a filing fee of five dollars. Provided that the tax upon shares of stock without nominal or par value shall be the same as if each share of stock had a par or face value of one hundred dollars. Such corporation may withdraw from the state upon filing in the office of the secretary of state a statement signed by its president and secretary and attested by its corporate seal, setting forth the fact that such corporation desires to withdraw, and upon payment to the secretary of state of a fee of five dollars. Every corporation failing to comply with the provisions of this section shall forfeit to the state five hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it appears that this section has been violated. This section does not apply to railroad, banking, express or telegraph companies which, prior to March 9, 1915, had been licensed to do business in this state, or were engaged in business in this state, having a regularly appointed agent upon whom service of process could be made, located in this state.

All acts of the Secretary of State domesticating foreign corporations without nominal or par value shares of stock and taxing the same as provided in the proviso are hereby validated. (Rev., s. 1194; 1901, c. 2, s. 57; 1903, c. 76; 1915, c. 263; 1935, c. 44; 1939, c. 57; C. S. 1181.)

§ 55-119. Sale of shares of stock held by life tenant.—The shares of the capital stock of a foreign corporation, in which any person owns a life estate, may be sold by an order in a special proceeding, unless prohibited by the instrument under which such title was acquired. All persons in esse who are interested in the property aforesaid shall be made parties to the proceedings. Whenever it appears from the petition, or otherwise, that among those interested are persons not in being, or who, because of some contingency, cannot be presently ascertained, such persons shall be made parties defendant by publication of notice of the proceeding, according to the usual practice, and a guardian ad litem shall be appointed for them, and he shall file answer, as provided by §§ 1-66 and 1-67. The clerk of the Superior Court shall have power to make, from time to time, appropriate orders for the sale of said shares of stock, and for handling, securing and investing the net proceeds of sale. In lieu of the payment to the life tenant of the income and profits on the net proceeds of sale, the clerk may order the present cash value of the life tenant's share, ascertained as by law provided, to be paid to the life tenant absolutely, out of said proceeds, and order the balance thereof to be invested and kept invested for the remaindermen, or paid over to a trustee appointed for the purpose, after the trustee shall have qualified by filing with the clerk an undertaking, to be approved by him, payable to the State of North Carolina, for the benefit of the remaindermen, in a sum double the amount of the balance of the net proceeds aforesaid, and conditioned for the prompt forthcoming and payment of the principal and interest or income thereof, and the faithful performance of duty and compliance with the orders of court relating thereto. The orders aforesaid shall be approved by the judge of the Superior Court residing in or holding the courts of the district, where such approval is now required by law. (1925, c. 59.)

§ 55-120. Secretary of state directed to require domestication of all foreign corporations do-

ing business in state.—The secretary of state is hereby directed to require that every foreign corporation doing business in North Carolina, as permitted under the provisions of § 55-117, shall file in the office of the secretary of state a copy of its charter or articles of agreement, in the manner required by § 55-118, and all amendments thereto, and otherwise fully comply with the provisions of said law, including the payment to the secretary of state of fees fixed by said law for the privilege of doing business in this state and domestication therein. The secretary of state is authorized and empowered to employ such assistants as shall be deemed necessary in his office for the purpose of carrying out and enforcing the provisions of this section, and for making such investigations as shall be necessary to ascertain foreign corporations now doing business in North Carolina which may have failed or hereafter fail to domesticate as required by law. (1937, c. 343.)

Art. 11. Dissolution.

§ 55-121. Voluntary, generally.—When in the judgment of the board of directors it is deemed advisable and for the benefit of a corporation that it be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board, at a meeting called for that purpose, of which meeting every director shall have received three days notice, shall cause notice of adoption of such resolution to be mailed to each stockholder residing in the United States, to his last known postoffice address, and also, beginning within said ten days, cause a like notice to be published in a newspaper published in the county wherein the corporation has its principal office, at least once a week for four successive weeks, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution. The stockholders' meeting thus called may, on the day appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at one time, of which adjourned meeting notice by advertisement in said newspaper shall be given. If at such meeting two-thirds in interest of all the stockholders consent in writing that a dissolution take place, their consent, together with the list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that the consent has been filed, and the board of directors shall cause this certificate to be recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and published once a week for four successive weeks in a newspaper published in said county. Upon the filing in the office of the secretary of state of an affidavit of the manager or publisher of such newspaper that the certificate has been so published, the corporation is dissolved, and the board shall proceed to settle up and adjust its business and affairs.

Whenever all the stockholders consent in writing to a dissolution, no meeting or notice thereof is necessary, but on filing the consent in the office of the Secretary of State, he shall issue a certificate showing that such consent in writing has been filed in his office, and said certificate shall be published as above provided in cases without unanimous consent, and recorded in the office of the clerk of the superior court of the county in which the principal office of the corporation is located. Upon the filing in the office of the Secretary of State of an affidavit of the manager or publisher of the newspaper in which publication is made, showing that said certificate has been so published, the Secretary of State shall forthwith issue a certificate of dissolution of the said corporation.

The Secretary of State shall withhold issuance of final certificate of dissolution of or withdrawal of any corporation, domestic or foreign, until the receipt by him of a notice from the Commissioner of Revenue to the effect that such corporation has met the requirements with respect to reports and taxes required by the Revenue Laws of the State of North Carolina. (Rev., s. 1195; 1901, c. 2, s. 34; 1941, c. 195; C. S. 1182.)

§ 55-122. Liability of stockholders.—The stockholders of a corporation chartered under the laws of this state are individually liable for all taxes, costs and fees for the dissolution of the corporation, and the attorney-general is authorized to enforce the provisions of this section by suit before a justice of the peace or in the superior court in the county where such corporation had its principal place of business, whenever it appears upon report from the secretary of state that the corporation has ceased to transact business and fails to pay the taxes due the state or to file annual statements or to dissolve itself as provided by law. If a nonresident stockholder of the corporation refuses to sign the certificate of dissolution the resident stockholders shall make affidavit to that effect, and the written assent of such resident stockholders, accompanied by such affidavit, is sufficient to dissolve the corporation. If no stockholder of such corporation is found within the state the secretary of state has authority to declare the charter of the corporation forfeited, and shall publish annually in his corporation report a list of the corporations whose charters have been so forfeited. (1909, c. 730, s. 1; C. S. 1183.)

§ 55-123. Voluntary, before payment of stock.—The incorporators named in a certificate of incorporation, before the payment of any part of the capital stock, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by oath, that no part of the capital stock has been paid and such business has not been begun, and surrendering all rights and franchises. Thereupon the corporation is dissolved. (Rev., s. 1177; 1901, c. 2, s. 35; C. S. 1184.)

§ 55-124. Involuntary, at instance of private persons.—Corporations may be dissolved by civil action, instituted by the corporation, a stockholder, or creditor, or by authority of the attorney-general in the name of the state, in the following cases:

1. For any abuse of its powers to the injury of

the public or of its stockholders, creditors, or debtors.

2. For nonuser of its powers for two or more consecutive years.

3. When it is insolvent, or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate rights.

4. Upon any conviction of the company of a persistent criminal offense. (Rev., s. 1196; Code, s. 694; 1901, c. 2, s. 73; C. S. 1185.)

§ 55-125. Involuntary, by stockholders.—When stockholders owning one-fifth or more in amount of the paid-up stock of any corporation organized under the laws of and doing business in this state, except corporations organized for religious, charitable, fraternal, and educational purposes, and except banking and public-service corporations, apply in term or vacation to the judge of the superior court holding the courts for the county in which the principal place of business of the corporation is situated, by petition containing a statement that for three years next preceding the filing of the petition, which time shall begin to run from three years after it has begun business, the net earnings of the corporation have not been sufficient to pay in good faith an annual dividend of four per cent upon the paid stock of the corporation, over and above the salaries and expenses authorized by its by-laws and regulations, or that the corporation has paid no dividend for six years preceding said application; or whenever stockholders owning one-tenth or more in amount of the paid-up common stock of any such corporation apply to the judge of the superior court as aforesaid by petition containing a statement that the corporation has paid no dividend on the common stock for ten years preceding said application, and that they desire a dissolution of the corporation, the judge shall make an order requiring the officers of the corporation to file in court, within a reasonable time, inventories showing all the real and personal estate of the corporation, a true account of its capital stock, the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in upon said shares and the amount still due thereon, and a statement of all the encumbrances on the property of the corporation and all its contracts which have not been fully satisfied and canceled, specifying the place and residence of each creditor, the sum owing to each, the nature of the debt or demand, and the consideration therefor, and the books and papers of the corporation. Upon the filing of the inventories, accounts and statements, the court shall enter an order requiring all persons interested in the corporation to appear before a referee to be appointed by the court, at a time and place named in the order, service of which may be made by publication for such time as may be deemed proper by the court, and show cause why the corporation should not be dissolved. If it appears to the court that the statements contained in the petition are true, the court may adjudge a dissolution of the corporation and shall appoint one or more receivers, who shall have all powers of receivers conferred by this chapter for the winding up the affairs and distribution of the assets of the corporation. If it appears to the court that the corporation is insolvent or in imminent danger of insolvency, the court may appoint a temporary receiver of the corporation pending dissolution. No suit shall be brought for the dissolution of a corporation under the provisions of this section until each and all of the petitioners have owned their stock for the term of two years prior to the institution of the action; nor shall any such suit be brought for the period of three years after a final judgment upon a prior petition as herein provided. (1913, c. 147; 1915, c. 137, s. 1; C. S. 1186.)

§ 55-126. Involuntary, by attorney-general.—An action may be brought by the attorney-general in the name of the state against a corporation for the purpose of annulling its charter upon the ground that it was procured upon a fraudulent suggestion, or concealment of a material fact, by the persons incorporated or by some of them, or with their knowledge or consent; or for the purpose of annulling the existence of a corporation, other than municipal, when such corporation—

1. Offends against the act creating, altering, or renewing it.

2. Violates any law by which it has forfeited its charter by abuse of its power.

3. Has forfeited its privileges or franchises by failure to exercise its power.

4. Has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.

5. Has exercised a franchise or privilege not conferred upon it by law.

6. Has failed to use its powers for two or more consecutive years.

7. Has become insolvent as manifested by the return of an execution unsatisfied upon a judgment against the corporation docketed in the superior court of the county where it has its principal place of business.

It is the duty of the attorney-general, whenever he has reason to believe that any of these acts or omissions can be established by proof, to bring an action in every case of public interest, and also in every other case in which satisfactory security is given to indemnify the state against the costs and expenses to be incurred thereby. (Rev., s. 1198; Code, ss. 604, 605; 1889, c. 533; C. S. 1187.)

§ 55-127. Forfeiture or dissolution for failure to organize or act. — When a charter has been granted creating a corporation, and the incorporators for two years neglect to organize and carry into effect the intent of the charter, or when organized, if they for two consecutive years cease to act, then this disuse of their corporate privileges and powers is a forfeiture of the charter. If, after thirty days notice by the secretary of state, the corporation fails to surrender its corporate rights or to dissolve, in the manner provided in this chapter, the secretary of state shall report it to the attorney-general, who shall institute an appropriate action for its dissolution. (Rev., s. 1246; Code, s. 688; 1901, c. 2, s. 106; C. S. 1188.)

§ 55-128. Forfeiture for nonuser by hydro-electric companies. — All waterpower, hydro-electric power, and water companies or corporations organized in this state shall be required to begin active work in making their proposed develop-

ment within two years after their organization and diligently to prosecute their work on the same until it has been completed; and a failure to begin the work or development within the time, and to diligently prosecute work on the same until its completion, as herein provided, shall be legal grounds for declaring their charter rights, privileges and franchises forfeited, by the state, acting through its attorney-general, upon the recommendation of the utilities commission of this state: Provided, this section shall not apply to any company which is supplying the public and is meeting the demands of the public for its services. (1913, c. 133, s. 2; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 1189.)

§ 55-129. Involuntary, by bankruptcy.—When a corporation chartered under the laws of this state is adjudged bankrupt under the laws of the United States or when it shall be made to appear to a judge of the superior court that all of the assets of the corporation of whatever kind or character have been lost to the stockholders by reason of foreclosure, assignment, or execution under judgment, and that the corporation is therefore unable to conduct the business for which it was organized, the charter of the corporation is forfeited without further action, unless the stockholders determine by appropriate resolutions to continue the corporate existence of the corporation after the adjudication in bankruptcy, foreclosure, assignment, or sale under execution, and furnish the secretary of state with a duly certified copy of the resolutions, all within six months after the adjudication, foreclosure, assignment or final sale under execution. The stockholders of a bankrupt corporation whose existence is continued by the foregoing procedure must pay all privilege taxes which have accrued against the corporation since the adjudication, together with a fee of one dollar allowed the secretary of state for recording and filing the certificate provided for in this section. (1915, c. 134, ss. 2, 3; 1931, c. 310; C. S. 1190.)

§ 55-130. When franchises forfeited by neglect, etc., corporation dissolved; costs. — If it is adjudged that a corporation against which an action has been brought has forfeited by neglect, abuse, or surrender, its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such rights, privileges and franchises, and that it be dissolved. If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs to be collected by execution against the persons making the claim, or by attachment or process against the directors or other officers of the corporation. (Rev., ss. 1209, 1210; Code, ss. 617, 618; C. S. 1191.)

§ 55-131. Service of summons in action for dissolution.—In an action for the dissolution of a corporation, or for the appointment of a receiver thereof, the summons must be served on the corporation by service on an officer or agent upon whom other process can be served, and shall be served on the stockholders, creditors, dealers and any others interested in the affairs of the company by publishing a copy at least weekly for two successive weeks in some newspaper printed in the county in which the corporation has its principal place of business, or if there is no such newspaper published, by posting a copy of the summons at the door of the courthouse of such county, and publishing a copy for the time and in the manner aforesaid in a newspaper published nearest the county seat of the county in which the corporation has its principal place of business or in a newspaper published in the city of Raleigh. This publication is sufficient service on all the stockholders, creditors of, or dealers with, the corporation, and upon the corporation, if no officer can after due diligence be found in the state and it has no process agent in the state; and all such stockholders, creditors or dealers or other parties interested may intervene in said proceedings and become parties thereto for themselves, or for others in like interest, under such rules as the court for the purpose of justice prescribes. (Rev., s. 1199; Code, s. 695; 1911, c. 173, s. 1; C. S. 1192.)

§ 55-132. Corporate existence continued three years. — All corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall continue to be bodies corporate for three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of their property, and to divide their assets; but not for the purpose of continuing the business for which the corporation was established. The superior court of the county in which the principal office of the corporation is located may, upon petition of said corporation, continue the corporate existence for the purposes of winding up the affairs, for such time as the court may deem proper. The provisions hereof shall also apply to corporations whose affairs have not on March 30, 1939, been wound up. (Rev., s. 1200; Code, s. 667; 1901, c. 2, s. 58; 1939, c. 250, s. 1; C. S. 1193.)

§ 55-133. Directors to be trustees; powers and duties. — On the dissolution in any manner of a corporation, unless otherwise directed by an order of the court, the directors are trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, and, after paying its debts, divide any surplus money and other property among the stockholders. The trustees have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority, to prescribe the terms and conditions of the sale of such property, and they may sell all or any part for cash, or partly on credit, or take mortgages or bonds for part of the purchase price for all or any part of the property. They have power to sue for and recover the said debts and property in the name of the corporation, and are suable in the same name for the debts owing by it, and are jointly and severally responsible for such debts only to the amount of property of the corporation which comes into their possession as trustees. Vacancies in the board of directors may be filled in accordance with the provisions of the by-laws of the corporation or the stockholders may fill such vacancies at a regular or duly called meeting. (Rev., ss. 1201, 1202; Code, s. 687; 1901, c. 2, ss. 59, 60; 1939, c. 250, s. 2; C. S. 1194.)

§ 55-134. Jurisdiction of superior court.—When a corporation is dissolved, in any manner whatsoever, the superior court, on application of a creditor or stockholder, may either continue the directors as trustees or appoint one or more persons receivers of the corporation. The court has jurisdiction of the application, and of all questions arising in the proceedings thereon, and may make, at any place in the district, any orders, injunctions, or decrees therein as justice and equity require. The powers of such trustees or receivers are as elsewhere given in this chapter, and may be continued as long as the court thinks necessary. (Rev., ss. 1203, 1204; Code, ss. 619, 668, 669; 1901, c. 2, ss. 61, 62; C. S. 1195.)

§ 55-135. Injunction; notice and undertaking.—An injunction to suspend the general and ordinary business of a corporation or to appoint a receiver shall not be granted without due notice of the application therefor to the corporation, except where the state is a party to the proceeding, unless the plaintiff gives a written undertaking, executed by two sufficient sureties to be approved by the judge, to the effect that the plaintiff will pay all damages, not exceeding the sum mentioned in the undertaking, which the corporation may sustain by reason of the injunction, or the appointment of the receiver, if the court finally decides that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court directs. (Rev., s. 1205; Code, s. 343; C. C. P., s. 194; C. S. 1196.)

§ 55-136. Wages for two months lien on assets.—In case of the insolvency of a corporation, partnership or individual, all persons doing labor or service of whatever character in its regular employment have a lien upon the assets thereof for the amount of wages due to them for all labor, work, and services rendered within two months next preceding the date when proceedings in insolvency were actually instituted and begun against the corporation, partnership or individual, which lien is prior to all other liens that can be acquired against such assets. (Rev., s. 1206; 1901, c. 2, s. 87; 1937, c. 223; C. S. 1197.)

§ 55-137. Distribution of funds.—After payment of all allowances, expenses and costs, and the satisfaction of all general and special liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, and shall be entitled to distribution on debts not due, making in such case a rebate of interest when interest is not accruing on the same. Any surplus funds, after payment of the creditors and costs, expenses and allowances, shall be paid to the preferred stockholders according to their respective shares, and if there still be a surplus, it shall be divided and paid to the general stockholders proportionately, according to their respective shares. Upon the distribution of the assets of an insolvent corporation, judgment of dissolution shall be entered and a certified copy of the judgment filed in the office of the secretary of state, and also in the office of the clerk of the superior court of the county in which the principal office of the corporation is located, and the same shall be recorded in the Corporation Book and in the Record of Incorporations in these offices respectively. Thereupon the corporation is dissolved without being required to comply with § 55-121. (Rev., s. 1207; Code, s. 670; 1901, c. 2, ss. 63, 89; 1909, c. 15, s. 1; C. S. 1198.)

§ 55-138. Debts not extinguished nor actions abated.—In case of the dissolution of a corporation, the debts due to and from it are not thereby extinguished, nor do actions against a corporation which is dissolved before final judgment abate by reason thereof, but no judgment shall be entered therein without notice to the trustees or receivers of the corporation. (Rev., ss. 1201, 1208; Code, s. 687; 1901, c. 2, ss. 59, 64; C. S. 1199.)

§ 55-139. Copy of judgment to be filed with secretary of state; costs.—A copy of every judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation and in the index thereof, and be published by him in the annual report hereinafter provided for, the cost of which shall be taxed by the clerk of the superior court in the action wherein the corporation is dissolved. (Rev., s. 1211; 1901, c. 2, s. 65; C. S. 1200.)

Art. 12. Execution.

§ 55-140. How issued; property subject to execution.—If a judgment is rendered against a corporation, the plaintiff may sue out such executions against its property as is provided by law to be issued against the property of natural persons, which executions may be levied as well on the current money as on the goods, chattels, lands and tenements of such corporation. (Rev., s. 1212; 1901, c. 2, s. 66; C. S. 1201.)

§ 55-141. Agent must furnish information as to property to officer.—Every agent or person having charge or control of any property of the corporation, on request of a public officer having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, so far as he has knowledge of the same. (Rev., s. 1213; 1901, c. 2, s. 67; C. S. 1202.)

§ 55-142. Shares of stock subject to; agent must furnish information. — Any share or interest in any bank, insurance company, or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution in the same manner as goods and chattels. The clerk, cashier, or other officer of such company who has at the time the custody of the books of the company shall, upon being shown the writ of execution, give to the officer having it a certificate of the number of shares or amount of the interest held by the defendant in the company; and if he neglects or refuses to do so, or if he willfully gives a false certificate, he shall be liable to the plaintiff for the amount due on the execution, with costs. (Rev., ss. 1214, 1215; 1901, c. 2, ss. 69, 70; C. S. 1203.)

§ 55-143. Debts due corporation subject to; duty and liability of agent.—If an officer holding an execution is unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution in whole or in part out of any debts due the corporation; and it is the duty of any agent or person having custody of any evidence of such debt to deliver it to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and the creditor may sue for and collect the same in the name of the corporation, subject to such equitable setoffs on the part of the debtor as in other assignments. Every agent or person who neglects or refuses to comply with the provisions of this section and § 55-141 is liable to pay to the execution creditor the amount due on the execution, with costs. (Rev., s. 1216; 1901, c. 2, s. 68; C. S. 1204.)

§ 55-144. Violations of three preceding sections misdemeanor. — If any agent or person having charge or control of any property of a corporation, or any clerk, cashier, or other officer of a corporation, who has at the time the custody of the books of the company, or if any agent or person having custody of any evidence of debt due to a corporation, shall, on request of a public officer having in his hands for service an execution against the said corporation, willfully refuse to give to such officer the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, or shall willfully refuse to give to such officer a certificate of the number of shares, or amount of interest held by such corporation in any other corporation, or shall willfully refuse to deliver to such officer any evidence of indebtedness due or to become due to such corporation, he shall be guilty of a misdemeanor. (Rev., s. 3690; 1901, c. 2, ss. 67, 68, 70; C. S. 1205.)

§ 55-145. Proceedings when custodian of corporate books is a nonresident. — When the clerk, cashier, or other officer of any corporation incorporated under the laws of this state, who has the custody of the stock-registry books, is a nonresident of the state, it is the duty of the sheriff receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company to send by mail a notice in writing, directed to the nonresident clerk, cashier, or other officer at the postoffice nearest his reputed place of residence, stating in the notice that he, the sheriff, holds the writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels the writ has been issued, and that by virtue of such writ he seizes and levies upon all the shares of stock of the company held by the defendant in execution on the day of the date of such written notice. It is also the duty of the sheriff on the day of mailing the notice to affix and set upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of the company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode. The sending, setting up, and serving of such notices in the manner aforesaid constitutes a valid levy of the writ upon all shares of stock in such company held by the defendant in execution, which have not at the time of the receipt of the notice by the clerk, cashier, or other officer, who has custody of the stock-registry books, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution is void as against the plaintiff in the execution, or any purchaser of such stock at any sale thereunder. (Rev., s. 1217; 1901, c. 2, s. 71; C. S. 1206.)

§ 55-146. Duty and liability of nonresident custodian.—The nonresident clerk, cashier, or other officer in such corporation, to whom notice in writing is sent as prescribed in § 55-145, shall send forthwith to the officer having the writ, a statement of the time when he received the notice and a certificate of the number of shares held by the defendant in the corporation at the time of the receipt, not actually transferred on the books of the corporation; and the sheriff, or other officer, on receipt by him of this certificate, shall insert the number of shares in the inventory attached to the writ. If the clerk, cashier, or other officer in such corporation neglects to send the certificate as aforesaid or willfully sends a false one, he is liable to the plaintiff for double the amount of damages occasioned by his neglect, or false certificate, to be recovered in an action against him; but the neglect to send, or miscarriage of the certificate, does not impair the validity of the levy upon the stock. (Rev., s. 1218; 1901, c. 2, s. 72; C. S. 1207.)

Art. 13. Receivers.

§ 55-147. Appointment and removal.—When a corporation becomes insolvent or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate rights, or its corporate existence has expired by limitation, a receiver may be appointed by the court under the same regulations that are provided by law for the appointment of receivers in other cases; and the court may remove a receiver or trustee and appoint another in his place, or fill any vacancy. Everything required to be done by receivers or trustees is valid if performed by a majority of them. (Rev., ss. 1219, 1223; Code, s. 668; 1901, c. 2, ss. 73, 79; C. S. 1208.)

§ 55-148. Powers and bond.—The receiver has power and authority to—

1. Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation.

2. Foreclose mortgages, deeds of trust, and other liens executed to the corporation.

3. Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the corporation, and he shall, upon application by him, be substituted as party plaintiff in the place of the corporation in any suit or proceeding pending at the time of his appointment.

4. Sell, convey, and assign all of the said estate, rights, and interest.

5. Appoint agents under him.

6. Examine persons and papers, and pass on claims as elsewhere provided in this article.

7. Do all other acts which might be done by the corporation, if in being, that are necessary for the final settlement of its unfinished business.

The powers of the receiver may be continued as long as the court thinks necessary, and the receiver shall hold and dispose of the proceeds of all sales of property under the direction of the court, and, before acting, must enter into such bond and comply with such terms as the court prescribes. (Rev., ss. 1222, 1231; Code, s. 668; 1901, c. 2, ss. 74, 84; C. S. 1209.)

§ 55-149. Title and inventory.—All of the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects, upon the appointment of a receiver, forthwith vest in him, and the corporation is divested of the title thereto. Within thirty days after his appointment he shall lay before the court a full and complete inventory of all estate, property, and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and shall make a report of his proceedings to the superior court at every civil term during the continuance of the trust. (Rev., ss. 1224, 1225; 1901, c. 2, ss. 75, 80; C. S. 1210.)

§ 55-150. Foreclosure by receivers and trustees of corporate mortgagees or grantees.—Where real estate has been conveyed by mortgage deed, or deed of trust to any corporation in this State authorized to accept such conveyance for the purpose of securing the notes or bonds of the grantor, and such corporation thereafter shall be placed in the hands of a receiver or trustee in properly instituted court proceedings, then such receiver or trustee under and pursuant to the orders and the decrees of the said court or other court of competent jurisdiction may sell such real property pursuant to the orders and the decrees of the said court or may foreclose and sell such real property as provided in such mortgage deed, or deed of trust, pursuant to the orders and decrees of such court.

All such sales shall be made as directed by the court in the cause in which said receiver is appointed or the said trustee elected, and for the satisfaction and settlement of such notes and bonds secured by such mortgage deed or deed of trust or in such other actions for the sales of the said real property as the said receiver or trustee may institute and all pursuant to the orders and decrees of the court having jurisdiction therein.

All sales of real property made prior to April 10, 1931 by such receiver or trustee of and pursuant to the orders of the courts of competent jurisdiction in such cases, are hereby validated. (1931, c. 265.)

§ 55-151. May send for persons and papers; penalty for refusing to answer.—The receiver has power to send for persons and papers, to examine any persons, including the creditors, claimants, president, directors, and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills, choses in action, real and personal estate and effects of every kind; and also respecting its debts, obligations, contracts, and liabilities, and the claims against it; and if any person refuses to be sworn or affirmed, or to make answers to such questions as may be put to him, or refuses to declare the whole truth touching the subject-matter of the examination, the court may, on report of the receiver, commit such person as for contempt. (Rev., s. 1227; 1901, c. 2, s. 78; C. S. 1211.)

§ 55-152. Proof of claims; time limit. — All claims against an insolvent corporation must be presented to the receiver in writing; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver directs, and shall produce such books and papers relating to the claim as shall be required. The receiver has power to examine under oath or affirmation all witnesses produced before him touching the claim, and shall pass upon and allow or disallow the claims or any part thereof, and notify the claimants of his determination. The court may limit the time within which creditors may present and prove to the receiver their respective claims against the corporation, and may bar all creditors and claimants failing to do so within the time limited from participating in the distribution of the assets of the corporation. The court may also prescribe what notice, by publication or otherwise, must be given to creditors of such limitation of time. (Rev., ss. 1228, 1229; 1901, c. 2, ss. 81, 82; C. S. 1212.)

§ 55-153. Report on claims to court; exceptions and jury trial.—It is the duty of the receiver to report to the term of the superior court subsequent to a finding by him as to any claim against the corporation, and exceptions thereto may be filed by any person interested, within ten days after notice of the finding by the receiver, and not later than within the first three days of the said term; and, if, on an exception so filed, a jury trial is demanded, it is the duty of the court to prepare a proper issue and submit it to a jury; and if the demand is not made in the exceptions to the report the right to a jury trial is waived. The judge may, in his discretion, extend the time for filing such exceptions. (Rev., s. 1230; 1901, c. 2, s. 83; C. S. 1213.)

§ 55-154. Property sold pending litigation.—When the property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court may order the receiver to sell the same, clear of incumbrance, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court directs. And the receiver or receivers making such sale is hereby authorized and directed to report to the resident judge of the district or to the judge holding the courts of the district in which the property is sold, the said sale for confirmation, the said report to be

made to the said judge in any county in which he may be at the time; but before acting upon said report, the said receiver or receivers shall publish in some newspaper published in the county or in some newspaper of general circulation in the county, where there is no newspaper published in the county, a notice directed to all creditors and persons interested in said property, that the said receiver will make application to the judge (naming him) at a certain place and time for the confirmation of his said report, which said notice shall be published at least ten days before the time fixed therein for the said hearing. And the said judge is authorized to act upon said report, either confirming it or rejecting the sale; and if he rejects the sale it shall be competent for him to order a new sale and the said order shall have the same force and effect as if made at a regular term of the Superior Court of the county in which the property is situated. (Rev., s. 1232; 1901, c. 2, s. 86; Ex. Sess. 1924, c. 13; C. S. 1214.)

§ 55-155. Compensation and expenses.—Before distribution of the assets of an insolvent corporation among the creditors or stockholders, the court shall allow a reasonable compensation to the receiver for his services, not to exceed five per cent upon receipts and disbursements, and the costs and expenses of administration of his trust and of the proceedings in said court, to be first paid out of said assets. (Rev., s. 1226; 1901, c. 2, s. 88; C. S. 1215.)

§ 55-156. Debts provided for, receiver discharged.—When a receiver has been appointed, and it afterwards appears that the debts of the corporation have been paid, or provided for, and that there remains, or can be obtained by further contributions, sufficient capital to enable it to resume its business, the court may, in its discretion, a proper case being shown, discharge the receiver, and decree that the property, rights, and franchises of the corporation revert to it, and thereafter the corporation may resume control of the same, as fully as if the receiver had never been appointed. (Rev., s. 1220; 1901, c. 2, s. 76; C. S. 1216.)

§ 55-157. Reorganization.—When a majority in interest of the stockholders of the corporation have agreed upon a plan for its reorganization and a resumption by it of the management and control of its property and business, the corporation may, with the consent of the court, upon the reconveyance to it of its property and franchises, either by deed or decree of the court, mortgage the same for an amount necessary for the purposes of the reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization. (Rev., s. 1221; 1901, c. 2, s. 77; C. S. 1217.)

Art. 14. Taxes and Fees.

§ 55-158. Taxes for filing; secretary of state not to file corporate papers until prescribed fees, etc., paid.—On filing any certificate or paper relative to corporations in the office of the Secretary of State, the following tax shall be paid to the State Treasurer for the use of the State:

1. For certificates of incorporation, forty cents for each thousand dollars of the total amount of capital stock authorized but in no case less than forty dollars.

2. Increase of capital stock, forty cents for each thousand dollars of the total increase authorized, but in no case less than forty dollars.

3. Extension or renewal of corporate existence of any corporation, the same as required for the original certificate of incorporation by this section.

4. Change of name, change of nature of business, amended certificate of incorporation (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of, or number of shares, forty dollars.

5. For filing of officers and directors, two dollars.

6. Dissolution of corporation, change of principal place of business, five dollars.

7. For certificates of incorporation for any benevolent, religious, educational, charitable or social society or association having no capital stock, fifteen dollars.

Provided, no tax shall be required by corporations created by virtue of § 55-11 relating to public parks and drives; and these taxes shall not be cumulative, but when two or more taxes have been incurred at the same time the tax for all shall be the largest single tax.

The secretary of state shall not file any articles, certificates, applications, amendments, reports, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter until all fees, taxes, and charges provided to be paid in connection therewith shall have been paid to him. (Rev., s. 1233; 1901, c. 2, s. 96; 1911, c. 155, s. 5; 1929, c. 36; 1935, c. 10; 1937, c. 171; C. S. 1218.)

§ 55-159. Fees to secretary of state and clerk of superior court.—The secretary of state shall collect and retain the following fees: For recording the certificate of incorporation, one dollar for the first three copy sheets and ten cents for each copy sheet in excess thereof, and for official seal one dollar; for copying, the same fees as for recording. There shall be paid the clerk of the superior court for recording the certificate of incorporation a fee of three dollars. (Rev., s. 1234; Code, s. 680; 1893, c. 318, s. 4; 1901, c. 2, s. 96; 1917, c. 231, s. 84; C. S. 1219.)

§ 55-160. Property in receiver's hands liable for taxes.—When listed or unlisted taxes are duly assessed and charged against and are due and unpaid by a corporation with chartered rights, doing business or with property in this state, or against a person residing in, doing business, or having property in this state, it is competent for an officer or tax collector who has the tax list to levy upon, seize, and take possession of that part of the property belonging to the corporation or person necessary to pay such taxes, even though the property is in the hands of a receiver duly appointed; and the officer or collector need not apply to the court appointing the receiver, or with jurisdiction of the property or the receiver, for an order for the payment of said taxes. This section applies to all taxes, whether state, county, town or municipal, and shall be liberally construed in

favor of and in furtherance of the collection of such taxes. (Rev., ss. 1236, 1237; Code, ss. 699, 670; C. S. 1220.)

Art. 15. Reorganization.

§ 55-161. Corporations whose property and franchises sold under order of court or execution.—When the property and franchises of a public-service corporation are sold under a judgment or decree of a court of this state, or of the district court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale vests in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchise, subject to all the conditions, limitations and restrictions of the corporation; and the purchaser and his associates, not less than three in number, thereupon become a new corporation, by such name as they select, and they are the stockholders in the ratio of the purchase money by them contributed; and are entitled to all the rights and franchises and subject to all the conditions, limitations and penalties of the corporation whose property and franchises have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of the sale succeeds to all the franchises, rights and privileges of the original corporation only when the sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when the railroad is sold as an entirety. If a purchaser at any such sale is a corporation, such purchasing corporation shall succeed to all the properties, franchises, powers, rights, and privileges of the original corporation: Provided, that this shall not affect vested rights and shall not be construed to alter in any manner the public policy of the state now or hereafter established with reference to trusts and contracts in restraint of trade. (Rev., s. 1238; Code, ss. 697, 698; 1897, c. 305; 1901, c. 2, s. 99; 1913, c. 25, s. 1; 1919, c. 75; C. S. 1221.)

§ 55-162. New owners to meet and organize.—The persons for whom the property and franchises have been purchased shall meet within thirty days after the delivery of the conveyance made by virtue of said process or decree, and organize the new corporation, ten days written notice of the time and place of the meeting having been given to each of the said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary. (Rev., ss. 1239, 1240; 1901, c. 2, ss. 100, 101, 102; C. S. 1222.)

§ 55-163. Certificate to be filed with secretary of state.—It is the duty of the new corporation, within one month after its organization to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the secretary of state, to be filed and recorded in his office, and there remain of record. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation. (Rev., s. 1241; 1901, c. 2, s. 103; C. S. 1223.)

§ 55-164. Effect on liens and other rights.—Nothing contained in this article in any manner impairs the lien of a prior mortgage, or other encumbrance, upon the property or franchises conveyed under the sale, when by the terms of the process or decree under which the sale was made, or by operation of law, the sale was made subject to the lien of any such prior mortgage or other encumbrance. No such sale and conveyance or organization of such new corporation in any way affects the rights of any person, body politic, or corporate, not a party to the action in which the decree was made, nor of the said party except as determined by the decree. When a trustee has been made a party to such action and his cestui que trust, for reason satisfactory to the court, has not been made a party thereto, the rights and interest of the cestui que trust are concluded by the decree. (Rev., s. 1241; 1901, c. 2, s. 103; C. S. 1224.)

Art. 16. Merger.

§ 55-165. Merger, proceedings for.—Any two or more corporations organized or to be organized, or existing under the laws of this state, or any corporation organized under the laws of this state and any corporation organized under the laws of any other state for the purpose of carrying on any kind of business may merge or consolidate into a single corporation which may be either one of said merging or consolidating corporations or a new corporation under the laws of this state to be formed by means of such merger and consolidation, provided, the corporation resulting from said merger and consolidation shall be a corporation of the state of North Carolina; the directors, or a majority of them, of such corporations as desire to consolidate, may enter into an agreement signed by them, and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in the certificate of incorporation, as provided in this chapter, as well as the manner and basis of converting the shares of each of the old corporations into stock of the new corporation, with such other details and provisions as are deemed necessary or desirable.

Said agreement shall be submitted to the stockholders of each corporation, at a meeting thereof, called separately for the purpose of taking the same into consideration; of the time, place and object of which meeting due notice shall be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each corporation either has its principal office or conducts its business (and if there be no newspaper published in

such county, then in a newspaper published in an adjoining county), and a copy of such notice shall be mailed to the last known postoffice address of each stockholder of each corporation, at least twenty days prior to the date of such meeting, and at said meeting said agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitled to vote entitling the holder thereof to one vote; and if the votes of the stockholders of each corporation representing a majority of the outstanding shares of stock entitled to vote shall be for the adoption of the said agreement, then that fact shall be certified on said agreement by the secretary of each corporation, under the seal thereof; and the agreement so adopted and certified shall be signed by the president or vice-president and secretary or assistant secretary of each of said corporations under the corporate seals thereof and acknowledged by the president or vice-president for each of such corporations before any officer authorized by the laws of this State to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations, and the agreement so certified and acknowledged shall be filed in the office of the Secretary of State, and shall thence be taken and deemed to be the agreement and act of consolidation of the said corporation; and a copy of said agreement and act of consolidation, duly certified by the Secretary of State under the seal of his office, shall also be recorded in the office of the clerk of the Superior Court of the county of this State in which the principal office of the consolidated corporation is, or is to be, established, and in the offices of the clerks of the Superior Courts of the counties of this State in which the respective corporations so consolidating shall have their original charters recorded, or if any of the corporations shall have been specially created by a public act of the Legislature, then said agreement shall be recorded in the county where such corporation shall have had its principal office, and also in the office of the register of deeds of each county in which either or any of the corporations entering into the consolidation owns any real estate, and such record or a certified copy thereof, shall be evidence of the existence of the corporation created by the said agreement, and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof. (1925, c. 77, s. 1; 1939, c. 5.)

§ 55-166. Merger; status of old and new corporations.—When the agreement is signed, acknowledged, filed and recorded, as in § 55-165 is required, the separate existence of the constituent corporations shall cease, and the consolidating corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature and all and singular the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed and all debts due on whatever account, and all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not revert or be in any way impaired by reason of this article: Provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the time of the consolidations, and all debts, liabilities and duties of the respective former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debt, liabilities and duties had been incurred or controlled by it.

Before receiving stock in the new or consolidated corporation, the shareholders of the old corporations shall surrender to the new corporation their certificates of stock in such old corporations; and the same shall be canceled by the new corporation upon the delivery of the stock in the new corporation. If any certificate of stock in any of the old corporations shall have been lost, destroyed or misplaced, the owner thereof shall have the right to receive from the new corporation stock therein to be issued for the value of the old stock lost, destroyed or misplaced; and the new or consolidated corporation shall have the right to require from such person indemnity against loss on account of the issue of the stock so applied for, in the manner provided by law for the reissue of lost stock. If the person owning such lost, destroyed or misplaced certificate in one of the old corporations, shall be dissatisfied with the terms of the merger and shall object thereto, he shall have the same right to have the value of his stock appraised and paid for, and to appeal to the courts, as is provided in § 55-167 for other dissatisfied stockholders, upon giving security and indemnifying the new corporation against loss on account of the payment for such lost, destroyed or misplaced certificate of stock. (1925, c. 77, s. 1.)

§ 55-167. Merger; payment for stock of dissatisfied stockholders. — If any stockholder entitled to vote in either corporation consolidating as aforesaid shall vote against the same, or if any stockholder in either corporation consolidating as aforesaid, not entitled to vote therein, shall, at or prior to the taking of the vote, object thereto in writing, and if such dissenting or objecting stockholder shall, within twenty days after the agreement of consolidation has been filed and recorded as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall within thirty days thereafter pay to him the value of the stock at the date of the consolidation; in case of disagreement as to the value thereof, it shall be lawful for any such stockholder or stockholders within thirty days after he has made demand in writing as aforesaid, and upon reasonable notice to the consolidated corporation, to appeal by petition to the Superior Court of the county in which the principal office of the consolidated corporation is, or is to be, established, to appoint three appraisers to appraise the value of his stock. The award of the appraiser (or a majority of them), if not opposed within ten days after the same

shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive; and if opposed and excepted to, the exceptions shall be transferred to the civil issue docket of the Superior Court, and there tried in the same manner, as near as may be practicable, as is provided in § 40-20 for the trial of exceptions to the appraisal of land condemned for public purposes, and with the same right of appeal to the Supreme Court as is permitted in said chapter. The court shall assess against the consolidated corporation the costs of said proceedings, including a reasonable attorney's fee to the stockholder and a reasonable fee to the appraisers as it shall deem equitable. On the making of said demand in writing as aforesaid, any such stockholder or stockholders shall cease to be stockholders in said constituent company and shall have no rights with respect to such stock except the right to receive payment therefor as aforesaid, and upon payment of the agreed value of the stock or of the value of the stock under final judgment, said stockholder or stockholders shall transfer their stock to the consolidated corporation; and in the event the consolidated corporation shall fail to pay the amount of said judgment within ten days after the same shall become final, said judgment may be collected and enforced in the manner prescribed by law for the enforcement of judgments. Each stockholder in either of the constituent corporations at the time the consolidation becomes effective, entitled to vote, who does not vote against the consolidation and each stockholder in each of the constituent corporations at the time the consolidation becomes effective, not entitled to vote, who does not object thereto in writing as aforesaid, shall cease to be a stockholder in such constituent corporation and shall be deemed to have assented to the consolidation together with the stockholders voting in favor of the consolidation in the manner and on the terms specified in the agreement of consolidation. (1925, c. 77, s. 1.)

§ 55-168. Merger; pending action saved.—Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place or the new corporation may be substituted in its place. (1925, c. 77, s. 1.)

§ 55-169. Liability of corporations and rights of others unimpaired by consolidation.—The liability of corporations created under this chapter, or existing under the laws of this State, or the stockholders or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with such corporations, shall not in any way be lessened or impaired by the consolidation of two or more corporations under the provisions hereof. (1925, c. 77, s. 1.)

§ 55-170. Powers of consolidated corporations.—When two or more corporations are consolidated, the consolidated corporation shall, subject to all the laws of this State, have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payment it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue capital stock, with or without par value, or in classes any class of which may be with or without par value, to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment in whole or part for the original shares, in the manner and on the terms specified in the agreement of consolidation. Providing that the only fees that shall be collected from said merging corporations shall be office or filing fees and charter fees upon any increase in the authorized capital stock of the merged corporations in excess of that provided for in the charters of the merging corporations when the authorized capital stock of said merging corporations shall be added. (1925, c. 77, s. 1; 1931, c. 209.)

§ 55-171. Merger of charitable and other corporations not under control of state.—Any two or more charitable, educational, social, ancestral, historical, penal or reformatory corporations not under the patronage and control of the state, and any two or more corporations without capital stock organized for the purpose of aiding in the work of any church, religious society or organization, or fraternal order, whether organized under special act or general laws, may consolidate into a single corporation, which shall be deemed the successor of each and all corporations joining in such consolidation, in the following manner:

(a) When authorized to do so by the conference, synod, convention or other body owning and/or controlling such corporation, the trustees or directors of such corporation by resolution adopted by majority vote at a meeting duly called and convened in accordance with the present charter, by-laws or other regulations for the conduct of such meetings of such corporation, and in the absence of such charter provision, by-laws or other regulations upon ten days' notice to each trustee or director of the time, place and object of the meeting, may authorize such corporation to make, enter into and execute a consolidation agreement with one or more other such corporations; that such consolidation agreement shall prescribe the terms and conditions of consolidation, the mode of carrying same into effect, and shall set forth in full the certificate of incorporation of the consolidated corporation; and the consolidation agreement so authorized shall be executed in the name and behalf of each such corporation entering into the consolidation by its president or vice-president, attested by its secretary or assistant secretary and its corporate seal thereto affixed, and the due execution thereof shall be acknowledged in the manner and before a notary public or other officer required by the general laws of North Carolina for the acknowledgment of corporate deeds; and there shall be attached to such agreement of consolidation the written consent of a majority of the trustees or directors of each corporation entering into the consolidation.

(b) The agreement of consolidation, when authorized and executed as provided above and having attached thereto the aforesaid written consent, shall be filed in the office of the secretary of state.

When so filed, the separate legal existence of each of the corporations joining in the consolidation thereupon shall be merged into the consolidated corporation, and thereafter there shall be only one corporation having as its charter the certificate of incorporation fully set forth in the agreement of consolidation.

(c) A copy of said agreement of consolidation, duly certified by the secretary of state under the seal of his office, shall be recorded in the office of the clerk of the superior court of the county in which the principal office of the consolidated corporation as fixed by its certificate of incorporation is located, and a like certified copy of the agreement of consolidation shall be recorded in the office of the clerk of the superior court of each county where any one or more of the corporations joining in the consolidation theretofore has had its principal office or place of business; and such certified copy shall be evidence of the existence of the consolidated corporation created by such agreement of consolidation and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof. (1933, c. 408, s. 1.)

§ 55-172. Rights and powers of consolidated charitable, etc., corporations.—The consolidated corporation shall succeed to and be vested with all rights, privileges and powers, and all property, real, personal and mixed, tangible and intangible, and the title thereto, of each and all of the corporations joining in the consolidation as fully and effectually as the same were theretofore owned and held by each of the separate corporations, and the consolidated corporation shall be liable for the payment of all debts and liabilities of each and all of the separate corporations: Provided, such consolidation shall not affect liens or the priority of liens established against the separate property of any corporation prior to the consolidation. (1933, c. 408, s. 2.)

§ 55-173. Trust properties vested in new charitable, etc., corporation.—The consolidated corporation shall succeed to and be vested with all money, securities, property, real, personal and mixed, tangible and intangible, and the title thereto, theretofore owned, held and/or administered by each separate corporation upon the uses and trusts declared in any will, deed or other instrument, and the consolidated corporation shall handle, use and administer such trust funds upon the same uses and trusts and not otherwise; and the consolidated corporation shall be deemed to embrace each separate corporation and to constitute a continuation thereof, and no trust fund or other asset of a separate corporation shall be construed to revert and/or pass to other ownership on the ground that such separate corporation has ceased to exist for the purpose of administering such trust or otherwise. (1933, c. 408, s. 3.)

Art. 17. Severance of Certain Partially Merged Charitable, Educational or Social Corporations.

§ 55-174. Application of article.—This article shall apply only to a charitable, educational or social corporation, not under the patronage or control of the state nor under the patronage or control of any religious denomination, which has been formed by the de jure merger of two or more corporations of such character, the merger having been brought about either under §§ 55-165 to 55-173, or under other special or general laws, but where for any reason the merger has not been carried out in fact to the extent of the actual surrender of shares of stock or of other evidences of membership in the respective corporations and the issuance of new stock or new evidences of membership in the merged corporation. A charitable, educational or social corporation, organized by the merger of two such corporations, may be severed and restored to the status of the merging or original corporations by complying with the provisions of this article, with the exceptions above set out. (1937, c. 256, s. 1.)

§ 55-175. Resolution providing for severance; accounting.—At any regular or duly called meeting of the board of directors or other governing body of such merged corporation, a resolution may be adopted providing for the severance of the corporations and restoration to each of the original corporations of the properties owned by each at the time of the merger, and the restoration to the stockholders or members of the stock, rights and privileges owned by them in the merging corporations at the time of the merger, and providing for an accounting as between the respective corporations of their receipts, disbursements and obligations incurred since the attempted merger, the accounting to be on the assumption the corporations had never been merged. (1937, c. 256, s. 2.)

§ 55-176. Stockholders' meeting; notice; ratification of resolution.—Upon the adoption by the board of directors or other governing body of the merged corporations of such resolution of severance, a meeting shall be called by the said governing body of the members or stockholders of the merged corporation. A notice shall be sent to each stockholder or member of the merged corporation by registered mail at least ten days before the date of the stockholders' or members' meeting. Such notice shall be mailed to the last address of the stockholder or member as it appears on the records of the merged corporation. Such notice shall also be published once in a newspaper of general circulation in the county in which the corporation has its principal office at least ten days before the meeting, stating the substance of the resolution of severance and giving the time and place of the meeting. If at such meeting of stockholders or members a resolution shall be adopted ratifying the resolution of the board of directors or governing body, and providing for the severance of the merged corporation into its constituent corporations as they existed immediately prior to the merger, and such resolution shall be adopted by a majority of three-fourths of the total membership or total number of stockholders by shares, as the voting privilege may be exercised in the merged corporation, then the merged corporation shall be severed, on compliance with the further procedural provisions of this article. (1937, c. 256, s. 3.)

§ 55-177. Election of officers for severed corporations.—On the adoption of such resolution of severance by the stockholders or members, the president of the merged corporation shall, either

at said meeting or within ten days thereafter, appoint an acting chairman of the membership or stockholders of each corporation, and shall call a meeting of the members or stockholders of each corporation for the purpose of electing officers of each of the severed corporations, such meetings to be held in accordance with the charter and by-laws of the severed corporations as they existed prior to the merger. (1937, c. 256, s. 4.)

§ 55-178. Agreement between officers and directors for division and accounting.—The officers and directors of the several corporations shall thereupon enter into an agreement setting out in substantial detail the division of the properties of the merged corporation and providing for the accounting of all receipts and disbursements as between the severed corporations on the same basis as if the respective corporations had never been merged. Such agreement shall thereupon be submitted to the stockholders or members of the severed corporations at a meeting to be called in accordance with the charter or by-laws of the severed corporations. At such meeting such agreement shall become effective when approved by a majority of the stockholders or members. Thereupon said agreement shall be executed by the respective officers of the severed corporations, and deeds and other appropriate instruments shall be executed by the officers of the respective corporations to carry out the terms of the agreement. (1937, c. 256, s. 5.)

§ 55-179. Certificates of severance.—Upon the approval of the terms of the severance agreement, as provided in the preceding section, the president and board of directors of the respective corporations shall execute a certificate under the seal of the corporation setting forth in substance the terms of the resolution of severance adopted by the stockholders or members of the merged corporation provided for by § 55-176, and also setting forth the fact and date of the ratification of such severance agreement by the majority of the members or stockholders of the severed corporations, and shall file the same with the secretary of the state of North Carolina. Such certificate, duly certified by the secretary of state under the seal of his office, shall also be recorded in the office of the clerk of the superior court of the county in this state in which the principal office of the merged corporation was established, and also in the offices of the clerks of the superior court for each of the counties in which the respective severed corporations shall have or shall establish their principal offices. On the filing of such certificates in the office of the clerk or clerks of the superior courts, as herein provided, said severance shall be complete to all intents and purposes as if the merger had never taken place. Upon the recording of such certificate it shall be presumptive evidence of the statements of fact contained in said certificate, and after sixty days it shall be conclusive evidence of such statements of fact, except as to any stockholder or member who shall have demanded the value of his stock or membership. (1937, c. 256, s. 6.)

§ 55-180. Original rights restored; liabilities unaffected.—On the completion of the procedure set out in the previous section the stockholders or members in the respective corporations, or their representatives or assigns, as the case may be, shall to all intents and purposes be restored to the same rights and privileges which they, or their predecessors in interest, held in the original corporations: Provided, that any member or stockholder who has conveyed or for any reason forfeited his rights in the merged corporation shall not, by reason of the severance of the merged corporations, be restored to the rights he had in the original corporations at the time of the merger. Nothing contained in this article, however, shall be deemed to affect any debts, liabilities or obligations assumed or incurred by the merged corporation during the period of the merger, but each of the severed corporations shall, with respect to such debts or other obligations, remain liable jointly and severally. (1937, c. 256, s. 7.)

§ 55-181. Objection to severance and demand for payment for stock; failure to object deemed assent.—If any stockholder or member entitled to vote in the merged corporation shall vote against the severance at the stockholders' or members' meeting provided in § 55-176, or shall, prior to the taking of the vote at such meeting, object thereto in writing, and if such dissenting or objecting stockholder or member shall, within twenty days after such meeting, demand in writing from the merged corporation payment of his stock or of his interest in the merged corporation by reason of his membership therein, the merged corporation shall, within thirty days thereafter, pay to him the value of his stock or membership at the date of the adoption of the resolution of severance at the stockholders' or members' meeting. In case of disagreement as to the value thereof, it shall be lawful for any such stockholder or member, within thirty days after he has made demand in writing as aforesaid, or has voted against the resolution as aforesaid, and upon written notice to the merged corporation to appeal by petition to the superior court of the county in which the principal office of the merged corporation is located to appoint three appraisers to appraise the value of his stock or membership. The award of the appraisers, or a majority of them, if not opposed within ten days after the same shall have been filed in court, shall be confirmed by the court or clerk, and when confirmed shall be final and conclusive. If such report is opposed and excepted to, the exceptions shall be transferred to the civil issue docket of the superior court, and there tried in the same manner, as nearly as may be practicable, as is provided in § 40-20 for the trial of exceptions to the appraisal of land condemned for public purposes. The court shall assess against the merged corporation the costs of said proceeding. On the making of such demand in writing, as aforesaid, any such stockholder or member shall cease to be a stockholder or member in said merged corporation, and shall have no rights with respect thereto, except the right to receive payment for the value of his stock or membership. Each stockholder or member in the merged corporation entitled to vote, who does not vote against the severance, and each stockholder or member at the time of the adoption of the resolution of severance provided in § 55-176 not entitled to vote, who does not object thereto

in writing, as aforesaid, shall be deemed to have assented to the severance. (1937, c. 256, s. 8.)

§ 55-182. Pending litigation not affected.—Any action or proceeding pending by or against the merged corporation may be prosecuted to judgment as if such severance had not taken place, or the severed corporation, or either of them, may be substituted in its place. (1937, c. 256, s. 9.)

§ 55-183. Fees of secretary of state.—The fees to be charged by the secretary of state for filing the certificate of severance and the issuance of his certificate thereon shall be the same as provided by law for the filing of an original certificate of incorporation of charitable, educational or social corporations. (1937, c. 256, s. 10.)

Chapter 56. Electric, Telegraph, and Power Companies.

Art. 1. Acquisition and Condemnation of Property.

Sec.
56-1. Use of public highways.
56-2. Electric and hydro-electric power companies may appropriate highways; conditions.
56-3. Powers granted corporations under chapter exercisable by persons, firms or co-partnerships.
56-4. Acquisition of right of way by contract.
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Art. 2. Intrastate Telegraph Messages.

56-11. Penalty for nondelivery of intrastate telegraph message.

Art. 1. Acquisition and Condemnation of Property.

§ 56-1. Use of public highways.—Any person, firm or co-partnership operating electric power lines for lights or power, or authorized by law to establish such lines, or any duly incorporated company possessing the power to construct telegraph or telephone lines, lines for the conveying of electric power or for lights, either or all, has the right to construct, maintain and operate such lines along any railroad or other public highway, but such lines shall be so constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway. (Rev., s. 1571; Code, s. 2007; 1874-5, c. 203, s. 2; 1899, c. 64, s. 1; 1903, c. 562; 1939, c. 228, s. 1; C. S. 1695.)

§ 56-2. Electric and hydro-electric power companies may appropriate highways; conditions.—Every electric power or hydro-electric power corporation, person, firm or co-partnership which may exercise the right of eminent domain under the chapter Eminent Domain, where in the development of electric or hydro-electric power it shall become necessary to use or occupy any public highway, or any part of the same, after obtaining the consent of the public road authorities having supervision of such public highway, shall have power to appropriate said public highway for the development of electric or hydro-electric power: Provided, that said electric power or hydro-electric power corporation shall construct an equally good public highway, by a route to be selected by and subject to the approval and satisfaction of the public road authorities having supervision of such public highway: Provided further, that said company shall pay all damages to be assessed as provided by law, by the damming of water, the discontinuance of the road, and for the laying out of said new road. (1911, c. 114; 1939, c. 228, s. 2; C. S. 1696.)

§ 56-3. Powers granted corporations under chapter exercisable by persons, firms or co-partnerships.—All the rights, powers and obligations given, extended to, or that may be exercised by any corporation or incorporated company under this chapter shall be extended to and likewise be exercised and are hereby granted unto all persons, firms or co-partnerships engaged in or authorized by law to engage in the business herein described. Such persons, firms, co-partnerships and corporations engaging in such business shall be subject to the provisions and requirements of the public laws which are applicable to others engaged in the same kind of business. (1939, c. 228, s. 3.)

§ 56-4. Acquisition of right of way by contract. — Such telegraph, telephone, or electric power or lighting company has power to contract with any person or corporation, the owner of any lands or of any franchise or easement therein, over which its lines are proposed to be erected, for the right of way for planting, repairing and preservation of its poles or other property, and for the erection and occupation of offices at suitable distances for the public accommodation. This section shall not be construed as requiring electric power or lighting companies to erect offices for public accommodation. (Rev., s. 1572; Code, s. 2008; 1874-5, c. 203, s. 3; 1899, c. 64; 1903, c. 562, ss. 1, 2; C. S. 1697.)

§ 56-5. Grant of eminent domain; exception as to mills and water-powers.—Such telegraph, telephone, electric power or lighting company shall be entitled, upon making just compensation therefor, to the right of way over the lands, privileges and easements of other persons and corporations, and to the right to erect poles and towers, to establish offices, and to take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, works, railroads, or sidetracks, or power-houses, with the right to divert the water from such ponds or reservoirs and conduct the

same by flume, ditch, conduit, waterway or pipe line, or in any other manner, to the point of use for the generation of power at its said power-houses, returning said water to its proper channel after being so used. Nothing in this section authorizes interference with any mill or power plant actually in process of construction or in operation; or the taking of water-powers, developed or undeveloped, with the land adjacent thereto necessary for their development: Provided, however, that if the court, upon filing of the petition by such electric power or lighting company, shall find that any mill, excepting cotton mills now in operation, whether operated by water-power or otherwise, together with the lands and easements adjacent thereto or used in connection therewith, or that any water-power, developed or undeveloped, with land adjacent thereto necessary for its development, excepting any water-power, right or property of any person, firm or corporation engaged in the actual service of the general public where such water-power, right or property is being used or held to be used or to be developed for use in connection with or in addition to any power actually used by such person, firm or corporation serving the general public, is necessary for the development of any hydro-electric power plant which is to be operated for the purpose of generating electric power for sale to the general public, and that said electric power or lighting company is unable to agree for the purchase of such property with the owners thereof, and that the failure to acquire such property will affect the ability of such electric power or lighting company to supply power to the general public, and that the taking of such mill or water-power will be greatly more to the benefit of the public than the continued existence of such mill or the continuation of the existing ownership of such water-power, then the court, upon such finding, shall make an order authorizing the condemnation of such property and easements in all respects as in the cases of other property referred to in this section. Any provisions in conflict with this chapter in any special charters granted before January thirty-first, one thousand nine hundred and seven, in respect to the exercise of the right of eminent domain are repealed. (Rev., s. 1573; Code, s. 2009; 1874-5, c. 203, s. 4; 1899, c. 64; 1903, c. 562; 1907, c. 74; 1921, c. 115; 1923, c. 60; 1925, c. 175; C. S. 1698.)

§ 56-6. Residences, etc., may be taken under certain cases.—Residence property or vacant lots adjacent thereto in towns or cities, or other residences, gardens, orchards, graveyards or cemeteries, may be taken under § 56-5 only when the company alleges, and upon the proceedings to condemn makes it appear to the satisfaction of the court, that it owns or otherwise controls not less than seventy-five per cent of the fall of the river or stream on which it proposes to erect its works, from the location of its proposed dam to the head of its pond or reservoir; or when the utilities commission, upon the petition filed by the company, shall, after due inquiry, so authorize. Nothing in this section repeals any part or feature of any private charter, but any firm or corporation acting under a private charter may operate under or adopt any feature of this section. (1907, c. 74; 1917, c. 108; 1933, c. 134, ss. 7, 8; C. S. 1699.)

§ 56-7. Condemnation on petition; parties' interests only taken; no survey required.—When such telegraph, telephone, electric power or lighting company fails on application therefor to secure by contract or agreement such right of way for the purposes aforesaid over the lands, privilege or easement of another person or corporation, it is lawful for such company, first giving security for costs, to file its petition before the superior court for the county in which said lands are situate, or into or through which such easement, privilege or franchise extends, setting forth and describing the parcels of land, privilege or easement over which the way, privilege or right of use is claimed, the owners of the land, easement or privilege, and their place of residence, if known, and if not known that fact shall be stated, and such petition shall set forth the use, easement, privilege or other right claimed, and must be sworn to, and if the use or right sought be over or upon an easement or right of way, it shall be sufficient to give jurisdiction if the person or corporation owning the easement or right of way be made a party defendant.

Only the interest of such parties as are brought before the court shall be condemned in any such proceedings, and if the right of way of a railroad or railway company sought to be condemned extends into or through more counties than one, the whole right and controversy may be heard and determined in one county into or through which such right of way extends.

It is not necessary for the petitioner to make any survey of or over the right of way, nor to file any map or survey thereof, nor to file any certificate of the location of its line by its board of directors. (Rev., s. 1574; Code, s. 2010; 1874-5, c. 203, s. 5; 1899, c. 64, s. 2; 1903, c. 562; C. S. 1700.)

§ 56-8. Copy of petition to be served.—A copy of such petition, with a notice of the time and place the same will be presented to the superior court, must be served on the persons whose interests are to be affected by the proceeding at least ten days prior to the presentation of the same to the said court. (Rev., s. 1575; Code, s. 2011; 1874-5, c. 203, s. 6; 1899, c. 64, s. 3; C. S. 1701.)

§ 56-9. Proceedings as under eminent domain.—The proceedings for the condemnation of lands, or any easement or interest therein, for the use of telegraph, telephone, electric power or lighting companies, the appraisal of the lands, or interest therein, the duty of the commissioners of appraisal, the right of either party to file exceptions, the report of commissioners, the mode and manner of appeal, the power and authority of the court or judge, the final judgment, and the manner of its entry and enforcement, and the rights of the company pending the appeal, shall be as prescribed in Article 2, entitled "Condemnation Proceedings," of the chapter Eminent Domain. (Rev., s. 1576; Code, s. 2012; 1899, c. 64; 1903, c. 562; C. S. 1702.)

§ 56-10. Commissioners to inspect premises.—In considering the question of damages when the interest sought is over an easement, privilege or right of way, the commissioners may inspect the

premises or rest their finding on such testimony as to them may be satisfactory. (Rev., s. 1577; Code, s. 2013; 1874-5, c. 203, s. 9; C. S. 1703.)

Art. 2. Intrastate Telegraph Messages.

§ 56-11. Penalty for nondelivery of intrastate telegraph message.—Any telegraph company doing business in this state that shall fail to transmit and deliver any intrastate message within a reasonable time shall forfeit and pay to any one who may sue for same a penalty of twenty-five dollars. Such penalty shall be in addition to any right of action that any person may have for the recovery of damages. Proof of the sending of any message from one point in this state to another point in this state shall be prima facie evidence that it is an intrastate message. (1919, c. 175; C. S. 1704.)

Chapter 57. Hospital Service Corporations.

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57-16. Cost plus plans.
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§ 57-1. Regulation and definition; application of other laws; profit and foreign corporations prohibited.—Any corporation heretofore or hereafter organized under the general corporation laws of the state of North Carolina for the purpose of maintaining, and operating a non-profit hospital service plan, whereby hospital care may be provided by the said corporation or by a hospital with which it has a contract for such care, to such persons who become subscribers to such plans under a contract which entitles each subscriber to certain hospital care, shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state heretofore enacted, unless specifically designated herein and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term "hospital service corporation" as used in this chapter, includes any such corporation and any non-profit hospital service corporation heretofore organized for the purpose hereinabove expressed.

No hospital service corporation within the meaning of this chapter shall be converted into a corporation organized for pecuniary profit. Every such corporation shall be maintained and operated for the benefit of its members and subscribers as a coöperative corporation.

No foreign or alien hospital service corporation shall be authorized to do business in this state. (1941, c. 338, s. 1.)

§ 57-2. Incorporation. — Any number of persons not less than seven, desiring to form a non-profit hospital service corporation, shall incorporate under the provisions of the general laws of the state of North Carolina governing corporations, but subject to the following provisions:

1. The certificate of incorporation of each such corporation shall have endorsed thereon or attached thereto, the consent of the insurance commissioner, if he shall find the same to be in accordance with the provisions of this chapter.

2. A statement of the services to be rendered by the corporation and the rates currently to be charged therefor which said statement shall be accompanied by two copies of each contract for services which the corporation proposes to make with its subscribers, and two copies of the type of contract which said corporation purposes to make with participating hospitals, shall have been furnished the insurance commissioner; provided, however, that if the articles of incorporation of any such corporation within the meaning of this chapter, shall have been filed with the secretary of state prior to the effective date of this chapter, the approval thereof by the insurance commissioner shall be evidenced by a separate instrument in writing filed with the secretary of state. (1941, c. 338, s. 2.)

§ 57-3. Hospital contracts. — Any corporation organized under the provisions of this chapter may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals approved by the American medical association and/or the North Carolina hospital association. All obligations arising under contracts issued by such corporations to the subscriber shall be satisfied by payments made directly to the hospital or hospitals which rendered such hospital service, unless otherwise authorized by the commissioner of insurance. Nothing herein shall be construed to discriminate against hospitals conducted by other schools of medical practice. (1941, c. 338, s. 3.)

§ 57-4. Supervision of commissioner of insurance; form of contract with subscribers; schedule of rates.—No hospital service corporation shall enter into any contract with subscribers unless

and until it shall have filed with the commissioner of insurance a specimen copy of the contract or certificate and of all applications, riders, and endorsements for use in connection with the issuance or renewal thereof to be formally approved by him as conforming to the section of this chapter entitled "Subscribers Contracts," and conforms to all rules and regulations promulgated by the insurance commissioner under the provisions of this chapter. The commissioner of insurance shall, within a reasonable time after the filing of any such form, notify the corporation filing the same either of his approval or of his disapproval of such form.

No corporation subject to the provisions of this chapter shall enter into any contract with a subscriber after the enactment hereof unless and until it shall have filed with the commissioner of insurance a full schedule of rates to be paid by the subscribers to such contracts and shall have obtained the commissioner's approval thereof. The commissioner may refuse approval if he finds that such rates are excessive, inadequate or discriminatory or if he finds the form of subscriber's contract is unfair or discriminatory. At all times such rates and form of subscriber's contract shall be subject to modification and approval of the insurance commissioner under rules and regulations adopted by the insurance commissioner, in conformity to this chapter. (1941, c. 338, s. 4.)

§ 57-5. Application for certificate of authority or license.—No corporation subject to the provisions of this chapter shall issue contracts for the rendering of hospital service to subscribers, until the insurance commissioner has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license, shall be made on forms to be supplied by the insurance commissioner, containing such information as he shall deem necessary. Each application for such certificate of authority or license, as a part thereof shall be accompanied by duplicate copies of the following documents duly certified by at least two of the executive officers of such corporation:

(a) Certificate of incorporation with all amendments thereto.

(b) By-laws with all amendments thereto.

(c) Each contract executed or proposed to be executed by and between the corporation and any participating hospital under the terms of which hospital service is to be furnished to subscribers to the plan.

(d) Each form of contract, application, rider, and endorsement, issued or proposed to be issued to subscribers to the plan, or in renewal of any of contracts with subscribers to the plan, together with a table of rates charged or proposed to be charged to subscribers for each form of such contract.

(e) Financial statement of the corporation which shall include the amounts of each contribution paid or agreed to be paid to the corporation for working capital, the name or names of each contributor and the terms of each contribution. (1941, c. 338, s. 5.)

§ 57-6. Issuance of certificate. — Before issuing any such license or certificate the commissioner of insurance may make such an examination or investigation as he deems expedient. The commissioner of insurance shall issue a certificate of authority or license upon the payment of an annual fee of one hundred dollars ($100.00) and upon being satisfied on the following points:

(a) The applicant is established as a bona fide non-profit hospital service corporation.

(b) The rates charged and benefits to be provided are fair and reasonable.

(c) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital expenses and such reserve as the department of insurance deems adequate, as provided hereinafter.

(d) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate. (1941, c. 338, s. 6.)

§ 57-7. Subscriber contracts; required and prohibited provisions.—1. Every contract made by a corporation subject to the provisions of the chapter shall be for a period not to exceed twelve months, and no contract shall be made providing for the inception of benefits at a date later than one year from the date of the contract. Any such contract may provide that it shall be automatically renewed for a similar period unless there shall have been one month's prior written notice of termination by either the subscriber or the corporation.

2. No contract between any such corporation and a subscriber, shall entitle more than one person to benefits except that a contract issued and marked as a "family contract" may provide that benefits will be furnished to a husband and wife, or husband, wife and their child or children not over eighteen years of age.

3. Every contract entered into by any such corporation with any subscriber thereto shall be in writing and a certificate stating the terms and conditions thereof shall be furnished to the subscriber to be kept by him. No such certificate form shall be made, issued or delivered in this state unless it contains the following provisions:

(a) A statement of the amount payable to the corporation by the subscriber and the times at which and manner in which such amount is to be paid; this provision may be inserted in the application rather than in the certificate. Application need not be attached to certificate.

(b) A statement of the nature of the benefits to be furnished and the period during which they will be furnished.

(c) A statement of the terms and conditions, if any, upon which the contract may be cancelled or otherwise terminated at the option of either party.

(d) A statement that the contract includes the endorsements thereon and attached papers, if any, and together with the application contains the entire contract.

(e) A statement that if the subscriber defaults in making any payment, under the contract, the subsequent acceptance of a payment by the corporation at its home office shall reinstate the contract, but with respect to sickness and injury, only to cover such sickness as may be first manifested

more than ten days after the date of such acceptance.

4. In every such contract made, issued or delivered in this state:

(a) All printed portions shall be plainly printed;

(b) The exceptions from the contract shall appear with the same prominence as the benefits to which they apply; and

(c) If the contract contains any provision purporting to make any portion of the articles, constitution or by-laws of the corporation a part of the contract, such portion shall be set forth in full.

5. A hospital service corporation may issue a master group contract with the approval of the insurance commissioner provided such contract and the individual certificates issued to members of the group, shall comply in substance to the other provisions of this chapter. Any such contract may provide for the adjustment of the rate of the premium or benefits conferred with the approval of the insurance commissioner, based upon the experience thereunder at the end of the first year or any subsequent year of insurance thereunder and such readjustment may be made retroactive only for such policy year. If such master group contract is issued, altered or modified, the subscribers' contracts issued in pursuance thereof are altered or modified accordingly, all laws and clauses in subscribers' contracts to the contrary notwithstanding. Nothing in the chapter shall be construed to prohibit or prevent the same. Forms of such contract shall at all times be furnished upon request of subscribers thereto. (1941, c. 338, s. 7.)

§ 57-8. Investments and reserves. — No hospital service corporation shall invest in any securities other than securities permitted by the laws of this state for the investment of assets of life insurance companies, banks, trust companies, executors, administrators and guardians.

Every such corporation after the first full year of doing business after the passage of this chapter shall accumulate and maintain, in addition to proper reserves for current administrative liabilities and whatever reserves are deemed adequate and proper by the commissioner of insurance for unpaid hospital bills, and unearned membership dues, a special contingent surplus or reserve at the following rates annually of its gross annual collections from membership dues, exclusive of receipts from cost plus plans, until said reserve shall equal three times its average monthly expenditures for hospital claims and administrative and selling expenses.

1. 1st $200,000.00 .....4%
2. Next $200,000.00 .....2%
3. All above $400,000.00 ....1%

Any such corporation may accumulate and maintain a contingent reserve in excess of the reserve hereinabove provided for, not to exceed an amount equal to three times the average monthly expenditures for hospital claims and administrative and seliing expenses.

In the event the insurance commissioner finds that special conditions exist warranting an increase or decrease in the reserves or schedule of reserves, hereinabove provided for, it may be modified by the insurance commissioner accordingly, provided however, when special conditions exist warranting an increase in said schedule of reserves, said schedule shall not be increased by the insurance commissioner until a reasonable length of time shall have elapsed after notice of such increase. (1941, c. 338, s. 8.)

§ 57-9. Reports filed with insurance commissioner.—Every such corporation shall annually on or before the first day of March of each year, file in the office of the commissioner of insurance a sworn statement verified by at least two of the principal officers of the said corporation showing its condition on the thirty-first day of December, then next preceding; which shall be in such form and shall contain such matter as the commissioner of insurance shall prescribe. In case any such corporation shall fail to file any such annual statement as herein required, the said commissioner of insurance shall be authorized and empowered to suspend the certificate of authority issued to such corporation until such statement shall be properly filed. (1941, c. 338, s. 9.)

§ 57-10. Visitations and examinations. — The commissioner of insurance or any deputy or examiner or other person whom he may appoint, shall have the power of visitations and examination into the affairs of any such corporation and free access to all the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents, or employees or other persons in relation to the affairs, transactions and conditions of the corporation, the actual expense of which shall be paid by the association so examined. (1941, c. 338, s. 10.)

§ 57-11. Expenses. — All acquisition expenses in connection with the solicitation of subscribers to such hospital service plan and administration costs including salaries paid to officers of the corporations, if any, shall at all times be subject to inspection by the commissioner of insurance. (1941, c. 338, s. 11.)

§ 57-12. Licensing of agents. — Every agent of any hospital service corporation authorized to do business in this state under the provisions of this chapter shall be required to obtain annually from the insurance commissioner a license under the seal of his office showing that the company for which he is agent is licensed to do business in this state and that he is an agent of such company and duly authorized to do business for it. And every such agent, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit hospital service. For said license, each agent shall annually pay the sum of one ($1.00) dollar. Before a license is issued to an agent, hereunder, the agent and the company for which he desires to act, shall apply for the license on forms to be prescribed by the insurance commissioner, and before he issues a license to such agent, the insurance commissioner shall satisfy himself by examination that the person applying for a license as an agent is a person of good moral character, that he intends to hold himself out in good faith as a hospital service agent and has sufficient knowledge of the business proposed to be done; that he has not wilfully violated any of

the insurance laws of the state, and that he is a proper person for such position, and that such license, if issued, shall serve the public's interest. For said examination applicant shall pay the sum of ten ($10.00) dollars. All agents operating as such for corporation subject to the provisions of this chapter on the date of its ratification are deemed qualified to act as such without the examination herein provided for. Licenses issued hereunder shall be subject to revocation by the insurance commissioner for cause and if any person shall assume to act as an agent or broker without obtaining the license herein provided for, or makes any false statements or representations concerning the said hospital service, knowingly or wilfully, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars for each offense. (1941, c. 338, s. 12.)

§ 57-13. Revocation of certificate of authority; dissolution.—Whenever the insurance commissioner shall find as a fact that any corporation subject to the provisions of this chapter, is being operated for profit or fraudulently conducted, or is not complying with the provisions of this chapter, he shall be authorized to revoke the certificate of authority or license theretofore granted and may at any time thereafter institute or cause to be instituted the necessary proceedings under the laws of this state looking to the dissolution of such corporation, and any dissolution, liquidation, merger, or reorganization of a corporation or corporations subject to the provisions of this chapter shall be under the supervision of the insurance commissioner who shall have all powers with respect thereto granted to him under the insurance laws of this state. If, at any time, a corporation organized under the provisions of this chapter is financially unable to comply with the provisions of this chapter or to comply with any of the provisions of any of the hospital contracts or subscribers' contracts issued by said corporation in pursuance of this chapter, the commissioner of insurance shall have the right without court action, to transfer all its assets, liabilities, and obligations, to any other corporation, whether organized under the provisions of this chapter, or not, under such contract of reinsurance with such transferee corporation, that he deems to the best interests of the corporation, its members and creditors whose assets, obligations and liabilities, are transferred. This action on the part of the insurance commissioner is without prejudice to the rights of the corporations whose assets, liabilities and obligations are so transferred, to institute other and proper legal remedies, and to question the action so taken by the insurance commissioner as herein provided, provided, however, that the action taken by the insurance commissioner herein shall not be affected pending a final determination by the court with reference thereto. (1941, c. 338, s. 13.)

§ 57-14. Taxation. — Every corporation subject to the provisions of this chapter is hereby declared to be a charitable and benevolent corporation and all of its funds and property shall be exempt from every state, county, district, municipal and school tax or assessment, and all other taxes and license fees, from the payment of which charitable and/or benevolent institutions are now or shall be hereafter exempt. For the purpose of raising revenues sufficient to defray the expenses of the administration of this chapter, and in lieu of all other taxes an annual franchise or privilege tax is hereby levied upon every corporation subject to the provisions of this chapter at the rate of one-third of one per cent of the gross annual collections from membership dues exclusive of receipts from cost plus plans. The general assembly of North Carolina does hereby appropriate the sum of four thousand dollars ($4,000.00) annually from its general funds to be paid over to the department of insurance of this state for its use in the discharge of the duties by this chapter imposed upon the commissioner of insurance of this state. (1941, c. 338, s. 14.)

§ 57-15. Amendments to certificate of incorporation.—Every such corporation subject to the provisions of this chapter shall, prior to any amendments of its certificate of incorporation, file with the commissioner of insurance, two copies of the proposed amendment. Every amendment to a certificate of incorporation of any corporation subject to the provisions of this chapter, shall have annexed thereto the approval of the insurance commissioner before the same shall be filed with the secretary of state. (1941, c. 338, s. 15.)

§ 57-16. Cost plus plans. — Any corporation organized under the provisions of this chapter shall be authorized as agent of any other corporations, firm, group, partnership, or association, doing business in this state, to administer on behalf of such corporation, firm, group, partnership, or association, doing business in this state, any employee group hospitilization or medical service plan, promulgated by such corporation, firm, group, partnership, or association, on a cost plus administrative expense basis, provided only that administrative costs of such a cost plus plan administered by a corporation organized under the provisions of this chapter, acting as an agent as herein provided, shall not exceed the remuneration received therefor, and provided further that the corporation organized under this chapter administering such a plan shall have no liability to the subscribers or to the hospitals for the success or failure, liquidation or dissolution of such group hospitalization and provided further, that nothing herein contained shall be construed to require of said corporation, firm, group, partnership, or association, conformity to the provisions of this chapter if such employee group hospitalization is administered by a corporation organized under this chapter, on a cost plus expense basis. The administration of any cost plus plans as herein provided, shall not be subject to regulation or supervision by the insurance commissioner. (1941, c. 338, s. 16.)

§ 57-17. Pre-existing hospital service corporations.—No corporations organized under the laws of this state prior to the ratification of this chapter, for the purposes herein provided, shall be required to reincorporate as provided for herein, and the provisions of this chapter shall apply to said corporations only with regard to operations

by said corporations with respect to subscribers' contracts, participating hospital contracts, reserves, investments, reports, visitations, expenses, taxation, amendments to charters, supervision of commissioner of insurance, application for certificate, issuance of certificates, licensing of agents after the date of the passage of this chapter, provided, however, as soon as practical hereafter and in accordance with rules and regulations adopted by the insurance commissioner, said corporations shall conform to this chapter as near as practical with respect to subscribers' contracts, endorsements, riders, and applications entered into prior to the ratification of this chapter. (1941, c. 338, s. 17.)

§ 57-18. Construction of chapter as to single employer plans.—Nothing in this chapter shall be construed to effect or apply to hospital service plans which limit their membership to employees and the immediate members of the families of the employees of a single employer and which plans are operated by such employer or such limited group of the employees; and such hospital service plans are hereby exempt from the provisions of this chapter. The insurance commissioner may require from any such hospital service plan such information as will enable him to determine whether such hospital service plan is exempt from the provisions of this chapter. (1941, c. 338, s. 18.)

Chapter 58. Insurance.

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SUBCHAPTER I. INSURANCE DEPARTMENT.

Art. 1. Title and Definitions.

§ 58-1. Title of the chapter.—This chapter may be cited and shall be known as the Insurance Law. (Rev., s. 4677; 1899, c. 54; C. S. 6260.)

§ 58-2. Terms defined.—When consistent with the context and not obviously used in a different sense, the term "company" or "insurance company," as used in this chapter, includes all corporations, associations, partnerships, or individuals engaged as principals in the business of insurance; the word "domestic" designates those companies incorporated or formed, and with home office, in this state; and the word "foreign," when used without limitation, includes all those formed by authority of any other state or government, and whose home office is not located in this state. (Rev., s. 4678; 1899, c. 54, s. 1; C. S. 6261.)

§ 58-3. Contract of insurance.—A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity for, the destruction, loss, or injury of something in which the other party has an interest. (Rev., s. 4679; 1899, c. 54, s. 2; C. S. 6262.)

Art. 2. Insurance Commissioner.

§ 58-4. Department established. — The insurance department is hereby established as a separate and distinct department, which is charged with the execution of laws relating to insurance and other subjects placed under the department. (Rev., s. 4680; 1899, c. 54, s. 3; 1901, c. 391, s. 1; C. S. 6263.)

§ 58-5. Commissioner's election and term of office.—The chief officer at the insurance department shall be called the insurance commissioner. He shall be elected by the people in the manner prescribed for the election of members of the general assembly and state officers, and the result of the election shall be declared in the same manner and at the same time as the election of state officers is now declared. His term of office begins on the first day of January next after his election, and is for four years or until his successor is elected and qualified. If a vacancy occurs during the term, it shall be filled by the governor for the unexpired term. (Rev., ss. 4680, 4681; 1907, c. 868; C. S. 6264.)

§ 58-6. Salary of insurance commissioner.—The salary of the insurance commissioner shall be six thousand dollars a year, payable monthly. (Rev., s. 2756; 1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; 1903, c. 771, s. 3; 1907, c. 830, s. 10; 1907, c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; C. S. 3874.)

§ 58-7. Bond of commissioner.—The insurance

commissioner, before he enters upon the execution of his official duties, must give a bond to the state in the sum of twenty-five thousand dollars, with sufficient surety, to be approved by the state treasurer, conditioned upon the faithful performance of the duties of his office during his term of office; this bond extends to the faithful execution of the office of insurance commissioner by the person elected or appointed thereto until a new election or appointment of insurance commissioner is made and a new bond given. (Rev., s. 293; 1899, c. 54, s. 55; 1905, c. 430, s. 2; C. S. 6265.)

§ 58-8. Seal of department. — The insurance commissioner, with the approval of the governor, shall devise a seal, with suitable inscription, for his office, a description of which, with the certificate of approval by the governor, shall be filed in the office of the secretary of state, with an impression thereof, which seal shall thereupon become the seal of office of the commissioner of the insurance department. The seal may be renewed whenever necessary. (Rev., s. 4682; 1899, c. 54, s. 11; C. S. 6266.)

§ 58-9. Duties of commissioner. — The insurance commissioner shall:

(1) See that all laws relating to the companies, associations, and orders under the insurance department are faithfully executed.

(2) Furnish to each of the companies incorporated by this state and to the attorneys or general agents of companies and associations incorporated by other states and foreign governments, doing business in this state, printed forms for all statements required by law.

(3) Perform all duties now imposed upon him by law in regard to the examination, supervision, and conduct of companies and associations and orders.

(4) Upon a proper application by any citizen of this state, give a statement or synopsis of the provisions of any insurance contract offered or issued to such citizen.

He may administer the oaths in the discharge of his official duty. (Rev., s. 4689; 1899, c. 54, s. 8; 1905, c. 430, s. 3; C. S. 6269.)

§ 58-10. Commissioner to provide books; make inspection; compensation.—The insurance commissioner shall provide all books and blanks of every kind required to carry out the provisions of the law for inspection of buildings in towns and cities, and he or his deputy shall make inspections of the cities and towns of the state. Whenever the commissioner has reason to believe that the local inspectors are not doing their duty he or his deputy shall make special trips of inspection and take proper steps to have all the provisions of law relative to the investigation of fires and the prevention of fire waste enforced. (Rev., s. 4690; 1905, c. 506, s. 6; 1925, c. 89; C. S. 6270.)

§ 58-11. Reports and records kept for public inspection.—The insurance commissioner shall keep on file in his office, for the inspection of the public, all the reports received by him in obedience to law. He shall keep and preserve in a permanent form a record of his proceedings, including a concise statement of the result of all official examinations of companies, a report of the condition of receiverships of insolvent companies, an exhibit of the financial condition and business methods as disclosed by the official examinations of the same, or by their several statements; and such other information and comments in relation to insurance and the public interest therein as he deems fit and proper to preserve. He shall keep the records of fires and matters connected therewith as required by § 69-1 of the chapter on Fire Protection, a record of the policies insuring property of the state, as required by § 58-189 of this chapter, and a record of the proceedings attending the service of process on him as agent for a foreign insurance company, as required by § 58-154. (Rev., s. 4683; 1899, c. 54, ss. 9, 77; 1907, c. 1000, s. 1; C. S. 6271.)

§ 58-12. Original documents and certified copies as evidence.—Every certificate, assignment, or conveyance executed by the commissioner, in pursuance of any authority conferred on him by law and sealed with his seal of office, may be used as evidence and may be recorded in the proper recording offices, in the same manner and with like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the probate of deeds; and all copies of papers in the office of the commissioner, certified by him and authenticated by his official seal, shall be evidence as the original. (Rev., s. 4684; 1899, c. 54, s. 11; C. S. 6272.)

§ 58-13. Admissibility as evidence of agent's authority.—In any case or controversy arising in any court of original jurisdiction within this State wherein it is necessary to establish the question as to whether any insurance or other corporation or agent thereof is or has been licensed by the State Insurance Department to do business in this State, the certificate of the Insurance Commissioner under the seal of his office shall be admissible in evidence as proof of such corporation or agent's authority as conferred by the State Insurance Department. (1929, c. 289, s. 1.)

§ 58-14. Reports of commissioner to the governor and general assembly.—The commissioner shall biennially submit to the general assembly, through the governor, a report of his official acts. The commissioner shall, from time to time, report to the general assembly any change which in his opinion should be made in the laws relating to insurance and other subjects pertaining to his department. On or before the first day of February of each year in which the general assembly is in session he shall make to the governor the recommendations called for in this section, to be transmitted to the general assembly, with the last annual report of this department, including receipts and disbursements. (Rev., ss. 4687, 4688; 1899, c. 54, ss. 6, 7, 10; 1901, c. 391, s. 2; 1911, c. 211, s. 2; 1927, c. 217, s. 5; C. S. 6273.)

§ 58-15. Authority over all insurance companies; no exemptions from license.—Every insurance company, association or order, as well as every bond, investment, dividend, guarantee, registry, title guarantee, debenture, or such other like company (not strictly an insurance company, as defined in the general insurance laws), must be licensed and supervised by the insurance commissioner, and must pay all licenses, taxes, and

fees as prescribed in the insurance laws of the state for the class of company, association, or order to which it belongs. No provision in any statute, public or private, may relieve any company, association, or order from the supervision prescribed for the class of companies, associations, or orders of like character, or release it from the payment of the licenses, taxes, and fees prescribed for companies, associations, and orders of the same class; and all such special provisions or exemptions are hereby repealed. It is unlawful for the insurance commissioner to grant or issue a license to any company, association, or order, or agent for them, claiming such exemption from supervision by his department and release for the payment of license, fees, and taxes. (Rev., s. 4691; 1903, c. 594, ss. 1, 2, 3; C. S. 6274.)

§ 58-16. Examinations to be made. — Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the commissioner shall be satisfied, by such examination and evidence as he sees fit to make and require, that the company is otherwise duly qualified under the laws of the state to transact business therein. As often as once in three years he shall personally or by his deputy visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the laws. He shall also make an examination of any such company whenever he deems it prudent to do so, or upon the request of five or more of the stockholders, creditors, policyholders, or persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that the company is in an unsound condition. Whenever the commissioner deems it prudent for the protection of policyholders in this state he shall in like manner visit and examine, or cause to be visited and examined by some competent person appointed by him for that purpose, any foreign insurance company applying for admission or already admitted to do business in this state, and such company shall pay the proper charges incurred in this examination, including the expenses of the commissioner or his deputy and the expenses and compensation of his assistants employed therein. For these purposes the commissioner or his deputy or persons making the examination shall have free access to all the books and papers of the insurance company that relate to its business, and to the books and papers kept by any of its agents, and may summon, administer oaths to, and examine as witnesses, the directors, officers, agents, and trustees of any such company, and any other person, in relation to its affairs, transactions, and condition. (Rev., s. 4692; 1899, c. 54, s. 13; C. S. 6275.)

§ 58-17. Oath required for compliance with law.—Before issuing license to any insurance company to transact the business of insurance in this state, the insurance commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with him the affidavit of its president or other chief officer that it has not violated any of the provisions of this chapter for the space of twelve months last past, and that it accepts the terms and obligations of this chapter as a part of the consideration of the license. (Rev., s. 4693; 1899, c. 54, s. 110; 1901, c. 391, s. 8; C. S. 6276.)

§ 58-18. Investigation of charges.—Upon complaint being filed by a citizen of this state that a company authorized to do business in the state has violated any of the provisions of this chapter, the insurance commissioner shall diligently investigate the matter, and, if necessary, examine, under oath, by himself or his accredited representatives, at the head office located in the United States, the president and such other officer or agents of such companies as may be deemed proper; also all books, records, and papers of the same. He or his deputies shall have power to summon witnesses, and to compel them to appear before him, or either of them, and to testify under oath in relation to any matter which is, by the provisions of this law, a subject of inquiry and investigation, and may require the production of any book, paper, document, or other matter whatsoever deemed pertinent or necessary to such inquiry with the same force and effect as is possessed by courts of record in this state. (Rev., s. 4694; 1899, c. 54, s. 111; 1903, c. 438, s. 11; 1921, c. 136, s. 4; 1925, c. 275, s. 6; C. S. 6277.)

§ 58-19. Collection of expenses of examination.—If any company, authorized to do business in this state under this chapter, fails or refuses to pay the expenses of examination upon the presentation of a bill therefor by the insurance commissioner, the commissioner shall at once institute appropriate action against the company for the recovery of the same. (Rev., s. 4695; 1899, c. 54, s. 113; C. S. 6278.)

§ 58-20. Commissioner to prescribe forms and furnish blanks for returns.—The insurance commissioner shall furnish blank forms for statements in order to secure full information as to the standing, condition, and other information desired of companies under his department. These forms shall contain such questions and be in such form as the commissioner may prescribe. (Rev., s. 4708; 1899, c. 54, s. 104; C. S. 6279.)

§ 58-21. Annual statements to be filed with commissioner.—Every insurance company, association, or order—domestic, through its officers, and foreign, through its general agent—shall file in the office of the insurance commissioner, on or before the first day of March in each year, in form and detail as the insurance commissioner prescribes, a statement showing the business standing and financial condition of such company, association, or order on the preceding thirty-first day of December, signed and sworn to by the chief managing agent or officer thereof, before the insurance commissioner or some officer authorized by law to administer oaths. The insurance commissioner shall, in December of each year, furnish to each of the insurance companies authorized to do business in the state two or more blanks adapted for their annual statements. (Rev., s. 4698; 1899, c. 54, ss. 72, 73, 83, 90, 97; 1901, c. 706, s. 2; 1903, c. 438, s. 9; C. S. 6280.)

§ 58-22. Punishment for making false statement.—If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person making oath to or subscribing the same shall severally be punished by a fine of not less than five hundred nor more than one thousand dollars. (Rev., s. 3493; 1899, c. 54, s. 97; C. S. 6281.)

§ 58-23. Commissioner to examine statements and publish abstracts.—It is the duty of the insurance commissioner to receive and thoroughly examine each annual statement required by this chapter, and, if made in compliance with the laws of this state, to publish, at the expense of the company, an abstract of the same in one of the newspapers of the state, which newspaper may be selected by the general agent making the statement, if within thirty days after the filing of the statement he notifies the insurance commissioner, in writing, of the name of the paper selected by him. (Rev., s. 4699; 1899, c. 54, s. 74; 1901, c. 391, s. 6; C. S. 6282.)

§ 58-24. Commissioner to file reports of companies; copy to superior court clerk; certified list of licenses.—The insurance commissioner shall keep on file in his office, for the inspection of the public, all the reports received by him in obedience to this chapter, and shall certify to the clerk of the superior court of each county an abstract of each annual statement at the expense of the company making the same, and receive therefor from each company the sum of four dollars: Provided, the insurance commissioner may, in lieu of said abstract, file with the clerks of the courts a copy of the advance sheets of his report or the full report, or both; and he shall also certify, at like expense, to such clerks, on the first day of May of each year, a list of the licenses in force at such dates and those that have expired without renewal or that have been revoked, and each clerk shall file such certified abstracts and lists in stub books, to be kept for that purpose, furnished by the insurance commissioner, which books shall be open for the inspection of the public. There shall be no tax for any seal on the certificates required by this section. (Rev., s. 4700; 1899, c. 54, s. 77; 1901, c. 391, s. 6; 1903, c. 438; s. 7; 1915, c. 166, s. 9; 1931, c. 74; C. S. 6283.)

§ 58-25. Record of business kept by companies and agents; commissioner may inspect.—All companies, agents, or brokers doing any kind of insurance business in this state must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the insurance commissioner on demand, and the original books of records shall be open to the inspection of the commissioner, his deputy or clerk, when demanded. (Rev., s. 4696; 1899, c. 54, s. 108; 1903, c. 438, s. 11; C. S. 6284.)

§ 58-26. Commissioner may employ actuary or accountant.—It is the duty of the insurance commissioner, when in his judgment it is necessary in order that he may be fully advised as to the exact financial condition of any insurance company and the manner in which its business has been or is being conducted, to employ an independent actuary to make a technical calculation of the business and policies of the company, or a skilled accountant to examine and check up the books of the company, and the services shall be paid for as other bills against the state, out of the treasury, where payment is not otherwise provided for. (1907, c. 1000, s. 2; C. S. 6285.)

§ 58-27. Books and papers required to be exhibited.—It is the duty of any person having in his possession or control any books, accounts, or papers of any company, order, or person licensed under this chapter, to exhibit the same to the insurance commissioner or to any deputy, actuary, accountant, or person acting with or for the insurance commissioner. Any person who shall refuse, on demand, to exhibit the books, accounts, or papers, as above provided, or who shall knowingly or wilfully make any false statement in regard to the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (Rev., ss. 3494, 4697; 1899, c. 54, s. 76; 1907, c. 1000, s. 3; C. S. 6286.)

Art. 3. General Regulations for Insurance.

§ 58-28. State law governs insurance contracts.—All contracts of insurance on property, lives, or interests in this state shall be deemed to be made therein; and all contracts of insurance the applications for which are taken within the state shall be deemed to have been made within this state and are subject to the laws thereof. (Rev., s. 4806; 1899, c. 54, s. 2; 1901, c. 705, s. 1; C. S. 6287.)

§ 58-29. No insurance contracts except under this chapter.—It is unlawful for any company to make any contract of insurance upon or concerning any property or interest or lives in this state, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of this chapter. (Rev., s. 4807; 1899, c. 54, s. 2; C. S. 6288.)

§ 58-30. Statements in application not warranties.—All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy. (Rev., s. 4808; 1901, c. 705, s. 2; C. S. 6289.)

§ 58-31. Stipulations as to jurisdiction and limitation of actions.—No company or order, domestic or foreign, authorized to do business in this state under this chapter, may make any condition or stipulation in its insurance contracts concerning the court or jurisdiction wherein any suit or action thereon may be brought, nor may it limit the time within which such suit or action may be commenced to less than one year after the cause of action accrues or to less than six months from any time at which a plaintiff takes a nonsuit to an action begun within the legal time. All conditions and stipulations forbidden by this section are void. (Rev., s. 4809; 1899, c. 54, ss. 23, 106; 1901, c. 391, s. 8; C. S. 6290.)

§ 58-32. Insurance as security for a loan by the company. — Where an insurance company, as a condition for a loan by such company, of money upon mortgage or other security, requires that the borrower insure either his life or that of another, or his property, or the title to his property, with the company, and assign or cause to be assigned to it a policy of insurance as security for the loan, and agree to pay premiums thereon during the continuance of the loan, whether the premium is paid annually, semiannually, quarterly, or monthly, such premiums shall not be considered as interest on such loans, nor will any loan be rendered usurious by reason of any such requirements, where the rate of interest charged for the loan does not exceed the legal rate and where the premiums charged for the insurance do not exceed the premiums charged to other persons for similar policies who do not obtain loans. (1915, c. 8; 1917, c. 61; C. S. 6291.)

§ 58-33. Companies must do business in own name.—Every insurance company, foreign or domestic, must conduct its business in the state in, and the policies and contracts of insurance issued by it shall be headed or entitled only by, its proper or corporate name. (Rev., s. 4811; 1899, c. 54, s. 18; C. S. 6292.)

§ 58-34. Publication of assets and liabilities; penalty for failure.—When any company publishes its assets it must in the same connection and with equal conspicuousness publish its liabilities computed on the basis allowed for its annual statements; and any publications purporting to show its capital must exhibit only the amount of such capital as has been actually paid in cash. Any company or agent thereof violating the provision of this section shall be punished by a fine of not less than fifty nor more than two hundred dollars. (Rev., ss. 3492, 4812; 1899, c. 54, ss. 18, 96; C. S. 6293.)

§ 58-35. Liabilities and reserve fund determined. —To determine the liability of an insurance company, other than life and real estate title insurance, upon its contracts, and thence the amount such company must hold as a reserve for reinsurance, the insurance commissioner shall take the actual unearned portion of the premiums written in its policies. In case of the insolvency of any company, the reserve on outstanding policies may, with the consent of the commissioner, be used for the reinsurance of its policies to the extent of their pro rata part thereof. (Rev., s. 4704; 1899, c. 54, s. 67; 1901, c. 391, s. 5; 1907, c. 1000, s. 4; C. S. 6294.)

§ 58-36. Corporation or association maintaining office in state required to qualify and secure license.—Any corporation or voluntary association, other than an association of companies, the members of which are licensed in this state, issuing contracts of insurance and maintaining a principal, branch, or other office within this state, whether soliciting business in this state or in foreign states, shall qualify under the insurance laws of this state applicable to the type of insurance written by such corporation or association and secure license from the insurance commissioner as provided under this chapter on insurance, as amended, and the officers and agents of any such corporation or association maintaining offices within this state and failing to qualify and secure license as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 39.)

§ 58-37. Revocation of license of foreign company; publication of notice.—If the insurance commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition, or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities; or that it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination or to perform any legal obligation in relation thereto, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notification thereof to be published in one or more newspapers published in this state; and no new business may thereafter be done by it or its agents in this state while such default or disability continues, or until its authority to do business is restored by the commissioner. (Rev., s. 4701; 1899, c. 54, s. 14; 1901, c. 176, s. 1; C. S. 6295.)

§ 58-38. Revocation of license of domestic company; injunction and receiver.—If, upon examination, the insurance commissioner is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers, or failed to comply with any provision of law, or that its condition is such as to render its further proceeding hazardous to the public or to its policyholders, he shall revoke its license, and, if he deems it necessary, shall apply to a judge of the superior court to issue an injunction restraining it in whole or in part from further proceeding with its business. The judge may issue the injunction forthwith, or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify the injunction or make it permanent, and may make all orders and judgments needful in the matter, and may appoint agents or a receiver to take possession of the property and effects of the company and to settle its affairs, subject to such rules and orders as the court from time to time prescribes. (Rev., s. 4702; 1899, c. 54, s. 14; C. S. 6296.)

§ 58-39. Revocation of license for violation of law or impaired assets.—1. The authority of a domestic or foreign insurance company may be revoked if it violates or neglects to comply with any provision of law obligatory upon it, and whenever in the opinion of the insurance commissioner its condition is unsound, or its assets above its liabilities, exclusive of capital and inclusive of reserve or unearned premiums estimated as provided by this chapter, are less than the amount of its original capital or required unimpaired funds.

2. If the insurance commissioner is satisfied at any time that any statements made by any company licensed under this chapter are untrue, or if a general agent fails or refuses to obey the provisions of this chapter, the insurance commissioner may revoke and cancel the license of such company or agent.

An insurance company violating any provision

of this chapter, or refusing to submit to the examination provided for in § 58-18, when requested, forfeits its right to do business in this state for twelve months thereafter, and the insurance commissioner shall immediately revoke the license issued to such insurance company to do business in this state. (Rev., ss. 4703, 4705; 1899, c. 54, ss. 66, 75, 112; 1901, c. 391, s. 5; C. S. 6297.)

§ 58-40. Agents and adjusters must procure license.—Every agent or adjuster of any insurance company authorized to do business in this state shall be required to obtain annually from the insurance commissioner a license under the seal of his office, showing that the company for which he is agent or proposes to adjust is licensed to do business in this state, and that he is an agent of such company and duly authorized to do business for it. And every such agent or adjuster, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit insurance. (Rev., s. 4706; 1899, c. 54, s. 81; 1901, c. 391, s. 7; 1903, c. 438, s. 8, c. 774; 1915, c. 109, s. 7, c. 166, s. 1; C. S. 6298.)

§ 58-41. Application for license.—Before a license is issued to an insurance agent or adjuster in this state, the agent or adjuster and the company for which he desires to act shall apply for the license on forms to be prescribed by the insurance commissioner; and before he issues a license to such agent or adjuster, the insurance commissioner shall satisfy himself that the person applying for license as an agent or adjuster is a person of good moral character, that he intends to hold himself out in good faith as an insurance agent or adjuster, and has sufficient knowledge of the business proposed to be done, that he has not willfully violated any of the insurance laws of this state, and that he is a proper person for such position, and that such license, if issued, shall serve the public's interests. (1913, c. 79, s. 1; 1915, c. 109, ss. 6, 7, c. 166, s. 7; 1931, c. 185; C. S. 6299.)

§ 58-42. Revocation of agent's or adjuster's license. — When the insurance commissioner is satisfied that any insurance agent or adjuster licensed by this state has wilfully violated any of the insurance laws of this state, or has wilfully overinsured property of any of the citizens of the state, or has willfully misrepresented any policy of insurance, or has dealt unjustly with or wilfully deceived any citizen of this state in regard to any insurance policies, or has failed or refused to pay over to the company which he represents, or has represented, any money or property in the hands of such agent or adjuster belonging to the company, when demanded, or has become in any way disqualified according to any of the provisions necessary for obtaining or holding such license as set out in § 58-41, or has in any other way become unfit for such position, the commissioner may revoke, and it shall be his duty to revoke, the license of such agent or adjuster for all the companies which he represents in this state for such length of time as he may decide, not exceeding one year. The insurance commissioner shall give to the agent or adjuster ten days' notice of the revocation of such license, and shall give the reasons therefor; and the agent or adjuster shall have the right to have such revocation reviewed by any judge of the superior court of Wake county upon appeal. For the purpose of investigation under this section, the insurance commissioner shall have all the power conferred upon him by § 58-171. (1913, c. 79, ss. 2, 3; 1915, c. 166, s. 7; 1929, c. 301, s. 1; C. S. 6300.)

§ 58-43. Nonresident agents forbidden; exception.—No nonresident of the state shall be licensed to do business in the state, except as a special agent or organizer, and then only when he reports his business for record as North Carolina business to some general or district agent of his company in the state, or having territory within the state. (Rev., s. 4707; 1899, c. 54, s. 108; 1903, c. 438, s. 11; C. S. 6301.)

§ 58-44. Resident agents required; discrimination.—All business done in this state by steam-boiler, liability, accident, health, live-stock, marine, leakage, credit, plate-glass, and fidelity insurance companies shall be by their regularly authorized agents residing in the state, or transacted through applications of such agents; and all policies so issued must be countersigned by such agents, who may pay not exceeding fifty per centum of the regular commissions allowed on the premiums collected on such business to a licensed nonresident broker. It shall be unlawful for any salaried officer, manager, or other representative of any company, unless a bona fide resident agent, to do or perform for or on behalf of his company any act which by the insurance laws of this State is required to be performed by a licensed resident agent. It shall be unlawful for the Insurance Commissioner to license as a resident agent any person unless he is fully satisfied that such a person is a bona fide resident of this State, and is not being licensed for the purpose of evading the resident agent's law. No such companies nor their agents may make any discrimination in favor of individuals or insurance, and the provisions hereafter set forth in this chapter with respect to discrimination by life insurance companies shall apply to the companies above named and their agents. (Rev., s. 4810; 1899, c. 54, ss. 107, 108; 1903, c. 438, s. 11; 1911, c. 196, s. 5; 1913, c. 140, s. 3; 1921, c. 136, s. 3; 1925, c. 70, s. 1; C. S. 6302.)

§ 58-45. Agents personally liable, when.—An insurance agent is personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for any company not authorized to do business in the state. A person or citizen of the state who fills up or signs any open policy, certificate, blank or coupon of, or furnished by, an unlicensed company, agent, or broker, the effect of which is to bind any insurance in an unlicensed company on property in this state, is the agent of such company, and personally liable for all licenses and taxes due on account of such transaction. (Rev., s. 4813; 1899, c. 54, s. 70; 1903, c. 438, s. 7; C. S. 6303.)

§ 58-46. Payment of premium to agent valid; obtaining by fraud a crime.—An insurance agent or broker who acts for a person other than himself negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent, whatever conditions or stipulations

may be contained in the policy or contract. Such agent or broker knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or be imprisoned for not more than one year. (Rev., ss. 3486, 4814; 1899, c. 54, s. 69; C. S. 6304.)

§ 58-47. Punishment for violating this chapter or for agent acting without license.—If any person shall assume to act as insurance agent or broker without license therefor as required by law, or shall act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this state, or as principal or agent shall violate any provisions of law contained in this chapter, the punishment for which is not provided for elsewhere, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred nor more than five hundred dollars for each offense. (Rev., s. 3484; 1899, c. 54, s. 94; 1907, c. 1000, s. 8; C. S. 6305.)

§ 58-48. Agent failing to exhibit license.—If any agent of any insurance company shall, on demand of any person from whom he shall solicit insurance, fail to exhibit a certificate from the insurance commissioner bearing the seal of his office, and dated within one year from such demand, he shall be fined five dollars or imprisoned ten days for each offense. (Rev., s. 3485; 1899, c. 54, s. 81; C. S. 6306.)

§ 58-49. Agents making false statements. — If any solicitor, agent, examining physician, or other person shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any publication for insurance, or shall make any such statement for the purpose of obtaining fee, commission, money, or benefit in any corporation transacting business in this state, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, at the discretion of the court. (Rev., s. 3487; 1899, c. 54, s. 60; C. S. 6307.)

§ 58-50. Agents signing certain blank policies.—If any agent, commissioned or otherwise, of any fire, marine, health, live-stock, leakage, credit, steam-boiler, liability, accident, plate-glass, or fidelity insurance company shall sign any blank contract or policy of insurance, upon conviction thereof he shall be fined for each offense not less than one hundred dollars nor more than two hundred dollars. (Rev., s. 3488; 1899, c. 54, ss. 108, 109; 1911, c. 196, s. 6; C. S. 6308.)

§ 58-51. Adjuster acting for unauthorized company.—If any person shall act as adjuster on a contract made otherwise than as authorized by the laws of this state, or by any insurance company or other person not regularly licensed to do business in the state, or shall adjust or aid in the adjustment, either directly or indirectly, of a loss by fire on property located in this state, incurred on a contract not authorized by the laws of the state, he shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than two years, or both, in the discretion of the court. (Rev., s. 3482; 1899, c. 54, s. 114; C. S. 6309.)

§ 58-52. Agent violating insurance law.—If any person, either as principal or agent, or pretending to be such, shall solicit, examine, or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making, or executing any contract of insurance of any kind otherwise than the law permits, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than two hundred dollars nor more than five hundred dollars, or be imprisoned not less than one nor more than two years, or both, at the discretion of the court. (Rev., s. 3490; 1899, c. 54, s. 115; C. S. 6310.)

§ 58-53. Informer to receive half of penalty.—The person, if other than the insurance commissioner or his deputy, upon whose complaint a conviction is had for violation of the law prohibiting insurance in or by foreign companies not authorized to do business in the state, or for soliciting, examining, inspecting any risk, or receiving, collecting, or transmitting any premium, or adjusting or aiding in the adjustment of a loss, under a contract made otherwise than as authorized by the laws of this state, is entitled to one-half of the penalty recovered therefor. (Rev., s. 4831; 1899, c. 54, s. 93; C. S. 6311.)

§ 58-54. Forms to be approved by insurance commissioner.—It is unlawful for any insurance company, association, order or society doing business in this state to issue, sell, or dispose of any policy, contract, or certificate, or use applications in connection therewith, until the forms of the same have been submitted to and approved by the insurance commissioner of North Carolina, and copies filed in the insurance department. (1907, c. 879; 1913, c. 139; C. S. 6312.)

Art. 4. Deposit of Securities.

§ 58-55. Deposits held in trust by commissioner or treasurer. — 1. Deposits by domestic company. — The insurance commissioner or the treasurer, in their official capacity, shall take and hold in trust deposits made by any domestic insurance company for the purpose of complying with the laws of any other state to enable the company to do business in that state. The company making the deposits is entitled to the income thereof, and may, from time to time, with the consent of the insurance commissioner or treasurer, and when not forbidden by the law under which the deposit was made, change in whole or in part the securities which compose the deposit for other solvent securities of equal par value. Upon request of any domestic insurance company such officer may return to the company the whole or any portion of the securities of the company held by him on deposit, when he is satisfied that they are subject to no liability and are not required to be longer held by any provision of law or purpose of the original deposit.

2. Deposits by foreign company.—The commissioner or treasurer may return to the trustees or other representatives authorized for that purpose any deposit made by a foreign insurance company, when it appears that the company has ceased to do business in the state and is under no obligation to policyholders or other persons in the state for whose benefit the deposit was made.

3. Action to enforce or terminate the trust.—An insurance company which has made a deposit in this state pursuant to this chapter, or its trustees or resident managers in the United States, or the insurance commissioner, or any creditor of the company, may at any time bring an action in the superior court of Wake county against the state and other parties properly joined therein, to enforce, administer, or terminate the trust created by the deposit. The process in this action shall be served on the officer of the state having the deposit, who shall appear and answer in behalf of the state and perform such orders and judgments as the court may make in such action. (Rev., s. 4709; 1899, c. 54, s. 17; 1901, c. 391, s. 2; 1903, c. 438, s. 1; 1903, c. 536, s. 4; C. S. 6313.)

§ 58-56. Deposits subject to approval and control of commissioner.—The deposits of securities required to be made by any insurance company of this state shall be approved by the insurance commissioner of the state, and he may examine them at all times, and may order all or any part thereof changed for better security, and no change or transfer of the same may be made without his assent. (Rev., s. 4710; 1903, c. 536, s. 5; C. S. 6314.)

§ 58-57. Deposits by foreign companies required and regulated.—A foreign company, if incorporated or associated under the laws of any government or state other than the United States or one of the United States, shall not be admitted to do business in this state until, in addition to complying with the conditions by law prescribed for the licensing and admission of such companies to do business in this state, it has made a deposit with the treasurer or insurance commissioner of this state, or with the financial officer of some other state of the United States, of a sum not less than the capital required of like companies under this chapter. This deposit must be in exclusive trust for the benefit and security of all the company's policyholders and creditors in the United States, and may be made in the securities, but subject to the limitations, specified in this chapter with regard to the investment of the capital of domestic companies formed and organized under the provisions of this chapter. The deposit shall be deemed for all purposes of the insurance law the capital of the company making it. (Rev., s. 4711; 1899, c. 54, s. 64; 1903, c. 438, s. 6; C. S. 6315.)

§ 58-58. Deposits by life companies not chartered in United States. — Every life insurance company organized under the laws of any other country than the United States must have and keep on deposit with some state insurance department or in the hands of trustees, in exclusive trust for the security of its contracts with policyholders in the United States, funds of an amount equal to the net value of all its policies in the United States and not less than two hundred thousand dollars. (Rev., s. 4712; 1899, c. 54, s. 56; C. S. 6316.)

§ 58-59. Registration of bonds deposited in name of treasurer.—The Insurance Commissioner is hereby empowered, upon the written consent of any insurance company depositing with the Insurance Commissioner or the State Treasurer under any law of this State, any state, county, city or town bonds or notes which are payable to bearer, to cause such bonds or notes to be registered as to the principal thereof in lawful books of registry kept by or in behalf of the issuing state, county, city or town, such registration to be in the name of the Treasurer of North Carolina in trust for the company depositing the notes or bonds and the State of North Carolina, as their respective interest may appear, and is further empowered to require of any and all such companies the filing of written consent to such registration as a condition precedent to the right of making any such deposit or right to continue any such deposit heretofore made. (1925, c. 145, s. 2.)

§ 58-60. Notation of registration; release. — Bonds or notes so registered shall bear notation of such registration on the reverse thereof, signed by the registering officer or agent, and may be released from such registration and may be transferred on such books of registry by the signature of the State Treasurer. (1925, c. 145, s. 3.)

§ 58-61. Expenses of registration. — The necessary expenses of procuring such registration and any transfer thereof shall be paid by the company making the deposits. (1925, c. 145, s. 4.)

Art. 5. License Fees and Taxes.

§ 58-62. Commissioner to report and pay monthly. — On or before the tenth day of each month the insurance commissioner shall furnish to the auditor a statement in detail of the taxes and license fees received by him during the previous month, and shall pay to the treasurer the amount in full of such taxes and fees. The auditor may examine the accounts of the insurance comsioner and check them up with said statement. (Rev., s. 4714; 1899, c. 54, s. 82; 1901, c. 391, s. 7; 1905, c. 430, s. 4; C. S. 6317.)

§ 58-63. Schedule of fees and charges.—The insurance commissioner shall collect and pay into the state treasury fees and charges as follows:

1. For filing and examining statement preliminary to admission, twenty dollars; for filing and auditing annual statement, ten dollars; for filing any other papers required by law, one dollar; for each certificate of examination, condition, or qualification of company or association, two dollars; for each seal when required, one dollar; for filing charter and other papers of a fraternal order, preliminary to admission, twenty-five dollars.

2. To be paid to the publisher, for the publication of each financial statement, nine dollars.

3. The commissioner shall receive for copy of any record or paper in his office ten cents per copy sheet and one dollar for certifying same, or any fact or data from the records of his office; for

making and mailing abstracts to the clerks of the superior courts in the counties of the state, four dollars; for examination of any foreign company, twenty-five dollars per diem and all expenses, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, five dollars; also, to defray the expense of computing the value of the policies of domestic life insurance companies, one cent for every thousand dollars of the whole amount insured by its policies so valued. The traveling and other expenses of accountants, and other examiners when engaged in the work of examination shall be paid by the companies, associations, or orders under investigation. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reasonable percentage of such delinquent tax, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.

4. He shall collect all other fees and charges due and payable into the state treasury by any company, association, order, or individual under his department. (Rev., s. 4715; 1899, c. 54, ss. 50, 68, 80, 81, 82, 87, 90, 92; 1901, c. 391, s. 7; c. 706, s. 2; 1903, c. 438, ss. 7, 8; 1903, c. 536, s. 4; 1903, cc. 680, 774; 1905, c. 588, s. 68; 1913, c. 140, s. 1; 1919, c. 186, s. 6; 1921, c. 218; 1935, c. 334; 1939, c. 158, s. 208; C. S. 6318.)

§ 58-64. License fees for more than one class of insurance.—No insurance company admitted to do business in the state shall be authorized to transact more than one class or kind of insurance therein, unless it pays the license fees for each class. But upon the payment of the largest license fees provided for any one business done a life insurance company may do a health business, and a fire insurance company may insure against loss or damage to property by lightning, wind, hail, or tornado, use and occupancy, and for non-occupancy, and may insure vessels, freights, goods, money, effects, and money lent on bottomry or respondentia against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation; and may also insure against loss or damage by water to any goods or premises arising from leakage of sprinklers and water pipes. No insurance company may be required to pay license fees amounting in the aggregate to more than three hundred and fifty dollars per annum. (Rev., s. 4717; 1899, c. 54, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6; C. S. 6320.)

§ 58-65. Licensing of underwriters reinsurance agencies.—An underwriters agency, composed of two or more companies, proposing to do a reinsurance business only in the state may be licensed without a separate license for each company, upon filing with the insurance commissioner a statement of each company, the amount proposed to be assumed by them, and such other information as he may call for, showing that the companies are solvent and propose to conduct the business in a way that would be safe and fair to the citizens of the state. (1919, c. 186, s. 6; C. S. 6318.)

§ 58-66. Licenses run from April first; pro rata payment.—The license required of insurance companies shall continue for the next ensuing twelve months after April first of each year, unless revoked as provided in this chapter; but the insurance commissioner may, when the annual license tax exceeds twenty-five dollars, receive from applicants after April first so much of the license fee required by law as may be due pro rata for the remainder of the year, beginning with the first day of the current month. (Rev., s. 4718; 1899, c. 54, s. 78; C. S. 6321.)

§ 58-67. Statements of gross receipts filed and tax paid.—Every general agent shall, within the first thirty days of January and July of each year, make a full and correct statement, under oath of himself and of the president, secretary, or some officer at the home or head office of the company in this country, of the amount of the gross receipts derived from the insurance business under this chapter obtained from residents of this state, or on property located therein during the preceding six months, and shall, within the first fifteen days of February and August of each year, pay to the insurance commissioner the tax imposed upon such gross receipts. (Rev., s. 4719; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8; C. S. 6322.)

§ 58-68. Policyholders to furnish information.—To enable the insurance commissioner the better to enforce the payment of the taxes imposed by this chapter and by § 105-121 every corporation, firm, or individual doing business in the state shall, upon demand of the commissioner, furnish to him, upon blanks to be provided by him, a statement of the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the commissioner calls for, or shall file an affidavit with the commissioner that all their insurance is placed in companies licensed to do business in this state. (Rev., s. 4720; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8; C. S. 6323.)

SUBCHAPTER II. INSURANCE COMPANIES.

Art. 6. General Domestic Companies.

§ 58-69. Application of this chapter and general laws.—The general provisions of law relative to the powers, duties, and liabilities of corporations apply to all incorporated domestic insurance companies where pertinent and not in conflict with other provisions of law relative to such companies or with their charters. All insurance companies of this state shall be governed by this chapter, notwithstanding anything in their special charters to the contrary, provided notice of the acceptance of this chapter is filed with the insurance commissioner. (Rev., s. 4721; 1899, c. 54, s. 19; C. S. 6324.)

§ 58-70. Extension of existing charters.—Domestic insurance companies incorporated by special acts, whose charters are subject to limitation of time, shall, after the limitation expires, and upon filing statement and paying the taxes and fees required for an amendment of the charter, continue to be bodies corporate, subject to all

general laws applicable to such companies. (Rev., s. 4722; 1899, c. 54, s. 20; C. S. 6325.)

§ 58-71. Certificate required before issuing policies.—No domestic insurance company may issue policies until upon examination of the insurance commissioner, his deputy or examiner, it is found to have complied with the laws of the state, and until it has obtained from the insurance commissioner a certificate setting forth that fact and authorizing it to issue policies. The issuing of policies in violation of this section renders the company liable to the forfeiture prescribed by law, but such policies are binding upon the company. (Rev., s. 4723; 1899, c. 54, ss. 21, 99; 1903, c. 438, s. 10; C. S. 6326.)

§ 58-72. Purposes of organization. — Insurance companies, associations, or orders may be formed as provided in §§ 58-73 and 58-74 for any one of the following purposes:

1. Fire and Storm.—To insure against loss or damage to property by fire, lightning, wind, hail, or tornado, use and occupancy, and for nonoccupancy, upon the stock or mutual plan.

2. Marine.—To insure, upon the stock or mutual plan, vessels, freights, goods, money, effects, and money lent on bottomry or respondentia against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation.

3. Life.—To carry on the business commonly known as life insurance on the stock or mutual plan, contract for the payment of endowments or annuities, or make and enter into such other contracts conditioned upon the continuance or cessation of human life.

4. Sickness. — Against disablement resulting from sickness and every insurance appertaining thereto.

5. Accident. — Against injury, disablement, or death resulting from traveling or general accident and every insurance appertaining thereto.

6. Fidelity and Surety.—Guaranteeing the fidelity of persons holding places of public or private trust, and guaranteeing the performance of contracts other than insurance policies, and guaranteeing and executing all bonds, undertakings, and contracts of suretyship. And a company is authorized to execute such bonds, undertakings, and contracts of suretyship by itself, though a statute requires two or more sureties.

7. Plate-glass.—Upon glass against breakage.

8. Liability.—Insuring any one against loss or damage resulting from accident to or injury, fatal or nonfatal, suffered by an employee or other person, for which the person insured is liable.

9. Boiler and Machinery.—Upon steam boilers and upon pipes, engines, and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life, person, or property resulting therefrom. And a company is authorized to make inspection of and to issue certificates of inspection upon such boilers, pipes, engines, and machinery.

10. Burglary.—Against loss by burglary or theft, or both.

11. Credit.—To carry on the business commonly known as credit insurance or guaranty, either by agreeing to purchase uncollectible debts or otherwise to insure against loss or damage from the failure of persons indebted to the insured to meet their liabilities.

12. Sprinkler.—To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water-pipes. And a company is authorized to make inspection of and to issue certificates of inspection upon such sprinklers and pipes.

13. Accidents to Vehicles.—To insure against loss or damage to property arising from accidents to elevators, automobiles, bicycles, and vehicles, except rolling stock of railways.

14. Live-stock. — To insure horses and other live-stock against death and damage.

15. Real estate title.—For the purpose of examining titles to real estate and furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of encumbrances and defective title.

16. Miscellaneous.—Against any other casualty authorized by the charter of the company, not included under the heads of life, fire, marine, or title insurance, which is a proper subject of insurance. No corporation so formed may transact any other business than that specified in its charter and articles of association. (Rev., s. 4726; 1899, c. 54, ss. 24, 26; 1903, c. 438, s. 1; 1911, c. 111, s. 1; C. S. 6327.)

§ 58-73. Manner of creating such corporations. —The procedure for organizing such corporations is as follows: The proposed incorporators, not less than ten in number, a majority of whom must be residents of the state, shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation doing business under the laws of this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact and on what business plan or principle; the place of its location within the state, and if on the stock plan, the amount of its capital stock. The words "insurance company," "insurance association," or "insurance society" must be a part of the title of any such corporation, and also the word "mutual," if it is organized upon the mutual principle. The certificate of incorporation must be subscribed and sworn to by the incorporators before an officer authorized to take acknowledgment of deeds, who shall forthwith certify the certificate of incorporation, as so made out and signed, to the insurance commissioner of the state at his office in the city of Raleigh. The insurance commissioner shall examine the certificate, and if he approves of it and finds that the requirements of the law have been complied with, shall certify such facts, by certificate on such articles, to the secretary of state. Upon the filing in the office of the secretary of state of the certificate of incorporation and attached certificates, and the payment of a charter fee in the amount required for private corporations, and the same fees to the secretary of state, the secretary of state shall cause the certificate and accompanying certificates to be recorded in his office, and shall issue a certificate in the following form:

Be it known that, whereas (here the names of the subscribers to the articles of association shall

be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of association shall be inserted), with a capital (or with a permanent fund) of (here the amount of capital or permanent fund fixed in the articles of association shall be inserted), and have complied with the provisions of the statute of this state in such case made and provided, as appears from the following certified articles of association: (Here copy articles of association and accompanying certificates). Now, therefore, I (here the name of the secretary shall be inserted), secretary of state, hereby certify that (here the names of the subscribers to the articles of association shall be inserted), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (here the name of the corporation shall be inserted), with such articles of association, and have all the powers, rights, and privileges and are subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the state of North Carolina hereunto affixed, this the ..... day of ....., in the year ..... (in these blanks the day, month, and year of execution of this certificate shall be inserted; and in the case of purely mutual companies, so much as relates to capital stock shall be omitted).

The secretary of state shall sign the certificate and cause the seal of the state to be affixed to it, and such certificate of incorporation and certificate of the secretary of state has the effect of a special charter and is conclusive evidence of the organization and establishment of the corporation. The secretary of state shall also cause a record of his certificate to be made, and a certified copy of this record may be given in evidence with the same effect as the original certificate. (Rev., s. 4727; 1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3; C. S. 6328.)

§ 58-74. First meeting; organization; license.—The first meeting for the purpose of organization under such charter shall be called by a notice signed by one or more of the subscribers to the certificate of incorporation, stating the time, place, and purpose of the meeting; and at least seven days before the appointed time a copy of this notice shall be given to each subscriber, left at his usual place of business or residence, or duly mailed to his postoffice address, unless the signers waive notice in writing. Whoever gives the notice must make affidavit thereof, which affidavit shall include a copy of the notice and be entered upon the records of the corporation. At the first meeting, or any adjournment thereof, an organization shall be effected by the choice of a temporary clerk, who shall be sworn; by the adoption of by-laws; and by the election of directors and such other officers as the by-laws required; but at this meeting no person may be elected director who has not signed the certificate of incorporation. The temporary clerk shall record the proceedings until the election and qualification of the secretary. The directors so chosen shall elect a president, secretary, and other officers which under the by-laws they are so authorized to choose. The president, secretary, and a majority of the directors shall forthwith make, sign, and swear to a certificate setting forth a copy of the certificate of incorporation, with the names of the subscribers thereto, the date of the first meeting and of any adjournments thereof, and shall submit such certificate and the records of the corporation to the insurance commissioner, who shall examine the same, and who may require such other evidence as he deems necessary. If upon his examination the insurance commissioner approves of the by-laws and finds that the requirements of the law have been complied with, he shall issue a license to the company to do business in the state, as is provided for in this chapter. (Rev., s. 4728; 1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3; C. S. 6329.)

§ 58-75. By-laws; classification and election of directors.—A domestic company may adopt by-laws for the conduct of its business not repugnant to law or its charter, and therein provide for the division of its board of directors into two, three, or four classes, and the election thereof at its annual meetings so that the members of one class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term. (Rev., s. 4724; 1899, c. 54, s. 22; C. S. 6330.)

§ 58-76. Power to purchase, hold, and convey real estate.—Any company organized by special charter or under the provisions of the general insurance laws of this state may purchase, hold, and convey real estate for the sole purposes and in the manner herein set forth:

1. Such as is necessary for its immediate use in the transaction of its business.

2. Property mortgaged to it in good faith as security for loans previously contracted or for money due.

3. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

4. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose; and such real estate acquired, and not necessary for the accommodation of the company in the convenient transaction of its business, shall be sold and disposed of within five years after the company has acquired title, and it is not lawful for it to hold the real estate for a longer period than that mentioned, unless it acquired such real estate prior to March sixth, one thousand eight hundred and ninety-nine, or procures a certificate from the insurance commissioner that the interest of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such a time as the insurance commissioner directs in the certificate. Nothing contained herein prevents any insurance company from improving and conveying its real estate, notwithstanding the lapse of five years from its acquisition thereof, without having procured such certificate from the insurance commissioner. (Rev., s. 4725; 1899, c. 54, s. 22; 1903, c. 536, s. 2; C. S. 6331.)

§ 58-77. Amount of capital required. — The

amount of capital requisite to the formation and organization of companies under the provisions of this subchapter is as follows: Companies to insure plate-glass, not less than twenty-five thousand dollars. Companies issuing health policies, policies against damage by hail, or insuring marine risks or inland risks upon the stock plan, or insuring live-stock, not less than fifty thousand dollars. Companies for the purpose of transacting life or fire insurance on the stock plan, fidelity insurance, accident insurance, steamboiler insurance, credit insurance, sprinkler insurance, and insurance against loss by accident to vehicles, not less than one hundred thousand dollars; but life or accident companies on the industrial plan, issuing policies not over five hundred dollars, may be allowed to transact business with as little capital as fifty thousand dollars. Companies may be so formed to insure mechanics' tools and apparatus against loss by fire for an amount not exceeding two hundred and fifty dollars in a single risk, with a capital of not less than ten thousand dollars, divided into shares of the par value of ten dollars each. (Rev., s. 4729; 1899, c. 54, s. 26; 1903, c. 438, s. 4; 1907, c. 1000, s. 5; 1913, c. 140, s. 2; 1929, c. 284, s. 1; C. S. 6332.)

§ 58-78. Capital stock fully paid in cash.—The capital stock shall be paid in cash within twelve months from the date of the charter or certificate of organization, and no certificate of full shares and no policies may be issued until the whole capital is paid in. A majority of the directors shall certify on oath that the money has been paid by the stockholders for their respective shares and is held as the capital of the company invested or to be invested as required by § 58-79. (Rev., s. 4730; 1899, c. 54, s. 27; C. S. 6333.)

§ 58-79. Investment of capital.—Such capital shall be invested only as follows:

1. In first mortgages of real estate in this state.

2. In bonds of the United States or of any of the states whose bonds do not sell for less than par.

3. In the bonds or notes of any city, county, or town of this state whose net indebtedness does not exceed five per centum of the last preceding valuation of the property therein for purposes of taxation. The term "net indebtedness" excludes any debt created to provide an electric light plant and equipment, sewerage system, and a supply of water for general domestic use, and allows credit for the sinking fund of a county, city, town, or district available for the payment of its indebtedness.

4. Any insurance company having a capital stock of more than one hundred thousand dollars may, with the consent of the insurance commissioner, after investing one hundred thousand dollars of the capital as provided in this section, invest the balance in such other securities or in such safe manner as may be approved by the commissioner.

5. Any real-estate title insurance company organized for any of the purposes set forth in article fourteen of this chapter, and having a capital stock of more than fifty thousand dollars, may, with the consent of the insurance commissioner, after investing fifty thousand dollars of the capital, as provided in this section, invest the balance thereof in any such other securities including preferred stock in solvent corporations and including a reasonable investment not to exceed one-fourth of the total capital stock in abstract or title plants; and no such company shall guarantee or insure in any one risk more than forty per cent of its combined capital and surplus without first having the approval of the insurance commissioner of North Carolina, which approval shall be endorsed upon the policy. If the capital stock of such company does not exceed fifty thousand dollars, it may, with the consent of the insurance commissioner, after having invested three-fourths of its capital stock as now provided by law, invest the balance thereof in abstracts of titles of property situated in one or more of the cities or counties of this state. (Rev., s. 4731; 1899, c. 54, s. 27; 1907, c. 798; 1907, c. 998; 1911, c. 32; 1913, c. 200; 1923, c. 73; 1925, c. 187; C. S. 6334.)

§ 58-80. Valuation of bonds and other evidences of debt; discretion of insurance commissioner.—All bonds or other evidences of debt having a fixed term and rate held by any life insurance company, assessment life association, or fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity, and so as to yield in the meantime the effective rate of interest at which the purchase was made: Provided, that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and provided further, that the insurance commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule. (1921, c. 220; C. S. 6334(a).)

§ 58-81. Authority to increase or reduce capital stock.—The insurance commissioner shall, upon application, examine the proceedings of domestic companies to increase or reduce their capital stock, and when found conformable to law shall issue certificates of authority to such companies to transact business upon such increased or reduced capital. He shall not allow stockholders' obligations of any description as part of the assets or capital of any stock insurance company unless the same are secured by competent collateral. (Rev., s. 4732; 1899, c. 54, s. 15; C. S. 6335.)

§ 58-82. Assessment of shares; revocation of license.—When the net assets of a company organized under this article do not amount to more than three-fourths of its original capital, it may make good its capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable and may be canceled by vote of the directors and new shares issued to make up the deficiency. If such company does not, within three months after notice from the insurance commissioner to that effect, make good its capital or reduce the same, as allowed by this article, its authority to transact new business of insurance shall be revoked by

the commissioner. (Rev., s. 4733; 1899, c. 54, s. 28; 1903, c. 438, s. 4; C. S. 6336.)

§ 58-83. Increase of capital stock.—Any company organized under this article may issue pro rata to its stockholders certificates of any portion of its actual net surplus it deems fit to divide, which shall be considered an increase of its capital to the amount of such certificates. The company may, at a meeting called for the purpose, vote to increase the amount and number of shares of its capital stock, and to issue certificates therefor when paid for in full. In whichever method the increase is made, the company shall, within thirty days after the issue of such certificates, submit to the insurance commissioner a certificate setting forth the amount of the increase and the facts of the transaction, signed and sworn to by its president and secretary and a majority of its directors. If the insurance commissioner finds that the facts conform to the law, he shall endorse his approval thereof; and upon filing such certificate so endorsed with the secretary of state, and the payment of a fee of five dollars for filing the same, the company may transact business upon the capital as increased, and the insurance commissioner shall issue his certificate to that effect. (Rev., s. 4734; 1899, c. 54, s. 29; C. S. 6337.)

§ 58-84. Reduction of capital stock.—When the capital stock of a company organized under this article is impaired, the company may, upon a vote of the majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law, but no part of its assets and property shall be distributed to its stockholders. Within ten days after such meeting the company must submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of the reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary, and a majority of its directors. The insurance commissioner shall examine the facts in the case, and if they conform to law, and in his judgment the proposed reduction may be made without prejudice to the public, he shall endorse his approval upon the certificate. Upon filing the certificate so endorsed with the secretary of state and paying a filing fee of five dollars, the company may transact business upon the basis of the reduced capital as though it were original capital, and its charter shall be deemed to be amended to conform thereto, and the insurance commissioner shall issue his certificate to that effect. The company may, by a majority vote of its directors, after the reduction, require the return of the original certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital. (Rev., s. 4735; 1899, c. 54, s. 30; C. S. 6338.)

§ 58-85. Dividends declared; liability of stockholders for unlawful dividends.—No stock company organized under this article may pay a cash or stock dividend except from its actual net surplus computed as required by law in its annual statements, nor may any such company which has ceased to do new business of insurance divide any portion of its assets, except surplus, to its stockholders, until it has performed or canceled its policy obligations. No dividend shall be paid by any company incorporated in this state when its capital stock is impaired, or when such payment would have the effect of impairing its capital stock; and any dividend so paid subjects the stockholders receiving it to a joint and several liability to the creditors of said company to the extent of the dividend so paid. (Rev., s. 4736; 1899, c. 54, s. 31; 1903, c. 536, s. 3; C. S. 6339.)

§ 58-86. Loans insufficiently secured. — Whenever it appears by examination, as authorized by law, that an insurance company, organized under the laws of this state, holds, as collateral security for the payment of any loan, any stock, bond, or security of whatever description, which has not a cash market value of at least twenty-five per centum more than the amount of such loan, the insurance commissioner may require the reduction of the loan or an increase of the collateral security, so that the security shall be at least twenty-five per centum in excess of the amount loaned. If the company fail to comply with this requirement within ten days after receiving written notice thereof from the commissioner, it is the duty of the commissioner to disallow the loan and to deduct the amount thereof from the assets of the company. If it appears, upon examination, that any such insurance company holds, as security for any loan, a mortgage upon real estate which is not a first lien, or that the value of the real estate is less than fifty per centum in excess of the loan which it is mortgaged to secure, the insurance commissioner may disallow the loan and deduct the amount thereof from the assets of the company holding it, after having given the company at least twenty days notice, in writing, to change or conform the loan to the requirements of this section. (Rev., s. 4737; 1903, c. 536, ss. 6, 7, 8; C. S. 6340.)

Art. 7. Guaranty Fund for Domestic Companies.

§ 58-87. Guaranty fund established.—Any insurance company formed as provided in the preceding article, or now existing by virtue of any of the laws of North Carolina, may establish a guaranty fund of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, in the following manner: The company may receive from any person, firm, or corporation, money, bonds, or other securities, in such amount as may be agreed upon, for the purpose of providing a guaranty fund, to be used as hereinafter provided, for payment of the claims of policyholders. Upon the receipt of such bonds, money, or other securities by an insurance company, it shall issue its certificate, in writing, authenticated as required by law for certificates of stock, stating the amount, terms, and conditions of repayment of such money or the return of such bonds or other securities, the name of the payee or depositor, and the certificate shall also state upon its face that it is issued under the provisions of this section. The money, bonds, or other securities, when so paid to or deposited

with such insurance company, become a part of the guaranty fund of the company, and are liable for all the claims of policyholders after the general assets of the company have been exhausted. This guaranty fund is not liable for the claims or debts due to stockholders or the general creditors of such insurance company. No insurance company shall create a guaranty fund, as provided in this article, except upon the approval of a majority of its stockholders authorized at any regular or special meeting called for the purpose. (1909, c. 922, s. 1; C. S. 6341.)

§ 58-88. Separate accounts; application of fund. —Every insurance company which establishes a guaranty fund under the provisions of this article must keep a separate account of the same on its books, together with a full and true list of any securities held therefor. The money and securities belonging to the guaranty fund must be invested in the same manner as is now provided by law for the investment of other assets of insurance companies; but any bond or other securities received by any such insurance company as a part of its guaranty fund may be deposited with the insurance commissioner, as is now allowed by law, subject to the further provisions of this article. An insurance company receiving said money or securities as a part of its guaranty fund, as herein provided, may pay to the person, firm, or corporation from whom the same is received a semi-annual dividend of not more than three and one-half per cent on the amount of said money or securities. The guaranty fund herein provided for shall be applied to the payment of claims of policyholders only when the insurance company has exhausted its cash on hand and the invested assets, exclusive of uncollected premium; and when the guarantee is in any way impaired the directors may make good the whole or any part of such impairment, by assessment upon the contingent funds of the company at the date of such impairment, if any are available. (1909, c. 922, s. 1; C. S. 6342.)

§ 58-89. Reduction or retirement of fund.—The guaranty fund shall be retired when the permanent fund of the company equals two per centum of the amount insured upon all policies in force; and such guaranty fund may be reduced or retired by vote of the directors of the company and the assent of the insurance commissioner, if the net assets of the company above the reinsurance reserve and all other claims and obligations, exclusive of the guaranty fund, for two years immediately preceding and including the date of its last annual statement, are not less than twenty-five per centum of the fund. Due notice of this proposed action on the part of the directors of the company must be mailed to each director of the company not less than thirty days before the meeting when such action may be taken, and must also be advertised in two newspapers of general circulation, to be approved by the insurance commissioner, not less than twice a week for a period of not less than four weeks before the meeting. No insurance company with a guaranty fund, as hereinbefore provided, which has ceased to do new business, may return or retire any part of the guaranty fund or divide to its stockholders any part of its general assets, except incomes from its investments, until it shall have performed, reinsured, or canceled its policy obligations. (1909, c. 922, s. 1; C. S. 6343.)

§ 58-90. Insolvency; return of fund. — In the event of insolvency or voluntary liquidation of any such insurance company, the amount of the guaranty fund shall be returned to the persons, firms, or corporations, their heirs, executors, administrators, successors, or assigns, from which the same was received, in full or pro rata, as the case may be, before any amount shall be paid from the assets of said company to its stockholders. The intention of this section is that the liability of the company for the repayment or the return of its guaranty fund, as evidenced by its certificates therefor, as hereinbefore provided, shall be preferred in the distribution of its assets to the stockholders and general creditors of the company, other than its policy obligations. (1909, c. 922, s. 1; C. S. 6344.)

§ 58-91. Conversion to guaranty fund.—Any insurance company now doing business as a domestic insurance company under the laws of this state which has received any money or securities to be held as a guaranty capital, guaranty surplus, or guaranty fund, may convert the same into a guaranty fund, as hereinbefore provided, by mutual agreement between the board of directors of the insurance company and the parties from whom the money or securities have been received, subject, however, to the approval of the insurance commissioner, and thereupon certificates shall be issued therefor, as hereinbefore provided, and the same shall thereafter be held subject to the rights and liabilities provided in this article. (1909, c. 922, s. 2; C. S. 6345.)

Art. 8. Mutual Insurance Companies.

§ 58-92. Mutual fire insurance companies organized; requisites for doing business.—Mutual fire insurance companies may be formed under this article, but no policy may be issued by a purely mutual fire insurance company, or by a mutual fire insurance company with a guaranty capital of less than fifty thousand dollars, until not less than two hundred thousand dollars of insurance, in not less than two hundred separate risks upon property located in North Carolina, has been subscribed for and entered on its books; but in the formation of mutual fire insurance companies to operate in no more than two counties of this state, whether town or farmers' mutuals, the requirement as to amount of insurance shall be twenty-five thousand dollars in risks owned by at least twenty-five adult residents of such towns or counties; but where there is an association or corporation for the purpose of interinsurance or mutual protection between members of said association or corporation, which members or stockholders are engaged in the same line of business, the requirement shall be fifty instead of two hundred separate risks. No policy may be issued under this section until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the insurance commissioner for approval is genuine, and made with an agreement with

every subscriber for insurance that he will take the policies subscribed for by him within thirty days after the granting of a license to the company by the insurance commissioner to issue policies. (Rev., s. 4738; 1899, c. 54, ss. 25, 32, 34; 1901, c. 391, s. 3; 1903, c. 438, s. 4; 1911, c. 93; C. S. 6346.)

§ 58-93. Assessments kept in treasury; certain officers debarred from commissions.—Every mutual or assessment company or association organized or doing business in the state on the assessment plan shall keep in its treasury at least one assessment sufficient to pay one average loss. No officer or other person whose duty it is to determine the character of the risk, and upon whose decision the application shall be accepted or rejected by a mutual fire insurance company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share in the net profits as the directors may determine. Nor shall such officer or person be an employee of any officer or agent of the company. (Rev., s. 4738; 1899, c. 54, s. 32; 1903, c. 438, s. 4; C. S. 6347.)

§ 58-94. Policyholders are members of mutual fire companies.—Every person insured by a mutual fire insurance company is a member while his policy is in force, entitled to one vote for each policy he holds, and must be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

The insured is hereby notified that by virtue of this policy he is a member of the ..... insurance company, and that the annual meetings of the company are held at its home office on the ..... day of ....., in each year, at ..... o'clock.

The blanks shall be duly filled in print and are a sufficient notice. A corporation which becomes a member of such company may authorize any person to represent it, and this representative has all the rights of an individual member. A person holding property in trust may insure it in such company, and as trustee assume the liability and be entitled to the rights of a member, but is not personally liable upon the contract of insurance. Members may vote by proxies, dated and executed within three months, and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person as proxy or otherwise may cast more than twenty votes. (Rev., s. 4739; 1899, c. 54, s. 33; C. S. 6348.)

§ 58-95. Directors in mutual fire companies.—Every mutual fire insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the by-laws provide and until their successors are qualified. Two-thirds at least of the directors must be citizens of the state, and after the first election members only are eligible, but no director is disqualified from serving the term he was chosen for by reason of the expiration or cancellation of his policy. In companies with a guaranty capital, one-half of the directors shall be chosen by and from the stockholders. (Rev., s. 4739; 1899, c. 54, s. 33; C. S. 6349.)

§ 58-96. Mutual fire companies with a guaranty capital.—A mutual fire insurance company formed as provided in this article, or a mutual fire insurance company now existing, may establish a guaranty capital or surplus of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, divided into shares of one hundred dollars each, which shall be invested in the same manner as is provided in this subchapter for the investment of the capital stock of certain insurance companies. The stockholders of the guaranty capital of a company or owners of guaranty surplus are entitled to a semiannual dividend of not more than three and one-half per centum on their respective shares, if the net profits or unused premiums left after all expenses, losses, and liabilities then incurred, together with the reserve for reinsurance, as provided for, are sufficient to pay the same. The guaranty capital or surplus shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies. This guaranty capital or surplus shall be retired when the permanent fund of the company equals two per centum of the amount insured upon all policies in force, and may be reduced or retired by vote of the policyholders of the company and the assent of the insurance commissioner, if the net assets of the company above its reinsurance reserve and all other claims and obligations, exclusive of guaranty capital or surplus, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five per centum of the guaranty capital or surplus. Due notice of such proposed action on the part of the company must be mailed to each policyholder of the company not less than thirty days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the insurance commissioner, not less than three times a week for a period of not less than four weeks before such meeting. No insurance company with a guaranty capital or surplus, which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital or surplus, except income from investments, until it has performed or canceled its policy obligations. (Rev., s. 4740; 1899, c. 54, s. 34; 1911, c. 196, s. 3; C. S. 6350.)

§ 58-97. Dividends and assessments; liability of policyholders.—The directors of a mutual fire insurance company may from time to time, by vote, fix and determine the amount to be paid as a dividend upon policies expiring during each year. Each policyholder is liable to pay his proportional share of any assessments which are

made by the company in accordance with law and his contract on account of losses incurred while he was a member, if he is notified of such assessments within one year after the expiration of his policy. Any mutual fire insurance company doing business with a fixed annual premium may in its by-laws and policies fix the contingent liability of its members for the payment of losses and expenses not provided for by its cash funds, which contingent liability must not be less than a sum equal to the cash premium written in his policy and in addition thereto. The by-laws may also provide for policies to be issued for cash premiums without contingent liability of policyholders; provided, that no mutual fire insurance company shall issue any policy without contingent liability until and unless it possesses a surplus of at least one hundred thousand dollars. The total amount of the liability of the policyholder must be plainly and legibly stated upon the back of each policy. Whenever any reduction is made in the contingent liability of members, it applies proportionally to all policies in force: Provided this section shall not apply to farmers mutual fire insurance companies. (Rev., s. 4741; 1899, c. 54, s. 35; 1935, c. 89; C. S. 6351.)

§ 58-98. Waiver of forfeiture in policies assigned or pledged; notice of assignment; payment of assessment or premium by assignee or mortgagee.—When any policy of insurance is issued by any mutual insurance company or association organized under the laws of this state and such policy is assigned or pledged as collateral security for the payment of a debt, such company or association, by its president and secretary or other managing officers, may insert in such policy so assigned or pledged, or attach thereto as a rider thereon, a provision or provisions to be approved by the insurance commissioner, whereby any or all conditions of the policy which work a suspension or forfeiture and especially the provisions of the statute which limits such corporation to insure only property of its members, may be waived in such case for the benefit of the assignee or mortgagee. In case any such company or association shall consent to such assignment of any policy or policies, or the proceeds thereof, it may nevertheless at any time thereafter, by its president and secretary or such other officer as may be authorized by the board of directors, cancel such policy by giving the assignee or mortgagee not less than ten days notice in writing: Provided, however, a longer period may be agreed upon by the company or association and such assignee or mortgagee. And the president and secretary of such company or association, with the approval of the insurance commissioner, may agree with the assignee or mortgagee upon an assessment or premium to be paid to the insurer in case the insured shall not pay the same, which shall not be less than such a rate or sum of money as may be produced by the average assessments or premiums made or charged by like company or association during a period of five years next preceding the year of such agreement and assignment. When an assignment is made as herein provided the policy or policies so assigned or pledged, subject to the conditions herein, shall remain in full force and effect for the benefit of the assignee or mortgagee, notwithstanding the title or ownership of the assured to the property insured, or to any interest therein, shall be in any manner changed, transferred or encumbered. (Ex. Sess. 1920, c. 79; C. S. 6351(a).)

§ 58-99. Guaranty against assessments prohibited.—If any director or other officer of a mutual fire insurance company, either officially or privately, shall give a guarantee to a policyholder thereof against an assessment to which such policyholder would otherwise be liable, he shall be punished by a fine not exceeding one hundred dollars for each offense. (Rev., s. 3496; 1899, c. 54, s. 100; C. S. 6352.)

§ 58-100. Manner of making assessments; rights and liabilties of policyholders.—When a mutual fire insurance company is not possessed of cash funds above its reinsurance reserve sufficient for the payment of insured losses and expenses, it must make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities. The company shall cause to be recorded in a book kept for that purpose the order for the assessment, together with a statement which must set forth the condition of the company at the date of the order, the amount of its cash assets and deposits, notes, or other contingent funds liable to the assessment, the amount the assessment calls for, and the particular losses or liabilities it is made to provide for. This record must be made and signed by the directors who voted for the order before any part of the assessment is collected, and any person liable to the assessment may inspect and take a copy of the same. When, by reason of depreciation or loss of its funds or otherwise, the cash assets of such company, after providing for its other debts, are less than the required premium reserve upon its policies, it must make good the deficiency by assessment in the manner above provided. If the directors are of the opinion that the company is liable to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policyholder must equitably pay or receive in case of withdrawal from the company and having his policy canceled; the second, what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policyholder must pay or receive according to the first assessment, and his policy shall be canceled unless he pays the sum further determined by the second assessment, in which case his policy continues in force; but in neither case may a policyholder receive or have credited to him more than he would have received on having his policy canceled by a vote of the directors under the by-laws. (Rev., s. 4742; 1899, c. 54, ss. 36, 37; C. S. 6353.)

§ 58-101. Mutual life and health companies.—Life and health insurance companies and associations organized in this state to do business on the mutual plan shall be governed as to the commencement of business, election of members, guaranty capital, dividends, and assessments as provided in this article for mutual fire insurance

companies, where applicable. (Rev., s. 4743; 1903, c. 536, s. 1; C. S. 6354.)

§ 58-102. Dividends on, and redemption of, guaranty capital of life companies.—The stockholders of the guaranty capital of any domestic life insurance company are entitled to such annual dividends not exceeding eight per centum, payable from the net surplus, as have been agreed upon in the subscription thereof. Such company may redeem its guaranty capital by appropriation of net surplus for that purpose whenever its members so vote. (Rev., s. 4744; 1899, c. 54, s. 58; 1903, c. 438, s. 5; C. S. 6355.)

Art. 9. Conversion of Stock Corporations into Mutual Corporations.

§ 58-103. Domestic stock life insurance corporations authorized to convert into mutual corporations; procedure.—Any domestic stock life insurance corporation may become a mutual life insurance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock: Provided, however, that such plan (first) shall have been adopted by a vote of a majority of the directors of such corporation; (second) shall have been approved by a vote of the holders of two-thirds of the stock outstanding at the time of issuing the call for a meeting for that purpose; (third) shall have been submitted to the insurance commissioner and shall have been approved by him in writing, and (fourth) shall have been approved by a majority vote of the policyholders (including, for the purpose of this article, the employer or the president, secretary or other executive officer of any corporation or association to which a master group policy has been issued, but excluding the holders of certificates or policies issued under or in connection with a master group policy) voting at said meeting, called for that purpose, at which meeting only such policyholders whose insurance shall then be in force and shall have been in force for at least one year prior to such a meeting shall be entitled to vote; notice of such a meeting shall be given by mailing such notice, postage prepaid, from the home office of such corporation at least thirty days prior to such meeting to such policyholders at their last known post-office addresses: Provided, that personal delivery of such written notice to any policyholder may be in lieu of mailing the same; and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan: Provided, however, that policyholders may vote in person, by proxy, or by mail; that all such votes shall be cast by ballot, and a representative of the insurance commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the said representative and to the corporation the results thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the insurance commissioner; that all necessary expenses incurred by the insurance commissioner or his representative shall be paid by the corporation as certified to by said commissioner. Every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the commissioner: Provided, that neither such plan, nor any payment thereunder, nor any payment not fixed by such plan, shall be approved by the commissioner, if the making of such payment shall reduce the assets of the corporation to an amount less than the entire liabilities of the corporation, including therein the net values of its outstanding contracts according to the standard adopted by the insurance commissioner, and also all other funds, contingent reserves and surplus which the corporation is required by order or direction of the insurance commissioner to maintain, save so much of the surplus as shall have been appropriated or paid under such plan. (1937, c. 231, s. 1.)

§ 58-104. Stock acquired to be turned over to voting trust until all stock acquired; dividends repaid to corporation for beneficiaries.—If a domestic stock life insurance corporation shall determine to become a mutual life insurance corporation it may, in carrying out any plan to that end under the provisions of § 58-103, acquire any shares of its own stock by gift, bequest or purchase. And until all such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to not less than three nor more than five trustees, and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote until all of the capital stock of such corporation is acquired, when the entire capital stock shall be retired and canceled; and thereupon, unless sooner incorporated as such, the corporation shall be and become a mutual life insurance corporation without capital stock. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under § 58-103. Said trustees shall file with the corporation and with the insurance commissioner a verified acceptance of their appointments and declaration that they will faithfully discharge their duties as such trustees. After the payment of such dividends to stockholders or former stockholders as may have been provided in the plan adopted under § 58-103, all dividends and other sums received by said trustees on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are or may become policyholders of said corporation and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation, and be apportionable accordingly as a part of said surplus among said policyholders. (1937, c. 231, s. 2.)

Art. 10. Assessment Companies.

§ 58-105. Copies of charter and by-laws filed.—Every corporation, society, or organization of this or any other state or country, transacting business under this department upon the coöperative or assessment plan, must file with the insurance commissioner, before beginning to do busi-

ness in this state, a copy of its charter or articles of association, and the by-laws, rules, or regulations referred to in its policies or certificates and made a part of such contract. By-laws or regulations not so filed with the insurance commissioner will not avoid or affect any policy or certificate issued by such company or association. (Rev., s. 4790; 1899, c. 54, s. 86; C. S. 6356.)

§ 58-106. Contracts must accord with charter and by-laws.—Every policy or certificate or renewal receipt issued to a resident of this state by any corporation, association, or order transacting therein the business of insurance upon the assessment plan must be in accord with the provisions of the charter and by-laws of such corporation, association, or order, as filed with the insurance commissioner. It is unlawful for any such domestic or foreign insurance company or fraternal order to transact or offer to transact any business not authorized by the provisions of its charter and the terms of its by-laws, or, through an agent or otherwise, to offer or issue any policy, renewal certificate, or other contract whose terms are not in clear accord with the powers, terms, and stipulations of its charter and by-laws. (Rev., s. 4791; 1899, c. 54, s. 84; 1903, c. 438, s. 9; C. S. 6357.)

§ 58-107. "Assessment plan" printed on application and policy; waiver by commissioner.—Every policy or certificate issued to a resident of the state by any corporation transacting in the state the business of life insurance upon the assessment plan, or admitted to do business in this state on the assessment plan, shall print in bold type and in red ink, near the top of the front page of the policy, upon every policy or certificate issued upon the life of any such resident of the state, the words "issued upon the assessment plan"; and the words "assessment plan" shall be printed conspicuously in red ink in and upon every application, circular, card, and any and all printed documents issued, circulated, or caused to be circulated by such corporation within the state, save and except, however, in advertising in newspapers within the state, in which case the words may be printed in black. The insurance commissioner may waive the provisions of this section as to assessment companies or associations who conduct their business on an annual premium basis and maintain a full reserve of at least four per cent, based on any recognized table of mortality, and at all times maintain a net surplus over and above all liabilities and available for the payment of claims, sufficient to preclude the possibility of an extra assessment being levied against policyholders. Said waiver must be in writing and the insurance commissioner may revoke it at any time for cause. (1913, c. 159, s. 1; 1929, c. 93, s. 1; 1933, c. 34; C. S. 6358.)

§ 58-108. Revocation for noncompliance.—If any corporation or association transacting insurance business in this state on the assessment plan or issuing any policy upon the life of a resident of North Carolina upon the assessment plan shall fail or refuse to comply with the foregoing section, the insurance commissioner shall forthwith suspend or revoke all authority of such corporation or association and of its agents to do business in this state. (1913, c. 159, s. 2; C. S. 6359.)

§ 58-109. Deposits and advance assessments required.—Every domestic insurance company, association, order, or fraternal benefit society doing business on the assessment plan shall collect and keep at all times in its treasury one regular loss assessment sufficient to pay one regular average loss; and no such company, association, order, or fraternal benefit society shall be licensed by the insurance commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by federal loan banks, or in the bonds of some city, county, or town of North Carolina to be approved by the insurance commissioner, or deposit with him a good and sufficient bond, secured by a deed of trust on real estate situated in North Carolina and approved by him, or by depositing with the insurance commissioner a bond in an amount of not less than five thousand ($5,000) dollars, issued by any corporate surety company authorized to do business in this state. Such companies, associations, orders, or societies now doing business in this state and not issuing policies or certificates for more than two hundred dollars, shall be permitted to deposit five hundred dollars on the first day of July, one thousand nine hundred and thirteen, and five hundred dollars each six months thereafter until the required amount is deposited; and the last named association when hereafter organized may be allowed by the insurance commissioner to make such deposit in like installments. The insurance commissioner may increase the amount of deposit to the amount of reserve on the contracts of the association or society. The provisions of this section shall not apply to the farmers mutual fire insurance associations now doing business in the state and restricting their activities to not more than two adjacent counties. (Rev. s. 4792; 1913, c. 119, s. 1; 1917, c. 191, s. 2; 1933, c. 47; C. S. 6360.)

§ 58-110. Deposits by foreign assessment companies or order.—Each foreign insurance company, association, order, or fraternal benefit society doing business in this state on the assessment plan shall keep at all times deposited with the insurance commissioner or in its head office in this state, or in some responsible banking or trust company, one regular assessment sufficient to pay the average loss or losses occurring among its members in this state during the time allowed by it for the collection of assessments and payment of losses. It shall notify the insurance commissioner of the place of deposit and furnish him at all times such information as he requires in regard thereto; and no such company, association, order, or fraternal benefit society shall be licensed by the commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by federal land banks, or in the bonds of some county, city, or town in North Carolina to be approved by the insurance commissioner, or a good and sufficient bond or note, secured by deed of trust on real estate situate in North Carolina, and approved by the commissioner. The provisions of this section do not apply to associations, orders, or fraternal benefit societies operating in

not more than two adjacent counties in the state and paying a benefit of not exceeding two hundred dollars, but the amount to be deposited by said societies is within the discretion of the insurance commissioner, but must be not less than one-hundred dollars. (Rev., s. 4713; 1899, c. 54, s. 84; 1903, c. 438; s. 9; 1913, c. 119, ss. 2, 3; 1917, c. 191, s. 2; C. S. 6361.)

§ 58-111. Must pay death benefits in coin instead of services.—No corporation, society, or organization now doing business in this state or that may hereafter be authorized to do business in this state upon a mutual or assessment insurance plan and issuing contracts to its members providing benefits in excess of one hundred dollars ($100) in the event of death of its members or policy holders shall issue any contract to such members providing for the payment of benefits in merchandise or service to be rendered to such member or his beneficiary; but all contracts hereafter issued by any such corporation, society, or organization, shall provide by the terms of its contract for the payment of such benefits only in lawful currency or coin. (1931, c. 71.)

§ 58-112. Revocation of license.—If any such corporation, association, or order at any time fails to comply with the provisions of §§ 58-109 and 58-110 or shall issue policies or certificates not in accord with its charter and by-laws, as provided in this article, the insurance commissioner shall forthwith suspend or revoke all authority to it, and of all its agents or officers, to do business in this state, and shall publish such revocation in some newspaper published in this state. (Rev., s. 4793; 1899, c. 54, s. 85; C. S. 6362.)

Art. 11. Fidelity Insurance Companies.

§ 58-113. May act as fiduciaries.—Any corporation licensed by the insurance commissioner, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator in this state without giving any bond; and the clerks of the superior courts or other officers charged with the duty, or clothed with the power of making such appointments, are authorized to appoint such corporation to any such office, whether the corporation is a resident of this state or not. (Rev., s. 4799; 1899, c. 54, s. 47; 1903, c. 438, s. 5; C. S. 6376.)

§ 58-114. License to do business.—Before any such corporation is authorized to execute any bond, obligation, or undertaking, or act in any fiduciary capacity without bond, it must be licensed by the insurance commissioner of the state, which the commissioner is authorized to do when satisfied that such company or corporation is safe and solvent and has complied with the laws of this state applicable to such companies, and if a foreign company, that it has also complied with the conditions, rules, and regulations governing the admission of foreign insurance companies to do business in this state; but if such corporation be engaged in the business of commercial banking then such license shall be issued by the Commissioner of Banks and all other provisions of this article pertaining to corporations engaged in the business of banking shall apply to such corporations but shall be exercised and enforced by the Commissioner of Banks. For such license the licensee shall pay to the Banking Commission an annual license fee of two hundred ($200.00) dollars, which shall be remitted to the State Treasurer for the use of the Commissioner of Banks in the supervision of banks acting in a fiduciary capacity in so far as it may be necessary and the surplus, if any, shall remain in the State treasury for the use of the general fund of the State. (Rev., s. 4800; 1899, c. 54, s. 46; 1901, c. 706, s. 1; 1931, c. 387; C. S. 6377.)

§ 58-115. Examination as to solvency. — The commissioner shall examine into the solvency of such corporation, and shall, if he deem it necessary, at the expense of the corporation, make or cause to be made an examination at its home office of its assets and liabilities. (Rev., s. 4801; 1899, c. 54, s. 46; 1901, c. 706; C. S. 6378.)

§ 58-116. Certificate of solvency equivalent to justification. — After any such corporation has been licensed by the commissioner, the certificate of the commissioner that it has been admitted to do business in the state and is licensed by the insurance commissioner and is solvent to an amount not less than one hundred thousand dollars, shall be, until revoked by him, equivalent to the justification of sureties, and full evidence of its authority to give such bonds or undertakings. There shall be no charge for the seal of this certificate. (Rev., s. 4802; 1899, c. 54, s. 46; 1901, c. 706; C. S. 6379.)

§ 58-117. Clerk of superior court notified of license and revocation.—The insurance commissioner, upon granting license to any such corporation, shall immediately notify the clerk of the superior court of each county in the state that such corporation has been licensed under this chapter; and whenever the commissioner is satisfied that any corporation licensed by him has become insolvent, or is in imminent danger of insolvency, he shall revoke the license granted to it, and notify the clerk of the superior court of each county of such revocation; and after such notification the right of such corporation to hold any office, or be surety on any bond, as permitted by this chapter, ceases. (Rev., s. 4803; 1899, c. 54, s. 50; C. S. 6380.)

§ 58-118. Resident agents required.—All business done in this state by any fidelity insurance company must be done through regularly authorized agents residing in this state, or through applications of such agents; and all policies so issued must be countersigned by such agents. (Rev., s. 4804; 1899, c. 54, s. 108; 1903, c. 438, s. 11; C. S. 6381.)

§ 58-119. Limitation of liability assumed.—No stock corporation transacting fidelity or surety business in this State shall expose itself to any loss on any one fidelity or surety risk or hazard in an amount exceeding ten per centum of its capital and surplus, unless it shall be protected in excess of that amount by

(a) Reinsurance in a corporation authorized to transact a fidelity and surety business in this State: Provided, that such reinsurance is in such form as to enable the obligee or beneficiary to maintain an action thereon against the company reinsured jointly with such reinsurer and, upon

recovering judgment against such reinsured, to have recovery against such reinsurer for payment to the extent in which it may be liable under such reinsurance and in discharge thereof; or

(b) The co-suretyship of such a corporation similarly authorized; or

(c) By deposit with it in pledge or conveyance to it in trust for its protection of property; or

(d) By conveyance or mortgage for its protection; or

(e) In case a suretyship obligation was made on behalf or on account of a fiduciary holding property in a trust capacity, by deposit or other disposition of a portion of the property so held in trust that no future sale, mortgage, pledge or other disposition can be made thereof without the consent of such corporation; except by decree or order of a court of competent jurisdiction;

Provided: (1) That such corporation may execute what are known as transportation or warehousing bonds for United States Internal Revenue taxes to an amount equal to fifty per centum of its capital and surplus; (2) that, when the penalty of the suretyship obligation exceeds the amount of a judgment described therein as appealed from and thereby secured, or exceeds the amount of the subject matter in controversy or of the estate in the hands of the fiduciary for the performance of whose duties it is conditioned, the bond may be executed if the actual amount of the judgment or the subject matter in controversy or estate not subject to supervision or control of the surety is not in excess of such limitation; and (3) that, when the penalty of the suretyship obligation executed for the performance of a contract exceeds the contract price, the latter shall be taken as the basis for estimating the limit of risk within the meaning of this section.

No such corporation shall, anything to the contrary in this section notwithstanding, execute suretyship obligations guaranteeing the deposits of any single financial institution in an aggregate amount in excess of ten per centum of the capital and surplus of such corporate surety, unless it shall be protected in excess of that amount by credits in accordance with sub-division (a), (b), (c) or (d) of this section: Provided, nothing in this section shall be construed to make invalid any contract entered into by such corporation with another person, firm, corporation or municipal corporation notwithstanding any provisions of this section. (1911, c. 28; 1931, c. 285; C. S. 6382.)

Art. 12. Promoting and Holding Companies.

§ 58-120. Terms defined.—As the terms are used in this article, "promoting corporation" means a corporation or joint-stock association, engaged in the business of organizing or promoting or endeavoring to organize or promote the organization of an insurance corporation or corporations, or in any way assisting therein; "holding corporation" means a corporation or joint-stock association, which holds or is engaged in the acquisition of the capital stock or a major portion thereof of one or more insurance corporations for the purpose of controlling the management thereof, as voting trustee or otherwise; and "securities" means the shares of capital stock, subscription, certificates, debenture bonds, and any and all other contracts or evidences of ownership of or interest in insurance corporations, or in promoting or holding corporations. (1913, c. 182, s. 1; C. S. 6383.)

§ 58-121. Certificate of authority to sell securities required.—No individual, partnership, association, or corporation, as the agent of another or as a broker, shall sell or offer for sale, or in any way assist in the sale in this state of the securities of any promoting or holding corporation, or of any insurance corporation, which is not at that time lawfully engaged or authorized to engage in the transaction of the business of insurance in this state, without first procuring, as hereinafter provided, a certificate of authority from the insurance department to sell such securities; nor shall any individual, partnership, association, or corporation sell or offer for sale in this state the securities of any promoting or holding corporation, or of any insurance corporation which is not at the time of such sale or offer of sale lawfully engaged or authorized to engage in the transaction of the business of insurance in the state, unless such corporation has first procured from the insurance commissioner, as hereinafter provided, a certificate that the corporation has fully complied with the provisions of this article, and is authorized to sell the securities. Every certificate issued by the insurance commissioner pursuant to the provisions of this article shall state in bold type that the commissioner in no way recommends the securities thereby authorized to be sold, and shall be renewable annually, upon written application, filed on or before the first day of April of each year, and may be revoked for cause at any time by the commissioner. The commissioner shall prepare and furnish upon request suitable blank forms of application for the certificates required by this article. (1913, c. 182, s. 2; C. S. 6384.)

§ 58-122. Application for certificate by agent.—Every individual, partnership, association, or corporation desiring or intending to sell or to offer for sale in this state the securities of insurance corporations or of any holding or promoting corporation shall file with the insurance commissioner an application for a certificate of such authority. This application must contain a statement, verified by oath, setting forth the name and address of the applicants' previous business experience, date and place of birth or organization, and such other information as the commissioner requires. It is the duty of the commissioner to examine the application and to make any further inquiry or examination of the applicant as he deems advisable. If upon examination the commissioner finds the applicant, or if a corporation, the officers and directors thereof, to be trustworthy persons of good business credit, he may issue to the applicant a certificate of authority to sell or offer for sale in this state the securities of any insurance corporation, and of any promoting or holding corporation previously authorized under this article, which shall be mentioned therein. (1913, c. 182, s. 3; C. S. 6385.)

§ 58-123. Application for certificate by corporation.—Every such unauthorized insurance corporation, and every promoting or holding corporation, whose securities are offered for sale in this

state, must file with the insurance commissioner copies of all securities to be offered for sale, and an application for certificate of authority under this article which shall contain a statement in detail of the plans and purposes of such corporation, the amount and par value of the securities to be offered for sale, and the selling price thereof, the manner in which the money paid in therefor is to be spent or employed, the rate of commission to be paid for the sale of such securities, the salaries to be paid to the officers of such corporation, and such other information as the insurance commissioner requires. No change shall thereafter be made in the form or character of the securities to be offered for sale, or in the plans or purposes of any such corporation, without the approval thereof in writing by the commissioner. It is the duty of the commissioner to examine the application and other documents filed, and to make any further inquiry or examination of the corporation as he deems advisable. If upon examination the commissioner finds that the plans and purposes of the corporation are proper, that its condition is satisfactory, that the amount of its securities is reasonable, that the price at which such securities are to be sold is adequate, and that the manner in which the money is paid in therefor, the rate of commissions to be paid and the salaries of officers are fair, he may issue a certificate that the corporation has complied with all the provisions of this article, and is authorized to sell or offer its securities for sale in this state. (1913, c. 182, s. 4; C. S. 6386.)

§ 58-124. Approval of advertising matter; misrepresentation.—No printed matter may be used in connection with the sale of securities of any such promoting, holding, or insurance corporation, for advertising purposes, or in the dissemination of information with reference thereto, unless it is first submitted to the insurance commissioner and approved by him in writing. No such corporation, and no officer, director, or agent thereof, or any other person, copartnership, association, or corporation may issue, circulate, or employ or cause or permit to be used, issued, circulated, or employed any circular or statement, whether printed or oral, misrepresenting or exaggerating the earnings of insurance corporations or the value of their corporate stock or other securities, or the profits to be derived either directly or indirectly from the organization and management of insurance corporations, or of organizing or holding corporations. No insurance or other corporation, and no individual, copartnership, or association transacting business in this state shall place or offer to place insurance in any corporation in connection with the sale or purchase of the securities of any insurance corporation or of any promoting or holding corporation. (1913, c. 182, s. 5; C. S. 6387.)

Art. 13. Rate-Making Companies.

§ 58-125. Information to be filed with insurance commissioner. — Every corporation, association, board, or bureau which now exists or hereafter may be formed, and every person who maintains, or hereafter may maintain, a bureau or office for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurance, including surety bonds, on property or risks of any kind located in this state, shall file with the insurance commissioner a copy of the articles of agreement, association or incorporation and the by-laws and all amendments thereto under which such person, association, or bureau operates or proposes to operate, together with his or its business address and a list of the members or insurance corporations represented or to be represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the insurance commissioner. (1913, c. 145, s. 1; 1915, c. 166, s. 8; C. S. 6388.)

§ 58-126. Examination by insurance commissioner; reports.—Every such person, corporation, association, or bureau, whether before or after the filing of the information specified in the preceding section, shall be subject to the visitation, supervision, and examination of the insurance commissioner, who shall cause to be made an examination thereof as often as he deems it expedient, and at least once in three years. For such purpose he may appoint as examiners one or more competent persons, and upon such examination he, his deputy, or any examiner authorized by him shall have all the powers given to the insurance commissioner, his deputy, or any examiner authorized by him by law, including the power to examine under oath the officers and agents and all persons deemed to have material information regarding the business or manner of operation by every such person, corporation, association, bureau, or board. The insurance commissioner shall make public the results of such examination, and shall report to the legislature in his annual report on the methods of such rating organization and the manner of its operation. (1913, c. 145, s. 2; C. S. 6389.)

§ 58-127. Schedule of rates filed.—Every such person, corporation, association, or bureau, as well as every insurance company doing business in the state, shall file with the insurance commissioner, whenever he may call therefor, any and every schedule of rates or such other information concerning such rates as may be suggested, approved, or made by any such rating organization for the purposes specified in § 58-125, or by such company for its own use. (1913, c. 145, s. 3; 1915, c. 166, s. 8; C. S. 6890.)

§ 58-128. Certain conditions forbidden; no discrimination.—No such person, corporation, association, or bureau shall fix or make any rate or schedule of rates which is to or may apply to any risk within this state, on the condition that the whole amount of insurance on such risk or any specified part thereof shall be placed at such rates, or with the members of or subscribers to such rating organization; nor shall any such person, association, or corporation authorized to transact the business of insurance within this state, fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within this state of essentially the same hazard, or if such rate be a fire insurance rate, which discriminates unfairly between the risks in the application of like charges or credits or which discriminates unfairly between risks of essentially the same hazards and having substan-

tially the same degree of public protection against fire. Whenever it is made to appear to the satisfaction of the insurance commissioner that such discrimination exists, he may, after a full hearing, either before himself or before any salaried employee of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations, or bureaus affected thereby shall immediately comply therewith; nor shall such persons, corporations, associations, or bureaus remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the insurance commissioner that such increase is justifiable. (1913, c. 145, s. 4; C. S. 6391.)

§ 58-129. Record to be kept; hearing on rates.—Every such rating organization shall keep a careful record of its proceedings and shall furnish upon demand to any person upon whose property or risk a rate has been made, or to his authorized agent, full information as to such rate, and if such property or risk be rated by schedule, a copy of such schedule; it shall also provide such means as may be approved by the insurance commissioner whereby any person affected by such rate may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such rating organization on an application for a change in such rate. (1913, c. 145, s. 5; C. S. 6392.)

§ 58-130. Hearing on rates before insurance commissioner.—Any person, firm, or corporation aggrieved by any rating of a fire insurance company, bureau, or board, may file a complaint in writing with the insurance commissioner stating in detail the grounds upon which the complainant asks relief. The commissioner shall set a time, not earlier than seven days after the date of the notice, and a place for a hearing upon the complaint. After due hearing the commissioner shall make a finding as to whether the established rate is excessive or unfair, and shall make such recommendations as he deems advisable. The finding and recommendations in each case shall be made a matter of record, and shall be open to public inspection. (1915, c. 166, s. 8; C. S. 6393.)

§ 58-131. Certain insurance contracts excepted.—This article shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor title and credit insurance. (1913, c. 145, s. 6; 1935, c. 152; C. S. 6394.)

Art. 14. Real Estate Title Insurance Companies.

§ 58-132. Purpose of organization.—Companies may be formed in the manner provided in this subchapter, with a capital of not less than fifty thousand dollars, for the purpose of examining titles to real estate, of furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of encumbrances and defective title. Such companies shall not be subject to the provisions of this chapter except as regards the manner of their formation and as provided in this article. (Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3; 1923, c. 71; C. S. 6395.)

§ 58-133. Certificate of authority to do business.—Before any such company may issue any policy or make any contract or guarantee of insurance, it shall file with the insurance commissioner a certified copy of the record or the certificate of its organization in the office of the secretary of state, and obtain from the insurance commissioner his certificate that it has complied with the laws applicable to it and that it is authorized to do business. (Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3; C. S. 6396.)

§ 58-134. Annual statement and license required.—Every such corporation shall, on or before the thirtieth day of January of each year, file in the office of the insurance commissioner a statement, such as he may require, showing its condition and its affairs for the year ending on the preceding thirty-first day of December, signed and sworn to by its president or secretary or treasurer and one of its directors. For neglect to file such annual statement or for making a wilfully false statement it shall be liable to the same penalties imposed upon other insurance companies. The insurance commissioner shall annually license such companies and their agents, and have the same power and authority to visit and examine such corporations as he has in the case of other domestic insurance companies; and the duties and liabilities of such corporations and their agents in reference to such examinations are the same as those of other domestic insurance companies. (Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3; C. S. 6397.)

Art. 15. Title Insurance Companies and Land Mortgage Companies Issuing Collateral Loan Certificates.

§ 58-135. Issuance of collateral loan certificates; security.—Any domestic land mortgage company or title insurance company having a paid in capital and surplus of at least two hundred thousand ($200,000.00) dollars, may, under the supervision and control of the Insurance Commissioner, issue collateral loan certificates, or other certificates of indebtedness secured by the deposit of first mortgages on real estate with the commissioner, or under his direction, or secured by the deposit with the commissioner, or under his direction, of collateral trust bonds secured by first mortgages, the principal and interest of which said mortgages is guaranteed by a surety company having assets of at least ten million ($10,000,000.00) dollars, upon a basis not to exceed one hundred ($100.00) dollars for each one hundred ($100.00) dollars of liability under the collateral loan certificates or other certificates of indebtedness outstanding and secured by such first mortgages or collateral trust bonds. (1927, c. 204, s. 1.)

§ 58-136. Licenses.—Any domestic land mortgage company, or title insurance company, wishing to do business under the provisions of this article upon making written application and submitting proof satisfactory to the Insurance Commissioner that its business, capital and other

qualifications comply with the provisions of this article, upon paying to the Insurance Commissioner, the sum of two hundred dollars as a license fee and all other fees assessed against such company may be licensed to do business in this State under the provisions of this article until the first day of the following April and may have its license renewed for each year thereafter so long as it complies with the provisions of this article and such rules and regulations as may be promulgated by the Insurance Commissioner. For each such renewal such company shall pay to the Insurance Commissioner the sum of two hundred dollars and all other fees assessed against such company and such renewal shall continue in force and effect until a new license be issued or specifically refused unless revoked for good cause. The Insurance Commissioner, or any person appointed by him, shall have the power and authority to make such rules and regulations and examinations not inconsistent with the provisions of this article, as may be in his discretion necessary or proper to enforce the provisions hereof and secure compliance with the terms of this article. For any examination made hereunder the Insurance Commissioner shall charge the land mortgage companies or title insurance companies examined with the actual expense of such examination. (1927, c. 204, s. 2.)

§ 58-137. Annual statements furnished. — Every such domestic land mortgage company or title insurance company doing business in this State under this article shall annually file with the Insurance Commissioner on or before the first day of March in each year a full and complete sworn statement of its financial condition on the thirty-first day of December next preceding. Such statement shall plainly exhibit all real and contingent assets and liabilities and a complete account of its income and disbursements during the year and shall also exhibit the amount of real estate mortgages deposited by such land mortgage company or title insurance company for the protection of the certificates issued under this article. The Insurance Commissioner is hereby empowered to require such further information as may be reasonably necessary to satisfy him that the statements contained in the sworn statements are true and correct. (1927, c. 204, s. 3.)

Art. 16. Reciprocal or Inter-Insurance Exchanges.

§ 58-138. Exchange of insurance contracts authorized; power of attorney.—Individuals, partnerships, and corporations of this state hereby designated as subscribers, are authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships, and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. Such contracts may be executed by an attorney, agent, or other representative, herein designated attorney, duly authorized and acting for such subscribers.

The attorney in fact for each of such exchanges shall be required to obtain a written power of attorney executed by each of the subscribers and have the same in his or its possession before any contracts of insurance of any kind or description shall be issued or renewed to subscribers, and a full copy of the provisions of the power of attorney used at the exchange and on file with the insurance commissioner under the requirements of § 58-139, subsection four, shall be incorporated into and made a part of all contracts or policies issued to subscribers in this state. (1913, c. 183, ss. 1, 2; 1937, c. 130; C. S. 6398.)

§ 58-139. Statement to be filed with insurance commissioner.—The subscribers, so contracting among themselves, shall, through their attorney, file with the insurance commissioner of this state a declaration verified by oath of such attorney, setting forth:

1. The name or title of the office at which such subscribers propose to exchange such indemnity contracts. This name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of the insurance commissioner is calculated to result in confusion or deception. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or inter-insurance exchanges.

2. The kind or kinds of insurance to be effected or exchanged.

3. A copy of the form of policy, contract, or agreement under or by which the insurance is to be effected or exchanged.

4. A copy of the form of power of attorney or other authority of such attorney under which the insurance is to be effected or exchanged.

5. The location of the office or offices from which such contracts or agreements are to be issued.

6. That applications have been made for indemnity upon at least one hundred separate risks, aggregating not less than one and one-half million dollars as represented by executed contracts or bona fide applications, to become concurrently effective, or, in case of liability or compensation insurance, covering a total pay roll of not less than one and one-half million dollars: Provided, that when the attorney maintains the central office in this state the insurance commissioner may authorize an exchange with a less number of risks and a smaller amount of indemnity to be exchanged and an amount of cash deposits less than twenty-five thousand dollars.

7. That there is on deposit with such attorney and available for payment of losses a sum of not less than twenty-five thousand dollars. (1913, c. 183, s. 3; C. S. 6399.)

§ 58-140. Agreement for service of process.—At the time of filing the declaration provided for by the preceding section, the attorney shall file with the insurance commissioner an instrument in writing, executed by him for the subscribers, conditioned that upon the issuance of certificate of authority provided for in this article, service of process may be had upon the insurance commissioner in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. Three copies of such process shall be served, and

the insurance commissioner shall file one copy, forward one copy to the attorney, and return one copy with his admission of service. (1913, c. 183, s. 4; C. S. 6400.)

§ 58-141. Statement as to amount of risks.—There shall be filed with the insurance commissioner of this state by such attorney a statement under his oath showing the maximum amount of indemnity upon any single risk, and the attorney shall, whenever and as often as the same shall be required, file with the insurance commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than ten per cent of the net worth of such subscriber. (1913, c. 183, s. 5; C. S. 6401.)

§ 58-142. Certificate issued by commissioner.—Upon the filing of the foregoing papers, and upon the payment of fees as provided for in this article, the insurance commissioner shall examine and pass upon the same, and if found correct, and in accordance with this article, issue a certificate of authority, which shall expire on the first day of April next succeeding. (1913, c. 183, s. 6; C. S. 6402.)

§ 58-143. Reserve fund.—There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty per centum of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. For the purpose of said reserve, net annual deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements, for expenses. Said sum shall at no time be less than twenty-five thousand dollars, and if at any time fifty per cent of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency. (1913, c. 183, s. 7; C. S. 6403.)

§ 58-144. Annual reports; examination by commissioner.—The attorney shall make an annual report to the insurance commissioner for each calendar year, showing the financial condition of affairs at that office where such contracts are issued, and shall furnish such additional information and reports as may be required; but the attorney shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of the reciprocal or inter-insurance exchanges shall be subject to examination by the insurance commissioner. (1913, c. 183, s. 8; C. S. 6404.)

§ 58-145. Corporations empowered to exchange insurance.—Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned through exchanges complying with this article. (1913, c. 183, s. 9; C. S. 6405.)

§ 58-146. Punishment for failing to comply with law.—Any attorney or representative who shall, except for the purpose of applying for certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in this article, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars. (1913, c. 183, s. 10; C. S. 6406.)

§ 58-147. Certificate to attorney; revocation.—Each attorney by or through whom are issued any policies or contracts for indemnity of the character referred to in this article shall procure from the insurance commissioner annually a certificate of authority, stating that all the requirements of this article have been complied with, and upon such compliance and the payment of the fees and taxes required by this article, the insurance commissioner shall issue such certificate of authority. The insurance commissioner may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by this article after reasonable notice has been given the attorney in writing so that he may appear and show cause why such action should not be taken. (1913, c. 183, s. 11; C. S. 6407.)

§ 58-148. Application of general insurance law.—Nothing in the general insurance laws, except as herein provided and as may specifically apply to such contracts and exchanges, shall be construed to extend to inter-insurance or reciprocal exchanges licensed under this article. (1913, c. 183, s. 13; C. S. 6409.)

Art. 17. Foreign Insurance Companies.

§ 58-149. Admitted to do business.—Foreign insurance companies, upon complying with the conditions herein set forth applicable to them, may be admitted to transact in this state, by constituted agents resident herein, any class of insurance authorized by the laws in force relative to the duties, obligations, prohibitions, and penalties of insurance companies, and subject to all laws applicable to the transaction of such business by foreign insurance companies and their agents. (Rev., s. 4746; 1899, c. 54, s. 61; C. S. 6410.)

§ 58-150. Conditions of admission. — A foreign insurance company may be admitted and authorized to do business when it:

1. Deposits with the insurance commissioner a certified copy of its charter or certificate of organization and a statement of its financial condition and business, in such form and detail as he requires, signed and sworn to by its president and secretary or other proper officer, and pays for the filing of this statement the sum required by law.

2. Satisfies the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it pro-

poses to transact; that it has, if a stock company, a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than $100,000 (but nothing in this subsection applies to companies now authorized to do business in this state); and if a mutual company, other than life, that its net cash assets are equal to the capital required of like companies on the stock plan; or that it possesses net cash assets of not less than $100,000 or net cash assets of not less than $50,000, with, also, invested assets of not less than $100,000, and in each case with additional contingent assets of not less than $300,000, and that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

3. By a duly executed instrument filed in his office constitutes and appoints the insurance commissioner and his successor its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein agrees that any lawful process against it which may be served upon such attorney shall be of the same force and validity as if served on the company; and the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Copies of this instrument, certified by the insurance commissioner, are sufficient evidence thereof, and service upon such attorney is sufficient service upon the principal.

4. Appoints as its agent or agents in this state some resident or residents thereof.

5. Obtains from the insurance commissioner a certificate that it has complied with the laws of the state and is authorized to make contracts of insurance. It must also comply with the provisions of this chapter as to deposits and reinsurance by such companies. (Rev., s. 4747; 1899, c. 54, s. 62; 1901, c. 391, s. 5; 1903, c. 438, s. 6; C. S. 6411.)

§ 58-151. Limitation as to classes of business.—No insurance company admitted to do business in the state may be authorized to transact more than one class or kind of insurance therein, unless it has the requisite capital for such business engaged in, and such a company may undertake two or more of the classes of insurance set out in article six, § 58-72, of this chapter, upon providing for each additional kind at least fifty thousand dollars additional capital. But if life, fire, and credit insurance is added to any other line or lines, the additional capital shall be one hundred thousand dollars each, and the company shall pay the license taxes and fees for each class or kind of insurance provided by this chapter. (Rev., s. 4748; 1899, c. 54, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6; 1911, c. 111, s. 2; C. S. 6412.)

§ 58-152. Retaliatory laws.—When, by the laws of any other state or nation, any taxes, fines, penalties, licenses, fees, deposits of money or of securities, or other obligations or prohibitions are imposed upon insurance companies of this state doing business in such other state or nation or upon their agents therein greater than those imposed by this state upon insurance companies of such other state, then, so long as such laws continue in force, the same taxes, fines, penalties, licenses, fees, deposits, obligations and prohibitions, of whatever kind, shall be imposed upon all such insurance companies of such other state or nation doing business within this state and upon their agents here. Nothing herein repeals or reduces the license, fees, taxes, and other obligations now imposed by the laws of this state or to go into effect with the companies of any other state or nation unless some company of this state is actually doing or seeking to do business in such state or nation. When an insurance company organized under the laws of any state or country is prohibited by the laws of such state or country or by its charter from investing its assets other than capital stock in the bonds of this state, then and in such case the insurance commissioner is authorized and directed to refuse to grant a license to transact business in this state to such insurance company. (Rev., s. 4749; 1899, c. 54, s. 71; 1903, c. 536, s. 11; 1927, c. 32; C. S. 6413.)

§ 58-153. Service of legal process upon insurance commissioner.—The service of legal process upon any insurance, bonding and/or surety company, admitted and authorized to do business in this state under the provisions of this chapter, shall be made by leaving the same in the hands or office of the insurance commissioner, and no service upon a company that is licensed to do business in this state is valid unless made upon the insurance commissioner, the general agent for service, or some officer of the company. As a condition precedent to a valid service of process and of the duty of the commissioner in the premises, the plaintiff shall pay to the insurance commissioner at the time of service the sum of one dollar, which the plaintiff shall recover as taxable costs if he prevails in his action. In any action of which a justice of the peace has jurisdiction, summons may be served on any licensed agent of such company, returnable in not less than ten days from date of service; if there is no such agent in the county, then the summons may be served as provided for in other actions against foreign corporations in a court of a justice of the peace. (Rev., s. 4750; 1899, c. 54, ss. 16, 62; 1903, c. 438, s. 6; 1927, c. 167, s. 1; 1931, c. 287; C. S. 6414.)

§ 58-154. Commissioner to notify company of service of process.—When legal process is served upon the insurance commissioner as attorney for an insurance company under the provisions of this chapter, he shall immediately notify the company of such service by registered letter directed to its secretary and shall state whether or not complaint was served with the process, or, in case of a foreign country, to its resident manager, if any in the United States; and must within two days after such service forward in the same manner a copy of the process, together with copy of complaint, if any, served on him to such secretary or manager designated by the company by written notice filed in the office of the Commissioner: Provided, that the thirty days fixed by statute within which to file answer when complaint is served with summons shall not begin to run until ten days after such service on the Insurance Commissioner. The Commissioner must keep a record of all such pro-

ceedings which shall show the day and hour of such service of process on such Commissioner, and whether complaint was served with such process. (Rev., s. 4751; 1899, c. 54, s. 16; 1927, c. 167, s. 2; C. S. 6415.)

§ 58-155. Action to enforce compliance with this chapter.—Compliance with the provisions of this chapter as to deposits, obligations, and prohibitions, and the payment of taxes, fines, fees, and penalties by foreign insurance companies, may be enforced in the ordinary course of legal procedure by action brought in the superior court of Wake county by the attorney-general in the name of the state upon the relation of the insurance commissioner. (Rev., s. 4752; 1899, c. 54, s. 102; 1903, c. 438, s. 10; C. S. 6416.)

SUBCHAPTER III. FIRE INSURANCE.

Art. 18. General Regulations of Business.

§ 58-156. Riders insuring against damage to sprinkler systems, water damage, etc., permitted. — All insurance companies authorized to transact fire insurance business in this state may, in addition to the business which they are now authorized by law to do, insure sprinklers, pumps, and other apparatus erected or put in position for the purpose of extinguishing fires, against damage, loss, or injury resulting from accidental causes other than fire; and may also insure any property which such companies are authorized to insure against loss or damage by fire, against damage, loss, or injury by water or otherwise, resulting from the accidental breaking of or injury to such sprinklers, pumps, or other apparatus, arising from causes other than fire. Contracts of insurance of this kind, provided for in this section, shall not be incorporated in any contract of insurance against loss or damage by fire, but may be contained in riders attached thereto, the conditions of which shall be prescribed by the insurance commissioner. (Rev., s. 4754; 1899, c. 54, s. 24; 1907, c. 1000, s. 6; C. S. 6417.)

§ 58-157. Performance of contracts as to devices not prohibited.—Nothing contained in this chapter shall be construed as prohibiting the performance of any contract hereafter made for the introduction or installation of automatic sprinklers or other betterments or improvements for reducing the risk by fire or water on any property located in this State, and containing provisions for obtaining insurance against loss or damage by fire or water, for a specified time at a fixed rate; provided, every policy issued under such contract shall be as provided by law. (1929, ch. 145, s. 1.)

§ 58-158. Policies limited as to amount and term. —No insurance company or agent shall knowingly issue any fire insurance policy upon property within this state for an amount which, together with any existing insurance thereon, exceeds the fair value of the property, nor for a longer term than seven years. Policies issued in violation of this section are binding upon the company issuing them, but the company is liable for the forfeitures by law prescribed for such violation. (Rev., s. 4755; 1899, c. 54, ss. 39, 99; 1903, c. 438, s. 10; C. S. 6418.)

§ 58-159. Limit of liability on total loss.—When buildings insured against loss by fire and situated within the state are totally destroyed by fire, the company is not liable beyond the actual cash value of the insured property at the time of the loss or damage; and if it appears that the insured has paid a premium on a sum in excess of the actual value, he shall be reimbursed the proportionate excess of premium paid on the difference between the amount named in the policy and the ascertained values, with interest at six per centum per annum from the date of issue. (Rev., s. 4756; 1899, c. 54, s. 40; C. S. 6419.)

§ 58-160. Policies for the benefit of mortgagees. —Where by an agreement with the insured, or by the terms of a fire insurance policy taken out by a mortgagor, the whole or any part of the loss thereon is payable to a mortgagee of the property for his benefit, the company shall, upon satisfactory proof of the rights and title of the parties, in accordance with such terms or agreement, pay all mortgagees protected by such policy in the order of their priority of claim, as their claims appear, not beyond the amount for which the company is liable, and such payments are, to the extent thereof, payment and satisfaction of the liabilities of the company under the policy. (Rev., s. 4757; 1899, c. 54, s. 41; C. S. 6420.)

§ 58-161. Fire loss reported to commissioner before payment.—Every insurance company transacting business in this state shall, upon receiving notice of loss by fire of property in North Carolina, on which it is liable under a policy of insurance, notify the insurance commissioner thereof, either directly or through some bureau or association approved by the commissioner, and no insurance upon any such property shall be paid by any company until one week after this notification. A company violating this section may be fined by the insurance commissioner the sum of ten dollars for each offense, and for refusal to comply with its provisions its license may be canceled by the commissioner. (Rev., s. 4822; 1899, c. 54, s. 40; 1903, c. 438, s. 4; 1915, c. 166, s. 4; C. S. 6421.)

§ 58-162. Reinsurance restricted and regulated. —When an application for license, renewal of license, or for admission to this state, is made by a company, whether of this state, of another state of the United States, or of a foreign country, for the transaction of business of fire insurance herein, the company shall, as one of the prerequisites of license and admission, file a sworn declaration signed by its president and secretary, or officers corresponding thereto, that it will not reinsure any risk or part thereof taken by it on any property located in this state with any company not authorized to transact the business of fire insurance in the state. Every fire insurance company admitted shall annually and at such other times as the insurance commissioner requires, in addition to all returns now required by law of it or its agents or managers, make a return to the insurance commissioner, in such form and detail as is prescribed by him, of all reinsurance contracted for or effected by it directly or indirectly upon property located in this state, this return to be certified by the oath of its president and

secretary, if a company of one of the United States, and if a company of a foreign country, by its president and secretary or by officers corresponding thereto, as to such reinsurance contracted for or effected through the foreign office, and by the United States manager as to such reinsurance effected by the United States branch. If any company, domestic or foreign, directly or indirectly, reinsure any risk taken by it on any property located in this state in any company not duly authorized to transact business herein, or if it refuses or neglects to make the returns required by this section, the insurance commissioner shall revoke its authority to transact business in this state. The provisions of this section also apply to companies licensed to do reinsurance business only. It is unlawful for any company reinsuring risks on property located in this state to reinsure such risks or parts thereof except in companies authorized by the laws of this state to do such business. (Rev., s. 4770; 1899, c. 54, s. 63; 1901, c. 391, s. 5; C. S. 6422.)

§ 58-163. Penalty for reinsuring in unauthorized company.—If any fire insurance company shall, directly or indirectly, reinsure any risk taken by it on any property located in North Carolina in any company not duly authorized to transact business herein, the insurance agent and the company effecting or acting in the negotiation of such reinsurance shall severally be punished by a fine of five hundred dollars. (Rev., s. 3495; 1899, c. 54, ss. 63, 98; C. S. 6423.)

§ 58-164. No action lies on policy of unlicensed company.—No action may be maintained in any court in the state upon a policy or contract of fire insurance issued upon property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the insurance commissioner to transact such insurance business. (Rev., s. 4763; 1899, c. 54, s. 105; C. S. 6424.)

§ 58-165. Citizens authorized to procure policies in unlicensed foreign companies.

1. What applicant must show.—The insurance commissioner, upon the annual payment of a fee of twenty dollars, may issue licenses to citizens of this state, subject to revocation at any time, permitting the person named therein to procure policies of fire insurance on property in this state in foreign insurance companies not authorized to transact business in the state. Before the person named in such a license may procure any insurance in such companies or on any property in this state, he must execute and file with the insurance commissioner an affidavit that he is unable to procure in companies admitted to do business in the state the amount of insurance necessary to protect such property, and may only procure insurance under such license after he has procured insurance in companies admitted to do business in this state to the full amount which those companies are willing to write on the property; but such licensed person shall not be required to offer any portion of such insurance to any company which is not possessed of cash assets amounting to at least twenty-five thousand dollars, or one which has, within the preceding twelve months, been in an impaired condition.

2. Account and report.—Each person so licensed must keep a separate account of the business done under the license, a certified copy of which account he shall forthwith file with the insurance commissioner, showing the exact amount of such insurance placed by any person, firm, or corporation, the gross premium charged thereon, the companies in which the same is placed, the date and terms of the policies, and also a report in the same detail of all such policies canceled and the gross return premium thereon.

3. Bond filed.—Before receiving such license the applicant therefor shall execute and deliver to the insurance commissioner a bond in the penal sum of one thousand dollars, with such sureties as the insurance commissioner may approve, with a condition that the licensee will faithfully comply with all the requirements of this section, and will file with the insurance commissioner, in January of each year, a sworn statement of the gross premiums charged for insurance procured or placed, and the gross returned premiums on such insurance canceled under such license during the year ending on the thirty-first day of December next preceding, and at the time of filing such statement will pay into the treasury of the state a sum equal to five per centum of such gross premiums, less return premiums, so reported, or pay such tax at the time of taking out and delivering such policy or policies.

4. Broker may obtain license.—Any broker licensed under this section may, upon application to the insurance commissioner, be allowed to place policies of insurance with any mutual fire insurance company not doing or licensed to do business in this state, not paying commissions upon business, not having agents to solicit business, and doing only one class of fire insurance business, if he files with the insurance department a certified copy of the charter of each such company, a statement of its financial condition on a blank of the department, and certificate of its authority to do business at its home office, and also receives from the insurance commissioner a license for each company to do business through him on the payment by him of the license, taxes, and fees required by law. All such contracts of insurance placed through any such broker are valid and legal, and the risks upon which such policies are placed may be examined and inspected by regular agents or inspectors licensed by the insurance department upon the application of the broker writing the insurance.

5. Each resident broker, authorized to procure insurance in nonadmitted companies, shall pay an annual license tax of twenty dollars, and also a tax of five per cent on his gross premium receipts. (Rev., ss. 4715, 4769; 1899, c. 54, ss. 68, 95; 1903, c. 438, s. 7, c. 680; C. S. 6425.)

§ 58-166. Punishment for failure to file affidavit and statements.—If any person licensed to procure insurance in an unauthorized foreign company shall procure, or act in any manner in the procurement or negotiation of, insurance in any unauthorized foreign company, and shall neglect to make and file the affidavit and statements required by the preceding section, he shall forfeit his license and be punished by a fine of not less than one hundred nor more than five hun-

dred dollars, or by imprisonment for not more than one year, or by both. (Rev., ss. 3483, 4769; 1899, c. 54, ss. 68, 95; C. S. 6426.)

§ 58-167. Tax deducted from premium; reports filed.—When any person or corporation shall insure any property located in this state with an insurance company not licensed to do business in this state, it shall be the duty of such person or corporation to deduct from the premium charged on the policy or policies issued for such insurance five per centum of the premium and remit the same to the insurance commissioner of the state, at the same time reporting to the insurance commissioner the name of the company or companies issuing the policy or policies, the location of the property insured, and the premium charged. The insurance commissioner shall pay the said amounts to the treasurer of the state. If such report is not made on or before the thirtieth days of July and January of each year for the business done prior to July first and January first preceding, there shall be added to the amount of taxes thereon the sum of one per centum on the first day of each month thereafter. (1915, c. 109, s. 8; C. S. 6427.)

§ 58-168. Resident agents required. — Foreign fire insurance companies legally authorized to do business in this state through regularly commissioned and licensed agents located in the state shall not make contracts of fire insurance on property herein, except through such resident agents as are regularly commissioned by them and licensed to write policies of fire insurance in this state. This section does not apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers. (Rev., s. 4764; 1899, c. 54, s. 107; 1901, c. 391, s. 8; C. S. 6428.)

§ 58-169. Policies through nonresident agent prohibited.—Every fire insurance company authorized to do business in the state is prohibited from authorizing or allowing any person, agent, firm, or corporation who is a nonresident of this state, to issue or cause to be issued, except through a licensed agent, any policy of insurance on property located in the state. (Rev., s. 4765; 1903, c. 488, s. 1; 1905, c. 170; C. S. 6429.)

§ 58-170. Licensed agents not to pay commissions to nonresident or unlicensed persons.—Any person, firm, or corporation licensed by the insurance commissioner to act as a fire insurance agent in this state is prohibited from paying directly or indirectly any commission, brokerage, or other valuable consideration on account of any policy covering property in this state, to any person, firm, or corporation who is a nonresident of the state, or to any person, firm, or corporation not duly licensed by the insurance commissioner as a fire insurance agent; but a fire insurance agent licensed in the state may pay a commission not exceeding fifty per centum of the regular commissions allowed upon the issuance of such policies to a licensed nonresident broker. The insurance commissioner is authorized to license a non-resident as a broker when he applies therefor on a proper blank of the department and makes affidavit that he will not during the fiscal year place directly or indirectly any fire insurance on any property located in North Carolina except through licensed resident agents of the state, that he is a broker in good faith and proposes to hold himself out as such. The fee for this license and seal is ten dollars. (Rev., s. 4766; 1903, c. 488, s. 2; 1905, c. 170, s. 2; 1923, c. 4, s. 70; 1925, c. 70, s. 6; C. S. 6430.)

§ 58-171. Revocation of license for violation; power of commissioner.—When the insurance commissioner has information of a violation of any of the provisions of §§ 58-169 and 58-170, he shall immediately investigate or cause to be investigated such violation, and if a fire insurance company has violated any of such provisions he shall immediately revoke its license for not less than three nor more than six months for a first offense, and for each offense thereafter for not less than one year. If a person, firm, or corporation licensed by the insurance commissioner as a fire insurance agent violates or causes to be violated any of the provisions of those sections, he shall for the first offense have his license revoked for all companies for which he has been licensed for not less than three nor more than six months, and for the second offense he shall have his license revoked for all companies for which he is licensed, and he shall not thereafter be licensed for any company for one year from the date of the revocation. For the purpose of enforcing the provisions of those sections the insurance commissioner is authorized and empowered to examine persons, administer oaths, and send for papers and records. A failure or refusal on the part of any fire insurance company, person, firm, or corporation licensed to do business in this state, to appear before the insurance commissioner when requested to do so, or to produce records and papers, or answer under oath, subjects such company, person, firm, or corporation to the penalties of this section. (Rev., s. 4767; 1903, c. 488, ss. 3, 4; C. S. 6431.)

§ 58-172. Agreements restricting agent's compensation; penalty.—It is unlawful for any fire insurance company, association, or partnership doing business in this state employing an agent who is employed by another fire insurance company, association, or partnership, either directly or through any organization or association, to enter into, make or maintain any stipulation or agreement in restraint of or limiting the compensation which said agent may receive from any other fire insurance company, association, or partnership, or forbidding or prohibiting reinsurance of the risks of a domestic fire insurance company in whole or in part by any company holding membership in or coöperating with such bureau or board. The penalty for any violation of this section shall be a fine of not less than two hundred and fifty dollars nor more than five hundred dollars and the forfeiture of license to do business in this state for a period of twelve months thereafter. (Rev., ss. 3491, 4768; 1905, c. 424; 1915, c. 166, ss. 2, 3; C. S. 6432.)

§ 58-173. Punishment for issuing fire policies contrary to law.—Any insurance company or agent who makes, issues, or delivers a policy of fire insurance in wilful violation of the provi-

sions of this chapter which prohibit a domestic insurance company from issuing policies before obtaining certificate and authority from the insurance commissioner; or which prohibit the issuing of a fire insurance policy for more than the fair value of the property or for a longer term than seven years; or which prohibit stipulations in insurance contracts restricting the jurisdiction of courts, or limiting the time within which an action may be brought to less than one year after the cause of action accrues or to less than six months after a nonsuit by the plaintiff, shall forfeit for each offense not less than fifty nor more than two hundred dollars; but the policy shall be binding upon the company issuing it. (Rev., s. 4832; 1899, c. 54, s. 99; 1903, c. 438, s. 10; C. S. 6433.)

Art. 19. Fire Insurance Policies.

§ 58-174. Terms and conditions must be set out in policy.—In all insurance against loss by fire the conditions of insurance must be stated in full, and the rules and by-laws of the company are not a warranty or a part of the contract, except as incorporated in full into the policy. (Rev., s. 4758; 1899, c. 54, s. 42; C. S. 6434.)

§ 58-175. Items to be expressed in policies; agent to inspect risks. — Upon request there shall be printed, stamped, or written on each fire policy issued in this state the basis rate, deficiency charge, the credit for improvements, and the rate at which written, and whenever a rate is made or changed on any property situated in this state upon request a full statement thereof showing in detail the basis rate, deficiency charges and credits, as well as rate proposed to be made, shall be delivered to the owner or his representative having the insurance on the property in charge, by the company, association, their agent or representative, with a notice to the effect that the rate is promulgated and filed with the insurance department. Every agent of a fire insurance company shall, before issuing a policy of insurance on property situated in a city or town, inspect the same, informing himself as to its value and insurable condition. (1915, c. 109, s. 3; 1925, c. 70, s. 3; C. S. 6435.)

§ 58-176. Standard policy adopted.—No fire insurance company shall issue fire insurance policies on property in this state other than those of the standard form filed in the office of the insurance commissioner of the state, known and designated as the standard fire insurance policy of the state of North Carolina, except as follows: (a) A company may print on or in its policies its name, location, and date of incorporation, the amount of its paid-up capital stock, the names of its officers and agents, the number and date of the policy, and if it is issued through an agent, the words: "This policy shall not be valid until countersigned by the duly authorized manager or agent of the company at ....." and after the words "Standard Fire Insurance Policy of the State of North Carolina," on the back of the form, the names of such other states as have adopted this standard form. (b) A company may use in its policies written or printed forms of description and specification of the property insured. (c) A company insuring against damage by lightning may print in the clause enumerating the perils insured against, the additional words, "also any damage by lightning, whether fire ensues or not," and in the clause providing for an apportionment of loss in case of other insurance, the words, "whether by fire, lightning, or both." (d) A company insuring against damage by windstorm, cyclones and tornadoes may print in the clause enumerating the perils insured against, the additional words, "also any damage by windstorm, cyclones and tornadoes, whether fire ensues or not," and in the clause providing for apportionment of loss in case of other insurance, the words, "whether by fire, windstorm, cyclones, tornadoes or all." Such company may also print after the other conditions of the standard fire policy such provisions and conditions especially applicable to windstorms, cyclones, and tornadoes. The company may also make such change in the heading and preliminary statements of such combined policy form as may be necessary, all in such form as may be approved by the Insurance Commissioner. (e) A company may write or print upon the margin or across the face of a policy, or write or print in type not smaller than long primer or ten point Roman-faced, upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form, and all such slips, riders, and provisions must be signed by the officers or agents of the company so using them. The iron safe or any similar clause requiring the taking of inventories, the keeping of books and producing the same in the adjustment of any loss, shall not be used or operative in the settlement of losses on buildings, furniture and fixtures, or any property not subject to any change in bulk and value. (f) Every mutual company shall cause to appear in the body of its policy the total amount for which the assured may be liable under the charter of the company. (g) The company may print on or in its policy, with the approval of the insurance commissioner, if the same is not already included in such standard form, any provision which any such corporation is required by law to insert in its policies not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements, or conditions of the policy, under a separate title, as follows: "Provisions Required by Law to be Inserted in This Policy." (Rev., s. 4759; 1899, c. 54, s. 43; 1901, c. 391, s. 4; 1907, c. 800, s. 1; 1915, c. 109, s. 10; 1925, c. 70, s. 5; C. S. 6436.)

§ 58-177. Form of standard policy.—The standard form of policy must be plainly printed, no part of it may be in type smaller than that used in printing the form on file in the office of the insurance commissioner, and shall be as follows:

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

Amount $.... Rate .... Premium $ ....

In consideration of the stipulations herein named and of .... dollars premium does insure ....

and legal representatives, to the extent of the actual cash value (ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the term of ..... from the ..... day of ....., 19 ...., at noon, to the ..... day of ....., 19 ...., at noon, against all direct loss and damage by fire and by removal from premises endangered by fire except as herein provided, to an amount not exceeding ..... dollars to the following described property while located and contained as described herein, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from fire, but not elsewhere, to wit:

[Space for description of property.]

This policy is made and accepted subject to the foregoing stipulations and conditions, and to the stipulations and conditions printed on the back hereof, which are hereby made a part of the policy, together with such other provisions, stipulations, and conditions as may be endorsed hereon or added hereto as herein provided.

In witness whereof, this company has executed and attested these presents.

[Space for date and for signatures and titles of officers and agent.]

Fraud, misrepresentation, etc.—This entire policy is void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Property which cannot be insured.—This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, notes or securities.

Hazards not covered.—This company shall not be liable for loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war, or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises.

This entire policy is void, unless otherwise provided by agreement in writing added hereto—

Ownership, etc.—(a) if the interest of the insured is other than unconditional and sole ownership; or (b) if the subject of insurance is a building on ground not owned by the insured in fee simple; or (c) if, with the knowledge of the insured, foreclosure proceedings are commenced or notice given of sale of any property insured hereunder by reason of any mortgage or trust deed; or (d) if any change, other than by the death of an insured, takes place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy is assigned before a loss.

Unless otherwise provided by agreement in writing added hereto, this company is not liable for loss or damage occurring—

Other insurance.—(a) while the insured has any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

Increase of hazard.—(b) while the hazard is increased by any means within the control or knowledge of the insured; or

Repairs, etc.—(c) while mechanics are employed in building, altering, or repairing the described premises beyond a period of fifteen days; or

Explosives, gas, etc.—(d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used, or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasoline, naphtha, or any other product of petroleum of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

Factories.—(e) if the subject of insurance is a manufacturing establishment while operated in whole or in part between the hours of ten p. m. and five a. m., or while it ceases to be operated beyond a period of ten days; or

Unoccupancy.—(f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

Excepted property.—(g) to bullion, manuscripts, mechanical drawings, dyes, or patterns; or

Explosion, lightning.—(h) by explosion or lightning, unless fire ensues, and, in that event, for loss or damage by fire only.

Chattel mortgage.—Unless otherwise provided by agreement in writing added hereto this company is not liable for loss or damage to any property insured hereunder while encumbered by a chattel mortgage, and during the time of such encumbrance this company is liable only for loss or damage to any other property insured hereunder.

Fall of building.—If a building, or any material part thereof, falls, except as the result of fire, all insurance by this policy on such building or its contents immediately ceases.

Added clauses.—The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss or damage, and any other agreement not inconsistent with or a waiver of any of the conditions or provisions of the policy, may be provided for by rider added hereto.

Waiver.—No one has power to waive any provision or condition of this policy except such as by the terms of the policy is the subject of agreement added hereto, nor shall any such provision or condition be waived unless the waiver is in writing added hereto, nor shall any provision or condition of this policy or any forfeiture be waived by any requirement, act, or proceeding on the part of this company relating to appraisal

or to any examination herein provided for; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the insured unless granted herein or by rider added hereto.

Cancellation of policy.—This policy will be canceled at any time at the request of the insured, in which case the company shall, upon demand and surrender of the policy, refund the excess of paid premium above the customary short rates for the expired time. The policy may be canceled at any time by the company by giving to the insured a five days written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation must state that the excess premium (if not tendered) will be refunded on demand.

Pro rata liability.—This company will not be liable for a greater proportion of any loss or damage than the amount hereby insured bears to the whole insurance covering the property, whether valid or not and whether collectible or not.

Noon.—The word "noon" herein means noon of standard time at the place of loss or damage.

Mortgagee.—If loss or damage is made payable, in whole or in part, to a mortgagee, this policy may be canceled as to such interest by giving to the mortgagee a ten days written notice of cancellation. Upon failure of the insured to render proof of loss, such mortgagee shall, as if named as insured hereunder, but within sixty days after such failure, render proof of loss and be subject to the provisions hereof as to appraisal and time of payment. On payment to a mortgagee of any sum for loss or damage hereunder, if this company claims that as to the mortgagor or owner no liability existed, it shall, to the extent of such payment, be subrogated to the mortgagee's right of recovery and claim upon the collateral to the mortgage debt, but without impairing the mortgagee's right to sue; or it may pay the mortgage debt and require an assignment thereof and of the mortgage. Except as stated in this paragraph, the agreement between a mortgagee and this company shall be only as stated by rider added hereto.

Requirements in case of loss.—The insured shall give immediate notice, in writing, to this company, of any loss or damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and the insured shall, within sixty days after the fire, unless such time is extended in writing by this company, render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof, and the amount of loss or damage thereto; all encumbrances thereon; all other contracts of insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; and by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as is reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as is reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals are lost, at such reasonable time and place as is designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the insured and this company fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage, stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized, of any two, when filed with this company, shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him, and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options.—It is optional with this company to take all, or any part, of the articles at the agreed or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of the like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required; but

Abandonment.—There can be no abandonment to this company of any property.

When loss payable.—The amount of loss or damage for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss or damage is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit.—No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity unless the insured has complied with all the requirements of this policy, nor unless commenced within twelve months next after the fire.

Subrogation. — This company may require from the insured an assignment of all right of recovery against any party for loss or damage to

the extent that payment therefor is made by this company.

Standard Fire Insurance Policy of the State of .....

Expires .....
Property .....
Amount . . . . . $ .....
Premium . . . . . $ .....
No.....

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once. (Rev., s. 4760; 1899, c. 54, s. 43; 1901, c. 391, s. 4; 1915, c. 109, s. 9; C. S. 6437.)

§ 58-178. Size of policy; notice; umpire; statement and blanks; policy issued to husband or wife on joint property.—No provisions of this chapter limit insurance companies to use of any particular size or manner of folding the paper upon which their policies are issued. If notice in writing signed by the insured, or his agent, is given before loss or damage by fire to the agent of the company of any fact or condition stated in paragraphs (a), (b), (c), (d), (e), (f), of the standard form of policy set out in § 58-177, it is equivalent to an agreement in writing added thereto, and has the force of the agreement in writing referred to in the foregoing form of policy with respect to the liability of the company and the waiver; but this notice does not affect the right of the company to cancel the policy as therein stipulated.

The resident judge of the superior court of the district in which the property insured is located is designated as the judge of the court of record to select the umpire referred to in the foregoing form of policy. When any company demands or requires the insured, under any fire insurance policy, to furnish a statement in writing as prescribed in the standard policy form, after a fire or loss occurs, the company or its representative shall furnish to the insured a blank or blanks in duplicate to be used for the purpose, which blanks shall be of standard form such as the insurance commissioner has approved. The failure to furnish these blanks is a waiver of the provision requiring such statement. Any policy of fire insurance issued to husband or wife, on buildings and household furniture owned by the husband and wife, either by entirety, in common, or jointly, either name of one of the parties in interest named as the assured or beneficiary therein, shall be sufficient and the policy shall not be void for failure to disclose the interest of the other, unless it appears that in the procuring of the issuance of such policy, fraudulent means or methods were used by the insured or owner thereof. (Rev., s. 4761; 1899, c. 54, s. 43; 1907, c. 578, s. 1; 1915, c. 109, s. 11; 1929, c. 60, s. 1; C. S. 6438.)

§ 58-179. Penalty for issuing policy not of standard form.—Any insurance company which causes to be issued, and any agent who makes, issues, or delivers a policy of fire insurance other than of the standard form, in wilful violation of this chapter, shall forfeit for each offense not less than fifty nor more than two hundred dollars; but the policy shall be binding upon the company issuing it. (Rev., ss. 4762, 4833; 1899, c. 54, s. 44; C. S. 6439.)

§ 58-180. Effect of failure to give notice of encumbrance.—No policy of insurance issued upon any property shall be held void because of the failure to give notice to the company of a mortgage or deed of trust existing thereon or thereafter placed thereon, except during the life of the mortgage or deed of trust. (1915, c. 109, s. 4; C. S. 6440.)

§ 58-181. Additional or coinsurance clause.—No fire insurance company licensed to do business in this state may issue any policy or contract of insurance covering property in this state which shall contain any clause or provision requiring the insured to take out or maintain a larger amount of insurance than that expressed in such policy, nor in any way provide that the insured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provision shall be null and void, and of no effect: Provided, the coinsurance clause or provision may be written in or attached to a policy or policies issued when there is stamped on the face of such policy the words "coinsurance contract." The rate for the insurance with and without the coinsurance clause shall be furnished the owner upon request. (1915, c. 109, s. 5; 1925, c. 70, s. 4; C. S. 6441.)

Art. 20. Deposits by Foreign Fire Insurance Companies.

§ 58-182. Amount and nature of deposits required.—Unless otherwise provided in this article, every fire insurance company chartered by any other state or foreign government shall, by their general agent or through some authorized officer, deliver under oath to the insurance commissioner of this state a statement of the amount of capital stock of the company, and deposit with him bonds of the United States, or of the state of North Carolina, or of the cities or counties of this state, or first mortgages on real estate situated in this state to be approved by the insurance commissioner, as follows: Companies whose capital stock is five hundred thousand dollars or less, ten thousand dollars; companies whose capital stock is more than five hundred thousand dollars and not over one million dollars, twenty thousand dollars; companies whose capital stock is in excess of one million dollars, twenty-five thousand dollars; and every insurance company writing a fidelity, surety or casualty business in this state shall be required to deposit with the state securities of the same class enumerated above in the following amounts: Companies whose premium income derived from this state is less than $100,000.00 per annum, $25,000.00; companies whose premium income is in excess of $100,000.00 per annum, $50,000.00; and the insurance commissioner shall thereupon give the agent a receipt for the same. With securities so deposited the company shall at the same time deliver to the insurance commissioner a power of attorney authorizing him to transfer said securities or any part thereof for the purpose of paying any of the liabilities provided for in this article. The insurance commissioner shall require each company to make good any depreciation or reduction in value of the securities. The securities re-

quired to be deposited by each insurance company in this article shall be delivered for safekeeping by the insurance commissioner to the treasurer of the state, who shall receipt him therefor. For securities so deposited the faith of the state is pledged that they shall be returned to the parties entitled to receive them or disposed of as hereinafter provided for. The securities deposited by any company under this article shall not, on account of such securities being in this state, be subjected to taxation, but shall be held exclusively and solely for the protection of contract holders. (1909, c. 923, s. 1; 1911, c. 164, s. 1; Ex. Sess. 1913, c. 62, ss. 1, 2, 3; 1915, c. 166, s. 6; 1933, c. 60; C. S. 6442.)

§ 58-183. Right of company to receive interest on deposits.—The insurance commissioner, at the time of receiving the securities, shall give to the company authority to draw the interest thereon, as the same may become due and payable, for the use of the company, and this authority shall continue in force until the company fails to pay any liability arising upon any policy made in favor of any person, firm, or corporation which shall be, at the time the liability arises, a resident of this state, or which shall own property in the state covered by policies issued. In case of such failure the corporation charged with the payment of such interest shall be forthwith notified, and thereafter the interest, so long as the liability exists, shall be payable to the insurance commissioner, to be applied, if necessary, to the payment of such liability. (1909, c. 923, s. 2; C. S. 6443.)

§ 58-184. Sale of deposits for payment of liabilities.—If the company fails to pay any of its liabilities on its contracts according to the terms thereof, after the liabilities have been adjusted between the parties in the manner prescribed by the contracts, if any manner is prescribed thereby, or after the same have been ascertained in any manner agreed upon by the parties or by the judgment, order, or decree of the court having jurisdiction of the subject, the insurance commissioner shall, upon application of the party to whom the debt or money is due, and upon satisfactory proof that the notice herein required has been given to the company, proceed to sell at public auction such an amount of the securities as, with the interest in his hands, will pay the sum due and expenses of sale, and out of the proceeds of sale pay said sums and expenses; and the company shall be required forthwith to make good any deficit in the amount of the deposit caused by such sale. The party making application shall give to the company or to its agent in this state twenty days notice of his intention to apply to the insurance commissioner for the sale of securities. The insurance commissioner shall advertise the sale of the securities for thirty days prior to the day of the sale in some daily newspaper published in the city of Raleigh, and shall state in the advertisement the securities to be sold and the company depositing them, and shall mail a copy to the company. (1909, c. 923, s. 3; C. S. 6444.)

§ 58-185. Lien of policyholders; action to enforce.—Upon the securities deposited with the insurance commissioner by any such insurance company, the holders of all contracts of the company who are citizens or residents of this state at such time, or who hold policies issued upon property in the state, shall have a lien for the amounts due them, respectively, under or in consequence of such contracts for losses, equitable values, return premiums, or otherwise, and shall be entitled to be paid ratably out of the proceeds of said securities, if such proceeds be not sufficient to pay all of said contract holders. When any company depositing securities as aforesaid becomes insolvent or bankrupt or makes an assignment for the benefit of its creditors, any holder of such contract may begin an action in the superior court of the county of Wake to enforce the lien for the benefit of all the holders of such contracts. The insurance commissioner shall be a party to the suit, and the funds shall be distributed by the court, but no cost of such action shall be adjudged against the insurance commissioner. (1909, c. 923, s. 4; C. S. 6445.)

§ 58-186. Substitution for securities paid. — Where the principal of any of the securities so deposited is paid to the insurance commissioner, he shall notify the company or its agent in this state, and pay the money so received to the company upon receiving other securities of the character named in this article to an equal amount, or, upon the failure of the company for thirty days after receiving notice to deliver such securities to an equal amount to the insurance commissioner, he may invest the money in any such securities and hold the same as he held those which were paid. (1909, c. 923, s. 5; C. S. 6446.)

§ 58-187. Return of deposits.—If such company ceases to do business in this state, and its liabilities, whether fixed or contingent upon its contracts, to persons residing in this state or having policies upon property situated in this state have been satisfied or have been terminated, upon satisfactory evidence of this fact to the insurance commissioner the state treasurer shall deliver to such company, upon the order of the insurance commissioner, the securities in his possession belonging to it, or such of them as remain after paying the liabilities aforesaid. (1909, c. 923, s. 6; C. S. 6447.)

§ 58-188. Deposit required before license granted; exception.—When any fire insurance company files an application with the insurance commissioner to be admitted to do business in this state, he shall require of it a compliance with the provisions of this article before issuing a license to such company; but this article shall not apply to companies licensed to do a reinsurance business only. (1909, c. 923, s. 7; 1915, c. 166, s. 6; C. S. 6448.)

Art. 21. Insuring State Property.

§ 58-189. Insurance commissioner to procure insurance.—It is the duty of the insurance commissioner to prepare a schedule of the different properties of the state and to procure policies of insurance thereon according to these schedules for such amounts as he is able to provide for with the provisions and appropriations for the insurance of state property, and to inspect and pass upon all policies of insurance issued upon

the public buildings or other property belonging to the state, as regards the form of contract, rate, description, and such other things as are necessary to have the policies in proper form. He shall keep a record in his department, showing the number and date of policy, the name of company, the amount insured, the amount of premium, date of expiration, the property insured, and its location. (Rev., s. 4825; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 1; 1905, c. 441; C. S. 6449.)

§ 58-190. Payment of premiums by state treasurer.—When the insurance commissioner has placed the insurance on state property as provided for in this article and approved the bill for the same, the bill shall be paid out of the insurance appropriation of the department for which the insurance is effected, in an amount sufficient to insure the property up to fifty per centum of the scheduled value of such property, but this shall not apply to insurance on property of, or in charge of, the agricultural department and state prison. (Rev., s. 4827; 1905, c. 441, s. 2; 1919, c. 155; Ex. Sess. 1921, c. 61; 1923, c. 248; 1929, c. 100; C. S. 6450.)

§ 58-191. Payment of premiums by officers in charge.—The insurance on the property of, or in charge of, the agricultural department and the state's prison shall be for the amount agreed upon by the insurance commissioner and the officer or officers having such property in charge, and the premiums shall be paid out of the special funds of the agricultural department and state's prison on the order of the insurance commissioner. Before such board, public officer, or other person charged with the custody or safekeeping of any public building or other property of the state may pay any sum of money as premium for a policy of insurance thereon, they shall receive and file among their records a certificate of the insurance commissioner that he has examined and approved of the policies of insurance, giving the number, amount, date, and term of such policies, the property covered, and the names of the companies in which they are written. (Rev., ss. 4826, 4827; 1901, c. 710, ss. 1, 2; 1903, c. 771, ss. 2, 3; 1905, c. 441, s. 2; C. S. 6451.)

§ 58-192. Information furnished commissioner by officers in charge.—It is the duty of the different officers or boards having in their custody any property belonging to the state to inform the commissioner, giving him in detail a full description of same, and to keep him informed of any changes in such property or its location or surroundings. (Rev., s. 4828; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 2; C. S. 6452.)

§ 58-193. Commissioner to inspect state property; plans submitted.—It is the duty of the commissioner at least once in each year, or oftener, if deemed necessary, to visit, inspect, and thoroughly examine each state institution or other state property with a view to its protection from fire, as well as to the safety of its inmates or the property therein in case of fire, and call to the attention of the board or officer having the same in charge any defect noted by him or any improvement deemed necessary. No board, commission, superintendent, or other person or persons authorized and directed by law to select plans and erect buildings for the use of the state of North Carolina or any institution thereof or for the use of any county, city, or incorporated town or school district shall receive and approve of any plans until they are submitted to and approved by the insurance commissioner of the state as to the safety of the proposed buildings from fire, as well as the protection of the inmates in case of fire. (Rev., s. 4829; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 3; 1909, c. 880; 1919, c. 186, s. 3; C. S. 6453.)

§ 58-194. Report required of commissioner.—The insurance commissioner must submit annually to the governor a full report of his official action under this article, with such recommendations as commend themselves to him, and it shall be embodied in or attached to his biennial report to the general assembly. (Rev., s. 4830; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 4; C. S. 6454.)

SUBCHAPTER IV. LIFE INSURANCE.

Art. 22. General Regulations of Business.

§ 58-195. Life insurance company defined; requisites of contract.—All corporations, associations, partnerships, or individuals doing business in this state, under any charter, compact, agreement, or statute of this or any other state, involving the payment of money or other thing of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract, or pledge for the payment of endowments or annuities, or who employ agents to solicit business, are life insurance companies, in all respects subject to the laws herein made and provided for the government of life insurance companies, and shall not make any such insurance, guaranty, contract, or pledge in this state with any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment, and the consideration therefor. (Rev., s. 4773; 1899, c. 54, s. 55; C. S. 6455.)

§ 58-196. Foreign companies; requirements for admission.—A company organized under the laws of any other of these United States for the transaction of life insurance may be admitted to do business in this state if it complies with the other provisions of this chapter regulating the terms and conditions upon which foreign life insurance companies may be admitted and authorized to do business in this state, and, in the opinion of the insurance commissioner, is in sound financial condition and has policies in force upon not less than five hundred lives for an aggregate amount of not less than five hundred thousand dollars. Any life company organized under the laws of any other country than the United States, in addition to the above requirements, must make and maintain the deposit required of such companies by article four of this chapter. (Rev., s. 4774; 1899, c. 54, s. 56; C. S. 6456.)

§ 58-197. Soliciting agent represents the company.—A person who solicits an application for insurance upon the life of another, in any contro-

versy relating thereto between the insured or his beneficiary and the company issuing a policy upon such application, is the agent of the company and not of the insured. (1907, c. 958, s. 1; C. S. 6457.)

§ 58-198. Discrimination between insurants forbidden.—A life insurance company doing business in this state shall not make any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount of payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any of the terms and conditions of the contracts it makes; nor shall any such company or any agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor pay or allow as inducement to insurance any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance; nor give, sell, or purchase, or offer to give, sell, or purchase as inducement to insurance or in connection therewith any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits to accrue therein, or anything of value whatsoever not specified in the policy. (Rev., s. 4775; 1899, c. 54, s. 57; 1903, c. 438, ss. 5, 10; 1911, c. 196, s. 7; C. S. 6458.)

§ 58-199. Misrepresentations of policy forbidden.—No life insurance company doing business in this state, and no officer, director, solicitor, or other agent thereof, shall make, issue, or circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, or statement of any sort misrepresenting the terms of the policy issued by it or the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such company, agent, or broker make any misrepresentation to any person insured in said company or in any other company for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender his said insurance. (1913, c. 95; C. S. 6459.)

§ 58-200. Medical examination required.—No life insurance company organized under the laws of or doing business in this State shall enter into any contract of insurance in any twelve months' period in an amount in excess of five thousand dollars ($5,000) upon any one life within this State without having previously made or caused to be made a prescribed medical examination of the insured by a registered medical practitioner; and provided further, that where there has been no medical examination the policy shall not be rendered void nor shall payment be resisted on account of any misrepresentation as to the physical condition of the applicant, except in cases of fraud; and provided further, that this section shall not apply to contracts of insurance issued under the group plan. (Rev., s. 4779; 1899, c. 54, s. 58; 1903, c. 438, s. 5; 1919, c. 186, s. 5; 1925 c. 82; 1927, c. 13, s. 1; C. S. 6460.)

§ 58-201. Domestic companies to report outstanding policies; reinsurance fund calculated.—It is the duty of every life insurance company incorporated by the laws of this state to make returns in January of each year to the insurance commissioner, showing all its policies and annuity bonds in force on the first day of that month, with such particulars of the same as are necessary for the valuation thereof as hereinafter directed. The insurance commissioner shall thereupon compute, or cause to be computed, the value of such policies and bonds, or what is known as the reinsurance fund therefor, according to the American experience table of mortality and interest at the rate of four and a half per centum, or according to the actuaries' mortality and four per centum interest, or according to any other recognized standard of valuation as he deems best for the security of the business and the safety of the persons insured. Upon this valuation being made and a certificate thereof furnished by the insurance commissioner, each company shall pay to such officer, to defray the expenses thereof, the sum of one cent for every thousand dollars of the whole amount insured by its policies so valued. The reserve fund hereinbefore provided for shall not be available for or used for any other purpose than the discharge of policy obligations, but is a trust fund to be held and expended only for the benefit of policyholders. In case of the insolvency of the company, the reserve on outstanding policies may, with the consent of the insurance commissioner, be used for the reinsurance of its policies to the extent of their pro rata part thereof. (Rev., s. 4777; 1903, c. 536, s. 4; 1905, c. 410; 1907, c. 1000, s. 7; C. S. 6461.)

§ 58-202. Reinsurance of risks regulated.—No domestic life insurance company may reinsure its risks without the permission of the insurance commissioner, except to the extent of one-half of any individual risk. The receiver of any life insurance company organized under the laws of this state, when the assets of the company are sufficient for that purpose, and the consent of two thirds of its policyholders has been secured in writing, may reinsure all the policy obligations of such company in some other solvent life insurance company, or, when the assets are insufficient to secure the reinsurance of all the policies in full, he may reinsure such a percentage of each and every policy outstanding as the assets will secure; but there must be no preference or discrimination as against any policyholder, and the contract for such reinsurance by the receiver must be approved by the insurance commissioner of this state before it has effect. (Rev., s. 4778; 1899, c. 54, s. 58; 1903, c. 536, s. 9; C. S. 6462.)

§ 58-203. Punishment for violation of law as to reinsurance and medical examination.—If any domestic life insurance company shall reinsure its risks, except by permission of the insurance commissioner, exceeding one-half of any individual risk, or if any life insurance company organized under the laws of, or doing business in, this state shall enter into any contract of insurance upon lives within this state without having previously made or caused to be made a prescribed medical examination of the insured by a registered medical

practitioner, such insurance company, or any officer, agent, or other person soliciting or effecting or attempting to effect, a contract of insurance contrary to this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars for each offense. (Rev., s. 3497; 1899, c. 54, s. 58; C. S. 6463.)

§ 58-204. Insurable interest as between stockholders, partners, etc.—Where two or more persons own stock or interests in the same corporation, partnership or business association and have heretofore contracted or hereafter contract with one another for the purchase, at the death of one, by the survivor or survivors of the stock, share or interest of the deceased, the person or persons making the contract of purchase shall be deemed to have, and are hereby declared to have, an insurable interest in the life or lives of the person or persons contracting to sell. (1941, c. 201.)

§ 58-205. Rights of beneficiaries.—When a policy of insurance is effected by any person on his own life, or on another life in favor of some person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance. The person to whom a policy of life insurance is made payable may maintain an action thereon in his own name. Every policy of life insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred, or in any way made payable to a married woman, or to any person in trust for her or for her benefit, whether procured by herself, her husband, or by any other person, and whether the assignment or transfer is made by her husband or by any other person, inures to her separate use and benefit and to that of her children, if she dies in his lifetime. (Rev., ss. 4771, 4772; Const., Art. X, s. 7; 1899, c. 54, s. 59; C. S. 6464.)

§ 58-206. Creditors deprived of benefits of life insurance policies except in cases of fraud.—If a policy of insurance, is effected by any person on his own life or on another life, in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avails against creditors and representatives of the insured and of the person effecting same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person: Provided, that subject to the statute of limitations, the amount of any premiums for said insurance paid with the intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms unless, before such payment, the company shall have written notice by or in behalf of the creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount claimed. (1931, c. 179, s. 1.)

§ 58-207. Notice of nonpayment of premium required before forfeiture.—No life insurance corporation doing business in this state shall, within one year after the default in payment of any premium, installment, or interest, declare forfeited or lapsed any policy hereafter issued or renewed and not issued upon the payment of monthly or weekly premiums, or unless the same is a term insurance contract for one year or less, nor shall any such policy be forfeited or lapsed by reason of nonpayment, when due, of any premium, interest, or installment or any portion thereof required by the terms of the policy to be paid, within one year from the failure to pay such premium, interest, or installment, unless a written or printed notice stating the amount of such premium, interest, installment, or portion thereof due on such policy, the place where it shall be paid, and the person to whom the same is payable has been duly addressed and mailed, postage paid, to the person whose life is insured or the assignee of the policy, if notice of the assignment has been given to the corporation, at his or her last known postoffice address in this state, by the corporation or by any officer thereof or person appointed by it to collect such premium, at least fifteen and not more than forty-five days prior to the day when the same is payable, as regards policies which do not contain a provision for grace or are not entitled to grace in the payment of premiums and at least five and not more than forty-five days prior to the day when the same is payable as regards policies which do contain a provision for grace or are entitled to grace in the payment of premiums. The notice shall also state that unless such premium, interest, installment, or portion thereof then due shall be paid to the corporation or to the duly appointed agent or person authorized to collect such premium, by or before the day it falls due, the policy and all payments thereon will become forfeited and void, except as to the right to a surrender value or paid-up policy, as in the contract provided. If the payment demanded by such notice shall be made within its time limit therefor, it shall be taken to be in full compliance with the requirements of the policy in respect to the time of such payment; and no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice. The affidavit of any officer, clerk, or agent of the corporation, or of any one authorized to mail such notice, that the notice required by this section has been duly addressed and mailed by the corporation issuing such policy, shall be presumptive evidence that such notice has been duly given. No action shall be maintained to recover under a forfeited policy unless the same is instituted within three years from the day upon which default was made in paying the premium, installment, interest, or portion thereof for which it is claimed that forfeiture ensued.

No insurance company doing business in this State and issuing health and/or accident insur-

ance policies, other than contracts of group insurance or disability and/or accidental death benefits in connection with policies of life insurance, the premium for which is to be collected in weekly, monthly, or other periodical installments by authority of a payroll deduction order executed by the assured and delivered to such insurance company or the assured's employer authorizing the deduction of such premium installments from the assured's salary or wages, shall, during the period for which such policy is issued, declare forfeited or lapsed any such policy hereafter issued or renewed until and unless a written or printed notice of the failure of the employer to remit said premium or installment thereof stating the amount or portion thereof due on such policy and to whom it must be paid, has been duly addressed and mailed to the person who is insured under such policy at least fifteen days before said policy is cancelled or lapsed. (1909, c. 884; 1929, c. 308, s. 1; 1931, c. 317; C. S. 6465.)

§ 58-208. Minimum premium rates for assessment life insurance companies.—No assessment life insurance corporation, organization or association of any kind issuing policies or contracts upon the life of any resident of this state shall hereafter be organized or licensed by the insurance commissioner unless such corporation, organization or association adopt premium rates based upon the attained age of the assured at the time of issuance of the contract and such rates shall not be less than those fixed by the American Experience Table of Mortality or any other recognized table of mortality approved by the insurance commissioner. Nothing contained in this section shall be construed to affect burial associations regulated under §§ 58-224 to 58-241, or railroad burial associations. (1939, c. 161.)

§ 58-209. Distribution of surplus in mutual companies.—Every life insurance company doing business in this state upon the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof, may distribute the surplus annually, or once in two, three, four, or five years, as its directors determine. In determining the amount of the surplus to be distributed there shall be reserved an amount not less than the aggregate net value of all the outstanding policies, this value to be computed by the American Experience Table of Mortality with interest not exceeding four and one-half per cent. (Rev., s. 4776; 1903, c. 536, s. 10; C. S. 6466.)

§ 58-210. Definition of group life insurance.—Group life insurance is hereby declared to be that form of life insurance covering not less than fifty employees with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: Provided, however, that when the premium is to be paid by the employer and employees jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per centum of such employees may be so insured. Such group policy may provide that the term 'employees' shall include the officers, managers and employees of subsidiary or affiliated corporations and the individual proprietors, partners and employees of affiliated individuals and firms, when the business of such subsidiary or affiliated corporations, firms or individuals is controlled by the common employer through stock ownership, contract or otherwise. (1925, c. 58, s. 1; 1931, c. 328.)

§ 58-211. Standard provisions for policies of group life insurance.—No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the Insurance Commissioner and formally approved by him; nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

(a) A provision that the policy shall be incontestable after two years from its date of issue, except for nonpayment of premium and except for violation of the conditions of the policy relating to military or naval service in time of war.

(b) A provision that the policy, the application of the employer and the individual applicants, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer or by the individual employees shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application.

(c) A provision for the equitable adjustment of the premiums or the amount of insurance payable in the event of a misstatement in the age of the employee.

(d) A provision that the company will issue to the employer for delivery to the employee whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provision to the effect that in case of the termination of the employment for any reason whatsoever the employee shall be entitled to have issued to him by the company, without evidence of insurability, and upon application made to the company within thirty-one days after such termination, and upon the payment of the premium applicable to the class of risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company, except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination.

(e) A provision that to the group or class thereof originally insured shall be added from time to time all new employees of the employer eligible to insurance in such group or class.

Except as provided in this chapter it shall be unlawful to make a contract of life insurance covering a group in this State. Policies of group life insurance, when issued in this State by any company not organized under the laws of this

State, may contain, when issued, any provision required by the law of the state territory, or district of the United States under which the company is organized; and policies issued in other states or countries by companies organized in this State, may contain any provision required by the laws of the State, territory, district or county in which the same are issued, anything in this section to the contrary notwithstanding. Any such policy may be issued or delivered in this State which in the opinion of the Insurance Commissioner contains provisions on any one or more of the several foregoing requirements more favorable to the employer or to the employee than hereinbefore required. (1925, c. 58, s. 2.)

§ 58-212. Voting power under policies of group life insurance.—In every group policy issued by a domestic life insurance company, the employer shall be deemed to be the policyholder for all purposes within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. (1925, c. 58, s. 3.)

§ 58-213. Exemption from execution. — No policy of group insurance, nor the proceeds thereof, when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. (1925, c. 58, s. 4.)

Art. 23. Registered Policies.

§ 58-214. Deposits to secure registered policies.—Any life insurance company, incorporated under the laws of this state, may deposit with the insurance commissioner securities of the kind described in article six of this chapter, for the investment of the capital of insurance companies, or farm loan bonds issued by the federal land banks, or notes secured by real estate situated in another state approved by the committee hereinafter designated, to any amount not less than ten thousand dollars, which shall be legally transferred by it to him as insurance commissioner and his successors for the common benefit of all the holders of its "registered" policies and annuity bonds issued under the provisions of this article; and these securities shall be held by him and his successors in office in trust for the purposes and objects specified herein.

All securities offered to the insurance commissioner for deposit under this section shall, before acceptance by him, be approved by a committee, composed of the commissioner, the state treasurer, and the attorney-general; and when the securities are of the character prescribed by law and approved by a majority of the committee, the insurance commissioner shall list them in a book of records kept in his department for that purpose. The committee shall endorse on the record, at the end of the list of the securities, its approval of the securities named in the list. The record shall contain a separate list or account of the securities deposited by each insurance company, so kept as to show at all times the total value of all securities on deposit for each company. No security may be withdrawn or substituted except upon the approval of the committee. All the securities, after being approved and listed, shall be deposited with the state treasurer, who shall give his receipt to the insurance commissioner for them. The committee shall, twice a year, in the months of June and December, review and assess the value of all securities on deposit under this section. (Rev., s. 4780; 1905, c. 504, s. 12; 1009, c. 920, ss. 1, 2; 1911, c. 140, s. 1; 1917, c. 191, s. 2; C. S. 6467.)

§ 58-215. Additional deposits may be required.—Each company which has made deposits herein provided for shall make additional deposits from time to time, as the insurance commissioner prescribes, in amounts of not less than five thousand dollars and of such securities as are described in the preceding section, so that the market value of the securities deposited shall always equal the net value of the registered policies and annuity bonds issued by the company, less such liens not exceeding such value as the company has against it. No company organized under this chapter shall be required to make such deposit until the net value of the policies in force, as ascertained by the insurance commissioner, exceeds the amount deposited by said company under the preceding section. As long as any licensed company maintains its deposits as herein prescribed at an amount equal to or in excess of the net value of its registered policies and annuity bonds, as aforesaid, it is the duty of the insurance commissioner to sign and affix his seal to the certificates, as required in this article, on every policy and annuity bond presented to him for that purpose by any company so depositing. (Rev., s. 4781; 1905, c. 504, s. 15; 1909, c. 920, s. 3; 1911, c. 140, s. 2; 1917, c. 191, s. 3; C. S. 6468.)

§ 58-216. Withdrawal of deposits.—Any such company whose deposits exceed the net value of all registered policies and annuity bonds it has in force, less such liens not exceeding such value as the company holds against them, may withdraw such excess or it may withdraw any of such securities at any time by depositing in their place others of equal value and of the character authorized by law; and as long as such company remains solvent and keeps up its deposits, as herein required, it may collect the interest and coupons on the securities deposited as they accrue; and any life insurance company may withdraw such securities by and with the consent of the policyholder only; and in case of such withdrawal, the certificate of registration in each case must be surrendered for cancellation, or a receipt from the policyholder, satisfactory to the insurance commissioner, must be produced before such withdrawal of deposits shall be allowed. (Rev., s. 4782; 1905, c. 504, s. 18; 1911, c. 134; C. S. 6469.)

§ 58-217. Manner of keeping deposits.—The securities deposited under this article shall be deposited and kept in the manner required by law for the keeping of other deposits of insurance companies, but separate from other deposits of

the company. (Rev., s. 4783; 1905, c. 504, s. 19; C. S. 6470.)

§ 58-218. Record of securities kept by commissioner; deficit made good.—The insurance commissioner shall keep a careful record of the securities deposited by each company, and when furnishing the annual certificates of value hereafter required in this article, he may enter thereon the face and market value of the securities deposited by such company. If at any time it appears from such certificate or otherwise that the value of securities held on deposit is less than the net value of the registered policies and annuity bonds issued by such companies, it is not lawful for the insurance commissioner to execute the certificate on any additional policies or annuity bonds of such company until it has made good the deficit. If any company fails or neglects to make such deposits for sixty days it shall be deemed to be insolvent and shall be proceeded against in the manner provided by law in such cases. (Rev., s. 4784; 1905, c. 504, s. 16; C. S. 6471.)

§ 58-219. Registered policies certified. — After making the deposits provided for in this article no company may issue a policy of insurance or endowment or an annuity bond known or designated as "registered" unless it has upon its face a certificate in the following words: "This policy or annuity bond is registered and secured by pledge of bonds, stocks, or securities deposited with this department as provided by law," which certificate shall be signed by the insurance commissioner and sealed with the seal of his office. Such policies and bonds shall be known as "registered" policies and annuity bonds, and a sample copy of such kind, class, and issue shall be kept in the office of the insurance commissioner. All policies and bonds of each kind and class issued, and the copies thereof, filed in the office of the insurance commissioner must have imprinted thereon some appropriate designating letter, combination of letters or terms identifying the special forms of contract, together with the year of adoption of such form, and whenever any change or modification is made in the form of contracts, policy, or bond, the designating letters or terms and year of adoption thereon shall be changed accordingly. (Rev., s. 4785; 1905, c. 504, s. 13; C. S. 6472.)

§ 58-220. Deposit for, and registration of, unregistered policies.—Every company which has made the deposit herein provided for may, at any time after the date on which it was made, deposit with the insurance commissioner securities of the kind herein mentioned and in accordance with the provisions hereof, in an amount, inclusive of any amount deposited under the provisions of this law, equal to the net value of any nonregistered policies and annuity bonds which it has in force at that time, less such liens not exceeding such actual cash value as the company has against them, and the insurance commissioner shall, when requested so to do, furnish such company with a certificate of the description mentioned in § 58-219, to be attached to each of said policies and annuity bonds. The insurance commissioner shall enter upon each of such certificates the number of the policy or annuity bond to which it belongs and make a record of the same in his department. (Rev., s. 4786; 1905, c. 504, s. 17; C. S. 6473.)

§ 58-221. Record to be kept by commissioner; valuation; mutilated policies.—The insurance commissioner shall prepare and keep such registers of registered policies of insurance or endowment and of annuity bonds as will enable him to compute their value at any time. Upon sufficient proof, attested by the president or vice-president and secretary of the company which has issued such policies or annuity bonds, that any of them have been commuted or terminated, the insurance commissioner shall commute or cancel them upon such register. The net present value of every policy or annuity bond according to the standard prescribed in the laws of this state for the valuation of policies of life insurance companies when the first premium shall have been paid thereon, less the amount of such liens, not exceeding such value as the company has against it, shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time the record is made. On the thirty-first day of December of each year or within sixty days thereafter the insurance commissioner shall cause the registered policies and annuity bonds of each company to be carefully revalued, and the net present value thereof at the time fixed for such valuation, less such liens, not exceeding such value as the company has against it, shall be entered upon the register opposite the record of such policy or bond, and the insurance commissioner shall furnish a certificate of the aggregate of such value to the company. For the purpose of making this valuation the insurance commissioner may employ a competent actuary, who shall be paid by the company for which the services are rendered, but nothing herein shall prevent any company from having made such valuation herein contemplated, which may be received by the insurance commissioner upon such proof as he determines. Upon application of an insurance company, subject to the provisions of this article, it is the duty of the insurance commissioner to receive mutilated policies and annuity bonds issued by said companies and certify in lieu thereof other policies or bonds of like tenor and date. (Rev., s. 4787; 1905, c. 504, s. 14; C. S. 6474.)

§ 58-222. Power of commissioner in case of insolvency.—If at any time the affairs of a life insurance company which has deposited securities under the provisions of this article, in the opinion of the insurance commissioner, appear in such condition as to render the issuing of additional policies and annuity bonds by such company injurious to the public interest, the insurance commissioner may take such proceedings against the company as are authorized by law to be taken against other insolvent companies, and said companies are in all respects subject to the provisions of law affecting other companies. (Rev., s. 4788; 1905, c. 504, s. 20; C. S. 6475.)

§ 58-223. Fees for registering policies.—Every company making deposits under the provisions of this article must pay to the insurance commissioner for each certificate on registered policies or annuity bonds, including seal, a fee of fifty cents for those exceeding ten thousand dollars in

amount and twenty-five cents for all under ten thousand dollars in amount, except policies for one hundred dollars and not exceeding five hundred dollars the fee shall be fifteen cents; for policies of one hundred dollars or less the fee shall be ten cents; for each certificate, including seal, for nonregistered policies issued in accordance with the provisions of this article, the fee shall be twenty-five cents. (Rev., s. 4789; 1905, c. 504, s. 21; C. S. 6476.)

Art. 24. Mutual Burial Associations.

§ 58-224. Mutual burial associations placed under supervision of burial association commissioner.—All mutual burial associations now organized and operating in the state of North Carolina, and all mutual burial associations hereafter organized and operating within said state, shall be under the general supervision of a burial association commissioner to be appointed by the governor of the state of North Carolina, whose term shall be for a period of four years and his salary to be fixed by the governor. (1941, c. 130, s. 2.)

§ 58-225. Maintenance of separate branches, when operated for benefit of both races.—All burial associations now operating in the state of North Carolina and all burial associations hereafter organized and operated in the state of North Carolina, for the benefit of both races, shall maintain and operate two separate branches, and the provisions of article 24 shall apply to each branch as a separate association, except as hereinafter provided. (1941, c. 130, s. 3.)

§ 58-226. Requirements as to rules and by-laws.—All burial associations now operating within the state of North Carolina, and all burial associations hereafter organized and operating within the state of North Carolina shall have and maintain rules and by-laws embodying in substance the following:

Article 1. The name of this association shall be ....., which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of any association already organized, shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which benefit shall consist of a funeral in merchandise and service, with no free embalming or free ambulance service included in such benefits; and in no case shall any cash be paid. That no other free service or any other thing free shall be held out, promised or furnished in any case. Such funeral benefit shall be in the amount of one hundred dollars ($100.00) of merchandise and service, without free embalming or free ambulance service, for persons of the age of ten years and over, and in the amount of fifty dollars ($50.00) for persons under the age of ten years.

Article 3. Any person of either the white or colored race who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of such burial association by the payment of a membership fee by such person, or for such person, of twenty-five cents. Applicant's birthday must be written in the application and subject to verification by any record the burial association commissioner may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at ..... (here insert the place, date and hour); each member shall have one vote at said annual meeting and fifteen members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and by-laws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. The secretary-treasurer shall be the only paid officer of the association and his compensation shall be fixed by the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these articles and the by-laws of the association, and subject to such modification as may be made or authorized by an act of the general assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association shall be at all times open to the inspection of the burial association commissioner, provided elsewhere in article 24.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified,

subject to the power of the board of directors to remove any officer for good cause shown: Provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule (or in multiples thereof) at the age of entry of the member: Provided, those members joining at ages under ten shall be charged with the assessment for age ten when they reach their tenth birthday:

Assessment Rate for Age Groups:

First to tenth birthday .....five cents (5c)
Tenth to thirtieth birthday .....ten cents (10c)
Thirtieth to fiftieth birthday ...twenty cents (20c)
Fiftieth to sixty-fifth birthday ..thirty cents (30c)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing, and the frequency of the assessments will be governed by the death rate within the association.

Article 7. No benefit will be paid for natural death occurring within thirty days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: The president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within thirty days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within ninety days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within thirty days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family, and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial service for a deceased member. The service shall be in keeping with the services and casket, sold at the same price, similar to that provided and charged by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the funeral and burial service provided in article nine hereof shall be rendered by (give name of funeral director and town), which funeral director is designated in these rules and by-laws as the official funeral director of this association, and such funeral director shall be, by the secretary-treasurer of this association, immediately notified upon the death of any member, and upon the death of any member it shall be the duty of his or her nearest relative to notify the secretary-treasurer of the association of the death of such member. In the event a member in good standing shall die at a place beyond the territory served by the above named funeral director, the secretary of this association, being notified of such death, shall cause the deceased to receive a funeral and burial service equal to that provided for in these by-laws. The benefits provided for are to be payable to the funeral director rendering such funeral and burial service, which payment the secretary-treasurer is authorized to make. If the secretary-treasurer of the association shall fail, on demand, to provide the benefits as listed in article nine of these rules and by-laws by arrangement with the official funeral director serving the community in which the services are required, then the benefits shall be paid in cash to the representative of the deceased qualified under law to receive such payments.

Article 11. If the proceeds of one assessment on the entire membership produces more than enough for burial or burials, on account of which said assessment is made, the balance shall be placed in the treasury of the association to apply on future burials. Assessments shall be made in such multiples of the assessment rate as is necessary to provide a fund to take care of anticipated deaths until the next assessment period. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of one assessment on the entire membership does not prove sufficient at any time to yield the benefit provided for in these by-laws, then the secretary-treasurer shall notify the burial association commissioner who shall be authorized, unless the membership is increased to that point where such assessment is sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed twenty-five per cent of the assessments collected. In the expenses of operation shall be included an amount sufficient to pay burial association commissioner and two or more auditors, with office expenses, all not to exceed an outlay of seventeen thousand dollars ($17,000.00) per year.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisible, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds per cent of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under article three of these by-laws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two separate burial associations and, upon evidence that membership is maintained contrary to this article, the secretary-treasurer may call upon such member to forfeit all benefits and fees paid in either one or the other of the associations. That any person who is found to have maintained membership in two associations shall forfeit all benefits and fees paid in the second association of which he became a member, unless the membership in the original association was discontinued or such association had been placed in liquidation.

Article 18. Each year before the annual meeting of the membership of this association, the association shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year (giving the names of each person buried and the amount expended by the association in such burial). A statement mailed to the head of a family shall be regarded as notice to each member of such family holding membership in such association. The secretary or secretary-treasurer shall keep a faithful list of all notices mailed each year and shall note opposite the name of each member on the list of membership the date of mailing said statement.

Article 19. These rules and by-laws shall not be modified, cancelled or abridged by any association or other authority except by act of the general assembly of North Carolina. (1941, c. 130, s. 4.)

§ 58-227. Limitation of soliciting agents; licensing and qualifications; officers exempt from license; issuance of membership certificates.—Each burial association shall have not more than five agents or representatives soliciting members other than the secretary-treasurer and president, and before any agent or representative shall or may represent any burial association in North Carolina, he or she shall first apply to the burial association commissioner of North Carolina for a license, and the burial association commissioner shall have full power and authority to issue such license upon proof satisfactory to such commissioner that such person is capable of soliciting burial association memberships, is of good moral character and recommended by the association in behalf of which such membership solicitations are to be made. The burial association commissioner may reject the application of any person who does not meet the requirements set out by him, as to capacity and moral fitness on recommendations by the association. Upon the issuing of a license to solicit membership in any burial association, such person shall be required to pay in cash, at the time of issuing license to such applicant, to the burial association commissioner, the sum of ten dollars ($10.00); moneys derived from this fee or charge to be and remain in the department or office of such burial association commissioner, for supervision of burial associations in this state, subject to withdrawal for expenses of supervision by authority of the burial association commissioner. It shall not be necessary that the president or secretary-treasurer of any burial association shall obtain a license for soliciting membership in any association, of which such person is president or secretary-treasurer. Membership certificates shall not be issued by a solicitor in the field, but shall be reported to the office of the association and there issued and a record made of such issuance at the time such certificate is so issued. (1941, c. 130, s. 5.)

§ 58-228. Assessments against associations for supervision expense.—In order to meet the expense of supervision, the burial association commissioner shall prorate the amount of supervisory cost over and above any other funds in his hands for this purpose and assess each association on a pro rata basis in accordance with the number of members of each association and such association shall remit to the burial association commisioner his pro rata part of the assessment as fixed by the burial association commissioner, which expense shall be included in the twenty-five per cent expense allowance as provided in article thirteen. (1941, c. 130, s. 6.)

§ 58-229. Unlawful to operate without written authority of commissioner.—It shall be unlawful for any person, firm or corporation, association or organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, without the written authority of the burial association commissioner, and any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred and fifty dollars ($250.00) or imprisoned not less than twelve months, or both, in the discretion of the court: Provided, however, the burial association commissioner shall not withhold authority for the organization or operation of a bona fide burial association, meeting the requirements of this act, unless it shall be found and established to the satisfaction of the burial association commissioner

that the person or persons applying for authority to organize and operate such bona fide burial association is disqualified or does not meet the requirements of article 24. (1941, c. 130, s. 7.)

§ 58-230. Penalty for failure to operate in substantial compliance with article 24.—If any burial association or other organization or official thereof, or any person operates or allows to be operated a burial association on any plan, scheme or by-laws not in substantial compliance with the by-laws set forth in § 58-226, the burial association commissioner may revoke any authority or license granted for the operation of such burial association, and any person, firm or corporation or association convicted of the violation of this section shall be guilty of a misdemeanor and shall be fined not less than two hundred and fifty dollars ($250.00) or imprisoned not less than one year in jail, or both, in the discretion of the court. (1941, c. 130, s. 8.)

§ 58-231. Penalty for wrongfully inducing person to change membership.—Any burial association official, agent or representative thereof or any person who shall use fraud or make any promise not part of the printed by-laws, or who shall offer any rebate, gratuity or refund to cause a member of one association to change membership to another association, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred and fifty dollars ($250.00) or imprisoned not less than one year in jail, or both, in the discretion of the court. (1941, c. 130, s. 9.)

§ 58-232. Penalty for making false and fraudulent entries.—Any burial association official who makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal from the burial association commissioner or his deputy or agent, or any auditor authorized to examine the books of such association, under the supervision of the burial association commissioner, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred and fifty dollars ($250.00), or imprisoned in the common jail for not less than twelve months, or both, in the discretion of the court. (1941, c. 130, s. 10.)

§ 58-233. Accepting application without collecting fee.—Any burial association official, agent or representative, or any other person who shall accept an application for membership in any association without collecting the fee from any such person making such application for membership, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred and fifty dollars ($250.00), or imprisoned not less than twelve months in the common jail, or both, in the discretion of the court. (1941, c. 130, s. 11.)

§ 58-234. Removal of secretary-treasurer for failure to maintain proper records.—Any burial association secretary or secretary-treasurer who fails to maintain records to the minimum standards required by the burial association commissioner shall be by such commissioner removed from office and another elected in his stead, such election to be immediate and by the board of directors of said burial association upon notice of such removal. (1941, c. 130, s. 12.)

§ 58-235. Acceptance of donations, failure to make proper assessments, etc., made misdemeanor.—Any person or persons who accept donations from any source, or who contribute money or funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred and fifty dollars ($250.00) or imprisoned in the common jail for not less than twelve months, or both, in the discretion of the court. (1941, c. 130, s. 13.)

§ 58-236. Right of appeal upon revocation of license.—Upon the revocation of any license or authority by the burial association commissioner, under any of the provisions of article 24, the said association or individual whose license has been revoked, shall have right of appeal from the action of said burial association commissioner revoking such license or authority to the superior court of the county in which such burial association may be located, as in other cases of appeal, and the matter shall be heard de novo. (1941, c. 130, s. 14.)

§ 58-237. Loss reserve; deposit of securities with commissioner or bond in lieu thereof.—Every burial association licensed and doing business under the provisions of article 24 shall collect and keep at all times in its treasury one regular loss assessment sufficient to pay one average loss and no burial association shall be licensed by the burial association commissioner until and unless it makes and maintains with him for the protection of its obligations and as assurance that all contractual obligations to its members will be fulfilled, at least five thousand dollars ($5,000.00) in United States or North Carolina bonds, or in the bonds of some city, county or town of North Carolina to be approved by the burial association commissioner, or deposit with him a good and sufficient bond in an amount of not less than five thousand dollars ($5,000.00) secured by deed of trust on real estate situate in North Carolina and approved by him, the bond thus given not to exceed sixty per cent of the appraised value of the real estate securing same, or deposit with the burial association commissioner a bond in an amount of not less than five thousand dollars ($5,000.00) issued by any corporate surety company authorized to do business in this state: Provided, further, that if such association operates a branch for members of the colored race and the officers of both the associations are the same, then the provisions of article 24 shall apply as of one association. (1941, c. 130, s. 15.)

§ 58-238. State-wide organization of associations.—It shall be lawful for the several mutual burial associations of the state of North Carolina, in good standing, to organize and provide for a state-wide organization of mutual burial associations, which organization shall be for the mutual and general suggestive control of mutual burial associations in the state of North

Carolina. Such organization shall have such name as agreed upon by the membership in meetings, and to be composed of members as are lawfully operating in the state and who pay their dues to such association. (1941, c. 130, s. 16.)

§ 58-239. Article 24 deemed exclusive authority for organization, etc., of mutual burial associations.—Article 24 shall be deemed and held exclusive authority for the organization and operation of mutual burial associations within the state of North Carolina, and such associations shall not be subject to any other laws respecting insurance companies of any class. (1941, c. 130, s. 17.)

§ 58-240. Operation of association in violation of law prohibited.—No person, firm or corporation shall operate as a burial association in this state unless incorporated under the laws of the state of North Carolina, or be composed of a membership constituting an association complying with all the rules, regulations, sections and articles of article 24; and licensed and approved by the burial association commissioner of the state of North Carolina. (1941, c. 130, s. 18.)

§ 58-241. Appointment and removal of burial association commissioner; bond.—The burial association commissioner provided for in this act shall be appointed by the governor for a term of four years, subject to removal for cause, and shall hold office until his successor is appointed and qualified. Such burial association commissioner shall give bond approved by the insurance commissioner of the state of North Carolina in the sum of ten thousand dollars ($10,000.00), conditioned for his faithful application of all funds coming into his hands by virtue of his office. (1941, c. 130, s. 19.)

SUBCHAPTER V. AUTOMOBILE LIABILITY INSURANCE.

Art. 25. Regulation of Automobile Liability Insurance Rates.

§ 58-242. Approval by insurance commissioner of automobile liability insurance rates.—Every person, association or corporation authorized to transact automobile liability and/or property damage and/or collision insurance business within this state shall file with the insurance commissioner on or before their effective date, the classification of risks, rules, rates, and rating plans, for writing such insurance, approved or made by such insurer or by any rating organization of which it is a member, none of which shall become effective until approved by the insurance commissioner. The insurance commissioner shall within fifteen days after the filing of each classification of risks, rules, rates and rating plans indicate in writing his approval or disapproval thereof with his reasons therefor. Such filing may be made on behalf of an insurer by the rating organization of which it is a member. Any bureau organized in this state for making and/or administering automobile rates and rating plans shall provide for equal representation of stock and non-stock insurers upon its governing and all other committees and shall admit to membership any insurer applying therefor. (1933, c. 283, s. 1.)

§ 58-243. Compliance with fixed rates mandatory.—Every person, association, or corporation authorized to transact the aforesaid insurance business within this state shall comply with the rates and rules affecting such rates of the rating organization in which it has membership or whose rates it adopts as its standard, or with the rates and rules which such insurer has filed with the insurance commissioner. (1933, c. 283, s. 2.)

§ 58-244. Adjustment of unreasonable rates.—It shall be the duty of the insurance commissioner, after due notice and a hearing before him, to order an adjustment of rates on any such risks or classes of risks whenever it shall be found by him that such rates are excessive or unreasonable or that any insurer is discriminating unfairly between its policyholders whose risks are of essentially the same hazard. The findings, determinations and orders of the insurance commissioner shall be subject to review on their merits by appeal to the superior court of Wake county. (1933, c. 283, s. 3.)

§ 58-245. Refunds by mutuals and exchanges unaffected.—Nothing in this article shall be construed to limit the method of determining rates or plan of operation of any mutual insurance company or inter-insurance exchange in this state, or prevent refund to all policyholders of the same class of any portion of the annual premium not required to defray the expense of such insurance. (1933, c. 283, s. 4.)

§ 58-246. North Carolina automobile rate administrative office created; objects and functions.—There is hereby created a bureau to be known as the North Carolina automobile rate administrative office which office shall be established in the compensation rating and inspection bureau of North Carolina, created under § 97-51 and shall be a branch and under the management of the general manager of the compensation rating and inspection Bureau of North Carolina, with the following objects, functions and sources of income:

(a) To maintain rules and regulations and fix maximum rates for automobile bodily injury, property damage and collision insurance and equitably adjust the same as far as practicable in accordance with the hazard of the different classes of risks as established by said bureau.

(b) To furnish upon request of any person carrying this form of insurance in the state or to any member of the North Carolina automobile rate administrative office, upon whose risk a rate has been promulgated, information as to the rating, including the method of its capitulation, and to encourage safety on the highways and streets of the state, by offering reduced premium rates under a uniform system of experience rating as may be approved by the insurance commissioner. (1939, c. 394, s. 1.)

§ 58-247. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses; insurance commissioner ex-officio chairman.—Before the insurance commissioner shall grant permission to any stock, non-stock, or reciprocal insurance company or any other insurance organization to write automobile bodily injury, property damage and collision insurance in this state, it shall be a requisite that they shall subscribe to and become members of

the North Carolina automobile rate administrative office.

(a) Each member of the North Carolina automobile rate administrative office writing the above classes of insurance in North Carolina shall, as a requisite thereto, be represented in the aforesaid bureau and shall be entitled to one representative and one vote in the administration of the affairs of the bureau. They shall, upon organization, elect a governing committee which governing committee shall be composed of equal representation by stock and nonstock members.

(b) The bureau, when created, shall adopt such rules and regulations for its orderly procedure, as shall be necessary for its maintenance and operation. The expense of such bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from automobile bodily injury, property damage and collision insurance in North Carolina during the preceding year ending December 31, 1938, and members entering such bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the bureau the necessary expense of the bureau shall be advanced by the members in accordance with rules and regulations to be established and adopted by the governing committee.

(c) The insurance commissioner of the state of North Carolina, or such deputy as he may appoint, shall be ex-officio chairman of the North Carolina automobile rate administrative office and shall preside over all meetings of the governing committee or other meetings of the bureau and it shall be his duty to determine any controversy that may arise by reason of a tie vote between the members of the governing committee. (1939, c. 394, s. 2.)

§ 58-248. Personnel and assistants; general manager; authority of insurance commissioner.—In order to carry into effect the objects of §§ 58-246 to 58-248, the bureau members shall immediately elect its governing committee who shall employ and fix the salaries of such personnel and assistants as are necessary, but the general manager of the compensation rating and inspection bureau of North Carolina shall be the general manager also of the North Carolina automobile rate administrative office and the insurance commissioner is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the pure cost and expense loading of automobile bodily injury, property damage and collision insurance in North Carolina and this information shall be available and for the use of the North Carolina automobile rate administrative office for the capitulation and promulgation of rates on automobile bodily injury, property damage and collision insurance. All such rates compiled and promulgated by such bureau shall be submitted to the insurance commissioner for approval and no such rates shall be put into effect in this state until approved by the insurance commissioner and not subsequently disapproved: Provided §§ 58-246 to 58-248 shall not apply to publicly owned vehicles. (1939, c. 394, s. 3.)

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

Art. 26. Nature of Policies.

§ 58-249. Form, classification, and rates to be approved by insurance commissioner.—No policy of insurance against loss or damage from the sickness or the bodily injury or death of the insured by accident shall be issued or delivered to any person in this state until a copy of the form thereof and of the classification of risks and the premium rates pertaining thereto have been filed with the commissioner of insurance; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed unless the commissioner shall sooner give his written approval thereto. If the commissioner shall notify, in writing, the company, society, or other insurer which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the commissioner in this regard shall be subject to review by any court of competent jurisdiction; but nothing in this article shall be construed to give jurisdiction to any court not already having jurisdiction. (1911, c. 209, s. 1; 1913, c. 91, s. 1; C. S. 6477.)

§ 58-250. Specifications as to form of policy.—No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the insurer; nor (3) if the policy purports to insure more than one person; nor (4) unless every printed portion thereof and of any endorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten point; nor (5) unless a brief description thereof be printed on its first page, and on its filing back in type of which the face shall not be smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply: Provided, however, that any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances shall be printed in bold-face type and with greater prominence than any other portion of the text of the policy. (1913, c. 91, s. 2; C. S. 6478.)

§ 58-251. Standard provisions in policy.—Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth and be preceded in every policy by the caption "Standard Provisions." In each standard provision, wherever the the word "insurer" is used, there shall be substituted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the insurer.

1. Provisions Relative to Contract.—A standard provision relative to the contract may be in either of the following two forms: Form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and Form (B) to be used in policies which do so provide. If Form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured."

(A) This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

(B) This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the insurer in accordance with such law; but if such filing is not required by such law then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

2. Changes in the Contract.—A standard provision relative to changes in the contract shall be in the following form: No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval be endorsed hereon.

3. Reinstatement of Policy.—A standard provision relative to reinstatement of policy after lapse may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; Form (B) to be used in policies which insure only against loss from sickness; and Form (C) to be used in policies which insure against loss from both accident and sickness.

(A) If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B) If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C) If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

4. Time of Notice of Claim.—A standard provision relative to time of notice of claim may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident: Form (B) to be used in policies which insure only against loss from sickness, and Form (C) to be used in policies which insure against loss from both accident and sickness. If Form (A) or Form (C) is used the insurer may at its option add thereto the following sentence: "In event of accidental death immediate notice thereof must be given to the insurer."

(A) Written notice of injury on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury.

(B) Written notice of sickness on which claim may be based must be given to the insurer within ten days after the commencement of the disability from such sickness.

(C) Written notice of injury or of sickness on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

5. Sufficient Notice of Claim.—A standard provision relative to sufficiency of notice of claim shall be in the following form, and the insurer shall insert in the blank space such office and its location as it may desire to designate for the purpose of notice:

Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at ..... or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim, if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. Furnishing Forms for Proof of Loss.—A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss shall be as follows:

The insurer, upon receipt of such notice, will

furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

7. Filing Proof of Loss.—A standard provision relative to filing proof of loss shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A) Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

(B) Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C) Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of such loss.

8. Examination of Person and Autopsy. — A standard provision relative to examination of the person of the insured and relative to autopsy shall be in the following form: The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. Time of Payments.—A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made may be in either of the following two forms, which may be omitted from any policy providing only indemnity for loss of time on account of disability. The insurer shall insert in the blank space either the word "immediately" or appropriate language to designate such period of time, not more than sixty days, as it may desire: Form (A) to be used in policies which do not provide indemnity for loss of time on account of disability, and Form (B) to be used in policies which do so provide.

(A) All indemnities provided in this policy will be paid ..... after receipt of due proof.

(B) All indemnities provided in this policy for loss other than that of time on account of disability will be paid ..... after receipt of due proof.

10. Periodical Payments.—A standard provision relative to periodical payments of indemnity for loss of time on account of disability shall be in the following form, and may be omitted from any policy not providing for such indemnity. The insurer shall insert in the first blank space of the form appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half, and in the second blank space shall insert any period of time not exceeding sixty days:

Upon request of the insured and subject to due proof of loss ..... accrued indemnity for loss of time on account of disability will be paid at the expiration of each ..... during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity Payments.—A standard provision relative to indemnity payments may be in either of the two following forms: Form (A) to be used in policies which designate a beneficiary, and Form (B) to be used in policies which do not designate any beneficiary other than the insured:

(A) Indemnity for loss of life of the insured is payable to the beneficiary, if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B) All the indemnities of this policy are payable to the insured.

12. Cancellation of Policy by Insured.—A standard provision providing for cancellation of the policy at the instance of the insured shall be in the following form: If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured, and surrender of the policy, will cancel the same and return to the insured the unearned premium.

13. Rights of Beneficiary.—A standard provision relative to the rights of the beneficiary under the policy shall be in the following form and may be omitted from any policy not designating a beneficiary: Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

14. Limiting Time of Action.—A standard provision limiting the time within which suit may be brought upon the policy shall be as follows: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. Time Limitations.—A standard provision relative to time limitations of the policy shall be as follows: If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law. (1911, c. 209, s. 1; 1913, c. 91, s. 3; C. S. 6479.)

§ 58-252. Certain provisions forbidden in policy. —No such policy shall be issued or delivered which contains any provision (1) relative to cancellation at the instance of the insurer; or (2) limiting the amount of indemnity to a sum less than the amount stated in the policy and for

which the premium has been paid; or, (3) providing for the deduction of any premium from the amount paid in settlement of claim; or, (4) relative to other insurance by the same insurer; or, (5) relative to the age limits of the policy; unless such provisions, which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are set forth in the next section, but the insurer may at its option omit from the policy any such optional standard provisions. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in this article. (1911, c. 209, s. 2; 1913, c. 91, s. 4; C. S. 6480.)

§ 58-253. Optional standard provisions.—The optional standard provisions which may be used in the policy are as follows:

1. Cancellation of Policy by Insurer.—The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address as shown by the records of the insurer, together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

2. Reduction of Indemnity.—If the insured shall carry with another company, corporation, association, or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premiums paid as shall exceed the pro rata for the indemnity thus determined.

3. Deduction of Premium.—Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

4. Other Insurance.—An optional standard provision relative to other insurance by the same insurer which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank spaces of which the insurer shall insert such upward limits of indemnity as are specified by the insurer's classification of risks, filed as required by this article:

(A) If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of $--------, the excess insurance shall be void, and all premiums paid for such excess shall be returned to the insured.

(B) If a like policy or policies, previously issued by the insurer to the insured, be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of $-------- weekly, the excess insurance shall be void, and all premiums paid for such excess shall be returned to the insured.

(C) If a like policy or policies, previously issued by the insurer to the insured, be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of $--------, or the aggregate indemnity for loss of time on account of disability in excess of $-------- weekly, the excess insurance of either kind shall be void, and all premiums paid for such excess shall be returned to the insured.

5. Age Limits.—An optional standard provision relative to the age limits of the policy, which shall be in the following form and in the blank spaces of which the insurer shall insert such number of years as it may elect: The insurance under this policy shall not cover any person under the age of .....years nor over the age of..... years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request. (1911, c. 209, s. 2; 1913, c. 91, s. 4; C. S. 6481.)

§ 58-254. Conflicting provisions forbidden; terms in policy.—No such policy shall be issued or delivered if it contains any provision contradictory, in whole or part, of any provisions hereinbefore in this article designated as "Standard Provisions" or as "Optional Standard Provisions"; nor shall any endorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the "Standard Provisions" or the "Optional Standard Provisions"; nor shall such policy be issued or delivered if it contains any provision purporting to make any portion of the charter, constitution, or by-laws of the insurer a part of the policy unless such portion of the charter, constitution, or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the commissioner of insurance in accordance with the provisions of this article. (1911, c. 209, s. 3; 1913, c. 91, s. 5; C. S. 6482.)

Art. 27. General Regulations.

§ 58-255. False statement in application.—The falsity of any statement in the application for any policy covered by this subchapter shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. (1913, c. 91, s. 6; C. S. 6483.)

§ 58-256. Waiver by insurer.—The acknowledgment by any insurer of the receipt of notice given under any policy covered by this subchapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder, shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy. (1913, c. 91, s. 7; C. S. 6484.)

§ 58-257. Alteration of application.—No alteration of any written application for insurance by erasure, insertion, or otherwise, shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employee of the insurer, with the insurer's knowledge or consent, then such act shall be deemed to have been performed by the insurer thereafter issuing the policy upon such altered application. (1913, c. 91, s. 8; C. S. 6485.)

§ 58-258. Construction of policy.—A policy issued in violation of this subchapter shall be held valid, but shall be construed as provided in this subchapter, and when any provision in such a policy is in conflict with any provision of this subchapter, the rights, duties, and obligations of the insurer, the policyholder, and the beneficiary shall be governed by the provisions of this subchapter. (1913, c. 91, s. 9; C. S. 6486.)

§ 58-259. Provisions of laws of other states.—The policies of insurance against accidental bodily injury or sickness issued by an insurer not organized under the laws of this state may contain, when issued in this state, any provision which the law of the state, territory, or district of the United States under which the insurer is organized, prescribed for insertion in such policies; and the policies of insurance against accidental bodily injury or sickness issued by an insurer organized under the laws of the state may contain, when issued or delivered in any other state, territory, district, or country, any provisions required by the laws of the state, territory, district, or country in which the same are issued, anything in this subchapter to the contrary notwithstanding. (1911, c. 209, s. 4; 1913, c. 91, s. 10; C. S. 6487.)

§ 58-260. Discrimination forbidden. — Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this subchapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited. (1913, c. 91, s. 11; C. S. 6488.)

§ 58-261. Certain policies of insurance not affected.—1. Nothing in this subchapter shall apply to or affect any policy of liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, copartnership, association, or individual employer, police or fire department, underwriters' corps, salvage bureau, or like associations or organizations, where the officers, members, or employees or classes or departments thereof are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise, in consideration of a premium intended to cover the risks of all the persons insured under such policy.

2. Nothing in this subchapter shall apply to or in any way affect contracts supplemental to contracts of life or endowment insurance where such supplemental contracts contain no provisions except such as operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness, nor to contracts issued as supplements to life insurance contracts or contracts of endowment insurance, and intended to increase the amount insured by such life or endowment contracts in the event that the death of the insured shall result from accidental bodily injuries: Provided, that no such supplemental contracts shall be issued or delivered to any person in this state unless and until a copy of the form thereof has been submitted to and approved by the insurance commissioner under such reasonable rules and regulations as he shall make concerning the provisions in such contracts, and their submission to an approval by him.

3. Nothing in this subchapter shall apply to or in any way affect fraternal benefit societies.

4. The provisions of this subchapter contained in clause (5) of § 58-250, and clauses two, three, eight, and twelve of § 58-251, may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees. (1911, c. 209, s. 5; 1913, c. 91, s. 12; 1921, c. 136, s. 5; C. S. 6489.)

§ 58-262. Punishment for violation.—Any company, association, society, or other insurer or any officer or agent thereof, which or who issues or delivers to any person in this state any policy in wilful violation of the provisions of this subchapter, shall be punished by a fine of not more than five hundred dollars for each offense, and the commissioner of insurance may revoke the license of any company, corporation, association, society, or other insurer of another state or country, or of the agent thereof, which or who wilfully violates any provision of this subchapter. (1911, c. 209, s. 6; 1913, c. 91, s. 13; C. S. 6490.)

SUBCHAPTER VII. FRATERNAL ORDERS AND SOCIETIES.

Art. 28. Fraternal Orders.

§ 58-263. General insurance law not applicable.—Nothing in the general insurance laws, except such as apply to fraternal orders or fraternal societies, shall be construed to extend to benevolent associations, incorporated under the laws of this state that only levy an assessment on the members to create a fund to pay the family of a deceased member and make no profit therefrom, and do not solicit business through agents. Such benevolent associations providing death benefits in excess of three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, shall be known as "fraternal benefit societies"; and those providing benefits of three hundred dollars or less shall be known as "fraternal orders." (Rev., s. 4794; 1899, c. 54, s. 87; 1901, c. 706, s. 2; 1913, c. 46; C. S. 6491.)

§ 58-264. Fraternal orders defined.—Every incorporated association, order, or society doing business in this state on the lodge system, with ritualistic form of work and representative form of government, for the purpose of making provision for the payment of benefits of three hundred dollars or less in case of death, sickness, temporary or permanent physical disability, either as the result of disease, accident, or old age, formed and organized for the sole benefit of its members and their beneficiaries, and not for profit, is hereby declared to be a "fraternal order." Societies and orders which do not make insurance contracts or collect dues or assessments therefor, but simply pay burial or other benefits out of the treasury of their orders, and use their funds for the purpose of building homes or asylums for the purpose of caring for and educating orphan children and aged and infirm people in this state, shall not be con-

sidered as "fraternal orders" or "fraternal benefit societies" under this subchapter; and such order or association paying death or disability benefits may also create, maintain, apply, or disburse among its membership a reserve or emergency fund as may be provided in its constitution or by-laws; but no profit or gain may be added to the payments made by a member. (Rev., s. 4795; 1899, c. 54, s. 88; 1901, c. 706, s. 3; 1907, c. 936; 1913, c. 46; C. S. 6492.)

§ 58-265. Funds derived from assessments and dues.—The fund from which the payment of benefits, as provided for in § 58-264, shall be made, and the fund from which the expenses of such association, order or society shall be defrayed, shall be derived from assessments or dues collected from its members. Such societies or associations shall be governed by the laws of the state governing fraternal orders or societies, and are exempt from the provisions of all general insurance laws of this state, and no law hereafter passed shall apply to such societies unless fraternal orders or societies are designated therein. (Rev., s. 4796; 1899, c. 54, s. 89; 1901, c. 706, s. 2; 1913, c. 46; C. S. 6493.)

§ 58-266. Appointment of member as receiver or collector; appointee as agent for order or society; rights of members.—Assessments and dues referred to in §§ 58-264 and 58-265 may be collected, receipted, and remitted by a member or officer of any local or subordinate lodge of any fraternal order or society when so appointed or designated by any grand, district, or subordinate lodge or officer, deputy, or representative of the same, there being no regular licensed agent or deputy of said grand lodge charged with said duties; but any person so collecting said dues or assessments shall be the agent or representative of such fraternal order or society, or any department thereof, and shall bind them by their acts in collecting and remitting said amounts so collected. Under no circumstances, regardless of any agreement, by-laws, contract, or notice, shall said officer or collector be the agent or representative of the individual member from whom any such collection is made; nor shall said member be responsible for the failure of such officer or collector to safely keep, handle, or remit said dues or assessments so collected, in accordance with the rules, regulations, or by-laws of said society; nor shall said member, regardless of any rules, regulations, or by-laws to the contrary, forfeit any rights under his certificate of membership in said fraternal benefit society by reason of any default or misconduct of any said officer or member so acting. (1921, c. 139; C. S. 6493(a).)

§ 58-267. Meetings of governing body; principal office; separation of races.—Any such society or order incorporated and organized under the laws of this state may provide for the meeting of its supreme legislative or governing body in any other state, province, or territory wherein such society has subordinate lodges, and all business transacted at such meetings is as valid in all respects as if the meetings were held in this state; but the principal business office of such society shall always be kept in this state. No fraternal order or society or beneficiary association shall be authorized to do business in this state under the provisions of this article, whether incorporated under the laws of this or any other state, province, or territory, which associates with, or seeks in this state to associate with, as members of the same lodge, fraternity, society, association, the white and colored races with the objects and purposes provided in this article. (Rev., s. 4797; 1899, c. 54, s. 91; 1913, c. 46; C. S. 6494.)

§ 58-268. Conditions precedent to doing business.—Any such fraternal, beneficiary order, society, or association as defined by this chapter, chartered and organized in this state or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the insurance commissioner that its business is proper and legitimate and so conducted, may be admitted to transact business in this state upon the same conditions as are prescribed by this chapter for admitting and authorizing foreign insurance companies to do business in this state, except that such fraternal orders shall not be required to have the capital required of such insurance companies. (Rev., s. 4798; 1899, c. 54, s. 92; 1901, c. 706, s. 2; 1903, c. 438, s. 9; 1913, c. 46; C. S. 6495.)

§ 58-269. Certain lodge systems exempt.—The following beneficial orders or societies shall be exempt from the requirements of this chapter, and shall not be required to pay any license tax or fees nor make any report to the insurance commissioner, unless the assessments collected for death benefits by the supreme lodge amount to at least three hundred dollars in one year: Beneficial fraternal orders, or societies incorporated under the laws of this state, which are conducted under the lodge system which have the supreme lodge or governing body located in this state, and which are so organized that the membership consists of members of subordinate lodges; that the subordinate lodges accept for membership only residents of the county in which such subordinate lodge is located; that each subordinate lodge issues certificates, makes assessments, and collects a fund to pay benefits to the widows and orphans of its own deceased members and their families, each lodge independently of the others, for itself and independently of the supreme lodge; that each lodge controls the fund for this purpose; that in addition to the benefits paid by each subordinate lodge to its own members, the supreme lodge provides for an additional benefit for such of the members of the subordinate lodges as are qualified, at the option of the subordinate lodge members; that such organization is not conducted for profit, has no capital stock, and has been in operation for ten years in this state.

The insurance commissioner may require the chief or presiding officer, or the secretary, to file annually an affidavit that such organization is entitled to this exemption. (1911, c. 199; C. S. 6496.)

§ 58-270. Fraternal benefit society defined.—Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work

and representative form of government, and which makes provision for the payment of benefits as hereafter prescribed in this article, is declared to be a fraternal benefit society. (1913, c. 89, s. 1; C. S. 6497.)

§ 58-271. Lodge system defined.—A society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members are elected, initiated, and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches are required by the laws of such society to hold regular or stated meetings at least once in each month, is deemed to be operating on the lodge system. (1913, c. 89, s. 2; C. S. 6498.)

§ 58-272. Representative form of government defined.—A society is deemed to have a representative form of government when it provides in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws: Provided, that the elective members constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; and Provided further, that the meetings of the supreme or governing body, and the election of officers, representatives, or delegates, are held as often as once in four years. The members, officers, representatives, or delegates of a fraternal benefit society shall not vote by proxy. (1913, c. 89, s. 3; C. S. 6499.)

§ 58-273. Organization.—1 Application.—Ten or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation in which shall be stated:

a. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

b. The purpose for which it is formed—which shall not include more liberal powers than are granted by this article: Provided, that any lawful social, intellectual, educational, charitable, benevolent, moral, or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

c. The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

2. Papers and Bond Filed.—Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor, and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the insurance commissioner, conditioned upon the return of the advance payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the insurance commissioner, who may require such further information as he deems necessary.

3. Preliminary License.—If the purposes of the society conform to the requirements of this article, and all provisions of law have been complied with, the insurance commissioner shall so certify to the secretary of state, and upon his issuing the articles of incorporation shall furnish the incorporators a preliminary license authorizing the society to solicit members as hereinafter provided.

4. Completion of Organization.—Upon receipt of such license from the insurance commissioner the society may solicit members for the purpose of completing its organization, and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, or the largest amount written on any one person, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to the insurance commissioner under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the national fraternal congress table of mortality, as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience, and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum; nor until it shall be shown to the insurance commissioner by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid

in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars. Such advanced payments shall be credited to the mortuary or disability fund on account of such applicants, and no part thereof may be used for expenses, but such payments shall be held in trust and returned to the applicants if the organization is not completed within one year as hereinafter provided.

5. License Issued.—The insurance commissioner may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate or license to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate.

6. One-year Limit.—No preliminary certificate or license granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the insurance commissioner, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of such preliminary certificate, or at the expiration of such extended period, unless the society shall have completed its organization and commenced business as herein provided.

7. Discontinuance. — When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void. 1913, c. 89, s. 11; C. S. 6500.)

§ 58-274. Constitution and by-laws.—Each society shall have power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; it shall have the power to change or amend such constitution and by-laws, and it shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. (1913, c. 89, s. 11; C. S. 6501.)

§ 58-275. Amendments to constitution and by-laws.—Every society transacting business under this article shall file with the insurance commissioner a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof. (1913, c. 89, s. 19; C. S. 6502.)

§ 58-276. Waiver of the provisions of the laws.—The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof, and on all beneficiaries of members. (1913, c. 89, s. 17; C. S. 6503.)

§ 58-277. Place of meeting; location of office.—Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province, or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state; but its principal office shall be located in this state. (1913, c. 89, s. 15; C. S. 6504.)

§ 58-278. No personal liability for benefits.—Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society; but the same shall be payable only out of the funds of such society and in the manner provided by its laws. (1913, c. 89, s. 16; C. S. 6505.)

§ 58-279. Qualifications for membership.—Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society: Provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members. (1913, c. 89, s. 6; C. S. 6506.)

§ 58-280. Benefits.—1. Every society transacting business under this article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident, or old age, and for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits: Provided, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; but nothing contained in this article shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life, which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent per annum; but this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions, and to contracts affected by such readjustment.

2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American experience table and four per cent interest, may grant to its members extended and paid-up protection, or such withdrawal equities as its constitution and laws may provide; but such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. (1913, c. 89, s. 4; C. S. 6507.)

§ 58-281. Beneficiaries.—The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, step-children, children by legal adoption, or to a person or persons dependent upon the member, or, with the consent of the society, any charitable institution maintained by the society; and if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules and regulations of the society, and no beneficiary shall have or obtain any vested interest in such benefit until the same has become due and payable upon the death of the member. Any society may, by its laws, limit the scope of beneficiaries within the above classes.

Provided, however, that any member or insured named in any contract or certificate of insurance issued by any beneficial fraternal order, lodge, society, or other insurance association, who has neither lawful spouse nor offspring, shall have the right, without regard to the amount payable thereunder, to have the death benefit provided for in any such contract or certificate of insurance made payable, or to have the named beneficiary changed, to the estate of such member or insured, or to his or her executors or administrators, and to make a testamentary disposition of the proceeds thereof, or to have such death benefit made payable, or to have the named beneficiary changed, to a trustee to be named by such member or insured, and to impress the proceeds in the hands of such trustee with a trust, the terms and provisions of the charter, rules, by-laws and regulations of any such beneficial fraternal order, lodge, society, or other insurance association, to the contrary notwithstanding: Provided further, that in case a husband or wife is designated as beneficiary and subsequently comes absolutely divorced from the member or insured, such divorce shall automatically annul the designation. (1913, c. 89, s. 5; 1931, c. 161; 1937, c. 178; C. S. 6508.)

§ 58-282. Benefit certificates.—Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter, or articles of incorporation or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member; and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions, or amendments to the charter or articles of incorporation, or articles of association if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership. (1913, c. 89, s. 7; C. S. 6509.)

§ 58-283. Benefits not subject to debts.—No money or other benefit, charity or relief or aid to be paid, provided, or rendered by any such society or association for the relief of employees including railroad and other relief associations shall be liable to attachment, garnishment, or other process, or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment. (1913, c. 89, s. 18; 1925, c. 83; C. S. 6510.)

§ 58-284. Certificates of insurance to members.—Any fraternal benefit society authorized to do business in this state which shall accumulate and maintain the reserves, on all certificates hereafter issued, required by the American Experience Table of Mortality, with Craig's or Buttolph's Extension thereof, or the Standard Industrial Table of Mortality, with an interest assumption of not more than three and one-half per centum per annum, or the American Men Ultimate Table of Mortality, with Bowerman's Extension thereof, with an interest assumption of not more than three and one-half per centum per annum, or some higher standard, may accept members in such manner and upon such showing of eligibility, and issue to its members such forms of certificates in such amounts and payable to such beneficiaries as may be authorized by the society; and such society may issue benefit certificates of insurance to any such members in an amount or amounts not exceeding five thousand ($5,000.00) dollars on the aggregate without medical examination, upon health and character information satisfactory to the society. The provisions of this section shall apply to children under sixteen years of age of members of such society.

This section shall not affect or apply to any organization or society which limit their membership to persons engaged in one or more hazardous occupations in the same or similar lines of business, or in any way affect or repeal any law that now applies to such organizations or societies. (1941, c. 74.)

§ 58-285. Funds provided.—1. Any society may create, maintain, invest, disburse, and apply an emergency, surplus, or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled

to any apportionment or the surrender of any part thereof, except as provided in subsection two of § 58-280. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. But no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or any higher standard, with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum.

2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. (1913, c. 89, s. 8; C. S. 6511.)

§ 58-286. Investment of funds.—Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies: Provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated where it has such laws, shall be held to meet the requirements of this article for the investment of funds. (1913, c. 89, s. 9; C. S. 6512.)

§ 58-287. Application of funds.—Every provision of the laws of the society for payment by its members, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses. (1913, c. 89, s. 10; C. S. 6513.)

§ 58-288. Powers of existing societies retained; reincorporation.—Any society now engaged in transacting business in this state may exercise all of the rights conferred by this article, and all the rights, powers, and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this article, if incorporated; or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided by law. (1913, c. 89, s. 12; C. S. 6514.)

§ 58-289. Mergers and transfers.—No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and is filed with the insurance commissioner of this state, together with a sworn statement of the financial condition of each of the societies, by its president and secretary or corresponding officers, and a certificate duly verified under oath of said officers of each of the contracting societies that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of the societies.

Upon the submission of such contract, financial statements, and certificates, the insurance commissioner shall examine the same, and if he shall find such financial statements to be correct and the contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of the societies, he shall approve the merger or transfer, issue his certificate to that effect, and thereupon the contract of merger or transfer shall be of full force and effect.

In case such contact is not approved, the fact of its submission and its contents shall not be disclosed by the insurance commissioner. (1913, c. 89, s. 13; C. S. 6515.)

§ 58-290. Accident societies may be licensed.—Any fraternal benefit society heretofore organized and incorporated, and operating within the definition set forth in this article, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this article, and shall have all the privileges and be subject to all the provisions and regulations of this article, except the provisions requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits. (1913, c. 89, s. 27; C. S. 6517.)

§ 58-291. Certain societies not included.—Nothing contained in this article shall be construed to affect or apply to societies which limit their membership to any one hazardous occupation, nor to an association of local lodges of a society now doing business in this state which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation, nor to domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The insurance commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provi-

sions of this article. (1913, c. 89, s. 26; 1925, c. 70, s. 2; C. S. 6518.)

§ 58-292. Reports to insurance commissioner. 1. Annual Report.—Every society transacting business in this state shall annually, on or before the first day of March, file with the insurance commissioner, in such form as he may require, a statement, under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

2. Valuation of Certificates.—In addition to the annual report herein required, each society shall annually report to the commissioner a valuation of its certificates in force on December thirty-first, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and the net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

3. Valuation Ascertained.—Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society: Provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience, and in such case a separation of the funds shall not be required.

4. Test of Solvency.—The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

5. Report Mailed to Members.—A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June first of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper, and the issue containing the same mailed to each beneficiary member of the society. (1913, c. 89, s. 20; C. S. 6519.)

§ 58-293. Additional or increased rates.—The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased, or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per cent per annum. 1913, c. 89, s. 20; C. S. 6520.)

§ 58-294. Provisions to insure future security.—If the valuation of the certificates, as hereinbefore provided, on December thirty-first, one thousand nine hundred and seventeen, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of efficiency as shown in the valuation as of December thirty-first, one thousand nine hundred and seventeen. If at any succeeding triennial valuation such society does not show at least the same condition, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provisions of this article, or in the case of a foreign society, its license may be canceled in the manner provided in this article.

Any such society, shown by any triennial valuation, subsequent to December thirty-first, one thousand nine hundred and seventeen, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December thirty-first, one thousand nine hundred and seventeen, or thereafter, as to all new members admitted, to be subject, so far as stated rates of contributions are con-

cerned, to the provisions of this article, applicable in the organization of new societies: Provided, that the net mortuary or beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds. (1913, c. 89, s. 20(a); C. S. 6521.)

§ 58-295. Valuation on accumulation basis; tabular basis.—In lieu of the requirements of the two preceding sections, any society accepting in its laws the provisions of this section may value its certificates on a basis herein designated "accumulation basis," by crediting each member with the net amount contributed for each year, and with interest at approximately the net rate earned and by charging him with his shares of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death, less the credit to the member. Except as specifically provided in its articles or laws or contracts, no charge shall be carried forward from the first valuation hereunder against any member of any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose.

Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained, and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Certificates issued, rerated, or readjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumptions for mortality and interest recognized by the law of this state, shall be valued on such basis, herein designated the "Tabular Basis": Provided, that if on the first valuation under this section a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever, in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions or by an increase in the number of assessments applied to the society as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws.

If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society, and the required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life or other plan of insurance specified in the contract, according to assumptions for mortality and interest recognized by the law of this state and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July first of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis.

For this purpose individual bookkeeping accounts for each member shall not be required, and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. (1913, c. 89, s. 20(b); C. S. 6522.)

§ 58-296. Examination of domestic societies.—The insurance commissioner, or any person he may appoint, shall have power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

The expense of such examination shall be paid by the society examined upon statement furnished by the insurance commissioner, and the examination shall be made at least once in three years. (1913, c. 89, s. 21; C. S. 6523.)

§ 58-297. Proceedings for dissolution.—When after examination the insurance commissioner is satisfied that any domestic society has failed to comply with any provision of this article, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred (or shall determine to discontinue business), the insurance commissioner may present the facts relating thereto to the attorney-general, who shall, if he deem

the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, it shall be enjoined from carrying on any further business, and a receiver shall be appointed to take possession of its books, papers, moneys, and other assets and immediately, under the direction of the court, proceed to close its affairs and distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney-general against any such society until after notice has been duly served on its chief executive officers and a reasonable opportunity given to it, on a date to be named in the notice, to show cause why such proceedings should not be commenced. (1913, c. 89, s. 21; C. S. 6524.)

§ 58-298. Proceedings only by attorney-general.—No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney-general. (1913, c. 89, s. 22; C. S. 6525.)

§ 58-299. Examination of foreign societies.—The insurance commissioner or any person whom he may appoint may examine any foreign society transacting or applying for admission to transact business in this state. The commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees and other persons in relation to the affairs, transactions, and condition of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province, or country where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the insurance commissioner.

If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, its authority to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to its condition and affairs, and during such suspension the society shall not write new business in this state. (1913, c. 89, s. 23; C. S. 6526.)

§ 58-300. No adverse publications. — Pending, during, or after an examination or investigation of any such society, either domestic or foreign, the insurance commissioner shall make public no financial statement, report, or finding, nor shall he knowingly permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society, until a copy thereof has been served upon the society, at its home office, nor until the society has been afforded a reasonable opportunity to answer any such financial statement, report, or finding, and to make such showing in connection therewith as it may desire. (1913, c. 89, s. 24; C. S. 6527.)

§ 58-301. Revocation of license.—When the insurance commissioner on investigation is satisfied that any foreign society transacting business under this article has exceeded its powers, or has failed to comply wth any provisions of this article, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require the society, on a date named, to show cause why its license should not be revoked. If on the date named in the notice such objections have not been removed to the satisfaction of the commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in this article. (1913, c. 89, s. 25; C. S. 6528.)

§ 58-302. Criminal offenses.—Any person, officer, member, or examining physician of any society authorized to do business under this article who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent, or employee thereof, neglecting or refusing to comply with, or violating, any of the provisions of this article, the penalty for which neglect, refusal, or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof. (1913, c. 89, s. 28; C. S. 6529.)

§ 58-303. Merger, consolidation, or reinsurance of risks, with other fraternal benefit societies.—No fraternal benefit society organized under the laws of this state to do the business of life, accident, or health insurance, shall consolidate or merge with any other fraternal benefit society, or reinsure its insurance risks, or any part thereof with any other fraternal benefit society, or assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, except as herein provided. No fraternal benefit society or subordinate body thereof shall merge,

consolidate with, or be reinsured by any company or association not licensed to transact business as a fraternal beneficiary society. (1921, c. 60, s. 1; C. S. 6529(a).)

§ 58-304. Contract approved by governing bodies of parties to same; approval by insurance commissioner.—When any such fraternal benefit society shall propose to consolidate or merge its business or to enter into any contract of reinsurance, or to assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, the proposed contract in writing setting forth the terms and conditions of such proposed consolidation, merger, or reinsurance shall be submitted to the legislative or governing bodies of each of said parties to said contract after due notice, and if approved, such contract as so approved, shall be submitted to the insurance commissioner of this state for his approval, and the parties to said contract shall at the same time submit a sworn statement showing the financial condition of each of such fraternal benefit societies as of the thirty-first day of December preceding the date of such contract: Provided, that such insurance commissioner may, within his discretion, require such financial statement to be submitted as of the last day of the month preceding the date of such contract. The insurance commissioner shall thereupon consider such contract of consolidation, merger, or reinsurance, and if satisfied that the interests of the certificate holders of such fraternal benefit societies are properly protected, and that such contract is just and equitable to the members of each of such societies, and that no reasonable objection exists thereto, shall approve said contract as submitted. In case the parties corporate to such a contract shall have been incorporated in separate states, or territories, such contract shall be submitted as herein provided to the insurance commissioner of each of such incorporating states, or territories, to be considered and approved separately by each of such insurance commissioners. When said contract of consolidation, merger, or reinsurance shall have been approved as hereinabove provided, such insurance commissioner shall issue a certificate to that effect, and thereupon the said contract of consolidation, merger, or reinsurance shall be in full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the insurance commissioner. (1921, c. 60, s. 2; C. S. 6529(b).)

§ 58-305. Expenses; compensation to officers or employees of contracting parties and state employees.—All necessary and actual expenses and compensation incident to the proceedings provided in this law shall be paid as provided by such contract of consolidation, merger, or reinsurance: Provided, however, that no brokerage or commission shall be included in such expenses and compensation or shall be paid to any person by either of the parties to any such contract in connection with the negotiation therefor or execution thereof, nor shall any compensation be paid to any officer or employee of either of the parties to such contract for directly or indirectly aiding in effecting such contract of consolidation, merger, or reinsurance. An itemized statement of all such expenses shall be filed with the insurance commissioner, subject to approval, and when approved the same shall be binding on the parties thereto. Except as fully expressed in the contract of consolidation, merger or reinsurance, or itemized statement of expenses, as approved by the insurance commissioner, or commissioners, as the case may be, no compensation shall be paid to any person or persons, and no officer or employee of the state shall receive any compensation, directly or indirectly, for in any manner aiding, promoting, or assisting any such consolidation, merger, or reinsurance. (1921, c. 60, s. 3; C. S. 6529(c).)

§ 58-306. Violation of law a felony.—Any person violating the provisions of §§ 58-303, 58-304, and 58-305 shall be guilty of a felony, and upon conviction shall be liable to a fine of not more than five thousand dollars, or to imprisonment for not more than five years, or to both fine and imprisonment. (1921, c. 60, s. 4; C. S. 6529(d).)

§ 58-307. Appointment of insurance commissioner as process agent.—Every foreign fraternal benefit society except labor organizations which limit their admission to membership to persons engaged in one or more hazardous occupations in the same or similar lines of business now transacting business in this state shall, within thirty days after the passage of this section, and every such society hereafter applying for admission shall, before being licensed, appoint in writing the insurance commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by said insurance commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall be made in duplicate upon the insurance commissioner, or in his absence upon the person in charge of his office, and shall be deemed sufficient service upon said society. When legal service against any such society is served upon said insurance commissioner he shall forthwith forward by registered mail one of the duplicate copies, prepaid and directed to its secretary or corresponding officer. No such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of such service to such society. Legal process shall not be served upon any such society except in the manner provided therein. As a condition precedent to a valid service of process and to the duty of the commissioner in the premises, the plaintiff shall pay to the insurance commissioner at the time of service the sum of one ($1.00) dollar, which the plaintiff shall recover as taxable costs if he prevails in his action. (1939, c. 130.)

Art. 29. Whole Family Protection.

§ 58-308. Insurance on children.—Any fraternal order or fraternal benefit society authorized to do business in this State and operating on the lodge plan may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of one and sixteen years at next birthday, for whose support and maintenance a member of such society is responsible. The society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: one year, twenty dollars; two years, fifty dollars; three years, seventy-five dollars; four years, one hundred dollars; five years, one hundred twenty-five dollars; six years, one hundred fifty dollars; seven years, two hundred dollars; eight years, two hundred fifty dollars; nine years, three hundred dollars; ten years, four hundred dollars; eleven years, five hundred dollars; twelve years, six hundred dollars; thirteen years, seven hundred dollars; fourteen years, eight hundred dollars; fifteen years, nine hundred dollars; sixteen years, one thousand dollars.

Provided, any fraternal benefit society which shall accumulate and maintain the reserves required by a table of mortality not lower than the American Experience Table of Mortality, with an interest assumption of not more than four per cent, may accept members at such ages, and children under sixteen years of age, in such manner and upon such showing of eligibility, and issue to its members, and children under sixteen years of age, such forms of certificates, payable to such beneficiaries, and for such amounts, as its constitution and laws may provide. Children under sixteen years of age shall have no voice or vote. (1917, c. 239, s. 1; 1931, c. 38; 1937, c. 208; C. S. 6530.)

§ 58-309. Medical examination; certificates and contributions.—No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the society, nor shall any such benefit certificate be issued unless the society shall simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Mortality Table" or the "English Life Table Number Six," and a rate of interest not greater than four per cent per annum, or upon a higher standard; but contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws; and extra contributions shall be made if the reserves hereafter provided for become impaired. (1917, c. 239, s. 2; C. S. 6531.)

§ 58-310. Reserve fund; exchange of certificates.—Any society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in § 58-309, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized. A society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society: Provided, that such surrender will not reduce the number of lives insured in the branch below five hundred; and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. (1917, c. 239, s. 3; C. S. 6532.)

§ 58-311. Separation of funds.—An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the insurance commissioner by any society availing itself of the provisions hereof. The separation of assets, funds, and liabilities required hereby shall not be terminated, rescinded, or modified, nor shall the funds be diverted for any use other than as specified in the preceding section, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition or the status of the society. (1917, c. 239, s. 4; C. S. 6533.)

§ 58-312. Payments to expense or general fund.—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society, as its constitution and by-laws may provide. (1917, c. 239, s. 5; C. S. 6534.)

§ 58-313. Continuation of certificates.—In the event of the termination of membership in the society by the person responsible for the support of any child on whose account a certificate may have been issued as provided herein, the certificate may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child who shall assume the payment of the required contributions. (1917, c. 239, s. 6; C. S. 6535.)

Art. 30. General Provisions for Societies.

§ 58-314. Appointment of trustees to hold property. — The lodges of Masons, Odd Fellows, Knights of Pythias, camps of Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, Young Men's Christian Associations, Young Women's Christian Associations, societies for the care of orphans and indigent children, societies for the rescue of fallen women, and any other benevolent or fraternal orders and societies, may appoint from time to time suitable persons trustees of their bodies or societies, in such manner as they deem proper, which trustees, and their successors, shall have power to receive, purchase, take, and hold property, real and personal, in trust for such society or body. The trustees shall have power, when instructed so to do by resolution adopted by the society or body which they represent, to mortgage or sell and convey in fee simple any real or personal property owned by the society or body; and the conveyances so made by the trustees shall be effective to pass the property in fee simple to the purchaser or to the mortgagee or trustee for the purposes in such conveyance or mortgage expressed. If there shall be no trustee, then any real or personal property which could be held by such trustees shall vest in and be held by such charitable, benevolent, religious, or fraternal orders and societies, respectively, according to such intent. (1907, c. 22; 1915, cc. 149, 186; 1923, c. 257; C. S. 6536.)

§ 58-315. Unauthorized wearing of badges, etc. —Any person who fraudulently and wilfully wears the badge or button of any secret or fraternal organization or society, either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, or who fraudulently and wilfully uses the name of any such order or organization, the titles of its officers, or its insignia, ritual, or ceremonies, unless entitled to wear or use the same under the constitution and by-laws, rules and regulations of such secret or fraternal organization or society, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of fifty dollars or imprisonment for thirty days, in the discretion of the court. (1907, c. 968; 1911, c. 37; 1915, c. 252; C. S. 6537.)

Art. 31. Non-Profit Life Benefit Association.

§ 58-316. Cooperative non-profit life benefit association defined.—Any corporation or association, domestic or foreign, issuing benefit certificates or policies of life, health or accident insurance upon the lives or health of its members, having a representative form of government without capital stock and conducting its business without profit and for the sole benefit of its members and their beneficiaries and maintaining the reserves as herein provided and all contracts issued by it, which shall make acceptable written application to become such and shall comply with the provisions of this article is defined as a "Cooperative Nonprofit Life Benefit Association." (1927, c. 30, s. 1.)

§ 58-317. Form of corporate government.— Such association shall have a constitution, laws and/or by-laws providing for a representative form of government for the management of the association; providing for a legislative or governing body composed of its officers and representatives to be elected either by the adult members or by delegates elected directly or indirectly by the adult members, and providing for the manner of selecting representatives of the members for membership in its legislative body. The elected members of the governing body shall have not less than two-thirds of the votes of said body, nor less than the votes required to amend its constitution, laws and by-laws, and the governing body shall meet as often as once in four years (or any time during the fourth year after a meeting). Meetings of its governing body may be held in any state, province or country where such association is authorized to do business. The members of the governing body shall not vote by proxy.

Officers to conduct the business of the association shall be elected by such body, but not for a longer period than four years or/and until the subsequent quadrennial meeting of said body. Such officers, by whatever name known, shall constitute the Board of Directors. (1927, c. 30, s. 2.)

§ 58-318. Basis upon which insurance contracts may be issued.—Any such association maintaining reserves based upon the American Experience Table of Mortality, with an interest assumption of not more than 4% or some higher standard, or upon any minimum standard hereafter allowed by law in this State for legal reserve life insurance companies, may issue contracts of insurance, life, health, accident, annuities and endowments or all of them combined or separately, upon the health and lives of children and adults.

Any association licensed to do business under the provisions of this act, which has theretofore enacted a provision in its constitution, laws and /or by-laws in relation to the rates to be paid by its members, or lien and interest charges in lieu of such rates, or any part thereof, shall maintain the provisions of such constitution, laws and/or by-laws in full force and effect or the equivalent thereof in all particulars as to such members.

Any such association desiring to do business in this State under the provisions of this article, which has all or any portion of its membership upon a rate or premium basis not producing the reserves herein required under the American Experience Table of Mortality with an interest assumption of not more than 4% and which also possesses the power to increase the rates or call extra assessments upon said membership, may be permitted to do business in this State as such association defined in this article if it shall, as to all business hereafter acquired by it, maintain reserves on such business based upon the American Experience Table of Mortality with an interest assumption of not more than four per cent, or upon any minimum standard allowed by law for legal reserve life insurance companies in this State or the state of its domicile; and the contracts of members theretofore admitted to membership shall be forever subject to increased rates or extra assessments and the association shall maintain the reserves on all of its prior business on a basis not less than the National Fraternal

Congress Table of Mortality with an interest assumption of not more than four (4) per cent, or upon a table of mortality not less than that derived from its own experience covering a period of not less than twenty years and involving not less than one hundred thousand lives, with an interest assumption of not more than four per cent.; and the officers of such association shall provide for such increased rates or extra assessments as shall be necessary to maintain such reserves. (1927, c. 30, ss. 3, 3(a); 1927, c. 252.)

§ 58-319. Contracts in writing; fees not set out in policy forbidden.—All contracts for insurance or benefits shall be in writing. It shall be unlawful for any such association or any officer or agent to include in the sum charged a member, any fee, compensation, charge or perquisite whatsoever not specified in the policy or certificate except that a local medical examiner's fee may be charged. (1927, c. 30, s. 4.)

§ 58-320. All policies mutual and participating.—All beneficiary certificates or policies issued by such association on said American Experience Table of Mortality with said interest assumption or any higher standard, shall be mutual and participating, and the association may provide for automatic paid up or extended insurance for an amount not to exceed the amount the reserve to the credit of such member will purchase in the event of suspension after said certificate shall have been in force for not less than two full years or more from date of issue, and shall carry such liability on its books. (1927, c. 30, s. 5.)

§ 58-321. Benefit not subject to seizure under process.—No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such association, shall be liable to attachment, garnishment or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment. (1927, c. 30, s. 6.)

§ 58-322. Officers and members not personally liable.—Officers and members of the supreme, grand or any subordinate body of such association, by whatever name known, shall not be individually liable for the payment of any disability or death or other benefits provided for in the laws and contracts of such association, but such benefits shall be payable out of the funds of such association and in the manner provided by its laws. (1927, c. 30, s. 7.)

§ 58-323. Authority to make laws.—Every such association shall have the power to make a constitution, laws and/or by-laws for the government of the association, the admission of its members, the management of its affairs and the fixing and readjustment of the rates of contribution of its members from time to time, and it shall have the power to change, add to or amend such constitution, laws or by-laws and shall have such other powers as are necessary to carry into effect the objects and purposes of the association; it may make refunds to its members equitably of any surplus funds of the association. (1927, c. 30, s. 8.)

§ 58-324. Constitution, laws and by-laws must be filed.—Every such association transacting business under this act shall file with the Insurance Commissioner of this State, a duly certified copy of its constitution, laws or by-laws and all amendments or additions thereto. Copies of the same, certified to by the secretary or corresponding officer of the association, shall be prima facie evidence of the legal adoption and filing thereof. (1927, c. 30, s. 9.)

§ 58-325. Benefits, loan values and dividends.—Such association may provide for stipulated premiums and death, annuity, endowment and disability benefits, and for cash surrender and loan values to an amount not exceeding the reserve or the equivalent thereof, in paid up or extended term insurance, based upon the mortality standards set forth in this article. (1927, c. 30, s. 10.)

§ 58-326. May maintain hospitals and homes.—Such association may maintain homes for aged members, or children's homes, hospitals or recreational centers, or any or all of said features, or any other charitable institution, and may provide for the erection of monuments or memorials to deceased members: Provided, any such expenses may not be paid from the mortuary fund or reserves herein required. (1927, c. 30. s. 11.)

§ 58-327. Organization of coöperative non-profit life benefit association. — When ten or more citizens of the United States, a majority of whom are citizens of this State, desire to form an association under the provisions of this article, they shall adopt articles of incorporation and a constitution, laws or by-laws and file the same with the Insurance Commissioner of this State who shall grant them temporary permission to solicit members and collect premiums therefrom, but without the right to issue contracts until licensed to do business; and when such incorporators have presented to the Insurance Commissioner proof that they have five hundred members or more, and have collected from them assessments or premiums sufficient to pay the maximum amount of any proposed policy to be issued, and upon depositing with the Insurance Commissioner ten thousand dollars ($10,000) in securities to be approved by him, then said Insurance Commissioner may grant to said association a certificate of authority and permission to do business under this article. (1927, c. 30. s. 12.)

§ 58-328. Corporation now doing business in this State may qualify under this article.—Any association, domestic or foreign, now engaged in transacting business in this State, which can qualify under the provisions of this article as a "Coöperative Non-profit Life Benefit Association," may, upon making application therefor, be granted a license by the Insurance Commissioner to do business as such under this article, provided, it has accumulated reserves on its policies in force in a sum of not less than one hundred thousand dollars ($100,000), properly invested. (1927, c. 30, s. 13.)

§ 58-329. License granted.—Any domestic or foreign association wishing to do business under the provisions of this article, under whatever name it may conduct its business, upon making a written application and submitting proof satisfactory to the Insurance Commissioner of this State that its business, as conducted, and its reserves on hand comply with the provisions of this article, upon paying to the Insurance Commissioner the sum of two hundred dollars ($200) as license fee and all other fees assessed against such company shall be licensed to do business in this State as such association until the first day of the following April. Any such association, admitted to do business under this article in this State, which shall fail to comply with the provisions of this article, may have its license revoked, and upon failing to maintain its reserves as herein required, may be liquidated by the courts or by the Insurance Commissioner as may be provided by law for the liquidation of legal reserve life insurance companies. (1927, c. 30, s. 14.)

§ 58-330. Annual statement and license.—Every such association doing business in this State shall annually file with the Insurance Commissioner on or before the first day of March in each year a full and complete sworn statement of its financial condition on the thirty-first day of December next preceding. Such statement shall plainly exhibit all real and contingent assets and liabilities and a complete account of its income and disbursements during the year. The Insurance Commissioner is hereby empowered to require such further information as may be reasonably necessary to satisfy him that the statements contained in the sworn statement are true, and he may thereupon grant a renewal of such license to such association to do business in this State which shall continue in full force and effect until a new license be issued or specifically refused unless revoked for good cause. For each such license, or annual renewal thereof, the association shall pay the Insurance Commissioner two hundred dollars ($200). Such license or a duplicate thereof shall be prima facie evidence that such association is a Coöperative Non-Profit Life Benefit Association within the meaning of this article. When the Insurance Commissioner refuses to license any such association or revokes its authority to do business in this State, he shall reduce his ruling, order or decision to writing and file the same in his office and furnish a copy thereof, together with a statement of his reasons for his ruling to the officers of the association upon request, and the action of the Insurance Commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. Except as herein provided, such association shall be governed by the laws of this State relative to or affecting life insurance companies. (1927, c. 30, s. 15.)

§ 58-331. Examination of association.—The Insurance Commissioner or any person he may appoint shall have the power of visitation and examination into the affairs of any such association. He may employ assistants for such purpose and they shall have free access to all the books, papers and documents that relate to the business of the association, and may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the condition of its business. The expenses of such examination shall be paid by the association examined upon a statement furnished by the Insurance Commissioner. As to all such foreign associations doing business in this State, the Insurance Commissioner, in his discretion, may accept in lieu of such examination the report of the examination of the Insurance Commissioner of the State, territory, district, province or country where such association is organized or a report of an examination made of such association by the Insurance Commissioner of any State. (1927, c. 30, s. 16.)

§ 58-332. Investments.—The funds of such association shall be invested in the same securities as provided by law for other domestic companies, and if a foreign association, in such securities as may be provided by the laws of its domicile. (1927, c. 30, s. 17.)

§ 58-333. Premium tax; reports.—The officers of such association shall file the reports required by § 58-67 and shall pay the same premium tax as is now or shall hereafter be provided for other life insurance companies. (1927, c. 30, s. 18.)

§ 58-334. Foreign associations may incorporate under this article.—Any foreign association, now or hereafter doing business in this state or conducting a business enabling it to qualify to do business under this article in this state, may become incorporated in this state as such association under whatever name it shall select, upon filing with the insurance commissioner a resolution of its board of directors or of a similar body by whatever name known, or of its legislative body, requesting to be incorporated as such association of this state, and submitting proof of its financial qualifications under this article: Provided, the name chosen shall not conflict with the name of some other organization doing business in this state so as to cause confusion. The officers of such associations shall thereupon retain their respective offices for the terms for which they were elected. Such association so reincorporated in this state shall maintain a general office within this state. (1927, c. 30, s. 19.)

§ 58-335. To become a legal reserve life company.—Any such association filing with the Insurance Commissioner a resolution of its board of directors or similar body, by whatever name known, or of its legislative body, making a request to become a legal reserve life insurance company, upon submitting proof satisfactory to the Insurance Commissioner that the condition of its business qualifies it under the laws of this State, to be classed as a legal reserve life insurance company, shall thereupon become a legal reserve life insurance company under such name and such plan as may be approved by the Insurance Commissioner. (1927, c. 30, s. 20.)

§ 58-336. Election of corporation to accept article.—This article shall not apply to any corporation, domestic or foreign, now or hereafter doing business in this State, unless said corporation, by action of its board of directors or other properly constituted body, elects to have said

corporation come under the provisions hereof. (1927, c. 30, s. 21.)

§ 58-337. Suit against association; where instituted.—Suit may be instituted against said association in any county in this State in any court having jurisdiction. (1927, c. 30, s. 22.)

§ 58-338. Service of process on Insurance Commissioner.—Every coöperative non-profit life benefit association, whether domestic or foreign, before it shall be permitted to transact business in this State, shall appoint in writing the Insurance Commissioner and his successor in office to be its true and lawful attorney on whom all legal process and legal notices in any action or proceeding against it in this State shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon said association, and that the authority of such Insurance Commissioner shall continue in force so long as any liability remains outstanding in this State. (1927, c. 30, s. 23.)

§ 58-339. Mode of service; time to file answer.—Copies of such appointment, certified by said Insurance Commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original. Service of process in all suits and proceedings against such association shall be made only upon such attorney and must be made in duplicate upon him, or in his absence upon the person in charge of his office, and shall be deemed sufficient service upon such association: Provided, however, that no such service shall be deemed valid or binding against such association when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of service upon such attorney. When legal process against such association is served upon said Insurance Commissioner, he shall forthwith forward by mail one of the duplicate copies, directed to its secretary or corresponding officer at the home office of the association. Legal process shall not be served upon any such association except in the manner herein provided. (1927, c. 30, s. 24.)

§ 58-340. Insurance Commissioner defined.—The term "Insurance Commissioner," as used in this article, shall include the person, board or department of this State, under whatever name known, supervising the granting of licenses to insurance organizations to do business in this State. (1927, c. 30, s. 25.)

Chapter 59. Partnership.

Art. 1. Uniform Limited Partnership Act.

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Art. 1. Uniform Limited Partnership Act.

§ 59-1. Limited partnership defined.—A limited partnership is a partnership formed by two or more persons under the provisions of § 59-2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. (1941, c. 251, s. 1.)

§ 59-2. Formation.—(1) Two or more persons desiring to form a limited partnership shall

(a) Sign and swear to a certificate, which shall state

I. The name of the partnership,

II. The character of the business,

III. The location of the principal place of business,

IV. The name and place of residence of each member; general and limited partners being respectively designated,

V. The term for which the partnership is to exist,

VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,

VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,

VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,

IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,

X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,

XI. The right, if given, of the partners to admit additional limited partners,

XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File for record the certificate in the office of the clerk of the superior court.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1). (1941, c. 251, s. 2.)

§ 59-3. Business which may be carried on.—A limited partnership may carry on any business which a partnership without limited partners may carry on. (1941, c. 251, s. 3.)

§ 59-4. Character of limited partner's contribution.—The contributions of a limited partner

may be cash or other property, but not services. (1941, c. 251, s. 4.)

§ 59-5. A name not to contain surname of limited partner; exceptions.—(1) The surname of a limited partner shall not appear in the partnership name, unless

(a) It is also the surname of a general partner, or

(b) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. (1941, c. 251, s. 5.)

§ 59-6. Liability for false statements in certificate.—If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in § 59-25, subsection (3). (1941, c. 251, s. 6.)

§ 59-7. Limited partner not liable to creditors.—A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. (1941, c. 251, s. 7.)

§ 59-8. Admission of additional limited partners.—After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of § 59-25. (1941, c. 251, s. 8.)

§ 59-9. Rights, powers and liabilities of a general partner.—A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

(a) Do any act in contravention of the certificate,

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership,

(c) Confess a judgment against the partnership,

(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,

(e) Admit a person as a general partner,

(f) Admit a person as a limited partner, unless the right so to do is given in the certificate,

(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate. (1941, c. 251, s. 9.)

§ 59-10. Rights of a limited partner.—(1) A limited partner shall have the same rights as a general partner to

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in §§ 59-15 and 59-16. (1941, c. 251, s. 10.)

§ 59-11. Status of person erroneously believing himself a limited partner.—A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. (1941, c. 251, s. 11.)

§ 59-12. One person both general and limited partner.—(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner. (1941, c. 251, s. 12.)

§ 59-13. Loans and other business transactions with limited partner.—(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim

(a) Receive or hold as collateral security any partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (1) is a fraud on the creditors of the partnership. (1941, c. 251, s. 13.)

§ 59-14. Relation of limited partners inter se.—Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. (1941, c. 251, s. 14.)

§ 59-15. Compensation of limited partner.—A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. (1941, c. 251, s. 15.)

§ 59-16. Withdrawal or reduction of limited partner's contribution.—(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution

(a) On the dissolution of a partnership, or

(b) When the date specified in the certificate for its return has arrived, or

(c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when

(a) He rightfully but unsuccessfully demands the return of his contribution, or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1) (a) and the limited partner would otherwise be entitled to the return of his contribution. (1941, c. 251, s. 16.)

§ 59-17. Liability of limited partner to partnership.—(1) A limited partner is liable to the partnership

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the condition stated in the certificate.

(2) A limited partner holds as trustee for the partnership

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. (1941, c. 251, s. 17.)

§ 59-18. Nature of limited partner's interest in the partnership.—A limited partner's interest in the partnership is personal property. (1941, c. 251, s. 18.)

§ 59-19. Assignment of limited partner's interest.—(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is approximately amended in accordance with § 59-25.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under §§ 59-6 and 59-17. (1941, c. 251, s. 19.)

§ 59-20. Effect of retirement, death or insanity of a general partner.—The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members. (1941, c. 251, s. 20.)

§ 59-21. Death of limited partner.—(1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner

shall be liable for all his liabilities as a limited partner. (1941, c. 251, s. 21.)

§ 59-22. Rights of creditors of limited partner.—(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this article shall be held to deprive a limited partner of his statutory exemption. (1941, c. 251, s. 22.)

§ 59-23. Distribution of assets.—(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners,

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions,

(c) Those to limited partners in respect to the capital of their contributions,

(d) Those to general partners other than for capital and profits,

(e) Those to general partners in respect to profits,

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims. (1941, c. 251, s. 23.)

§ 59-24. When certificate shall be cancelled or amended.—(1) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies or becomes insane, and the business is continued under § 59-20,

(f) There is a change in the character of the business of the partnership,

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them. (1941, c. 251, s. 24.)

§ 59-25. Requirements for amendment and for cancellation of certificate.—(1) The writing to amend a certificate shall

(a) Conform to the requirements of § 59-2, subsection (1) (a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the superior court to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the clerk of the superior court in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or cancelled when there is filed for record in the office of the clerk of the superior court where the certificate is recorded

(a) A writing in accordance with the provisions of paragraph (1), or (2) or

(b) A certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this article. (1941, c. 251, s. 25.)

§ 59-26. Parties to actions.—A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership except where the object is to enforce a limited partner's right against or liability to the partnership. (1941, c. 251, s. 26.)

§ 59-27. Name of article.—This article may be cited as the Uniform Limited Partnership Act. (1941, c. 251, s. 27.)

§ 59-28. Rules of construction.—(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this article.

(2) This article shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This article shall not be so construed as to impair the obligations of any contract existing when the article goes into effect, nor to affect any

action on proceedings begun or right accrued before this article takes effect. (1941, c. 251, s. 28.)

§ 59-29. Rules for cases not provided for in this article.—In any case not provided for in this article the rules of law and equity, including the law merchant, shall govern. (1941, c. 251, s. 29.)

§ 59-30. Provisions for existing limited partnerships.—(1) A limited partnership formed under any statute of this state prior to March 15, 1941, may become a limited partnership under this article by complying with the provisions of § 59-2; provided the certificate sets forth

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this state prior to the adoption of this article, until or unless it becomes a limited partnership under this article, shall continue to be governed by the provisions of existing law, except that such partnership shall not be renewed unless so provided in the original agreement. (1941, c. 251, s. 30.)

Editor's Note.—Section 31 of the Uniform Limited Partnership Act (1941, c. 251, s. 31) repealed §§ 3258-3276 of the Consolidated Statutes, as amended, except in so far as said sections affect limited partnerships existing on March 15, 1941.

Art. 2. Uniform Partnership Act.

Part 1. Preliminary Provisions.

§ 59-31. Name of article.—This article may be cited as Uniform Partnership Act. (1941, c. 374, s. 1.)

§ 59-32. Definition of terms.—In this article, "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land. (1941, c. 374, s. 2.)

§ 59-33. Interpretation of knowledge and notice.—(1) A person has "knowledge" of a fact within the meaning of this article not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this article when the person who claims the benefit of the notice:

(A) states the fact to such person, or

(B) delivers through the mail, or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence. (1941, c. 374, s. 3.)

§ 59-34. Rules of construction.—(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this article.

(2) The law of estoppel shall apply under this article.

(3) The law of agency shall apply under this article.

(4) This article shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This article shall not be construed so as to impair the obligations of any contract existing when the article goes into effect, nor to affect any action or proceedings begun or right accrued before this article takes effect. (1941, c. 374, s. 4.)

§ 59-35. Rules for cases not provided for in this article.—In any case not provided for in this article the rules of law and equity, including the law merchant, shall govern. (1941, c. 374, s. 5.)

Part 2. Nature of a Partnership.

§ 59-36. Partnership defined.—(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this article, unless such association would have been a partnership in this state prior to the adoption of this article; but this article shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith. (1941, c. 374, s. 6.)

§ 59-37. Rules for determining the existence of a partnership.—In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by § 59-46 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) as a debt by installments or otherwise,

(b) as wages of an employee or rent to a landlord,

(c) as an annuity to a widow or representative of a deceased partner,

(d) as interest on a loan, though the amount of payment vary with the profits of the business,

(e) as the consideration for the sale of a goodwill of a business or other property by installments or otherwise. (1941, c. 374, s. 7.)

§ 59-38. Partnership property.—(1) All property originally brought into the partnership stock or subsequently acquired by purchase or other-

wise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. (1941, c. 374, s. 8.)

Part 3. Relations of Partners to Persons Dealing with the Partnership.

§ 59-39. Partner agent of partnership as to partnership business.—(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors, or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the goodwill of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. (1941, c. 374, s. 9.)

§ 59-40. Conveyance of real property of the partnership.—(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of § 59-39, or unless such property has been conveyed by the grantee of a person claiming through such grantee to holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of § 59-39.

(3) Where title to real property is in the name of one or more, but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of § 59-39, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of § 59-39.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property. (1941, c. 374, s. 10.)

§ 59-41. Partnership bound by admission of partner.—An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this article is evidence against the partnership. (1941, c. 374, s. 11.)

§ 59-42. Partnership charged with knowledge of or notice to partner.—Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (1941, c. 374, s. 12.)

§ 59-43. Partnership bound by partner's wrongful act.—Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. (1941, c. 374, s. 13.)

§ 59-44. Partnership bound by partner's breach of trust.—The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. (1941, c. 374, s. 14.)

§ 59-45. Nature of partner's liability.—All partners are liable

(a) Jointly and severally for everything chargeable to the partnership under §§ 59-43 and 59-44.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract. (1941, c. 374, s. 15.)

§ 59-46. Partner by estoppel.—(1) When a person, by words spoken or written or by conduct,

represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. (1941, c. 374, s. 16.)

§ 59-47. Liability of incoming partner.—A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. (1941, c. 374, s. 17.)

Part 4. Relations of Partners to One Another.

§ 59-48. Rules determining rights and duties of partners.—The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. (1941, c. 374, s. 18.)

§ 59-49. Partnership books.—The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them. (1941, c. 374, s. 19.)

§ 59-50. Duty of partners to render information.—Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. (1941, c. 374, s. 20.)

§ 59-51. Partner accountable as a fiduciary.—(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. (1941, c. 374, s. 21.)

§ 59-52. Right to an account.—Any partner shall have the right to a formal account as to partnership affairs:

(a) if he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(b) if the right exists under the terms of any agreement,

(c) as provided by § 59-51,

(d) whenever other circumstances render it just and reasonable. (1941, c. 374, s. 22.)

§ 59-53. Continuation of partnership beyond fixed term.—(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. (1941, c. 374, s. 23.)

Part 5. Property Rights of a Partner.

§ 59-54. Extent of property rights of a part-

ner.—The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. (1941, c. 374, s. 24.)

§ 59-55. Nature of a partner's right in specific partnership property.—(1) A partner is coowner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this article and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin. (1941, c. 374, s. 25.)

§ 59-56. Nature of partner's interest in the partnership.—A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property. (1941, c. 374, s. 26.)

§ 59-57. Assignment of partner's interest.—(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. (1941, c. 374, s. 27.)

§ 59-58. Partner's interest subject to charging order.—(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this article shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (1941, c. 374, s. 28.)

Part 6. Dissolution and Winding Up.

§ 59-59. Dissolution defined.—The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. (1941, c. 374, s. 29.)

§ 59-60. Partnership not terminated by dissolution.—On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (1941, c. 374, s. 30.)

§ 59-61. Causes of dissolution.—Dissolution is caused: (1) Without violation of the agreement between the partners,

(a) by the termination of the definite term or particular undertaking specified in the agreement,

(b) by the express will of any partner when no definite term or particular undertaking is specified,

(c) by the express will of all partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specific term or particular undertaking,

(d) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) by the death of any partner;

(5) by the bankruptcy of any partner or the partnership;

(6) by decree of court under § 59-62. (1941, c. 374, s. 31.)

§ 59-62. Dissolution by decree of court.—(1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) a partner becomes in any other way incapable of performing his part of the partnership contract,

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) the business of the partnership can only be carried on at a loss,

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under §§ 59-57 and 59-58:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. (1941, c. 374, s. 32.)

§ 59-63. General effect of dissolution on authority of partner.—Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

(1) with respect to the partners,

(a) when the dissolution is not by the act, bankruptcy or death of a partner; or

(b) when the dissolution is by such act, bankruptcy or death of a partner, in cases where § 59-64 so requires,

(2) with respect to persons not partners, as declared in § 59-65. (1941, c. 374, s. 33.)

§ 59-64. Right of partner to contribution from copartners after dissolution.—Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

(a) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy. (1941, c. 374, s. 34.)

§ 59-65. Power of partner to bind partnership to third persons after dissolution.—(1) After dissolution a partner can bind the partnership except as provided in paragraph (3)

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1) (b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1) (b) (II).

(4) Nothing in this section shall affect the liability under § 59-46 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. (1941, c. 374, s. 35.)

§ 59-66. Effect of dissolution on partner's existing liability.—(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. (1941, c. 374, s. 36.)

§ 59-67. Right to wind up.—Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. (1941, c. 374, s. 37.)

§ 59-68. Rights of partners to application of partnership property.—(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interest in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under § 59-66, subsection (2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have

(I) all the rights specified in paragraph (1) of this section, and

(II) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2) (a) (II) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2) (b) all the rights of a partner under paragraph (1), subject to clause (2) (a) (II), of this section,

(II) if the business is continued under paragraph (2) (b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered. (1941, c. 374, s. 38.)

§ 59-69. Rights where partnership is dissolved for fraud or misrepresentation.—Where partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(a) to a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) to stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) to be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (1941, c. 374, s. 39.)

§ 59-70. Rules for distribution.—In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are

(I) the partnership property,

(II) the contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this section.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) those owing to partners other than for capital and profits,

(III) those owing to partners in respect of capital,

(IV) those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this section to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by § 59-48, subsection (a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this section.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this section, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this section.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against the separate property shall rank in the following order:

(I) Those owing to separate creditors,

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution. (1941, c. 374, s. 40.)

§ 59-71. Liability of persons continuing the business in certain cases.—(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his

rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of § 59-68, subsection (2) (b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of the partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. (1941, c. 374, s. 41.)

§ 59-72. Rights of retiring or estate of deceased partner when the business is continued.—When any partner retires or dies, and the business is continued under any of the conditions set forth in § 59-71, subsections (1, 2, 3, 5, 6), or § 59-68, subsection (2) (b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by § 59-71, subsection (8). (1941, c. 374, s. 42.)

§ 59-73. Accrual of actions.—The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (1941, c. 374, s. 43.)

Art. 3. Surviving Partners.

§ 59-74. Surviving partner to give bond.—Upon the death of any member of a partnership, the surviving partner shall, within thirty days, execute before the clerk of the superior court of the county where the partnership business was conducted, a bond payable to the state of North Carolina, with sufficient surety conditioned upon the faithful performance of his duties in the settlement of the partnership affairs. The amount of such bond shall be fixed by the clerk of the court; and the settlement of the estate and the liability of the bond shall be the same as under the law governing administrators and their bonds. (1915, c. 227, ss. 1, 2, 3; C. S. 3277.)

§ 59-75. Effect of failure to give bond.—Upon the failure of the surviving partner to execute the bond provided for in § 59-74, the clerk of the superior court shall, upon application of any person interested in the estate of the deceased partner, appoint a collector of the partnership, who shall be governed by the same law governing an administrator of a deceased person. (1915, c. 227, s. 4; C. S. 3278.)

§ 59-76. Surviving partner and personal representative make inventory.—When a member of any partnership dies the surviving partner, within sixty days after the death of the deceased partner, together with the personal representative of the deceased partner, shall make out a full and complete inventory of the assets of the partnership, including real estate, if there be any, together with a schedule of the debts and liabilities thereof, a copy of which inventory and schedule shall be retained by the surviving partner, and a

copy thereof shall be furnished to the personal representative of the deceased partner. (Rev., s. 2540; 1901, c. 640; C. S. 3279.)

§ 59-77. When personal representative may take inventory; receiver.—If the surviving partner neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of § 59-76. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law. (Rev., s. 2541; 1901, c. 640, s. 2; C. S. 3280.)

§ 59-78. Notice to creditors.—Every surviving partner, within thirty days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within twelve months from the date of first publication of such notice. The notice shall be published once a week for four weeks in a newspaper (if there be any) published in the county where the partnership existed. If there should be no newspaper published in the county, then the notice shall be posted at the courthouse and four other public places in the county. (Rev., s. 2542; 1901, c. 640, s. 3; C. S. 3281.)

§ 59-79. Debts paid pro rata; liens.—All debts and demands against a copartnership, where one partner has died, shall be paid pro rata, except debts which are a specific lien on property belonging to the partnership. (Rev., s. 2543; 1901, c. 640, s. 4; C. S. 3282.)

§ 59-80. Effect of failure to present claim in twelve months.—In an action brought on a claim which was not presented within twelve months from the first publication of the general notice to creditors, the surviving partner shall not be chargeable for any assets that he may have paid in satisfaction of any debts before such action was commenced, nor shall any costs be recovered in such action against the surviving partner. (Rev., s. 2544; 1901, c. 640, s. 5; C. S. 3283.)

§ 59-81. Procedure for purchase by surviving partner.—1. Appraisal of Property.—The surviving partner may, if he so desire, make application to the clerk of the superior court of the county in which the partnership existed, after first giving notice to the executor or administrator of the time of the hearing of such application, for the appointment of three judicious, disinterested appraisers, one of whom may be named by the surviving partner, one by the representative of the deceased partner's estate, and the third named by the two appraisers selected, whose duty it shall be to make out under oath a full and complete inventory and appraisement of the entire assets of the partnership, including real estate if there be any, together with a schedule of the debts and liabilities thereof, and to deliver the same to the surviving partner; they shall also deliver a copy to the executor or administrator, and file a copy with the clerk of the court.

2. Surviving Partner May Purchase.—The surviving partner may, with the consent of the executor or administrator of the deceased partner and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of such deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets.

3. Surviving Partner to Give Bond.—In case the surviving partner shall avail himself of the privilege of purchasing such interest as provided for in this section, he shall give bond to the executor or administrator with surety for the payment of the debts and liabilities of the partnership, and for the performance of all contracts for which the partnership is liable.

4. Sale of Real Estate.—In case of such sale of the real estate belonging to the partnership, the title to the real estate so purchased shall not pass until the sale thereof has been reported to and confirmed by the clerk of the superior court of the county in which the partnership was located, in a special proceeding to which the widow and heirs at law or devisees of the deceased partner are duly made parties. (Rev., s. 2545; 1901, c. 640, s. 6; 1911, c. 12; C. S. 3284.)

§ 59-82. Surviving partner to account and settle.—In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within twelve months from the death of the deceased partner, file with the clerk of the superior court of the county where the partnership was located, an account, under oath, stating his action as surviving partner, and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court, and in no case to exceed five per cent out of the share of the deceased partner. (Rev., s. 2546; 1901, c. 640, s. 7; C. S. 3285.)

§ 59-83. Accounting compelled.—In case any surviving partner fails to come to a settlement with the executor or administrator of the deceased partner within the time prescribed by law, the clerk of the superior court may, at the instance of such executor, administrator or other person interested in such deceased partnership estate, cite the surviving partners to a final settlement as provided for by law in the case of executors and administrators. (Rev., s. 2547; 1901, c. 640, s. 8; C. S. 3286.)

§ 59-84. Settlement otherwise provided for.—When the original articles of partnership in force at the death of any partner or the will of a de-

ceased partner make provision for the settlement of the deceased partner's interest in the partnership, and for a disposition thereof different from that provided for in this chapter, the interest of such deceased partner in the partnership shall be settled and disposed of in accordance with the provisions of such articles of partnership or of such will. (Rev., s. 2545; 1901, c. 640, s. 6; C. S. 3287.)

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§ 59-85. Certificate filed; contents.—No person shall hereafter carry on, conduct or transact business in this state under assumed name, or under any designation, name or style other than the real name of the individual owning, conducting or transacting such business, unless such person shall file in the office of the clerk of the superior court of the county in which such person owns, conducts or transacts, or intends to own, conduct or transact such business, or maintain an office or place of business, a certificate setting forth the name under which such business owned is or is to be conducted or transacted, and the true or real full name of the person owning, conducting or transacting the same, with the home and post-office address of such person. The certificate shall be executed and duly acknowledged by the person so owning, conducting or intending to conduct such business: Provided, that the selling of goods by sample or through traveling agents or traveling salesman, or by means of orders forwarded by the purchaser through the mails, shall not be construed for the purpose of this section as conducting or transacting business so as to require the filing of such certificates. (1913, c. 77, s. 1; C. S. 3288.)

§ 59-86. Index of certificates kept by clerk.—The several clerks of the superior court of this state shall keep an alphabetical index of all persons filing certificates provided for herein, and for the indexing and filing of such certificates they shall receive a fee of twenty-five cents. A copy of such certificates duly certified to by the clerk in whose office the same shall be filed shall be presumptive evidence in all courts of law in this state of the facts therein contained. (1913, c. 77, s. 2; C. S. 3289.)

§ 59-87. Corporations and limited partnerships not affected.—This article shall in no way affect or apply to any corporation created and organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in this state, nor shall it in any manner affect the right of any persons to form limited partnerships as provided by the laws of this state. (1913, c. 77, s. 3; C. S. 3290.)

§ 59-88. Violation of article misdemeanor.—Any person owning, carrying on or conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than fifty dollars or imprisonment in the county jail for a term of not exceeding thirty days: Provided, however, that the failure of any person or persons owning, carrying on, or conducting or transacting business as aforesaid, to comply with the provisions of this article shall not prevent a recovery by said person or persons in any civil action brought in any of the courts of this state. (1913, c. 77, s. 4; 1919, c. 2; C. S. 3291.)

§ 59-89. Person trading as "company" or "agent" to disclose real parties.—If any person shall transact business as trader or merchant, with the addition of the words "factor," "agent," "& Company" or "& Co.," or shall conduct such business under any name or style other than his own, except in case of a corporation, and fail to disclose the name of his principal or partner by a sign placed conspicuously at the place wherein such business is conducted, then all the property, stock of goods and merchandise, and choses in action purchased, used and contracted in the course of such business shall, as to creditors, be liable for the debts contracted in the course of such business by the person in charge of same. Provided, this section shall not apply to any person transacting business under license as an auctioneer, broker, or commission merchant; in all actions under this section it is incumbent on such trader or merchant to prove compliance with the same. (Rev., s. 2118; 1905, c. 443; C. S. 3292.)

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Art. 1. General Provisions.

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§ 60-2. Roads not to be established unless authorized by law.—If any person or corporation, not being expressly authorized thereto, shall make or establish any canal, turnpike, tramroad, railroad or plankroad, with the intent that the same shall be used to transport passengers other than such persons, or the members of such corporation, or to transport any productions, fabrics or manufactures other than their own, the per-

son or corporation so offending, and using the same for any such purpose, shall forfeit and pay fifty dollars for every person and article of produce so transported.

This section shall not apply to any narrow-gauge railroad, tramroad or toll road made and established and maintained solely by the owner of the lands upon which said road may be, the principal business of which is the transportation of logs, lumber and articles for the owners of such railroad or tramroad: Provided, that the utilities commission shall have power to authorize lumber companies, having logging roads, to transport all kinds of commodities other than their own and passengers and to charge therefor reasonable rates to be approved by said commission. (Rev., s. 2598; Code, s. 1717; R. C., c. 61, s. 37; 1874-5, c. 83; 1901, c. 282; 1907, c. 531; 1911, c. 160; 1915, c. 6; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3413.)

§ 60-3. Conductor and certain other employees to wear badges.—Every conductor, baggage-master, engineer, brakeman or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property. (Rev., s. 2604; Code, s. 1958; 1871-2, c. 138, s. 30; C. S. 3414.)

§ 60-4. Actions for penalties to be in name of state.—All penalties imposed by this chapter may, unless otherwise provided, be sued for in the name of the state. (Rev., s. 2647; Code, s. 1976; 1885, c. 221; C. S. 3415.)

§ 60-5. Discrimination in charges misdemeanor.—If any common carrier shall directly or indirectly by special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property subject to the provisions of law than it charges, demands or collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions; or shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever; or shall subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such person or corporation shall be upon conviction thereof fined not less than one thousand nor more than five thousand dollars for each and every offense. (Rev., s. 3749; 1899, c. 164, s. 13; C. S. 3416.)

§ 60-6. Discrimination by rebate or reduced charges, misdemeanor. — Any railroad company doing business in the state, or officer or agent thereof, who shall give to any person or shipper any advantage over another person or shipper under like circumstances, by way of any rebate or reduced rate not authorized by law or by the North Carolina utilities commission, or which shall make charges for shipments of freight in violation of the law as to railroad freight rates, contained in article 8 of the chapter Utilities Commission, or shall willfully discriminate in the matter of service in favor of one person or corporation against another in like circumstances, shall be guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not less than one hundred dollars and such officer or agent shall be fined or imprisoned or both, in the discretion of the court; and any shipper or consignee of any freight in the state of North Carolina who shall knowingly accept any rebate or other consideration or services from any railroad company which is not allowed or given other shippers or consignees under like or similar circumstances, and which is not allowed by law, shall be guilty of a misdemeanor, and fined or imprisoned in the discretion of the court. (1907, c. 217, s. 2; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3417.)

§ 60-7. Discrimination against connecting lines and violation of certain rules of the utilities commission misdemeanor.—If any common carrier shall not afford all reasonable, proper and equal facilities for the interchange of traffic between its respective lines and for the forwarding and delivering of passengers and freights to and from its several lines and those connecting therewith, or shall discriminate in its rates and charges against such connecting lines, or if any connecting line shall not make as close connection as practicable for the convenience of the traveling public, or shall not obey all rules and regulations made by the utilities commission relating to trackage, it shall be punished by a fine of not less than five hundred dollars nor exceeding five thousand dollars for each and every offense. (Rev., s. 3751; 1899, c. 164, s. 21; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3418.)

§ 60-8. Discrimination against the Atlantic and North Carolina railroad misdemeanor; venue.—If any railroad in North Carolina shall discriminate against the freights received from the Atlantic and North Carolina railroad, or shall make rates by which, either directly or indirectly, by rebates or otherwise, freights may be delivered at less rates when received from other points than from points along the Atlantic and North Carolina railroad in proportion to distance hauled, it shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars for each and every violation thereof. An indictment for the misdemeanor may be found and tried in the courts where the goods were either shipped or delivered, but the court in which the indictment for the offense is first found shall have exclusive jurisdiction. (Rev., s. 3750; 1889, c. 358; C. S. 3419.)

Art. 2. Incorporation, Officers, and Stock of Railroad.

§ 60-9. Articles of association; contents; signature; filing.—Any number of persons, not less

than six, at least one of whom shall be a citizen and resident of this state, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use; and for that purpose may make and sign articles of association, in which shall be stated the name of the company, the number of years the same is to continue, the places from and to which the road is to be constructed or maintained and operated, the length of such road as near as may be, and the name of each county in this state through or into which it is made or intended to be made, the amount of the capital stock of the company, which shall not be less than five thousand dollars for every mile of road constructed or proposed to be constructed, and the number of shares of which the capital stock shall consist, and the names and places of residence of six directors of the company, at least one of whom shall be a citizen and resident of this state, upon whom legal process may be served, who shall manage its affairs for the first year, or until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in the company. On compliance with the provisions of § 60-10, such articles of association may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and thereupon the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges granted to railroad corporations by this chapter. The articles of association of any company formed under the provisions of this chapter, or the charter of any railroad company formed under a special act, may be amended as provided in §§ 55-30 and 55-31 and said §§ 55-30 and 55-31 are hereby made to apply to railroad companies: Provided, no amendment may be made changing the nature of the company's business, extending its corporate existence or authorizing any powers other than those authorized by this chapter. Provided further, that the capital stock provision or provisions of this section shall not apply to any railroad corporation chartered for the purpose of leasing a railroad already in existence and in operation, and such railroad company so chartered shall have a paid-in capital stock of not less than five thousand dollars ($5,000.00). (Rev., s. 2548; Code, s. 1932; 1871-2, c. 138; 1905, c. 187; 1907, c. 472, ss. 1, 2; 1921, c. 117; 1939, c. 60; C. S. 3420.)

§ 60-10. Prerequisites of filing; stock subscription; affidavit of directors; payment of fees.—Such articles of association shall not be filed and recorded in the office in the secretary of the state until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and five per cent paid thereon in good faith, and in cash, to the directors named in the articles of association; nor until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors named in such articles, that the amount of stock required by this section has been in good faith subscribed and five per cent paid in cash thereon as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association, as aforesaid; nor until said directors shall pay the taxes and fees provided for under the chapter Corporations, Article 14, entitled Taxes and Fees. (Rev., s. 2549; Code, s. 1933; 1871-2, c. 138, s. 2; 1905, c. 168; C. S. 3421.)

§ 60-11. Amendment of charter by railroad; changing value of and issuing stock without par value.—Any railroad company heretofore or hereafter organized under the laws of this State, whether under a special act, or otherwise, may, in the manner provided by § 55-31, as heretofore amended, amend its certificate of incorporation, articles of association or charter, for the purpose of increasing or decreasing its capital stock, changing its name, changing the par value of the shares of its capital stock, creating one or more classes of common or preferred stock, creating shares of stock with or without nominal or par value, or for any purpose authorized by statutes now in force relating to the amendment of certificates of incorporation, articles of association or charters of corporations: Provided, however, that in case of a consolidated railroad company, heretofore or hereafter organized under a special act or general laws of this State and of any other state or states, a new class or classes of stock may be created upon authorization by vote of such amount of the outstanding capital stock, in no case less than a majority thereof, as may be prescribed by the provisions of the agreement of consolidation in pursuance of which such consolidated company was formed. (1929, c. 261.)

§ 60-12. Copy of articles evidence of incorporation.—A copy of any articles of association filed and recorded in pursuance of this article and of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated. (Rev., s. 2550; Code, s. 1934; 1871-2, c. 138, s. 3; C. S. 3422.)

§ 60-13. Opening of subscription books.—When such articles of association and affidavit are filed and recorded in the office of the secretary of state, the directors named in such articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company in such places and after giving such notice as they may deem expedient, and may continue to receive subscriptions until the whole of the capital stock is subscribed. (Rev., s. 2551; Code, s. 1935; 1871-2, c. 138, s. 4; C. S. 3423.)

§ 60-14. How stock paid for; forfeiture for nonpayment. — The directors may require the subscribers to the capital stock of the company to pay the amounts by them respectively subscribed in such manner and in such installments as they

may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon forfeited for the use of the company, but they shall not declare it so forfeited until they shall have caused a notice in writing to be served on him personally, or the same to be deposited in the postoffice, properly directed to him at the post office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in such notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid at least sixty days previous to the day on which payment is required to be made. (Rev., s. 2554; Code, s. 1938; 1871-2, c. 138, s. 7; C. S. 3424.)

§ 60-15. Increase of capital stock.—In case the capital stock of any railroad company is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purposes aforesaid. Such increase must be sanctioned by a vote in person or by proxy of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that purpose, by a notice in writing to each stockholder, to be served on him personally or by depositing the same, properly folded and directed to him at the postoffice nearest his usual place of residence, in the postoffice at least twenty days prior to such meeting. Such notice must state the time and place of the meeting and its object and the amount to which it is proposed to increase the capital stock. The proceedings of such meetings must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all the stockholders of the company aforesaid. (Rev., s. 2555; Code, s. 1939; 1871-2, c. 138, s. 9; C. S. 3425.)

§ 60-16. Stockholders' liability for unpaid stock and to laborers; notice.—Each stockholder of any such company shall be individually liable to the creditors of such company to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company until the whole amount of the capital stock so held by him shall have been paid to the company, and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution shall be the amount recoverable with costs against such stockholder. Before such laborer or servant shall charge such stockholders for such thirty days service he shall give them notice in writing within twenty days after the performance of such service that he intends to hold them liable, and shall commence such action therefor within thirty days after the return of such execution unsatisfied as above mentioned; and every such stockholder, against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in such corporation in ratable proportion to the amount of the stock they shall respectively hold with himself. (Rev., s. 2556; Code, s. 1940; 1871-2, c. 138, s. 10; C. S. 3426.)

§ 60-17. Liability of trustees and other fiduciaries holding stock.—No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company. The estates in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name, and a person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly. (Rev., s. 2557; Code, s. 1941; 1871-2, c. 138, s. 11; C. S. 3427.)

§ 60-18. Directors and presidents.—There shall be a board of six directors, one of whom shall be elected president, of every corporation formed under this article, to manage its affairs. The directors shall be chosen annually by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue in office until others are elected in their places. In the election of directors each stockholder shall be entitled to one vote personally or by proxy on every share held by him thirty days previous to any such election, and vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. The inspectors of the first election of directors shall be appointed by the board of directors named in the articles of association. No person shall be a director or president unless he shall be a stockholder owning stock absolutely in his own right and qualified to vote for directors at the election at which he shall be chosen; and at every election of directors the books and papers of such company shall be exhibited to the meeting, if a majority of the stockholders present shall require it. (Rev., s. 2552; Code, s. 1936; 1871-2, c. 138, s. 5; C. S. 3428.)

§ 60-19. Appointment of officers and agents.—The president and directors shall appoint a treasurer and secretary and such other officers and agents as shall be prescribed by the by-laws. (Rev., s. 2553; Code, s. 1937; 1871-2, c. 138, s. 6; C. S. 3429.)

§ 60-20. Officials to account to successors.—The president and directors of the several railroads, and all persons acting under them, are hereby required upon demand to account with the president and directors elected or appointed to succeed them, and shall transfer to them forthwith all the money, books, papers, choses in action,

property and effects of every kind and description belonging to such company. (Rev., s. 2648; Code, s. 2001; 1870-1, c. 72, ss. 1, 3; C. S. 3430.)

Art. 3. County Subscriptions in Aid of Railroads.

§ 60-21. Counties may subscribe stock.—The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company when necessary to aid in the construction of any railroad in which the citizens of the county may have an interest. (Rev., s. 2558; Code, s. 1996; 1868-9, c. 171, s. 1; C. S. 3431.)

§ 60-22. Election on question of county aid.—The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and if a majority of the board shall vote for the proposition, this shall be entered of record, which record shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. If a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company: Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper. (Rev.. s. 2559; Code, s. 1997; 1868-9, c. 171, s. 2; C. S. 3432.)

§ 60-23. Conduct of election.—All elections ordered under § 60-22 shall be held by the sheriff under the laws and regulations provided for the election of members of the general assembly. The votes shall be compared by the boards of county commissioners, who shall make a record of the same. (Rev., s. 2560; Code, s. 1998; 1868-9, c. 171, s. 3; C. S. 3433.)

§ 60-24. Interest on bonds.—In case the county shall subscribe the amount proposed in bonds, the board of commissioners shall have power to fix the rate of interest, not to exceed the rate of six per cent, when the principal on said bonds shall be payable and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mode and manner of paying the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on such bonds. (Rev., s. 2561; Code, s. 1999; 1868-9, c. 171, s. 4; C. S. 3434.)

§ 60-25. Collection and disposition of taxes authorized.—The taxes authorized by this article to be raised for the payment of interest or principal shall be collected by the sheriff in like manner as other state taxes, and be paid into the hands of the county treasurer, to be used by the chairman of the board of county commissioners as directed by this article. (Rev., s. 2562; Code, s. 2000; 1868-9, c. 171, s. 5; C. S. 3435.)

Art. 4. Township Subscriptions in Aid of Railroads.

§ 60-26. Townships may subscribe stock.—The board of commissioners of the several counties of the state shall have power to subscribe stock for the use and benefit of any township in their several counties, when necessary to aid in the construction of any railroad, which is now or may be hereafter incorporated under the laws of this state, in which the citizens of such county may have an interest. (1917, c. 64, s. 1; C. S. 3436.)

§ 60-27. Election on question of township aid.—The board of commissioners of any county proposing to take stock, for the use and benefit of any township, as mentioned in § 60-26, shall meet and agree upon the amount to be subscribed for such township, and if a majority of the board shall vote for the proposition, this shall be entered of record, which record shall show the amount proposed to be subscribed, and for what township, to what company, and whether in bonds, money or other property; and thereupon the board shall order an election, to be held upon a notice of not less than thirty days, in each and every township for whose use and benefit such subscription is proposed to be made for the purpose of voting for or against the proposition to subscribe the amount agreed on by the board of commissioners. If a majority of the qualified voters of the township for whose use and benefit such subscription is proposed to be made shall vote in favor of the proposition, the board of county commissioners through their chairman shall have power to subscribe the amount of stock proposed by them, and submitted to the voters, for the use and benefit of such township, subject to all the rules, regulations, and restrictions of other stockholders in such railroad company: Provided, that the township, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as it may think proper. (1917, c. 64, s. 2; C. S. 3437.)

§ 60-28. Conduct of election; canvass of votes.—All elections ordered under § 60-27 shall be held by the sheriff of the county in which such township is located, under such laws and regulations as are now or may hereafter be provided for the election of members of the general assembly. The votes of each township for whose use and benefit subscription under this article is proposed to be made shall be compared and the results of such election determined by the board of commissioners of the county in which such township is located, who shall make a record of the same. (1917, c. 64, s. 3; C. S. 3438.)

§ 60-29. Bond issue; special tax.—In case the township shall authorize, at the election herein provided for, a subscription of the amount proposed in bonds, the board of commissioners shall have power to fix the rate of interest, not to exceed the rate of six per cent, when the principal of such bonds shall be payable, and at what place, and shall also fix the time and place for paying interest, and shall also determine the mode and manner of paying the same. The board of commissioners shall, in order to provide for the payment of the bonds and interest thereon authorized to be issued by this article, compute and levy each

year at the time of levying the county and state taxes a sufficient tax upon the property in any township authorizing the issuing of bonds under this article to pay the interest on the bonds issued on account of and for the use and benefit of such township, and shall also levy a sufficient tax to create a sinking fund to provide for the payment of such bonds at maturity. Such taxes shall be levied and collected annually and under the same laws and regulations as shall be in force for levying and collecting other county taxes. (1917, c. 64, s. 4; C. S. 3439.)

§ 60-30. Levy, collection, and disposition of tax.—The tax authorized by this article to be raised for the payment of interest and principal shall be levied by the board of commissioners of the county in which such township is located, at such times as is now or hereafter may be fixed for levying state and other county taxes, against the taxable property located in such township, in addition to the regular state and county taxes assessable against such property. The tax shall be collected by the sheriff or tax collector or other collecting officer of the county in which such township is located in like manner as state taxes are collected, and shall be paid into the hands of the county treasurer, to be used by the chairman of the board of commissioners as directed by this article. (1917, c. 64, s. 5; C. S. 3440.)

§ 60-31. Tax to be kept separate.—The taxes levied and collected under the provisions of this article shall be kept separate and apart from all other state and county taxes levied and collected in the county in which such township shall be located. (1917, c. 64, s. 6; C. S. 3441.)

§ 60-32. Townships may subscribe to purchase of railroad corporations. — The board of commissioners of the several counties of the state shall have power to make subscriptions, for the use and benefit of any township in their several counties, for the purpose of purchasing or aiding in the purchase of any railroad corporation now or hereafter incorporated under the laws of this state which shall be dissolved or whose property and franchises are proposed to be sold privately or under execution, judicial decree, deed in trust, mortgage, or other conveyance, and all the provisions of this article shall apply as fully and as well to such subscriptions as they do to subscriptions to stock to aid in the construction of railroads. (1917, c. 64, s. 1; 1919, c. 130, s. 1; C. S. 3442.)

§ 60-33. Election on question of purchase; proxies to represent stock.—The county commissioners shall, upon the petition of one-fourth of the qualified voters of any township mentioned in § 60-32, order an election and submit the question of such subscription according to the terms of the petition. At such election five persons shall be chosen as proxies to represent such stock, if the vote shall be in favor of the subscription, in all respects as fully as if private promoters, corporators or holders of such stock. They shall be eligible to the position of director or other office in the corporation. They shall hold office until the first Monday in December following the next general election and until their successors chosen at such general election shall qualify. Such proxies shall be chosen at the general election every two years as township officers are. They shall have authority, alone, if sole purchasers, and with the proxies from other townships and others participating in the purchase, if not acting alone, to purchase such railroad property and franchise, and shall constitute a new corporation upon compliance with law as in other cases of a dissolution and sale of railroad property and franchise. (1917, c. 64, s. 2; 1919, c. 130, s. 2; C. S. 3443.)

§ 60-34. Increase of interest; procedure.—Whenever the board of county commissioners of any county has subscribed for the use and benefit of any township to any interest in any railroad or railroad corporation, as provided in this article, and the majority of the proxies chosen to represent the stock or interest of the township in such railroad shall certify to the board of commissioners that in their opinion the interest of the township in said railroad or railroad corporation should be increased, the board of county commissioners shall order an election to be held in such township, upon the petition of one-fourth of the qualified voters of such township, in the same manner as provided in this article, and if the majority of the qualified voters of such township shall vote in favor of the proposition contained in the petition the county commissioners shall execute and deliver the bonds authorized, levy and collect in the township and dispose of the tax, as authorized in this article. (Ex. Sess. 1924, c. 117, s. 1.)

§ 60-35. Execution and sale of bonds for increase of interest.—Said bonds shall be executed by the chairman of the board of county commissioners of such county, attested by the clerk of said board, who shall affix the seal of the board, and deliver the same to the board of proxies representing said township.

The board of proxies shall advertise said bonds as provided by law, and faithfully apply the same to the purposes set forth in the petition for the election. (Ex. Sess. 1924, c. 117, ss. 2, 3.)

§ 60-36. Organization of proxies; report; vacancies.—The proxies chosen at each general election shall qualify and organize on the first Monday in December, elect a chairman, vice-chairman and secretary, and they shall annually in each year file with the board of county commissioners a copy of the report required by law to be made to the Interstate Commerce Commission.

Any vacancy occurring in the board of proxies shall be filled by the board of proxies until the next general election. (Ex. Sess. 1924, c. 117, ss. 4, 5.)

Art. 5. Powers and Liabilities.

§ 60-37. Powers of railroad corporations enumerated.—Every railroad corporation shall have power:

1. To Survey and Enter on Land.—To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of

any person, but subject to responsibility for all damages which shall be done thereto.

2. To Condemn Land under Eminent Domain.—To appropriate land and rights therein by condemnation, as provided in the chapter Eminent Domain.

3. To Take Property by Grant.—To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

4. To Purchase and Hold Property.—To purchase and hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad and the stations and other accommodations necessary to accomplish the object of its incorporation.

5. To Grade and Construct Road.—To lay out its road, not exceeding one hundred feet in width, and to construct the same; to take, for the purpose of cuttings and embankments, as much more land as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in the chapter Eminent Domain.

6. To Intersect with Highways and Waterways.—To construct its road across, along or upon any stream of water, water-course, street, highway, plankroad, turnpike, railroad or canal which the route of its road shall intersect or touch; but the company shall restore the stream or water-course, street, highway, plankroad or turnpike road, thus intersected or touched, to its former state or to such state as not unnecessarily to have impaired its usefulness. Nothing in this chapter contained shall be construed to authorize the erection of any bridge or any other obstruction across, in or over any stream or lake navigated by steam or sail boats, at the place where any bridge or other obstructions may be proposed to be placed, nor to authorize the construction of any railroad not already located in, upon or across any streets in any city without the assent of the corporation of such city.

7. To Intersect with Other Railroads. — To cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route, and upon the grounds of such other company, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the object of its connections. Every company whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be appointed by the court as is provided in the chapter Eminent Domain.

8. To Transport Persons and Property.—To take and convey persons and property on its railroad by the power or force of steam, electricity or animals, or by any mechanical power, and to receive compensation therefor.

9. To Erect Stations and Other Buildings.—To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

10. To Borrow Money, Issue Bonds and Execute Mortgages.—From time to time to borrow such sums of money as may be necessary for completing and finishing or operating its railroad, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises and to secure the payment of any debt contracted by the company for the purposes aforesaid, and the directors of the company may confer on any holder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such company at any time under such regulations as the directors may see fit to adopt.

11. To Lease Rails.—To lease iron rails to any person or corporation for such time and upon such terms as may be agreed on by the contracting parties, and upon the termination of the lease by expiration, forfeiture or surrender, to take possession of and remove the rails so leased as if they had never been laid.

12. To Establish Hotels and Eating Houses. —To purchase, lease, hold, operate or maintain eating-houses, hotels and restaurants for the accommodation of the traveling public along the line of its road. (Rev., ss. 2567, 2575; Code, s. 1957; 1887, c. 341; 1889, c. 518; 1871-2, c. 138, s. 29; C. S. 3444.)

§ 60-38. Engaging in unauthorized business.—It shall be unlawful for any railroad company incorporated under the laws of this State, or any railroad company incorporated under the laws of any other state and operating one or more railroads in this State, to engage in any business other than the business authorized by its or their charter.

Any railroad company violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in the discretion of the court. (Ex. Sess. 1924, c. 80.)

§ 60-39. Power to aid in construction of connecting and branch lines.—Any railroad or other transportation company shall have the right to aid in the construction of any railroad or branch railroad in this or an adjoining state connected with it directly or indirectly, if the construction of such railroad or branch railroad is authorized by law. (Rev., s. 2567, subsec. 12; 1885, c. 108, s. 1; C. S. 3445.)

§ 60-40. Power to seize fuel.—If any railroad or other transportation company finds it necessary, in order to prevent delays in the transportation of freight or passengers, to take possession of coal, wood, or other fuel not its own property and convert it to its own use without an agreement with the owner thereof, it shall notify such owner within three days of such taking that his property has been appropriated, giving the date thereof, and shall, within a period of thirty days, pay for such coal, wood or other fuel at the

invoice price at place of shipment, plus twenty-five per cent. Should the transportation company fail to notify the consignee or owner within such three days or pay for the coal, wood or other fuel at the invoice price at place of shipment, plus twenty-five per cent as above provided, within thirty days after converting the same to its own use, it shall in addition forfeit to the party aggrieved the sum of twenty-five dollars for the first day of failure to notify such consignee of the appropriation of the fuel, or its failure to pay for the same, and five dollars for each day thereafter in which it shall fail to notify such consignee or pay for the same. (Rev., s. 2617; 1903, c. 590, s. 4; 1907, c. 467; C. S. 3446.)

§ 60-41. Agreements for through freight and travel.—The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight, or breaking the bulk thereof, at different points along the lines, and for this purpose may use the road or roads and the rolling stock of such corporations or companies on such terms as may be agreed upon by them. (Rev., s. 2640; Code, s. 1995; 1866-7, c. 105; C. S. 3447.)

§ 60-42. Intersection with highways. — Whenever the track of a railroad shall cross a highway, turnpike or plankroad, such highway, turnpike or plankroad may be carried under or over the track, as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway, turnpike or plankroad desirable, then such corporation may take such additional lands for the construction of the road, highway, turnpike or plankroad on such new line as may be deemed requisite by the directors. Unless the land so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in the chapter Eminent Domain, and duly made by such corporation to the owners and persons interested in such land. The same when so taken shall become a part of such intersecting highway, turnpike or plankroad in such manner and by such tenure as the adjacent parts of the same highway, turnpike or plankroad may be held for highway purposes. (Rev., s. 2568; Code, s. 1954; 1871-2, c. 138, s. 26; C. S. 3448.)

§ 60-43. Obstructing highways; defective crossings; failure to repair after notice misdemeanor.—Whenever, in their construction, the works of any railroad corporation shall cross established roads or ways, the corporation shall so construct its works as not to impede the passage or transportation of persons or property along the same. If any railroad corporation shall so construct its crossings with public streets, thoroughfares or highways, or keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or endanger the passage or transportation of persons or property along, over or across the same, the governing body of the county, city or town, or other public road authority having charge, control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in writing, directing it to place any such crossing in good condition, so that persons may cross and property be safely transported across the same. If the railroad corporation shall fail to put such crossing in a safe condition for the passage of persons and property within thirty days from and after the service of the notice, it shall be guilty of a misdemeanor and shall be punished in the discretion of the court. Each calendar month which shall elapse after the giving of the notice and before the placing of such crossing in repair shall be a separate offense. This section shall in no wise be construed to abrogate, repeal or otherwise affect any existing law now applicable to railroad corporations with respect to highway and street crossings; but the duty imposed and the remedy given by this section shall be in addition to other duties and remedies now prescribed by law. (Rev., s. 2569; Code, s. 1710; R. C., c. 61, s. 30; 1874-5, c. 83; 1915, c. 250, ss. 1, 2; C. S. 3449.)

§ 60-44. Service of notice of defective crossings.—The notice required by § 60-43 may be served upon the agent of the offending railroad located nearest to the defective or dangerous crossing about which the notice is given, or it may be served upon the section master whose section includes such crossing. Such notice may be served by delivering a copy to such agent or section master, or by letter properly stamped, registered and addressed to either of such persons. (1915, c. 250, s. 1; C. S. 3450.)

§ 60-45. Change in location of highways.—In order to prevent the frequent crossing of such road or ways, or in cases where it may be necessary to occupy the same, the corporation may change the roads and ways so as to avoid such crossing and occupation, and to such points as may be deemed expedient. (Rev., s. 2570; Code, s. 1711; R. C., c. 61, s. 31; 1874-5, c. 83; C. S. 3451.)

§ 60-46. Damages due to change in location.—For any injury done to the lands of persons by taking them under § 60-45, the value thereof shall be assessed in like manner as is provided for assessing damages to real estate for taking lands under the chapter Eminent Domain. (Rev., s. 2571; Code, s. 1712; R. C., c. 61, s. 32; 1874-5, c. 83; C. S. 3452.)

§ 60-47. Old road not to be impeded until new road is made. — Before any part of an established road or way shall be impeded by any railroad corporation, the new road or way shall be prepared and made equally good with the portion proposed to be discontinued; and then the same shall be deemed a part of the original road or way, and shall be kept up and repaired as before the change. (Rev., s. 2572; Code, s. 1713; R. C., c. 61, s. 33; 1874-5, c. 83; C. S. 3453.)

§ 60-48. Cattle-guards and private crossings; failure to erect and maintain misdemeanor.—Every incorporated company owning, operating or constructing, or which shall hereafter own, operate or construct, or any company which shall hereafter be incorporated and shall own, operate or construct any railroad passing through and over the land of any person now enclosed, or which may hereafter become enclosed, shall, at

its own expense, construct and constantly maintain, in good and safe condition, good and sufficient cattle-guards at the points of entrance upon and exit from such enclosed land, and shall also make and keep in constant repair crossings to any plantation road thereupon. Every railroad corporation which shall fail to erect and constantly maintain the cattle-guards and crossings provided for by this section shall be liable to an action for damages to any party aggrieved, and shall be guilty of a misdemeanor and fined in the discretion of the court.

So far as this section relates to cattle-guards, the utilities commission is hereby authorized, directed and empowered to adopt such good and sufficient make of cattle-guard now upon the market as is best suited for turning stock. When such guard is selected, approved and authorized by the commission any company operating in this state which shall procure, install and maintain and keep in good and safe condition on its line of road such guard so selected by the commission shall be deemed and held in all suits, actions or proceedings in all the courts of this state to have complied with the conditions of this section in installing a good and sufficient cattle-guard: Provided, that any railroad company operating in this state may make application to the commission to adopt for its road any particular brand or make of cattle-guard, and if the commission shall approve and authorized the use of such guard, it shall, if kept and maintained in good and sufficient condition at all times by such railroad company, be deemed and held in all actions, suits or proceedings in any court of this state a good and sufficient cattle-guard. (Rev., ss. 2601, 3753; Code, s. 1975; 1883, c. 394, ss. 1, 2, 3; 1915, c. 127; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3454.)

§ 60-49. Change of route of railroad.—The directors of any railroad corporation may by a vote of two-thirds of their whole number at any time alter or change the route, or any part of the route, of their road, if it shall appear to them that the line can be improved thereby, and they shall have the same right and power to acquire title to any lands required for the purposes of the company in such altered or changed route, as if the road had been located there in the first instance; but no such alteration shall be made in any city or town after the road shall have been constructed, unless the same is sanctioned by a vote of two-thirds of the corporate authorities of such city or town. In case of any alteration made in the route of any railroad after the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. When any route or line is abandoned in the exercise of the power herein granted, full compensation shall be made by the company for all money, labor, bonds or material contributed to the construction of the road-bed or its superstructure by those so interested by their contributions in the abandoned route or line. All the provisions of this chapter relative to the first location and to acquiring title to land shall apply to every such new or altered portion of the route. (Rev., s. 2573; Code, s. 1953; 1871-2, c. 138, s. 25; 1889, c. 391; 1893, c. 396, s. 3; C. S. 3455.)

§ 60-50. Forfeiture for failure to begin or complete railroad.—If any railroad corporation shall not within three years after its articles of association are filed and recorded in the office of the secretary of state, or the passage of its charter, begin the construction of its road and expend thereon ten per cent of the amount of its capital, or shall not finish the road and put it in operation in ten years from the time of filing its articles of association or passage of its charter as aforesaid, its corporate existence and powers shall cease. (Rev., s. 2564; Code, s. 1980; 1871-2, c. 138, s. 43; Ex. Sess. 1908, c. 142; C. S. 3456.)

§ 60-51. Secretary of state may extend time to begin railroad in certain cases.—In all cases where railroad companies have been chartered by the act of the general assembly or the charter of any railroad company has been amended by act of the general assembly, during or subsequent to the session of one thousand nine hundred and eleven, but where construction work has not begun in accordance with the provisions of § 60-50 or having been begun such construction work has not been completed, the secretary of state may in the exercise of his sound discretion, upon application of any such railroad company and the payment to the state of the same fees as provided in § 55-158, extend from time to time for periods of two years the time within which to begin or renew construction work as required by § 60-50; and the fact of extending the time by the secretary of state, as herein provided, shall, for the period of such extension, fully and to all intents and purposes, renew corporate existence and corporate powers as fully as the same are conferred in the original charter. (1919, c. 19; 1921, c. 184; 1923, c. 245; C. S. 3457.)

§ 60-52. Forfeiture for preferences to shippers.—In the event of any contract having been entered into by any railroad company in this state with any person or company, whereby preferences or exclusive rights of transportation, either in priority or in arrangements, are given to such person or company, the attorney-general is hereby instructed to institute proceedings against such railroad company for a forfeiture of its charter. (Rev., s. 2563; Code, s. 1969; 1865-6, resolution ratified December 14, 1865; C. S. 3458.)

§ 60-53. Obtaining temporary track across railroad.—Wherever any railroad line track and right of way shall lie between any body of merchantable timber or quarry or other kind or class of heavy property requiring machinery for transportation and any body of navigable water over which such property could be floated or shipped, and the owner of such timber or property shall desire to transport such property to water for purpose of floating or shipping, such property owner shall have the right to file petition before the utilities commission for a right to cross such railroad with any other railroad track or tramway. The procedure for the hearing of the petition shall be same as other proceedings of the commission. The commission shall hear the facts and if it be found reasonably necessary that the railroad track and right of way shall be crossed by a temporary rail-

road track the commission shall so order and prescribe the payment of the expense and the cost. (1931, c. 448; 1933, c. 134, s. 8; 1941, c. 97.)

§ 60-54. Shelter at railroad division points required; failure to provide, a misdemeanor.—It shall be the duty of every person, firm, or corporation that may now or hereafter own, control, or operate any line of railroad in the state of North Carolina, to erect and maintain at every division point where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired, or constructed, a building or shed with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees permanently employed in the construction and repair of cars, trucks, or other railroad equipment of whatever description shall be under shelter and protected during snows, rains, sleets, hot sunshine, and other inclement weather: Provided, the utilities commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: Provided further, that such order shall only be made after a hearing of which public notice shall have been given.

Any person, firm, or corporation failing to comply with the requirements of this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than one hundred dollars nor more than five hundred dollars. Each day of such failure shall constitute a separate offense. (1913, c. 65; 1913, c. 117; 1933, c. 134; 1941, c. 97; C. S. 6557.)

§ 60-55. Railroad employees to be paid twice a month.—All persons, firms, companies, corporations, or associations owning, leasing, or operating any railroad or railroads, wholly or partially within this state, shall pay and settle with their employees engaged or employed in shops, round-houses, or repair shops within this state at least twice in each month, which settlements shall not be less than two weeks nor more than three weeks apart, and shall, in such settlements, pay such employees the full amounts due them for their work and services up to the date of the preceding settlement, and such payment shall be made in lawful money of the United States, or by check or cash order redeemable by the maker thereof for its face value in lawful money of the United States upon demand of or presentation by the lawful holder thereof: Provided, this section shall not apply to repair shops where less than ten employees are engaged. (1915, c. 92; C. S. 6558.)

Art. 6. Hours of Service for Employees of Carriers.

§ 60-56. Maximum continuous service.—It shall be unlawful for any common carrier, its officers or agents, subject to this article, to require or permit any employee, subject to this article, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a period longer than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: Provided further, the utilities commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case. (1911, c. 112, s. 2; 1933, c. 134; 1941, c. 97; C. S. 6565.)

§ 60-57. Penalty for violation.—Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of § 65-56 shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in suit or suits to be brought in the name of the state of North Carolina on relation of the utilities commission in the superior court of Wake county or of the county in which the violation of this article occurred; and it shall be the duty of the said utilities commission to bring such suits upon satisfactory information lodged with it; but no such suit shall be brought after the expiration of one year from date of such violation; and it shall be the duty of said utilities commission to lodge with the proper solicitors information of any such violations as may come to its knowledge. In all prosecutions under this article the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, that the provisions of this article shall not apply to any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time the said employee left a terminal, and which could not have been foreseen: Provided further, that the provisions of this article shall not apply to the crews of wrecking or relief trains: Provided further, this article shall not be construed to impose a penalty upon any common carrier for any act done in violation of the act of congress, ratified March the fourth, one thousand nine hundred and seven, and entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," or any acts amendatory thereof. (1911, c. 112, s. 3; C. S. 6566.)

§ 60-58. Utilities commission to enforce article.—It shall be the duty of the utilities commis-

sion to execute and enforce the provisions of this article, and all powers granted to the utilities commission are extended to it in the execution thereof. (1911, c. 112, s. 4; 1933, c. 134, ss. 7, 8; 1941, c. 97; C. S. 6567.)

Art. 7. Lease, Sale, and Reorganization.

§ 60-59. Lessee of noncompeting railroad may acquire its stock; merger of lessor.—Any railroad corporation or its successors, being the lessee of the road of any other noncompeting railroad corporation, may take a surrender or transfer of the capital stock of the stockholders, or any of them, in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do, to be entered on their minutes, become ex officio the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof as provided by law; and whenever the whole of such capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the corporation whose stock shall have been so surrendered or transferred shall thereupon vest in and be held and enjoyed by the corporation to whom such surrender or transfer shall have been made, and as fully and entirely, without charge or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the corporation to whom the surrender or transfer of such stock shall have been made in the corporate name of such corporation. But the property, rights, franchises and profits of every corporation so surrendered, transferred or leased shall hereafter always be liable to taxation, and shall never be exempt therefrom. The rights of any stockholder not so surrendering or transferring his stock shall not be in any way affected thereby, nor shall existing liabilities or the rights of creditors of the corporation where stock shall have been so surrendered or transferred be in any way affected or impaired by this section. (Rev., s. 2574; Code, s. 1994; 1871-2, c. 138, s. 57; Ex. Sess. 1908, c. 119, s. 2; C. S. 3459.)

§ 60-60. Lease or merger of competing carrier declared a misdemeanor.—No railroad or other transportation company or its officers, now or hereafter doing business in this state, shall purchase, lease, absorb, take over, buy stock in, merge with or in any way secure an interest in a competing line of railroad or other transportation company, nor shall any railroad or other transportation company or its officers enter into any contract, agreement or understanding with a competing line of railroad or other transportation company calculated to defeat or which may defeat or lessen competition in this state. All such contracts, purchases or sales shall be void. Any violation of this section shall make the corporation or person so offending guilty of a misdemeanor, and on conviction the offender shall be fined in the discretion of the court. This section shall not prevent railroads independently owned and operated in this state, and not exceeding one hundred miles in length, from selling their roads and property. (Ex. Sess. 1908, c. 119, ss. 2, 3; C. S. 3460.)

§ 60-61. Acquisition of interest in or lease of noncompeting branch or connecting lines.—Any railroad or other transportation company may acquire and hold or guarantee, or endorse the bonds or stocks of, or may lease any railroad or branch railroad, or other transportation line in this or adjoining state connecting with it directly or indirectly. But no railroad or other transportation company or its officers shall acquire, hold or guarantee the bonds or stock of, or lease or be leased to, or purchase or buy or consolidate with or be merged into, any parallel or competing railroad or other transportation company, nor shall any railroad or other transportation company or its officers sell any of its stock or bonds to any holding or voting company or its officers, whereby such consolidation or merger may be effected, and any such purchase, contract, merger or sale shall be void. This provision shall not prevent railroads independently owned and operated in this state, and not exceeding one hundred miles in length, from selling their roads and property. (Rev., s. 2567, subsec. 13; 1885, c. 108, s. 2; 1908, c. 119, ss. 1, 3; C. S. 3461.)

§ 60-62. Purchaser at mortgage or execution sale of railroads may incorporate.—Whenever the purchaser of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may hereafter be sold, by virtue of any mortgage executed by such corporation or execution issued upon any judgment or decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser may associate with him any number of persons, and make and acknowledge and file articles of association as prescribed in this chapter. Such purchaser and his associates shall thereupon be a new corporation, with all the powers, privileges and franchises and subject to all of the provisions of this chapter. (Rev., s. 2552; Code, s. 1936; 1871-2, c. 138, s. 5; C. S. 3462.)

§ 60-63. On dissolution or sale of railroads purchaser becomes a corporation.—When any railroad corporation shall be dissolved, or its property sold and conveyed under any execution, deed of trust, mortgage or other conveyance, the owner or purchaser shall constitute a new corporation upon compliance with law. (Rev., s. 2565; Code, s. 2005; C. S. 3463.)

Art. 8. Liability of Railroads for Injuries to Employees.

§ 60-64. Common carrier defined.—The term "common carrier," as used in this article, shall include the receiver or receivers, or other persons or corporations charged with the duty of the management of the business of a common carrier. (1913, c. 6, s. 5; C. S. 3464.)

§ 60-65. Fellow-servant rule abrogated; defec-

tive machinery.—Any servant or employee of any railroad company operating in this state who shall suffer injury to his person, or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company, by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void. (Rev., s. 2646; 1897 (Pr.), c. 56; 1915, c. 256; C. S. 3465.)

§ 60-66. Injuries through fellow-servants or defective appliances.—Every common carrier by railroad shall be liable in damages to any person suffering injury while he is employed by such carrier, or in the case of the death of such employee, to his or her personal representative, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engine, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment. (1913, c. 6, s. 1; C. S. 3466.)

§ 60-67. Contributory negligence no bar, but mitigates damages.—In all actions hereafter brought against any common carrier by railroad to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. (1913, c. 6, s. 2; C. S. 3467.)

§ 60-68. Assumption of risk as defense.—In any action brought against any common carrier under or by virtue of any of the provisions of this article to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee, or the death or injury was caused by negligence. (1913, c. 6, s. 3; C. S. 3468.)

§ 60-69. Contracts and rules exempting from liability void; set-off.—Any contract, rule, regulation or device whatsoever, the purpose and intent of which shall be to enable any common carrier by railroad to exempt itself from any liability created by this article, shall to that extent be void: Provided, that in any action brought against such common carrier, under and by virtue of any of the provisions of this article, such common carrier may set off therein any sum it has contributed or paid to any insurance or relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which such action was brought. (1913, c. 6, s. 4; C. S. 3469.)

§ 60-70. Provisions of this article applicable to logging roads and tramroads.—The provisions in this article relating to liability for damages shall also apply to logging roads and tramroads. (1919, c. 275; C. S. 3470.)

Art. 9. Construction and Operation of Railroads.

§ 60-71. Map of route to be served with summons for condemnation.—Whenever it shall become necessary to condemn any land for the purposes of a railroad, at the time that the summons for such condemnation is served there shall also be served by the railroad company a map showing how the line of the road is located on the land sought to be condemned, and a profile showing the depth of the cuts and the height of the embankments on the land so sought to be condemned, and at what points on such land such cuts and embankments are located. This section shall not apply to street railways. (Rev., s. 2599; Code, s. 1952; 1893, c. 396, s. 2; 1901, c. 6, s. 3; 1871-2, c. 138, s. 24; C. S. 3471.)

§ 60-72. Map of railroad to be made and filed.—Every railroad corporation shall, within a reasonable time after its road shall be constructed, cause to be made a map and profile thereof, and of the land taken or obtained for the use thereof, and shall file the same in the office of the utilities commission. Every such map shall be drawn on a scale and on paper to be designated by the utilities commission, and shall be certified and signed by the president or engineer of such corporation. (Rev., s. 2600; Code, s. 1977; 1871-2, c. 138, s. 41; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3472.)

§ 60-73. Joint construction by railroads having same location.—Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may by agreement provide for the construction of so much of said line as is common to both of them, by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Upon the making of such an agreement, the company that is not to construct the part of the line which is common to both may terminate its line at the point of intersection, and may reduce its capital to a sum of not less than five thousand dollars for each mile of the road proposed to be constructed. (Rev., s. 2602; Code, s. 1983; 1871-2, c. 138, s. 46; C. S. 3473.)

§ 60-74. Construction of part of line in another state.—Whenever after due examination it shall be ascertained by the directors of any railroad company that a part of the line of railroad proposed to be made between any two points in this state ought to be located and constructed in an adjoining state, it may be so located and constructed by a vote of two-thirds of all the directors. The sections of such railroad within this state shall be considered a connected line, and the directors may reduce the capital specified to such amount as may be deemed proper, but not less than the amount required by law for the

number of miles of railroad to be actually constructed in this state. (Rev., s. 2603; Code, s. 1984; 1871-2, c. 138, s. 47; C. S. 3474.)

§ 60-75. Carriage must be according to public schedule.—Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises. (Rev., s. 2611; Code, s. 1963; 1871-2, c. 138, s. 35; C. S. 3475.)

§ 60-76. Arrangement of cars in passenger trains.—In forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear of the passenger cars, except in case of accident, or when the cars are provided with automatic couplers or brakes. If any officer or agent of a railroad company, in forming a passenger train, shall direct or knowingly suffer an arrangement of the cars different from the one herein provided for, he shall be guilty of a misdemeanor: Provided, the criminal liability hereby imposed shall not apply to officers and agents of the Wilmington sea-coast railroad company. (Rev., ss. 2612, 3747; Code, s. 1971; 1871-2, c. 138; 1893, c. 331; 1895, c. 212; C. S. 3476.)

§ 60-77. Unauthorized manufacture or sale of switch-lock keys misdemeanor.—It shall be unlawful for any person to make, manufacture, sell or give away to any other person any duplicate key to any lock used by any railroad company in this state on its switches or switch tracks, except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch-lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1909, c. 795; C. S. 3477.)

§ 60-78. Willful injury to railroad property misdemeanor.—If any person shall willfully do or cause to be done any act or acts whatever whereby any building, construction or work of any railroad corporation, or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor. (Rev., s. 3756; Code, s. 1974; 1871-2, c. 138, s. 39; C. S. 3478.)

§ 60-79. Headlights on locomotives on main lines.—Every company, corporation, lessee, manager or receiver owning or operating a railroad in this state is hereby required to equip and maintain and use upon every locomotive in operation in railroad service on main lines in this state an electric or power headlight of at least one thousand five hundred candlepower, measured without the aid of a reflector. This section shall not apply to locomotive engines regularly used in switching cars or trains, to locomotive engines used exclusively between sunup and sundown, and to locomotive engines going to and returning from repair shops when ordered in for repairs; neither shall this section apply to independently owned and operated railroad companies in this state whose mileage of road in this state is one hundred and twenty-five miles or less, nor to railroad companies having only lines extending into this state, no one of which is one hundred miles in length in this state. The utilities commission may relieve from the operation of this section such locomotives and roads, or parts or sections or branches of roads, upon which the said utilities commission may deem electric or power headlights not advisable. Should an engine start on a trip with the headlight in good working condition, and from some unavoidable cause such headlight becomes disabled and cannot be repaired on the line of the road on which such run is being made, there shall be nothing in this section to prevent such engine from continuing on its trip, and the railroad company shall not be liable for prosecution on account of such failure to repair. Any company, corporation, lessee, manager or receiver violating the provisions of this section shall be guilty of a misdemeanor. (1909, c. 446; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3479.)

§ 60-80. Operation of trains on Sunday misdemeanor; exceptions. — No railroad company shall permit the loading or unloading of any freight car on Sunday; nor shall it permit any car, train of cars or locomotive to be run on Sunday on any railroad, save in case of accident, except such as may be run for the purpose of transporting the United States mails, passengers with their baggage and ordinary express freight in express cars exclusively, and except such as may be run for the purpose of transporting fruits, vegetables, livestock and perishable freights. Where there are not sufficient cars of livestock or other perishable freights to make a complete train, or section of a train, the company may add other cars to complete the same. Solid trains, made up of through freight cars, reaching on Sunday any point upon any railroad in North Carolina and destined for some point or points beyond the limits of the state of North Carolina, may be continued as a solid through freight train along the line of such railroad through the state of North Carolina, without stopping the train for other purposes than to take on fuel and receive necessary running orders. The word Sunday in this section shall be construed to embrace only that portion of the day between sunrise and sunset. Trains in transitu, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock a. m. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops. Any railroad company violating the provisions of this section shall be guilty of a misdemeanor in each county in which such car, train of cars, or locomotive shall run,

or in which any such freight car shall be loaded or unloaded, and upon conviction shall be fined not less than five hundred dollars for each offense. (Rev., ss. 2613, 3844; Code, s. 1973; 1879, cc. 97, 203; 1885, c. 92; 1897, c. 126; 1901, c. 444; 1909, c. 285; C. S. 3480.)

§ 60-81. Negligence presumed from killing livestock.—When any cattle or other livestock shall be killed or injured by the engine or cars running upon any railroad, it shall be prima facie evidence of negligence on the part of the railroad company in any action for damages against such company: Provided, that no person shall be allowed the benefit of this section unless he shall bring his action within six months after his cause of action shall have accrued. (Rev., s. 2645; Code, s. 2326; 1856-7, c. 7; C. S. 3482.)

Art. 10. Railroad Police.

§ 60-82. Railway conductors and station agents declared special police.—All passenger conductors of railroad trains and station or depot agents are hereby declared to be special police of the state of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall have such power only on board of their respective trains or their railroad right of way, and the agents at their respective stations; and such conductors and agents may cause any person so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability now existing by statute or under the common law for the act or acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred. (1907, c. 470, ss. 3, 4; C. S. 3483.)

§ 60-83. Governor may appoint and commission railroad police; civil liability of railroads.—Any corporation operating a railroad on which steam or electricity is used as the motive power or any electric or water-power company or construction company or manufacturing company may apply to the governor to commission such persons as the corporation or company may designate to act as policemen for it. The governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability now existing by statute or under the common law for the act or acts of such policemen, in exercising or attempting to exercise the powers conferred by this section. The preceding sentence shall apply only to such acts committed on the property of railroads. (Rev., ss. 2605, 2606; Code, ss. 1988, 1989; 1871-2, c. 138, ss. 51, 52; 1907, c. 128, s. 1; 1923, c. 23; 1933, c. 61; C. S. 3484.)

§ 60-84. Oath, bond, and powers of railroad police.—Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath. Such oath, with a copy of the commission, shall be filed with the utilities commission and a certificate thereof by its clerk shall be filed with the clerk of each county through or into which the railroad for which such policeman is appointed may run or in which the company may be engaged in work, and in which it is intended he shall act, and such policemen shall severally possess within the limits of the county all the powers of policemen in the several towns, cities and villages in which they shall be so authorized to act as aforesaid: Provided, that every policeman appointed under this and § 60-83 shall, before entering upon the duties of his office, enter into bond in the sum of five hundred dollars, payable to the state of North Carolina, conditioned for the faithful performance of the duties of his office, with good and sufficient surety, to be passed upon and accepted by and filed with the utilities commission. (Rev., s. 2607; Code, s. 1990; 1871-2, c. 138, s. 53; 1907, c. 128, s. 2; 1907, c. 462; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3485.)

§ 60-85. Railroad police to wear badges.—Such railroad police shall, when on duty, severally wear a metallic shield with the words "Railway Police" and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives. (Rev., s. 2608; Code, s. 1991; 1871-2, c. 138, s. 54; C. S. 3486.)

§ 60-86. Compensation of railroad police.—The compensation of such police shall be paid by the companies for which the policemen are respectively appointed, as may be agreed on between them. (Rev., s. 2609; Code, s. 1992; 1871-2, c. 138, s. 55; C. S. 3487.)

§ 60-87. Police powers cease on company's filing notice.—Whenever any company shall no longer require the services of any policeman so appointed as aforesaid, it may file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of such officer shall cease and be determined. (Rev., s. 2610; Code, s. 1993; 1871-2, c. 138, s. 56; C. S. 3488.)

Art. 11. Joint Rates.

§ 60-88. Carriers permitted to establish joint rates. — Any operating railroad company is authorized and directed to enter into arrangements for the establishment of joint rates and through routes with common carriers by water and with other such railroad companies for the transportation of persons and/or property transported wholly within the State of North Carolina by such carrier by water and such railroad company. (1931, c. 195.)

Art. 12. Carriage of Passengers.

§ 60-89. Railroad passenger rates established.—No railroad company doing business as a common carrier of passengers in the state of North Carolina shall, except as herein provided, charge, demand or receive for transporting any passenger and his or her baggage, not exceeding in weight two hundred pounds, from any station on

its railroad in North Carolina to any other station on its road in North Carolina, a rate in excess of three cents per mile: Provided, however, that independently owned and operated railroad companies in North Carolina whose mileage of road in this state is one hundred miles or less may charge a rate twenty per cent higher than the rate above specified; but this proviso shall not extend to branch lines of railroad companies controlling over one hundred miles of road, whether chartered in or out of the state: Provided further, this section shall not apply to railroads hereafter built less than fifty miles in length. For transporting children under twelve years and over five years old, one-half of the rate above prescribed may be charged. For transporting children under five years old, accompanied by any person paying fare, no charge whatever shall be made. Where the amount of the ticket at the prescribed rate would amount to any figure between two multiples of five, the price of the ticket shall be the multiple of five which is nearest the price of the ticket at the rate above mentioned; or, in the event that the amount is equidistant between the multiples of five, the price charged for the ticket shall be on the basis of the higher of those two multiples of five. No charge less than ten cents shall be required. A charge of fifteen cents may be added to the fare of any passenger when the same is paid on the train, if the ticket might have been procured within a reasonable time before the departure of the train. (Ex. Sess. 1908, c. 144, s. 1; Ex. Sess. 1920, c. 51, s. 1; C. S. 3489.)

§ 60-90. Rates on leased or controlled lines.—In the case that any railroad company operating as a common carrier of passengers in the state of North Carolina is owned, controlled or operated by lease or other agreement by any other railroad company doing business in the state, the rate for carrying passengers thereon shall be determined for such railroad company by the rate prescribed by § 60-89 for the railroad company which owns, controls or operates the same. (Ex. Sess. 1908, c. 144, s. 2; C. S. 3490.)

§ 60-91. Violations of passenger rates misdemeanor.—Any railroad company violating any of the provisions of §§ 60-89 and 60-90, or counseling, ordering or directing any employee, agent or servant to violate any of such provisions, by charging, demanding or receiving any rate greater than that fixed by such sections, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five hundred dollars nor more than five thousand dollars; and any agent, servant or employee of any railroad company who shall violate either § 60-89 or § 60-90 shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, in the discretion of the court. (Ex. Sess. 1908, c. 144, s. 3; C. S. 3491.)

§ 60-92. Accepting or giving free transportation illegally misdemeanor.—Any persons, except those permitted by law, who accept free transportation shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, in the discretion of the court; and any railroad, or its employees or agents, giving free transportation of any kind whatsoever, except that permitted by law, shall be guilty of a misdemeanor, and on conviction shall be fined not less than five hundred dollars nor more than two thousand dollars for each offense. (Ex. Sess. 1908, c. 144, s. 4; C. S. 3492.)

§ 60-93. Powers of utilities commission over rates limited.—The utilities commission shall have no power to change, alter, modify or in any way affect the enforcement or operation of any of the provisions of the preceding sections of this article, except as the same shall be therein specifically authorized, or the enforcement of any penalties for violating the provisions thereof. (Ex. Sess. 1908, c. 144, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3493.)

§ 60-94. Separate accommodations for different races.—All railroad and steamboat companies engaged as common carriers in the transportation of passengers for hire, other than street railways, shall provide separate but equal accommodations for the white and colored races at passenger stations or waiting-rooms, and also on all trains and steamboats carrying passengers. Such accommodations may be furnished by railroad companies either by separate passenger cars or by compartments in passenger cars, which shall be provided by the railroads under the supervision and direction of the utilities commission: Provided, that this shall not apply to relief trains in cases of accident, to Pullman or sleeping cars, or through express trains that do not stop at all stations and are not used ordinarily for traveling from station to station, to negro servants in attendance on their employers, to officers or guards transporting prisoners, nor to prisoners so transported. (Rev., s. 2619; 1899, c. 384; 1901, c. 213; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3494.)

§ 60-95. Certain carriers may be exempted from requirement.—The utilities commission is hereby authorized to exempt from the provisions of § 60-94 steamboats, branch lines and narrow-gauge railroads and mixed trains carrying both freight and passengers, if in its judgment the enforcement of the same be unnecessary to secure the comfort of passengers by reason of the light volume of passenger traffic, or the small number of colored passenger travelers on such steamboats, narrow-guage railroads, branch lines or mixed trains. (Rev., s. 2620; 1899, c. 384, s. 2; 1901, c. 213; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3495.)

§ 60-96. Use of same coach in emergencies.—When any coach or compartment car for either race shall be completely filled at a station where no extra coach or car can be had, and the increased number of passengers could not be foreseen, the conductor in charge of such train may assign and set apart a portion of a car or compartment assigned for passengers of one race to passengers of the other race. (Rev., s. 2621; 1899, c. 384, s. 3; C. S. 3496.)

§ 60-97. Penalty for failing to provide separate coaches.—Any railroad or steamboat company failing to comply in good faith with the provisions of §§ 60-94 to 60-96 shall be liable to a penalty of one hundred dollars per day, to be recovered in an action brought against such company by any passenger on any train or boat of any railroad or steamboat company which is required by this

chapter to furnish separate accommodations to the races, who has been furnished accommodations on such railroad train or steamboat only in a car or compartment with a person of a different race in violation of law. (Rev., s. 2622; 1899, c. 384, s. 5; C. S. 3497.)

§ 60-98. Exceptions to requirement of separate coaches and toilets.—As to trains consisting of not more than one passenger car unit, operated principally for the accommodation of local travel, although operated both intrastate and interstate and irrespective of the motive power used, the utilities commission is authorized to make such rules and regulations for the separation of the races and with regard to toilet facilities as in its best judgment may be feasible and reasonable in the circumstances, and the rules and regulations established pursuant to this authority shall be exceptions to the provisions of §§ 60-94 and 60-107. (1935, c. 270; 1941, c. 97, s. 5.)

§ 60-99. Unused tickets to be redeemed.—When any round-trip ticket is sold by a railroad or other transportation company, it shall be the duty of such company to redeem the unused portion of said ticket by allowing to the holder thereof the difference between the cost thereof and the price of a one-way ticket between the stations for which such round-trip ticket was sold. Whenever any one-way or regular ticket is sold by a railroad or other transportation company, and not used by the purchaser, it shall be the duty of the company selling the ticket to redeem it at the price paid for it. All railroad and other transportation companies shall redeem in money all mileage tickets known as five-hundred, thousand and two-thousand mile tickets, sold by them, if presented within a year from the date of the sale, when as much as fifty per centum of such ticket has been used by the purchaser, by paying the same price per mile paid for it, or shall allow the original holder to ride it out. (Rev., s. 2627; 1891, c. 290; 1893, c. 249; 1895, c. 83, ss. 2, 3; 1897, c. 418; C. S. 3503.)

§ 60-100. Ticket may be refused intoxicated person; prohibited entry misdemeanor. — The ticket agent of any railroad, steamboat or other transportation company shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The conductor, captain or other person in charge of any railroad car, steamboat or other conveyance for the use of the traveling public shall at all times have power to prevent any intoxicated person from entering such car, boat or other conveyance. If any intoxicated person, after being forbidden by the conductor, captain or other person having charge of any such railroad train, steamboat or other conveyance for the use of the traveling public, shall enter such train, boat or other conveyance, he shall be guilty of a misdemeanor. (Rev., ss. 2625, 2626, 3757; 1885, c. 358, ss. 1, 2, 3; C. S. 3504.)

§ 60-101. Entering cars after being forbidden misdemeanor.—No person shall enter any railroad passenger car, baggage car, mail car or caboose car, or go upon the platform of such cars, after being forbidden so to do by the conductor, his assistants, the baggage-master or other person in charge of such cars, unless the person enter such cars or go upon such platforms as a passenger or in some official capacity authorized by law, or on business with a passenger or some official or employee of the railroad, or for some other like purpose. Any person violating this section shall be guilty of a misdemeanor and shall be fined not exceeding ten dollars. (Rev., s. 3752; Code, s. 1979; 1883, c. 351; C. S. 3505.)

§ 60-102. Riding in first-class cabin with second-class ticket misdemeanor.—If any passenger purchasing or holding a second-class ticket, after being requested or directed by any captain or other officer in charge of any steamboat in this state, riding in any first-class cabin, refuses to pay the difference between a first-class and a second-class fare or rate, or refuses to go into the second-class cabin, when there shall be a comfortable second-class cabin on such steamboat, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. Any justice of the peace in the county where such offense is committed shall have jurisdiction of the offense, upon sworn complaint of any officer of such steamboat company. (Rev., s. 3761; 1903, c. 795; C. S. 3506.)

§ 60-103. Passenger refusing to pay fare and violating rules may be ejected.—If any passenger shall refuse to pay his fare, or violate the rules of a railroad corporation, it shall be lawful for the conductor of the train and servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling house, as the conductor shall elect, on stopping the train. (Rev., s. 2629; Code, s. 1962; 1871-2, c. 138, s. 34; C. S. 3507.)

§ 60-104. Beating way on trains misdemeanor; venue.—If any person, other than a railroad employee in the discharge of his duty, without authority from the conductor of the train or by permission of the engineer, and with the intention of being transported free and without paying the usual fare for such transportation, rides or attempts to ride on top of any car, coach, engine or tender, on any railroad in this state, or on the draw-heads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car or mail car on any train, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. Any person charged with a violation of this section may be tried in any county in this state through which such train may pass carrying such person, or in any county in which such violation may have occurred or may be discovered. (Rev., s. 3748; 1899, c. 625; 1905, c. 32; C. S. 3508.)

§ 60-105. Injury while on platform or in other prohibited places.—In case any passenger on any railroad shall be injured while on the platform of a car or on any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside its passengers cars then in the train,

such company shall not be liable for the injury: Provided, such company at the time furnish room inside its passenger cars sufficient for the proper accommodation of its passengers. (Rev., s. 2628; Code, s. 1978; 1871-2, c. 138, s. 42; C. S. 3509.)

§ 60-106. Checking baggage; liability for loss.—A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of any railroad corporation, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the conductor in charge of the train, and on producing the check, if his baggage shall not be delivered to him, he may, by an action, recover the value of such trunk or baggage. (Rev., s. 2623; Code, s. 1970; 1871-2, c. 138, s. 36; C. S. 3510.)

§ 60-107. Cars and toilets to be kept clean.—Every person or railroad company, whether incorporated or not, engaged in the regular business of carrying passengers on his or its railroad cars in this state, shall have such cars cleaned, brushed, dusted and the windows washed, if needed, at least once each day, and shall in each car, in which male and female passengers are carried, have therein a toilet-room for each sex, and have the same kept clean and decent. Any person or corporation engaged in the business aforesaid who shall willfully or negligently fail or refuse to give orders to his or its agent in charge of such cars to comply with the requirements of this section, shall forfeit twenty dollars for each day of such failure or refusal, to be recovered by any person suing therefor. (1907, c. 474, ss. 1, 2; C. S. 3511.)

§ 60-108. Evidence of failure to order cleaning of cars; violation of orders misdemeanor.—The willful or negligent refusal or the failure on the part of the conductor or manager of any passenger car named in § 60-107 to comply with such section shall be received as evidence of failure or refusal of such person or railroad company to give the orders therein provided for. Moreover, such conductor or manager shall be guilty of a misdemeanor if he fail or refuse to carry out such orders of the persons or company mentioned in the said section. (1907, c. 474, s. 3; C. S. 3512.)

§ 60-109. Surcharge on Pullman car transportation.—It shall be unlawful for any railroad or Pullman car company doing business in North Carolina to collect from any person within the boundaries of North Carolina any surtax or surcharge for Pullman car transportation from one point to any other point within the bounds of the state of North Carolina; but nothing in this section shall be construed to affect in any way the charge which any railroad or Pullman car company may require for transportation on interstate travel. (1923, c. 147; C. S. 3512(a).)

Art. 13. Carriage of Freight.

§ 60-110. No charge in excess of printed tariffs; refunding overcharge; penalty.—No railroad, steamboat, express or other transportation company engaged in the carriage of freight and no telegraph company or telephone company shall demand, collect or receive for any service rendered or to be rendered in the transportation of property or transmission of messages more than the rates appearing in the printed tariff of such company in force at the time such service is rendered, or more than is allowed by law. In case of any overcharge, contrary to the provisions of this section, the person aggrieved may file with any agent of the company collecting or receiving greater compensation than the amount allowed a written demand, supported by a paid freight bill and an original bill of lading or duplicate thereof for refund of overcharge, and a maximum period of sixty days shall be allowed such company to pay claims filed under this section. Any company failing to refund such overcharge within the time allowed shall forfeit to the party aggrieved the sum of twenty-five dollars for the first day and five dollars per day for each day's delay thereafter until said over charge is paid, together with all costs incurred by the party aggrieved: Provided, the total forfeiture shall not exceed one hundred dollars. (Rev., ss. 2642, 2643, 2644; 1903, c. 590, ss. 1, 2; C. S. 3514.)

§ 60-111. Penalty for failure to receive and forward freight tendered.—Agents or other officers of railroad and other transportation companies whose duty it is to receive freights shall receive all articles of the nature and kind received by such company for transportation whenever tendered at a regular depot, station, wharf or boat landing, and every loaded car tendered at a sidetrack, or any warehouse connected with the railroad by a siding, and shall forward the same by the route selected by the person tendering the freight under existing laws; and the transportation company represented by any person refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars for each day such company refuses to receive such shipment of freight, and all damages actually sustained by reason of the refusal to receive freight. If such loaded car be tendered at any siding or warehouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment. (Rev., s. 2631; Code, s. 1964; 1903, cc. 444, 693; C. S. 3515.)

§ 60-112. Penalty for failure to transport within reasonable time.—It shall be unlawful for any railroad company, steamboat company, express company or other transportation company doing business in this state to omit or neglect to transport within a reasonable time any goods, merchandise or other articles of value received by it for shipment and billed to or from any place in the state of North Carolina, unless otherwise agreed upon between the company and the shipper, or unless the same be burned, stolen or otherwise destroyed, or unless otherwise provided by the North Carolina utilities commission.

Any company violating any of the provisions

of this section shall forfeit to the party aggrieved the sum of fifteen dollars for the first day and two dollars for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars for the first day and one dollar for each succeeding day, but the forfeiture shall not be collected for a period exceeding thirty days.

In reckoning what is a reasonable time for such transportation, it shall be considered that such transportation company has transported freight within a reasonable time if it has done so in the ordinary time required for transporting such articles of freight between the receiving and shipping stations. A delay of two days at the initial point and forty-eight hours at one intermediate point for each hundred miles of distance or fraction thereof over which such freight is to be transported shall not be charged against the transportation company as unreasonable and shall be held to be prima facie reasonable, and a failure to transport within such time shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the freight from the station where it is received, but to require the delivery at its destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen, and which were unavoidable, then upon the establishment of these facts to the satisfaction of the justice of the peace or jury trying the cause, the defendant transportation company shall be relieved from any penalty for delay in the transportation of freight, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a transportation company under this section, the burden of proof shall be upon the transportation company to show where the delay, if any, occurred. (Rev., s. 2632; 1903, c. 590, s. 3; 1905, c. 545; 1907, cc. 217, 461; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3516.)

§ 60-113. Flume companies exercising right of eminent domain become common carriers.—All flume companies availing themselves of the right of eminent domain under the provisions of the chapter Eminent Domain shall become public carriers of freight, for the purposes for which they are adapted, and shall be under the direction, control and supervision of the utilities commission in the same manner and for the same purposes as is by law provided for other public carriers of freight. (1907, c. 39, s. 4; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3517.)

Local Modification.—Duplin: 1911, c. 214.

§ 60-114. Freight charges to be at legal rates; penalty for failure to deliver to consignee on tender of same.—All common carriers doing business in this state shall settle their freight charges according to the rate stipulated in the bill of lading, provided the rate therein stipulated be in conformity with the classifications and rates made and filed with the interstate commerce commission in case of shipments from without the state and with those of the utilities commission of this state in case of shipments wholly within this state, by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers; and it shall be the duty of such common carriers to inform any consignee of the correct amount due for freight according to such classification and rates. Upon payment or tender of the amount due on any shipment which has arrived at its destination according to such classification and rates, such common carrier shall deliver the freight in question to the consignee. Any failure or refusal to comply with the provisions hereof shall subject such carrier so failing or refusing to a penalty of fifty dollars for each such failure or refusal, to be recovered by any consignee aggrieved by any suit in any court of competent jurisdiction. (Rev., s. 2633; 1905, c. 330, s. 1; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3518.)

§ 60-115. Charging unreasonable freight rates misdemeanor.—If any railroad company doing business in this state shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of freight of any description, or for the use and transportation of any railroad car upon its track or any of the branches thereof or upon any railroad in this state which has the right, license or permission to use, operate or control the same, it shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred nor more than five thousand dollars. (Rev., s. 3768; 1899, c. 164, s. 12; C. S. 3519.)

§ 60-116. Allowing or accepting rebates or pooling freights misdemeanor. — If any person shall be concerned in pooling freights or shall directly or indirectly allow or accept rebates on freights he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one thousand dollars or imprisoned not less than twelve months. (Rev., s. 3762; Code, s. 1968; 1879, c. 237, s. 2; C. S. 3520.)

§ 60-117. Partial charges for partial deliveries.—Whenever any freight of any kind shall be received by any common carrier in this state to be delivered to any consignee in this state, and a portion of the same shall not have been received at the place of destination, it shall not be lawful for the carrier to demand any part of the charges for freight or transportation due for such portion of the shipment as shall not have reached the place of destination. The carrier shall be required to deliver to the consignee such portion of the consignment as shall have been received upon the payment or tender of the freight charges due upon such portion. But nothing in this section shall be construed as interferring with, or depriving a consignor, or other person having authority, of his rights of stoppage in transitu. (Rev., s. 2641; 1893, c. 495; C. S. 3521.)

§ 60-118. Placing cars for loading.—Whenever any person, firm or corporation intending to ship freight makes a written application to any railroad company for cars to be loaded in carload lots with any kind of freight embraced in the tariffs of the company, stating in the application the character of the freight, the number of cars wanted, the station, depot, siding, wharf or boat-

landing on the line of the company whence the shipment is to be moved, and its final destination, the railroad company shall furnish the cars within four days from seven o'clock a. m., the day following such application. The application must be delivered to the agent of the railroad company at the station at or nearest the point of shipment. Any railroad company failing to furnish the cars named in such written application shall be subject to a penalty of five dollars per car per day for each car not furnished, to be recovered by the person, firm or corporation making application: Provided, that the railroad company, before furnishing the cars upon such application, may require the person, firm or corporation applying for the same to deposit five dollars for each car so demanded at the time the application is made, which deposit of five dollars for each car may be retained by the said railroad company as a forfeit for trackage in case the car or cars are not loaded within forty-eight hours after notice of the placement of car or cars in accordance with demand: Provided, that the utilities commission may excuse from the penalties imposed by this section independent lines not owned, operated, or controlled by any other line or system when trackage is less than one hundred miles. (1907, c. 217, s. 3; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3522.)

§ 60-119. Baggage and freight to be carefully handled.—All railroad and steamboat companies shall handle with care all baggage and freights placed with them for transportation, and they shall be liable in damages for any and all injuries to the baggage or freight of persons from whom they have collected fare or charged freight, while the same is under their control. Upon proof of injury to baggage or freight in the possession or under the control of any such company it shall be presumed that the injury was caused by the negligence of the company. (Rev., s. 2624; 1897, c. 46; C. S. 3523.)

§ 60-120. Claims for loss of or damage to goods; filing and adjustment.—Every claim for loss of or damage to property while in possession of a common carrier, including every express company, firm or corporation doing an express business within the state, shall be adjusted and paid within ninety days in case of shipments wholly within the state and within four months in case of shipments from without the state, after the filing of such claim with the agent of such carrier at the point of destination of such shipment, or point of delivery to another common carrier, by the consignee, or at the point of origin by the consignor, when it shall appear that the consignor was the owner of the shipment: Provided, that no such claim shall be filed until after the arrival of the shipment, or some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof.

In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee aggrieved (or consignor, when it shall appear that the consignor was the owner of the property at the time of shipment and at the time of suit, and is, therefore, the party aggrieved), in any court of competent jurisdiction: Provided, that unless such consignee or consignor recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid; and that no penalty shall be recoverable under the provisions of this section where claims have been filed by both the consignor and consignee, unless the time herein provided has elapsed after the withdrawal of one of the claims.

Causes of action for the recovery of the possession of the property shipped, for loss or damage thereto, and for the penalties herein provided for, may be united in the same complaint. (Rev., s. 2634; 1905, c. 330, ss. 2, 4, 5; 1907, c. 983; 1911, c. 139; C. S. 3524.)

§ 60-121. Existing remedies to continue.—Section 60-120 shall not deprive any consignee of any rights or remedies now existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon such common carriers. (Rev., s. 2635; 1905, c. 330, s. 5; C. S. 3525.)

§ 60-122. Carrier's right against prior carrier.—Any common carrier, upon complying with the provisions of §§ 60-114 and 60-120, shall have all the rights and remedies herein provided for against a common carrier from which it receives the freight in question. (Rev., s. 2636; 1905, c. 330, s. 3; C. S. 3526.)

§ 60-123. Regulation of demurrage.—No railroad or other transportation company doing business in the state shall make any charge on account of demurrage while a car, whether the same be a refrigerator car or not, is being loaded for shipment, until it has remained at the place of loading for forty-eight hours from the time it has been so placed; but the utilities commission may change this provision, if it considers it unreasonable, under the power vested in it under the chapter Utilities Commission, to make regulations as to demurrage and the loading of cars. (Ex. Sess. 1913, c. 55; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3527.)

§ 60-124. Shipment of livestock on Scuppernong river regulated; violation of regulations misdemeanor.—If any transportation company or common carrier shall receive livestock for shipment at any of the landings or shipping points on Scuppernong river, Columbia excepted, between the hours of sunset and sunrise, or shall during the time any livestock may be held for shipment at any landing or shipping point on such river, Columbia excepted, fail to keep the same in a covered pound or inclosure, supplied with necessary food and drinking water, and at all times in full view of the public, such transportation company, common carrier, or the agent of either, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. (Rev., s. 3675; 1903, c. 283; C. S. 3528.)

§ 60-125. Carload shipments of watermelons regulated; violation of regulations misdemeanor.—It shall be the duty of all common carriers to furnish the weights of all carload shipments of watermelons originating within the state to the shippers thereof within forty-eight hours after receipt of the same. Any common carrier violating the provisions of this section shall upon conviction be fined ten dollars for each offense. (Ex. Sess. 1913, c. 68; C. S. 3529.)

§ 60-126. Express companies to settle promptly for cash-on-delivery shipments; penalty.—Every express company which shall fail to make settlement with the consignor of a cash-on-delivery shipment, either by payment of the moneys stipulated to be collected upon the delivery of the articles so shipped or by the return to such consignor of the article so shipped, within twenty days after demand made by the consignor and payment or tender of payment by him of the lawful charges for transportation, shall forfeit and pay to such consignor a penalty of twenty-five dollars, where the value of the shipment is twenty-five dollars or less; and, where the value of the shipment is over twenty-five dollars, a penalty equal to the value of the shipment; the penalty not to exceed fifty dollars in any case: Provided, no penalty shall be collectible where the shipments, through no act of negligence of the company, is burned, stolen or otherwise destroyed: Provided further, that the penalties here named shall not be in derogation of any right the consignor may now have to recover of the company damages for the loss of any cash-on-delivery shipment or for negligent delay in handling the same. (1909, c. 866; C. S. 3530.)

§ 60-127. Failure to place name on produce shipped misdemeanor.—Any person, firm or corporation selling or offering for sale or consignment any barrel, crate, box, case, package or other receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or other produce of any kind whatsoever, to be shipped to any point within or without the state of North Carolina, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that this section shall not apply to railroads, express companies and other transportation companies selling or offering for sale, for transportation or storage charges or any other charges accruing to such railroads, express companies or other transportation companies, any barrel, crate, box, case, package, or other receptacle containing berries, fruit, melons, potatoes, vegetables, truck or other produce. (1915, c. 193; C. S. 3531.)

§ 60-128. Unclaimed freight to be sold.—Every railroad, steamboat, express or other transportation company which shall have had unclaimed freight, not perishable, in its possession for a period of six months, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such freight and the expenses of the advertisement and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a state paper and also in a newspaper published at or nearest the place at which such freight was directed to be left, and also at the place where such sale is to take place. The expenses incurred for advertising shall be a lien upon such freight in a ratable proportion according to the value of each article, package or parcel, if more than one. (Rev., s. 2637; Code, s. 1985; 1871-2, c. 138, s. 48; C. S. 3532.)

§ 60-129. Sale of unclaimed perishable freight.—In case such unclaimed freight shall in its nature be perishable, then the same may be sold as soon as it can be, on giving the notice required in § 60-128, after its receipt at the place where it was directed to be left. (Rev., s. 2638; Code, s. 1986; 1871-2, c. 138, s. 49; C. S. 3533.)

§ 60-130. Funds from unclaimed freight to be paid to state university.—Such railroad, steamboat, express or other transportation company shall make an entry of the balance of the proceeds of the sale, if any, of each parcel of freight owned by or consigned to the same person, as near as can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership; if no person shall claim the surplus within five years, such surplus shall be paid to the state university. (Rev., s. 2639; Code, s. 1987; 1871-2, c. 138, s. 50; C. S. 3534.)

§ 60-131. Sale of unclaimed baggage or freight; notice; sale of neglected property.—Any common carrier which has had in its possession on hand at any destination in this state any article whether baggage or freight, for a period of sixty days from its arrival at destination, which said carrier cannot deliver because unclaimed, may at the expiration of said sixty days sell the same at public auction at any point where in the opinion of the carrier the best price can be obtained: Provided, however, that notice of such sale shall be mailed to the consignor and consignee, by registered mail, if known to such carrier, not less than fifteen days before such sale shall be made; or notice of the sale shall be published once a week for two consecutive weeks in some newspaper of general circulation published at the point of sale: Provided, that if there is no such paper published at such point, the publication may be made in any paper having a general circulation in the state: Provided further, however, that if the nondelivery of said article is due to the consignee's and consignor's rejection of it, then such article may be sold by the carrier at public or private sale, and at such time and place as will in the carrier's judgment net the best price, and this without further notice to either consignee or consignor, and without the necessity of publication. (1921, c. 124, s. 1; C. S. 3534(a).)

§ 60-132. Sale of live or perishable or cheap freight.—Where the article referred to in § 60-131 is live freight, or perishable freight, or freight of such low value as would not bring the accrued transportation and other charges if held for sixty days as provided in said section, the common carrier may, with or without advertisement, sell

the same in such manner and at such time and in such place as will best in its judgment protect the interests of the carrier, the consignor and the consignee, and whenever practicable the consignor and consignee shall be notified of the proposed sale of such live or perishable freight, or freight of such low value. (1921, c. 124, s. 2; C. S. 3534(b).)

§ 60-133. Record of articles and prices; deduction of expenses; payment of balance.—The carrier shall keep a record of the articles sold, and of the prices obtained therefor, and shall, after deducting all charges and expenses of the sale, including advertisement, if advertised, pay the balance to the owner of such articles on demand therefor made at any time within two years from the date of the sale. (1921, c. 124, s. 3; C. S. 3534(c).)

Art. 14. Street and Interurban Railways.

§ 60-134. May build and maintain water-power plants.—Where any street or interurban railway company owns lands on one or both sides of a stream which can be used in developing a water-power, and desires to erect and maintain a water-power plant for the purpose of generating electricity to be used in operating such railway, then such railway company shall have the power to erect, maintain and operate such water-power plant for such purpose, and may build, maintain and operate any and all dams, ponds, canals, bridges, ferries, aqueducts, flumes, water-ways, wasteways, reservoirs, and all works, machinery, houses, shops and buildings necessary for the use and operation of a water-power plant for generating electricity. Whenever such company shall not own the entire water-front, or all of the lands, water rights, or other easements necessary to be used in fully developing such water-power, it shall have the power to acquire any other lands, water rights or easements which may be needed to fully develop such water-power; and if the company cannot agree with the owners for the purchase of such lands, water rights or other easements, the same may be condemned by the railway company for that purpose, and the procedure shall be the same as that provided for the condemnation of lands for railroads: Provided, that no dwelling house, yard, garden, orchard or burial-ground shall be condemned for such purpose: Provided further, that such company shall not have the power to condemn any water-power, right or property of any person, firm or corporation engaged in the actual service of the general public, where such power, right or property is being used or held to be used or to be developed for use in connection with or in addition to any power actually used by such person, firm or corporation serving the general public. Any surplus electric power generated by any plant erected under the provisions of this section may be sold by such company upon reasonable terms. (1907, c. 302; 1913, c. 94; C. S. 3535.)

§ 60-135. Separate accommodations for different races; failure to provide misdemeanor.—All street, interurban and suburban railway companies, engaged as common carriers in the transportation of passengers for hire in the state of North Carolina, shall provide and set apart so much of the front portion of each car operated by them as shall be necessary, for occupation by the white passengers therein, and shall likewise provide and set apart so much of the rear part of such car as shall be necessary, for occupation by the colored passengers therein, and shall require as far as practicable the white and colored passengers to occupy the respective parts of such car so set apart for each of them. The provisions of this section shall not apply to nurses or attendants of children or of the sick or infirm of a different race, while in attendance upon such children or such sick or infirm persons. Any officer, agent or other employee of any street railway company who shall willfully violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1907, c. 850, ss. 1, 5, 7; 1909, c. 851; C. S. 3536.)

§ 60-136. Passengers to take certain seats; violation of requirement misdemeanor.—Any white person entering a street car or other passenger vehicle or motor bus for the purpose of becoming a passenger therein shall, in order to carry out the purposes of § 60-135, occupy the first vacant seat or unoccupied space nearest the front thereof, and any colored person entering a street car or other passenger vehicle or motor bus for a like purpose shall occupy the first vacant seat or unoccupied space nearest the rear end thereof, provided, however, that no contiguous seat on the same bench shall be occupied by white and colored passengers at the same time, unless and until all the other seats in the car have been occupied. Upon request of the person in charge of the street car or other passenger vehicle or motor bus, and when necessary in order to carry out the purpose of providing separate seats for white and colored passengers, it shall be the duty of any white person to move to any unoccupied seat toward or in the front of the car, vehicle or bus, and the duty of any colored person to move to any unoccupied seat toward or in the rear thereof, and the failure of any such person to so move shall constitute prima facie evidence of an intent to violate this section. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. Any such person may also be ejected from the car, vehicle or bus by the person charged with the operation thereof. Each person now or hereafter charged with the operation of any such street car, passenger vehicle or motor bus is hereby invested with police powers and authority to carry out the provisions of this section. (1907, c. 850, ss. 2, 6; 1939, c. 147; C. S. 3537.)

§ 60-137. No liability for mistake in assigning passengers to wrong seat.—No street, suburban or interurban railway company, its agents, servants or employees, shall be liable to any person on account of any mistake in the designation of any passenger to a seat or part of a car set apart for passengers of the other race. (1907, c. 850, s. 8; C. S. 3538.)

§ 60-138. Misconduct on car; riding on front platform misdemeanor.—It shall be unlawful for

any passenger to expectorate upon the floor or any other part of any street-car, or to use, while thereon, any loud, profane or indecent language, or to make any insulting or disparaging remark to or about any other passenger or person thereon within his or her hearing. It shall likewise be unlawful for any passenger to stand willfully upon the front platform, fender, bumper, running-board or steps of such car while the same is in motion, whether such passenger has or has not paid the usual fare for riding on such car. Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. He may also be ejected from the car by the conductor and other agent or agents charged with the operation of such car, who are hereby invested with police powers to carry out the provisions of this section. (1907, c. 850, ss. 3, 6; C. S. 3539.)

§ 60-139. Sections 60-135 to 60-138 extended to motor busses used as common carriers.—The provisions of §§ 60-135 to 60-138 are hereby extended to motor busses operated in the urban, interurban or suburban transportation of passengers for hire, and to the operator or operators thereof, and the agents, servants, and employees of such operators. (1933, c. 489.)

§ 60-140. Passenger riding on rear platform assumes risk; copies of section to be posted.—Any passenger who shall ride upon the rear platform of any street-car in motion, when there is room for such passenger either to sit or stand inside the car, shall be deemed to have assumed all the risks of being injured while so riding, as the result of any act of the street-car company: Provided, that such company shall make it appear that such passenger would not have been injured had he been on the inside of said car: Provided further, that before any street, interurban or suburban railway shall be allowed to invoke the provisions of this section it shall have copies thereof printed and framed and one copy hung in each end of all cars operated on its lines, and shall further have a placard hung in a conspicuous place on the rear of such cars, which shall read as follows: "Passengers are warned not to ride on this platform," and a placard hung on each side of open cars in a conspicuous place, which shall read as follows: "Passengers are warned not to ride on the running board." (1907, c. 850, s. 4; C. S. 3540.)

§ 60-141. Street-cars to have vestibule fronts; failure to provide them misdemeanor.—All street passenger railway companies shall use vestibule fronts, of frontage not less than four feet, on all passenger cars run by them on their lines during the latter half of the month of November and during the months of December, January, February and March of each year: Provided, that such companies shall not be required to close the sides of the vestibules: Provided further, that such companies may use cars without vestibule fronts in cases of temporary emergency in suitable weather, not to exceed four days in any one month within the period herein prescribed for the use of vestibule fronts. The utilities commission is hereby authorized to make exemptions from the provisions of this section in cases where in their judgment the enforcement of this section is unnecessary. Any such company that shall refuse or fail to comply with the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for each day of such refusal or failure. (Rev., ss. 2615, 3800; 1901, c. 743; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3541.)

§ 60-142. Street cars to have fenders; failure to provide them misdemeanor.—All street passenger railway companies shall use practical fenders in front of all passenger cars run by them. The utilities commission is hereby authorized to make exemptions from the provisions of this section in cases where in their judgment the enforcement of this section is unnecessary. Any such company that shall refuse or fail to comply with the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for each day of such refusal or failure. (Rev., ss. 2616, 3801; 1901, c. 743, s. 2; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3542.)

Art. 15. Electric Interurban Railways.

§ 60-143. Organization.—Any electric interurban railway company, whether organized under the laws of this or any other State, may construct, maintain and operate electric interurban railways and engage in business in this State. (1927, c. 33, s. 1.)

§ 60-144. Right of eminent domain.—Any such company may exercise the right of eminent domain under the provisions of chapter forty and acts amendatory thereof, and for the purpose of constructing its roads and other works, shall have the powers given railroad corporations by this chapter, and acts amendatory thereof, except that no such company when organized under the laws of another state shall operate any part of its line of railway in this State by steam motive power, or as a part of a general steam railroad system of transportation. (1927, c. 33, s. 2.)

§ 60-145. Status defined.—All such companies shall be deemed public service corporations and shall be subject to the laws of this State regulating such corporations. (1927, c. 33, s. 3.)

Art. 16. Pipe Line Companies.

§ 60-146. Right of eminent domain conferred upon pipe line companies; other rights.—Any pipe line company transporting or conveying natural gas, gasoline, crude oil, or other fluid substances by pipe line for the public for compensation, and incorporated under the laws of the state of North Carolina, may exercise the right of eminent domain under the provisions of chapter forty and acts amendatory thereof, and for the purpose of constructing and maintaining its pipe lines and other works shall have all the rights and powers given railroads and other corporations by chapters fifty-six and sixty and acts amendatory thereof, provided the pipe lines of such companies transporting or conveying natural gas, gasoline, crude oil, or other fluid substances shall originate within this state. Nothing herein shall prohibit any such pipe line company granted the right of eminent domain under the laws of this state from

extending its pipe lines from within this state into another state for the purpose of transporting natural gas into this state, nor to prohibit any such pipe line company from conveying or transporting natural gas, gasoline, crude oil, or other fluid substances from within this state into another state. All such pipe lines companies shall be deemed public service companies and shall be subject to the laws of this state regulating such corporations. (1937, c. 280.)

Chapter 61. Religious Societies.

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61-5. Authority of bishops, ministers, etc., to acquire, hold and transfer property; prior transfers validated.
61-6. House on vacant land vests title.

§ 61-1. Trustees may be appointed and removed.—The conference, synod, convention or other ecclesiastical body representing any church or religious denomination within the state, as also the religious societies and congregations within the state, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise. (Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 2; 1844, c. 47; 1848, c. 76; C. S. 3568.)

§ 61-2. Trustees may hold property.—The trustees and their successors have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation; and they may sue or be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matters relating thereto. They shall be accountable to the churches, denominations, societies and congregations for the use and management of such property, and shall surrender it to any person authorized to demand it. (Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 3; 1844, c. 47; 1848, c. 76; C. S. 3569.)

§ 61-3. Title to lands vested in trustees, or in societies.—All glebes, lands and tenements, heretofore purchased, given, or devised for the support of any particular ministry, or mode of worship, and all churches and other houses built for the purpose of public worship, and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious denomination, religious society or congregagtion within the state for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society or congregation for which the glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which such churches, chapels or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested, as between the parties thereto, in the trustees respectively of such churches, denominations, societies and congregations, for their several use, according to the intent expressed in the conveyance, gift, grant or will; and in case there shall be no trustees, then in such churches, denominations, societies and congregations, respectively, according to such intent. (Rev., s. 2672; Code, s. 3665; R. C., c. 97, s. 1; 1776, c. 107; 1796, c. 457, s. 4; C. S. 3570.)

§ 61-4. Trustees may convey property.—The trustees of any religious body may mortgage or sell and convey in fee simple any land owned by such body, when directed so to do by such church, congregation, society or denomination, or its committee, board or body having charge of its finances, and all such conveyances so made or heretofore made, or hereafter to be made, shall be effective to pass the land in fee simple to the purchaser or to the mortgagee for the purposes in such conveyances or mortgage expressed; and they may sell or mortgage its personal property. (Rev., s. 2673; 1855, c. 384; 1889, c. 484; C. S. 3571.)

§ 61-5. Authority of bishops, ministers, etc., to acquire, hold and transfer property; prior transfers validated.—Whenever the laws, rules, or ecclesiastic polity of any church or religious sect, society or denomination, commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by gift, purchase or otherwise, and to hold, improve, mortgage, sell and convey the property, real or personal, of any such church or religious sect, society or denomination, for the purposes, in the manner and otherwise as authorized and permitted by its laws, rules or ecclesiastic polity; and in the event of the transfer, removal, resignation or death of any such bishop, minister or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon appointment or election, and pending appointment or election of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules or ecclesiastic polity of such church or religious sect, society or denomination.

All deeds, deeds of trust, mortgages, wills or other instruments made prior to March 24, 1939,

to or by a duly elected or appointed bishop, minister or other ecclesiastical officer, who, at the time of the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church, religious sect, society or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church or religious sect, society or denomination, are hereby ratified and declared valid; and all transfers of title and rights with respect to property, prior to March 24, 1939, from a predecessor bishop, minister or other ecclesiastical officer who has resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church, or religious sect, society or denomination, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

This section shall not affect vested rights, or repeal any of the provisions of §§ 61-1 to 61-4, or of §§ 36-21 to 36-23. (1939, c. 177.)

§ 61-6. House on vacant land vests title.—All houses and edifices erected for public religious worship on vacant lands, or on lands of the state not for other purposes intended or appropriated, together with two acres adjoining the same, shall hereafter be held and kept sacred for divine worship, to and for the use of the society by which the same was originally established. (Rev., s. 2674; Code, s. 3666; R. C., c. 97, s. 2; 1778, c. 132, s. 6; C. S. 3572.)

Chapter 62. Utilities Commission.

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Art. 1. Organization of the Commission.

§ 62-1. Number and appointment of commissioners; terms.—The North Carolina utilities commission shall consist of three commissioners, who shall be appointed by the governor, by and with the consent of the senate. The term of office of each commissioner shall be six years, provided that the first three commissioners shall be appointed one for a term of six years, one for a term of four years, and one for a term of two years, and their successors shall be appointed for a term of six years. (1941, c. 97, s. 2.)

§ 62-2. Salaries of commissioners. — The salary of the commissioners shall be as follows: chairman, six thousand and six hundred dollars ($6,600.00) per annum; commissioners, six thousand dollars ($6,000.00) each per annum; and the term of office for each commissioner shall begin on the first day of February, beginning with one thousand nine hundred and forty-one, provided, however, that the two commissioners to be named to serve with the chairman of the North Carolina utilities commission shall not draw salary until appointed and qualified. (1941, c. 97, s. 3.)

§ 62-3. Oath of office.—Each utilities commissioner before entering upon the duties of his office shall file with the secretary of state his oath of office to support the constitution and laws of the United States and the constitution and laws of the state of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any utility company or public-service corporation, or an employee thereof, and that he has no interest in any such company or corporation. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97.)

§ 62-4. Present utilities commissioner appointed to new commission; chairman.—The present utilities commissioner is hereby named a commissioner of the North Carolina utilities commission for a term of six years, beginning with February first, one thousand nine hundred and forty-one, and is hereby designated chairman of said commission, to hold such office during his term. Thereafter the governor of the state of North Carolina is hereby vested with the right to designate the chairman of the North Carolina utilities commission. (1941, c. 97, s. 4.)

§ 62-5. Clerical assistance.—The utilities commission shall be allowed such stenographic and other clerical assistance as it may require for the performance of the duties and functions of the said office, to be established and fixed by such department, bureau, or other state agency as may be charged by law with the duty of determining the extent of such assistance in said departments; all such stenographers, clerks, and assistants and special investigators so provided for to be appointed by the utilities commission and subject to removal or discharge by it. The salaries and compensation of such clerical assistants, special investigators, or other office force as may be allowed in the office of the utilities commission shall be fixed in the manner as now provided by law for fixing and regulating the salaries and compensation by other state departments. (1933, c. 134, s. 14; 1941, c. 97.)

§ 62-6. To report annually to governor.—It shall be the duty of the commission to make to the governor annual reports of its transactions, and recommend from time to time such legislation as it may deem advisable under the provisions of this chapter, and the governor shall have one thousand copies of such report printed for distribution. (Rev., s. 1117; 1899, c. 164, s. 27; 1911, c. 211, s. 9, 1913, c. 10, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1065.)

§ 62-7. To keep record of receipts and disbursements. — The commission shall keep a record showing in detail all receipts and disbursements. (Rev., s. 1115; 1899, c. 164, s. 34; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1063.)

§ 62-8. To pay fees and money into treasury.—All license fees and seal tax and all other fees paid into the office of the utilities commission shall be turned into the state treasury; also all moneys received from fines and penalties. (Rev., s. 1114, 1899, c. 164, ss. 26, 33; 1941, c. 97; C. S. 1064.)

§ 62-9. Adoption and use of seal; certificate.—The North Carolina Utilities Commission shall adopt a seal; and in all cases where a seal is required on any document, such seal so adopted by the utilities commission shall be sufficient; and whenever any record, paper, or document is required to be certified or evidenced by the certificate of the utilities commission or its chief clerk or wherever any act or thing is required or permitted to be evidenced by such certificate, the certificate shall be made by the utilities commission. (1933, c. 134, s. 15; 1941, c. 97, s. 7.)

§ 62-10. Public record of proceedings; chief clerk.—The utilities commission shall keep in its office at all times a record of its official acts, rulings, and transactions, which shall be public records of the state of North Carolina, and all rulings and determinations of said commission upon matters and things authorized to be passed upon by this chapter, and shall have and appoint a chief clerk, who shall be experienced in railroad and other public utilities statistics, transportation and public-service charges, and whose term of office shall be for a period of two years, and he shall file with the secretary of state the oath of office similar to that prescribed for the utilities commission. The utilities commission shall have power to remove such clerk for cause at any time. (1933, c. 134, s. 13; 1941, c. 97.)

Art. 2. Procedure before the Commission.

§ 62-11. Commission constituted court of record.—For the purpose of making investigations and conducting hearings, the utilities commission is hereby constituted a court of record and shall have all the powers and jurisdiction of a court of general jurisdiction as to all subjects embraced within this chapter. The commissioners and their clerks shall have full power to administer oaths, hear and take evidence, and said commission or commissioners shall render their decisions upon questions of law and of fact as other courts of similar jurisdiction. (1933, c. 134, s. 9; 1941, c. 97.)

§ 62-12. Rules of practice. — The commission hereby created shall formulate and promulgate rules of practice, including rules for hearings by one or more members of the commission or em-

ployees of the commission; provided, that as to any hearing before less than the full commission or an employee of the commission, the rules shall provide for a proposed report, exceptions to said report and a final hearing before the full commission upon the record, including the exceptions. (1941, c. 97, s. 6.)

§ 62-13. Witnesses; production of papers; contempt. — The utilities commission shall have the same power to compel the attendance of witnesses, require the examination of persons and parties, and compel the production of books and papers, and punish for contempt, as by law is conferred upon the superior courts. (Rev., s. 1067; 1899, c. 164, ss. 1, 9, 10; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1090.)

§ 62-14. Refusal of witness to testify.—If any person duly summoned to appear and testify before the utilities commission shall fail or refuse to testify without lawful excuse, or shall refuse to answer any proper question propounded to him by said commission in the discharge of duty, or shall conduct himself in a rude, disrespectful or disorderly manner before said commission deliberating in the discharge of duty, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one thousand dollars. (Rev., s. 3691; 1899, c. 164, s. 10; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1091.)

§ 62-15. Rules of evidence.—In all cases under the provisions of this chapter the rules of evidence shall be the same as in civil actions, except as provided by this chapter. (Rev., s. 1069; 1899, c. 164, s. 26; C. S. 1093.)

§ 62-16. Subpoenas; issuance; service. — All subpoenas for witnesses to appear before the commission, and notice to persons or corporations, shall be issued by the commission or its clerk and be directed to any sheriff, constable or to the marshal of any city or town, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. (Rev., s. 1070; 1899, c. 164, s. 10; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1094.)

§ 62-17. Service of orders.—The clerk of the commission may serve any notice issued by it, and his return thereof shall be evidence of said service; and it shall be the duty of the sheriffs and other officers to serve any process, subpoenas and notices issued by the commission, and they shall be entitled therefor to the same fees as are prescribed by law for serving similar papers issuing from the superior court. (Rev., s. 1071; 1899, c. 164, s. 9; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1095.)

§ 62-18. Undertakings.—All bonds or undertakings required to be given by any of the provisions of this chapter shall be payable to the state of North Carolina, and may be sued on as are other undertakings which are payable to the state. (Rev., s. 1072; 1899, c. 164, s. 7; C. S. 1096.)

§ 62-19. Judgments of commission.—The Utilities Commission shall hear and determine such matter, thing, or controversy in dispute, pass upon and determine the issues of fact raised thereon, and the questions of law involved therein, and make and enter their findings and conclusions thereon as the judgment of the said utilities commission. From the decision of said utilities commission any party to said proceeding may appeal to the superior court at term as designated in and under the rules of procedure required by §§ 62-20 to 62-25, said appeal to be prosecuted and the said matter and controversy there to be heard and disposed of as is now provided by law, and upon such appeal being taken, it shall be the duty of the utilities commission to certify its decision and rulings to the said superior court as now provided by law. (1933, c. 134, s. 12; 1941, c. 97.)

§ 62-20. Right of appeal; how taken.—From all decisions or determinations made by the utilities commission, any party affected thereby shall be entitled to an appeal. Before such party shall be allowed to appeal, he shall, within ten days after notice of such decision or determination, file with the commission exceptions to the decision or determination of the commission, which exceptions shall state the grounds of objection to such decision or determination. If any one of such exceptions shall be overruled, then such party may appeal from the order overruling the exception, and shall, within ten days after the decision overruling the exception, give notice of his appeal. When an exception is made to the facts as found by the commission, the appeal shall be to the superior court in term time; otherwise to the judge of the superior court at chambers. The party appealing shall, within ten days after the notice of appeal has been served, file with the commission exceptions to the decision or determination overruling the exception, which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the commission shall, within ten days, transmit all the papers and evidence considered by it, together with the assignment of errors filed by the appellant, to a judge of the superior court holding court or residing in some district in which such company operates or the party resides. If there be no exceptions to any facts as found by the commission, it shall be heard by the judge at chambers at some place in the district, of which all parties shall have ten days notice. (Rev., s. 1074; 1899, c. 164, ss. 7, 28; 1903, c. 126; 1907, c. 469, s. 6; 1913, c. 127, s. 4; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1097.)

§ 62-21. Appeal docketed; priority of trial; burden.—The cause shall be entitled "State of North Carolina on relation of the Utilities Commission against (here insert name of appellant)," and if there are exceptions to any facts found by the commission, it shall be placed on the civil issue docket of such court and shall have precedence of other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes, except that the rates fixed or the decision or determination made by the commission shall be prima facie just and reasonable. (Rev., s. 1075; 1899, c. 164, s. 7; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1098.)

§ 62-22. Appeal heard at chambers by consent. —By consent of all parties the appeal may be heard and determined at chambers before any

judge of a district through or into which the railroad may extend, or any judge holding court therein, or in which the person or company does business. (Rev., s. 1076; 1899, c. 164, s. 7; C. S. 1099.)

§ 62-23. Appeal to supreme court. — Either party may appeal to the supreme court from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that the state of North Carolina, if it shall appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal, and such court may advance the cause on its docket so as to give the same a speedy hearing. (Rev., s. 1077; 1899, c. 164, s. 7; C. S. 1100.)

§ 62-24. Judgment of superior court not vacated by appeal.—Any freight or passenger rates fixed by the commission, when approved or confirmed by the judgment of the superior court, shall be and remain the established rates, and shall be so observed and regarded by an appealing corporation until the same shall be changed, revised or modified by the final judgment of the supreme court, if there shall be an appeal thereto, and until changed by the utilities commission. (Rev., s. 1079; 1899, c. 164, s. 7; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1101.)

§ 62-25. Judgment on appeal enforced by mandamus.—In all cases in which, upon appeal, a judgment of the utilities commission is affirmed, in whole or in part, the appellate court shall embrace in its decree a mandamus to the appellant to put said order in force, or so much thereof as shall be affirmed. (Rev., s. 1080; 1905, c. 107, s. 2; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1102.)

§ 62-26. Peremptory mandamus to enforce order, when no appeal.—If no appeal is taken from an order or judgment of the utilities commission within the time prescribed by law, but the corporation affected thereby fails to put said order in operation, the utilities commission may apply to the judge riding the superior court district which embraces Wake County, or to the resident judge of said district at chambers, upon ten days notice, for a peremptory mandamus upon said corporation for the putting in force of said judgment or order; and if said judge shall find that the order of said commission was valid and within the scope of its powers, he shall issue such peremptory mandamus. An appeal shall lie to the supreme court in behalf of the utilities commission, or the defendant corporation, from the refusal or the granting of such peremptory mandamus. (Rev., s. 1081; 1905, c. 107; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1103.)

Art. 3. Powers and Duties of the Commission.

§ 62-27. General powers of commission.—The utilities commission shall have general power and control over the public utilities and public-service corporations of the state, and such supervision as may be necessary to carry into full force and effect the laws regulating the companies, corporations, partnerships, and individuals hereinafter referred to, and to fix and regulate the rates charged the public for service, and to require such efficient service to be given as may be reasonably necessary. (1933, c. 134, s. 2; 1941, c. 97.)

§ 62-28. To make and enforce rules for public-service corporations. — The utilities commission has power to make any necessary and proper rules, orders and regulations for the safety, comfort and convenience of passengers, shippers or patrons of any public-service corporation, and to require the observance of and to enforce the same by the company and its employees, such power being the same as that provided in this chapter in respect to railroads and other transportation companies. (1907, c. 469, s. 1a; 1913, c. 127, s. 2; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1037.)

§ 62-29. Express and implied powers.—The utilities commission shall also have, exercise, and perform all the functions, powers, and duties and have all the responsibilities conferred by this article, and all such other powers and duties as may be necessary or incident to the proper discharge of the duties of its office. (1933, c. 134, s. 6; 1941, c. 97.)

§ 62-30. Supervisory powers.—Under the rules and regulations herein prescribed and subject to the limitations hereinafter set forth, the said utilities commission shall have general supervision over the rates charged and the service given, as follows, to wit:

(1) By railroads, street railways, steamboats, canals, express and sleeping-car companies, and all persons, firms or corporations engaged in the carrying of freight or passengers or otherwise engaged as common carriers;

(2) By telephone and telegraph companies and all other companies engaged in the transmission of messages, and by all firms and individuals owning or operating telephone or telegraph lines in the state;

(3) By electric light, power, water, and gas companies, pipe lines originating in North Carolina for the transportation of petroleum products, and corporations, other than such as are municipally owned or conducted, and all other companies, corporations, or individuals engaged in furnishing electricity, electric light current, power, or in transmitting or selling the same or producing the same from the water courses of this state: Provided, that the exemption given to municipally owned or conducted electric light, power, water and gas companies from supervision by the utilities commission shall not apply to municipally owned electric light or power systems which are leased to and operated by private individuals, firms, or corporations.

(4) By all water power and hydroelectric companies or corporations now doing business in this state or which may hereafter engage in doing business in this state, whether organized under the laws of this state or under the laws of any other state or country, and such companies and corporations are deemed to be public-service companies and subject to the laws of this state regulating the same;

(5) By flume companies, corporations, other than municipal corporations, or individuals owning or operating public sewerage systems in the state of North Carolina;

And the said utilities commissioner is hereby vested under this section with all power necessary to require and compel any public utility or public-service corporation of the kinds herein designated or any other class of public utility to provide and furnish to the citizens of this state reasonable service of the kind it underakes to furnish and fix and regulate the reasonable rates and charges to be made to the citizens of the state who may be entitled to use the same under such rules and regulations as may be lawfully prescribed.

The power of control and supervision vested in the commission under this section with respect to the various classes of public service corporations and individuals engaged in furnishing the public utilities mentioned shall be the same as that vested in it in respect to railroads and other transportation companies. (1913, c. 127, s. 7; 1933, c. 134, s. 3; 1937, c. 108, s. 2; 1941, cc. 59, 97; C. S. 1112(b).)

§ 62-31. Commission to keep itself informed as to utilities.—The said utilities commission shall at all times be required to keep itself informed as to the public-service corporations hereinbefore specified and enumerated, their rates and charges for service, and the service supplied to the citizens of the state and purposes therefor; and it shall at all times be empowered and required to inquire into such service and rates charged therefor, and to fix and determine as herein provided the reasonableness thereof, and upon petition or otherwise to make full inquiry into such rates and charges in behalf of the citizens of the state, and compel and require compliance with the regulations and charges, and final determination fixed therefor under the provisions of this article, and no corporation, association, partnership, or individual, other than carriers of passengers and property by rail, express, highway and/or water, doing business in the state of North Carolina as a public-service corporation, or any other corporation herein designated, shall be allowed to increase its rate and charge for service, or change its classification in any manner whatsoever except upon petition duly filed with the utilities commission and inquiry held thereon and final determination of the reasonableness and the necessity of any such increase or change in classification or service: Provided, however, that nothing herein shall be construed to prevent any public-service corporation under the jurisdiction of the commission from reducing its rates, either directly or by change in classification. (1933, c. 134, s. 16; 1937, c. 165; 1939, c. 365, ss. 1, 2; 1941, c. 97.)

§ 62-32. To investigate companies and businesses under its control.—The commission shall from time to time visit the places of business, and investigate the books and papers of all corporations, firms or individuals engaged in the transportation of freight or passengers, the transmission of messages either by telegraph or telephone, or in the furnishing of other public utilities the supervision and control of which is vested in the utilities commission to ascertain if all the orders, rules and regulations of the utilities commission have been complied with, and shall have full power and authority to examine all officers, agents and employees of such companies, individuals, firms or corporations, and all other persons, under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this chapter. (Rev., s. 1064; 1913, c. 127, ss. 1, 2, 7; 1917, c. 194; 1899, c. 164, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1060.)

§ 62-33. System of accounts.—The utilities commission may establish a system of accounts to be kept by the public utilities, under its jurisdiction, or may classify said public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97.)

§ 62-34. Reports. — The utilities commission shall at least once every twelve months require any public utility to file annual reports in such form and of such content as the commission may require and special reports concerning any matter about which the commission is authorized to inquire or to keep itself informed, or which it is authorized to enforce. All reports shall be under oath when required by the commission. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97.)

§ 62-35. Investigations. — The utilities commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of public utilities or any particular utility. In conducting such investigation the commission may proceed either with or without a hearing as it may deem best, but shall make no order without affording the parties affected thereby a hearing.

If after such an investigation, or investigation and hearing, the commission, in its discretion, is of the opinion that the public interest shall be more greatly conserved by an appraisal of any properties in question, the investigation of any particular construction, the audit of any accounts or books, the investigation of any contracts, or the practices, contracts or other relations between the utility in question and any holding or finance agency with which such public utility may be affiliated, it shall be the duty of the commission to report its findings and recommendation to the governor and council of state with request for an allotment from the emergency and contingency fund to defray such expense which may be granted as provided by law for expenditures from such fund or may be denied. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97.)

§ 62-36. To fix rates for public utilities in cities.—The utilities commission shall have full power and authority to fix and establish any and all rates which any public-service or quasi public-service corporation other than railroads using steam as a motive power shall charge or exact from any person, firm or corporation in any city for the services rendered or commodity furnished. (1917, c. 136, sub-ch. 3, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 2783.)

§ 62-37. Manner of enforcing above regulations.—The North Carolina utilities commission shall have the power to require such improvements and extensions to the service of public-service corporations mentioned in § 62-36 as it may deem necessary after the investigation of any complaint of any person, corporation, or municipality as to the inadequacy of such service. Upon application be-

ing made, the utilities commission shall proceed to hear, pass on, and determine, in the manner prescribed by law, a just or reasonable rate or charge for the service or other commodity rendered or furnished; the hearing before the utilities commission shall be governed by the law as to the commission relating to the fixing of rates and rules and orders of the commission as to the enforcement thereof by the commission. The utilities commission shall have the same power and authority in hearing and passing on any matter or case under § 62-36, enforcing or fixing of rates, supervising and regulating said corporation or otherwise as they now have under the general law. The failure or refusal to conform to or obey any decision, rule, regulation, or order made in such cases by the utilities commission shall subject said public-utility corporation or quasi public-utility corporation refusing or failing to comply herewith to the penalties provided in this chapter. (1917, c. 136, sub-ch. 3, s. 2; 1933, c. 134, s. 8; 1941, c. 97; C. S. 2784.)

§ 62-38. Sections 62-36 and 62-37 not to affect existing power.—Nothing contained in §§ 62-36 and 62-37 shall be construed to deprive the utilities commission of the authority and power which it now has under the laws of North Carolina to supervise and regulate and fix the rates for public-utility corporations or quasi public-utility corporations operating or doing business in such city. (1917, c. 136, sub-ch. 3, s. 3; 1933, c. 134, s. 8; 1941, c. 97; C. S. 2785.)

§ 62-39. To require transportation and transmission companies to maintain facilities. — The utilities commission has power to require all transportation and transmission companies to establish and maintain all such public-service facilities and conveniences as may be reasonable and just. It may require steamboat companies to provide such wharf and warehouse facilities as may be reasonable and just. (1907, c. 469, s. 2; Ex. Sess. 1913, c. 52, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1038.)

§ 62-40. To authorize lumber companies to transport commodities.—The utilities commission has power to authorize lumber companies, having logging roads, to transport all kinds of commodities other than their own and passengers, and to charge therefor reasonable rates to be approved by the commission. (1915, c. 160, s. 1; 1915, c. 6; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1039.)

§ 62-41. To establish and regulate stations for freight and passengers.—The commission is empowered and directed to require, where the public necessity demands, and it is demonstrated that the revenue received will be sufficient to justify it, the establishment of stations by any company or corporation engaged in the transportation of freight and passengers in this state, and to require the erection of depot accommodations commensurate with such business and revenue, and to require the erection of accommodations for loading and unloading livestock and for feeding, sheltering and protecting the same in transportation. The commission shall not require any company or corporation to establish any station nearer to another station than five miles. (Rev., s. 1097; 1899, c. 164, s. 2, subsec. 12; 1913, c. 155; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1040.)

§ 62-42. To require change, repair, and additions to stations.—The commission is empowered and directed to require a change of any station or the repairing, addition to, or change of any station house by any railroad or other transportation company in order to promote the security, convenience and accommodation of the public, and to require the raising or lowering of the track at any crossing when deemed necessary. (Rev., s. 1097; 1899, c. 164, s. 2, subsec. 13; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1041.)

§ 62-43. To provide for union depots.—The commission is empowered and directed to require, when practicable, and when the necessities of the case, in its judgment, require, any two or more railroads which now or hereafter may enter any city or town to have one common or union passenger depot for the security, accommodation and convenience of traveling public, and to unite in the joint undertaking and expense of erecting, constructing and maintaining such union passenger depot, commensurate with the business and revenue of such railroad companies or corporations, on such terms, regulations, provisions and conditions as the commission shall prescribe. The railroads so ordered to construct a union depot shall have power to condemn land for such purpose, as in case of locating and constructing a line of railroad: Provided, that nothing in this section shall be construed to authorize the commission to require the construction of such union depot should the railroad companies at the time of application for said order have separate depots, which, in the opinion of the commission, are adequate and convenient and offer suitable accommodations for the traveling public. (Rev., s. 1097; 1903, c. 126; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1042.)

§ 62-44. To provide for separate waiting rooms for races.—The commission is empowered and directed to require the establishment of separate waiting rooms at all stations for the white and colored races. (Rev., s. 1097; 1899, c. 64, s. 2, subsec. 14; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1043.)

§ 62-45. To require construction of sidetracks.—The commission is empowered and directed to require the construction of sidetracks by any railroad company to industries already established or to be established: Provided, it is shown that the proportion of such revenue accruing to such sidetrack is sufficient within five years to pay the expenses of its construction. This shall not be construed to give the commission authority to require railroad companies to construct sidetracks more than five hundred feet in length. (Rev., s. 1097; 1899, c. 164, s. 2, subsec. 15; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1044.)

§ 62-46. To require trains to be run over railroads and connections at intersections.—The commission is empowered and directed to require, when practicable and when the necessities of the traveling public, in the judgment of the commission, demand, that any railroad in this state shall install and operate one or more passenger or freight trains over its road, and also require any two or more railroads having intersecting points to make close connection at such

points: Provided, that no order under this section shall be made unless the business of the railroad justifies it. (1907, c. 469, s. 3; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1045.)

§ 62-47. May authorize operation of fast mail trains; discontinuance of passenger service.—The utilities commission is hereby empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall stop only at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train such railroad company shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday. The utilities commission, or its successor, however, shall have and it is hereby vested with the power in any case in which the convenience and necessity of the traveling public do not require the running of passenger trains upon its railroad to authorize such railroad company to cease the operation of passenger trains as long as the convenience and necessity of the traveling public shall not require such operation: Provided that this section and any ruling hereafter made by the utilities commission, or its successors, shall not be construed as abrogating or repealing the provisions of any charter or franchise requiring such common carrier to furnish daily freight service over its lines, nor cause the discontinuance of daily freight service where now maintained. (Rev., s. 2614; 1893, c. 97; 1933, c. 528; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 3481.)

§ 62-48. To inspect railroads as to equipment and facilities, and to require repair.—The commission is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the public's safety and convenience; and if any are found by it to be unsafe, it shall at once notify and require the railroad company to put the same in repair. (1907, c. 469, s. 3; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1046.)

§ 62-49. To require installation and maintenance of block system and safety devices. — The commission is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part. (1907, c. 469, s. 1b; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1047.)

§ 62-50. To regulate crossings and to abolish grade crossings.—The commission is empowered and directed to require the raising or lowering of any tracks or highway at any highway or railroad crossing, and to designate who shall pay for the same; and, when it thinks proper, partition the cost of abolishing grade crossings and the raising or lowering of said track or highway among the railroads and municipalities interested. (1907, c. 469, s. 1 (c); 1911, c. 197, s. 1; 1933, c. 34, s. 8; 1941, c. 97; C. S. 1048.)

§ 62-51. To require installation and maintenance of automatic signals at railroad intersections, etc. —The commission is empowered and directed to require, when public safety demands, when and in case two or more railroads now cross or may hereafter cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper. (1911, c. 197, s. 2; Ex. Sess. 1913, c. 63, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1049.)

§ 62-52. To require railroads to enter towns and maintain depots in certain cases.—Where two or more railroads may maintain freight depots and a union passenger depot within one mile of a town of two thousand population for the convenience of the inhabitants thereof, and do not enter the corporate limits of the town, it is the duty of the utilities commission, upon the petition of a majority of the qualified voters of the said town, which petition shall be properly sworn to by the signers thereof, to require and compel, where practicable, the said railroads to run their lines into or through the corporate limits of the said town, and construct, equip, and maintain suitable passenger and freight depots at some convenient place or places therein, and the passenger depot shall be a union station and be built and maintained by the several railroads according to a plan and in such a manner as shall be approved by the commission.

When a petition is filed with the utilities commission as aforesaid, the commission shall set a day for the hearing thereof, which day shall be not more than twenty days from the filing of said petition, and shall immediately cause a notice to issue to the railroads interested in the matter set out in the petition, and after the hearing of the matter on the day named in the notice, the commission, if it deem it practicable, shall thereupon cause an order to be made requiring the said railroads to build, equip, and maintain in a suitable manner roadbeds, yards and depots, and any other necessary buildings or equipment, at convenient places within the limits of said town, as to it seems proper for the needs and growth of the business and inhabitants of the said town.

The order of the utilities commission to the railroads shall name a time within which all the necessary work of entering the said town and construction of depots and other buildings shall be completed and opened to the public for the transaction of business, and the said railroads, for every day beyond the said time that they shall not be in operation according to the said order, shall pay the sum of fifty dollars for each and every day of such failure and neglect, to the board of commissioners or aldermen of said town, which shall be for the benefit of the said

town, this amount to be recovered as in other actions.

This section shall also apply to any railroad that may hereafter enter into or run within one mile of the corporate limits of said town, and the utilities commission shall have the power to require such railroads to unite with the other railroads in maintaining the depots, tracks, and other structures, and also pay such part of the cost thereof as to the said utilities commission may seem proper.

The railroads have the power to condemn such quantity of lands, including gardens, yards, residences and the premises pertaining thereto, as are necessary for the purposes of this section, the condemnation proceedings to be had in the same manner as now provided by law. (1907, c. 465; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1050.)

§ 62-53. To consent to abandonment or relocation of depots.—A railroad corporation which has established and maintained for a year a passenger station or freight depot at a point upon its road shall not abandon such station or depot, nor substantially diminish the accommodation furnished by the stopping of trains, except by consent of the commission. Freight or passenger depots may be relocated upon the written approval of the commission. (Rev., s. 1098; 1899, c. 164, ss. 19, 20; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1051.)

§ 62-54. To regulate crossings of telephone, telegraph and electric power lines.—Power is conferred on the utilities commission whenever any telephone, telegraph or electric power lines cross, to require such crossings to be constructed and maintained in a safe manner, so that the wires of one line will not fall upon the other; to prescribe the manner in which this shall be done; to discontinue or prohibit such crossings where they are unnecessary and can reasonably be avoided; and to apportion the cost of proper changing and construction of such crossings among the lines interested, as to said commission may seem just: Provided, that in all crossings made dangerous by the presence of high tension wire or wires of any power or light company, the cost shall be paid by such power or light company. (1913, c. 130, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1052.)

Local Modification.—Ashe: 1929, c. 101.

§ 62-55. To regulate delivery of freight, express, and baggage.—The utilities commission shall make reasonable and just rules—

1. For the handling of freight and baggage at stations.

2. As to charges by any company or corporation engaged in the carriage of freight or express for the necessary handling and delivery of the same at all stations. (Rev., s. 1094; 1899, c. 164, s. 2, subsecs. 2, 7; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1053.)

§ 62-56. To prevent discriminations.—The utilities commission shall make reasonable and just rules and regulations—

1. To prevent discrimination in the transportation of freight or passengers, or in furnishing electricity, electric light, current, power or gas.

2. To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or the misleading or deceiving the public in any manner as to real rates charged for freight, express or passengers, or in furnishing electricity, electric light, current, power or gas. (Rev., s. 1095; 1899, c. 164, s. 2, subsecs. 3, 5; 1913, c. 127, s. 6; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1054.)

§ 62-57. To fix a standard for gas.—The utilities commission shall fix, establish and promulgate a standard of quality for gas and prescribe rules and regulations for the enforcement of and obedience to the same. (1919, c. 32; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1055.)

§ 62-58. To regulate shipment of inflammable substances.—The utilities commission is authorized and empowered to adopt and promulgate rules for the shipment of inflammable and explosive articles; cotton which has been partially consumed by fire, and such other like articles as in its opinion may be apt to render transportation dangerous. And after the promulgation of such rules, no common carrier shall be required to receive or transport any such articles except when tendered in accordance with the said rules; nor shall such common carrier be liable for any penalty for refusal to receive such article for shipment until all the rules prescribed by the utilities commission in regard to the shipments of the same shall be complied with. (1907, c. 471, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1056.)

§ 62-59. To regulate demurrage, storage, placing, and loading of cars.—The commission shall make rules, regulations and rates governing demurrage and storage charges by railroad companies and other transportation companies; and shall make rules governing railroad companies in the placing of cars for loading and unloading and in fixing time limit for delivery of freights after the same have been received by the transportation companies for shipment. (Rev., s. 1100; 1903, c. 342; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1057.)

§ 62-60. To fix rate of speed through towns; procedure.—If a railroad company is of the opinion that an ordinance of a city or town through which a line of its railroad passes regulating the speed at which trains may run while passing through said city or town, is unreasonable or oppressive, such railroad company may file its petition before the utilities commission, setting forth all the facts, and asking relief against such ordinance, and that the utilities commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, in a registered letter, to the mayor or chief officer of the town or municipality, together with a notice from the utilities commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the city or town named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the utilities commission shall hear the petition, but any hearing granted by the utilities commission shall be had at the town, city or locality where the conditions complained of are alleged to exist, or some member of the said commission shall take evidence, both for the petition and against it, at such city, town or locality, and report to the full commission before any decision is made by the commission.

Either party, petitioner or respondent, has the right to introduce testimony and to be heard by counsel; and the utilities commission, after hearing the petition, answer, evidence and argument, shall render judgment thereon. If the commission finds that such ordinance is reasonable and just the petition shall be dismissed, and the petitioner shall pay all the costs, to be taxed by the clerk to the utilities commission. If the commission is of the opinion that the ordinance is unreasonable, it shall so adjudge; and in addition thereto it shall prescribe the maximum rates of speed for passing through such town. And thereafter the railroad company may run its trains through such town or city at speeds not greater than those prescribed by the utilities commission, and the ordinance adjudged to be unreasonable shall not be enforced against such railroad company.

If the judgment of the utilities commission is in favor of the petitioner, it shall be lawful for the utilities commission to make such order as to the payment of the costs as shall seem just. It may require either party to pay the same or it may divide the same. The costs in such proceeding shall be the same as are fixed by law for similar services in the superior court. (Rev., ss. 1101, 1102, 1103; 1903, c. 552; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1058.)

Local Modification. — Cumberland, Rockingham, Union, Wayne: C. S. 1058.

§ 62-61. To hear and determine controversies submitted.—When a company or corporation embraced in this chapter has a controversy with another corporation or person, and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrator, the commission shall act as such, and after due notice to all parties interested shall proceed to hear the same, and its award shall be final. Such award in cases where land or an interest in land is concerned shall immediately be certified to the clerk of the superior court of the county in which said land is situated, and shall by such clerk be docketed in the judgment docket for such county, and from such docketing shall be a judgment of the superior court for such county. Parties may appear in person or by attorney before such arbitrator. (Rev., s. 1073; 1899, c. 164, s. 25; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1059.)

§ 62-62. To investigate accidents.—The commission may investigate the causes of any accident on a railroad or steamboat which it may deem to require investigation, and any evidence taken upon such investigation shall be reduced to writing, filed in the office of the commission, and be subject to public inspection. (Rev., s. 1065; 1899, c. 164, s. 24; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1061.)

§ 62-63. To notify of violation of rules and institute suit.—The commission, whenever in its judgment any public utility has violated any law, shall give notice thereof in writing to such corporation, and, if the violation or neglect is continued after such notice, shall forthwith present the facts to the attorney-general, who shall take such proceedings thereon as he may deem expedient. (Rev., s. 1113; 1899, c. 164, s. 8; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1062.)

§ 62-64. Utilities commission authorized to enter agreement of indemnity as to oyster beds in New River.—The utilities commission is authorized and empowered to enter into a contract with the United States or the Secretary of War on behalf of the State of North Carolina, by the terms of which it shall be agreed that the State of North Carolina will save the United States free from liability for damages to oyster beds in New River arising from the dredging and maintenance of a channel ten feet deep and ninety feet wide therein, between the Inland Waterway and Jacksonville: Provided, the liability of the State of North Carolina under such contract shall not exceed the total sum of five thousand dollars ($5,000).

The enactment of this statute shall not be treated or considered as any admission on the part of the State that the owner of such oyster beds who have not executed waivers or releases prior to February 24, 1939, shall be entitled to any damages by reason of the dredging and maintenance of the said channel, and no payment shall be made on account of such claims unless and until the owners of such oyster beds shall show that there has been sustained actual damages to such oyster beds on account of the dredging and maintenance of said channel. (1939, c. 51; 1941, c. 97.)

Art. 4. Public Utilities Act of 1933

§ 62-65. Definitions.—(a) The term "corporation," when used in this article, includes a private corporation, an association, a joint stock association or a business trust.

(b) The term "person," when used in this article, includes a natural person, a partnership or two or more persons having a joint or common interest, and a corporation as hereinbefore defined.

(c) The term "municipality," when used in this article, includes a city, a county, a village, a town, and any other public corporation existing, created or organized as a governmental unit under the constitution or laws of the State.

(d) The term "commission" shall mean the utilities commission.

(e) The term "public utility," when used in this article, includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for:

(1) Producing, generating, transmitting, delivering or furnishing gas, electricity, steam or any other agency for the production of light, heat or power to or for the public for compensation;

(2) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation;

(3) Transporting persons or property by street, suburban or interurban railways for the public for compensation;

(4) Transporting persons or property by motor vehicles for the public for compensation, but not including taxicab, operating on call, or truck transfer service in cities or towns;

(5) Transporting or conveying gas, crude oil or other fluid substance by pipe line for the public for compensation;

(6) Conveying or transmitting messages or communications by telephone or telegraph, where such service is offered to the public for compensation;

(7) The term "public utility" shall for rate mak-

ing purposes only include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others. The business of any public utility other than of the character defined in subdivisions 1 to 7, inclusive, of subdivision (e) of this section is not subject to the provisions of this article.

(f) The term "rate," when used in this article, means and includes every compensation, charge, fare, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service, product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, toll, rental or classification. (1933, c. 307, s. 1; c. 134, s. 8; 1941, c. 97.)

§ 62-66. Rates must be just and reasonable.—Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. (1933, c. 307, s. 2.)

§ 62-67. Service.—Every public utility shall furnish adequate, efficient and reasonable service. (1933, c. 307, s. 3.)

§ 62-68. To file rate schedules with commission.—Under such rules and regulations as the commission may prescribe, every public utility shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such rules and regulations as the commission may prescribe. (1933, c. 307, s. 4.)

§ 62-69. Rates varying from schedule prohibited.—No public utility shall directly or indirectly, by any device whatsoever, or in any wise, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this article, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules. (1933, c. 307, s. 5.)

§ 62-70. Discrimination prohibited. — No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The commission may determine any questions of fact arising under this section. (1933, c. 307, s. 6.)

§ 62-71. Change of rates.—Unless the commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this article, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The utility shall also give such notice of the proposed changes to other interested persons as the commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The commission, for good cause shown, may allow changes in rates, without requiring the thirty days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

Whenever there is filed with the commission by any public utility any schedule stating a new rate or rates, the commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than ninety (90) days beyond the time when such rate or rates would otherwise go into effect unless the commission shall find that a longer time will be required, in which case the commission may extend the period for not to exceed six (6) months: Provided, and notwithstanding any such order of suspension, the public utility may put such suspended rate or rates into effect on the date when it or they would have become effective, if not so suspended, by filing with the commission a bond in a reasonable amount approved by the commission, with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission to the persons entitled thereto of the amount of the excess, if the rate or rates so put into effect are finally determined to be excessive; or there may be substituted for such bond, other arrangements satisfactory to the commission for the protection of the parties interested. If the public utility fails to make refund within thirty (30) days after such final determination, any person entitled to such refund may sue therefor in any court of this state of competent jurisdiction and be entitled to recover, in addition to the amount of the refund due, all court costs, but no suit may be maintained for that purpose unless instituted within two years after such final determination. Any number of persons entitled to such refund may join as plaintiffs and recover their several claims in a single action; in which action the court shall render a judgment severally for each plaintiff as his interest may appear. During any such period of suspension the commission may, in its discretion, require that the public utility involved shall furnish to its consumers or patrons a certificate or other evidence of payments made by them. (1933, c. 307, s. 7.)

§ 62-72. Changing unreasonable rates after hearing.—Whenever the commission, after a hearing had after reasonable notice upon its own motion or upon complaint, finds that the existing rates in effect and collected by any public utility for any service, product, or commodity, are unjust, unreasonable, insufficient or discriminatory, or in any wise in violation of any provision of law, the commission shall determine the just, reasonable and sufficient rates to be thereafter observed and in force, and shall fix the same by order as hereinafter provided. (1933, c. 307, s. 8.)

§ 62-73. Compelling telephone and telegraph companies to form continuous lines to certain points.—The commission may upon complaint, in writing, by any person, or on its own initiative after a hearing on reasonable notice, by order require any two or more telephone or telegraph companies whose lines or wires form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections or the joint use of equipment, or the transfer of messages at common points, between different localities which can not be communicated with or reached by the lines of either company alone, where such service is not already established or provided, to establish and maintain through lines within the state between two or more such localities. The rate for such service shall be just and reasonable and the commission shall have power to establish the same, and declare the portion thereof to which each company affected thereby is entitled and the manner in which the same must be secured and paid. All necessary construction, maintenance and equipment in order to establish such service shall be constructed and maintained in such manner and under such rules, with such division of expense and labor as may be required by the commission. (1933, c. 307, s. 9.)

§ 62-74. Compelling efficient service after hearing.—Whenever the commission, after a hearing after reasonable notice had upon its own motion or upon complaint, finds that the service of any public utility is unreasonable, unsafe, inadequate, insufficient or unreasonably discriminatory, the commission shall determine the reasonable, safe, adequate sufficient service to be observed, furnished, enforced or employed and shall fix the same by its order, rule or regulation. (1933, c. 307, s. 10.)

§ 62-75. Fixing standards, classifications, etc.; testing service. — The commission may, after hearing upon reasonable notice had upon its own motion or upon complaint, ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all public utilities; ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any and all public utilities; prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement; and provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any public utility. (1933, c. 307, s. 11.)

§ 62-76. Valuing and revaluing utility property.—The commission may, on hearing after reasonable notice, ascertain and fix the value of the whole or any part of the property of any public utility insofar as the same is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the value of all new construction, extension and additions to the property of every public utility. (1933, c. 307, s. 12.)

§ 62-77. Establishment of accounting system.—The commission may establish a system of accounts to be kept by the public utilities, subject to its jurisdiction, or may classify said public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. (1933, c. 307, s. 13.)

§ 62-78. Visitorial and inspection powers of commission.—The commissioners and the officers and employees of the commission may during all reasonable hours enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any power provided for in this article, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examination, tests and inspections. (1933, c. 307, s. 14.)

§ 62-79. Annual reports. — The commission may require any public utility to file annual reports in such form and of such content as the commission may require and special reports concerning any matter about which the commission is authorized to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission. (1933, c. 307, s. 15.)

§ 62-80. Investigation into management of utilities. — The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of public utilities or any particular utility. In conducting such investigations the commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the parties affected thereby a hearing. (1933, c. 307, s. 16.)

§ 62-81. Permission to pledge assets or pay fees.—No public utility shall pledge its faith, credit, moneys or property for the benefit of any holder of its preferred or common stocks or bonds, nor for any other business interest with which it may be affiliated through agents or holding companies or otherwise by the authority of the action of its stockholders, directors, or contract or other agents, the compliance or result of which would in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, decrease or increase its liabilities or assets, without first making application to the commis-

sion and by order obtain its permission so to do; nor shall any such utility pay any fees, commissions or compensation of any description whatsoever to any holding, managing, operating, constructing, engineering, financing, or purchasing company or agency including subsidiary or affiliated companies, for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the commission and obtaining its approval. (1933, c. 307, s. 17.)

§ 62-82. Assumption of certain liabilities and obligations to be approved by commission.—No utility shall issue any securities, or assume any liability or obligation as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect to the securities of any other person unless and until, and then only to the extent that, upon application by the utility, and after investigation by the commission of the purposes and uses of the proposed issue, and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, the commission by order authorizes such issue or assumption. The commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object within the corporate purposes of the utility, (b) is compatible with the public interest, (c) is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public as such utility and will not impair its ability to perform that service, and, (d) is reasonably necessary and appropriate for such purpose. Any such order of the commission shall specify the purposes for which any such securities or the proceeds thereof may be used by the utility making such application. (1933, c. 307, s. 18.)

§ 62-83. Commission may approve in whole or in part or refuse approval.—The commission, by its order, may grant or deny the application provided for in the preceding section as made, or may grant it in part or deny it in part or may grant it with such modification and upon such terms and conditions as the commission may deem necessary or appropriate in the premises and may, from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate and may, by any such supplemental order, modify the provisions of any previous order as to the particular purposes, uses, and extent to which or the conditions under which any securities so theretofore authorized or the proceeds thereof may be applied; subject always to the requirements of the foregoing section. (1933, c. 307, s. 19.)

§ 62-84. Contents of application for permission.—Every application for authority for such issue or assumption shall be made in such form and contain such matters as the commission may prescribe. Every such application and every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the utility by its president, a vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the utility. (1933, c. 307, s. 20.)

§ 62-85. Applications to receive immediate attention; continuances. — All applications for the issuance of securities or assumption of liability or obligation shall be placed at the head of the commission's docket and disposed of promptly, and all such applications shall be disposed of in thirty (30) days after the same are filed with the commission, unless it is necessary for good cause to continue the same for a longer period for consideration. Whenever such application is continued beyond thirty (30) days after the time it is filed, the order making such continuance must state fully the facts necessitating such continuance. (1933, c. 307, s. 21.)

§ 62-86. Notifying commission as to disposition of securities.—Whenever any securities set forth and described in any such application for authority or certificate of notification as pledged or held unincumbered in the treasury of the utility shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of, by the utility, such utility shall, within ten days after such sale, pledge, repledge, or other disposition, file with the commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the commission. (1933, c. 307, s. 22.)

§ 62-87. No guarantee on part of state. — Nothing herein shall be construed to imply any guarantee or obligation as to such securities on the part of the state of North Carolina. (1933, c. 307; s. 23.)

§ 62-88. Article not applicable to note issues; renewals likewise excepted.—The provisions of the foregoing sections shall not apply to notes issued by a utility for the proper purposes and not in violation of law, payable at a period of not more than two (2) years from the date thereof, and shall not apply to like notes issued by a utility payable at a period of not more than two (2) years from date thereof, to pay, retire, discharge, or refund in whole or in part any such note or notes and shall not apply to renewals thereof from time to time not exceeding in the aggregate six (6) years from the date of the issue of the original note or notes so renewed or refunded. No such notes payable at a period of not more than two (2) years from the date thereof, shall, however, in whole or in part, directly or indirectly, be paid, retired, discharged or refunded by any issue of securities of another kind of any term or character or from the proceeds thereof without the approval of the commission. (1933, c. 307, s. 24.)

§ 62-89. Not applicable to debentures of court receivers; notice to commission.—Nothing contained in this article shall limit the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity. Within ten (10) days after the making of any such notes, so payable at periods of not more than two (2) years from the date thereof, the utility issuing the same shall file with the commission a certificate of notification, in such form as may from time to time be determined and prescribed by the commission. (1933, c. 307, s. 25.)

§ 62-90. Periodical or special reports. — The commission shall require periodical or special reports from each utility hereafter issuing any security including such notes payable at periods of not more than two (2) years from the date thereof, which shall show, in such detail as the commission may require, the disposition made of such securities and the application of the proceeds thereof. (1933, c. 307, s. 26.)

§ 62-91. Failure to obtain approval not to invalidate securities or obligations.—(a) Securities issued and obligations and liabilities assumed by a utility, for which under the provisions of this article the authorization of the commission is required, shall not be invalidated because issued or assumed without such authorization therefor having first been obtained or because issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption. (b) Securities issued or obligations or liabilities assumed in accordance with all the terms and conditions of the order of authorization therefor shall not be affected by a failure to comply with any provision of this article or rule or regulation of the commission relating to procedure and other matters preceding the entry of such order of authorization or order supplemental thereto. (c) A copy of any order made and entered by the commission as in this article provided (duly certified by the clerk of the commission) approving the issuance of any securities or the assumption of any obligation or liability by a utility shall, in and of itself, be sufficient evidence, for all purposes, of full and complete compliance by the applicant for such approval with all procedural and other matters required precedent to the entry of such order. (d) Any utility which willfully issues any such securities, or assumes any such obligation or liability, or makes any sale or other disposition of securities, or applies any securities or the proceeds thereof to purposes other than the purposes specified in an order of the commission with respect thereto, contrary to the provisions of this article, shall be liable to a penalty of not more than ten thousand dollars, but such utility is only required to specify in general terms the purpose for which any securities are to be issued, or for which any obligation or liability is to be assumed, and the order of the commission with respect thereto shall likewise be in general terms. (1933, c. 307, s. 27.)

§ 62-92. Commission may act jointly with agency of another state where utility operates. — If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, then the utilities commission of the state of North Carolina shall have the power to agree with such commission or other agency or agencies of such other state on the issue of stocks, bonds, notes or other evidences of indebtedness by a public utility owning or operating a public utility both in such state and in this state, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue joint certificate of such approval: Provided, however, that no such joint approval shall be required in order to express the consent to an approval of such issue by the state of North Carolina if said issue is separately approved by the utilities commission of the state of North Carolina. (1933, c. 307, s. 28; c. 134, s. 8; 1941, c. 97.)

§ 62-93. Willful acts of employees deemed those of utility. — The willful act of any officer, agent, or employee of a utility, acting within the scope of his official duties of employment, shall, for the purpose of this article be deemed to be the willful act of the utility. (1933, c. 307, s. 29.)

§ 62-94. Actions to recover penalties. — Actions to recover penalties under this article shall be brought in the name of the state of North Carolina, in the county in which the offense was committed. Whenever any utility is subject to a penalty under this article, the commission shall certify the facts to the attorney-general, who shall institute and prosecute an action for the recovery of such penalty: Provided, the commission may compromise such action and dismiss the same on such terms as the court will approve. (1933, c. 307, s. 30.)

§ 62-95. Penalties to school fund.—All penalties recovered by the state in such action shall be paid into the state treasury to the credit of the school fund. (1933, c. 307, s. 31.)

§ 62-96. Abandonment and reduction of service. —Upon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of a utility realizing sufficient revenue from the service to meet its expenses, the commission shall have power, after petition, notice and hearing, to authorize by order any utility to abandon or reduce its service or facilities. (1933, c. 307, s. 32.)

§ 62-97. Water gauging stations. — The commission may require the location, establishment, maintenance and operation of water gauging stations, and the commission and the North Carolina department of conservation and development may co-operate with each other as to such locations, construction and reports and upon the results of operation. (1933, c. 307, s. 33.)

§ 62-98. Reports from municipalities operating own utilities. — Every municipality engaged in operating any works or systems for the manufacture and supplying of gas or electricity, or purchasing same for distribution and resale, or operating telephone exchanges, shall make an annual report to the commission, verified by the oath of the general manager or superintendent thereof, on the same blanks as now provided for reports of privately owned utilities, giving the same information as required of such utilities. (1933, c. 307, s. 34.)

§ 62-99. Refusal to permit commission to inspect records made misdemeanor. — Any public utility, its officers or agents in charge thereof, that fails or refuses upon the written demand of the commission, or a majority of said commission, and under the seal of the commission, to permit the commission, its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a misdemeanor. Each day of such fail-

ure or refusal shall constitute a separate offense and each such offense shall be punishable by a fine of not less than five hundred and not more than five thousand dollars. (1933, c. 307, s. 35.)

§ 62-100. Willful disobedience to orders of commission incurs forfeiture.—Every public utility and the officers, agents and employees thereof shall obey, observe and comply with every order made by the commission under authority of this article so long as the same shall be and remain in force. Any such person or corporation, or any officer, agent or employee thereof, who knowingly fails or neglects to obey or comply with such order, or any provision of this article, shall forfeit to the state of North Carolina not to exceed the sum of one thousand dollars for each offense. Every distinct violation of any such order or of this article shall be a separate and distinct offense, and in case of a continuing violation each day shall be deemed a separate and distinct offense.

No present provision of law shall be deemed to be repealed by this article except such as are directly in conflict therewith. (1933, c. 307, ss. 36, 37.)

Art. 5. Miscellaneous Provisions as to Public Utilities.

§ 62-101. Certificate of convenience and necessity. — No person, or corporation, their lessees, trustees or receivers shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control of, either directly or indirectly, without first obtaining from the utilities commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to new construction in progress on May 27, 1931, nor to construction into territory contiguous to that already occupied and not receiving similar service from another utility, nor to construction in the ordinary conduct of business.

The utilities commission is hereby empowered to make rules governing the application for, and the issuance of such certificates of public convenience and necessity. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97.)

§ 62-102. Contracts of public service corporations.—All public service corporations when requested by the utilities commission shall submit copies of contracts made with any person, firm or corporation classed as a holding, managing or operating company or selling service of any kind, and the utilities commission shall have the right to disapprove any such contract, after hearing, if in its judgment it is found to be unjust or unreasonable, and designed, or entered into for the purpose of concealing, abstracting, or dissipating the net earnings of the public service corporation receiving such services. (1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97.)

Art. 6. Motor Carriers.

§ 62-103. Definitions.—In all matters relating to the administration of this article, whenever and wherever the following terms are used they shall be construed and defined as follows:

(a) The term "article" means this article.

(b) The term "state" means the State of North Carolina.

(c) The term "person" means an individual, a firm or a co-partnership.

(d) The term "corporation" means a corporation, a company, an association or a joint-stock association.

(e) The term "commission" means the Utilities Commission ~~of North Carolina~~.

(f) The term "certificate" means the franchise certificate, granting authority to a motor vehicle carrier to operate motor vehicle service over a specific route.

(g) The term "driver's permit" means the permit issued, after examination, authorizing a person to drive a motor vehicle operating under the article.

(h) The term "vehicle permit" means the card, or other marker, bearing the identification of the motor vehicle and the highway routing.

(i) The term "motor vehicles" means vehicles driven by gas, oil, electric or steam motors and not operated on rails.

(j) The term "trailer" means a vehicle without attached motor, designed for carrying property wholly on its own structure and for being drawn by a motor vehicle.

(k) The term "motor vehicle carrier" means every corporation or person, as the term "corporation" and the term "person" are hereinbefore defined, or their lessees, trustees or receivers owning, controlling, operating or managing any motor vehicle used in the business of transporting persons ~~or property~~ for compensation between cities, or between towns, or between cities and towns, or over a regular route, over the public highways of the state, as public highways are defined herein.

(l) The term "city" means any collection of people incorporated pursuant to the provisions of section four, article eight, of the Constitution of North Carolina.

(m) The term "town" means any unincorporated community, point, or collection of people having a geographical name by which it may be generally known and is so generally designated.

(n) The term "service" means that motor vehicle service which is held out to the public and of which the public may avail itself at will for transportation over the public highways between cities or between towns, or between cities and towns, irrespective of whether the service is upon regular schedule or otherwise.

(o) The term "public highway" means every street, road or highway in this State, whether within or without the corporate limits of any municipality.

(p) The term "between fixed termini or over a regular route" means the termini or route, respectively, between or over which any motor vehicle carrier usually or ordinarily operates any motor vehicle, even though there may be periodical or irregular departures from such termini or route.

(q) The term "casual trip" means a trip on call for the purpose of transporting passengers ~~or property~~ to a given destination and return, or either.

(r) The term "broker" means any person not included in the term "motor vehicle carrier" and

not a bona fide employee or agent of any such carriers, who or which as principal or agent sells or offers for sale any transportation, or negotiates for or holds himself, or itself, out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

(s) The term "forwarder" means any person not included in the terms "motor vehicle carrier" or "broker" as herein defined, who or which issues receipts of billings for property received by it for transportation, forwarding, or consolidating or for distribution by any medium of transportation or combination of mediums of transportation, and who is not a carrier by rail, water, air or express, and other than the operations of a bona fide warehouseman.

(t) The term "restricted common carrier by motor vehicle" means any person not included in the definition "common carrier by motor vehicle" who or which undertakes, whether directly or by lease or other arrangement, to transport passengers ~~or property~~ restricted to any class or classes of passengers ~~or~~ to any class, kind or commodity ~~or property~~ by motor vehicle for compensation, whether over regular or irregular routes, and/or "excursion passenger vehicles" as defined in § 20-38 subsection (q). ~~(1925, c. 50, s. 1; 1927, c. 136, s. 1; 1929, c. 193, s. 1; 1933, c. 134, s. 8; 1937, c. 247, ss. 1, 2; 1941, c. 97.)~~

§ 62-104. To whom applicable.—No corporation or person, their lessees, trustees, or receivers shall operate over the public highways in this state any motor vehicle ~~or motor vehicle with trailer~~, as hereinbefore defined as a motor vehicle carrier, for the transportation of persons ~~or property~~ between cities, or between towns, or between cities and towns, or over a regular route, for compensation, except in accordance with the provisions of this article, and said operation shall be subject to control, supervision, and regulation by the commission in the manner provided by this article: Provided, that where the corporate limits of two or more cities join, they shall be treated as one for purposes of administering this article: provided, further, that nothing in this article shall prohibit a motor vehicle carrier under this article, nor any motor vehicle on which the franchise tax has been paid as provided in the current revenue act, from making casual trips on call over routes established hereunder; provided, that on said casual trips no one shall be allowed to pick up any passenger ~~or property~~ along the route, nor be permitted on the return trip to carry any passengers ~~or property~~ other than those ~~or that~~ included in the original trip; nor shall it apply to motor vehicles used exclusively for transporting school students from and to their homes; nor to motor vehicles used exclusively for transporting persons to or from religious services; ~~nor to motor vehicles used exclusively in carrying the United States mail;~~ nor to motor vehicles used exclusively in transporting farm and dairy products from the farm or dairy to warehouse, creamery or other original storage or market; nor to motor vehicles used exclusively in the distribution of newspapers from the publisher to subscribers or distributors; nor to motor vehicles used exclusively in the transportation of bona fide employees of an industrial plant to and from the places of their regular employment: Provided, that if a franchise operator shall furnish such transportation facilities to such mill or factory maintaining a residential unit of one thousand inhabitants or more, the foregoing exception shall not be operative. ~~(1925, c. 50, s. 2; 1927, c. 136, s. 2; 1929, cc. 193, s. 1, 254, s. 1; 1935, c. 111; 1937, c. 247, s. 2.)~~

§ 62-105. Application for franchise certificate.—Every corporation or person, their lessees, trustees, or receivers, before operating any motor vehicle upon the public highways of the State for the transportation of persons ~~or property~~ for compensation, within the purview of this ~~article~~, shall apply to the commission and obtain a franchise certificate authorizing such operation, and such franchise certificate shall be secured in the manner following:

(a) Application for such certificate shall be made by such corporation or person, their lessees, trustees, or receivers, to the commission in the manner prescribed, and on forms furnished, by the commission.

(b) Upon the filing of said application, the commission may, in its discretion, fix a time and place for the hearing of said application. When the time and place for the hearing has been fixed, the applicant shall, at least ten days prior to said hearing, cause to be published in a newspaper of general circulation in the territory to be served a notice reciting the fact of the filing of said application together with a statement of the time and place for the hearing of said application.

(c) At the time specified in said notice, or at such time as may be fixed by the commission, a public hearing upon said application shall be held by said commission: Provided, that in passing upon applications for certificates, the commission may take into consideration the reliability of the applicant, his court record, and any other matters tending to qualify or disqualify him as a carrier. After such hearing, the commission may issue the license certificate, or refuse to issue it, or may issue it with modifications and upon such terms and conditions as in its judgment the public convenience and necessity may require.

(d) Before granting the franchise certificate to an applicant for operation of passenger ~~or freight~~ motor vehicles over the public highways of the State, the commission shall request and the Highway Commission of the State shall furnish to the commission its recommendations as to the size and weight of the motor vehicles and the type of tires with which said motor vehicles may be equipped, which may be safely operated over said highways and may be operated over the same without greatly damaging them, and such recommendations made by the Highway Commission shall in all cases be observed by the commission in granting franchise certificates to applicants for operation over said highways.

(e) No license certificates shall be issued for the operation on any highway in the State of any motor propelled vehicles of greater ~~width than eighty-six (86) inches and greater loaded weight~~ than fifteen thousand (15,000) pounds for passenger traffic, and greater width than eighty-six (86)

inches and greater loaded weight than nine (9) tons for freight traffic, and the commission shall have power at any time, when in its judgment the public convenience or safety requires, or upon request of the Highway Commission, to reduce the size and weight of motor vehicles operated upon the public highways under this article, whether upon hard-surfaced or other types of highway construction.

(f) The commission may refuse to grant any application for a franchise certificate where the granting of such application would duplicate, in whole or in part, a previously authorized similar class of service, unless it is shown to the satisfaction of the commission that the existing operations are not providing sufficient service to reasonably meet the public convenience and necessity and the existing operators, after thirty days' notice, fail to provide the service required by the commission: Provided, that where two or more highways intersect within less than twenty-five miles of any incorporated city and the business of such lines transacted at such intersection is insufficient to warrant the maintenance of a bus station, then the commission may in its discretion route all operators to the next city in which a bus station is established and maintained.

(g) All applications not acted upon by the commission within sixty days from date same were filed because of request of applicant shall become null and void.

(h) No license certificate shall be issued to two or more persons until such persons have executed a partnership agreement and registered the same in each county in which they propose to operate.

(i) Applications may be tentatively granted pending purchase of equipment and equipment specifications and insurance, or bond; but no franchise certificate shall be issued until equipment has been purchased and equipment specifications and insurance, or bond, have been filed and approved.

(j) Franchise certificates may be granted to restricted common carriers as defined herein for any period in the discretion of the commission not to exceed three years.

(k) A brokerage license shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this article and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest and policy declared herein; otherwise, such application shall be denied.

(l) No person shall engage in the business of a forwarder, subject to the provisions of this article, in intrastate operations within this state unless such person makes application to the commission and obtains a certificate issued by the commission authorizing such person to engage in such business as provided herein for other common carriers by motor vehicle: Provided, that where any such forwarder hires instead of owning motor vehicle equipment, such forwarder shall become subject to the provisions herein prescribed for brokers: Provided further, that it shall be unlawful for any such forwarder in the performance of its operation in intrastate commerce to employ or use any motor vehicle carrier which is not the lawful holder of an effective certificate issued as provided in this article. The commission may in any certificate issued restrict or prohibit the direct operation of any motor vehicles by such forwarder in intrastate commerce. Subject to the foregoing part of this subsection (l), a certificate shall be issued to any qualified applicant to conduct the business of forwarder in whole or in part, if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this article and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be consistent with the public interest and policy declared by this article; otherwise, such application shall be denied. (1925, c. 50, s. 3; c. 137; 1927, c. 136, s. 3; 1931, c. 182; 1933, c. 440, s. 1; 1937, c. 247, s. 3.)

§ 62-106. Franchise certificate. — Upon granting a franchise under this article, the commission shall issue to such applicant a franchise certificate which shall expire automatically three years from the date thereof and shall contain the following matters:

(a) The name and post office address of the grantee.

(b) The public highway or highways over which, and the fixed termini between which, the grantee is permitted to operate.

(c) The kind of transportation, whether passenger or freight, in which the grantee is permitted to engage.

(d) Such additional matters as said commission may deem necessary or proper. (1927, c. 136, s. 4.)

§ 62-107. Sale or other disposition of franchise.—No franchise certificate, issued under the provisions of this article, may be assigned or transferred, or pledged, or hypothecated in any way without the written consent of the commission. (1927, c. 136, s. 5.)

§ 62-108. Insurance. — The commission shall, in granting a franchise certificate, require the applicant to procure and file with the commission acceptable liability and property damage insurance in a company licensed to do business in the State; or, in lieu of such insurance may accept bond with solvent surety, on such motor vehicles to be used in such service, in such amount as the commission may determine, insuring passengers and the public receiving personal injury by reason of an act of negligence arising from the operation of any motor vehicle by the applicant upon the public highways of the State, and for damage to baggage in the custody of the assured and for loss of baggage when checked by the assured; and insuring the passengers and the public receiving personal injury by reason of any act of negligence arising from the operation of any motor vehicle by the applicant upon the route designated in the applicant's franchise certificate, whether such motor vehicle shall be specifically named, numbered or designated in the in-

surance policy or bond, or not, and whether such motor vehicle be in regular or temporary use by the applicant. Such policy, or bond, shall contain such other conditions, provisions and limitations as the commission may prescribe, and shall be kept in full force and effect. Property carriers may, in the discretion of the commission, be required to secure and file acceptable cargo insurance, or bond, which shall cover damage to or loss of property only when listed on a duly prescribed and authorized bill of lading and receipted for by the assured or his agent. Before final judgment has been rendered by a competent court of jurisdiction, in any cause arising from the operation under any franchise certificate, no attachment shall lie against motor vehicles used in such operation by any motor vehicle carrier, who has filed with the commission such damage liability policy, or bond, so long as such policy or bond is in full force and effect. In any action in the courts arising out of damage to person or property, the assurer shall not be joined in the action against the assured; but upon final judgment against the assured, the assurer shall be liable within the limitations of the policy for the amount recovered and all court costs. Provided, that the commission may permit the filing by any licensed assurer of a uniform master insurance policy contract, the terms of which shall conform to the foregoing, and when approved and accepted by the commission, shall be applicable to all insurance policy contracts filed by such assurer for motor vehicle carriers under this article, and thereafter, so long as the master policy contract shall remain in force, carriers under this article may be permitted to file certificates, in such form as the commission may prescribe, evidencing fleet coverage under the term of such master policy instead of filing a separate individual policy contract in each case: Provided, that brokers and forwarders not operating motor vehicles under a certificate shall be required to file bond to cover financial responsibility not in excess of amounts required by the interstate commerce commission. (1927, c. 136, s. 6; 1937, c. 403; 1941, c. 97.)

§ 62-109. Regulatory powers of commission; separation of races.—The commission is hereby vested with power and authority to supervise and regulate every motor vehicle carrier under this article; to make or approve the rates, fares, charges, classifications, rules and regulations for service and safety of operation and the checking of baggage of each such motor vehicle carrier; to supervise the operation of union passenger stations in any manner necessary to promote harmony among the operators and efficiency of service to the traveling public; to fix and prescribe the speed limit, which may be less but shall not be greater than that prescribed by law; to regulate the accounts and to require the filing of annual and other reports and of other data by such motor vehicle carriers; to require the increase of equipment capacity to meet public convenience and necessity; and to supervise and regulate motor vehicle carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations applicable to any and all motor vehicle carriers, and the said commission is authorized, directed and empowered, whenever the public convenience and necessity may require, to increase, or decrease, or suspend temporarily the service upon any route for which a franchise certificate has been issued; and is hereby authorized, empowered, and directed to see that such rules and regulations and all, and singularly, the provisions of this article are enforced. The commission shall require any motor vehicle carrier operating on a franchise granted by the utilities commission and coming within the provisions of this article, if engaged in the transportation of both white and colored passengers for hire, to provide separate but equal accommodations for the white and colored races at passenger stations or waiting rooms where the carrier receives passengers of both races and/or on all busses or motor vehicles operating on a route or routes over which such carrier transports passengers of both races. Such accommodations may be furnished either by separate motor vehicles or by equal accommodations in motor vehicles. Provided that any requirement as to separate accommodation for the races shall not apply to specially chartered motor vehicles or to negro servants and attendants on their employers, or to officers or guards transporting prisoners; and provided that operators of motor vehicles or bus lines or taxicabs engaged in the transportation of passengers of one race only shall not be required to provide any accommodations for the other race, and provided that an operator shall not be required to furnish any accommodations to the other race over a line or route where he has undertaken and is engaged in the transportation of passengers of only one race, and provided, further, that nothing contained in this section shall be construed to declare operators of busses and/or taxicabs common carriers. (1925, c. 50, s. 4; 1927, c. 136, s. 7; 1929, c. 216, s. 1; 1933, c. 134, s. 8; 1941, c. 97.)

§ 62-110. Violations investigated; hearing; revocation of license; appeal.—The commission shall, at any time, upon complaint, or upon its own motion, that any operator transporting persons or property by a motor vehicle, licensed under the provisions of this or any other act by the state of North Carolina, is engaged in violating the provisions of this article or any rules or regulations prescribed by the commission, or violating any of the laws of the state with respect to the rights, duties, and privileges of motor vehicle carriers for the transportation of either persons or property on franchise certificate issued under the provisions of this article, cause an order to be issued directing the owner of the motor vehicle alleged to be engaged in any of the acts specified to appear before the commission at a fixed time and place, at which time the commission shall investigate the complaint made; and if the commission shall be satisfied after such hearing that the said motor vehicle carrier has been engaged in practice or practices violating the terms of his franchise or the rules and regulations for the enforcement thereof, or, if not a franchise carrier, has been invading the prerogatives, privileges, or rights of a duly licensed franchise carrier by operating on the route of a common carrier, by soliciting or transporting passengers or property at lower than approved rates for the common carrier, or with-

out a bona fide contract, the commission shall issue an order requiring the suspension of such practice or practices conditioned upon the revocation of the motor vehicle license of the offending party if he shall fail within the time specified by the commission to desist from such offending practice or practices; and upon the failure of any offending motor vehicle carrier to obey such order of the commission, the commision shall certify this fact to the commissioner of motor vehicles, whereupon the commissioner of motor vehicles shall cause the license or licenses of the offending motor vehicle carrier to be canceled, and such offending carrier who shall thereafter engage in the hauling of any persons or property for compensation shall be guilty of a misdemeanor, and each day's operation shall constitute a separate offense: Provided, the holder of any certificate, franchise or license whose certificate, franchise or license is ordered canceled hereunder shall have the right of appeal to the superior court as is now provided by law for appeals from the commission, but no such holder shall operate pending such appeal unless permitted to do so by order of the commission. (1927, c. 136, s. 8; 1937, c. 247, s. 4; 1941, cc. 36, 97.)

§ 62-111. Cancellation of franchise certificates. (a) Franchise certificates issued under this article shall become null and void for the following causes:

(1) For failure for thirty days to pay the franchise tax as provided by law.

(2) For abandonment of authorized operation for a period of thirty days without the written consent of the commission.

(3) For failure to begin operation within thirty days after the issuance of certificate.

(b) Such franchise certificates may be cancelled in the discretion of the commission after ten days' notice for the following causes:

(1) For failure to pay station rent where a station has been designated and the expense apportioned among the operators by the commission.

(2) For failure to provide tickets for sale at the several stations designated by the commission.

(3) For failure to check baggage as provided by this article and the commission's regulations.

(4) For failure to keep equipment in safe and sanitary condition.

(5) For operating a motor vehicle over a route established hereunder without first obtaining a motor vehicle permit therefor.

(6) For operating a motor vehicle over a route established hereunder without having insurance, or bond, as provided in § 62-108 on file with the commission and in full force and effect at the time of the operation of such motor vehicle.

(7) For failure to observe and comply with schedules and tariffs made or approved by and on file with the commission.

(8) For removing a number plate from a motor vehicle designated by the commission for such motor vehicle, or for attaching or placing on a motor vehicle a number plate not authorized or designated therefor.

(9) For the violation of any other provision of this article, or the commission's regulations, or the wilful or negligent violation of any other statute of this State, relating to the use or operation of motor vehicles on the public highways.

(10) For the violation and conviction of the criminal laws of this State, or for such other acts or conduct that may, in the opinion of the commission, disqualify such operator for rendering the public service contemplated by this article.

Sufficient notice shall be deemed to have been given under this article when notice in writing shall have been addressed to an operator and posted by registered mail to the address contained in the certificate with return receipt requested, or when such written notice has been delivered by a duly authorized agent of the commission or by any officer authorized by law to serve process in this State. (1927, c. 136, s. 10.)

§ 62-112. Depots and stations. — The commission shall designate the towns and cities in which stations shall be maintained by passenger carriers and shall prescribe the rules and regulations under which the expense shall be borne by the respective carriers using such stations and may prescribe rules and regulations governing the maintenance and operation thereof. (1927, c. 136, s. 11.)

§ 62-113. Inspection of bus stations by State Board of Health; reports; action by N. C. Utilities Commission.—The State Board of Health is hereby authorized and directed to inspect bus stations with reference to general sanitation thereof and upon inspection to file with the bus station manager, the North Carolina Utilities Commission, and any and all bus companies operating into the station a copy of the report of inspection, together with such recommendations as said State Board of Health may make. The North Carolina Utilities Commission, upon the receipt of any report of inspection is authorized and empowered to take such action with reference thereto as the public interest may require. If the North Carolina Utilities Commission shall propose any change with reference to the station inspected, it shall give notice to the bus companies affected of the time and place to be heard in connection therewith, and after hearing, the commission may make such order as in its discretion promotes the public interest. (1941, c. 328.)

§ 62-114. Baggage, express, loading, etc.—The amount of express or baggage that may be carried in any motor vehicle with passengers shall not be greater than can be safely and conveniently carried, without causing discomfort to the passengers; and no motor vehicle shall be operated with any baggage, trunk, crate, or other article extending beyond the running board on the left side of such motor vehicle; doorways and aisles of passenger motor vehicles shall be kept clear of all obstruction, and the front seat of all motor vehicles of greater passenger capacity than seven shall be considered an emergency seat, and no passenger shall be allowed to occupy the same unless all other seats of such vehicle are fully occupied. (1927, c. 136, s. 12.)

§ 62-115. Fares, charges, and free transportation.—No motor vehicle carrier shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of

persons ~~or property~~, or for any service in connection therewith, than the ~~rates~~, fares, and charges applicable to such carrier as specified in its tariffs filed with and approved by the commission and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the ~~rates~~, fares, or charges so specified, or extend to any person, firm, copartnership, or corporation, or other organization, or association, privileges or facilities in the transportation of persons ~~or property~~ except such as are regularly and uniformly extended to all; and no such carrier shall, directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, employees, and members of their immediate families, and such persons as the commission may designate in its employ, the employ of the state highway and public works commission and/or the motor vehicle department, for the inspection of equipment and supervision of traffic upon the highways of the state: Provided, that motor vehicle carriers under the article may exchange free transportation within the limits of this section. Provided, that any motor vehicle carrier may carry free any blind preacher within the state of North Carolina upon its busses or motor vehicles operating in the state of North Carolina, under the condition that said preacher shall carry or present to such motor vehicle carrier a certificate showing what church or sect he may represent and that he is in good and regular standing with that denomination or sect. ~~(1927, c. 136, s. 13; 1929, c. 58, s. 1; 1937, c. 247, s. 5; 1941, c. 36.)~~

§ 62-116. Renewal of franchise certificates.—Any holder of a franchise certificate granted under this article, which is in force and effect on the date that such certificate expires automatically under the law, who makes application for the renewal thereof, other qualifications of applicants in the discretion of the commission being equal, shall be given preference over other applicants. (1927, c. 136, s. 14.)

§ 62-117. Foreign and interstate commerce.—Neither this article nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations, or commerce among the several states of this Union, or business conducted for the United States Government, except insofar as the same may be permitted under the Constitution of the United States and the acts of Congress, as construed by the United States Supreme Court. ~~(1927, c. 136, s. 15.)~~

§ 62-118. Violations. — Every corporation and every officer, agent, or employee of any corporation, and every other person who wilfully violates or fails to comply with, or who procures, aids or abets the violation of any provision of this article, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction or requirement of the commission, made under the provisions of this article, or any part or provision thereof, or who operates any motor vehicle for the transportation of persons ~~or property~~ for compensation while under the influence of intoxicating liquors or drugs or in such a reckless manner or at such a rate of speed as would endanger the safety of the passengers or any other person along such highway, shall be guilty of a misdemeanor, and upon conviction shall be punishable by fine of not less than fifty dollars nor more than five hundred dollars, or imprisonment, in the discretion of the court, or both fine and imprisonment, in the discretion of the court. ~~(1927, c. 136, s. 16.)~~

§ 62-119. Maintenance of actions; fees; funds for enforcement; conferences, etc.—The commission shall have the right and authority to enforce by injunction or other ancillary remedy the provisions of this article or the rules and regulations made under this article.

(a) Fees.—Each applicant for a certificate shall deposit with the commission as a filing fee the sum of ten dollars ($10.00) at the time of application, and fee of one dollar ($1.00) for each motor vehicle added thereafter; and for annual re-registration for the purchase of license, number plates, or tags, a fee of twenty-five cents (25c) for each motor vehicle so re-registered; and for renewal of certificate, a fee of twenty-five cents (25c) for each motor vehicle being operated under the certificate at the time application for renewal is filed: Provided, that brokers ~~and forwarders~~ not applying for nor holding certificates for the operation of motor vehicles shall deposit a filing fee of twenty-five dollars ($25.00) each at the time of application and twenty-five dollars ($25.00) per annum thereafter in addition to any other tax or fee provided by law. Such fees, when received by the commission, shall be paid forthwith to the state treasurer and credited to the highway fund for enforcement purposes.

(b) Funds for Enforcement.—The highway and public works commission is hereby empowered, with the approval of the director of the budget, from time to time to appropriate sufficient funds for the use of the commission for the reasonable enforcement of this article, to be by him disbursed under the supervision of the director of the budget.

(c) Conferences and Joint Hearings.—The commission or its authorized representative is authorized to confer with and hold joint hearings with the authorities of any other state or representatives of the interstate commerce commission in connection with any matter arising under the Federal Motor Carrier Act, one thousand nine hundred thirty-five, or in establishing jurisdiction under this article or the Federal Act. ~~(1927, c. 136, s. 18; 1937, c. 247, s. 6; 1941, c. 97.)~~

§ 62-120. Construction of article.—Nothing herein contained shall be construed to relieve any motor vehicle carrier, as herein defined, from any regulation otherwise imposed by law or lawful authority; neither shall chapter 136 of the Public Laws of 1927 be construed to affect any obligation arising under duty imposed by nor right of action accruing under chapter 50, Public Laws of 1925, and amendments thereto. ~~(1927, c. 136, s. 20.)~~

§ 62-121. Enforcement employees. — The commission shall have authority to employ such persons as may be necessary to enforce the provisions of this article, and their compensation shall be fixed in the manner now provided by law. ~~(1927, c. 136, s. 21.)~~

Art. 7. Rate Regulation.

§ 62-122. Commission to fix rates for public utilities.—Subject to the provisions as to passenger rates in the chapter, Railroads, and as to rail-

road freight rates in this chapter, the commission shall make reasonable and just rates and charges, in intrastate traffic, and regulate the same, of and for—

1. Railroads, street railways, steamboats, canal and express companies or corporations, and all other transportation companies or corporations engaged in the carriage of freight, express or passengers.

2. The transmission and delivery of messages by any telegraph company, and for the rental of telephone and furnishing telephonic communication by any telephone company or corporation.

3. Persons, companies and corporations, other than municipal corporations, engaged in furnishing electricity, electric lights, current, power or gas, or owning or operating a public sewerage system in North Carolina.

4. The through transportation of freight, express or passengers.

5. The use of railway cars carrying freight or passengers.

6. And shall make rules and regulations as to contracts entered into by any railroad company or corporation to carry over its line or any part thereof the car or cars of any other company or corporation.

7. And he shall make, require or approve for intrastate shipments what is known as milling-in-transit, or warehousing in transit rates on grain, or lumber to be dressed, or cotton or peanuts or tobacco.

8. And, conjointly with such railroad companies, shall have authority to make special rates for the purpose of developing all manufacturing, mining, milling and internal improvements in the state.

Nothing in this chapter shall prohibit railroad or steamboat companies from making special passenger rates with excursion or other parties, also rates on such freights as are necessary for the comfort of such parties, subject to the approval of the commission.

The powers vested in the commission by this section over the several subjects enumerated shall be the same as that vested in it in respect to railroads and other transportation companies. (Rev., ss. 1096, 1099; 1899, c. 164, ss. 2, 14; 1903, c. 683; 1907, c. 469, s. 4; 1913, c. 127, s. 2; 1917, c. 194; 1925, c. 37; 1929, cc. 82, 91; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1066.)

§ 62-123. Rates established deemed just and reasonable.—The rates or charges established by the commission shall be deemed just and reasonable, and any rate or charge made by any corporation, company, copartnership or individual engaged in the businesses enumerated in the preceding section other than those so established shall be deemed unjust and unreasonable. Provided, however, that upon petition filed by any shipper or receiver of freight, and a hearing thereon, if the commission shall find the rates or charges collected to be unjust, unreasonable, discriminatory or preferential, the commission may enter an order awarding such petitioner a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the commission to be just and reasonable, nondiscriminatory and nonpreferential upon all shipments made or received by said petitioner within two years prior to the filing of such petition; provided, however that this shall only apply to charges assessed and collected on and/or after March 19, 1929. (1913, c. 127, s. 3; 1929, cc. 241, 342; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1067.)

§ 62-124. How maximum rates fixed.—In fixing any maximum rate or charge, or tariff of rates or charges for any common carrier, person or corporation subject to the provisions of this chapter, the commission shall take into consideration if proved, or may require proof of, the value of the property of such carrier, person or corporation used for the public in the consideration of such rate or charge or the fair value of the service rendered in determining the value of the property so being used for the convenience of the public. It shall furthermore consider the original cost of construction thereof and the amount expended in permanent improvements thereon and the present compared with the original cost of construction of all its property within the state; the probable earning capacity of such property under the particular rates proposed and the sum required to meet the operating expenses of such carrier, person or corporation, and all other facts that will enable it to determine what are reasonable and just rates, charges and tariffs. (Rev., s. 1104; 1899, c. 164, s. 2, subsec. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1068.)

§ 62-125. Hearing before utilities commission upon request for change of rates, etc.—Whenever there shall be filed with the utilities commission any schedule stating an increase in any new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a public carrier or carriers by railroad, or express, or highway, or water, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing and its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, for a period of ninety days, and if the proceeding has not been concluded and a final order made within such period, the commission may, from time to time, extend the period of suspension by order, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding

has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, may go into effect at the end of such period. At any hearing involving a rate, fare, charge, or classification, increased or sought to be increased, or involving a rule, regulation, or practice, resulting in an increase, the burden of proof shall be upon the carrier to show that the increased rate, fare, charge, or classification, or rule, regulation, or practice, or the proposed increased rate, fare, charge, or classification, or the proposed rule, regulation, or practice, is just and reasonable. (1939, c. 365, s. 3; 1941, c. 97.)

§ 62-126. Notice required for increase in rates, etc.—No increase shall be made in any rate, fare, charge, or classification, nor shall any change be made in any rule, regulation, or practice, the result of which will be an increase, which has been published and filed by any of the transportation companies named in the preceding section, except upon not less than thirty days' notice to the commission and the public: Provided, that the commission may, in its discretion, and for good cause shown, authorize the publication and filing of increased rates, fares, charges, or classification, or rules, regulations, or practices, upon less than thirty days' notice. (1939, c. 365, s. 4; 1941, c. 97.)

§ 62-127. Revision of rates. — The commission shall from time to time, and as often as circumstances may require, change and revise or cause to be changed or revised any schedules of rates fixed by the commission, or allowed to be charged by any carrier of freight, passengers, or express, or by any telegraph or telephone company. The powers of the commission, under this section, shall be exercised with respect to railroad freight and passenger rates under the limitations prescribed by article 8 of this chapter and article 12 of the chapter entitled Railroads. (Rev., s. 1106; 1899, c. 164, s. 7; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1071.)

§ 62-128. Long and short hauls.—It shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this chapter to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, that upon application to the commission, such common carrier may in special cases be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: Provided, that nothing in this chapter contained shall be taken as in any manner abridging or controlling the rates of freight charged by any railroad in this state for conveying freight which comes from or goes beyond the boundaries of the state and on which freight less than local rates on any railroad carrying the same are charged by such railroads. (Rev., s. 1107; 1899, c. 164, s. 14; Ex. Sess. 1913, c. 20, s. 9; 1915, c. 17, s. 1; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1072.)

§ 62-129. Contracts as to rates.—All contracts and agreements between railroad companies as to rates of freight and passenger tariffs shall be submitted to the commission for inspection and correction, that it may be seen whether or not they are a violation of law or the rules and regulations of said commission, and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies shall be submitted to the commission for inspection and approval in so far as they affect the rules and regulations made by the commission to secure to all persons doing business with such companies just and reasonable rates of freight and passenger tariffs, and the commission may make such rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreements not approved by the commission, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of this chapter and shall be illegal and void. (Rev., s. 1108; 1899, c. 164, s. 6; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1073.)

§ 62-130. Rates to be published.—All carriers shall, whenever required by the commission, file with it a schedule of their rates of charges for freight and passengers, and the commission is authorized and required to publish the rates, or a summary thereof, in some convenient form for the information of the public, and quarterly thereafter the changes made in such schedules, if it deems it advisable. (Rev., s. 1109; 1899, c. 164, s. 7; 1907, c. 217, s. 5; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1074.)

§ 62-131. Interstate commerce. — The utilities commission, or other body charged by law with the supervision and regulation of intrastate rates, is authorized and empowered upon its own investigation to bring such cases before the Interstate Commerce Commission, or other body of the National Government supervising and regulating the interstate freight rates, rules and practices, as in its opinion may be necessary to secure for the receivers and shippers of freight in this State such just and reasonable schedule of freight rates as in its opinion may be necessary; and is authorized to maintain before the courts of this State, or the United States, such action as in its opinion may be necessary for the enforcement of just and reasonable schedules of freight rates. In the performance of this duty the said commission shall receive upon application the services of the Attorney General of the State to represent it before the Interstate Commerce Commission or the courts of this State or the United States. (Rev., s. 1110; 1899, c. 164, s. 14; 1907, c. 469, s. 5; 1929, c. 235; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1075.)

§ 62-132. Schedule of rates to be evidence.—The schedule of rates fixed by statute or under this article shall, in suits brought against any company wherein is involved the charges of any company for the transportation of any passenger or freight

or cars or unjust discrimination in relation thereto, be taken in all courts as prima facie evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freight and cars upon the railroads. All such schedules shall be received and held in all suits as prima facie evidence of the schedules of the commission without further proof than the production of the schedules desired to be used as evidence, with a certificate of the clerk of the commission that the same is a true copy of the schedule prepared or approved by it for the railroad company or corporation therein named. (Rev., s. 1112; 1899, c. 164, s. 7; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1077.)

§ 62-133. Commission entitled to free carriage.—The commission and its clerks shall be transported free of charge over all railroads and transportation lines which are under the supervision of the commission; and when traveling on official business, they may take with them experts or other agents whose services they may deem temporarily of public importance. (Rev., s. 1105; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1069.)

§ 62-134. Free carriage.—Nothing in this chapter shall prevent or prohibit—

1. The carriage, storage, or handling of property free or at reduced rates for the United States, state or municipal governments, or for charitable or educational purposes; or for any corporation or association incorporated for the preservation and adornment of any historic spot, or to the employees or officers of such company or association while traveling in the performance of their duties, provided they shall not travel further than ten miles one way on any one trip free of charge or to or from fairs or exhibitions for exhibition thereat.

2. The free carriage of destitute or homeless persons transported by charitable societies, and the necessary agents employed in such transportation; or the free transportation of persons traveling in the interest of orphan asylums or homes for the aged or infirm, or any department thereof, or traveling secretaries of Railroad Young Men's Christian Associations, or ex-Confederate soldiers attending annual reunions.

3. The use of passes for journeys wholly within this state which have been or may be issued for interstate journeys under the authority of the United States interstate commerce commission.

4. The issuance of mileage, excursion or commutation passenger tickets.

5. Common carriers from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' orphan homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes.

6. Common carriers from giving free carriage to their own officers and employees and members of their families, or furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of such common carrier, and the remains of a person killed in the employment of a common carrier, and employees traveling for the purpose of entering the service of such common carrier, and the families of those persons named; also the families of persons killed, and the widows during widowhood, and minor children during minority of persons who died while in the service of such common carrier.

7. The principal officers of any common carrier from exchanging passes, franks or tickets with other common carriers for their officers or employees, and members of their families.

8. Transportation companies from contracting with newspapers for advertising space in exchange for transportation over their lines to such an extent as may be agreed upon between the parties for said consideration.

9. Transportation companies, if they so desire, from furnishing transportation to such agricultural extension and demonstration workers as are engaged in work in the field in efforts to increase production on the farm and to improve the farm home, when such workers are actually engaged in the performance of duties requiring travel.

10. Any common carrier that is operating under lease a railroad in this state, in which the state owns a majority of the capital stock, from giving free carriage, according to the contract of lease, to the officers and their families and the committees of the lessor owning such leased railroad, nor prevent such operating common carrier from issuing annually free transportation to ex-presidents of such lessor owning companies and their families in compliance with the contract of lease entered into by them or according to and for such period of time as may have been prescribed by any by-law of the lessor which was in force at the time such lease was made. (Rev., s. 1105; 1899, c. 164, s. 22; 1899, c. 642; 1901, c. 679, s. 2; 1901, c. 652; 1905, c. 312; 1911, cc. 49, 148; 1913, c. 100; 1915, c. 215; 1917, cc. 56, 160; C. S. 1070.)

Art. 8. Railroad Freight Rates.

§ 62-135. Charging or receiving greater rates forbidden.—No railroad company being engaged in the business of common carrier of property within the state of North Carolina shall charge, take, or receive any sum for carrying property entirely within the state of North Carolina between initial and terminal points which are within the state, greater than the amount specified by the utilities commission for the respective classes and commodities, and for the respective distances except in the manner and to the extent and on the conditions mentioned in this article. (Ex. Sess. 1913, c. 20, s. 5; C. S. 1082.)

§ 62-136. Application for investigation of rates; appeal; rates pending appeal. — The utilities commission, or such commission or body upon which jurisdiction and power may be conferred to fix rates for the transportation of property to be charged by the railroads doing business in North Carolina, may, and upon request of any person directly interested in such charge shall, under rules and regulations fixed by law or prescribed and established by such commission, hear evidence as to the reasonableness of the maximum rates fixed by law, or by such commission or body, and establish such rates, in the manner prescribed and allowed by law, as may, in the judgment of said commission, be just, sub-

ject to the limitations fixed by this article; and from such an order of such commission any shipper or railroad company directly affected by such order may, under rules and regulations prescribed by law, or under reasonable rules and regulations prescribed by such commission, appeal to the superior court of North Carolina: Provided, that pending the appeal of any railroad company from an order of such commission fixing maximum rates, there shall be no suspension of such order of such commission.

All incorporated cities and towns in the state are deemed to be directly interested in the rates charged for the transportation of property by railroads and other common carriers operating into and out of such municipalities and in any discrimination in such rates and services as between municipalities; and, their welfare being thereby affected, any incorporated city or town in North Carolina is authorized and empowered to file its petition with the utilities commission for investigation and determination of all matters affecting rates for the transportation of property by railroads and other common carriers to or from such municipality, and also to prevent or remove any unfair or unreasonable difference or discrimination, to its prejudice or disadvantage, between the rates or the services at, in or to another such municipality within the state; and such municipality shall have the right, as a party in interest, to be represented and appear before, and to appeal from any decision which may be rendered therein by the utilities commission, in the manner provided by § 62-20. (Ex. Sess. 1913, c. 20, s. 7; 1933, c. 134, s. 8; 1937, c. 401; 1941, c. 97; C. S. 1083.)

§ 62-137. Rates between points connected by more than one route.—When there is more than one railroad route between given points in North Carolina, and freight is routed or directed by the shipper or consignee to be transported over a shorter route, and it is in fact shipped by a longer route between such points, the rate fixed by law or by such commission for the shorter route shall be the maximum rate which may be charged, and it shall be unlawful to charge more for transporting such freight over the longer route than the lawful charge for the shorter route. (Ex. Sess. 1913, c. 20, s. 11; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1085.)

§ 62-138. Action for double amount of overcharge; penalty.—Any railroad company in the state of North Carolina which shall charge a rate for transporting property wholly within the state of North Carolina, between terminals within the state, in excess of that fixed by law or by the lawful order of such commission or board, and which shall omit to refund the same within thirty days after written notice and demand of the person or corporation overcharged, shall be liable to an action for double the amount of such overcharge, and to a penalty of ten dollars per day for each day's delay after thirty days from such notice, in case of shipments of less than carload lots, and to a penalty of twenty dollars per day in the event of shipments of carload lots. (Ex. Sess 1913, c. 20, s. 12; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1086.)

§ 62-139. Double penalty.—Any such railroad company so doing business in the state of North Carolina that shall knowingly charge a rate in excess of that fixed by law or by such board or commission, for shipments wholly within the state, shall be subject to a penalty and shall pay double the penalty above prescribed. (Ex. Sess. 1913, c. 20, s. 13; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1087.)

§ 62-140. Persons to receive penalties; accounts and receipts kept separate.—The penalties herein provided for shall be payable to the person or corporation who pays the freight or against whom the freight is charged, and such person or corporation may sue such railroad company and recover such penalty and the amount of such overcharge. The commission shall require the railroad companies, and may require all other such public-service companies as are mentioned in this chapter, to keep separate the cost of doing interstate and intrastate business in North Carolina, and to keep separate receipts from the respective classes, and to direct the manner of keeping the accounts, and to enforce, by penalties, contempt, or otherwise as the law provides, obedience to its orders. (Ex. Sess. 1913, c. 20, s. 14; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1088.)

Art. 9. Penalties and Actions.

§ 62-141. For violating rules.—If any railroad company doing business in this state by its agents or employees shall be guilty of the violation of the rules and regulations provided and prescribed by the commission, and if after due notice of such violation given to the principal officer thereof, if residing in the state, or, if not, to the manager or superintendent or secretary or treasurer if residing in the state, or, if not, then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation as may be directed by the commission shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of five hundred dollars. (Rev., s. 1086; 1899, c. 164, s. 15; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1105.)

§ 62-142. Refusing to obey orders of commission.—Any railroad or other corporation which violates any of the provisions of this chapter or refuses to conform to or obey any rule, order or regulation of the utilities commission shall, in addition to the other penalties prescribed in this chapter, forfeit and pay the sum of five hundred dollars for each offense, to be recovered in an action to be instituted in the superior court of Wake County, in the name of the state of North Carolina on the relation of the utilities commission; and each day such company continues to violate any provision of this chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the utilities commission shall be a separate offense. (Rev., s. 1087; 1899, c. 164, s. 23; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1106.)

§ 62-143. Discrimination between connecting lines.—All common carriers subject to the provisions of this chapter shall according to their powers afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freights to and from their several lines and those connecting therewith, and

shall not discriminate in their rates, routes and charges against such connecting lines, and shall be required to make as close connection as practicable for the convenience of the traveling public. And common carriers shall obey all rules and regulations made by the commission relating to trackage. (Rev., s. 1088; 1899, c. 164, s. 21; 1933, c. 134, s. 8; 1935, c. 258; 1941, c. 97; C. S. 1107.)

§ 62-144. Failure to make reports.—Every officer, agent or employee of any railroad company, express or telegraph company, who shall willfully neglect or refuse to make and furnish any report required by the commission for the purposes of this chapter, or who shall willfully or unlawfully hinder, delay or obstruct the commission in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars for each offense, to be recovered in an action in the name of the state. A delay of ten days to make and furnish such report shall raise the presumption that the same was willful. (Rev., s. 1089; 1899, c. 164, s. 18; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1108.)

§ 62-145. Offenses by railroads, not otherwise provided for.—If any railroad company shall violate the provisions of this chapter not otherwise provided for, such railroad company shall incur a penalty of one hundred dollars for each violation, to be recovered by the party injured. (Rev., s. 1090; 1899, c. 164, s. 17; C. S. 1109.)

§ 62-146. Violation of rules, causing injury; damages; limitation.—If any railroad company doing business in this state shall, in violation of any rule or regulation provided by the commission, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between individuals, except that in case of willful violation of law such railroad company shall be liable to exemplary damages: Provided, that all suits under this chapter shall be brought within one year after the commission of the alleged wrong or injury. (Rev., s. 1091; 1899, c. 164, s. 16; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1110.)

§ 62-147. Action for penalty; when and how brought.—An action for the recovery of any penalty under this chapter shall be instituted in the county in which the penalty has been incurred, and shall be instituted in the name of the state of North Carolina on the relation of the utilities commission against the company incurring such penalty; or whenever such action is upon the complaint of any injured person or corporation, it shall be instituted in the name of the state of North Carolina on the relation of the utilities commission upon the complaint of such injured person or corporation against the company incurring such penalty. Such action shall be instituted and prosecuted by the attorney-general or the solicitor of the judicial district in which such penalty has been incurred. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as are now provided by law in other civil actions. (Rev., s. 1092; 1899, c. 164, s. 15; 1933, c. 134, s. 8; 1941, c. 97; C. S. 1111.)

§ 62-148. Remedies, cumulative.—The remedies given by this chapter to persons injured shall be regarded as cumulative to the remedies now given or which may be given by law against railroad corporations, and this chapter shall not be construed as repealing any statute giving such remedies. (Rev., s. 1093; 1899, c. 164, s. 26; C. S. 1112.)

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Chapter 63. Aeronautics.

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Art. 1. Municipal Airports.

§ 63-1. Definition.—Airport or landing field for the purposes of this article is defined as any plot of land or water formally set aside, and designated as a place where aircraft may land or take off. (1929, c. 87, s. 1.)

§ 63-2. Cities and towns authorized to establish airports.—The governing body of any city or town in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, either within or without the limits of such cities and towns and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such city or town. (1929, c. 87, s. 2.)

§ 63-3. Counties authorized to establish airports.—The governing body of any county in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within or without the limits of such counties, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such county. (1929, c. 87, s. 3.)

§ 63-4. Joint airports established by cities and towns and counties.—The governing bodies of any city, town and county in this state are hereby authorized to jointly acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within or without the limits of such cities, towns and counties, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be jointly owned or controlled by such city, town and county. (1929, c. 87, s. 4.)

§ 63-5. Airport declared public purpose; eminent domain.—Any lands acquired, owned, controlled, or occupied by such cities, towns, and/or counties, for the purposes enumerated in §§ 63-2, 63-3 and 63-4, shall and are hereby declared to be acquired, owned, controlled and occupied for a public purpose, and such cities, towns and/or counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public purpose. (1929, c. 87, s. 5.)

§ 63-6. Acquisition of sites; appropriation of moneys.—Private property needed by a city, town and/or county for an airport or landing field may be acquired by gift or devise or shall be acquired by purchase if the city town and/or county is or are able to agree with the owners on the terms thereof, and otherwise by condemnation, in the manner provided by law under which the city, town and/or county is or are authorized to acquire real property for public purposes, other than street purposes, or if there be no such law, in the manner provided for and subject to the provisions of the condemnation law. The purchase price, or award for property acquired for an airport or landing field may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of the sale of bonds of the city, town and/or county, as the governing body and/or bodies of such city, town and/or county shall determine. (1929, c. 87, s. 6.)

§ 63-7. Airports already established declared public charge; regulations and fees for use of.— The governing body or bodies of a city, town and/or county which has or have established an airport or landing field, and acquired, leased, or set apart real property for such purpose, may construct, improve, equip, maintain, and operate the same. The expenses of such construction, improvement, maintenance, and operation shall be a city, town and/or county charge as the case may be. The governing body or bodies of a city, town and/or county may adopt regulations and establish fees or charges for the use of such airport or landing field. (1929, c. 87, s. 7.)

§ 63-8. Appropriations.—The governing body or bodies of a city, town and/or county to which this article is applicable, having power to appropriate, individually or jointly, money therein, are hereby authorized to annually appropriate and cause to be raised by taxation in such city, town and/or county or to use from the net proceeds derived from the operation, by such city, town or county, of any public utility a sum sufficient to carry out the provisions of this article in such proportion and upon such pro-rata basis as may be determined upon by a joint board to be appointed by and from the governing body or bodies of the city, town and/or the county or individually as the case may be. Provided, nothing herein shall be construed to permit the governing bodies of any county, city or town to issue bonds under the provisions of this article without a vote of the people. (1929, c. 87, s. 8.)

§ 63-9. Partial invalidity.—If any part or parts of this article shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this article. The General Assembly expressly declares that it would have passed the remaining parts of this article, if it had known that such part or parts thereof would be declared unconstitutional. (1929, c. 87, s. 9.)

Art. 2. State Regulation.

§ 63-10. Definition of terms. — In this article "aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane while at rest on water and while being operated on or immediately above water shall be governed by the rules regarding water navigation; while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft. "Aeronaut" and "airman" includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight. "Passenger" includes any person riding in an aircraft but having no part in its operation. (1929, c. 190, s. 1.)

§ 63-11. Sovereignty in space. — Sovereignty in space above the lands and waters of this State is declared to rest in the State, except where granted to and assumed by the United States. (1929, c. 190, s. 2.)

§ 63-12. Ownership of space.—The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in § 63-13. (1929, c. 190, s. 3.)

§ 63-13. Lawfulness of flight.—Flight in aircraft over the lands and waters of this State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable as provided in § 63-14. (1929, c. 190, s. 4.)

§ 63-14. Damage on land. — The owner of every aircraft which is operated over the lands or waters of this State is absolutely liable for injuries to persons or property on the land or water beneath, caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly, or either or both of them may be sued separately. An aeronaut who is not the owner or lessee shall be liable only for the consequences of his own negligence. The injured person, or owner or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or objects falling from it. (1929, c. 190, s. 5.)

§ 63-15. Collision of aircraft.—The liability of the owner of one aircraft, to the owner of another aircraft, or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air shall be determined by the rules of law applicable to torts on land. (1929, c. 190, s. 6.)

§ 63-16. Jurisdiction over crimes and torts. —All crimes, torts, and other wrongs committed by or against an aeronaut or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft shall be determined by the laws of this State. (1929, c. 190, s. 7.)

§ 63-17. Jurisdiction over contracts.—All contractual and other legal relations entered into by aeronauts or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath. (1929, c. 190, s. 8.)

§ 63-18. Dangerous flying a misdemeanor.— Any aeronaut or passenger who, while in flight over a thickly inhabited area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall except while in landing or taking off, fly at such a low level as to endanger the persons on the surface beneath, or drop any object except loose water or loose sand ballast, shall be guilty of a misdemeanor and punishable by a fine of not

more than five hundred dollars ($500.00) or imprisonment for not more than one year, or both. (1929, c. 190, s. 9.)

§ 63-19. Hunting from aircraft a misdemeanor.—Any aeronaut or passenger who, while in flight within this State, shall intentionally kill or attempt to kill any birds or animals shall be guilty of a misdemeanor and punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not more than thirty days, or both. (1929, c. 190, s. 10.)

§ 63-20. Qualifications of operator; federal license.—The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that a person engaging within this State in operating aircraft, in any form of aerial navigation for which a license to operate aircraft issued by the United States Government would then be required if such aerial navigation were interstate, should have the qualifications necessary for obtaining and holding such a license, it shall be unlawful for any person to engage in operating aircraft within the State, in any such form of aerial navigation, unless he have such Federal license. (1929, c. 190, s. 11.)

§ 63-21. Possession and exhibition of license certificate.—The certificate of the license, herein required, shall be kept in the personal possession of the licensee when he is operating aircraft within this State and must be presented for inspection upon the demand of any passenger, any peace officer of this State, or any official, manager or person in charge of any airport or landing field in this State upon which he shall land. (1929, c. 190, s. 12.)

§ 63-22. Aircraft; construction, design and airworthiness; federal registration. — The public safety requiring, and the advantages of uniform regulation making it desirable, in the interest of aeronautical progress, that aircraft to be operated within this State should conform, with respect to design, construction and airworthiness, to standards then prescribed by the United States Government with respect to aerial navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to operate an aircraft within this State unless it is registered pursuant to the lawful rules and regulations of the United States Government then in force, if the circumstances of such aerial navigation are of a character that such registration would be required in the case of interstate aerial navigation. (1929, c. 190, s. 13.)

§ 63-23. Penalties.—A person who violates any provision of §§ 63-20, 63-21 or 63-22 of this article shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars ($100.00), or by imprisonment for not more than ninety days, or both; provided, however, that acts or omissions made unlawful by §§ 63-20, 63-21 or 63-22 of this article shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States. (1929, c. 190, s. 14.)

§ 63-24. Jurisdiction of state over crimes and torts retained.—Provided that this article shall not be construed as a waiver of jurisdiction of the courts of the State of North Carolina over any crime or tort committed within the State of North Carolina, and provided, further, that the General Assembly of North Carolina may at any time amend, regulate or control any of the powers which may be assumed by the United States Department of Commerce under this article. (1929, c. 190, s. 15.)

Art. 3. Stealing, Tampering with, or Operating While Intoxicated.

§ 63-25. Taking of aircraft made crime of larceny.—Any person who, under circumstances not constituting larceny shall, without the consent of the owner, take, use or operate or cause to be taken, used or operated, an airplane or other aircraft or its equipment, for his own profit, purpose or pleasure, steals the same, is guilty of larceny and is punishable accordingly. (1929, c. 90, s. 1.)

§ 63-26. Tampering with aircraft made crime.—Any person who shall without the consent of the owner, go upon or enter, tamper with or in any way damage or injure any airplane or other aircraft shall be guilty of a misdemeanor and shall be punishable by fine of not more than one hundred ($100.00) dollars or imprisonment of not more than sixty days, or both, in the discretion of the court and it shall not be necessary to conviction hereunder to show wilful or malicious intent. (1929, c. 90, s. 2.)

§ 63-27. Operation of aircraft while intoxicated made crime.—Any person who operates an airplane or other aircraft, whether on the ground or in the air while in an intoxicated condition, shall be guilty of a misdemeanor and punishable by fine not to exceed one hundred dollars or by imprisonment not to exceed sixty days, or both, in the discretion of the court. (1929, c. 90, s. 3.)

§ 63-28. Infliction of serious bodily injury by operation of aircraft while intoxicated made felony.—Any person who, operating an airplane or other aircraft whether on the ground or in the air while in an intoxicated condition, does serious bodily injury to another shall be guilty of a felony. (1929, c. 90, s. 4.)

Art. 4. Model Airport Zoning Act.

§ 63-29. Definitions.—As used in this article, unless the context otherwise requires:

(1) "Airport" means any area of land or water designed for the landing and taking off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

(2) "Airport hazard" means any overhead power line, not constructed, operated and maintained according to standard engineering practices in general use, which interferes with radio communication between a publicly owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off.

(3) "Political subdivision" means any municipality, city, county, or town.

(4) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(6) "Tree" means any object of natural growth. (1941, c. 250, s. 1.)

§ 63-30. Airport hazards not in public interest.—It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare. (1941, c. 250, s. 2.)

§ 63-31. Adoption of airport zoning regulations.—(1) Every political subdivision may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations, which regulations shall divide the area surrounding any airport within the jurisdiction of said political subdivision into zones, and, within such zones, specify the land uses permitted, and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulations, the political subdivision shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing existing obstructions, and the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

(2) In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this article, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this article.

(3) Any two or more political subdivisions may agree, by ordinance duly adopted, to create a joint board and delegate to said board the powers herein conferred to promulgate, administer and enforce airport zoning regulations to protect the aerial approaches of any airport located within the corporate limits of any one or more of said political subdivisions. Such joint boards shall have as members two representatives appointed by the chief executive officer of each political subdivision participating in the creation of said board and a chairman elected by a majority of the members so appointed.

(4) The jurisdiction of each political subdivision is hereby extended to the promulgating, administering and enforcement of airport zoning regulations to protect the approaches of any airport which is owned by said political subdivision but located outside the corporate limits of said political subdivision. In case of conflict with any airport zoning or other regulations promulgated by any other political subdivision, the regulations adopted pursuant to this section shall prevail.

(5) All airport zoning regulations adopted under this article shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in § 63-32, subsection (1).

(6) Nothing herein contained shall be construed to prevent trees existing at the time any zoning regulations are adopted to continue their natural growth. (1941, c. 250, s. 3.)

§ 63-32. Permits, new structures, etc., and variances.—(1) Permits.—Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this article, a system may be established by any political subdivision for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than eighty per cent torn down, destroyed, deteriorated, or decayed: (a) no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and (b) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the nonconforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for ten days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

(2) Variances. — Any person desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this article, may apply to the board of appeals, as provided in § 63-33, subsection (3), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public

interest but do substantial justice and be in accordance with the spirit of the regulations and this article.

(3) Obstruction Marking and Lighting. — In granting any permit or variance under this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this article and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon. (1941, c. 250, s. 4.)

§ 63-33. Procedure. — (1) Adoption of Zoning Regulations. — No airport zoning regulations shall be adopted, amended, or changed under this article except by action of the legislative body of the political subdivision in question, or the joint board provided for in § 63-31, subsection (3), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport is located.

(2) Administration of Zoning Regulations—Administrative Agency.—The legislative body of any political subdivision adopting airport zoning regulations under this article may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform such duty, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under § 63-32, subsection (1), but such agency shall not have or exercise any of the powers delegated to the board of appeals.

(3) Administration of Airport Zoning Regulations—Board of Appeals.—Airport zoning regulations adopted under this article shall provide for a board of appeals to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this article or of any ordinance adopted pursuant thereto;

(b) To hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance;

(c) To hear and decide specific variances under § 63-32, subsection (2). Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of appeals. Otherwise, the board of appeals shall consist of five members, each to be appointed for a term of three years and to be removable for cause by the appointing authority upon written charges and after public hearing.

The board shall adopt rules in accordance with the provisions of any ordinance adopted under this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Appeals to the board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. (1941, c. 250, s. 5.)

§ 63-34. Judicial review. — (1) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from,

but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(3) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from. (1941, c. 250, s. 6.)

§ 63-35. Enforcement and remedies. — Each violation of this article or of any regulations, order, or ruling promulgated or made pursuant to this article, shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than thirty days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision within which the property is located may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this article, or of airport zoning regulations adopted under this article, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this article and of the regulations adopted and orders and rulings made pursuant thereto. (1941, c. 250, s. 7.)

§ 63-36. Acquisition of air rights. — In any case in which: (1) it is desired to remove, lower, or otherwise terminate a nonconforming use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this article; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, in the manner provided by the law under which municipalities are authorized to acquire real property for public purposes, such an air right, easement, or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purposes of this article.

If any political subdivision, or if any board or administrative agency appointed or selected by a political subdivision, shall adopt, administer or enforce any airport zoning regulations which results in the taking of, or in any other injury or damage to any existing structure, such political subdivision shall be liable therefor in damages to the owner or owners of any such property and the liability of the political subdivision shall include any expense which the owners of such property are required to incur in complying with any such zoning regulations. (1941, c. 250, s. 8.)

§ 63-37. Short title.—This article shall be known and may be cited as the "Model Airport Zoning Act." (1941, c. 250, s. 10.)

Chapter 64. Aliens.

Sec.
64-1. Rights as to real property.

Sec.
64-2. Contracts validated.

§ 64-1. Rights as to real property.—It is lawful for aliens to take both by purchase and descent, or other operation of law, any lands, tenements or hereditaments, and to hold and convey the same as fully as citizens of this state can or may do, any law or usage to the contrary notwithstanding. (Rev., s. 182; Code, s. 7; 1870-1, c. 255; 1935, c. 243; 1939, c. 19; C. S. 192.)

§ 64-2. Contracts validated.—All contracts to purchase or sell real estate by or with aliens, heretofore made, shall be deemed and taken as valid to all intents and purposes. (Rev., s. 183; Code, s. 8; 1870-1, c. 255, s. 2; C. S. 193.)

Chapter 65. Cemeteries.

Sec.

Art. 1. Care of Rural Cemeteries.

65-1. County commissioners to provide list of public and abandoned cemeteries.
65-2. Appropriations by county commissioners.
65-3. County commissioners to have control of abandoned cemeteries.

Art. 2. Care of Confederate Cemetery.

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65-13. Removal to enlarge or erect churches, etc., or to establish hydro-electric reservoirs.
65-14. Conveyance by church; removal of graves.
65-15. Removal after abandonment of cemetery.

Art. 6. Cemetery Associations.

65-16. Land holdings.
65-17. Change of name of association or corporations.

Art. 1. Care of Rural Cemeteries.

§ 65-1. County commissioners to provide list of public and abandoned cemeteries.—It shall be the duty of the boards of county commissioners of the various counties in the state to prepare and keep on record in the office of the register of deeds a list of all public cemeteries in the counties outside the limits of incorporated towns and cities, and not established and maintained for the use of an incorporated town or city, together with the names and addresses of the persons in possession and control of the same. To such list shall be added a list of the public cemeteries in the rural districts of such counties which have been abandoned, and it shall be the duty of the boards of county commissioners to furnish to the division of publications in the office of the Secretary of State copies of the lists of such public and abandoned cemeteries, to the end that it may furnish to the boards, for the use of the persons in control of such cemeteries, suitable literature, suggesting methods of taking care of such places. (1917, c. 101, s. 1; 1939, c. 316; C. S. 5019.)

§ 65-2. Appropriations by county commissioners.—To encourage the persons in possession and control of the public cemeteries referred to in § 65-1 to take proper care of and to beautify such cemeteries, to mark distinctly their boundary line with evergreen hedges or rows of suitable trees, and otherwise to lay out the grounds in an orderly manner, the board of county commissioners of any county, upon being notified that two-thirds of the expense necessary for so marking and beautifying any cemetery has been raised by the local governing body of the institution which owns the cemetery, and is actually in hand, is hereby required to appropriate from the general fund of the county one-third of the expense necessary to pay for such work, the amount appropriated by the board of commissioners in no case to exceed fifteen dollars for each cemetery. (1917, c. 101, s. 2; C. S. 5020.)

§ 65-3. County commissioners to have control of abandoned cemeteries.—The county commissioners of the various counties are required to take possession and control of all abandoned public cemeteries in their respective counties, to see that the boundaries and lines are clearly laid out, defined, and marked, and to take proper steps to preserve them from encroachment, and they are hereby authorized to appropriate from the general fund of the county whatever sums may be necessary from time to time for the above purposes. (1917, c. 101, s. 3; C. S. 5021.)

Art. 2. Care of Confederate Cemetery.

§ 65-4. State highway and public works commission to furnish labor.—The state highway and public works commission is hereby authorized and directed to furnish at such time, or times, as may be convenient, such prisoner's labor as may be available, to properly care for the Confederate Cemetery situated in the City of Raleigh, such services to be rendered by the State's prisoners without compensation. (1927, c. 224, s. 1; 1933, c. 172.)

Art. 3. Cemeteries for Inmates of County Homes.

§ 65-5. County commissioners may establish new cemeteries.—The boards of county commissioners of the various counties in the state are authorized and empowered to locate and establish new graveyards or cemeteries upon the lands of their respective counties for the burial of the inmates of the county homes. (1917, c. 151, s. 1; C. S. 5022.)

§ 65-6. Removal and reinterment of bodies.—Whenever the county commissioners have established new graveyards or cemeteries, they are authorized and empowered to remove to such graveyards or cemeteries all bodies of deceased inmates of the county homes. (1917, c. 151, s. 2; C. S. 5023.)

Art. 4. Trust Funds for the Care of Cemeteries.

§ 65-7. Money deposited with clerk of superior court.—For the maintenance and preservation of graves, burial plats, graveyards and cemeteries which may be neglected, any person, firm, or corporation may, by will or otherwise,

place in the hands of the clerk of the superior court of any county in the state where such grave or lot is located any sum of money not less than one hundred dollars nor more than two thousand dollars, the income from which is to be used for keeping in good condition any grave, burial plat, graveyard, or cemetery in the county in which the money is placed, with specific instructions as to the use of the fund. (1917, c. 155, s. 1; C. S. 5024.)

§ 65-8. Separate record of accounts to be kept. —It shall be the duty of the clerk of the superior court to keep a separate record for keeping account of the money deposited as above provided, to keep a perpetual account of the same therein, and to record therein the specific instructions about the use of the income on such money. He shall see that the income is spent according to such specific instructions, and shall make report of the same from year to year in the same manner as if it were guardian funds. (1917, c. 155, s. 1; C. S. 5025.)

§ 65-9. Funds to be kept perpetually. — All money placed in the office of the superior court clerk in accordance with this article shall be held perpetually, and no one shall have authority to withdraw or change the direction of the income on same. (1917, c. 155, s. 2; C. S. 5026.)

§ 65-10. Investment of funds.—The superior court clerk, with the advice and consent of the sheriff and register of deeds of such county, who shall constitute an advisory committee to the clerk, may invest such money in accordance with the provisions of §§ 2-54 to 2-60. (1917, c. 155, s. 3; C. S. 5027.)

§ 65-11. Clerk's bond and fees; substitution of bank or trust company as trustee.—The clerk of the superior court shall give bond in some surety company, to be approved by the county commissioners, in a sufficient amount to cover such sums as may be held by him, the premium on such bond to be paid out of the income on such money. The clerk shall receive for his services and responsibilities a commission of ten per cent on the net income each year of such money; and the fees or commissions so received by him under this article shall not be taken into consideration as a part of his salary.

In lieu of the provisions of the first paragraph of this section, the clerk of the superior court may, with the consent and approval of the sheriff and register of deeds, appoint any bank or trust company authorized to do business in this state as trustee for the funds authorized to be paid into his office by virtue of this article; provided, that no bank or trust company shall be appointed as such trustee unless such bank or trust company is authorized and licensed to act as fiduciary under the laws of this state.

Before any clerk shall turn over such funds to the trustee so appointed, he shall require that the trustee so named qualify before him as such trustee in the same way and manner and to the same extent as guardians are by law required to so qualify. After such trustee has qualified as herein provided, all such funds coming into its hands may be invested by it only in the securities set out in § 2-55 and the income therefrom invested for the purposes and in the manner heretofore set out in this article. All trustees appointed under the provisions of this article shall render and file in the office of the clerk of the superior court all reports that are now required by law of guardians. (1917, c. 155, ss. 3, 4; 1939, c. 18; C. S. 5028.)

§ 65-12. Funds exempt from taxation. — All money referred to in the preceding sections of this article shall be exempt from all state, county, township, town, and city taxes. (1917, c. 155, s. 4; C. S. 5029.)

Art. 5. Removal of Graves.

§ 65-13. Removal to enlarge or erect churches, etc., or to establish hydro-electric reservoirs.— In those cases where any church authorities desire to enlarge a church building and/or erect a new church and/or parish house and/or parsonage and where it becomes necessary or expedient to remove certain graves in order to secure the necessary room for such enlargement, it shall be lawful for such church authorities after thirty days' notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plat in the church cemetery, or in another cemetery, due care being taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal. When any lands are owned by any hydro-electric power or lighting company for use as a reservoir, on which lands there are graves, it shall be lawful for said company, after thirty (30) days' notice to the surviving husband or wife, or next of kin of the deceased, or the person in control of such graves, if any are known, and if not known, then after publishing a notice for four (4) weeks in a newspaper, published in the county and in a daily State paper, to open any such graves, and to take therefrom any dead body, or part thereof buried therein, and anything interred therewith, and to remove and re-inter the same in some other cemetery or suitable place in the same county to be selected by the next of kin, or the welfare officer of the county or the Clerk of the Superior Court in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for re-interring said remains. Due care shall also be taken to remove, protect and replace all tombstones or other markers; so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the county, if one, or his representatives; but if no welfare officer, then under the supervision and direction of the clerk of the court, or his representatives. All the expense connected with said work, including the actual expense of one of "next of kin" in attending to same, shall be borne by the company doing, or causing same to be done. (1919, c. 245; 1927, c. 23, s. 1; 1937, c. 3; C. S. 5030.)

§ 65-14. Conveyance by church; removal of graves.—Where any church has conveyed, or is about to convey real estate on which there are graves, and where it becomes necessary and expedient to remove said graves, it shall be law-

ful for such church authorities after thirty days notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plot in some other cemetery, due care being taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal. (Ex. Sess. 1920, c. 46; C. S. 5030(a).)

§ 65-15. Removal after abandonment of cemetery.—When any person, firm, or corporation, owns any land on which is situated any cemetery or burying ground, and where it becomes necessary and expedient in the opinion of the governing body of the county or town in which any such graves are situated to remove said graves, it shall be lawful for such person, firm or corporation, after thirty days' notice to the relatives of the deceased persons buried therein, if any are known, and if none are known, then after thirty days' notice printed in some newspaper published in said county where said property lies, and if no newspaper is published in said county, then by posting notice at the court house door of said county, to remove said graves to a suitable plot in some other cemetery, due care being taken to protect tombstones and replace them properly so as to leave the graves in as good condition as before removal: Provided, that all of said work shall be done under the supervision of the county health officer and the board of county commissioners: Provided, further, that the conveyance of the land without reservation of the burying ground shall itself be evidence of the abandonment of the same sufficient for the purposes of this section. (1927, c. 175, s. 1.)

Art. 6. Cemetery Associations.

§ 65-16. Land holdings.—All cemetery associations or corporations created by any local, private or special act or resolution before January tenth, one thousand nine hundred and seventeen are authorized and fully empowered to hold amounts of land in excess of the limitation provided in the local, private or special act or resolution incorporating or chartering such cemetery association or corporation. (1923, c. 76, s. 1; C. S. 5030(b).)

§ 65-17. Change of name of association or corporations.—Any corporation or association chartered or incorporated by any special act of the legislature, as set forth in § 65-16, is authorized and fully empowered to change the name of such association or corporation by a majority vote of its directors, and upon such change in name it shall be the duty of the officers of the board of directors of such corporation or association to file with the clerk of the superior court a copy of resolution changing the name, which resolution must show the act of the legislature creating or incorporating the same and the reasons for the change thereof. (1923, c. 76, s. 2; C. S. 5030(c).)

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Art. 1. Regulation and Inspection.

§ 66-1. County commissioners to appoint inspectors.—The board of county commissioners may appoint for their county or any township thereof inspectors for any article of commerce the inspection of which is not otherwise provided for by law, who shall hold office for the term of five years after their employment. (Rev., ss. 4637, 4669; C. S. 5068.)

§ 66-2. Vacancies in office of inspectors; assistants; principal liable.—Whenever there shall be a vacancy in the office of inspector while the county commissioners are not in session, any three justices may appoint some other fit person until the next succeeding meeting of the board; or if any inspector shall be rendered incapable of performing his duty by sickness or other accident, he may, with the consent of three justices, appoint some other person as assistant during his sickness or other disability, which consent shall be certified under their hands and lodged with the clerk of the board of commissioners, and such assistant shall take the same oaths as inspectors; and the inspector shall be liable to the same fines and penalties for the assistant's misbehavior as for his own. (Rev., s. 4638; Code, s. 2989; R. C., c. 60, s. 9; 1784, c. 206, s. 3; 1793, c. 386; 1799, c. 539, s. 2; 1811, c. 807, s. 6; 1811, c. 812; C. S. 5069.)

§ 66-3. Bond of inspector; fees.—The said inspector shall enter into bond in the sum of five hundred dollars, payable to the state of North Carolina, conditioned for the faithful performance of the duties of his office, which bond the board shall take; and he shall be entitled to such fees as may be prescribed by the board. (Rev., s. 4671; Code, s. 3053; R. C., c. 60, s. 76; 1848, c. 43, s. 3; C. S. 5071.)

§ 66-4. Falsely acting as inspector.—If any person, who is not a legal or sworn inspector of lumber or other articles, presume to act as such, he shall forfeit and pay one hundred dollars, and be guilty of a misdemeanor. (Rev., s. 3580; Code, s. 3046; R. C., c. 60, s. 69; 1824, c. 1254, s. 3; C. S. 5072.)

§ 66-5. Penalty for sale without inspection.—If any person shall sell any article of forage or provision, of which inspection is required in accordance with this article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars. (Rev., s. 4672; Code, s. 3054; R. C., c. 60, s. 77; 1850, c. 74, s. 2; C. S. 5073.)

§ 66-6. Penalty on master receiving without inspection.—No master or commander of any vessel shall take on board any cask or barrel or other commodity, liable to inspection as aforesaid, without its being inspected and branded as required, under the penalty of two hundred dollars for each offense. (Rev., ss. 4657, 4658; Code, ss. 3036, 3037; R. C., c. 60, s. 59; 1784, c. 206, s. 6; C. S. 5074.)

Local Modification.—Town of New Bern: C. S. 5074.

§ 66-7. Who to pay inspectors' fees; penalty for extortion.—The fees of inspectors shall be paid by the purchaser or exporter of the articles inspected, and if any inspector shall receive any greater fees than are by law allowed, he shall forfeit and pay ten dollars for every offense to any person suing for the same. (Rev., s. 4673; Code, s. 3055; R. C., c. 60, s. 79; 1824, c. 1254, ss. 1, 2; C. S. 5075.)

§ 66-8. Firewood in towns.—All firewood sold in incorporated towns shall be sold by the cord and not otherwise; and each cord shall contain eight feet in length, four feet in height and four feet in breadth; and shall be corded by the seller, under the penalty of two dollars for each offence, to the use of the informer. (Rev., s. 4667; Code, s. 3049; R. C., c. 60, s. 72; 1784, c. 211; 1880, c. 401; C. S. 5081.)

§ 66-9. Gas and electric light bills to show reading of meter.—It shall be the duty of all gas companies and electric light companies selling gas and electricity to the public to show, among

other things, on all statements or bills rendered to consumers, the reading of the meter at the end of the preceding month, and the reading of the meter at the end of the current month, and the amount of electricity, in kilowatt hours, and of gas, in feet, consumed for the current month.

Any gas or electric light company failing to render bills or statements, as provided for in this section, shall be subject to a penalty of ten dollars for each violation of this section or failure to render such statements, recoverable before a justice of the peace by any person suing for the same; but this section shall not apply to bills and accounts rendered customers on flat rate contracts. (1915, c. 259; C. S. 5082.)

§ 66-10. Failure of junk dealers to keep record of purchases misdemeanor.—Every person, firm, or corporation buying brass or copper, or any other metal, or any rubber, or leather and rubber belts and belting, as junk, shall keep a register and shall keep therein a true and accurate record of each purchase, showing the description of the article purchased, the name from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon said metal, rubber, or leather and rubber belts and belting. The said register and the metal and rubber, and leather and rubber belts and belting purchased shall be at all times open to the inspection of the public. A failure to comply with these requirements or the making of a false entry concerning such metals, rubber, or leather, or rubber belts or belting shall constitute a misdemeanor. (1917, c. 46; C. S. 5090.)

Local Modification.—Anson, Buncombe, Caldwell, Davidson, Randolph, Robeson: C. S. 5090; Stanly: 1939, c. 154.

§ 66-11. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor.—Every person, firm, or corporation buying railroad brasses or any composition metal specially used in the operation of trains, or brasses, composition metals, or copper of the kind or quality used by manufacturing or power plants, shall keep a register and shall insert therein a true and accurate record of each purchase, showing the name of the person from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon such metal. The register shall be at all times open to the inspection of the public. Any person or dealer buying or selling metals without complying with this section shall be guilty of a misdemeanor; and any person making a false entry in such register shall be guilty of a misdemeanor. Every person, firm, or corporation who shall buy or receive any such metals from persons under twenty-one years old, or who shall buy or receive any such metals after the same have been broken up and the marks or brands obliterated, shall be guilty of a misdemeanor; and every person buying, receiving or selling, or offering for sale metals broken into small pieces, or so broken as to obliterate the marks or brands, shall be prima facie presumed to have received such metals knowing the same to have been stolen. (1907, c. 464; 1909, c. 855, s. 1; C. S. 5091.)

Art. 2. Manufacture and Sale of Matches.

§ 66-12. Requirements for matches permitted to be sold.—No person, association, or corporation shall manufacture, store, offer for sale, sell or otherwise dispose of or distribute white phosphorous, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches"; nor manufacture, store, sell, offer for sale, or otherwise dispose of, or distribute, white phosphorous, double-dipped, strike-anywhere matches or any other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitible on an abrasive surface; nor manufacture, store, sell, or offer for sale, or otherwise dispose of or distribute matches which when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of two hundred degrees F., will ignite in eight hours; nor manufacture, store, offer for sale, sell or otherwise dispose of, or distribute, blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type. (1915, c. 109, s. 12, I; C. S. 5113.)

§ 66-13. Packages to be marked.—No person, association, or corporation shall offer for sale, sell or otherwise dispose of, or distribute, any matches, unless the package or container in which such matches are packed bears, plainly marked on the outside thereof, the name of the manufacturer and the brand or trade-mark under which the matches are sold, disposed of, or distributed. (1915, c. 109, s. 12, II; C. S. 5114.)

§ 66-14. Storage and packing regulated.—No more than one case of each brand of matches of any type or manufacture shall be opened at any one time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes or paper-wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; all matches when stored in warehouses must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove, or other like heating apparatus; nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor. All matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or package: Provided, however, that when more than three hundred matches are packed in any one box or package the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more matches shall have placed over the matches a center-holding or protecting strip, made of chip board, not less than one and one-quarter inches wide; said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it. (1915, c. 109, s. 12, II; C. S. 5115.)

§ 66-15. Shipping containers regulated. — All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes or packages contained in

any one shipping container or case shall not exceed the following number:

Number of Boxes	Nominal Number of Matches per Box
½ gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross over 50 and under	100
25 gross under	50

No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight, including its contents, of seventy-five pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-anywhere Matches" or "Strike-on-the-Box Matches." (1915, c. 109, s. 12, III; C. S. 5116.)

§ 66-16. Violation of article a misdemeanor.—Any person, association, or corporation violating any of the provisions of this article shall be fined for the first offense not less than five dollars nor more than twenty-five dollars, and for each subsequent violation not less than twenty-five dollars. (1915, c. 109, s. 12, IV; C. S. 5117.)

Art. 3. Candy and Similar Products.

§ 66-17. Sale, etc., of candy or other food not complying with health and pure food laws.—It shall be unlawful for any person, firm or corporation, or agent of any person, firm or corporation, to consign, sell, possess or use any candy or other product within this state that does not comply with all federal and state health and pure food laws in force and effect in North Carolina. (1939, c. 323, s. 1.)

§ 66-18. Manufacturer to pay tax upon products consigned to person, etc., other than licensed wholesale or retail merchant.—Any manufacturer of candy or similar products, or the agent of such manufacturer, who consigns any such products to any person, firm or corporation other than a licensed wholesale or retail merchant in the state of North Carolina shall be liable for and pay to the state of North Carolina a tax of three per cent (3%) upon the gross retail sales price of merchandise so consigned and/or sold: Provided such manufacturers shall be entitled to a refund or credit for taxes paid on such consigned goods as are returned by the consignee to said manufacturers. (1939, c. 323, s. 2.)

§ 66-19. Regulations as to possession and sale.—It shall be unlawful for any person, firm or corporation other than a licensed wholesale or retail merchant in the state of North Carolina to consign, possess or use any article upon which the tax provided for in § 66-18 preceding is payable, or for any consignee to sell such product, unless the manufacturer thereof is registered with the commissioner of revenue of the state of North Carolina for payment of said tax. (1939, c. 323, s. 3.)

§ 66-20. Commissioner of revenue may require reports. — The commissioner of revenue shall have authority to require a report, at such times as he may require, from every person, firm or corporation manufacturing candy or similar products, or from the agent of any such manufacturer, of the names and addresses of all consignors, other than licensed merchants, to whom consignment of such merchandise is made. (1939, c. 323, s. 4.)

§ 66-21. Violators deprived of legal redress.—The consignor shall not have the right to sue in any court of law in this state for the collection of monies resulting from the sale of merchandise sold in violation of this article. (1939, c. 323, s. 5.)

§ 66-22. Violations made misdemeanor.—Any person convicted for the violation of this article shall be guilty of a misdemeanor and subject to a fine of not exceeding one hundred dollars ($100.00) or imprisonment for not exceeding thirty days or both fine and imprisonment in the discretion of the court. (1939, c. 323, s. 6.)

Art. 4. Electrical Materials, Devices, Appliances and Equipment.

§ 66-23. Sale of electrical goods regulated.—Every person, firm or corporation before selling, offering for sale or exposing for sale, at retail to the general public or disposing of by gift as premiums or in any similar manner any electrical material, devices, appliances or equipment shall first determine if such electrical materials, devices, appliances and equipment comply with the provision of this article. (1933, c. 555, s. 1.)

§ 66-24. Identification marks required. — All electrical materials, devices, appliances and equipment offered for sale, exposed for sale at retail to the general public, or disposed of by gift as premiums or in any similar manner shall have the maker's name, trademark, or other identification symbol placed thereon, together with such other markings giving voltage, current, wattage, or other appropriate ratings as may be necessary to determine the character of the material, device, appliance or equipment and the use for which it is intended; and it shall be unlawful for any person, firm or corporation to remove, alter, change or deface the maker's name, trademark or other identification symbol. (1933, c. 555, s. 2.)

§ 66-25. Acceptable listings as to safety of goods.—The electrical inspector shall accept, without further examination or test, the listings of Underwriters' Laboratories, Inc., as evidence of safety of such materials, etc., so long as the listing continues in effect to his knowledge and, so long as information and experience have not demonstrated, in his judgment, that any specific listed materials, etc., are not safe.

The electrical inspector may accept as evidence of safety of such materials, etc., where not of types for which such Underwriters' laboratories listings are in effect, such evidence by way of records of tests and examinations by bodies he deems properly qualified, as he deems necessary to assure him of the safety of such materials, etc.

But such acceptance cannot be made to apply to other than the stock of materials, etc., for which such evidence has been specifically secured. One body whose evidence of safety shall be accepted by the electrical inspector for specific stocks is the insurance commission of the state of North Carolina, if the stock in question has been submitted to the examinations and tests required by that commission, and that commission has certified that in its judgment the stock conforms to the state law, to the requirements of this article, and to any additional requirements deemed necessary for safety in the judgment of that commission.

The electrical inspector may decline to accept any evidence of safety other than that provided by Underwriters' laboratories listings, for specific materials, etc., of types for which such listings are available.

The electrical inspector, in accepting listings of Underwriters' laboratories, shall keep in file as far as practicable, copies of all Underwriters' laboratories listings in effect, and copies of the recorded standards, requirements, test and examinations of Underwriters' laboratories for such materials, etc., or shall when necessary refer to the files of such information maintained by the insurance commission of North Carolina. The words "electrical inspector" when used in this article shall be construed to refer to any duly licensed and employed electrical inspector of the state or any governmental agency thereof. (1933, c. 555, s. 3.)

§ 66-26. Legal responsibility of proper installations unaffected.—This article shall not be construed to relieve from or to lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical materials, devices, appliances or equipment for damages to persons or property caused by any defect therein, nor shall the electrical inspector be held as assuming any such liability by reason of the approval of any material, device, appliance or equipment authorized herein. (1933, c. 555, s. 4.)

§ 66-27. Violation made misdemeanor. — Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than fifty ($50.00) dollars or imprisonment for not more than thirty days. (1933, c. 555, s. 5.)

Art. 5. Sale of Phonograph Records or Electrical Transcriptions.

§ 66-28. Prohibition of rights to further restrict or to collect royalties on commercial use.—When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce for use within this state, all asserted common law rights to further restrict or to collect royalties on the commercial use made of such recorded performances by any person is hereby abrogated and expressly repealed. When such article or chattel has been sold in commerce, any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself, and the right to further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is hereby forbidden and abrogated.

Nothing in this section shall be deemed to deny the rights granted any person by the United States Copyright Laws. The sole intendment of this enactment is to abolish any common law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions of the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof. (1939, c. 113.)

Art. 6. Sale of Nursery Stock.

§ 66-29. Agreements for spraying, pruning, etc.—Every person, firm or corporation, who shall sell, barter or exchange any nursery stock in the state of North Carolina, who shall promise or agree, either in the written contract of sale, orally or otherwise, that such person, firm or corporation, selling, exchanging or bartering such nursery stock, will spray, prune or otherwise look after or service such nursery stock for any period of time after the said sale is made, shall before engaging in such business in the state of North Carolina post with the commissioner of agriculture a good and sufficient bond in the sum of one thousand dollars ($1,000.00) payable to the state of North Carolina, and conditioned that such person, firm or corporation, shall well and truly comply with the contract of sale containing such promise and agreements either written or oral.

This regulation shall apply to any agent or employee of any person, firm or corporation engaging in such business in the state of North Carolina, but one bond given by the principal shall be sufficient for all agents representing such principal. (1939, c. 189.)

Art. 7. Tagging Secondhand Watches.

§ 66-30. Definitions.—The following terms as used in this article are hereby defined as follows:

(a) "Person" means a person, firm, partnership or corporation, but shall not include a receiver, trustee in bankruptcy, trustee under a mortgage, deed of trust or contract securing any indebtedness, and executor or administrator while acting as such, or any person acting under an order of court or as a licensed pawnbroker.

(b) "Consumer" means an individual, firm, partnership, association or corporation, who buys for their own use or for the use of another, but not for resale.

(c) "Secondhand watch" means a watch as a whole, or any part thereof, which has previously been sold to a consumer, or a watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, or a watch any part of which has been replaced by parts from another make or model watch. (1941, c. 244, s. 1.)

§ 66-31. Tags required; "sell" defined.—Any person, or agent or employee thereof, who sells a secondhand watch, as herein defined, shall affix and keep affixed to the same a tag with the words "secondhand" legibly written or printed thereon in the English language. For the purpose of this subsection, "sell" includes an offer to sell or exchange, expose for sale or exchange, possess with

intent to sell or exchange and to sell or exchange. (1941, c. 244, s. 2.)

§ 66-32. Invoices delivered to purchasers; duplicate invoices open to inspection.—Any person, or agent or employee thereof who sells a secondhand watch, shall deliver to the purchaser a written invoice or bill of sale, setting forth the name and address of the seller, the name and address of the purchaser, the date of the sale, and a full description of the secondhand watch so sold, with the serial numbers, if any, or other distinguishing numbers or identification marks on its case and movements. A duplicate of such invoice or bill of sale shall be kept on file by the vendor for at least one year from the date of such sale, and such duplicate shall be open to inspection during all business hours by any peace officer or by any person authorized by any such peace officer to make an investigation regarding same. (1941, c. 244, s. 3.)

§ 66-33. Advertisements. — Any person advertising in any manner secondhand watches for sale shall state in such advertising that the watches so advertised are secondhand watches. (1941, c. 244, s. 4.)

§ 66-34. Violation of article made misdemeanor.—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than fifty ($50.00) dollars, or by imprisonment for not more than thirty (30) days, or both. (1941, c. 244, s. 5.)

Art. 8. Public Warehouses.

§ 66-35. Who may become public warehousemen.—Any person or any corporation organized under the laws of this state whose charter authorizes it to engage in the business of a warehouseman, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares, and other merchandise as hereinafter prescribed upon giving the bond hereinafter required. (Rev., s. 3029; 1901, c. 678; 1919, c. 212; C. S. 5118.)

§ 66-36. Bond required.—Every person or every corporation organized under § 66-35, to become a public warehouseman, except such as shall have a capital stock of not less than five thousand dollars, shall give bond in a reliable bonding or surety company, or an individual bond with sufficient sureties, payable to the state of North Carolina, in an amount not less than ten thousand dollars, to be approved, filed with and recorded by the clerk of the superior court of the county in which the warehouse is located, for the faithful performance of the duties of a public warehouseman; but if such person or corporation has a capital stock of not less than five thousand dollars, then it shall not be required to give the bond mentioned in this section. (Rev., s. 3030; 1901, c. 678, s. 2; 1905, c. 540; 1908, c. 56; 1919, c. 212; C. S. 5119.)

§ 66-37. Person injured may sue on bond.—Whenever such warehouseman fails to perform any duty or violates any of the provisions of this article, any person injured by such failure or violation may bring an action in his name and to his own use in any court of competent jurisdiction on the bond of said warehouseman. (Rev., s. 3031; 1901, c. 678, s. 3; C. S. 5120.)

§ 66-38. When insurance required; storage receipts.—Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall give to each person depositing property with it for storage a receipt therefor. (Rev., s. 3032; 1901, c. 678, s. 4; 1905, c. 540, s. 2; C. S. 5121.)

§ 66-39. Books of account kept; open to inspection.—Every such warehouseman shall keep a book in which shall be entered an account of all its transactions relating to warehousing, storing, and insuring cotton, goods, wares, and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entry relates. (Rev., s. 3035; 1901, c. 678, s. 7; C. S. 5122.)

§ 66-40. Unlawful disposition of property stored.—If any person unlawfully sells, pledges, lends, or in any other way disposes of or permits or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse, without the authority of the party who deposited the same, he shall be punished by a fine not to exceed two thousand dollars and by imprisonment in the state's prison for not more than three years; but no officer, manager, or agent of such public warehouse shall be liable to the penalties provided in this section unless, with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending, or other disposition of any goods, wares, merchandise, article, or thing so deposited. (Rev., s. 3831; 1901, c. 678, s. 11; C. S. 5123.)

Art. 9. Collection of Accounts.

§ 66-41. Permit from Insurance Commissioner.—Any person, firm or corporation within the State of North Carolina engaging in the collection of accounts for a percentage consideration of the account collected, or upon any other basis than regular employment, shall, before engaging in such business within the State of North Carolina, apply to and receive from the Insurance Commissioner, a permit to engage in such business, which permit shall at all times be prominently displayed in the main office of the person, firm, or corporation to whom or to which the permit is issued, and the number of said permit shall be printed in bold type upon all letterheads, stationery and forms used by the person, firm or corporation holding said permit. (1931, c. 217, s. 1.)

§ 66-42. Application to Commissioner for permit.—The person, firm, or corporation desiring to secure a permit as provided in § 66-41, shall make application to the Insurance Commissioner upon such form as the Commissioner may provide, and shall submit with such application any and all information which the Commissioner may require to assist him in determining the financial condition, business integrity, method of operation and protection to the public

offered by the person, firm or corporation filing the application. All information submitted shall be sworn to by the responsible officer, member of the firm, or individual, as in each case necessary, and the Commissioner shall have the right to require any and all additional information which, in his judgment, might assist him in determining whether or not the applicant is entitled to the permit sought. (1931, c. 217, s. 2.)

§ 66-43. Hearing granted applicant if application declined; appeal.—If, for any reason, upon the application made and upon the consideration of the data submitted with the application or items, the Commissioner shall be of the opinion that a permit should not be issued to the applicant, he shall decline the same, giving notice of his action to the applicant. Following notice, the applicant shall have ten days within which to submit additional information in support of his application, and if, upon further hearing upon the application and additional information, the Commissioner shall again decline to issue the permit, the applicant shall have the right to appeal to the Superior Court and his appeal shall stand for hearing in the Superior Court of the County of Wake, and the evidence, data and information submitted to the Commissioner shall constitute the record in the Superior Court, and the same shall be heard by the Judge of the Superior Court to determine whether or not the Commissioner had evidence sufficient to justify his action. (1931, c. 217, s. 3.)

§ 66-44. Application fee; issuance of permit; contents and duration.—Upon the filing of the application and information hereinbefore required, the commissioner may require the applicant to pay a fee of $50.00, and no permit may be issued until this fee is paid. The commissioner may issue a permit if he finds it proper, and in that case no part of the $50.00 shall be returned. If the application is denied, the commissioner shall retain $5.00 of the application fee and return the remainder to the applicant. The $5.00 so retained upon applications not granted, and the full fee of $50.00 upon applications granted, shall be used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.

Each permit shall state the name of the applicant, his place of business, and the nature and kind of business he is engaged in. The commissioner shall assign to the permit a serial number for each year beginning with July first, one thousand nine hundred and thirty-one. Each permit shall be for a period of one year, beginning with July first and ending with June thirtieth of the following year. (1931, c. 217, s. 4.)

§ 66-45. Revocation of permit.—If the Commissioner shall have issued any permit to any person, firm, or corporation as herein provided, and shall have information that the holder of the permit is not conducting his business in a business-like way, he shall notify the holder of the permit of a date for a hearing, which notice shall name a time and place for the hearing, and at which hearing any and all evidence as to the conduct of the business may be heard by the Commissioner. If, upon the hearing of the evidence, the Commissioner shall be of the opinion that the applicant is not entitled to the permit, the Commissioner shall cancel said permit, after which time it shall be unlawful for the person, firm or corporation whose permit is cancelled to engage in the business covered by the permit. If the permit be cancelled upon hearing, either the holder of the permit or the complaining party shall have the right to appeal as hereinbefore provided in case the application is denied, and the record of the hearing before the Commissioner shall be the record in the Superior Court upon which the Judge shall determine whether or not the Commissioner had sufficient evidence upon which to base his action. (1931, c. 217, s. 5.)

§§ 66-46. Rules and regulations; schedule of fees.—The Commissioner shall have the right to make any rules or regulations necessary to enforce the provisions of this article and may approve schedules of fees and methods of collecting the same, or make any other rule or regulation necessary to secure the proper conduct of the business referred to in this article. (1931, c. 217, s. 6.)

§ 66-47. Violation of article a misdemeanor.—Any person, firm or corporation who shall engage in the business referred to in this article without first receiving a permit, or who shall fail to secure a renewal of his permit upon the expiration of the license year, or shall engage in the business herein referred to after the permit has been cancelled as herein provided, or who shall fail or refuse to furnish the information required of the Commissioner, or who shall fail to observe the rules and regulations made by the Commissioner pursuant to this article, shall, upon conviction, be guilty of a misdemeanor punishable in the discretion of the court. (1931, c. 217, s. 7.)

§ 66-48. Disposition of fees.—All fees collected hereunder shall be credited to the account of the Insurance Commissioner for the specific purpose of providing the personnel, equipment and supplies necessary to enforce this article, but the Director of the Budget shall have the right to budget the revenues received in accordance with the requirements of the Commissioner for the purposes herein required, and at the end of the fiscal year, if any sum whatever shall remain to the credit of the Commissioner, derived from the sources herein referred to, the same shall revert to the General Treasury of the State to be appropriated as other funds. (1931, c. 217, s. 8.)

§ 66-49. Attorneys at law and local county agencies excepted.—Nothing in this article shall be construed to apply to legally licensed attorneys at law engaged in the practice of the profession of law unless, however, such attorneys shall engage in the business herein referred to under a trade name or as a corporation, nor shall this article apply or be construed to apply to any person, firm or corporation whose business of collecting accounts is limited to the collection of such accounts against debtors having residence in the county of the residence of such person or firm, or the principal office of such corporations so engaged in such business. (1931, c. 217, s. 9.)

Art. 10. Fair Trade.

§ 66-50. Title of article.—This article may be

known and cited as the "Fair Trade Act." (1937, c. 350, s. 10.)

§ 66-51. Definitions.—The following terms, as used in this article, are hereby defined as follows:

(a) "Commodity" means any subject of commerce.

(b) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(c) "Wholesaler" means any person selling a commodity other than a producer or retailer.

(d) "Retailer" means any person selling a commodity to consumers for use.

(e) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. "Person" shall not include the state of North Carolina or any of its political sub-divisions. (1937, c. 350, s. 1.)

§ 66-52. Authorized contracts relating to sale or resale of commodities bearing trademark, brand or name.—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others, shall be deemed in violation of any law of the state of North Carolina by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c) That the seller will not sell such commodity:

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price. (1937, c. 350, s. 2.)

§ 66-53. Certain evasions of resale price restrictions, prohibited.—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to the provisions of this article (except to the extent authorized by the said contract):

(a) The offering or giving of any article of value in connection with the sale of such commodity;

(b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c) The sale or offering for sale of such commodity in combination with any other commodity shall be deemed a violation of such resale prices restriction, for which the remedies prescribed by § 66-56 shall be available. (1937, c. 350, s. 3.)

§ 66-54. Contracts with persons other than the owner of the brand, etc., not authorized.—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this article, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name. (1937, c. 350, s. 4.)

§ 66-55. Resales not precluded by contract.—No contract containing any of the provisions enumerated in § 66-52 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(a) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and when plain notice of the fact is given to the public: Provided, the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(b) When the trade-mark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement or sale thereof;

(c) When the goods are altered, second-hand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(d) By any officer acting under an order of court.

(e) When any commodity is sold to a religious, charitable or educational organization or institution, provided such commodity is for the use of such organization or institution and not for resale. (1937, c. 350, s. 5.)

§ 66-56. Violation of contract declared unfair competition.—Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this article, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby. (1937, c. 350, s. 6.)

§ 66-57. Exemptions.—This article shall not apply to any contract or agreement between or among producers or distributors or, except as provided in sub-division (c) of § 66-52, between or among wholesalers, or between or among retailers, as to sale or resale prices. This article shall not apply to any prices offered in connection with or contracts or purchases made by the state of North Carolina or any of its agencies, or any of

the political subdivisions of the said state. (1937, c. 350, s. 7.)

Art. 11. Government in Business.

§ 66-58. Sale of merchandise by governmental units.—It shall be unlawful for any unit or agency of the state government or any individual employee or employees of any such unit or agency in his, or her, or their capacity as employee or employees of said unit or agency to purchase for or sell to any person, firm or corporation any article of merchandise in competition with citizens of the state: Provided, however, that as regards educational institutions, the provisions of this section shall not apply to articles produced incident to the operation of an instructional department, or incident to educational research, or to articles of merchandise incident to classroom work, meals, books and/or other articles of merchandise not exceeding fifteen cents in value when sold to members of the educational staff, or staff auxiliary to education, or sold to duly enrolled students, or to members of charitable institutions, or on occasion to immediate members of the families of members of the educational staff or of duly enrolled students: Provided further, that the provisions of this section shall not apply to the sale of meals, or merchandise aforesaid, to persons attending meetings or conventions at state institutions as invited guests of such institutions, or to the products of experiment stations at any state institution: Provided further, that the provisions of this section shall not apply to the sale of learned journals or books, or to the business operation of endowment funds established for the purpose of producing income for educational purposes: Provided further, that the provisions of this section shall not apply to counties and municipalities, to the state board of health, to the division of purchase and contract, to the state highway and public works commission, to state hospitals for the insane, to the state commission for the blind, to the North Carolina school for the blind at Raleigh, to the North Carolina school for the deaf at Morganton, to Appalachian State Teachers College at Boone, to Western Carolina Teachers College at Cullowhee, or to any state correctional institutions or agencies, or to farm, dairy, livestock, or poultry products of any state institution or agency; provided that nothing in this section shall apply to Highlands School in Macon county; provided further, that this section shall not be construed to apply to any high school or public school: Provided further, that this section shall not apply to child-caring institutions or orphanages receiving state aid.

Any person knowingly or willfully violating the provisions of this section shall be subject to a fine of ten dollars for each such violation. (1939, c. 122.)

Chapter 67. Dogs.

Sec.

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Art. 1. Owner's Liability.

§ 67-1. Liability for injury to livestock or fowls.—If any dog, not being at the time on the premises of the owner or person having charge thereof, shall kill or injure any livestock or fowls, the owner or person having such dog in charge shall be liable for damages sustained by the injury, killing, or maiming of any livestock, and costs of suit. (1911, c. 3, s. 1; C. S. 1669.)

§ 67-2. Permitting bitch at large.—If any person owning or having any bitch shall knowingly permit her to run at large during the erotic stage of copulation he shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3303; Code, s. 2501; 1862-3, c. 41, s. 2; C. S. 1670.)

§ 67-3. Sheep-killing dogs to be killed.—If any person owning or having any dog that kills

sheep or other domestic animal, upon satisfactory evidence of the same being made before any justice of the peace of the county, and the owner duly notified thereof, shall refuse to kill it, and shall permit such dog to go at liberty, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days, and the dog may be killed by any one if found going at large. (Rev., s. 3304; Code, s. 2500; 1862-3, c. 41, s. 1; 1874-5, c. 108, s. 2; C. S. 1671.)

§ 67-4. Failing to kill mad dog.—If the owner of any dog shall know, or have good reason to believe, that his dog, or any dog belonging to any person under his control, has been bitten by a mad dog, and shall neglect or refuse immediately to kill the same, he shall forfeit and pay the sum of fifty dollars to him who will sue therefor; and the offender shall be liable to pay all damages which may be sustained by any one, in his property or person, by the bite of any such dog, and shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3305; Code, s. 2499; R. C., c. 67; C. S. 1672.)

Art. 2. License Taxes on Dogs.

§ 67-5. Amount of tax.—Any person owning or keeping about him any open female dog of the age of six months or older shall pay annually a license or privilege tax of two dollars. Any person owning or keeping any male dog, or female dog other than an open female dog of the age of six months or older, shall pay annually on each dog so owned or kept a license or privilege tax of one dollar. (1919, c. 116, ss. 1, 2; C. S. 1673.)

Local Modification.—Cherokee: 1933, c. 90; Clay: 1933, c. 301; Graham: 1931, c. 35; Macon: 1933, c. 301; Swain: 1933, c. 149.

§ 67-6. License tags; optional with county commissioners.—To every person paying the license or privilege tax prescribed in § 67-5 there shall be issued by the sheriff a metal tag bearing county name, a serial number, and expiration date, which shall be attached by owner to a collar to always be worn by any dog when not on premises of the owner or when engaged in hunting. The superintendent of public instruction shall at all times keep on hand a supply of tags to be furnished the sheriffs of the several counties. Provided, that the county commissioners of each county shall, by order duly made in regular session, make an order determining whether the collar and tag shall be applied to that county. (1919, c. 116, s. 2½; Ex. Sess. 1920, c. 37; C. S. 1674.)

§ 67-7. Dogs to be listed; penalty for failure to list.—It shall be the duty of every owner or keeper of a dog to list the same for taxes at the same time and place that other personal property is listed, and the various tax listers in the state shall have proper abstracts furnished them for listing dogs for taxation, and any person failing or refusing to list such dog or dogs shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. The owner of the home or lessee of such owner shall be responsible for listing of any dog belonging to any member of his family. (1919, c. 116, s. 3; C. S. 1675.)

Local Modification.—Mitchell: Pub. Loc. 1925, c. 265. (See § 67-18.)

§ 67-8. When tax due; penalty for failure to pay.—The license or privilege tax herein imposed shall be due and payable on the first day of October of each and every year, and all persons after December first thereafter who own or keep a dog or dogs upon which the license or privilege tax is not paid, whether said dog or dogs have been listed or not, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned not more than thirty days. (1919, c. 116, s. 3; C. S. 1676.)

§ 67-9. Receipt for tax a license.—Upon the payment to the sheriff or tax collector of the license or privilege tax aforesaid, such sheriff or tax collector shall give the owner or keeper of such dog or dogs a receipt for the same which shall constitute a license under the provisions of this article. (1919, c. 116, s. 3; C. S. 1677.)

§ 67-10. Tax listers to make inquiry, compile reports; compensation.—The tax listers for each township, town, and city in this state shall annually, at the time of listing property as required by law, make diligent inquiry as to the number of dogs owned, harbored, or kept by any person subject to taxation. The list-takers shall, on or before the first day of July in each year, make a complete report to the sheriff or tax collector on a blank form furnished them by the proper authority, setting forth the name of every owner of any dog or dogs, how many of each and the sex owned or kept by such person. The county commissioners may pay the tax listers for such services such amounts as may be just out of the money arising under this article. (1919, c. 116, ss. 4, 6; C. S. 1678.)

§ 67-11. Purchasers to ascertain listing.—Any person coming in possession of any dog or dogs after listing time shall immediately ascertain whether such dog or dogs have been listed for taxes or not, and if not so listed, it is hereby made the duty of such owner or keeper of such dog or dogs to go to the sheriff or tax collector of his county and list such dog or dogs for taxes, and it is made the duty of the owner or keeper of such dog or dogs to pay the privilege or license tax as is herein provided for in other cases. (1919, c. 116, s. 4; C. S. 1679.)

§ 67-12. Permitting dogs to run at large at night; penalty; liability for damage.—No person shall allow his dog over six months old to run at large in the night time unaccompanied by the owner or by some member of the owner's family, or some other person by the owner's permission. Any person intentionally, knowingly, and willfully violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, and shall also be liable in damages to any person injured or suffering loss to his property or chattels. (1919, c. 116, s. 5; C. S. 1680.)

Local Modification.—Buncombe, Halifax, New Hanover, Wake: 1925, c. 314; Watauga: Pub. Loc. 1927, c. 503. (See § 67-18.)

§ 67-13. Proceeds of tax to school fund; proviso, payment of damages; reimbursement by owner.—The money arising under the provisions of this article shall be applied to the school funds of the county in which said tax is collected: Provided, it shall be the duty of the county commissioners, upon complaint made to them of injury to person or injury to or destruction of property by any dog, upon satisfactory proof of such injury or destruction, to appoint three freeholders to ascertain the amount of damages done, including necessary treatment, if any, and all reasonable expenses incurred, and upon the coming in of the report of such jury of the damage as aforesaid, the said county commissioners shall order the same paid out of any moneys arising from the tax on dogs as provided for in this article. And in cases where the owner of such dog or dogs is known or can be ascertained, he shall reimburse the county to the amount paid out for such injury or destruction. To enforce collection of this amount the county commissioners are hereby authorized and empowered to sue for the same. Provided, further that all that portion of this section after the word, "collected" in line three, shall not apply to Anson, Beaufort, Bladen, Caldwell, Chatham, Columbus, Currituck, Davie, Duplin, Durham, Gates, Graham, Harnett, Hertford, Lincoln, McDowell, Moore, Perquimans, Scotland, Stokes, Transylvania, Union, Warren, Wayne and Yadkin counties. (1919, c. 77, s. 7; 1919, c. 116, s. 7; Pub. Loc. 1925, c. 54; Pub. Loc. 1927, cc. 18, 219, 504; 1929, cc. 31, 79; 1933, cc. 28, 387, 477, 526; 1935, c. 402; 1937, cc. 63, 75, 118, 282, 370; 1939, cc. 101, 153; 1941, cc. 8, 46, 132, 287; C. S. 1681.)

Local Modification.—Alamance: 1935, c. 50; Avery, Forsyth, McDowell, Orange, Randolph, Watauga: 1931, c. 283; Avery, Mitchell: 1933, c. 273; Buncombe: 1937, c. 119; Cabarrus: 1939, c. 225; Caldwell: 1937, c. 23; Caswell: 1935, c. 188; 1941, c. 19; Chowan: 1925, c. 15; Cumberland: 1935, c. 361; Dare: 1939, c. 155; Davidson: 1925, c. 79; Duplin: 1937, c. 47; Greene: 1937, c. 92; Guilford, Forsyth: 1933, c. 547; Jones: 1939, c. 151; Madison: 1935, c. 412; Mitchell: 1937, c. 73; Mecklenburg, Stanly: 1933, c. 30; Onslow: 1933, c. 200; 1939, c. 85; Pender: 1937, c. 76; Pitt: 1933, c. 561; Rockingham: 1925, c. 25; Surry: 1933, c. 310; Union: Pub. Loc. 1927, c. 501; Vance: Pub. Loc. 1925, c. 103; Wayne: 1939, c. 39; Wilson: 1931, c. 37; Yancey: Pub. Loc. 1925, c. 57, s. 2.

§ 67-14. Mad dogs, dogs killing sheep, etc., may be killed.—Any person may kill any mad dog, and also any dog if he is killing sheep, cattle, hogs, goats, or poultry. (1919, c. 116, s. 8; C. S. 1682.)

§ 67-15. Dogs, when listed, personal property; larceny of dog a misdemeanor. — All dogs, when listed for taxes, become personal property and shall be governed by the laws governing other personal property: Provided, the larceny of any dog upon which aforesaid tax has been paid shall be a misdemeanor. (1919, c. 116, s. 9; C. S. 1683.)

§ 67-16. Failure to discharge duties imposed under this article. — Any person failing to discharge any duty imposed upon him under this article shall be guilty of a misdemeanor, and upon conviction shall pay a fine not exceeding fifty dollars or be imprisoned not more than thirty days. (1919, c. 116, s. 10; C. S. 1684.)

§ 67-17. Counties excepted from operation of article.—This article shall not apply to the counties of Yancey, Alexander, Cherokee, Madison and Jackson. All dog taxes collected in said counties and not disbursed on February 27, 1923, shall be prorated among those having bona fide claims against said fund, and the balance, if any, paid over to the school fund of the county. (1923, c. 84, ss. 2, 3; 1924, c. 14; 1931, c. 27; C. S. 1684(a).)

Local Modification.—Yancey: Pub. Loc. 1925, c. 57, s. 1. (See § 67-18.)

§ 67-18. Application of article.—This article, §§ 67-5 to 67-18, inclusive, is hereby made applicable to every county in the State of North Carolina. notwithstanding any provisions in local, special or private acts exempting any county or any township or municipality from the provisions of the same enacted at any General Assembly commencing at the General Assembly of nineteen hundred and nineteen and going through the General Assembly of nineteen hundred and twenty-nine: Provided, this section shall not apply to counties that do not participate in the Equalization Fund. All laws and parts of laws, whether general, local, special or private, enacted at any session of the Legislature, as set out above, in conflict with this section are hereby repealed. (1929, c. 318.)

Art. 3. Special License Tax on Dogs.

§ 67-19. Nothing in this article abrogated by Art. 2; special tax an additional tax. — Nothing contained in Article 2 of this chapter shall have the effect of abrogating any of the provisions of this article, and the special license tax on dogs provided for under this article shall be in addition to the license tax on dogs provided for under Article 2 of this chapter: Provided that Article 2 shall not be construed as repealing any existing ordinance of any city or town or any ordinance of any city or town hereafter enacted, regulating the keeping or use of dogs in cities and towns. (1919, c. 116, s. 11; Ex. Sess. 1920, c. 53; C. S. 1685.)

§ 67-20. Special dog tax submitted to voters on petition. — Upon the written application of one-third of the qualified voters of any county in this state made to the board of commissioners of such county, asking that an election be held in said county to adopt the provisions of this article for levying and collecting a special dog tax in said county, it shall be the duty of said board of commissioners from time to time to submit the question of "special dog tax" or "no special dog tax" to the qualified voters of said county; and if at any such election a majority of the votes cast shall be in favor of said special dog tax, then the provisions of this article shall be in full force and effect over the whole of said county, and the special dog tax hereinafter provided for shall be levied and collected in said county; but if a majority of the votes cast at such election shall be against said special dog tax, then the provisions of this article shall not apply to any part of said county. (1917, c. 206, s. 1; C. S. 1686.)

§ 67-21. Conduct of elections.—Every election held under the provisions of this article shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the general assembly: Provided, that no such election shall be held in any county oftener than once in two years. (1917, c. 206, s. 3; C. S. 1687.)

§ 67-22. Commissioners to provide for registration; ballots and machinery. — The board of commissioners of any county in this state in which an election is to be held under the provisions of this article may provide for a new registration of voters in said county if they deem necessary, or they may provide for the use of the registration of voters in effect at the general election for county officers in said county next preceding the holding of the election hereunder, and they shall appoint such officers as may be necessary to properly hold such election and shall designate the time and places for holding such elections, and make all rules, regulations, and do all other things necessary to carry into effect the provisions of this article. (1917, c. 206, s. 4; C. S. 1688.)

§ 67-23. Canvass of votes and returns.—At the close of said election the officers holding same shall canvass the vote and certify the returns to the said board of commissioners of said county, and the said board of commissioners shall canvass the said returns and declare the results of said election in the manner now provided by law for holding special-tax school elections. (1917, c. 206, s. 4; C. S. 1689.)

§ 67-24. Contents and record of petition; notice of election. — The qualified voters of any county who shall make written application to the board of commissioners of said county asking that an election be held under the provisions of this article shall designate and insert in said application the amount of special dog tax to be levied and collected in said county, which tax shall not exceed the sum of five dollars nor be less than the sum of one dollar for each dog, whether male or female, and the board of commissioners shall have said written application, specifying the amount of said special dog tax to be voted for in said county, recorded in the records of their proceedings, and shall cause to be published in some newspaper published or circulated in said county, and posted at the courthouse door and five other public places in said county, a notice of the time and places for holding said election and specifying the amount of tax to be voted for in said county. (1917, c. 206, s. 5; C. S. 1690.)

§ 67-25. License tax.—Any person or persons, firm or corporation, owning or keeping any dog or dogs, whether male or female, in any county which shall adopt the provisions of this article for the levy and collection of said special dog tax shall pay annually a license or privilege tax on each dog, whether male or female, such sum or sums as may be designated and inserted in the written application of the qualified voters of said county asking for said election and as recorded in the proceedings of the board of county commissioners of said county, which shall not exceed the sum of five dollars nor be less than the sum of one dollar for each dog: Provided, the tax voted for and levied on female dogs may be greater than the tax on male dogs, but in no event shall said special tax exceed the sum of five dollars, nor be less than the sum of one dollar for any dog, whether male or female. (1917, c. 206, s. 6; C. S. 1691.)

§ 67-26. Collection and application of tax.—The special dog tax voted for under the provisions of this article shall be due and collectible at the same time and in the same manner as provided by law for the collection of taxes on other personal property in said county, and shall be collected by the collector of other taxes in said county in the same manner and under the same penalties provided by law for collection of taxes on other personal property in said county, and shall be applied to the road fund, or school fund, of said county, as may be directed by the board of commissioners of said county. (1917, c. 206, s. 8; C. S. 1692.)

§ 67-27. Listed dogs protected; exceptions.—Any person who shall steal any dog which has been listed for taxation as herein provided shall be guilty of a misdemeanor and fined or imprisoned, in the discretion of the court; and any person who shall kill any dog the property of another, after the same has been listed as herein provided, shall be liable to the owner in damages for the value of such dog. Nothing in this article shall prevent the killing of a mad dog, sheepkilling dog, or egg-sucking dog on sight, when off the premises of its owner, and the owner shall not recover any damages for the loss of such dog. (1917, c. 206, s. 9; C. S. 1693.)

§ 67-28. Application of article to counties having dog tax.—Any county in this state which now has a local law taxing dogs may, by election in the manner herein provided for, accept the provisions of this article, and if adopted by a majority of the qualified voters of said county at such election, the local law taxing dogs in such county shall thereby be repealed and annulled, and the provisions of this article shall be in full force and effect in such county. (1917, c. 206, s. 10; C. S. 1694.)

Chapter 68. Fences and Stock Law.

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Art. 1. Lawful Fences.

§ 68-1. Fences to be five feet high.—Every planter shall make a sufficient fence about his cleared ground under cultivation, at least five feet high, unless otherwise provided in this chapter, unless there shall be some navigable stream or deep watercourse that shall be sufficient, instead of such fence, and unless his lands shall be situated within the limits of a county, township or district wherein the stock law may be in force. (Rev., s. 1660; Code, s. 2799; R. C., c. 48, s. 1; 1777, c. 121, s. 2; 1791, c. 354, s. 1; C. S. 1827.)

Local Modification.—Bertie, Buncombe, Carteret, Hyde, Madison, McDowell, New Hanover, Northampton, Pamlico: C. S. 1829.

§ 68-2. Local: Four and a half feet in certain counties.—A fence four and one half feet high is a lawful fence in the counties of Alleghany, Bladen, Brunswick, Burke, Caldwell, Cherokee, Craven, Cumberland, Currituck, Davie, Davidson, Duplin, Harnett, Henderson, Jackson, Lenoir, Perquimans, Randolph, Richmond, Robeson, Rutherford, Sampson, Tyrrell, Yancey, Wake, Washington and Wilkes. This section does not apply to stock-law fences. (Rev., s. 1661; 1889, c. 175; 1891, c. 36; 1905, c. 333; 1909, cc. 55, 94; P. L. 1911, c. 15; C. S. 1828.)

Local Modification.—Tyrrell: C. S. 1828.

§ 68-3. Watercourse made lawful fence by county commissioners.—Any five electors, residents of the same county, may apply to the board of commissioners of the county, at any regular meeting of the same, by written petition praying that any watercourse, or any part of any watercourse, in the county, may be made a lawful fence. Notice of such petition shall be posted forty days at the courthouse door, by the clerk of the board, before such petition shall be acted upon. Upon the hearing of such petition, the board of county commissioners is authorized to declare any watercourse, or any part of any watercourse to which the petition applies, a lawful fence. And the several acts of the general assembly, declaring certain watercourses, in part or in whole, lawful fences, are so far repealed as to enable the board of commissioners of any county to declare any of such acts, or parts thereof, to be null and void in said county. Any order made under this section shall be of record and signed by the chairman, and may be rescinded by the board of commissioners at any regular meeting. (Rev., s. 1663; Code, ss. 2808, 2809, 2810; 1872-3, c. 98; C. S. 1830.)

§ 68-4. Injury to wire fence forbidden.—If any person shall willfully destroy, cut or injure any part of a wire fence or a fence composed partly of wire and partly of wood situated on the land of another, he shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not exceeding thirty days or fined not exceeding fifty dollars. (Rev., s. 3413; 1889, c. 516; C. S. 1831.)

§ 68-5. Local: Building unguarded barbed-wire fences along public highways.—If any person shall erect or maintain a barbed-wire fence along any public road or highway, and within ten yards thereof, without putting a railing, smooth wire, board or plank on the top of such fence not less than three inches in width, he shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court. This section shall apply to the counties of Rowan, Swain, Catawba, Greene, Richmond, Stokes, Rutherford, Forsyth, Yadkin, Brunswick, Durham, Wilkes, Stanly, Cumberland, Iredell, Macon and Mitchell: Provided, that in Rutherford county only a railing or plank shall be used at the top of such fence. (Rev., s. 3769; 1895, c. 65; 1899, c. 43; 1899, c. 225; 1905, c. 220; 1909, cc. 318, 604, 629, 810; C. S. 4422.)

Art. 2. Division Fences.

§ 68-6. Division fences maintainable jointly.—Where two or more persons have lands adjoining, which are either cultivated or used as a pasture for stock, the respective owners of each piece of land shall make and maintain one-half of the

fence upon the dividing line. (Rev., s. 1664; Code, s. 2800; 1868-9, c. 275, s. 1; C. S. 1832.)

§ 68-7. Remedy against delinquent owner.—If any person who is liable to build or keep up a part of any division fence fails at any time to do so, the owner of the adjoining land, after notice, may build or repair the whole, and recover of the delinquent one-half of the cost before any court having jurisdiction. (Rev., s. 1670; Code, s. 2807; 1868-9, c. 275, s. 7; C. S. 1833.)

§ 68-8. Fence erected because of changed use of land.—If the owner of a tract of land, who chooses neither to cultivate it, to use it as a pasture, nor to permit his stock to run on it, afterwards uses it in either of these ways and does not so enclose his stock that they cannot enter on the lands of an adjoining owner, he shall refund to such owner one-half the value of any fence erected by the latter on the dividing line. (Rev., s. 1665; Code, s. 2801; 1868-9, c. 275, s. 2; C. S. 1834.)

§ 68-9. When owner may remove his part of division fence.—If any owner of land liable to contribute for the keeping up of a division fence determines neither to cultivate his land nor permit his stock to run thereon, he may give the adjoining owner three months notice of his determination; and in that case, at any time after the expiration of such notice and between the first day of January and the first day of March, but at no other time, he may remove the half of the fence kept up by himself, and shall be no longer liable to keep up the same. (Rev., s. 1671; Code, s. 2802; 1903, c. 20; 1868-9, c. 275, s. 8; 1883, c. 111; C. S. 1835.)

§ 68-10. Proceeding to value division fence.—The value of such fence shall be ascertained as follows: Either owner may summon the other to appear before any justice of the peace of the township in which the dividing line is situate; or if it be situate in more than one township, then before any justice of the peace of any township in which any part of it is situate. In his summons he shall name a certain day, not less than five days after the summons, for the appearance of the defendant; he shall also state the purpose of the summons to be the adjustment of all matters in controversy respecting the dividing fence between the parties. The justice shall hear the complaint and defense. If the facts be found such as entitle either party to demand contribution of the other, the justice shall call on the complainant to name an indifferent person, qualified to act as a juror of the township, and if the complainant refuses the justice shall name one for him. The justice shall then call on the defendant to name an indifferent person, qualified to act as a juror of the township, and if the defendant refuses the justice shall name one for him. The justice shall then name a third indifferent person. These three persons, or any two of them, shall view the premises and decide all matters in controversy between the parties, relating to a fence on the dividing line. They shall make a written report to the justice, who shall give judgment thereon, and for the costs, which shall be paid by the owners of the several pieces of land equally. The jurors shall each receive one dollar per day. The fees of the justice and constable shall be as in other cases. Either party may appeal as provided in other cases of justices' judgments. (Rev., s. 1666; Code, s. 2803; 1868-9, c. 275, s. 3; C. S. 1836.)

§ 68-11. Contents of jurors' report.—The report of the jurors shall also state the kind of fence which ought to be kept up, and assign to each owner, in such manner as that it may be identified, the part which he shall keep up. (Rev., s. 1667; Code, s. 2804; 1868-9, c. 275, s. 4; C. S. 1837.)

§ 68-12. Register to record report.—The justice shall return the report, together with a transcript of the proceedings, to the register of deeds of his county for registration. The justice shall collect from the parties the fees of the register, and pay the same to him. (Rev., s. 1668; Code, s. 2805; 1868-9, c. 275, s. 5; C. S. 1838.)

§ 68-13. Final judgment on report; effect.—The final judgment upon the report of the jurors shall be binding on the owners of the respective lands and their assigns, so long as such ownership shall continue, or until the same shall be set aside, modified or reversed. (Rev., s. 1669; Code, s. 2806; 1868-9, c. 275, s. 6; C. S. 1839.)

§ 68-14. Removal of common fence misdemeanor.—If any person owning, occupying, cultivating or being in possession of any lands under a common fence protecting the lands, crops or property of others, shall remove such fence or any part thereof during the time in which any crops are growing or being actually cultivated thereon, or property is protected by such fence, and before such crops are harvested, without the consent and permission of such person or persons whose crop or property is protected by such common fence, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that the provisions of this section shall not apply when ninety days notice of such removal shall have been given to all persons owning, cultivating or in possession of lands surrounded by such common fence, or having property protected thereby, and when thereafter such fence shall be removed between the first day of January and the first day of March following such notice of intended removal. (Rev., s. 3412; Code, s. 2820; 1903, c. 20; C. S. 1840.)

Art. 3. Stock Law.

§ 68-15. Term "stock" defined. — The word "stock" in this chapter shall be construed to mean horses, mules, colts, cows, calves, sheep, goats, jennets, and all neat cattle, swine and geese. (Rev., s. 1681; Code, s. 2822; C. S. 1841.)

Local Modification.—Currituck: 1937, c. 389; Dare: 1935, c. 263; 1937, c. 213; Onslow: 1935, c. 151; 1937, c. 356; Robeson: 1917, c. 662.

§ 68-16. County elections.—Upon the written application of one-fifth of the qualified voters of any county made to the board of commissioners thereof, it shall be the duty of the commissioners from time to time to submit the question of "stock law" or "no stock law" to the qualified voters of said county. And if at any such election a majority of the votes cast is in favor of "stock

law," then the provisions of this chapter relating to the stock law shall be in force over the whole of said county. (Rev., s. 1672; Code, s. 2812; C. S. 1842.)

§ 68-17. Township elections.—Upon the written application of one-fifth of the qualified voters in any township, made to the board of commissioners of the county wherein the township is situated, it shall be the duty of the commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of the township; and if at any such township election a majority of the votes cast is in favor of "stock law," then the stock law shall be in force in said township. (Rev., s. 1673; Code, s. 2813; C. S. 1843.)

§ 68-18. District elections.—Upon the written application of one-fifth of the qualified voters of any district or territory, whether the boundaries of said district follow township lines or not, made to the board of county commissioners at any time, and setting forth well-defined boundaries of the district, it shall be the duty of the commissioners to submit the question of "stock law" or "no stock law" to the qualified voters of the district, and if at any such election a majority of the votes cast is in favor of "stock law," then the stock law shall be in force over the whole of said district. (Rev., s. 1674; Code, s. 2814; C. S. 1844.)

§ 68-19. Local: How territory released from stock law.—Upon the written application of a majority of the qualified voters in any district, territory or well defined boundary, made to the board of county commissioners, at any time, setting forth that the citizens of said district, territory or boundary are within the stock-law boundary, and are desirous of being released from the laws governing stock-law territory, it shall be the duty of the commissioners to submit the question of "no stock law" or "stock law" to the qualified voters of said district or territory, and if at any such election a majority of the votes cast is against stock law, then the said district or territory shall be released and free from the operation of the stock law: Provided, the expense incurred in changing the fence in such boundary, district or territory so released be paid by the property holders in such boundary, district or territory, and that the commissioners of the county levy the tax to pay the same on the property holders of such boundary, district or territory so released, but they shall not be further liable for keeping up said stock-law fence: Provided, that in any territory where stock law now prevails no election against stock law shall be held in less than two years from the date of the election adopting stock law in said territory: Provided further, that if "no stock law" should carry, it shall not take effect until six months from the date of its ratification: Provided still further, that neither "stock law" nor "no stock law" shall take effect during crop season.

This section applies only to the counties of Cherokee, Clay, Graham, Jackson, Macon, Mitchell, Pender, Randolph, Swain, and to Hogback Township in Transylvania County. (Rev., s. 1675; 1895, c. 35; 1897, cc. 461, 516; 1903, c. 60; 1907, c. 874, s. 3; P. L. 1911, cc. 265, 469; P. L. 1915, c. 379; P. L. 1917, c. 662; C. S. 1845.)

Local Modification.—Currituck: 1937, c. 389; Dare: 1935, c. 263; 1937, c. 213.

§ 68-20. How election conducted.—Every election under this chapter shall be held and conducted under the same rules and regulations and according to the same penalties provided by law for the election of members of the general assembly: Provided, no such county, township or district election shall be held oftener than once in any one year, although the boundaries of such district may not be the same. (Rev., s. 1676; Code, s. 2815; C. S. 1846.)

§ 68-21. Powers and duties of county commissioners.—The board of commissioners of the county may provide for a new registration of voters, designate places for holding elections, and make all regulations, and do all other things necessary to carry into effect the provisions of this chapter relating to the stock law. (Rev., s. 1677; Code, s. 2826; C. S. 1847.)

§ 68-22. Admission of lands adjoining stock-law territory.—Any person, or any number of persons, owning land in a county, district or township which shall not adopt the stock law, or adjoining any county, township or district where a stock law prevails, may have his or their lands enclosed within any fence built in pursuance of this chapter. All such adjacent lands, when so enclosed, shall be subject to all the provisions of law with respect to livestock running at large within the original district so enclosed, as if it were a part of the township, county or district with which it is hereby authorized to be enclosed. Any number of landowners, whose lands are contiguous, may at any time build a common fence around all their lands, with gates across all public highways; and no livestock shall run at large within any such enclosure, under the pains and penalties prescribed in this chapter. (Rev., s. 1678; Code, s. 2821; C. S. 1848.)

§ 68-23. Allowing stock at large in stock-law territory forbidden.—If any person shall allow his livestock to run at large within the limits of any county, township or district in which a stock law prevails or shall prevail pursuant to law, he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3319; Code, s. 2811; 1889, c. 504; C. S. 1849.)

§ 68-24. Impounding stock at large in territory.—Any person may take up any livestock running at large within any township or district wherein the stock law shall be in force and impound the same; and such impounder may demand fifty cents for each animal so taken up, and twenty-five cents for each animal for every day such stock is kept impounded, and may retain the same, with the right to use it under proper care, until all legal charges for impounding said stock and for damages caused by the same are paid, the damages to be ascertained by two disinterested freeholders, to be selected by the owner and the impounder, the freeholders to select an umpire, if they cannot agree, and their decision

to be final. (Rev., s. 1679; Code, s. 2816; C. S 1850.)

Local Modification.—Camden, Currituck, Gates, Pasquotank, Perquimans: Pub. Loc. 1927, c. 327.

§ 68-25. Owner notified; sale of stock; application of proceeds.—If the owner of such stock be known to the impounder he shall immediately inform the owner where his stock is impounded, and if the owner shall for two days after such notice willfully refuse or neglect to redeem his stock, then the impounder, after ten days written notice posted at three or more public places within the township where the stock is impounded, and describing the stock and stating place, day and hour of sale, or if the owner be unknown, after twenty days notice in the same manner, and also at the courthouse door, shall sell the stock at public auction, and apply the proceeds in accordance with the provisions of this article, and the balance he shall turn over to the owner if known, and if the owner be not known, to the county commissioners for the use of the school fund of the district wherein said stock was taken up and impounded, subject in their hands for six months to the call of the legally entitled owner. (Rev., s. 1680; Code, s. 2817; C. S. 1851.)

§ 68-26. Impounding unlawfully misdemeanor.—If any person shall willfully and unlawfully toll, drive, or in any way move any other person's horse, mule, ass, neat cattle, sheep, hog, goat, or dog, from the range or elsewhere, into any stock-law district, or into the limits of any city or town having the right to impound or destroy the same, with intent to secure the poundage or other penalty, or with intent to injure the owner of such animal, or to require him to pay any poundage or penalty on account of such animal, or for hire or reward, he shall be guilty of a misdemeanor. If any person shall unlawfully and willfully remove any animal above named from any lawful inclosure, with intent to injure the owner, he shall be guilty of a misdemeanor. (Rev., s. 3309; 1895, c. 141, s. 1; C. S. 1852.)

§ 68-27. Illegally releasing or receiving impounded stock misdemeanor.—If any person unlawfully receives or releases any impounded stock, or unlawfully attempts to do so, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3310; Code, s. 2819; 1889, c. 504; C. S. 1853.)

§ 68-28. Impounded stock to be fed and watered.—If any person shall impound, or cause to be impounded in any pound or other place, any animal, and shall fail to supply to the same during such confinement a sufficient quantity of good and wholesome food and water, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3311; Code, s. 2484; 1891, c. 65; 1881, c. 368, s. 3; C. S. 1854.)

§ 68-29. Right to feed impounded stock; owner liable.—In case any animal is at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any such pound or other place in which any animal shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal. (Rev., s. 1682; Code, s. 2485; 1881, c. 368, s. 4; C. S. 1855.)

§ 68-30. Injuring lands in stock-law territory by riding or driving.—If any person, by riding or driving upon the lands of another without permission, or while driving livestock along any roadway, public or private, shall willfully, deliberately or recklessly do or permit to be done any actual injury to said land, or to the crops or other property growing or being thereon, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. But no such offender shall be proceeded against unless the party injured, or some one in his behalf, shall cause a warrant to be issued or an indictment to be found against the party offending, within fifteen days after the commission of the offense. (Rev., s. 3321; Code, s. 2828; 1889, c. 118; C. S. 1856.)

§ 68-31. Owner in stock-law territory allowing stock outside.—If any person having stock within the limits of a stock-law territory shall allow the same to run at large beyond the boundaries of said territory, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that a person owning or renting land outside of the stock-law territory may turn his stock upon the said land outside of the stock-law district. (Rev., s. 3322; Code, s. 2827; 1889, c. 266; 1885, c. 371; C. S. 1857.)

§ 68-32. Stock-law territory to be fenced around.—The stock-law authorized by this chapter shall not be enforced until a fence has been erected around any territory proposed to be enclosed, with gates on all the public roads passing into and going out of said territory: Provided, all streams which are or may be declared to be lawful fences shall be sufficient boundaries, in lieu of fences: Provided further, no fence shall be erected along the boundary lines of any county, township or district where a stock law prevails. (Rev., s. 1683; Code, s. 2823; C. S. 1858.)

§ 68-33. Commissioners may declare natural barrier sufficient fence.—In any county in the state in which or in any portion of which the stock law is now in force or may hereafter be adopted, the county commissioners of said county in their discretion may declare any watercourse, mountain, mountain range or parts of same, and also other natural and sufficient obstruction along the line of said stock-law territory to be and constitute a sufficient stock-law fence, and in that event such watercourse, mountain, mountain range or part thereof and obstructions so declared by said commissioners shall be and constitute a lawful fence to all intents and purposes. (Rev., s. 1684; 1901, c. 542; C. S. 1859.)

§ 68-34. Assessment of landowners for fence.—For the purpose of building stock-law fences, the board of commissioners of the county may levy and collect a special assessment upon all real property, taxable by the county, within the county, township or district which may adopt the stock law, but no such assessment shall be greater than one-fourth of one per centum on the value of said property. (Rev., s. 1685; Code, s. 2824; C. S. 1860.)

§ 68-35. Condemnation of land for fence.—If the owner of any land objects to the building of any fence herein allowed, his land, not exceeding twenty feet in width, shall be condemned for the fenceway in accordance with the procedure specified in the article Condemnation Proceedings under the chapter Eminent Domain. (Rev., s. 1686; Code, s. 2825; C. S. 1861.)

§ 68-36. Injury to stock-law fences misdemeanor in stock-law territory.—If any person willfully tears down, or in any manner breaks a fence or gate, or leaves open a gate erected around a stock-law territory, or willfully breaks any enclosure within any township, district or county where a stock law is in force, and wherein any stock is confined, so that the same may escape therefrom, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3411; Code, s. 2820; 1889, c. 504; C. S. 1862.)

§ 68-37. Impounder violating stock law misdemeanor.— If any impounder willfully misappropriates money that he may receive from sale of stock impounded, or in any manner willfully violates any provisions of the law in regard thereto, he shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3312; Code, s. 2820; 1889, c. 504; C. S. 1863.)

§ 68-38. Local: Depredations of domestic fowls in certain counties.—In the counties and parts of counties hereinafter enumerated, where the stock law prevails, it shall be unlawful for any person to permit any turkeys, geese, chickens, ducks or other domestic fowls to run at large, after being notified as provided in this section, on the lands of any other person while such lands are under cultivation in any kind of grain or feedstuff, or while being used for gardens or ornamental purposes.

Any person so permitting his fowls to run at large, after having been notified to keep them up, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five dollars or imprisoned not exceeding five days, or if it shall appear to any justice of the peace that after two days notice any person persists in allowing his fowls to run at large and fails or refuses to keep them upon his own premises, then the said justice of the peace may, in his discretion, order any sheriff, constable or other officer to kill said fowls when so depredating. (C. S. 1864.)

Alamance, 1901, c. 645.
Avery, 1935, c. 77.
Beaufort, Pub. Loc. 1927, c. 316.
Bladen, 1901, c. 645.
Buncombe, 1907, c. 508.
Burke, 1907, c. 508.
Cabarrus, 1901, c. 645.
Caldwell, Pub. Loc. 1911, c. 244.
Clay, 1935, c. 51.
Cleveland, 1901, c. 645.
Columbus, 1933, c. 308.
Currituck, 1901, c. 645.
Davidson, Pub. Loc. 1911, c. 244.
Duplin, Ex. Sess. 1908, c. 73; 1933, c. 186.
Edgecombe, 1901, c. 645.
Gaston, Pub. Loc. 1919, c. 31.
Gates, 1935, c. 77.
Graham, 1901, c. 645.
Granville, Pub. Loc. 1911, c. 244.
Guilford, 1901, c. 645.
Harnett, 1931, c. 443.
Henderson, Pub. Loc. 1911, c. 636.
Iredell, 1935, c. 170.
Jackson, Pub. Loc. 1919, c. 31.
Johnston, 1935, c. 78.
Lee, Pub. Loc. 1913, c. 725.
Lenoir, Pub. Loc. 1911, c. 244.
Macon, Pub. Loc. 1919, c. 31.
Martin, 1935, c. 77.
Mecklenburg, 1901, c. 645.
Moore, 1935, c. 77.
Onslow, Pub. Loc. 1911, c. 244.
Orange, 1903, c. 115.
Pasquotank, 1901, c. 645.
Richmond, Pub. Loc. 1927, c. 72.
Rockingham, Ex. Sess. 1924, c. 205; 1931, c. 434.
Rowan, 1909, c. 847.
Sampson, 1935, c. 196.
Stokes, 1931, c. 22.
Surry, 1901, c. 645.
Swain, Pub. Loc. 1911, c. 244.
Transylvania, Pub. Loc. 1911, c. 244.
Tyrrell, Ex. Sess. 1921, c. 41.
Union, 1935, c. 77.
Vance, 1909, c. 748.
Wayne, Pub. Loc. 1911, c. 244.
Wilson, 1937, c. 122.

Local Modification.—Catawba, Chatham: 1903, c. 482; Davie: Pub. Loc. 1915, c. 167; Duplin: 1933, c. 186; Forsyth: Pub. Loc. 1915, c. 39; Greene: 1907, c. 917; Ex. Sess. 1908, c. 78; Lincoln: Pub. Loc. 1915, c. 312; McDowell: Pub. Loc. 1917, c. 328; Pitt: Pub. Loc. 1915, c. 462; Randolph: Pub. Loc. 1913, c. 645; Scotland: Pub. Loc. 1915, c. 714; Wake: Pub. Loc. 1915, c. 378; Yadkin: Pub. Loc. 1915, c. 39; Pub. Loc. 1917, c. 321; Yancey: Pub. Loc. 1913, c. 739.

§ 68-39. Eastern North Carolina, territory placed under stock law. — From and after January first, one thousand nine hundred and twenty-two, all of that part of eastern North Carolina lying east of that branch of the Atlantic Coast Line Railroad running from Wilmington, North Carolina, northerly to the Virginia line and passing through Goldsboro, Wilson, and Weldon (formerly known as the Wilmington and Weldon Railroad), shall be and is hereby declared to be "stock law territory," and shall be subject to all of the provisions of §§ 68-15 to 68-38, inclusive: Provided, that that portion of North Carolina which borders the Atlantic Ocean and which is separated from the mainland by a body of water such as an inlet or sound, shall not be considered to fall within the provisions of this law. (1921, c. 50, s. 1; C. S. 1864(a).)

Local Modification.—Currituck: 1937, c. 389; Dare: 1935, c. 263; 1937, c. 213; Onslow: 1933, c. 151; 1937, c. 356.

§ 68-40. Counties divided by railroad.—Wherever the railroad referred to in § 68-39 shall divide a county so that a part of the county lies east and a part west of the said railroad, then the whole of said county shall be "stock law territory," and under the provisions of this article from and after January first, one thousand nine hundred and twenty-two. (1921, c. 50, s. 2; C. S. 1864(b).)

§ 68-41. Repeal of local laws or regulations.—Sections 68-39 and 68-40 shall not be construed to repeal or change local laws or regulations regarding the subject-matter covered by those sections except so far as said local laws and regulations actually conflict with the provisions thereof and prevent the proper enforcement of said provisions, and the said local laws, rules, and regulations on the subject-matter similar to that covered by said sections shall remain in full force and effect, except as they do and until they do actually interfere with the enforcement of the said provisions. (1921, c. 230; C. S. 1864(c).)

Chapter 69. Fire Protection.

Art. 1. Investigation of Fires and Inspection of Premises.

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69-1. Fires investigated; reports; records.
69-2. Insurance commissioner to make examination; arrests and prosecution.
69-3. Powers of commissioner in investigations.
69-4. Inspection of premises; dangerous material removed.
69-5. Deputy investigators.
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Art. 1. Investigation of Fires and Inspection of Premises.

§ 69-1. Fires investigated; reports; records.—The insurance commissioner and the chief of the fire department, or chief of police where there is no chief of fire department, in municipalities and towns, and the sheriff of the county where such fire occurs outside of a municipality, are hereby authorized to investigate the cause, origin, and circumstances of every fire occurring in such municipalities or counties in which property has been destroyed or damaged, and shall specially make investigation whether the fire was the result of carelessness or design. A preliminary investigation shall be made by the chief of fire department or chief of police, where there is no chief of fire department in municipalities, and by the sheriff of the county where such fire occurs outside of a municipality, and must be begun within three days, exclusive of Sunday, of the occurrence of the fire, and the insurance commissioner shall have the right to supervise and direct the investigation when he deems it expedient or necessary. The officer making the investigation of fires shall forthwith notify the insurance commissioner, and must within one week of the occurrence of the fire furnish to the commissioner a written statement of all the facts relating to the cause and origin of the fire, the kind, value, and ownership of the property destroyed, and such other information as is called for by the blanks provided by the commissioner. The insurance commissioner shall keep in his office a record of all fires occurring in the state, together with all facts, statistics, and circumstances, including the origin of the fires, which are determined by the investigations provided for by this article. This record shall at all times be open to public inspection. (Rev., s. 4818; 1899, c. 58; 1901, c. 387; 1903, c. 719; C. S. 6074.)

§ 69-2. Insurance commissioner to make examination; arrests and prosecution. — It is the duty of the insurance commissioner to examine, or cause examination to be made, into the cause, circumstances, and origin of all fires occurring within the state to which his attention has been called in accordance with the provisions of § 69-1, or by interested parties, by which property is accidentally or unlawfully burned, destroyed, or damaged, whenever in his judgment the evidence is sufficient, and to specially examine and decide whether the fire was the result of carelessness or the act of an incendiary. The commissioner shall, in person, by deputy or otherwise, fully investi-

gate all circumstances surrounding such fire, and, when in his opinion such proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which an examination is herein required to be made, and shall cause the same to be reduced to writing. If he is of the opinion that there is evidence sufficient to charge any person with the crime of arson, or other wilful burning, he shall cause such person to be arrested, charged with such offense, and prosecuted, and shall furnish to the solicitor of the district all such evidence, together with the names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case. (Rev., s. 4819; 1899, c. 58, s. 2; 1901, c. 387, s. 2; 1903, c. 719; C. S. 6075.)

§ 69-3. Powers of commissioner in investigations.—The insurance commissioner, or his deputy appointed to conduct such examination, has the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses to testify in relation to any matter which is by provisions of this article a subject of inquiry and investigation, and may administer oaths and affirmations to persons appearing as witnesses before them. False swearing in any such matter or proceeding is perjury and shall be punished as such. The commissioner or his deputy has authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same. All investigations held by or under the direction of the commissioner or his deputy may, in their discretion, be private, and persons other than those required to be present by the provisions of this article may be excluded from the place where the investigation is held, and witnesses may be kept apart from each other and not allowed to communicate with each other until they have been examined. (Rev., s. 4820; 1899, c. 58, s. 3; 1901, c. 387, s. 3; C. S. 6076.)

§ 69-4. Inspection of premises; dangerous material removed.—The insurance commissioner, or the chief of fire department or chief of police where there is no chief of fire department, or local inspector of buildings in municipalities where such officer is elected or appointed, has the right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises in their jurisdiction. It is the duty of the insurance commissioner to require in all municipalities of the state that such officers make in their respective municipalities annual inspection of the buildings therein and quarterly inspection of all premises within the fire limits, and report in detail the results of their inspection to the insurance commissioner upon blanks furnished by him. When any of such officers find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such building or premises they shall order the same to be removed or remedied, and this order shall be forthwith complied with by the owner or occupant of such building or premises. The owner or occupant may, within twenty-four hours, appeal to the insurance commissioner from the order, and the cause of the complaint shall be at once investigated by his direction, and unless by his authority the order of the officer above named is revoked it remains in force and must be forthwith complied with by the owner or occupant. The insurance commissioner, fire chief, or fire committee shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction upon complaint of any person having an interest in such building or premises or property adjacent thereto. The commissioner may, in person or by deputy, visit any municipality and make such inspections alone or in company with the local officer. The local inspector shall be paid by the municipality a reasonable salary or proper fees to be fixed by its governing board. (Rev., s. 4821; 1899, c. 58, s. 4; 1901, c. 387, s. 4; 1903, c. 719; C. S. 6077.)

§§ 69-5. Deputy investigators.—It shall be the duty of the insurance commissioner to appoint two or more persons as deputies, whose particular duty it shall be to investigate forest fires and endeavor to ascertain the persons guilty of setting such fires and cause prosecution to be instituted against those who, as a result of such investigation, are deemed guilty. (Rev., s. 4823; 1899, c. 58, s. 6; 1901, c. 387, s. 6; 1903, c. 719, s. 2; 1915, c. 109, s. 2; 1919, c. 186, s. 7; Ex. Sess. 1924, c. 119; C. S. 6078.)

§ 69-6. Reports of insurance commissioner.—The insurance commissioner shall submit annually, as early as consistent with full and accurate preparation, and not later than the first day of June, a detailed report of his official action under this article, and it shall be embodied in his report to the general assembly. He shall, in his annual report, make a statement of the fires investigated, the value of property destroyed, the amount of insurance, if any, the origin of the fire, when ascertained, and the location of the property damaged or destroyed, whether in town, city, or country. (Rev., s. 4824; 1899, c. 58, s. 7; 1901, c. 387, s. 7; 1915, c. 109, s. 1; C. S. 6079.)

§ 69-7. Fire prevention and fire prevention day.—It is the duty of the insurance commissioner and superintendent of public instruction, as far as practicable, to provide, except to schools taught in one-story houses, a pamphlet containing printed instructions for properly conducting fire drills in schools, and the superintendent or principal of every public school in this State, except schools taught in one-story houses, shall conduct at least one fire drill every month during the regular school session, such fire drills to include all children and teachers and the use of all ways of egress, and the Insurance Commission and Superintendent of Public Instruction shall further provide for the teaching of "Fire Prevention" in the colleges and schools of the state, and to arrange for a text-book adapted to such use. The ninth day of October of every year shall be set aside and designated as "Fire Prevention Day," and the governor shall issue a

proclamation urging the people to a proper observance of the day, and the insurance commissioner shall bring the day and its observance to the attention of the officials of the municipalities of the state, and especially to the firemen, and where possible arrange suitable programs to be followed in its observance. (1915, c. 166, s. 5; 1925, c. 130; C. S. 6080.)

Art. 2. Fire-Escapes.

§ 69-8. Construction of buildings regulated.—All hotels, lodging houses, school dormitories, hospitals, sanitariums, apartment houses, flats, tenement houses and all buildings other than private dwellings not over three stories in height, in which rooms are to be rented or leased or let or offered for rent, let or leased for living or sleeping purposes, hereafter constructed in this state shall be constructed so that the occupants of all rooms above the first floor shall have unobstructed access to two separate and distinct ways of egress extending from the uppermost floor to the ground, such ways of egress to be so arranged in reference to rooms that in case of fire on one stairway the other stairway can be reached by the occupant without his or her having to pass the stairway involved. Entrance to all such ways of egress aforementioned in this section shall be from corridors or hallways of not less than three feet in width, and in no case shall entrance to such ways of egress be through a room or closet, and where such building is in the opinion of the insurance commissioner of sufficient size to require more than two ways of egress the "National Fire Protection Association" standard governing corridors and stair areas shall be adhered to. Every hotel, lodging house, school dormitory, hospital, sanatorium, apartment house, flat, tenement or other building, other than a private dwelling not over three stories in height, in which rooms are rented, leased, let or offered for rent, leased or let, shall forthwith, at the owner's expense, be provided with additional ways of egress as the insurance commissioner shall deem practicable in order that the object of this article may be accomplished and that existing dangers may not be perpetuated. (1909, c. 637, s. 1; 1923, c. 149, s. 4; C. S. 6081.)

§ 69-9. Places of public amusement, how constructed.—Every theater, opera house, or other like place of public amusement shall have as many doors for egress therefrom as may be necessary and can be made consistently with the proper strength of the building; all such doors shall be hung so as to open outwardly, or both outwardly and inwardly; and the seats therein shall be arranged in rows properly spaced, with aisles of adequate width, so as to afford easy egress therefrom. All scenery shall be made as secure against becoming inflamed as reasonably practical, and also all reasonably practical arrangements shall be made for the constant supply of water and other means for extinguishment of fires, and they shall be kept constantly effective during the presence of an audience. The insurance commissioner may require all theaters to be equipped with a front curtain of asbestos or other fireproof material, to be furnished by owners of the building, and this curtain shall be raised and lowered not less than twice before each performance, in order to guarantee its being in perfect working order. (1909, c. 637, s. 2; C. S. 6082.)

§ 69-10. Doors in certain buildings to open outwardly.—In all public schoolhouses and other buildings, and also all theaters, assembly rooms, halls, churches, factories with more than ten employees, and all other buildings or places of public resort where people are accustomed to assemble (excepting schoolhouses and churches of one room on the ground floor) which shall hereafter be erected, together with all those heretofore erected and which are still in use as such buildings or places of resort, the doors for ingress and egress shall be so hung as to open outwardly from the audience rooms, halls, or workshops of such buildings or places, or the doors may be hung on double hinges, so as to open with equal ease outwardly or inwardly. And it is further provided that, in order to safeguard the public from the dangers of fire and contingencies arising and resulting therefrom in places of this kind, and the owner or owners from unnecessary confusion and expense, plans for all such theaters, opera houses, moving picture shows, and other like places of amusement to be hereafter erected shall be submitted to and approved, as to the safety of the building from fire and the occupants in case of fire, by the insurance commissioner before work is begun on the building. This requirement shall apply also where any building standing or part thereof is to be changed to use as a theater, opera house, moving picture show or other like place of amusement. (1909, c. 637, s. 3; 1923, c. 149, s. 1; C. S. 6083.)

§ 69-11. Fire-escapes to be provided.—All factories, manufacturing establishments or workshops of three or more stories in height, in which ten or more people are employed above the first floor thereof, shall be provided with one or (if the proper officials shall deem necessary) more outside fire-escapes, not less than six feet in length and three feet in width, properly and safely constructed, guarded by iron railings not less than three feet in length and taking in at least one door and one window or two windows at each story and connected with the interior by easily accessible and unobstructed openings; and the fire escapes shall connect by iron stairs not less than twenty-four inches wide, the steps to be not less than six inches tread, placed at not more than an angle of forty-five degrees slant, and protected by a well secured hand-rail on both sides, with a twelve-inch wide drop ladder from the lowest platform reaching to the ground. Each story of all factories, manufacturing establishments or workshops of three or more stories in height shall be amply supplied with means for extinguishing fires. All the main doors, both inside and outside, in factories, except fire doors, shall open outwardly, when the proper official shall so direct, and no outside or inside door of any building wherein operatives are employed shall be locked, bolted, or otherwise fastened during the hours of labor so as to prevent egress. (1909, c. 637, s. 4; 1923, c. 149, s. 2; C. S. 6084.)

§ 69-12. Ways of escape provided.—Every building now or hereafter used, in whole or in part, as

a public building, public or private institution, schoolhouse, church, theater, public hall, place of assembly or place of public resort, and every building in which twenty or more persons are employed, allowed or accustomed to assemble or accommodated above the second story in a factory, workshop, office building or mercantile or other establishment, when the owner or agent of the owner of the buildings is notified in writing by the insurance commissioner or one of his deputies, shall be provided with proper ways of egress or other means of escape from fire sufficient for the use of all persons accommodated, assembled, employed, lodging or residing in such building or buildings, and such ways of egress and means of escape shall be kept free from obstructions, in good repair, and ready for use. Every room above the second story in any such building in which twenty or more persons are employed shall be provided with more than one way of egress by stairways on the inside or outside of the building. All doors in any building subject to the provisions of this article shall open outwardly, if the insurance commissioner or one of his deputies shall so direct in writing. (1909, c. 637, s. 5; 1923, c. 149, s. 3; 1927, c. 55, s. 1; C. S. 6085.)

§ 69-13. Enforcement by insurance commissioner.—The insurance commissioner is charged with the execution of this article, and he or the chief of the fire department is vested with all privileges, duties, and obligations placed upon them in this chapter, in regard to the inspection of buildings, for the purpose of enforcing the provisions of this article in regard to the buildings and requirements herein. Any owner or occupant of premises failing to comply with the provisions of this article, in accordance with the orders of the authorities above specified, shall be guilty of a misdemeanor and punished by a fine not less than ten dollars nor more than fifty dollars for each day's neglect. If any owner or lessee of any building referred to in this article shall deem himself aggrieved by any ruling or order of any chief of fire department or local inspector, he may within twenty-four hours appeal to the insurance commissioner, and the cause of complaint shall at once be investigated by the direction of the commissioner, and unless by his authority the order or ruling is revoked it shall remain in full force and effect and be forthwith complied with by the owner or lessee. (1909, c. 637, s. 6; C. S. 6086.)

Art. 3. State Volunteer Fire Department.

§ 69-14. Purpose of article.—The purpose of this article shall be the creation of a state volunteer fire department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the state of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this article. (1939, c. 364, s. 1.)

§ 69-15. Personnel. — The personnel of the North Carolina state volunteer fire department shall consist of all active members of the organized fire departments, who are members of the North Carolina state firemen's association, of municipalities whereof the governing bodies shall subscribe to and endorse this article. (1939, c. 364, s. 2.)

§ 69-16. Organization. — The North Carolina state fire marshal shall be chief of the state volunteer fire department; regular municipal fire chiefs shall be assistant chiefs; assistant chiefs shall be deputy chiefs; battalion chiefs, captains; lieutenants and privates shall hold the same positions that they occupy in their municipal companies. When engaged in rendering assistance at the scene of any emergency, the ranking officer of the first department arriving at the scene of the emergency shall have complete charge of all operations until the arrival of a superior officer. All subordinate officers and men shall act under the direction of such ranking officer. Whenever present at the scene of an emergency, the chief shall have full and complete control and authority over operations of all members of the department. (1939, c. 364, s. 3.)

§ 69-17. Acceptance by municipalities. — Any municipality having an organized fire department and desiring to participate in the establishment of the state volunteer fire department, may do so by a resolution of the governing body accepting and endorsing the provisions of this article: Provided, that acceptance shall not be compulsory. (1939, c. 364, s. 4.)

§ 69-18. Withdrawal.—Any municipality which has accepted the provisions of this article may withdraw its fire departments from membership in the state volunteer fire department by resolution of the governing body thereof. Notice of such withdrawal shall be given to the state fire marshal and withdrawal shall not become effective until sixty (60) days after his receipt thereof. (1939, c. 364, s. 5.)

§ 69-19. Dispatching firemen and apparatus from municipalities. — Municipalities endorsing this article shall retain full and complete control and authority in sending or permitting firemen and apparatus to go beyond the limits of the municipality. The governing bodies of such municipalities shall designate and authorize a person, and at least two alternates, who shall have authority to grant or deny permission to firemen and apparatus to leave the municipality in all cases where request is made for assistance beyond its corporate limits, and the municipality shall, through the office of its municipal fire chief, furnish to the office of the state insurance commissioner, and to the secretary of the North Carolina state firemen's association, a list of the persons so authorized by the municipality. The secretary of the state firemen's association shall furnish to all municipalities and counties accepting this article a list of all such persons so designated in all municipalities within the state. (1939, c. 364, s. 6.)

§ 69-20. No authority in state volunteer fire department to render assistance to non-accepting counties.—The state volunteer fire department shall not have authority to render assistance in any emergency occurring within a county which has not accepted the terms and conditions of this article by resolution of the board of county commissioners: Provided, that nothing in this arti-

cle shall be construed to prevent any municipality from voluntarily permitting its fire department to render assistance in any emergency, notwithstanding that it may arise in a county which has failed to accept this article. (1939, c. 364, s. 7.)

§ 69-21. Acceptance by counties.—Any county desiring to accept the benefits of this article may do so by resolution of the board of county commissioners. The board may make the necessary appropriation therefor and levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in § 153-9, and in addition to the rate allowed by the constitution. Any such county may thereupon make agreements and enter into contracts with respect to payment for services rendered by the state volunteer fire department within its boundaries in the following manner:

The county may contract with any municipality which has accepted the terms of this article, whether within or without said county, to pay to such municipality an annual fee as a consideration for the municipality providing equipment and carrying compensation insurance which will enable it to respond to calls from within the county so contracting, and to pay an additional sum per truck for each mile traveled from the station house to the scene of the emergency, and to pay an additional sum per truck per hour or fraction thereof for the use of its water or chemical pumping equipment. Said sums shall be paid to the city within thirty (30) days after such services have been performed: Provided, that nothing in this section shall be construed to prevent the county and municipality from adopting a different schedule of fees in cases where those provided above shall be considered excessive or inadequate: Provided, that if the emergency shall occur within the limits of another city or town, such city or town and not the county wherein it lies shall be responsible for the payments and shall assume all liabilities as provided in this section. (1939, c. 364, s. 8.)

§ 69-22. Municipalities not to be left unprotected.—At no time shall the entire personnel or equipment of any municipal fire department be absent from the municipality in response to a call to another municipality, or other place lying at a distance exceeding two miles from the corporate limits, but there shall remain within the municipal limits such personnel and equipment as in the judgment of the local fire chief might provide sufficient protection during the absence of the remainder. (1939, c. 364, s. 9.)

§ 69-23. Rights and privileges of firemen; liability of municipality.—When responding to a call and while working at a fire or other emergency outside the limits of the municipality by which they are regularly employed or in volunteer fire service, all members of the state volunteer fire department shall have the same authority, rights, privileges and immunities which are afforded them while responding to calls within their home municipality. In permitting its fire department or equipment to attend an emergency or answer a call beyond the municipal limits, whether under the terms of this article or otherwise, a municipality shall be deemed in exercise of a governmental function, and shall hold the privileges and immunities attendant upon the exercise of such functions within its corporate limits. (1939, c. 364, s. 10).

§ 69-24. Relief in case of injury or death.—In case of injury or death of any member of the state volunteer fire department arising out of and in the course of the performance of his duties while such member is assisting at any emergency arising beyond the limits of the municipality with which he is connected, or while going to or returning from the scene of such emergency, such fireman shall be entitled to compensation under the terms of the North Carolina Workmen's Compensation Act, and the municipality with which he is connected shall be liable for the compensation provided under that Act. (1939, c. 364, s. 11.)

§ 69-25. Sums from contingent fund of state made available for administration of article.—In order to assist in carrying out the purposes of this article the governor may, from time to time, make provisions for assistance to the North Carolina state firemen's association in a sum not to exceed two thousand five hundred dollars ($2,500.00), in any one year, out of the contingent fund appropriated in the General Appropriation Act. One-half of the amount so provided shall, in each instance, go to the state firemen's relief fund, and one-half to the expenses of the said association incurred in carrying out the provisions of this article. (1939, c. 364, s. 12.)

Chapter 70. Indian Antiquities.

Sec.
70-1. Private landowners urged to refrain from destruction.
70-2. Possessors of relics urged to commit them to custody of state agencies.
70-3. Preservation of relics on public lands.
70-4. Destruction or sale of relic from public lands made misdemeanor.

§ 70-1. Private landowners urged to refrain from destruction.—Private owners of lands containing Indian relics, artifacts, mounds or burial grounds are urged to refrain from the excavation or destruction thereof and to forbid such conduct by others, without the cooperation of the director of the state museum and the secretary of the North Carolina Historical Commission or without the assistance or supervision of some person designated by either as qualified to make scientific archaeological explorations. (1935, c. 198, s. 1.)

§ 70-2. Possessors of relics urged to commit them to custody of state agencies.—All persons having in their possession collections of Indian relics, artifacts, and antiquities which are in danger of being lost, destroyed or scattered are urged to commit them to the custody of the North Carolina State Museum, the North Carolina Historical Commission, or some other public agency or institution within the State which is qualified to preserve and exhibit them for their historic, scientific and educational value to the people of the State. (1935, c. 198, s. 2.)

§ 70-3. Preservation of relics on public lands.—It shall be the duty of any person in charge of any construction or excavation on any lands owned by the State, by any public agency or institution, by any county, or by any municipal corporation, to report promptly to and preserve for the director of the state museum or the secretary of the North Carolina Historical Commission any Indian relic, artifact, mound, or burial ground discovered in the course of such construction or excavation. (1935, c. 198, s. 3.)

§ 70-4. Destruction or sale of relic from public lands made misdemeanor.—Any person who shall excavate, disturb, remove, destroy or sell any Indian relic or artifact, or any of the contents of any mound or burial ground, on or from any lands owned by the State, by any public agency or institution, by any county, or by any municipal corporation, except with the written approval of the director of the state museum or the secretary of the North Carolina Historical Commission, shall be guilty of a misdemeanor. (1935, c. 198, s. 4.)

Chapter 71. Indians.

Sec.
71-1. Cherokee Indians of Robeson County; rights and privileges.
71-2. Separate privileges in schools and institutions.
71-3. Chapter not applicable to certain bands of Cherokees.

§ 71-1. Cherokee Indians of Robeson County; rights and privileges.—The persons residing in Robeson, Richmond, and Sampson counties, who have heretofore been known as "Croatan Indians" or "Indians of Robeson County," together with their descendants, shall hereafter be known and designated as "Cherokee Indians of Robeson County," and by that name shall be entitled to all the rights and privileges heretofore or hereafter conferred, by any law or laws of the state of North Carolina, upon the indians heretofore known as the "Croatan Indians" or "Indians of Robeson County." In all laws enacted by the General Assembly of North Carolina relating to said indians subsequent to the enactment of said chapter fifty-one of the Laws of eighteen hundred and eighty-five, the words "Croatan Indians" and "Indians of Robeson County" are stricken out and the words "Cherokee Indians of Robeson County" inserted in lieu thereof. (Rev., s. 4168; 1885, c. 51, s. 2; 1911, c. 215; P. L. 1911, c. 263; 1913, c. 123; C. S. 6257.)

§ 71-2. Separate privileges in schools and institutions.—Such Cherokee indians of Robeson county and the indians of Person county, defined in the chapter Education, § 115-66, shall be entitled to the following rights and privileges:

1. Separate schools, with the educational privileges provided in the chapter Education.

2. Suitable accommodations in the state hospital for the insane at Raleigh, as provided in the chapter Hospitals for the Insane, in the article entitled Organization and Management.

3. The sheriffs, jailers, or other properties of Robeson and Person counties shall provide in the common jails of said counties, and in the homes for the aged and infirm thereof, separate cells, wards, or apartments for such indians in all cases where it shall be necessary under the laws of this state to commit any of said indians to such jails or county homes. (1911, c. 215, s. 6; 1913, c. 123; P. L. 1913, c. 22; C. S. 6258.)

§ 71-3. Chapter not applicable to certain bands of Cherokees.—Neither this chapter nor any other act relating to said "Cherokee Indians of Robeson County" shall be construed so as to impose on said indians any powers, privileges, rights, or immunities, or any limitations on their power to contract, heretofore enacted with reference to the eastern band of Cherokee indians residing in Cherokee, Graham, Swain, Jackson, and other adjoining counties in North Carolina, or any other band or tribe of Cherokee indians other than those now residing, or who have since the Revolutionary War resided, in Robeson county, nor shall said "Cherokee Indians of Robeson County," as herein designated, be subject to the limitations provided in the chapter Contracts Requiring Writing, in § 22-3, entitled Contracts with Cherokee Indians. (1913, c. 123, s. 5; C. S. 6259.)

Chapter 72. Inns, Hotels and Restaurants.

Art. 1. Innkeepers.

Sec.
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72-2. Liability for loss of baggage.
72-3. Safekeeping of valuables.
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Art. 1. Innkeepers.

§ 72-1. Must furnish accommodations.—Every innkeeper shall at all times provide suitable food, rooms, beds and bedding for strangers and travelers whom he may accept as guests in his inn or hotel. (Rev., s. 1909; 1903, c. 563; C. S. 2249.)

§ 72-2. Liability for loss of baggage.—Innkeepers shall not be liable for loss, damage or destruction of the baggage or property of their guests except in case such loss, damage, or destruction results from the failure of the innkeeper to exercise ordinary, proper and reasonable care in the custody of such baggage and property; and in case of such loss, damage or destruction resulting from the negligence and want of care of the said innkeeper he shall be liable to the owner of the said baggage and property to an amount not exceeding one hundred dollars. Any guest may, however, at any time before a loss, damage or destruction of his property, notify the innkeeper in writing that his property exceeds in value the said sum of one hundred dollars, and shall upon demand of the innkeeper furnish him a list or schedule of the same, with the value thereof, in which case the innkeeper shall be liable for the loss, damage or destruction of said property because of any negligence on his part for the full value of the same. Proof of the loss of any such baggage, except in case of damage or destruction by fire, shall be prima facie evidence of the negligence of said hotel or innkeeper. (Rev., s. 1910; 1903, c. 563, s. 2; C. S. 2250.)

§ 72-3. Safekeeping of valuables. — It is the duty of innkeepers, upon the request of any guest, to receive from said guest and safely keep money, jewelry and valuables to an amount not exceeding five hundred dollars; and no innkeeper shall be required to receive and take care of any money, jewelry or other valuables to a greater amount than five hundred dollars: Provided, the receipt given by said innkeeper to said guest shall have plainly printed upon it a copy of this section. No innkeeper shall be liable for the loss, damage or destruction of any money or jewels not so deposited. (Rev., s. 1911; 1903, c. 563, s. 3; C. S. 2251.)

§ 72-4. Loss by fire.—No innkeeper shall be liable for loss, damage or destruction of any baggage or property caused by fire not resulting from the negligence of the innkeeper or by any other force over which the innkeeper had no control. Nothing herein contained shall enlarge the limit of the amount to which the innkeeper shall be liable as provided in preceding sections. (Rev., s. 1912; 1903, c. 563, s. 4; C. S. 2252.)

§ 72-5. Negligence of guest.—Any innkeeper against whom claim is made for loss sustained by a guest may show that such loss resulted from the negligence of such guest or of his failure to comply with the reasonable and proper regulations of the inn. (Rev., s. 1914; 1903, c. 563, s. 7; C. S. 2253.)

§ 72-6. Copies of this article to be posted.—Every innkeeper shall keep posted in every room of his house occupied by guests, and in the office, a printed copy of this article and of all regulations relating to the conduct of guests. This chapter shall not apply to innkeepers, or their guests, where the innkeeper fails to keep such notices posted. (Rev., s. 1913; 1903, c. 563, ss. 5, 6; C. S. 2254.)

§ 72-7. Admittance of dogs to bedrooms.—It shall be unlawful for any innkeeper or guest owning, keeping, or who has in his care a dog or dogs, to permit such a dog or dogs admittance to any bedroom or rooms used for sleeping purposes in any inn or hotel.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine not to exceed fifty dollars or be imprisoned not more than thirty days. (1927, c. 67.)

Art. 2. Sanitary Inspection and Conduct.

§ 72-8. Annual inspection and certificate by state board of health.—For the purpose of carrying out the provisions of this article the state board of health is authorized and required to inspect, through its officers or agents, without cost to the hotels or hospitals, all hotels and restaurants, hospitals and sanitariums, public and private, in the state once a year. If upon inspection of any hotel or restaurant, hospital or sanitarium, it shall be found that this article has been fully complied with, the secretary of the state board of health shall issue a certificate to that effect to the person operating the same, and such certificate shall be kept posted in plain view in some conspicuous place in said hotel or restaurant, hospital or sanitarium. (1917, c. 66, s. 23; 1923, c. 173; C. S. 2277.)

§ 72-9. Definitions; "hotel"; "transient guest"; "restaurant".—A "hotel" within the meaning of this article is any inn or public lodging-house where transient guests are lodged for pay. The term "transient guest" within the meaning of this article shall mean one who puts up for less than one week at a time at such hotel. The term "restaurant" as used in this article shall include lunch counters, cafes and all other establishments whatsoever where lunches, meals or food in any form are prepared for and/or served to the public for immediate consumption. Nothing in this article shall be construed as affecting private boarding houses where the majority of the patrons receive boarding accommodations for periods of a week or longer at a time. (1921, c. 186, s. 1; 1935, c. 169; C. S. 2283(a).)

§ 72-10. Charges for rooms; posting.—Every transient hotel shall keep posted in a conspicuous place in the office a list of its charges for rooms, with or without meals, in accordance with the plan or plans on which the hotel is operated, giving the exact transient rate, and shall also keep posted in each room the rate for that room, with or without meals, in accordance with its plan as stated above, giving the transient rate per day and week, and the rate for each person in the room. (1921, c. 186, s. 2; C. S. 2283(b).)

§ 72-11. Water-closets, bathrooms, and washbowls.—In all cities, towns, or villages where a system of water-works and sewerage is maintained for public use, every hotel therein accessible to water main and sewer main shall be equipped with suitable water-closets for the accommodation of its guests, which water-closets shall be connected and tapped by proper plumbing with such water and sewerage systems, and there shall be some adequate means of flushing said water-closets with the water in such manner as to prevent sewer gas from arising therefrom. The water-closets and bathrooms must be sufficiently lighted to permit the reading of ordinary newspaper type (18) inches from the normal eye. The washbowls of the main wash-room of such hotel must be connected and tapped and equipped in similar manner, both as to method and time; all such equipment to be paid for by the owner. (1921, c. 186, s. 3; C. S. 2283(c).)

§ 72-12. Receptacles holding water screened. "Standing water" defined.—The proprietor of every hotel and restaurant shall keep all cisterns, tanks, and other receptacles containing standing water screened or otherwise so covered as to prevent the entrance of flies, mosquitoes, and other disease-carrying insects. The term "standing water" as used in this article shall mean water that remains for ten days or more in a cistern, tank, or other receptacle. (1921, c. 186, s. 4; C. S. 2283(d).)

§ 72-13. Water to be analyzed. Discontinuance of use.—A sample of water used in every hotel and restaurant, except in cases where the water is derived from some public water supply, shall be sent by the proprietor to the state laboratory of hygiene for analysis twice each year, with a certificate that it is the water used in such hotel or restaurant, and if the sample is found by said laboratory to be unfit for the use that is made of the water in the hotel or restaurant, the further use of such water shall be discontinued until permission is granted by the state board of health to resume the use of such water. (1921, c. 186, s. 5; C. S. 2283(e).)

§ 72-14. Door and window screens. Mosquito bar for beds. Fly paper and fly traps.—The proprietor or keeper of every hotel or restaurant shall keep screened the doors, windows, and all openings of the kitchen and dining-room with suitable mesh-wire gauze from the first of April to the first of December. Every hotel shall have

all bedroom windows screened, or else provide each bed with a mosquito bar for the use of its patrons for protection against flies, mosquitoes and other insects, and it shall be the duty of the proprietor or keeper of every hotel and restaurant to use such other means, as fly-paper, fly-traps, etc., as may be necessary to keep the restaurant, kitchen, and dining-room reasonably free from flies. (1921, c. 186, s. 6; C. S. 2283(f).)

§ 72-15. Minimum floor and air space. Beds.—In every sleeping room the minimum floor area shall be sixty (60) square feet per bed, and under no circumstances shall there be provided less than five hundred (500) cubic feet of air space per bed. There shall always be space in each room, and the arrangement of each room shall be such that there may be a space of two feet between any beds in the room. All beds shall be so arranged that the air shall circulate freely under each. In no hotel shall beds or bunks in the same room or apartment be placed one above another: Provided, that this section shall not apply in cases of emergency. (1921, c. 186, s. 7; C. S. 2283(g).)

§ 72-16. Lighting of rooms. Window space. Blinds or shades.—Each room in every hotel hereafter constructed shall be well lighted, with outside window space not less than one-eighth (1/8) the floor space. Each window in every hotel now existing or hereafter constructed shall be provided with either blinds having hinges and shutters or slats freely movable and in good working order, or with a movable shade which effectively excludes the light when drawn. (1921, c. 186, s. 8; C. S. 2283(h).)

§ 72-17. Pillow-slips and sheets; clean sets.—All hotels shall hereafter provide each bed, bunk, cot, or other sleeping place for the use of guests with pillow-slips, under and top sheets to be of sufficient width to cover the mattress thereof, and to be at least ninety (90) inches long. All pillow-slips and sheets, after being used by one guest, must be washed and ironed before used by another guest, a clean set being furnished each succeeding guest. (1921, c. 186, s. 9; C. S. 2283(i).)

§ 72-18. Beds and furnishings to be kept clean and free from vermin.—All beds, bedclothing, mattresses, and pillows shall always be kept clean and free from vermin. (1921, c. 186, s. 10; C. S. 2283(j).)

§ 72-19. Rooms to be disinfected and aired.—Every room, after being occupied by any one known or suspected to be suffering from tuberculosis, diphtheria, or any contagious disease, must be thoroughly disinfected as prescribed by the state board of health before further occupancy; and every room, after being occupied by any one known or suspected to be suffering from measles or whooping-cough, must be thoroughly aired for twenty-four (24) hours before subsequent occupancy. (1921, c. 186, s. 11; C. S. 2283(k).)

§ 72-20. Towels.—All hotels shall furnish each guest with a clean towel; and the use of the roller or other towels used in common is prohibited in all hotels and restaurants. (1921, c. 186, s. 12; C. S. 2283(l).)

§ 72-21. Refrigerators, ice boxes, and cold storage rooms. Kitchens.—The refrigerator, ice boxes, and cold-storage rooms of all hotels or restaurants must be kept free from foul and unpleasant odors, mold, and slime. The kitchen must be well lighted and ventilated, the floor clean, and the side walls and ceilings free from cobwebs and accumulated dirt. (1921, c. 186, s. 13; C. S. 2283(m).)

§ 72-22. Tableware and kitchen utensils. Reservice of food. — All dishes, tableware, and kitchen utensils must be thoroughly washed and rinsed with clean water after using; food served to customers when part of same has been used must not again be served to other customers. (1921, c. 186, s. 14; C. S. 2283(n).)

§ 72-23. Protection and removal of garbage.—All garbage must be kept covered and protected from flies, in barrels or galvanized iron cans, and removed at least twice a week. (1921, c. 186, s. 15; C. S. 2283(o).)

§ 72-24. Requirements for lodging-houses. — Every lodging-house accepting transient guests shall at all times be kept free from filth and rubbish in or on the premises belonging to or connected with the same. All water-closets, washbasins, baths, windows, fixtures, fittings, and painted surface shall at all times be kept clean and in good repair. The floors, walls, and ceilings of all rooms, passages, and stairways must at all times be clean and in good repair. (1921, c. 186, s. 16; C. S. 2283(p).)

§ 72-25. Rules prescribed by state board of health. Inspections. Rating. — For the purpose of carrying out the provisions of this article the state board of health is authorized and required to prepare reasonable rules and regulations, and an official score card for showing numerically the rating of hotels and restaurants that come within the meaning of this article. The state board of health, through its officers or agents, shall inspect all hotels and restaurants coming within the meaning of this article at least once a year, and give to every hotel and restaurant inspected a rating in accordance with the aforementioned score card. It shall be the duty of the inspector to leave with the management of said hotel or restaurant at the time of inspection a copy of his report. The said board shall publish at various times the ratings given to the various hotels and restaurants that have been inspected by its officers or agents, and shall furnish to each hotel and restaurant a certificate with the rating given to the hotel stated thereon. The proprietor or manager of the hotel or restaurant, upon the receipt of the aforesaid certificate, shall post it in a conspicuous place where it may be easily observed by guests, and shall remove and destroy the said certificate one year after the date written thereon, or sooner when called upon to do so by an officer or agent of the state board of health. (1921, c. 186, s. 17; C. S. 2283(q).)

§ 72-26. Annual inspections. Certificates.—No inspection of any hotel or restaurant shall be required oftener than once a year, unless there is a change of proprietors, or unless it shall appear to the state board of health that additional inspections are advisable, or upon complaint

from two or more persons setting forth facts indicating that such hotel or restaurant is in an unsanitary condition and not maintained in accordance with the requirements of this article: Provided, however, upon request on the part of the management or proprietor a reinspection may be had within a period of thirty (30) days. When more than one inspection of a hotel or restaurant is made within any one year, the state board of health shall issue a new certificate of inspection, and upon the receipt of the new certificate the proprietor or manager of the hotel or restaurant shall remove and destroy the certificate previously issued and replace it with the later certificate. (1921, c. 186, s. 18; C. S. 2283(r).)

§ 72-27. Authority of inspectors. Privacy of guests.—The inspectors, officers, or agents of the state board of health are empowered and authorized to enter any hotel or restaurant at all reasonable hours to make such inspection; and it is the duty of every person in the management or control of such hotel or restaurant to afford free access to every part of the hotel or restaurant and render all aid and assistance necessary to enable the inspector to make a full, thorough, and complete examination thereof; but no inspector shall violate the privacy of any guest without his or her consent. (1921, c. 186, s. 19; C. S. 2283(s).)

§ 72-28. Acts and omissions constituting misdemeanor; punishment.—Any owner, manager, agent, or person in charge of a hotel or restaurant, or any other person who shall willfully obstruct, hinder, or interfere with any officer or agent of the state board of health in the proper discharge of his duty, or who shall willfully fail or neglect to comply with any of the provisions of this article, or who shall maintain or operate a hotel or restaurant which, under the requirements and provisions of this article, shall be found to have a rating of less than 70 shall be guilty of a misdemeanor, and upon conviction fined not less than $10 nor more than $50 for each offense, and each day that he shall fail to comply with this article or to maintain his hotel or restaurant with a rating of more than 70 points shall be a separate offense. (1921, c. 186, s. 20; C. S. 2283(t).)

§ 72-29. Inspector to swear out warrants.—It shall be the duty of the inspector, in case he shall have knowledge of any violation of this article, to swear out a warrant against the person offending. (1921, c. 186, s. 21; C. S. 2283(u).)

Art. 3. Immoral Practices of Guests of Hotels and Lodging-houses.

§ 72-30. Registration to be in true name; addresses; peace officers.—No person shall write, or cause to be written, or if in charge of a register knowingly permit to be written, in any register in any lodging-house or hotel any other or different name or designation than the true name or names in ordinary use of the person registering or causing himself to be registered therein. Any person occupying any room or rooms in any lodging-house or hotel shall register or cause himself to be registered where registration is required by such lodging-house or hotel. Any person registering or causing himself to be registered at any lodging-house or hotel, shall write, or cause to be written, in the register of such lodging-house or hotel the correct address of the person registering, or causing himself to be registered. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred dollars ($200). This section shall not apply to any peace officer of this state who shall privately give his true name to the clerk or proprietor of such hotel or lodging-house. (1921, c. 111; C. S. 2283(v).)

Art. 4. Licensing and Regulation of Tourist Camps and Homes, Cabin Camps, Road Houses and Public Dance Halls.

§ 72-31. License required.—Every person, firm or corporation engaged in the business of operating outside the corporate limits of any city or town in this state a tourist camp, cabin camp, tourist home, road house, public dance hall, or any other similar establishment by whatever name called, where travelers, transient guests, or other persons are or may be lodged for pay or compensation, shall, before engaging in such business, apply for and obtain from the board of county commissioners of the county in which such business is to be carried on a license for the privilege of engaging in such business and shall pay for such license an annual tax in the amount of two dollars ($2.00). (1939, c. 188, s. 1.)

§ 72-32. Exemptions.—This article shall not apply to hotels and inns within the definition of § 72-9, nor to persons who incidental to their principal business or occupation accept from time to time seasonal boarders in their private residences: Provided, however, this shall not be construed to exempt from the provisions of this article residences maintained in connection with a store or other establishment operated for the sale of articles of merchandise. (1939, c. 188, s. 2.)

§ 72-33. Application to county commissioners for license. — Every person, firm or corporation making application for license to engage in the business described in § 72-31 shall make application to the board of county commissioners in the county in which such business is to be engaged in and the application shall contain:

(a) The name and residence of the applicant and the length of the residence within the state of North Carolina.

(b) The address and place for which such license is desired.

(c) The name of the owner of the premises upon which the business licensed is to be carried on.

(d) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction.

(e) That such applicant is of good moral character and has never been convicted of a felony involving moral turpitude, or adjudged guilty of violating either the state or federal prohibition laws within the last two years prior to the filing of the application. (1939, c. 188, s. 3.)

§ 72-34. Verification of application; disqualifications for license.—The application prescribed in § 72-33 must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant, or otherwise, that such applicant has been convicted of a felony involving moral turpitude or adjudged guilty of violating either state or federal prohibition laws within the last two years prior to the filing of the application, or within two years from the completion of sentence thereon, the license herein provided for shall not be granted, unless it shall appear to the satisfaction of the board of county commissioners that the licensed premises will be operated in a lawful manner; in which case they may, in their discretion, issue such license. Before any such license shall be issued, the governing body of the county shall be satisfied that the statements required by § 72-33 are true. Every establishment named in this article shall be subject to inspection by the state board of health and the county health authorities in the county in which such business is carried on. (1939, c. 188, s. 4.)

§ 72-35. List of employees furnished to sheriff upon request.—At any time upon request of the sheriff of the county in which such business is carried on, the operator of every establishment named in this article shall furnish said sheriff with a list of all employees who are employed by him in connection with said business; and, in every instance when such an operator goes out of business or there is a change of ownership or management thereof, such operator shall immediately file with the clerk of the board of county commissioners of the county in which such business is carried on a notice to this effect, giving the name and address of the purchaser or the new owner or manager thereof. (1939, c. 188, s. 5.)

§ 72-36. Registration of guest.—Any person or persons occupying any room or rooms in a tourist camp, cabin camp, tourist home, road house, or any other similar establishment by whatever name called, shall register or cause himself to be registered before occupying the same, and if traveling by motor vehicle shall register at the same time the automobile license tag of such motor vehicle and the name of the manufacturer of such motor vehicle; and no person shall write or cause to be written, or, if in charge of a register, knowingly permit to be written in any register in any of the establishments herein named, any other or different name or designation than the true name or names in ordinary use of the person registering or causing himself to be registered therein, or the true name of the manufacturer of such motor vehicle or the correct license plate and number thereof. Every person to whom a license is issued under the provisions of this article shall provide a permanent register for the purposes set forth herein. (1939, c. 188, s. 6.)

§ 72-37. False registration and use for immoral purposes made misdemeanor.—Any man or woman found occupying the same room in any establishment within the meaning of this article for any immoral purpose, or any man or woman falsely registering as or otherwise representing themselves to be husband and wife in any such establishment shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 7.)

§ 72-38. Operator knowingly permitting violations, guilty of misdemeanor.—Any person being the operator or keeper of any establishment within the meaning of this article who shall knowingly permit any man or woman to occupy any room in any establishment within the meaning of this article for any immoral purposes, or who shall knowingly permit any man or woman to falsely register as husband and wife in such an establishment, shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 8.)

§ 72-39. Inducing female to enter tourist camps, etc., for immoral purpose made misdemeanor. — Any person who shall knowingly persuade, induce or entice, or cause to be persuaded, induced or enticed, any woman or girl to enter any establishment within the meaning of this article for the purpose of prostitution or debauchery, or for any other immoral purpose, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 9.)

§ 72-40. Revocation of operator's license.—In addition to the penalty herein prescribed for a violation of this article, the court, before whom such person is tried and where a conviction is had, shall have the power to revoke the license to operate the establishment or establishments licensed under this article, and whenever any person, firm or corporation has been so convicted, the court, if it shall appear that said premises were being operated in violation of the law with the knowledge, consent or approval of the owner thereof, shall have the authority to prohibit the issuance of any similar license for said premises to any person for a term of six months after the revocation of said license. (1939, c. 188, s. 10.)

§ 72-41. Tax imposed declared additional.—The tax imposed by this article shall be in addition to all other licenses and taxes levied by law upon the business taxed hereunder. (1939, c. 188, s. 11.)

§ 72-42. Time of payment of license; expiration date.—Licenses issued under this article shall be due and payable in advance annually on or before the first day of June of each year, or at the date of engaging in such business, and shall expire on the thirty-first day of May of each year, and shall be for the full amount of the tax prescribed, regardless of the date such business is begun. Upon the expiration of the license herein required, it shall be unlawful for any person, firm or corporation to continue such business until a new license is applied for and obtained for the privilege of engaging in such business, as in this article required. (1939, c. 188, s. 12.)

§ 72-43. Operation without license made misdemeanor.—It shall be unlawful for any person, firm or corporation to engage in such business without first obtaining a license therefor.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 13.)

§ 72-44. Violations of article made misdemeanor.—Unless another penalty is in this article or by the laws of this State provided, any person violating any of the provision of this article shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1939, c. 188, s. 14.)

§ 72-45. Application of article to municipalities. — The governing body of any city or town shall have the authority to make any or all of the provisions of this article applicable to any business as defined herein which may be located in the limits of any such city or town. (1939, c. 188, s. 15.)

Local Modification. — Bladen, Caswell, Graham, Hyde, Moore: 1939, c. 188, s. 18; Guilford: 1939, c. 188, s. 16.

Art. 5. Sanitation of Establishments Providing Food and Lodging.

§ 72-46. State board of health to regulate sanitary conditions of hotels, cafes, etc.—For the better protection of the public health, the state board of health is hereby authorized, empowered, and directed to prepare and enforce rules and regulations governing the sanitation of hotels, cafes, restaurants, tourist homes, tourist camps, summer camps, lunch and drink stands, sandwich manufacturing establishments, and all other establishments where food is prepared, handled, and served to the public at wholesale or retail for pay, or where transient guests are served food or provided with lodging for pay. The state board of health is also authorized, empowered, and directed to prepare a system of grading all such places, and no such establishment shall operate which receives a grade less than C. (1941, c. 309, s. 1.)

§ 72-47. Inspections; report and grade card. —The officers, sanitarians or agents of the State board of health are hereby empowered and authorized to enter any hotel, cafe, restaurant, tourist home, tourist camp, summer camp, lunch and drink stand, sandwich manufacturing establishment, and all other establishments where food is prepared, handled or served to the public at wholesale or retail for pay, or where transient guests are served food or provided lodging for pay, for the purpose of making inspections, and it is hereby made the duty of every person responsible for the management or control of such hotel, cafe, restaurant, tourist home, tourist camp, summer camp, lunch and drink stand, sandwich manufacturing establishment, or other establishment to afford free access to every part of such establishment, and to render all aid and assistance necessary to enable the sanitarians or agents of the state board of health to make a full, thorough, and complete examination thereof, but the privacy of no person shall be violated without his or her consent. It shall be the duty of the sanitarian or agent of the state board of health to leave with the management, or person in charge at the time of the inspection, a copy of his inspection report and a grade card showing the grade of such place, and it shall be the duty of the management, or person in charge, to post said card in a conspicuous place where it may be readily observed by the public. Such grade card shall not be removed by anyone, except an authorized sanitarian or agent of the state board of health, or upon his instruction. (1941, c. 309, s. 2.)

§ 72-48. Violation of article a misdemeanor. —Any owner, manager, agent, or person in charge of a hotel, cafe, restaurant, tourist home, tourist camp, summer camp, lunch and drink stand, sandwich manufacturing establishment, or any other establishment where food is prepared, handled, or served to the public at wholesale or retail for pay, or where transient guests are served food or provided with lodging for pay, or any other person who shall willfully obstruct, hinder, or interfere with a sanitarian, agent, or officer of the state board of health in the proper discharge of his duty, or who shall be found guilty of violating any of the other provisions of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten ($10.00) dollars, nor more than fifty ($50.00) dollars, or imprisoned for not more than thirty days, and each day that he shall fail to comply with this article, or operate a place with a rating of less than a grade of C shall be a separate offense. (1941, c. 309, s. 3.)

Chapter 73. Mills.

Art. 1. Public Mills.

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Art. 1. Public Mills.

§ 73-1. Public mills defined. — Every water grist-mill, steam mill, or wind-mill, that grinds for toll, is a public mill. (Rev., s. 2119; Code, s. 1846; R. C., c. 71, s. 1; 1777, c. 122, s. 1; C. S. 2531.)

§ 73-2. Miller to grind according to turn; tolls regulated.—All millers of public mills shall grind according to turn, and shall well and sufficiently grind the grain brought to their mills, if the water will permit, and shall take no more toll for grinding than one-eighth part of the indian corn and wheat, and one-fourteenth part for chopping grain of any kind; and every miller and keeper of a mill making default therein shall, for each offense, forfeit and pay five dollars to the party injured: Provided, that the owner may grind his own grain at any time. (Rev., s. 2120; Code, s. 1847; R. C., c. 71, s. 6; 1777, c. 122, s. 10; 1793, c. 402; 1905, c. 694; 1907, c. 367; C. S. 2532.)

Local Modification.—Bertie, Hertford, Hyde: 1933, c. 150; Chowan: 1937, c. 4; Cleveland: 1933, c. 158; Franklin, Northampton: 1929, c. 129; Lenoir: 1929, c. 139; Pamlico, Robeson: 1929, c. 311; Pender: 1933, c. 298; Sampson: 1937, c. 164.

§ 73-3. Measures to be kept; tolls by weight or measure.—All millers shall keep in their mills the following measures, namely, a half-bushel and peck of full measure, and also proper toll-dishes for each measure; but the toll allowed by law may be taken by weight or measure at the option of the miller and customer. (Rev., s. 2121; Code, s. 1848; 1885, c. 202; R. C., c. 71, s. 7; 1777, c. 122, s. 11; C. S. 2533.)

§ 73-4. Keeping false toll-dishes misdemeanor. —If any owner, by himself or servant, keeping any mill, shall keep any false toll-dishes, he shall be guilty of a misdemeanor. (Rev., s. 3679; Code, s. 1848; R. C., c. 71, s. 7; 1777, c. 122, s. 11; C. S. 2534.)

Art. 2. Condemnation for Mill by Owner of One Bank of Stream.

§ 73-5. Special proceedings; parties; summons. —Any person wishing to build a water mill, who has land on only one side of a stream, shall issue a summons returnable to the superior court of the county in which the land sought to be condemned, or some part of it, lies, against the persons in possession and the owners of the land on the opposite side of the stream, and against such others as have an interest in the controversy, and the procedure shall be as is provided in other special proceedings, except so far as the same may be modified by this chapter. (Rev., s. 2122; Code, s. 1849; 1868-9, c. 158, s. 1; C. S. 2535.)

§ 73-6. Commissioners to be appointed.—If no just cause is shown against the building of such mill, the court shall appoint three freeholders, one of whom shall be chosen by the plaintiff, another by the defendants, and the third by the court, or if the plaintiff or defendants refuse or fail, or unreasonably delay to name a commissioner, the court shall name one in lieu of such delinquent party. These commissioners may be changed from time to time by permission of the court for just cause shown. (Rev., s. 2123; Code, s. 1850; 1868-9, c. 158, s. 2; C. S. 2536.)

Art. 4. Recovery of Damages for Erection of Mill.

Sec.
73-25. Action in superior court; procedure.
73-26. When dams, etc., abated as nuisances.
73-27. Judgment for annual sum as damages.
73-28. Final judgment; costs and execution.

§ 73-7. Meeting to be appointed and commissioners notified; witnesses examined.—The third commissioner shall cause the others to be notified of the time and place of meeting, and shall preside at their meetings. They may, if necessary, summon and examine witnesses, who shall be sworn by the presiding commissioner. Any commissioner named by or for either of the parties who, without just cause, fails to attend any meeting notified by the president, shall forfeit and pay to the opposite party fifty dollars; and if the president, in like manner, unreasonably delays to notify the other commissioners of a meeting, or fails to attend one that is appointed, he shall forfeit and pay to the plaintiff fifty dollars, and to the defendant a like sum. (Rev., s. 2124; Code, s. 1851; 1868-9, c. 158, s. 3; C. S. 2537.)

§ 73-8. Oath and duty of commissioners.—The commissioners shall be sworn by some officer qualified to administer an oath to act impartially between the parties, and to perform the duties herein imposed on them honestly and to the best of their ability. They shall view the premises where the mill is proposed to be built, and shall lay off and value a portion of the land of the plaintiff, not to exceed one acre in area, and an equal area of land of the defendants opposite thereto, and report their proceedings to the court within a reasonable time, not exceeding sixty days. (Rev., s. 2125; Code, s. 1852; 1868-9, c. 158, s. 4; C. S. 2538.)

§ 73-9. Contents of commissioners' report.— The report of the commissioners shall set forth:

1. The location, quantities and value of the several areas laid off by them.
2. Whether either of them includes houses, gardens, orchards or other immediate conveniences.
3. Whether the proposed mill will overflow another mill or create a nuisance in the neighborhood.
4. Any other matter upon which they have been directed by the court to report, or which they may think necessary to the doing of full justice between the parties. (Rev., s. 2126; Code, s. 1853; 1868-9, c. 158, s. 5; C. S. 2539.)

§ 73-10. When building not to be allowed.—If the area laid off on the land of either party take away houses, gardens, orchards, or other immediate conveniences; or if the mill proposed will overflow another mill, or will create a nuisance in the neighborhood, the court shall not allow the pro-

posed mill to be built. (Rev., s. 2127; Code, s. 1854; 1868-9, c. 158, s. 6; C. S. 2540.)

§ 73-11. Power of court on return of report.— If the report is in favor of building the proposed mill, and is confirmed, then the court may, in its discretion, allow either the plaintiff or defendant to erect such mill at the place proposed, and shall order the costs, and the value of the opposite area, to be paid by the party to whom such leave is granted; and upon such payment, the party to whom such leave is granted shall be vested with title in fee to the opposite area. Such payment may be made into court for the use of the parties entitled thereto. (Rev., s. 2128; Code, s. 1855; 1868-9, c. 158, s. 7; C. S. 2541.)

§ 73-12. Time for beginning and building mill; to be kept up.— The person to whom leave is granted shall, within one year, begin to build such water mill, and shall finish the same within three years; and thereafter keep it up for the use and ease of its customers, or such as shall be customers to it; otherwise, the said land shall return to the person from whom it was taken, or to such other person as shall have his right, unless the time for finishing the mill, for reasons approved by the court, be enlarged. (Rev., s. 2129; Code, s. 1856; 1868-9, c. 158, s. 8; C. S. 2542.)

§ 73-13. Rebuilding mill after destruction.—If a water mill belonging to a minor, a person of unsound mind, or imprisoned, falls, burns, or is otherwise destroyed, such person and his heirs shall have three years to rebuild and repair the same, and any person under any disability aforesaid shall have three years from the removal of the disability. (Rev., s. 2130; Code, s. 1857; 1903, c. 74, ss. 1, 2; 1868-9, c. 158, s. 9; C. S. 2543.)

Art. 3. Condemnation for Races, Waterways, etc., by Owner of Mill or Millsite.

§ 73-14. Special proceedings; summons.—Any person who has land on one or both sides of a stream and wishes to build a water mill, or has a water-mill already built and may find it necessary for the better operation of said mill or the building of the said mill to convey water either to or from his mill by ditch, waterway, drain, mill-race or tail-race, or in any other manner, over the lands of any other person, or erect a dam to pond said water over the lands of any other person, or raise any dam already built, may make application by petition in writing to the clerk of the superior court of the county in which the said lands to be affected, or a greater part thereof, are situated, for the right to so convey the said water or pond the same by the erection of a dam or the raising of any dam already built; and the procedure shall be as in other special proceedings. (Rev., s. 2131; 1905, c. 534, s. 1a, k; C. S. 2544.)

§ 73-15. Contents of petition. — The petition shall specify the lands to be affected, the name of the owner of said lands, and the character of the ditch, race, waterway or drain or pond intended to be made, and said owner or owners shall be made parties defendant. The petition shall state the distance desired to be condemned on each side of the ditch, waterway or drain to be constructed or erected, and not more than thirty feet from each bank can be condemned. (Rev., s. 2132; 1905, c. 534, s. 1b; C. S. 2545.)

§ 73-16. Commissioners to be appointed.—Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the said lands by the contemplated work, and shall issue a notice to them to meet upon the premises on a day specified, not to exceed ten days from the date of said notice. (Rev., s. 2133; 1905, c. 534, s. 1c; C. S. 2546.)

§ 73-17. Oath and duty of commissioners.—The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by the said work and assess the damage thereto and make report thereof under their hands and seals to the clerk from whom the notice issued, who shall have power to confirm the same. (Rev., s. 2134; 1905, c. 534, s. 1d; C. S. 2547.)

§ 73-18. Assessment of damages.—In determining the amount of such compensation to be paid to the owners of the said lands and assessing the damages thereto by reason of the erection or construction of such waterway, ditch, drain or dam, they shall make an allowance or deduction on account of any benefits which the parties in interest may derive from the construction or erection of such waterway, ditch, drain or dam, and shall ascertain the damages, as near as may be, to the extent it may damage each acre of land so appropriated or occupied by the said mill-owner. The damage assessed by the appraisers under this article shall include all damages that the owners shall thereafter suffer or be entitled to by reason of the construction of the said waterways, races, ditches or dams. (Rev., s. 2135; 1905, c. 534, s. 1e, m; C. S. 2548.)

§ 73-19. When commissioners' report not to be affirmed.—If the area laid off on the lands of either party take away houses, gardens, orchards or immediate conveniences, or if the mill proposed or erected will overflow another mill of pond water within two hundred feet of another mill, or will overflow or pond water within two hundred feet of the millsite or premises of a person who has the right under this chapter, or by the authority of law, to rebuild a mill after its destruction, or if the mill create a nuisance in the neighborhood, the court shall not allow the report of the appraisers to be affirmed. (Rev., s. 2136; 1905, c. 534, s. 1g; C. S. 2549.)

§ 73-20. When petitioner may enter on lands.— After the return of the appraisers and the confirmation thereof the petitioner shall have full right and power to enter upon said lands and make such ditches, waterways, drains, races or other necessary works and construct such dams: Provided, he has first paid or tendered the damage assessed as above to the owner of such lands or his known or recognized agent in this state. If the owner is a nonresident and has no known agent in this state, the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner: Provided further, that the mill-

owner shall not be compelled to pay said damages so assessed unless he shall enter upon such lands and make ditches, drains or other works or erect such dam. (Rev., s. 2137; 1905, c. 534, s. 11; C. S. 2550.)

§ 73-21. Owner of mills and millsites protected.—No other person shall have the right to erect or maintain any dam, ditch, waterway, drain or race that will overflow or pond water within two hundred feet of the millsite or premises of any person or body corporate who shall have erected a mill, dam, ditch, drain or race under the provisions of this chapter, or of any millsite owned by any person who has the right under this chapter, or by the authority of law, to rebuild a mill after its destruction. When any person violates the provisions of this section the owner of said mill or millsite shall have a right of action against said person to tear down said dam or other works so built or erected to the extent herein forbidden and to abate the same as prescribed by law for the abatement of nuisances. (Rev., s. 2138; 1905, c. 534, s. 1h; C. S. 2551.)

§ 73-22. Report to be registered.—The petitioner, or any other person interested, may have the said assessment registered upon the certificate of the clerk, and shall pay the register the usual legal fees for registering such instruments in his office. (Rev., s. 2139; 1905, c. 534, s. 1i; C. S. 2552.)

§ 73-23. Fees of appraisers.—Each appraiser shall be entitled to a fee of one dollar for each day actually employed in making said assessment, to be paid by the petitioner. (Rev., s. 2140; 1905, c. 534, s. 1j; C. S. 2553.)

§ 73-24. Obstructing mill races or dams a misdemeanor.—Any person who shall obstruct any drain, ditch or dam constructed under this article shall be guilty of a misdemeanor. (Rev., 3381; 1905, c. 534, s. 11; C. S. 2554.)

Art. 4. Recovery of Damages for Erection of Mill.

§ 73-25. Action in superior court; procedure.—Any person conceiving himself injured by the erection of any grist-mill, or mill for other useful purposes, may issue his summons returnable before the judge of the superior court of the county where the damaged land or any part thereof lies, against the persons authorized to be made parties defendant. In his complaint he shall set forth in what respect and to what extent he is injured, together with such other matters as may be necessary to entitle him to the relief demanded. The court shall then proceed to hear and determine all the questions of law and issues of fact arising on the pleadings as in other civil actions. (Rev., s. 2141; Code, s. 1858; 1876-7, c. 197, s. 1; C. S. 2555.)

§ 73-26. When dams, etc., abated as nuisances.—When damages are recovered in final judgment in such civil actions, and execution issues and is returned unsatisfied, and the plaintiff is not able to collect the same either because of the insolvency of the defendant or by reason of the exemptions allowed to defendant, the judge shall, on the facts being made to appear before him by affidavit or other evidence, order that the dam, or portion of the dam, or other cause creating the injury, shall be abated as a nuisance, and he shall have power to make all necessary orders to effect this purpose. (Rev., s. 2142; Code, s. 1859; 1876-7, c. 197, s. 3; C. S. 2556.)

§ 73-27. Judgment for annual sum as damages.—A judgment giving to the plaintiff an annual sum by way of damages shall be binding between the parties for five years from the issuing of the summons, if the mill is kept up during that time, unless the damages are increased by raising the water or otherwise.

In all cases where the final judgment of the court assesses the yearly damage of the plaintiff as high as twenty dollars, nothing contained in this chapter shall be construed to prevent the plaintiff, his heirs or assigns, from suing as heretofore, and in such case the final judgment aforesaid shall be binding only for the year's damage preceding the issuing of the summons. (Rev., ss. 2143, 2144; Code, ss. 1860, 1861; 1868-9, c. 158, ss. 12, 14; C. S. 2557.)

§ 73-28. Final judgment; costs and execution.—If the final judgment of the court is that the plaintiff has sustained no damage, he shall pay the costs of his proceeding; but if the final judgment is in favor of the plaintiff, he shall have execution against the defendant for one year's damage, preceding the issuing of the summons, and for all costs: Provided, that if the damage adjudged does not amount to five dollars, the plaintiff shall recover no more costs than damages. And if the defendant does not annually pay the plaintiff, his heirs or assigns, before it falls due, the sum adjudged as the damages for that year, the plaintiff may sue out execution for the amount of the last year's damage, or any part thereof which may remain unpaid. (Rev., s. 2145; Code, s. 1862; 1868-9, c. 158, s. 15; C. S. 2558.)

Chapter 74. Mines and Quarries.

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Art. 1. Operation of Mines and Quarries.

§ 74-1. Lessor not held partner of lessee.—No lessor of property, real or personal, for mining purposes, although the lessor may receive an uncertain sum of the proceeds or net profits, or any other consideration, which, though uncertain at first, may afterwards become certain, shall be held as a partner of the lessee; nor shall any of the legal or equitable relations or liabilities of copartners exist between them, unless it is so stipulated in the contract between the lessor and lessee. (Rev., s. 4930; Code, s. 3292; R. C., c. 72; 1830, c. 46; C. S. 6896.)

§ 74-2. Minors under sixteen not to be employed.—No minor under sixteen years of age shall be allowed to work in any mine, and in all cases of minors applying for work the agent of such mine shall see that the provisions of this section are not violated; and the inspector may, when doubt exists as to the age of any person found working in any mine, examine under oath such person and his parents, or other witnesses, as to his age. (Rev., s. 4931; 1897, c. 251, s. 7; 1919, c. 100, s. 6; C. S. 6897.)

§ 74-3. Operator to furnish timber. — The owner, agent, or operator of every coal mine shall keep a supply of timber constantly on hand, and shall deliver the same to the working place of the miner, and no miner shall be held responsible for accident which may occur in the mine where the provisions of this section have not been complied with by the owner, agent, or operator thereof, resulting directly or indirectly from the failure to deliver such timber. (Rev., s. 4932; 1897, c. 251, s. 8; C. S. 6898.)

§ 74-4. Unused mines to be fenced.—All underground entrances to any place not in actual course of working or extension shall be properly fenced across the whole width of such entrance so as to prevent persons from inadvertently entering the same. (Rev., s. 4933; 1897, c. 251, s. 5; C. S. 6899.)

§ 74-5. Means of ingress and egress provided.—No owner or agent of any coal mine worked by shaft shall permit any person to work therein unless there are, to every seam of coal worked in such mine, at least two separate outlets, separated by natural strata of not less than one hundred feet in breadth, by which shafts or outlets distinct means of ingress and egress are always available to the persons employed in the mine; but it is not necessary for the two outlets to belong to the same mine if the persons employed therein have safe, ready, and available means of ingress or egress by not less than two openings. This section shall not apply to opening a new mine while being worked for the purpose of making communications between the two outlets, so long as not more than twenty persons are employed at one time in such mine; neither shall it apply to any mine or part of a mine in which the second outlet has been rendered unavailable by reason of the final robbing of pillars previous to abandonment, as long as not more than twenty persons are employed therein at any one time. The cage or cages and other means of egress shall at all times be available for the persons employed when there is no second outlet. The escapement shafts shall be fitted with safe and available appliances, which shall always be kept in a safe condition, by which the persons employed in the mine may readily escape in case an accident occurs; and in no case shall an air shaft with a ventilating furnace at the bottom be construed to be an escapement shaft within the meaning of this section. To all other coal mines, whether slopes or drifts, two such openings or outlets must be provided within twelve months after shipments of coal have commenced from such mine; and in case such outlets are not provided as herein stipulated, it shall not be lawful for the agent or owner of such slope or drift to permit more than ten persons to work therein at any one time. (Rev., s. 4934; 1897, c. 251, s. 4; C. S. 6900.)

§ 74-6. Hoisting engines; how operated.—No owner or agent of any mine operated by a shaft or slope shall place in charge of any engine used for lowering into or hoisting out of mines persons employed therein any but experienced, competent, and sober engineers, and no engineers in charge of such engine shall allow any persons except as may be deputed for such purposes by the owner or agent to interfere with it or any part of the machinery, and no person shall interfere or in any way intimidate the engineer in the discharge of his duties, and in no case shall more than six men ride on any cage or car at one time, and no person shall ride upon a loaded cage or car in any shaft or slope. (Rev., s. 4935; 1897, c. 251, s. 6; 1911, c. 183; C. S. 6901.)

§ 74-7. Ventilation. — The owner or agent of any coal mine, whether shaft, slope, or drift, shall provide and maintain for every such mine an

amount of ventilation of not less than one hundred cubic feet per minute per person employed in such mine, which shall be circulated and distributed throughout the mine in such a manner as to dilute, render harmless and expel the poisonous and noxious gases from every working place in the mine. No working place shall be driven more than sixty feet in advance of a break-through or airway, and all break-throughs or airways, except those last made near the working places of the mine, shall be closed up by brattice trap-doors, or otherwise, so that the currents of air in circulation in the mine may spread to the interior of the mine when the persons employed in such mine are at work. All mines governed by this chapter shall be provided with artificial means of producing ventilation, such as forcing or suction fans, exhaust steam furnaces, or other contrivances of such capacity and power as to produce and maintain an abundant supply of air, and all mines generating fire damp shall be kept free from standing gas. (Rev., s. 4936; 1897, c. 251, s. 5; C. S. 6902.)

§ 74-8. Daily examinations; safety lamps.—Every working place shall be examined every morning with a safety lamp by a competent person before any workmen are allowed to enter the mine. All safety lamps used in examining mines, or for working therein, shall be the property of the operator of the mine, and a competent person shall be appointed, who shall examine every safety lamp before it is taken into the workings for use, and ascertain it to be clean, safe, and securely locked, and safety lamps shall not be used until they have been so examined and found safe and clean and securely locked, unless permission be first given by the mine foreman to have the lamps used unlocked. No one except the duly authorized person shall have in his possession a key, or any other contrivance, for the purpose of unlocking any safety lamp in any mine where locked lamps are used. No matches or any other apparatus for striking lights shall be taken into any mine, or parts thereof, except under the direction of the mine foreman. (Rev., s. 4937; 1897, c. 251, ss. 5, 6; C. S. 6903.)

§ 74-9. Report of ventilation.—The mine foreman shall measure the ventilation at least once a week, at the inlet and outlet, and also at or near the face of all the entries, and the measurement of air so made shall be noted on blanks furnished by the inspector; and on the first day of each month the mine boss of each mine shall sign one of such blanks, properly filled with the actual measurement, and present the same to the inspector. (Rev., s. 4938; 1897, c. 251, s. 6; C. S. 6904.)

§ 74-10. Notice of opening or changing mines given.—The owner, agent, or manager of any mine shall give notice to the inspector in the following cases: 1. When any working is commenced for the purpose of opening a new shaft, slope, or mine, to which this chapter applies. 2. When any mine is abandoned, or the working thereof discontinued. 3. When the working of any mine is recommenced after an abandonment or discontinuance for a period exceeding three months. 4. When a squeeze or crush, or any other cause or change, may seem to affect the safety of persons employed in the mine, or when fire occurs. (Rev., s. 4939; 1897, c. 251, s. 7; C. S. 6905.)

§ 74-11. Notice of accidents given.—The owner, agent, or manager of every mine shall, within twenty-four hours next after any accident or explosion, whereby loss of life or personal injury may have been occasioned, send notice, in writing, by mail or otherwise, to the inspector, and shall specify in such notice the character and cause of the accident, and the name or names of the persons killed and injured, with the extent and nature of the injuries sustained. When any personal injury of which notice is required to be sent under this section results in the death of the person injured, notice in writing shall be sent to the inspector within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager; and when loss of life occurs in any mine by explosion, or accident, or results from personal injuries so received, the owner, agent, or manager of such mine shall notify the coroner of the county in which such mine is situated, and the coroner shall hold an inquest upon the body of the person whose death has been thus caused, and inquire carefully into the cause thereof, and return a copy of the finding of the jury and all the testimony to the inspector. (Rev., s. 4940; 1897, c. 251, s. 6; C. S. 6906.)

§ 74-12. Report to inspector.—The owner, lessee, or agent in charge of any mine or quarry, or who is engaged in mining or quarrying or producing any mineral whatsoever in this state, shall, on or before the thirtieth day of January in every year, send to the office of the inspector upon blanks to be furnished by him a correct return, specifying with respect to the preceding calendar year the quantity of coal, iron ore, fire-clay, limestone, or other mineral product of such mine or quarry, and the number of persons ordinarily employed in or about such mine or quarry below and above ground, distinguishing the persons and labor below ground and above ground: Provided, that nothing in this section shall require the owner, lessor or agent in charge of any quarry who does not employ more than ten persons to work in any one quarry at the same time, to file or make any of the reports required under this section. (Rev., s. 4941; 1897, c. 251, s. 3; 1939, c. 223, s. 2; C. S. 6907.)

§ 74-13. Liability for injuries.—For any injury to person or property occasioned by any wilful violation of this chapter, or any wilful failure to comply with its provisions, by any owner, agent, or manager of the mine, a right of action shall accrue to the party injured for any damage he may sustain thereby; and in any case of loss of life by reason of such wilful neglect or failure a right of action shall accrue to the personal representative of the deceased, as in other actions for wrongful death. (Rev., s. 4942; 1897, c. 251, s. 6; C. S. 6908.)

§ 74-14. Punishment for violation.—If any person shall knowingly violate any of the provisions of the law relating to mines or shall do anything whereby the life or health of persons or the security of any mine and machinery is endangered, or if any miner or other person employed in any mine governed by the statutes shall intentionally

or wilfully neglect or refuse to securely prop the roof of any working place under his control, or neglect or refuse to obey any orders given by the superintendent of a mine in relation to the security of a mine in the part thereof where he is at work and for fifteen feet back of his working place, or if any miner, workman, or other person shall knowingly injure any water-gauge, barometer, air-course, or brattice, or shall obstruct or throw open any airways, or shall handle or disturb any part of the machinery of the hoisting engine or signaling apparatus or wire connected therewith, or air pipes or fittings, or open a door of the mine and not have the same closed again, whereby danger is produced either to the mine or those that work therein, or shall enter any part of the mine against caution, or shall disobey any order given in pursuance of law, or shall do any wilful act whereby the lives and health of the persons working in the mine or the security of the mine or the machinery thereof is endangered, or if the person having charge of a mine whenever loss of life occurs by accident connected with the machinery of such mine or by explosion shall neglect or refuse to give notice thereof forthwith by mail or otherwise to the inspector and to the coroner of the county in which such mine is situated, or if any such coroner shall neglect or refuse to hold an inquest upon the body of the person whose death has been thus caused, and return a copy of his findings and a copy of all the testimony to the inspector, he shall be guilty of a misdemeanor, and upon conviction fined not more than fifty dollars or imprisoned in the county jail not more than thirty days, or both. (Rev., s. 3797; 1897, c. 251, s. 8; C. S. 6909.)

Art. 2. Inspection of Mines and Quarries.

§ 74-15. Commissioner of labor to inspect mines and quarries.—The Commissioner of Labor, acting through the director of the division of standards and inspection of the Department of Labor, shall perform the duties of mine inspector as provided in this chapter. (Rev., s. 4943; 1897, c. 251, s. 1; 1931, c. 312; C. S. 6910.)

§ 74-16. Inspector to examine mines.—It shall be the duty of the inspector to examine all the mines in the state as often as possible to see that all the provisions and requirements of this chapter are strictly observed and carried out; he shall particularly examine the works and machinery belonging to any mine, examine into the state and condition of the mines as to ventilation, circulation, and condition of air, drainage, and general security. (Rev., s. 4944; 1897, c. 251, s. 2; C. S. 6911.)

§ 74-17. May enter to make examinations. — For the purpose of making the inspection and examinations provided for in this chapter, the inspector shall have the right to enter any mine at all reasonable times, by night or by day, but in such manner as shall not unnecessarily obstruct the working of the mine; and the owner or agent of such mine is hereby required to furnish the means necessary for such entry and inspection; the inspection and examination herein provided for shall extend to fire-clay, iron ore, and other mines as well as coal mines. (Rev., s. 4945; 1897, c. 251, s. 2; C. S. 6912.)

§ 74-18. Death by accident investigated. — Upon receiving notice of any death resulting from accident it shall be the duty of the inspector to go himself, or send a representative, at once to the mine in which the death occurred and inquire into the cause of the same, and to make a written report fully setting forth the condition of that part of the mine where such death occurred and the cause which led to the same; which report shall be filed by the inspector in his office as a matter of record and for future reference. (Rev., s. 4946; 1897, c. 251, s. 6; C. S. 6913.)

§ 74-19. Record of examinations. — He shall make a record of all examinations of mines, showing the date when examination is made, the condition in which the mines are found, the extent to which the laws relating to mines and mining are observed or violated, the progress made in the improvements and security of life and health sought to be secured by the provisions of this chapter, number of accidents, injuries received, or deaths in or about the mines, the number of mines in the state, the number of persons employed in or about each mine, together with all such other facts and information of public interest, concerning the condition of mines, development and progress of mining in the state as he may think useful and proper, which record shall be filed in the office of the inspector, and as much thereof as may be of public interest to be included in his annual report. (Rev., s. 4947; 1897, c. 251, s. 2; C. S. 6914.)

§ 74-20. Papers to be preserved.—He shall keep in his office and carefully preserve all maps, surveys, and other reports and papers required by law to be filed with him, and so arrange and preserve the same as shall make them a permanent record of ready, convenient, and connected reference. (Rev., s. 4948; 1897, c. 251, s. 3; C. S. 6915.)

§ 74-21. Inspector to enforce law; counsel furnished.—In case of any controversy or disagreement between the inspector and the owner or operator of any mine or the persons working therein, or in case of conditions or emergencies requiring counsel, the inspector may call on the governor for such assistance and counsel as may be necessary. If the inspector finds any of the provisions of this chapter violated or not complied with by any owner, lessee, or agent in charge, unless the same is within a reasonable time rectified, and the provisions of this chapter fully complied with, he shall institute an action in the name of the state to compel the compliance therewith. The inspector shall exercise a sound discretion in the enforcement of this chapter. (Rev., s. 4949; 1897, c. 251, s. 2; C. S. 6916.)

§ 74-22. Operation enjoined when law violated. —On application of the inspector, after suit brought as directed in § 74-21, any court of competent jurisdiction may enjoin or restrain the owner or agent from working or operating such mine until it is made to conform to the provisions of this chapter; and such remedy shall be cumu-

lative, and shall not take the place of or affect any other proceedings against such owner or agent authorized by law for the matter complained of in such action. (Rev., s. 4950; 1897, c. 251, s. 7; C. S. 6917.)

§ 74-23. Report to governor. — The inspector shall annually make report to the governor of all his proceedings, the condition and operation of the different mines of the state, and the number of mines and the number of persons employed in or about such mines, the amount of coal, iron ore, limestone, fire-clay, or other mineral mined in this state; and he shall enumerate all accidents in or about the mines, and the manner in which they occurred, and give all such other information as he thinks useful and proper, and make such suggestions as he deems important relative to mines and mining, and any legislation that may be necessary on the subject for the better preservation of the life and health of those engaged in such industry. (Rev., s. 4951; 1897, c. 251, s. 3; C. S. 6918.)

§ 74-24. Articles one and two made applicable to quarries.—For the purpose of providing for the safety of workers in quarries in North Carolina, the provisions of articles one and two of this chapter, relating to the operation and inspection of mines are hereby made applicable to quarries in so far as such provisions are suitable to the operation and inspection of quarries. (1939, c. 223, s. 1.)

Art. 3. Waterways Obtained.

§ 74-25. Water and drainage rights obtained.— Any person or body corporate engaged or about to engage in mining, who may find it necessary for the furtherance of his operations to convey water either to or from his mine or mines over the lands of any other person or persons, may make application by petition in writing to the clerk of the superior court of the county in which the lands to be affected or the greater part are situate, for the right so to convey such water. The owner of the lands to be affected shall be made a party defendant, and the proceeding shall be conducted as other special proceedings. (Rev., s. 4953; Code, ss. 3293, 3294, 3300; 1871-2, c. 158, ss. 1, 3; C. S. 6920.)

§ 74-26. The petition, what to contain. — The petition shall specify the lands to be affected, the name of the owner of such lands, and the character of the ditch or drain intended to be made. (Rev., s. 4954; Code, s. 3294; 1871-2, c. 158, s. 3; C. S. 6921.)

§ 74-27. Appraisers; appointment and duties.— Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons, qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the lands by the contemplated work, and shall issue a notice to them to meet upon the premises at a day specified, not to exceed ten days from the date of such notice. The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by such work, and assess the damage thereto, and make report thereof under their hands and seals to the clerk from whom the notice issued. (Rev., s. 4955; Code, ss. 3295, 3296, 3299; 1871-2, c. 158, ss. 4, 5, 9; C. S. 6922.)

§ 74-28. Confirmation of report; payment of damages; rights of petitioner. — After the filing of the report and confirmation thereof by the clerk, who shall have power to confirm or, for good cause, set aside the same, the petitioner shall have full right and power to enter upon such lands and make such ditches, drains, or other necessary work: Provided, he has first paid or tendered the damages, assessed as above, to the owner of such lands or his known and recognized agent, if he be a resident of this state, or have such agent in this state. If the owner be a nonresident and have no known agent in this state, the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner. (Rev., s. 4957; Code, s. 3298; 1871-2, c. 158, s. 12; C. S. 6923.)

§ 74-29. Registration of report.—The petitioner, or any other person interested, may have the report of the appraisers registered upon the certificate of the clerk and shall pay the register a fee of twenty-five cents therefor. (Rev., s. 4957; Code, s. 3298; 1871-2, c. 158, s. 8; C. S. 6924.)

§ 74-30. Obstructing mining drains. — If any person shall obstruct any drain or ditch constructed under the provisions of this chapter, he shall be guilty of a misdemeanor. (Rev., s. 3380; Code, s. 3301; 1871-2, c. 158, s. 12; C. S. 6925.)

§ 74-31. Disposition of waste.—In getting out and washing the products of kaolin and mica mines, the persons engaged in such business shall have the right to allow the waste, water, and sediment to run off into the natural courses and streams. (1917, c. 123; 1937, c. 378; C. S. 6926.)

Art. 4. Adjustment of Conflicting Claims.

§ 74-32. Liability for damage for trespass. — If any owner or person in possession of any mine or mining claim shall enter upon, either on the surface or underground, any mine or mining claim, the property of another, and shall mine or carry away any valuable mineral therefrom, he shall be liable to the owner of the mine so trespassed upon for double the value of all such mineral mined or carried away and for all other damages; and the value of the mineral mined or carried away shall be presumed to be the amount of the gross value ascertained by an average assay of the excavated material or vein or ledge from which it was taken. If such trespass is wrongfully and wilfully made, punitive damages may be allowed. (1913, c. 51, s. 1; C. S. 6927.)

§ 74-33. Persons entitled to bring suit.—The owner of a mine in this state, or any person in possession under a lease or other contract, may maintain an action to recover damages to such property arising from the operation of any adjacent mine by the owner thereof or other person in possession and working the same under lease or contract, and also to prevent the continuance of the operation of the adjacent mine in such a

manner as to injure or endanger the safety of the complainant's mine. (1913, c. 51, s. 1; C. S. 6928.)

§ 74-34. Application and order for survey.—The person entitled to bring an action, as provided in § 74-33, may apply to any judge of the superior court having jurisdiction to grant injunctions and restraining orders, and obtain an order of survey in the following manner: He shall file an affidavit giving the names of the parties and the location as near as may be, of the mine complained of; the location of the plaintiff's mine, and that he has reason to believe that the defendant, or his agents or employees, are or have been trespassing upon his mine, or working the defendant's mine in such a manner as to damage or endanger the plaintiff's property. Upon the filing of the affidavit, the judge shall cause a notice to be issued to the defendant or his agents, stating the time and place and before whom the application will be heard, and requiring them to appear, in not less than ten nor more than twenty days from the date thereof, and show cause why an order of survey should not be granted. Upon the hearing, and for good cause shown, the judge shall grant an order directed to some competent disinterested surveyor or mining engineer, or both, as the case may be, who shall proceed to make the necessary examination and surveys, as directed by the court, and report their action to the court. The persons selected by the judge to make the survey and examination shall be residents of the state, and, before entering upon the discharge of their duty, shall take and subscribe an oath that they will fairly and impartially survey the mines described in the petition. In all other respects, except as stated above, the surveyors appointed by the judge shall proceed as in surveys in disputed boundaries. (1913, c. 51, s. 2; C. S. 6929.)

§ 74-35. Free access to mine for survey.—Upon the order made for the survey in the manner, at the time, and by the persons mentioned in the order, which shall include a representative of the party making the application, who shall not be one of the surveyors, there shall be given free access to the mine for the purpose of survey, and any interference with the persons acting under the order of survey shall be contempt of court and punished accordingly. If the persons named in the order of survey so require, they, with their instruments, shall be carefully lowered and raised in and out of the mine with the cage, bucket, or skip ordinarily used in the shafts of the mine; and they may demand of the owner of the mine, or his manager or agent, that they be so raised and lowered at a speed agreeable to them and not to endanger their comfort and safety or to injure the accuracy of their instruments. The owner of the mine, his managers or agents, shall be liable in damages to the persons making the examination for any injury to them or to their instruments, caused by the careless and negligent operation of any bucket, cage, or skip at such a high rate of speed as to injure the persons or their instruments while being lowered or raised in the mine. (1913, c. 51, s. 2; C. S. 6930.)

§ 74-36. Costs of the survey.—The costs of the order and survey shall be paid by the person making the application; but if he shall maintain an action and recover damages for the injury done or threatened prior to such survey and examination, the costs of the order and survey shall be taxed against the defendant as other costs in the action. The party obtaining the survey shall be liable for any unnecessary injury done to the property examined and surveyed in making the survey. (1913, c. 51, s. 2; C. S. 6931.)

Chapter 75. Monopolies and Trusts.

Sec.
75-1. Combinations in restraint of trade illegal.
75-2. Any restraint in violation of common law included.
75-3. Burden of proof as to reasonableness on defendant.
75-4. Contracts to be in writing.
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75-15. Actions prosecuted by Attorney-General.
75-16. Civil action by person injured; treble damages.

§ 75-1. Combinations in restraint of trade illegal.—Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the state of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy, shall be guilty of a misdemeanor, and upon conviction thereof such person shall be fined or imprisoned, or both, in the discretion of the court, whether such person entered into such contract individually or as an agent representing a corporation, and such corporation shall be fined in the discretion of the court not less than one thousand dollars. (1913, c. 41, s. 1; C. S. 2559.)

§ 75-2. Any restraint in violation of common law included.—Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of § 75-1. (1913, c. 41, s. 2; C. S. 2560.)

§ 75-3. Burden of proof as to reasonableness on defendant.— All contracts, combinations in the form of trust, and conspiracies in restraint of trade or commerce prohibited in §§ 75-1 and 75-2 are hereby declared to be unreasonable and illegal, unless the persons entering into such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce can show affirmatively upon an indictment or civil action for violation of §§ 75-1 and 75-2 that such contract, combination in the form of trust, conspiracy in restraint of trade or commerce does not injure the business of any competitor, or prevent any one from becoming a competitor because his or its business will be unfairly injured by reason of such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce. (1913, c. 41, s. 3; C. S. 2561.)

§ 75-4. Contracts to be in writing.—No contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the state of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: Provided, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the state of North Carolina, or at any point in the state of North Carolina, which contract is now illegal, or which contract is made illegal by any other section of this chapter. (1913, c. 41, s. 4; C. S. 2562.)

§ 75-5. Particular acts defined.—In addition to the matters and things hereinbefore declared to be illegal, the following acts are declared to be unlawful, that is, for any person, firm, corporation, or association directly or indirectly to do or to have any contract, express or knowingly implied, to do any of the acts or things specified in any of the subsections of this section.

1. To agree or conspire with any other person, firm, corporation or association to put down or keep down the price of any article produced in this state by the labor of others, which article the person, firm, corporation or association intends, plans or desires to buy.

2. To make a sale of any goods, wares, merchandise, articles or things of value whatsoever in North Carolina, whether directly or indirectly, or through any agent or employee, upon the condition that the purchaser thereof shall not deal in the goods, wares, merchandise, articles or things of value of a competitor or rival in the business of the person, firm, corporation or association making such sales.

3. To willfully destroy or injure, or undertake to destroy or injure, the business of any opponent or business rival in the state of North Carolina with the purpose or intention of attempting to fix the price of anything of value when the competition is removed.

4. To directly or indirectly buy or sell within the state, through himself or itself, or through any agent of any kind or as agent or principal, or together with or through any allied, subsidiary or dependent person, firm, corporation or association, any article or thing of value which is sold or bought, in the state to injure or destroy or undertake to injure or destroy the business of any rival or opponent, by lowering the price of any article or thing of value sold, so low, or by raising the price of any article or thing of value bought, so high as to leave an unreasonable or inadequate profit for a time, with the purpose of increasing the profit on the business when such rival or opponent is driven out of business, or his or its business is injured.

5. To deal in any thing of value within the state of North Carolina, to give away or sell, at a place where there is competition, such thing of value at a price lower than is charged by such person, firm, corporation or association for the same thing at another place, where there is not good and sufficient reason, on account of transportation or the expense of doing business, for charging less at the one place than at the other, with the view of injuring the business of another.

6. To engage in buying or selling any thing of value in North Carolina, to make or have any agreement or understanding, express or implied, with any other person, firm, corporation or association, not to buy or sell such things of value within certain territorial limits within the state, with intention of preventing competition in selling or to fix the price or prevent competition in buying of such things of value within these limits: Provided, nothing herein shall be construed to prevent an agent from representing more than one principal; but nothing in this proviso shall be construed to authorize two or more principals to employ a common agent for the purpose of suppressing competition or lowering prices: Provided, further, that nothing herein shall be construed to prevent a person, firm or corporation from selling his or its business and good will to a competitor, and agreeing in writing not to enter the business in competition with the purchaser in a limited territory, as is now allowed under the common law: Provided, such agreement shall not violate the principles of the common law against trusts and shall not violate the provisions of this chapter. (1913, c. 41, s. 5; C. S. 2563.)

§ 75-6. Violation a misdemeanor; punishment.—Any corporation, either as agent or principal, violating any of the provisions of § 75-5 shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person, whether acting for himself or as officer of any corporation or as agent of any corporation or person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 41, s. 5; C. S. 2564.)

§ 75-7. Persons encouraging violation guilty.—Any person, being either within or without the state, who encourages or wilfully allows or permits any agent or associates in business in this state to violate any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in § 75-6. (1913, c. 41, s. 6; C. S. 2565.)

§ 75-8. Continuous violations separate offenses.—Where the things prohibited in this chapter are continuous, then in such event, after the first violation of any of the provisions hereof, each week

that the violation of such provision shall continue shall be a separate offense. (1913, c. 41, s. 7; C. S. 2566.)

§ 75-9. Duty of attorney-general to investigate.—The attorney-general of the state of North Carolina shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations doing business in this state, which are or may be embraced within the meaning of the statutes of this state defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations in North Carolina doing business in violation of law; and all other corporations of every character engaged in this state in the business of transporting property or passengers, or transmitting messages, and all other public-service corporations of any kind or nature whatever which are doing business in the state for hire. Such investigation shall be with a view of ascertaining whether the law or any rule of the Utilities Commission or Commission of Banks is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted. (1913, c. 41, s. 8; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97, s. 5; C. S. 2567.)

§ 75-10. Power to compel examination. — In performing the duty required in § 75-9, the attorney-general shall have power, at any and all times, to require the officers, agents or employees of any such corporation, and all other persons having knowledge with respect to the matters and affairs of such corporations, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations, or which are in any way connected with the business thereof; and the attorney-general is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any judge of the supreme or superior court, after five days notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge. (1913, c. 41, s. 9; C. S. 2568.)

§ 75-11. Person examined exempt from prosecution.—No person examined, as provided in § 75-10 shall be subject to indictment, prosecution, punishment or penalty by reason or on account of anything disclosed by him upon such examination, and full immunity from prosecution and punishment by reason or on account of anything so disclosed is hereby extended to all persons so examined. (1913, c. 41, s. 9; C. S. 2569.)

§ 75-12. Refusal to furnish information; false swearing.—Any corporation unlawfully refusing or willfully neglecting to furnish the information required by this chapter, when it is demanded as herein provided, shall be guilty of a misdemeanor and fined not less than one thousand dollars: Provided, that if any corporation shall in writing notify the attorney-general that it objects to the time or place designated by him for the examination or inspection provided for in this chapter, it shall be his duty to apply to a judge of the supreme or superior court, who shall fix an appropriate time and place for such examination or inspection, and such corporation shall, in such event, be guilty under this section only in the event of its failure, refusal or neglect to appear at the time and place so fixed by the judge and furnish the information required by this chapter. False swearing by any person examined under the provisions of this chapter shall constitute perjury, and the person guilty of it shall be punishable as in other cases of perjury. (1913, c. 41, s. 10; C. S. 2570.)

§ 75-13. Criminal prosecution; solicitors to assist; expenses.—The attorney-general in carrying out the provisions of this chapter shall have a right to send bills of indictment before any grand jury in any county in which it is alleged this chapter has been violated or in any adjoining county, and may take charge of and prosecute all cases coming within the purview of this chapter, and shall have the power to call to his assistance in the performance of any of these duties of his office which he may assign to them any of the solicitors in the state, who shall, upon being required to do so by the attorney-general, send bills of indictment and assist him in the performance of the duties of his office. (1913, c. 41, s. 13; C. S. 2571.)

§ 75-14. Action to obtain mandatory order.—If it shall become necessary to do so, the attorney-general may prosecute civil actions in the name of the state on relation of the attorney-general to obtain a mandatory order to carry out the provisions of this chapter, and the venue shall be in any county as selected by the attorney-general. (1913, c. 41, s. 11; C. S. 2572.)

§ 75-15. Actions prosecuted by Attorney-General.—It shall be the duty of the attorney-general, upon his ascertaining that the laws have been violated by any trust or public-service corporation, so as to render it liable to prosecution in a civil action, to prosecute such action in the name of the state, or any officer or department thereof, as provided by law, or in the name of the state on relation of the attorney-general, and to prosecute all officers or agents or employees of such corporations, whenever in his opinion the interests of the public require it. (1913, c. 41, s. 12; C. S. 2573.)

§ 75-16. Civil action by person injured; treble damages.—If the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed by a jury in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict. (1913, c. 41, s. 14; C. S. 2574.)

Chapter 76. Navigation.

Art. 1. Cape Fear River.

Sec.
76-1. Board of commissioners of navigation and pilotage.
76-2. Rules to regulate pilotage service.
76-3. Examination and licensing of pilots.
76-4. Appointment and regulation of pilots' apprentices.
76-5. Classes of licenses issued.
76-6. Renewal of license; license fee.
76-7. Expenses of the board.
76-8. Pilots to give bond.
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Art. 1. Cape Fear River.

§ 76-1. Board of commissioners of navigation and pilotage. — A board of commissioners of navigation and pilotage for the Cape Fear river and bar, to consist of five members, at least four of whom shall be residents of New Hanover County, and none of whom shall be licensed pilots, is hereby created. The members of the board shall be appointed by the governor and their terms of office shall begin on the fifteenth day of April of the year in which they are appointed and continue for four years and until their successors shall be appointed and qualified. They shall be and are hereby declared to be commissioners for a special purpose, within the purview of section seven, article fourteen, of the constitution of North Carolina. It shall be the duty of the governor to appoint, on or before the fifth day of April, one thousand nine hundred and twenty-one, and on or before the fifth day of April of every fourth year thereafter, the members of said board of commissioners. A majority of the board shall constitute a quorum and may act in all cases. The board shall have power to fill vacancies in its membership as they occur during their term, to appoint a clerk to record in a book, rules, orders and proceedings of the board, and the board shall have authority in all matters that may concern the navigation of waters from seven miles above Negro-head Point downwards, and out of the bar and inlets. They shall annually, on the first Monday in May, appoint a harbor master for the port of Wilmington. (1921, c. 79, s. 1; C. S. 6943(a).

§ 76-2. Rules to regulate pilotage service.—The board shall from time to time make and establish such rules and regulations respecting the qualifications, arrangements, and station of pilots as to them shall seem most advisable, and shall im-

pose such reasonable fines, forfeitures and penalties as may be prescribed for the purpose of enforcing the execution of such rules and regulations. The board shall also have power and authority to prescribe, reduce, and limit the number of pilots necessary to maintain an efficient pilotage service for the Cape Fear River and bar, as in its discretion may be necessary: Provided, that the present number of eleven pilots now actively engaged in the service shall not be reduced except for cause or by resignation, disability, or death. When, in the opinion of a majority of the board, the best interests of the port of Wilmington, the state of North Carolina, and the pilotage service shall require it, the board shall have power and authority to organize all pilots licensed by it into a mutual association, under such reasonable rules and regulations as the board may prescribe; any licensed pilot refusing to become a member of such association shall be subject to suspension, or to have his license revoked, at the discretion of the board. (1921, c. 79, s. 2; 1927, c. 158, s. 1; C. S. 6943(b).)

§ 76-3. Examination and licensing of pilots. — The board, or a majority of them, may from time to time examine, or cause to be examined, such persons as may offer themselves to be pilots for the Cape Fear river and bar, and shall give to such as are approved commissions under their hands and the seal of the board, to act as pilots for the river and bar; and the number of pilots so commissioned, not exceeding fifteen at any one time, shall be left to the discretion of the board, but the limitation as to number herein shall not deprive the board of the power to issue license to any person who is a duly licensed pilot at the time of the passage of this article. (1921, c. 79, s. 3; 1927, c. 158, s. 2; C. S. 6943(c).)

§ 76-4. Appointment and regulation of pilots' apprentices.—The board, when it deems necessary for the best interests of the port, is hereby authorized to appoint in its discretion apprentices, and to make and enforce reasonable rules and regulations relating to apprentices. No apprentice shall be required to serve for a longer period than three years in order to obtain a license to pilot vessels of a draught of not exceeding fifteen feet, and one year thereafter for a license to pilot vessels of a draught of more than fifteen feet. No one shall be entered as an apprentice who is of the age of more than twenty-five years. (1921, c. 79, s. 4; 1927, c. 158, s. 3; C. S. 6943(d).)

§ 76-5. Classes of licenses issued. — The board shall have authority to issue two classes of licenses as follows:

(1) A license to pilot vessels whose draught of water does not exceed eighteen feet, to such applicants above the age of twenty-one years who have served as apprentices for such length of time as is required by the rules and regulations of the board to entitle such applicant to such license;

(2) An unlimited or full license to those who have served at least one year under a license of the first class: Provided, that the board shall have power to appoint pilots without reference to apprenticeship record as in its judgment the service may require. (1921, c. 79, s. 5; 1927, c. 158, s. 4; C. S. 6943(e).)

§ 76-6. Renewal of license; license fee. — All licenses shall be renewed annually upon payment of a fee of five dollars ($5): Provided, the holder of such license shall have, during the year preceding the date for such renewal, complied with the provisions of this article and the reasonable rules and regulations prescribed by the board under authority hereof. (1921, c. 79, s. 6; C. S. 6943(f).)

§ 76-7. Expenses of the board. — Each pilot, or the association of pilots, when organized as in this article provided, shall pay over to the board under such reasonable rules as the board shall prescribe two per cent (2%) of each and every pilotage fee received, for the purpose of providing funds to defray the necessary expenses of the board. In the event that the total of the sums so paid over in any one year shall exceed the expenses of the board, the excess, upon being duly ascertained, shall be paid over to the fund for the benefit of widows and orphans of the deceased pilots, as said fund is now constituted and provided for by law. (1921, c. 79, s. 7; C. S. 6943(g).)

§ 76-8. Pilots to give bond. — Every person before being commissioned as a pilot shall give bond for the faithful performance of his duties, with two or more sureties, payable to the state of North Carolina in the sum of five hundred dollars ($500); the board may, from time to time, and as often as it may deem necessary, enlarge the penalty of the bond, or require new or additional bonds to be given in a sum or sums not to exceed in all, one thousand dollars ($1,000). Every bond taken of a pilot shall be filed with and preserved by the board, in trust for every person, firm, or corporation, who shall be injured by the neglect or misconduct of such pilots, and any person, firm, or corporation, so injured may severally bring suit for the damage by each one sustained. (1921, c. 79, s. 8; C. S. 6943(h).)

§ 76-9. Permission to run as pilots on steamers; other ports.—The board shall have power to grant permission in writing to any pilot in good standing and authorized to pilot vessels, to run regularly as pilots on steamers running between the port of Wilmington and other ports of the United States, under such rules and regulations as the board shall prescribe. (1921, c. 79, s. 9; C. S. 6943(i).)

§ 76-10. Cancellation of licenses. — The board shall have the power to call in and cancel the license of any pilot who has refused or neglected, except in case of sickness, his duty as a pilot for a period of six months in succession, and any pilot who has been absent from the state for a longer period than six months in succession shall, upon his return, surrender his license to the board, or the board may declare the same void, except when such absence has been under permission from the board as provided in § 76-9. (1921, c. 79, s. 10; C. S. 6943(j).)

§ 76-11. Jurisdiction over disputes as to pilotage. — Each member of the board shall have power and authority to hear and determine any matter of dispute between any pilot and any master of a vessel, or between pilots themselves, respecting the pilotage of any vessel and any one of them may issue a warrant against any pilot for the recovery of any demand which one pilot may have against another, relative to pilotage, and for the recovery of any forfeiture or penalty provided by law, relating to pilotage on Cape Fear river and bar, or provided by any by-law or rule or regulation enacted by the board by virtue of any such law, which warrant the sheriff or any constable in New Hanover or Brunswick counties, shall execute together with any other process authorized by this article. On any warrant issued as herein provided any one of said commissioners may give judgment for any sum not exceeding five hundred dollars ($500), and may issue execution thereon, in like manner as is provided for the issuing of execution on judgments rendered by justices of the peace, which writ of execution shall be executed agreeably to the law regulating the levy and sale under executions issuing from courts of justices of the peace. Any member of the board shall have authority to issue summons for witnesses and to administer oaths, and hearings before any member of the board of any matters as provided in this section shall conform as nearly as may be to procedure provided by law in courts of justices of the peace. From any judgment rendered by any member of the board, either party shall have the right of appeal to the superior court of New Hanover or Brunswick counties, in like manner as is provided for appeals on judgments of justices of the peace. (1921, c. 79, s. 11; C. S. 6943(k).)

§ 76-12. Retirement of pilots from active service. — The board shall have and is hereby given authority in its discretion, and under such reasonable rules and regulations as it may prescribe, to retire from active service any pilot who shall become physically or mentally unfit to perform his duties as pilot, and to provide for such pilot or pilots so retired such compensation as the board shall deem proper: Provided, however, that no pilot shall be retired, except with his consent, for physical or mental disability, unless and until such pilot shall have first been examined by the public health officers or county physicians of New Hanover or Brunswick counties, and such public health officers or physicians shall have certified, either separately or jointly, to the board the fact of such physical or mental disability. (1921, c. 79, s. 12; C. S. 6943(l).)

§ 76-13. When employment compulsory; rates of pilotage. — All vessels, coastwise or foreign, over sixty (60) gross tons, shall on and after the first day of May, one thousand nine hundred and twenty-one, take a state licensed pilot from sea to Southport, and from Southport to sea. and the rates of pilotage shall be the rates given in column number one below, designated "From sea to Southport, or vice versa;" the employment of pilots from Southport to Wilmington and from Wilmington to Southport is optional, but any vessel taking a pilot from Southport to Wilmington, or from Wilmington to Southport, shall employ only a state licensed pilot, and the rate of pilotage shall be the rates in column number two below, designated "From Southport to Wilmington, or vice versa."

Column No. 1
From
Sea to Southport,
or Vice Versa

Feet and under	Rate
6	$ 11.00
7	13.00
8	15.00
9	16.00
10	21.00
11	26.00
12	29.00
12–6	30.00
13	32.00
13–6	34.00
14	39.00
14–6	43.00
15	45.00
15–6	47.00
16	50.00
16–6	54.00
17	57.00
17–6	61.00
18	65.00
18–6	67.00
19	71.00
19–6	75.00
20	78.00
20–6	83.00
21	87.00
21–6	94.00
22	100.00
22–6	106.00
23	112.00
23–6	116.00
24	120.00
24–6	124.00
25	128.00
25–6	131.00
26	135.00
26–6	139.00
27	143.00
27–6	146.00
28	150.00
28–6	154.00
29	158.00
29–6	161.00
30	165.00

Column No. 2
From
Southport to Wilmington,
or Vice Versa

Feet and under	Rate
6	$ 6.00
7	8.00
8	9.00
9	10.00
10	13.00
11	15.00
12	17.00
12–6	18.00
13	19.00
13–6	20.00
14	23.00

Feet and under	Rate
14–6	26.00
15	27.00
15–6	28.00
16	30.00
16–6	33.00
17	35.00
17–6	37.00
18	38.00
18–6	40.00
19	44.00
19–6	45.00
20	47.00
20–6	50.00
21	53.00
21–6	56.00
22	60.00
22–6	64.00
23	68.00
23-6	70.00
24	72.00
24–6	74.00
25	76.00
25–6	79.00
26	81.00
26–6	83.00
27	85.00
27–6	88.00
28	90.00
28–6	92.00
29	94.00
29–6	97.00
30	99.00

Vessels calling at the port solely for the purpose of obtaining bunker coal shall pay one-half the fees hereinbefore prescribed. (1921, c. 79, s. 13; 1927, c. 158, s. 5; C. S. 6943(m).)

§ 76-14. Pay for detention of pilots. — Every master of a vessel who shall detain a pilot at the time appointed so that he cannot proceed to sea, though wind and weather permit, shall pay such pilot ten dollars ($10) per day during the time of his actual detention, the pilot to have due notice from the master or agent of said vessel. (1921, c. 79, s. 14; C. S. 6943(n).)

§ 76-15. Vessels not liable for pilotage. — Any vessel coming into Southport from sea without the assistance of a pilot, the wind and weather being such that such assistance or service could have been reasonably given, shall not be liable for pilotage inward from sea, and shall be at liberty to depart without payment of any pilotage, unless the services of a pilot be secured. (1921, c. 79, s. 15; C. S. 6943(o).)

§ 76-16. First pilot to speak vessel to get fees. —The first pilot speaking a vessel from a regularly numbered and licensed boat of this board shall be entitled to the pilotage fees over the bar to Southport, and out to sea again: Provided, said pilot shall be ready and willing to serve as pilot when the vessel is ready to depart, due notice having been given by the master or agent to said pilot. (1921, c. 79, s. 16; C. S. 6943(p).)

§ 76-17. Vessels entering for harborage exempt.—Any vessel coming in from sea for harbor shall not be required to take a pilot either from sea inward or back to sea. (1921, c. 79, s. 17; C. S. 6943(q).)

§ 76-18. Harbor master of Wilmington; duties. —The harbor master appointed for the port of Wilmington shall hold his office for one year next ensuing and until his successor is appointed. The harbor master shall have power and is required:

1. To keep the channel-way of the Cape Fear river and the track of vessels clear; to berth vessels at appropriate wharves or docks; to change the berth of any vessel at request of the owner of the wharf or dock; to move such vessels to some other wharf or to a safe anchorage in the stream; and he is further authorized and required to determine in all cases how far and in what instances it is the duty of masters and others having charge of vessels, flats, rafts, or crafts to accommodate each other in their respective berths and situations.

2. To arrest any person violating this chapter, and to immediately bring such offender before some justice of the peace of the county in which such offense may be committed, for trial.

3. Whenever in his judgment it shall be necessary, to cast loose from any wharf or dock any raft, flat, vessel, or other craft by untying or cutting the lines by which it is made fast, if the owner after notice refuses to remove such vessel.

4. Whenever any of the public docks of the city of Wilmington are obstructed by any vessels, flats, barges, logs, hulks, trash, or garbage, and the owner thereof cannot be found or fails to remove the same from said docks, to take the most speedy method to clear the docks.

5. To appoint in writing some competent person to act in his place and stead during his temporary absence, or at such times as he is unable to attend to the duties of his office, and such person shall, while acting for such harbor master, have all the power and authority conferred upon and vested in the harbor master by law.

6. To collect from all vessels arriving in the port of Wilmington the following fees and no others, to wit: If over one hundred tons and under three hundred tons, three dollars; if over three hundred tons and under five hundred tons, five dollars; if over five hundred tons and under seven hundred tons, seven dollars; if over seven hundred tons, ten dollars. (Rev., s. 4958; Code, s. 3482; 1903, c. 662; 1905, c. 321; C. S. 6960.)

§ 76-19. Port wardens of Wilmington; election; oath.—There shall be three competent persons at the port of Wilmington, to be known as port wardens. The persons so elected shall at once take and subscribe before the clerk of the superior court of New Hanover county the following oath:

I, A. B., do solemnly and sincerely swear that I will faithfully, honestly, and impartially execute and discharge the duty of port warden for the port of Wilmington, by duly appraising and estimating the damage sustained on any vessel or goods arriving in or stranded within the bounds of said port, and will make a true and fair estimate and report of and regarding the seaworthiness of any vessel by me surveyed. (Rev., s. 4959; 1889, c. 437; 1905, c. 321; C. S. 6961.)

§ 76-20. Port wardens of Wilmington; duties; fees.—The port wardens of Wilmington shall, on request made by the master, owner, freighter, or

supercargo of any vessel arriving in said port, or stranded within the bounds thereof, survey and make report of her situation and condition, and the causes thereof, and whether she should be repaired or condemned; inspect the conditions of vessels which may arrive in distress or may have suffered by gales of wind or otherwise at sea; the situation and condition of goods, wares, and merchandise which may arrive in said vessels or may have received damage at sea, and report thereon and the probable causes thereof; inspect the storage of cargoes of vessels arriving as aforesaid, or having received damage as aforesaid, before the same shall be discharged, except where vessels may be stranded, in which cases their cargoes may be inspected after the same are removed, and report thereon, whether faulty or not, in which report shall be stated the probable cause of the damage; make surveys of goods, wares, and merchandise, and the cargoes of vessels damaged as aforesaid, and make and report estimates of the amount of the damage sustained as aforesaid; and make and report, if required, surveys of vessels outward bound, and report whether they are seaworthy or not, and fit for the voyage intended. All goods which shall be sold by reason of their having received damage as aforesaid, and shall have been surveyed or inspected by the said port wardens, shall be sold under their inspection and direction; and the said port wardens shall respectively receive for their services: For a survey at the town of Wilmington, the sum of ten dollars; for a survey at the Flats, the sum of twelve dollars; and for a survey at Fort Johnson, the sum of fifteen dollars, to be paid by the party at whose request the same is made, and recovered before any court of competent jurisdiction. (Rev., s. 4960; 1889, c. 437, ss. 2, 3; C. S. 6962.)

§ 76-21. Repairing boats in street docks at Wilmington forbidden. — If any person shall, for the purpose of repair, put any flat, steamboat, or other craft, in any of the street docks of the city of Wilmington, or shall, for the purpose of repair, ground any such flat, steamboat, or other craft in any of the public docks of such city on the east side of the Cape Fear river between Church street dock and Red Cross street dock, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3554; 1903, c. 662, s. 2; C. S. 6963.)

§ 76-22. Obstructing docks by flats and barges at Wilmington forbidden.—The owner of any rafts, flats, vessels, or other craft lying alongside any wharf or wharves or before the entrance of any public dock, his or their agents or servants, shall, upon notice from the harbor master, immediately remove the same, and upon his or their refusal so to do, it shall be the duty of the harbor master, and he is hereby authorized and directed, after notice as aforesaid to the owner or owners thereof, their agents or servants, forthwith to cause all such rafts, flats, vessels, or other craft to be removed at the cost and expense of such owner or owners or their agent or agents, and the owner shall be guilty of a misdemeanor. (Rev., s. 3549; 1903, c. 662, s. 3; C. S. 6964.)

§ 76-23. Obstructing harbor master of Wilmington forbidden. — If any person shall hinder, delay, obstruct, or in any manner wilfully interfere with the harbor master of Wilmington in the discharge of his duty he shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3552; 1903, c. 662, s. 8; C. S. 6965.)

§ 76-24. Encumbering docks at Wilmington forbidden.—If any person shall encumber any of the public docks of the city of Wilmington with logs, hulks, flats, or barges, trash or garbage, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars, and if the encumbrance be not removed immediately upon notice from the harbor master, he shall be fined ten dollars for each and every day thereafter such nuisance shall remain. (Rev., s. 3547; 1903, c. 662, s. 9; C. S. 6966.)

Art. 2. Beaufort Harbor.

§ 76-25. Commissioners of navigation; election. — The commissioners of navigation for Old Topsail inlet and Beaufort harbor shall be composed of three persons, to be elected as follows: The board of commissioners of Carteret county shall elect one, the commissioners of the town of Beaufort shall elect one, and the commissioners of the town of Morehead City shall elect one. They shall be elected at the regular meeting of such boards in June, one thousand nine hundred and five, and every two years thereafter, and shall qualify by taking the oath required by law before the clerk of the superior court or some justice of the peace of Carteret county, and enter upon the discharge of their duties on the first Monday in July following their election. (Rev., s. 4964; 1899, c. 9, ss. 1, 2; C. S. 6967.)

§ 76-26. Authority of commissioners. — They shall have authority in all matters that may concern the navigation of the harbor, Old Topsail inlet, and all the waters of the sound and rivers within ten miles of the town of Beaufort, and in the construction of wharves, and when there is no harbor master, the commissioners aforesaid shall decide all disputes about the moving of vessels and other matters which properly fall within the department of harbor master. (Rev., s. 4965; Code, s. 3528; 1868-9, c. 208, s. 3; C. S. 6968.)

§ 76-27. Harbor master for Beaufort. — The said commissioners immediately after their election shall appoint a harbor master for the port of Beaufort, who shall hold his office for the term of one year, unless sooner removed by the commissioners for neglect of duty. He shall be entitled to receive of the master of each vessel that shall enter said port, and for other services, such fees as the commissioners may prescribe. (Rev., s. 4966; Code, s. 3529; 1868-9, c. 208, s. 4; C. S. 6969.)

§ 76-28. Pilots; how appointed and licensed. — Such commissioners shall elect the pilots for said inlet and harbor, and may make such rules and regulations for their government as the commissioners may deem right and proper, not inconsistent with the constitution and laws of this state or of the United States: Provided, that all persons who may be licensed as pilots shall have

had at least two years practical experience as apprentices under some regular licensed pilot of Beaufort Harbor and Old Topsail Inlet, and shall secure two pilots in good standing to endorse in writing each application for license. Application for pilot licenses or branches shall be made to the commissioners in writing, giving the name, age, and occupation of applicants for two years next preceding the date of application. The commissioners shall examine all applicants for pilot's licenses, and may also examine other persons as to qualification of applicants to perform the duties of pilot, and may in their discretion reject any applicant whom they may deem incompetent. (Rev., s. 4967; 1899, c. 9, ss. 3, 4, 5; 1921, c. 74, s. 6; C. S. 6970.)

§ 76-29. Fees for issuing pilot's license. — The said commissioners shall give to every pilot elected by them a license or branch under their hands and seals, which shall be and remain in force for one year unless, for good cause to said commissioners appearing, the same shall be sooner revoked by them. They shall charge for each license or branch, fifteen dollars, which they may retain for their expenses and services. (Rev., s. 4968; 1899, c. 9, s. 6; 1921, c. 74, s. 5; C. S. 6971.)

§ 76-30. Expiration of pilot's license; reinstatement.—Each pilot shall forfeit his branch after fifteen days expiration of the same; however, such pilot may be reinstated by securing two pilots in good standing to sign his branch. (1915, c. 142, s. 3; C. S. 6972.)

§ 76-31. Pilot boats to be numbered. — Each and every pilot vessel in Carteret county shall be numbered; and any pilot piloting a vessel or barge in or out of the territory as set out in this article, without a number, shall be guilty of a misdemeanor and be subject to a fine of not more than fifty dollars or imprisoned not more than thirty days, or both, in the discretion of the court. The commissioners of navigation of Beaufort harbor shall make provision for numbering of pilot vessels as required by this section. All said fines collected under this article to be applied to the public school fund of Carteret County. (1915, c. 142, ss. 2, 3; C. S. 6973.)

§ 76-32. Rates of pilotage. — The pilotage for Old Topsail inlet and Beaufort harbor shall be as follows: For vessels drawing eight feet and under, two dollars and fifty cents per foot; ten feet and over eight, three dollars per foot; twelve feet and over ten, four dollars per foot; all over twelve feet, four dollars and fifty cents per foot. The above fees to be collectible in Beaufort harbor from Middle marsh to Lewis thoroughfare, and from the Neuse river side of the inland waterway through the said waterway and out of Beaufort inlet. For every vessel piloted without these bounds an additional charge of fifty cents per foot may be charged. The commissioners shall have the rates of pilotage printed or written on every license or branch issued by them, and every pilot shall exhibit his license to the master of every vessel he has in charge, when demanded by said master. The rates of pilotage as set out in this section shall apply to all vessels entering or leaving "Old Topsail Inlet" and "Beaufort Harbor." (Rev., s. 4969; 1899, c. 9, ss. 7, 8; 1901, c. 639; 1909, c. 250, s. 1; 1915, c. 142, s. 1; 1921, c. 74, ss. 1-3; C. S. 6974.)

§ 76-33. Vessels required to take pilots.—All vessels, coastwise or foreign, over sixty gross tons shall take a state-licensed pilot from sea to Pier One, Morehead City, North Carolina, and from Pier One, Morehead City, North Carolina, to sea, and the rates of pilotage shall be the rates as are set out in § 76-32. (1921, c. 74, s. 4; C. S. 6974(a).)

§ 76-34. Vessel under sixty tons not liable for pilotage.—No pilot, acting under the authority of the commissioners of navigation for Old Topsail inlet, shall be entitled to pilotage for any vessel under sixty tons burden, unless such vessel shall have given a signal for a pilot, or otherwise shall have required the assistance of a pilot. (Rev., s. 4970; Code, s. 3523; R. C., c. 85, s. 33; 1801, c. 600, s. 3; 1806, c. 711, s. 1; C. S. 6975.)

Art. 3. Bogue Inlet.

§ 76-35. Commissioners of navigation for Bogue inlet.—The board of commissioners of the county of Onslow shall appoint five commissioners of navigation for Bogue inlet and its waters. When vacancies occur in said board, by refusal to act, by resignation, or otherwise, the remaining members of such board shall fill the same until the same be supplied by the appointing board, which is directed to be done at the first meeting after the vacancy occurs. And the said board shall have the same powers and authority as to pilots and pilotage as the commissioners for Old Topsail inlet and Beaufort harbor. (Rev., s. 4971; Code, s. 3515; R. C., c. 85, s. 25; 1783, c. 194; 1784, c. 208, s. 2; 1879, c. 216, s. 4; C. S. 6976.)

§ 76-36. Rates of pilotage.—The branch pilots for Bogue inlet shall be entitled to receive of the commander of such vessel as they may have charge of the following pilotage, namely: For bringing any vessel into the said inlet, drawing less than seven feet, from the outside of the bar to the anchorage before the town, or the customary place in Hill's channel, one dollar per foot; for a vessel drawing more than seven feet, one dollar and fifty cents per foot; and the same fees for pilotage outward as inward. (Rev., s. 4972; Code, s. 3535; 1889, c. 121; C. S. 6977.)

Art. 4. Hatteras and Ocracoke.

§ 76-37. Board of commissioners of navigation; organization; oath; pilots' licenses. — John W. Rolinson, R. R. Quidley, George L. Styron, William Balance, and Charles L. Odine shall constitute a board of commissioners of navigation for the port of Hatteras inlet, of the county of Dare; William E. Howard, Christopher O. Neal, Sr., and Gilbert O. Neal, of the county of Hyde; D. R. Roberts and J. W. Gilgo, of the county of Carteret, shall constitute a board of navigation for the port of Ocracoke inlet, whose duty it shall be to meet at Hatteras and Ocracoke respectively three times in each year, or a majority of the respective board, after giving at least twenty days notice of each meeting, and when any person is desirous of becoming a pilot at Hatteras or Ocracoke inlets, over the Swashes through Pamlico and Albemarle sounds, he shall be examined by

said board, and when found competent to take charge of any ship or vessel as a pilot the board shall issue to him a branch and take the bond authorized by law, and no person shall be authorized to act as a bar or swash pilot unless he shall have a branch from said boards. The said boards shall have their offices at Hatteras and Ocracoke respectively, in which shall be filed the bonds of the pilots, and every pilot receiving a branch from said boards shall pay to the board from which he receives such branch two dollars and fifty cents, of which sum the commissioners of Ocracoke who live in Carteret county shall receive ten cents per mile traveling to and from the meeting of said board, and the residue shall be divided between all the members of said board, and the commissioners shall belong to each board respectively. When a vacancy shall occur in either board by death, resignation, or refusal to act, a majority thereof of each board shall appoint some suitable person thereto, whose residence shall be at the same place where the vacancy occured; said commissioners shall keep a regular journal of their proceedings, and before entering on the duties of their office they shall take and subscribe before any justice of the peace of the counties of Dare, Carteret, or Hyde the following oath:

I do solemnly swear that I will truly and faithfully and impartially examine every person who shall apply to me for a branch, to the best of my ability: So help me, God.

The branch shall expire in three years from the date thereof. (Rev., s. 4961; Code, s. 3512; R. C., c. 85, s. 24; 1871-2, c. 134; 1879, c. 216; 1897, c. 211; C. S. 6978.)

§ 76-38. Rates of pilotage.—Branch pilots of Ocracoke or Hatteras shall be entitled to receive of the commander of such vessel as they may have in charge the following pilotage, namely: For every vessel of sixty and not over one hundred and forty tons burden, from the other side of the bar, at any place within the limits of the pilot ground, to Beacon Island road, or Wallace's channel, ten cents for each ton, and the further sum of two and a half cents for each ton over one hundred and forty, and two dollars for each vessel over either of the swashes (that is, over said swashes either to or from Beacon Island road, or Wallace's channel, or over any shoal lying intermediate between either of said swashes and Beacon Island road or Wallace's channel); for every ship or vessel from the mouth of the swash to either of the ports of New Bern or Washington, one dollar per foot, and for every ship or vessel from the same place to the port of Edenton, twelve dollars; and to the port of Elizabeth City, ten dollars; and the same allowance down as up, and outward as inward. (Rev., s. 4962; Code, s. 3524; R. C., c. 85, s. 34; 1794, c. 426; 1806, c. 711; 1846, c. 49, ss. 1, 2, 3; C. S. 6979.)

§ 76-39. Who may be pilots for Hatteras or Ocracoke inlet.—The said boards shall not issue or grant any branch to pilot vessels through Hatteras inlet to any person who does not reside in Hatteras precinct, which precinct extends from Cape Hatteras lighthouse to Hatteras inlet. And the said boards shall not issue or grant a branch to pilot vessels through or over Ocracoke inlet to any person who does not reside upon the island of Ocracoke or in the precinct of Portsmouth. (Rev., s. 4963; Code, s. 3514; 1856-7, c. 29; 1879, c. 216, s. 3; C. S. 6980.)

Art. 5. General Provisions.

§ 76-40. Obstructing navigable waters; removing beacons; penalty; pilot's liability.—If any person shall cast or throw from any vessel, into the navigable water of Carteret or Onslow counties, of Tar or Pamlico rivers, or into the navigable waters of the Cape Fear, or any other river in the state, or into any channel of navigable water elsewhere than in a river, any ballast, stone, shells, earth, trash, or other substance likely to be injurious to the navigation of such waters, rivers, or channel; or if any person shall wilfully pull down any beacon, stake, or other mark, erected or placed by virtue of any by-law, order, or regulation passed or ordained by any commissioners of navigation, he shall be guilty of a misdemeanor and shall forfeit and pay two hundred dollars, to be recovered for the use of the commissioners in whose waters the offense was committed. If any pilot shall knowingly suffer any such unlawful act to be done, and shall not within ten days thereafter give to the said commissioners, or one of them, information thereof, such pilot shall likewise be guilty of a misdemeanor; and, besides the usual punishment of such offense, on conviction, shall be forever incapable of acting as a pilot in the state. (Rev., s. 3560; Code, ss. 3537, 3538; R. C., c. 85, ss. 40, 41; 1833, c. 146; 1784, c. 206, s. 11; R. S., c. 88, ss. 23, 24, 45; 1811, c. 839; 1842, c. 65, s. 4; 1846, c. 60, s. 3; C. S. 6981.)

§ 76-41. Obstructing waters of Currituck sound.—It shall be unlawful for any person to obstruct navigation in the waters of Currituck sound and tributaries, and all persons, corporations, companies, or clubs, who have heretofore placed or caused to be placed any hedging across the mouth of a bay, creek, strait, or lead of water in Currituck sound or tributaries, made of iron, wire, or wood or other material, for the purpose of preventing the free passage of boats or vessels of any size or class, or to stop the public use of such bay, creek, strait, or lead of water, are required to forthwith remove the same. Any person, corporation, or club violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than ten dollars, or imprisoned not more than thirty days, at the discretion of the court. (Rev., s. 3553; 1897, c. 277; C. S. 6982.)

§ 76-42. Lumbermen to remove obstructions in Albemarle sound. — If any lumberman shall fail to remove all obstructions placed by him in the waters of Albemarle sound and its tributaries, as soon as practicable, after they have ceased to use them for the purpose for which they were placed in said waters, from all places where the water is not less than two feet deep, and also from all landing places on both sides, for the space of sixty feet from the shore outward, he shall be guilty of a misdemeanor, and fined not less than one dollar nor more than fifty dollars, at the dis-

cretion of the court. (Rev., s. 3551; Code, s. 3303; 1880, c. 37, ss. 1, 2; C. S. 6983.)

§ 76-43. Anchoring in range of lighthouses.—If the master of any vessel shall anchor on the range line of any range of lights established by the United States lighthouse board, unless such anchorage is unavoidable, he shall be guilty of a misdemeanor, and punished by a fine not to exceed fifty dollars. (Rev., s. 3550; Code, s. 3086; 1883, c. 165, s. 2; C. S. 6984.)

§ 76-44. Vessels on inland waterways exempt from pilot laws; proviso as to steam vessels.—All vessels, barges, schooners, or other craft passing through the inland waterway of this state, when bound to a port or ports in this or any other state, be and the same are hereby exempt from the operations of the pilot laws of North Carolina and are not compelled to take a state licensed pilot: Provided, that steam vessels not having a United States licensed pilot for the waters navigated on board shall be subject to the state pilot laws. (1917, c. 33, s. 2; C. S. 6985.)

§ 76-45. Bond of pilot. — Every person, before he obtains a commission or a branch to be a pilot, shall give bond with two sufficient sureties payable to the state of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his duties, and the duties of his apprentices; and the body appointing such pilot may, from time to time, and as often as they may deem it necessary, enlarge the penalty of the bond, or require new and additional bonds to be given; and every bond taken of a pilot shall be filed with, and preserved by, the said body appointing such pilot in trust for every person that shall be injured by the neglect or misconduct of such pilot, or his apprentices; who may severally bring suit thereon for the damage by each one sustained. (Rev., s. 307; Code, s. 3487; R. C., c. 85, s. 6; 1784, c. 207, s. 3; C. S. 6986.)

§ 76-46. Pilots to have spyglasses.—Every pilot, within such convenient time as the commissioners may direct, who has control over the waters within which he acts, shall furnish himself with a good telescope or spyglass, under the penalty of fifty dollars, to be paid to the commissioners. (Rev., s. 4973; Code, s. 3517; R. C., c. 85, s. 27; 1790, c. 320, s. 3; C. S. 6987.)

§ 76-47. Acting as pilot without license.—If any person shall act as a pilot, who is not qualified and licensed in the manner prescribed in this chapter, he shall be guilty of a misdemeanor and upon conviction shall be fined not more than $50.00 and not less than $25.00, or imprisoned not more than thirty days at the discretion of the court: Provided, that should there be no licensed pilot in attendance, any person may conduct into port any vessel in danger from stress of weather or in a leaky condition. (Rev., s. 4974; Code, s. 3519; R. C., c. 85, s. 29; 1783, c. 194, s. 3; 1784, c. 208, s. 4; 1933, c. 325; C. S. 6988.)

§ 76-48. Penalty on pilot neglecting to go to vessel having signal set.—When any pilot shall see any vessel on the coast, having a signal for a pilot, or shall hear a gun of distress fired off the coast, and shall neglect or refuse to go to the assistance of such vessel, such pilot shall forfeit and pay one hundred dollars, to be recovered in the name of the state, one-half to the use of the informer and the other half to the master of the vessel, unless such pilot is then actually in charge of another vessel. (Rev., s. 4975; Code, s. 3521; R. C., c. 85, s. 31; 1784, c. 207, s. 10; 1790, c. 320, s. 2; 1783, c. 194, s. 6; C. S. 6989.)

§ 76-49. Pilots may be removed.—Unless otherwise provided in the first article of this chapter for the Cape Fear river, whenever any pilot appointed, as authorized in this chapter, shall, on trial, be found incompetent, or shall be guilty of improper conduct by intoxication or otherwise, or of any misbehavior in his office, or shall absent himself from the state for a period of six months, the pilot so offending may be removed from his office by the board of commissioners under whose authority he is acting, by a notice to him in writing; and if after such removal he shall attempt to take charge of any vessel, he shall forfeit and pay two hundred dollars for the use of said board. And it shall be the duty of the board to put up a written notice of the removal, in the public places within the port, or publish it in some convenient newspaper. But no pilot for the navigation of Hatteras inlet shall be required to surrender or forfeit his branch by reason of absence from the state for a period of less than six months. (Rev., s. 4976; Code, ss. 3518, 3490; 1869-70, c. 235, s. 7; 1881, c. 261, s. 2; R. C., c. 85, s. 28; R. S., c. 88, ss. 7, 31, 35; 1784, c. 207, s. 4; 1819, c. 1025, s. 4; 1800, c. 565; 1876-7, c. 22; 1881, c. 261, s. 1; C. S. 6990.)

§ 76-50. Pilots refused, entitled to pay. — If a branch pilot shall go off to any vessel bound in, and offer to pilot her over the bar, the master or commander of such vessel, if he refuses to take such pilot, shall pay to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in, to be recovered before a justice of the peace, if the sum be within his jurisdiction: Provided, that the first pilot, and no other, who shall speak such vessel so bound in shall be entitled to the pay provided for in this section. (Rev., s. 4978; Code, s. 3522; R. C., c. 85, s. 32; 1871-2, c. 117; C. S. 6991.)

§ 76-51. Pay of pilots when detained by vessel.—Every master of a vessel who shall detain a pilot at the time appointed, so that he cannot proceed to sea, though wind and weather should permit, shall pay to such pilot three dollars per day during the time of his actual detention. (Rev., s. 4979; Code, s. 3495; 1858-9, c. 23, s. 7; C. S. 6992.)

§ 76-52. Rates of pilotage annexed to commission.—The commissioners of navigation for the several ports of this state shall annex to the branch or commission, by them given to each pilot, a copy of the fees to which such pilot is entitled. (Rev., s. 4980; Code, ss. 3497, 3536; R. C., c. 85, ss. 9, 38; 1784, c. 208, s. 4; 1796, c. 470, s. 5; C. S. 6993.)

§ 76-53. Harbor masters; how appointed.—The several boards of commissioners of navigation may appoint a harbor master for their respective ports. They shall appoint a clerk to keep books, in which shall be recorded all their proceedings.

(Rev., s. 4981; Code, s. 3525; R. C., c. 85, s. 35; C. S. 6994.)

§ 76-54. Commissioners of navigation may hold another office.—A commissioner of navigation and pilotage shall be deemed a commissioner for a special purpose within the meaning of section seven of article fourteen of the constitution of North Carolina, so as not to be prohibited from holding at the same time with his commissionership another office under the national or state governments. (Ex. Sess. 1913, c. 76; C. S. 6995.)

§ 76-55. Commissioners of navigation to designate place for trash.—The several boards of commissioners established by this chapter may, subject to such regulations as the United States may make, designate the places whereat, within the waters under their several and respective control, may be cast and thrown ballast, trash, stone, and like matter. (Rev., s. 4982; Code, s. 3537; R. C., c. 85, s. 40; R. S., c. 88, ss. 23, 24, 45; 1833, c. 146, ss. 1, 2, 3; 1846, c. 60, s. 3; C. S. 6996.)

§ 76-56. Harbor master; how appointed where no board of navigation.—Where no board of navigation exists the governing body of any incorporated town, situated on any navigable water course, shall have power to appoint a harbor master for the port, who shall have the same power and authority in their respective ports as the harbor master of Wilmington is by this chapter given for that port, and shall receive like fees and no others. (Rev., s. 4983; C. S. 6997.)

§ 76-57. Rafts to exercise care in passing buoys, etc., penalty.—If any person having charge of any raft passing any buoy, beacon, or day-mark, shall not exercise due diligence in keeping clear of it, or, if unavoidably fouling it, shall not exercise due diligence in clearing it, without dragging from its position such buoy, beacon, or day-mark, he shall be guilty of a misdemeanor, and punished by fine not to exceed fifty dollars. (Rev., s. 3545; Code, s. 3087; 1883, c. 165, s. 3; C. S. 6998.)

§ 76-58. Interfering with buoys, beacons, and day-marks.—If any person shall moor any kind of vessel, or any raft or any part of a raft, to any buoy, beacon, or day-mark placed in the waters of North Carolina by the authority of the United States lighthouse board, or shall in any manner hang on with any vessel or raft, or part of a raft, to any such buoy, beacon, or day-mark, or shall wilfully remove, damage, or destroy any such buoy, beacon, or day-mark, or shall cut down, remove, damage, or destroy any beacon erected on land in this state by the authority of the said United States lighthouse board, or through unavoidable accident run down, drag from its position, or in any way injure any buoy, beacon, or day-mark, as aforesaid, and shall fail to give notice as soon as practicable of having done so, to the lighthouse inspector of the district in which said buoy, beacon, or day-mark may be located, or to the collector of the port, or, if in charge of a pilot, to the collector of the port from which he comes, he shall for every such offense be guilty of a misdemeanor and shall be punished by a fine not to exceed two hundred dollars, or imprisoned not to exceed three months, or both, at the discretion of the court. (Rev., s. 3546; Code, s. 3085; 1858-9, c. 58, ss. 2, 3; 1883, c. 165, s. 1; C. S. 6999.)

Chapter 77. Rivers and Creeks.

Art. 1. Commissioners for Opening and Clearing Streams.

Sec.
77-1. County Commissioners to appoint commissioners.
77-2. Flats and appurtenances procured.
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77-12. Obstructing passage of boats.
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Art. 1. Commissioners for Opening and Clearing Streams.

§ 77-1. County Commissioners to appoint commissioners.—Where any inland river or stream runs through the county, or is a line of their county, the boards of commissioners of the several counties may appoint commissioners to view such river or stream, and make out a scale of the expense of labor with which the opening and clearing thereof will be attended; and if the same is deemed within the ability of the county, and to be expedient, they may appoint and authorize the commissioners to proceed in the most expeditious manner in opening and clearing the same. (Rev., s. 5297; Code, s. 3706; 1887, c. 370; C. S. 7363.)

§ 77-2. Flats and appurtenances procured.—The board of county commissioners appointing the commissioners may direct them to purchase or hire a flat with a windlass and the appurtenances necessary to remove loose rock and other things, which may by such means be more easily removed, and allow the same to be paid for out of the county funds. (Rev., s. 5299; Code, s. 3708; R. C., c. 100, s. 3; 1785, c. 242, s. 2; C. S. 7365.)

§ 77-3. Laid off in districts; passage for fish.—The board of county commissioners may appoint commissioners to examine and lay off the rivers and creeks in their county; and where the stream is a boundary between two counties,

may lay off the same on their side; in doing so they shall allow three-fourths for the owners of the streams for erecting slopes, dams and stands; and one-fourth part, including the deepest part, they shall leave open for the passage of fish, marking and designating the same in the best manner they can; and if mills are built across such stream, and slopes may be necessary, the commissioners shall lay off such slopes, and determine the length of time they shall be kept open; and such commissioners shall return to their respective boards of county commissioners a plan of such slopes, dams, and other parts of streams viewed and surveyed. (Rev., s. 5301; Code, s. 3710; R. C., c. 100, s. 5; 1787, c. 272, s. 1; C. S. 7367.)

§ 77-4. Gates and slopes on milldams.—The commissioners appointed by the board of county commissioners to examine and lay off the rivers and creeks within the county, or where the stream is a boundary between counties, shall have power to lay off gates, with slopes attached thereto, upon any milldam built across such stream, of such dimensions and construction as shall be sufficient for the convenient passage of floating logs and other timber, in cases where it may be deemed necessary by the said board of county commissioners; and they shall return to the board of county commissioners appointing them a plan of such gates, slopes, and dams in writing. (Rev., s. 5302; Code, s. 3712; 1858-9, c. 26, s. 1; C. S. 7368.)

§ 77-5. Owner to maintain gate and slope.—Upon the confirmation of the report made by the commissioners, and notice thereof given to the owner or keeper of said mill, it shall be his duty forthwith to construct, and thereafter to keep and maintain, at his expense, such gate and slope, for the use of persons floating logs and other timber as aforesaid, so long as said dam shall be kept up, or until otherwise ordered by the board of county commissioners. (Rev., s. 5303; Code, s. 3713; 1858-9, c. 26, s. 2; C. S. 7369.)

§ 77-6. Gates and slopes discontinued. — The commissioners appointed as aforesaid, at any time that they may deem such gate and slope no longer necessary, may report the fact to their respective boards of county commissioners, and said boards of county commissioners may order the same to be discontinued. (Rev., s. 5304; Code, s. 3714; 1858-9, c. 26. s. 3; C. S. 7370.)

§ 77-7. Failure of owner of dam to keep gates, etc.—If any owner or keeper of a mill, whose dam is across any stream, shall fail to build a gate and slope therein, or thereafter to keep and maintain the same as required by commissioners to lay off rivers and creeks, he shall be guilty of a misdemeanor. (Rev., s. 3383; Code, s. 3715; 1858-9, c. 26, s. 4; C. S. 7371.)

§ 77-8. Repairing breaks. — Wherever any stream of water which is used to propel machinery shall be by freshet or otherwise diverted from its usual channel so as to impair its power as used by any person, such person shall have power to repair the banks of such stream at the place where the break occurs, so as to cause the stream to return to its former channel. (Rev., s. 5305; Code, s. 3716; 1879, c. 53, s. 1; C. S. 7372.)

§ 77-9. Entry upon lands of another to make repairs.—In case the break occurs on the lands of a different person from the one utilizing the stream, the person utilizing the stream shall have power to enter upon the lands of such other person to repair the same, and in case such person objects, the clerk of the superior court of the county in which the break occurs shall, upon application of the party utilizing the stream, appoint three disinterested freeholders, neither of whom shall be related to either party, who after being duly sworn shall lay off a road if necessary by which said person may pass over the lands of such other person to the break and repair said break from time to time as often as may be necessary, so as to cause the stream to return to its original channel, and assess any damage which may thereby be occasioned: Provided, the party upon whose land the work is proposed to be done shall have five days notice in writing served on him or left at his place of residence: Provided further, that it shall be the duty of said commissioners to assess the damages of any one on whose land the road shall be laid off to be paid by the applicant for said road: Provided, also, that either party shall have the right of appeal to the superior court. (Rev., s. 5306; Code, s. 3717; 1879, c. 53, s. 2; C. S. 7373.)

§ 77-10. Draws in bridges. — Whenever the navigation of any river or creek which, in the strict construction of law, might not be considered a navigable stream, shall be obstructed by any bridge across said stream, it shall be lawful for any person owning any boat plying on said stream to make a draw in such bridge sufficient for the passage of such boat; and the party owning such boat shall construct and maintain such draw at his own expense, and shall use the same in such manner as to delay travel as little as possible. (Rev, s. 5307; Code, s. 3719; 1879, c. 279, ss. 1, 2; C. S. 7374.)

§ 77-11. Public landings.—The board of county commissioners may establish public landings on any navigable stream or watercourse in the county upon petition in writing. Unless it shall appear to the board that the person owning the lands sought to be used for a public landing shall have had twenty days' notice of the intention to file such petition, the same shall be filed in the office of the clerk of the board until the succeeding meeting of the board, and notice thereof shall be posted during the same period at the court house door. At said meeting of the board, the allegations of the petition shall be heard, and if sufficient reason be shown, the board shall order the establishment of the public landing.

The board is authorized to enter upon any land and locate a public landing after service of notice on the landowner that a landing is to be established under the authority of this section. If the board and landowner cannot agree on the damages, if any, the board shall, on the expiration of sixty days from the completion of the landing, cause to be summoned three disinterested freeholders of the county, who shall go upon the land and assess the damages and benefits according to the general law. All damages assessed shall be a county charge. In assessing damages, the jury

shall take into consideration any special benefits accruing to the landowner, and if such benefits exceed the damages, the amount of such excess of benefits shall be assessed against the landowner and constitute a lien on the land adjoining the landing, and shall be collected in the same manner as county taxes. The board shall order how the costs shall be paid.

No suit shall be instituted by a landowner for damages for the location of the landing earlier than sixty days, nor later than six months, after the completion of the landing. Either party may appeal to the Superior Court for the assessment of damages and benefits, where the matter shall be heard de novo by the court and jury. No cost shall be awarded against the county upon appeals when the recovery awarded on appeal is not more favorable to the appellant than the award of the referees. All places heretofore established as public landings shall remain such. (Rev., ss. 2684, 2685, 5308; Code, ss. 2038, 2040, 2982; R. C. c. 60, s. 1; c. 101, ss. 2, 4; 1784, c. 206, s. 4; 1789, c. 303; 1790, c. 331, s. 3; 1793, c. 386; 1813, c. 862, s. 1; 1822, c. 1139, s. 2; 1869, c. 20, s. 8, sub-sec. 29; 1872-3, c. 189, s. 3; 1879, c. 82, s. 9; 1917, c. 284, s. 33; 1919, c. 68; C. S. 3667, 3762, 3763, 7375.)

Art. 2. Obstructions in Streams.

§ 77-12. Obstructing passage of boats.—If any person shall obstruct the free passage of boats along any river or creek, by felling trees, or by any other means whatever, he shall be guilty of a misdemeanor. (Rev., s. 3561; Code, s. 3711; R. C., 100, s. 6; 1796, c. 460, s. 2; C. S. 7376.)

§ 77-13. Obstructing streams a misdemeanor.—If any person shall wilfully fell any tree, or wilfully put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, and whereby the navigation of such stream by any raft or flat may be impeded, delayed, or prevented, the person so offending shall be guilty of a misdemeanor, and fined not to exceed fifty dollars, or imprisoned not to exceed thirty days. Nothing in this section shall prevent the erection of fish-dams or hedges which do not extend across more than two-thirds of the width of any stream where erected, but if extending over more than two-thirds of the width of any stream, the said penalties shall attach. (Rev., s. 3559; Code, s. 1123; 1872-3, c. 107, ss. 1, 2; C. S. 7377.)

Chapter 78. Securities Law.

Sec.
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§ 78-1. Title.—This chapter may be cited and shall be known as the "Capital Issues Law" of the State of North Carolina. (1925, c. 190, s. 1; 1927, c. 149, s. 1.)

§ 78-2. Definitions.—

(a) The term "person" shall mean and include a natural person, firm, partnership, association, syndicate, joint-stock company, unincorporated company or organization, trust, incorporated or unincorporated, and any corporation organized under the laws of the District of Columbia, or of any state or territory of the United States, or of any foreign government. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law or equity.

(b) The term "securities" or "security" shall include any note, stock certificate, stock, treasury stock, bond, debenture, evidence of indebtedness, transferable certificate of interest or participation, certificate of interest in a profit-sharing agreement, certificate of interest in an oil, gas or mining lease, collateral trust certificate, any transferable share, investment contract, or beneficial interest in or title to property or profits or any contract or agreement in the promotion of a plan or scheme whereby one party undertakes to purchase the increase or production of the other party from the article or thing sold under the plan or scheme, or whereby one party is to receive the profits arising from the increase or production of the article or thing sold under the plan or scheme, or any other instrument commonly known as security.

(c) The term "sale" shall include any agreement whereby a person transfers or agrees to transfer either the ownership of or an interest in a security. Any security given or delivered with

or as a bonus on account of any purchase of securities, or of any other thing shall be deemed to constitute a part of the subject of such purchase and to have been sold for value. "Sale," or "sell" shall also include an attempt to sell, an option of a purchase or sale, a solicitation of a sale, a subscription, or an offer to sell, either directly or by agent, or by a circular letter, advertisement, or otherwise; but nothing herein shall limit or diminish the full meaning of the term "sell" or "sale" as used by or accepted in courts of law or equity: Provided, that a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same issuer shall not be deemed a sale, or offer to sell, or option of sale of such other security within the meaning of this definition and such privilege shall not be construed as affecting the status of the security to which such privilege pertains with respect to exemption or registration under the provisions of this chapter, but when such privilege of conversion shall be exercised such conversion shall be subject to the limitations hereinafter provided in subsection (8) of § 78-4; and provided further, that the issue or transfer of a right pertaining to a security entitling the holder to subscribe to another security of the same issuer, when such right is issued or transferred with the security to which it pertains, shall not be deemed a sale or offer to sell or option of sale of such other security within the meaning of this definition, and such right shall not be construed as affecting the status of the security to which such right pertains with respect to exemption or registration under the provisions of this chapter; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this chapter.

(d) The term "issuer" shall include every person who proposes to issue or who issues or who has issued or shall hereafter issue any security (sold or to be sold, offered or to be offered for sale).

(e) The term "intangible assets" shall mean and include patents, formulae, good will, promotions, trade brands, franchises, evidences of indebtedness or corporate securities, titles or rights in and to intangible property, and all other like assets.

(f) "Tangible assets" shall mean all assets other intangible assets, as above defined.

(g) "Mortgage" shall be deemed to include a deed of trust to secure a debt. (1925, c. 190, s. 2; 1927, c. 149, s. 2; 1933, c. 432.)

§ 78-3. Exempted securities.—Except as hereinafter provided, the provisions of this chapter shall not apply to any security which, at the time of sale thereof, is within any of the following classes of securities:

(a) Any security issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state or municipal corporation or political subdivision or agency thereof.

(b) Any security issued or guaranteed by any foreign government, or by any state, province or political subdivision thereof, having the power of taxation or assessment, with which the United States is maintaining diplomatic relations and which security is recognized at the time it is offered for sale in this State as a valid obligation for its face value by such foreign government, or by the State, province or political subdivision thereof issuing same.

(c) Any security issued by a national bank, or by any Federal Land Bank, or joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July seventeen, nineteen hundred and sixteen, or any amendments thereof, or by the War Finance Corporation, or by any corporation created or acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States, provided, that such corporation is subject to supervision or regulation by the government of the United States.

(d) Any security issued or guaranteed as to principal, interest or dividend, by a corporation, domestic, or foreign, owning or operating a railroad, or any other public service utility: Provided, that such corporation is subject to regulation or supervision, either as to its rates and charges or as to the issue of its own securities by a public commission, board or officer, or by any governmental, legislative or regulatory body of this State, or of the United States, or of any State, territory or insular possession thereof, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment securities based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock or equipment mortgaged, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, or equipment securities where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any State, or of the Dominion of Canada, to secure the payment of such equipment securities; also bonds, notes or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any of the securities herein above in this clause (d) described: Provided, that such collateral securities equal in fair value at least one hundred and twenty-five (125%) per cent of the par value of the bonds, notes or other evidences of indebtedness, so secured.

(e) Securities appearing in any list of securities dealt in or any organized stock exchange having an established meeting place in a city of over five hundred thousand population according to the last preceding United States census and providing facilities for the use of its members in the purchase and sale of securities listed by such exchange and on which exchange actual transactions have accrued during each of the preceding twenty years in the purchase and sale of United States bonds, or other bonds of any of the classes exempted herein from the provisions of this chapter, and which require financial statements to be submitted at the time of listing and annually thereafter; or on any other recognized and responsible stock exchange which has been previously investigated and approved by the secretary of state and which securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, or represented by subscription rights which have been so listed; or evidences of indebtedness guaranteed

by companies any stock of which is so listed, if the company whose securities are guaranteed is a subsidiary of the guaranteeing company and controlled by lease or ownership of stock, such securities to be exempt only so long as such listing shall remain in effect: Provided, however, that the secretary of state upon 10 days' notice and hearing may at any time withdraw his approval of any such stock exchange; and provided further, that the secretary of state may at any time withdraw his approval of any security so listed on any stock exchange in a city of five hundred thousand population as above defined, or any other approved stock exchange, and thereafter such security shall not be entitled to the benefit of this exemption, except upon further order of the secretary of state.

(f) Any security issued by, and representing an interest in, or a direct contract obligation of a bank, trust company or savings institution, which bank, trust company or savings institution is incorporated under the laws of, and subject to the examination, supervision and control of the United States, or of any state or territory of the United States, or of any insular possession thereof: Provided, this section shall not apply to any security based upon mortgages on real estate nor to saving institutions and trust companies not approved by the commissioner of banks of the State of North Carolina.

(g) Negotiable promissory notes or commercial paper if such issue of negotiable notes or commercial paper mature in not more than fifteen months from the date of issue and shall be issued within three months after date of sale.

(h) Securities issued by building and loan associations incorporated under the laws of the State of North Carolina.

(i) Securities issued by insurance companies in North Carolina, subject to State supervision.

(j) Securities issued by any corporation organized not for pecuniary profit or organized exclusively for educational, benevolent, fraternal, charitable or reformatory purposes.

(k) Securities evidencing indebtedness due under any contract made in pursuance to the provisions of any statute of any State of the United States providing for the acquisition of personal property under conditional sale contract.

(l) Bonds or notes secured by lien on vessels shown by policies of marine insurance taken out in responsible companies to be of value, after deducting any and all other indebtedness secured by prior lien, of not less than one hundred and twenty-five (125%) per cent of the par amount of such bonds or notes.

(m) Any security other than common stock outstanding and in the hands of the public for a period of not less than five years upon which no default in payment of principal, interest or dividend exists and upon which no such default has occurred for a continuous immediately preceding period of five years.

(n) Any security which, under the laws of this State, is a legal investment for savings banks of trust funds.

(o) Securities issued by a domestic corporation, partnership, association, company, syndicate or trust owning a property, business or industry which has been in continuous operation for not less than three years prior thereto, and which has shown during a period of not less than two years nor more than five years prior to the close of its last fiscal year preceding the offering of such securities average annual net earnings, after deducting all prior charges, not including the charges or prior securities to be retired out of the proceeds of such sale, as follows:

(1) In the case of interest bearing securities, not less than one and one-half times the annual interest charges thereon and upon all other outstanding interest-bearing obligations of equal rank.

(2) In the case of preferred stock not less than one and one-half times the annual dividend requirements on the total of the proposed issue of such preferred stock and on all other outstanding stock of equal rank.

(3) In the case of common stock with par value not less than six per cent upon all outstanding common stock of equal rank, or in the case of common stock without par value, not less than six per cent upon the amount charged to capital by reason of the issuance thereof: Provided, the tangible assets of such corporation, partnership, association, company, syndicate, or trust (not including any intangible assets), together with the proceeds of the sale of such securities accruing to the issuer, shall equal or exceed:

(1) In the case of evidence of indebtedness, one hundred twenty-five per centum of the par value of such evidence of indebtedness, and all other obligations of equal rank then outstanding and not to be retired out of the proceeds of the sale of such evidence of indebtedness.

(2) In the case of preferred stock one hundred twenty-five per centum of the par value of the aggregate amount of all outstanding preferred stock of equal and prior rank and the stock then offered for sale, after the deduction from such assets of all indebtedness which will be existing and of the par value of all stock of senior rank which will be outstanding after the application of the proceeds of the preferred stock offered for sale.

(3) In the case of common stock one hundred per centum of the aggregate of all outstanding stock of equal rank and the stock then offered for sale, reckoned at the price at which such stock is offered for sale or sold after the deduction from such assets of all indebtedness which will be existing and of the par value of all stock of senior rank which will be outstanding after the application of the proceeds of the common stock offered for sale: Provided, however, that in the case of preferred or common stock, without par value, computation hereunder shall be made upon the basis of the amount charged to capital by reason of the issuance thereof, instead of upon the basis of par value. (1925, c. 190, s. 3; 1927, c. 149, s. 3; 1931, c. 243, s. 5.)

§ 78-4. Transactions exempted from operation of this chapter.—Except as hereinafter provided, the provisions of this chapter shall not apply to the sale or the offering for sale of any security in any of the following transactions, viz.:

(1) At any judicial, executor's, administrator's, or guardian's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy.

(2) By or for the account of any pledgeholder or mortgagee selling or offering for sale, in the

ordinary course of business, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) In an isolated transaction in which any security is sold or offered for sale by the owner thereof, or by his representative for the owner's account in the usual and ordinary course of business and not for the direct or indirect promotion of any scheme or enterprise within the purview of this chapter, and when such sale or offer for sale is not made in the course of repeated and successive transactions of a like character by such owner or on his account by the representative of such owner, and neither such owner nor his representative is the maker or issuer or underwriter of such security.

(4) The sale of, or offer to sell such security to any bank, savings institution, trust company, insurance company, or to any corporation.

(5) The distribution by a corporation of capital stock, bonds or other securities to its stockholders or other security holders as a stock dividend or other distribution out of earnings or surplus; or the issue of securities by a corporation to security holders or creditors of such corporation in the process of a bona fide reorganization of such corporation made in good faith either in exchange for either or both the securities of such security holders or claims of such creditors, or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issue of increased capital stock of a corporation sold or distributed by it entirely among its own stockholders, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock.

(6) The transfer or exchange by or on account of one corporation to another corporation or to its stockholders of their or its own securities in connection with a proposed consolidation or merger of such corporations, or in connection with the change of par value of stock to non par value stock or the exchange of outstanding shares for a greater or smaller number of shares; the transfer or exchange by or on the account of one corporation of its own securities to the holders of the securities of another corporation, partnership, trust, person, firm or association, in any plan of distribution or exchange providing for the assumption or acquisition by the issuing corporation of the securities for which its own securities are issued or are to be issued, where the plan of distribution or exchange is contained in a registration statement which has been filed for more than twenty days with the securities and exchange commission of the United States government or like agency of the United States government, charged with the registration of securities.

(7) Subscriptions for shares or sales or negotiations for sales of shares of the capital stock in domestic corporations, when no expense is incurred, and no commission, compensation or remuneration is paid or given for, or in connection with, the sale or disposition of such securities.

(8) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security exchanged to make such conversion: Provided, that the security exchanged has been registered by notification under the law or was when sold exempt from the provisions of the law and that the security received in exchange if sold at the conversion price would at the time of such conversion fall within the class of securities entitled to registration by notification under the law. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities received in such exchange are sold.

(9) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof, when no expense is incurred, and no commission, compensation or remuneration is paid or given for, or in connection with, the sale or disposition of such securities.

(10) The sale of securities to a registered dealer.

(11) Bonds or notes secured by mortgage upon real estate where the entire mortgage together with all of the bonds or notes secured thereby are sold to a single purchaser at a single sale. (1925, c. 190, s. 4; 1927, c. 149, s. 4; 1935, cc. 90, 154.)

§ 78-5. Burden of proof as to such transactions.—It shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment or proceeding laid or brought under this chapter in either a court of law or equity, or before the secretary of state, in either a civil or a criminal action or suit. The sale, unless the transaction is exempted from the operation of this chapter, of any security not exempt from the provisions of this chapter as hereinbefore provided and not admitted to the record and recorded as hereinafter provided, shall be prima facie evidence of the violation of this chapter and the burden of proof of any such exemption shall be upon the party claiming the benefit thereof. (1925, c. 190, s. 5; 1927, c. 149, s. 5.)

§ 78-6. Registration of securities.—No securities except of a class exempt under any of the provisions of § 78-3 or unless sold in any transaction exempt under any of the provisions of § 78-4 shall be sold within this State unless such securities shall have been registered by notification or by qualification as hereinafter defined. Registration of stock shall be deemed to include the registration of rights to subscribe to such stock if the notice under § 78-7 or the application under § 78-8 for registration of such stock includes a statement that such rights are to be issued. (1925, c. 190, s. 6; 1927, c. 149, s. 6.)

§ 78-7. Advertisement of securities.—It shall be unlawful hereafter:

(1) To advertise in this State, through or by means of any prospectus, circular, price list, letter, order blank, newspaper, periodical or otherwise, or

(2) To circulate or publish any newspaper, periodical or either written or printed matter in which any advertisement in this section specified shall appear, or

(3) To circulate any prospectus, price list, order blanks, or other matter for the purpose of inducing or securing any subscriptions to or sale of any security or securities not exempted under any of the provisions of § 78-3, and not sold or to be sold in one of the transactions exempted under the provisions of § 78-4 and except as provided in

§ 78-8, unless and until the requirements of § 78-6 have been fully complied with and such advertising matter has been filed and approved by the secretary of state. (1925, c. 190, s. 7; 1927, c. 149, s. 7.)

§ 78-8. Registration by notification.—The following classes of securities shall be entitled to registration by notification in the manner provided in this section:

(1) Securities issued by a corporation, partnership, association, company, syndicate or trust owning a property, business or industry which has been in continuous operation not less than three years, and which has shown during a period of not less than two years, nor more than five years, next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges not including the charges upon securities to be retired out of the proceeds of sale, as follows:

(a) In the case of interest bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest bearing obligations of equal rank.

(b) In the case of preferred stock, not less than one and one-half times the annual dividend requirements on such preferred stock and on all other outstanding stock of equal rank.

(c) In the case of common stock not less than five per centum upon all outstanding common stock of equal rank, together with the amount of common stock then offered for sale reckoned upon the price at which such stock is then offered for sale or sold. The ownership by a corporation, partnership, association, company, syndicate or trust or more than 50 per cent of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of the property, business or industry of such corporation, and shall permit the inclusion of the earnings of such corporation, applicable to the payment of dividends upon the stock so owned in the earnings of the corporation, partnership, association, company, syndicate, or trust issuing the securities sought to be registered by notification.

(2) Any bond or notes secured by a first mortgage upon agricultural lands used and valuable for agricultural purposes (not including oil, gas or mining property or leases), or upon city, town or village real estate situated in any State or territory of the United States or in the District of Columbia or in the Dominion of Canada as follows:

(a) When the mortgage is a first mortgage upon such agricultural lands, used and valuable for agricultural purposes, and when the aggregate face value of such bonds or notes, not including interest notes, or coupons secured thereby, does not exceed 60 per centum of the then fair market value of said lands plus 60 per centum of the insured value of any improvements thereon; or,

(b) When the mortgage is a first mortgage upon city, town or village real estate and when the aggregate face value of such bonds or notes, not including interest notes or coupons, secured by such real estate or leaseholds does not exceed 60 per centum of the then fair market value of said mortgaged real estate or leaseholds, respectively, including any improvements appurtenant thereto, and when said mortgaged property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value, after deducting operating expenses and taxes, at least equal to the annual interest, plus not less than 3 per centum of the principal of said mortgage indebtedness.

(3) Bonds or notes secured by first lien on collateral pledged as security for such bonds or notes with a bank or trust company as trustee, which bank or trust company is incorporated under the laws of and subject to examination and supervision by the United States or by a state of the United States, which collateral shall consist of (a) a principal amount of first mortgage bonds or notes conforming to the requirements of any one or more of the provisions of subsection (2) of this section and/or (b) a principal amount of obligations secured as hereinafter in this subsection provided, and/or (c) a principal amount of obligations of the United States, and/or (d) cash, equal to not less than 100 per cent of the aggregate principal amount of all bonds or notes secured thereby. The portion of such collateral referred to in clause (b) shall consist of obligations secured by a first lien on a principal amount of first mortgage bonds or notes conforming to the requirements of subsection (2) of this section, and / or a principal amount of obligations of the United States and/or cash equal to not less than 100 per cent of the aggregate principal amount of such obligations so secured thereby, and all such pledged securities including cash so securing such obligations shall have been deposited with a bank or trust company as trustee, which bank or trust company is incorporated under the laws of and subject to examination and supervision by the United States or by a state of the United States.

Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof in the office of the secretary of state of a statement with respect to such securities containing the following:

(a) Name of issuer.

(b) A brief description of the security including amount of the issue.

(c) Amount of securities to be offered in the State.

(d) A brief statement of the facts which show that the security falls within one of the classes in this section defined.

(e) The price at which the securities are to be offered for sale.

In the case of securities falling within the class defined by subsection (1), if the circular to be used for the public offering is not filed with the statement, then a copy of such circular shall be filed in the office of the secretary of state within two days thereafter, or within such further time as the secretary of state shall allow.

In the case of securities falling within the classes defined by subsections (2) and (3) the circular to be used for the public offering shall be filed with the statement.

The filing of such statement in the office of the secretary of state and the payment of the fee here-

inafter provided shall constitute the registration of such security. Upon such registration, such securities equal to the amount so registered by notification may be sold in this State by any registered dealer by giving notice in the manner hereinafter provided in § 78-19, subject, however, to the further order of the secretary of state as hereinafter provided.

If, at any time, in the opinion of the secretary of state, the information contained in the statement or circular filed is misleading, incorrect, inadequate, or incomplete, or the sale or offering for sale of the security may work or tend to work a fraud or, in the opinion of the secretary of state, be contrary to good business practices, the secretary of state may require from the person filing such statement such further information as may, in his judgment, be necessary to establish the classification of such security as claimed in said statement, or to enable the secretary of state to ascertain whether the sale of such security would be fraudulent, or would result in fraud, and the secretary of state may also suspend the right to sell such security pending further investigation by entering an order specifying the grounds for such action, and by notifying personally by mail, telephone or telegraph the person filing such statement and every registered dealer who shall have notified the secretary of state of an intention to sell such security. The refusal to furnish information required by the secretary of state, within a reasonable time to be fixed by the secretary of state, may be a proper ground for the entry of such order of suspension. Upon the entry of any such order of suspension no further sales of such security shall be made until the further order of the secretary of state, unless the person to be affected by such order shall file with the secretary of state a bond in a penalty to be fixed by him in some solvent surety company licensed in the State of North Carolina, to pay all such damages as might be sustained by any purchaser of such security, which bond shall be made payable to the State of North Carolina and sued upon by any person damaged by such sale.

In the event of the entry of such order of suspension the secretary of state shall upon request give a prompt hearing to the parties interested. If no hearing is requested within a period of twenty (20) days from the entry of such order, or if upon such hearing the secretary of state shall determine that any such security does not fall within a class entitled to registration under this section, or that the sale thereof would be fraudulent or would result in fraud or the continued sale of the same, is in his opinion contrary to good business practices, he shall enter a final order prohibiting sales of such security, with his findings with respect thereto: Provided, that if the finding with respect to such security is that it is not entitled to registration under this section, the applicant may apply for registration by qualification by complying with the requirements of § 78-9. Appeals from such final order may be taken as hereinafter provided. If, however, upon such hearing, the secretary of state shall find that the security is entitled to registration under this section, and that its sale will neither be fraudulent nor result in fraud, or that the continued sale thereof is not contrary to good business practices, he shall forthwith enter an order revoking such order of suspension and such security shall be restored to its status as a security registered under this section, as of the date of such order of suspension.

At the time of filing the statement, as hereinbefore prescribed in this section, the applicant shall pay to the secretary of state a filing fee of ten dollars and a fee of one-twentieth of one per cent of the aggregate par value of the securities to be sold in this State for which the applicant is seeking registration, but in no case shall such latter fee be less than twenty-five dollars, and not exceeding one hundred and fifty dollars. In the case of stock having no par value, the price at which such stock is to be offered to the public, shall be deemed to be the par value of such stock. (1927, c. 149, s. 8.)

§ 78-9. Registration by qualification.—All securities required by this chapter to be registered before being sold in this State, and not entitled to registration by notification, shall be registered only by qualification in the manner provided by this section.

The secretary of state shall receive and act upon applications to have securities registered by qualification and may prescribe forms on which he may require such applications to be submitted. Applications shall be in writing and shall be duly signed by the applicant and sworn to by a proper person, and filed in the office of the secretary of state and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within this State.

The secretary of state may require the applicant to submit to the secretary of state the following information respecting the issuer and such other information as he may, in his judgment, deem necessary to enable him to ascertain whether such securities shall be registered pursuant to the provisions of this section.

(a) The names and addresses of directors, trustees and officers, if the issuer be a corporation or association or trust organized or existing under the common law (as hereinbefore defined), of all partners, if the issuer be a partnership, and of the issuer if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this State, if any, and if not, the name of its process officer within this State.

(c) The purposes of incorporation, (if incorporated) and the general character of the business actually to be transacted by the issuer, and the purpose of the proposed issue.

(d) A statement of the capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities on a day not more than sixty (60) days prior to the date of filing such balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which application is made; and a copy of all circulars, prospectuses, advertisements or other descriptions of such securities then prepared by or for such issuer, and/or by or for such applicant (if the applicant shall not be the issuer) to be used for distribution or publication in this State.

(e) A statement of the amount of the issuer's

income, expenses, and fixed charges during the last fiscal year, or if in actual business less than one year, then for such time as the issuer has been in actual business.

(f) A statement showing the price at which such security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale, or offering for sale, of such securities.

(g) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which such securities have been or are to be issued in payment.

(h) The amount of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(i) If the issuer is a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments and of its existing by-laws, if not already on file in the office of the secretary of state of this State. If the issuer is a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership or an unincorporated association, or joint stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office of the secretary of state of this State.

All of the statements, exhibits, and documents of every kind required by the secretary of state under this section, except properly certified public documents, shall be verified in such manner and form as may be required by the secretary of state.

With respect to securities required to be registered by qualification under the provisions of this section, the secretary of state may by order duly entered fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise directly or indirectly, for or in connection with the sale or offering for sale of such securities which shall in no case exceed ten per cent of the actual sale price of the security.

At the time of filing the information, as hereinbefore prescribed in this section, the applicant shall pay to the secretary of state a filing fee of twenty-five dollars and, upon the entry of an order for the registration of the securities, shall pay to the secretary of state a fee of one-tenth of one per cent of the aggregate par value of the securities to be sold in this State, for which the applicant is seeking registration, but in no case shall such latter fee be less than twenty-five dollars, and not exceeding two hundred and fifty dollars. In case of stock having no par value the price at which such stock is to be offered to the public shall be deemed to be the par value of such stock. (1927, c. 149, s. 9.)

§ 78-10. Consideration of application by secretary of state.—

(1) As soon as practicable after the filing of an application, under § 78-9, the secretary of state shall examine the application, statements and documents so filed; and if he deems it advisable, may make or cause to be made such inspection, examination, audit and investigation of the business and affairs of the issuer as he may deem necessary or advisable, which said inspection, examinations, audit and investigation, shall be at the expense of the applicant. As a part of the aforesaid inspection, examination, audit and investigation, the secretary of state may, if he deems it necessary or advisable, cause an appraisal to be made of the property or assets of the issuer or parts thereof. Appraisals herein provided for may be made by three disinterested appraisers, and the secretary of state is authorized to nominate and appoint such appraisers, who shall be paid not more than twenty-five dollars per day and their actual expenses while so employed, which compensation and expenses shall be paid by the applicant. The secretary of state may require a bond sufficient to cover the expense of any such inspection, examination, audit or investigation as may be deemed necessary by the secretary of state in connection with the application before, or after the granting of such application for registration.

(2) The secretary of state shall make a complete report of the inspection, investigation, examination, etc., of the business and affairs of the applicant above provided for, which record shall include a copy of the appraisal aforesaid, provided such an appraisal be made. (1925, c. 190, s. 10; 1927, c. 149, s. 10.)

§ 78-11. Hearing before secretary of state.—The secretary of state shall, within fifteen days after the filing of the report of such investigation, give the applicant a hearing, if he so desires.

(1) If the secretary of state shall act favorably upon the application, he shall issue an order, directing that such securities be admitted to record in the register of qualified securities, hereinafter provided for. The secretary of state shall keep a permanent record of all proceedings, findings, judgments and orders. In granting to an applicant the privilege of offering securities to the public in the State of North Carolina the secretary of state may impose such reasonable conditions, either precedent or concurrent thereto, as in his judgment may be necessary or advisable. If the statement containing information as to securities, as provided for in § 78-9, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, lease, formulae or good will, or for promotion fees or expenses or for other intangible assets, the amount and nature thereof shall be fully set forth and the secretary of state may require that such securities so issued in payment of such patent right, copyright, trade-mark, process, lease, formulae or good will, or for promotion fees or expenses, or for other intangible assets shall be delivered in escrow to the secretary of state or other depository satisfactory to the secretary of state under an escrow agreement that the owners of such securities shall not be entitled to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend, or dividends aggregating not less than six per cent for three years, shown to the satisfaction of said secretary of state to have been actually earned on the investment in any common stock so held, and in case of dissolution or insolvency during the time such securities

are held in escrow, that the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full: Provided, that during the period such securities shall be held in escrow, the secretary of state shall have the right to vote such stock in person, or by proxy as he shall deem advisable.

(2) If, however, the secretary of state shall, in any case, believe from all the evidence:

(a) That the sale of such securities would work a fraud, deception or imposition upon the purchaser thereof; or

(b) That the articles of incorporation or association, declaration of trust, charter, constitution, by-laws, or other organization papers of the issuer are unfair, unjust, inequitable, illegal or oppressive; or

(c) That the issuers or guarantors of such securities are insolvent, or are in failing circumstances, or are not trustworthy; or

(d) That the issuer's plan of business is unfair, inequitable, dishonest or fraudulent; or

(e) That the issuer's literature or advertising is misleading or calculated to deceive purchasers or investors; or

(f) That the securities offered or to be offered; issued or to be issued in payment for property or assets, either tangible or intangible, are so in excess of the reasonable value thereof as to indicate fraud or bad faith; or

(g) That the enterprise or business of either the issuers or of the applicant, is unlawful or against public policy; or

(h) That the sale of such securities is a mere scheme of either the issuer or the applicant to dispose of worthless securities of no real intrinsic value, at the expense of the purchasers of said securities; or

(i) That the sale of such securities is contrary to good business practices.

Then the secretary of state shall refuse to admit said securities to record in the register of qualified securities, or if such securities are admitted to record, such action may at any time thereafter be revoked by the secretary of state for any of the reasons set out in this section, subsection two, and it shall thereafter be unlawful to sell such securities in this State or to circulate any advertisement thereof.

In any case the secretary of state either before granting or after granting any application for registration by qualification under § 78-9, shall have the right to require of the applicant a bond, the form whereof shall be prescribed and the surety approved by the secretary of state, penalty whereof shall be fixed by the secretary of state at not more than twenty per centum of the sales price of the securities issued or proposed or authorized to be issued. The said bond shall be with surety and payable to the State of North Carolina, conditioned that the facts set forth in the application for such permit and in all other documents required by this chapter to be filed with the secretary of state are true, and that the provisions of this chapter shall be strictly complied with, and that all moneys from the sale of such securities will be used for the proper purpose or purposes as set forth in the security sold and in the papers filed with the secretary of state; and that the contract of the promoter as set forth in the securities issued will be complied with and also that all statements set forth in all literature or advertising matter used or circulated in connection with the sale, or offer of sale, of such securities shall be the truth; and that the contract of the promoter shall be fulfilled. Except when the surety offered is a surety company authorized to do business in this State, it shall be the duty of the secretary of state to satisfy himself that such surety is amply solvent before accepting the same.

Any person who shall be induced to purchase any securities covered by such bond by reason of any misrepresentation of any material fact concerning such securities, contained in said application or other documents submitted in connection therewith or furnished to the secretary of state, upon its request or any other written or printed matter issued or used by the person making such sale or its, or his, agents in making such sale, or shall have suffered loss by reason of the fact that moneys paid by him to the said seller of such securities or the seller's agent, have not been applied to the proper purpose set forth in the security sold or the papers filed with the secretary of state, or that the seller has failed or refused to comply with his contract, as set forth in the security issued, shall have the right to bring suit upon the bond above provided for, and such bond shall be security for such person for his losses; but such person shall not be entitled to recover more than the money paid, or the actual value of the property given, or the labor performed, in exchange for such securities, with legal interest from the date of payment or the performance of the services or the transfer of property. One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect, but no recoveries upon such bond shall ever exceed the full amount of same, and upon suits being commenced in excess of the amount of same, the secretary of state may require a new bond, and, if the same is not given within thirty days the secretary of state may revoke the registration herein provided for: Provided, however, that any suit or action instituted under this section shall be commenced within one year from the date of any such sale. During the thirty days after notice to file a new bond, the securities shall not be sold or offered for sale. (1925, c. 190, s. 11; 1927, c. 149, s. 11.)

§ 78-12. No representation to be made of endorsement.—No person, dealer, or agent shall represent any securities sold under the provisions of this chapter as being endorsed or recommended by the state of North Carolina or any officer thereof, nor shall he make any mention whatever of their being recorded or admitted to record in the state of North Carolina. (1925, c. 190, s. 12; 1927, c. 149, s. 12.)

§ 78-13. Register of qualified securities.—The secretary of state shall keep and maintain a permanent register of qualified securities and shall enter therein the names and amounts of all securities the privilege of offering which to the public in the State of North Carolina has been granted by the secretary of state, and the date thereof, and such other data as the secretary of state may deem proper. All securities admitted to

record and recorded in such register shall be deemed, for the purpose of this chapter, to have been fully qualified for sale in the State of North Carolina and thereafter any person may lawfully sell or offer for sale any part of such issue as recorded; subject, however, to the provisions of this chapter. Such register shall be open to inspection by the public. (1925, c. 190, s. 13; 1927, c. 149, s. 13.)

§ 78-14. Report to secretary of state.—Every issuer whose securities have been admitted to record and recorded as herein provided, may be required during the offering of such securities to file within thirty days after the close of business on December thirty-first, March thirty-first, June thirtieth, and September thirtieth, of each year, and at such other times as may be required by the secretary of state, a statement, verified under oath by some person having actual knowledge of the facts therein stated, setting forth, in such form as may be prescribed by the secretary of state, the financial condition, the amount of assets and liabilities, of such issuer on the above dates and such other information as said secretary of state may require. It shall be unlawful for any issuer subject to the provisions of this chapter, who refuses or fails to comply with the provisions of this section, or for his agent or agents, to thereafter sell such securities in this State. (1925, c. 190, s. 14; 1927, c. 149, s. 14.)

§ 78-15. Examination and examiners. — The records and the business affairs of every company or person, whose securities have been admitted to record in the register of qualified securities shall be subject to examination and inspection by the secretary of state or upon his direction by his assistants, accountants, or examiners, at any time said secretary of state may deem it advisable; and such company or person shall pay a fee for each of such examinations of not to exceed twenty-five dollars ($25) for each day or fraction thereof, plus the actual traveling and hotel expenses of said secretary of state, his assistant, accountant or examiner, that he is absent from the capital of the State for the purpose of making such examination. (1925, c. 190, s. 15; 1927, c. 149, s. 15.)

§ 78-16. Complaints, investigations, findings of facts.—The secretary of state may, upon his own initiative or upon the complaint of any reasonable person, hold such public hearings or make or have made such special inspection, examination or investigation as he may deem necessary, in connection with the promotion, sale or disposal in this State of any security or securities, to determine whether the same constitutes a violation of law; and the said secretary of state, his assistant or deputy shall have power and authority:

(1) To issue subpœnas and process compelling the attendance of any person and the production of any paper, records or books relating to any matter of which the secretary of state has jurisdiction under this article, and

(2) To administer an oath to any person whose testimony may be required on such inspection, examination, or investigation. Upon the conclusion of any such hearing, inspection, examination or investigation the secretary of state may make findings of fact concerning the matter or matters investigated. Such findings of facts shall be admissible in evidence in any suit or action, at law or in equity, instituted under any of the laws of this State, and shall be prima facie evidence of the truth of the matters therein found by said secretary of state, and,

(3) To maintain by injunction or other remedy any action in any court of competent jurisdiction in this State for the purpose of enforcing this chapter, or making investigations. (1925, c. 190, s. 16; 1927, c. 149, s. 16.)

§ 78-17. Certain information and records open to inspection by public.—All information received by the secretary of state shall be kept open to public inspection at all reasonable hours, and the secretary of state shall supply to the public upon request copies of any papers on record with the secretary of state at charges equaling the cost of typing same; and the secretary of state shall have power and authority to place in a separate file, not open to the public except on his special order, any information which he deems in justice to the person filing the same should not be made public. An exemplification of the record under the hand of the secretary of state, or of his deputy, shall be good and sufficient evidence of any record made or entered by the secretary of state. A certificate under the hand of the department of state or his deputy or assistant and the seal of the department of state showing that the securities in question have not been recorded in the register of qualified securities, shall constitute prima facie evidence that such securities have not been qualified for sale pursuant to the provisions of this chapter, and shall be admissible in evidence in any proceeding, either civil or criminal, instituted under any of the laws or statutes of this State. (1925, c. 190, s. 17; 1927, c. 149, s. 17.)

§ 78-18. Appeal.—Any interested person being dissatisfied with any findings, rulings, or judgments of the secretary of state if final and made after a formal hearing elsewhere provided for in this chapter, may, within thirty days after the making and issuance thereof, appeal to the superior court. Any interested person aggrieved by any other order or the failure of the secretary of state to make an order under any of the provisions of this chapter shall, if a hearing is not otherwise provided for, upon written request to the secretary of state and within thirty days after the filing of such request, be entitled to a hearing. The secretary of state shall rule upon the subject matter of such hearing, and any interested person may, within thirty days after the making and issuance of his ruling or order, appeal to the superior court. In all cases of appeals from the secretary of state to the superior court, the record made before such secretary shall thereupon be certified to the superior court of the county in which such interested person may reside, or any county adjoining thereto in the discretion of said secretary of state and thereafter the parties may plead and such procedure may be had as in other causes within the jurisdiction of said superior court, and after the issues shall have been determined by the court or jury, as the case may be, such judgment shall be rendered by the court as the findings may require. Appeals may be taken from the decision of the superior court to the supreme court by either party in the same manner as is provided by law in other civil cases, but the

secretary of state may appeal without bond. Pending any such appeal, the said findings, rulings, orders and judgments of the secretary of state shall be prima facie evidence that they are just and reasonable and that the facts found are true, and shall remain in full force and effect, if no such suit be brought within said thirty days, said findings, ruling, order or judgment shall become final and binding. (1925, c. 190, s. 18; 1927, c. 149, s. 18.)

§ 78-19. Dealers and salesmen; registration.—No dealer or salesman shall carry on business in the State of North Carolina as such dealer or salesman, or sell securities, including any securities exempted under the provisions of § 78-3, unless he has been registered as dealer or salesman in the office of the secretary of state pursuant to the provisions of this section. Every applicant for registration shall file in the office of the secretary of state, pursuant to the provisions of this section, an application in writing, duly signed and sworn to, in such form as the secretary of state may prescribe, giving particulars concerning the business reputation of the applicant. The secretary of state, in his discretion, may require that the applicant shall have been a bona fide resident of the State of North Carolina for a term not to exceed two years prior to the filing of the application. The names and addresses of all persons approved for registration as dealers or salesmen shall be recorded in a register of dealers and salesmen kept in the office of the secretary of state, which shall be open to public inspection. Every registration under this section shall expire on the thirty-first day of March in each year, but the same may be renewed. The fee for such registration and for each annual renewal thereof shall be fifty dollars in the case of dealers, and ten dollars in the case of salesmen. Registration may be refused or a registration granted may be cancelled by the secretary of state if, after reasonable notice and a hearing, the secretary of state determines that such applicant or dealer or salesman so registered (1) has violated any provision of this chapter or any regulation made hereunder; or (2) has made a material false statement in the application for registration; or (3) has been guilty of a fraudulent act in connection with any sale of securities in the State of North Carolina, or has been or is engaged in making fictitious or pretended sales or purchases of any such securities or has been engaged in any practice or transaction or course of business relating to the purchase or sale of securities which is fraudulent or in violation of law; or (4) has demonstrated his unworthiness to transact the business of dealer or salesman. It shall be sufficient cause for refusal or cancellation of registration in the case of a partnership, corporation or unincorporated association or trust estate, if any member of the partnership, or any officer or director of the corporation, association or trust estate has been guilty of any act or omission which would be cause for refusing or cancelling the registration of an individual dealer or salesman. The word "dealer" as used in this section shall include every person other than a salesman, who in the State of North Carolina engages, either for all or part of his time, directly or through an agent, in the business of offering for sale, selling or otherwise dealing in securities, including securities exempted under the provisions of § 78-3, or of purchasing or otherwise acquiring such securities from another person with the purpose of reselling them or of offering them for sale to the public for a commission or at a profit, or who deals in futures on market quotations of prices or values of any securities, or accepts margins on prices or values of said securities. The word "salesman," as used in this section shall include every person employed, appointed or authorized by another person to sell securities in any manner in the State of North Carolina. No person shall be registered as a salesman except upon the application of the person on whose behalf such salesman is to act. It shall be unlawful for any person required to register under the provisions of this section to sell any security to any person in the State of North Carolina without having registered, or after such registration has expired or been cancelled and not renewed.

Provided, however, that employees of a company, or of a company directly controlling such company, or the general agent of a domestic corporation, securities of which are exempted under the provisions of § 78-3, may sell or solicit or negotiate for the sale or purchase of any such securities of such company in the territory served by such company or in which it operates without being considered as salesmen or dealers within the meaning of this chapter and without being required to register under its provision.

The partners of a partnership and the executive officers of a corporation or other association registered as a dealer may act as salesmen during such time as such partnership, corporation or association is so registered without further registration as salesmen. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with reference to such change.

Every registered dealer who intends to offer any security of any issue, registered or to be registered, shall notify the secretary of state in writing of his intention so to do. The notice shall contain the name of the dealer and shall state the name of the security to be offered for sale, and whenever a dealer shall have prepared such notice and shall have forwarded the same by registered mail, postage prepaid, and properly addressed to the secretary of state, such dealer, as to the contents of such notice and filing thereof, shall be deemed to have complied with the requirements of this paragraph. Any issuer of a security required to be registered under the provisions of this chapter, selling such securities except in exempt transactions as defined in § 78-4, shall be deemed a dealer within the meaning of this section and required to comply with all the provisions hereof. (1925, c. 190, s. 19; 1927, c. 149, s. 19.)

§ 78-20. Assistants, clerks, etc., employment of.—It shall be the duty of the secretary of state to administer and enforce the provisions of this chapter, and he may appoint such clerks and other assistants as may from time to time be needed. (1925, c. 190, s. 20; 1927, c. 149, s. 20.)

§ 78-21. Fee paid into State Treasury; expenses of administration.—All fees herein provided

for shall be collected by the secretary of state and shall be paid over to the State Treasurer to go into the general fund; as well as all fees, per diems, expenses, etc., of appraisers, assistants, and investigators as herein provided, and all other expenses and fees required by this chapter. (1925, c. 190, s. 21; 1927, c. 149, s. 21.)

§ 78-22. Remedies. — Every sale or contract for sale made in violation of any of the provisions of this chapter shall be voidable at the election of the purchaser and the person making such sale or contract for sale and every director, officer or agent of or for such seller, if such director, officer or agent shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser in an action at law in any court of competent jurisdiction upon tender to the seller of the securities sold or of the contract made for the full amount paid by such purchaser: Provided, that no action shall be brought for the recovery of the purchase price after two years from the date of such sale or contract for sale: and provided further, that no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within sixty days to accept the voluntary offer of the seller to take back the security in question and to refund the full amount paid by such purchaser and court costs, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed.

(a) In case such securities consist of interest-bearing obligations at the same rate as provided in such obligations; and

(b) In case such securities consist of other than interest bearing obligations at the rate of six per centum per annum; less, in every case, the amount of any income from said securities that may have been received by such purchaser. (1925, c. 190, s. 22; 1927, c. 149, s. 22.)

§ 78-23. Violation of chapter; punishment. — (a) Whoever for the purpose of procuring the registration of any security by notification under this chapter, shall knowingly make or cause to be made any false representation of a material fact to the secretary of state shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the State prison for not less than one year or more than five years or fined in any sum not more than one thousand dollars ($1,000), or both.

(b) Whoever shall sell or cause to be sold, or offer to sell or cause to be offered for sale, any security in this State, which is not exempt under any of the provisions of § 78-3, unless sold in any transaction exempt under any of the provisions of § 78-4, and which such securities so sold, or caused to be sold or so offered for sale or caused to be offered for sale shall not have been registered as provided in this chapter, shall be guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for a period of not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(c) Whoever shall, for the purpose of selling any security in this State, fraudulently represent to the purchaser or prospective purchaser thereof the amount of dividends, interest or earnings which such security will yield, shall be deemed guilty of a violation of the provisions of this chapter and upon conviction thereof shall be imprisoned in the State prison for not less than one year nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(d) Whoever, for the purpose of securing the registration by qualification of any securities under this chapter, shall make any false representation concerning any material fact submitted to the secretary of state shall be deemed guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(e) Whoever, for the purpose of procuring the registration by qualification of any security under this chapter, shall suppress or withhold any information from the secretary of state which he possesses and which if submitted by him to the secretary of state would render such security incompetent to be registered by qualification under and pursuant to the terms of this chapter, shall be deemed guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(f) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State after having been notified by the secretary of state that the registration of such securities has been cancelled, shall be deemed guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(g) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State after being notified by the commissioner to stop the sale of such security pending the investigation provided for in § 78-8, or pending the filing of the bond which may be required under § 78-11, shall be deemed guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(h) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State embraced and referred to in § 78-19, without first having registered under and pursuant to the terms of said section, shall be deemed guilty of a violation of said section, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(i) Whoever sells or causes to be sold, or offers for sale or causes to be offered for sale, any security in this State after his registration as provided in § 78-19, has been cancelled by the secretary of state as provided by § 78-19, shall be deemed guilty of a violation of said § 78-19, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(j) Whoever for the purpose of procuring the registration of any dealer or agent under this chapter, shall knowingly make or cause to be made any false representations of a material fact to the secretary of state shall be guilty of a felony and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum of not more than one thousand dollars ($1,000), or both.

(k) Whoever engages in this State in the making of fictitious or pretended sales or purchases, or who causes the making of fictitious or pretended sales or purchases, or who engages in the offer of fictitious or pretended sales or purchases of any securities within the meaning of this chapter, the actual delivery of which securities are not to follow such sales, shall be deemed guilty of a violation of the terms of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than five thousand dollars ($5,000), or both.

(l) Whoever, without first having become registered under and pursuant to the terms of § 78-19, shall assist or attempt to assist, by recommendation or by personal solicitation, any salesman or agent in this State in the sale or disposition of any securities required to be registered under the provisions of this chapter to any purchaser or purchasers, except in transactions exempt under § 78-4, and who shall in consideration of such assistance or an effort to assist receive compensation in any form or gratuity from such dealer or agent, or anyone upon their behalf, or who shall render such assistance or make such effort upon the promise of such dealer or agent, express or implied, that he shall receive in consideration therefor compensation in any form or a gratuity for such assistance or effort to assist, shall be deemed guilty of a violation of this chapter, and upon conviction thereof shall be imprisoned in the State prison for not less than one, nor more than five years, or fined in any sum not more than one thousand dollars ($1,000), or both.

(m) It is hereby expressly provided that the offenses herein created and the penalties herein imposed are to be deemed cumulative to the offenses and penalties heretofore created and now existing in the criminal code of this State, and that the conviction of any person for the violation of any offense created by this chapter shall not be deemed to have placed such person in jeopardy of trial and conviction for the violation of any offense heretofore created and now existing in the criminal code of this State. (1925, c. 190, s. 23; 1927, c. 149, s. 23.)

§ 78-24. Foreign corporations to name process officer within State.—In all cases of application by a foreign corporation, partnership, association or trust company for registration of securities by qualification or as a dealer in securities, such corporation, partnership, association or trust company shall name a process officer within the State of North Carolina, approved by the commissioner upon whom service of any process of any court in this State shall be of the same effect as if served upon said corporation, partnership, association or trust company. (1927, c. 149, s. 24.)

Chapter 79. Strays.

Sec.
79-1. Notice to owner of stray, or to register of deeds.
79-2. Owner may reclaim.
79-3. When and how strays sold.
79-4. Failure to comply with stray law misdemeanor.

§ 79-1. Notice to owner of stray, or to register of deeds.—Any person who shall take up any stray horse, mare, colt, mule, ass or jennet, neat cattle, hog or sheep, shall within ten days after taking up such stray inform the owner, if to him known, if not, he shall inform the register of deeds of the supposed age, marks, brands and color of the stray, and that the same was taken up at his plantation or place of abode; whereupon the register of deeds shall record such information in a book kept by him for that purpose, for which service the taker-up of the stray shall pay a fee of twenty-five cents, except for hogs and sheep, for which the fee shall be ten cents. The register of deeds shall at once publish a notice of the taking up of such stray, by posting the same at the courthouse door, and if the cost does not exceed two dollars, then in some newspaper published in the county. Such notices shall be published for thirty days, and shall contain a full and complete description of the stray and of all marks or brands on the same, and when and where the same was taken up. The fees for publishing such notices shall be paid by the party taking up the stray. (Rev., s. 2833; Code, s. 3768; 1874-5, c. 258, s. 2; C. S. 3951.)

§ 79-2. Owner may reclaim.—When any stray has been taken up, the owner may at any time before a sale reclaim such stray by proving his ownership and paying to the party capturing the same the actual costs paid the register of deeds as provided in § 79-1, together with the actual costs of keeping such stray, as fixed by the county commissioners. The board of commissioners of the several counties shall fix a scale of costs for keeping strays. (Rev., s. 28-34; C. S. 3952.)

§ 79-3. When and how strays sold. — If the owner of any stray shall fail to claim the same within thirty days after the publication of the notice required by law, the person taking up the stray shall cause the stray to be appraised by the nearest magistrate and two freeholders, none of whom shall receive any fees for such services. Such appraisement shall give a full and accurate description of such stray and shall by the magistrate be returned to the register of deeds, and by him recorded in his book for strays; and the

register of deeds shall issue an order to the sheriff directing him to sell such stray, and the sheriff shall sell such stray at public auction after ten days public advertisement as for sales of personal property under execution; and out of the proceeds he shall pay the cost of publishing the notices as to strays, the costs of keeping and the cost of sale, and shall pay the surplus to the county treasurer for the benefit of the public school fund of the county. The county board of education shall, at any time within twelve months after such funds have been paid to the county treasurer, upon due proof of ownership, issue an order commanding the county treasurer to pay to the owner of the stray the net amount paid the county treasurer as the proceeds of the sale of the stray. (Rev., s. 2835; C. S. 3953.)

§ 79-4. Failure to comply with stray law misdemeanor.—If any person shall fail to comply with any of the requirements of law as to strays, he shall be guilty of a misdemeanor and upon conviction be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3306; C. S. 3954.)

Chapter 80. Trademarks, Brands, etc.

Sec.

Art. 1. Trademarks.

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Art. 1. Trademarks.

§ 80-1. Adoption and filing for registry. — It shall be lawful for any person to adopt for his protection and file for registry, as in this chapter provided, any label, trademark, term or design that has been used or is intended to be used for the purpose of designating, making known or distinguishing any goods, wares, merchandise or products of labor that have been or may be wholly or partly

made, manufactured, produced, prepared, packed or put on sale by any such person, or to or upon which any work or labor has been applied or expended by any such person, or by any member of any corporation, or association or union of workingmen, that has adopted and filed for registry any such label, trademark, term or design, or announcing or indicating that the same have been made in whole or in part by any such person or corporation, or association or union of workingmen, or by any member thereof.

The word "person" as used in this article includes associations or unions of workingmen, whether incorporated or unincorporated. Any duly authorized officer or agent of any such association or union may act in its behalf in securing for the association or union the benefits and protection of this article. (Rev., s. 3012; 1903, c. 271; 1941, c. 255, s. 1; C. S. 3971.)

§ 80-2. Property rights protected by filing for registry.—Whenever any person shall adopt and file for registry any label, trademark, term or design pursuant to the provisions of this chapter, the property, privileges, rights, remedies and interests in and to any such label, trademark, term or design, and in and to the use of same, provided or given by this chapter to, or otherwise conferred upon or enjoyed by, the person filing the same for the registry, shall be fully and completely secured, preserved and protected as the property of those entitled to the same before any such label, trademark, term or design has been actually applied to any goods, wares, merchandise, or product of labor, and put upon the market for sale or otherwise, and before any use or appropriation of any such label, trademark, term or design has been made in connection with any such goods, wares, merchandise or product of labor, as well as after the same has been used or applied to designate, make known or distinguish any such goods, wares, merchandise, or product of labor and they have been put upon the market. (Rev., s. 3013; 1903, c. 271, s. 2; C. S. 3972.)

§ 80-3. Filing to be with secretary of state; contents of affidavits; fees.—Any person who has heretofore adopted and used, or shall hereafter adopt and use any label, trademark, term or design, as in this chapter provided, may file the same for registry in the office of the secretary of state, by leaving two copies, facsimiles or counterparts thereof, with the said secretary, and filing therewith a statement in the form of an affidavit, subscribed and sworn to by any such person, or by any officer, agent or attorney, if a corporation or association or union of workingmen, specifying the person by whom any such label, trademark, term or design is filed, and the class or character of the goods, wares, merchandise or products of labor to which the same has been or is intended to be appropriated or applied, and that the person so filing the same has the right to the use of the said label, trademark, term or design, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, without the permission or authority of the person filing the same, and that the copies, facsimiles or counterparts filed therewith are true and correct copies, facsimiles or counterparts of the genuine label, trademark, term or design of the person filing the same; and there shall be paid for such registry a fee of five dollars to the secretary of state for the use of the state, and the same recording fees required by law for recording certificate of organization of corporations. (Rev., s. 3014; 1903, c. 271, s. 3; 1935, c. 60; 1941, c. 255, s. 2; C. S. 3973.)

§ 80-4. Registration; certified copies evidence; fees.—The secretary of state, upon the filing of any such label, trademark, term or design that is not in conflict with § 80-6, shall register the same, and shall deliver to the person filing the same as many certified copies thereof, with his certificate of such registry, as any such person may request, and for every such copy and certificate there shall be paid to the secretary of state, for the use of the state, a fee of one dollar; and any such certified copy and certificate shall be admissible in evidence and competent and sufficient proof of the adoption, filing and registry of any such label, trademark, term or design, by any such person in any action or judicial proceeding in any of the courts of this state, and of due compliance with the provisions of this chapter. (Rev., s. 3015; 1903, c. 271, s. 4; C. S. 3974.)

§ 80-5. Transfer of trademarks.—The right to use any registered label, trademark, term or design shall be granted only by an instrument in writing, duly filed in the office of the secretary of state. The fees for recording or filing such transfer and issuing copies thereof shall be the same as for filing such label, trademark, term or design. (Rev., s. 3016; C. S. 3975.)

§ 80-6. Similar trademarks refused registration.—It shall not be lawful for the secretary of state to register for any person any label, trademark, term or design that is in the identical form of any other label, trademark, term or design theretofore filed by any other person, or that bears any such near resemblance thereto as may be calculated to deceive, or that would be liable to be mistaken therefor. (Rev., s. 3017; 1903, c. 271, s. 5; C. S. 3976.)

§ 80-7. Fraudulent registration; penalty. — Any person who shall file or procure the filing and registry of any label, trademark, term or design in the office of the secretary of state under the provisions of this chapter, by making any false or fraudulent representations or declarations, with fraudulent intent, shall be liable to pay any damages sustained in consequence of any such registry, to be recoverd by or in behalf of the party injured thereby. (Rev., s. 3018; 1903, c. 271, s. 5; C. S. 3977.)

§ 80-8. Use of counterfeit trademarks unlawful.—Whenever any person has adopted and filed for registry any label, trademark, term or design, as provided by law, and the same shall have been registered pursuant to law, it shall be unlawful for any other person to manufacture, use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term or design, or have in possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor to which or on which any

counterfeit or imitation of any such label, trademark, term or design is attached, affixed, printed, stamped, impressed or displayed, or to sell or dispose of, or offer to sell or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, stamped, impressed or displayed. (Rev., s. 3019; 1903, c. 271, s. 6; C. S. 3978.)

§ 80-9. Unauthorized use unlawful; use under license.—Whenever any person has adopted and registered any label, trademark, term or design, as provided by law, it shall be unlawful for any other person to make any use, sale, offer for sale or display of the genuine label, trademark, term or design of any such person filing the same, or to have any such genuine label, trademark, term or design in possession with intent that the same shall be used, sold, offered for sale, or displayed, or that the same shall be applied, attached or displayed in any manner whatever to or on any goods, wares or merchandise, or to sell, offer to sell, or dispose of, or have in possession with intent that the same shall be sold or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trademark, term or design of any such person is attached, affixed, or displayed, or to make any use whatever of any such genuine label, trademark, term or design, without first obtaining in every such case the license of the person adopting, filing and registering the same; and any such license may be revoked and terminated at any time upon notice, and thereafter any use thereof shall be unlawful. (Rev., s. 3020; 1903, c. 271, s. 7; C. S. 3979.)

§ 80-10. Remedies; damages; destruction of counterfeits. — Any person who has registered any label, trademark, term or design under the provisions of this chapter shall have a right of action against any person for the unauthorized use of such label, trademark, term or design, and the courts shall by appropriate remedies prevent the unauthorized or unlawful use, manufacture or display of any label, trademark, term or design, or the imitation or counterfeit thereof, or the sale, disposal or display of any articles of property on which any counterfeit or imitation of any registered label, trademark, term or design, or on which any genuine label, trademark, term or design may be used or displayed without proper authority; and shall further secure and protect all persons in all rights of property and interest which they may have in any label, trademark, term or design registered under this chapter; and the court shall award to the plaintiff any and all damages resulting from any such wrongful use of any such label, trademark, term or design; and any counterfeit or imitation of any labels, trademarks, terms or designs, and any die, engraving, mould or mechanical device or the manufacture of the same in the possession or under the control of the defendant, shall be delivered up to an officer of the court, to be destroyed, and any such genuine labels, trademarks, terms or designs in the possession or under the control of any such defendant shall be delivered to the plaintiff: Provided, however, no restraining order or injunction granted to any association or union of workingmen to prevent violations of this article shall have the effect of impounding or preventing the free flow into the channels of commerce of any goods, wares, merchandise or products already manufactured or in the process of manufacture to which any label, trademark, term or design has been affixed at the time of the institution of the action in which the injunctive relief is sought, unless the owner or manufacturer of said goods, wares, merchandise or products has permitted the affixing of such label, trademark, term or design with the actual knowledge that it was being used or affixed in violation of the provisions of this article. (Rev., s. 3021; 1903, c. 271, s. 8; 1941, c. 255, s. 3; C. S. 3980.)

§ 80-11. Concurrent action for penalty.—In addition to any other rights, remedies or penalties provided by this chapter, and as concurrent therewith, any person who shall violate any of the provisions of this chapter shall be liable to a penalty of two hundred dollars, to be recovered by any person who has filed any such label, trademark, term or design. (Rev., s. 3022; 1903, c. 271, s. 9; C. S. 3981.)

§ 80-12. Use of private marks or labels to defraud; punishment.—If any person shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, the private marks, tokens, stamps or labels of any mechanic, manufacturer or other person, being a resident of the United States, with intent to deceive and defraud the purchasers, mechanics, or manufacturers of any goods, wares or merchandise whatsoever, upon conviction thereof he shall be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment of not less than thirty days or more than five years, or both fine and imprisonment, at the discretion of the court. (Rev., s. 3852; Code, s. 1038; 1870-1, c. 253, s. 1; C. S. 3982.)

§ 80-13. Selling goods with forged marks or labels, misdemeanor.—If any person shall vend any goods, wares or merchandise having thereon any forged or counterfeited marks, tokens, stamps or labels purporting to be the marks, tokens, stamps or labels of any person being a resident of the United States, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, he shall be guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both fine and imprisonment, at the discretion of the court. (Rev., s. 3850; Code, s. 1039; 1870-1, c. 253, s. 2; C. S. 3983.)

§ 80-14. Misbranding sacks to defraud, misdemeanor.—If any person shall knowingly use the mark or brand of any other person on any sack, or shall knowingly impress on any sack the mark or brand of another person, with intent to defraud or for the purpose of enhancing the value of his own property, the person so offending shall be guilty of a misdemeanor, and punished as if

convicted of larceny. (Rev., s. 3851; Code, s. 1040; 1874-5, c. 225; C. S. 3984.)

Art. 2. Timber Marks.

§ 80-15. Timber dealers may adopt.—Any person dealing in timber in any form shall be known as a timber dealer and as such may adopt a trademark, in the manner and with the effect in this article provided. (Rev., s. 3023; 1903, c. 261, s. 1; C. S. 3985.)

§ 80-16. How adopted, registered and published. — Every such dealer desiring to adopt a trademark may do so by the execution of a writing in form and effect as follows:

Notice is hereby given that I (or we, etc., as the case may be) have adopted the following trademark, to be used in my (or our, etc.) business as timber dealer (or dealers), to wit: (Here insert the words, letters, figures, etc., constituting the trademark, or if it be any device other than words, letters or figures, insert a facsimile thereof).

Dated this .....day of ....., 19.....

A..... B.....

Such writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be registered in the office of the register of deeds of the county in which the principal office or place of business of such timber dealer may be, in a book to be kept for that purpose marked Registry of Timber Marks, also in office of secretary of state, and a copy thereof shall be published at least once in each week for four successive weeks in some newspaper printed in such county, or if there be no such newspaper printed therein, then in some newspaper of general circulation in such county. (Rev., s. 3024; 1889, c. 142; 1903, c. 261, s. 2; C. S. 3986.)

§ 80-17. Property in and use of trademarks.— Every trademark so adopted shall, from the date thereof, be the exclusive property of the person adopting the same. The proprietor of such trademark shall, in using the same, cause it to be plainly stamped, branded or otherwise impressed upon each piece of timber upon which the same is placed. (Rev., s. 3025; 1889, c. 142; 1903, c. 261, ss. 3, 4; C. S. 3987.)

§ 80-18. Effect of branding timber purchased.— When timber is purchased by the proprietor of any such trademark, and the said trademark is placed thereon as hereinbefore provided, such timber shall thenceforth be deemed the property of such purchaser, without any other or further delivery thereof, and such timber shall thereafter be at the risk of the purchaser, unless otherwise provided by contract in writing between the parties. (Rev., s. 3026; 1889, c. 142; 1903, c. 261, s. 6; C. S. 3988.)

§ 80-19. Trademark on timber evidence of ownership.—In any action, suit or contest in which the title to any timber, upon which any trademark has been placed as aforesaid, shall come in question, it shall be presumed that such timber was the property of the proprietor of such trademark, in the absence of satisfactory proof to the contrary. (Rev., s. 3027; 1903, c. 261, s. 7; C. S. 3989.)

§ 80-20. Fraudulent use of timber trademark, misdemeanor. — If any person shall use or attempt to use any timber trademark without the written consent of the proprietor thereof, or falsely and fraudulently place any trademark on timber not the property of the owner of such trademark without his written consent, or intentionally and without lawful authority remove, deface or destroy any timber trademark or the imprint thereof on any timber or intentionally put any such timber in such a position or place so remote from the stream from which it was taken or on which it was afloat as to render it inconvenient or unnecessarily expensive to replace the same in such stream, he shall be guilty of a misdemeanor. (Rev., s. 3854; 1903, c. 261, ss. 3-5; C. S. 3990.)

§ 80-21. Larceny of branded timber.—If any person shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark is stamped, branded or otherwise impressed, or shall knowingly and unlawfully buy, sell, take and carry away, secrete, destroy or convert to his own use, any timber upon which a trademark has been intentionally and without lawful authority removed, defaced or destroyed, he shall be deemed guilty of larceny thereof and punished as in other cases of larceny. (Rev., s. 3853; 1903, c. 261, s. 5; C. S. 3991.)

§ 80-22. Altering timber trademark crime. — If any person shall willfully change, alter, erase or destroy any registered timber mark or brand put or cut upon any logs, timber, lumber or boards, except by the consent of the owner thereof, with intent to steal the said logs or timber, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both; if the same shall have been done with a felonious intent, such person shall be guilty of larceny and punished as for that offense. (Rev., s. 3855; 1889, c. 142, s. 3; 1903, c. 41; C. S. 3992.)

§ 80-23. Possession of branded logs without consent, misdemeanor. — If any person shall knowingly and willfully take up or have in his possession any log, timber, lumber or board upon which a registered timber mark or brand has been put or cut, except by the consent of the owner thereof, he shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars or imprisoned not more than thirty days, or both. (Rev., s. 3856; 1889, c. 142, s. 4; 1903, c. 42; C. S. 3993.)

Art. 3. Mineral Waters and Beverages.

§ 80-24. Description of name, labels, or marks filed and published.—Any person, partnership or corporation engaged in manufacturing, bottling, selling or dealing in mineral, soda or aerated waters, beers, lager-beer, milk or other beverages, in kegs, boxes, trays, crates, bottles, syphons, barrels, casks, or other vessels, with his name or other marks or devices printed, impressed, or otherwise produced thereon, or upon labels pasted thereon, shall file with the clerk of the superior court of the county in which his principal office or place of business (or in case of a foreign corporation, its principal office or

place of business or agency) is located, a description of the names, marks, or devices so used by him, and cause such description to be printed twice a week for two successive weeks in some daily newspaper published in said county, if there be a daily newspaper published therein, and if not, then in some newspaper published in said county once a week for two successive weeks. The description of the names, marks or devices, before being filed as aforesaid, shall be signed by the person filing the same, or in case of a partnership, by a partner, or in case of a corporation, by one of its officers or managers, and shall be acknowledged by the person signing the same as his act, or as the act of said partnership or corporation, before an officer competent to take acknowledgment of deeds. The publication hereby required need only be a brief description, sufficient for identification, of such names or marks, and need not contain a certified copy of the acknowledgment. The provisions of this article shall apply to all vessels enumerated above upon which said names or marks shall appear as aforesaid, whether or not any of the same shall be in existence at the time of said filing and publication. (1907, c. 901, s. 1; C. S. 3994.)

§ 80-25. Clerk to record description. — The several clerks of the superior courts mentioned in the preceding section shall record in some book of record in their custody all such descriptions filed with them, and also copies of the said advertisement in the newspaper, certified to by the publishers thereof, and shall furnish copies thereof, duly certified by them in the usual manner, to any person who may apply therefor, and shall receive for the recording of such copies a fee of fifty cents. Such certified copies shall be evidence that the provisions of the preceding section have been complied with, and shall be prima facie evidence of the title of the person, named therein, to the vessels upon which his name, marks, labels or devices appear as described in said description. (1907, c. 901, s. 2; C. S. 3995.)

§ 80-26. Refilling vessels and defacing marks forbidden; punishment.—After any person has filed and published his description of such names, marks or devices, in accordance with the preceding provisions of this article, it shall be unlawful for any persons to fill in any way the vessels upon which such names or other marks are printed, impressed or otherwise produced, with any water or beverage enumerated in this article, or to deface, remove or conceal such names or other marks, thereon, with intent to convert the same to his use, or to have on sale, offer for sale, traffic in, handle in the course of business, transport, or to take or collect from ash or garbage receptacles or from public or private premises, or to keep in stock, store or dispose of or deal or traffic in same, or any parts thereof, without the written consent of the person whose name or other marks are upon such vessels, or to willfully break, destroy or otherwise injure any of the articles mentioned in this section. Any person who shall do any of the acts declared to be unlawful by this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for the first offense by imprisonment of not less than ten days or more than one year, or by a fine of three dollars for each of such kegs, casks or barrels, and one dollar for each of such boxes, trays, crates, bottles, syphons, or any other vessels so unlawfully used; and for the second and subsequent offense by imprisonment for not less than twenty days or more than one year, or by a fine of not less than two dollars or more than five dollars for each vessel unlawfully used, or by both such fine and imprisonment, at the discretion of the court before whom such offense is tried: Provided, this section shall not apply to such vessels as the bottler charges his customers for at the time of sale of the goods. (1907, c. 901, s. 3; C. S. 3996.)

§ 80-27. Possession of vessels as evidence of offense.—If any person shall be found to be in possession of any of the vessels mentioned above in this article, or any parts thereof, and the persons whose names, marks or devices have been placed thereon, as above provided, have complied with the provisions of this article, and the persons so found in possession thereof shall be charged with any of the offenses mentioned in the preceding section, then such possession shall be prima facie evidence that such person is guilty of the offenses so charged: Provided, this section shall not apply to bottlers who receive such vessels in the course of business and mixed and exchanged in shipment, when such bottler within a reasonable time notifies the owners thereof of the location thereof. (1907, c. 901, s. 4; C. S. 3998.)

§ 80-28. Search warrants.—If the owner of any vessel mentioned in § 80-24 who has complied with the provisions thereof, or the officer, agent or employee of such owner, shall make an affidavit before a justice of the peace asserting that he has reason to believe and does believe that any person is in actual or constructive possession of, or is making use of, any article above mentioned or any part thereof, or in any way declared to be unlawful by § 80-26, the justice may issue his search warrant to any sheriff, constable or other officer of the law to whom such warrant may be directed, and cause the premises designated in the warrant to be searched; and if article above mentioned or any part thereof shall be found upon the premises so designated, the officer executing such search warrant shall thereupon report the same, under his oath, to the justice, who shall thereupon, upon said report and upon the oath of any person or persons charging any violations of § 80-26, issue his warrant for the arrest of the person against whom the charge is made, and cause him, together with such articles, to be brought before him for trial. (1907, c. 901, s. 5; C. S. 3999.)

§ 80-29. Concurrent jurisdiction of superior courts and justices of the peace.—The justices of the peace in the counties of this state shall have concurrent jurisdiction with the superior courts of their respective counties in the case of persons arrested for violation of the above provisions of this article, and such justices of the peace shall proceed to hear and determine such cases when the parties arrested are brought before them, in all cases where the punishment fixed in this article is such as to give the justices jurisdiction under

the constitution and laws of this state. And if such person shall be found to be guilty of the violation of any of the provisions of this article, the court trying such person and imposing the punishment herein prescribed shall also award possession to the owner of all the property involved in such violation. (1907, c. 901, s. 6; C. S. 4000.)

§ 80-30. Accepting deposit not deemed sale.—The requiring, taking or accepting of any deposit for any purpose upon any vessel above enumerated shall not be deemed to constitute a sale of such property, either optional, conditional or otherwise, in any proceedings under this article. (1907, c. 901, s. 7; C. S. 4001.)

§ 80-31. When refiling description not required.—Any person, partnership, or corporation that has heretofore filed and published a description of his name, marks or devices for the purposes mentioned in § 80-1, in accordance with the law existing at the time of such filing and publication, shall not be required to again file such description, but shall be entitled to all the benefits of this article as fully as if he had complied with all the provisions thereof. (1907, c. 901, s. 8; C. S. 4002.)

§ 80-32. Application of the article.—The provisions of this article do not apply to any person using the vessels enumerated above for the beverages placed therein by the owners, or who after consumption of the contents is in possession of the same, while awaiting the return to the owners, nor shall the provisions of this article apply to any garbage man collecting the same in the regular course of his business: Provided, this article shall not apply to beer and mineral water bottles shipped into this state from other states. (1907, c. 901, s. 9; C. S. 4003.)

Art. 4. Farm Names.

§ 80-33. Registration of farm names authorized.—Any owner of a farm in the state of North Carolina may have the name of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the register of deeds of the county in which the farm is located, and the register of deeds shall furnish to such landowner a proper certificate setting forth the name and description of the lands. (1915, c. 108, s. 1; C. S. 4004.)

Local Modification.—Sampson, Stokes, Surry: C. S. 4011.

§ 80-34. After registry, similar name not registered.—When any name has been recorded as the name of any farm in such county, the name, or one so nearly like it as to produce confusion, shall not be recorded as the name of any other farm in the same county. (1915, c. 108, s. 1; C. S. 4005.)

§ 80-35. Distinctive name required.—No name shall be registered as the name of a farm where such proposed name or one so nearly like it as to produce confusion has been so used in connection with another farm in the same county as to become generally known prior to March 5, 1915, unless the name used has also prior to March 5, 1915, become well known as the name of the farm proposed to be registered; and in this event two or more farms in the same county may be registered with the same name with some prefix or suffix added to distinguish them. (1915, c. 108, s. 2; C. S. 4006.)

§ 80-36. Application for registry; publication and hearing.—Before a name shall be registered the clerk shall have publication made at least once a week for four weeks in some secular newspaper published in the county, if one is so published, and if one is not so published, then one having a general circulation in the county, giving the name of the applicant, the proposed name of registration and a sufficient description to identify the farm and the time of the return; and if the owner or clerk knows of another farm in the county of the same or very similar name, a summons shall be served on the owner thereof at least ten days before the return day. On the return day any person, firm or corporation may file claim to the name, and the clerk may pass upon the claim and award the name to any party, with the right to appeal by the aggrieved party to the superior court within ten days, as in other cases, and on such appeal the judge shall decide the matters unless a jury be demanded by some party. (1915, c. 108, s. 2; C. S. 4007.)

§ 80-37. Fees for registration. — Any person having the name of his farm recorded as provided in this article shall first pay to the register of deeds a fee of one dollar, which fee shall be paid to the county treasurer as other fees are to be paid to the county treasurer by such register of deeds: Provided, that in counties where the fee system obtains, the fees herein mentioned shall go to the register of deeds of such counties. (1915, c. 108, s. 3; C. S. 4008.)

§ 80-38. When transfer of farm carries name.—When any owner of a farm, the name of which has been recorded as provided in this article, transfers by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then, in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed or conveyance. (1915, c. 108, s. 4; C. S. 4009.)

§ 80-39. Cancellation of registry; fee.—When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name the following: "This name is canceled and I hereby release all rights thereunder," which shall be signed by the person cancelling such name, and attested by the register of deeds. For such latter service the register of deeds shall charge a fee of twenty-five cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him. (1915, c. 108, s. 5; C. S. 4010.)

Art. 5. Stamping of Gold and Silver Articles.

§ 80-40. Marking gold articles regulated.—It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box,

package, cover or wrapper in which the article is enclosed, any mark indicating or designed to indicate that the gold, or alloy or gold, therein is of a greater degree of fineness than its actual fineness, unless the actual fineness, in the case of flat-ware and watch-cases, is not less by more than three one-thousandths parts, and in the case of all other articles is not less by more than one-half karat than the fineness indicated, according to the standards and subject to the qualifications hereinafter set forth.

In any test for ascertaining the fineness of gold or alloy in the articles, according to the required standards, the part of the gold or alloy taken for the test, analysis or assay shall be a part not containing or having attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of the articles. In addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned in this section (except watch-cases), including all solder or alloy of inferior metal used for brazing or uniting the parts (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than one karat than the fineness indicated by the mark used as above indicated. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 1; C. S. 4012.)

§ 80-41. Marking silver articles regulated.—It shall be unlawful to make for sale or sell or offer to sell or dispose of or have in possession with intent to sell or dispose of—

1. Any article of merchandise made in whole or in part of silver or any alloy of silver, and having marked, stamped, branded or engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred and twenty-five one-thousandths of the component parts of the metal appearing or purporting to be silver, of which the article is manufactured, are pure silver, subject to the qualifications hereinafter set forth: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard.

2. Any article of merchandise made in whole or in part of silver or of any alloy of silver, and having marked, stamped, branded, engraved or imprinted thereon, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, the words "coin" or "coin silver," or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver, of which the article is manufactured, are pure silver, subject to the qualifications hereinafter set forth: Provided, that in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

3. Any article of merchandise made in whole or in part of silver or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any mark or word (other than the word "sterling" or the word "coin") indicating, or designed to indicate, that the silver or alloy of silver in the article is of a greater degree of fineness than its actual fineness, unless the actual fineness is not less by more than four one-thousandths parts than the actual fineness indicated by the use of such mark or word, subject to the qualifications hereinafter set forth.

In any test for ascertaining the fineness of the articles mentioned in this section, according to the foregoing standards, the part taken for test, analysis or assay shall be a part not containing or having attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article. In addition to the foregoing test and standards, the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in this section, including all solder or alloy of inferior fineness used for brazing or uniting the parts (all such silver, alloy or solder being assayed as one piece), shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark employed as above indicated. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 2; C. S. 4013.)

§ 80-42. Marking articles of gold plate regulated.—It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering or sheet of gold, or of any alloy of gold, which article is known in the market as "rolled gold plate," "gold plate," "gold-filled," or "gold electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which the article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless such word be accompanied by other words plainly indicating that such article or some part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold-filled, as the case may be. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 3; C. S. 4014.)

§ 80-43. Marking articles of silver plate regulated.—It shall be unlawful to make for sale, or sell, or offer to sell or dispose of, or have in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering or sheet of silver or of any alloy of silver, which article is known in the market as "silver plate" or "silver electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or

wrapper in which the article is enclosed, the word "sterling" or the word "coin," either alone or in conjunction with any other words or marks. Violation of this section is a misdemeanor, punishable as provided in this article. (1907, c. 331, s. 4; C. S. 4015.)

§ 80-44. Violation of article misdemeanor.—Every person, firm, corporation or association guilty of a violation of any one of the preceding sections of this article, and every officer, manager, director or managing agent of any such person, firm, corporation or association directly participating in such violation or consenting thereto, shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, at the discretion of the court: Provided, that if the person charged with violation of this article shall prove that the article concerning which the charge was made was manufactured prior to the thirteenth day of June, one thousand nine hundred and seven, then the charge shall be dismissed. (1907, c. 331, s. 5; C. S. 4016.)

Art. 6. Cattle Brands.

§ 80-45. Owners of stock to register brand or marks.—Every person who has any horses, cattle, hogs or sheep may have an earmark or brand different from the earmark or brand of all other persons, which he shall record with the clerk of the board of commissioners of the county where his horses, cattle, hogs or sheep are; and he may brand all horses eighteen months old and upwards with the said brand, and earmark all his hogs and sheep six months old and upwards with the said earmark; and earmark or brand all his cattle twelve months old and upwards; and if any dispute shall arise about any earmark or brand, the same shall be decided by the record thereof. (Rev., s. 3028; Code, s. 2317; R. C., c. 17, s. 1; C. S. 4017.)

Art. 7. Recording of Cattle Brands and Marks with Commissioner of Agriculture.

§ 80-46. "Stock growers" and "live stock" defined.—Every person, firm, association or corporation, who owns, raises, buys or sells cattle in this State, is deemed a stock grower, and all cattle are deemed live stock, within the meaning of this article. (1935, c. 232, s. 1.)

§ 80-47. Stock growers limited to single mark or brand; registration not required; law compulsory upon registration.—Every stock grower in this State must use one, and only one, mark or brand for said stock grower's cattle, which mark or brand shall be placed in some conspicuous place on said cattle, which place must be designated in the application for the recording of said mark or brand hereinafter provided for in this article: Provided, however, nothing in this section nor in any subsequent section of this article shall be construed to be compulsory upon any stock grower in this State to apply for or register his mark or brand of cattle; but when a stock grower does so, then this article and all provisions thereof shall be binding and compulsory upon said stock grower. (1935, c. 232, s. 2.)

§ 80-48. Commissioner of agriculture named recorder.—The commissioner of agriculture of the State of North Carolina is hereby declared to be the state recorder of marks and brands of cattle growers in this State. (1935, c. 232, s. 3.)

§ 80-49. Recording with commissioner. — All brands or marks shall be recorded with the state recorder. (1935, c. 232, s. 4.)

§ 80-50. Application; effect of recording; fee; no duplication allowed.—Any stock grower in the State of North Carolina, who desires to avail himself of the provisions of this article, shall make and sign an application, furnished by the state recorder, setting forth a facsimile and description of the brand or mark which said stock grower desires to use, and shall file the same with the state recorder, who shall record the same in a book kept by him for that purpose, and from and after the filing of the same, the stock grower filing the same shall have exclusive right to use said brand or mark within the State; and shall pay the state recorder a fee of one dollar; Provided, that the state recorder shall not file or record such mark or brand if the same has been heretofore recorded by him in favor of some other grower. (1935, c. 232, s. 5.)

§ 80-51. Certified copy of mark or brand; registration; fees and disposition thereof.—Upon the recording of any such brand or mark with the state recorder, as herein provided, the owner thereof may procure from the state recorder a certified copy thereof, paying therefor the sum of fifty cents, and may cause the same to be recorded in the office of the register of deeds in the county where said stock grower resides, and shall pay said register of deeds a fee of fifty cents for recording same. It shall be unlawful for any register of deeds to record any such mark or brand, unless the same is certified to him by the state recorder. Application blanks and a book for recording said marks and brands shall be furnished each register of deeds of the county applying for same, and shall be paid for by the state recorder, if he has sufficient funds derived from the recording fees, and if not, then by the county so applying for same. All fees received by the state recorder shall be used in the administration of this article, and any surplus paid into the general fund of the agriculture department. In order to put the provisions of this article in force the commissioner of agriculture is hereby authorized to use any fund in his department not otherwise appropriated. (1935, c. 232, s. 6.)

§ 80-52. Certified copy prima facie evidence of ownership.—In all civil or criminal suits in any court in this State a duly certified copy, under the seal of the department of agriculture, of any brand or mark, duly recorded under the provisions of this article, shall be prima facie evidence of the ownership of the animal of said cattle grower. (1935, c. 232, s. 7.)

§ 80-53. Records to be kept by those engaged in slaughtering.—Any person, firm or corporation engaged in the business of slaughtering cattle shall keep at its place of business a book in which must be kept the name or names of the persons from whom any marked or branded cattle are purchased and the date of purchase and his address, and the mark or brand of such cattle. Said book must be kept ready at all times for the in-

spection of any person who desires to examine the same. (1935, c. 232, s. 8.)

§ 80-54. Purchaser of branded cattle to keep record of purchases.—Any person purchasing any marked or branded cattle, the mark or brand of which has been duly recorded under the provisions of this article, shall keep the name and address of the person from whom said cattle are purchased, a description of the mark or brand and the date of the purchase, and exhibit same to any person desiring to examine same. (1935, c. 232, s. 9.)

§ 80-55. Defacing marks or brands made misdemeanor. — No stock grower or other person in this State must change, conceal, deface, disfigure or obliterate any brand or mark previously branded, impressed or marked on any head of cattle, or put his or any other brand or mark upon or over any part of any brand or mark previously branded or marked upon any head of cattle, and no person shall make or use any counterfeit of any mark or brand of any other person. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (1935, c. 232, s. 10.)

§ 80-56. Violation of article made misdemeanor. —Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1935, c. 232, s. 11.)

Chapter 81. Weights and Measures.

Sec.

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Art. 1. Uniform Weights and Measures.

§ 81-1. Office of superintendent of weights and measures.—In order to protect the purchasers of any commodity and to provide one standard of measure of length and surface throughout the State, which must be in conformity with the standard of measure of length, surface, weight and capacity established by Congress, the office of Superintendent of Weights and Measures for the State of North Carolina is hereby established as hereinafter provided. (1927, c. 261, s. 1.)

§ 81-2. Administration of article. — The provisions of this article shall be administered by the State Department of Agriculture through a suitable person to be selected by the Commissioner of Agriculture and known as the Superintendent of Weights and Measures. In administering the provisions of this article, the rules and codes of specifications and tolerances as adopted by the National Conference of Weights and Measures and recommended by the United States Bureau of Standards are hereby adopted; however, the Department of Agriculture is empowered to make such rules and regulations as may be necessary to make effective the purposes and provisions of this article and to fix and prescribe reasonable charges and fees for examining, testing, adjusting and certifying the correct, or incorrect, equipment used in the buying or selling of any commodity or thing, or for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight and measure when a charge is made for such determination. Such rules and regulations and fees and charges shall be published thirty days before such rules, regulations, fees and charges become effective. (1927, c. 261, s. 2; 1931, c. 150.)

§ 81-3. Employment of superintendent of weights and measures. — The Commissioner of Agriculture shall have authority to employ a superintendent of weights and measures and necessary assistants, local inspectors and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties.

The person named as superintendent of weights and measures shall give bond to the State of North Carolina in the sum of ten thousand dollars to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State to be approved as other bonds for the State officers. The superintendent of weights and measures shall, to safeguard the interests of the buyer and seller, require bond from other employees authorized under the first paragraph of this section in the amounts of not less than one thousand dollars for each employee designated as a local inspector or sealer of weights and measures. (1927, c. 261, ss. 3, 4.)

§ 81-4. Salaries and expenses. — All salaries and necessary expenses shall be provided as now provided for the other departments and agencies of the State government. (1927, c. 261, s. 5; 1931, c. 150.)

§ 81-5. Standard of work for local standard keepers.—When any town or county wishes to appoint a local standard keeper or inspector or sealer of weights and measures the appointment and regulation of his work must be in keeping with the rules and regulations of the State Department of Agriculture and his work subject to supervision of the State Superintendent of Weights and Measures. (1927, c. 261, s. 6.)

§ 81-6. Receipts for fees; approved standards to be marked.—The State Superintendent of Weights and Measures, or his deputies, or inspectors on his direction, shall, after examining any standards of weights or measures or other apparatus used for determining the weight or measure of anything, issue to the owner of such measuring device or apparatus a receipt for any fees collected and, when such measuring device or apparatus is found to be accurate, stamp upon, or tag, the measuring instrument with the letters "N.C." and two figures representing the year in which the inspection was made. (1927, c. 261, s. 7.)

§ 81-7. Standard equipment.—There shall be issued to each deputy inspector, or local sealer of weights and measures, such standard equipment as may be necessary. (1927, c. 261, s. 8.)

§ 81-8. Standards of weights and measures. —The weights and measures received from the United States under joint resolution of Congress, approved June fourteenth, one thousand eight hundred and twenty-six, and July twenty-seventh, one thousand eight hundred and sixty-six, and such new weights and measures as shall be received from the United States as standards of weights and measures in addition thereto, or in renewal thereof, and such as shall be supplied by the State in conformity therewith and certified by the National Bureau of Standards shall

be the State standards of weights and measures, and in addition thereto there shall be supplied from time to time such copies of these as may be deemed necessary. The Superintendent of Weights and Measures shall take charge of the standards adopted by this article as the standards of the State and cause them to be kept in a fire proof building belonging to the State, from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safe keeping. He shall maintain the State standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall keep complete record of the standards, balances and other apparatus belonging to the State and take a receipt for same from his successor in office. He shall annually, on the first day of December, make to the Commissioner of Agriculture a report of all work done in his office. (1927, c. 261, s. 9.)

§ 81-9. Supervision of devices offered for.—The State Superintendent of Weights and Measures shall have and keep a general supervision of the weights and measures and weighing or measuring devices offered for sale, sold, or in use in the State. He, or his deputies, or inspectors at his direction, shall, upon written request of any citizen, firm, or corporation, or educational institution in the State, test or calibrate weights, measures and weighing or measuring devices used as standards in the State. (1927, c. 261, s. 10.)

§ 81-10. Authority of deputy or local inspector. — Each deputy or local inspector shall have the power, and it shall be his duty, under the direction of the State Superintendent of Weights and Measures, to inspect, test, try and ascertain if they are correct all weights and measures and weighing and measuring devices kept, offered, or exposed for sale, sold, or used or employed within the State by any proprietor, agent, lessee, or employee in proving the size, quantity, extent, area, or measurement of quantities, things produced, or articles for distribution or consumption, purchased or offered or submitted by any person or persons for sale, hire, or award, and he shall have the power, and shall, from time to time, weigh or measure and inspect packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered, or exposed for sale, or sold, or in the process of delivery, in order to determine whether the same contain the amount represented, or whether they be kept, offered or exposed for sale, or sold in a manner in accordance with law. He may, for the purpose above mentioned and in the general performance of his duties, enter and go into, or open, and without formal warrant, any stand, place, building, or premises, or stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any person whomsoever and require him, if necessary, to proceed to some place which the sealer may specify for the purpose of making the proper test. (1927, c. 261, s. 11.)

§ 81-11. Condemnation and destruction of incorrect weights, measures or devices.—The deputy or local inspector shall condemn, seize, and may destroy incorrect weights and measures or weighing and measuring devices, which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect and yet in his best judgment may be repaired, he shall mark or tag as "Condemned for Repairs" in a manner prescribed by the State Superintendent of Weights and Measures. The owners or users of any weights, measures or weighing or measuring devices of which such disposition is made shall have the same repaired and corrected within ten days and they may neither use nor dispose of same in any way, but shall hold the same at the disposal of the sealer. Any weights, measures, or weighing or measuring devices which have been condemned for repairs and have not been repaired as required shall be confiscated by the sealer. (1927, c. 261, s. 12.)

§ 81-12. Seizure of false weights and measures.—The Superintendent of Weights and Measures, his deputies and inspectors are hereby made special policemen and are authorized and empowered to arrest without formal warrant, any violator of the statutes in relation to weights and measures and to seize as use for evidence without formal warrant any false or unsealed weights, measures, or weighing or measuring devices or package or amount of commodity found to be used, retained, or offered or exposed for sale, or sold in violation of law. (1927, c. 261, s. 13.)

§ 81-13. Obstruction to officers misdemeanor.—Any person who shall hinder or obstruct in any way the Superintendent of Weights and Measures, his deputies or inspectors, in the performance of his official duties shall be guilty of a misdemeanor and, upon conviction in any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars or more than two hundred dollars, or by imprisonment in the county jail for not more than three months, or by both fine and imprisonment. (1927, c. 261, s. 14.)

§ 81-14. Impersonation of superintendent of weights and measures or deputies misdemeanor.—Any person who shall impersonate in any way the Superintendent of Weights and Measures, his deputies or inspectors, by the use of his seal or counterfeit of his seal or otherwise, shall be guilty of a misdemeanor and upon conviction therefor in any court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. (1927, c. 261, s. 15.)

§ 81-15. Weights of goods sold in packages to be stated on package.—It shall be unlawful to keep for the purpose of sale, or expose for sale, or sell any commodity in package form unless the net quantity of the contents are plainly or conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, that reasonable variations or tolerances shall be permitted and that these reasonable variations or tolerances, and also exemptions as to small packages shall be established by rules and regulations made by and published with

other rules and regulations approved by the Department of Agriculture. (1927, c. 261, s. 16.)

§ 81-16. Sales when no claim of weight or measure made.—Nothing in this article shall be construed to prohibit the sale by farmers, dealers or merchants, of fruits and vegetables when sold by the piece, head or bunch, and there is no claim made as to its weight or measure. (1927, c. 261, s. 17.)

§ 81-17. Net weight basis of sales by weight.—Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this article, it shall be understood and construed to mean the net weight of the commodity. (1927, c. 261, s. 18.)

§ 81-18. Acts and omissions declared misdemeanor.—Any person who, by himself, or his servant or agent, or as the servant or agent of any other person, shall offer, or expose for sale, sell, use in the buying or selling of any commodity or thing or for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight or measure, when a charge is made for such determination, or retain in his possession a false weight or measure or weighing or measuring device or any weight or measure or weighing or measuring device which has not been sealed by the State Superintendent, or his deputy, or inspectors, or by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law, or remove the tag placed thereon by the State Superintendent, or his deputy, or inspectors, or who shall sell or offer or expose for sale less than the quantity he represents on any commodity, thing, or service, or shall take or attempt to take more than the quantity he represents, when as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of any commodity, thing, or service is determined; or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall violate any provisions of this article for which a specific penalty has not been provided; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using any device or instrument to be used to, or calculated to, falsify any weight or measure, shall be guilty of a misdemeanor, and shall be punished by fine of not less than ten dollars or more than two hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment, upon a first conviction in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. (1927, c. 261, s. 19.)

§ 81-19. "Person" construed.—The word "person" as used in this article shall be construed to impart both the plural and singular as the case demands and shall include corporations, companies, societies and associations. (1927, c. 261, s. 20.)

§ 81-20. "Weights, measures, weighing or measuring devices" construed.—The words "weights, measures, or (and) weighing or (and) measuring devices" as used in this article, shall be construed to include all weights, scales, beams, measures of every kind, instruments, mechanical devices for weighing or measuring any other appliances and accessories connected with any or all such instruments. The words "sale or sell" as used in this act shall be construed to include barter and exchange. (1927, c. 261, s. 21.)

§ 81-21. Transfer of division of weights and measures to department of revenue. — The governor of North Carolina is hereby authorized by executive order to transfer the superintendent of weights and measures, as set up by this article, to the department of revenue.

In the case of the transfer of the superintendent of weights and measures as set forth in this section, the governor, together with the commissioner of revenue, is hereby authorized and empowered to promulgate and enforce such rules and regulations as he or they may deem necessary or advisable to effectuate this article, and all appointive and elective authority now vested in the commissioner of agriculture by this article pertaining to weights and measures, is hereby transferred to the governor of North Carolina; and the governor is specifically authorized and empowered to appoint a superintendent of weights and measures to serve at the will of the governor. (1933, c. 523, ss. 1, 2.)

§ 81-22. Certain measures regulated. — Whenever any commodity now named in § 81-24, shall be quoted or sold by the bushel, the bushel shall consist of the number of pounds stated in said section; and whenever quoted or sold in subdivisions of the bushel, the number of pounds shall consist of the fractional part of the number of pounds as set forth therein for the bushel; and when sold by the barrel shall consist of the number of pounds constituting 3.281 bushels. (1933, c. 523, s. 3.)

Art. 2. Establishment and Use of Standards.

§ 81-23. Standard weights and measures, exception; penalty.—The standard weight of the following seeds and other articles named shall be as stated in this section, viz:

Alfalfa shall be 60 lbs. per bu.; apples, dried, shall be 24 lbs. per bu.; apple seed shall be 40 lbs. per bu.; barley shall be 48 lbs. per bu.; beans, castor, shall be 46 lbs. per bu.; beans, dry, shall be 60 lbs. per bu.; beans, green in pod, shall be 30 lbs. per bu.; beans, soy, shall be 60 lbs. per bu.; beef, net, shall be 200 lbs. per bbl.; beets shall be 50 lbs. per bu.; blackberries shall be 48 lbs. per bu.; blackberries, dried, shall be 28 lbs. per bu.; bran shall be 20 lbs. per bu.; broomcorn shall be 44 lbs. per bu.; buckwheat shall be 50 lbs. per bu.; cabbage shall be 50 lbs. per bu.; canary seed shall be 60 lbs. per bu.; carrots shall be 50 lbs. per bu.; cherries, with stems, shall be 56 lbs. per bu.; cherries, without stems, shall be 64 lbs. per bu.; clover seed, red and white, shall be 60 lbs. per bu.; clover, burr, shall be 8 lbs. per

bu.; clover, German, shall be 60 lbs. per bu.; clover, Japan, Lespedeza, shall be, in hull 25 lbs. per bu.; corn, shelled, shall be 56 lbs. per bu.; corn, Kaffir, shall be 50 lbs. per bu.; corn, pop, shall be 70 lbs. per bu.; cotton seed shall be 30 lbs. per bu.; cotton seed, Sea Island, shall be 44 lbs. per bu.; cucumbers shall be 48 lbs. per bu.; fish shall be 100 lbs. per ½ bbl.; flax seed shall be 56 lbs. per bu.; grapes, with stems, shall be 48 lbs. per bu.; grapes, without stems, shall be 60 lbs. per bu.; gooseberries shall be 48 lbs. per bu.; grass seed, Bermuda, shall be 14 lbs. per bu.; grass seed, blue, shall be 14 lbs. per bu.; grass seed, Hungarian, shall be 48 lbs. per bu.; grass seed, Johnson, shall be 25 lbs. per bu.; grass seed, Italian rye, shall be 20 lbs. per bu.; grass seed, orchard, shall be 14 lbs. per bu.; grass seed, tall meadow and tall fescue, 24 lbs. per bu.; grass seed, all meadow and fescue except tall, 14 lbs. per bu.; grass seed, perennial rye, shall be 14 lbs. per bu.; grass seed, timothy, shall be 45 lbs. per bu.; grass seed, velvet, shall be 7 lbs. per bu.; grass, red top, shall be 14 lbs. per bu.; hemp seed shall be 44 lbs. per bu.; hominy shall be 62 lbs. per bu.; horseradish shall be 50 lbs. per bu.; liquids shall be 42 gals. per bbl.; meal, corn, whether bolted or unbolted, 48 lbs. per bu.; melon, cantaloupe, shall be 50 lbs. per bu.; millet shall be 50 lbs. per bu.; mustard shall be 58 lbs. per bu.; nuts, chestnuts, shall be 50 lbs. per bu.; nuts, hickory, without hulls, shall be 50 lbs. per bu.; nuts, walnuts without hulls, shall be 50 lbs. per bu.; oats, seed, shall be 32 lbs. per bu.; onions, button sets, shall be 32 lbs.; onions, top buttons, shall be 28 lbs. per bu.; onions, matured, shall be 57 lbs. per bu.; osage orange seed shall be 33 lbs. per bu.; peaches, matured, shall be 50 lbs. per bu.; peaches, dried, shall be 25 lbs. per bu.; peanuts shall be 22 lbs. per bu.; peach seed shall be 50 lbs. per bu.; peanuts, Spanish, shall be 30 lbs. per bu.; parsnips shall be 50 lbs. per bu.; pears, matured, shall be 56 lbs. per bu.; pears, dried, shall be 26 lbs. per bu.; peas, dry, shall be 60 lbs. per bu; peas, green, shall be, in hull 30 lbs. per bu.; pieplant shall be 50 lbs. per bu.; plums shall be 64 lbs. per bu.; pork, net, shall be 200 lbs. per bbl.; potatoes, Irish, shall be 56 lbs. per bu.; potatoes, sweet, green, shall be 56 lbs. per bu.; and the dry weight 47 lbs. per bu.; quinces, matured, shall be 48 lbs. per bu.; raspberries shall be 48 lbs. per bu.; rice, rough, shall be 44 lbs. per bu.; rye seed shall be 56 lbs. per bu.; sage shall be 4 lbs. per bu.; salads, mustard, spinach, turnips, kale 10 lbs. per bu.; salt shall be 50 lbs. per bu.; sorghum seed shall be 50 lbs. per bu.; sorghum molasses shall be 12 lbs. per gal.; strawberries shall be 48 lbs. per bu.; sunflower seed shall be 24 lbs. per bu.; teosinte shall be 59 lbs. per bu.; tomatoes shall be 56 lbs. per bu.; turnips shall be 50 lbs. per bu.; wheat shall be 60 lbs. per bu.; cement shall be 80 lbs. per bu.; charcoal shall be 22 lbs. per bu.; coal, stone, shall be 80 lbs. per bu.; coke shall be 40 lbs. per bu.; hair, plastering, shall be 8 lbs. per bu.; land plaster shall be 100 lbs. per bu.; lime, unslaked, shall be 80 lbs. per bu.; lime, slaked, shall be 40 lbs. per bu.

It shall be unlawful to purchase or sell, or barter or exchange, any article named in this section on any other basis than as stated herein: Provided, however, that any and/or all such articles may be sold by weight, avoirdupois standard.

If any person shall take any greater weight than is specified for any of the items named herein, he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for same. (1915, c. 230, s. 1; 1909, c. 555, s. 1; 1917, c. 34; Ex. Sess. 1921, c. 87; 1931, c. 76; 1937, c. 354; C. S. 8060.)

§ 81-24. Congressional standards adopted.—No trader or other person shall buy or sell, or otherwise use in trading, any other weights and measures than are made and used according to the standard prescribed by the congress of the United States: Provided, that this chapter shall not prevent the citizens of the state from buying and selling grain by measure as may be agreed upon between the parties. (Rev., s. 3063; Code, s. 3837; R. C., c. 117, s. 1; 1741, c. 32, s. 2; 1866, c. 125; C. S. 8061.)

§ 81-25. Area of acre.—The measure of an acre of land shall be equal to a rectangle of sixteen poles or perches in length and ten in breadth, and shall contain one hundred and sixty square perches or poles, or four thousand eight hundred and forty square yards, six hundred and forty such acres being contained in a square mile. (Rev., s. 3065; Code, s. 3843; R. C., c. 117, s. 7; 33 Edw. I, c. 6; C. S. 8062.)

Art. 3. County Standard.

§ 81-26. County commissioners to provide standards. — The board of commissioners of each county shall, at the charge of their county, procure standard sealed weights of half hundred, quarter hundred, ten pounds, five pounds, two pounds, and one pound, one-half pound, one-quarter pound, two ounces, one ounce, one-half ounce, gauging rod and waist sticks, yardsticks, half-bushel, peck, half-peck, quarter-peck, and one-eighth peck; gallon, half-gallon, quart, pint, half-pint, and gill measure, of the United States standard, sealed and branded "N. C.". (Rev., s. 3064; Code, s. 3838; 1866-7, c. 126; 1881, c. 199; C. S. 8063.)

§ 81-27. State superintendent to supply standards to counties.—It shall be the duty of the superintendent of weights and measures, under the direction of the governor, to procure and furnish, at prime cost, to any of the counties, upon an order of the board of county commissioners, any of the standard sealed weights and measures required by law to be kept, and he is hereby authorized, by and with the approval of the governor, to contract for the manufacture of plain sealed weights substantially made of iron, steel or brass, as the county ordering may direct; yard stick made of substantial wood, each end neatly covered with metal, sealed, marked and stamped "N. C."; half-bushel, peck, half-peck, quarter-peck, and one-eighth peck, made of substantial, well seasoned wood, with secure metallic binding and casing; gallon, half-gallon, quart, pint, half-pint, and gill measure, made of light sheet copper with iron handles. He shall procure and furnish as herein provided to the board of commissioners of any county ordering the same, dry and liquid sealed measures and yardstick made of brass or copper. (Rev., s. 3069; Code, s. 3839; 1881, c. 199, s. 2; C. S. 8066.)

§ 81-28. Counties to pay costs of standards.—It shall be the duty of the state superintendent of weights and measures to supply to each county which shall call for the same such standard weights as the standard-keeper of such county shall demand, duly sealed, such county paying to the state treasurer the actual cost of such weights, upon the certificate of the state superintendent of weights and measures. (Rev., s. 3070; Code, s. 3846; 1866-7, c. 126, s. 1; C. S. 8067.)

§ 81-29. State superintendent to keep record.—It shall be the duty of the state superintendent of weights and measures to keep a book, in which he shall keep an accurate account of all the weights and measures by him delivered, and the expenses incurred by him in the purchase of such weights and measures, subject to the inspection of the state treasurer and the general assembly. (Rev., s. 3071; Code, s. 3847; 1866-7, c. 126, s. 2; C. S. 8068.)

§ 81-30. Appointment of county standard-keeper.—The weights and measures, stamps and brands thus provided shall be kept at the courthouse of the respective counties by a standard-keeper, to be elected by the board of commissioners for the term of two years; the person thus elected shall, before the board of county commissioners, take the oath required for public officers and also an oath of office, and shall give bond, with good and sufficient surety, payable to the state of North Carolina, in the sum of two hundred dollars, conditioned for the safe-keeping of weights and measures, stamps and brands of said county, and for the faithful performance of the duties of his office. (Rev., ss. 306, 3072; Code, s. 3840; R. C., c. 117, s. 4; 1741, c. 32, s. 3; 1816, c. 901, s. 2; 1827, c. 22, s. 3; C. S. 8069.)

§ 81-31. County standard-keeper. — Standard-keepers shall be entitled to receive the following fees, and no other, namely: for examining and adjusting a pair of steelyards, twenty-five cents; every weight of half a pound and upwards, five cents; every set of weights below half a pound, including one piece of each denomination, five cents; for a yardstick, or other measurer of cloth, five cents; every bushel, half-bushel, peck or other measure used in measuring grain, meal or salt, ten cents; each measure for liquors or wines, three cents, and for extra work on bushel and half-bushel measures a sum not exceeding twenty-five cents in any one case; and for every surveyor's chain, fifty cents. (Rev., s. 2780; Code, s. 3753; 1889, c. 406; R. C., c. 102, s. 37; 1870-1, c. 139, s. 3; 1874-5, c. 110; C. S. 3914.)

§ 81-32. Removal of standards.—The standard-keeper may remove the weights and measures, stamps and brands from the courthouse, not to exceed sixty days in any one year, for the purpose of testing weights and measures throughout the county. (Rev., s. 3072; C. S. 8070.)

§ 81-33. Testing and marking standards; penalty.—Every person, firm, or corporation using weights and measures of any and every kind which shall be used in buying or selling or bartering, or for hire, or in fixing or determining the amount of toll or charge or rate for any service shall allow or permit the standard-keeper of the county to try, examine, and adjust by the standard, at least once every year, all the said weights and measures of any and every kind used as aforesaid, and every person, firm, or corporation who shall neglect to comply with the requirements of this section shall forfeit and pay fifty dollars, to be recovered at the suit of the standard-keeper, one-half to his use and the other half to the use of the county wherein the default occurs. It shall be the duty of the standard-keeper, when practicable, to mark, by stamp or brand, the weights or measures found or made to agree with the standard, and he shall give a certificate of such examination and adjustment, stating the weights and measures examined and adjusted. (Rev., s. 3073; 1909, c. 695; 1925, c. 299; C. S. 8071.)

§ 81-34. Destruction of unadjusted standards.—In every instance where the standard-keeper shall have before him for adjustment, or shall find in the possession of any person, intending to use the same, any weight or measure that cannot be adjusted so as to meet the requirements of the law, it shall be the duty of the standard-keeper to destroy the same. (Rev., s. 3074; Code, s. 3848; 1866-7, c. 126, s. 4; C. S. 8072.)

§ 81-35. Local: Office abolished in certain counties.—The office of county standard-keeper is abolished in the following counties, and in these counties the sections regulating that office and its duties do not apply: Ashe, Beaufort, Bertie, Bladen, Brunswick, Camden, Cumberland, Currituck, Gaston, Halifax, Lincoln, Montgomery, Moore, Northampton, Rockingham, Rutherford, Swain, Vance, Warren, Yadkin, Yancey. (Rev., ss. 3072, 3073; 1909, c. 106; 1909, c. 354; 1909, c. 695; P. L. 1911, c. 153; P. L. 1911, c. 593; 1929, c. 136, s. 1; C. S. 8073.)

Art. 4. Public Weigh Masters.

§ 81-36. Definitions.—Any person, either for himself or as a servant or agent of any other person, firm, or corporation, or who is elected by popular vote, who shall weigh, or measure, or count, or who shall ascertain from, or record the indications or readings of, a weighing, or measuring, or recording, device or apparatus for any other person, firm or corporation, and declare the weight, or measure, or count, or reading or recording to be the true weight, or measure, or count, or reading, or recording of any commodity, thing, article, or product upon which the purchase, or sale, or exchange, is based, and make a charge for, or collect pay, a fee, or any other compensation for such act and shall issue a certificate of weight, or measure, or count, in accordance with the provisions of this article, shall be licensed and shall be known as a public weigh master in the state of North Carolina. (1939, c. 285, s. 1.)

§ 81-37. Application for license permit.—Any person desiring to be a public weigh master in this state shall apply for and obtain license permit from the state of North Carolina through the state superintendent of weights and measures by filing formal application as follows:

"I, ..., a citizen of the United States, residing at ....., county of ....., have familiarized myself with the law and with full knowledge of the provisions contained therein relative to licensing of public weigh master, do

hereby file application for license permit to be issued accordingly.

I certify that I am of sound mind and am physically fit to perform the duties imposed upon a public weigh master and that I will, if licensed, abide by and enforce all laws, rules and regulations relating to the public weigh master Act to the best of my knowledge and ability.

I, ..., ...,) Being a citizen of this State
Name address) and of good moral character, not related to the applicant by blood or marriage, do hereby certify that the statement of applicant is true to the best of my knowledge and belief and that my endorsement is without fear or embarrassment." (1939, c. 285, s. 2.)

§ 81-38. Forms of certificates of weight, etc., to be approved by state superintendent of weights and measures.—It shall be the duty of every public weigh master licensed by this article to issue a certificate of weight, measure, count, reading, or recording on forms approved by the state superintendent of weights and measures, and to enforce the provisions of this article, together with rules and regulations relating thereto. Said public weigh master shall not receive compensation from the state for the duties so performed. (1939, ch. 285, s. 3.)

§ 81-39. Official seal of public weigh masters.—It shall be the duty of every public weigh master so licensed by this article, to obtain from the state department of weights and measures an official seal, which seal shall have inscribed thereon the following words: "North Carolina Public Weigh Master" and such other design and/or legend as the state superintendent of weights and measures may deem appropriate. The seal shall be stamped or impressed upon each and every weight, measure, numerical count, reading or recording certificate issued by such public weigh master, and when so applied the certificate shall be recognized and accepted as a declaration of the official, true, and accurate and undisputed weight, measure, count, reading or recording of the commodity, product, or article weighed, or measured, or counted within the tolerance allowed by the "Uniform Weights and Measures Act" of this state: Provided, however, that the weighers of tobacco in "Leaf Tobacco Warehouses" may use, in lieu of said seal, a signature, which signature shall also appear, in ink or other indelible substance on the Weigh Master's Formal Application, and again, posted in a conspicuous and accessible place in the tobacco warehouse where he is acting as weigh master. (1939, c. 285, s. 4; 1941, c. 317, s. 1.)

§ 81-40. Violations of provisions by weigh masters made misdemeanor. — Any public weigh master who shall refuse to issue a certificate as prescribed by this article, or who shall issue a certificate giving a false weight, or measure, or count, or reading, or recording, or who shall misrepresent the weight, or measure, or count, or reading or recording of the quantity of any commodity, produce or article to any person, firm or corporation, or who shall otherwise violate any of the provisions of this article shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court, and, in addition thereto, his license shall be revoked and he shall forfeit his seal which, when so forfeited, shall be turned over to the state superintendent of weights and measures or his agents. (1939, c. 285, s. 5.)

§ 81-41. Requesting weigh waster to falsify weights; impersonation of weigh master; alteration of certificate, etc.—Any person, firm, or corporation who shall request a public weigh master to weigh, measure, count, read, or record any commodity, product or article falsely or incorrectly, or who shall request a false or inaccurate certificate of weight, measure, count, reading or recording, or any person issuing a certificate of weight, or measure, or count, or reading, or recording within the meaning of this article, who is not a public weigh master as provided for by this article, or who shall act as, or for, or in any way impersonate, a public weigh master, or who shall erase, change, or alter any certificate issued by a public weigh master, or who shall make incorrect the certificate by increasing or decreasing the weight or measure or count of the commodity, product or article certified to for the purpose of deception, or who shall violate any provision of this article for which a special penalty has not been provided, shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00), or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court. (1939, c. 285, s. 6.)

§ 81-42. Certificates of weigh masters presumed accurate and correct. — When a public weigh master certificate is used in the sale, or purchase, or barter, or exchange of any commodity, produce, or article, the certified weight, or measure, or count or reading or recording shall be deemed to be the true, accurate and undisputed weight, or measure, or count, or reading or recording at time said commodity, produce, or article is put into the natural channels of trade, which is, at the time of sale or purchase or barter or exchange: Provided, however, that reasonable variations, or tolerances shall be permitted as established by rules and regulations as provided for by Uniform Weights and Measures Act. (1939, c. 285, s. 7; 1941, c. 317, s. 2.)

§ 81-43. Duty of custodian of product during time intervening between weighing and issuance of certificate.—If any commodity, product or article is to be offered for sale, or sold and is weighed or measured or counted by any public weigh master and a certificate issued prior to sale, or acceptance of such commodity, product or article by the purchaser, his agent, or consignee or, if any commodity product or article is offered for sale, sold, and/or delivered pending the weighing or measuring or counting of such commodity, product, or article by a public weigh master and the issuance of a certificate, the person, firm or corporation in whose custody said commodity, product or article is, shall keep, protect and pre-

vent any increase or decrease in weight, measure or count, in the interim so that the declaration of weight, or measure, or count shall be true in accordance with § 81-42. The term "interim" as used in this section shall be construed to mean the time intervening between the weighing and issuance of certificate and the sale or purchase; and the time intervening between the sale or purchase and the presentation of such commodity, product, or article to the public weigh master for weighing, or measuring or counting, and the issuance of certificate. Any loss sustained in the weight or measure or count of any commodity, produce, or article while in custody shall be borne by the person, firm or corporation in whose custody said commodity, produce, or article is. (1939, c. 285, s. 8.)

§ 81-44. Complaints to weigh master or state superintendent of weights and measures. — When doubt or difference arises as to the correctness of the weight, or measure, or count, or reading, or recording of any amount or part of any commodity, product, or article for which a certificate of weight, measure, count, reading or recording, has been issued by a public weigh master, the owner, agent or consignee shall make complaint before moving said commodity, produce, or article from city, town or community where weight certificate was issued, to the public weigh master issuing said certificate or to the state superintendent of weights and measures setting forth cause or causes for such doubt and/or difference, and have said amount, or part of the amount, or any commodity, product, or article reweighed, or remeasured, or recounted by the weigh master issuing the certificate or by the state superintendent of weights and measures or his agents: Provided, the commodity, produce or article is kept and protected as is required during the interim period provided for in § 81-43. If, on reweighing, remeasuring or recounting, a difference in original weight, or measure or count, is sustained the difference thus sustained shall be that, and that only, which is in excess of tolerance allowed by § 81-42, and any desired adjustment as a result of such difference shall be made accordingly, and the cost of reweighing or remeasuring or recounting shall be borne by the public weigh master responsible for the issuance of such faulty certificate; otherwise, the cost shall be borne by the complainant. (1939, c. 285, s. 9; 1941, c. 317, s. 3.)

§ 81-45. Approval by state superintendent of weights and measures of devices used. — It shall be unlawful for any public weigh master to use any weights or measures, or weighing or measuring or reading or recording device, which has not been tested and/or approved by the state superintendent of weights and measures, or his assistant or deputy or inspector in accordance with the "Uniform Weights and Measures Act" and/or the rules and regulations governing same. (1939, c. 285, s. 10.)

§ 81-46. Annual license for public weigh masters.—Public weigh masters shall be licensed for a period of one year from the date of issuance thereof, and a fee of five dollars ($5.00) shall be paid by each person so licensed to the state superintendent of weights and measures at time of filing application, as set forth in § 81-37, which fee shall be deposited with the state treasurer of North Carolina by the said state superintendent of weights and measures, and shall be kept in a separate and distinct fund designated as a special uniform weights and measures fund by said treasurer, and shall be disbursed by him under the terms of the Executive Budget Act: Provided, that a similar fee, as provided in this section, shall be required of all renewals of license as a public weigh master, which fee shall also be turned into the treasurer of the state by the state superintendent of weights and measures, to be expended in the manner herein set out. (1939, c. 285, s. 11.)

§ 81-47. Use of fees collected.—All monies collected by this article shall be used exclusively for the enforcement of this and the Uniform Weights and Measures Act. (1939, c. 285, s. 12.)

§ 81-48. Seal obtained from state superintendent of weights and measures. — Each public weigh master licensed under this article shall obtain from the state superintendent of weights and measures the seal, as provided for by this article, and pay the sum of two dollars and fifty cents ($2.50), which sum shall be for the use of said seal, and no additional charges shall be made as long as the public weigh master is licensed in accordance with the provisions of this article. Monies collected under this section shall be deposited with the state treasurer of North Carolina and expended for the purposes of this article under the terms of the Executive Budget Act. The state superintendent of weights and measures shall issue to the public weigh master the said seal upon receipt of said sum. All seals as issued to the public weigh masters shall be paid for out of the special uniform weights and measures fund. (1939, c. 285, s. 13.)

§ 81-49. Seal declared property of state.—The seal herein provided for shall be the property of the state of North Carolina and shall be forfeited and returned to the state superintendent of weights and measures upon termination of the performance of duties herein described as being the duties of a public weigh master. Failure or refusal of a person licensed as a public weigh master under this article to return, turn over, or surrender the official seal furnished by the state superintendent of weights and measures upon expiration of term of license or for malfeasance in office, shall be a misdemeanor and any person convicted thereof shall forfeit the amount paid for use of such seal and shall be punished by a fine of not less than ten dollars ($10.00) nor more than two hundred dollars ($200.00), or by imprisonment for not more than three months, or both such fine and imprisonment, in the discretion of the court. (1939, c. 285, s. 14.)

Art. 5. Scale Mechanics.

§ 81-50. Cotton weighing.—If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale, or package of lint cotton, for or on account of the draft, turn, or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and fined three hundred dollars or imprisoned, in the

discretion of the court: Provided, that the weigher may make such proper deduction as shall be agreed on by him and the seller, or his agent, for water, dirt, or other foreign substance in or on such bag, bale, or package of cotton, or for other just cause. (Rev., s. 3816; Code, s. 1007; 1874-5, c. 58, ss. 1, 3; C. S. 5085.)

§ 81-51. Cotton weigher failing to file oath a misdemeanor.—Every public weigher of cotton shall, before entering on the duties of his office, make and subscribe the oath prescribed for cotton weighers, which, when made, shall be filed in the office of the register of deeds for the county in which the person acts as weigher, and said register shall make a note of the same, and any person acting as weigher without making and filing the oath shall be guilty of a misdemeanor, and shall be fined twenty-five dollars for every bag, bale, or package of cotton which he shall have unlawfully weighed before being qualified to do so. (Rev., s. 3815; Code, s. 1008; 1874-5, c. 58, s. 2; C. S. 5086.)

§ 81-52. Purpose of act.—The purpose and intent of this act shall be:

(a) To protect the owners and/or users of scales in this state against the practices of the unscrupulous, incompetent and fraudulent, "self-named" "scale mechanic."

(b) To provide honest, efficient and competent scale service.

(c) To protect the honest, efficient and competent "scale mechanic" in the practice of his profession. (1941, c. 237, s. 1.)

§ 81-53. Definition of "scale mechanic;" act not applicable to certain apprentices or helpers.—Any person who is skilled in installing, adjusting, maintaining and repairing scales and/or weighing devices and who acts as such for hire or award and who is registered, shall be known as a "scale mechanic," provided, conditions as hereinafter stipulated are complied with; and provided further that the provisions of this act shall not apply to an apprentice or helper when working with a registered "scale mechanic." (1941, c. 237, s. 2.)

§ 81-54. Prerequisites for "scale mechanic."—A "scale mechanic," as defined in § 81-53 shall have the following prerequisites:

(a) A thorough working knowledge of scale mechanics.

(b) Be endorsed by three reputable citizens of this state, not related to "scale mechanic" by blood or marriage, for whom said "scale mechanic" has rendered satisfactory scale repair service.

(c) Shall furnish the state superintendent of weights and measures satisfactory proof of his ability to comply with the provisions of this act and any and all rules and/or regulations promulgated in accordance therewith.

(d) Shall apply for, and be registered as such, with the state superintendent of weights and measures. (1941, c. 237, s. 3.)

§ 81-55. Requirements for registration.—In order to be registered a "scale mechanic" must:

(a) Give satisfactory proof of prerequisites a, b and c as set forth in § 81-54, to the state superintendent of weights and measures.

(b) Have sufficient tools and test weights or equipment as may be necessary to render satisfactory scale service and be able to test counter scales up to thirty pounds and platform scales up to twenty-five per cent of capacity.

(c) Conform and/or comply with such rules and regulations as provided for by § 81-57. (1941, c. 237, s. 4.)

§ 81-56. Issuance of certificate of registration; annual renewal.—Upon compliance with the provisions of § 81-55, the state superintendent of weights and measures is authorized to issue a certificate of registration to such "scale mechanic," which certificate shall be renewed annually and the state superintendent of weights and measures shall have the power and authority to refuse to renew such certificate if it appears to his satisfaction that such "scale mechanic" has secured the original certificate of registration by false representation as to his ability or has failed to comply with the provisions of this act and any and all rules and/or regulations promulgated in accordance therewith. (1941, c. 237, s. 5.)

§ 81-57. Rules and regulations.—Such rules and regulations as are necessary to carry out the purpose and intent of this act shall be made and published by the state superintendent of weights and measures by and with the advice of his advisory board. (1941, c. 237, s. 6.)

§ 81-58. Impersonation of registered "scale mechanic" and violation of rules.—Any person who shall impersonate in any way a registered "scale mechanic" as herein provided for or violate any of the provisions or related rules or regulations of this act, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars and not more than five hundred dollars or by imprisonment not exceeding thirty days or by both such fine and imprisonment upon conviction in any court of competent jurisdiction. (1941, c. 237, s. 7.)

Art. 6. Surveyors.

§ 81-59. Standard surveyor's chain; tests.—The standard measure for a surveyor's chain shall be twenty-two standard yards, a standard half or two-pole chain shall be eleven standard yards, a standard quarter or one-pole chain shall be five and one-half standard yards; but every person using a surveyor's chain, half-chain, or quarter-chain for measuring land shall every two years test the same in the manner hereinafter provided. (Rev., s. 3075; 1889, c. 409; 1899, c. 665; C. S. 8074.)

§ 81-60. Using untested chain misdemeanor.—If any person shall use any chain for measuring land without having the same first measured and sealed by the standard-keeper, or shall use the same for a longer period than two years without bringing it to the standard-keeper and having the same measured and sealed by him, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars. (Rev., s. 3684; 1889, c. 409, s. 2; C. S. 8075.)

§ 81-61. Tests for magnetic variation and for chain.—Every surveyor operating in any of the counties of this state with magnetic instruments, whether in a public or private capacity, shall, between the first day of January and thirty-first day of December in each and every year, carefully test his needle upon the official meridian monu-

ments in the county in which he resides or the nearest county in which such monuments have been erected, by adjusting his instrument over the intersection of the lines cut into the top of one of the meridian monuments so established and sighting to the intersection of the lines cut into the top of the other meridian monument, noting the variation of the magnetic from the true meridian and the direction thereof, and shall test the chain or other instrument of linear measure upon the distance from center to center as indicated by intersecting lines of the two beams, tablets, or other official monuments set at or near the county courthouse for this purpose, noting the error of such instrument as compared with the standard of the monuments. (Rev., s. 3076; 1899, c. 665, s. 1; 1901, c. 642; C. S. 8076.)

§ 81-62. Magnetic variation to be recorded with survey.—On every official record of a survey of lands made after the first day in July, nineteen hundred and one, in any county in which meridian monuments have been erected, there shall be entered by the surveyor making such survey a record as to the date of testing the magnetic instrument used, and the amount of declination or variation of the magnetic needle indicated at such test. (Rev., s. 3076; C. S. 8077.)

§ 81-63. Surveys in another county; data as to variation recorded.—Before making surveys in any county other than the one in which the magnetic instrument and instruments for linear measure to be used have already been tested, said surveyor shall procure in writing from the register of deeds of the county in which said monuments have been established, nearest to the point where the survey is to be made, a statement giving the declination of the magnetic needle for the year in which it was last determined, and the rate and direction of the variation of said magnetic needle since that time, and this data shall be recorded as a part of the record of his survey. But no surveyor shall be required to go outside of the county in which he resides for the purpose of testing the instruments herein named. (Rev., s. 3077; 1899, c. 665, s. 1; C. S. 8078.)

§ 81-64. Tests returned to register; records kept.—Such tests and the correction, if any, resulting therefrom shall be returned by the surveyor in writing and under oath to the register of deeds for the county in which such meridian is situate within ten days from the taking of the observations, setting forth the name of the surveyor, his residence, the character of the instrument tested, the date of the observations, the declination east or west of the magnetic needle from the true meridian, together with a fee of ten cents for filing and registering the same; and such return shall be filed and registered by the register of deeds in a book properly ruled and lettered, to be furnished by the board of commissioners of the county, to be used for such purpose exclusively and entitled "The Meridian Record." (Rev., s. 3078; 1899, c. 665, s. 1; C. S. 8079.)

§ 81-65. Meridian monuments protected by county commissioners.—It shall be the duty of the board of county commissioners to maintain and protect the meridian monuments and tablets or monuments for the testing of chains or other instruments of linear measure established by the state, or national surveys coöperating with the county authorities, in good order and condition as the official standards of the county. (Rev., s. 3079; 1899, c. 665, s. 2; C. S. 8080.)

§ 81-66. Defacing meridian monuments misdemeanor.—If any person shall in any manner injure, deface, remove, or destroy any meridian monument or tablets, or any part thereof, or shall fail, neglect, or refuse to do and perform any act, matter, or thing by law required of him to be done in connection with such monuments or tablets, he shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine or be imprisoned, or both, at the discretion of the court. (Rev., s. 3743; 1899, c. 665, s. 3; 1893, c. 282, s. 4; C. S. 8081.)

Art. 7. Standard Weight Packages of Grits, Meal and Flour.

§ 81-67. Corn meal.—It shall be unlawful for any person or persons to pack for sale, sell, or offer for sale in this state corn meal except in packages containing one pound, two pounds, three pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds, or one hundred pounds, or multiple of one hundred pounds, and whether the meal is bolted or unbolted shall be stated on the package. (1921, c. 170, s. 1; C. S. 8081(a).)

Local Modification.—Clay, Lenoir, Transylvania, Swain: 1931, c. 299; Jackson: 1931, c. 122; Macon: 1933, c. 82.

§ 81-68. Hominy or grits.—It shall be unlawful for any person or persons to pack for sale, sell, or offer for sale any hominy or grits except in packages of one pound, one and one-half pounds, two pounds, three pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds, or one hundred pounds, or multiples of one hundred pounds. (1921, c. 170, s. 2; 1933, c. 162; C. S. 8081(b).)

§ 81-69. Flour; sales from bulk.—It shall be unlawful for any person or persons to pack for sale, sell, or offer for sale in this state flour, except in packages containing six pounds, twelve pounds, twenty-four pounds, forty-eight pounds, ninety-eight pounds, or one hundred and ninety-six pounds of flour, and the net weight of all grits, meal, or flour shall be stated on the package of such meal, flour, or grits, with the name and address of the maker or jobber: Provided, the provisions of this article shall not apply to the retailing of grits, meal or flour direct to customers from bulk, when the same is priced and delivered by actual weight. (1921, c. 170, s. 3; C. S. 8081(c).)

§ 81-70. Packages of corn meal, grits or flour weighing five pounds or less.—The provisions of the above three sections shall not apply to packages of corn meal, grits and/or flour weighing five pounds or less but same may be packed for sale, sold or offered for sale when and if the said packages are plainly and conspicuously marked, which said marking must show the net contents by avoirdupois weight, and said packages must be so filled that the size will not tend to deceive or aid in the perpetration of fraud in the sale thereof. (1935, c. 269.)

§ 81-71. Inspections for discovery of violations of law; certification of violations to solicitor.

—The board of agriculture shall cause to be made from time to time such inspections as may be necessary to determine whether the provisions of this article have been violated. If it shall appear from such inspection that any provisions of this article have been violated, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case. (1921, c. 170, s. 4; C. S. 8081(d).)

§ 81-72. Violation of law a misdemeanor; seizure and sale of goods; release by commissioner. —Any person or persons violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment in the discretion of the court, and the meal or flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article: Provided, that the commissioner of agriculture may in his discretion order the release of the grits, meal, or flour seized when the owner of same shall offer to pack it in accordance with the provisions of this article, and it shall appear to the satisfaction of the commissioner that said owner did not intend to violate the provisions of the law. (1921, c. 170, s. 5; C. S. 8081(e).)

Chapter 82. Wrecks.

Sec.
82-1. Number and boundaries of wreck districts.
82-2. Commissioners of wrecks; appointment, residence and term of office.
82-3. Commissioners to give bond.
82-4. Commissioners to take oath of office.
82-5. Duty of commissioners.
82-6. Salvage to be paid, or its payment secured, before release of goods.
82-7. Adjustment of salvage when the parties cannot agree.
82-8. Sale of wrecked property for salvage; compensation of commissioner.
82-9. Compensation of commissioner when there is no sale.
82-10. Sale of unclaimed property.
82-11. Proceeds of sale to be paid to clerk of superior court.
82-12. Disposition of proceeds of sale by clerk.
82-13. Proof of ownership of property sold.
82-14. Stranded property to be reported; failure to report misdemeanor.
82-15. Expenses to be deducted from proceeds of sales.
82-16. Violation of chapter a misdemeanor.
82-17. Commissioner violating chapter liable for double damages and guilty of a misdemeanor.
82-18. Interfering with commissioner in the discharge of his duties.

§ 82-1. Number and boundaries of wreck districts.—The counties of Currituck, Dare, Hyde, Carteret, Onslow, Brunswick, and New Hanover are hereby divided into the following wreck districts, namely:

Currituck.—The first to extend from the Virginia state line to Judy's cove; the second to extend from the Judy's cove to Josephus Baum's fish house; the third to extend from Josephus Baum's fish-house to the county line of Dare.

Dare.—The first to extend from the county line of Currituck to the north point of Oregon inlet; the second to extend from the north point of Oregon inlet to the south point of New inlet; the third to extend from the south point of New inlet to the patrol house between Gull Shoal and Little Kennakeet life-saving stations; the fourth to extend from the last named patrol house to the patrol house between Big Kennakeet and Cape Hatteras life-saving stations; the fifth to extend from the last named patrol house to Creed's Hill life-saving stations; the sixth to extend from Creed's Hill life-saving stations to the county line of Hyde county.

Hyde.—The county of Hyde shall constitute one wreck district, which shall extend from the Dare county line to the Carteret county line.

Carteret.—The first from the Hyde county line to Core Banks life-saving station; the second from Core Banks life-saving station to Old Topsail inlet; the third from Old Topsail inlet to the Onslow county line.

Onslow.—The first from Bogue inlet to New River inlet; the second from New River inlet to the New Hanover county line.

New Hanover and Brunswick.—To extend from the Onslow county line to the South Carolina state line. (Rev., s. 5439; 1899, c. 79, ss. 1-9; 1903, c. 85; 1905, c. 199; 1915, c. 42; C. S. 8082.)

§ 82-2. Commissioners of wrecks; appointment, residence and term of office. — The governor, whenever it may be necessary, shall appoint a commissioner of wrecks for each of the districts designated in § 82-1. Each commissioner shall reside in the district for which he is appointed, unless separated by navigable waters, in which case the distance shall not exceed three miles. The restrictions as to residence shall not apply to Hyde county. No person who holds any office of profit or trust under the laws of the United States or the state of North Carolina, nor any person who is a pilot, shall hold the office of commissioner of wrecks. The term of office shall be for two years. (Rev., s. 5440; 1899, c. 79, ss. 10, 12, 13; 1903, c. 85; 1907, c. 398; C. S. 8083.)

§ 82-3. Commissioners to give bond.—Every person appointed a commissioner of wrecks shall enter into a bond, with good and sufficient surety, in the sum of two thousand dollars, payable to

the state of North Carolina and conditioned for the faithful performance of his duties. This bond shall be approved by the board of county commissioners and deposited in the office of the clerk of the superior court. (Rev., s. 305; 1899, c. 79, s. 10; C. S. 8084.)

§ 82-4. Commissioners to take oath of office.—Every person appointed a commissioner of wrecks, before entering upon the duties of his office, shall go before some officer duly authorized to administer oaths and take an oath to perform faithfully the duties of his office, and the oaths to support the constitution of the state and of the United States. (Rev., s. 5441; 1899, c. 79, s. 11; C. S. 8085.)

§ 82-5. Duty of commissioners.—Upon the earliest intelligence given that any ship or vessel is stranded, it shall be the duty of the commissioner in whose district the same is stranded, or his duly authorized agent, to repair at once to such wrecked ship or vessel, and upon the permission of its master to summon immediately a sufficient number of men who, acting under the direction of the commissioner or his agent, shall at once proceed to save the cargo and material of such wrecked vessel. As soon as any such stranded property is saved it shall be immediately placed under guard, one guard to be selected by the commissioner or owner representing the same, and one other guard to be selected by the salvors. Such goods or stranded property shall be kept under strict guard until sold or the salvors are paid as provided in this chapter. (Rev., s. 5442; 1899, c. 79, s. 14; 1901, c. 178; C. S. 8086.)

§ 82-6. Salvage to be paid, or its payment secured, before release of goods. — Every person who assists in saving such cargo or material shall, within thirty days after saving the same, be paid a reasonable reward by the owner or master of the stranded vessel, or by the merchant whose vessel or goods are saved. In default of payment of a reasonable compensation the goods or other property so saved shall remain in the joint custody of the commissioner and salvors until all such charges are paid, or until the payment thereof is secured to the satisfaction of the parties saving such goods or other property. (Rev., s. 5443; 1899, c. 79, ss. 14, 15; C. S. 8087.)

§ 82-7. Adjustment of salvage when the parties cannot agree.—If the parties shall disagree touching the amount of reward or salvage to be paid to the persons employed, the commander, owner, or commissioner who represents the property saved shall choose one disinterested person, and the salvors shall nominate one other, who shall adjust and ascertain the same. If the persons thus chosen cannot agree, they shall choose one other indifferent person as umpire to decide between them: Provided, that the amount to be paid the salvors shall be determined and agreed upon before sale is made of such property. (Rev., s. 5444; 1899, c. 79, s. 16; C. S. 8088.)

§ 82-8. Sale of wrecked property for salvage; compensation of commissioner.—If the owner of the vessel, or the property which has been saved, shall fail for thirty days after the salvage has been ascertained, either by agreement or as provided for in § 82-7, to pay such salvage, it shall be the duty of the commissioner of wrecks in charge of such stranded or wrecked vessel or other property to sell the same at public sale, after first advertising such sale in the same manner as is required for sales of personal property under execution. Each commissioner shall provide himself with books and shall record in them all such sales by him made. He shall receive for selling any such wrecked or stranded property five per centum on the amount of sales, and in addition thereto he shall receive his actual expenses incurred in going to and returning from the place of the wreck, or where the property is stranded, to be paid out of the gross amount of such sales. At any public sale of stranded property, the salvors may select one person and the commissioner one other, who shall keep an accurate account of the sales, make the collections, settle with the commissioner his fees, and pay to the salvors the amount agreed on or awarded by the referees. (Rev., s. 5445; 1899, c. 79, s. 17; 1901, c. 178; 1905, c. 66; C. S. 8089.)

§ 82-9. Compensation of commissioner when there is no sale.—If any owner or merchant shall remove any such goods or other stranded property from the custody of any commissioner without a sale, then such commissioner shall receive, in addition to his actual expenses incurred for the purposes mentioned in § 82-8, two and one-half per centum on the amount of the value of such property, which amount shall be ascertained in the same manner as is provided for ascertaining the amount of the reward to be paid salvors in those cases where such reward cannot be determined by agreement. No commissioner shall receive any salvage or other reward except the commission prescribed in this chapter. (Rev., s. 5446; 1899, c. 79, ss. 17, 18; 1905, c. 66; C. S. 8090.)

§ 82-10. Sale of unclaimed property.—Whenever any vessel, cargo, or material of any ship or vessel or any other property shall be cast ashore or taken up at sea and brought to shore, and no person is present to claim the same as owner, it shall be the duty of the commissioner of the district where the same is brought or cast ashore to take charge of such property and to proceed to advertise and sell it at public sale, first giving twenty days notice of such sale at three public places. On making any such sale the commissioner shall, out of the gross proceeds thereof, retain a commission of five per centum as his compensation and the amount awarded to the salvors pursuant to the provisions of this chapter. (Rev., s. 5447; 1899, c. 79, ss. 19, 20; C. S. 8091.)

§ 82-11. Proceeds of sale to be paid to clerk of superior court.—When any commissioner shall undertake to sell any property where no person is or has been present to claim the same, it shall be his duty to notify the clerk of the superior court of his county of such sale. After any such sale is made, the commissioner shall forward to such clerk the proceeds of the sale, after deducting his commission of five per centum and paying the salvors the amount awarded to them as provided in this chapter. (Rev., s. 5448; 1899, c. 79, s. 21; C. S. 8092.)

§ 82-12. Disposition of proceeds of sale by clerk.

—It shall be the duty of the clerk of the superior court to make a record and keep an account of all moneys received by him from any commissioner of wrecks, and he shall advertise in some weekly newspaper published in North Carolina the amount so received, giving a true description of the marks, numbers, and kinds of goods or other stranded property, for which the same was sold. Each commissioner shall give the clerk of the superior court all necessary information for the proper enforcement of this section in each return made by him to the clerk. The clerk shall advertise for the space of sixty days, and if no person shall come to claim the money within a year and a day from the date of advertisement, then the clerk holding such money shall transmit the same, after deducting one per centum for his trouble and also after deducting the cost of advertising, to the treasurer of the state for the benefit of the public school funds. (Rev., s. 5449; 1899, c. 79, s. 22; C. S. 8093.)

§ 82-13. Proof of ownership of property sold.—If any person shall claim to be the owner of any property sold as provided in § 82-10 and shall present his claim to the clerk holding the money arising from the sale of such property, it shall be the duty of such person to prove his title to the satisfaction of the clerk. If any person making a claim to such property be unknown to the clerk, then the clerk shall submit such claim to the consideration of three disinterested persons, one of whom shall be chosen by the claimant, and the decision of such referees shall always be final. (Rev., s. 5450; 1899, c. 79, s. 23; C. S. 8094.)

§ 82-14. Stranded property to be reported; failure to report misdemeanor.—If any person shall find any wrecked or stranded property on or near the seashore, no person being present to claim the same, he shall as soon as possible give information thereof to the nearest commissioner of wrecks, who shall advertise and sell the same as provided in this chapter. If such finder shall refuse to report the goods so found, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars, or imprisoned not more than thirty days. (Rev., ss. 3548, 5451; 1899, c. 79, s. 24; C. S. 8095.)

§ 82-15. Expenses to be deducted from proceeds of sales.—All necessary expenses shall be deducted from the gross proceeds of any sales made under this chapter. Such necessary expenses shall include only the cost of advertising, guarding, and surveying, when a survey is called. (Rev., s. 5452; 1899, c. 79, s. 19; C. S. 8096.)

§ 82-16. Violation of chapter a misdemeanor.—If any person shall violate any of the provisions of this chapter he shall be guilty of a misdemeanor. (Rev., s. 3562; 1899, c. 79, s. 26; C. S. 8097.)

§ 82-17. Commissioner violating chapter liable for double damages and guilty of a misdemeanor.—If any commissioner of wrecks shall by fraud or wilful neglect violate any of the provisions of this chapter, or abuse the trust reposed in him, he shall forfeit and pay double the amount of damages to the party aggrieved. He shall also be guilty of a misdemeanor, and upon conviction shall forfeit his office and shall thereafter be incapable of acting as commissioner. (Rev. s. 3563; 1899, c. 79, s. 25; C. S. 8098.)

§ 82-18. Interfering with commissioner in the discharge of his duties.—If any person shall wilfully and unlawfully resist, delay, or obstruct any commissioner of wrecks in discharging or attempting to discharge his duties as such commissioner, he shall be guilty of a misdemeanor. (Rev., s. 3564; 1905, c. 66, s. 2; C. S. 8099.)

Division XII. Occupations.

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Chapter 83. Architects.

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§ 83-1. Architecture defined.—For the purpose of this chapter, the practice of architecture consists of rendering or offering to render for compensation design and/or related supervision services, of an aesthetic and/or structural nature, for the construction of buildings, structures or projects, wherein the safeguarding of life, health, and property and the promotion of the public welfare may be involved. An architect is a person who practices architecture as herein defined; provided that nothing herein shall prevent a building contractor from drafting designs and plans without compensation for use by him in constructing or repairing buildings for the owner. (1915, c. 270, s. 9; 1941, c. 369, s. 3; C. S. 4985.)

§ 83-2. State board of architectual examination and registration; creation; membership; vacancies.—There shall be a state board of architectural examination and registration, consisting of five members, to be appointed by the governor in the following manner, to wit: Within thirty days after the ninth day of March, one thousand nine hundred and fifteen, the governor shall appoint five persons who are reputable architects residing in the state of North Carolina, who have been engaged in the practice of architecture at least ten years. The five persons so appointed by the governor shall constitute the board of architectural examination and registration, and they shall be appointed for one, two, three, four, and five years, respectively. Thereafter, in each year, the governor in like manner shall appoint one licensed architect to fill the vacancy caused by the expiration of the term of office, the term of such new members to be for five years. If vacancy shall occur in the board for any cause, the same shall be filled by the appointment of the governor. (1915, c. 270, s. 1; C. S. 4986.)

§ 83-3. Oath of members. — Each member of the state board of architectural examination and registration shall, before entering upon the discharge of the duties of his office, take and file with the secretary of state an oath in writing to properly perform the duties of his office as a member of said board, and to uphold the constitution of North Carolina and the constitution of the United States. (1915, c. 270, s. 2; C. S. 4987.)

§ 83-4. Organization of board; officers; treasurer's bond.—The said board shall, within thirty days after its appointment by the governor, meet in the city of Raleigh, at a time and place to be designated by the governor, and organize by electing a president, vice-president, secretary, and treasurer, each to serve for one year. Said board shall have power to make such by-laws, rules, and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The treasurer shall give bond in such sum as the board shall determine, with such security as shall be approved by the board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. (1915, c. 270, s. 1; C. S. 4988.)

§ 83-5. Seal of board.—The board shall adopt a seal for its own use. The seal shall have the words "Board of Architectural Examination and Registration, State of North Carolina," and the Secretary shall have charge, care, and custody thereof. (1915, c. 270, s. 5; C. S. 4989.)

§ 83-6. Meeting of board; quorum.—The board shall meet once a year in July of each succeeding year, for the purpose of electing officers and transacting such other business as may properly come before it. Due notice of such annul meeting, and the time and place thereof, shall be given to each member by letter, sent to his last postoffice address at least ten days before the meetings, and thirty days notice of such annual meeting shall be given in some newspaper published in the city of Raleigh, at least once a week for four weeks preceding such meeting. Three members of the board shall constitute a quorum. (1915, c. 270, s. 1; C. S. 4990.)

§ 83-7. Record of proceedings and of registration.—The secretary shall keep a record of the proceedings of the board and registration for all applicants for registration and admission to practice architecture, giving the name and location of the institution or place of training where the applicant was prepared for the practice of architecture, and such other information as the board may deem proper and useful. This registration shall be prima facie evidence of all matters recorded therein. (1915, c. 270, s. 1; C. S. 4991.)

§ 83-8. Examination and certificate of applicant.—Any person hereafter desiring to be registered and admitted to the practice of architecture in the state shall make a written application for examination to the board of architectural examination and registration, on a form prescribed

by the board, giving his name, age (which shall not be less than twenty-one years), his residence, and such evidence of his qualification and proficiency as may be prescribed by said board, which application shall be accompanied by twenty-five dollars. If said application is satisfactory to the board, then the applicant shall be entitled to an examination to determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the board, then the board shall issue to the applicant a certificate to practice architecture in North Carolina. Any person failing to pass such examination may be reëxamined at any regular meeting of the board without additional fee. (1915, c. 270, s. 3; 1919, c. 336, s. 1; C. S. 4992.)

§ 83-9. Refusal, revocation, or suspension of certificates.—Said board may refuse to grant certificate to any person convicted of a felony, or who, in the opinion of the board, has been guilty of gross, unprofessional conduct, or who is addicted to habits of such character as to render him unfit to practice architecture. The board of architectual examination and registration may suspend for a period or revoke the certificate of admission to practice, and forbid practice by any architect upon conviction, after a fair and impartial trial, of any dishonest practice, unprofessional conduct, or incompetence. For the purpose of such trial, the board shall have full power to subpœna and examine witnesses under oath as to the facts of the case. Any architect against whom charges are preferred shall have not less than sixty days notice before the trial of his case, and shall have the right to have witnesses subpœnaed in his behalf, and of being heard in person and by counsel. Any such trial shall be open to the public. (1915, c. 270, s. 5; 1919, c. 336, s. 3; C. S. 4993.)

§ 83-10. Examination fees; expenses of board.—All examination fees shall be paid in advance to the treasurer of said board of architectural examination and registration. The state of North Carolina shall not be liable for the compensation of any members or officers of said board. All expenses incurred by said board in the necessary discharge of their duties shall be paid out of funds derived from examination fees herein provided for, and shall be paid by the treasurer upon warrant drawn by the secretary and approved by the president. The said board shall have the power to determine what are necessary expenses and to fix the salaries of the respective officers. (1915, c. 270, s. 6; C. S. 4994.)

§ 83-11. Annual renewal of certificate; fee.—Every architect continuing his practice in the state shall, on or before the first day of July in each year, obtain from the board of architectural examination and registration a renewal of his certificate for the ensuing year upon the payment of a fee of five dollars, and upon failure to do so shall have his certificate of admission to practice revoked, but such certificate may be renewed at any time within one year upon the payment of a fee of ten dollars. (1919, c. 336, s. 2; C. S. 4995.)

§ 83-12. Holding out as architect without having certificate, provisos.—Any person not registered under this chapter who shall advertise or put up a sign or card or other device, or in any other way hold himself out to the public as an architect, or practice arichitecture as herein defined, shall be guilty of a misdemeanor and punished by a fine not exceeding fifty dollars: Provided, however, that nothing herein shall prevent any person from making plans or data for buildings for themselves: Provided, further, that nothing in this chapter shall prevent any person from selling or furnishing plans for the construction of residence or farm or commercial buildings of a value not exceeding fifteen thousand dollars; provided, further, that nothing in this chapter shall prevent any registered engineer duly licensed in this state from furnishing design or supervision services for plants or structures which are elements of engineering projects or utilities: And provided further, that nothing in this chapter shall prevent the procuring of plans and specifications from an architect residing outside of this state. Nonresident architects who come within the state to do business shall be subject to the same examination and upon same terms and conditions as resident applicants, unless such nonresident architects are permitted to engage in business in this state under the terms of the preceding section. (1915, c. 270, s. 4; 1941, c. 369, ss. 1, 2; C. S. 4996.)

§ 83-13. Seal of registered architect; plans to bear seal.—Every architect who shall have obtained from said board a certificate, shall have a seal which must contain the name of the architect, his place of business, and the words "Registered Architect, of North Carolina," and he shall stamp all drawings and specifications issued from his office, for use in this state, with an impression of said seal. (1915, c. 270, s. 7; C. S. 4997.)

§ 83-14. County record of registered architects; fees.—Every person holding a certificate of said board to practice architecture shall have said certificate recorded in the office of the clerk of the superior court of the county in which he resides or has his principal office. Said clerk shall record the same in a book to be kept by him, entitled "Record of Architecture," and the clerk shall be entitled to a fee of one dollar for recording such certificate: Provided, however, that in any counties where the clerk is on a salary and not on a fee basis, then the said fee of one dollar shall be paid into the county treasury. It shall be unlawful for any person to hold himself out as an architect until said certificate shall have been recorded, and any person found guilty of holding himself out as an architect without registration of his certificate, as aforesaid, shall be guilty of a misdemeanor, and fined not more than fifty dollars, in the discretion of the court. (1915, c. 270, s. 8; C. S. 4998.)

§ 83-15. Copy to registered architects.—A notice and copy of this chapter shall be mailed by the secretary of the state board of architectural examination and registration to each architect in and out of the state to whom a certificate has been issued under this chapter. (1919, c. 336, s. 3; C. S. 4993.)

Chapter 84. Attorneys at Law.

Art. 1. Qualifications of Attorney; Unauthorized Practice of Law.

Sec.
84-1. Oaths taken in open court.
84-2. Persons disqualified.
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84-4. Corporations and persons other than members of state bar prohibited from practicing law; exceptions.
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84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys.
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Art. 1. Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-1. Oaths taken in open court.—Attorneys before they shall be admitted to practice law shall, in open court before a justice of the supreme or judge of the superior court, take the oath prescribed for attorneys, and also the oaths of allegiance to the state, and to support the constitution of the United States, prescribed for all public officers, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken, may act as attorneys during their good behavior. (Rev., s. 209; Code, s. 19; R. C., c. 9, s. 3; 1777, c. 115, s. 8; C. S. 197.)

§ 84-2. Persons disqualified.—No clerk of the superior or supreme court, nor deputy or assistant clerk of said courts, nor register of deeds, nor sheriff, nor any justice of the peace, nor county commissioner shall practice law. Persons violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars. This section shall not apply to Confederate soldiers.

The phrase "practice law" as used herein is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation of deeds, mortgages, wills, trust instruments, reports of guardians, trustees, administrators, or executors, abstracting or passing upon titles, the preparation and filing of petitions for use in any court, or assisting by advice, counsel, or otherwise in any such legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of such term, but shall be construed to include the foregoing particular acts, as well as all other acts within said general definition. (Rev., ss. 210, 3641; Code, ss. 27, 28, 110; 1870-1, c. 90; 1883, c. 406; 1871-2, c. 120; 1880, c. 43; C. C. P., s. 424; 1919, c. 205; 1933, c. 15; 1941, c. 177; C. S. 198.)

Local Modification.—Burke: 1933, c. 135; Madison: 1935, c. 214.

§ 84-3. Officers of inferior courts disqualified in certain cases.—No judge or prosecuting attorney of any recorder's, municipal, or county court shall appear in any other court on behalf of the defendant in a criminal action, where such criminal action has been tried in the court of such officer. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars. (1917, c. 213; C. S. 199.)

Local Modification.—Iredell: 1917, c. 213, s. 3.

§ 84-4. Corporations and persons other than members of state bar prohibited from practicing law; exceptions. — It shall be unlawful for any corporation or any person or association of persons, except members of the bar of the state of North Carolina admitted and licensed to practice as attorneys at law, to appear as attorney or counsellor-at-law in any action or proceeding in any court in this state or before any judicial body

or the North Carolina industrial commission or the unemployment compensation commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counselling in law or acting as attorney or counsellor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except members of the Bar, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust serving purposes similar to those of a will, except life insurance trusts, or, for a fee or any consideration, to organize corporations or prepare for another person, firm or corporation, any other legal document. Provided, that nothing herein shall prohibit any person from conferring with a person, firm or corporation with respect to the creation of a fiduciary relationship, or from coöperating with a licensed attorney of another in preparing any such legal document, if such attorney maintains his own place of business and is not an officer of a corporation represented by such person; or from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law. (1931, c. 157, s. 1; 1937, c. 155, s. 1.)

§ 84-5. Further prohibition as to practice of law by corporation; exceptions.—It shall be unlawful for any corporation to practice or appear as an attorney for any person other than itself in any court in this state, or before any judicial body or the North Carolina industrial commission or the unemployment compensation commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents not relating to its lawful business, or draw wills, or practice law, or give legal advice not relating to its lawful business; or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular: Provided, that the foregoing shall not prevent a corporation from employing an attorney in regard to its own affairs or in any litigation to which it may be a party. Provided, further, that the above provisions of this section and § 84-4 shall not be construed to prohibit a person or corporation acting in a fiduciary capacity from transacting the necessary clerical business incidental to the routine or usual administration of estates, trusts, guardianships, or other similar fiduciary capacities, such as offering wills for probate in common form, securing authority to expend principal as guardian or trustee, filing accounts, preparing and filing tax returns of every nature, and other such administrative acts, where no special compensation is charged for such service and no compensation whatever is charged or received other than the usual commissions allowed by the court for administering the trust, or provided for by the instrument creating the trust or other fiduciary relationship. And provided, further, that nothing herein shall prohibit any insurance company from causing to be defended, or prosecuted, or from offering to cause to be defended, through lawyers of its own selection, the insured in policies issued or to be issued by it, in accordance with the terms of such policies; and shall not prohibit one such licensed attorney at law from acting for several common carriers and/or other corporations and/or associations or any of its subsidiaries pursuant to arrangement between said corporations and/or associations. (1931, c. 157, s. 2; 1937, c. 155, s. 2.)

§ 84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys.—It shall be unlawful to exact, charge, or receive any attorney's fee for the foreclosure of any mortgage under power of sale, unless the foreclosure is conducted by a licensed attorney at law of North Carolina, and unless the full amount charged as attorney's fee is actually paid to and received and retained by such attorney, without being directly or indirectly shared with or rebated to any one else, and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same, or to share with or rebate to any other person, firm, or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted, and has forwarded the case to the attorney conducting such foreclosure. (1931, c. 157, s. 3.)

§ 84-7. Solicitors, upon application, to bring injunction or criminal proceedings. — The solicitor of any of the superior courts shall, upon the application of any member of the Bar, or of any bar association, of the State of North Carolina, bring such action in the name of the State as may be proper to enjoin any such person, corporation, or association of persons who it is alleged are violating the provisions of §§ 84-4 to 84-8, and it shall be the duty of the solicitors of this State to indict any person, corporation, or association of persons upon the receipt of information of the violation of the provisions of §§ 84-4 to 84-8. (1931, c. 157, s. 4.)

§ 84-8. Punishment for violations; legal clinics of law schools excepted.—Any person, corporation, or association of persons violating the provisions of §§ 84-4 to 84-8 shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court. Provided, that §§ 84-4 to 84-8 shall not apply to any law school or law schools conducting a legal clinic and receiving as their clientage only those persons unable financially to compensate for legal advice or services rendered. (1931, c. 157, s. 5; 1931, c. 347.)

§ 84-9. Unlawful for any one except attorney to appear for creditor in insolvency and certain

other proceedings.—It shall be unlawful for any corporation, or any firm or other association of persons other than a law firm, or for any individual other than an attorney duly licensed to practice law, to appear for another in any bankruptcy or insolvency proceeding, or in any action or proceeding for or growing out of the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors, or to present or vote any claim of another, whether under an assignment or transfer of such claim or in any other manner, in any of the actions, proceedings or matters hereinabove set out. (1931, c. 208, s. 2.)

§ 84-10. Violation of preceding section a misdemeanor.—Any individual, corporation, or firm or other association of persons violating any provision of § 84-9 shall be guilty of a misdemeanor. (1931, c. 208, s. 3.)

Art. 2. Relation to Client.

§ 84-11. Authority filed or produced if requested.—Every attorney who claims to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court in which he claims to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf, otherwise he shall not be allowed so to do: Provided, that when any attorney claims to enter an appearance by virtue of a letter to him directed (whether such letter purport a general or particular employment), and it is necessary for him to retain the letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and the clerk shall make a note to that effect upon the docket. (Rev., s. 213; Code, s. 29; R. C., c. 31, s. 57; C. S. 200.)

§ 84-12. Failure to file complaint, attorney liable for costs.—When a plaintiff is compelled to pay the costs of his suit in consequence of a failure on the part of his attorney to file his complaint in proper time, he may sue such attorney for all the costs by him so paid, and the receipt of the clerk may be given in evidence in support of such claim. (Rev., s. 214; Code, s. 22; R. C., c. 9, s. 5; 1786, c. 253, s. 6; C. S. 201.)

§ 84-13. Fraudulent practice, attorney liable in double damages.—If any attorney commits any fraudulent practice, he shall be liable in an action to the party injured, and on the verdict passing against him, judgment shall be given for the plaintiff to recover double damages. (Rev., s. 215; Code, s. 23; R. C., c. 9, s. 6; 1743, c. 37; C. S. 202.)

Art. 3. Arguments.

§ 84-14. Court's control of argument.—In all trials in the superior courts there shall be allowed two addresses to the jury for the state or plaintiff and two for the defendant, except in capital felonies, when there shall be no limit as to number. The Judges of the Superior Court are authorized to limit the time of argument of Counsel to the jury on the trial of actions, civil and criminal as follows: To not less than one hour on each side in misdemeanors and appeals from Justices of the peace; to not less than two hours on each side in all other civil actions and in felonies less than capital; in capital felonies, the time of argument of Counsel may not be limited otherwise than by consent, except that the court may limit the number of those who may address the jury to three Counsel on each side. Where any greater number of addresses or any extension of time are desired, motion shall be made, and it shall be in the discretion of the judge to allow the same or not, as the interests of justice may require. In jury trials the whole case as well of law as of fact may be argued to the jury. (Rev., s. 216; 1903, c. 433; 1927, ch. 52; C. S. 203.)

Art. 4. North Carolina State Bar.

§ 84-15. Creation of North Carolina State Bar as an agency of the state.—There is hereby created as an agency of the State of North Carolina, for the purposes and with the powers hereinafter set forth, the North Carolina State Bar. (1933, c. 210, s. 1.)

§ 84-16. Membership and privileges.—The membership of the North Carolina state bar shall consist of three classes, active, honorary and inactive.

The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the state of North Carolina, who shall have paid the membership dues hereinafter specified, unless classified as an inactive member by the council as hereinafter provided. No person other than a member of the North Carolina state bar shall practice in any court of the state, except foreign attorneys as provided by statute.

The honorary members shall be (a) the chief justice and associate justices of the supreme court of North Carolina; (b) the judges of the superior courts of North Carolina; (c) all former judges of the above-named courts resident in North Carolina, but not engaged in the practice of law; (d) judges of the district courts of the United States and of the circuit court of appeals resident in North Carolina.

Inactive members shall be all persons found by the Council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law.

Only active members shall be required to pay annual membership fees, and shall have the right to vote. A member shall be entitled to vote at all annual or special meetings of the North Carolina state bar, and at all meetings of and elections held by the bar of each of the judicial districts in which he resides: Provided, that if he desires to vote with the bar of some district in which he practices, other than that in which he resides, he may do so upon filing with the resident judge of the district in which he desires to vote, and with the resident judge of the district in which he resides (and, after the North Carolina state bar shall have been organized as hereinafter set forth, with the secretary-treasurer of the North Carolina state bar), his statement in writing that he desires to

vote in such other district: Provided, however, that in no case shall he be entitled to vote in more than one district. (1933, c. 210, s. 2; 1939, c. 21, s. 1; 1941, c. 344, ss. 1, 2, 3.)

§ 84-17. Government.—The government of the North Carolina state bar shall be vested in a council of the North Carolina state bar, hereinafter referred to as the "council," consisting of one councillor from each judicial district of the state, to be appointed or elected as hereinafter set forth, and the officers of the North Carolina state bar, who shall be ex officio members during their respective terms of office. Notwithstanding any provisions of this article as to the voting powers of members, the council shall be competent to exercise the entire powers of the North Carolina state bar in respect of the interpretation and administration of this article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other matters, except as otherwise directed or overruled, as in § 84-33 provided. The councillors elected shall serve as follows: Those elected from the first, fourth, seventh, tenth, thirteenth, sixteenth, and nineteenth districts shall serve for one year from the date of their elections; those elected from the second, fifth, eighth, eleventh, fourteenth, seventeenth, and twentieth districts shall serve for two years from the date of their election; and those elected from the third, sixth, ninth, twelfth, fifteenth, and eighteenth districts shall serve for three years from the date of their election: Provided, that upon the election of successors to the councillors first elected, the term of office and the period for which such councillors are elected shall be three years from the date of election.

All councillors elected from any additional judicial districts shall be elected for a term of three years. (1933, c. 210, s. 3; 1937, c. 51, s. 1.)

§ 84-18. Election of councillors.—Within thirty days after this article shall have gone into effect the judge of each judicial district shall, by notice posted at the front door of each courthouse within his district and by such other means as he shall think desirable, call a meeting of the attorneys residing within his district, and any others who may declare in writing their desire to be affiliated with that district, as hereinabove provided, for the purpose of organizing the bar of the district, the said meeting to be held at a place deemed by the judge to be convenient, on a day fixed, not less than twenty nor more than thirty days from posting of notice. At that meeting such attorneys as attend shall constitute a quorum, and shall forthwith form such organization herein referred to as the "district bar," as they may deem advisable, of which organization all active members of the North Carolina state bar entitled to vote in that district shall be members. The district bar shall be the subdivision of the North Carolina state bar for that judicial district, and shall adopt such rules, regulations and by-laws not inconsistent with this article as it shall see fit, a copy of which shall be transmitted to the secretary-treasurer of the North Carolina state bar when organized; and copies of any amendments of such rules, regulations, and by-laws shall likewise be sent to said secretary-treasurer. The district bar so formed shall, at the time of its formation, elect a councillor to represent that district, and all subsequent elections of councillors, whether for regular terms or to fill vacancies, shall be held as provided by the said rules, regulations, and by-laws so adopted by the district bar. In case the judge of any judicial district, by reason of physical disability or otherwise, shall fail to call the meeting aforesaid within thirty days after this article shall have gone into effect, the same may be called within thirty days thereafter by any two attorneys residing in said district, by written notice signed by them and delivered to the clerk of the court of each county in the district to be posted at the front door of each courthouse as aforesaid, the said meeting to be held on a day fixed not less than twenty nor more than thirty days after the posting of said notice; and thereupon the same proceedings shall take place as though the meeting had been called by the judge as aforesaid. Any clerk to whom any such notice shall be delivered to be posted shall immediately post the same and shall write upon the said notice the exact date and time when the same is so posted. In case more than one notice shall be posted hereunder by different groups of attorneys, that posted first in point of time shall prevail and be deemed to be the notice provided for under this article. Pending the organization of the council as hereinafter provided, notification of the election of each councillor shall be sent within five days after such election by the secretary of the district bar to the clerk of the supreme court of North Carolina; but after the organization of the council such notices shall be sent to its secretary-treasurer. In case neither the judge nor any two members shall call a meeting as aforesaid, a councillor for the said district, residing therein, shall be named at a meeting of such members of the council as shall have been elected in accordance herewith, to serve until such district bar shall be organized under the provisions of this article (except as to the time for calling meetings), either on the call of the judge of the district court or of two members of the bar, and shall have elected a councillor to serve for the unexpired term of the councillor so named. (1933, c. 210, s. 4.)

§ 84-19. Change of judicial districts.—In the event that a new district shall hereafter be carved out of an existing district, the councillor for the old district shall remain in office and continue to represent the district constituting that portion of the old district in which he resides or with which he has elected to be affiliated; and within thirty days after the division of the old district shall have become effective, or so soon thereafter as practicable, the same procedure shall be followed for the organization of the North Carolina state bar, constituting the remaining and unrepresented portion of the old district, and for the election of a councillor to represent the same, as is prescribed by § 84-18; and if a new district or more than one new district shall be formed by a recombination or reallocation of the counties in more than one existing district, the same procedure shall be followed as is prescribed by § 84-18, in said new district, or in each of them if there be more than one, within thirty days after the elec-

tion or appointment of the judge or judges thereof; but in that event the office of councillor for each of the old districts the counties in which shall have been so recombined into or reallocated to such new district or districts shall cease, determine, and become vacant so soon as the bar or bars of such new district, or all of such new districts if there shall be more than one, shall have been organized and shall have elected a councillor or councillors therefor, but not earlier: Provided, that if at such time any councillor whose office shall thus become vacant be actually serving upon a committee before which there is pending any trial of a case of professional misconduct or malpractice, he shall, notwithstanding the election of a new councillor, continue to serve as councillor for the purpose of trying such case until judgment shall have been rendered therein. (1933, c. 210, s. 5.)

§ 84-20. Compensation of councillors. — The members of the council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation, not exceeding ten ($10.00) dollars per day for the time spent in attending meetings, together with an expense allowance as follows: For subsistence—hotel and meals—not exceeding four dollars per day; for transportation, actual mileage, except when using personally owned automobiles, in which case a sum not exceeding five cents per mile of travel. The council shall determine per diem, subsistence and mileage to be paid. Such allowance as may be fixed by the council shall be paid by the secretary-treasurer of the North Carolina state bar upon certified statements presented by each member. (1933, c. 210, s. 6; 1935, c. 34.)

§ 84-21. Organization of council; publication of rules, regulations and by-laws.—Upon receiving notification of the election of a councillor for each judicial district, or, if such notification shall not have been received from all said districts, within one hundred and twenty (120) days after this article shall have gone into effect, the clerk of the supreme court of North Carolina shall call a meeting of the councillors of whose election he shall have been notified, to be held in the city of Raleigh not less than twenty days nor more than thirty days after the date of said call; and at the meeting so held the councillors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councillors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this article. The regular term of all officers shall be one year, but those first elected shall serve until the first day of January, one thousand nine hundred thirty-five. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and by-laws, not inconsistent with this article, as it shall deem necessary or expedient for the discharge of its duties, the secretary-treasurer shall file with the clerk of the supreme court of North Carolina a certificate, to be called the "certificate of organization," showing the officers and members of the council, with the judicial districts which the members respectively represent, and their post office addresses, and the rules, regulations and by-laws adopted by it; and thereupon the chief justice of the supreme court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this article have not been complied with, shall return the said certificate to the secretary-treasurer with a statement showing in what respects the provisions of this article have not been complied with; and the said certificate shall not be again presented to the chief justice of the supreme court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this article have been complied with, or (b) if for any reason the chief justice or judge should not act thereon within thirty days, then, after the lapse of thirty days from the presentation to the chief justice or judge, as the case may be, of any certificate of organization hereinabove required to be presented by the secretary-treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this article has not been complied with, the organization of the council shall be deemed to be complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina Reports. The rules and regulations set forth in the certificate of organization, and all other rules and regulations which may be adopted by the council under this article, may be amended by the council from time to time in any manner not inconsistent with this article. Copies of all such rules and regulations adopted subsequently to the filing of the certificate of organization, and of all amendments so made by the council, shall be certified to the chief justice of the supreme court of North Carolina, entered by it upon its minutes, and published in the next ensuing number of the North Carolina Reports: Provided, that the court may decline to have so entered upon its minutes any of such rules, regulations and amendments which in the opinion of the chief justice are inconsistent with this article. (1933, c. 210, s. 7.)

§ 84-22. Officers and committees of the North Carolina State Bar.—The officers of the North Carolina State Bar shall be a president, a first vice-president, a second vice-president, and a secretary-treasurer, who shall be deemed likewise to be the officers, with the same titles, of the council. Their duties shall be prescribed by the council. The president and vice-presidents shall be elected by

the members of the North Carolina State Bar at its annual meeting, and the secretary-treasurer shall be elected by the council. All officers shall hold office for one year and until their successors are elected and qualified. The officers need not be members of the council. (1933, c. 210, s. 8; 1941, c. 344, ss. 4, 5.)

§ 84-23. Powers of council.—Subject to the superior authority of the general assembly to legislate thereon by general laws, and except as herein otherwise limited, the council is hereby vested, as an agency of the state, with the control of the discipline, disbarment and restoration of attorneys practicing law in this state: Provided, that from any order suspending an attorney from the practice of law and from any order disbarring an attorney, an appeal shall lie in the manner hereinafter provided, to the superior court of the county wherein the attorney involved resides. The council shall have power to administer this article; to formulate and adopt rules of professional ethics and conduct; to publish an official journal concerning matters of interest to the legal profession, and to do all such things necessary in the furtherance of the purposes of this article as are not prohibited by law. (1933, c. 210, s. 9; 1935, c. 74, s. 1; 1937, c. 51, s. 2.)

§ 84-24. Admission to practice.—The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the supreme court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this article.

For the purpose of examining applicants and providing rules and regulations for admission to the bar including the issuance of license therefor, there is hereby created the board of law examiners, which shall consist of seven members of the bar, elected by the council of the North Carolina state bar, who need not be members of the council. No teacher in any law school, however, shall be eligible. The members of the board of law examiners elected from the bar shall each hold office for a term of three years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.

The secretary of the North Carolina state bar shall be the secretary of the board, and serve without additional pay. The board of law examiners shall elect a member of said board as chairman thereof, who shall hold office for such period as said board may determine.

The examination shall be held in such manner and at such times as the board of law examiners may determine, but no change in the time or place shall become effective within one year from the date upon which the change is determined.

The board of law examiners, subject to the approval of the council, shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the bar as in their judgment shall promote the welfare of the state and the profession: Provided, that any change in the educational requirements for admission to the bar shall not become effective within two years from the date of the adoption of such change.

All such rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in § 84-21 in relation to the certificate of organization and the rules and regulations of the council.

Whenever the Council shall order the restoration of license to any person as authorized by § 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to such person, noting thereon that the same is issued in compliance with an order of the Council of The North Carolina State Bar, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance. (1933, c. 210, s. 10; c. 331; 1935, cc. 33, 61; 1941, c. 344, s. 6.)

§ 84-25. Fees of applicants.—All applicants for examination before the board of law examiners for license to practice law in North Carolina shall pay a filing fee of one dollar and fifty cents ($1.50) and shall deposit with the secretary of the board of law examiners the sum of twenty-two and 0/100 ($22.00) dollars, of which sum two dollars shall be a deposit to pay for license, if issued. Any applicant who shall fail to pass examination shall receive a refund of twelve dollars from said twenty-two dollars deposit. (1935, c. 33, s. 1.)

§ 84-26. Pay of board of law examiners.—Each member of the board of law examiners shall receive the sum of fifty dollars for his services in connection with each examination and shall receive his actual expenses of travel and subsistence while engaged in duties assigned to him, provided that for transportation by the use of private automobile the expense of travel shall not exceed five cents per mile. (1935, c. 33, s. 2; 1937, c. 35.)

§ 84-27. Surplus received from applicants directed to supreme court library.—After the payment of all expenses incurred in connection with each examination held by the board of law examiners and expenses of said board at such meetings as may be necessary for the performance of its additional duties, the said board of law examiners shall cause to be paid at the end of each fiscal year of the State of North Carolina to the Supreme Court of North Carolina for its use in connection with the maintenance of its library, such surplus then remaining with said board of law examiners from fees received from applicants for examination. (1935, c. 33, s. 3.)

§ 84-28. Discipline and disbarment.—The council or any committee of its members appointed for that purpose shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation of professional ethics, made against any member of the North Carolina state bar; may administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes: 1. Commission of a criminal offense showing professional unfitness; 2. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney; 3. Soliciting professional business; 4. Conduct involving willful deceit or fraud or any other unprofessional conduct; 5. Detention without a bona

fide claim thereto of property received or money collected in any fiduciary capacity; 6. The violation of any of the canons of ethics which have been adopted and promulgated by the council of the North Carolina state bar; may invoke the processes of the courts in any case in which they deem it desirable to do so, and shall formulate rules of procedure governing the trial of any such person which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references. Such rules shall provide for notice of the nature of the charges and an opportunity to be heard; for a complete record of the proceedings for purposes of appeal to the superior court of the county wherein the attorney involved resides on the record made before the council or the committee as the case may be. Upon such appeal to the superior court the accused attorney shall have the right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the trial committee or council. From the decision of the superior court the council and the accused attorney shall each have the right of appeal to the supreme court of North Carolina. Trial before the committee appointed for that purpose by the council shall be held in the county in which the accused member resides: Provided, however, that the committee conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of such committee the ends of justice or convenience of witnesses require such removal. The procedure herein provided shall apply in all cases of discipline or disbarments arising under this section. (1933, c. 210, s. 11; 1937, c. 51, s. 3.)

§ 84-29. Concerning evidence and witness fees.—In any investigation of charges of professional misconduct the council and any committee thereof shall have power to summon and examine witnesses under oath, and to compel their attendance, and the production of books, papers, and other documents or writings deemed by it necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary-treasurer or the president of the council or the chairman of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the council or its committee, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings; but the council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the state be brought before it. Witnesses giving testimony under a subpoena before the council or any committee thereof or by deposition shall be entitled to the same fees as in civil actions.

In cases heard before the council or any committee thereof, if the party shall be convicted of the charges against him, he shall be taxed with the cost of the hearings: Provided, however, that such bill of costs shall not include any compensation to the members of the council or committee before whom the hearings are conducted. (1933, c. 210, s. 12.)

§ 84-30. Rights of accused person.—Any person who shall stand charged with an offense cognizable by the council or any committee thereof shall have the right to invoke and have exercised in his favor the powers of the council and its committees in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13.)

§ 84-31. Designation of prosecutor; compensation.—Whenever charges shall have been preferred against any member of the bar, and the council shall have directed a hearing upon the charges, it shall also designate some member of the bar to prosecute said charges in such hearings as may be held, including hearing upon appeals in the superior and supreme courts. The council may allow the attorney performing such services at its request such compensation as it may deem proper. (1933, c. 210, s. 14.)

§ 84-32. Records and judgments and their effect; restoration of licenses.—In the case of persons charged with an offense cognizable by the council or any committee thereof, a complete record of the proceedings and evidence taken before the council or any committee thereof shall be made and preserved in the office of the secretary-treasurer, but the council may, upon sufficient cause shown and with the consent of the person so charged, cause the same to be expunged and destroyed. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court of the county wherein the accused resides, and also upon the minutes of the supreme court of North Carolina; and such judgment shall be effective throughout the state.

Whenever any attorney has been deprived of his license, the council, in its discretion, may restore said license upon due notice being given and hearing had and satisfactory evidence produced of proper reformation of the licentiate before restoration. (1933, c. 210, s. 15; 1935, c. 74, s. 2.)

§ 84-33. Annual and special meetings.—There shall be an annual meeting of the North Carolina state bar, open to all members in good standing, to be held at such place and time after such notice (but not less than thirty days) as the council may determine, for the discussion of the affairs of the bar and the administration of justice; and special meetings of the North Carolina state bar may be called, on not less than thirty days' notice, by the council, or on the call, addressed to the council, of not less than twenty-five per cent of the active members of the North Carolina state bar; but at special meetings no subjects shall be dealt with other than those specified in the notice. Notice of all meetings, whether annual or special, may be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina state bar. The North Car-

olina state bar shall not take any action in respect of any decision of the council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action, save after notice in writing of the action of the council or committee proposed to be directed or overruled, which notice shall be given to the secretary-treasurer thirty days before the meeting, who shall give, by mail, at least fifteen days notice to the members of the North Carolina state bar, and unless at the meeting two-thirds of the members present and voting shall favor the motion to direct or overrule. At any annual or special meeting ten per cent of the active members of the bar shall constitute a quorum; but there shall be no voting by proxy. (1933, c. 210, s. 16.)

§ 84-34. Membership fees and list of members. — Every active member of the North Carolina State Bar shall on or before the first day of January, nineteen hundred and thirty-four, pay to the secretary-treasurer, without demand therefor, in respect of the calendar year nineteen hundred and thirty-three, a membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with and including the year nineteen hundred and thirty-four, pay to the secretary-treasurer, in respect of the calendar year in which such payment is herein directed to be made, an annual membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with the calendar year one thousand nine hundred and thirty-nine, pay to the secretary-treasurer, in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of five dollars; and in every case the member so paying shall notify the secretary-treasurer of his correct post-office address. The said membership fee shall be regarded as a service charge for the maintenance of the several services prescribed in this article, and shall be in addition to all fees now required in connection with admissions to practice, and in addition to all license taxes now or hereafter required by law. The said fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this article shall have gone into effect until the first day of July of the second calendar year (a "calendar year" for the purposes of this article being treated as the period from January first to December thirty-first) following that in which he shall have been licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The said fees shall be disbursed by the secretary-treasurer on the order of the council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the council, publish an account of the financial transactions of the council, in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and post-office addresses forwarded to him and from any other available sources of information a list of members of the North Carolina state bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this article. The name of each of the active members who shall be in arrears in the payment of membership fees for one or more calendar years shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein said member or members reside, and the court shall thereupon take such action as is necessary and proper. The names and addresses of such attorneys so certified shall be kept available to the public. The commissioner of revenue is hereby directed to supply the secretary-treasurer, from his record of license tax payments, with any information for which the secretary-treasurer may call in order to enable him to comply with this requirement. (1933, c. 210, s. 17; 1939, c. 21, ss. 2, 3.)

§ 84-35. Saving as to North Carolina Bar Association.—Nothing in this article contained shall be construed as affecting in any way the North Carolina Bar Association, or any local bar association. (1933, c. 210, s. 18.)

§ 84-36. Inherent powers of courts unaffected. —Nothing contained in this article shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys. (1937, c. 51, s. 4.)

§ 84-37. State bar may investigate and enjoin unauthorized practice.—The council or any committee of its members appointed for that purpose may inquire into and investigate any charges or complaints of unauthorized or unlawful practice of law. The council may bring or cause to be brought and maintain in the name of the North Carolina state bar an action or actions, upon information or upon the complaint of any private person or of any bar association against any person, partnership, corporation or association and any employee, agent, director, or officer thereof who engages in rendering any legal service or makes it a practice or business to render legal services which are unauthorized or prohibited by law or statutes relative thereto. No bond for cost shall be required in such proceeding.

(a) In an action brought under this section the final judgment if in favor of the plaintiff shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of law. The provisions of statute or rules relating generally to injunctions as provisional remedies in actions shall apply to such a temporary injunction and the proceedings thereunder.

(b) The venue for actions brought under this section shall be the superior court of any county in which such acts constituting unauthorized or unlawful practice of law are alleged to have been committed or in which there appear reasonable grounds that they will be committed or in the county where the defendants in such action reside.

(c) The plaintiff in such action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the

same manner as provided by law for the examination of parties.

(d) This section shall not repeal or curtail any remedy now provided in cases of unauthorized or unlawful practice of law, and nothing contained herein shall be construed as disabling or abridging the inherent powers of the court in such matters. (1939, c. 281.)

Chapter 85. Auctioneers.

Art. 1. In General.

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85-2. Appointment; bond.
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85-20. False and fraudulent advertising, labelling, etc., prohibited.
85-21. False statements as to value or costs prohibited.
85-22. Application of article to agents.
85-23. Violation made misdemeanor.
85-24. Church and civic organizations not prevented from holding auctions.
85-25. Purpose of article.
85-26. Rights and privileges conferred by article are additional to rights, etc., under other laws.

Art. 1. In General.

§ 85-1. Application of article.—The provisions of this article shall apply only to sales of jewelry and silverware at public auction, and to the auctioneers conducting or engaged in such sales.

This article does not affect any sale of jewelry or silverware (1) by auction of jewelry or silverware made pursuant to and in execution of any order, decree, or judgment of the courts of the United States or of this state; or (2) made in consequence of any assignment of property and estate for benefit of creditors; or (3) made by executors, administrators, collectors, or guardians; or (4) made pursuant to any law touching the collection of any tax or duty, or sale of any wrecked goods. (Rev., s. 220; Code, s. 2284; R. C., c. 10, s. 6; 1923, c. 243, s. 1; C. S. 4999.)

§ 85-2. Appointment; bond.—No person shall exercise or conduct the trade or business of an auctioneer in this state or offer to conduct any such trade or business described in this article unless such person shall hold a license issued by the commissioner of revenue, and no license shall issue to any person who is not a resident of the state of North Carolina, and who has not been a bona fide resident for at least two years prior to the date when such application for license is filed with the Department of Revenue. The license shall issue only upon the filing of a bond in the sum of five thousand dollars ($5,000.00), with such conditions and sureties as may be required and approved by the commissioner of revenue. The license shall expire on the first day of April following, unless the authority is sooner revoked by the Commissioner of Revenue, and such authority shall be subject to revocation at any time by such officer for the causes and in the manner set forth in § 85-9. The fees for each license shall be two hundred dollars ($200.00). (Rev., s. 217; Code, s. 2281; 1889, c. 40; 1891, c. 576; R. C., c. 10, s. 1; 1923, c. 243, s. 1; 1941, c. 131; C. S. 5000.)

§ 85-3. Requirements of law and of commissioner of revenue; false statement.—No person who shall conduct the business of an auctioneer in the state shall fail to comply with any provision of the law or any requirement of the commissioner of revenue pursuant to the law, and no such person shall make or cause to be made any false statement in any report required of him, and upon any violation of any section of this article, the commissioner of revenue may revoke his license to do business in this state. (1923, c. 243, s. 2; 1941, c. 131; 1941, c. 230, s. 2; C. S. 5000(a).)

§ 85-4. Punishment for violation of law.—Any person violating any of the provisions of this article shall be punished by a fine not exceeding two hundred dollars or by imprisonment in jail or worked on the roads for not exceeding two years, or by both such fine and imprisonment. (1923, c. 243, s. 3; C. S. 5000(b).)

§ 85-5. License tax by counties and municipalities.—Nothing in this article shall be construed to take away from the counties, cities or towns of this state any right or rights which they may now have, or may hereafter have, to levy a license tax on persons exercising or conducting

the trade or business of an auctioneer. (1923, c. 243, s. 4; C. S. 5000(c).)

§ 85-6. Account semiannually; pay over moneys received.—It is the duty of such auctioneers, on the first days respectively of October and April, to render to the clerks of the superior court of their respective counties a true and particular account in writing of all the moneys made liable to duty by law, for which any jewelry or silverware may have been sold at auction, and also at private sale, where the price of the jewelry and silverware sold at private sale was fixed or agreed upon or governed by any previous sale at auction of any jewelry and silverware of the same kind; which account shall contain a statement of the gross amount of sales by them made for each particular person or company at one time, the date of each sale, the names of the owners of the jewelry and silverware sold, and the amount of the tax due thereon, which tax they shall pay as directed by law. The statement shall be subscribed by them and sworn to before the clerk of the said court, who is hereby authorized to administer the oath. And it is their further duty to account with and pay to the person entitled thereto the moneys received on the sales by them made. (Rev., s. 218; Code, s. 2282; R. C., c. 10, s. 2; C. S. 5001.)

§ 85-7. Acting without appointment; penalty.—No person shall exercise the trade or business of an auctioneer by selling any jewelry or silverware by auction or by any other mode of sale whereby the best or highest bidder is deemed to be the purchaser, unless such person is appointed an auctioneer pursuant to this article, on pain of forfeiting to the state for every such sale the sum of two hundred dollars, which shall be prosecuted to recovery by the solicitor of the district. (Rev., s. 219; Code, s. 2283; R. C., c. 10, s. 5; C. S. 5002.)

§ 85-8. Commissions; one per cent to town.—Auctioneers are entitled to such compensation as may be agreed upon, not exceeding two and a half per cent on the amount of sales; and auctioneers of incorporated towns shall retain and pay one per cent of the gross amount of sales to the commissioners or other authority of their respective towns. (Rev., s. 221; Code, s. 2285; R. C., c. 10, s. 7; C. S. 5003.)

§ 85-9. Power of Commissioner of Revenue to revoke licenses of auctioneers.—The Commissioner of Revenue of the State of North Carolina shall have power to revoke an auctioneer's license, upon the conviction of the auctioneer by any court of competent jurisdiction of the State of North Carolina of any of the offenses hereinafter set out, or upon a finding by the Commissioner of Revenue that such auctioneer is guilty of any of the offenses hereinafter set out, to-wit: (1) fraud; (2) failing to account for or to remit any money or properties coming into his possession which belong to others; (3) forgery, embezzlement, obtaining money under false pretense, larceny, conspiracy to defraud, or like offense or offenses; (4) false representations as to the origin, genuineness, cost to seller, value, or other matters relating to the sale of any property then or thereafter to be offered for sale at auction; (5) conviction of any crime involving moral turpitude either in this State or any other state; (6) making any false statement in the application for license; (7) violating any of the provisions of the laws of this State relating to sales at auction. Provided, that no license shall be revoked upon a finding by the Commissioner of Revenue except by charges preferred. The accused shall be furnished a written copy of such charges and given not less than twenty days' notice of the time and place when the Commissioner shall accord a full and fair hearing on the charges. From any action of the Commissioner of Revenue depriving the accused of his license, the accused shall have the right of appeal to the Superior Court of the county of his residence, upon filing notice of appeal within ten days of the decision of the Commission of Revenue. The trial in the Superior Court shall be heard de novo as in the case of an appeal from a justice of the peace. (1941, c. 230, s. 1.)

Art. 2. Auction Sales of Articles Containing Hidden Value.

§ 85-10. Application of article.—The provisions of this article shall relate to all persons, firms and corporations who shall sell or offer to sell any of the goods, wares and merchandise hereinafter enumerated by means of auction sale of same conducted either by themselves or licensed auctioneers, except that it shall not apply to receivers, trustees in bankruptcy, trustees acting under a bona fide mortgage or deed of trust, trustees acting under the provisions of a will, any person acting under orders of any court, or to administrators or to executors while acting as such or to the bona fide holder of an article pledged to secure a debt. (1941, c. 371, s. 1.)

§ 85-11. Sale of certain articles in violation of article prohibited.—It shall be unlawful for any person, firm or corporation to offer for sale or sell to the highest bidder at an auction sale furs, objects of art, artware, glassware, silver plated ware, chinaware, gold, silver, precious or semi-precious stones, jewelry, watches, clocks, or gems of any kind, except as hereafter provided. (1941, c. 371, s. 2.)

§ 85-12. Licensing of auction merchants.—Before selling or offering for sale any of the articles hereinabove mentioned, the person, firm or corporation which is to conduct such auction sale shall apply to and obtain from the revenue department of the state of North Carolina a license or permit to engage in the activity covered by this article and pay therefor to the commissioner of revenue the sum of two hundred dollars ($200.00) for such license or permit. The license or permit issued by the revenue department shall entitle the person, firm or corporation named therein to conduct the auction sale as provided in this article in one county, and upon payment of one half of the fee for each additional county, such person, firm or corporation shall have authority to conduct auction sales in additional counties for which the tax has been paid. No person or copartnership shall receive any license or permit to conduct any such sale unless such person or a member of the copartnership is and has been for a period of one year prior to the issuance of the permit a resident of the state of North Carolina and is and has been for a period of six months prior thereto a resident of one of the counties for which he seeks

permit, and no corporation shall receive a license or permit to conduct such sale unless such corporation is either a domestic corporation of the state of North Carolina or a foreign corporation which has complied with all requirements of the state of North Carolina and domesticated in North Carolina. (1941, c. 371, s. 3.)

§ 85-13. Bond prerequisite for license.—Before any person, firm or corporation shall offer for sale or sell at public auction any of the goods hereinabove described, such person, firm or corporation shall obtain the permit provided in § 85-12 and shall file with the commissioner of revenue a good and sufficient bond in the penal sum of five thousand dollars ($5,000.00), executed by a corporate surety licensed to do business in North Carolina or by two individual sureties who own real property in the state of North Carolina of a net value of twice the amount of such bond and who shall have justified on such bond before the clerk of the superior court of the county in which such individual sureties reside. Said bond shall be kept in full force and effect during the period for which such license is issued and for a period of one year thereafter. The conditions of said bond are to provide that the surety or sureties are irrevocably appointed as process agents on whom any process issued against the person, firm or corporation conducting such sale may be served, and shall further provide that the person, firm or corporation conducting said sale will pay all valid judgments secured against such person, firm or corporation on causes of action arising out of such sales by auction. (1941, c. 371, s. 4.)

§ 85-14. Conduct of sales by licensed auctioneer required.—An auctioneer duly licensed as such by the state of North Carolina shall be present and in charge of any such auction sale. (1941, c. 371, s. 5.)

§ 85-15. Regulation of bidding at sales. — At any such auction sale, no person interested either directly or indirectly as seller, and no person employed by any person interested either directly or indirectly as seller, shall bid on any articles offered for sale, and no person shall act as a fictitious bidder, or what is commonly known as a "capper," "booster," "by-bidder" or "shiller," and no person shall bid or offer to bid or pretend to buy an article sold or offered for sale at any such auction by prearranged agreement with any person interested in the sale directly or indirectly as seller. (1941, c. 371, s. 6.)

§ 85-16. Written description of articles purchased furnished to purchaser upon demand.—At any such auction sale any person who shall purchase any article may have the right to demand of the person, firm or corporation conducting such sale, at the time the sale is made or within forty-eight hours thereafter, a written description of the merchandise so purchased, which description shall be accurate and full, and shall give the name of the manufacturer or producer of such merchandise, if known; shall state whether the merchandise is an original, a copy, a reproduction, new or used, genuine or artificial, and shall also incorporate all representations made to induce persons to bid on such merchandise; such statement shall be deemed to be the representations upon which the merchandise is purchased, and upon a refusal to give such statement as herein provided, the sale may, at the option of the purchaser, be rescinded, in which event the purchaser shall have the privilege of demanding a return of all sums paid on account of such purchase. A notice of the right of a purchaser to demand such a statement shall be conspicuously displayed in each room where such auction shall take place. (1941, c. 371, s. 7.)

§ 85-17. Application of Fair Trade Act.—No sale shall be made at such auction sales which shall violate the provisions of the North Carolina Fair Trade Act. (1941, c. 371, s. 8.)

§ 85-18. Presence of merchant at sales required; responsibility for auctioneer's acts.—At all sales by auction conducted under the provisions of this article, the person, firm or corporation conducting such sale shall be present at all times in person or by an agent duly authorized in writing to represent such person, firm or corporation, and the person, firm or corporation conducting such sale shall be responsible for acts done and words spoken by the auctioneer or his assistants in furthering the sales by auction. (1941, c. 371, s. 9.)

§ 85-19. Statements in advertisements deemed representations; merchandise not as advertised.—At all such auction sales, all statements contained in the advertising of such sales shall be considered and deemed representations inducing purchasers to bid on and buy the merchandise advertised, and in the event any such merchandise shall not be as advertised, the purchaser thereof shall, at his option, be entitled to rescind such sale and have the right, upon such rescission, to demand and receive any sums paid by him on account of such purchase. (1941, c. 371, s. 10.)

§ 85-20. False and fraudulent advertising, labelling, etc., prohibited.—No person, firm or corporation conducting any such sale shall advertise any merchandise falsely or fraudulently, either by word of mouth, written or published advertisement, or other forms of advertisement, nor shall any such person, firm or corporation permit any article to be displayed or offered for sale which shall be falsely tagged, labeled or branded. (1941, c. 371, s. 11.)

§ 85-21. False statements as to value or costs prohibited.—No person, firm or corporation conducting any such sale shall allow or permit any false statement to be made by any person connected with such sale, either directly or indirectly, as seller, as to the value of any such merchandise being sold or as to the cost to the seller of any such merchandise being sold. (1941, c. 371, s. 12.)

§ 85-22. Application of article to agents.—The provisions of this article shall apply to the person, firm or corporation conducting such sale, whether such person, firm or corporation is the owner of the merchandise being sold, or selling such merchandise for others. (1941, c. 371, s. 13.)

§ 85-23. Violation made misdemeanor. — Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five ($25.00) dollars nor

more than five hundred ($500.00) dollars, or imprisoned for not more than six months, or both, in the discretion of the court, and shall be permanently enjoined from thereafter participating in the conducting of any such auction sale, either directly or indirectly. (1941, c. 371, s. 14.)

§ 85-24. Church and civic organizations not prevented from holding auctions.—Nothing in this article shall be construed as preventing church and civic organizations from holding auction sales of antiques for charitable purposes. (1941, c. 371, s. 15.)

§ 85-25. Purpose of article.—It is the purpose of this article to provide for the protection of the public in purchasing articles containing a hidden value, which is not and cannot be determined except by persons having special knowledge thereof, when such articles are sold at public auction, where there is not ample time for deliberation and appraisal of such merchandise, and where the purchaser, by reason of the manner of sale, of necessity must rely principally upon the representations made by the seller as to value of said merchandise. (1941, c. 371, s. 18.)

§ 85-26. Rights and privileges conferred by article are additional to rights, etc., under other laws.—The rights and privileges herein granted to any purchaser shall be in addition to all other rights, privileges or remedies which such purchaser might otherwise have under the laws of North Carolina, and the provisions of this article shall not be deemed to deprive any such purchaser of any rights or remedies which he otherwise would have had. (1941, c. 371, s. 19.)

Chapter 86. Barbers.

Sec.

86-1. Necessity for certificate of registered barber or apprentice.
86-2. What constitutes practice of barbering.
86-3. Qualifications for issuance of certificates of registration.
86-4. Registered apprentice must serve under Registered Barber and take examination before opening shop.
86-5. Period of apprenticeship; affidavit; qualifications for certificate as Registered Barber.
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86-21. Notice; public hearing; appeal.
86-22. Misdemeanors.
86-23. Board to keep record of proceedings; data on registrants.
86-24. Barbering among members of same family.

§ 86-1. Necessity for certificate of registered barber or apprentice. — No person or combination of persons shall, either directly or indirectly, practice or attempt to practice barbering as hereinafter defined in the State of North Carolina without a Certificate of Registration either as a Registered Apprentice or as a Registered Barber issued pursuant to the provisions of this chapter by the State Board of Barber Examiners hereinafter established. (1929, c. 119, s. 1; 1941, c. 375, s. 1.)

§ 86-2. What constitutes practice of barbering.—Any one or combination of the following practices shall constitute the practice of barbering in the purview of this chapter:

(a) Shaving or trimming the beard, or cutting the hair.

(b) Giving facial or scalp massages, or treatments with oils, creams, lotions and other preparations either by hand or mechanical appliances.

(c) Singeing, shampooing or dyeing the hair or applying hair tonics.

(d) Applying cosmetic preparations, antiseptics, powders, oils, clays and lotions to the scalp, neck or face. (1929, c. 119, s. 2; 1941, c. 375, s. 2.)

§ 86-3. Qualifications for issuance of certificates of registration.—No person shall be issued a certificate of Registration as a Registered Apprentice by the State Board of Barber Examiners, hereinafter established

(a) Unless such person is at least seventeen years of age.

(b) Unless such person passes a satisfactory physical examination prescribed by said Board of Barber Examiners.

(c) Unless each person has completed at least a six months' course in a reliable Barber School or College approved by said Board of Barber Examiners.

(d) Unless such person passes the examination prescribed by the Board of Barber Examiners and pays the required fees hereinafter enumerated. (1929, c. 119, s. 3.)

§ 86-4. Registered apprentice must serve under Registered Barber and take examination before opening shop.—No Registered Apprentice, registered under the provisions of this chapter, shall operate a barber shop in the State, but must serve his period of apprenticeship under the direct su-

pervision of a Registered Barber, as required by § 86-5.

Every Registered Apprentice when eligible shall take the examination to receive a certificate of registration as a Registered Barber. No Registered Apprentice shall be permitted to practice for a period of more than three years without passing the required examination to receive a certificate of registration as a Registered Barber. (1929, c. 119, s. 4; 1941, c. 375, s. 3.)

§ 86-5. Period of apprenticeship; affidavit; qualifications for certificate as Registered Barber.—Any person to practice barbering as a Registered Barber, must have worked as a Registered Apprentice for a period of at least eighteen months under the direct supervision of a Registered Barber, and this fact must be demonstrated to the Board of Barber Examiners by the sworn affidavit of three Registered Barbers, or such other methods of proof as the Board may prescribe and deem necessary. A Certificate of Registration as a Registered Barber shall be issued by the Board hereinafter designated, to any person who is qualified under the provisions of this chapter, or meets the following qualifications:

(a) Who is qualified under the provisions of § 86-3;

(b) Who is at least nineteen years of age;

(c) Who passes a satisfactory physical examination as prescribed by said Board;

(d) Who has practiced as a Registered Apprentice for a period of eighteen months, under the immediate personal supervision of a Registered Barber; and

(e) Who has passed a satisfactory examination, conducted by the Board, to determine his fitness to practice barbering, such examination to be so prepared and conducted, as to determine whether or not the applicant is possessed of the requisite skill in such trade, to properly perform all the duties thereof, including the ability of the applicant in his preparation of tools, shaving, hair-cutting, and all the duties and services incident thereto, and has sufficient knowledge concerning diseases of the face, skin and scalp, to avoid the aggravation and spreading thereof in the practice of said trade. (1929, c. 119, s. 5.)

§ 86-6. State Board of Barber Examiners; appointment and qualifications; governor; term of office and removal.—A board to be known as the State Board of Barber Examiners is hereby established to consist of three members appointed by the Governor of the State. Each member shall be an experienced barber, who has followed the practice of barbering for at least five years in the State. The members of the first Board appointed shall serve for six years, four years and two years, respectively, after appointed, and members appointed thereafter shall serve for six years. The Governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1929, c. 119, s. 6.)

§ 86-7. Office; seal; officers and secretary; bond.—The Board shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. Said Board shall elect its own officers, and in addition thereto, shall elect a full time Secretary, which Secretary shall receive an annual salary not to exceed three thousand dollars, such salary as well as all other expenses of said Board, to be paid only out of the revenue derived from fees collected under the provisions of this chapter. Said full time Secretary shall keep and preserve all the records of the Board, issue all necessary notices to the barbers of the State, and perform such other duties, clerical and otherwise, as may be imposed upon him by said Board of Barber Examiners. Said full-time Secretary shall turn over, as required by law, all moneys collected by him, and render full, itemized and detailed reports therewith, as required by law. He shall, before entering upon the duties of his office, execute to the State of North Carolina, a satisfactory bond, with a duly licensed bonding company in this State as surety, or other acceptable surety, such bond to be in the penal sum of not less than ten thousand dollars, and conditioned upon the faithful performance of the duties of his office. The Board shall employ such agents and assistants and attorneys as it may deem necessary. (1929, c. 119, s. 7; 1941, c. 375, s. 4.)

§ 86-8. Salary and expenses; annual report to Governor.—Each member of the Board of Barber Examiners, as herein created, shall receive for his services the sum of ten dollars per day for each day actually spent in the performance of his duties, and shall be reimbursed for his actual necessary expenses incurred in the discharge of his duties, both per diem allowance and expenses, to be paid only from the funds derived from the fees collected in the administration of this chapter. The Board shall report annually to the Governor a full statement of its receipts and expenditures, and also a full statement of its work during the year, together with such recommendations as it may deem expedient. (1929, c. 119, s. 8.)

§ 86-9. Application for examination; payment of fee.—Each applicant for an examination shall:

(a) Make application to the Board on blank forms prepared and furnished by the full-time Secretary, such application to contain proof under the applicant's oath of the particular qualifications of the applicant.

(b) Pay to the Board the required fee.

All applications for said examination must be filed with the full-time Secretary at least thirty days prior to the actual taking of such examination by applicants. (1929, c. 119, s. 9.)

§ 86-10. Board to conduct examinations not less than four times each year.—The Board shall conduct examinations of applicants for Certificates of Registration to practice as Registered Barbers, and of applicants for Certificate of Registration to practice as Registered Apprentices, not less than four times each year, at such times and places as will prove most convenient, and as the Board may determine. The examination of applicants for Certificates of Registration as Registered Barbers and Registered Apprentices shall include such practical demonstration and oral and written tests as the Board may determine. (1929, c. 119, s. 10.)

§ 86-11. Issuance of certificates of Registration.—Whenever the provisions of this chapter have been complied with, the Board shall issue, or have issued, a Certificate of Registration as a Registered Barber or as a Registered Apprentice, as the case may be. (1929, c. 119, s. 11.)

§ 86-12. Barbers from other states; temporary permits.—Persons who have practiced barbering in another state or county for a period of not less than two years, and who move into this State, shall prove and demonstrate their fitness to the Board of Barber Examiners, as herein created, before they will be issued a Certificate of Registration to practice barbering, but said Board may issue such temporary permits as are necessary. (1929, c. 119, s. 12; 1941, c. 375, s. 5.)

§ 86-13. Procedure for registration.—The procedure for the registration of present practitioners of barbering shall be as follows:

(a) If such person has been practicing barbering for a shorter period of time than eighteen months, he shall, upon paying the required fee, and making an affidavit to that effect to the Board of Barber Examiners, be issued a Certificate of Registration as an Apprentice.

(b) If such person has been practicing barbering in the State of North Carolina for more than eighteen months, he shall upon paying the required fee and making an affidavit to that effect, to the Board of Barber Examiners, be issued a Certificate of Registration as a Registered Barber.

(c) All persons, however, who are not actively engaged in the practice of barbering, at the time this chapter is enacted into law, shall be required to take the examination herein provided, and otherwise comply with the provisions of this chapter before engaging in the practice of barbering. (1929, c. 119, s. 13.)

§ 86-14. Procedure for registration of barbers not registered under section 86-13.—The procedure for the registration of present practitioners of barbering who were not registered under § 86-13, shall be as follows:

(a) If such person has been practicing barbering in the State of North Carolina for more than eighteen months and is actively engaged in the practice of barbering at the time this bill is enacted into law, he shall, upon making affidavit to that effect and paying the required fee to the Board of Barber Examiners, be issued a certificate of registration as a registered barber.

(b) All persons, however, who do not make application prior to January 1, 1938, shall be required to take the examination prescribed by the State Board of Barber Examiners, and otherwise comply with the provisions of this chapter before engaging in the practice of barbering. (1937, c. 138, s. 3.)

§ 86-15. Fees.—The fee to be paid by applicant for examination to determine his fitness to receive a certificate of registration, as a registered apprentice, shall be five ($5.00) dollars, and such fee must accompany his application. The annual license fee of an apprentice shall be three ($3.00) dollars. The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration as a registered barber shall be fifteen ($15.00) dollars, and such fee must accompany his application. The annual license fee of a registered barber shall be five ($5.00) dollars. All licenses, both for apprentices and for registered barbers, shall be renewed as of the thirtieth day of June of each and every year, and such renewals for apprentices shall be three ($3.00) dollars, and for registered barbers five ($5.00) dollars. The fee for restoration of an expired certificate for registered barbers shall be seven ($7.00) dollars, and restoration of expired certificate of an apprentice shall be four ($4.00) dollars: Provided, the difference between the fees being charged on March 13, 1937, and the fees herein provided for shall be used exclusively for the employment of additional inspectors and the payment of their necessary expenses of inspection, it being the purpose of this chapter to provide as nearly as possible equal inspection throughout the state of North Carolina. The fees herein set out are not to be increased by the board of barber examiners, but said board may regulate the payment of said fees and prorate the license fees in such manner as it deems expedient. (1929, c. 119, s. 14; 1937, c. 138, s. 4.)

§ 86-16. Persons exempt from provisions of chapter. — The following persons are exempt from the provisions of this chapter while engaged in the proper discharge of their professional duties.

(a) Persons authorized under the laws of the State to practice medicine and surgery.

(b) Commissioned medical or surgical officers of the United States Army, Navy, or Marine Hospital Service.

(c) Registered nurses.

(d) Students in schools, colleges and universities, who follow the practice of barbering upon the school, college, or university premises, for the purpose of making a part of their school expenses.

(e) Undertakers.

(f) Persons practicing hair dressing and beauty culture exclusively for females. The provisions of this chapter shall apply to all persons except those persons specifically exempted by this section and § 86-24. (1929, c. 119, s. 15; 1937, c. 138, s. 2; 1941, c. 375, s. 6.)

§ 86-17. Sanitary rules and regulations; inspection.—(a) Each barber and each owner or manager of a barber shop, barber school or college, or any other place where barber service is rendered, shall comply with the following sanitary rules and regulations:

1. Inspection. — All barber shops, or barber schools and colleges, or any other place where barber service is rendered, shall be open for inspection at all times during business hours to any members of the board of barber examiners, or its agents or assistants.

2. Proper Quarters.—Every barber shop, or any other place where barber service is rendered, shall be located in buildings or rooms of such construction that the same may be easily cleaned.

3. Barber Shops.—Every barber shop, or barber school, or barber college, or any other place where barber service is rendered, shall be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition.

4. Position of Barber Shops.—Any room or place for barbering is prohibited which is used for other purposes, unless such a substantial partition or wall of ceiling height, separates such portion used for barber shops, or any place where barber service is rendered. However, this rule shall apply to sanitation only as determined by the discretion of the inspector.

5. Walls and Floors.—The floors, walls, and ceiling of all barber shops, or barber schools and colleges, or any other place where barber service is rendered, must be kept clean and sanitary at all times.

6. Fixture Conditions. — Work stands or cabinets, and chairs and fixtures of all barber shops, or any other place where barber service is rendered, must be kept clean and sanitary at all times. All lavatories, towel urns, paper jars, cuspidors, and all receptacles containing cosmetics of any nature must be kept clean at all times.

7. Tools and Instruments.—Every owner or manager of each barber shop shall supply a separate tool cabinet, having a door as near air-tight as possible, for himself and each barber employed. All tools and instruments shall be kept clean and sanitary at all times and shall be kept in tool cabinets, and shall not be placed in drawers or on work stands. Cabinets shall be of such construction as to be easily cleaned and shall be clean and sanitary at all times.

8. Water.—(1) All barber shops, or any other place where barber service is rendered, located in towns or cities having a water system shall be required to connect with said water system. Running water, hot and cold, shall be provided, and lavatories shall be located at a convenient place in each barber shop.

9. Water.—(2) All barber shops or any other place where barber service is rendered, not located in cities or towns having water systems must supply hot and cold water under pressure in tank to hold not less than five gallons, and said tanks must be connected with a lavatory. Tanks and lavatory shall be of such construction that they may be easily cleaned. Said lavatory must have a drain pipe to drain all waste water out of the building. The dipping of shaving mugs and towels, etc., into water receptacles is prohibited.

10. Styptic Pencil and Alum.—No person serving as a barber shall, to stop the flow of blood, use alum or other material unless the same be used in liquid or powder form with clean towels. The use of common styptic pencil or lump alum shall not be permitted for any purpose.

11. Instruments. — Each person serving as a barber, shall, immediately before using razors, tweezers, combs, contact cup or pad of vibrator or massage machine, sterilize same by immersing in a solution of fifty per cent (50%) alcohol, five per cent (5%) carbolic acid, twenty per cent (20%) formaldehyde, or ten per cent (10%) lysol. Every owner or manager of each barber shop shall supply a separate container for each barber adequate to provide for a sufficient supply of the above solutions.

12. Hair Brushes and Combs.—Each barber shall maintain combs and hair brushes in clean and sanitary manner at all times, and each hair brush shall be thoroughly washed with hot water and soap before each separate use.

13. Mugs and Brushes. — Each barber shall thoroughly clean mug and lather brush before each separate use and same must be kept clean and sanitary at all times.

14. Headrest.—The headrest of every barber chair shall be protected with fresh, clean paper or clean laundered towel before its use for any person.

15. Towels.—Each and every person serving as a barber shall use a clean freshly laundered towel for each patron. This applies to every kind of towel, dry-towel, steam-towel, or washcloth. All clean towels shall be placed in closed cabinets until used. Receptacles composed of material that can be washed and cleansed, shall be provided to receive used towels and all used towels must be discarded in said receptacles until laundered. Towels shall not be placed in a sterilizer or tank or rinsed or washed in the barber shop. All wet and used towels must be removed from the work stand or lavatory after serving each patron.

16. Haircloths.—Whenever a haircloth is used in cutting the hair, shampooing, etc., a newly laundered towel or paper neck strap shall be placed around the neck so as to prevent the haircloth from touching the skin. Haircloths shall be discarded when soiled.

17. Baths and Toilets.—Baths and toilets must be kept in a clean and sanitary manner at all times.

18. Barber Hands.—Every person serving as a barber shall thoroughly cleanse his or her hands immediately before serving each customer.

19. Barber Appearance.—Each person working as a barber shall be clean, both as to person and dress.

20. Health Certificate.—No person having an infectious or communicable disease shall practice as a barber in the state of North Carolina. Each and every barber practicing the profession in North Carolina shall furnish the state board of barber examiners a satisfactory health certificate, including Wassermann Test, at such times as the board of barber examiners may deem necessary, signed by a physician in good standing and licensed by the North Carolina board of medical examiners.

21. Diseases.—No barber shall serve any person having an infectious or communicable disease, and no barber shall undertake to treat any infectious or contagious disease.

22. Rules Posted.—The owner or manager of any barber shop, or any other place where barber service is rendered, shall post a copy of these rules and regulations in a conspicuous place in said shop.

(b) Any member of the board and its agents and assistants shall have authority to enter upon and inspect any barber shop or barber school, or other place where barber service is rendered, at any time during business hours in performance of the duties conferred and imposed by this act. A copy of the sanitary rules and regulations set out in this section shall be furnished by the board to the owner or manager of each barber shop or barber school, or any other place where barber service is rendered in the state, and such copy shall be posted in a conspicuous place in each barber shop or barber school. (1929, c. 119, s. 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, s. 7.)

§ 86-18. Certificates to be displayed. — Every holder of a Certificate of Registration shall display it in a conspicuous place adjacent to or near his work chair. (1929, c. 119, s. 17.)

§ 86-19. Renewal or restoration of certificates. —Every registered barber and every registered apprentice who continues in practice or service shall annually, on or before June thirtieth of each year, renew his certificate of registration and furnish such health certificate as the board may prescribe and pay the required fee. Every certificate of registration shall expire on the thirtieth day of June in each and every year. A registered barber or a registered apprentice whose certificate of registration has expired may have his certificate restored immediately upon paying the required restoration fee and furnishing health certificate prescribed by the board: Provided, however, that registered barber or registered apprentice whose certificate has expired for a period of three years shall be required to take the examination prescribed by the state board of barber examiners, and otherwise comply with the provisions of this chapter before engaging in the practice of barbering. (1929, c. 119, s. 18; 1937, c. 138, s. 5.)

§ 86-20. Disqualifications for certificate.—The Board may either refuse to issue or renew, or may suspend or revoke, any Certificate of Registration for any one or combination of the following causes:

1. Conviction of a felony shown by certified copy of the record of the court of conviction.
2. Gross malpractice or gross incompetency.
3. Continued practice by a person knowingly having an infectious or contagious disease.
4. Advertising by means of knowingly false or deceptive statements.
5. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.
6. The commission of any of the offences described in § 86-22, sub-divisions three, four and six.
7. The violation of any one or a combination of the sanitary rules and regulations.
8. The violation of any of the provisions of § 86-4. (1929, c. 119, s. 19; 1941, c. 375, s. 8.)

§ 86-21. Notice; public hearing; appeal.—The Board may neither refuse to issue nor refuse to renew, nor suspend, or revoke any Certificate of Registration, however, for any of these causes, unless the person accused has been given at least thirty days' notice in writing of the charge against him and a public hearing by the Board.

Upon the hearing of any such proceeding, the Board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers.

Any barber in the State whose case has been passed upon by the Board of Barber Examiners shall have the right and is hereby given the right to appeal to the Superior Court of the State, which Court may in its discretion reverse or modify any order made by the said Board of Barber Examiners. (1929, c. 119, s. 20; 1939, c. 218, s. 1.)

§ 86-22. Misdemeanors.—Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars, nor more than fifty ($50.00) dollars, or thirty days in jail or both:

1. The violation of any of the provisions of § 86-1.
2. Permitting any person in one's employ, supervision or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.
3. Permitting any person in one's employ, supervision or control, to practice as a barber unless that person has a certificate as a registered barber.
4. Obtaining or attempting to obtain a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.
5. Practicing or attempting to practice by fraudulent misrepresentations.
6. The wilful failure to display a certificate of registration as required by § 86-18.
7. The violation of the reasonable rules and regulations adopted by the state board of barber examiners for the sanitary management of barber shops and barber schools.
8. The violation of any of the provisions of § 86-5.
9. The refusal of any owner or manager to permit any member of the board, its agents, or assistants to enter upon and inspect any barber shop, or barber school, or any other place where barber service is rendered, at any time during business hours.
10. The violation of any one or a combination of the sanitary rules and regulations.
11. Practicing or attempting to practice barbering during the period of suspension or revocation of any certificate of registration granted under this chapter. Each day's operation during such period of suspension or revocation shall be deemed a separate offense, and, upon conviction thereof, shall be punished as prescribed in this section. (1929, c. 119, s. 21; 1933, c. 95, s. 1; 1937, c. 138, s. 6; 1941, c. 375, ss. 9, 10.)

§ 86-23. Board to keep record of proceedings; data on registrants.—The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of Certificates of Registration. This record shall also contain the name, place of business and residence of each Registered Barber and Registered Apprentice, and the date and number of his Certificate of Registration. This record shall be open to public inspection at all reasonable times. (1929, c. 119, s. 22.)

§ 86-24. Barbering among members of same family.—This chapter shall not prevent a member of the family from practicing barbering on a member of his or her family. (1941, c. 375, s. 12.)

Chapter 87. Contractors.

Sec.

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Art. 1. General Contractors.

§ 87-1. Contractor defined.—For the purpose of this article a general contractor is defined to be one who, for a fixed price, commission, fee or wage, undertakes to bid upon or to construct or superintend the construction of any building, highway, sewer, grading or any improvement or structure where the cost of the undertaking is ten thousand dollars or more; and anyone who shall bid upon or engage in constructing or superintending the construction of any structures or any undertakings or improvements above mentioned in the state of North Carolina costing ten thousand dollars or more, shall be deemed and held to have engaged in the business of general contracting in the state of North Carolina. (1925, c. 318, s. 1; 1931, c. 62, s. 1; 1937, c. 429, s. 1.)

§ 87-2. Licensing board; organization.—There shall be a State licensing board for contractors consisting of five members who shall be ap-

pointed by the Governor within sixty days after March 10, 1925. At least one member of such board shall have as a larger part of his business the construction of highways; at least one member of such board shall have as the larger part of his business the construction of public utilities; at least one member shall have as the larger part of his business the construction of buildings. The members of the first board shall be appointed for one, two, three, four and five years respectively, their terms of office expiring on the thirty-first day of December of the said years. Thereafter in each year the Governor in like manner shall appoint to fill the vacancy caused by the expiration of the term of office a member for a term of five years. Each member shall hold over after the expiration of his term until his successor shall be duly appointed and qualified. If vacancies shall occur in the board for any cause the same shall be filled by the appointment of the Governor. The Governor may remove any member of the board for misconduct, incompetency or neglect of duty. (1925, c. 318, s. 2.)

§ 87-3. Members of board to take oath.—Each member of the board shall, before entering upon the discharge of the duties of his office, take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said board and to uphold the Constitution of North Carolina and the Constitution of the United States. (1925, c. 318, s. 3.)

§ 87-4. First meeting of board; officers; secretary-treasurer and assistants.—The said board shall, within thirty days after its appointment by the Governor, meet in the city of Raleigh, at a time and place to be designated by the Governor, and organize by electing a chairman, a vice chairman, and a secretary-treasurer, each to serve for one year. Said board shall have power to make such by-laws, rules and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The secretary-treasurer shall give bond in such sum as the board shall determine, with such security as shall be approved by the board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. The secretary-treasurer need not be a member of the board, and the board is hereby authorized to employ a full time secretary-treasurer, whose salary shall not exceed thirty-six hundred dollars ($3600.00) per annum, and such other assistants and make such other expenditures as may be necessary to the proper carrying out of the provisions of this article. (1925, c. 318, s. 4; 1941, c. 257, s. 4.)

§ 87-5. Seal of board.—The board shall adopt a seal for its own use. The seal shall have the words "Licensing Board for Contractors, State of North Carolina," and the secretary shall have charge, care and custody thereof. (1925, c. 318, s. 5.)

§ 87-6. Meetings; notice; quorum.—The board shall meet twice each year, once in April and once in October, for the purpose of transacting such business as may properly come before it. At the April meeting in each year the board shall elect officers. Special meetings may be held at such times as the board may provide in the by-laws it shall adopt. Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the by-laws may provide. Three members of the board shall constitute a quorum. (1925, c. 318, s. 6.)

§ 87-7. Records of board; disposition of funds.—The secretary-treasurer shall keep a record of the proceedings of the said board and shall receive and account for all moneys derived from the operation of this article. Any funds remaining in the hands of the secretary-treasurer to the credit of the board after the expenses of the board for the current year have been paid shall be paid over, to the Greater University of North Carolina for the use of its engineering department. The board has the right, however, to retain at least ten per cent of the total expense it incurs for a year's operation to meet any emergency that may arise. (1925, c. 318, s. 7.)

§ 87-8. Records; roster of licensed contractors. — The secretary-treasurer shall keep a record of the proceedings of the board and a register of all applicants for license showing for each the date of application, name, qualifications, place of business, place of residence, and whether license was granted or refused. The books and register of this board shall be prima facie evidence of all matters recorded therein. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the secretary of the board during the month of January of each year; such roster shall be printed by the board out of funds of said board as provided in § 87-7. On or before the first day of March of each year the board shall submit to the governor a report of its transactions for the preceding year, and shall file with the secretary of state a copy of such report, together with a complete statement of the receipts and expenditures of the board, attested by the affidavits of the chairman and the secretary, and a copy of the said roster of licensed general contractors. (1925, c. 318, s. 8; 1937, c. 429, s. 2.)

§ 87-9. Compliance with federal highway act, etc.; contracts financed by federal road funds.—Nothing in this article shall operate to prevent the state highway and public works commission from complying with any act of congress and any rules and regulations promulgated by the United States secretary of agriculture for carrying out the provisions of the Federal Highway Act, or shall apply to any person, firm or corporation proposing to submit a bid or enter into contract for any work to be financed in whole or in part with federal aid road funds in such manner as will conflict with any act of congress or any such rules and regulations of the United States secretary of agriculture. (1939, c. 230.)

§ 87-10. Application for license; examination; certificate; renewal.—Anyone hereafter desiring to be licensed as a general contractor in this state shall make and file with the board, thirty days prior to any regular or special meeting thereof, a written application on such form as may then be by the board prescribed for examination by the board, which application shall be accom-

panied by the sum of sixty dollars ($60.00) if the application is for an unlimited license, or forty dollars ($40.00) if the application is for an intermediate license, or twenty dollars ($20.00) if the application is for a limited license; the holder of an unlimited license shall be entitled to engage in the business of general contracting in North Carolina unlimited as to the value of any single project, the holder of an intermediate license shall be entitled to engage in the practice of general contracting in North Carolina but shall not be entitled to engage therein with respect to any single project of a value in excess of three hundred thousand dollars ($300,000.00), the holder of a limited license shall be entitled to engage in the practice of general contracting in North Carolina but the holder shall not be entitled to engage therein with respect to any single project of a value in excess of seventy-five thousand dollars ($75,000.00) and the license certificate shall be classified as hereinafter set forth. Before being entitled to an examination an applicant must show to the satisfaction of the board from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability and integrity, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under the provisions hereinafter set forth for the suspension or revocation of contractor's license, or that the applicant has not committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor nor had such license revoked, either in this state or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony: Provided, no applicant shall be refused the right to an examination without being given an opportunity upon such notice, as may be prescribed by the board, to appear before the board and produce evidence in support of his application.

The board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the state of North Carolina relating to contractors, construction and liens. If the results of the examination of applicant shall be satisfactory to the board, then the board shall issue to the applicant a certificate to engage as a general contractor in the state of North Carolina, as provided in said certificate, which may be limited into four classifications as the common use of the terms are known—that is, (1) building contractor; (2) highway contractor; (3) public utilities contractor; and, (4) specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the state of North Carolina.

If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a co-partnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of thirty days thereafter, and then be cancelled, but the applicant shall then be entitled to a re-examination, all pursuant to the rules to be promulgated by the board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this article.

Anyone failing to pass this examination may be re-examined at any regular meeting of the board without additional fee. Certificate of license shall expire on the first day of December following the issuance or renewal and shall become invalid on that day unless renewed, subject to the approval of the board. Renewals may be effected any time during the month of January without re-examination, by the payment of a fee to the secretary of the board of thirty dollars ($30.00) for unlimited license, twenty dollars ($20.00) for intermediate license and ten dollars ($10.00) for limited license: Provided, the classification herein provided for shall not apply to contracts of the state highway and public works commission. (1925, c. 318, s. 9; 1931, c. 62, s. 2; 1937, c. 328; 1937, c. 429, s. 3; 1941, c. 257, s. 1.)

§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; notice of charges; reissuance of certificate.—The board shall have the power to revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency or misconduct in the practice of his profession, or wilful violation of any provisions of this article. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed hereunder; such charges shall be in writing and sworn to by the complainant and submitted to the board. Such charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within thirty days after the date in which they were preferred. A time and place for such hearing shall be fixed by the board and held in the county in which said charges originated or such other county as the board may designate. A copy of the charges, together with the notice of the time and place of hearing, shall be legally served on the accused at least fifteen days before the fixed date for the hearing, and in the event that such service cannot be effected fifteen days before such hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At said hearing the accused shall have the right to appear personally and by counsel and to

cross-examine witnesses against him, her or them, and to produce evidence of witnesses in his, her or their defense. If after said hearing at least four members of the board vote in favor of finding the accused guilty of any fraud or deceit in obtaining license, or of gross negligence, incompetency or misconduct in practice the board shall revoke the license of the accused.

The board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, three or more members of the board vote in favor of such reissuance for reasons the board may deem sufficient.

The board shall immediately notify the secretary of state of its finding in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the board. (1925, c. 318, s. 10; 1937, c. 429, s. 4.)

§ 87-12. Certificate evidence of license.—The issuance of a certificate of license or limited license by this board shall be evidence that the person, firm or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed general contractor while the said license remains unrevoked or unexpired. (1925, c. 318, s. 11; 1937, c. 429, s. 5.)

§ 87-13. Unauthorized practice of contracting; impersonating contractor; false certificate; giving false evidence to board; penalties.—Any person, firm or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works enumerated in § 87-1, without having first complied with the provisions hereof, or who shall attempt to practice general contracting in this state, except as provided for in this article, and any person, firm, or corporation presenting or attempting to file as his own the licensed certificate of another or who shall give false or forged evidence of any kind to the board or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked certificate of license, and any architect or engineer who receives or considers a bid from any one not properly licensed under this article, shall be deemed guilty of a misdemeanor and shall for each such offense of which he is convicted be punished by a fine of not less than five hundred dollars or imprisonment of three months, or both fine and imprisonment in the discretion of the court. And the board may, in its discretion, use its funds to defray the expense, legal or otherwise, in the prosecution of any violations of this article. (1925, c. 318, s. 12; 1931, c. 62, s. 3; 1937, c. 429, s. 6.)

§ 87-14. Regulations as to issue of building permits.—Any person, firm or corporation, upon making application to the building inspector or such other authority of any incorporated city, town or village in North Carolina charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, grading or any improvement or structure where the cost thereof is to be ten thousand dollars ($10,000.00) or more, shall, before he be entitled to the issuance of such permit, furnish satisfactory proof to such inspector or authority that he is duly licensed under the terms of this article to carry out or superintend the same, and that he has paid the license tax required by the Revenue Act of the state of North Carolina then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied; and it shall be unlawful for such building inspector or other authority to issue or allow the issuance of such building permit unless and until the applicant has furnished evidence that he is either exempt from the provisions of this article or is duly licensed under this article to carry out or superintend the work for which permit has been applied; and further, that the applicant has paid the license tax required by the State Revenue Act then in force so as to be qualified to bid upon or contract for the work covered by the permit; and such building inspector, or other such authority, violating the terms of this section shall be guilty of a misdemeanor and subject to a fine of not more than fifty dollars ($50.00). (1925, c. 318, s. 13; 1931, c. 62, s. 4; 1937, c. 429, s. 7.)

§ 87-15. Copy of article included in specifications; bid not considered unless contractor licensed.—All architects and engineers preparing plans and specifications for work to be contracted in the state of North Carolina shall include in their invitations to bidders and in their specifications a copy of this article or such portions thereof as are deemed necessary to convey to the invited bidder, whether he be a resident or nonresident of this state and whether a license has been issued to him or not, the information that it will be necessary for him to show evidence of a license before his bid is considered. (1925, c. 318, s. 14; 1937, c. 429, s. 8; 1941, c. 257, s. 2.)

Art. 2. Plumbing and Heating Contractors.

§ 87-16. Board of Examiners; appointment; term of office.—For the purpose of carrying out the provisions of this article there is hereby created a State Board of Examiners of Plumbing and Heating Contractors, consisting of seven members to be appointed by the Governor within sixty days after February 27, 1931. The said board shall consist of one member from the Engineering School of the Greater University of North Carolina, one member from the State Board of Health, one member to be a plumbing inspector from some city of the State, one licensed master plumber and one heating contractor, one member from the division of public health of the Greater University of North Carolina, and one member to be a licensed air conditioning contractor. The term of office of said members shall be so designated by the Governor that the term of one member shall expire each year. Thereafter in each year the Governor shall in like manner appoint one person to fill the vacancy on the board thus created. Vacancies in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Whenever the word "board" is used in this article, it shall be deemed and held to refer to the state board of examiners of plumbing and heating contractors. (1931, c. 52, s. 1; 1939, c. 224, s. 1.)

§ 87-17. Removal, qualifications and compensation of members; allowance for expenses.—The Governor may remove any member of the

board for misconduct, incompetency or neglect of duty. Each member of the board shall be a citizen of the United States and a resident of this State at the time of his appointment. Each member of the board shall receive ten dollars per day for attending sessions of the board or of its committees, and for the time spent in necessary traveling in carrying out the provisions of this article, and in addition to the per diem compensation, each member shall be reimbursed by the board from funds in its hands for necessary traveling expenses and for such expenses incurred in carrying out the provisions hereof, as shall be approved by a majority of the members of the board. (1931, c. 52, s. 2.)

§ 87-18. Organization meeting; officers seal; examination of witnesses and taking of testimony.—The board shall within thirty days after its appointment meet in the city of Raleigh and organize, and shall elect a chairman and secretary and treasurer, each to serve for one year. Thereafter said officers shall be elected annually. The secretary and treasurer shall give bond approved by the board for the faithful performance of his duties, in such sum as the board may, from time to time determine. The board shall have a common seal and shall formulate rules to govern its actions. (1931, c. 52, s. 3; 1939, c. 224, s. 2.)

§ 87-19. Regular and special meetings; quorum.—The board after holding its first meeting as hereinbefore provided, shall thereafter hold at least two regular meetings each year. Special meetings may be held at such times and places as the by-laws and/or rules of the board provide; or as may be required in carrying out the provisions hereof. A quorum of the board shall consist of not less than three members. (1931, c. 52, s. 4.)

§ 87-20. Record of proceedings and register of applicants; reports. — The board shall keep a record of its proceedings and a register of all applicants for examination, showing the date of each application, the name, age and other qualifications, place of business and residence of each applicant. The books and records of the board shall be prima facie evidence of the correctness of the contents thereof. On or before the first day of March of each year the board shall submit to the Governor a report of its activities for the preceding year, and file with the Secretary of State a copy of such report, together with a statement of receipts and expenditures of the board attested by the chairman and secretary. (1931, c. 52, s. 5.)

§ 87-21. Definitions; contractors licensed by board; towns excepted.—For the purpose of this article plumbing shall be deemed and held to include the plumbing system of a building consisting of water supply distributing pipes, the fixtures and fixture traps, soil, waste and vent pipes, all with their devices, appurtenances and connections, and all within, adjacent to or connected with the building, however shall not include the repair or installation of water supply pipe from the street to plumbing fixtures not connected with the sewerage or ventilating systems or to the repair or replacement of outside water faucets. For the purpose of this article heating shall be deemed and held to include all heating systems of a building requiring the use of high or low pressure steam, vapor, hot water, warm or conditioned air, and all piping, ducts, connections or mechanical equipment appurtenant thereto within, adjacent to or connected with the building. Any person, firm or corporation, who, for a valuable consideration, installs, alters or restores or offers to install, alter or restore either plumbing or heating, or both, as defined in this article, shall be deemed to be engaged in the business of either plumbing or heating contracting, or both, as the case may be. All persons, firms or corporations, whether resident or nonresident of the state of North Carolina, before engaging in either the plumbing or heating contracting business, or both, as defined in this article, shall first apply to the state board of examiners of plumbing and heating contractors for examination and shall procure a license. Each application shall be accompanied by a certified check in the amount of the annual license fee required by this article. In order to promote the health, comfort, and safety of the people of the state of North Carolina in the regulation of the business of plumbing or heating contracting, the board shall give each applicant for license an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, construction, fundamentals of design and installation, sanitation, fire hazards, and related subjects. Regular examinations shall be given by the board in the months of February and August of each year; and additional examinations may be given at such other time as the board may deem necessary. Any person, firm or corporation may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the board in its discretion will fix a time and place for such examination to be given, not less than ten nor more than thirty days from receipt of the written demand and the deposit of the cost. As the result of such examination, all applicants found by the board to be qualified to engage in and carry on the business of either plumbing or heating contracting, or both, as defined in this article, shall be entitled to and shall receive a license to do so. The said board shall have authority to issue a limited heating license to any applicant who establishes to the satisfaction of the board, by such examination, that he is qualified to engage in the business of heating contracting by the installation, alteration and renovation of any one or more types of heating systems, but such limited license shall authorize the licensee to engage in the heating contracting business only to the extent and under the conditions recited in the license. The board shall, within thirty days after March 30, 1939, meet and classify the business of heating contracting into the following groups for the purpose of issuing limited licenses as provided in this article: Group number one to consist of the installation, alteration or restoration of all heating systems which involve the use of high or low pressure steam, vapor, hot water and all piping, ducts, connections or mechanical equipment appurtenant thereto, within, adjacent or connected with a building; group number two to con-

sist of the installation, alteration or restoration of all air conditioning systems which provide conditioned air for comfort cooling by the lowering of temperature within a building, including all parts and accessories necessary thereto. Persons, firms or corporations now holding licenses for heating contracting in accordance with the provisions of §§ 87-16 to 87-27 shall be granted, without examination, a limited heating license under group number one as classified under this section. Section 87-25 shall not apply to any person, firm or corporation engaged in the business of heating contracting as classified under group number two as defined in this section prior to January first one thousand nine hundred and forty. Employees who work under the supervision and jurisdiction of a person, firm or corporation, licensed in accordance with the provisions of this article, shall not be required to apply for and obtain a license while so engaged. The requirements of this article shall apply only to persons, firms or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns having a population of more than thirty-five hundred. (1931, c. 52, s. 6; 1939, c. 224, s. 3.)

§ 87-22. License fee based on population; expiration and renewal; penalty.—All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of ten thousand inhabitants or more shall pay an annual license fee of fifty dollars, and in cities or towns of more than thirty-five hundred and less than ten thousand inhabitants an annual license fee of twenty-five dollars. In the event the board refuses to license an applicant, the license fee deposited shall be returned by the board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to his last known address of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of said license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the board shall increase said license fee ten per centum for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided, further that no penalty will be imposed if one-half of the annual license fee is paid in January and the remaining one-half in June of each year. (1931, c. 52, s. 7; 1939, c. 224, s. 4.)

§ 87-23. Revocation or suspension of license for cause.—The board shall have power to revoke or suspend the license of any plumbing or heating contractor, or both, who is guilty of any fraud or deceit in obtaining a license, or who fails to comply with any provision or requirement of this article, or for gross negligence, incompetency, or misconduct, in the practice of or in carrying on the business of either a plumbing or heating contractor, or both, as defined in this article. Any person may prefer charges of such fraud, deceit, gross negligence, incompetency, misconduct, or failure to comply with any provision or requirement of this article, against any plumbing or heating contractor, or both, who is licensed under the provisions of this article. All of such charges shall be in writing and verified by the complainant, and such charges shall be heard and determined by the board within ninety days after the same are received by it. A time and place for such hearing shall be fixed by the board and a copy of said charges together with notice of the time and place of hearing, shall be furnished to the person, firm, or corporation accused at least thirty days before the date fixed for the hearing. At said hearing the person accused shall have the right to appear personally, or by counsel, and be heard in defense of said charges. Upon the conclusion of said hearing, if the board finds that the license of the accused person should be revoked or suspended for any one or more of the causes set forth in this section, the board shall enter upon its records a resolution revoking or suspending the license and furnish a copy of said resolution to the accused. Any person, firm, or corporation whose license shall be revoked or suspended by the board shall have the right to appeal to the superior court of the county in which the accused maintains his or its principal place of business, said appeal to be perfected within thirty days after receipt of the board's resolution by the accused, but not thereafter. (1931, c. 52, s. 8; 1939, c. 224, s. 5.)

§ 87-24. Re-issuance of revoked licenses; replacing lost or destroyed licenses.—The board may in its discretion re-issue license to any person, firm or corporation whose license may have been revoked: Provided, three or more members of the board vote in favor of such re-issuance for reasons deemed sufficient by the board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the board. (1931, c. 52, s. 9.)

§ 87-25. Violations made misdemeanor; employees of licensees excepted.—Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of either plumbing or heating contracting, or both, as defined in § 87-21, without first having been licensed to engage in such business, or businesses, as required by the provisions of this article; or any person, firm or corporation holding a limited heating license under the provisions of this article who shall practice or offer to practice or carry on any type of heating contracting not authorized by said limited license; or any person, firm or corporation who shall give false or forged evidence of any kind to the board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this article, shall be guilty of a misdemeanor and upon conviction fined not less than one hundred dollars or imprisoned for not more than three months, or both, in the discretion of the court. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of the article, shall not be construed to

have engaged in the business of either plumbing or heating contracting, or both. (1931, c. 52, s. 10; 1939, c. 224, s. 6.)

§ 87-26. Only one person in partnership or corporation need have license.—A corporation or partnership may engage in the business of either plumbing or heating, or both, provided one or more persons connected with such corporation or partnership is registered and licensed as herein required; and provided such licensed person shall execute all contracts, exercise general supervision over the work done thereunder and be responsible for compliance with all the provisions of this article. (1931, c. 52, s. 12; 1939, c. 224, s. 8.)

§ 87-27. License fees payable in advance; application of.—All license fees shall be paid in advance to the secretary and treasurer of the board, and by him held as a fund for the use of the board. The compensation and expenses of the members of the board as herein provided, the salaries of its employees, and all expenses incurred in the discharge of its duties under this article shall be paid out of such fund, upon the warrant of the president and secretary and treasurer: Provided, upon the payment of the necessary expenses of the board as herein set out, and the retention by it of twenty-five per centum of the balance of funds collected hereunder, the residue, if any, shall be paid to the state treasurer. (1931, c. 52, s. 13; 1933, c. 57; 1939, c. 224, s. 9.)

Art. 3. Tile Contractors.

§ 87-28. License required of tile contractors.—In order to protect the health and safety of the people of North Carolina any person, firm or corporation desiring to engage in tile contracting within the state of North Carolina as defined in this article shall make application in writing for license to the North Carolina licensing board for tile contractors: Provided, that the provisions of this article shall not apply to state colleges, hospitals and other state buildings. (1937, c. 86, s. 1; 1941, c. 219, s. 1.)

§ 87-29. Tile contracting defined. — Engaging in tile contracting for the purpose of this article is defined to mean any person, firm or corporation who for profit undertakes to lay, set or install ceramic tile, marble, or terrazzo floors or walls in buildings for private or public use. (1937, c. 86, s. 2; 1939, c. 75, s. 1; 1941, c. 219, s. 2.)

§ 87-30. Licensing board created; membership; appointment and removal.—The North Carolina licensing board for tile contractors shall consist of five members, each of whom shall be a reputable tile contractor residing in the state of North Carolina who has been engaged in the business of tile contracting for at least five years. The members of the first board shall be appointed within sixty days after March 1, 1937, for terms of one, two, three, four, and five years by the governor, and the governor in each year thereafter shall appoint one licensed tile contractor to fill the vacancy caused by the expiration of the term of office, the term of such new member to be for five years. If vacancy shall occur in the board for any cause the same shall be filled by appointment of the governor. The governor shall have the power to remove from office any member of said board for incapacity, misconduct, or neglect of duty. (1937, c. 86, s. 3.)

§ 87-31. Oath of office; organization; meetings; authority; compensation.—The members of said board shall qualify by taking an oath of office in writing to be filed with the secretary of state to uphold the constitution of the United States and the constitution of North Carolina and to properly perform the duties of his office. The board shall elect a president, vice-president, and secretary-treasurer. A majority of the members of the board shall constitute a quorum. Regular meetings shall be held at least twice a year, at such time and place as shall be deemed most convenient. Due notice of such meetings shall be given to all applicants for license in such manner as the by-laws may provide. The board may prescribe regulations, rules, and by-laws for its own proceedings and government and for the examination of applicants not in conflict with the laws of North Carolina. Special meetings may be held upon a call of three members of the board. Each member of the board shall receive for his services the sum of ten ($10.00) dollars per day for each and every day spent in the performance of his duties, and shall be reimbursed for all necessary expenses incurred in the discharge of his duties. (1937, c. 86, s. 4.)

§ 87-32. Secretary-treasurer, duties and bond; seal; annual report to governor.—It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the board and all licenses issued, and to pay all necessary expenses of the board out of the funds collected, and he shall give such bond as the board shall direct. All funds in excess of the sum of one hundred ($100.00) dollars remaining in the hands of the secretary-treasurer, after all of the expenses of the board for the current year have been paid, shall be paid over to the Greater University of North Carolina for the use of the ceramic engineering department of North Carolina State College to be devoted by it to the development of the safe, proper, and sanitary uses of tile. The board shall adopt a seal to be affixed to all of its official documents, and shall make an annual report of its proceedings to the governor on or before the first day of March of each year, which report shall contain an account of all moneys received and disbursed. (1937, c. 86, s. 5.)

§ 87-33. Applications for examinations; fee; qualifications of applicants.—Any person desiring to be examined by said board shall at least two weeks prior to the holding of an examination file an application upon the prescribed form to be furnished by the board. Each applicant upon making an application shall pay to the secretary-treasurer of the board an examination fee of twenty-five dollars ($25.00). To qualify and obtain a license such applicant must be a citizen of the United States, or person who has duly declared his intention of becoming such citizen, who shall have had at least two years experience, or its equivalent, next preceding the date of his application for license as a tile, marble and terrazzo student or mechanic, possessing the knowledge to specify the proper kind of tile, marble and terrazzo floors or walls for use in private or public buildings, and the ability to lay, set or install tile, marble and terrazzo in accordance with specifica-

tions and blue prints ordinarily used in the tile contracting business. (1937, c. 86, s. 6; 1941, c. 219, s. 6.)

§ 87-34. Fee for annual renewal of registration; license revoked for default; penalty for reinstatement.—Every licensed tile contractor who desires to continue in business in this state shall annually, on or before the first day of January of each year, pay to the secretary-treasurer of the board the sum of fifty ($50.00) dollars for which he shall receive a renewal of such registration, and in case of the default of such registration by any person the license shall be revoked. Any licensed tile contractor whose license has been revoked for failure to pay the renewal fee, as herein provided, may apply to have the same regranted upon payment of all renewal fees that should have been paid, together with a penalty of ten ($10.00) dollars. (1937, c. 86, s. 7.)

§ 87-35. Power of board to revoke or suspend licenses; charges; notice and opportunity for hearing; appeal.—The board shall have the power after hearing to revoke or suspend the license of any tile contractor upon satisfactory proof that such license was secured by fraud or deceit practiced upon the board, or upon satisfactory proof that such tile contractor is guilty of gross negligence, incompetency, or inefficiency in carrying on the business of tile contracting. Each charge against any contractor submitted to the board shall be in writing and sworn to by the complainant: Provided, however, that before any license shall be revoked or suspended the holder thereof shall have notice of the specific charge or charges preferred, and at a date specified in said notice, at least thirty days after legal service thereof, be given public hearing, and have an opportunity to appear, cross-examine witnesses, and to produce evidence. Any person being aggrieved by the action of the board shall have the right of appeal to the superior court. (1937, c. 86, s. 8.)

§ 87-36. No examination required of present contractors.—All persons, firms or corporations now actively engaged in the tile contracting business in the state of North Carolina shall upon filing affidavit with the board be entitled to and receive a license without examination upon payment of the annual license fee. (1937, c. 86, s. 9; 1939, c. 75, s. 3; 1941, c. 219, s. 9.)

§ 87-37. License to one member of firm, etc., sufficient; employees exempt; restricted application of article.—Any firm, partnership or corporation may engage in the tile contracting business in this state, provided, one member of said firm, partnership or corporation is a licensed tile contractor actually employed by said firm, partnership or corporation, and personally present in charge of such tile contracting work. No license shall be required of any mechanic or employee of a licensed tile contractor performing duties for the employer. Provided, however, that none of the provisions of this article shall apply to jobs in which the total cost of tile, labor and other materials necessary for laying same is less than one hundred and fifty dollars ($150.00). (1937, c. 86, s. 10; 1941, c. 219, s. 10.)

§ 87-38. Penalty for misrepresentation or fraud in procuring or maintaining license certificate.—Any person, firm, or corporation not being duly licensed to engage in tile contracting in this state as provided for in this article who engages therein, and any person, firm, or corporation presenting as his own the license certificate of another or who shall give false or forged evidence of any kind to the board or any member thereof in maintaining a certificate of license, or who shall falsely impersonate another, or who shall use an expired or revoked certificate of license, or an architect, engineer or contractor who receives or considers a bid from any one not properly licensed under this article, shall be guilty of misdemeanor, and for each offense of which he is convicted be punished by a fine of not less than two hundred ($200.00) dollars, or by imprisonment of not less than two months or both fined and imprisoned in the discretion of the court. (1937, c. 86, s. 11; 1939, c. 75, s. 4.)

Art. 4. Electrical Contractors.

§ 87-39. Board of examiners created; members appointed and officers; terms; principal office; meetings; quorum; compensation and expenses.—A state board of examiners of electrical contractors is hereby created, which shall consist of the state electrical engineer, who shall act as chairman of the board, the secretary of the association of electrical contractors of North Carolina, and three other members to be appointed by the governor as follows: One from the faculty of the engineering school of the Greater University of North Carolina, one person who is serving as chief electrical inspector of a municipality in the state of North Carolina, and one representative of a firm, partnership or corporation located in the state of North Carolina and engaged in the business of electrical contracting. Of the three appointed members one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, and until their respective successors are appointed and qualified; and thereafter each appointment shall be for a term of three years. The principal office of the board shall be at such place as shall be designated by a majority of the members thereof. The board of examiners shall hold regular meetings quarterly and may hold special meetings on call of the chairman. They shall annually appoint and at their pleasure remove a secretary-treasurer, who need not be a member of the board, and whose duties shall be prescribed and whose compensation shall be fixed by the board. Three members of the board shall constitute a quorum. The appointive members of the board shall be entitled to receive the sum of seven dollars ($7.00) and actual and necessary expenses for each day actually devoted to the performance of their duties under this article: Provided, however, that none of the expenses of said board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the state of North Carolina; and neither the board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt or other financial obligation binding upon the state of North Carolina. (1937, c. 87, s. 1.)

§ 87-40. Board to appoint secretary-treasurer within thirty days; bond required; oath of membership.—The board of examiners of electrical

contractors shall within thirty days after its appointment meet at the time and place designated by the chairman and appoint a secretary-treasurer. The secretary-treasurer shall give a bond approved by the board for the faithful performance of his duties in such form as the board may from time to time prescribe. The board shall have a common seal and shall formulate rules to govern its actions and may take testimony and proof concerning all matters within its jurisdiction. Before entering upon the performance of their duties hereunder each member of the board shall take and file with the secretary of state an oath in writing to properly perform the duties of his office as a member of said board, and to uphold the constitution of North Carolina and the constitution of the United States. (1937, c. 87, s. 2.)

§ 87-41. Seal for board; duties of secretary-treasurer; surplus funds; contingent or emergency fund.—The board shall adopt a seal for its own use. The seal shall have inscribed thereon the words "board of examiners of electrical contractors, state of North Carolina," and the secretary shall have charge and custody thereof. The secretary-treasurer shall keep a record of the proceedings of said board and shall receive and account for all moneys derived under the operations of this article. Any funds remaining in the hands of the secretary-treasurer to the credit of the board after the expenses of the board for the current year have been paid shall be paid over to the electrical engineering department of the Greater University of North Carolina to be used for electrical experimentations: Provided, however, the board shall have the right to retain as a contingent or emergency fund ten per cent of such gross receipts in each year of its operation. (1937, c. 87, s. 3.)

§ 87-42. Board to give examinations and issue licenses.—It shall be the duty of the board of examiners of electrical contractors to receive all applications for licenses filed by persons, or representatives of firms or corporations seeking to enter upon or continue in the electrical contracting business within the state of North Carolina, as such business is herein defined, and upon proper qualification of such applicant to issue the license applied for; to prescribe the conditions of examination of, and, subject to the provisions of this article, to give examinations to all persons who are under the provisions of this article required to take such examination. (1937, c. 87, s. 4.)

§ 87-43. Persons required to obtain licenses; examination required; licenses for firms or corporations.—No person, firm or corporation shall engage in the business of installing, maintaining, altering or repairing within the state of North Carolina any electric wiring, devices, appliances or equipment for which a permit is now or may hereafter be required by the statutes of the state of North Carolina, or by municipal or county ordinances in the county in which such work is undertaken, dealing with the erection and inspection of buildings and fire protection and electrical installation unless such person, firm or corporation shall have received from the board of examiners of electrical contractors an electrical contractor's license: Provided, however, that the provisions of this article shall not apply (a) to the installation, construction, or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter; (b) to the installation, construction, maintenance, or repair of telephone, telegraph, or signal systems by public utilities; (c) to any mechanic employed by a licensee of this board; (d) to the installation, construction or maintenance of electrical equipment and wiring for temporary use by contractors in connection with the work of construction; (e) to the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by persons, firms or corporations, upon their own property, who maintain in regular and full-time employment electricians, when such electricians are employed and engaged exclusively by such persons, firms or corporations; (f) to the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by state institutions and private educational institutions which maintain a private electrical department. No license shall be issued by said board without an examination of the applicant for the purpose of ascertaining his qualifications for such work, but no such examination shall be required for the annual renewal of such license: Provided, however, that persons, firms or corporations residing in the state of North Carolina on March 1, 1937, who have paid the license fees required of electrical contractors by the State Revenue Act of one thousand nine hundred and thirty-five, upon proper certification or establishment of such fact, shall be granted a license by the board of examiners under this article without examination. Firms or corporations shall be eligible to secure licenses from the board of examiners provided they have in their respective organizations at least one person duly qualified as an electrical contractor under the provisions of this article. No license or renewal of any license shall be issued to any applicant until the fees herein prescribed shall have been paid. (1937, c. 87, s. 5.)

§ 87-44. Fees for licenses.—Before a license is granted to any applicant, and before any expiring license is renewed, the applicant shall pay to the board of examiners of electrical contractors a fee in such an amount as is herein specified for the license to be granted or renewed as follows:

For a Class 1, Electrical Contractor's License, state-wide $25.00

For a Class 2, Electrical Contractor's License, for one county only 5.00

(1937, c. 87, s. 6.)

§ 87-45. Licenses expire on June 30th, following issuance; renewal; fees used for administrative expense.—Each license issued hereunder shall expire on June thirtieth following the date of its issuance, and shall be renewed by the board of examiners of electrical contractors upon application of the holder of the license and payment of the required fee at any time within thirty days before the date of such expiration. Licenses renewed subsequent to the date of expiration thereof may in the discretion of the board be subject to a penalty not exceeding ten per cent. The fees collected for licenses under this article shall be used for the expenses of the board of examiners in carrying out the provisions of this article, subject to the provisions herein made with reference

to payment of surplus to the electrical engineering department of the Greater University of North Carolina for electrical experimental purposes. (1937, c. 87, s. 7.)

§ 87-46. Examination before local examiner.—In order that applicants for licenses hereunder who are by the provisions of this article required to take an examination before the issuance thereof shall not be subject to any unreasonable inconvenience in connection therewith, the board of examiners of electrical contractors may, and upon the request of the board of commissioners of any county shall delegate to the electrical inspector of the county in which such applicant resides, or if there be no county electrical inspector, then to the electrical inspector of any municipality therein, the authority to conduct examinations of such applicant or applicants residing in such county, such examination, however, to be as prescribed by the board of examiners. In such an event the local examiner herein provided for shall transmit to the board of examiners of electrical contractors the results of such examination, and, if approved by the board, licenses on the basis of such examination shall be issued to the applicants upon the payment of the fees herein prescribed. (1937, c. 87, s. 8.)

§ 87-47. License signed by chairman and secretary-treasurer under seal of board; display in place of business required; register of licenses; records. — Licenses issued hereunder shall be signed by the chairman and the secretary-treasurer of the board of examiners, under the seal of the board. Every holder of license shall keep his certificate of license displayed in a conspicuous place in his principal place of business. The secretary of the board shall keep a register of all licenses to electrical contractors, which said register shall be open during the ordinary business hours for public inspection. The board of examiners shall keep minutes of all of its proceedings and an accurate record of its receipts and disbursements, which record shall be audited at the close of each fiscal year by a certified public accountant, and within thirty days after the close of each fiscal year a summary of its proceedings and a copy of the audit of its books shall be filed with the governor and the treasurer of the state. (1937, c. 87, s. 9.)

§ 87-48. Licenses not assignable or transferable; suspension or revocation.—No license issued in accordance with the provisions of this article shall be assignable or transferable. Any such license may, after hearing, be suspended for a definite length of time or revoked by the board of examiners if the person, firm or corporation holding such license shall wilfully or by reason of incompetence violate any of the statutes of the state of North Carolina, or any ordinances of any municipality or county relating to the installation, maintenance, alteration or repair of electric wiring, devices, appliances or equipment. (1937, c. 87, s. 10.)

§ 87-49. License does not relieve compliance with codes or laws.—Nothing in this article shall relieve the holder or holders of licenses issued under the provisions hereof from complying with the building or electrical codes or statutes or ordinances of the state of North Carolina, or of any county or municipality thereof, now in force or hereafter enacted. (1937, c. 87, s. 11.)

§ 87-50. Responsibility for negligence; non-liability of board.—Nothing in this article shall be construed as relieving the holder of any license issued hereunder from responsibility or liability for negligent acts on the part of such holder in connection with electrical contracting work; nor shall the board of examiners of electrical contractors be accountable in damages, or otherwise, for the negligent act or acts of any holder of such license. (1937, c. 87, s. 12.)

§ 87-51. Penalty for violation of article.—Any person, firm or corporation who shall violate any of the provisions of this article, or who shall engage or undertake to engage in the business of electrical contracting as herein defined, without first having obtained a license under the provisions of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars ($25.00) or more than fifty dollars ($50.00) for each offense. Conviction of a violation of this article on the part of a holder of a license issued hereunder shall automatically have the effect of suspending such license until such time as it shall have been reinstated by the board of examiners of electrical contractors. (1937, c. 87, s. 13.)

Chapter 88. Cosmetic Art.

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§ 88-1. Practice of cosmetology regulated. — —On and after June thirtieth, one thousand nine hundred and thirty-three, no person or combination of persons shall for pay, or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the state of North Carolina without a certificate of registration, either as a registered apprentice or as a registered "cosmetologist," issued pursuant to the provisions of this chapter by the state board of cosmetic art examiners hereinafter established. (1933, c. 179, s. 1.)

§ 88-2. Cosmetic art.—Any one or a combination of the following practices, when done for pay, or reward, shall constitute the practice of cosmetic art in the meaning of this chapter:

The systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders and hands; the use of cosmetic preparations and antiseptics; manicuring; cutting, dyeing, cleansing, arranging, dressing, waving, and marcelling of the hair, and the use of electricity for stimulating growth of hair. (1933, c. 179, s. 2.)

§ 88-3. Cosmetologist.—"Cosmetologist" is any person who, for compensation, practices cosmetic art, or conducts, or maintains a cosmetic art shop, beauty parlor, or hairdressing establishment. (1933, c. 179, s. 3.)

§ 88-4. Beauty parlor, etc. — "Cosmetic art shop," "beauty parlor," or "hairdressing establishment" is any building, or part thereof wherein cosmetic art is practiced. (1933, c. 179, s. 4.)

§ 88-5. Manager. — "Manager," or "managing cosmetologist," as used in this chapter, is defined as any person who has direct supervision over operators, or apprentices in a cosmetic art shop, beauty parlor, or hairdressing establishment. (1933, c. 179, s. 5.)

§ 88-6. Operator. — "Operator" is any person who is not a manager, itinerant, or apprentice cosmetologist, who practices cosmetic art under the direction and supervision of a managing cosmetologist. (1933, c. 179, s. 6.)

§ 88-7. Itinerant cosmetologist; application of chapter.—"Itinerant cosmetologist" is any person who practices as a business cosmetic art outside of a cosmetic art shop, beauty parlor, or hairdressing establishment, either in going from house to house or from place to place at regular, or irregular intervals: Provided, this chapter shall not apply to persons attending female institutions of learning, who defray the cost or a part of the cost of such attendance by the occasional practice of cosmetic art as defined herein, or to persons practicing the cosmetic art in rural communities without the use of mechanical appliances. (1933, c. 179, s. 7.)

§ 88-8. Manicurist.—"Manicurist" is any person who does manicuring only, outside of a cosmetic art shop, beauty parlor, or hairdressing establishment, for compensation. (1933, c. 179, s. 8.)

§ 88-9. Apprentice. — "Apprentice" is any person who is not a manager, itinerant cosmetologist, or operator, who is engaged in learning and acquiring the practice of cosmetic art under the direction and supervision of a licensed managing cosmetologist. (1933, c. 179, s. 9.)

§ 88-10. Qualifications for certificate of registration.—No person shall be issued a certificate of registration as a registered apprentice by the state board of cosmetic art examiners, hereinafter established—

(a) Unless such person is at least eighteen years of age.

(b) Unless such person passes a satisfactory physical examination prescribed by the said board of cosmetic art examiners.

(c) Unless such person has completed at least one thousand hours in classes in a reliable cosmetic art school, or college approved by said board of cosmetic art examiners.

(d) Unless such person passes the examination prescribed by the board of cosmetic art examiners and pays the required fees hereinafter enumerated. (1933, c. 179, s. 10; 1941, c. 234, s. 1.)

§ 88-11. When apprentice may operate shop.— No registered apprentice, registered under the provisions of this chapter, shall operate a cosmetic art beauty shop, beauty parlor, or hairdressing establishment in this state, but must serve his or her period of apprenticehip under the direct supervision of a registered managing cosmetologist as required by this chapter: Provided, however, that any apprentice who, on June 30, 1933, is regularly employed under the direct supervision of one who is entitled to registration as a managing cosmetologist under the provisions of § 88-19 shall, upon recommendation of such managing cosmetologist, and upon passing a satisfactory physical examination, be entitled to registration as a registered cosmetologist. (1933, c. 179, s. 11.)

§ 88-12. Qualifications for registered cosmetologist. — Any person to practice cosmetic art as a registered cosmetologist must have worked as a registered apprentice for a period of at least six months under the direct supervision of a registered managing cosmetologist, and this fact must be demonstrated to the board of cosmetic art examiners by the sworn affidavit of three registered cosmetologists, or by such other methods of proof as the board may prescribe and deem necessary. A certificate of registration as a registered cosmetologist shall be issued by the board, hereinafter designated, to any person who is qualified under the provisions of this chapter, or meets the following qualifications:

(a) Who is qualified under the provisions of section ten of this chapter.

(b) Who is at least nineteen years of age.

(c) Who passes a satisfactory physical examination as prescribed by said board.

(d) Who has practiced as a registered apprentice for a period of six months, under the immediate personal supervision of a registered cosmetologist; and

(e) Who has passed a satisfactory examination, conducted by the board, to determine his or her fitness to practice cosmetic art, such examination to be prepared and conducted, as to determine whether or not the applicant is possessed of the requisite skill in such trade, to properly perform all the duties thereof, and services incident thereto, and has sufficient knowledge concerning the diseases of the face, skin, and scalp, to avoid the aggravation and spreading thereof in the practice of said profession. (1933, c. 179, s. 12.)

§ 88-13. State board of cosmetic art examiners created; appointment and qualifications of members; term of office; removal for cause. — A board to be known as the state board of cosmetic art examiners is hereby established, to consist of three members appointed by the governor of the State. Each member shall be an experienced cosmetologist, who has followed the practice of all branches of the cosmetic art in the State of North Carolina for at least five years next preceding his or her appointment, and who, during such period of time, and at the time of appointment, shall be free of connection in any manner with any cosmetic art school or college or academy or training school. The appointment of the governor shall be for a term of three years. The governor, at his option, may remove any member for good cause shown and appoint members to fill unexpired terms. (1933, c. 179, s. 13; 1935, c. 54, s. 2.)

§ 88-14. Office in Raleigh.—The board of cosmetic art examiners shall maintain a suitable office in Raleigh, North Carolina, and shall adopt and use a common seal for the authentication of its orders and records. Said board shall elect its own officers, and in addition thereto, shall elect a full time secretary, which secretary shall receive an annual salary not to exceed one thousand eight hundred dollars, such salary, as well as all other expenses of said board, to be paid only out of the revenue derived from fees collected under the provisions of this chapter. Said full time secretary shall keep and preserve all the records of the board, issue all necessary notices to the registered cosmetologists and apprentices of the state, and perform such other duties, clerical and otherwise, as may be imposed upon him, or her, as the case may be, by said board of cosmetic art examiners. Said full time secretary is hereby authorized and empowered to collect, in the name and on behalf of the board, the fees prescribed in this chapter, and shall turn over all moneys so collected into such state or national bank or trust company as shall be designated and selected by the board as a depository for such funds; and said secretary shall make full and complete report of such collections from the records of his office as and when required by the chairman of the board. Such secretary shall, upon entering upon the duties of office, execute a bond unto the state of North Carolina with a duly licensed bonding company doing business in this state as surety, or with other surety acceptable to said board, such bond to be in the penal sum of ten thousand dollars and to be conditioned upon the faithful performance of the duties of the office, and faithful and correct accounting for the moneys received.

The fund thus accumulated shall be disbursed under the provisions of this chapter, on vouchers or checks signed by the chairman and secretary, for the purposes of this chapter, and accounting rendered annually of receipts and disbursements as hereinafter provided in § 88-15. (1933, c. 179, s. 14.)

§ 88-15. Compensation and expenses of board members; inspectors; attorneys; reports. — Each member of the board of cosmetic art examiners, as herein created, shall receive for his or her services the sum of not more than seven dollars and fifty cents per day for each day actually spent in the performance of his or her duties, and shall be reimbursed for actual necessary expenses incurred in the discharge of their duties. Said board shall appoint three inspectors, who shall be experienced in all branches of cosmetic art, at a salary not to exceed two hundred and twenty-five dollars ($225.00) per month, this sum to cover salary and expenses incurred in the discharge of such duties as they may be called upon to perform, and shall have authority to employ attorneys such as, in their judgment, may be needed in the administration of this chapter. The inspectors or agents so appointed shall perform such duties as may be prescribed by the board. Any inspector, appointed under authority of this section, or any member of the board shall have the authority at all reasonable hours to examine cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies or training schools with respect to their compliance with the provisions of this chapter. The inspectors and agents appointed under authority of this chapter shall make such reports to the board as it may require. All amounts paid out under this section shall be only from funds derived from fees collected in the administration of this chapter. (1933, c. 179, s. 15; 1935, c. 54, s. 3; 1941, c. 234, s. 2.)

§ 88-16. Applicants for examination.—Each applicant for an examination shall:

(a) Make application to the board of cosmetic art examiners on blank forms prepared and furnished by the full time secretary, such application to contain proof under the applicant's oath of the particular qualifications of the applicant.

(b) Pay to the secretary of the said board the required examination fee, hereinafter established.

(c) All applications for said examination must be filed with the full time secretary at least thirty days prior to the actual taking of such examination by applicant. (1933, c. 179, s. 16.)

§ 88-17. Regular and special meetings of board; examinations. — The board of cosmetic art examiners shall meet four times a year in the months of January, April, July and October on the first Tuesday in each of said months, for the purpose of transacting all business of the board of cosmetic art examiners and to conduct exam-

inations of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificates of registration to practice as registered apprentices, meetings to be held at such places as the board may determine to be most convenient for such examinations. The examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be open to all applicants, and shall include such practical demonstration and oral and written tests as the said board may determine. The chairman of the board is hereby authorized and empowered to call a meeting of said board whenever necessary, said meetings to be in addition to the quarterly meetings hereinbefore provided for. (1933, c. 179, 17; 1935, c. 54, s. 4.)

§ 88-18. Certificate of registration. — Whenever the provisions of this chapter have been complied with, the said board shall issue or cause to be issued, a certificate of registration as registered cosmetologist, or as a registered apprentice to the applicant, as the case may be. (1933, c. 179, s. 18.)

§ 88-19. Admitting operators from other states. —Persons who have practiced cosmetic art in another state and who move into this state shall prove and demonstrate his, or her fitness, physical and otherwise, as set out in §§ 88-10 and 88-12, to the board of cosmetic art examiners, as herein created, and as herein provided, before they will be issued a certificate of registration to practice cosmetic art, but said board may issue such temporary permits as are necessary. (1933, c. 179, s. 19.)

88-20. Registration procedure. — The procedure for the registration of present practitioners of cosmetic art shall be as follows:

(a) Every person who has been practicing cosmetic art in North Carolina and who is practicing such art on June 30, 1933, upon making an affidavit to that effect, and complying with the provisions of this chapter as to physical fitness, and upon paying the required fee to the board of cosmetic art examiners shall be issued a certificate of registration as a registered cosmetologist.

(b) Any person who, on June 30, 1933, is operating a shop as a managing cosmetologist, shall, upon making an affidavit to that effect, and complying with the provisions of this chapter as to physical fitness and upon paying the required fee to the board of cosmetic art examiners be issued a certificate of registration as a managing cosmetologist.

(c) Any person who, on June 30, 1933, is regularly employed under a person who has registered as a managing cosmetologist shall be entitled to register as a cosmetologist as provided in § 88-11.

(d) All persons who are not actively engaged in the practice of cosmetic art on June 30, 1933, shall be required to comply with all of the provisions of this chapter.

(e) All persons, however, who do not make application prior to January 1, 1942, shall be required to take the examination prescribed by the State Board of Cosmetic Art Examiners and otherwise comply with the provisions of this chapter, as amended, before engaging in the practice of cosmetic art. (1933, c. 179, s. 20; 1941, c. 234, s. 3.)

§ 88-21. Fees required.—The fee to be paid by an applicant for a certificate of registration to practice cosmetic art as an apprentice shall be three dollars. The fee to be paid by an applicant for examination to determine his or her fitness to receive a certificate of registration as a registered cosmetologist shall be five dollars. The annual license fee of a registered cosmetologist shall be three dollars fifty cents, while the annual license fee of a registered apprentice shall be two dollars fifty cents. All licenses, both for apprentices and registered cosmetologists, shall be renewed as of the 30th day of June each and every year; such renewals for apprentices shall be two dollars fifty cents, and for registered cosmetologists three dollars fifty cents. The fees herein set out shall not be increased by the board of cosmetic art examiners, but said board may regulate the payment of said fees and pro-rate the license fees in such manner as it deems expedient. The fee for registration of an expired certificate for a registered cosmetologist shall be five dollars and registration of an expired certificate of an apprentice shall be three dollars. (1933, c. 179, s. 21.)

§ 88-22. Persons exempt.—The following persons are exempt from the provisions of this chapter while engaged in the proper discharge of their professional duties:

(a) Persons authorized under the laws of the state to practice medicine and surgery.

(b) Commissioned medical or surgical officers of the United States army, navy, or marine hospital services.

(c) Registered nurses.

(d) Undertakers.

(e) Registered barbers.

(f) Manicurists as herein defined. (1933, c. 179, s. 22.)

§ 88-23. Rules and regulations of board. — The state board of cosmetic art examiners shall have authority to make reasonable rules and regulations for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have such rules and regulations enforced. The duly authorized agents of said board shall have authority to enter upon and inspect any shop or school at any time during business hours. A copy of the rules and regulations adopted by said board and approved by the state board of health shall be furnished from the office of the board or by the above mentioned authorized agents to the owner or manager of each shop or school in the State, and such copy shall be kept posted in a conspicuous place in each shop and school. (1933, c. 179, s. 23; 1935, c. 54, s. 5.)

§ 88-24. Posting of certificates. — Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his, or her work chair. (1933, c. 179, s. 24.)

§ 88-25. Annual renewal of certificates.—Every registered cosmetologist and every registered apprentice, who continues in active practice or

service shall annually, on or before June 30th, of each year, file with the secretary of the board, a renewal certificate as to physical fitness, renew his, or her certificate of registration which has not been renewed prior to, or during the month of July in any year, and which shall expire on the first day of August in that year. A registered cosmetologist, or a registered apprentice whose certificate of registration has expired may have his or her certificate restored immediately upon payment of the required restoration fee, and furnishing to the secretary of the board renewal certificate as to physical fitness. Any registered cosmetologist who retires from the practice of cosmetic art for not more than three years may renew his or her certificate of registration upon payment of the required restoration fee, and by furnishing to the secretary of the board renewal certificate as to physical fitness. (1933, c. 179, s. 25.)

§ 88-26. Causes for revocation of certificates. —The board of cosmetic art examiners may either refuse to issue or renew, or may suspend, or revoke any certificate of registration for any one, or combination of the following causes:

(a) Conviction of a felony shown by certified copy of the record of the court of conviction.

(b) Gross malpractice, or gross incompetency, which shall be determined by the board of cosmetic art examiners.

(c) Continued practice by a person knowingly having an infectious, or contagious disease.

(d) Advertising by means of knowingly false, or deceptive statements.

(e) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.

(f) The commission of any of the offenses described in § 88-28, sub-sections (c), (d), (f) and (g). (1933, c. 179, s. 26; 1941, c. 234, s. 4.)

§ 88-27. Hearing on charges. — The board may neither refuse to issue, nor refuse to renew, nor suspend, nor revoke any certificate of registration, however, for any of these causes, unless the person accused has been given at least thirty days notice in writing of the charge against him or her and public hearing by the board of cosmetic art examiners.

(a) Upon the hearing of any such proceeding, the board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers.

(b) Any cosmetologist in the state whose case has been passed upon by the board of cosmetic art examiners shall have the right to appeal to the superior court of the state, which court may in its discretion reverse, or modify any order made by the said board of cosmetic art examiners. (1933, c. 179, s. 27; 1939, c. 218, s. 1.)

§ 88-28. Acts made misdemeanors. — Each of the following constitutes a misdemeanor punishable upon conviction by a fine of not less than $10.00 and not more than $50.00, or imprisonment for not less than ten days, or more than thirty days:

(a) The violation of any of the provisions of § 88-1.

(b) Permitting any person in one's employ, supervision, or control to practice as an apprentice unless that person has a certificate of registration as a registered apprentice.

(c) Permitting any person in one's employ, supervision, or control, to practice as a cosmetologist unless that person has a certificate as a registered cosmetologist.

(d) Obtaining, or attempting to obtain, a certificate of registration for money other than required fee, or any other thing of value, or by fraudulent misrepresentations.

(e) Practicing or attempting to practice by fraudulent misrepresentations.

(f) The willful failure to display a certificate of registration as required by § 88-24.

(g) The willful and continued violation of the reasonable rules and regulations adopted by the state board of cosmetic art examiners, and approved by the state board of health, for the sanitary management of shops and schools. (1933, c. 179, s. 28.)

§ 88-29. Records to be kept by board.—The board of cosmetic art examiners shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business, and residence of each registered cosmetologist and registered apprentice, and the date and number of his certificate of registration. This record shall be open to public inspection during all days, excepting Sundays and legal holidays. (1933, c. 179, s. 29.)

Chapter 89. Engineering and Land Surveying.

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89-1. Qualification to practice; registration.
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89-10. Expiration and renewal of certificates.
89-11. Revocation of license; reissue of revoked license; reinstatement; lost certificate.
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§ 89-1. Qualification to practice; registration.—In order to safeguard life, health, and property, any person practicing or offering to practice engineering or land surveying in this state shall hereafter be required to submit evidence that he or she is qualified so to practice, and shall be registered as hereinafter provided; and from February 25, 1922, it shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this state, except as herein provided, unless such person has been duly registered under the provisions of this chapter. (1921, c. 1, s. 1; C. S. 6055(b).)

§ 89-2. Private practice.—Nothing in this chapter shall be construed as requiring registration for the purpose of practicing engineering or land surveying by an individual, firm, or corporation on property owned or leased by said individual, firm, or corporation, unless the same involves the public safety or health. (1921, c. 1, s. 2; C. S. 6055(c).)

§ 89-3. State board of registration for engineers and surveyors.—There is hereby created a state board of registration for engineers and land surveyors, hereinafter called the "board," consisting of five members, who shall be appointed by the governor within sixty days after this chapter becomes effective. At least two members of such board shall be appointed from the engineering faculty of the North Carolina state college of agriculture and engineering of the University of North Carolina. Not more than three members of said board shall be from the same branch of the profession of engineering. The members of the first board shall be appointed to serve for the following terms: Two members for one year, two members for two years, and one member for four years; said terms ending on the thirty-first day of December of the succeeding year. On the expiration of each of said terms the term of office of each newly appointed or reappointed member of the board shall be for a period of four years and shall terminate on the thirty-first day of December. Each member shall hold over after the expiration of his term until his successor shall be duly appointed and qualified. The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board, however created, shall be filled by appointment by the governor for the unexpired term. (1921, c. 1, s. 3; C. S. 6055(d).)

§ 89-4. Requisites for appointment; pay.—Each member of the board shall be a citizen of the United States and a resident of this state at the time of his appointment. He shall have been engaged in the practice or teaching of his profession for at least ten years. Each member of the board shall receive ten dollars ($10) per day for attending sessions of the board or of its committees, and for the time spent in necessary travel, and, in addition, shall be reimbursed for all necessary traveling, incidental, and clerical expenses incurred in carrying out the provisions of this chapter. (1921, c. 1, s. 4; C. S. 6055(e).)

§ 89-5. Certificate of appointment; oath; certificate of registration; seal; by-law.—Each member of the board shall receive a certificate of appointment from the governor, and before beginning his term of office he shall file with the secretary of state the constitutional oath of office. Each member of the board first created shall receive a certificate of registration under this chapter from the governor of the state. The board shall have power to compel the attendance of witnesses, may administer oaths and may take testimony and proofs concerning all matters within its jurisdiction. The board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted; and shall make all by-laws and rules not inconsistent with law, needed in performing its duty. (1921, c. 1, s. 5; C. S. 6055(f).)

§ 89-6. Meetings; notice; quorum.—The board shall hold a meeting within thirty days after its members are first appointed, and thereafter shall hold at least two regular meetings each year. Special meetings shall be held at such times as the by-laws of the board may provide. Notice of all meetings shall be given in such manner as the by-laws may provide. The board shall elect annually from its members a chairman, a vice-chairman, and a secretary. A quorum of the board shall consist of not less than three members. (1921, c. 1, s. 6; C. S. 6055(g).)

§ 89-7. Fund of board; bond of secretary of board.—The secretary of the board shall receive and account for all moneys derived from the operation of this chapter and shall pay them to the state treasurer, who shall keep such moneys in a separte fund, to be known as the "Fund of the Board of Registration for Engineers and Land Surveyors," which fund shall be continued from year to year, and shall be drawn against only for the purpose of this chapter as herein provided. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of said fund on the warrant of the auditor of the state, issued on requisition signed by the chairman and secretary of the board: Provided, however, that at no time shall the total of warrants issued exceed the total amount of funds accumulated under this chapter. The secretary of the board shall give a surety bond satisfactory to the state treasurer, conditioned upon the faithful performance of his duties. The premium on said bond shall be regarded as a proper and necessary expense of the board. (1921, c. 1, s. 7; C. S. 6055(h).)

§ 89-8. Record of proceedings and register of applicants; roster of engineers and surveyors; annual report.—The board shall keep a record of its proceedings and a register of all applicants for registration showing for each the date of application, name, age, education and other qualifications, place of business and place of residence, and whether the applicant was rejected or a certificate of registration granted, and the date of such action. The books and register of the board shall be prima facie evidence of all matters recorded therein. A roster showing the names and places of business and of residence of all registered engineers and land surveyors shall be prepared by the secretary of the board during the month of January of each year; such roster shall be printed by the board out of the

fund of the said board as provided in § 89-7, and a copy mailed to and placed on file by the clerk of each incorporated city, town and county in the state. On or before the first day of March of each year the board shall submit to the governor a report of its transactions for the preceding year, and shall file with the secretary of state copy of such report, together with a complete statement of the receipts and expenditures of the board, attested by the affidavits of the chairman and the secretary, and a copy of the said roster of registered engineers and registered surveyors. (1921, c. 1, s. 8; C. S. 6055(i).)

§ 89-9. Certificates; issuance; fees; eligibility of applicants.—The board shall, on application therefor, on prescribed form, and the payment of a fee of twenty-five dollars ($25) by engineers, or the payment of a fee of ten dollars ($10) by land surveyors, issue a certificate of registration:

(1) To any person who submits evidence satisfactory to the board that he or she is fully qualified to practice engineering, or land surveying, such evidence after January first, one thousand nine hundred and twenty-three, to include an examination, oral or written; or

(2) To any person who holds a like unexpired certificate of registration issued to him or her by proper authority in any state or territory of the United States in which the requirements for the registration of engineers or land surveyors are of a standard satisfactory to the board: Provided, however, that the engineering registration board of said states or territories shall grant full and equal reciprocal registration rights and privileges to North Carolina registrants: Provided, however, that no person shall be eligible for registration who is under twenty-one years of age, who is not a citizen of the United States, who does not speak and write the English language, who is not of good character and repute.

Unless disqualifying evidence be before the board, the following facts established in the application shall be regarded as prima facie "evidence satisfactory to the board," that the applicant is fully qualified to practice engineering or land surveying, or both:

(a) Five (5) or more years of active engagement in engineering, or three or more years active practice in land surveying, February 25, 1921: Provided, however, each year of teaching, or of study satisfactorily completed, in a college of standing satisfactory to the board shall be considered as equivalent to one year of such active practice: Provided further, the period spent in the army, navy, marine corps, or other government service of the United States in the late war by any student whose engineering education was interrupted by such services shall also be counted as equivalent to an equal period of active practice: Provided, however, application for registration is made within twelve (12) months after February 25, 1921.

(b) Graduation, after a course of not less than four (4) years, in engineering from a school or college approved by the board as of satisfactory standing.

(c) Full membership in the American Society of Civil Engineers, American Institute of Chemical Engineers, American Institute of Electrical Engineers, American Society of Mechanical Engineers, American Institute of Mining and Metallurgical Engineers, American Society of Naval Architects and Marine Engineers, or such other national or state engineering or architectural societies as may be approved by the board, the requirements for full membership of which are not lower than the requirements for full membership in the professional societies or institutes named above.

Applicants for registration, in cases where the evidence originally presented in the application does not appear to the board conclusively or warranting the issuance of a certificate, may present further evidence which may include the results of a required examination, for the consideration of the board.

In case the board denies the issuance of a certificate to an applicant, the registration fee deposited shall be returned by the board to the applicant. (1921, c. 1, s. 9; C. S. 6055(j).)

Local Modification.—Macon: Pub. Loc. 1927, c. 657.

§ 89-10. Expiration and renewal of certificates.—Certificates of registration shall expire on the last day of the month of December following their issuance or renewal, and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify by mail every person registered hereunder of the date of the expiration of his certificate and the amount of the fee required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of January by the payment of a fee of five dollars ($5) to the secretary of the board. The failure on the part of any registrant to renew his certificate annually in the month of January, as required above, shall not deprive such person of the right of renewal thereafter, but the fee paid for the renewal of a certificate after the month of January shall be increased ten per cent for each month or fraction of a month that payment for renewal is delayed: Provided, however, that the maximum fee for a delayed renewal shall not exceed twice the normal fee. (1921, c. 1, s. 9; C. S. 6055(k).)

§ 89-11. Revocation of license; reissue of revoked license; reinstatement; lost certificate.—The board shall have the power to revoke the certificate of registration of any engineer or land surveyor registered hereunder who is found guilty of any fraud or deceit in obtaining a certificate of registration, or gross negligence, incompetency or misconduct in the practice of engineering or land surveying. Any person may prefer charges of such fraud, deceit, negligence, incompetency or misconduct against any engineer or land surveyor registered hereunder; such charges shall be in writing and sworn to by the complainant and submitted to the board. Such charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within three (3) months after the date on which they are preferred. Hearings shall be in the county of the residence of the person whose license is involved; provided that

after notice such person and the board may agree that the hearing may be held in some other county. A copy of the charges, together with a notice of the time and place of hearing, shall be legally served on the accused at least thirty (30) days before the date fixed for the hearing, and in the event that such service cannot be effected thirty (30) days before such hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At said hearing the accused shall have the right to appear personally and by counsel, and to cross-examine witnesses against him or her and to produce evidence or witnesses in his or her defense. If after said hearing the board unanimously votes in favor of finding the accused guilty of any fraud or deceit in obtaining the certificate or of gross negligence, incompetency, or misconduct in the practice of engineering or land surveying, the board shall revoke the certificate of registration of the accused. The board may reissue a certificate of registration to any person whose certificate has been revoked: Provided, three or more members of the board vote in favor of such reissuance for reasons the board may deem sufficient. The board shall immediately notify the secretary of state and the clerk of each incorporated city, town or county in the state of its findings in the case of the revocation of a certificate of registration or of its reissuance of a revoked certificate of registration. A new certificate of registration to replace any certificate lost, destroyed or mutilated may be issued, subject to the rules and regulations of the board. (1921, c. 1, s. 10; 1939, c. 218, s. 2; C. S. 6055(l).)

§ 89-12. Evidence carried by certificate; seal of registrant. — The issuance of a certificate of registration by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered engineer or registered land surveyor, or both, while the said certificate remains unrevoked or unexpired. Each registrant hereunder shall, upon registration, obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered engineer," or "registered land surveyor." Plans, specifications, plats and reports issued by a registrant shall be stamped with said seal during the life of registrant's certificate, but it shall be unlawful for any one to stamp or seal any document or documents with said seal after the certificate of the registrant named thereon has expired or has been revoked unless said certificate has been renewed or reissued. (1921, c. 1, s. 11; C. S. 6055(m).)

§ 89-13. Acts declared misdemeanors; punishment.—Any person, who, after February 25, 1922, is not legally authorized to practice engineering or land surveying in this state, according to the provisions of this chapter, and shall practice or offer to practice engineering or land surveying in this state, except as provided in §§ 89-14 and 89-16, and any person presenting or attempting to file as his own the certificate of registration of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration, or who shall falsely impersonate any other practitioner, of like or different name, or who shall use an expired or revoked certificate of registration, shall be deemed guilty of a misdemeanor and shall for each such offense of which he is convicted be punished by a fine of not less than one hundred dollars ($100) or by imprisonment for three (3) months, or by both fine and imprisonment, in the discretion of the court. (1921, c. 1, s. 12; C. S. 6055(n).)

§ 89-14. Exemptions from operation of chapter. —The following shall be exempted from the provisions of this chapter:

(a) Any person or persons offering to practice in this state, as an engineer or land surveyor, not a resident of and having no established place of business in this state.

(b) Practice as an engineer or land surveyor in this state by any person not a resident of this state, and having no established place of business in this state, when this practice does not aggregate more than thirty (30) days in any calendar year: Provided, that said person is legally qualified for such professional service in his own state or country.

(c) Practice as an engineer or land surveyor in this state by any person not a resident of this state and having no established place of business in this state, or any person resident in this state but whose arrival in the state is recent: Provided, however, such person shall have filed an application for registration as an engineer or land surveyor and shall have paid the fee provided for in § 89-9. Such exemption shall continue for only such reasonable time as the board requires in which to consider and grant or deny the said application for registration.

(d) Engaging in engineering and land surveying work as an employee, or assistant, of a registered engineer or a registered land surveyor, or as an employee or assistant of a nonresident engineer or a nonresident land surveyor, provided for in paragraphs (b) and (c) of this section, provided that said work as an employee may not include responsible charge of design or supervision.

(e) Practice of engineering or land surveying by any person not a resident of and having no established place of business in this state, as a consulting associate or an architect, engineer or a land surveyor registered under the provisions of this chapter: Provided, the nonresident is qualified for such professional service in his own state or country.

(f) Practice of engineering and land surveying solely as an officer or as an employee of the United States. (1921, c. 1, s. 13; C. S. 6055(o).)

§ 89-15. Corporations and partnerships. — A corporation or partnership may engage in the practice of engineering or land surveying in this state: Provided, the person or persons connected with such corporation or partnership in charge of the designing or supervision which constitutes such practice is or are registered as herein required of engineers and land surveyors. The same exemptions shall apply to corporations and partnerships as apply to individuals under this chapter. (1921, c. 1, s. 14; C. S. 6055(p).)

§ 89-16. Land surveying. — Land surveying as covered by this chapter refers only to sur-

veys for the determination of areas, or for the establishment or reëstablishment of land boundaries and the subdivision and platting of land, and making plats, maps, and drawing descriptions of the lands or lines so surveyed, platted or investigated. Nothing in this chapter shall be construed as prohibiting a duly qualified registered engineer from making land surveys; nor as prohibiting any person from doing land surveying provided he does not represent himself to be a registered land surveyor. (1921, c. 1, s. 15; C. S. 6055(q).)

Local Modification.—Cumberland: 1937, c. 110.

§ 89-17. Fees of surveyors and chain-carriers.—Surveyors appointed by courts to survey any lands the boundaries of which may come in question in any suit or proceeding pending therein, or called upon by the commissioners to assist in surveying and dividing the lands of intestates or others, held in common, shall receive the following fees, and no other, namely: For every survey on an entry containing three hundred acres or less, one dollar and sixty cents, and for every hundred more than that quantity, forty cents; for surveying lands in dispute, by order of court, traveling to and from the place, and performing the duty, two dollars per day, or such greater sum as the court may allow; for assisting in surveying and dividing the lands of intestates, or others, held in common, when called upon by the commissioners appointed to make partition, or in laying off dower, traveling to and from the place, and performing the duty, two dollars per day. For assisting in surveying and allotting the homestead exemption of any person when summoned to do so by the sheriff or other lawful officer, for traveling to and from the place and performing the duty, two dollars per day, which shall be taxed in the bill of costs. In all surveys made by order of the court, the chain-carriers shall be allowed such compensation as the court may determine, not exceeding one dollar each per day; and in matters of disputed boundary, which may come in question, in any suit, the court may make to the surveyor such allowance for plots as it may deem reasonable, which, with the allowance to chain-carriers, shall be taxed as costs. (Rev., s. 2802; Code, s. 3754; 1893, c. 58, s. 2; 1905, cc. 182, 263; C. S. 3921.)

Local Modification.—Cabarrus: 1935, c. 202.

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Art. 1. Practice of Medicine.

§ 90-1. North Carolina medical society incorporated.—The association of regularly graduated physicians, calling themselves the state medical society, is hereby declared to be a body politic and corporate, to be known and distinguished by the name of The Medical Society of the State of North Carolina. (Rev., s. 4491; Code, s. 3121; 1858-9, c. 258, s. 1; C. S. 6605.)

§ 90-2. Board of examiners.—In order to properly regulate the practice of medicine and surgery, there shall be established a board of regularly graduated physicians, to be known by the title of The Board of Medical Examiners of the State of North Carolina, which shall consist of seven regularly graduated physicians. (Rev., s. 4492; Code, s. 3123; 1858-9, c. 258, ss. 3, 4; Ex. Sess. 1921, c. 44, s. 1; C. S. 6606.)

§ 90-3. Medical society appoints board. — The medical society shall have power to appoint the board of medical examiners. (Rev., s. 4493; Code, s. 3126; 1858-9, c. 258, s. 9; C. S. 6607.)

§ 90-4. Board elects officers and fills vacancies.—The board of medical examiners is authorized to elect all such officers and to frame all such by-laws as may be necessary, and in the event of any vacancy by death, resignation, or otherwise, of any member of said board, the board, or a quorum thereof, is empowered to fill such vacancy. (Rev., s. 4494; Code, s. 3128; 1858-9, c. 258, s. 11; C. S. 6608.)

§ 90-5. Meetings of board.—The board of medical examiners may assemble once in every year in the city of Raleigh, and shall remain in session from day to day until all applicants who may present themselves for examination within the first two days of this meeting have been examined and disposed of; other meetings in each year may be held at some suitable point in the state if deemed advisable. (Rev., s. 4495; 1915, c. 220, s. 1; 1935, c. 363; C. S. 6609.)

§ 90-6. Regulations governing applicants for license, examinations, etc.—The board of medical examiners is empowered to prescribe such regulations as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper. (1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 2; C. S. 6610.)

§ 90-7. Bond of secretary.—The secretary of the board of medical examiners shall give bond with good surety, to the president of the board, for the safe-keeping and proper payment of all moneys that may come into his hands. (Rev., s. 4497; Code, s. 3134; 1858-9, c. 258, s. 17; C. S. 6611.)

§ 90-8. Officers may swear applicants and summon witnesses. — The president and secretary of the board of medical examiners of this state shall have power to administer oaths to all persons who may apply for examination before the board, or to any other persons deemed necessary in connection with performing the duties of the board as imposed by law. The board shall have power to summon any witnesses deemed necessary to testify under oath in connection with any cause to be heard before it; or to summon any licentiate against whom charges are preferred in writing, and the failure of the licentiate, against whom charges are preferred, to appear at the stated time and place to answer to the charges, after due notice or summons has been served in writing, shall be deemed a waiver of his right to said hearing, as provided in § 90-14. (1913, c. 20, s. 7; Ex. Sess. 1921, c. 44, s. 3; C. S. 6612.)

§ 90-9. Examination for license; scope; conditions and prerequisites.—It shall be the duty of the board of medical examiners to examine for license to practice medicine or surgery, or any of the branches thereof, every applicant who complies with the following provisions: He shall, before he is admitted to examination, satisfy the board that he has an academic education equal to the entrance requirements of the University of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that he has passed an examination upon his literary attainments to meet the requirements of entrance in the regular course of the state university. He shall exhibit a diploma or furnish satisfactory proof of graduation from a medical college in good standing requiring an attendance of not less than four years, and supplying such facilities for clinical and scientific instruction as shall meet the approval of the board; but the requirement of four years attendance at a school shall not apply to those graduating prior to January the first, nineteen hundred.

The examination shall cover the following branches of medical science: anatomy, embryology, histology, physiology, pathology, bacteriology, surgery, pediatrics, medical hygiene, chemistry, pharmacy, materia medica, therapeutics, obstetrics, gynecology, and the practice of medicine.

If on such examination the applicant is found competent, the board shall grant him a license authorizing him to practice medicine or surgery or any of the branches thereof.

Five members of the board shall constitute a quorum, and four of those present shall be agreed as to the qualification of the applicant. (Rev., s. 4498; 1913, c. 20, ss. 2, 3, 6; 1921, c. 47, s. 1; C. S. 6613.)

§ 90-10. Two examinations, preliminary and final, allowed.—It shall be the duty of the state board of medical examiners to examine any applicant for license to practice medicine on the subjects of anatomy, histology, physiology, bacteriology, embryology, pathology, medical hygiene, and chemistry, upon his furnishing satisfactory evidence from a medical school in good standing, and supplying such facilities for anatomical and laboratory instruction as shall meet with the approval of the board, that he has completed the course of study in the school upon the subjects mentioned. The board shall set to the credit of such applicant upon its record books the grade made by him upon the examination, which shall stand to the credit of such applicant; and when he has subsequently completed the full course in medicine and presents a diploma of graduation from a medical college in good standing, requiring a four years course of study of medicine for graduation, and when he has completed the exam-

ination upon the further branches of medicine, to wit, pharmacy, materia medica, therapeutics, obstetrics, gynecology, pediatrics, practice of medicine and surgery, he shall have accounted to his credit the grade made upon the former examination, and if then upon such completed examination he be found competent, said board shall grant him a license to practice medicine and surgery, and any of the branches thereof. (1921, c. 47, s. 2; Ex. Sess. 1921, c. 44, s. 4; C. S. 6614.)

§ 90-11. Qualification of applicant for license.— Every person making application for a license to practice medicine or surgery in the state shall be not less than twenty-one years of age, and of good moral character, before any license can be granted by the board of medical examiners: Provided, that the age requirement shall not apply to students taking the examinations of the first two years in medicine. (1921, c. 47, s. 3; Ex. Sess. 1921, c. 44, s. 5; C. S. 6615.)

§ 90-12. Limited license. — The board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make such modifications of the requirements of the preceding sections, both as to application for examination and examination for license, as in its judgment the interests of the people living in that locality may demand, and may issue to such applicant a special license, to be entitled a "Limited License", authorizing the holder thereof to practice medicine and surgery within the limits only of the districts specifically described therein. The holder of the limited license practicing medicine or surgery beyond the boundaries of the district as laid down in said license shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars for each and every offense; and the board is empowered to revoke such limited license, in its discretion, after due notice. The clerk of the superior court, in registering the holder of a limited license, shall copy upon the certificate of registration and upon his record the description of the district given in the license. (1909, c. 218, s. 1; C. S. 6616.)

§ 90-13. When license without examination allowed.—The board of medical examiners shall in their discretion issue a license to any applicant to practice medicine and surgery in this state without examination if said applicant exhibits a diploma or satisfactory proof of graduation from a medical college in good standing, requiring an attendance of not less than four years and a license issued to him to practice medicine and surgery by the board of medical examiners of another state. (1907, c. 890; 1913, c. 20, s. 3; C. S. 6617.)

§ 90-14. Board may rescind license.—The board shall have the power to revoke and rescind any license granted by it, when, after due notice and hearing, it shall find that any physician licensed by it has been guilty of grossly immoral conduct, or of producing or attempting to produce a criminal abortion, or, by false and fraudulent representations, has obtained or attempted to obtain, practice in his profession, or is habitually addicted to the use of morphine, cocaine or other narcotic drugs, or has by false or fraudulent representations of his professional skill obtained, or attempted to obtain, money or anything of value, or has advertised or held himself out under a name other than his own, or has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which he holds a license, or is guilty of any fraud or deceit by which he was admitted to practice, or has been guilty of any unprofessional or dishonorable conduct unworthy of, and affecting, the practice of his profession, or has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude. Upon the hearing before said board of any charge involving a conviction of such felony or other criminal offense, a transcript of the record thereof certified by the clerk of the court in which such conviction is had, shall be sufficient evidence to justify the revocation or rescinding of such license. The findings and action of said board shall, in all such cases and hearings, be final and conclusive. And, for any of the above reasons, the said board of medical examiners may refuse to issue a license to an applicant. The said board of medical examiners may, in its discretion, restore a license so revoked and rescinded, upon due notice being given and hearing had, and satisfactory evidence produced of reformation of the licentiate. (1921, c. 47, s. 4; Ex. Sess. 1921, c. 44, s. 6; 1933, c. 32; C. S. 6618.)

§ 90-15. License fee; salaries, fees, and expenses of board.—Each applicant for examinations shall pay to the treasurer of the board of medical examiners of the state of North Carolina a fee of fifteen dollars ($15) before being admitted to the examination: Provided, however, that in the case of applicants taking the examinations in two halves, as provided in § 90-10, the fee shall be seven and one-half dollars ($7.50) for each of the two half examinations. Whenever any license is granted without examination, as authorized in § 90-13, the applicant shall pay to the treasurer of the board a fee of fifty dollars ($50). Whenever a limited license is granted, as provided in § 90-12, the person shall pay to the treasurer of the board a fee of fifteen dollars ($15). A fee of five dollars ($5) shall be paid for each duplicate license. All fees shall be paid in advance to the treasurer of the board of medical examiners of the state of North Carolina, to be by him held as a fund for the use of said board. The compensation and expenses of the members and officers of said board, and all expenses proper and necessary in the opinion of said board, to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of such funds, upon the warrant of the president and secretary of said board. The salaries and fees of the officers and members of the said board shall be fixed by the board, but shall not exceed ten dollars ($10) per day per member, and railroad fare and hotel expenses; and no expense shall be created to exceed the income from fees herein provided. Any unexpended sum or sums of money remaining in the treasury of the said board at the expiration of the terms of office of the members thereof, shall be paid over to their successors after their election and qualification as such. (Rev., s. 4501; Code, s. 3130; 1858-9, c. 258, s. 13; 1913, c.

20, ss. 4, 5; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 7; C. S. 6619.)

§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence.—The board of examiners shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the board present, the names of the applicants for license, and other information as to its actions. The board of examiners shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The board of examiners shall publish the names of those licensed in three daily newspapers published in the state of North Carolina, within thirty days after granting the same. A transcript of any such entry in the record books, or a certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this article, certified under the hand of the secretary and the seals of the board of medical examiners of the state of North Carolina, shall be admitted as evidence in any court of this state when it is otherwise competent. (Rev., s. 4500; Code, s. 3129; 1858-9, c. 258, s. 12; 1921, c. 47, s. 6; C. S. 6620.)

§ 90-17. Blanks furnished clerk.—It shall be the duty of the medical society of the state of North Carolina to prescribe proper form of certificates required by this article and all such blanks and forms as the clerk may need to enable him to perform his duties under this article. (Rev., s. 4505; 1889, c. 181, s. 7; 1899, c. 93, s. 4; C. S. 6621.)

§ 90-18. Practicing without license; practicing defined; penalties.—No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless he shall have been first licensed and registered so to do in the manner provided in this article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this article, he shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars ($50) nor more than one hundred ($100), or imprisoned at the discretion of the court for each and every offense.

Any person shall be regarded as practicing medicine or surgery within the meaning of this article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another person: Provided, that the following cases shall not come within the definition above recited:

1. The administration of domestic or family remedies in cases of emergency.

2. The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

3. The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

4. The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

5. The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

6. The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

7. The practice of midwifery by any woman who pursues the vocation of midwife.

8. The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

9. The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially § 90-129.

10. The practice of chiropractic by any legally licensed chiropractor when engaged in the manual adjustment of the twenty-four spinal vertebrae of the human body and without the use of drugs.

11. The practice of medicine or surgery by any reputable physician or surgeon in a neighboring state coming into this state for consultation with a resident registered physician. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this state.

12. Physicians who have a diploma from a regular medical college or were practicing medicine and surgery in this state prior to the seventh day of March, one thousand eight hundred and eighty-five, and who are properly registered as required by law.

13. Any person practicing Radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of x-rays. Any person shall be regarded as engaged in the practice of Radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of x-rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of x-rays; or who treats any disease or condition of the human body by the application of x-rays or radium. Nothing in this subsection shall prevent the practice of Radiology by any person licensed under the provisions of Articles 2, 5, 6, and 11 of chapter 110. (Rev., ss. 3645, 4502; Code, s. 3122; 1858-9, c. 258, s. 2; 1885, c. 117, s. 2; 1885, c. 261; 1889, c. 181, ss. 1, 2; 1921, c. 47, s. 7; Ex. Sess. 1921, c. 44, s. 8; 1941, c. 163; C. S. 6622.)

§ 90-19. Practicing without registration; penalties.—Any person desiring to engage in the practice of medicine or surgery shall personally appear before the clerk of the superior court of the county in which he resides or practices, for registration

as a physician or surgeon. The person so applying shall produce and exhibit before the clerk of the superior court a license obtained from the board of medical examiners of the state. The clerk shall thereupon register the date of registration, with the name and residence of such applicant, in a book to be kept for this purpose in his office marked "Register of Physicians and Surgeons," and shall issue to him a certificate of registration under the seal of the superior court of the county upon the form furnished him by the medical society of North Carolina, for which the clerk shall be entitled to collect from said applicant a fee of twenty-five cents. The person obtaining such certificate shall be entitled to practice medicine or surgery, or both, in the county where the same was obtained, and in any other county in this state; but if he shall remove his residence to another county he shall exhibit said certificate to the clerk of such other county and be registered, which registration shall be made by said clerk without fee or charge.

Any person who practices or attempts to practice medicine or surgery in this state without first having registered and obtained the certificate required in this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned at the discretion of the court, for each and every offense: Provided, this section shall not apply to women pursuing the vocation of midwife, nor to reputable physicians or surgeons resident in a neighboring state coming into this state for consultation with a registered physician of this state. (Rev., ss. 3646, 4504; 1889, c. 181, ss. 4, 5; 1891, c. 420; Ex. Sess. 1921, c. 44, s. 9; C. S. 6623.)

§ 90-20. Clerk punishable for illegally registering physician.—If any clerk of the superior court shall register, or issue a certificate to, any person practicing medicine or surgery in any other manner than that prescribed by law, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars and shall be removed from office. (Rev., s. 3647; 1889, c. 181, s. 6; C. S. 6624.)

§ 90-21. Certain offenses prosecuted in superior court; duties of attorney-general.—In case of the violation of the criminal provisions of §§ 90-18 to 90-20, the attorney-general of the state of North Carolina, upon complaint of the board of medical examiners of the state of North Carolina, shall investigate the charges preferred, and if in his judgment the law has been violated, he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending persons. A solicitor's fee of five dollars shall be allowed and collected in accordance with the provisions of § 6-12. The board of medical examiners may also employ, at their own expense, special counsel to assist the attorney-general or the solicitor.

Exclusive original jurisdiction of all criminal actions instituted for the violations of §§ 90-18 to 90-20 shall be in the superior court, the provisions of any special or local act to the contrary notwithstanding. (1915, c. 220, s. 2; C. S. 6625.)

Art. 2. Dentistry.

§ 90-22. Board of dental examiners continued; membership; term of office; vacancies; present members hold over.—The North Carolina state board of dental examiners heretofore created by chapter one hundred and thirty-nine, Public Laws, one thousand eight hundred and seventy-nine and by chapter one hundred and seventy-eight, Public Laws one thousand nine hundred and fifteen, is hereby continued as the agency of the State for the regulation of the practice of dentistry in this State, said board to consist of six (6) members of the North Carolina dental society, to be elected by the said society at its annual meeting; said members so elected to be commissioned by the governor for a period of three years or until their successors are elected, commissioned and qualified. Any vacancy in the said board shall be filled by a member of the North Carolina dental society to be elected by said board by and with the consent and approval of the executive committee of the North Carolina dental society, and commissioned by the governor to hold office for the unexpired term to which elected. Nothing in this article and no provision of this section shall in any way change the terms of office of the members of the North Carolina state board of dental examiners as now constituted, and said members of said board shall hold their office for the term to which they have been elected. (1935, c. 66, s. 1.)

§ 90-23. Officers; common seal. — The North Carolina state board of dental examiners shall, at each annual meeting thereof, elect one of its members president and one secretary-treasurer. The common seal which has already been adopted by said board, pursuant to law, shall be continued as the seal of said board. (1935, c. 66. s. 2.)

§ 90-24. Quorum; adjourned meetings.—Four (4) members of said board shall constitute a quorum for the transaction of business and at any meeting of the board, if four (4) members are not present at the time and the place appointed for the meeting, those members of the board present may adjourn from day to day until a quorum is present, and the action of the board taken at any adjourned meeting thus had shall have the same force and effect as if had upon the day and at the hour of the meeting called and adjourned from day to day. (1935, c. 66, s. 2.)

§ 90-25. Records and transcripts.—The said board shall keep a record of its transactions at all annual or special meetings and shall provide a record book in which shall be entered the names and proficiency of all persons to whom licenses may be granted under the provisions of law. The said book shall show, also, the license number and the date upon which such license was issued and shall show such other matters as in the opinion of the board may be necessary or proper. Said book shall be deemed a book of record of said board and a transcript of any entry therein or a certification that there is not entered therein the name, proficiency and license number or date of granting such license, certified under the hand of the secretary-treasurer, attested by the seal of the North Carolina state board of dental examiners, shall be admitted as

evidence in any court of this State when the same shall otherwise be competent. (1935, c. 66, s. 2.)

§ 90-26. Annual and special meetings. — The North Carolina state board of dental examiners shall meet annually on the fourth Monday in June of each year at such place as may be determined by the board, and at such other times and places as may be determined by action of the board or by any four (4) members thereof. Notice of the place of the annual meeting and of the time and place of any special or called meeting shall be given by advertising a copy of said notice in at least three daily newspapers published in this State at least ten days prior to said meeting. At the annual meeting or at any special or called meeting, the said board shall have the power to conduct examination of applicants and to transact such other business as may come before it, provided that in case of a special meeting, the purpose for which said meeting is called shall be stated in the notice. (1935, c. 66, s. 3.)

§ 90-27. Judicial powers; additional data for records. — The president of the North Carolina state board of dental examiners, and/or the secretary-treasurer of said board, shall have the power to administer oaths, issue subpoenas requiring the attendance of persons and the production of papers and records before said board in any hearing, investigation or proceeding conducted by it. The sheriff or other proper official of any county of the State shall serve the process issued by said president or secretary-treasurer of said board pursuant to its requirements and in the same manner as process issued by any court of record. The said board shall pay for the service of all process, such fees as are provided by law for the service of like process in other cases.

Any person who shall neglect or refuse to obey any subpoena requiring him to attend and testify before said board or to produce books, records or documents shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

The board shall have the power, upon the production of any papers, records or data, to authorize certified copies thereof to be substituted in the permanent record of the matter in which such books, records or data shall have been introduced in evidence. (1935, c. 66, s. 4.)

§ 90-28. By-laws and regulations. — The North Carolina state board of dental examiners shall have the power to make necessary by-laws and regulations, not inconsistent with the provisions of this article, regarding any matter referred to in this article and for the purpose of facilitating the transaction of business by the said board. (1935, c. 66, s. 5.)

§ 90-29. Necessity for license; dentistry defined; certain practices exempted. — No person shall engage in the practice of dentistry in this State or attempt to do so without first having applied for and obtained a license for such purpose from the said North Carolina state board of dental examiners, or without first having obtained from said board a certificate of renewal of license for the calendar year in which such person proposes to practice dentistry.

A person shall be deemed to practice dentistry in this State within the meaning of this article and this section of this article, who represents himself as being able to remove stains and accretions from teeth, diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or maxillary bones and associated tissues or parts and/or who offers or undertakes by any means or methods to remove stains or accretions from teeth, diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the same, or to take impressions of the teeth or jaws and/or who owns, maintains or operates an office for the practice of dentistry, and/or who engages in any of the practices included in the curricular of recognized and approved dental schools or colleges.

The fact that a person uses any dental degree or designation or any card, device, directory, poster, sign or other media whereby he represents himself to be a dentist practicing in the State, shall constitute prima facie evidence that such person is engaged in the practice of dentistry.

The following practices, acts, and operations, however, shall be exempt from the provisions of this article:

(a) Any act in the practice of his profession by a duly licensed physician or surgeon.

(b) The rendering of dental relief in emergency cases in the practice of his profession by a physician or surgeon licensed as such and registered under the laws of this State, unless he undertakes to reproduce or reproduces lost parts of the human teeth in the mouth, or to restore or replace in the human mouth, lost or missing teeth.

(c) The practice of dentistry in the discharge of their official duties by dentists in the United States army, the United States navy, the United States public health service, the United States veterans bureau, or other federal agency.

(d) The teaching of dentistry in dental schools or colleges as may be conducted in the State of North Carolina and approved by the said North Carolina state board of dental examiners, and the practice of dentistry by students in dental schools or colleges so approved when such students are acting under the direction and supervision of registered and licensed dentists acting as instructors.

(e) The practice of dentistry by licensed dentists of another state, territory or country at meetings of the North Carolina dental society, or component parts thereof, meetings of dental colleges or other like dental organizations while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentist duly licensed under the provisions of this article.

(f) The making, either upon written orders, prescriptions, casts, models or impressions furnished by a duly licensed dentist of artificial restorations, substitutes, appliances or materials for the correction of disease, loss, deformity, malposition, discoloration, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate or associated tissues or parts. (1935, c. 66, s. 6.)

§ 90-30. Examination and licensing applicants; qualifications; causes for refusal to grant license;

void licenses. — The North Carolina state board of dental examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this article.

The applicant shall be of good moral character, at least twenty-one years of age at the time the application for examination is filed. The application shall be made to the said board in writing and shall be accompanied by evidence satisfactory to said board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the said board; that he is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the said board.

The North Carolina state board of dental examiners is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating, deception or fraud during such examination, or whose examination discloses to the satisfaction of the board, a deficiency in academic education.

The North Carolina state board of dental examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect. (1935, c. 66, s. 7.)

§ 90-31. Annual renewal of licenses. — The laws of North Carolina now in force, having provided for the annual renewal of any license issued by the North Carolina state board of dental examiners, it is hereby declared to be the policy of this State, that all licenses heretofore issued by the North Carolina state board of dental examiners or hereafter issued by said board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina state board of dental examiners is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each dentist engaged in the practice of dentistry in North Carolina shall make application to the North Carolina state board of dental examiners and receive from said board, subject to the further provisions of this section and of this article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said board from time to time may prescribe, at least six months prior to January first of any year. (1935, c. 66, s. 8.)

§ 90-32. Contents of original license. — The original license granted by the North Carolina state board of dental examiners shall bear a serial number, the full name of the applicant, the date of issuance and shall be signed by the president and the majority of the members of the said board and attested by the seal of said board and the secretary thereof. The certificate of renewal of license shall bear a serial number which need not be the serial number of the original license issued, the full name of the applicant and the date of issuance. (1935, c. 66, s. 8.)

§ 90-33. Displaying license and current certificate of renewal.—The license and the current certificate of renewal of license to practice dentistry issued, as herein provided, shall at all times be displayed in a conspicuous place in the office of the holder thereof and whenever requested the license and the current certificate of renewal shall be exhibited to or produced before the North Carolina state board of dental examiners or to its authorized agents. (1935, c. 66, s. 8.)

§ 90-34. Refusal to grant renewal license. — For cause satisfactory to it or to a majority thereof, the North Carolina state board of dental examiners may refuse to issue a certificate of renewal of license upon any application made to it therefor, and the applicant whose certificate of renewal of license is refused, for cause by said board, shall not be authorized to practice dentistry in North Carolina until said board shall, in its discretion, renew the license of the applicant. (1935, c. 66, s. 8.)

§ 90-35. Duplicate licenses. — When a person is a holder of a license to practice dentistry in North Carolina or the holder of a certificate of renewal of license, he may make application to the North Carolina state board of dental examiners for the issuance of a copy or a duplicate thereof accompanied by a fee of two dollars. Upon the filing of the application and the payment of the fee, the said board shall issue a copy or duplicate. (1935, c. 66, s. 8.)

§ 90-36. Licensing practitioners of other states. —The North Carolina state board of dental examiners may, in its discretion, issue a license to practice dentistry in this State without an examination other than clinical to a legal and ethical practitioner of dentistry who moves into North Carolina from another state or territory of the United States, whose standard of requirements is equal to that of the State of North Carolina and in which such applicant has conducted a legal and ethical practice of dentistry for at least five (5) years, next preceding his or her removal and who has not, during his period of practice, been charged with violation of the ethics of his profession, nor with the violation of the laws of the state which issued license to him, or of the criminal laws of the United States, nor whose license to practice dentistry has been revoked or suspended by a duly constituted authority.

Application for license to be issued under the

provisions of this section shall be accompanied by a certificate from the dental board or like board of the State from which said applicant removed, certifying that the applicant is the legal holder of a license to practice dentistry in that State, and for a period of five (5) years immediately preceding the application has engaged in the practice of dentistry; is of good moral character and that during the period of his practice no charges have been filed with said board against the applicant for the violation of the laws of the State or of the United States, or for the violation of the ethics of the profession of dentistry.

Application for a license under this section shall be made to the North Carolina state board of dental examiners within the six (6) months of the date of the issuance of the certificate hereinbefore required, and said certificate shall be accompanied by the diploma or other evidence of the graduation from a reputable, recognized and approved dental college, school or dental department of a college or university.

Any license issued upon the application of any dentist from any other state or territory shall be subject to all of the provisions of this article with reference to the license issued by the North Carolina state board of dental examiners upon examination of applicants and the rights and privileges to practice the profession of dentistry under any license so issued shall be subject to the same duties, obligations, restrictions and the conditions as imposed by this article on dentists originally examined by the North Carolina state board of dental examiners. (1935, c. 66, s. 9.)

§ 90-37. Certificate issued to dentist moving out of state. — Any dentist duly licensed by the North Carolina state board of dental examiners, desiring to move from North Carolina to another state, territory or foreign country, if a holder of a certificate of renewal of license from said board, upon application to said board and the payment to it of the fee in this article provided, shall be issued a certificate showing his full name and address, the date of license originally issued to him, the date and number of his renewal of license, and whether any charges have been filed with the board against him. The board may provide forms for such certificate, requiring such additional information as it may determine proper. (1935, c. 66, s. 10.)

§ 90-38. Licensing former dentists who have moved back into state or resumed practice. — Any person who shall have been licensed by the North Carolina state board of dental examiners to practice dentistry in this State who shall have retired from practice or who shall have moved from the state and shall have returned to the state, may, upon a satisfactory showing to said board of his proficiency in the profession of dentistry and his good moral character during the period of his retirement, be granted by said board a license to resume the practice of dentistry upon making application to the said board in such form as it may require and upon the payment of the fee of ten dollars. The license to resume practice, after issuance thereof, shall be subject to all the provisions of this article. (1935, c. 66, s. 11.)

§ 90-39. Fees collectible by board.—In order to provide the means of carrying out and enforcing the provisions of this article and the duties devolving upon the North Carolina state board of dental examiners, it shall charge and collect for: (a) each applicant for examination, a fee of twenty dollars; (b) each certificate of renewal of license, a fee of two dollars; (c) each certificate of practice to a resident dentist desiring to change to another state or territory, a fee of five dollars; (d) each license issued to a legal practitioner of another state or territory to practice in this State, a fee of twenty dollars; (e) each license to resume the practice issued to a dentist who has retired from the practice of dentistry, or has removed from and returned to the state, a fee of ten dollars. (1935, c. 66, s. 12.)

§ 90-40. Unauthorized practice; penalty. — If any person shall practice or attempt to practice dentistry in this State without first having passed the examination and obtained a license from the North Carolina board of dental examiners; or, if a period of more than one year has elapsed since the issuance of his license, and he shall practice without first having obtained a certificate of renewal of license; or shall practice or attempt to practice dentistry while his license is revoked, or suspended, or when a certificate of renewal of license has been refused; or shall violate any of the provisions of this article for which no specific penalty has been provided, or shall practice dentistry under any name other than his own name, said person shall be guilty of a misdemeanor, and, upon conviction, shall be fined in the sum of fifty ($50.00) dollars for the first offense.

Whenever any person shall have been convicted once in this State of the violation of chapter one hundred and thirty-nine, Public Laws of one thousand eight hundred and seventy-nine, and/or chapter one hundred and seventy-eight, Public Laws of one thousand nine hundred and fifteen and/or amendments to said acts and/or of this article, and shall practice, or attempt to practice, dentistry in violation of the provisions of this article, he shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court. (1935, c. 66, s. 13.)

§ 90-41. Revocation or suspension of license. —Whenever it shall appear to the North Carolina state board of dental examiners that any dentist who has received license to practice dentistry in this State, or who has received from the said board of dental examiners a certificate of renewal of license, has been guilty of fraud, deceit or misrepresentation in obtaining his license, or of gross immorality, or is an habitual user of intoxicants or drugs, rendering him unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent or has been guilty of wilful neglect in the practice of dentistry, or has been employing unlicensed persons to perform work which, under this article, can be legally done or performed only by persons holding a license to practice dentistry in this State, or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice, or has been guilty of fraudulent and/or misleading statements of his art, skill or knowledge, or of his method of treatment or practice, or any offense involving moral turpitude,

or has by himself or another, solicited or advertised in any manner for professional business, or has been guilty of any other unprofessional conduct in the practice of dentistry, or in the procurement of license has filed, as his own, a diploma or license of another, or a forged diploma or a forged or false affidavit of identification or qualification, the board may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said board, will be commensurate with the offense committed: Provided, however, it shall not be considered advertising within the meaning of this article for a dentist, duly authorized to practice in this State, to place a card containing his name, telephone number and office address and office hours in a registry or other publication, or to place upon the window or door of his office his name followed by the word, "dentist."

The North Carolina state board of dental examiners is authorized and empowered to appoint an investigator to ascertain the facts with reference to any information coming to the attention of the said board respecting the violation of any of the provisions of this article, or of any act heretofore in effect in this State.

Such investigator so appointed by the North Carolina state board of dental examiners is thereupon authorized and directed to make an investigation as to any information coming to his attention with reference to the violation of the provisions of this article or any act in force at the time of said violation, and formulate a statement of charges which the said board, upon presentation by the said investigator, shall cause to be served upon the dentist so accused. Said notice shall contain the statement of a time and place at which the charges against the accused shall be heard before the board or a quorum thereof, which time shall not be less then ten (10) days from the date of service of said statement and notice.

At the time and place named in said notice, the said board shall proceed to hear the charges against the accused upon competent evidence, oral or by deposition, and at said hearing said accused shall have the right to be present in person and/or represented by counsel. After hearing all the evidence, including such evidence as the accused may present, the board shall determine its action and announce the same.

From any action of the board depriving the accused of his license, or certificate of renewal of license, the accused shall have the right of appeal to the superior court of the county wherein the hearing was held, upon filing notice of appeal within ten days of the decision of the board. The record of the hearing before the North Carolina state board of dental examiners shall constitute the record upon appeal in the superior court and the same shall be heard in the superior court as in the case of consent references. (1935, c. 66, s. 14.)

§ 90-42. Restoration of revoked license. — Whenever any dentist has been deprived of his license, the North Carolina state board of dental examiners, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licentiate, before restoration. (1935, c. 66, s. 14.)

§ 90-43. Compensation and expenses of board. — Each member of the North Carolina state board of dental examiners shall receive as compensation for his services in the performance of his duties under this article a sum not exceeding ten dollars for each day actually engaged in the performance of the duties of his office, said per diem to be fixed by said board, and all legitimate and necessary expenses incurred in attending meetings of the said board.

The secretary-treasurer shall, as compensation for his services, both as secretary-treasurer of the board and a member thereof, be allowed a reasonable annual salary to be fixed by the board and shall, in addition thereto, receive all legitimate and necessary expenses incurred by him in attending meetings of the board and in the discharge of the duties of his office.

All per diem allowances and all expenses paid as herein provided shall be paid upon voucher drawn by the secretary-treasurer of the board who shall likewise draw voucher payable to himself for the salary fixed for him by the board.

The board is authorized and empowered to expend from funds collected hereunder such additional sum or sums as it may determine necessary in the administration and enforcement of this article. (1935, c. 66, s. 15.)

§ 90-44. Annual report of board.—Said board, shall, on or before the fifteenth day of February in each year, make an annual report as of the thirty-first day of December of the year preceding, of its proceedings, showing therein the examinations given, the fees received, the expenses incurred, the hearings conducted and the result thereof, which said report shall be filed with the governor of the State of North Carolina. (1935, c. 66, s. 15.)

§ 90-45. Exemption from jury duty.—All dentists duly licensed by the North Carolina state board of dental examiners and/or the holders of certificate of renewal of license from said board shall be exempt from service as jurors in any of the courts of this State. (1935, c. 66, s. 16.)

§ 90-46. Filling prescriptions.—Legally licensed druggists of this State may fill prescriptions of dentists duly licensed by the North Carolina state board of dental examiners. (1935, c. 66, s. 17.)

§ 90-47. Restrictions on lectures and teaching. — Lectures on the science of dentistry shall not be made in North Carolina in connection with the demonstration, promotion or distribution of any product or products used or claimed to be useful in the promotion of the health of the oral cavity, except after specific authority has been granted by the North Carolina state board of dental examiners, nor shall the science of dentistry be taught in North Carolina except by duly licensed dentists acting as teachers in a duly organized school or college of dentistry or a dental department of a college or university. (1935, c. 66, s. 18.)

§ 90-48. Rules and regulations of board; violation a misdemeanor.—The North Carolina state board of dental examiners shall be and is hereby vested, as an agency of the State, with full power and authority to enact rules and regula-

tions governing the practice of dentistry within the State, provided such rules, and regulations are not inconsistent with the provisions of this article. Such rules and regulations shall become effective thirty days after passage, and the same may be proven, as evidence, by the president and/or the secretary-treasurer of the board, and/or by certified copy under the hand and official seal of the secretary-treasurer. A certified copy of any rule or regulation shall be receivable in all courts as prima facie evidence thereof if otherwise competent, and any person, firm, or corporation violating any such rule, regulation, or by-law shall be guilty of a misdemeanor, subject to a fine of not more than fifty ($50.00) dollars or imprisonment for not more than thirty days. (1935, c. 66, s. 19.)

Art. 3. The Licensing of Mouth Hygienists, to Teach and Practice Mouth Hygiene in Public Institutions.

§ 90-49. Qualifications and examinations of applicants.—Any person of good moral character who holds a grade "A" teacher's certificate issued by the Department of Education of the State of North Carolina, may be licensed to practice mouth hygiene in conjunction with the teaching of health subjects in the public institutions and public schools of the State as is hereinafter provided in this article.

Such person shall be a graduate in Mouth Hygiene from an approved school for such technical training, said approval to be by the North Carolina State Board of Dental Examiners. Upon the completion of such course or courses and upon the payment of a fee of ten dollars ($10.00), which shall not be returned, the applicant for such license shall apply to the North Carolina State Board of Dental Examiners, at their annual meeting which shall be held on the fourth Monday of June, or at any other such time as they deem necessary, for an examination on such subjects as said Board shall deem essential for the practice of mouth hygiene in this State; and if the examination is satisfactory to said Board of Dental Examiners, the applicant shall be registered and licensed by said Board as a mouth hygienist to practice as such only in the public institutions and public schools of the State. (1929, c. 304, s. 1.)

§ 90-50. By whom employed; duties. — Only public institutions and public school authorities of the State may employ such licensed mouth hygienist, whose clinical work shall be under the direct supervision of the dentist who shall be at the head of the Bureau of Mouth Hygiene of the State Board of Health. The duties of a mouth hygienist shall be to examine mouths of inmates of said institutions and of pupils of said public schools without expense, to make such charts and records as the head of said Bureau shall require, and to furnish copies of the same to the guardians or teachers of those examined.

Such hygienist shall teach mouth hygiene and the proper care of the teeth and may recommend mouth washes, clean stains, remove deposits and accretions from the exposed surfaces of the teeth of said inmates and pupils, but shall not perform any other operation on the teeth or tissues of the mouth or body. Provided that no pupil may be so examined and treated over the written objection of such child's parents or guardian. (1929, c. 304, s. 2.)

§ 90-51. Revocation or suspension of license. —The State Board of Dental Examiners shall have the power to revoke or suspend the license of any mouth hygienist, who shall violate the provisions of this article, and the proceedings to revoke or suspend said license shall be the same as are provided in the case of suspension or revoking the license of a dentist as set out in §§ 90-22 to 90-48 of this Code. (1929, c. 304, s. 3.)

§ 90-52. Penalty for violation of article. — Any person falsely claiming to have a mouth hygienist's license, or who shall practice or attempt to practice mouth hygiene without first having been duly licensed thereto, as provided in this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined twenty-five dollars for each and every offense; any person, who, having been so licensed to practice mouth hygiene in said public institutions and public schools, fails to display the said license, or who practices or attempts to practice mouth hygiene elsewhere than in said public institutions and public schools, as hereinbefore provided, in this article, shall, upon conviction thereof, be fined twenty-five dollars for each and every offense and shall also forfeit her license to practice mouth hygiene in the said institutions and schools. (1929, c. 304, s. 4.)

Art. 4. Pharmacy.

Part 1. Practice of Pharmacy.

§ 90-53. North Carolina pharmaceutical association.—The North Carolina pharmaceutical association, and the persons composing the same, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by said name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do such other things and perform such other acts as appertain to bodies corporate and politic not inconsistent with the constitution and laws of the state. (Rev., s. 4471; Code, s. 3135; 1881, c. 355, s. 1; C. S. 6650.)

§ 90-54. Object of pharmaceutical association. —The object of the association is to unite the pharmacists and druggists of this state for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent, to elevate the standard of professional thought, and ultimately restrict the practice of pharmacy to properly qualified druggists and apothecaries. (Rev., s. 4472; Code, s. 3136; 1881, c. 355, s. 2; C. S. 6651.)

§ 90-55. Board of pharmacy; election; terms; vacancies.—The board of pharmacy shall consist of five persons licensed as pharmacists within this state, who shall be elected and commissioned by the governor as hereinafter provided. The members of the present board of pharmacy shall continue in office until the expiration of their respective terms, and the rules, regulations, and by-laws of said board, so far as they are not

inconsistent with the provisions of this article, shall continue in effect. The North Carolina pharmaceutical association shall annually elect a resident pharmacist from its number to fill the vacancy annually occurring in said board, and the pharmacist so elected shall be commissioned by the governor and shall hold office for the term of five years and until his successor has been duly elected and qualified. In case of death, resignation, or removal from the state of any member of said board of pharmacy, the said board shall elect in his place a pharmacist who is a member of said North Carolina pharmaceutical association, who shall be commissioned by the governor as a member of the said board of pharmacy for the remainder of the term. It shall be the duty of a member of the board of pharmacy, within ten days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law. (Rev., s. 4473; 1905, c. 108, ss. 5-7; C. S. 6652.)

§ 90-56. Election of officers; bonds; annual meetings.—The board of pharmacy shall elect two officers, a president and a secretary-treasurer, who shall hold their offices until their successors shall have been elected and qualified. The president shall be elected from the membership of the board. The secretary-treasurer may or may not be a member of the board, as the board shall determine. The secretary-treasurer shall give bond in such sum as may be prescribed by the board, conditioned for the faithful discharge of the duties of his office acording to law, and said bond shall be made payable to the North Carolina board of pharmacy and approved by said board. The said board shall hold an annual meeting at such time and place as it may provide by rule for the examination of candidates and for the discharge of such other business as may legally come before it, and said board may hold such additional meetings as may be necessary for the examination of candidates and for the discharge of any other business. (Rev., s. 4474; 1905, c. 108, s. 8; 1923, c. 82; C. S. 6653.)

§ 90-57. Powers of board; reports; quorum; records.—The board of pharmacy shall have a common seal, and shall have the power and authority to define and designate nonpoisonous domestic remedies, to adopt such rules, regulations, and by-laws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this article, and shall have power and authority to employ an attorney to conduct prosecutions and to assist in the conduct of prosecutions under this article, and for any other purposes which said board may deem necessary. The said board of pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists and permits have been issued, and of all renewals thereof; and the books and register of the said board, or a copy of any part thereof, certified by the secretary, attested by the seal of said board, shall be taken and accepted as competent evidence in all the courts of the state. The said board of pharmacy shall make annually to the governor and to the North Carolina pharmaceutical association written reports of its proceedings and of its receipts and disbursements under this article, and of all persons licensed to practice as pharmacists in this state. A majority of the board shall constitute a quorum for the transaction of all business. (Rev., s. 4475; 1905, c. 108, s. 9; 1907, c. 113, s. 1; C. S. 6654.)

§ 90-58. Compensation of secretary and board.—The secretary of the board of pharmacy shall receive such salary as may be prescribed by the board, and shall be paid his necessary expenses while engaged in the performance of his official duties. The other members of the said board shall receive the sum of ten dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein: Provided, that the compensation and expenses of the secretary and members of the said board of pharmacy and all disbursements for expenses incurred by the said board in carrying into effect and executing the provisions of this article shall be paid out of the fees received by the said board. (Rev., s. 4476; 1905, c. 108, s. 10; 1921, c. 57, s. 2; C. S. 6655.)

§ 90-59. Secretary to investigate and prosecute.—Upon information that any provision of this article has been or is being violated by any member, the secretary of the board of pharmacy or any one appointed by the said board of pharmacy shall promptly make investigations of such matters, and, upon probable cause appearing, shall file complaint and prosecute the offender. All fines and penalties prescribed in this article shall be recoverable by suit in the name of the people of the state. In all prosecutions for the violation of any of the provisions of this article, a certificate under oath by the secretary of the board of pharmacy shall be competent and admissible as evidence in any court of the state that the person so charged with the violation of this article is not a registered pharmacist or assistant pharmacist, as required by law. (Rev., s. 4477; 1905, c. 108, s. 11; 1923, c. 74, s. 1; C. S. 6656.)

§ 90-60. Fees collectible by board.—The board of pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist ten dollars; for renewing the license as a pharmacist or an assistant pharmacist, five dollars; for issuing a permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, ten dollars; for the renewal of permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, five dollars. All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the board. (Rev., s. 4478; 1905, c. 108, s. 12; 1921, c. 57, s. 3; C. S. 6657.)

§ 90-61. Application and examination for license, prerequisites.—Every person licensed or registered as a pharmacist on February 4, 1905, under the laws of this state shall be entitled to con-

tinue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist shall file with the secretary of the board of pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the board of pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. The application referred to above shall be prepared and furnished by the board of pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article, an applicant shall be not less than twenty-one years of age, he shall present to the board of pharmacy satisfactory evidence that he has had four years experience in pharmacy under the instruction of a licensed pharmacist, and that he is a graduate of a reputable school or college of pharmacy, and he shall also pass a satisfactory examination of the board of pharmacy: Provided, however, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed three years, may be deducted from the time of experience required. Provided, further, that any person legally registered or licensed as a pharmacist by another state board of pharmacy, and who has had fifteen years continuous experience in North Carolina under the instruction of a licensed pharmacist next preceding his application shall be permitted to stand the examination to practice pharmacy in North Carolina upon application filed with said board. Any person who has had two years of college training and has been filling prescriptions in a drug store or stores for twenty years or longer may take the examination as provided in the above proviso. (Rev., ss. 4479, 4480; 1905, c. 108, s. 13; 1915, c. 165; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; C. S. 6658.)

§ 90-62. When license issued.—If an applicant for license as pharmacist has complied with all the requirements of §§ 90-60 and 90-61, the board of pharmacy shall enroll his name upon the register of pharmacists and issue to him a license, which shall entitle him to practice as a pharmacist up to the first day of January next ensuing, as provided in this article for the annual renewal of every registration. (Rev., s. 4481; 1905, c. 108, s. 15; 1921, c. 68, s. 1; C. S. 6659.)

§ 90-63. Certain assistant pharmacists may take registered pharmacist's examination; no original assistants' certificates issued after January 1, 1939.—Every person who is the holder of a certificate as a registered assistant pharmacist, issued prior to January first, one thousand nine hundred and thirty-nine, shall be admitted to the registered pharmacist examination. After January first, one thousand nine hundred and thirty-nine, the board shall not issue an original certificate to any person as a registered assistant pharmacist: Provided, however, that nothing in this section shall prevent any person who was registered as an assistant pharmacist prior to January first, one thousand nine hundred and thirty-nine, from continuing to practice as a registered assistant pharmacist. (1937, c. 402.)

§ 90-64. When license without examination issued.—The board of pharmacy may issue licenses to practice as pharmacists in this state, without examination, to such persons as have been legally registered or licensed as pharmacists by other boards of pharmacy, if the applicant for such license shall present satisfactory evidence of the same qualifications as are required from licentiates in this state, and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such board of pharmacy is not lower than that required in this state. All applicants for license under this section shall, with their application, forward to the secretary of the board of pharmacy the same fees as are required of other candidates for license. (Rev., s. 4482; 1905, c. 108, s. 16; C. S. 6660.)

§ 90-65. When license refused or revoked; fraud.—The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the board of pharmacy may, after due notice and hearing, revoke a license for like cause, or any license which has been procured by fraud. Any license or permit, or renewal thereof, obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law. (Rev., s. 4483; 1905, c. 108, ss. 17, 25; C. S. 6661.)

§ 90-66. Expiration and renewal of license; failure to renew misdemeanor.—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession, and every physician holding a permit to sell drugs in a village of not more than six hundred inhabitants, shall within thirty days next preceding the expiration of his license or permit, file with the secretary and treasurer of the board of pharmacy an application for the renewal thereof, which application shall be accompanied by the fee hereinbefore prescribed. If the board of pharmacy shall find that an applicant has been legally licensed in this state, and is entitled to a renewal thereof, or to a renewal of a permit, it shall issue to him a certificate attesting that fact. And if any pharmacist or assistant pharmacist shall fail, for a period of six days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists and assistant pharmacists and such person, in order to again become registered as a licensed pharmacist or assistant pharmacist shall be required to pay the same fee as in the case of original registration. And if any holder of a permit to sell drugs in a village of not more than six hundred inhabitants shall fail, for a period of sixty days after the expiration of his permit, to make application for the renewal thereof, his name shall be erased from the reg-

ister of persons holding such permits, and he may be restored thereto only upon the payment of the fee required for the granting of original permit. The registration of every license and every permit issued by the board shall expire on the thirty-first day of December next ensuing the granting thereof: Provided, that the board of pharmacy, in its discretion, shall have the power to issue a license or permit, or renewals thereof, to any person whose license or permit has been revoked by operation of law or by the board of pharmacy, or whose renewal thereof has been refused by the board of pharmacy, after the expiration of one year from the date of such revocation of license or permit, or refusal of a renewal thereof, upon satisfactory proof that such person is entitled to such license or permit, or to a renewal thereof.

Every holder of a license or permit as a pharmacist or assistant pharmacist, who after the expiration thereof continues to carry on the business for which the license or permit was granted, without renewing the same as required by this section, shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars. (Rev., ss. 3653, 4484; 1905, c. 108, ss. 18, 19, 27; 1911, c. 48; 1921, c. 68, s. 2; C. S. 6662.)

§ 90-67. License to be displayed; penalty.—Every certificate or license to practice as a pharmacist or assistant pharmacist and every permit to a practicing physician to conduct a pharmacy or drug store in a village of not more than six hundred inhabitants, and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.

The holder of such license, permit, or renewal who fails to expose it as required by this section shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars, and each day that such license, permit, or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense. (Rev., ss. 3651, 4485; 1905, c. 108, ss. 18, 26; 1921, c. 68, s. 3; C. S. 6663.)

§ 90-68. Unlicensed person not to use title of pharmacist; penalty.—It shall be unlawful for any person not legally licensed as a pharmacist or assistant pharmacist to take, use or exhibit the title of pharmacist or assistant pharmacist or licensed or registered pharmacist, or the title druggist or apothecary, or any other title, name, or description of like import.

Every person who violates this section shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars. (Rev., ss. 3652, 4486; 1905, c. 108, ss. 22, 29; 1921, c. 68, s. 4; C. S. 6664.)

§ 90-69. Purity of drugs protected; seller responsible; adulteration misdemeanor. — Every person who shall engage in the sale of drugs, chemicals, and medicines shall be held responsible for the quality of all drugs, chemicals, and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."

If any person engaged in the sale of drugs, chemicals, and medicines shall intentionally adulterate, or cause to be adulterated, or exposed to sale knowing the same to be adulterated, any drugs, chemicals, or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and if he is a licensed pharmacist or assistant pharmacist his name shall be stricken from the register of licensed pharmacists and assistant pharmacists. (Rev., ss. 3648, 4488; Code, s. 3145; 1881, c. 355, s. 11; 1897, c. 182, s. 7; 1905, c. 108, s. 3; 1921, c. 68, s. 5; C. S. 6665.)

§ 90-70. Prescriptions preserved; copies furnished.—Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drug store or pharmacy. Upon the request of the prescribing physician, or of the person for whom such prescription was compounded or dispensed, the proprietor or manager of such drug store or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the board of pharmacy to make such inspection and examination. (Rev., s. 4490; 1905, c. 108, s. 21; C. S. 6666.)

§ 90-71. Selling drugs without license prohibited; drug trade regulated.—It shall be unlawful for any person not licensed as a pharmacist or assistant pharmacist within the meaning of this article to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poison, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail any drugs, chemicals, or poison, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this article to compound, dispense, or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article. Provided, that during the temporary absence of the licensed pharmacist in charge of any pharmacy, drug or chemical store, a licensed assistant pharmacist may conduct or have charge of said store. And it shall be unlawful for any owner or manager of a pharmacy or drug store or other place of business to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any drug, medicine, or poison, except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own pre-

scriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor, except in cities and towns wherein there is located an established drug store, and except in the counties of Avery, Bertie, Cleveland, Cabarrus, Cumberland, Duplin, Forsyth, Gaston, Guilford, Halifax, Harnett, Iredell, Henderson, Mecklenburg, Montgomery, Nash, Pender, Moore, New Hanover, Orange, Richmond, Rockingham, Robeson, Rowan, Scotland, and Wilson, shall this section be construed to interfere with the sale of paregoric, Godfrey's Cordial, Aspirin, alum, borax, bicarbonate of soda, calomel tablets, castor oil, compound carthartic pills, copperas, cough remedies which contain no poison or narcotic drugs, cream of tartar, distilled extract witch hazel, epsom salts, harlem oil, gum asafetida, gum camphor, glycerin, peroxide of hydrogen, petroleum jelly, saltpetre, spirit of turpentine, spirit of camphor, sweet oil, and sulphate of quinine, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

In any village of not more than six hundred inhabitants the board of pharmacy may, after due investigation, grant any legally registered practicing physician a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than six hundred. (Rev., s. 4487; 1905, c. 108, s. 4; 1921, c. 68, s. 6; Ex. Sess. 1924, c. 116; C. S. 6667.)

Local Modification.—Johnston: 1929, c. 249; Onslow, McDowell: 1925, c. 27.

§ 90-72. Compounding prescriptions without license.—If any person, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense, or sell at retail any drug, medicine, poison, or pharmaceutical preparation, either upon a physician's prescription or otherwise, and if any person being the owner or manager of a drug store, pharmacy, or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail, or compound any drug, medicine, poison, or physician's prescription contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. (Rev., s. 3649; 1905, c. 108, s. 24; 1921, c. 68, s. 7; C. S. 6668.)

§ 90-73. Conducting pharmacy without license.—If any person, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy, or other place or business for the compounding, dispensing, or sale at retail of any drugs, medicines, or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. (Rev., s. 3650; 1905, c. 108, s. 23; C. S. 6669.)

§ 90-74. Pharmacist obtaining license fraudulently.—If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars; and if any person shall wilfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as is now prescribed for the crime of perjury. (Rev., s. 3654; 1905, c. 108, s. 25; C. S. 6670.)

§ 90-75. Registration of drug stores and pharmacies.—The Board of Pharmacy shall require and provide for the annual registration of every drug store and pharmacy doing business in this State; the proprietor of every drug store or pharmacy opening for business after January 1, 1928, shall apply to the Board of Pharmacy for registration and it shall be unlawful for any drug store or pharmacy to do business until so registered; the fee for such registration, whether original or annual, shall be one dollar ($1), and upon the payment thereof the Board of Pharmacy shall issue permit to applicant entitled to receive same. All permits issued under this section shall expire on December thirty-first of each year.

The terms "drug store" and "pharmacy" as used herein shall mean any store or other place in which drugs, medicines, chemicals, poisons, or prescriptions are compounded, dispensed, or sold at retail, or which uses the title "drug store," "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import: Provided, that nothing in this section shall apply to the sale of domestic remedies, patent and proprietary preparations, and insecticides as set out and provided for in paragraph two of § 90-71. (1927, c. 28, s. 1.)

§ 90-76. Substitution of drugs, etc., prohibited.—Any person or corporation engaged in the business of selling drugs, medicines, chemicals, or preparations for medical use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopœia and National Formulary, or prepared according to the private formula of some individual or firm, other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or au-

thorized by the latest edition of the United States Pharmacopœia and National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, at the discretion of the court: Provided, that this section shall apply to registered drug stores and their employees only. (1937, c. 59.)

Part 2. Dealing in Specific Drugs Regulated.

§ 90-77. Poisons; sales regulated; label; penalties.—It shall be unlawful for any persons to sell or deliver to any person any of the following described substances or any poisonous compound, combination, or preparation thereof, to-wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbolic acid, the essential oils of almonds, pennyroyal, tansy and savine, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum, cotton root, conium, cannabis indica, digitalis, hyoscyamus, nux vomica, opium, ergot, cannabis stramonius, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall first be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled with the name of the substance, the word "Poison," and the name of the person or firm dispensing the substance.

Before a delivery is made of any of the following substances, to wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnine and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper officers of the law: Provided, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: Provided, also, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale; but the box, bottle, or other package containing such substances, when sold at wholesale, shall be properly labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler: Provided further, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphide of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or paris green, when dispensed in the original package of the manufacturer or wholesaler, or calomel, paregoric, or other preparations of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a single box, bottle, or other package, or when the bulk of two fluid ounces or the weight of two avoirdupois ounces does not contain more than an adult medicinal dose of such poisonous substance.

If any person shall sell or deliver to any person any poisonous substance specified in this section without labeling the same and recording the delivery thereof in the manner prescribed, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. (Rev., ss. 3655, 4489; 1905, c. 108, ss. 20, 28; C. S. 6671.)

§ 90-78. Certain patent cures and devices; sale and advertising forbidden.—It shall be unlawful for any person, firm, association, or corporation in the state, or any agent thereof, to sell or offer for sale any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device whose claims for the cure or treatment of disease are false or fraudulent; and it shall be unlawful for any person, firm, association, or corporation in the state, or agent thereof, to publish in any manner, or by any means, or cause to be published, circulated, or in any way placed before the public any advertisement in a newspaper or other publication or in the form of books, pamphlets, handbills, circulars, either printed or written, or by any drawing, map, print, tag, or by any other means whatsoever, any advertisement of any kind or description offering for sale or commending to the public any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device for the treatment of disease, when the North Carolina board of health shall declare that such device is without value in the treatment of disease.

Any person, firm, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense. Each sale, offer for sale, or publication of any advertisement for sale of any of the medicines, remedies, or devices mentioned in this section shall constitute a separate offense. (1917, c. 27, ss. 1, 2, 3; C. S. 6684.)

§ 90-79. Certain patent cures and devices; enforcement of law.—To provide for the efficient enforcement of § 90-78, the same shall be under the supervision and management of the North Carolina board of pharmacy, and it shall be the duty of all registered pharmacists to report immediately any violations thereof to the secretary of the board of pharmacy, and any wilful failure to make such report shall have the effect of re-

voking his license to practice pharmacy in this state. (1917, c. 27, ss. 4, 5; C. S. 6685.)

§ 90-80. Department of agriculture to analyze patent medicines.—The chemists and other experts of the department of agriculture shall, under such rules and regulations as may be prescribed by the board of pharmacy, and upon request of the secretary of said board, make an analytical examination of all samples of drugs, preparations, and compounds sold or offered for sale in violation of §§ 90-78 and 90-79. (1917, c. 27, s. 6; C. S. 6686.)

§ 90-81. Hypnotic drugs defined and enumerated.—In §§ 90-81 to 90-85, unless the context otherwise requires, the words "hypnotic drug" include:

Sulphonmethane (sulphonal).

Sulphonethylmethane (trional).

Diethyl sulphonedrethylmethane (tetronal).

Dietyl barbituric acid (barbital), or any of the foregoing by whatsoever trade name or designation; or any compound, preparation, mixture or solution thereof; or any salt or derivative thereof or of barbituric acid possessing hypnotic properties or effects.

Chloral hydrate or any mixture or solution thereof containing twenty grains or more thereof to the fluid ounce. (1931, c. 162, s. 1.)

§ 90-82. Sale prohibited except by physicians and pharmacists.—No person other than a licensed pharmacist, a duly licensed physician, doctor of dental surgery, or doctor of veterinary surgery shall sell or offer to sell any hypnotic drug to consumers or have such drug in his possession with intent to sell or give away to consumers. (1931, c. 162, s. 2.)

§ 90-83. Limitation on quantity that may be sold; exception; record of sales. — No hypnotic drug as defined in §§ 90-81 to 90-85 may be sold in quantities exceeding twelve therapeutic doses, except to persons known to be suffering with epilepsy: Provided, however, that nothing in §§ 90-81 to 90-85 shall apply to prescriptions of duly licensed physicians, doctors of dental surgery, or doctors of veterinary surgery.

Any person dispensing any hypnotic drug coming under the provisions of §§ 90-81 to 90-85, other than upon prescription, shall record in a book kept for the purpose the name of the article sold, the quantity delivered, the date of delivery, the name and address of the purchaser and the name of the dispenser, which record shall at all times be open to the inspection of the proper officer of the law. (1931, c. 162, s. 3.)

§ 90-84. Dispensing of drugs by physicians in lawful practice.—Nothing in §§ 90-81 to 90-85 shall be construed to limit the sale of hypnotic drugs to, nor to the dispensing of hypnotic drugs in the course of their professional practice by, duly licensed physicians, doctors of dental surgery or doctors of veterinary surgery lawfully practicing their profession in this State, or to registered retail or wholesale pharmacists, or to hospitals and other institutions for the treatment of defective, afflicted, sick and injured persons. (1931, c. 162, s. 4.)

§ 90-85. Violation of sections 90-81 to 90-85 a misdemeanor.—Any person who shall violate any provision of §§ 90-81 to 90-85 shall be deemed guilty of a misdemeanor and upon conviction therefor for the first offence shall be fined not more than twenty-five dollars, and upon conviction of the second offence shall be fined not more than one hundred dollars. (1931, c. 162, s. 5.)

Art. 5. Narcotic Drug Act.

§ 90-86. Title of article. — This article may be cited as the Uniform Narcotic Drug Act. (1935, c. 477, s. 26.)

§ 90-87. Definitions. — The following words and phrases as used in this article shall have the following meanings unless the context otherwise requires:

(a) "Person" includes any corporation, association, copartnership or one or more individuals.

(b) "Physician" means any person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use narcotic drugs in connection with such treatment.

(c) "Dentist" means any person authorized by law to practice dentistry in this State.

(d) "Veterinarian" means any person authorized by law to practice veterinary in this State.

(e) "Manufacturer" means a person who by compounding, mixing, cultivating, growing or other process produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescription.

(f) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written order, but not on prescription.

(g) "Pharmacist" means a registered pharmacist of this State.

(h) "Pharmacy owner" means the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a registered pharmacist; but nothing in this article contained shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this State.

(i) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the state board of pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(j) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific, experimental and medical purposes and for purposes of instruction approved by the state board of pharmacy.

(k) "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(l) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ec-

gonine, or substances from which cocaine or ecgonine may be synthesized or made.

(m) "Opium" includes morphine, codeine and heroin and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(n) "Cannabis" includes the following substances under whatever means they may be designated:

(1) The dried flowering or fruiting tops of the pistillate plant cannabis sativa L. from which the resin has not been extracted;

(2) The resin extracted from such tops; and

(3) Every compound, manufacture, salt, derivative, mixture, or preparation of such resin or of such tops from which the resin has not been extracted; and

(4) Peyote or mara huanna.

(o) "Narcotic drugs" means coca leaves, opium, cannabis, and every substance not chemically distinguishable from them.

(p) "Federal narcotic law" means the laws of the United States relating to opium, coca leaves and other narcotic drugs.

(q) "Official written order" means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law.

(r) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(s) "Registry number" means the number assigned to each person registered under the federal narcotic laws. (1935, c. 477, s. 1.)

§ 90-88. Manufacture, sale, etc., of narcotic drugs regulated.—It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this article. (1935, c. 477, s. 2.)

§ 90-89. Conditions of sale of drugs. — A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons but only on official written orders:

(a) To a manufacturer, wholesaler, pharmacist or pharmacy owner.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medicinal purposes.

A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territory, district, county, municipality, or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any air craft upon which no physician is regularly employed for the actual medical needs of persons on board such ship or air craft when not in port, provided such narcotic drug shall be sold to the master of such ship or person in charge of such air craft only in pursuance of a special order form approved by a commanding medical officer or acting assistant surgeon of the United States public health service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with. (1935, c. 477, s. 3.)

§ 90-90. Execution of written orders; use in purchase; preserving copies for inspection. — An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In the event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years, in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms. (1935, c. 477, s. 4.)

§ 90-91. Lawful possession of drugs.—Possession of or control of narcotic drugs obtained as authorized in this article shall be lawful if obtained in the regular course of business, occupation, profession, employment or duty of the possessor. (1935, c. 477, s. 5.)

§ 90-92. Dispensing of drugs regulated. — A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivision thereof, and the master or other proper officer of a ship or air craft, who obtains narcotic drugs under the provisions of this article or otherwise shall not administer, nor dispense, nor otherwise use such drugs within this State except within the scope of his employment or official duty and then only for scientific or medicinal purposes and subject to the provisions of this article. (1935, c. 477, s. 6.)

§ 90-93. Sale of drugs on doctor's prescription.—A pharmacist in good faith may sell and dispense narcotic drugs to any person upon the written prescription of a physician, dentist or veterinarian, provided it is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person so prescribing if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. A person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years so as to be readily accessible for the inspection of any officers engaged in the enforce-

ment of this article. The prescription shall not be refilled.

The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, pharmacist or pharmacy owner but only upon an official written order.

A pharmacist, only upon an official written order, may sell to a physician, dentist or veterinarian in quantities not exceeding one ounce at any one time, aqeous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per centum (20%) of the complete solution, to be used for medicinal purposes. (1935, c. 477, s. 7.)

§ 90-94. Prescribing, administering or dispensing by physicians or dentists. — A physician or a dentist, in good faith and in the course of his professional practice, only, may prescribe on a written prescription, administer, or dispense narcotic drugs or may cause the same to be administered by a nurse or interne under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, providing he is required by those laws to be so registered. (1935, c. 477, s. 8.)

§ 90-95. Prescribing, administering or dispensing by veterinarians. — A veterinarian, in good faith and in the course of his professional practice only not for use by a human being, may prescribe on a written prescription, administer and dispense narcotic drugs and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal, the species of the animal for which the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered. (1935, c. 477, s. 8.)

§ 90-96. Returning unused portions of drugs.— Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian shall return to such physician, dentist or veterinarian any unused portion of such drug when it is no longer required by the patient. (1935, c. 477, s. 8.)

§ 90-97. Article not applicable in certain cases. —Except as otherwise herein specifically provided, this article shall not apply to the following cases:

(1) Prescribing, administering, compounding, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce (a) not more than two grains of opium, (b) not more than one-quarter grain of morphine or of any of its salts, (c) not more than one grain of codeine, or of any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more than one-half of a grain of extract of cannabis nor more than one-half of a grain of any more potent derivative or preparation of cannabis.

(2) Prescribing, administering, compounding, dispensing or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this article shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combinations.

(3) The exemptions authorized by this section shall be subject to the following conditions:

(a) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) Such preparation shall be prescribed, administered, compounded, dispensed and sold in good faith as a medicine, and not for the purpose of evading the provisions of this article.

(4) Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, compounded, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, compounded, dispensed, or sold, in compliance with the general provisions of this article. (1935, c. 477, s. 9.)

§ 90-98. Records of drugs dispensed; records of manufacturers and wholesalers; records of pharmacists; written orders unnecessary for certain drugs; invoices rendered with sales. — Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this section if any such person using small quantities or solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of this section.

Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of this article.

The keeping of a record required by or under

the federal narcotic law shall constitute the only record required to be kept by every person who purchases for resale or who sells narcotic drug preparations exempted.

Written orders shall not be required for the sale of cannabis indica or cannabis sativa, or peyote and mara huanna, and the provisions of the article in respect to written orders and records shall not apply to cannabis indica, cannabis sativa, peyote and mara huanna, but manufacturers and wholesalers of cannabis indica, cannabis sativa, peyote and mara huanna shall be required to render with every sale of cannabis indica or cannabis sativa, peyote and mara huanna, an invoice, whether such sale be for cash or on credit; and such invoice shall contain the date of such sale, the name and address of the purchaser, and the amount of cannabis indica or cannabis sativa or peyote and mara huanna so sold.

Every purchaser of cannabis indica, cannabis sativa or peyote and mara huanna from a wholesaler or manufacturer shall be required to keep the invoice rendered with such purchase for a period of two years. (1935, c. 477, s. 10.)

§ 90-99. Labeling packages containing drugs.— Whenever a manufacturer sells or disposes of a narcotic drug and whenever a wholesaler sells and dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except a pharmacist for the purpose of filling a prescription under this article, shall alter, deface or remove any label so affixed. (1935, c. 477, s. 11.)

§ 90-100. Labeling containers of drugs dispensed on prescriptions. — Whenever a pharmacist sells or dispenses any narcotic drug on prescription issued by a physician, dentist, or veterinarian he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address and registry number of the pharmacist or pharmacy owner for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed as long as any of the original contents remain. (1935, c. 477, s. 11.)

§ 90-101. Lawful possession in original containers. — A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, pharmacist, or other person authorized under the provisions of this article, the owner of any animal for which any such drug has been prescribed, sold, or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (1935, c. 477, s. 12.)

§ 90-102. Common carriers and warehousemen excepted; other persons exempt.—The provisions of this article restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employees of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (1935, c. 477, s. 13.)

§ 90-103. Places unlawfully possessing drugs declared nuisances.—Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. No person shall keep or maintain such common nuisance. (1935, c. 477, s. 14.)

§ 90-104. Forfeiture and disposition of drugs unlawfully possessed. — All narcotic drugs the lawful possession of which is not established, or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) The court or magistrate having jurisdiction shall immediately notify the state board of pharmacy and unless otherwise requested within fifteen days by the state board of pharmacy in accordance with sub-section (b) of this section shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the state board of pharmacy the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of them except heroin and its salts and derivatives to said state board of pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this State, not operated for private gain, the state board of pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The state board of pharmacy may from time to time deliver excess stocks of such drugs to the United States commissioner of narcotics, or shall destroy the same.

(d) The state board of pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, dis-

posal, or destruction, which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws. (1935, c. 477, s. 15.)

§ 90-105. Prescriptions, stocks, etc., open to inspection by officials.—Prescriptions, orders and records, required by this article, and stocks of narcotic drugs shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party. (1935, c. 477, s. 16.)

§ 90-106. Fraudulent attempts to obtain drugs prohibited.—No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of false name or the giving of a false address.

(a) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(b) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this article.

(c) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, veterinarian, or other authorized person.

(d) No person shall make or utter any false or forged prescription or written order.

(e) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs. (1935, c. 477, s. 17.)

§ 90-107. Application of certain restrictions. — The provisions of § 90-106 shall apply to all transactions relating to narcotic drugs under the provisions of § 90-97 in the same way as they apply to transactions under all other sections. (1935, c. 477, s. 18.)

§ 90-108. Possession of hypodermic syringes and needles regulated.—No person except a manufacturer or a wholesaler or a retail dealer in surgical instruments, pharmacist, physician, dentist, veterinarian, nurse or interne shall at any time have or possess a hypodermic syringe or needle or any instrument or implement adapted for the use of habit forming drugs by subcutaneous injections and which is possessed for the purpose of administering habit forming drugs, unless such possession be authorized by the certificate of a physician issued within the period of one year prior hereto. (1935, c. 477, s. 19.)

§ 90-109. Burden on defendant to prove exemption. — In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. (1935, c. 477, s. 20.)

§ 90-110. State board of pharmacy and peace officers to enforce article.—It is hereby made the duty of the state board of pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the State, and of all state's attorneys, to enforce all provisions of this article, except those specifically delegated, and to coöperate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states, relating to narcotic drugs. (1935, c. 477, s. 21.)

§ 90-111. Penalties for violation. — Any person violating any provision of this article shall, upon conviction, be punished for the first offense by a fine not exceeding one thousand ($1,000.00) dollars or by imprisonment for not exceeding three years, or both; and for any subsequent offense by a fine not exceeding three thousand dollars ($3,000.00) or by imprisonment for not exceeding five years, or both. (1935, c. 477, s. 22.)

§ 90-112. Double jeopardy. — No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal narcotic laws of the same act or commission, which, it is alleged, constitutes a violation of this article. (1935, c. 477, s. 23.)

§ 90-113. Construction of article. — This article shall be so interpreted and construed as to effectuate its general purpose and to make uniform the laws of those states which enact it. (1935, c. 477, s. 25.)

Art. 6. Optometry.

§ 90-114. Optometry defined. — The practice of optometry is hereby defined to be the employment of any means, other than the use of drugs, medicines, or surgery, for the measurement of the powers of vision and the adaptation of lenses for the aid thereof; and in such practices as above defined, the optometrist may prescribe, give directions or advice as to the fitness or adaptation of a pair of spectacles, eyeglasses or lenses for another person to wear for the correction or relief of any condition for which a pair of spectacles, eyeglasses or lenses are used, or to use or permit or allow the use of instruments, test-cards, test types, test lenses, spectacles or eyeglasses or anything containing lenses, or any device for the purpose of aiding any person to select any spectacles, eyeglasses or lenses to be used or worn by such last mentioned person or by any other person. (1909, c. 444, s. 1; 1923, c. 42, s. 1; C. S. 6687.)

§ 90-115. Practice without registration unlawful.—After the passage of this article it shall be unlawful for any person to practice optometry in the state unless he has first obtained a certificate of registration and filed the same, or a cer-

tified copy thereof, with the clerk of the superior court of his residence, as hereinafter provided. Within the meaning of this article, a person shall be deemed as practicing optometry who does, or attempts to, sell, furnish, replace, or duplicate, a lens, frame, or mounting, or furnishes any kind of material or apparatus for ophthalmic use, without a written prescription from a person authorized under the laws of the State of North Carolina to practice optometry, or from a person authorized under the laws of North Carolina to practice medicine: Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles, without advice or aid as to the selection thereof, as merchandise from permanently located or established places of business, nor shall it prohibit persons or corporations from making mechanical repairs to frames for spectacles; nor shall it prohibit any person, firm, or corporation engaged in grinding lenses and filling prescriptions from replacing or duplicating lenses on original prescriptions issued by a duly licensed optometrist, and oculist. (1909, c. 444, s. 2; 1935, c. 63; C. S. 6688.)

§ 90-116. Board of examiners in optometry. — There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this article, and which shall be styled the "North Carolina State Board of Examiners in Optometry." This board shall be elected by the North Carolina State Optometric Society and commissioned by the governor and shall consist of five regular optometrists who are members of the North Carolina state optometric society and who have been engaged in the practice of optometry in the state for five years. The terms of the members shall be as follows: One for one year, one for two years, one for three years, one for four years, one for five years. The terms of members thereafter appointed shall be for five years. The members of the board, before entering upon their duties, shall respectively take all oaths taken and prescribed for other state officers, in the manner provided by law, which shall be filed in the office of the secretary of state, and the board shall have a common seal. The North Carolina State Optometric Society shall have the power to fill all vacancies on said board for unexpired terms, and members so elected shall be commissioned by the governor. (1909, c. 444, s. 3; 1915, c. 21, s. 1; 1935, c. 63; C. S. 6689).

§ 90-117. Organization; meetings and powers thereat; records, witnesses and evidence. — The board of examiners shall choose, at the first regular meeting and annually thereafter, one of its members as president and one as secretary and treasurer. The board shall make such rules and regulations, not inconsistent with law, as may be necessary to the proper performance of its duties, and each member may administer oaths and take testimony concerning any matter within the jurisdiction of the board. A majority of the board shall constitute a quorum. The board shall meet at least once a year, the times and places of meeting to be designated by the president and secretary. The secretary of the board shall keep a full record of its proceedings, which shall at all reasonable times be open to public inspection. The president, secretary-treasurer, or any member of the board shall have power in connection with any matter within the jurisdiction of the board to summon and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by it necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary-treasurer or the president of the board and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to punishment for contempt by the board. Said board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held. (1909, c. 444, s. 4; 1935, c. 63; C. S. 6690.)

§ 90-118. Examination for practice; prerequisites; registration. — Every person, before beginning to practice optometry in this state after the passage of this article, shall pass an examination before the board of examiners. The examination shall be confined to such knowledge as is essential to practice of optometry. Every applicant for examination at the time of examination must comply with the following conditions:

1. He must be twenty-one years of age.

2. He shall file with the secretary of the board a certificate of good moral character, signed by two reputable citizens of this state; but an applicant from another state may have such certificate signed by any state officer of the state from which he comes.

3. He shall satisfy the board that he has been in actual attendance in approved school of optometry, and that he holds a certificate of graduation from said school, which school shall be approved by the North Carolina Board of Examiners in Optometry.

4. He must pay to the board for the use of the board the sum of twenty dollars, and if he shall successfully pass the examination he shall pay to the secretary for the use of the board a further sum of five dollars on the issuance to him of the certificate: Provided, the applicant may stand any subsequent examination by paying an additional fee of five dollars.

Every person successfully passing the examination shall be registered in the board registry, which shall be kept by the secretary, as licensed to practice optometry, and he shall also receive a certificate of registration, to be signed by the president and secretary of the board: Provided, that any person holding a certificate by examination to practice optometry in another state where the qualifications prescribed are equal to the qualifications required in this state may be licensed without examination on the same conditions and on the payment of the same fees as are required of other applicants. (1909, c. 444, s. 5; 1915, c. 21, ss. 2, 3, 4; 1923, c. 42, ss. 2, 3; 1935, c. 63; C. S. 6691.)

§ 90-119. Persons in practice before passage of statute.—Every person who had been engaged in the practice of optometry in the state for two years prior to the date of the passage of this article shall hereafter file an affidavit as proof thereof with the board. The secretary shall keep a record of such persons who shall be exempt from the provisions of the preceding section. Upon payment of three dollars he shall issue to each of them certificates of registration without the necessity of an examination. Failure on the part of a person so entitled within six months of the enactment of this article to make written application to the board for the certificate of registration accompanied by a written statement, signed by him and duly verified before an officer authorized to administer oaths within this state, fully setting forth the grounds upon which he claims such certificate, shall be deemed a waiver of his right to a certificate under the provisions of this section. A person who has thus waived his right may obtain a certificate thereafter by successfully passing examination and paying a fee as provided herein. (1909, c. 444, ss. 6, 7, 9; C. S. 6692.)

§ 90-120. Filing of certificate by licensee; fees; failure to file, certified copies.—Each recipient of the certificate of registration shall present the same for record to the clerk of the superior court of the county in which he resides, and shall pay a fee of fifty cents for recording the same. The clerk shall record it in a book to be provided by him for that purpose. Any person so licensed, before engaging in the practice of optometry in any other county, shall file the certificate for record with the clerk of the superior court of the county in which he desires to practice, and pay the clerk for recording it a fee of fifty cents. Any failure, neglect, or refusal on the part of a person holding a certificate to file it for record, for thirty days after the issuance thereof, shall forfeit the certificate and it shall become null and void. Upon the request of any person entitled to a certificate of registration the board shall issue a certified copy thereof, and upon the fact of the loss of the original being made to appear, the certified copy shall be recorded in lieu of the original, and the board shall be entitled to a fee of one dollar for recording such certified copy. (1909, c. 444, s. 8; C. S. 6693.)

§ 90-121. Certificate to be displayed at office.—Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted. (1909, c. 444, s. 10; C. S. 6694.)

§ 90-122. Compensation of boards; surplus funds.—Out of the funds coming into possession of said board each member thereof may receive as compensation the sum of ten dollars for each day he is actually engaged in the duties of his office and mileage of five cents per mile for all distances necessarily traveled in going to and coming from the meetings of the board. Such expenses shall be paid from the fees and assessments received by the board under the provisions of this article, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of per diem allowance and mileage, as above provided, shall be held by the secretary as a special fund for meeting expenses of the board and carrying out the provisions of this article, and he shall give the state such bond as the board shall from time to time direct for the faithful performance of his duties, and the board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this article. The secretary-treasurer shall receive from the funds of the board such salary as may be determined by the board. (1909, c. 444, s. 11; 1923, c. 42, s. 4; 1935, c. 63; C. S. 6695.)

§ 90-123. Annual fees; failure to pay; revocation of license; collection by suit.—For the use of the board in performing its duties under this article, every registered optometrist shall, in every year after the year one thousand nine hundred and thirty-seven pay to the board of examiners the sum of not exceeding fifteen ($15.00) dollars, the amount to be fixed by the board, as a license fee for the year. Such payments shall be made prior to the first day of April in each year, and in case of default in payment by any registered optometrist his certificate may be revoked by the board at the next regular meeting of the board after notice as herein provided. But no license shall be revoked for non-payment if the person so notified shall pay, before or at the time of consideration, his fee and such penalty as may be imposed by the board. The penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed five and no/100 dollars ($5.00). The board of examiners may collect any dues or fees provided for in this section by suit in the name of the board. The notice hereinbefore mentioned shall be in writing, addressed to the person in default in the payment of dues or fees herein mentioned at his last known address as shown by the records of the board, and shall be sent by the secretary of the board by registered mail, with proper postage attached, at least twenty (20) days before the date upon which revocation of license is considered, and the secretary shall keep a record of the fact and of the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of the license of the person to whom such notice is addressed. (1909, c. 444, s. 12; 1923, c. 42, s. 5; 1933, c. 492; 1937, c. 362, s. 1; C. S. 6696.)

§ 90-124. Revocation and regrant of certificate.—The board shall have the power to make such rules and regulations, not inconsistent with the laws of the State of North Carolina, as may be necessary and proper for the regulation of the practice of the profession of optometry, and for the performance of its duties. The board shall have the power to revoke any certificate of registration granted by it under this article for conviction of crime, habitual drunkenness, gross incompetence, contagious or infectious disease; and the board shall likewise have the power to revoke any such certificate of registration upon the finding by the board that the holder of such certificate has been guilty of unethical conduct or prac-

tice. Unethical practice as herein stipulated as a condition for revocation of license shall include the following:

(1) Advertising the "free examination of the eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey, or are calculated to convey, the impression to the public that the eyes are examined free, or of a character tending to deceive or mislead the public, or in the nature of "bait advertising";

(2) Use of advertising, directly or indirectly, whether printed, radio, display, or of any other nature which seeks or solicits practice on any installment payment plan;

(3) House-to-house canvassing or peddling, directly or through any agent or employee, for the purpose of selling, fitting, or supplying frames, mounting, lenses, or other opthalmic products.

Before any certificate shall be so revoked for any of the grounds or reasons herein set forth, the holder thereof shall be served with a written notice by any officer authorized to serve civil summons. The said notice shall inform the holder of the charge or charges against him and shall specify the day, which shall be at least 30 days from the date of the issuance of the notice, the place, and the time of the hearing before the board. The holder of the certificate shall have an opportunity to produce testimony in his behalf, and to confront the witnesses against him. Any person whose certificate has been revoked for any of the grounds or reasons herein set forth, or on account of non-payment of dues, may, after the expiration of ninety days, and within two years, apply to the board to have same regranted, and upon a showing satisfactory to the said board, and at the discretion of the board, license to practice optometry may be restored to such person. (1909, c. 444, s. 13; 1935, c. 63; C. S. 6697.)

§ 90-125. Practicing under other than own name or as a salaried or commissioned employee. —It shall be unlawful for any person licensed to practice optometry under the provisions of this article to advertise, practice, or attempt to practice under a name other than his own, except as an associate of or assistant to an optometrist licensed under the laws of the state of North Carolina; and it shall be likewise unlawful for any corporation, lay body, organization, group, or lay individual to engage, or undertake to engage, in the practice of optometry through means of engaging the services, upon a salary or commission basis, of one licensed to practice optometry or medicine in any of its branches in this state. Likewise, it shall be unlawful for any optometrist licensed under the provisions of this article to undertake to engage in the practice of optometry as a salaried or commissioned employee of any corporation, lay body, organization, group, or lay individual. (1935, c. 63; 1937, c. 362, s. 2.)

§ 90-126. Violation of article forbidden. — Any person who shall violate any of the provisions of this article, and any person who shall hold himself out to the public as a practitioner of optometry without a certificate of registration provided for herein, shall be deemed guilty of a misdemeanor, and upon conviction may be punished by a fine of not more than one hundred dollars or imprisonment for not more than four months, or both, in the discretion of the court. (1909, c. 444, s. 14; C. S. 6698.)

§ 90-127. Application of article. — Nothing in this article shall be construed to apply to physicians and surgeons authorized to practice under the laws of North Carolina, except the provisions contained in § 90-125, or prohibit persons to sell spectacles, eyeglasses, or lenses as merchandise from permanently located and established places of business. (1909, c. 444, s. 15; 1937, c. 362, s. 3; C. S. 6699.)

§ 90-128. Repeal of laws; exception.—Nothing in the provisions amending §§ 90-114, 90-118, 90-122, and 90-123, shall repeal any of the provisions of § 90-127. (1923, c. 42, s. 7; C. S. 6699(b).)

Art. 7. Osteopathy.

§ 90-129. Osteopathy defined.—For the purpose of this article osteopathy is defined to be the science of healing without the use of drugs, as taught by the various colleges of osteopathy recognized by the North Carolina Osteopathic Society, Incorporated. (1907, c. 764, s. 8; 1913, c. 92, s. 3; C. S. 6700.)

§ 90-130. Board of examiners; membership; officers; meetings.—There shall be a state board of osteopathic examination and registration, consisting of five members appointed by the governor, in the following manner, to wit: within thirty days after this article goes into effect the governor shall appoint five persons who are reputable practitioners of osteopathy, selected from a number of not less than ten who are recommended by the North Carolina osteopathic society, and this number may be increased to fifteen, upon the request of the governor; the recommendation of the president and secretary being sufficient proof of the appointees' standing in the profession; and said appointees shall constitute the first board of osteopathic examination and registration. Their term of office shall be so designated by the governor that the term of one member shall expire each year. Thereafter in each year the governor shall in like manner appoint one person to fill the vacancy in the board thus created, from a number of not less than five, who are recommended by the state osteopathic society; the term of said appointee to be for five years. A vacancy occurring from any other cause shall be filled by the governor for the unexpired term in the same manner as last above stated. The board shall, within thirty days after its appointment, meet in the city of Raleigh, and organize by electing a president, secretary and treasurer, each to serve for one year. Thereafter the election of said officers shall occur annually. The treasurer and secretary shall each give bond, approved by the board, for the faithful performance of their respective duties, in such sum as the board may from time to time determine. The board shall have a common seal, and shall formulate rules to govern its actions; and the president and secretary shall be empowered to administer oaths. The board shall meet in the city of Raleigh at the call of the president, in the month following the election of its officers, and in July of each succeeding year,

and at such other times and places as a majority of the board may designate. Three members of the board shall constitute a quorum, but no certificate to practice osteopathy shall be granted on an affirmative vote of less than three. The board shall keep a record of its proceedings, and a register of all applicants for certificates, giving the name and location of the institution granting the applicant the degree of doctor of or diploma in osteopathy, the date of his or her diploma, and also whether the applicant was rejected or a certificate granted. The record and registers shall be prima facie evidence of all matters recorded therein. (1907, c. 764, s. 1; 1913, c. 92, s. 1; 1937, c. 301, s. 1; C. S. 6701.)

§ 90-131. Examination and certification of applicant; prerequisites.—Any person, before engaging in the practice of osteopathy in this state, shall, upon the payment of a fee of twenty-five dollars, make application for a certificate to practice osteopathy to the board of osteopathic examination and registration on a form prescribed by the board, giving, first, his name, age (which shall not be less than twenty-one years), and residence; second, evidence that such applicant shall have, previous to the beginning of his course in osteopathy, a certificate of examination for admission to the freshman class of a reputable literary or scientific college, a diploma from a high school, academy, state normal school, college, or university, approved by aforesaid board; third, the date of his diploma, and evidence that such diploma was granted on personal attendance and completion of a course of not less than four terms of five months each, and after July, one thousand nine hundred and seventeen, of four terms of not less than nine months each in three separate years; fourth, the name of the school or college of osteopathy from which said applicant was a graduate, and which shall have been in good repute as such at the time of the granting of his diploma, as determined by the board. The board may, in its discretion, accept, as the equivalent of any part or all of the second, third, and fourth requirements, evidence of five or more years reputable practice of osteopathy, provided such substitution be specified in the certificate, if the facts thus set forth, and to which the applicant shall be required to make affidavit, shall meet the requirements of the board, as prescribed by its qualifications for the practice of osteopathy, which shall include the subjects of anatomy, physiology, physiological chemistry, toxicology, osteopathic pathology, bacteriology, osteopathic diagnosis, hygiene, osteopathic obstetrics and gynecology, minor surgery, principals and practice of osteopathy, and such other subjects as the board may require. A physician's certificate issued by a reputable school of osteopathy to a graduate from a reputable school of medicine, after an attendance of not less than two terms of nine months each in two separate years, may be accepted by the board on the same terms as a diploma, and the holder thereof be subject to the same regulations in all other respects as other applicants before the board. The board may refuse to grant a certificate to any person convicted of a felony, or of gross unprofessional conduct, or who is addicted to any vice to such a degree as to render him unfit to practice osteopathy, and may, after due notice and hearing, revoke such certificate for like cause. (1907, c. 764, s. 2; 1913, c. 92, s. 1; C. S. 6702.)

§ 90-132. When examination dispensed with; temporary permit.—The board may, upon the payment of a fee of two dollars, grant a certificate to practice osteopathy in this state without examination, if application therefor is filed within ninety days after the passage of this act, to any person having a diploma from a legally chartered school or college of osteopathy, which was in good standing at the time of issuing of such diploma as defined by the board, and who shall meet the requirements of the board in other respects, and who was in active practice in this state at the time of the passage of this article.

The board may, in its discretion, dispense with an examination in the case, first, of an osteopathic physician duly authorized to practice osteopathy in any other state or territory, or the District of Columbia, who presents a certificate of license issued after an examination by the legally constituted board of such state, territory, or District of Columbia, accorded only to applicants of equal grade with those required in this state; or, second, an osteopathic physician who has been in the actual practice of osteopathy for five years, who is a graduate of a reputable school of osteopathy, who may desire to change his residence to this state, and who makes application on a form to be prescribed by the board, accompanied by a fee of twenty-five dollars.

The secretary of the board may grant a temporary permit until a regular meeting of the board, or to such time as the board can conveniently meet, to one whom he considers eligible to practice in the state, and who may desire to commence the practice immediately. Such permit shall only be valid until legal action of the board can be taken. In all the above provisions the fee shall be the same as charged to applicants for examination. (1907, c. 764, s. 2; C. S. 6703.)

§ 90-133. Fees held by board; salaries; payment of expenses.—All fees shall be paid in advance to the treasurer of the board, to be by him held as a fund for the use of the state board of osteopathic examination and registration. The compensation and expenses of the members and officers of said board, and all expenses proper and necessary, in the opinion of said board, to discharge its duties under and to enforce the law, shall be paid out of such fund, upon the warrant of the president and secretary of said board, and no expense shall be created to exceed the income of fees or fines as herein provided. The salaries shall be fixed by the board, but shall not exceed ten dollars per day per member, and railroad and hotel expenses. (1907, c. 764, s. 3; C. S. 6705.)

§ 90-134. Subject to state and municipal regulations.—Osteopathic physicians shall observe and be subject to all state and municipal regu-

lations relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health, the same as physicians of other schools of medicine, and such reports shall be accepted by the officers or department to whom the same are made. (1907, c. 764, s. 4; C. S. 6706.)

§ 90-135. Record of certificates; fees. — Every person holding a certificate from the state board of examination and registration shall have it recorded in the office of the county clerk of the county in which he or she expects to practice. Until such certificate is filed for record, the holder shall exercise none of the rights or privileges therein conferred. Said clerk of the county shall keep in a book for that purpose a complete list of all certificates recorded by him, with the date of the recording of each certificate. Each holder of a certificate shall pay to said clerk a fee of one dollar for making such record. (1907, c. 764, s. 5; C. S. 6707.)

§ 90-136. Revocation or suspension of license. —The North Carolina state board of osteopathic examination and registration may refuse to issue a license to any one otherwise qualified, and may suspend or revoke any license issued by it to any osteopathic physician, who is not of good moral character, and/or for any one or any combination of the following causes:

1. Conviction of a felony, as shown by a certified copy of the record of the court of conviction;
2. The obtaining of or an attempt to obtain a license, or practice in the profession, or money, or any other thing of value, by fraudulent misrepresentations;
3. Gross malpractice;
4. Advertising by means of knowingly false or deceptive statements;
5. Advertising, practicing, or attempting to practice under a name other than one's own;
6. Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.

Each of the following acts constitutes a misdemeanor, punishable upon conviction by a fine of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars; or imprisonment for not less than thirty days nor more than one year, or both in the discretion of the court:

1. The practice of osteopathy or an attempt to practice osteopathy, or professing to do so without a license;
2. The obtaining of or an attempt to obtain a license, or practice in the profession, or money, or any other thing of value by fraudulent misrepresentation;
3. The making of any wilfully false oath or affirmation whenever an oath or affirmation is required by this article;
4. Advertising, practicing or attempting to practice osteopathy under a name other than one's own.

The state board may neither suspend nor revoke any license, however, for any of the causes hereinabove set forth unless the person accused has been given at least twenty days notice in writing of the charge against him and a public hearing had by said board, or a quorum thereof.

At the time and place named in said notice the said board, or a quorum thereof, shall proceed to hear the charges against the accused upon competent evidence, oral or by deposition, and at said hearing said accused shall have the right to be present in person and/or represented by counsel. After hearing all the evidence, including such evidence as the accused may present, the board shall determine its action and announce the same.

From any action of the board depriving the accused of his license, or certificate of renewal of license, the accused shall have the right of appeal to the superior court of the county wherein the hearing was held, upon filing notice of appeal within ten days of the decision of the board. The record of the hearing before the North Carolina state board of osteopathic examination and registration shall constitute the record upon appeal in the superior court. (1937, c. 301, s. 3.)

§ 90-137. Restoration of revoked license. — Whenever any osteopath has been deprived of his license, the North Carolina state board of osteopathic examination and registration, in its discretion, may restore said license upon due notice being given and hearing had, and satisfactory evidence produced of proper reformation of the licentiate before restoration. (1937, c. 301, s. 3.)

§ 90-138. Objects of North Carolina osteopathic society.—The object of the North Carolina osteopathic society shall be to unite the osteopaths of this state for mutual aid, encouragement, and improvements; to encourage scientific research in the laws of health and treatment of diseases of the human family; to elevate the standard of professional thought and conduct in the practice of osteopathy and to restrict the practice of osteopathy to persons educated and trained in the science and possessing a diploma from a reputable college of osteopathy. (1907, c. 764, s. 7; C. S. 6709.)

Art. 8. Chiropractic.

§ 90-139. Creation and membership of board of examiners. — There is hereby created and established a board to be known by the name and style of the state board of chiropractic examiners. The board shall be composed of three practicing chiropractors of integrity and ability, who shall be residents of the state, and no more than two members of said board shall be graduates from the same school or college of chiropractic. (1917, c. 73, s. 1; C. S. 6710.)

§ 90-140. Appointment; term; successors; recommendations. — The governor shall appoint the members of the state board of chiropractic examiners, whose terms of office shall be as follows: One member shall be appointed for a term of one year from the close of the next regular annual meeting of the North Carolina chiropractic association; one member shall be appointed for a term of two years from such time, and one member shall be appointed for a term of three years from such time. Annually thereafter, at the time of the annual meeting or immediately thereafter the governor shall appoint one member of the state board of chiropractic examiners, whose term of office shall be three years, and such members of the

board of examiners shall be appointed from a number of not less than five who shall be recommended by the North Carolina chiropractic association. (1917, c. 73, s. 2; 1933, c. 442, s. 1; C. S. 6711.)

§ 90-141. Organization and vacancies. — The board of chiropractic examiners shall elect such officers as they may deem necessary, and in case of a vacancy, caused by death or in any other manner, a majority of the board shall have the right to fill the vacancy by the election of some other member of the North Carolina chiropractic association. (1917, c. 73, s. 4; 1933, c. 442, s. 1; C. S. 6713.)

§ 90-142. Rules and regulations. — The state board of chiropractic examiners may adopt suitable rules and regulations for the performance of their duties. (1919, c. 148, s. 4; C. S. 6714.)

§ 90-143. Definitions of chiropractic; examinations; educational requirements.—Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the twenty-four movable vertebrae of the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the board of examiners to examine all applicants who shall furnish satisfactory proof of good character and of graduation from a regular chiropractic school of good standing, and such examination shall embrace such branches of study as are usually included in the regular course of study for chiropractors in chiropractic schools or colleges of good standing, including especially an examination of each applicant in the science of chiropractic as herein defined. Every applicant for license shall furnish to said board of examiners sufficient and satisfactory evidence that, prior to the beginning of his course in chiropractic, he had obtained a high school education, or what is equivalent thereto, entitling him to admission in a reputable college or university; and he shall also exhibit to said board of chiropractic examiners, or satisfy them that he holds, a diploma from a reputable chiropractic college, and not a correspondence school, and that said diploma was granted to him on a personal attendance and completion of a regular four years' course in such chiropractic college, and such applicant shall be examined in the following studies: Chiropractic analysis, chiropractic philosophy, chiropractic neurology, palpation, nerve tracing, microscopy, histology, anatomy, gynecology, jurisprudence, chemistry, pathology, hygiene, physiology, embryology, eye, ear, nose, and throat, dermatology, symptomology, spinography, chiropractic orghopody, and the theory, teaching and practicing of chiropractic.

Provided further, that the said state board of chiropractic examiners may license by reciprocity, upon application, any chiropractor holding a license issued to him by a regular board of chiropractic examiners in another state when said board is satisfied that such applicant has educational qualifications, or the equivalent thereof, equal to those prescribed by said board for admission to practice chiropractic in this state, and upon proof of good moral character and that he has practiced chiropractic under such license for at least one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; 1933, c. 442, s. 1; 1937, c. 293, s. 1; C. S. 6715.)

§ 90-144. Annual meetings. — The board of chiropractic examiners and the North Carolina chiropractic association shall hold their annual meetings at the same time and place. But the said board of examiners may, in their discretion, meet not more than three days in advance of the annual meeting of the North Carolina chiropractic association. (1917, c. 73, s. 6; 1933, c. 442, s. 1; C. S. 6716.)

§ 90-145. Grant of license; temporary license.— The board of chiropractic examiners at such regular annual meeting of the board shall grant to each applicant who is found to be competent, upon examination, a license authorizing him or her to practice chiropractic in North Carolina. Any two members of said board may grant a temporary license to any applicant who shall comply with the requirements of this article as to proof of good character and of graduation from a chiropractic school or college as prescribed in this article; but such temporary license shall not continue in force longer than until the next annual meeting of the said board of examiners, and in no case shall a temporary license be granted to an applicant who has already been refused a license by the board of examiners at an annual meeting. (1917, c. 73, s. 7; C. S. 6717.)

§ 90-146. Graduates from other states. — A graduate of a regular chiropractic school who comes into this state from another state may be granted a license by the board of examiners as required in his article. (1917, c. 73, s. 8; C. S. 6718.)

§ 90-147. Practice without license a misdemeanor.—Any person practicing chiropractic in this state without having first obtained a license as provided in this article shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court. (1917, c. 73, s. 9; C. S. 6719.)

§ 90-148. Records of board. — The secretary of the board of chiropractic examiners shall keep a record of the proceedings of the board, giving the name of each applicant for license, and the name of each applicant licensed and the date of such license. (1917, c. 73, s. 10; C. S. 6720.)

§ 90-149. Application fee.—Each applicant shall pay the secretary of said board a fee of twenty-five dollars. (1917, c. 73, s. 11; C. S. 6721.)

§ 90-150. Exempt from jury service. — All duly licensed chiropractors of this state shall be exempt from service as jurors in any of the courts of this state. (1933, c. 442, s. 2.)

§ 90-151. Extent and limitation of license.—Any person obtaining a license from the board of chiropractic examiners shall have the right to practice the science known as chiropractic, in accordance with the method, thought, and practice

of chiropractors, as taught in recognized chiropractic schools and colleges, but shall not prescribe for or administer to any person any medicine or drugs, nor practice osteopathy or surgery. (1917, c. 73, s. 12; 1933, c. 442, s. 3; C. S. 6722.)

§ 90-152. Registration of license. — Any person desiring to engage in the practice of chiropractic, having first obtained a license as herein provided, shall appear before the clerk of the superior court of the county in which he resides, or proposes to practice, for registration as a chiropractor. He shall produce and exhibit to the said clerk a license obtained from the board of chiropractic examiners, and upon such exhibition the clerk shall register the name and residence of the applicant, giving the date of such registration, in a book to be kept for the purpose of registering chiropractors, and shall issue to him a certification of such registration under the seal of the superior court of such county, for which the clerk shall be entitled to collect from said applicant a fee of fifty cents. The person obtaining such certificate shall be entitled to practice chiropractic anywhere in this state; but if he shall remove his residence to another county, he shall exhibit said certificate to the clerk of the superior court of such other county and be registered. Any one receiving a temporary license as provided in this article shall not be entitled to register, but may practice anywhere in this state during the time such temporary license shall be in force. (1917, c. 73, s. 13; C. S. 6723.)

§ 90-153. Licensed chiropractors may practice in public hospitals.—A licensed chiropractor in this state may have access to and practice chiropractic in any hospital or sanitarium in this state that receives aid or support from the public. (1919, c. 148, s. 3; C. S. 6724.)

§ 90-154. Grounds for refusal or revocation of license. — The board of chiropractic examiners may refuse to grant or may revoke a license to practice chiropractic in this state, upon the following grounds: Immoral conduct, bad character, the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate him or her for the performance of such professional duties. (1917, c. 73, s. 14; C. S. 6725.)

§ 90-155. Annual fee for renewal of license. — All persons practicing chiropractic in this state shall, on or before the first Tuesday after the first Monday in January in each year after licenses issued to them as herein provided, pay to the secretary of the board of chiropractic examiners a renewal license fee of ten ($10.00) dollars, the payment of which, and a receipt from the secretary of the board, shall work a renewal of the license fee for twelve months.

Any license or certificate granted by the board under this article shall automatically be cancelled if the holder thereof fails to secure a renewal within three months from the time herein provided; but any license thus cancelled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of fifteen ($15.00) dollars. (1917, c. 73, s. 15; 1933, c. 442, s. 4; 1937, c. 293, s. 2; C. S. 6726.)

§ 90-156. Pay of board and authorized expenditures.—The members of the board of chiropractic examiners shall receive their actual expenses, including railroad fare and hotel bills, when meeting for the purpose of holding examinations, and performing any other duties placed upon them by this article, such expenses to be paid by the treasurer of the board out of the moneys received by him as license fees, or from renewal fees. The board shall also expend out of such fund so much as may be necessary for preparing licenses, securing seal, and all other necessary expenses in connection with the duties of the board. (1917, c. 73, s. 16; C. S. 6727.)

§ 90-157. Chiropractors subject to state and municipal regulations. — Chiropractors shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases. (1917, c. 73, s. 17; C. S. 6728.)

Art. 9. Trained Nurses.

§ 90-158. Board of examiners. — A board of nurse examiners composed of five members, to consist of three registered nurses to be elected by the North Carolina State Nurses' Association, and one representative each from the North Carolina State Medical Society and the North Carolina State Hospital Association, is hereby created to be known by the title "The North Carolina Board of Nurse Examiners."

The members of the first board elected under this article shall serve as follows: The representative of the North Carolina State Medical Society and the representative of the North Carolina State Hospital Association shall serve for a term expiring June 1, 1925, or until their successors are qualified; and the three registered nurses elected by the North Carolina State Nurses' Association shall serve for a term expiring June 1, 1926, or until their successors are qualified. Thereafter, each member of said board shall serve a term of three years, or until his or her successor is appointed. The board shall fill any vacancy for an unexpired term.

The Board of nurse examiners is hereby empowered to prescribe such regulations as it may deem proper, governing applicants for licenses, admission to examinations, the conduct of applicants during examinations, and the conduct of the examinations proper with the approval of the standardization board hereinafter created. (1917, c. 17, s. 1; 1925, c. 87, s. 2; 1931, c. 56; C. S. 6729.)

§ 90-159. Committee on standardization. — A joint committee on standardization, consisting of three members appointed from the North Carolina state nurses' association, and four members from the North Carolina state hospital association, whose members shall serve for a term of three years, or until their successors are elected, is hereby created. The joint committee on standardization shall advise with the board of nurse examiners herein created in the adoption of regulations governing the education of nurses, and shall jointly with the North Carolina board of nurse examiners have power to establish standards and provide minimum requirements for the conduct of schools of nursing of which applicants for examination

for nurse's license under this chapter must be graduates before taking such examination. (1925, c. 87, s. 3; 1931, c. 56; 1933, c. 203.)

§ 90-160. Educational director of schools of nursing. — An educational director of schools of nursing shall be annually appointed by the North Carolina State Nurses' Association, who shall report annually to the board of nurse examiners, and to the North Carolina State Hospital Association. Such director shall be a registered nurse, her duties and compensation to be fixed by the board of nurse examiners and the standardization board. (1925, c. 87, s. 4.)

§ 90-161. Organization of board; seal; officers; compensation.—Three members of the board shall constitute a quorum, two of whom shall be nurses.

The board shall adopt and have custody of a seal and shall frame by-laws and regulations for its own government and for the execution of the provisions of this article. The officers of said board shall be a president and a secretary-treasurer, both to be elected from its nurse members. The treasurer shall give bond in such sum as may be fixed in the by-laws, and the premium therefor to be paid from the treasury of said board. The members of the board shall receive such compensation in addition to actual traveling and hotel expenses as shall be fixed by the board. The secretary-treasurer may receive an additional salary to be fixed by the board, said expenses and salaries to be paid from fees received by the board under the provisions of this article, and in no case to be charged upon the treasury of the State.

All moneys received in excess of said allowance, and other expenses provided for, shall be held by the secretary-treasurer for the expenses of the board and for extending nursing education in the State. (1917, c. 17, s. 2; 1925, c. 87, s. 5; C. S. 6730.)

§ 90-162. Meetings for examination; prerequisites for applicants. — The board of nurse examiners of North Carolina shall convene not less frequently than once annually, and at any time ten or more applicants shall notify the secretary-treasurer that they desire an examination. Thirty days prior to such meetings notice stating time and place of examination shall be published in one nursing journal and three daily State papers.

At such meetings it shall be the duty of the board of nurse examiners to examine graduate nurses applying for license to practice their profession in North Carolina. An applicant must prove to the satisfaction of the board that he or she is twenty-one years of age, is of good moral character, and has graduated from high school or has equivalent credits.

Applicants shall have graduated from a school of nursing connected with a general hospital giving a three years' course of practical and theoretical instruction, which said hospital meets the minimum requirements and standards for the conduct of schools of nursing which may have been set up and established by the joint committee on standardization provided for in § 90-159. Such schools of nursing may give credit for college work on the three years' course to the extent and as may be approved by the board of nurse examiners, such credits not to total more than one year for any one person. (1917, c. 17, s. 3; 1925, c. 87, s. 6; 1931, c. 56; C. S. 6731.)

§ 90-163. Scope of examination; fees; licensing. —Examinations shall be held in anatomy and physiology, materia medica, dietetics, hygiene and elementary bacteriology, obstetrical, medical and surgical nursing, nursing of children, contagious diseases and ethics of nursing, and such other subjects as may be prescribed by the examining board. The subject of contagious diseases may be given in theory only. If on examination the applicant should be found competent, the board shall grant a license authorizing him or her to register as herein provided and to use the title "registered nurse," signified by the letters "R. N."

Before an applicant shall be permitted to take such an examination he or she shall pay to the secretary of the examining board an examination fee of ten dollars. In the event of the failure of the applicant to pass examination, one-half of the above named fee shall be returned to the applicant. (1917, c. 17, s. 4; 1925, c. 87, s. 7; C. S. 6732.)

§ 90-164. Licenses and certificates without examination; fee.—The board of nurse examiners shall have authority to issue licenses without examination to nurses registered in other states: Provided, that said states shall maintain an equivalent standard of registration requirements. The examination fee shall accompany each such application for license.

The board shall also have power in the exercise of its discretion to issue a license without examination to any applicant who has been duly registered as a registered nurse under the laws of another state: Provided, said applicant possesses qualifications at least equal to those required by the State of North Carolina. The fee for license without examination shall be twenty-five dollars ($25.00). (1917, c. 17, s. 5; 1925, c. 87, s. 8; C. S. 6733.)

§ 90-165. Only licensed nurses to practice.—On and after February 28, 1925, all "trained," "graduate," "licensed," or "registered" nurses must obtain licenses from the board of nurse examiners before practicing their profession in this State, and before using the abbreviation "R. N." must obtain certificates of registration from the clerk of the Superior Court of any county as hereinafter provided; but nothing in this section shall be construed to apply to any nurse who is qualified and practicing her profession on February 28, 1925. (1917, c. 17, s. 6; 1917, c. 288; 1925, c. 87, s. 9; C. S. 6734.)

§ 90-166. Certain persons not affected by this article.—This article shall not be construed to affect or apply to the nursing of the sick by friends or members of the family. (1917, c. 17, s. 7; 1925, c. 87, s. 10; 1931, c. 56; C. S. 6735.)

§ 90-167. Temporary nursing in state. — The board of nurse examiners may make reasonable rules of comity allowing registered nurses from other states to do temporary nursing in this State. (1925, c. 87, s. 10½.)

§ 90-168. Registration of nurses.—The clerk of the Superior Court of any county, upon presentation to him of a license from the State Board of

Nurse Examiners issued at a date not more than twelve months previous, shall enter the date of registration and the name and residence of the holder thereof in a book to be kept in his office for this purpose, and marked "record of registered nurses," and shall issue to the applicant a certificate of such registration, under the seal of the Superior Court of the county upon a form to be prescribed by the board of nurse examiners. For such registration he shall charge a fee of fifty cents. (1917, c. 17, s. 8; 1925, c. 87, s. 11; C. S. 6736.)

§ 90-169. Revocation of license. — The board shall have power to revoke the license of any registered nurse upon conviction of gross incompetence, dishonesty, intemperance, or any act derogatory to the morals or standing of the profession of nursing. No license shall be revoked except upon charges preferred. The accused shall be furnished a written copy of such charges, and given not less than twenty days notice of the time and place when said board shall accord a full and fair hearing on the same. Upon the revocation of a license and certificate the name of the holder thereof shall be stricken from the roll of registered nurses in the hands of the secretary of the board, and by the clerk of the Superior Court from his register upon notification of such action by said secretary. (1917, c. 17, s. 9; 1925, c. 87, s. 12; C. S. 6737.)

§ 90-170. Violation of article misdemeanor. — Any person procuring license under this article by false representation, or who shall refuse to surrender a license which has been revoked in the manner prescribed in the preceding section, or who shall use the title "trained", "graduate," "licensed" or "registered nurse," or the abbreviation "R. N." without having first obtained a license, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. Each act shall constitute a new offense. (Rev., s. 3656; 1917, c. 17, s. 10; 1925, c. 87, s. 13; C. S. 6738.)

§ 90-171. Training school for nurses at Sanatorium.—The state sanatorium for the treatment of tuberculosis, located at Sanatorium, North Carolina, is hereby authorized and power is hereby expressly given it to organize and conduct a training school for nurses in connection with the said sanatorium. The superintendent of the North Carolina sanatorium for the treatment of tuberculosis shall be ex officio dean of the training school for nurses, and he shall have power and authority to appoint such faculty, prescribe such course or courses of lectures, study and clinical work, and award such diplomas, certificates, or other evidence of the completion of such course or courses as he may think wise and proper, and perform such other functions and do such other acts as he may think necessary in the conduct of the said training school. (1915, c. 163, ss. 1, 2; C. S. 6739.)

Art. 10. Midwives.

§ 90-172. Midwives to register. — All persons, other than regularly registered physicians, practicing midwifery in this state shall register, without fee, their names and addresses with the secretary of North Carolina state board of health, as required by the provisions of article 17, entitled Inflammation of Eyes of Newborn, of the chapter Public Health. (1917, c. 257, ss. 8, 9; C. S. 6750.)

§ 90-173. Persons forbidden to practice midwifery.—It shall be unlawful for any person who habitually gets drunk, or who is addicted to the excessive use of cocaine or morphine or other opium derivative, to practice midwifery for a fee. (1911, c. 34, s. 1; C. S. 6751.)

§ 90-174. Disinfection of hands of practitioners. —It shall be unlawful for any midwife or other person who practices midwifery for fees to touch or otherwise handle the private parts of the person of any patient upon whom such person is in attendance unless the person so in attendance shall first and immediately previous thereto thoroughly wash and disinfect his or her hands. (1911, c. 34, s. 2; C. S. 6752.)

§ 90-175. Violation of two preceding sections misdemeanor.—Any person violating §§ 90-173 and 90-174 shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than ten dollars. (1911, c. 34, s. 4; C. S. 6753.)

§ 90-176. Practice of midwifery regulated by state board of health.—The state board of health is hereby authorized, empowered and directed to adopt, promulgate and enforce rules and regulations governing the practice of midwifery in this State. (1935, c. 225, s. 1.)

§ 90-177. Permit from state board of health. —No person shall practice midwifery in this State, except upon a permit granted and issued by the state board of health, under rules and regulations which it shall adopt with respect thereto, and upon forms which it shall prescribe. Provided that all persons who have practiced midwifery in this State for a period of five (5) years or more shall as a matter of right be entitled to the issuance of a permit to practice such occupation, if such person or persons shall make application therefor on or before April 24, 1936. (1935, c. 225, s. 2.)

§ 90-178. Practicing without permit a misdemeanor; authority of local health officers unaffected; counties may exempt themselves from law.—Any person who shall practice midwifery in this State without such permit from the state board of health, or who, in such practice, shall violate any of the rules and regulations adopted and promulgated by the state board of health, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than fifty ($50.00) dollars, or imprisonment of not more than thirty (30) days; provided, the provisions of §§ 90-176 to 90-178 shall not apply to licensed medical or osteopathic physicians. Provided nothing herein shall be construed to interfere with or supplant the authority of the local health officers over the practice of midwifery in those counties and/or cities having organized health departments now controlling and regulating the practice of midwifery. Provided that any county in the State not desiring to remain under the provisions of §§ 90-176 to 90-178 may withdraw from same by resolution duly passed by the board of commissioners of said county and certified to state board of health. (1935, c. 225, s. 3.)

Art. 11. Veterinaries.

§ 90-179. State veterinary medical association incorporated.—The association of veterinary surgeons and physicians calling themselves the North Carolina state veterinary medical association is declared to be a body politic and corporate under the name and style of The North Carolina State Veterinary Medical Association. (Rev., s. 5431; 1903, c. 503; C. S. 6754.)

§ 90-180. Board of veterinary medical examiners; appointment; membership; organization. — In order to properly regulate the practice of veterinary medicine and surgery there shall be a board to be known as the North Carolina board of veterinary medical examiners, to consist of five members of the North Carolina veterinary medical association. The governor shall annually appoint one member of such board, who shall hold his office for five years, and until his successor is appointed and qualified. Every person so appointed shall, within thirty days after notice of appointment, appear before the clerk of the superior court of the county in which he resides and take oath to faithfully discharge the duties of his office. (Rev., s. 5432; 1903, c. 503, s. 2; C. S. 6755.)

§ 90-181. Meeting of board; powers. — The board of examiners shall meet at least once a year at such times and places as the association may decide upon, and remain in session sufficiently long to examine all who may make application at the appointed time for a license. Three members of said board shall constitute a quorum. The board of examiners shall elect a president and a secretary, who shall also perform the duties of a treasurer. They shall keep a regular record of their proceedings in a book to be kept for that purpose, which shall always be open for inspection, and shall keep a record of all applicants for a certificate and of all who are granted a certificate, and shall publish the names of the successful applicants at least once each year in two newspapers published in the state. The board shall have authority to adopt such by-laws and regulations as may be necessary. (Rev., s. 5433; 1903, c. 503, ss. 3, 4, 6, 7; C. S. 6756.)

§ 90-182. Compensation of board.—The members of such board shall receive such compensation for their services, not to exceed four dollars per day, and their traveling expenses, as the association may decide upon, to be paid by the secretary of the board out of any money coming into his hands as secretary. None of the expenses of the board or of the members shall be paid by the state. (Rev., s. 5434; 1903, c. 503, s. 9; C. S. 6757.)

§ 90-183. Examination and licensing of veterinaries. — The board of examiners shall, at their annual meeting, examine all applicants who desire license to practice veterinary medicine or surgery. If upon such examination the applicant be found to possess sufficient skill to practice veterinary medicine or surgery, and good moral character, a license or certificate shall be issued to him. No certificate shall be granted except with a concurrence of a majority of the members present. To prevent delay and inconvenience two members of the board of examiners may grant a temporary certificate to practice veterinary medicine or surgery, which shall be in force only until the next regular meeting of the board of examiners, but in no case shall such temporary certificate be granted to any person who has been an unsuccessful applicant for a certificate before the board. The board shall have power to require each applicant to pay a fee of not more than ten dollars before issuing a certificate and five dollars before issuing a temporary certificate. (Rev., s. 5435; 1903, c. 503, ss. 3, 5, 8; C. S. 6758.)

§ 90-184. Rescission of license. — The board shall have power to rescind any certificate that may have been granted by it or annul any registration made under this article in accordance with the provisions of §§ 150-1 to 150-8 upon satisfactory proof that the person thus licensed has been guilty of grossly immoral conduct or malpractice as determined by the board. And it shall be the duty of said board to furnish any information pertaining to the practice of veterinary medicine or surgery upon application for same by any one practicing under this article. (Rev., s. 5436; 1903, c. 503, s. 10; C. S. 6759.)

§ 90-185. Practitioners before one thousand nine hundred and thirty-five.—All persons who had, on the first day of January, one thousand nine hundred and thirty-five, been practicing veterinary medicine or surgery and who have for a period of twenty years paid all fees as are required by law shall be allowed to practice veterinary medicine or surgery in this State: Provided, they make affidavit to the effect that they have practiced veterinary medicine or surgery as a profession for a period of twenty years prior to the first day of January, one thousand nine hundred and thirty-five, and that they have for a period of twenty years prior to the first day of January, one thousand nine hundred and thirty-five, paid all fees as may have been required by law. (Rev., s. 5437; 1903, c. 503, s. 11; 1905, c. 320; 1913, c. 129; 1919, c. 94; 1921, c. 171; Ex. Sess. 1921, c. 68; 1924, c. 38; 1935, c. 387; C. S. 6760.)

§ 90-186. When may practice without license.— Nothing in this article shall be construed to prohibit any member of the medical profession from prescribing for domestic animals in cases of emergency and collecting a fee therefor, nor to prohibit gratuitous services by any person in an emergency, nor to prevent any person from practicing veterinary medicine or surgery on any animal belonging to himself, or to prevent any one from castrating or spaying any of the domestic animals. And this article shall not apply to commissioned veterinary surgeons in the United States army. (Rev., s. 5438; 1903, c. 503, s. 12; C. S. 6761.)

§ 90-187. Violation of article misdemeanor. — Any person practicing veterinary surgery or medicine in this state, without first having complied with the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. (1913, c. 129, s. 2; C. S. 6762.)

Art. 12. Chiropodists.

§ 90-188. Chiropody defined.—Chiropody (podiatry) as defined by this article is the surgical, medical and mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes, or the use of an anesthetic other than local. (1919, c. 78, s. 2; C. S. 6763.)

§ 90-189. Unlawful to practice unless registered.—On and after the first of July, one thousand nine hundred and nineteen, it shall be unlawful for any person to practice or attempt to practice chiropody (podiatry) in this state or to hold himself out as a chiropodist (podiatrist) or to designate himself or describe his occupation by the use of any words or letters calculated to lead others to believe that he is a chiropodist (podiatrist) unless he is duly registered as provided in this article. (1919, c. 78, s. 1; C. S. 6764.)

§ 90-190. Board of chiropody examiners; how appointed; terms of office.—There shall be established a board of chiropody (podiatry) examiners for the state of North Carolina. This board shall consist of three members who shall be appointed by the North Carolina pedic association. All of such members shall be chiropodists who have practiced chiropody in North Carolina for a period of not less than one year. The members of the board shall be appointed by said association for a term of three years: Provided, the members of the first board shall be appointed to hold office for one, two and three years respectively, and one member shall be appointed annually thereafter by said association. The board shall have authority to elect its own presiding and other officers. (1919, c. 78, s. 3; C. S. 6765.)

§ 90-191. Applicants to be examined; examination fee; requirements.—Any person not heretofore authorized to practice chiropody (podiatry) in this state shall file with the board of chiropody examiners an application for examination accompanied by a fee of twenty-five dollars, together with proof that the applicant is more than twenty-one years of age, is of good moral character, and has obtained a preliminary education equivalent to four years instruction in a high school. Such applicant before presenting himself for examination, must be a graduate of a legally incorporated school of chiropody (podiatry) acceptable to the board. (1919, c. 78, s. 9; C. S. 6766.)

§ 90-192. Examinations; subjects; certificates.—The board of chiropody examiners shall hold at least one examination annually for the purpose of examining applicants under this article. The examinations shall be held at such time and place as the board may see fit, and notice of the same shall be published in one or more newspapers in the state. The board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide such books, blanks and forms as may be necessary to conduct such examinations, and shall preserve and keep a complete record of all its transactions. Examinations for registration under this article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral, or clinical, as the board may determine, and shall be in the following subjects wholly or in part: Anatomy, physiology, pathology, bacteriology, chemistry, diagnosis and treatment, therapeutics, clinical chiropody and asepsis; limited in their scope to the treatment of the foot. No applicant shall be granted a certificate unless he obtains a general average of seventy-five or over, and not less than fifty per cent in any one subject. After such examination the board shall, without unnecessary delay, act on same and issue certificates to the successful candidates, signed by each member of the board; and the board of chiropody examiners shall report annually to the North Carolina pedic association. (1919, c. 78, s. 4; C. S. 6767.)

§ 90-193. Reëxamination of unsuccessful applicants.—An applicant failing to pass his examination shall within one year be entitled to reexamination upon the payment of two dollars, but not more than two reëxaminations shall be allowed any one applicant. Should he fail to pass his third examination he shall file a new application before he can again be examined. (1919, c. 78, s. 6; C. S. 6768.)

§ 90-194. Practitioners before enactment of this article; certificates.—Every person who is engaged in the practice of chiropody (podiatry) in this state one year next prior to the enactment of this article shall file with the board of chiropody examiners on or before the first day of July, one thousand nine hundred and nineteen, a written application for a certificate to practice chiropody (podiatry), together with proof satisfactory to the board that the applicant is more than twenty-one years of age and has been practicing chiropody in this state for a period of more than one year next prior to the passage of this article, and upon the payment of a fee of ten dollars the said board of chiropody examiners shall issue to such applicant a certificate to practice chiropody (podiatry) in this state. (1919, c. 78, s. 5; C. S. 6769.)

§ 90-195. Certificates to registered chiropodists of other states.—Applicants registered or certified by examiners of other states whose requirements are equal to those of this state may, upon the payment of a fee of twenty-five dollars, be granted a certificate without examination: Provided, that the provisions of this section shall be extended only to those states which extend to this state the same privilege. (1919, c. 78, s. 8; C. S. 6770.)

§ 90-196. Certificates filed with clerk of court; clerk to keep record.—Every person receiving a certificate from the board shall file the same with the clerk of the court of the city or county in which he resides. It shall be the duty of the clerk to register the name and address and date of the certificate in a book kept for such purpose as a part of the records of his office, and the number of the book and the page therein containing said recorded copy shall appear on the face of the certificate over the name of the clerk recording the same. The person thus registering shall pay to the clerk a fee of fifty cents. (1919, c. 78, s. 7; C. S. 6771.)

§ 90-197. Revocation of certificate; grounds for; suspension of certificate.—The board of chiropody

examiners may revoke by a majority vote of its members, and in accordance with the provisions of §§ 150-1 to 150-8, any certificate it has issued, and cause the name of the holder to be stricken from the book of the registration by the clerk of the court in the city or county in which the name of the person whose certificate is revoked is registered, for any of the following causes:

1. The wilful betrayal of a professional secret.
2. Any person who in any affidavit required of the applicant for certificate, registration, or examination under this article shall make a false statement.
3. Any person convicted of a crime involving moral turpitude.
4. Any person habitually indulging in the use of narcotics, ardent spirits, stimulants or any other substance which impairs intellect and judgment to such an extent as in the opinion of the board to incapacitate such person for the performance of his professional duties.

Any person against whom charges have been made shall be notified of the fact and a copy of the charges shall be sent him by the board, and he shall be given a fair and impartial trial by the board, whose decisions shall be made by a majority vote of its members.

The board may suspend any certificate granted under this article for a period not exceeding six months on account of any misconduct on the part of the person registered which would not, in the judgment of the board, justify the revocation of his certificate. (1919, c. 78, ss. 12, 13; C. S. 6772.)

§ 90-198. Fees for certificates and examinations; compensation of board.—To provide a fund in order to carry out the provisions of this article the board shall charge ten dollars for each certificate issued and fifteen dollars for each examination. From such funds all expenses and salaries, not exceeding four dollars per diem for each day actually spent in the performance of the duties of the office and actual railroad expenses in additiou, shall be paid by the board: Provided, that at no time shall the expenses exceed the cash balance on hand. (1919, c. 78, s. 14; C. S. 6773.)

§ 90-199. Annual fee of $10 required; cancellation or renewal of license. — On or before the first day of July of each year every chiropodist engaged in the practice of chiropody in this State shall transmit to the Secretary-Treasurer of the said North Carolina State Board of Chiropody Examiners his signature and post office address, the date and year of his or her certificate, together with a fee to be set by the Board of Chiropody Examiners not to exceed ten ($10.00) dollars, and receive therefor a renewal certificate. Any license or certificate granted by said Board under or by virtue of this or the following section, shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of thirty days after the thirty-first day of July of each year, and such delinquent chiropodist shall pay a penalty of five dollars for reinstatement: Provided that any legally registered chiropodist in this state who has retired from practice or who has been absent from the state may, upon furnishing affidavit to that effect, reinstate himself by paying all fees due for the years in which he was absent or retired, the said amount in no case to exceed fees for five years. (1931, c. 191.)

§ 90-200. Issuance of license upon payment of fees.—Upon payment of the fees prescribed in the above section, by or before July first, nineteen hundred and thirty-one, by any person who has heretofore practiced chiropody in the State of North Carolina, for a period of five successive years regularly, it shall be the duty of the State Board of Chiropody Examiners to issue to said person a license which shall grant to such person all the rights and privileges of chiropodists now engaged in practicing chiropody. (1931, c. 191.)

§ 90-201. Unlawful practice of chiropody a misdemeanor.—Any person who shall practice or attempt to practice chiropody (podiatry) in this state without having complied with the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or shall be imprisoned for not less than thirty nor more than ninety days. Nothing in this article shall be construed to interfere with physicians in the discharge of their professional duties. (1919, c. 78, s. 10; C. S. 6774.)

§ 90-202. Sheriffs and police to report violators of this article.—It shall be the duty of the police department of the cities and the sheriff of each county in the state to see that all practitioners of chiropody (podiatry) in the state are legally registered according to the provisions of this article, and to report to the state's attorney of the city or county all cases of violation of this article; whereupon the state's attorney shall promptly prosecute those violating the provisions of this article. (1919, c. 78, s. 11; C. S. 6775.)

Art. 13. Embalmers.

§ 90-203. State board; election; qualifications; term; vacancies.—The State board of embalmers shall consist of five members, elected by the state board of health, all of whom shall be licensed and practical embalmers, having experience in the care and disposition of dead human bodies. One member of such board shall be elected in June, one thousand nine hundred and five, and annually thereafter during the month of June one member of such board shall be elected. The term of office shall begin on the first day of July next after the election, and continue for five years. The state board of health shall fill all vacancies in such board. (Rev., s. 4384; 1901, c. 338, ss. 1, 2, 3; 1931, c. 174; C. S. 6777.)

§ 90-204. Members; removal; oath. — The state board of health shall have power to remove from office any member of said board for neglect of duty, incompetency, or improper conduct. The state board of health shall furnish each person appointed to serve on the state board of embalmers a certificate of appointment. The appointees shall qualify by taking and subscribing to the usual oath of office before some person authorized to administer oaths, within ten days after said appointment has been made, which oath shall be filed with the board of embalmers. (Rev., s. 4385; 1901, c. 338, ss. 3, 4; C. S. 6778.)

§ 90-205. Common seal; powers. — The board shall adopt a common seal, and shall have all the powers and privileges conferred on it by the laws of the state. (Rev., s. 4386; 1901, c. 338, s. 6; C. S. 6779.)

§ 90-206. Meetings; quorum; by-laws; officers; president to administer oaths.—The board shall meet at least once every year, during the month of July, at such place as it may determine. Three members shall constitute a quorum. At each annual meeting the board from its members shall select a president and a secretary, who shall hold their offices for one year, and until their successors are elected. The board shall, from time to time, adopt rules, regulations, and by-laws not inconsistent with the laws of this state or of the United States, whereby the performance of the duties of such board and the practice of embalming of dead human bodies shall be regulated. The president of the board (and in his absence a president pro tempore elected by the members present) is authorized to administer oaths to witnesses testifying before the board. (Rev., s. 4387; 1901, c. 338, ss. 5, 6, 7, 8; C. S. 6780.)

§ 90-207. Grant and renewal of licenses; fees; licenses displayed.—Every person not licensed as an embalmer, now engaged or desiring to engage in the practice of embalming dead human bodies, shall make written application to the state board of embalmers for a license, accompanying the same with a license fee of five dollars, whereupon the applicant shall present himself before the board at a time and place to be fixed by the board, and if the board shall find, upon due examination, that the applicant is of good moral character, possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has a responsible knowledge of sanitation and the disinfection of bodies of deceased persons and the apartment, clothing, and bedding, in case of death from infectious or contagious disease, and has had a special course in embalming in an approved school, or two years practical experience with a licensed and practical embalmer, who shall make affidavit upon the application that said applicant has had such experience under him, the board shall issue to such applicant a license to practice the art of embalming and the care and disposition of the dead, and shall register such applicant as a duly licensed embalmer. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving a license under the provisions of this article shall also register the fact at the office of the board of health of the city, and where there is no board of health, with the clerk of the superior court in the county or counties in which it is proposed to carry on said practice, and shall display said license in a conspicuous place in the office of such licentiate. Every registered embalmer who desires to continue the practice of his profession shall annually, during the time he shall continue in such practice, on such day as the board may determine, pay to the secretary of the board a fee of two dollars for the renewal registration. (Rev., s. 4388; 1901, c. 338, ss. 9, 10; 1917, c. 36; 1919, c. 88; C. S. 6781.)

§ 90-208. Embalming without license.—If any person shall practice or hold himself out as practicing the art of embalming, without having complied with the provisions of this article, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars for each offense. (Rev., s. 3644; 1901, c. 338, s. 14; C. S. 6782.)

§ 90-209. Expenses and salaries of board.—All expenses, salary, and per diem to members of this board shall be paid from fees received under the provisions of this article, and shall in no manner be an expense to the state. All moneys received in excess of said per diem allowance and other expenses provided for shall be held by the secretary of said board as a special fund for meeting the expenses of said board. (Rev., s. 4389; 1901, c. 338, s. 11; C. S. 6783.)

§ 90-210. Embalming schools have privileges of medical schools as to cadavers.—Schools for teaching embalming shall have extended to them the same privileges as to the use of bodies for dissection while teaching as those granted to medical colleges. (Rev., s. 4390; 1901, c. 338, s. 15; C. S. 6784.)

Art. 14. Cadavers for Medical Schools.

§ 90-211. Board for distribution.—The professors of anatomy of the several medical schools of the state shall be a board for the distribution of dead human bodies for the purpose of promoting the study of anatomy in this state, and shall have power to make proper rules for its government and the discharge of its functions under this article. (Rev., s. 4287; 1903, c. 666, s. 1; C. S. 6785.)

§ 90-212. What bodies to be furnished.—All officers, agents, or servants of the state of North Carolina or of any county or town having charge or control of any dead human body required to be buried at public expense, or of the dead body of any person who at the time of death was under sentence of death or imprisonment at hard labor for the violation of the criminal laws of the state, shall, upon the request of the board or its authorized agent, deliver such dead body to any one designated by the board for the purpose aforesaid: Provided, such body be not claimed within thirty-six hours, to be disposed of without expense to the state, county, or town, by any relative within the second degree of consanguinity, or by the husband or wife of such deceased person: Provided further, that the body of a Confederate soldier or of the wife of a Confederate soldier, or soldier, sailor or member of the marine corps of the World War who was honorably discharged from service, or the wife of such sailor or soldier, shall be excepted from the provisions of this article, and that the body of no white person shall be delivered to any school for the colored race.

This section shall not apply to the dead bodies of persons who are inmates of state hospitals, or to the bodies of travelers or strangers who die suddenly, or to the bodies of persons who die in the state schools for the blind or the deaf and dumb, or any other state school, or in county homes.

Provided further, that the bodies of all such white prisoners dying while in Central Prison or road camps of Wake county, whether death re-

sults from natural causes or otherwise, shall be equally distributed among the white funeral homes in Raleigh, and the bodies of all such negro prisoners dying under similar conditions shall be equally distributed among the negro funeral homes in Raleigh; but only such funeral homes can qualify hereunder as at all times maintain a regular licensed embalmer; and provided further, that nothing herein shall require the delivery of bodies of such prisoners to funeral directors of Wake county where the same are claimed by relatives or friends. (Rev., s. 4288; 1903, c. 666, s. 2; 1911, c. 188; 1923, c. 110; 1937, c. 351; C. S. 6786.)

§ 90-213. How bodies distributed. — The bodies obtained under this article shall be distributed among the several medical schools in proportion to the number of students studying anatomy in such schools. Upon the written application of the professor of anatomy, or his accredited representatives, of any medical school established by law in the state, the person or persons having charge or control of said dead body or bodies, as specified, shall give such professor of anatomy, or his accredited representative, permission to take, at the expiration of twenty-four hours after death, the body or bodies of such persons, to be used within the state for the advancement of anatomical science; and it shall be the duty of any professor of anatomy receiving such body or bodies to immediately report this fact to the secretary of the anatomical board. If any medical school, in the operation of this section, shall obtain more than its equitable proportion of bodies, as determined by the said secretary, then two-thirds of such excess shall be shipped to some other medical school in the state, to be designated by the secretary of the anatomical board. (Rev., s. 4289; 1903, c. 666, s. 3; 1911, c. 188; C. S. 6787.)

§ 90-214. Bodies to be embalmed.—The bodies obtained under this article shall be embalmed before being used for the purposes of dissection. (Rev., s. 4290; 1903, c. 666, s. 4; C. S. 6788.)

§ 90-215. How expenses paid.—All expenses for the delivery, distribution, and embalming of such dead bodies shall be borne by the medical school receiving same, and in no case shall the state or any county or town be liable therefor. (Rev., s. 4291; 1903, c. 666, s. 5; C. S. 6789.)

§ 90-216. Violation of article misdemeanor.—If any person shall fail or refuse to perform any duty imposed upon him by this article he shall be guilty of a misdemeanor and fined not exceeding one hundred dollars. (Rev., s. 3567; 1903, c. 666, s. 6; C. S. 6790.)

Art. 15. Autopsies.

§ 90-217. Limitation upon right to perform autopsy.—The right to perform an autopsy upon the dead body of a human being shall be limited to cases specially provided by statute or by direction or will of the deceased; cases where a coroner or the majority of a coroner's jury deem it necessary upon an inquest to have such an autopsy; and cases where the husband or wife or one of the next of kin or nearest known relative or other person charged by law with the duty of burial, in the order named and as known, shall authorize such examination or autopsy. (1931, c. 152; 1933, c. 209.)

Chapter 91. Pawnbrokers.

Sec.
91-1. Pawnbroker defined.
91-2. License; business confined to municipalities.
91-3. Municipal authorities to grant and control license; bond.
91-4. Records to be kept.
91-5. Pawn ticket.
91-6. Sale of pledges.
91-7. Usury law applicable.
91-8. Violation of chapter misdemeanor.

§ 91-1. Pawnbroker defined.—Any person, firm, or corporation who shall engage in the business of lending or advancing money on the pledge and possession of personal property, or dealing in the purchasing of personal property or valuable things on condition of selling the same back again at stipulated prices, is hereby declared and defined to be a pawnbroker. (1915, c. 198, s. 1; C. S. 7000.)

§ 91-2. License; business confined to municipalities.—No person, firm, or corporation shall engage in the business of lending money, or other things, for profit or on account of specific articles of personal property deposited with the lender in pledge in this state, which business is commonly known as that of pawnbrokers, except in incorporated cities and towns, and without first having obtained a license to do so from such incorporated cities and towns, and by paying the county, state, and municipal license tax required by law, and otherwise complying with the requirements made in this and succeeding sections. (1915, c. 198, s. 1; C. S. 7001.)

§ 91-3. Municipal authorities to grant and control license; bond.—The board of aldermen, or other governing body, of any city or town in this state may grant to such person, firm, or corporation as it may deem proper, and who shall produce satisfactory evidence of good character, a license authorizing such person, firm, or corporation to carry on the business of a pawnbroker, which said license shall designate the house in which such person, firm, or corporation shall carry on said business, and no person, firm, or corporation shall carry on the business of a pawnbroker without being duly licensed, nor in any other house than the one designated in the said license. Every person, firm, or corporation so licensed to carry on the business of a pawnbroker shall, at the time of receiving such license, file with

the mayor of the city or town granting the same, a bond payable to such city or town in the sum of one thousand dollars, to be executed by the persons so licensed and by two responsible sureties, or a surety company licensed to do business in the State of North Carolina, to be approved of by such mayor, which said bond shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The board of aldermen, or other governing body, shall have full power and authority to revoke such license and sue for forfeiture of the bond upon a breach thereof. Any person who may obtain a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied, may maintain an action in his own name upon the said bond of said pawnbroker, in any court having jurisdiction of the amount demanded, to satisfy said judgment. (1915, c. 198, s. 2; C. S. 7002.)

§ 91-4. Records to be kept.—Every pawnbroker shall keep a book in which shall be legibly written, at the time of the loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on said loan, and the name and residence of the person pawning or pledging the said goods, articles, or things. (1915, c. 198, s. 3; C. S. 7003.)

§ 91-5. Pawn ticket.—And every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, articles, or things a ticket or memorandum or note signed by him containing the substance of the entry required to be made by him in his book as aforesaid, and a copy of the said ticket, memorandum, or note so given to the person pawning or pledging any goods, articles, or things of value, shall be filed within forty-eight hours in the office of the chief of police of the city or town issuing the license to such pawnbroker. The said tickets or memorandums so issued shall be numbered consecutively and dated the day issued. (1915, c. 198, s. 3; C. S. 7004.)

§ 91-6. Sale of pledges. — No pawnbroker shall sell any pawn or pledge until the same shall have remained sixty days in his possession after the maturity of the debt for which the property was pledged. And no pawnbroker shall advertise or sell at his place of business as unredeemed pledges any articles of property other than those received by him as pawns or pledges in the usual course of his business at the place where he is licensed to do business. (1915, c. 198, s. 4; C. S. 7005.)

§ 91-7. Usury law applicable.—The provisions of this chapter shall not be construed to relieve any person from the penalty incurred under the laws against usury in this state. (1915, c. 198, s. 5; C. S. 7006.)

§ 91-8. Violation of chapter misdemeanor.—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court. (1915, c. 198, s. 5; C. S. 7007.)

Chapter 92. Photographers.

Sec.
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92-26. Records of proceedings and moneys received.
92-27. Expenses of administration.
92-28. Persons exempted.
92-29. Excepted cities and towns and low priced photographers.

§ 92-1. Definitions.—Words used in this chapter, unless otherwise expressly stated, shall have the following meaning:

"Board"—The board of photographic examiners.

"Person"—Any individual person, firm, corporation or association.

"Photography"—(a) The art or process of reproduction, recording the visible and invisible image through the action of light upon chemi-

cally sensitized substance or material. (b) The processes of projecting and registering images by means of lens and camera upon sensitized materials, development and fixation of the latent image to render same visible and permanent and the subsequent reproduction or transfer of such image, either negative or positive, upon sensitized material, by aid of light and chemical action.

"Photo finishing"—The process of reproducing or transferring any image made by means of camera and lens, either negative or positive, upon sensitized material by aid of light and chemical action.

"The practice of photography"—The profession or occupation of taking or producing photographs or any part thereof for hire.

"Photographer" — Any individual, person, firm or corporation who shall practice photography.

"Apprentice" — Any individual or person who shall study, train or work under the guidance of a duly registered photographer for the purpose of acquiring the necessary knowledge to practice photography.

"Licensee"—A licensed photographer or apprentice. (1935, c. 155, art. 1; 1939, c. 280, s. 1.)

§ 92-2. State board of photographic examiners created; terms of office.—A state board of photographic examiners is hereby created, which shall consist of five members, all of whom shall be residents of the State of North Carolina and shall have had not less than five (5) years experience as professional photographers, who shall be commissioned by the governor and hold office as follows: Two for one year, two for two years and one for three years, their successors to be commissioned by the governor for a term of three years. (1935, c. 155, art. 2, s. 1; 1935, c. 318.)

§ 92-3. Chairman and secretary.—The members of the state board of photographic examiners shall annually elect one of their number to act as chairman, and appoint and at their pleasure remove a secretary, who need not be a member of the board, and whose compensation shall be fixed by the board. The said secretary shall also act as treasurer and shall perform the duties prescribed by this chapter and such other duties as the board may from time to time direct. (1935, c. 155, art. 2, ss. 2, 3.)

§ 92-4. Pay and expenses; principal office; quorum.—The members of the board upon the certification by the majority of said members shall receive the sum of seven dollars and actual and necessary expenses for each day actually devoted to the performance of their duties under this chapter. The principal office of the board shall be at such place designated by a majority of the members of the board. Three members of the board shall constitute a quorum. (1935, c. 155, art. 2, ss. 4-6.)

§ 92-5. Organization meeting; bond of secretary-treasurer; powers of board.—The board of photographic examiners shall within thirty days after its appointment, meet in the city of Raleigh, and organize and shall elect a chairman and appoint a secretary-treasurer. The secretary-treasurer shall give bond approved by the board for the faithful performance of his duties, in such sum as the board may, from time to time, determine. The board shall have a common seal and shall formulate rules to govern its actions, and it may take testimony and proof concerning all matters within its jurisdiction. (1935, c. 155, art. 3, s. 1.)

§ 92-6. Record of proceedings.—The said board shall keep a record of its proceedings relating to issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of every registered photographer and registered apprentice, and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times. (1935, c. 155, art. 3, s. 2.)

§ 92-7. Rules and orders. — The board may adopt and enforce all rules and orders necessary to carry out the provisions of this chapter. Every rule or order of the board shall be available for public inspection in the office of the board. (1935, c. 155, art. 3, s. 3.)

§ 92-8. Conduct of hearings.—The board is authorized to conduct hearings in any part of the state or may designate any member of the board so to do, which hearing shall be held pursuant to the rules and regulations adopted and promulgated by the board. (1935, c. 155, art. 3, s. 4.)

§ 92-9. Appointment and removal of assistants. — Said board shall have the power to appoint and at its pleasure remove any technical, legal, or other assistants as may be necessary to carry out the provisions of this chapter and to prescribe their powers and duties and fix their compensation. (1935, c. 155, art. 3, s. 5.)

§ 92-10. Examination and licensing of applicants; temporary certificates.—The board shall provide for the examination of applicants who desire to practice photography in this state, and shall collect fees, as hereinafter provided, for such examinations and issue certificates of registration and licenses to practice photography to anyone who shall qualify as to competency, ability and integrity. The board may issue temporary certificates to practice photography until such time as the board shall hold an examination, provided such applicants are, in the opinion of the board, entitled thereto, and provided that application and deposit for examination is made at the time of application for such temporary license, and such certficate shall be null and void after the next examination held by the board, and provided further, that no such applicant shall, thereafter, be eligible to apply for and receive a temporary certificate. (1935, c. 155, art. 4, s. 1.)

§ 92-11. Qualifications of applicants for examination.—Prior to any applicant being admitted to an examination or licensed, said board shall have the power to require proof as to the technical qualifications, business record and moral character of such applicant, and if an applicant shall fail to satisfy the board in any or all of these respects, the board may decline to admit said applicant to examination, or to issue license. (1935, c. 155, art. 4, s. 2.)

§ 92-12. Semi-annual examinations; separate certificate for two branches of photography.— The board shall provide a place and give a written, and/or an oral and/or a practical examination at least twice a year to all duly qualified applicants covering the two branches of photography, to-wit: Photography and photo-finishing. Separate certificates shall be provided for each branch. A certificate for one branch shall not permit the practicing in the other branch, although any photographer may hold certificates in both branches if qualified under this chapter. All applicants may take the examination in either or both branches and the examination fee as hereinafter set forth shall cover both branches if taken at the same time. (1935, c. 155, art. 4, s. 3.)

§ 92-13. Application for license; examination fees; examination requirements. — Every person desiring to commence the practice of photography in this State shall file an application for a license with the board on a form prescribed by it. At the time of making such application the applicant shall deposit with the board an examination fee of twenty-five ($25.00) dollars: Provided, that the examination fees for persons engaged exclusively in the development, finishing, and/or enlarging of kodak pictures shall be in the sum of fifteen ($15.00) dollars. All applicants must appear for examination at the time and place designated by the board and shall present such references and credentials as the board may require, and shall give satisfactory evidence as to their competency and fitness to conduct the practice of photography based on their technical knowledge, their business record and their moral character. (1935, c. 155, art. 4, s. 4.)

§ 92-14. No fees refunded; fees for additional examinations.—No fee for examination shall in any case be refunded, but in case the applicant fails in the first examination he may take three subsequent examinations in the branches in which he failed and the fee for each such subsequent examination shall be ten ($10.00) dollars. (1935, c. 155, art. 4, s. 5.)

§ 92-15. Registration and licensing of successful applicants.—Every applicant successfully passing such examination shall be registered in the records of the board as a qualified photographer in the branch or branches in which he has been successful, and shall receive a license signed by the chairman and secretary of said board authorizing the applicant to practice photography in the branch or branches in which he has been successful in this State. (1935, c. 155, art. 4, s. 6.)

§ 92-16. Requirements for students or apprentices.—Every person desiring to commence the study of photography in this State for the purpose of practicing photography shall file a certificate signed by a duly licensed photographer that the said person has started to study photography with the said licensed photographer and that said student or apprentice commenced his studies or work prior to the date of the certificate, and such other information as the board may require. (1935, c. 155, art. 4, s. 7.)

§ 92-17. Licenses not transferable.—No license shall be transferable, nor shall it be issued to any person, firm or corporation, designed to operate under an assumed or fictitious name. (1935, c. 155, art. 4, s. 8.)

§ 92-18. Licensing without examination of photographers now practicing; license fee. — The board shall, upon application, issue a license to every photographer who has been continuously engaged in the practice of photography and/or photo-finishing in this State for one year next preceding the passage of this chapter, without examination. All applications for license under this section shall be accompanied by a fee of five ($5.00) dollars, in addition to the annual license fee hereinafter prescribed, and such application must be made within thirty days after notification from the board. (1935, c. 155, art. 4, s. 9.)

§ 92-19. Annual license fees for business establishments and employees.—All licensees who maintain an established place for the practice of photography and/or photo-finishing in the State of North Carolina, or who are not employees of an established place for the practice of photography and/or photo-finishing in the State of North Carolina, shall pay an annual license fee of five ($5.00) dollars. All licensees who are employees of an established place in the State of North Carolina for the practice of photography and/or photo-finishing shall pay an annual license fee of three ($3.00) dollars. (1935, c. 155, art. 4, s. 10.)

§ 92-20. Conduct of business unless registered prohibited.—No person, firm or corporation shall sell, offer for sale, or solicit orders for any product of photography unless duly registered under the terms of this chapter, or employed by a person, firm or corporation duly registered under the terms of this chapter. (1935, c. 155, art. 4, s. 11.)

§ 92-21. Display of license.—Every recipient of a license to practice photography or photo-finishing shall keep such license conspicuously displayed on his business premises. (1935, c. 155, art. 4, s. 12.)

§ 92-22. Time of payment of license fees; powers conferred by various fees.—All annual license fees prescribed by this chapter shall be paid to the board on or before the first day of July of each year. The board shall issue its receipt for every payment. The annual establishment fee of five ($5.00) dollars shall entitle the licensee, if otherwise qualified, to practice photography and photo-finishing. The annual employees' fee of three ($3.00) dollars shall entitle the licensee, if otherwise qualified, to practice photography and photo-finishing, but only for and on behalf of a duly registered photographer or photo-finisher. (1935, c. 155, art. 4, s. 13.)

§ 92-23. Revocation of license; reinstatement. —Should any licensee fail or neglect to pay his annual license on or before the first day of July of every year, the board shall notify him that his license will be revoked and unless said fee is paid in full on or before the first day of August of the same year, the board shall revoke said license.

(a) Any photographer and/or photo-finisher whose license has been revoked for failure to pay the annual license fee may make application to

the board for reinstatement. Such application shall be accompanied by a fee of five ($5.00) dollars, in addition to the regular license fee required. If the board shall find the applicant to be guilty of no violation of this chapter other than default in payment of annual license fees he may be immediately reinstated.

(b) The board shall have the power to revoke any license granted by it to any photographer and/or photo-finisher or apprentice found by the board to be guilty of fraud or unethical practices or of wilful misrepresentation, or found guilty under the laws of the State of North Carolina of any crime involving moral turpitude.

(c) Before any license is revoked, except for failure to pay the annual license fee, the holder thereof shall be given notice, in writing, either personally or by mailing by registered mail to his last known address, setting forth the charges against him and the time and place for a hearing to be had on such charges, which such charges must be filed in writing under oath with said board, and the said hearing shall be not less than thirty days from the time of the service of the said notice. The person charged shall be given a public hearing at which he may be represented by counsel and he shall have an opportunity to enter a defense and produce witnesses on his behalf. The board on such hearing shall provide a competent stenographer for the purpose of taking a complete record of such hearing, which record shall be filed with the board.

(d) If at such hearing of the accused the board shall be satisfied that the accused has been guilty of the offense charged it shall thereupon, without further notice, revoke the license of the person so accused: Provided, the accused shall not be barred the right of appeal to the superior courts. (1935, c. 155, art. 4, s. 14; 1939, c. 218, s. 1.)

§ 92-24. Violation of chapter a misdemeanor; separate offenses; disposition of fines and forfeitures.—Any person violating any of the provisions of this chapter, or engaging in any of the activities or practices herein defined without being duly licensed as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be fined the sum of not less than fifty ($50.00) dollars, nor more than two hundred ($200.00) dollars for the first offense, and shall be imprisoned not more than thirty days, and/or fined not exceeding two hundred ($200.00) dollars for any subsequent offense. Each and every violation hereof shall constitute a separate offense: Provided, all fines paid for violations of this chapter or bail forfeiture collected for appearances given by virtue of any process issued from any of the courts of this state shall be paid one-half to the treasurer of the county where such process was issued for the general fund of such county and one-half to the state treasurer to be by him deposited to the credit of the general funds of the State. (1935, c. 155, art. 5.)

§ 92-25. Application and examination of non-residents.—All non-resident photographers and/or photo-finishers, desiring to do business in this State, shall apply to the board for examination at least thirty days prior to the next examination and obtain license before entering into said business, and no person, firm or corporation shall represent or in any way solicit or accept business for such non-resident photographers and/or photo-finishers, unless and until they have complied with the provisions of this chapter. (1935, c. 155, art. 6.)

§ 92-26. Records of proceedings and moneys received.—The secretary-treasurer shall keep a record of the proceedings of the said board and shall receive and account for all moneys derived from the operation of this chapter. (1935, c. 155, art. 7, s. 1.)

§ 92-27. Expenses of administration.—All expenses of administering this chapter shall be paid upon order of the board from the funds derived from the examination, license fees and penalties herein prescribed, and, in no event, shall such expense exceed the income from said sources. (1935, c. 155, art. 7, s. 2.)

§ 92-28. Persons exempted.—Nothing in this chapter shall be construed to apply to:

(a) Persons in the employ of or acting under contract to newspapers or periodical publications: Provided, that this exemption shall apply only with respect to negatives and photographs made for newspapers and publication: And provided further, that such negatives or photographs are not sold or offered for sale, or otherwise disposed of for profit to any purchaser or user other than newspapers, publications, press agencies or associations serving newspapers and publications. The provisions of this chapter shall not apply to press photographers with regard to the unsolicited sale of negatives and prints made on regular press assignments.

(b) Any person (not regularly engaged in an occupation in which his compensation depends, in whole or in part, upon his making of negatives or photographs) who makes negatives or photographs for his own pleasure and occasionally sells or offers for sale a negative or photograph so made by him: Provided, that this exemption shall not extend to any person who solicits or accepts orders for such negatives, or prints or photographs made therefrom, before such negatives are made.

(c) Any person who is in the employ of the United States, the State of North Carolina, or any of its political subdivisions, or of any school, college, university or state institution, who makes negatives or any reproduction thereof solely for public use or for the use of such school, college, university or state institution, or educational or scientific purposes, provided such negatives or photographs are not sold or offered for sale in this state.

(d) Any duly licensed practitioner of medicine and allied occupations, hospitals or institutions who make negatives or photographs for clinical, surgical or medical purposes.

(e) Any motion picture photographer in the making of motion pictures. (1935, c. 155, art. 8; 1939, c. 280, ss. 2, 3.)

§ 92-29. Excepted cities and towns and low priced photographers. — This chapter shall only apply to cities and towns having a population of more than twenty-five hundred: Provided this chapter shall not apply to those photographers whose product is retailed at a unit price not exceeding ten cents (10c) per picture. (1935, c. 155, art. 10.)

Chapter 93. Public Accountants.

Sec.
93-1. "Public accounting" defined.
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93-3. Unlawful use of title "certified public accountant" by individual.
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93-10. Persons certified in other states.
93-11. Not applicable to officers of state, county or municipality.
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93-13. Violation of chapter; penalty.

§ 93-1. "Public accounting" defined.—The term "Practice of Public Accounting" as used in this chapter is defined as follows:

A person engages in the practice of public accounting, within the meaning and intent of this chapter, who offers his or her services to the public as one who is qualified to render professional service in the analysis, verification and audit of financial records and the interpretation of such service through statements and reports. (1925, c. 261, s. 1; 1929, c. 219, s. 1.)

§ 93-2. Qualifications. — Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, over twenty one years of age and of good moral character, and who shall have received from the State Board of Accountancy a certificate of qualification admitting him to practice as a certified public accountant as hereinafter provided, or who is the holder of a valid and unrevoked certificate issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, shall be licensed to practice and be styled and known as a certified public accountant. (1925, c. 261, s. 2.)

§ 93-3. Unlawful use of title "certified public accountant" by individual. — It shall be unlawful for any person who has not received a certificate of qualification admitting him to practice as a certified public accountant to assume or use such a title, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant. (1925, c. 261, s. 3.)

§ 93-4. Use of title by firm.—It shall be unlawful for any firm, copartnership, or association to assume or use the title of certified public accountant, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the members of such firm, copartnership or association have been admitted to practice as certified public accountants, unless each of the members of such firm, copartnership or association first shall have received a certificate of qualification from the State Board of Accountancy admitting him to practice as a certified public accountant. (1925, c. 261, s. 4.)

§ 93-5. Use of title by corporation.—It shall be unlawful for any corporation to assume or use the title of certified public accountant, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that such corporation has received a certificate of qualification from the State Board of Accountancy admitting it to practice as a certified public accountant. (1925, c. 261, s. 5.)

§ 93-6. Practice without certificate unlawful; corporations; exceptions.—It shall be unlawful for any person, firm, copartnership or association to engage in the practice of public accounting in the State of North Carolina unless such person, or each of the members of such firm, copartnership or association first shall have received from the State Board of Accountancy a certificate of qualification admitting him to practice as a certified public accountant. It shall be unlawful for any corporation to engage in the practice of public accounting in the State of North Carolina: Provided, however, that nothing herein contained shall be construed to prohibit the practicing of the profession of public accounting by any person, firm, copartnership, association, or corporation who shall on March 10, 1925, be engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina, or an accountant who has served two years or more as a civil service employee of the Federal government in the capacity of senior field auditor. (1925, c. 261, s. 6.)

§ 93-7. Registration of accountants already practicing.—Any person, firm, copartnership, association or corporation who shall on March 10, 1925, be engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina, may, within six months thereafter, apply to the State Board of Accountancy for registration as a public accountant, and the State Board of Accountancy, upon the production of satisfactory evidence that such applicant was engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina on March 10, 1925, shall register such person, firm, copartnership, association or corporation. Such registration shall be conclusive evidence of the right of such person, firm, copartnership, association or corporation to engage in the practice of public accounting in the State of North Carolina, but such registration shall not be construed in any way as indicating that the State of North Carolina or the State Board of Accountancy has approved the educational and professional experience and qualifications of the registrant. (1925, c. 261, s. 7.)

§ 93-8. Use of title "public accountant" without qualification.—It shall be unlawful for any

person, firm, copartnership, association or corporation, not having qualified under this chapter, to assume or use the style of title of public accountant, or other means of indentification to indicate that such person, firm, copartnership, or association or corporation is engaged in the practice of public accounting in the State of North Carolina: Provided, however, that the inhibitions of this section shall not be construed to apply to any person, firm, copartnership, association or corporation who on March 10, 1925, was engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina. (1925, c. 261, s. 8.)

§ 93-9. Assistants need not be certified.—Nothing contained in this chapter shall be construed to prohibit the employment by a certified public accountant, or by any person, firm, copartnership, association, or corporation permitted to engage in the practice of public accounting in the State of North Carolina, of persons who have not received certificates of qualification admitting them to practice as certified public accountants, as assistant accountants or clerks: Provided, that such employees work under the control and supervision of certified public accountants or public accountants, and do not certify to any one the accuracy or verification of audits or statements; and provided further, that such employees do not hold themselves out as engaged in the practice of public accounting. (1925, c. 261, s. 9.)

§ 93-10. Persons certified in other states.—A public accountant who holds a valid and unrevoked certificate as a certified public accountant, or its equivalent, issued under authority of any state, or the District of Columbia, and who resides without the State of North Carolina, may perform work within the State: Provided, that he register with the State Board of Accountancy and comply with its rules regarding such registration. (1925, c. 261, s. 10.)

§ 93-11. Not applicable to officers of state, county or municipality.—Nothing herein contained shall be construed to restrict or limit the power or authority of any State, county or municipal officer or appointee engaged in or upon the examination of the accounts of any public officer, his employees or appointees. (1925, c. 261, s. 12.)

§ 93-12. Board of accountancy; powers and duties.—The State Board of Accountancy shall consist of four persons to be appointed by the Governor, all of whom shall be the holders of valid and unrevoked certificates as certified public accountants heretofore issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, or issued under the provisions of this chapter. They shall hold office for the term of three years and until their successors are appointed: Provided, that no appointments to the board shall be made under the provisions of this chapter until the expiration of the terms of the members of the present board. The powers and duties of the board shall be as follows:

(1) To elect from its members a president, vice-president and secretary-treasurer. The members of the board shall be paid, for the time actually expended in pursuance of the duties imposed upon them by this chapter, an amount not exceeding ten dollars ($10) per day, and they shall be entitled to necessary traveling expenses.

(2) To employ legal counsel and clerical assistance and to fix the compensation of same, and to incur such other expenses as may be deemed necessary to carry into effect the provisions of this chapter.

(3) To formulate rules for the government of the board and for the examination of applicants for certificates of qualifications admitting such applicants to practice as certified public accountants.

(4) To hold written or oral examinations of applicants for certificates of qualification at least once a year, or oftener, as may be deemed necessary by the board.

(5) To issue certificates of qualification admitting to practice as certified public accountants each applicant, who, being the graduate of an accredited high school or having an equivalent education, shall have had at least two years experience or its equivalent next preceding the date of his application on the field staff of a certified public accountant or public accountant, one of which shall have been as a senior or accountant in charge, and who shall receive the endorsement of three certified public accountants of any state as to his eligibility to become a certified public accountant; or who, in lieu of the two years experience or its equivalent, above mentioned, shall have had one year's experience after graduating from a recognized school of accountancy; or an accountant who has served two years or more as a civil service employee of the Federal government in the capacity of senior field auditor, and who shall have passed a satisfactory examination in "theory of accounts," "practical accounting," "auditing," "commercial law" and other related subjects.

(6) In its discretion to grant certificates of qualification admitting to practice as certified public accountants such applicants who shall be the holders of valid and unrevoked certificates as certified public accountants, or the equivalent, issued by or under the authority of any state, or territory of the United States or the District of Columbia; or who shall hold valid and unrevoked certificates or degrees as certified public accountants, or the equivalent, issued under authority granted by a foreign nation; when in the judgment of the board the requirements for the issuing or granting of such certificates or degrees are substantially equivalent to the requirements established by this chapter: Provided, however, that such applicants signify their intention of engaging in the practice of public accounting within the State.

(7) To charge for each examination and certificate provided for in this chapter a fee of twenty-five dollars. This fee shall be payable to the secretary-treasurer of the board by the applicant at the time of filing application. If at any examination an applicant shall have received a passing grade in one subject, he shall have the privilege of one reëxamination at any subsequent examination held within eighteen months from the date of his application upon payment of a reexamination fee of fifteen dollars. In no case shall the examination fee be refunded, unless in the discre-

tion of the board the applicant shall be deemed ineligible for examination.

(8) To require the renewal of all certificates of qualification annually on the first day of July, and to charge and collect a fee not to exceed five dollars for such renewal.

(9) The board shall have the power to revoke any certificate issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, or issued under the provisions of this chapter, for good and sufficient cause: Provided, that written notice shall have been mailed to the holder of such certificate at his last known address thirty days before any hearing thereof, stating the cause of such contemplated action, and appointing a time for a hearing thereon by the board, and provided further, that no certificate shall be revoked until such hearing shall have been had. At all such hearings the Attorney General of the State, or one of his assistants designated by him, shall sit with the board with all the powers of a member thereof.

(10) Within sixty days after March 10, 1925, the board shall formulate rules for the registration of those persons, firms, copartnerships, associations or corporations who, not being holders of valid and unrevoked certificates as certified public accountants issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, and who, having on March 10, 1925, been engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina, shall, under the provisions of § 93-7 apply to the board for registration as public accountants. The board shall maintain a register of all persons, firms, copartnerships, associations or corporations who have made application for such registration and have complied with the rules of registration adopted by the board.

(11) Within sixty days after March 10, 1925, the board shall formulate rules for registration of these public accountants who are qualified to practice under this chapter and who under the provisions of § 93-10 are permitted to engage in work within the State of North Carolina. The board shall have the power to deny or withdraw the privilege herein referred to for good and sufficient reasons.

(12) To submit to the Commissioner of Revenue the names of all persons who have qualified under this chapter as practitioners of public accountancy, and who have complied with the rules of the board. The Commissioner of Revenue shall issue only to those whose names are so submitted to him by the board a license for the privilege of practicing the profession of public accountancy, and the license so issued shall be evidence of his registration with the board.

(13) The board shall keep a complete record of all its proceedings and shall annually submit a full report to the Governor.

(14) All fees collected on behalf of the State Board of Accountancy, and all receipts of every kind and nature, as well as the compensation paid the members of the board and the necessary expenses incurred by them in the performance of the duties imposed upon them by this chapter, shall be reported annually to the State Treasurer. Any surplus remaining in the hands of the board over the amount of three hundred dollars shall be paid to the State Treasurer at the time of submitting the report, and shall go to the credit of the general fund: Provided, that no expense incurred under this chapter shall be charged against the State.

(15) Any certificate of qualification issued under the provisions of this chapter, or issued under the provisions of chapter one hundred and fifty-seven of the Public Laws of one thousand nine hundred and thirteen, shall be forfeited for the failure of the holder to renew same and to pay the renewal fee therefor to the State Board of Accountancy within thirty days after demand for such renewal fee shall have been made by the State Board of Accountancy. (1925, c. 261, s. 11; 1939, c. 218, s. 1.)

§ 93-13. Violation of chapter; penalty.—Any violation of the provisions of this chapter shall be deemed a misdemeanor, and upon conviction thereof the guilty party shall be fined not less than fifty dollars and not exceeding two hundred dollars for each offense. (1925, c. 261, s. 11.)

Division XIII. Employer and Employee.

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Chapter 94. Apprenticeship.

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§ 94-1. Purpose.—The purposes of this chapter are: To open to young people the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprentice agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council and local and state joint apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a director of apprenticeship within the department of labor; to provide for reports to the legislature and to the public regarding the status of apprentice training in the state; to establish a procedure for the determination of apprentice agreement controversies; and to accomplish related ends. (1939, c. 229, s. 1.)

§ 94-2. Apprenticeship council.—The commissioner of labor shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations respectively. The state official who has been designated by the state board for vocational education as being in charge of trade and industrial education shall ex officio be a member of said council, without vote. The terms of office of the members of the apprenticeship council first appointed by the commissioner of labor shall expire as designated by the commissioner at the time of making the appointment: One representative each of employers, employees, being appointed for one year; one representative each of employers, employees, being appointed for two years, and one representative each of employers and employees for three years. Thereafter, each member shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. Each member of the council not otherwise compensated by public monies, shall be reimbursed for transportation and shall receive such per diem compensation as is provided generally for boards and commissions under the biennial Maintenance Appropriation Acts for each day spent in attendance at meetings of the apprenticeship council.

The apprenticeship council shall meet at the call of the commissioner of labor and shall aid him in formulating policies for the effective administration of this chapter. Subject to the approval of the commissioner, the apprenticeship council shall establish standards for apprentice agreement which in no case shall be lower than those prescribed by this chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said chapter, and shall perform such other functions as the commissioner may direct. Not less than once a year the apprenticeship council shall make a report through the commissioner of labor of its activities and findings to the legislature and to the public. (1939, c. 229, s. 2.)

§ 94-3. Director of apprenticeship.—The commissioner of labor is hereby directed to appoint a director of apprenticeship which appointment shall be subject to the confirmation of the state apprenticeship council by a majority vote. The commissioner of labor is further authorized to appoint and employ such clerical, technical, and professional help as shall be necessary to effectuate the purposes of this chapter. (1939, c. 229, s. 3.)

§ 94-4. Powers and duties of director of apprenticeship.—The director, under the supervision of the commissioner of labor and with the advice and guidance of the apprenticeship council is authorized to administer the provisions of this chapter; in cooperation with the apprenticeship council and local and state joint apprenticeship committees, to set up conditions and training standards for apprentice agreements, which conditions or standards shall in no case be lower than those prescribed by this chapter; to act as secretary of the apprenticeship council and of each state joint apprenticeship committee; to approve for the council if in his opinion approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established under this chapter; to terminate or cancel any apprentice agreement in accordance with the provisions of such agreement; to keep a record of apprentice agreements and their disposition; to issue certificates of completion of apprenticeship; and to perform such other duties as are necessary to carry out the intent of this chapter: Provided, that the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education. (1939, c. 229, s. 4.)

§ 94-5. Local and state joint apprenticeship committees.—A local joint apprenticeship committee may be appointed, in any trade or group of trades in a city or trade area, by the apprenticeship council, whenever the apprentice training

needs of such trade or group of trades justifies such establishment: Provided, that when a state joint apprenticeship committee in any trade or group of trades shall have been established, as hereinafter authorized, such state committee shall thereafter have the power of appointment of local joint apprenticeship committees in the trade or group of trades which it represents. Such local joint apprenticeship committee shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide local employer or employee organization, the committee shall be appointed from persons known to represent the interests of employers and of employees respectively. The function of a local joint apprenticeship committee shall be: To cooperate with school authorities in regard to the education of apprentices; in accordance with the standards set up by the apprenticeship committee for the same trade or group of trades, where such committee has been appointed, to work in an advisory capacity with employers and employees in matters regarding schedule of operations, application of wage rates, and working conditions for apprentices and to specify the number of apprentices which shall be employed locally in the trade under apprentice agreements under the chapter; and to adjust apprenticeship disputes, subject to the approval of the director. Until the appointment of a state joint apprenticeship committee for any trade or group of trades, as hereinafter provided, the local joint apprenticeship committee for that trade or group of trades shall, for the city or trade area for which it is appointed, exercise the functions of the state joint apprenticeship committee for the said trade or group of trades which it represents.

When two or more local joint apprenticeship committees have been established in the state for a trade or group of trades, or at the request of any trade or group of trades, the apprenticeship council may appoint a state joint apprenticeship committee for such trade or group of trades, composed of an equal number of employer and employee representatives chosen from names submitted by the respective employer and employee organizations. In a trade or group of trades in which there is no bona fide employer or employee organization, the apprenticeship council may appoint such a committee from persons known to represent the interests of employers and employees respectively. The functions of a state joint apprenticeship committee shall be: To coordinate the activities of local joint apprenticeship committees in the trade or group of trades which it represents; to ascertain the prevailing rate for journeymen in the respective trade areas within the state in such trade or trades and specify the graduated scale of wages applicable to apprentices in such trade or trades in each such area; to ascertain employment needs in such trade or trades and specify the appropriate current ratio of apprentices to journeymen; and to make recommendations for the general good of apprentices engaged in the trade or trades represented by the committee. The members of a state joint apprenticeship committee shall be reimbursed for transportation and shall receive such per diem compensation as is provided generally for boards and commissions under the biennial Maintenance Appropriation Acts for each day spent in attendance at meetings of the committee. (1939, c. 229, s. 5.)

§ 94-6. Definition of an apprentice.—The term "apprentice", as used herein, shall mean a person at least sixteen years of age who is covered by a written agreement, with an employer, an association of employers, or an organization of employees acting as employer's agent, and approved by the apprenticeship council; which apprentice agreement provides for not less than four thousand hours of reasonably continuous employment for such person for his participation in an approved schedule of work experience and for at least one hundred forty-four hours per year of related supplemental instruction. The required hours for apprenticeship agreements may vary in accordance with standards adopted by local or state joint apprenticeship committees, subject to approval of the state apprenticeship council and commissioner of labor. (1939, c. 229, s. 6.)

§ 94-7. Contents of agreement. — Every apprentice agreement entered into under this chapter shall contain:

(1) The names of the contracting parties.

(2) The date of birth of the apprentice.

(3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than one hundred forty-four hours per year: Provided, that in no case shall the combined weekly hours of work and of required related and supplemental instruction of the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age and sex of the apprentice.

(5) A statement setting forth a schedule of the processes in the trade or industry division in which the apprentice is to be taught and the approximate time to be spent at each process.

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.

(7) A statement providing for a period of probation of not more than five hundred hours of employment and instruction extending over not more than four months, during which time the apprentice agreement shall be terminated by the director at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the director by mutual agreement of all parties thereto, or cancelled by the director for good and sufficient reason. The council at the request of a joint apprentice committee may lengthen the period of probation.

(8) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally in accordance with § 94-5 shall be submitted to the director for determination as provided for in § 94-10.

(9) A provision that an employer who is unable to fulfill his obligation under the apprentice agree-

ment may with the approval of the director transfer such contract to any other employer: Provided, that the apprentice consents and that such other employer agrees to assume the obligations of said apprentice agreement.

(10) Such additional terms and conditions as may be prescribed or approved by the director not inconsistent with the provisions of this chapter. (1939, c. 229, s. 7.)

§ 94-8. Approval of apprentice agreements; signatures.—No apprentice agreement under this chapter shall be effective until approved by the director. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 94-9, and by the apprentice, and if the apprentice is a minor, by the minor's father: Provided, that if the father be dead or legally incapable of giving consent or has abandoned his family, then by the minor's mother; if both father and mother be dead or legally incapable of giving consent, then by the guardian of the minor. Where a minor enters into an apprentice agreement under this chapter for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority. (1939, c. 229, s. 8.)

§ 94-9. Rotation of employment.—For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the director of apprenticeship be signed by an association of employers or an organization of employees instead of by an individual employer. In such a case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for such apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in said agreement between the apprentice and employer association or employee organization during the period of each such employment. The apprentice agreement in such a case shall also expressly provide for the transfer of the apprentice, subject to the approval of the director, to such employer or employers who shall sign in written agreement with the apprentice, and if the apprentice is a minor with his parent or guardian, as specified in § 94-8, contracting to employ said apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the said agreement entered into between the apprentice and employer association or employee organization. (1939, c. 229, s. 9.)

§ 94-10. Settlement of controversies or complaints.—Under the complaint of any interested person or upon his own initiative, the director may investigate to determine if there has been a violation of the terms of an apprentice agreement, made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigations and determination. The parties to such agreement shall be given a fair and impartial hearing, after reasonable notice in writing thereof. All such hearings, investigations and determinations shall be made under authority of reasonable rules and procedures prescribed by the apprenticeship council, subject to the approval of the commissioner of labor.

The determination of the director shall be filed with the commissioner. If no appeal therefrom is filed with the commissioner within ten days after the date thereof, as herein provided, such determination shall become the order of the commissioner. Any person aggrieved by any determination or action of the commissioner, may appeal therefrom to the council, who shall hold a hearing thereon after due notice in writing to the interested parties. Any party to an apprentice agreement aggrieved by an order or decision of the council may appeal to the courts on questions of law. The decision of the council shall be final on the questions of fact. The decision of the council shall be conclusive if such appeal therefrom shall not be filed within thirty days after the date of such order or decision.

No person shall institute any action for the enforcement of any apprentice agreement, or damages for the breach of any apprentice agreement, made under this chapter, unless he shall first have exhausted all administrative remedies provided by this section. (1939, c. 229, s. 10.)

§ 94-11. Limitation.—Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees, setting up higher apprenticeship standards. (1939, c. 229, s. 11.)

Chapter 95. Department of Labor and Labor Regulations.

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Art. 1. Department of Labor.

§ 95-1. Department of labor established.—A Department of Labor is hereby created and established. The duties of said department shall be exercised and discharged under the supervision and direction of a commissioner, to be known as the Commissioner of Labor. (Rev., s. 3309; 1919, c. 314, s. 4; 1931, c. 312, s. 1; C. S. 7309.)

§ 95-2. Election of commissioner; term; salary; vacancy.—The commissioner of labor shall be elected by the people in the same manner as is provided for the election of the secretary of state.

His term of office shall be four years, and he shall receive a salary of six thousand dollars ($6,000.00) per annum. Any vacancy in the office shall be filled by the governor, until the next general election. The office of the department of labor shall be kept in the city of Raleigh and shall be provided for as are other public offices of the state. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 349; C. S. 7310.)

§ 95-3. Divisions of department; commissioner; administrative officers.—The Department of Labor shall consist of the following officers, divisions and sections:

A Commissioner of Labor.

A Division of Workmen's Compensation, as a separate and distinct unit, the officers of the Industrial Commission or the Division of Workmen's Compensation acting separately and independently of the other officers, divisions and sections herein provided for.

A Division of Standards and Inspections.

A Division of Statistics.

Each division, except the Division of Workmen's Compensation, shall be in the charge of a chief administrative officer and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division concerned, with the approval of the Governor, shall prescribe and promulgate. The Commissioner of Labor, with the approval of the Governor, may make provision for one person to act as chief administrative officer of two or more divisions, when such is deemed advisable. The chief administrative officers of the several divisions, except the Industrial Commission, shall be appointed by the Commissioner of Labor with the approval of the Governor, and he shall fix their compensation, subject to the approval of the Budget Bureau. The Commissioner of Labor, with the approval of the Governor may combine or consolidate the activities of two or more of the divisions of the department except the Division of Workmen's Compensation, or provide for the setting up of other divisions when such action shall be deemed advisable for the more efficient and economical administration of the work and duties of the department. (1931, cc. 277, 312, s. 4; 1933, c. 46.)

§ 95-4. Authority, powers and duties of commissioner.—The commissioner of labor shall be the executive and administrative head of the department of labor. In addition to the other powers and duties conferred upon the commissioner of labor by this article, the said commissioner shall have authority and be charged with the duty:

(a) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the department, with approval of said director of division, as may be necessary to perform the work of the department, and fix their compensation, subject to the approval of the Budget Bureau. The commissioner of labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subsection shall not apply to the industrial commission, or the division of workmen's compensation.

(b) To make such rules and regulations with reference to the work of the department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said commissioner and the work of the department; such rules and regulations to be made subject to the approval of the governor.

(c) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the state, any factory, store, workshop, laundry, public eating-house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within thirty days of the receipt of said list of questions.

(d) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating-places, and commercial institutions in the state. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the commissioner of labor.

(e) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating-places, and commercial institutions in the state, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.

(f) To aid veterans of the World War in securing the adjustment of claims against the Federal government.

(g) To enforce the provisions of this section, and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating-houses, and commercial institutions in this state before any justice of the peace or court of competent jurisdiction. It shall be the duty of the solicitor of the proper district or the prosecuting attorney of any city or county court, upon the request of the commissioner of labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said commissioner of labor to enforce. (1925, c. 288; 1931, cc. 277, 312, ss. 5, 6; 1933, cc. 46, 244.)

§ 95-5. Annual report to Governor; recommendation as to legislation needed. — The commissioner of labor shall annually, on or before the first day of January, file with the governor a report covering the activities of the department, and the report so made on or before January first of the years in which the general assembly shall be in session shall be accompanied by recommendations of the commissioner with reference to such changes in the law applying to or affecting industrial and labor conditions as the commissioner may deem advisable. The report of the commissioner of labor shall be printed and dis-

tributed in such manner and form as the director of the budget shall authorize. (1931, c. 312, s. 7.)

§ 95-6. Statistical report to Governor; publication of information given by employers.—It shall be the duty of the commissioner of labor to collect in the manner herein provided for, and to assort, systematize, and present to the governor as a part of the report provided for in § 95-5, statistical details relating to all divisions of labor in the State, and particularly concerning the following: The extent of unemployment, the hours of labor, the number of employees and sex thereof, and the daily wages earned; the conditions with respect to labor in all manufacturing establishments, hotels, stores, and workshops; and the industrial, social, educational, moral, and sanitary conditions of the labor classes, in the productive industries of the State. Such statistical details shall include the names of firms, companies, or corporations, where the same are located, the kind of goods produced or manufactured, the period of operation of each year, the number of employees, male or female, the number engaged in clerical work and the number engaged in manual labor, with the classification of the number of each sex engaged in such occupation and the average daily wage paid each: Provided, that the commissioner shall not, nor shall anyone connected with his office, publish or give or permit to be published or given to any person the individual statistics obtained from any employer, and all such statistics, when published, shall be published in connection with other similar statistics and be set forth in aggregates and averages. (1931, c. 312, s. 8.)

§ 95-7. Power of commissioner to compel the giving of such information; refusal as contempt.—The commissioner of labor, or his authorized representative, for the purpose of securing the statistical details referred to in § 95-6, shall have power to examine witnesses on oath, to compel the attendance of witnesses and the giving of such testimony and production of such papers as shall be necessary to enable him to gain the necessary information. Upon the refusal of any witness to comply with the requirements of the commissioner of labor or his representative in this respect, it shall be the duty of any judge of the superior court, upon the application of the commissioner of labor, or his representative, to order the witness to show cause why he should not comply with the requirements of the said commissioner, or his representative, if in the discretion of the judge such requirement is reasonable and proper. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court. (1931, c. 312, s. 9.)

§ 95-8. Employers required to make statistical report to Commissioner; refusal as contempt.—It shall be the duty of every owner, operator, or manager of every factory, workshop, mill, mine, or other establishment, where labor is employed, to make to the department, upon blanks furnished by said department, such reports and returns as the said department may require, for the purpose of compiling such labor statistics as are authorized by this article, and the owner or business manager shall make such reports and returns within the time prescribed therefor by said Commissioner, and shall certify to the correctness of the same. Upon the refusal of any person, firm, or corporation to comply with the provisions of this section, it shall be the duty of any judge of the superior court, upon application by the commissioner or by any representative of the department authorized by him, to order the person, firm, or corporation to show cause why he or it should not comply with the provisions of this section. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court. (1931, c. 312, s. 10.)

§ 95-9. Employers to post notice of laws.—It shall be the duty of every employer to keep posted in a conspicuous place in every room where five or more persons are employed a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Commissioner of Labor shall furnish the printed form of such notice upon request. (1933, c. 244, s. 6.)

§ 95-10. Division of workmen's compensation.—The North Carolina industrial commission, created under the provisions of the workmen's compensation act, § 97-1 et seq., is hereby transferred to the department of labor as one of its integral units. The powers, duties, and personnel of the said industrial commission shall continue as provided for in the workmen's compensation act: Provided, however, that such adjustments shall be made in connection with the statistical work and the work of inspection of said industrial commission and the statistical work and work of inspection of other divisions of the department of labor as the commissioner of labor, with the advice of the industrial commission and of the heads of the divisions directly concerned, may, with the approval of the Governor, prescribe, for the purpose of facilitating, expediting, and improving the work of the department as a whole. (1931, c. 312, s. 11.)

§ 95-11. Division of Standards and Inspection.—(a) The chief administrative officer of the Division of Standards and Inspection shall be known as the director of the division. It shall be his duty, under the direction and supervision of the Commissioner of Labor, and under rules and regulations to be adopted by the Department as herein provided, to make or cause to be made all necessary inspections to see that all laws, rules, and regulations concerning the safety and well-being of labor are promptly and effectively carried out.

(b) The Division shall make studies and investigations of special problems connected with the labor of women and children, and create the necessary organization, and appoint an adequate number of investigators, with the consent of the Commissioner of Labor and the approval of the Governor; and the Director of said division, under the supervision and direction of the Commissioner of Labor and under such rules and regulations as shall be prescribed by said Commissioner, with the approval of the Governor, shall perform all duties devolving upon the Department of Labor, or the Commissioner of Labor with relation to the enforcement of laws, rules, and regulations governing the employment of women and children.

(c) The Director shall report annually to the

Commissioner of Labor the activities of the division, with such recommendations as may be considered advisable for the improvement of the working conditions for women and children.

(d) The Division shall collect and collate information and statistics concerning the location, estimated and actual horsepower and condition of valuable water-powers, developed and undeveloped, in this State; also concerning farm lands and farming, the kinds, character, and quantity of the annual farm products in this State; also of timber lands and timbers, truck gardening, dairying, and such other information and statistics concerning the agricultural and industrial welfare of the citizens of this State as may be deemed to be of interest and benefit to the public. The Director shall also perform the duties of mine inspector as prescribed in the chapter on Mines and Quarries.

(e) The Division shall conduct such research and carry out such studies as will contribute to the health, safety, and general well-being of the working classes of the State. The finding of such investigations, with the approval of the Commissioner of Labor and the Governor and the cooperation of the chief administrative officer of the Division or Divisions directly concerned, shall be promulgated as rules and regulations governing work places and working conditions. All recommendations and suggestions pertaining to health, safety, and well-being of employees shall be transmitted to the Commissioner of Labor in an annual report which shall cover the work of the Division of Standards and Inspection.

(f) The Division shall make, promulgate and enforce rules and regulations for the protection of employees from accident and from occupational disease; and shall upon request, and after such investigation as it deems proper, issue certificates of compliance to such employers as are found by it to be in compliance with the rules and regulations made and promulgated in accordance with the provisions of this paragraph. (1931, c. 312, s. 12, c. 426; 1935; c. 131.)

§ 95-12. Division of Statistics.—The Division of Statistics shall be in charge of a Chief Statistician. It shall be his duty, under the direction and supervision of the Commissioner of Labor, to collect, assort, systematize, and print all statistical details relating to all divisions of labor in this State as is provided in § 95-6. (1931, c. 312, s. 13.)

§ 95-13. Enforcement of rules and regulations.—In the event any person, firm or corporation shall, after notice by the commissioner of labor, violate any of the rules or regulations promulgated under the authority of this article or any laws amendatory hereof relating to safety devices, or measures, the attorney general of the state, upon the request of the commissioner of labor, may take appropriate action in the civil courts of the state to enforce such rules and regulations. Upon request of the attorney general, any solicitor of the state of North Carolina in whose district such rule or regulation is violated may perform the duties hereinabove required of the attorney general. (1939, c. 398.)

§ 95-14. Agreements with certain federal agencies for enforcement of Fair Labor Standards Act.—The North Carolina state department of labor may and it is hereby authorized to enter into agreements with the wage and hour division, and the children's bureau, United States department of labor, for assistance and coöperation in the enforcement within this state of the act of Congress known as the Fair Labor Standards Act of one thousand nine hundred thirty-eight, approved June twenty-fifth, one thousand nine hundred thirty-eight, and is further authorized to accept payment and/or reimbursement for its services as provided by said act of Congress. Any such agreement may be subject to the regulations of the administrator of the wage and hour division, or the chief of the children's bureau of the United States department of labor, as the case may be, and shall be subject to the approval of the director of the state budget. Nothing in this section shall be construed as authorizing the state department of labor to spend in excess of its appropriation from state funds, except to the extent that such excess may be paid and/or reimbursed to it by the United States department of labor. All payments received by the state department of labor under this section shall be deposited in the state treasury and are hereby appropriated to the state department of labor to enable it to carry out the agreements entered into under this section. (1939, c. 245.)

Art. 2. Maximum Working Hours.

§ 95-15. Title of article.—This article shall be known and may be cited as the "Maximum Hour Law." (1937, c. 409, s. 1.)

§ 95-16. Declaration of public policy; enactment under police power.—As a guide to interpretation and application of this article, the public policy of this state is declared as follows: The relationship of hours of labor to the health, morals and general welfare of the people is a subject of general concern which requires appropriate legislation to limit hours of labor to promote the general welfare of the people of the state without jeopardizing the competitive position of North Carolina business and industry.

The general assembly, therefore, declares that in its considered judgment the general welfare of the state requires enactment of this law under the police power of the state. (1937, c. 409, s. 2.)

§ 95-17. Limitations of hours of employment; exceptions.—No employer shall employ a female person for more than forty-eight hours in any one week or nine hours in any one day, or on more than six days in any period of seven consecutive days.

No employer shall employ a male person for more than fifty-five hours in any one week, or more than twelve days in any period of fourteen consecutive days or more than ten hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: Provided, in case of emergencies, repair crews, engineers, electricians, firemen, watchmen, office and supervisory employees and employees engaged in hereinafter defined continuous process operations and in work, the nature of which pre-

vents second shift operations, may be employed for not more than sixty hours in any one week: Provided, also, that the ten hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment: Provided, that boys over fourteen years of age delivering newspapers on fixed routes and working not more than twenty-four hours per week, and watchmen may be employed seven days per week: Provided further, that from the eighteenth of December to and including the following twenty-fourth of December and for two periods of one week's duration each during the year for purpose of taking inventory, female persons over sixteen years of age in mercantile establishments may be employed not to exceed ten hours in any one day: Provided further, that female persons engaged in the operation of seasonal industries in the process of conditioning and preserving perishable or semi-perishable commodities may be employed for not more than ten hours in any one day and not more than fifty-five hours in any one week.

No provision in this article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same employee, the employer shall provide that all such periods shall be within twelve consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining-rooms, and public eating places, such periods shall be within fourteen consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this article shall apply to the employment of persons in agricultural occupations, ice plants, cotton gins and cottonseed oil mills or in domestic service in private homes and boarding houses, or to the work of persons over eighteen years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, motion picture theatres, seasonal hotels and club houses, commercial fishing or tobacco redrying plants, tobacco warehouses, employers employing a total of not more than eight persons in each place of business, charitable institutions and hospitals: Provided further, that nothing in this section or in any other provision of this article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the interstate commerce commission or the North Carolina utilities commission, and utilities operated by municipalities or any transportation agencies now regulated by the federal government: Provided, nothing in this article shall apply to the state or to municipal corporations or their employees, or to employees in hotels.

When, by reason of a seasonal rush of business, any employer finds or believes it to be necessary that the employees of his or its manufacturing plant shall work for more than fifty-five hours per week, the employer may apply to the commissioner of labor of the state of North Carolina for permission to allow the employees of such establishment to work a greater number of hours than fifty-five for a definite length of time not exceeding sixty days; and the commissioner, after investigation, may, in his discretion, issue such permit on the condition that all such employees shall receive one and one-half times the usual compensation for all hours worked over fifty-five per week: Provided, this shall not apply to the hours of any female person or any person under the age of eighteen years: Provided further, employees in all laundries and dry cleaning establishments shall not be employed more than fifty-five hours in any one week: Provided further, nothing contained in this article shall be construed to limit the hours of employment of any outside salesmen on commission basis. Provided, that this article shall not apply to male clerks in mercantile establishments. Provided, that this article shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: one week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day. (1937, cc. 406, 409, s. 3; 1939, c. 312, s. 1.)

§ 95-18. Definitions.—Whenever used in this article

(a) "Employ" includes permit or suffer to work.

(b) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative or foreman, or other person having control or custody of any employment, place of employment or of any employee.

(c) "Day" includes any period of twenty-four consecutive hours.

(d) "Continuous process operations" includes bleaching, dyeing, finishing, redrying, dry kiln operations, and any other processing requiring continuous handling or work for completion. (1937, c. 409, s. 4.)

§ 95-19. Posting of law.—Every employer shall post and keep conspicuously posted in or about the premises wherein any employee is employed, a printed abstract of this article to be furnished by the state commissioner of labor upon request. (1937, c. 409, s. 5.)

§ 95-20. Time records kept by employers.—Every employer shall keep a time book and/or record which shall state the name and occupation of each employee employed and which shall indicate the number of hours worked by him or her on each day of the week, and the amount of wages paid each pay period to each such employee. Such time book and/or record shall be kept on file at least one year after the entry of the record. The state commissioner of labor or his duly authorized representative shall, for the purpose of examination, have access to and the right to copy from such time book and/or record for the purpose of prosecuting violations of the provisions of the article. Any employer who fails to keep such time book and/or record, or knowingly and intentionally makes any false statement therein, or refuses to make such time book and/or record accessible, upon request, to the state commissioner of labor or his duly authorized rep-

resentative shall be deemed to have violated this section. (1937, c. 409, s. 6.)

§ 95-21. Enforcement by commissioner of labor. —It shall be the duty of the state commissioner of labor to enforce all the provisions of this article. The state commissioner of labor and his authorized representatives shall have the power and authority to enter any place of employment, and, in the enforcement of this article, the state commissioner of labor and his authorized representatives may enter and inspect as often as practicable all such places of employment. They may investigate all complaints of violations of this article received by them, and may institute prosecutions as hereinafter provided for violations of this article. (1937, c. 409, s. 7.)

§ 95-22. Interference with enforcement prohibited.—No person shall hinder or delay the state commissioner of labor or any of his authorized representatives in the performance of his duties; nor shall any person refuse to admit to, or lock out from, any place of employment the state commissioner of labor or any of his authorized representatives, or refuse to give the state commissioner of labor or his authorized representatives information required for the proper enforcement of this article. (1937, c. 409, s. 8.)

§ 95-23. Violation a misdemeanor.—Any person who, whether on his own behalf or for another, or through an agent, manager, representative, foreman or other person, shall knowingly and intentionally violate any provisions of this article, shall be guilty of a misdemeanor. (1937, c. 409, s. 9.)

§ 95-24. Penalties.—Whoever knowingly and intentionally violates any provisions of § 95-17, upon complaint lodged by the state commissioner of labor, shall be punished by a a fine of not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars, or by imprisonment for not more than thirty days in the discretion of the court; and whenever any person shall have been notified by the state commissioner of labor or his authorized representative, or by the service of a summons in a prosecution, that he is violating such provision, he shall be subject to like penalties in addition for each and every day that such violation shall have been continued after such notification.

Whoever knowingly and intentionally violates any of the provisions of §§ 95-19, 95-20, or 95-22 of this article shall be punished, for the first offense, by a fine of not less than five ($5.00) dollars nor more than twenty-five ($25.00) dollars, or imprisonment for not more than thirty days, in the discretion of the court, and whenever any person shall have been notified by the state commissioner of labor or his authorized representative that he is violating such provisions, and shall have been given a reasonable time in which to remedy the conditions which shall constitute such violations, he shall be subject to like penalties in addition to the penalties aforesaid, for each and every day that such violation shall have continued after the expiration of the time allowed by the state commissioner of labor or his authorized representative for remedying the aforesaid conditions. (1937, c. 409, s. 10.)

§ 95-25. Intimidating witnesses. — Whoever shall, by force, intimidation, threat of procuring dismissal from employment, or by any other manner whatsoever, induce or attempt to induce an employee to refrain from giving testimony in any investigation or proceeding relating to or arising under this article, or whoever discharges or penalizes any employee for so testifying, shall be subject to a fine of not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars, or by imprisonment for not more than thirty days. (1937, c. 409, s. 11.)

Art. 3. Various Regulations.

§ 95-26. Week's work of women to be fifty-five hours.—Not more than fifty-five hours shall constitute a week's work for women over sixteen in any laundry, dry-cleaning establishment, pressing club, work-shop, factory, manufacturing establishment, or mill, of the State, and no woman over sixteen employed in any of the above-named places shall be worked exceeding eleven hours in any one day or over fifty-five hours in any one week. Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, and each day's work exceeding the said hours shall constitute a separate offense. Provided, that this section shall not apply to those employed in the operation of seasonal industries in their process of conditioning and of preserving perishable or semi-perishable commodities, or to those engaged in agricultural work. Provided, further, that this section shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: one week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day. (1915, c. 148, s. 2; 1931, c. 289; 1935, c. 406; 1939, c. 312, s. 2; C. S. 6554.)

§ 95-27. Hours of work for women in certain industries.—It shall be unlawful for any person, firm, or corporation, proprietor or owner of any retail, or wholesale mercantile establishment or other business where any female help is employed for the purpose of serving the public in the capacity of clerks, salesladies or waitresses and other employees of public eating places, to employ or permit to work any female longer than ten hours in any one day or over fifty-five hours in any one week; nor shall any female be employed or permitted to work for more than six hours continuously at any one time without an interval of at least half an hour except where the terms of employment do not call for more than six and a half hours in any one day or period.

Nothing in this section shall be construed to apply to females whose full time is employed as bookkeepers, cashiers or office assistants or to any establishment that does not have in its employment three or more persons at any one time.

Every employer shall post in a conspicuous place in every room of the establishment in which females are employed a printed notice stating the provisions of this section and the hours of labor. The printed form of such notice shall be furnished, upon request, by the commissioner of labor.

Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars or imprisoned not exceeding sixty days and each day's work exceeding the said hours shall constitute a separate offense. (1933, c. 35; 1935, c. 407.)

§ 95-28. Working hours of employees in state institutions.—It shall be unlawful for any person or official or foreman or other person in authority in the state hospital at Raleigh, the state hospital at Morganton, the state hospital at Goldsboro, or any penal or correctional institution of the State of North Carolina, excepting the state prison and institutions under the control of the state commission of highways and public works, to require any employee to work for a greater number of hours than twelve (12) during any twenty-four (24) hour period, or not more than eighty-four (84) hours during any one one week, or permit the same, during which period the said employee shall be permitted to take one continuous hour off duty; except in case of an emergency as determined by the superintendent, in which case the limitation of twelve (12) hours in any consecutive twenty-four (24) shall not apply. Nothing in this section shall be construed to effect the hours of doctors and superintendents in these hospitals. Any violation of this section shall be a misdemeanor, punishable within the discretion of the court. (1935, c. 136.)

§ 95-29. Seats for women employees; failure to provide, a misdemeanor.—All persons, firms, or corporations who employ females in a store, shop, office, or manufacturing establishment, as clerks, operatives, or helpers in any business, trade, or occupation carried on or operated in the state of North Carolina, shall be required to procure and provide proper and suitable seats for all such females, and shall permit the use of such seats, rests, or stools as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such seats, stools, or rests when any such female employee or employees are not actively employed or engaged in their work in such business or employment.

If any employer of female help fails to provide seats, as required in this article, or makes any rules, orders or regulations in his or its shop, store, or other place of business requiring females to remain standing when not necessarily employed or engaged in service or labor therein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or both, within the discretion of the court.

The Commissioner of Labor, or his duly authorized agents, may at any time enter and inspect all stores, shops, offices, or manufacturing or other establishments coming within the provisions of this section, and he may make such rules and regulations as he deems necessary to enforce the provisions of this section. It shall be unlawful for any person, firm or corporation to refuse permission to enter, obstruct, or prevent any duly authorized agent of the commissioner in his effort to make the inspection herein provided for. (1909, c. 857, ss. 1, 2; 1919, c. 100, s. 12; C. S. 6555.)

§ 95-30. Medical chests in factories; failure to provide, a misdemeanor.—Every person, firm, or corporation operating a factory or shop employing over twenty-five laborers, in which machinery is used for any manufacturing purpose, or for any purpose except for elevation or for heating or hoisting apparatus, shall at all times keep and maintain free of expense to the employees a medical or surgical chest which shall contain two porcelain pans, two tourniquets, gauze, absorbent cotton, adhesive plasters, bandages, antiseptic soap, one bottle of carbolic acid with directions on bottle, one bottle antiseptic tablets, one pair scissors, one folding stretcher, for the treatment of persons injured or taken ill upon the premises: Provided, this section does not require any employer to spend over ten dollars for such equipment.

Any person, firm, or corporation violating this section shall be subject to a fine of not less than five dollars nor more than twenty-five dollars for every week during which such violation continues. (1911, c. 57; C. S. 6556.)

§ 95-31. Acceptance by employer of assignment of wages. — No employer of labor shall be responsible for any assignment of wages to be earned in the future, executed by an employee, unless and until such assignment of wages is accepted by the employer in a written agreement to pay same. (1935, c. 410; 1937, c. 90.)

Art. 4. Conciliation Service and Mediation of Labor Disputes.

§ 95-32. Declaration of policy.—It is hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected; and that the conciliation and voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state. To carry out such policy, the necessity for the enactment of the provisions of this article is hereby declared as a matter of legislative determination. (1941, c. 362, s. 1.)

§ 95-33. Scope of article.—The provisions of this article shall apply to all labor disputes in North Carolina. (1941, c. 362, s. 2.)

§ 95-34. Administration of article.—The administration of this article shall be under the general supervision of the commissioner of labor of North Carolina. (1941, c. 362, s. 3.)

§ 95-35. Conciliation service established; personnel; removal; compensation.—There is hereby established in the department of labor a conciliation service. The commissioner of labor may appoint such employees as may be required for the consummation of the work under this article, prescribe their duties and fix their compensation, subject to existing laws applicable to the appointment and compensation of employees

of the state of North Carolina. Any member of or employee in the conciliation service may be removed from office by the commissioner of labor, acting in his discretion. (1941, c. 362, s. 4.)

§ 95-36. Powers and duties of commissioner and conciliator.—Upon his own motion in an existent or imminent labor dispute, the commissioner of labor may, and, upon the direction of the governor, must order a conciliator to take such steps as seem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

The conciliator shall promptly put himself in communication with the parties to such controversy, and shall use his best efforts, by mediation, to bring them to agreement. (1941, c. 362, s. 5.)

Art. 5. Regulation of Employment Agencies.

§ 95-37. Employment agency defined. — Employment agency within the meaning of this article shall include any business operated by any person, firm or corporation for profit and engaged in procuring employment for any person, firm or corporation in the State of North Carolina and making a charge on the employee or employer for the service. (1929, c. 178, s. 1.)

§ 95-38. License from Commissioner of Labor; investigation of applicant.—No person, firm or corporation shall engage in the business of operating any employment agency, as designated in § 95-37, in North Carolina without first making a written application to the Commissioner of Labor and being licensed by him as herein provided, to engage in such business. Upon receiving an application from such person, firm or corporation it shall be the duty of the Commissioner of Labor to make an investigation into the character and moral standing of the person, firm or corporation. If after such investigation, the Commissioner of Labor shall be satisfied that such person, firm or corporation is of such character and moral standing as to warrant the issuance of a license to engage in the business covered by this article, he shall issue a license to such person, firm or corporation as provided herein. (1929, c. 178, s. 2; 1931, c. 312, s. 3.)

§ 95-39. Rules and regulations governing issuance of licenses.—The Commissioner of Labor is authorized and empowered to make general rules and regulations in relation to the licensing of such employment agencies and for the general supervision thereof in accordance with this article. (1929, c. 178, s. 3; 1931, c. 312, s. 3.)

§ 95-40. Investigation of records of agencies; hearing; rescission of licenses.—The Commissioner of Labor may investigate the books and records of any employment agency licensed under this article, and may rescind the license of the agency for cause if he finds that the agency is not complying with the terms and conditions of this article. No license shall be revoked until the Commissioner shall hold a hearing at the Court House of the County in which the licensee is doing business. The licensee shall be given ten days' notice to appear at the hearing and show cause why the license should not be revoked. At the hearing the result of the Commissioner's investigation shall be presented under oath, and the licensee may present evidence to show that the license should not be revoked. The licensee may appeal to the Superior Court within ten days after the Commissioner's decision. (1929, c. 178, s. 4; 1931, c. 312, s. 3.)

§ 95-41. Subpoenas; oaths.—The Commissioner of Labor, his Assistant or deputy shall be empowered to subpoena witnesses and administer oaths in making investigations and taking testimony to be presented at the hearing to be held before the Commissioner of Labor as hereinbefore provided for. (1929, c. 178, s. 5; 1931, c. 312, s. 3.)

§ 95-42. Service of subpoenas and fees for, governed by general law.—The County Sheriffs and their respective deputies shall serve all subpoenas of the Commissioner of Labor, and shall receive the same fees as are now provided by law for like services, and each witness who appears in obedience to such subpoena shall receive for attendance the fees and mileage for witnesses in civil cases of courts of the County in which the hearing is held. (1929, c. 178, s. 6; 1931, c. 312, s. 3.)

§ 95-43. Production of books, papers and records.—The Superior Court shall, on the application of the Commissioner of Labor, his assistant or duly authorized deputy, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records. (1929, c. 178, s. 7; 1931, c. 312, s. 3.)

§ 95-44. License fee to be paid into special fund.—The license fee, charged under the provisions of this article, shall be paid into a special fund of the Department of Labor, and the proceeds of such license fees shall be used for the purpose of the supervision and regulation of the employment agencies, including costs of investigations or hearings to revoke licenses and the necessary traveling expenses and other expenditures incurred in administering this article. (1929, c. 178, s. 8; 1931, c. 312, s. 3.)

§ 95-45. Violations.—Any person, firm or corporation conducting an employment agency in the State of North Carolina, in violation of this article shall be guilty of a misdemeanor, and if a person punishable by a fine of not less than five hundred dollars, or imprisonment of not less than six months, or both; and if a corporation by a fine of not less than five hundred dollars and not more than one thousand dollars. (1929, c. 178, s. 9.)

§ 95-46. Government employment agencies unaffected.—This article shall not in any manner affect or apply to any employment agency operated by the State of North Carolina, the Government of the United States, or any City, County or Town, or any agency thereof. (1929, c. 178, s. 10.)

§ 95-47. License taxes placed upon agencies under Revenue Act, not affected.—This article shall in no wise conflict with or affect any license tax placed upon such employment agencies by the General Revenue Act of North Carolina but instead shall be construed as supplementary

thereto in exercising the police powers of the State. (1929, c. 178, s. 11.)

Art. 6. Separate Toilets for Sexes and Races.

§ 95-48. When separate toilets required; penalty.—All persons and corporations employing males and females in any manufacturing industry, or other business employing more than two males and females in towns and cities having a population of one thousand persons or more, and where such employees are required to do indoor work chiefly, shall provide and keep in a cleanly condition separate and distinct toilet rooms for such employees, said toilets to be lettered and marked in a distinct manner, so as to furnish separate facilities for white males, white females, colored males and colored females: Provided, that the provisions of this section shall not apply to cases where toilet arrangements or facilities are furnished by said employer off the premises occupied by him. (1913, c. 83, s. 1; C. S. 6559.)

§ 95-49. Location; intruding on toilets misdemeanor.—It shall be the duty of the persons or corporations mentioned under this article to locate their toilets for males and females, white and colored, in separate parts of their buildings or grounds in buildings hereafter erected, and in those now erected all closets shall be separated by substantial walls of brick or timber, and any employee who shall wilfully intrude upon or use any toilet not intended for his or her sex or color shall be guilty of a misdemeanor and upon conviction shall be fined five dollars. (1913, c. 83, s. 4; C. S. 6560.)

§ 95-50. Punishment for violation of article.—If any person, firm, or corporation refuses to comply with the provisions of this article, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 83, s. 2; 1919, c. 100, s. 12; C. S. 6561.)

§ 95-51. Police in towns to enforce article.—The police officers of any town or city shall investigate the places of business of any person or corporation employing males and females and see that the provisions of this article are put in force, and shall swear out a warrant before the mayor or other proper officer of any town or city and prosecute all persons, corporations, and managers of corporations violating any of the provisions of this article. (1913, c. 83, s. 3; C. S. 6562.)

§ 95-52. Sheriff in county to enforce article.—When any persons or corporations locate their manufacturing plant or other business outside of any city or town, the sheriff of the county shall investigate the condition of the toilets used by such manufacturing plant or business and see that the provisions of this article are complied with, and shall swear out a warrant before a justice of the peace and prosecute any one violating the provisions of this article. (1913, c. 83, s. 5; C. S. 6563.)

Local Modification.—Harnett, Lee, Johnston, Northampton, Sampson, Cleveland, Rutherford, Polk, and Henderson: C. S. 6564.

§ 95-53. Enforcement by department of labor.—The department of labor shall investigate the places of business of any person or corporation employing males and females, and shall make such rules and regulations for enforcing and carrying out this article as may be necessary. (1919, c. 100, s. 7; 1931, c. 312, ss. 12, 14; C. S. 6563(a).)

Art. 7. Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-54. Board of boiler rules created; members, appointment, and qualifications; terms of office; vacancies; meetings.—There is hereby created the North Carolina board of boiler rules consisting of five members, of whom four shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years and one for a term of four years. At the expiration of their respective terms of office, their successors shall be appointed for terms of four years each. Upon the death or incapacity of any member, the vacancy for the remainder of the term shall be filled with a representative of the same class. Of these four appointed members, one shall be a representative of the owners and users of steam boilers within the State of North Carolina, one a representative of the boiler manufacturers or a boiler maker who has had not less than five years practical experience as a boilermaker within the State of North Carolina, one a representative of a boiler inspection and insurance company licensed to do business within the State of North Carolina, and one a representative of the operating steam engineers in the State of North Carolina. The fifth member shall be the commissioner of labor, who shall be chairman of the board. The board shall meet at least twice yearly at the state capital or other place designated by the board. (1935, c. 326, s. 1.)

§ 95-55. Formulation of rules and regulations.—The board shall formulate rules and regulations for the safe and proper construction, installation, repair, use and operation of steam boilers in this State. The rules and regulations so formulated shall conform as nearly as possible to the boiler code of the American Society of Mechanical Engineers and amendments and interpretations thereto made and approved by the council of the society. (1935, c. 326, s. 1.)

§ 95-56. Approval of rules and regulations by governor. — The rules and regulations formulated by the board of boiler rules shall become effective upon approval by the governor, except that rules applying to the construction of new boilers shall not become effective to prevent the installation of such new boilers until six months after approval by the governor. Changes in the rules which would raise the standards governing the methods of construction of new boilers or the quality of material used in them shall not become effective until six months after approval by the governor. (1935, c. 326, s. 2.)

§ 95-57. Compensation and expenses of board.—The members of the board of boiler rules, exclusive of the chairman thereof, shall serve without salary and shall receive their actual expenses, not to exceed their actual railroad fare plus four dollars ($4.00) per day each, for not to exceed twenty days in any year while in the perform-

ance of their duties as members of the board, to be paid in the same manner as in case of other state officers. The chairman of the board of boiler rules shall countersign all vouchers for expenditures under this section. (1935, c. 326, s. 3.)

§ 95-58. Effect of article on boilers installed prior to enactment.—This article shall not be construed as in any way preventing the use or sale of steam boilers in this State which shall have been installed or in use in this State prior to the taking effect of this article and which shall have been made to conform to the rules and regulations of the board of boiler rules governing existing installations as provided in § 95-66. (1935, c. 326, s. 4.)

§ 95-59. Commissioner of labor empowered to appoint chief inspector; qualifications; salary.—After the passage of this article and at any time thereafter that the office may become vacant, the commissioner of labor shall appoint, and may remove for cause when so appointed, a citizen of this State who shall have had at the time of such appointment not less than five years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector, or who has passed the same kind of examination as that prescribed for deputy or special inspectors in § 95-63, to be chief inspector for a term of two years or until his successor shall have been appointed, at an annual salary of two thousand dollars ($2,000.00). (1935, c. 326, s. 5.)

§ 95-60. Certain boilers excepted.—This article shall not apply to boilers under federal control or to stationary boilers used by railroads which are inspected regularly by competent inspectors, or to boilers used solely for propelling motor road vehicles; or to boilers of steam fire engines brought into the state for temporary use in times of emergency to check conflagrations; or to portable boilers used for agricultural purposes only or for pumping or drilling in the open field for water, gas or coal, gold, talc or other minerals and metals; or to steam heating boilers which carry pressures not exceeding fifteen pounds per square inch, built in accordance with the boiler code of the American Society of Mechanical Engineers. (1935, c. 326, s. 6; 1937, c. 125, s. 1.)

§ 95-61. Powers of commissioner of labor; creation of bureau of boiler inspection. — The commissioner of labor is hereby charged, directed and empowered:

(a) To set up in the division of standards and inspections of the department of labor, a bureau of boiler inspection to be supervised by the chief inspector provided for in § 95-59 and one or more deputy inspectors of boilers, who shall have passed the examination provided for in § 95-63, at a salary not to exceed the salary of a senior factory inspector, and such office help as may be necessary.

(b) To have free access for himself and his chief boiler inspector and deputies, during reasonable hours, to any premises in the State where a steam boiler is built or where a steam boiler or power plant apparatus is being installed or operated, for the purpose of ascertaining whether such boiler is built, installed and operated in accordance with the provisions of this article.

(c) To prosecute all violators of the provisions of this article.

(d) To issue, suspend and revoke inspection certificates allowing steam boilers to be operated, as provided in this article.

(e) To enforce the laws of the State governing the use of steam boilers and to enforce the rules and regulations of the board of boiler rules.

(f) To keep a complete record of the type, dimensions, age, condition, pressure allowed upon, location and date of the last inspection of all steam boilers to which this article applies.

(g) To publish and distribute among boiler manufacturers and others requesting them, copies of the rules and regulations adopted by the board of boiler rules. (1935, c. 326, s. 7.)

§ 95-62. Provision for special inspectors; examination required. — In addition to the deputy boiler inspectors authorized by § 95-61, the commissioner of labor shall, upon the request of any company authorized to insure against loss from explosion of boilers in this State, issue to any boiler inspectors of said company commissions as special inspectors: Provided, that each such inspector before receiving his commission shall pass satisfactorily the examination provided for in § 95-63, or, in lieu of such examination, shall hold a certificate of competency as an inspector of steam boilers for a state that has a standard of examination equal to that of the State of North Carolina, or a certificate from the national board of boiler and pressure vessel inspectors. The fee for such commission shall be one dollar ($1.00) and one dollar ($1.00) for each annual renewal thereof. Such special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the State, and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of a boiler inspection and insurance company duly authorized as aforesaid and upon his maintenance of the standards imposed by this article. Such special inspectors shall inspect all steam boilers insured by their respective companies, and the owners of such insured boilers shall be exempt from the payment of the fees provided for in § 95-68. Each company employing such special inspectors shall, within thirty days following each annual internal inspection made by such inspectors, file a report of such inspection with the commissioner of labor. (1935, c. 326, s. 8.)

§ 95-63. Examination for inspectors; revocation of commission.—Examination for deputy or special inspectors shall be given by the board of boiler rules or by at least two examiners to be appointed by said board and must be written or part written and part oral recorded in writing and must be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service and must be of uniform grade throughout the State. In case an applicant for an inspector's appointment or commission fails to pass this examination, he may appeal to the board of boiler rules for a second examination which shall be given by said board, or if by examiners appointed by said board, then by examiners other than those by whom the first examination was given and these examiners shall

be appointed forthwith to give said second examination. Upon the result of this examination on appeal, the board shall determine whether the applicant be qualified. The record of any applicant's examination, whether original or on appeal, shall be accessible to him and his employer.

A commission may be revoked by the commissioner of labor upon the recommendation of the chief inspector of steam boilers, for the incompetence or untrustworthiness of the holder thereof or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission is revoked may appeal from the revocation to the board of boiler rules which shall hear the appeal and either set aside or affirm the revocation and its decision shall be final. The person whose commission has been revoked shall be entitled to be present in person and by counsel on the hearing of the appeal. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. A person who has failed to pass the examination for a commission or whose commission has been revoked shall be entitled to apply for a new examination and commission after ninety days from such failure or revocation. (1935, c. 326, s. 9.)

§ 95-64. Boiler inspections; fee; certificate; suspension.—On and after April first, nineteen hundred and thirty-five, each steam boiler used or proposed to be used within this State, except boilers exempt under § 95-60, shall be thoroughly inspected internally and externally while not under pressure by the chief inspector or by one of the deputy inspectors or special inspectors provided for herein, as to its design, construction, installation, condition and operation; and if it shall be found to be suitable, and to conform to the rules and regulations of the board of boiler rules, the owner or user of a steam boiler as required in this article to be inspected shall pay to the chief inspector the sum of one dollar ($1.00) for each inspection certificate issued, and the chief inspector shall issue to the owner or user thereof an inspection certificate specifying the maximum pressure which it may be allowed to carry. Such inspection certificate shall be valid for not more than fourteen months from its date, and it shall be posted under glass in the engine or boiler room containing such boiler, or an engine operated by it, or, in the case of a portable boiler, in the office of the plant where it is located for the time being. No inspection certificate issued for a boiler inspected by a special inspector shall be valid after the boiler for which it was issued shall cease to be insured by a duly authorized insurance company. The chief inspector or any deputy inspector may, at any time, suspend an inspection certificate when, in his opinion, the boiler for which it was issued may not continue to be operated without menace to the public safety, or when the boiler is found not to comply with the rules herein provided for and a special inspector shall have corresponding powers with respect to inspection certificates for boilers insured by the company employing him. Such suspension of an inspection certificate shall continue in effect until said boiler shall have been made to conform to the rules and regulations of the board of boiler rules and until said inspection certificate shall have been reinstated by a state inspector, if the inspection certificate was suspended by a state inspector, or by a special inspector, if it was suspended by a special inspector. Not more than fourteen months shall elapse between such inspections and there shall be at least four such inspections in thirty-seven consecutive months. Each such boiler shall also be inspected externally while under pressure with at least the same frequency, and at no greater intervals. (1935, c. 326, s. 10; 1937, c. 125, s. 2; 1939, c. 361, s. 1.)

§ 95-65. Operation of unapproved boiler prohibited.—On and after July first, nineteen hundred and thirty-five, it shall be unlawful for any person, firm, partnership or corporation to operate under pressure in this State a steam boiler to which this article applies without a valid inspection certificate as provided for in this article. The operation of a steam boiler without an inspection certificate, shall constitute a misdemeanor on the part of the owner, user or operator thereof and be punishable by a fine not exceeding one hundred dollars ($100) or imprisonment not to exceed thirty days, or both, in the discretion of the court. (1935, c. 326, s. 11.)

§ 95-66. Installation of boilers not conforming to requirements prohibited; boilers now in use to conform.—No steam boiler which does not conform to the rules and regulations formulated by the board of boiler rules governing new installations shall be installed in this State after six months from the date upon which the said rules and regulations shall become effective by the approval of the governor.

All steam boilers installed and ready for use, or being used, before the said six months shall have elapsed, shall be made to conform to the rules and regulations of the board of boiler rules governing existing installations and the formula therein prescribed shall be used in determining the maximum allowable working pressure for such boilers. (1935, c. 326, s. 12.)

§ 95-67. Inspection of boilers during construction in state; outside state.—All boilers to be installed after six months from the date upon which the rules and regulations of the board of boiler rules shall become effective by the approval of the governor shall be inspected during construction by an inspector authorized to inspect boilers in this State, or if constructed outside the State, by an inspector holding a certificate of authority from the commissioner of labor of this State, which certificate shall be issued by the said commissioner of labor to any inspector who holds a certificate of authority to inspect steam boilers issued by a State which shall have adopted boiler rules that require standards of construction and operation substantially equal to those of this State, or an inspector who holds a certificate of inspection issued by the national board of boiler and pressure vessel inspectors. (1935, c. 326, s. 12.)

§ 95-68. Fees for internal and external inspections.—The owner or user of a steam boiler, required by this article to be inspected by the

chief boiler inspector or a deputy inspector, shall pay to the inspector six ($6.00) dollars for each fire tube boiler over thirty inches in diameter internally inspected and four ($4.00) dollars for each fire tube boiler over thirty inches in diameter externally inspected while under pressure and shall pay to the inspector four ($4.00) dollars for each fire tube boiler up to and including thirty inches in diameter internally inspected and three ($3.00) dollars for each fire tube boiler up to and including thirty inches in diameter externally inspected while under pressure. All water tube boilers shall be charged six ($6.00) dollars for each internal inspection and four ($4.00) dollars for each external inspection while under pressure. Not more than ten ($10.00) dollars shall be collected for any one fire tube boiler over thirty inches in diameter for any one year. Not more than seven ($7.00) dollars shall be collected for any one fire tube boiler up to and including thirty inches in diameter for any one year. Not more than ten ($10.00) dollars shall be collected for any water tube boiler for any one year: Provided, that one ($1.00) dollar of each internal inspection fee shall be the fee for the certificate of inspection required by § 95-64. The inspector shall give receipts for said fees and shall pay all sums so received to the commissioner of labor, who shall pay the same to the treasurer of the state. The treasurer of the state shall hold the fees collected under this section and under § 95-64 in a special account to pay the salaries and expenses incident to the administration of this article, the surplus, with the approval of the director of the budget, to be added to the appropriation of the division of standards and inspections of the department of labor for its general inspectional service. (1935, c. 326, s. 13; 1937, c. 125, s. 3; 1939, c. 361, s. 2.)

§ 95-69. Bonds of chief inspector and deputy inspectors.—The chief inspector shall furnish a bond in the sum of five thousand dollars ($5,000), and each of the deputy inspectors shall furnish a bond in the sum of one thousand dollars ($1,000), conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively, and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state treasurer out of the special fund provided for in § 95-68. (1935, c. 326, s. 14; 1937, c. 125, s. 4.)

Art. 8. Bureau of Labor for the Deaf.

§ 95-70. Creation.—There shall be created in the department of labor a division devoted to the deaf. (1923, c. 122, s. 1; 1931, c. 312, s. 3; C. S. 7312(j).)

§ 95-71. Appointment of chief of bureau; duties.—The commissioner of labor shall appoint a competent deaf man to take charge of such division, who shall devote his time to the special work of labor for the deaf under the supervision of the commissioner of labor, and who shall be designated chief of the bureau of labor for the deaf. He shall collect statistics of the deaf, ascertain what trades or occupations are most suitable for them and best adapted to promote their interest, and use his best efforts to aid them in securing such employment as they may be fitted to engage in. He shall study the methods in use in the education of the deaf as exemplified in the deaf themselves, with a view to determining their practicability and respective values in lifting them to become self-supporting, useful citizens and enabling them to obtain the greatest amount of happiness in life. He shall keep a census of the deaf and obtain facts, information and statistics as to their condition in life, with a view to the betterment of their lot. He shall endeavor to obtain statistics and information of the condition of labor and employment and education of the deaf in other states, with a view to promoting the general welfare of the deaf in this state. He shall make reports and recommendations from time to time as may be provided by law, and he shall also issue special reports or pamphlets as may be deemed necessary, giving results and information that may be helpful. (1923, c. 122, ss. 2, 3; 1931, c. 312, s. 3; C. S. 7312(k).)

§ 95-72. Assignment of other duties.—In case the duties herein enumerated should not occupy all of the time of such chief of the bureau of labor for the deaf, he shall perform such other duties in the department of labor as may be assigned him by the commissioner of labor. (1923, c. 122, s. 5; 1931, c. 312, s. 3; C. S. 7312(m).)

Art. 9. Earnings of Employees in Interstate Commerce.

§ 95-73. Collections out of state to avoid exemptions forbidden.—No resident creditor or other holder of any book account, negotiable instrument, duebill or other monetary demand arising out of contract, due by or chargeable against any resident wage-earner or other salaried employee of any railway corporation or other corporation, firm, or individual engaged in interstate business shall send out of the state, assign, or transfer the same, for value or otherwise, with intent to thereby deprive such debtor of his personal earnings and property exempt by law from application to the payment of his debts under the laws of the state of North Carolina, by instituting or causing to be instituted thereon against such debtor, in any court outside of this state, in such creditor's own name or in the name of any other person, any action, suit, or proceeding for the attachment or garnishment of such debtor's earnings in the hands of his employer, when such creditor and debtor and the railway corporation or other corporation, firm, or individual owing the wages or salary intended to be reached are under the jurisdiction of the courts of this state. (1909, c. 504, s. 1; C. S. 6568.)

§ 95-74. Resident not to abet collection out of state.—No person residing or sojourning in this state shall counsel, aid, or abet any violation of the provisions of § 95-73. (1909, c. 504, s. 2; C. S. 6569.)

§ 95-75. Remedies for violation of section 95-73 or 95-74; damages; indictment.—Any person violating any provision of § 95-73 or 95-74 shall be answerable in damages to any debtor from whom any book account, negotiable instrument, duebill, or other monetary demand arising out of contract shall be collected, or against whose earnings any warrant of attachment or notice of garnishment shall be issued, in violation of the provisions of § 95-73, to the full amount of the

debt thus collected, attached, or garnisheed, to be recovered by civil action in any court of competent jurisdiction in this state; and any person so offending shall likewise be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars. (1909, c. 504, s. 3; C. S. 6570.)

§ 95-76. Institution of foreign suit, etc., evidence of intent to violate.—In any civil or criminal action instituted in any court of competent jurisdiction in this state for any violation of the provisions of §§ 95-73 and 95-74, proof of the institution or prosecution of any action, suit, or proceeding in violation of the provisions of § 95-73, or the issuance of service therein of any warrant of attachment, notice, or garnishment or other like writ for the garnishment of earnings of the defendant therein, or of the payment by the garnishee therein of any final judgment rendered in any such action, suit, or proceeding shall be deemed prima facie evidence of the intent of the creditor or other holder of the debt sued upon to deprive such debtor of his personal earnings and property exempt from application to the payment of his debts under the laws of this state, in violation of the provisions of this article. (1909, c. 504, s. 4; C. S. 6571.)

§ 95-77. Construction of article.—No provision of this article shall be so construed as to deprive any person entitled to its benefits of any legal or equitable remedy already possessed under the laws of this state. (1909, c. 504, s. 5; C. S. 6572.)

Chapter 96. Unemployment Compensation.

Art. 1. Unemployment Compensation Commission.

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Art. 1. Unemployment Compensation Commission.

§ 96-1. Title. — This chapter shall be known and may be cited as the "Unemployment Compensation Law." (Ex. Sess., 1936, c. 1, s. 1.)

§ 96-2. Declaration of state public policy. — As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. (Ex. Sess., 1936, c. 1, s. 2.)

§ 96-3. Unemployment compensation commission.—(a) Organization.—There is hereby created a commission to be known as the unemployment compensation commission of North Carolina. The commission shall consist of seven (7) members to be appointed by the governor on or before July 1, 1941. The governor shall have the power to designate the member of said commission who shall act as the chairman thereof. The chair-

man of the commission shall not engage in any other business, vocation or employment, and no member of the commision shall serve as an officer or a committee member of any political party organization. Three (3) members of the commission shall be appointed by the governor to serve for a term of two (2) years. Three (3) members shall be appointed to serve for a term of four (4) years, and upon the expiration of the respective terms, the successors of said members shall be appointed for a term of four (4) years each, thereafter, and the member of said commission designated by the governor as chairman shall be appointed for a term of four (4) years from and after his appointment. Any member appointed to fill a vacancy occurring in any of the appointments made by the governor prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The governor may at any time after notice and hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(b) Divisions.—The commission shall establish two co-ordinate divisions: the North Carolina state employment service division, created pursuant to § 96-20, and the unemployment compensation division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel and duties, except in so far as the commission may find that such separation is impracticable.

(c) Salaries.—The chairman of the unemployment compensation commission of North Carolina, appointed by the governor, shall be paid from the unemployment compensation administration fund a salary payable on a monthly basis, which salary shall be fixed by the governor with the approval of the council of state; and the members of the commission other than the chairman shall each receive ten dollars ($10) per day while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund.

(d) Quorum.—The chairman and three (3) members of the commission shall constitute a quorum. (Ex. Sess., 1936, c. 1, s. 10; 1941, c. 108, s. 10, c. 279, ss. 1-3.)

§ 96-4. Administration.—(a) Duties and Powers of Commission. — It shall be the duty of the commission to administer this chapter. The commission shall meet at least once in each sixty days and may hold special meetings at any time at the call of the chairman or any three (3) members of the commission, and the commission shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of this chapter. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. The chairman of said commission shall, except as otherwise provided by the commission, be vested with all authority of the commission when the commission is not in session and shall execute all orders, rules and regulations established by said commission. Not later than the first day of February of each year, the commission shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year, and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules. —General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(c) Publication.—The commission shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, its annual reports to the governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor.

(d) Personnel.—Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. It shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments, not to exceed six months in duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such examinations; provided, however, that under any merit system provided, the employees of the commission who have given satisfactory service for a period of six months prior to certification of eligible employees under a merit system shall be certified as eligible for their present position without examination, and the commission may retain such employees in such position as they may hold at

the time of the certification. All positions shall be filled by persons selected and appointed on a non-partisan merit basis. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Local Advisory Councils.—The commission shall appoint local advisory councils composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representatives because of their vocation, employment, affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this chapter, and in assuring impartiality and freedom from political influence in the solution of such problems. Such local advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

(f) Employment Stabilization. — The commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(g) Records and Reports. — Each employing unit shall keep true and accurate employment records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both. All reports, statements, information and communications of every character so made or given to the commission, its deputies, agents, examiners and employees, whether same be written, oral or in the form of testimony at any hearing, or whether obtained by the commission from the employing unit's books and records shall be absolute privileged communications in any civil or criminal proceedings other than proceedings instituted pursuant to this chapter and proceedings involving the administration of this chapter; provided, nothing herein contained shall operate to relieve any employing unit from disclosing any information required by this chapter or as prescribed by the commission involving the administration of this chapter.

(h) Oaths and Witnesses.—In the discharge of the duties imposed by this chapter, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpœnas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(i) Subpœnas.—In case of contumacy by, or refusal to obey a subpœna issued to any person, any court of this state, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the commission, or its duly authorized representative, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpœna of the commission, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) Protection against Self-Incrimination. — No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission or in obedience to the subpœna of the commission or any member thereof, or any duly authorized representative of the commission, in any cause or proceeding before the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal Co-Operation.—In the administration of this chapter, the commission shall cooperate, to the fullest extent consistent with the provisions of this chapter, with the social security board, created by the Social Security Act, approved August fourteenth, one thousand nine hundred and thirty-five, as amended; shall make such reports, in such form and containing such information as the social security board may from time to time require, and shall comply with such provisions as the social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter. The commission shall further make its records available to the railroad retirement board, created by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the railroad retirement board at the expense of the railroad retirement board, such copies thereof as the board shall deem necessary for its purposes in accordance with the provisions of section three hundred three (c) of the Social Security Act as amended.

Upon request therefor, the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits, and such recipient's rights to further benefits under this chapter.

(l) Reciprocal Benefit Arrangements. — The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(m) The commission after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined by § 96-8(e) and § 96-8(f) and subsections thereunder of this chapter. The commission shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Unemployment Compensation Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Unemployment Compensation Law including the right to determine the amount of contributions, if any, which may be due the commission by any employer. All hearings shall be conducted and held at the office of the commission and shall be open to the public and shall be stenographically reported and the commission shall provide for the preparation of a record of all hearings and other proceedings. The commission may provide for the taking of evidence by a deputy in which event he shall swear or cause the witnesses to be sworn and shall transmit all testimony to the commission for its determination. From all decisions or determinations made by the commission any party affected thereby shall be entitled to an appeal to the superior court. Before such party shall be allowed to appeal, he shall within ten days after notice of such decision or determination, file with the commission exceptions to the decision or the determination of the commission, which exceptions will state the grounds of objection to such decision or determination. If any one of such exceptions shall be overruled then such party may appeal from the order overruling the exceptions, and shall, within ten days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the commission, the appeal shall be to the superior court in term time but the decision or determination of the commission upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the commission, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within ten days after the notice of appeal has been served, file with the commission exceptions to the decision or determination overruling the exception which statement shall assign the errors complained of and the grounds of the appeal. Upon the filing of such statement the commission shall, within ten days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business. If there be no exceptions to any facts as found by the commission the facts so found shall be binding upon the court and it shall be heard by the judge at chambers at some place in the district, above mentioned, of which all parties shall have ten days notice.

(n) The cause shall be entitled "State of North Carolina on Relationship of the Unemployment Compensation Commission of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the commission it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in § 96-10(b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the supreme court from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that if an appeal shall be taken on behalf of the Unemployment Compensation Commission of North Carolina it shall not be required

to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

(o) The decision or determination of the commission when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the commission that any employer is indebted to the commission for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the commission under § 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the said Unemployment Compensation Commission of North Carolina of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the commission or to collect any amount of contribution, penalty or interest adjudged to be due the commission by said decision or determination. In case of an appeal from any decision or determination of the commission to the superior court or from any judgment of the superior court to the supreme court all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

(p) The conduct of hearings shall be governed by suitable rules and regulations established by the commission. The manner in which appeals and hearings shall be presented and conducted before the commission shall be governed by suitable rules and regulations established by it. The commission shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure but shall conduct hearings in such manner as to ascertain the substantial rights of the parties.

(q) All subpoenas for witnesses to appear before the commission, and all notices to employing units, employers, persons, firms or corporations shall be issued by the commission or its secretary and be directed to any sheriff, constable or to the marshal of any city or town, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. All bonds or undertakings required to be given for the purpose of suspending or staying execution shall be payable to the Unemployment Compensation Commission of North Carolina, and may be sued on as are other undertakings which are payable to the state.

(r) None of the provisions or sections herein set forth in this amendment shall have the force and effect nor shall the same be construed or interpreted as repealing any of the provisions of § 96-15 which provide for the procedure and determination of all claims for benefits and such claims for benefits shall be prosecuted and determined as provided by said § 96-15. (Ex. Sess., 1936, c. 1, s. 11; 1939, c. 2, c. 27, s. 8, c. 52, s. 5, cc. 207, 209; 1941, c. 279, ss. 4, 5.)

§ 96-5. Unemployment compensation administration fund.—(a) Special Fund.—There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commission for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time or be transferred to any other fund. The unemployment compensation administration fund, except as otherwise provided in this chapter, shall be subject to the provisions of the Executive Budget Act (§ 143-1 et seq.) and the Personnel Act (§ 143-35 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purpose described in § 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state, all moneys received from the United States of America, or any agency thereof, including the Social Security Board, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the unemployment compensation administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the

state treasury, and shall be maintained in a separate account on the books of the state treasury. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation administration fund provided for under this chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.

(b) Replacement of Funds Lost or Improperly Expended.—If any moneys received after June thirtieth, one thousand nine hundred and forty-one, from the Social Security Board under Title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the Social Security Board, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Social Security Board, the commission shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July first, one thousand nine hundred and forty-one, pursuant to the provisions of Title III of the Social Security Act. (Ex. Sess. 1936, c. 1, s. 13; 1941, c. 108, ss. 12, 13.)

§ 96-6. Unemployment compensation fund. — (a) Establishment and Control.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this chapter. This fund shall consist of (1) all contributions collected under this chapter, together with any interest thereon collected pursuant to § 96-10; (2) all fines and penalties collected pursuant to the provisions of this chapter; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided, except that within the unemployment compensation fund "reserve accounts" and a "partially pooled account" shall be maintained as provided in § 96-9. To the "reserve accounts" established under § 96-9 shall be credited such portion of the contributions computed as provided in § 96-9, and the "partially pooled account" to be credited with the balance of such contributions paid as well as the remaining portions and additions thereto of the unemployment compensation fund which have not heretofore been set aside as employer "reserve accounts" within the fund under prior amendments to this chapter. Provided, however, that the "partially pooled account" established hereunder and the "reserve accounts of employer," as defined by section one (a) of the Railroad Unemployment Insurance Act, shall be subject to such withdrawals and transfers as are provided for by this section.

(b) Accounts and Deposit.—The state treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the commission and in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to § 96-10 may be paid from the clearing account upon warrants issued upon the treasurer by the state auditor under the requisition of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section nine hundred and four of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond, conditioned upon the faithful performance of those duties as custodian of the fund, in an amount fixed by the commission and in a form prescribed by law or approved by the attorney-general. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals. — Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon by the state auditor requisitioned by the commission for

the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the budget bureau or any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall bear the signature of the state auditor, as requisitioned by a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be re-deposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund.—The provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist, and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or such investments as are now permitted by law for sinking funds of the state of North Carolina; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commission.

(e) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums. (Ex. Sess. 1936, c. 1, ss. 9, 18; 1939, c. 27, s. 7, c. 52, s. 4, c. 208; 1941, c. 108.)

§ 96-7. Representation in court.—(a) In any civil action to enforce the provisions of this chapter, the commission and the state may be represented by any qualified attorney who is designated by it for this purpose.

(b) All criminal actions for violation of any provision of this chapter, or of any rules or regulations issued pursuant thereto, shall be prosecuted as now provided by law by the solicitor or by the prosecuting attorney of any county or city in which the violation occurs. (Ex. Sess. 1936, c. 1, s. 17; 1937, c. 150.)

Art. 2. Unemployment Compensation Division.

§ 96-8. Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(a) (1) On and after January first, one thousand nine hundred and forty-one, "annual pay roll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual pay roll" means the average of the annual pay rolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(c) "Commission" means the unemployment compensation commission established by this chapter.

(d) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has, on or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (f) of this section, or § 96-11 (c), the employing unit shall, for all the purposes of this chapter, be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment, except that each such contractor or subcontractor who is an employer by reason of subsection (f) of this section or § 96-11 (c) shall alone be liable for the contributions measured by wages paid to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (f) of this section or § 96-11

(c), may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work: Provided, however, that nothing herein, on or after July first, one thousand nine hundred thirty-nine, shall be construed to apply to that part of the business of such "employers" as may come within the meaning of that term as it is defined in section one (a) of the Railroad Unemployment Insurance Act.

(f) "Employer" means (1) Any employing unit which in each of twenty different weeks within either the current or the preceding calendar year (whether or not such weeks are or were consecutive) has, or had in employment, eight or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week);

(2) Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which, having become an employer under paragraphs (1), (2), or (3), has not, under § 96-11, ceased to be an employer subject to this chapter; or

(5) For the effective period of its election pursuant to § 96-11 (c) any other employing unit which has elected to become fully subject to this chapter.

(g) (1) "Employment" means service, including service in interstate commerce, except "employment" as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act, performed for remuneration or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Services performed within this state but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter, if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such service is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(5) Service shall be deemed to be localized within a state if

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(7) The term "employment" shall not include:

(A) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(B) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States. From and after March 10, 1941, service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a State Unemployment Compensation Law, all of the provisions of this Chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, that if this state shall not be certified for any year by the Social Security Board under section one thousand six hundred and three (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the

same period as is provided in § 96-10(e) with respect to contributions erroneously collected.

(C) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: Provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in § 96-4 (b) for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(D) Agricultural labor;

(E) Domestic service in a private home;

(F) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(G) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(H) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(I) Service performed on and after March 10, 1941 by an individual for an employing unit or an employer as an insurance agent or as an insurance solicitor or as a securities salesman if all such service performed by such individual for such employing unit or employer is performed for remuneration solely by way of commission;

(J) From and after March 10, 1941 service performed in any calendar quarter by any officer, individual or commiteeman of any building and loan association organized under the laws of this state, or any federal savings and loan association, where the remuneration for such service does not exceed forty-five dollars in any calendar quarter;

(K) From and after March 10, 1941 service in connection with the collection of dues or premiums for a fraternal benefit society, order or association performed away from the home office, or its ritulistic service in connection with any such society, order or associations;

(L) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(h) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(i) "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(j) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(k) "Total and partial unemployment."

(1) An individual shall be deemed "totally unemployed" in any week with respect to which no remuneration is payable to him and during which he performs no services (other than odd jobs or subsidiary work for which no remuneration, as used in this subsection, is payable to him).

(2) An individual shall be deemed "partially unemployed" in any week in which he has worked less than sixty per cent of scheduled full-time work for the industry or plant in which the individual was last employed and if his remuneration payable for such week is less than the ineligible amount shown in Column III of the table set forth in § 96-12 (b).

(3) As used in this sub-section, the term "remuneration" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of $3.00 in any one week.

(4) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(l) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(m) From and after March 10, 1941, "wages" means all remuneration for services from whatever source.

(n) From and after March 10, 1941, "wages" shall include commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his work from persons other than his employing unit shall be treated as wages received from his employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the commission: Provided, that the term "wages" shall not include the amount of any payment with respect to services performed from and after March 10, 1941 to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death: Provided, the individual in its employ (i) has not the option to receive, instead of provision for such death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit, and (ii) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or

system or policy of insurance or of his services with such employing unit.

(o) "Week" means such period or periods of seven consecutive calendar days ending at midnight as the commission may by regulations prescribe.

(p) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the commission may by regulation prescribe.

(q) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment.

(r) "Benefit year" with respect to any individual who is otherwise eligible means the three hundred and sixty-five (or three hundred and sixty-six if February 29th is included in the year) consecutive day period beginning with the first day on which the claimant registered for work and filed a claim for benefits for total unemployment, or beginning with the day of the week in which the claimant was partially unemployed as defined herein and with respect to which a claim is filed, and thereafter the next benefit year shall be the next three hundred and sixty-five (or three hundred and sixty-six if February twenty-ninth is included in the year) consecutive day period beginning with the first day on which the claimant registers for work and files a claim for benefits for total unemployment or beginning with the day of the week in which the claimant was partially unemployed as defined herein and with respect to which a claim is filed, provided, however, that any individual whose employment under this chapter prior to July first, one thousand nine hundred thirty-nine, shall have been for an employer subject after July first, one thousand nine hundred thirty-nine, to the Railroad Unemployment Insurance Act and some other employer subject to this chapter, such individual's benefit year, if established before July first, one thousand nine hundred thirty-nine, shall terminate on that date and if again unemployed after July first, one thousand nine hundred thirty-nine, he shall establish another benefit year after such date with respect to employment subject to this chapter.

(s) For benefit years beginning on or after February fifteenth, one thousand nine hundred thirty-nine, the term "base period" shall mean the completed calendar year immediately preceding the first day of an individual's benefit year as defined in subsection (r) of this section, if the benefit year begins subsequent to July first; and if the benefit year begins prior to July first, the base period shall be the next to the last completed calendar year, notwithstanding the fact that an otherwise eligible individual may have exhausted wage credits to his account prior to February fifteenth, one thousand nine hundred thirty-nine, for any such calendar year. Except that for weeks of unemployment of any individual after July first, one thousand nine hundred thirty-nine, who has worked in employment for an employer which after July first, one thousand nine hundred thirty-nine, is subject to the Railroad Unemployment Insurance Act, then only the wages payable to such an individual earned in employment during the base period for an employer other than one subject to the Railroad Unemployment Insurance Act shall be used in determining his weekly benefit amount after July first, one thousand nine hundred thirty-nine.

(t) Wages payable to an individual with respect to covered employment performed prior to January first, one thousand nine hundred and forty-one, shall, for the purpose of § 96-12 and § 96-9, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable. (Ex. Sess. 1936, c. 1, s. 19; 1937, c. 448, s. 5; 1939, c. 27, ss. 11-13, c. 52, ss. 6, 7, c. 141; 1941, cc. 108, 198.)

§ 96-9. Contributions. — (a) Payment.—(1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages for employment (as defined in § 96-8 (g)). Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided that, on and after July 1, 1941, contributions shall be paid for each calendar quarter with respect to wages paid for employment in all pay periods ending within such calendar quarter. Contributions shall become due on and shall be paid on or before the twenty-fifth day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the commission shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this chapter will be jeopardized by delay, the commission shall, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interests and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the commission for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by § 96-10 and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further that nothing in this paragraph shall be construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contribution were paid.

(2) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. For the purposes of this section, the term "wages" shall not include that part of the remuneration which, after remuneration equal to $3,000 has become payable to an individual by an employer with respect to

employment during the calendar year 1940, becomes payable to such individual by such employer with respect to employment during such calendar year, and which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during the calendar year 1941, and during any calendar year thereafter, is paid to such individual by such employer with respect to employment occurring during such calendar year but after December 31, 1940.

(b) Rate of Contributions.—Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of one percentum with respect to employment during the calendar year one thousand nine hundred and thirty-six;

(2) One and eight-tenths percentum with respect to employment during the calendar year one thousand nine hundred and thirty-seven;

(3) Two and seven-tenths percentum with respect to employment during the calendar year one thousand nine hundred and thirty-eight, and each year thereafter: Provided, however, that each employer shall pay contributions equal to two and seven-tenths percentum of wages paid by him during the calendar year one thousand nine hundred and forty-one, and during each calendar year thereafter, with respect to employment occurring after December thirty-first, one thousand nine hundred and forty, which shall be deemed the standard rate of contributions payable by each employer except as provided herein.

(4) Variations from the standard rate of contributions shall be determined in accordance with the following requirements:

(A) If, as of any computation date, the commission finds that: Compensation has been payable from an employer's account throughout the year preceding the computation date; and the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three years preceding such date; and the balance of such account as of the computation date amounts to not less than two and one-half percentum of that part of the payroll or payrolls in the three years preceding such date by which contributions were measured; and such contributions were payable to such account with respect to the three years preceding the computation date, contribution rates for the calendar year following such computation date shall be determined pursuant to paragraph (B) of this subsection. The term "year" as used in this section (except when preceded by the word "calendar") means the twelve month period ending on June 30th of any calendar year.

(B) If, as of any computation date, the cumulative total of all an employer's contributions which were paid and accredited to his "reserve account" before such computation date exceeds the cumulative total benefits which were chargeable to his "reserve account" and were paid before such computation date; and if such excess of contributions over benefits paid and chargeable to such account exceeds that percentage of his wages by which contributions were measured, during the thirty-six consecutive calendar month period preceding such computation date, which percentage is shown in Column 1 of the table below, and does not exceed the percentage opposite thereto in Column 2 of the table below, his contribution rate in the ensuing calendar year shall be equal to that percentum of the wages for employment, paid by him during such ensuing year, which is shown in Column 3 of the table below. Of the payments so made, there shall be credited to the "partially pooled account" the percentage shown opposite thereto in Column 4 of the table below, and there shall be credited to the "reserve account" of the employer that percentage of the wages for employment, paid by him during such calendar year, which is shown opposite thereto in Column 5 of the table below:

Column 1 Over but	Column 2 not to exceed	Column 3 Rate of Contribution	Column 4 Cr. Pool Account	Column 5 Credit Reserve Account
2.5%	2.8%	2.50%	.27%	2.23%
2.8	3.1	2.13	.27	1.86
3.1	3.4	1.76	.27	1.49
3.4	3.8	1.39	.27	1.12
3.8	4.2	1.02	.27	.75
4.2	4.6	.65	.27	.38
4.6	5.	.27	.27	.0
5% & in excess thereof		.27	.27	.0

(C) The computation date for any contribution rates shall be July first of the calendar year preceding the calendar year with respect to which such rates are effective.

(D) Should the commission be of the opinion that the balance to the credit of the "partially pooled account" is insufficient to provide adequate security in the payment of all compensation to all eligible individuals, it shall direct such fact to the attention of the council of state, and, upon finding of the council that such a situation exists and a declaration that emergency steps are advisable, the commission is hereby authorized and empowered to require the payment by all employers of as much as 60% of the standard rate to be credited entirely to the "partially pooled account," and if such additional credit to the "partially pooled account" as required by this section exceeds the rate for any employer as fixed under § 96-9 (b) (4) (B), his rate shall be such percentage of the standard rate with no credit to his reserve account. If the additional credit to the "partially pooled account" as required by this subsection is less than the standard rate or rate for any employer as fixed under § 96-9 (b), (4), (B), such employer shall pay the standard rate or the rate of contributions as provided in § 96-9 (b), (4), (B) and his reserve account be credited with the balance of payment after crediting the "partially pooled account" with the additional credit as provided in this subsection. Any increased contribution rate thus required by the commission shall be applicable with respect to contributions on wages paid during the quarter in which such finding of the council of state occurred, and shall continue to be applicable with respect to contributions on wages paid up to the last day of the calendar quarter preceding the quarter in which, upon recommendation by the commission, the council of state shall find that the balance to the credit of the "partially pooled account" is sufficient to provide adequate security for the payment of all compensation to all eligible individuals.

(E) Any employer may at any time make voluntary contributions, additional to the contributions required under this act, to the fund to be credited to his reserve account and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as said term is used in § 96-8 (d).

(F) If within the calendar month next following the computation date, the commission finds that any employing unit failed to file any report required in connection therewith, or has filed a report which the commission finds incorrect or insufficient, the commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to him at the time, and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within fifteen days after the mailing of such notice, the commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

(c) (1) The commission shall maintain a separate fiscal account for each employer and shall credit his account with all the contributions which he has paid or is paid on his own behalf. On and after January 1, 1939, the commission shall establish and maintain an employer's "reserve account" for each employer subject to this chapter, to which account the commission shall credit out of the unemployment compensation fund an amount equal to fifty percent of the contributions paid by such employers pursuant to § 96-9 (b) with respect to employment during the calendar year 1938 for the purpose of paying out of such accounts compensation payable to all eligible individuals in accord with the provisions of paragraph (2) of this subsection. To these "reserve accounts" shall also be credited seventy-five per cent of all contributions paid each year pursuant to this act from and after January 1, 1939, the remaining twenty-five per cent of the contributions to be credited to the "partially pooled account" and for each calendar year, beginning January 1, 1941, to these "reserve accounts" shall be credited ninety percentum of all contributions paid each calendar year pursuant to the act, the remaining ten percentum to be credited to the "partially pooled account," except as provided in subsection (b) (4) hereof, and as hereinafter provided. Provided further, that no provision of this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended.

(2) All benefits for weeks of unemployment paid during the twelve months preceding June thirtieth of each year to any eligible individual shall be paid out of the reserve account of such individual's employer or employers by whom he was employed during his base period. In accordance with the regulations of the commission, such payments shall be charged against all employers of such individual during his base period in the same ratio that the wages paid to such individual by each base period employer bears to the total wages paid him by all his employers during the base period. In the event that an employer's credits in his reserve account become exhausted through the payment of benefits chargeable to such account, the benefit payments which are chargeable to such account shall be paid out of the "partially pooled account" and at the same time the reserve account of the employer shall be debited accordingly. Whenever through inadvertence or mistake erroneous charges or credits are found to have been made to reserve accounts, the same shall be readjusted as of the date of discovery and such readjustment shall not affect any computation made under this section prior to the date of discovery.

(3) As of June thirtieth of each year, and at least fifteen days prior to the effective date of any variation from standard rate of contributions, the commission shall determine the balance of each employer in his reserve account and shall furnish him with a statement of all charges and credits thereto. At the same time the commission shall notify each employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination within thirty days after the effective date of such rates.

(4) The commission may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by one or more employers having the relationship of parent and subsidiary companies. Any employer who is or becomes subject to the provisions of this chapter under the terms of § 96-8 (f), whose organization, trade or business, or substantially all the assets thereof are transferred by sale, lease or otherwise shall have the privilege of transferring to his successor or assignee the reserve account herein established for such employer except that the purchaser, lessee or assignee shall not be entitled to any credit as provided herein except where compensation has been payable from such account throughout one previous calendar year, and that after such condition has been met the reserve account then meets all other conditions as prescribed hereinbefore. Notice of such transfers shall be given to the commission immediately. The commission may make regulations to govern such transfers of reserve accounts. In the event any employer subject to this chapter ceases to be such an employer through the termination of coverage as provided in § 96-11, the reserve account standing to the credit of such employer shall immediately upon such termination of coverage revert to the pooled fund established herein and the reserve account shall be closed.

(d) In order that the commission shall be kept informed at all times on the circumstances and conditions of unemployment within the state and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the commission may deem necessary shall be made. (Ex. Sess. 1936, c. 1, s. 7; 1939, c. 27, s. 6; 1941, c. 108, ss. 6, 8, c. 320.)

§ 96-10. Collection of contributions.—(a) Interest on Past-Due Contributions.—Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of one-half of one per centum per month from and after such date until payment

plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

(b) Collection.—If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the Workmen's Compensation Law of this state; or if any contribution imposed by this chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within thirty days after the same become due and payable, the commission under the hand of its chairman, may certify the same in duplicate and forward one copy thereof to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies for each county in which the commission has reason to believe such delinquent has property located, which copy so forwarded to the clerk of the superior court shall be immediately docketed by said clerk and indexed on the cross-index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The duplicate of said certificate shall be forwarded by the commission to the sheriff or sheriffs of such county, or counties, and in the hands of such sheriff shall have all the force and effect of an execution issued to him by the clerk of the superior court upon the judgment of the superior court duly docketed in said county. A return of such execution shall be made to the commission together with all moneys collected thereunder.

(c) Priorities under Legal Dissolution or Distributions.—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of one thousand eight hundred and ninety-eight, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section sixty-four (b) of that act (U. S. C., Title II, sec. 104 (b), as amended.

(d) Collections of Contributions upon Transfer or Cessation of Business.—The contribution or tax imposed by § 96-9, and subsections thereunder, of this chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the commission, to file with the commission all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the commission showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

(e) Refunds.—If not later than one year after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commission shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commission's own initiative: Provided, that nothing in this section or in any other section of this chapter shall be construed as permitting refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid.

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this chapter nor to restrain the sale of any property under writ of execution, judgment, decree or order of court for the non-payment thereof. Whenever any employer, person, firm or corporation against whom taxes or contributions provided for in this chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm or corporation shall pay the tax or contribution so assessed to the commission; but if at the time of such payment he shall notify the commission in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the commission; and

if the same shall not be refunded within ninety days thereafter, he may sue the commission for the amount so demanded; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive or contrary to the provisions of this chapter, the amount paid shall be refunded by the commission accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this chapter. No suit, action or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action or proceeding is commenced within three years after the expiration of the ninety days mentioned in this subsection, or within three years from the date of the refusal of said commission to make refund should such refusal be made before the expiration of said ninety days abovementioned. The three year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this chapter. (Ex. Sess. 1936, c. 1, s. 14; 1939, c. 27, ss. 9, 10; 1941, c. 108, ss. 14-16.)

§ 96-11. Period, election, and termination of employer's coverage.—(a) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year; provided, however, that on and after July first, one thousand nine hundred thirty-nine, this section shall not be construed to apply to any part of the business of an employer as may come within the terms of section one (a) of the Federal Railroad Unemployment Insurance Act.

(b) Except as otherwise provided in subsections (a) and (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the first day of January of any calendar year, if it files with the commission prior to the thirty-first day of January of such year a written application for termination of coverage and the commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed eight or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). For the purpose of this subsection, the two or more employing units mentioned in paragraphs two or three of § 96-8, subsection (f), of this chapter shall be treated as a single employing unit.

(c) (1) An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years only if, at least thirty days prior to such first day of January, it has filed with the commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the commission a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commission such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, at least thirty days prior to such first day of January, such employing unit has filed with the commission a written notice to that effect. (Ex. Sess. 1936, c. 1, s. 8; 1939, c. 52, ss. 2, 3; 1941, c. 108, s. 9.)

§ 96-12. Benefits. — (a) Payment of Benefits. —Twenty-four months after the date when contributions first accrue under this chapter benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

(b) Each eligible individual whose benefit year begins on or after March 10, 1941 and who is totally unemployed in any week (as defined by § 96-8 (k) (1)) shall be paid with respect to such week or weeks benefits at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to "employment": Provided, however, after July first, one thousand nine hundred and thirty-nine, for any individual whose employment prior to such date was in employment for an employer who after such date was or is subject to the Railroad

Column I Wages paid During base period			Column II Weekly benefit amount	Column III Ineligible amount
Under $130.00			Ineligible	Ineligible
$ 130.00	to	$ 139.99	$ 3.00	$ 3.60
140.00	to	154.99	3.50	4.20
155.00	to	174.99	4.00	4.80
175.00	to	204.99	4.50	5.40
205.00	to	244.99	5.00	6.00
245.00	to	294.99	5.50	6.60
295.00	to	354.99	6.00	7.20
355.00	to	444.99	6.50	7.80
445.00	to	554.99	7.00	8.40
555.00	to	599.99	7.50	9.00
600.00	to	649.99	8.00	9.60
650.00	to	694.99	8.50	10.20
695.00	to	744.99	9.00	10.80
745.00	to	794.99	9.50	11.40
795.00	to	844.99	10.00	12.00
845.00	to	894.99	10.50	12.60
895.00	to	944.99	11.00	13.20
945.00	to	994.99	11.50	13.80
995.00	to	1044.99	12.00	14.40
1045.00	to	1119.99	12.50	15.00
1120.00	to	1194.99	13.00	15.60
1195.00	to	1269.99	13.50	16.20
1270.00	to	1349.99	14.00	16.80
1350.00	to	1429.99	14.50	17.40
1430.00	and	over	15.00	18.00

Unemployment Insurance Act, and who worked for some other employer subject to this act, only the wages payable to such individual for employment performed for an employer not subject to said Railroad Unemployment Insurance Act after July first, one thousand nine hundred and thirty-nine, shall be used in determining wages paid during his base period.

(c) Weekly Benefit for Partial Unemployment.—Each eligible individual who is partially unemployed (as defined in § 96-8 (k) (2)) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount, figured to the nearest multiple of fifty cents (0.50), equal to the difference between his weekly benefit amount (as defined in § 96-8 (q)) and five-sixths of his remuneration (as defined in § 96-8 (n)) for such week.

(d) The maximum benefits payable to any eligible individual whose benefit year begins after February fifteenth, one thousand nine hundred thirty-nine shall be sixteen times his weekly benefit amount during any benefit year. After February fifteenth, one thousand nine hundred thirty-nine the commission shall maintain accounts for each individual who earns wages in such manner and form as the commission may prescribe as being adequate to administer the provisions of this chapter.

(e) Benefit Rights of Trainees in Military Service.—(1) Notwithstanding any inconsistent provisions of this chapter, the benefit rights of trainees shall be determined in accordance with the following provisions of this subsection for the periods and with respect to the matters specified herein. Except as herein otherwise provided, all other provisions of this chapter shall continue to be applicable in connection with such benefits.

(2) The term "military service" as used in this subsection means active service in the land or naval forces of the United States, but the service of an individual in any reserve component of the land or naval forces of the United States who is ordered to active duty in any such force for a period of thirty days or less shall not be deemed to be active service in any such force during such period.

(3) The term "trainee" as used in this subsection means an individual who entered military service after July 1, 1940, who continued in such service for not less than ninety consecutive days and whose military service was terminated on or before July 1, 1943.

(4) With respect to any trainee, the first benefit year following the termination of his military service shall be the fifty-two consecutive week period beginning with the first day of the first week following the date of such termination; and the second benefit year following the termination of his military service shall be the fifty-two consecutive week period beginning with the first day of the first week following the termination of such first benefit year.

(5) With respect to the first benefit year defined in paragraph (4) of this subsection, the base period shall be the two completed calendar years preceding the date of the trainee's entry into military service; and with respect to the second benefit year defined in paragraph (4) of this subsection, the base period shall be the complete calendar year preceding the date of the trainee's entry into military service plus the portion of a calendar year intervening between the end of such completed calendar year and the date of the trainee's entry into military service, plus (but only in the event that the military service ends between July 1 and December 31 of any year) the portion of a calendar year intervening between the date of the trainee's termination of service and the last day of such calendar year; provided that for the purposes of this subsection such portion of a calendar year intervening between the date of a trainee's termination of service and the last day of such calendar year shall be deemed to be included in the calendar year in which the trainee entered military service.

(6) The provisions of § 96-13 (d) with respect to waiting period shall not be applicable to the first benefit year defined in paragraph (4) of this subsection.

(7) An otherwise eligible trainee shall be eligible to receive benefits with respect to any week beginning in either of the benefit years defined in paragraph (4) of this subsection only if he has earned wages in an amount of $130 or more in either of the two calendar years included within the base period for that benefit year in which occurs the week with respect to which benefits are claimed.

(8) A trainee's weekly benefits amount with respect to each of the two benefit years defined in paragraph (4) of this subsection shall be the amount appearing in Column II of the table of subsection (b) opposite which amount there appears in Column I of such table the wages payable to such individual with respect to "employment" during that calendar year of the base period of such benefit year in which such trainee's wages payable with respect to "employment" were greatest.

(9) An otherwise eligible trainee shall be entitled during the first benefit year defined in paragraph (4) of this subsection to a total amount of benefits equal to whichever is the lesser of (a) sixteen times his weekly benefit amount and (b) thirty-two times his weekly benefit amount less the amount of any benefits paid him under this act for unemployment prior to his entry into military service on the basis of his wages in any part of the base period of such benefit year.

(10) An otherwise eligible trainee shall be entitled during the second benefit year defined in paragraph (4) of this subsection to a total amount of benefits equal to whichever is the lesser of (a) sixteen times his weekly benefit amount, and (b) four times his weekly benefit amount times the number of calendar quarters (completed or uncompleted) in the base period of such benefit year and less the amount of any benefits paid him under this act for unemployment prior to his entry into military service on the basis of his wages in any part of the base period of such benefit year.

(11) With respect to any benefit year of a trainee as defined in § 96-8 (r) which begins subsequent to the second benefit year defined in paragraph (4) of this subsection and has a base period containing less than four completed calendar quarters in which no military service was performed, the term "wages payable during base period" as used in subsection (b) shall be deemed to mean the wages payable to such individual during such base period with respect to "employment" divided by the number of completed calen-

dar quarters in such base period in which no military service was performed and multiplied by four.

(12) If under an Act of Congress, payments with respect to the unemployment of individuals who have completed a period of military service are payable by the United States, a trainee shall be disqualified for benefits with respect to any week beginning within a benefits year as defined in paragraph (4) of this subsection until he has exhausted all his rights to such payments from the United States. (Ex. Sess., 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14, c. 141; 1941, c. 108, s. 1, c. 276.)

§ 96-13. Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of § 96-15 (a);

(c) He is able to work, and is available for work;

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of one week (and for the purposes of this subsection two weeks of partial unemployment shall be deemed to be equivalent to one week of total unemployment. Such weeks of partial unemployment need not be consecutive.) No week shall be counted as a week of total unemployment for the purposes of this subsection;

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsection (b) of this section.

Any individual whose benefit year begins on or after February fifteenth, one thousand nine hundred thirty-nine, who has accumulated such one waiting period week within his benefit year, as provided in subsection (d) hereof, shall not be required to accumulate any more waiting period weeks during his benefit year. (Ex. Sess. 1936, c. 1, s. 4; 1939, c. 27, ss. 4, 5, c. 141; 1941, c. 108, s. 2.)

§ 96-14. Disqualification for benefits.—An individual shall be disqualified for benefits:

(a) For the week in which he has left work voluntarily without good cause, if so found by the commission, and for not less than the four nor more than the seven weeks which immediately follow such week (in addition to the waiting period), as determined by the commission, according to the circumstances in each case: Provided, however, that if it shall be determined by the commission that an individual shall be disqualified for a week or weeks within the limits above fixed, then no payment of benefits shall be made during any such week or weeks of disqualification, and in addition thereto, the maximum amount of benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of weeks of disqualification imposed by the weekly benefit amount, excluding any of such weeks with respect to which the individual shows to the satisfaction of the commission in accordance with such regulations as the commission may prescribe, that he was not totally or partially unemployed.

(b) For the week in which he has been discharged for misconduct connected with his work, if so found by the commission, and for not less than the five nor more than the ten weeks which immediately follow such week (in addition to the waiting period), as determined by the commission according to the circumstances in each case: Provided, however, that if it shall be determined by the commission that an individual shall be disqualified for a week or weeks within the limits above fixed, then, no payment of benefits shall be made during any such week or weeks of disqualification, and in addition thereto, the maximum amount of benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of weeks of disqualification imposed by the weekly benefit amount, excluding any of such weeks with respect to which the individual shows to the satisfaction of the commission, in accordance with such regulations as the commission may prescribe, that he was not totally or partially unemployed.

(c) If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than the four nor more than the seven weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case: Provided, however, that if it shall be determined by the commission that an individual shall be disqualified for a week or weeks within the limits above fixed, then no payment of benefits shall be made during any such week or weeks of disqualification, and in addition thereto, the maximum amount of benefits due said individual during his then current benefit year shall be reduced by an amount determined by multiplying the number of weeks of disqualification imposed by the weekly benefit amount, excluding any of such weeks with respect to which the individual shows to the satisfaction of the commission and in accordance with such regulations as the commission may prescribe, that he was not totally or partially unemployed.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the remuneration, hours, or other conditions of the work offered are substantially

less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona-fide labor organization.

(d) For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: Provided, for the purpose of this subsection (d), that if in any case separate branches of work which are commonly conducted as separate business in separate premises are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment, or other premises.

(e) For any week with respect to which he is receiving or has received remuneration in the form of—

(1) Remuneration in lieu of notice; or

(2) Primary insurance payments with respect to Old Age Benefits under Title II of the Social Security Act, as amended: Provided, that if such remuneration is less than the benefits which would otherwise be due under this act he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

(f) If the commission finds he is customarily self-employed and can reasonably return to self-employment.

(g) For any week after June thirtieth, one thousand nine hundred thirty-nine with respect to which he shall have or assert any right to unemployment benefits under an unemployment compensation law of either the federal or a state government, other than the state of North Carolina. (Ex. Sess., 1936, c. 1, s. 5; 1937, c. 448, ss. 2, 3; 1939, c. 52, s. 1; 1941, c. 108, ss. 3, 4.)

§ 96-15. Claims for benefits. — (a) Filing. — Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service, and shall make available to each such individual, at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

(b) Initial Determination of Validity of Claims. —A representative designated by the commission and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission, which shall make its determination with respect thereto in accordance with the procedure described in subsection (c) of this section. The deputy shall promptly notify the claimant and any other interested party of his decision and the reasons therefor. Unless the claimant or any such interested party, within five calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the commission shall be paid only after such determination: Provided, however, that if an appeal tribunal affirms a decision of a deputy, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's reserve account shall be charged with benefits so paid and such payments shall be charged to the pooled account.

(c) Appeals.—Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal Tribunals.—To hear and decide disputed claims, the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than five dollars per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Commission Review.—The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the commission may deem expedient. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is

not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard by a quorum thereof in accordance with the requirements in sub-section (c) of this section. The commission shall promptly notify the interested parties of its findings and decision.

(f) Procedure.—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the commission for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees.—Witnesses subpœnaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter.

(h) Appeal to Courts.—Any decision of the commission, in the absence of an appeal therefrom as herein provided, shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided by this chapter. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who has been designated by it for that purpose.

(i) Appeal Proceedings. — The decision of the commission shall be final, subject to appeal as herein provided. Within ten days after the decision of the commission has become final, any party aggrieved thereby may appeal to the superior court of the county of his residence. In case of such appeal, the court shall have power to make party-defendant any other party which it may deem necessary or proper to a just and fair determination of the case. In every case in which appeal is demanded, the appealing party shall file a statement with the commission within the time allowed for appeal, in which shall be plainly stated the grounds upon which a review is sought and the particulars in which it is claimed the commission is in error with respect to its decision. The commission shall make a return to the notice of appeal, which shall consist of all documents and papers necessary to an understanding of the appeal, and a transcript of all testimony taken in the matter, together with its findings of fact and decision thereon, which shall be certified and filed with the superior court to which appeal is taken within thirty days of said notice of appeal. The commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section the findings of the commission as to the facts, if there is evidence to support it, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner, and shall be given precedence over all civil cases, except cases arising under the Workmen's Compensation Law of this state. An appeal may be taken from the decision of the superior court, as provided in civil cases. No bond shall be required upon such appeal. Upon the final determination of the case or proceeding the commission shall enter an order in accordance with such determination. Such an appeal shall not act as a supersedeas or stay of any judgment, order, or decision of the court below, or of the commission unless the commission or the court shall so order as to the decision rendered by it. (Ex. Sess. 1936, c. 1, s. 6; 1937, cc. 150, 448, s. 4; 1941, c. 108, s. 5.)

§ 96-16. Seasonal industries. — Whenever the commission finds that on account of seasonal conditions it is highly impracticable or impossible for an employer in a particular industry or branch thereof to operate for a period or periods of not less than four weeks nor more than thirty-six weeks in a calendar year and the employer customarily operates entirely or in a branch of his industry only during a regularly recurring period or periods of not less than four weeks nor more than thirty-six weeks in a calendar year, then the rights to benefits payable to an otherwise eligible individual engaged in such a seasonal industry, or branch thereof, who earned as much as ten ($10.00) dollars during the preceding seasonal period, shall be limited in each calendar year to weeks of unemployment during the longest seasonal period or periods as determined by the commission, upon application by the employer, to be customary in such industry or branch of such industry; provided only that the employer tenders at the beginning of each season, and throughout such season makes work available to each individual employed by him who earned as much as ten ($10.00) dollars during the preceding seasonal period. The employer shall tender work to such individual prior to the commencement of the seasonal period at such time and in such manner as the commission may by regulation prescribe. Notice when given in accordance with such regulations shall be conclusive as to the fact of tender of work by the employer to the employee; and provided further, that if such individual fails without good cause to report for and accept such work at the time when tendered his rght to compensation shall be barred for the duration of the season, but no individual shall be disqualified for benefits for failing to report for or refuse to accept work if such work is not suitable work as provided in § 96-14 (c) of this chapter. It shall be the duty of the commission, upon request and application of each employer, to ascertain and determine, or redetermine, such seasonal period or periods for each such seasonal employer. During a current season an otherwise eligible individual previously employed in a prior season and unemployed during such subsequent season through no fault of his own, shall be paid benefits for each week of such unemployment within the seasonal period, in accordance with the provisions of this chapter, and all such benefits thus paid for unemployment

during the current season shall be paid out of and charged against the "reserve" account of the employer by whom he was employed during the previous season. The maximum benefits payable to an otherwise eligible individual whose employment is only in a seasonal industry shall be limited to sixteen times his weekly benefit amount in a benefit year; however, any individual who during a current calendar year is eligible for payment of compensation during any week or weeks other than weeks of the calendar year embracing the seasonal period, and who, during the preceding calendar year was employed in a seasonal industry or branch thereof, shall only be entitled to maximum benefit payments as follows:

If for any weeks of total unemployment which occur and for which benefits are payable during any period not within the seasonal period as prescribed by the commission the maximum benefit amount shall be an amount equal to sixteen times his weekly benefit amount divided by his total wages in the base period and multiplied by the wages paid in his base period in covered employment not within the seasonal period, and the maximum benefits payable for such individual during the seasonal period shall be an amount equal to sixteen times the individual's weekly benefit amount divided by the wages paid in the base period and multiplied by the wages paid within the seasonal period in covered employment in the base period. The earnings of a worker who has earned wages in seasonal employment shall be taken into consideration together with all other wages earned in employment subject to this chapter in determining his qualifications and eligibility for benefits. Where an employer in its branches or divisions carries on both seasonal and full-time operations, this section shall apply only to that portion of such industry or occupation as is determined by the commission to be seasonal after application for such determination has been made by the employer, and notice thereof posted conspicuously by the employer in his seasonal establishments. (1939, c. 28; 1941, c. 108, s. 7.)

§ 96-17. Protection of rights and benefits.— (a) Waiver of Rights Void.—Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

(b) Limitation of Fees.—No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel; but no such counsel shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than six months, or both.

(c) No Assignment of Benefits; Exemptions.— Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. (Ex. Sess. 1936, c. 1, s. 15; 1937, c. 150.)

§ 96-18. Penalties. — (a) Whoever makes a false statement or representation, knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or for any other person, shall be punished by a fine of not less than twenty dollars nor more than fifty dollars, or by imprisonment for not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal, shall constitute a separate offense.

(c) Any person who shall wilfully violate any provision of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the non-disclosure or misrepresentation by him or by another of a material fact (irrespective of whether such non-disclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this chapter, or shall be liable to repay to the commission for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in § 96-10 (b) for the collection of past-due contributions. (Ex. Sess. 1936, c. 1, s. 16.)

§ 96-19. Enforcement of unemployment compensation law discontinued upon repeal or invalidation of federal acts.—It is the purpose of this chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, as to credit on payment of federal taxes, of state contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the state that this chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States supreme court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States supreme court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this chapter, shall, nevertheless, be disbursed and expended, as far as may be possible, under the terms of this chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the state unemployment commission shall be reduced as rapidly as possible.

The funds remaining available for use by the North Carolina unemployment commission shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the state employment service, created by chapter one hundred six, Public Laws of one thousand nine hundred thirty-five, and transferred by chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session, and made a part of the unemployment compensation commission of North Carolina, shall in such event return to and have the same status as it had prior to enactment of chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session, and under authority of chapter one hundred six, Public Laws of one thousand nine hundred thirty-five, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the unemployment compensation commission of North Carolina, the said state employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this chapter or the provisions of chapter one, Public Laws of one thousand nine hundred thirty-six, Extra Session. (1937, c. 363; 1939, c. 52, s. 8.)

Art. 3. Employment Service Division.

§ 96-20. Duties of division; conformance to Wagner-Peyser Act; organization; director; employees.—The employment service division of the Unemployment Compensation Commission shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this article, and for the purpose of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes," approved June sixth, one thousand nine hundred and thirty-three (48 Stat., 113; U. S. C., Title 29, sec. 49(c)), as amended. The said division shall be administered by a full-time salaried director, who shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section four of said act, and this state will observe and comply with the requirements thereof. The state employment service division is hereby designated and constituted the agency of this state for the purpose of said act. The commission is directed to appoint the director, other officers, and employees of the state employment service. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service. (Ex. Sess. 1936, c. 1, s. 12; 1941, c. 108, s. 11.)

§ 96-21. Cooperation with federal board for vocational education.—The employment service division shall cooperate with the federal board for vocational education, division for rehabilitation of crippled soldiers and sailors, in endeavoring to se-

cure suitable employment and fair treatment of the veterans of the world war. (1921, c. 131, s. 3; Ex. Sess. 1936, c. 1, s. 12; C. S. 7312(c).)

§ 96-22. Employment of minors; farm employment; promotion of Americanism.—The employment service division shall have jurisdiction over all matters contemplated in this article pertaining to securing employment for all minors who avail themselves of the free employment service. The employment service division shall have power to so conduct its affairs that at all times it shall be in harmony with laws relating to child labor and compulsory education; to aid in inducing minors over sixteen, who cannot or do not for various reasons attend day school, to undertake promising skilled employment; to aid in influencing minors who do not come within the purview of compulsory education laws, and who do not attend day school, to avail themselves of continuation or special courses in existing night schools, vocational schools, part-time schools, trade schools, business schools, library schools, university extension courses, etc., so as to become more skilled in such occupation or vocation to which they are respectively inclined or particularly adapted; to aid in securing vocational employment on farms for town and city boys who are interested in agricultural work, and particularly town and city high school boys who include agriculture as an elective study; to cooperate with various social agencies, schools, etc., in group organization of employed minors, particularly those of foreign parentage, in order to promote the development of real, practical Americanism through a broader knowledge of the duties of citizenship; to investigate methods of vocational rehabilitation of boys and girls who are maimed or crippled and ways and means for minimizing such handicap. (1921, c. 131, s. 4; Ex. Sess. 1936, c. 1, s. 12; C. S. 7312(d).)

§ 96-23. Job placement; information; research and reports.—The employment service division shall make public, through the newspapers and other media, information as to situations it may have applicants to fill, and establish relations with employers for the purpose of supplying demands for labor. The division shall collect, collate, and publish statistical and other information relating to the work under its jurisdiction; investigate economic developments, and the extent and causes of unemployment and remedies therefor within and without the state, with the view of preparing for the information of the general assembly such facts as in its opinion may make further legislation desirable. (1921, c. 131, s. 5; Ex. Sess. 1936, c. 1, s. 12; C. S. 7312(e).)

§ 96-24. Local offices; cooperation with United States service; financial aid from United States.—The employment service division is authorized to enter into agreement with the governing authorities of any municipality, county, township, or school corporation in the state for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and for the extension of vocational guidance in cooperation with the United States employment service, and under and by virtue of any such agreement as aforesaid to pay, from any funds appropriated by the state for the purposes of this article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of offices and other expenses. (1921, c. 131, s. 6; 1935, c. 106, s. 4; 1931, c. 312, s. 3; Ex. Sess. 1936, c. 1, s. 12; C. S. 7312(f).)

§ 96-25. Acceptance and use of donations.—It shall be lawful for the employment service division to receive, accept, and use, in the name of the people of the state, or any community or municipal corporation, as the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose of extending the benefits of this article and for the purpose of giving assistance to deserving maimed or crippled boys and girls through vocational rehabilitation. (1921, c. 131, s. 7; 1931, c. 312, s. 3; Ex. Sess. 1936, c. 1, s. 12; C. S. 7312(g).)

§ 96-26. Cooperation of towns, townships, and counties with division.—It shall be lawful for the governing authorities of any municipality, county, township, or school corporation in the state to enter into cooperative agreement with the employment service division and to appropriate and expend the necessary money upon such conditions as may be approved by the employment service division and to permit the use of public property for the joint establishment and maintenance of such offices as may be mutually agreed upon, and which will further the purpose of this article. (1921, c. 131, s. 8; 1931, c. 312, s. 3; 1935, c. 106, s. 5; Ex. Sess. 1936, c. 1, s. 12; C. S. 7312(h).)

§ 96-27. Method of handling employment service funds.—All federal funds received by this state under the Wagner-Peyser Act (48 Stat. 113; Title 29, U. S. C., § 49) as amended, and all state funds appropriated or made available to the employment service division shall be paid into the unemployment compensation administration fund, and said moneys are hereby made available to the state employment service to be expended as provided in this article and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, said division is authorized to enter into agreements with any political subdivision of this state or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the unemployment compensation administration fund. (1935, c. 106, s. 7; Ex. Sess. 1936, c. 1, s. 12; 1941, c. 108, s. 11.)

§ 96-28. Annual appropriation.—There is hereby appropriated to the unemployment compensation commission seventy-five thousand dollars annually, for the purpose of paying the state's contribution towards the expenses of the employment service division. (Ex. Sess. 1936, c. 1, s. 13; 1941, c. 108, s. 12.)

Chapter 97. Workmen's Compensation Act.

Art. 1. Workmen's Compensation Act.

Sec.

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Art. 1. Workmen's Compensation Act.

§ 97-1. Official title.—This article shall be known and cited as "The North Carolina Workmen's Compensation Act." (1929, c. 120, s. 1.)

§ 97-2. Definitions.—When used in this article, unless the context otherwise requires—

(a) The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which five or more employees are regularly employed in the same business or establishment, except agriculture and domestic service and sawmills and logging operators in which less than fifteen employees are regularly employed.

(b) The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, except only such as are elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, except such as are elected by the people or elected by the council or other governing body of said municipal corporation or political subdivision, who act in purely administrative capacities, and to serve for a definite term of office. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full time basis or a part time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable.

(c) The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the state, for the purposes of this law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof.

(d) The term "person" means individual, partnership, association or corporation.

(e) "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to

both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract they shall be deemed a part of his earnings.

(f) "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident.

(g) The term "carrier" or "insurer" means any person or fund authorized under § 97-68 to insure under this article, and includes self-insurers.

(h) The term "commission" means the North Carolina Industrial Commission, to be created under the provisions of this article.

(i) The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(j) The term "death" as a basis for a right to compensation means only death resulting from an injury.

(k) The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this article, and includes funeral benefits provided herein.

(l) The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under eighteen years of age.

(m) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(n) The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

(o) The term "widower" includes only the decedent's husband who at the time of her death lived with her and was dependent for support upon her.

(p) The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(q) The singular includes the plural and the masculine includes the feminine and neuter.

(r) In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the Industrial Commission:

First. That there was an injury resulting in hernia or rupture.

Second. That the hernia or rupture appeared suddenly.

Third. That it was accompanied by pain.

Fourth. That the hernia or rupture immediately followed an accident.

Fifth. That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femeral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of § 97-38. In non-fatal cases, if it is shown by special examination, as provided in § 97-27, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this article.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo said operation, the employee shall be paid compensation in accordance with the provisions of this article. (1929, c. 120, s. 2; 1933, c. 448; 1939, c. 277, s. 1.)

Local Modification.—Ashe, Avery, Bladen, Carteret, Caswell, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga, Wilkes: 1939, c. 277, s. 3.

§ 97-3. Presumption that all employers and employees have come under provisions of chapter.—From and after July 1, 1929, every employer and employee, except as herein stated, shall be presumed to have accepted the provisions of this article respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, unless he shall have given, prior to any accident resulting in injury or death, notice to the contrary in the manner herein provided. (1929, c. 120, s. 4.)

§ 97-4. Notice of non-acceptance and waiver of exemption.—Either an employer or an employee, who has exempted himself by proper notice from

the operation of this article, may at any time waive such exemption, and thereby accept the provisions of this article by giving notice as herein provided.

The notice of non-acceptance of the provisions of this article and notice of waiver of exemption heretofore referred to shall be given thirty days prior to any accident resulting in injury or death: Provided, that if any such accident occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print, in substantially the form prescribed by the Industrial Commission, and shall be given by the employer by posting the same in a conspicuous place in the shop, plant, office, room, or place where the employee is employed, or by serving it personally upon him; and shall be given by the employee by sending the same in registered letter, addressed to the employer at his last known residence or place of business, or by giving it personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State. A copy of the notice in prescribed form shall also be filed with the Industrial Commission.

In any suit by an employer or an employee who has exempted himself by proper notice from the application of this article, a copy of such notice duly certified by the Industrial Commission shall be admissible in evidence as proof of such exemption. (1929, c. 120, s. 5.)

§ 97-5. Presumption as to contract of service.— Every contract of service between any employer and employee covered by this article, written or implied, now in operation or made or implied prior to July 1, 1929, shall, after that date, be presumed to continue, subject to the provisions of this article; and every such contract made subsequent to that date shall be presumed to have been made subject to the provisions of this article, unless either party shall give notice, as provided in § 97-4, to the other party to such contract that the provisions of this article other than §§ 97-14, 97-15, 97-16, and 97-67 are not intended to apply.

A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by or to the parent or guardian of the minor. (1929, c. 120, s. 6.)

§ 97-6. No special contract can relieve an employer of obligations.—No contract or agreement, written or implied, no rule, regulation, or other device shall in any manner operate to relieve an employer, in whole or in part, of any obligation created by this article, except as herein otherwise expressly provided. (1929, c. 120, s. 7.)

§ 97-7. State or subdivision and employees thereof.—Neither the State nor any municipal corporation within the State, nor any political subdivision thereof, nor any employee of the State or of any such corporation or subdivision, shall have the right to reject the provisions of this article relative to payment and acceptance of compensation, and the provisions of §§ 97-4, 97-5, 97-14, 97-15, and 97-16 shall not apply to them: Provided, however, that any county or special school district may, at its option, by action of the governing body of such county or school district at a regular meeting of such governing body, exempt itself entirely from the operation of this article: Provided, however, that such action on the part of such governing body shall not become effective until thirty days after such action is taken, and notice thereof filed with the Industrial Commission: and, Provided further, that such action on the part of any county or special school district exempting itself from the operation of this article shall not have the effect of relieving such county or school district in any degree from any liability against such county or school district already accrued prior to the taking of such action, or accruing during the said thirty-day period after the taking of such action. (1929, c. 120, s. 8; 1931, c. 274, s. 1.)

§ 97-8. Prior injuries and deaths unaffected. — The provisions of this article shall not apply to injuries or deaths, nor to accidents which occurred prior to July 1, 1929. (1920, c. 120, s. 9.)

§ 97-9. Employer to secure payment of compensation. — Every employer who accepts the compensation provisions of this article shall secure the payment of compensation to his employees in the manner hereinafter provided; and while such security remains in force, he or those conducting his business shall only be liable to any employee who elects to come under this article for personal injury or death by accident to the extent and in the manner herein specified. (1929, c. 120, s. 10.)

§ 97-10. Other rights and remedies against employer excluded; employer or insurer may sue third party tort-feasor; subrogation; amount of compensation as evidence; minors illegally employed.—The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this article, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, as against his employer at common law, or otherwise, on account of such injury, loss of service, or death: Provided, however, that in any case where such employee, his personal representative, or other person may have a right to recover damages for such injury, loss of service, or death from any person other than the employer, compensation shall be paid in accordance with the provisions of this chapter: Provided, further, that after the industrial commission shall have issued an award, the employer may commence an action in his own name and/or in the name of the injured employee or his personal representative for damages on account of such injury or death, and any amount recovered by the employer shall be applied as follows: First to the payment of actual court costs, then to the payment of attorneys' fees when approved by the industrial commission; the remainder or so much thereof as is necessary shall be paid to the employer to reimburse him for any amount paid and/or to be paid by him under the award of the industrial commission; if there then remain any excess, the amount thereof shall be paid to the injured employee or other person entitled thereto. If, however, the em-

ployer does not commence such action within six months from the date of such injury or death, the employee, or his personal representative, shall thereafter have the right to bring the action in his own name, and any amount recovered shall be paid in the same manner as if the employer had brought the action.

The amount of compensation paid by the employer, or the amount of compensation to which the injured employee or his dependents are entitled, shall not be admissible as evidence in any action against a third party.

When any employer is insured against liability for compensation with any insurance carrier, and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all rights and duties of the employer, and may enforce any such rights in the name of the injured employee or his personal representative; but nothing herein shall be construed as conferring upon the insurance carrier any other or further rights than those existing in the employer at the time of the injury to or death of the employee, anything in the policy of insurance to the contrary notwithstanding.

In all cases where an employer and employee have accepted the workmen's compensation act, any injury to a minor while employed contrary to the laws of this state shall be compensable under this article the same and to the same extent as if said minor were an adult. (1929, c. 120, s. 11; 1933, c. 449, s. 1.)

§ 97-11. Employer not relieved of statutory duty. — Nothing in this article shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty. (1929, c. 120, s. 12.)

§ 97-12. Intoxication or willful neglect of employee; willful disobedience of statutory duty. —No compensation shall be payable if the injury or death was occasioned by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another. When the injury or death is caused by the wilful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten per cent. When the injury or death is caused by the wilful failure of the employee to use a safety appliance or perform a statutory duty or by the wilful breach of any rule or regulation adopted by the employer and approved by the Commission and brought to the knowledge of the employee prior to the injury, compensation shall be reduced ten per cent. The burden of proof shall be upon him who claims an exemption or forfeiture under this section. (1929, c. 120, s. 13.)

§ 97-13. Exceptions from provisions of article.—(a) This article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect article seven (7) of chapter sixty (60), or any section thereof, relating to the liability of railroads for injuries to employees; nor, upon the trial of any action in tort for injuries not coming under the provisions of this article, shall any provision herein be placed in evidence or be permitted to be argued to the jury: Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to electric street railroads or employees thereof; and this article shall apply to electric street railroads and employees thereof, and to this extent the provisions of article seven, of chapter sixty (60) are hereby amended.

(b) This article shall not apply to casual employees, farm laborers, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than five employees in the same business within this state, unless such employees and their employers voluntarily elect, in the manner hereinafter specified, to be bound by this article: Provided, however, that when an employee files a claim with the North Carolina industrial commission and it shall appear that the employer has insured his liability under the Workmen's Compensation Act in any authorized corporation, association, or in any mutual insurance association formed by a group of employers so authorized, this shall be prima facie evidence that such employer and his employees have elected to be bound by this article, and, in such cases upon failure of the defendant and/or the insurance carrier to show by competent and sufficient evidence that the defendant employer was not bound by, or subject to the provisions of, the Workmen's Compensation Act at the time of the injury, compensation may be awarded by the industrial commission without any express findings in their award as to acceptance of the article by the parties.

(c) This article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Highway and Public Works Commission shall suffer accidental injury arising out of and in the course of the employment to which he had been assigned, if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in this article, then such discharged prisoner may have the benefit of this article by applying to the Industrial Commission as any other employee; provided, such application is made within twelve months from the date of discharge; and provided, further, that the maximum compensation to any prisoner shall not exceed fifteen dollars per month and the period of compensation shall relate to the date of his discharge rather than to the date of the accident, and prisoners who have been discharged prior to March 15, 1941, who are covered by the terms of the subsection may have twelve months from March 15, 1941, in which to apply for its benefits, but as to such prisoners their compensation shall be computed only from the date of their application and shall not be cumulative for any prior period; and no award shall be made for facial disfigurement, and no award other than burial expenses shall be made for any prisoner whose accident results in death; and no award shall be made for any injury where there is no apparent or outward physical evidence of such injury, unless it is clearly established by medical opinion and supporting testimony that the matter complained of results solely from the accident arising out of and in the course

of employment. If any person who has been awarded compensation under the provisions of this section shall be recommitted to prison upon conviction for an offense committed subsequent to the award, such compensation shall immediately cease and determine. Any awards made under the terms of this subsection shall be paid by the State Highway and Public Works Commission from the funds available for the operation of the Prison Department.

(d) This article shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer. (1929, c. 120, s. 14; 1933, c. 401; 1935, c. 150; 1941, c. 295.)

Local Modification.—Mecklenburg: 1933, c. 401.

§ 97-14. Employers not bound by article may not use certain defenses in damage suit.—An employer who elects not to operate under this article shall not, in any suit at law instituted by an employee subject to this article to recover damages for personal injury or death by accident, be permitted to defend any such suit at law upon any or all of the following grounds:

(a) That the employee was negligent.

(b) That the injury was caused by the negligence of a fellow employee.

(c) That the employee has assumed the risk of the injury. (1929, c. 120, s. 15.)

§ 97-15. Adhering employer may use such defenses against non-adhering employee.—An employee who elects not to operate under this article shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this article, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law. (1929, c. 120, s. 16.)

§ 97-16. Defenses denied to non-adhering employer as against non-adhering employee.—When both the employer and employee elect not to operate under this article, the liability of the employer shall be the same as though he alone rejected the terms of this article, and in any suit brought against him by such employee the employer shall not be permitted to avail himself of any of the common-law defenses cited in § 97-14. (1929, c. 120, s. 17; 1931, c. 274, s. 2; 1939, c. 277, s. 2.)

Local Modification.—Ashe, Avery, Bladen, Carteret, Caswell, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga, Wilkes: 1931, c. 274, s. 2; 1939, c. 277, s. 3.

§ 97-17. Settlements allowed in accordance with article. — Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this article. A copy of such settlement agreement shall be filed by employer with and approved by the Industrial Commission. (1929, c. 120, s. 18.)

§ 97-18. Prompt payment of compensation required; installments; notice to commission; penalties.—Compensation under this article shall be paid periodically, promptly and directly to the person entitled thereto unless otherwise specifically provided.

(a) The first installment of compensation payable under the terms of an agreement shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments weekly except where the Commission determines that payment in installments should be made monthly or at some other period.

(b) The first installment of compensation payable under the terms of an award by the Commission, or under the terms of a judgment of the court upon an appeal from such an award, shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments weekly, except where the Commission determines that payment in installments shall be made monthly or in some other manner.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the Commission, in accordance with the form prescribed by the Commission, that payment of compensation has begun or has been suspended, as the case may be.

(d) If any installment of compensation payable in accordance with the terms of an agreement approved by the Commission without an award is not paid within fourteen days after it becomes due, as provided in sub-division (a) of this section, or if any installment of compensation payable in accordance with the terms of an award by the Commission is not paid within fourteen days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless such non-payment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(e) Within sixteen days after final payment of compensation has been made, the employer shall send to the Commission a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission within such time, the Commission shall assess against such employer a civil penalty in the amount of $25.00. (1929, c. 120, s. 18½.)

§ 97-19. Liability of principal contractors; certificate that sub-contractor has complied with law; right to recover compensation of those who would have been liable; order of liability.—Any principal contractor, intermediate contractor, or

sub-contractor who shall sublet any contract for the performance of any work without requiring from such sub-contractor or obtaining from the Industrial Commission a certificate, issued by the Industrial Commission, stating that such sub-contractor has complied with § 97-68 hereof, shall be liable, irrespective of whether such sub-contractor has regularly in service less than five employees in the same business within this state, to the same extent as such sub-contractor would be if he had accepted the provisions of this article for the payment of compensation and other benefits under this article on account of the injury or death of any employee of such sub-contractor, due to an accident arising out of and in the course of the performance of the work covered by such sub-contract. If the principal contractor, intermediate contractor, or sub-contractor shall obtain such certificate at the time of sub-letting such contract to sub-contractor, he shall not thereafter be held liable to any employee of such sub-contractor for compensation or other benefits under this article. The Industrial Commission, upon demand, shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five (25) cents.

Any principal contractor, intermediate contractor, or sub-contractor paying compensation or other benefits under this article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who, independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer. (1929, c. 120, s. 19; 1941, c. 358, s. 1.)

§ 97-20. Priority of compensation claims against assets of employer.—All rights of compensation granted by this article shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor. (1929, c. 120, s. 20.)

§ 97-21. Claims unassignable and exempt from taxes and debts; agreement of employee to contribute to premium or waive right to compensation; unlawful deduction by employer.—No claim for compensation under this article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.

No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this article shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500.00. No agreement by an employee to waive his right to compensation under this chapter shall be valid. (1929, c. 120, s. 21.)

§ 97-22. Written notice of accident to employer.—Every injured employee or his representative shall immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident, and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this article prior to the giving of such notice, unless it can be shown that the employer, his agent or representative, had knowledge of the accident, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity, or the fraud or deceit of some third person; but no compensation shall be payable unless such written notice is given within thirty days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice, and the Commission is satisfied that the employer has not been prejudiced thereby. (1929, c. 120, s. 22.)

§ 97-23. What notice is to contain; defects no bar; notice personally or by registered letter.—The notice provided in the foregoing section shall state in ordinary language the name and address of the employee, the time, place, nature, and cause of the accident, and of the resulting injury or death; and shall be signed by the employee or by a person on his behalf, or, in the event of his death, by any one or more of his dependents, or by a person in their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to such extent as the prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State, or may be sent by registered letter addressed to the employer at his last known residence or place of business. (1929, c. 120, s. 23.)

§ 97-24. Right to compensation barred after one year.—(a) The right to compensation under this article shall be forever barred unless a claim be filed with the industrial commission within one year after the accident, and if death results from the accident, unless a claim be filed with the commission within one year thereafter.

(b) If any claim for compensation is hereafter made upon the theory that such claim or the injury upon which said claim is based is within the jurisdiction of the industrial commission under the provisions of this article, and if the commission, or the supreme court on appeal, shall adjudge that such claim is not within the article, the claimant, or if he dies, his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law. (1929, c. 120, s. 24; 1933, c. 449, s. 2.)

§ 97-25. Medical treatment and supplies. — Medical, surgical, hospital, and other treatment, including medical and surgical supplies as may reasonably be required, for a period not exceed-

ing ten weeks from date of injury to effect a cure or give relief and for such additional time as in the judgment of the commission will tend to lessen the period of disability, and in addition thereto such original artificial members as may be reasonably necessary at the end of the healing period shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the industrial commission may order such further treatments as may in the discretion of the commission be necessary.

The commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment when ordered by the industrial commission, shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the industrial commission the circumstances justified the refusal, in which case, the industrial commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the industrial commission: Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the industrial commission. (1929, c. 120, s. 25; 1931, c. 274, s. 4; 1933, c. 506.)

§ 97-26. Liability for medical treatment measured by average cost in community; malpractice of physician.—The pecuniary liability of the employer for medical, surgical, hospital service or other treatment required, when ordered by the Commission, shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person, and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such. (1929, c. 120, s. 26.)

§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; autopsy.—After an injury, and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Industrial Commission, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Commission. The employee shall have the right to have present at such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this article or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this article. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute any proceedings under this article shall be suspended until such refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. The employer, or the Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same. (1929, c. 120, s. 27.)

§ 97-28. Compensation allowed for first seven days.—No compensation shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in § 97-25. Provided, however, that in the case the injury results in disability of more than twenty-eight (28) days, the compensation shall be allowed from the date of the disability. (1929, c. 120, s. 28.)

§ 97-29. Compensation for total incapacity or death.—Where the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total disability, a weekly compensation equal to 60 per centum of his average weekly wages, but not more than eighteen dollars, nor less than seven dollars, a week; and in no case shall the period covered by such compensation be greater than four hundred weeks, nor shall the total amount of all compensation exceed six thousand dollars. In case of death the total sum paid shall be six thousand dollars less any amount that may have been paid as partial compensation during the period of disability, payable in one sum to the personal representative of deceased. The basis for compensation of deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis shall be the minimum amount of seven dollars a week as fixed herein. (1929, c. 120, s. 29; 1939, c. 277, s. 1.)

Local Modification.—Ashe, Avery, Bladen, Carteret, Caswell, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga, Wilkes: 1939, c. 277, s. 3.

§ 97-30. Partial incapacity; pro-rating where total disability results in partial. — Except as otherwise provided in § 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to 60 per centum of the difference between his average weekly wages before the injury and the

average weekly wages which he is able to earn thereafter, but not more than eighteen dollars a week, and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. (1929, c. 120, s. 30.)

§ 97-31. Other rates of compensation. — In cases included by the following schedule, the disability in each case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be specified therein, to-wit:

(a) For the loss of a thumb, sixty per centum of the average weekly wages during sixty weeks.

(b) For the loss of a first finger, commonly called the index finger, sixty per centum of the average weekly wages during thirty-five weeks.

(c) For the loss of a second finger, sixty per centum of average weekly wages during thirty weeks.

(d) For the loss of a third finger, sixty per centum of average weekly wages during twenty weeks.

(e) For the loss of a fourth finger, commonly called the little finger, sixty per centum of average weekly wages during fifteen weeks.

(f) The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one-half of such thumb or finger, and the compensation shall be for one-half of the periods of time above specified.

(g) The loss of more than one phalange shall be considered the loss of the entire finger or thumb: Provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(h) For the loss of a great toe, sixty per centum of the average weekly wages during thirty weeks.

(j) For the loss of one of the toes other than a great toe, sixty per centum of average weekly wages during ten weeks.

(k) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and the compensation shall be for one-half of the periods of time above specified.

(l) The loss of more than one phalange shall be considered as the loss of the entire toe.

(m) For the loss of a hand, sixty per centum of the average weekly wages during one hundred and fifty weeks.

(n) For the loss of an arm, sixty per centum of average weekly wages during two hundred weeks.

(o) For the loss of a foot, sixty per centum of average weekly wages during one hundred and twenty-five weeks.

(p) For the loss of a leg, sixty per centum of average weekly wages during one hundred and seventy-five weeks.

(q) For the loss of an eye, sixty per centum of the average weekly wages during one hundred weeks.

(r) The loss of both hands or both arms, or both feet, or both legs or both eyes, or any two thereof shall constitute total and permanent disability, to be compensated according to the provisions of § 97-29.

(s) For the complete loss of hearing in one ear, sixty per centum of average weekly wages during seventy weeks; for the complete loss of hearing in both ears, sixty per centum of average weekly wages during one hundred and fifty weeks.

(t) Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye shall be such proportion of the payments above provided for total loss as such partial loss bears to total loss. Loss of both arms, hands, legs, or vision in both eyes shall be deemed permanent total disability, and shall be compensated under § 97-29.

In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed $2,500.00.

The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in § 97-29; provided, however, that the foregoing schedule of compensation shall not be deemed to apply and compensate for serious disfigurement resulting from any injury to any employee received while in and about the duties of his employment. And provided, further, that the Industrial Commission created by this article shall have power and authority to make and award a reasonable compensation for any serious bodily disfigurement received by any employee within the meaning of this article, not to exceed twenty-five hundred ($2500) dollars. And provided, further, that disfigurement shall also include the loss or serious or permanent injury of any member or organ of the body for which no compensation is payable under the schedule of specific injuries set out in this section. (1929, c. 120, s. 31; 1931, c. 164.)

§ 97-32. Refusal of injured employee to accept suitable employment as suspending compensation. —If an injured employee refuses employment procured for him suitable to his capacity he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified. (1929, c. 120, s. 32.)

§ 97-33. Prorating permanent disability received in other employment. — If any employee has a permanent disablity or has sustained a permanent injury in service in the Army or Navy of the United States, or in another employment other than that in which he received a subsequent permanent injury by accident, such as specified in § 97-31 he shall be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed. (1929, c. 120, s. 33.)

§ 97-34. Employee receiving an injury when being compensated for former injury.—If an employee receives an injury for which compen-

sation is payable, while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless the later injury be a permanent injury such as specified in § 97-31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this article. (1929, c. 120, s. 34.)

§ 97-35. How compensation paid for two injuries; employer liable only for subsequent injury. — If any employee receives a permanent injury as specified in § 97-31 after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks.

If an employee has previously incurred permanent partial disability through the loss of a hand, arm, foot, leg, or eye, and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only. (1929, c. 120, s. 35.)

§ 97-36. Accidents taking place outside state; employee receiving compensation from another state.—Where an accident happens while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, if the employer's place of business is in this State, and if the residence of the employee is in this State; provided his contract of employment was not expressly for service exclusively outside of the State; provided, however, if an employee shall receive compensation or damages under the laws of any other State nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this article. (1929, c. 120, s. 36.)

§ 97-37. Where injured employee dies before total compensation is paid.—When an employee receives or is entitled to compensation under this article for an injury covered by § 97-31 and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived.

Provided, however, that if the death is due to a cause that is compensable under this article, and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall cease and determine. (1929, c. 120, s. 37.)

§ 97-38. Where death results proximately from accident; prorating as to persons partially dependent; compensation to aliens.—If death results proximately from the accident and within two years thereafter, or while total disability still continues, and within six years after the accident, the employer shall pay for or cause to be paid, subject, however, to the provisions of the other sections of this article in one of the methods hereinafter provided, to the dependents of the employee, wholly dependent upon his earnings for support at the time of accident, a weekly payment equal to 60 per centum of his average weekly wages, but not more than eighteen dollars, nor less than seven dollars, a week for a period of three hundred and fifty weeks from the date of the injury, and burial expenses not exceeding two hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid, as aforesaid, shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred and fifty weeks from the date of the injury. Compensation under this article to aliens not residents (or about to become non-residents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child, or children, to surviving father or mother whom the employee has supported, either wholly or in part for the period of one year prior to the date of the injury, and except that the Commission may, at its option, or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Commission. (1929, c. 120, s. 38.)

§ 97-39. Spouse and child to be conclusively presumed to be dependent; other cases determined upon facts; division of death benefits among those wholly dependent; when division among partially dependent. — A widow, a widower, and/or a child shall be conclusively presumed to be wholly dependent for support upon the deceased employee. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts as the facts may be at the time of the accident; but no allowance shall be made for any payment made in lieu of board and lodging or services, and no compensation shall be allowed unless the dependency existed for a period of three months or more prior to the accident. If there is more than one person wholly dependent, the death benefit shall be divided among them; the persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent, and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

The widow, or widower and all children of deceased employees shall be conclusively presumed

to be dependents of deceased and shall be entitled to receive the benefits of this article for the full periods specified herein. (1929, c. 120, s. 39.)

§ 97-40. Commutation of benefit and payment on failure of dependents; second injury fund. —If the deceased employee leaves no dependents the employer shall pay to the next of kin as herein defined the commuted amount provided for in § 97-38 for whole dependents; but if the deceased left no next of kin as herein defined, then said commuted amount shall be paid to the Industrial Commission to be held and disbursed by it in the manner hereinafter provided; one-half of said commuted amount shall be retained by the Industrial Commission and the other one-half paid to the personal representative of the deceased to be by him distributed to the next of kin as defined in the Statutes of Distribution; but if there be no next of kin as defined in the Statutes of Distribution, then the personal representative shall pay the same to the Industrial Commission after payment of costs of administration. For the purpose of this section the term "next of kin" shall include only the father, mother, widow, child, brother or sister of the deceased.

Amounts paid to the Industrial Commission under this section shall constitute a Second Injury Fund, to be held by the commission and disbursed by it in unusual cases of second injuries as follows: (1) To provide additional compensation in case of second injuries referred to in § 97-33: Provided, however, such additional compensation when added to the compensation awarded under said section shall not exceed the amount which would have been payable for both injuries had both been sustained in the subsequent accident. (2) To provide for an injured employee who has sustained permanent total disability, in the manner referred to in § 97-35, compensation in addition to the compensation which shall be awarded under said section; such additional compensation, however, when added to the compensation awarded under said section shall not exceed the compensation for permanent total disability as provided in § 97-29.

The additional compensation herein provided for is to be paid out of the Second Injury Fund exclusively and only to the extent which the assets of said fund shall permit. (1929, c. 120, s. 40; 1931, c. 274, s. 5; 1931, c. 319.)

§ 97-41. Total compensation not to exceed $6,000.—The total compensation payable under this article shall in no case exceed Six Thousand ($6,000) Dollars. (1929, c. 120, s. 41.)

§ 97-42. Deduction of unauthorized payments. —Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this article were not due and payable when made, may, subject to the approval of the Industrial Commission be deducted from the amount to be paid as compensation: Provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payment. (1929, c. 120, s. 42.)

§ 97-43. Commission may prescribe monthly or quarterly payments.—The Industrial Commission, upon application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly. (1929, c. 120, s. 43.)

§ 97-44. Lump sums.—Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, in unusual cases, where the parties agree and the Industrial Commission deems it to be to the best interest of the employee or his dependents, or where it will prevent undue hardships on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Commission, but in no case to exceed the commutable value of the future installments which may be due under this article. The Commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated, in whole or in part, by the payment of a lump sum, the amount of which shall be fixed by the Commission, but in no case to exceed the commutable value of the future installments which may be due under this article. (1929, c. 120, s. 44.)

§ 97-45. Reducing to judgment outstanding liability of insurance carriers withdrawing from state. — Upon the withdrawal of any insurance carrier from doing business in the state that has any outstanding liability under the workmen's compensation act, the insurance commissioner shall immediately notify the North Carolina industrial commission, and thereupon the said North Carolina industrial commission shall issue an award against said insurance carrier and commute the installments due the injured employee, or employees, and immediately have said award docketed in the superior court of the county in which the claimant resides, and the said North Carolina industrial commission shall then cause suit to be brought on said judgment in the state of the residence of any such insurance carrier, and the proceeds from said judgment after deducting the cost, if any, of the proceeding, shall be turned over to the injured employee, or employees, taking from such employee, or employees, the proper receipt in satisfaction of his claim. (1933, c. 474.)

§ 97-46. To receive lump sum payments; receipt to discharge employer. — Whenever the Industrial Commission deems it expedient, any lump sum, subject to the provisions of § 97-45, shall be paid by the employer to some suitable person or corporation appointed by the Superior Court in the county wherein the accident occurred, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the Commission. The receipt of such trustee for the amount as paid shall discharge the employer or any one else who is liable therefor. (1929, c. 120, s. 45.)

§ 97-47. Right of Commission to review awards and change same.—Upon its own motion or

upon the application of any party in interest on the grounds of a change in condition, the Industrial Commission may review any award, and on such review may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in this article, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid but no such review shall be made after twelve months from the date of the last payment of compensation pursuant to an award under this article. (1929, c. 120, s. 46; 1931, c. 274, s. 6.)

§ 97-48. Receipts relieving employer; payment to minors; when payment of claims to dependents subsequent in right discharges employer.—(a) Whenever payment of compensation is made to a widow or widower for her or his use, or for her or his use and the use of the child or children, the written receipt thereof of such widow or widower shall acquit the employer: Provided, however, that in order to protect the interests of minors or incompetents the Industrial Commission may at its discretion change the terms of any award with respect to whom compensation for the benefit of such minors or incompetents shall be paid.

(b) Whenever payment is made to any person eighteen years of age or over, the written receipt of such person shall acquit the employer.

(c) Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer, unless and until such dependent or dependents prior in right shall have given notice of his or their claims. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the Industrial Commission to decide between them. (1929, c. 120, s. 47; 1931, c. 274, s. 7.)

§ 97-49. Benefits of mentally incompetent or minor employees under 18 to be paid to a trustee, etc.—If an injured employee is mentally incompetent or is under eighteen years of age at the time when any right or privilege accrues to him under this article, his guardian, trustee, or committee may in his behalf claim and exercise such right or privilege. (1929, c. 120, s. 48.)

§ 97-50. Limitation as against minors or mentally incompetent.—No limitation of time provided in this article for the giving of notice or making claim under this article shall run against any person who is mentally incompetent, or a minor dependent, as long as he has no guardian, trustee, or committee. (1929, c. 120, s. 49.)

§ 97-51. Contribution allowed employers of same injured employee.—Whenever an employee, for whose injury or death compensation is payable under this article, shall at the time of the injury be in joint service of two or more employers subject to this article, such employers shall contribute to the payment of such compensation in proportion to their wages liability to such employee; provided, however, that nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation. (1929, c. 120, s. 50.)

§ 97-52. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.—There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of three commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission, one for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned, the Governor shall appoint a successor for a term of six years, and thereafter the term of office of each commissioner shall be six years. Not more than one appointee shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employers, and not more than one appointee shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employees. One member, to be designated by the Governor, shall act as chairman. (1929, c. 120, s. 51; 1931, c. 274, s. 8.)

§ 97-53. Salaries and expenses; secretary and other clerical assistance; annual report.—(a) The salaries of the chairman and each of the other Commissioners shall be fixed by the Governor, subject to the approval of the Advisory Budget Commission, such salaries to be payable in monthy installments.

(b) The Commission may appoint a secretary whose duties shall be prescribed by the Commission, and whose salary shall be fixed by the Governor and Council of the State and who, upon entering upon his duties, shall give bond in such sum as may be fixed by the Commission, and who may be removed at the will of the Commission. The Commission may also employ such clerical or other assistance as it may deem necessary, and fix the compensation of all persons so employed, such compensation to be in keeping with the compensation paid to the persons employed to do similar work in other State departments.

(c) The members of the Commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Commission, but such expenses shall be sworn to by the person who incurred the same, and shall be approved by the chairman of the Commission before payment is made.

(d) All salaries and expenses of the Commission shall be audited and paid out of the State Treasury, in the manner prescribed for similar expenses in other departments or branches of the State service, and to defray such salaries and expenses a sufficient appropriation shall be made under the general appropriation act as made to other departments, commissions and agencies of the State government.

(e) The Commission shall publish annually for free distribution a report of the administration of this article, together with such recommendations as the Commission deems advisable. (1929, c. 120, s. 52; 1931, c. 274, s. 9; 1941, c. 358, s. 2.)

§ 97-54. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.—(a) The Commission shall be provided with adequate offices in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

(b) The Commission may appoint deputies, who shall have the power to subpoena witnesses and administer oaths, and who may take testimony in such cases as the Commission may deem proper. Such testimony shall be transmitted in writing to the Commission, and the Commission shall fix the compensation of such deputies.

(c) The Commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the Commission.

(d) Hearings before the Commission shall be open to the public and shall be stenographically reported, and the Commission is authorized to contract for the reporting of such hearings. The Commission shall by regulation provide for the preparation of a record of the hearings and other proceedings. (1929, c. 120, s. 53; 1931, c. 274, s. 10.)

§ 97-55. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.—(a) The Commission may make rules, not inconsistent with this article, for carrying out the provisions of this article. Processes and procedure under this article shall be as summary and simple as reasonably may be. The Commission or any member thereof, or any person deputized by it, shall have the power, for the purpose of this article, to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Any party to a proceeding under this article may, upon application to the Commission, which application shall set forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by Commission. Such depositions shall be taken after giving the notice and in the manner prescribed by law for depositions in actions at law, except that they shall be directed to the Commission, the Commissioner, or the Deputy Commissioner before whom the proceedings may be pending.

(b) The County Sheriffs and their respective deputies shall serve all subpoenas of the Commission or its deputies, and shall receive the same fees as are now provided by law for like services; each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held.

(c) The Superior Court shall, on application of the Commission or any member or deputy thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records. (1929, c. 120, s. 54.)

§ 97-56. Blank forms and literature; accident reports; studies and investigations and recommendations to General Assembly; to co-operate with agencies of U. S. for prevention of injury.—(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this article.

(b) The Commission shall tabulate the accident reports received from employers in accordance with § 97-67 and shall publish the same in the annual report of the Commission and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications, and the employers' reports shall be private records of the Commission, and shall not be open for public inspection except for the inspection of the parties directly involved, and only to the extent of such interest. These reports shall not be used as evidence against any employer in any suit at law brought by any employee for the recovery of damages.

(c) The Commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this article, and shall from time to time make to the General Assembly and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(d) In making such studies and investigations the Commission is authorized (1) to co-operate with any agency of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by this article, or with any State agency engaged in enforcing any laws to assure safety for employees, and (2) to permit any such agency to have access to the records of the Commission. In carrying out the provisions of this section the Commission or any officer or employee of the Commission is authorized to enter at any reasonable time upon any premises, tracks, wharf, dock, or other landing place, or to enter any building, where an employment covered by this article is being carried on, and to examine any tool, appliance, or machinery used in such employment. (1929, c. 120, s. 55.)

§ 97-57. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval. — If after seven days after the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this article, a memorandum of the agreement in the form prescribed by the Industrial Commission, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.

If approved by the Commission, thereupon the memorandum shall for all purposes be enforceable by the court's decree as hereinafter specified. (1929, c. 120, s. 56.)

§ 97-58. In event of disagreement, Commission is to make award after hearing.—If the employer and the injured employee or his depend-

ents fail to reach an agreement, in regard to compensation under this article within fourteen days after the employee has knowledge of the injury or death, or if they have reached such an agreement which has been signed and filed with the Commission, and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Industrial Commission for a hearing in regard to the matters at issue, and for a ruling thereon.

Immediately after such application has been received the Commission shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the city or county where the injury occurred, unless otherwise agreed to by the parties and authorized by the Industrial Commission. (1929, c. 120, s. 57.)

§ 97-59. Determination of disputes by Commission.—The Commission or any of its members shall hear the parties at issue and their representatives and witnesses, and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, and a copy of the award shall immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event he shall swear or cause the witnesses to be sworn, and shall transmit all testimony to the Commission for its determination and award. (1929, c. 120, s. 58.)

§ 97-60. Review of award.—If application is made to the Commission within seven days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award. (1929, c. 120, s. 59.)

§ 97-61. Award conclusive as to facts; or certified questions of law. — The award of the Commission, as provided in § 97-59, if not reviewed in due time, or an award of the Commission upon such review, as provided in § 97-60, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within thirty days from the date of such award, or within thirty days after receipt of notice to be sent by registered mail of such award, but not thereafter, appeal from the decision of said Commission to the Superior Court of the county in which the alleged accident happened, or in which the employer resides or has his principal office, for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions. The Commission, of its own motion, may certify questions of law to the Supreme Court, for decision and determination by the said Court. In case of an appeal from the decision of the Commission, or of a certification by said Commission of questions of law, to the Supreme Court, said appeal or certification shall operate as a supersedeas, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this article. (1929, c. 120, s. 60.)

§ 97-62. Agreements approved by Commission or awards may be filed as judgments; discharge or restoration of lien. — Any party in interest may file in the Superior Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the Commission, or of an order or decision of the Commission, or of an award of the Commission unappealed from or of an award of the Commission affirmed upon appeal; whereupon said court shall render judgment in accordance therewith, and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by said court: Provided, if the judgment debtor shall file a certificate duly issued by the Industrial Commission, showing compliance with § 97-68, with the Clerk of the Superior Court in the county or counties where such judgment is docketed, then such clerk shall make upon the judgment roll an entry showing the filing of such certificate, which shall operate as a discharge of the lien of the said judgment, and no execution shall be issued thereon; provided, further, that if at any time there is default in the payment of any installment due under the award set forth in said judgment the court may, upon application for cause and after ten days' notice to judgment debtor, order the lien of such judgment restored, and execution may be immediately issued thereon for past due installments and for future installments as they may become due. (1929, c. 120, s. 61.)

§ 97-63. Expenses of appeals brought by insurers.—If the Industrial Commission at a hearing on review or any court before which any proceedings are brought on appeal under this article, shall find that such hearing or proceedings were brought by the insurer, and the Commission or court by its decision orders the insurer to make, or to continue, payments of compensation to the injured employee, the Commission or court may further order that the cost to the injured employee of such hearing or proceedings, including therein reasonable attorney's fee to be determined by the Commission shall be paid by the insurer as a part of the bill of costs. (1929, c. 120, s. 62; 1931, c. 274, s. 11.)

§ 97-64. Commission may appoint qualified physician to make necessary examinations; expenses; fees. — The Commission or any member thereof may, upon the application of either party, or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee, and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the Commission, not exceeding ten dollars for each examination and report, but the Commission may allow additional reasonable amounts

in extraordinary cases. The fees and expenses of such physician or surgeon shall be paid by the employer. (1929, c. 120, s. 63; 1931, c. 274, s. 12.)

§ 97-65. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims.—(a) Fees for attorneys and physicians and charges of hospitals for services under this article shall be subject to the approval of the Commission; but no physician shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Industrial Commission in connection with the case.

(b) Any person (1) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or such court, or (2) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not more than $500 or by imprisonment not to exceed one year, or by both such fine and imprisonment. (1929, c. 120, s. 64.)

§ 97-66. Commission to determine all questions.—All questions arising under this article if not settled by agreements of the parties interested therein, with the approval of the Commission, shall be determined by the Commission, except as otherwise herein provided. (1929, c. 120, s. 65.)

§ 97-67. Employer's record and report of accidents; records of Commission not open to public; supplementary report upon termination of disability; penalty for refusal to make report; when insurance carrier liable.—(a) Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment on blanks approved by the Commission. Within ten days after the occurrence and knowledge thereof, as provided in § 97-22, of an injury to an employee, causing his absence from work for more than three days, a report thereof shall be made in writing and mailed to the Industrial Commission on blanks to be procured from the Commission for this purpose.

(b) The records of the Commission, in so far as they refer to accidents, injuries, and settlements, shall not be open to the public, but only to the parties satisfying the Commission of their interest in such records and the right to inspect them.

(c) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty days, then, also, at the expiration of such period the employer shall make a supplementary report to the Commission on blanks to be procured from the Commission for the purpose.

(d) The said report shall contain the name, nature, and location of the business of the employer, and name, age, sex, and wages and occupation of the injured employee; and shall state the date and hour of the accident causing injury, the nature and cause of the injury, and such other information as may be required by the Commission.

(e) Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not less than five dollars and not more than twenty-five dollars for each refusal or neglect. The fine herein provided may be assessed by the Commission in an open hearing, with the right of review and appeal as in other cases. In the event the employer has transmitted the report to the insurance carrier for transmission by such insurance carrier to the Industrial Commission, the insurance carrier wilfully neglecting or failing to transmit the report shall be liable for the said penalty. (1929, c. 120, s. 66.)

§ 97-68. Adhering employers required to carry group insurance; prove financial ability to pay for benefits.—Every employer who accepts the provisions of this article relative to the payment of compensation shall insure and keep insured his ability thereunder in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized, or shall furnish to the Industrial Commission satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due, as provided for in this article. In the latter case the Commission may require the deposit of an acceptable security, indemnity or bond to secure the payment of the compensation liabilities as they are incurred. (1929, c. 120, s. 67.)

§ 97-69. Adhering employers required to give proof within 30 days that they have complied with preceding section; fine for not keeping liability insured; review; liability for compensation.—(a) Every employer accepting the compensation provisions of this article shall, within thirty days, after this article takes effect, file with the Commission, in form prescribed by it, and thereafter, annually or as often as may be necessary, evidence of his compliance with the provisions of § 97-68 and all others relating thereto.

(b) Any employer required to secure the payment of compensation under this article who refuses or neglects to secure such compensation shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than one dollar nor more than fifty dollars for each day of such refusal or neglect, and until the same ceases; and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this article or at law in the same manner as provided in § 97-14.

The fine herein provided may be assessed by the Commission in an open hearing, with the right of review and appeal as in other cases. (1929, c. 120, s. 68.)

§ 97-70. Actions against employers failing to effect insurance or qualify as self-insurer.—As to every employer subject to the provisions of this article who shall fail or neglect to keep in effect a policy of insurance against compensation liability arising hereunder with some insurance carrier, as provided in § 97-68, or who shall fail to qualify as a self-insurer as provided in the chapter, in addition to other penalties provided by this chapter, such employer shall be liable in a civil action which may be instituted by the claimant

for all such compensation as may be awarded by the industrial commission in a proceeding properly instituted before said commission, and such action may be brought by the claimant in the county of his residence or in any county in which the defendant has any property in this state; and in said civil action, ancillary remedies provided by law in civil actions of attachment, receivership, and other appropriate ancillary remedies shall be available to the plaintiff therein. Said action may be instituted before the award shall be made by the industrial commission in such case for the purpose of preventing the defendant from disposing of or removing from the state of North Carolina for the purpose of defeating the payment of compensation any property which the defendant may own in this state. In said action, after being instituted, the court may, after proper amendment to the pleadings therein, permit the recovery of a judgment against the defendant for the amount of compensation duly awarded by the North Carolina industrial commission, and subject any property seized in said action for payment of the judgment so awarded. The institution of said action shall in no wise interfere with the jurisdiction of said industrial commission in hearing and determining the claim for compensation in full accord with the provisions of this chapter. That nothing in this section shall be construed to limit or abridge the rights of an employee as provided in subsection (b) of § 97-69. (1941, c. 352.)

§ 97-71. Certificate of compliance with law; revocation and new certificate. — Whenever an employer has complied with the provisions of § 97-68, relating to self-insurance, the Industrial Commission shall issue to such employer a certificate, which shall remain in force for a period fixed by the Commission, but the Commission may, upon at least sixty days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the Commission may grant a new certificate to the employer upon his petition. (1929, c. 120, s. 69.)

§ 97-72. Insurance policies must contain clause that notice of employer is notice to insurer; etc. —All policies insuring the payment of compensation under this article must contain a clause to the effect that, as between the employer and the insurer, the notice to or acknowledgment of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this article shall be jurisdiction of the insurer, that the insurer shall in all things be bound by and subject to the awards, judgments, or decrees rendered against such insured employer, and that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the insurer from the payment of compensation for disability or death sustained by an employee during the life of such policy or contract. (1929, c. 120, s. 70.)

§ 97-73. Policy must contain agreement promptly to pay benefits; continuance of obligation of insurer in event of default.—No policy of insurance against liability arising under this article shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this article, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury or by any default in giving notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name. (1929, c. 120, s. 71.)

§ 97-74. Law written into each insurance policy; form of policy to be approved by Insurance Commissioner; law inapplicable to single catastrophe hazards.—(a) Every policy for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this article. No corporation, association, or organization shall enter into any such policy of insurance unless its form shall have been approved by the Insurance Commissioner.

(b) This article shall not apply to policies of insurance against loss from explosion of boilers or fly-wheels or other similar single catastrophe hazards: Provided, that nothing herein contained shall be construed to relieve the employer from liability for injury or death of an employee as a result of such explosion or catastrophe. (1929, c. 120, s. 72.)

§ 97-75. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; returned or canceled premiums; reports of premiums collected; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices to carrier; employer who carries own risk shall make report on payroll.—(a) The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this article, shall be fair, reasonable, and adequate, with due allowance for merit rating; and all risks of the same kind and degree of hazard shall be written at the same rate by the same carrier. No policy of insurance against liability for compensation under this article shall be valid until the rate thereof has been approved by the Commissioner of Insurance; nor shall any such carrier of insurance write any such policy or contract until its basic and merit rating schedules have been filed with, approved, and not subsequently disapproved by the Commissioner of Insurance.

(b) Each such insurance carrier shall report to the Commissioner of Insurance, in accordance with such reasonable rules as the Commissioner of Insurance may at any time prescribe, for the purpose of determining the solvency of the carrier and the adequacy of its rates; for such purpose the Commissioner of Insurance may inspect the books and records of such insurance carrier, and examine its agents, officers, and directors under oath.

(c) Every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, every mutual company or association and every other insurance carrier insuring employers in this State

against liability for personal injuries to their employees, or death caused thereby, under the provisions of this article, shall, as hereinafter provided, pay a tax upon the premium received, whether in cash or notes, in this State, or on account of business done in this State, for such insurance in this State, at the rate provided in the Revenue Act then in force, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided; provided, however, that such insurance carriers shall be credited with all canceled or returned premiums actually refunded during the year on such insurance.

(d) Every such insurance carrier shall, for the six months ending December thirty-first, nineteen hundred and twenty-nine, and semi-annually thereafter, make a return, verified by the affidavit of its president and secretary, or other chief officers or agents, to the Commissioner of Insurance, stating the amount of all such premiums and credits during the period covered by such return. Every insurance carrier required to make such return shall file the same with the Commissioner of Insurance within thirty days after the close of the period covered thereby, and shall at the same time pay to the State Insurance Commissioner the tax provided in the Revenue Act then in force on such premium ascertained, as provided in sub-section (c) hereof, less returned premium on canceled policies.

(e) If any such insurance carrier shall fail or refuse to make the return required by this article, the said Commissioner of Insurance shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premium as he may deem just, and the proceedings thereon shall be the same as if the return had been made.

(f) If any such insurance carrier shall withdraw from business in this State before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the Commissioner of Insurance shall at once proceed to collect the same; and he is hereby empowered and authorized to employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the State Treasury. The suit may be brought by the Commissioner of Insurance, in his official capacity, in any court of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs therein, and process may issue to any county of the State, and may be served as in civil actions, or in case of unincorporated associations, partnerships, inter-indemnity contracts, upon any agent of the parties thereto upon whom process may be served under the laws of this State.

(g) Any person or persons who shall in this State act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of this section obligatory upon such person or party, or who shall wilfully make a false or fraudulent statement of the business or condition of any such insurance carrier, or false or fraudulent return as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

(h) Whenever by this article, or the terms of any policy contract, any officer is required to give any notice to an insurance carrier, the same may be given by delivery, or by mailing by registered letter properly addressed and stamped, to the principal office or general agent of such insurance carrier within this State, or to its home office, or to the secretary, general agent, or chief officer thereof in the United States, or the State Insurance Commissioner.

(i) Any insurance carrier liable to pay a tax upon premiums under this article shall not be liable to pay any other or further tax upon such premiums, under any other law of this State.

(j) Every employer carrying his own risk under the provisions of § 97-68 shall, under oath, report to the Commission his payroll, subject to the provisions of this article. Such report shall be made in form prescribed by the Commission, and at the times herein provided for premium reports by insurer. The Commission shall assess against such payroll a maintenance fund tax computed by taking such per cent of the basic premiums charged against the same or most similar industry or business taken from the manual insurance rate then in force in this State as is assessed in the Revenue Act against the insurance carriers for premiums collected on compensation insurance policies. (1929, c. 120, s. 73; 1931, c. 274, s. 13.)

§ 97-76. Collection of fines and penalties.—The Industrial Commission shall have the power by civil action brought in its own name to enforce the collection of any fines or penalties provided by this article, and fines or penalties collected by the Commission shall become a part of the maintenance fund referred to in sub-section (j) of § 97-75. (1931, c. 274, s. 14.)

Art. 2. Compensation Rating and Inspection Bureau.

§ 97-77. Compensation Rating and Inspection Bureau created; objects, functions, etc.—There is hereby created a Bureau to be known as the Compensation Rating and Inspection Bureau of North Carolina, with the following objects, functions and sources of income:

(a) To maintain rules and regulations and fix premium rates for Workmen's Compensation Insurance and equitably adjust the same as far as practicable, in accordance with the hazards of individual risks by inspection by the Bureau.

(b) To furnish upon request of any employer in the State of North Carolina or to any member of the compensation rating and Inspection Bureau of North Carolina, upon whose risk a compensation rate has been promulgated, information as to the rating, including the method of its compilation, and to encourage employers to reduce the number and severity of accidents by offering reduced premium rates for improved working conditions under such uniform system of merit or schedule rating as may be approved by the Insur-

ance Commissioner of the State of North Carolina.

(c) The Bureau shall make a rating survey of each risk inspected which survey shall clearly show the location of all ratable items: Provided, however, that the Bureau shall not describe the items or make any recommendations for accident prevention, such service being reserved as a proper and essential field for the competitive enterprise of its individual members. (1931, c. 279, s. 1.)

§ 97-78. Membership in Bureau of carriers of insurance; acceptance of rejected risks; rules and regulations for maintenance; Insurance Commissioner or deputy ex-officio Chairman. — Before the Insurance Commissioner shall grant permission to any mutual association, reciprocal or stock company, or any other insurance organization to write compensation or employers' liability insurance in this State, it shall be a requisite that they shall subscribe to and become members of the Compensation Rating and Inspection Bureau of North Carolina.

It shall be the duty of all companies underwriting workmen's compensation insurance in this State and being members of the compensation rating and inspection bureau of North Carolina, as defined in this section, to insure and accept any workmen's compensation insurance risk which shall have been tendered to and rejected by any three members of said bureau in the manner hereinafter provided. When any such rejected risk is called to the attention of the compensation rating and inspection bureau of North Carolina and it appearing that said risk is in good faith entitled to such coverage, the bureau shall fix the initial premium therefor, (subject to the approval of the insurance commissioner), and upon its payment said bureau shall designate a member whose duty it shall be to issue a standard workmen's compensation policy of insurance containing the usual and customary provisions found in such policies therefor. Before any such risk shall be assigned under the provisions of this section such risk shall, if demanded, furnish the bureau a certificate of the division of standards and inspection of the department of labor that he is complying with the rules and regulations of that department. The bureau shall within thirty days after March 8, 1935, make and adopt such rules as may be necessary to carry this article into effect, subject to final approval of the insurance commissioner. As a prerequisite to the transaction of workmen's compensation insurance in this State every member of said bureau shall file with the insurance commissioner written authority permitting said bureau to act in its behalf as provided in this section, and an agreement to accept such risks as are assigned to said insurance by said bureau, as provided in this section.

(a) Each member of the Compensation Rating and Inspection Bureau writing compensation insurance in the State of North Carolina shall, as a requisite thereto, be represented in the aforesaid Bureau and shall be entitled to one representative and one vote in the administration of the affairs of the Bureau. They shall, upon organization, elect a governing committee, which governing committee shall be composed of equal representation by participating and non-participating members.

(b) The Bureau, when created, shall adopt such rules and regulations for its procedure as may be necessary for its maintenance and operation. The expense of such bureau shall be borne by its members by quarterly contributions to be made in advance, such necessary expense to be advanced by prorating such expense among the members in accordance with the amount of gross Workmen's Compensation premiums written in North Carolina during the preceding year ending December the thirty-first, one thousand nine hundred and thirty, and members entering since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the bureau the necessary expenses of the bureau shall be advanced by the members in accordance with rules and regulations to be established and adopted by the governing committee.

(c) The Insurance Commissioner of the State of North Carolina, or such deputy as he may appoint, shall be ex officio chairman of the Compensation Rating and Inspection Bureau of North Carolina, and the Insurance Commissioner or such deputy designated by him shall preside over all meetings of the governing committee or other meetings of the Bureau and it shall be his duty to determine any controversy that may arise by reason of a tie vote between the members of the governing committee. (1931, c. 279, s. 2; 1935, c. 76.)

§ 97-79. Governing committee; production of books and records for compilation of appropriate statistics; rates subject to approval of Insurance Commissioner.—In order to carry into effect the objects of this article the Bureau members shall immediately elect its governing committee who shall employ and fix the salaries of such personnel and assistance as is necessary, subject to the approval of the Insurance Commissioner, and the Insurance Commissioner is hereby authorized to compel the production of books, data, papers, and records relating to or bearing upon such data as is necessary to compile statistics for the purpose of determining the pure cost and expense loading of Workmen's Compensation Insurance in North Carolina and this information shall be available and for the use of the Compensation Rating and Inspection Bureau, for the compilation and promulgation of rates on Workmen's Compensation Insurance. All such rates compiled and promulgated by such Bureau shall be submitted to the Insurance Commissioner for approval as provided in § 97-75. (1931, c. 279, s. 3.)

Art. 3. Occupational Diseases.

§ 97-80. Occupational disease made compensable; "accident" defined; diseases excepted under certain conditions. — Disablement or death of an employee resulting from an occupational disease described in § 97-81 shall be treated as the happening of an injury by accident within the meaning of the North Carolina Workmen's Compensation Act and the procedure and practice and compensation and other benefits provided by said act shall apply in all such cases except as hereinafter otherwise provided. The word "accident,"

as used in the Workmen's Compensation Act, shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer, and disease attributable to such causes shall be compensable only if culminating in an occupational disease mentioned in and compensable under this article: Provided, however, no compensation shall be payable for asbestosis and/or silicosis as hereinafter defined if the employee, at the time of entering into the employment of the employer by whom compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled or laid off because of asbestosis or silicosis. (1935, c. 123.)

§ 97-81. Occupational diseases enumerated; when due to exposure to chemicals.—The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this article:

1. Anthrax.
2. Arsenic poisoning.
3. Brass poisoning.
4. Zinc poisoning.
5. Manganese poisoning.
6. Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least thirty days in the preceding twelve months' period, and; provided further only the employer in whose employment such employee was last injuriously exposed shall be liable.
7. Mercury poisoning.
8. Phosphorus poisoning.
9. Poisoning by carbon bisulphide, methanol, naphtha or volatile halogenated hydrocarbons.
10. Chrome ulceration.
11. Compressed-air illness.
12. Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrol-benzol, anilin, and others).
13. Infection or inflammation of the skin or eyes or other external contact surfaces or oral or nasal cavities due to irritating oils, cutting compounds, chemical dust, liquids, fumes, gases or vapors.
14. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
15. Radium poisoning or injury by X-rays.
16. Blisters due to use of tools or appliances in the employment.
17. Bursitis, of the knee or elbow, due to intermittent pressure in the employment.
18. Miner's nystagmus.
19. Bone felon due to constant or intermittent pressure in employment.
20. Synovitis, caused by trauma in employment.
21. Tenosynovitis, caused by trauma in employment.
22. Carbon monoxide poisoning.
23. Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
24. Asbestosis.
25. Silicosis.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals. (1935, c. 123.)

§ 97-82. "Disablement" defined. — The term "disablement" as used in this article as applied to cases of asbestosis and silicosis means the event of becoming actually incapacitated, because of such occupational disease, from performing normal labor in the last occupation in which remuneratively employed; but in all other cases of occupational disease shall be equivalent to "disability" as defined in § 97-2, paragraph (i). (1935, c. 123.)

§ 97-83. "Disability" defined.—The term "disability" as used in this article means the state of being incapacitated as the term is used in defining "disablement" in § 97-82. (1935, c. 123.)

§ 97-84. Limitation on compensable diseases. —The provisions of this article shall apply only to cases of occupational disease in which the last exposure in an occupation subject to the hazards of such diseases occurred on or after March 26, 1935. (1935, c. 123.)

§ 97-85. Persons liable.—In any case where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, which was on the risk when the employee was so last exposed under such employer, shall be liable. (1935, c. 123.)

§ 97-86. Claims for certain diseases restricted; time limit for filing claims.—An employer shall not be liable for any compensation for asbestosis, silicosis or lead poisoning unless disablement or death results within three years after the last exposure to such disease, or, in case of death, unless death follows continuous disability from such disease, commencing within the period of three years limited herein, and for which compensation has been paid or awarded or timely claim made as hereinafter provided and results within seven years after such last exposure. Claims for all other occupational diseases shall be barred unless claims shall be filed with the industrial commission within one year from the disablement or death caused by such occupational disease. (1935, c. 123.)

§ 97-87. Employer to provide treatment.—In the event of disability from an occupational disease, the employer shall provide reasonable medical and/or other treatment for such time as in the judgment of the industrial commission will tend to lessen the period of disability or provide needed relief; provided, however, medical and/or other treatment for asbestosis and/or silicosis shall not exceed a period of three years nor cost in excess of three hundred thirty-four ($334.00) dollars in any one year; and, provided further, all such treatment shall be first authorized by the industrial commission after consulting with the advisory medical committee. (1935, c. 123.)

§ 97-88. Compulsory examination of employees. —The compulsory examination of employees and prospective employees as herein provided applies only to persons engaged or about to engage in an occupation which has been found by the industrial commission to expose them to the hazards of asbestosis and/or silicosis. The industrial commission shall designate by order each industry found subject to any such hazard and shall notify the employers therein before such examinations are required. On and after March 26, 1935, it shall be the duty of every employer, in the conduct of whose business his employees or any of them are subjected to the hazards of asbestosis and/or silicosis, to provide prior to employment necessary examinations of all new employees for the purpose of ascertaining if any of them are in any degree affected by asbestosis and/or silicosis or peculiarly susceptible thereto; and every such employer shall from time to time, as ordered by the industrial commission, provide similar examinations for all of his employees whose employment exposes them to the hazards of asbestosis and/or silicosis. At least one member of the advisory medical committee or other physician designated by the industrial commission shall make such examinations or be present when any such examination is made. The refusal of an employee to submit to any such examination shall bar such employee from compensation or other benefits provided by this article in the event of disablement and/or death resulting from exposure to the hazards of asbestosis and/or silicosis subsequent to such refusal. It shall be the duty of the industrial commission to make and/or order inspections of employments and to keep a record of all employments subjecting employees to the hazards of asbestosis and/or silicosis, and to notify the employer in any case where such hazard shall have been found to exist. The unreasonable failure of an employer to provide for any examination or his unreasonable refusal to permit any inspection herein authorized shall constitute a misdemeanor and shall be punishable as such. (1935, c. 123.)

§ 97-89. Compensation for employee temporarily removed from hazardous employment; payment for training for readjustment to other work; waiver of right to compensation.—Where an employee, though not actually disabled, is found by the industrial commission to be affected by asbestosis and/or silicosis, and it is also found by the industrial commission that such employee would be benefited by being taken out of his employment and that such disease with such employee has progressed to such a degree as to make it hazardous for him to continue in his employment and is in consequence removed therefrom by order of the industrial commission, he shall be paid compensation as for temporary total or partial disability, as the case may be, until he can obtain employment in some other occupation in which there are no hazards of such occupational disease: Provided, however, compensation in no such case shall be paid for a longer period than twenty weeks to an employee without dependents, nor for a longer period than forty weeks to an employee with dependents, and in either case said period shall begin from the date of removal from the employment, unless actual disablement from such disease results later and within the time limited in § 97-86. When in any such case the forced change of occupation shall in the opinion of the industrial commission require that the employee be given special training in order to properly readjust himself there shall be paid for such training and incidental traveling and living expenses an additional sum which shall not exceed three hundred ($300.00) dollars, in the case of an employee without dependents, and which shall not exceed five hundred ($500.00) dollars in the case of an employee with dependents, such payment to be made for the benefit of the employee to such person or persons as the industrial commission may direct; provided, however, no such payment shall be made unless the employee accepts the special training herein provided, nor shall payment be made for a longer period of time than the employee shall accept such special training. If an employee has been so compensated, and whether or not specially trained for another occupation, and he thereafter engages in any occupation which exposes him to hazards of silicosis and/or asbestosis without first having obtained the written approval of the industrial commission, neither he, his dependents, personal representative nor any other person shall be entitled to any compensation for disablement or death from silicosis and/or asbestosis: Provided, however, that an employee so affected, as an alternative to forced change of occupation, may, subject to the approval of the industrial commission, waive in writing his right to compensation for any aggravation of his condition that may result from his continuing in his hazardous occupation; but in the event of total disablement and/or death as a result of asbestosis and/or silicosis with which the employee was so affected compensation shall nevertheless be payable, but in no case, whether for disability or death or both, for a longer period than one hundred (100) weeks. Such written waiver must be filed with the industrial commission, and the commission shall keep a record of each waiver, which record shall be open to the inspection of any interested person. (1935, c. 123.)

§ 97-90. "Silicosis" and "asbestosis" defined. —The word "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of dust of silica or silicates. "Asbestosis" shall mean a characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust. (1935, c. 123.)

§ 97-91. Period necessary for employee to be exposed. — Compensation shall not be payable for disability or death due to silicosis and/or asbestosis unless the employee shall have been exposed to the inhalation of dust of silica or silicates or asbestos dust in employment for a period of not less than two years in this state, provided no part of such period of two years shall have been more than ten years prior to the last exposure. (1935, c. 123.)

§ 97-92. General act to control as regards benefits. — Except as herein otherwise provided, in case of disablement or death from silicosis

and/or asbestosis, compensation shall be payable in accordance with the provisions of the North Carolina Workmen's Compensation Act. (1935, c. 123.)

§ 97-93. Reduction of rate where tuberculosis develops.—In case of disablement or death due primarily from silicosis and/or asbestosis and complicated with tuberculosis of the lungs compensation shall be payable as hereinbefore provided, except that the rate of payments may be reduced one-sixth. (1935, c. 123.)

§ 97-94. Requirement as to written notice of disease to employer or industrial commission; waiver of notice and claim where payments are made; claim where benefits are discontinued. — Unless written notice of the first distinct manifestation of an occupational disease shall be given to the employer in whose employment the employee was last injuriously exposed to the hazards of such disease or to the industrial commission within thirty (30) days after such manifestation, and, in case of death, unless also written notice of such death shall be given by the beneficiary hereunder to the employer or the industrial commission within ninety (90) days after occurrence, and unless claim for disability and/or death shall be made within one (1) year after the disablement or death, respectively, all rights to compensation for disability or death from an occupational disease shall be forever barred: Provided, however, that notice and/or claim shall be deemed waived in case of disability or death where the employer or insurance carrier voluntarily makes compensation payments therefor, or, within the time above limited, has actual knowledge of the incurrence of the disease or of the death and its cause, or by his or its conduct misleads the injured employee or claimant reasonably to believe that notice and/or claim has or have been waived; and, Provided further, that where compensation payments have been made and discontinued, and further compensation is claimed, whether for disability or death from asbestosis, silicosis or lead poisoning, the claim for such further compensation shall be made within two years after the last payment, but in all other cases of occupational disease claim for further compensation shall be made within one year after the last payment. (1935, c. 123.)

§ 97-95. Post-mortem examinations; notice to next of kin and insurance carrier.—Upon the filing of a claim for death from an occupational disease where in the opinion of the industrial commission a post-mortem examination is necessary to accurately ascertain the cause of death, such examination shall be ordered by the industrial commission. A full report of such examination shall be certified to the industrial commission. The surviving spouse or next kin and the employer or his insurance carrier, if their identity and whereabouts can be reasonably ascertained, shall be given reasonable notice of the time and place of such post-mortem examination, and, if present at such examination, shall be given an opportunity to witness the same. Any such person may be present at and witness such examination either in person or through a duly authorized representative. If such examination is not consented to by the surviving husband or wife or next of kin, all right to compensation shall cease. (1935, c. 123.)

§ 97-96. Controverted medical questions. — If on the hearing of a claim for compensation for asbestosis and/or silicosis, any controverted medical question or questions shall arise, the industrial commission shall reserve its decision and award until it shall have received a report from the advisory medical committee; and the industrial commission may in its discretion refer to said committee controverted medical questions arising out of other occupational disease claims. (1935, c. 123.)

§ 97-97. Hearing before advisory medical committee; inspection of medical reports.—The advisory medical committee, upon reference to it of a case of occupational disease shall notify the employee, or, in case he is dead, his dependents or personal representative, and his employer to appear before the advisory medical committee at a time and place stated in the notice. If the employee be living, he shall appear before the advisory medical committee at the time and place specified then or thereafter and he shall submit to such examinations including clinical and x-ray examinations as the advisory medical committee may require. The employee, or, if he be dead, the claimant and the employer shall be entitled to have present at all such examinations, a physician admitted to practice medicine in the state who shall be given every reasonable facility for observing every such examination whose services shall be paid for by the claimant or by the employer who engaged his services. If a physician admitted to practice medicine in the state shall certify that the employee is physically unable to appear at the time and place designated by the advisory medical committee, such committee may, upon the advice of the industrial commission, and on notice to the employer, change the place and/or time of the examination so as to reasonably facilitate the examination of the employee, and in any such case the employer shall furnish transportation and provide for other reasonably necessary expenses incidental to necessary travel. The claimant and the employer shall produce to the advisory medical committee all reports of medical and x-ray examinations which may be in their respective possession or control showing the past or present condition of the employee to assist the advisory medical committee in reaching its conclusions. (1935, c. 123.)

§ 97-98. Report of committee to industrial commission.—The advisory medical committee, shall, as soon as practicable after it has completed its consideration of a case, report to the industrial commission its opinion regarding all medical questions involved in the case. The advisory medical committee shall include in its report a statement of what, if any, physician or physicians were present at the examination on behalf of the claimant or employer and what, if any, medical reports and x-rays were produced by or on behalf of the claimant or employer. (1935, c. 123.)

§ 97-99. Filing report; right of hearing on report.—The advisory medical committee shall file its report in triplicate with the industrial com-

mission, which shall send one copy thereof to the claimant and one copy to the employer by registered mail. Unless within thirty days from receipt of the copy of said report the claimant and/or employer shall request the industrial commission in writing to set the case for further hearing for the purpose of examining and/or cross-examining the members of the advisory medical committee respecting the report of said committee, said report shall become a part of the record of the case and shall be accepted by the industrial commission as expert medical testimony to be considered as such in connection with all the evidence in the case in arriving at its decision. (1935, c. 123.)

§ 97-100. Appointment of advisory medical committee; terms of office; duties and functions; salaries and expenses.—There shall be an advisory medical committee consisting of three members, who shall be licensed physicians in good professional standing and peculiarly qualified in the diagnosis and/or treatment of occupational diseases. They shall be appointed by the industrial commission with the approval of the governor, and one of them shall be designated as chairman of the committee by the industrial commission. The members of committee shall be appointed to serve terms as follows: One for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned the industrial commission shall appoint a successor for a term of six years; except that the terms of the members first appointed shall expire June thirtieth, one thousand nine hundred thirty-six. The function of the committee shall be to conduct examinations and make reports as required by §§ 97-96 to 97-99, and to assist in any post-mortem examinations provided for in § 97-95 when so directed by the industrial commission. Members of the committee shall devote to the duties of the office so much of their time as may be required in the conducting of examinations with reasonable promptness, and they shall attend hearings as scheduled by the industrial commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

The members of the advisory medical committee shall be paid such salaries and/or fees and expenses, and in monthly installments or in such other manner as may be determined by the governor and approved by the advisory budget commission. (1935, c. 123.)

§ 97-101. Expenses of making examinations.—The industrial commission shall establish a schedule of reasonable charges to defray expenses incurred in making examinations pursuant to §§ 97-88 and 97-95, such charges to be collected in accordance with rules and regulations which shall be adopted by the industrial commission. Said charges shall be collected from employers who by order of the industrial commission are determined to be subject to the hazards of asbestosis and/or silicosis. (1935, c. 123.)

§ 97-102. Expense of hearings taxed as costs in compensation cases; fees collected directed to general fund.—In hearings arising out of claims for disability and/or death resulting from occupational diseases the industrial commission shall tax as a part of the costs in cases in which compensation is awarded a reasonable allowance for the services of members of the advisory medical committee attending such hearings and reasonable allowances for the services of members of the advisory medical committee for making investigations in connection with all claims for compensation on account of occupational diseases, including uncontested cases, as well as contested cases, and whether or not hearings shall have been conducted in connection therewith. All such charges, fees and allowances to be collected by the industrial commission shall be paid into the general fund of the state treasury to constitute a fund out of which to pay the expenses of the advisory medical committee. (1935, c. 123.)

§ 97-103. Making up deficiency by assessment upon employers in hazardous industries; provision for annual fund.—In the event the amount appropriated by the general assembly and the charges, fees and allowances so assessed and collected and paid into the state treasury shall not be sufficient to pay the full cost incurred by the advisory medical committee in making examinations of employees, and conducting post-mortem examinations, and in making investigations of claims arising under this article, and in testifying before the industrial commission, the industrial commission shall assess against the employers found by the industrial commission to be subject to the hazards of asbestosis and/or silicosis an amount sufficient to pay such cost, said amount to be assessed against such employers pro rata on the basis of annual payroll. The industrial commission is authorized to assess and collect in advance in the beginning of any year from the employers subject to such hazard an amount estimated as necessary to pay such cost. Said amount when so assessed shall be paid by such employers within ten days after the notice of assessment, and when collected by the industrial commission shall be paid into the state treasury as a part of the fund out of which to pay the expenses of the advisory medical committee. In the event such amount so assessed shall be found to be in excess of the cost incurred by such advisory medical committee in the performance of its duties under this article, such excess shall be credited against the estimate of the cost to be incurred by said committee for the succeeding year. In case the amount so assessed shall be insufficient to pay such cost the industrial commission is authorized to make an additional assessment to be made at the end of the regular assessment period and to be collected from the employers subject to the hazards of asbestosis and/or silicosis. (1935, c. 123.)

§ 97-104. Inspection of hazardous employments; refusal to allow inspection made misdemeanor.—The industrial commission shall make inspections of employments for the purpose of ascertaining whether such employments, or any of them, are subject to the hazards of asbestosis and/or silicosis, and for the purpose of making studies and recommendations with a view to reducing and/or eliminating such hazards. The industrial commission, and/or any person selected by it, is

authorized to enter upon the premises of employers where employments covered by this article are being carried on to make examinations and studies as aforesaid. Any employer, or any officer or agent of an employer, who unreasonably prevents or obstructs any such examinations or study shall be guilty of a misdemeanor. (1935, c. 123.)

Art. 4. Security Funds.

§ 97-105. Title of article.—This article shall be known as the Workmen's Compensation Security Fund Act. (1935, c. 228, s. 1.)

§ 97-106. Definitions.—As hereafter used in this article, unless the context or subject matter otherwise requires:

"Stock fund" means the stock workmen's compensation security fund created by this article.

"Mutual fund" means the mutual workmen's compensation security fund created by this article.

"Funds" means the stock fund and the mutual fund.

"Fund" means either the stock fund or the mutual fund as the context may require.

"Fund year" means the calendar year.

"Stock carrier" means any stock corporation authorized to transact the business of workmen's compensation insurance in this State, except an insolvent stock carrier.

"Mutual carrier" means any mutual corporation or association and any reciprocal or inter-insurance exchange authorized to transact the business of workmen's compensation insurance in this State, except an insolvent mutual carrier.

"Carrier" means either a stock carrier or a mutual carrier, as the context may require.

"Insolvent stock carrier" or "insolvent mutual carrier" means a stock carrier or a mutual carrier, as the case may be, which has been determined to be insolvent, or for which or for the assets of which a receiver has been appointed by a court or public officer of competent jurisdiction and authority.

"Commissioner" means the Insurance Commissioner of this State.

"Workmen's compensation act" means the workmen's compensation act of the State of North Carolina, being §§ 97-1 to 97-76 as amended and supplemented. (1935, c. 228, s. 2; 1941, c. 298, s. 1.)

§ 97-107. Stock workmen's compensation security fund created.—There is hereby created a fund to be known as "The Stock Workmen's Compensation Security Fund," for the purpose of assuring to persons entitled thereto the compensation provided by the workmen's compensation act for employments insured in insolvent stock carriers. Such fund shall be applicable to the payment of valid claims for compensation or death benefits heretofore or hereafter made pursuant to the workmen's compensation act, and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this article, of an insolvent stock carrier. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by stock carriers, as herein defined, all property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys deposited or invested as herein provided. The fund shall be administered by the commissioner of this State in accordance with the provisions of this article. (1935, c. 228, s. 3.)

§ 97-108. Verified report of premiums to be filed by stock carrier.—Every stock carrier shall, on or before the first day of September, nineteen hundred and thirty-five, file with the treasurer of the State and with the commissioner identical returns, under oath, on a form to be prescribed and furnished by the commissioner, stating the amount of net written premiums for the six months' period ending June thirtieth, nineteen hundred thirty-five on policies issued, renewed or extended by such carrier, to insure payment of compensation pursuant to the workmen's compensation act. For the purposes of this article "net written premiums" shall mean gross written premiums less return premiums on policies returned not taken, and on policies canceled. Thereafter, on or before the first day of March and September of each year, each such carrier shall file similar identical returns, stating the amount of such net written premiums for the six months' period ending, respectively, on the preceding December thirty-first and June thirtieth, on policies issued, renewed or extended by such carrier. (1935, c. 228, s. 4.)

§ 97-109. Contributions by stock carriers of 1% of net written premiums.—For the privilege of carrying on the business of workmen's compensation insurance in this State, every stock carrier shall pay into the stock fund on the first day of September, nineteen hundred thirty-five, a sum equal to one per centum (1%) of its net written premiums as shown by the return hereinbefore prescribed for the period ending June thirtieth, nineteen hundred thirty-five, and thereafter each such stock carrier, upon filing each semi-annual return, shall pay a sum equal to one per centum (1%) of its net written premiums for the period covered by such return. (1935, c. 228, s. 5.)

§ 97-110. Contributions to stop when stock fund equals 5% of loss reserves; resumption of contributions. — When the aggregate amount of all such payments into the stock fund, together with accumulated interest thereon, less all its expenditures and known liabilities, becomes equal to five per centum (5%) of the loss reserves of all stock carriers for the payment of benefits under the workmen's compensation act as of December thirty-first, next preceding, no further contributions to said fund shall be required to be made; provided, however, that whenever, thereafter, the amount of said fund shall be reduced below five per centum (5%) of such loss reserves as of said date by reason of payments from and known liabilities of said stock fund, then such contribution to said fund shall be resumed forthwith, and shall continue until said fund, over and above its known liabilities, shall be equal to five per centum (5%) of such reserves. (1935, c. 228, s. 6.)

§ 97-111. Rules and regulations for administration of stock fund; examination of books and records; penalty for failure to file report or pay

assessment; revocation of license.—The commissioner may adopt, amend and enforce rules and regulations necessary for the proper administration of said stock fund. In the event any stock carrier shall fail to file any return or make any payment required by this article, or in case the commissioner shall have cause to believe that any return or other statement filed is false or inaccurate in any particular, or that any payment made is incorrect, he shall have full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts and shall determine the correct amount to be paid and may proceed in any court of competent jurisdiction to recover for the benefit of the fund any sums shown to be due upon such examination and determination. Any stock carrier which fails to make any statement as required by this article, or to pay any contribution to the stock fund when due, shall thereby forfeit to said fund a penalty of five per centum (5%) of the amount of unpaid contribution determined to be due as provided by this article plus one per centum (1%) of such amount for each month of delay, or fraction thereof, after the expiration of the first month of such delay, but the commissioner may upon good cause shown extend the time for filing of such return or payment. The commissioner shall revoke the certificate of authority to do business in this State of any carrier which shall fail to comply with the provisions of this article or to pay any penalty imposed in accordance with this article. (1935, c. 228, s. 7.)

§ 97-112. Separation of stock fund; disbursements; investment; sale of securities.—The stock fund created by this article shall be separate and apart from any other fund so created and from all other state moneys. The state treasurer shall be the custodian of said fund; and all disbursements from said fund shall be made by the state treasurer upon vouchers signed by the commissioner as hereinafter provided. The moneys of said fund may be invested by the state treasurer only in the bonds or securities which are the direct obligations of or which are guaranteed as to principal and interest by the United States or this State. The state treasurer may sell any of the securities in which said fund is invested, if advisable for its proper administration or in the best interests of such fund, and all earnings from the investments of such fund shall be credited to such fund. (1935, c. 228, s. 8.)

§ 97-113. Payment of claim from stock fund when carrier insolvent; subrogation of employer paying claim; recovery against employer or receiver of insolvent carrier.—A. A valid claim for compensation or death benefits, or installments thereof, heretofore or hereafter made pursuant to the workmen's compensation act, which has remained or shall remain due and unpaid for sixty days, by reason of default by an insolvent stock carrier, shall be paid from the stock fund in the manner provided in this section. Any person in interest may file with the commissioner an application for payment of compensation or death benefits from the stock fund on a form prescribed and furnished by the commissioner. If there has been an award, final or otherwise, a certified copy thereof shall accompany the application. The commissioner shall thereupon certify to the state treasurer such award for payment according to the terms of the same, whereupon payment shall be made by the state treasurer.

B. Payment of compensation from the stock fund shall give the fund no right of recovery against the employer.

C. An employer may pay such award or part thereof in advance of payment from the stock fund and shall thereupon be subrogated to the rights of the employee or other party in interest against such fund to the extent of the amount so paid.

D. The state treasurer as custodian of the stock fund shall be entitled to recover the sum of all liabilities of such insolvent carrier assumed by such fund from such carrier, its receiver, liquidator, rehabilitator or trustee in bankruptcy and may prosecute an action or other proceedings therefor. All moneys recovered in any such action or proceedings shall forthwith be placed to the credit of the stock fund by the state treasurer to reimburse the stock fund to the extent of the moneys so recovered and paid. (1935, c. 228, s. 9.)

§ 97-114. Mutual workmen's compensation security fund created. — There is hereby created a fund to be known as "The Mutual Workmen's Compensation Security Fund," for the purpose of assuring to persons entitled thereto the compensation provided by the workmen's compensation act for employments insured in insolvent mutual carriers. Such fund shall be applicable to the payment of valid claims for compensation or death benefits heretofore or hereafter made pursuant to the workmen's compensation act, and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this article, of an insolvent mutual carrier. Expenses of administration also shall be paid from the fund as herein provided. Such fund shall consist of all contributions received and paid into the fund by mutual carriers, as herein defined, of property and securities acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys deposited or invested as herein provided. The fund shall be administered by the commissioner in accordance with the provisions of this article. (1935, c. 228, s. 10.)

§ 97-115. Verified report of premiums to be filed by mutual carrier; equalization of payments by reciprocal or inter-insurance exchanges.—Every mutual carrier shall, on or before the first day of September, nineteen hundred thirty-five, file with the treasurer of the State and with the commissioner identical returns, under oath, on a form to be prescribed and furnished by the commissioner of insurance, stating the amount of net written premiums for the six months' period ending June thirtieth, nineteen hundred thirty-five, on policies issued, renewed or extended by such carrier, to insure payment of compensation pursuant to the workmen's compensation act during said period. For the purpose of this article "net written premiums" shall mean gross written premiums less return premiums on policies returned not taken and on policies cancelled. Thereafter, on or before the first day of March and September, of

each year, each such carrier shall file similar identical returns, stating the amount of such net written premiums for the six months' periods ending, respectively, on the preceding December thirty-first and June thirtieth, on such policies issued, renewed or extended by such carrier.

Any reciprocal or inter-insurance exchange writing workmen's compensation insurance in North Carolina on September first, one thousand nine hundred and thirty-five and continuing to underwrite this class of insurance shall, upon the fund reaching its maximum contribution and the discontinuance of any collection thereof, continue to pay into said mutual fund as provided in this section for a period of six years after the other members of the mutual fund have discontinued said payments in order to equalize the contribution of all members of the mutual fund, and thereafter such reciprocal or inter-insurance exchanges shall be subject to the provisions of this section. (1935, c. 228, s. 11; 1941, c. 298, s. 2.)

§ 97-116. Contributions by mutual carriers of 1% of net written premiums.—For the privilege of carrying on the business of workmen's compensation insurance in this State, every mutual carrier shall pay into the mutual fund on the first day of September, nineteen hundred thirty-five, a sum equal to one per centum (1%) of its net written premiums, as shown by the return hereinbefore prescribed for the period ending June thirtieth, nineteen hundred thirty-five, and thereafter each such mutual carrier, upon filing each semi-annual return, shall pay a sum equal to one per centum (1%) of its net written premiums, as shown for the period covered by such return. (1935, c. 228, s. 12.)

§ 97-117. Distribution of excess when mutual fund equals to 5% of loss reserves; distribution of fund when liabilities liquidated. — Whenever the mutual fund, less all its known liabilities, shall exceed five percentum (5%) of the loss reserves of all mutual carriers for the payments of losses under the workmen's compensation act, as of December thirty-first next preceding, distribution of such excess shall be made as repayments for successive fund years, commencing with the first fund year, to the mutual carriers in the proportion in which they respectively made contributions for such fund year: Provided, however, no such distribution shall reduce the fund, less all its known liabilities, below an amount equal to five per centum (5%) of such loss reserves as of said date. Such repayments shall be made from time to time until the mutual carriers for the first fund year shall have received their proportionate shares of the contributions for the first fund year including interest, if any. Such repayments for succeeding fund years in their order shall be made on the same basis. The insolvency of any mutual carrier shall automatically terminate its right to such repayments and the withdrawal of any mutual carrier from the transaction of workmen's compensation insurance business in this State shall automatically suspend its right to such repayments until all its liabilities for workmen's compensation losses in this State shall have been fully liquidated. If and when all liabilities of all mutual carriers for workmen's compensation losses in this State shall have been fully liquidated, distribution shall be made of the remaining balance of the mutual fund in the proportion in which each such mutual carrier made contributions to the mutual fund. (1935, c. 228, s. 13.)

§ 97-118. Administration, custody, etc., of mutual fund. — The provisions of §§ 97-111, 97-112, and 97-113 shall apply to the administration, custody and investment of and payments from the mutual fund and to this end those sections shall be read with the necessary changes in detail to adopt their provisions to mutual funds. (1935, c. 228, s. 14.)

§ 97-119. Notice of insolvency; report of claims and unpaid awards.—Forthwith upon any carrier becoming an insolvent stock carrier, or an insolvent mutual carrier, as the case may be, the commissioner shall so notify the North Carolina industrial commission, and the North Carolina industrial commission shall immediately advise the commissioner (a) of all claims for compensation pending or thereafter made against an employer insured by such insolvent carrier, or against such insolvent carrier; (b) of all unpaid or continuing agreements, awards or decisions made upon claims prior to or after the date of such notice from the commissioner; and (c) of all appeals from or applications for modifications or rescission or review of such agreements, awards or decisions. (1935, c. 228, s. 15.)

§ 97-120. Right of commissioner to defend claims against insolvent carriers; arrangement with other carriers to pay claims.—The commissioner or his duly authorized representative may investigate and may defend before the North Carolina industrial commission or any court any or all claims for compensation against an employer insured by an insolvent carrier or against such insolvent carrier and may prosecute any pending appeal or may appeal from or make application for modification or rescission or review of an agreement, award or decision against such employer or insolvent carrier. Until all such claims for compensation are closed and all such awards thereon are paid, the commissioner, the administrator of the funds, shall be a party in interest in respect to all such claims, agreements and awards. For the purposes of this article the commissioner shall have exclusive power to select and employ such counsel, clerks and assistants as may be deemed necessary and to fix and determine their powers and duties, and he may also, in his discretion, arrange with any carrier or carriers to investigate and defend any or all such claims and to liquidate and pay such as are valid and the commissioner may from time to time reimburse, from the appropriate fund, such carrier or carriers for compensation payments so made, together with reasonable allowance for the services so rendered. (1935, c. 228, s. 16.)

§ 97-121. Expenses of administering funds.—The expense of administering the stock fund shall be paid out of the stock fund and the expense of administering the mutual fund shall be paid out of the mutual fund. The commissioner shall serve as administrator of each fund without additional compensation, but may be allowed and paid from either fund expenses incurred in the performance

of his duties in connection with that fund. The compensation of those persons employed by the commissioner shall be deemed administration expenses payable from the fund in the manner provided in § 97-112. The commissioner shall include in his regular report to the legislature a statement of the expense of administering each of such funds for the preceding year. (1935, c. 228, s. 17.)

§ 97-122. Contributions relieving carrier of posting bond or making special deposit.—Contributions made by any stock or mutual carrier to the funds created by this article shall relieve such carriers from filing any surety bond or making any deposit of securities required under the provisions of any law of this State for the purpose of securing the payment of workmen's compensation benefits only. (1935, c. 228, s. 18.)

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Chapter 98. Burnt and Lost Records.

Sec.
98-1. Copy of destroyed record as evidence; may be recorded.
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98-20. Expenses borne by applicant.

§ 98-1. Copy of destroyed record as evidence; may be recorded.—When the office of any registry is destroyed by fire or other accident, and the records and other papers thereof are burnt or destroyed, the copies of all such proceedings, instruments and papers as are of record or registry, certified by the proper officer, though without the seal of office, shall be received in evidence whenever the original or duly certified exemplications would be. Such copies, when the court is satisfied of their genuineness, may be ordered to be recorded or registered. (Rev., s. 327; Code, s. 55; C. S. 365.)

§ 98-2. Originals may be again recorded.—All original papers, once admitted to record or registry, whereof the record or registry is destroyed, may, on motion, be again recorded or registered, on such proof as the court shall require. (Rev., s. 328; Code, s. 56; C. S. 366.)

§ 98-3. Establishing boundaries and interest, where conveyance and copy lost. — When any conveyance of real estate, or of any right or interest therein, is lost, the registry thereof being also destroyed, any person claiming under the same may cause the boundaries thereof to be established in the manner provided in the chapter entitled Boundaries, or he may proceed in the following manner to establish both the boundaries and the nature of his estate:

He shall file his petition before the clerk of the superior court, setting forth the whole substance of the conveyance as truly and specifically as he can, the location and boundaries of his land, whose land it adjoins, the estate claimed therein, and a prayer to have his own boundaries established and the nature of his estate declared.

All persons claiming any estate in the premises, and those whose lands adjoin, shall be notified of the proceedings. Unless they or some of them, by answer on oath, deny the truth of all or some of the matters alleged, the clerk shall order a surveyor to run and designate the boundaries of the petitioner's land, and return his survey, with a plot thereof, to the court. This, when confirmed, shall, with the declaration of the court as to the nature of the estate of the petitioner, be registered and have, as to the persons notified, the effect of a deed for the same, executed by the person possessed of the same next before the petitioner. But in all cases, however, wherein the process of surveying is disputed, and the surveyor is forbidden to proceed by any person interested, the same proceedings shall be had as under the chapter entitled Boundaries.

If any of the persons notified deny by answer the truth of the conveyance, the clerk shall transfer the issues of fact to the superior court at term, to be tried as other issues of fact are required by law to be tried; and on the verdict and the pleadings the judge shall adjudge the rights of the parties, and declare the contents of the deed, if any deed is found by the jury, and allow the registration of such judgment and declaration, which shall have the force and effect of a deed. (Rev., s. 328; Code, s. 56; C. S. 367.)

§ 98-4. Copy of lost will may be probated.—In counties where the original wills on file in the office of the clerk of superior court, and will-books containing copies, are lost or destroyed, if the executor or any other person has preserved a copy of a will (the original being so lost or destroyed) with a certificate appended, signed by a clerk of the court in whose office the will was, or is required to be filed, stating that said copy is a correct one, this copy may be admitted to probate, under the same rules and in the same manner as now prescribed by law for proving wills. The proceedings in such cases shall be the same as though such copy was the original offered for the first time for probate, except that the clerk who signed such certificate shall, on oath, acknowledge his signature, or in case it appears that he has died or left the state, then his signature shall be proved by a competent witness; and the witness or witnesses to the original, who may be examined, shall be required to swear that he or they signed in the presence of the testator and by his direction a paper-writing purporting to be his last will and testament. (Rev., s. 329; Code, s. 57; C. S. 368.)

§ 98-5. Copy of lost will as evidence; letters to issue.—In any action or proceeding at law, where it becomes necessary to introduce such will to establish title, or for any other purpose, a copy

of the will and of the record of the probate, with a certificate signed by the clerk of the superior court for the county where the will may be recorded, stating that said record and copy are full and correct, shall be admitted as competent evidence; and when a copy of a will is admitted to probate, the clerk shall thereupon issue letters testamentary. (Rev., s. 330; Code, s. 58; C. S. 369.)

§ 98-6. Establishing contents of will, where original and copy destroyed.—Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file his petition in the office of the clerk of the superior court, setting forth the entire contents thereof, according to the best of his knowledge, information and belief. All persons having an interest under the same shall be made parties, and if the truth of such petition is denied, the issues of fact shall be transferred to the superior court at term for trial by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the judge shall be recorded as the will of the testator. Any devisee or legatee is a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same. (Rev., s. 331; Code, s. 59; C. S. 370.)

§ 98-7. Perpetuating destroyed judgments and proceedings.—Every person desirous of perpetuating the contents of destroyed judgments, orders or proceedings of court, or any paper admitted to record or registration, or directed to be filed for safe keeping, other than wills or conveyances of real estate, or some right or interest therein, or any deed or other instrument of writing, required to be recorded or registered, but not having been recorded or registered, it being competent to register or record said deed or other instrument at the time of its loss or destruction, may file his petition in the court having jurisdiction of like matters with the original proceeding, setting forth the substance of the whole record, deed, proceeding, or paper, which he desires to perpetuate. If, on the hearing, the court shall declare the existence of such record, deed, or proceeding, or paper at the time of the burning of the office wherein the same was lodged or kept, or other destruction thereof, and that the same was there destroyed, and shall declare the contents thereof, such declaration shall be recorded or registered, or filed, according to the nature of the paper destroyed. (Rev., s. 332; Code, s. 60; C. S. 371.)

§ 98-8. Color of title under destroyed instrument.—Every person who has been in the continual, peaceable and quiet possession of land, tenements, or hereditaments, situated in the county, claiming, using and occupying them as his own, for the space of seven years, under known boundaries, the title thereto being out of the state, is deemed to have been lawfully possessed, under color of title, of such estate therein as has been claimed by him during his possession, although he may exhibit no conveyance therefor: Provided, that such possession commenced before the destruction of the registry office, or other destruction as aforesaid, and also that any such person, or any person claiming by, through or under him, makes affidavit and produces such proof as is satisfactory to the court that the possession was rightfully taken; and if taken under a written conveyance, that the registry thereof was destroyed by fire or other means, or was destroyed before registry as aforesaid, and that neither the original nor any copy thereof is in existence: Provided further, that such presumption shall not arise against infants, persons of nonsane memory, and persons residing out of the state, who were such at the time of possession taken, and were not therefore barred, nor were so barred at the time of the burning of the office or other destruction. (Rev., s. 333; Code, s. 61; C. S. 372.)

§ 98-9. Action on destroyed bond.—Actions on official or other bonds lodged in any office which are destroyed with the registry thereof may be prosecuted by petition against the principal and sureties thereto, and the proceedings shall be as in the former courts of equity. (Rev., s. 334; Code, s. 62; C. S. 373.)

§ 98-10. Destroyed witness tickets; duplicates may be filed.—The court having jurisdiction of the action may allow other witness tickets to be filed in place of such as may be destroyed, upon the oath of the witness or other satisfactory proof. (Rev., s. 335; Code, s. 63; C. S. 374.)

§ 98-11. Replacing lost official conveyances.—Where any conveyance executed by any person, sheriff, clerk and master, or commissioner of court has been lost, and registry thereof destroyed as aforesaid, and there is no copy thereof, such persons, whether in or out of office, may execute another of like tenor and date, reciting therein that the same is a duplicate, and such deed shall be evidence of the facts therein recited, in all cases wherein the parties thereto are dead, or are incompetent witnesses to prove the same, to the extent as if it was the original conveyance. (Rev., s. 336; Code, s. 64; C. S. 375.)

§ 98-12. Court records as proof of destroyed instruments set out therein.—The records of any court in or out of the state, and all transcripts of such records, and the exhibits filed therewith in any case, are admissible to prove the existence and contents of all deeds, wills, conveyances, depositions and other papers, copies whereof are therein set forth or exhibited, in all cases where the records and registry of such as were or ought to have been recorded and registered, or the originals of such as were not proper to be recorded or registered, have been destroyed as aforesaid, although such transcripts or exhibits have been informally certified; and when offered in evidence have the like effect as though the transcript or record was the record of the court whose records are destroyed, and the deeds, wills and conveyances, depositions and other papers therein copied or therewith exhibited were original. (Rev., s. 337; Code, s. 65; C. S. 376.)

§ 98-13. Copies contained in court records may be recorded.—The copies aforesaid of all such deeds, wills, conveyances and other instruments proper to be recorded or registered, as are mentioned in § 98-12, may be recorded or registered on application to the clerk of the superior court

and due proof that the original thereof was genuine. (Rev., s. 338; Code, s. 66; C. S. 377.)

§ 98-14. Rules for petitions and motions.—The following rules shall be observed in petitions and motions under this chapter:

1. The facts stated in every petition or motion shall be verified by affidavit of the petitioner that they are true according to the best of his knowledge, information, and belief.

2. The instrument or paper sought to be established by any petition shall be fully set forth in its substance, and its precise language shall be stated when the same is remembered.

3. All persons interested in the prayers of the petition or decree shall be made parties.

4. Petitions to establish a record of any court shall be filed at term in the superior court of the county where the record is sought to be established. Other petitions may be filed in the office of the clerk.

5. The costs shall be paid as the court may decree.

6. Appeals shall be allowed as in all other cases, and where the error alleged shall be a finding by the superior court at term, of a matter of fact, the same may be removed on appeal to the supreme court, and the proper judgments directed to be entered below.

7. It shall be presumed that any order or record of the court of pleas and quarter sessions, which was made and has been lost or destroyed, was made by a legally constituted court, and the requisite number of justices, without naming said justices. (Rev., s. 339; Code, s. 67; 1893, c. 295; C. S. 378.)

§ 98-15. Records allowed under this chapter to have effect of original records.—The records and registries allowed by the court in pursuance of this chapter shall have the same force and effect as original records and registries. (Rev., s. 340; Code, s. 68; C. S. 379.)

§ 98-16. Destroyed court records proved prima facie by recitals in conveyances executed before their destruction.—The recitals, reference to, or mention of any decree, order, judgment or other record of any court of record of any county in which the courthouse, or records of said courts, or both, have been destroyed by fire or otherwise, contained, recited or set forth in any deed of conveyance, paper-writing, or other bona fide written evidence of title, executed prior to the destruction of the courthouse and records of said county, by any executor or administrator with a will annexed, or by any clerk and master, superior court clerk, clerk of the court of pleas and quarter sessions, sheriff, or other officer, or commissioners appointed by either of said courts, and authorized by law to execute said deed or other paper-writing, are deemed, taken and recognized as true in fact, and are prima facie evidence of the existence, validity and binding force of said decree, order, judgment or other record so referred to or recited in said deed or paper-writing, and are to all intents and purposes binding and valid against all persons mentioned or described in said instrument of writing, deed, etc., as purporting to be parties thereto, and against all persons who were parties to said decree, judgment, order or other record so referred to or recited, and against all persons claiming by, through or under them or either of them. (Rev., s. 341; Code, s. 69; C. S. 380.)

§ 98-17. Conveyances reciting court records prima facie evidence thereof.—Such deed of conveyance, or other paper-writing, executed as aforesaid, and registered according to law, may be read in any suit now pending or which may hereafter be instituted in any court of this state, as prima facie evidence of the existence and validity of the decree, judgment, order, or other record upon which the same purports to be founded, without any other or further restoration or reinstatement of said decree, order, judgment, or record than is contained in this chapter. (Rev., s. 342; Code, s. 70; C. S. 381.)

§ 98-18. Court records and conveyances to which chapter extends.—This chapter shall extend to records of any court which have been or may be destroyed by fire or otherwise, and to any deed of conveyance, paper-writing, or other bona fide evidence of title executed before the destruction of said records. (Rev., s. 343; Code, s. 71; C. S. 382.)

Local Modification.—Moore: C. S. 383; Cherokee, Graham, Haywood, and Madison: C. S. 384; 1935, c. 25.

§ 98-19. Replacement of stolen, lost or destroyed state or municipal bonds; indemnity bond.—The State Treasurer of the State of North Carolina, by and with the consent and approval of the governor and council of State, and the governing boards of the several counties, cities and political sub-divisions of the State, is hereby authorized and empowered to make settlement for or issue new bonds for bonds of the State or any of the political sub-divisions thereof, which have been stolen, lost or destroyed: Provided, that there is furnished an indemnity bond in double the amount of the said bonds, said indemnity bond to be approved by the State Treasurer or the governing boards of any political sub-division of the State issuing said replacement bonds: Provided further, that said indemnity bond shall clearly designate the bonds which have been stolen, lost or destroyed. (1935, c. 292, s. 1.)

§ 98-20. Expenses borne by applicant.—All expenses in connection with printing and issuing any replacement bonds provided for in this article shall be borne by the person making application therefor. (1935, c. 292, s. 2.)

Chapter 99. Libel and Slander.

Sec.
99-1. Libel against newspaper; notice before action.
99-2. Effect of publication in good faith and retraction.
99-3. Anonymous communications.
99-4. Charging innocent woman with incontinency.

§ 99-1. Libel against newspaper; notice before action.—Before any action, either civil or criminal, is brought for the publication, in a newspaper or periodical, of a libel, the plaintiff or prosecutor shall at least five days before instituting such action serve notice in writing on the defendant, specifying the article and the statements therein which he alleges to be false and defamatory. (Rev., s. 2012; 1901, c. 557; C. S. 2429.)

§ 99-2. Effect of publication in good faith and retraction.— If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case, if a civil action, shall recover only actual damages, and if, in a criminal proceeding, a verdict of "guilty" is rendered on such a state of facts, the defendant shall be fined a penny and the costs, and no more. (Rev., s. 2013; 1901, c. 557; C. S. 2430.)

§ 99-3. Anonymous communications.—The two preceding sections shall not apply to anonymous communications and publications. (Rev., s. 2014; 1901, c. 557, s. 3; C. S. 2431.)

§ 99-4. Charging innocent woman with incontinency.—Whereas doubts have arisen whether actions of slander can be maintained against persons who may attempt, in a wanton and malicious manner, to destroy the reputation of innocent and unprotected women, whose very existence in society depends upon the unsullied purity of their character, therefore any words written or spoken of a woman, which may amount to a charge of incontinency, shall be actionable. (Rev., s. 2015; Code, s. 3763; R. C., c. 106; 1808, c. 478; C. S. 2432.)

Chapter 100. Monuments, Memorials and Parks.

Art. 1. Memorials Commission.

Sec.
100-1. Memorials commission created; members; officers; quorum, etc.
100-2. Approval of memorials before acceptance by state; regulation of existing memorials, etc.; "work of art" defined; highway markers.
100-3. Approval of design, etc., of certain bridges and other structures.
100-4. Governor to accept works of art approved by commission.
100-5. Duties as to buildings erected or remodeled by state.
100-6. Disqualification to vote on work of art, etc.; vacancy.
100-7. Construction.
100-8. Memorials to persons within twenty-five years of death; acceptance of commemorative funds for useful work.

Art. 2. Memorials Financed by Counties and Cities.

Sec.
100-9. County commissioners may protect monuments.
100-10. Counties, cities, and towns may contribute toward erection of memorials.

Art. 3. Mount Mitchell Park.

100-11. Duties.
100-12. Roads, trails, and fences authorized; protection of property.
100-13. Fees for use of improvements; fees for other privileges; leases; rules and regulations.
100-14. Use of fees and other collections.
100-15. Annual reports.

Art. 4. Toll Roads or Bridges in Public Parks.

100-16. Private operation of toll roads or bridges in public parks prohibited.

Art. 1. Memorials Commission.

§ 100-1. Memorials commissions created; members; officers; quorum, etc.—A memorials commission in and for the state of North Carolina is hereby created, to consist of the following officials, ex-officio: The governor of North Carolina, the secretary of the North Carolina historical commission, the head of the art department of the University of North Carolina at Chapel Hill, the head of the history department of the University of North Carolina at Chapel Hill, and the head of the department of architecture of the North Carolina State College of Agriculture and Engineering. The memorials commission shall have the power to adopt its own rules and to elect such officers from its own members as may be deemed proper. Three commissioners shall constitute a quorum. The members shall serve without compensation. (1941, c. 341, s. 1.)

§ 100-2. Approval of memorials before acceptance by state; regulation of existing memorials, etc.; "work of art" defined; highway markers.—No memorial or work of art shall hereafter become the property of the state by purchase, gift or otherwise, unless such memorial or work of art or a design of the same, together with the proposed location of the same, shall first have been submitted to and approved by said memorials commission; nor shall any memorial or work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the state. No existing memorial or work of art owned by the state shall be removed, relocated, or altered in any way without approval of the memorials commission. The term "work of art" as used in this section shall include any painting, portrait, mural decoration, stained glass, statue, bas-relief, sculpture, monument, tablet, fountain, or other article or structure of a permanent character intended for decoration or commemoration. This

section, however, shall not apply to markers set up by the state highway and public works commission in coöperation with the department of conservation and development and the state historical commission as provided by chapter one hundred and ninety-seven of the Public Laws of one thousand nine hundred and thirty-five. (1941, c. 341, s. 2.)

§ 100-3. Approval of design, etc., of certain bridges and other structures.—No bridge, arch, gate, fence or other structure intended primarily for ornamental or memorial purposes and which is paid for either wholly or in part by appropriation from the state treasury, or which is to be placed on or allowed to extend over any property belonging to the state, shall be begun unless the design and proposed location thereof shall have been submitted to said memorials commission and approved by it. Furthermore, no existing structures of the kind named and described in the preceding part of this section owned by the state, shall be removed or remodeled without submission of the plans therefor to the commission and approval of said plans by the commission. This section shall not be construed as amending or repealing chapter one hundred and ninety-seven of the Public Laws of one thousand nine hundred and thirty-five. (1941, c. 341, s. 3.)

§ 100-4. Governor to accept works of art approved by commission.—The governor of North Carolina is hereby authorized to accept, in the name of the state of North Carolina, gifts to the state of works of art as defined in § 100-2. But no work of art shall be so accepted unless and until the same shall have been first submitted to said memorials commission and by it judged worthy of acceptance. (1941, c. 341, s. 4.)

§ 100-5. Duties as to buildings erected or remodeled by state.—Upon request of the governor and the board of public buildings and grounds, said memorials commission shall act in an advisory capacity relative to the artistic character of any building constructed, erected, or remodeled by the state. The term "building" as used in this section shall include structures intended for human occupation, and also bridges, arches, gates, walls, or other permanent structures of any character not intended primarily for purposes of decoration or commemoration. (1941, c. 341, s. 5.)

§ 100-6. Disqualification to vote on work of art, etc.; vacancy.—Any member of said memorials commission who shall be employed by the state to execute a work of art or structure of any kind requiring submission to the commission, or who shall take part in a competition for such work of art or structure, shall be disqualified from voting thereon, and the temporary vacancy thereby created may be filled by appointment by the governor. (1941, c. 341, s. 6.)

§ 100-7. Construction.—The provisions of this article shall not be construed to include exhibits of an educational nature arranged by museums or art galleries administered by the state or any of its agencies or institutions, or to prevent the placing of portraits of officials, officers, or employees of the state in the offices or buildings of the departments, agencies, or institutions with which such officials, officers, or employees are or have been connected. But upon request of such museums or agencies, said memorials commission shall act in an advisory capacity as to the artistic qualities and appropriations of memorial exhibits or works of art submitted to it. (1941, c. 341, s. 7.)

§ 100-8. Memorials to persons within twenty-five years of death; acceptance of commemorative funds for useful work.—No monument, statue, tablet, painting, or other article or structure of a permanent nature intended primarily to commemorate any person or persons shall be purchased from state funds or shall be placed in or upon or allowed to extend over state property within twenty-five years after the death of the person or persons so commemorated: Provided, nevertheless, that nothing in this article shall be interpreted as prohibiting the acceptance of funds by state agencies or institutions from individuals or societies who wish to commemorate some person or persons by providing funds for educational, health, charitable, or other useful work. The agency or institution to which such funds are offered for memorial enterprises shall exercise its discretion as to the acceptance and expenditure of such funds. (1941, c. 341, s. 8.)

Art. 2. Memorials Financed by Counties and Cities.

§ 100-9. County commissioners may protect monuments.—When any monument has been or shall hereafter be erected to the memory of our Confederate dead or to perpetuate the memory and virtues of our distinguished dead, if such monument is erected by the voluntary subscription of the people and is placed on the courthouse square, the board of county commissioners of such county are permitted to expend from the public funds of the county an amount sufficient to erect a substantial iron fence around such monument in order that the same may be protected. (Rev., s. 3928; 1905, c. 457; C. S. 6934.)

§ 100-10. Counties, cities, and towns may contribute toward erection of memorials. — Any county, city or town by resolution first adopted by its governing body may become a member of any memorial association or organization for perpetuating the memory of the soldiers and sailors of North Carolina who served the United States in the great world war, or who fought in the war between the states, and may subscribe and pay toward the cost of the erection of any memorial to the memory of such soldiers and sailors such sums of money as its governing body may determine, and may be represented in such association or organization by such persons as its governing body may select. Any contribution so made shall be paid out of the general fund of such county, city, or town making same, on such terms as may be agreed upon by its governing body, and the officers having the control and management of the association or organization to which subscription and contributions are made. (1919, c. 21, ss. 1, 2, 3; 1924, c. 200; C. S. 6938.)

Art. 3. Mount Mitchell Park.

§ 100-11. Duties.—The Board of Conservation and Development shall have complete control, care, protection and charge of that part of Mitchell's park acquired by the state. (1919, c. 316,

s. 3; 1915, c. 76; 1921, c. 222, s. 1; 1925, c. 122, s. 23; C. S. 6940.)

§ 100-12. Roads, trails, and fences authorized; protection of property.—The Board of Conservation and Development is authorized and empowered to enter upon the land hereinbefore referred to, and to build a fence or fences around the same, also roads, paths, and trails and protect the property against trespass and fire and injury of any and all kinds whatsoever; cut wood and timber upon the same, but only for the purpose of protecting the other timber thereon and improving the property generally. (1919, c. 316, s. 5; 1921, c. 222, s. 1; 1925, c. 122, s. 23; C. S. 6942.)

§ 100-13. Fees for use of improvements; fees for other privileges; leases; rules and regulations.—The Board of Conservation and Development is further authorized and empowered to charge and collect fees for the use of such improvements as have already been constructed, or may hereafter be constructed, on the park, and for other privileges connected with the full use of the park by the public; to lease sites for camps, houses, hotels, and places of amusement and business; and to make and enforce such necessary rules and regulations as may best tend to protect, preserve, and increase the value and attractiveness of the park. (1921, c. 222, s. 2; 1925, c. 122, s. 23; C. S. 6942(a).)

§ 100-14. Use of fees and other collections.—All fees and other money collected and received by the Board of Conservation and Development in connection with its proper administration of Mount Mitchell state park shall be used by said board for the administration, protection, improvement, and maintenance of said park. (1921, c. 222, s. 3; 1925, c. 122, s. 23; C. S. 6942(b).)

§ 100-15. Annual reports.—The Board of Conservation and Development shall make an annual report to the governor of all money received and expended by it in the administration of Mount Mitchell state park, and of such other items as may be called for by him or by the general assembly. (1921, c. 222, s. 4; 1925, c. 122, s. 23; C. S. 6942(c).)

Art. 4. Toll Roads or Bridges in Public Parks.

§ 100-16. Private operation of toll roads or bridges in public parks prohibited.—No person, firm or corporation shall have the right or privilege to privately operate any toll road or toll bridge in this state upon lands belonging to the state, set apart or designated as a public park.

In the event any such toll road or bridge is on March 17, 1939 being privately operated under any real or assumed right, privilege, or lease, the state institution or department having such state-owned property in charge or under its supervision shall immediately give notice to such person, firm or corporation so operating such toll road or toll bridge to discontinue the operation of the same.

Any person, firm or corporation who sustains any legal damage by reason of the exercise of the authority hereinbefore granted shall be entitled to just compensation therefor, and, in the event satisfactory settlement cannot be made with the department or state agency exercising the authority herein contained, the amount of just compensation may be determined by a special proceeding instituted by the claimant against the department or agency having such property in custody under the provisions of the chapter on Eminent Domain, in so far as the same may be applicable hereto: Provided, such proceeding shall be instituted within six months from the time such notice is given. Any compensation awarded shall be a valid claim against the state of North Carolina, payable out of the funds of the department or state agency having such property in charge. (1939, c. 127.)

Chapter 101. Names of Persons.

Sec.
101-1. Legislature may regulate change by general but not private law.
101-2. Procedure for changing name; petition; notice.
101-3. Contents of petition.
101-4. Proof of good character to accompany petition.
101-5. Clerk to order change; certificate and record.
101-6. Effect of change; only one change.

§ 101-1. Legislature may regulate change by general but not private law.—The general assembly shall not have power to pass any private law to alter the name of any person, but shall have power to pass general laws regulating the same. (Rev., s. 2146; Const., Art. II, s. 11; C. S. 2970.)

§ 101-2. Procedure for changing name; petition; notice.—A person who wishes, for good cause shown, to change his name must file his application before the clerk of the superior court of the county in which he lives, having first given ten days' notice of the application by publication at the courthouse door. (Rev., s. 2147; 1891, c. 145; C. S. 2971.)

§ 101-3. Contents of petition.—The applicant shall state in the application his true name, the name he desires to adopt, his reasons for desiring such change, and that his name has never been changed before by law. (Rev., s. 2147; 1891, c. 145; C. S. 2972.)

§ 101-4. Proof of good character to accompany petition.—The applicant shall also file with said petition proof of his good character, which proof must be made by at least two citizens of the county who know his standing. (Rev., s. 2148; 1891, c. 145; C. S. 2973.)

§ 101-5. Clerk to order change; certificate and record.—If the clerk thinks that good and sufficient reason exists for the change of name, it shall be his duty to issue an order changing the name of the applicant from his true name to the name sought to be adopted. He shall issue to the applicant a certificate under his hand and seal of office, stating the change made in the applicant's name, and shall also record said application and order on the docket of special proceedings in his court. (Rev., ss. 2149, 2150; 1891, c. 145; C. S. 2974.)

§ 101-6. Effect of change; only one change.—When the order is made and the applicant's name changed, he is entitled to all the privileges and protection under his new name as he would have been under the old name. No person shall be allowed to change his name under this chapter but once. (Rev., ss. 2147, 2149; 1891, c. 145; C. S. 2975.)

Chapter 102. Official Survey Base.

Sec.
102-1. Name and description.
102-2. Physical control.
102-3. Use of name.
102-4. Damaging, defacing, or destroying monuments.
102-5. Limitations of use.
102-6. Legality of use in descriptions.
102-7. Use not compulsory.
102-8. Administrative agency.
102-9. Duties and powers of the agency.
102-10. Prior work.
102-11. Vertical control.

§ 102-1. Name and description. — The official survey base for the state of North Carolina shall be a system of plane coördinates to be known as the "North Carolina Coördinate System," said system being defined as a Lambert conformal projection of Clarke's spheroid of one thousand eight hundred sixty-six, having a central meridian of 79°—00′ west from Greenwich and standard parallels of latitude of 34°—20′ and 36°—10′ north of the equator, along which parallels the scale shall be exact. All coördinates of the system are expressed in feet, the x coördinate being measured easterly along the grid and the y coördinate being measured northerly along the grid. The origin of the coördinates is hereby established on the meridian 79°—00′ west from Greenwich at the intersection of the parallels 33°—45′ north latitude, such origin being given the coördinates x=2,000,000 feet, y=0 feet. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the United States coast and geodetic survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of one thousand nine hundred twenty-seven, and whose plane coördinates have been computed on the system defined. (1939, c. 163, s. 1.)

§ 102-2. Physical control. — Any triangulation or traverse station or monument established as described in § 102-1 may be used in establishing a connection between any survey and the above-mentioned system of rectangular coördinates. (1939, c. 163, s. 2.)

§ 102-3. Use of name.—The use of the term "North Carolina Coördinate System" on any map, report, or survey, or other document, shall be limited to coördinates based on the North Carolina coördinate system as defined in this chapter. (1939, c. 163, s. 3.)

§ 102-4. Damaging, defacing, or destroying monuments.—If any person shall willfully damage, deface, destroy, or otherwise injure a station, monument or permanent mark of the North Carolina coördinate system, or shall oppose any obstacles to the proper, reasonable, and legal use of any such station or monument, such person shall be guilty of a misdemeanor, and shall be liable to fine or imprisonment at the discretion of the court. (1939, c. 163, s. 4.)

§ 102-5. Limitations of use.—No coördinates based on the North Carolina coördinate system purporting to define the position of a point on a land boundary shall be presented to be recorded in public land records or deed records unless such point in the survey is within one-half mile of a station or monument of the North Carolina coördinate system: Provided, that the administrative agency for said system may, by rules and regulations, increase or decrease such limiting distance for the whole state, or any area or areas thereof. (1939, c. 163, s. 5.)

§ 102-6. Legality of use in descriptions.—For the purpose of describing the location of any survey station or land boundary corner in the state of North Carolina, it shall be considered a complete, legal, and satisfactory description to define the location of such point or points by means of coördinates of the North Carolina coördinate system as described herein, and within the limitations of § 102-5. (1939, c. 163, s. 6.)

§ 102-7. Use not compulsory. — Nothing contained in this chapter shall be interpreted as requiring any purchaser or mortgagee to rely wholly on a description based upon the North Carolina coördinate system. (1939, c. 163, s. 7.)

§ 102-8. Administrative agency. — The administrative agency of the North Carolina coördinate system shall be the North Carolina department of conservation and development, through its appropriate division, hereinafter called the "Agency." (1939, c. 163, s. 8.)

§ 102-9. Duties and powers of the agency. — It shall be the duty of the agency to make or cause to be made from time to time such surveys and computations as are necessary to further or

complete the North Carolina coördinate system. The agency shall endeavor to carry to completion as soon as practicable the field monumentation and office computations of the coördinate system. For the purpose of this work the agency shall have the power to accept grants for the specific purpose of carrying on the work; to coördinate, organize, and direct any federal or other assistance which may be offered to further the work; to coöperate with any individual, firm, company, public or private agency, state or federal agencies, in the prosecution of the work; to enter into contracts or coöperative agreements with other state or federal agencies in promoting the work of the coördinating system. The agency shall further have the power to adopt necessary rules, regulations, and specifications relating to the establishment and use of the coördinate system as defined in this chapter, consistent with the standards and practice of the United States coast and geodetic survey. (1939, c. 163, s. 9.)

§ 102-10. Prior work. — The system of stations, monuments, traverses, computations, and other work which has been done or is under way in North Carolina by the so-called North Carolina geodetic survey, under the supervision of the United States coast and geodetic survey, is, where consistent with the provisions of this chapter, hereby made a part of the North Carolina coördinate system. The surveys, notes, computations, monuments, stations, and all other work relating to the coördinate system, which has been done by said North Carolina geodetic survey, under the supervision of and in coöperation with the United States coast and geodetic survey and federal relief agencies, hereby are placed under the direction of, and shall become the property of, the administrative agency, subject to the agreement of the federal Works Progress Administration. (1939, c. 163, s. 10).

§ 102-11. Vertical control.—Whereas the foregoing provisions of this chapter heretofore are related to horizontal control only, the administrative agency may adopt standards for vertical control or levying surveys consistent with those recommended by and used by the United States coast and geodetic survey, and make or cause to be made such surveys as are necessary to complete the vertical control of North Carolina, in accordance with the provisions for horizontal control surveys as defined in this chapter. (1939, c. 163, s. 11.)

Chapter 103. Sundays and Holidays.

Sec.
103-1. Work in ordinary calling on Sunday forbidden.
103-2. Hunting or going armed on Sunday.
103-3. What process executed on Sunday.
103-4. Dates of public holidays.
103-5. Acts to be done on Sunday or holidays.

§ 103-1. Work in ordinary calling on Sunday forbidden.—On the Lord's day, commonly called Sunday, no tradesman, artificer, planter, laborer, or other person shall, upon land or water, do or exercise any labor, business or work, of his ordinary calling, works of necessity and charity alone excepted, nor employ himself in hunting, fishing or fowling, nor use any game, sport or play, upon pain that every person so offending, being of the age of fourteen years and upwards, shall forfeit and pay one dollar. (Rev., s. 2836; Code, s. 3782; R. C. c. 115; 1741, c. 30, s. 2; C. S. 3955.)

Local Modification.—Forsyth: C. S. 3957; Johnston: 1925, c. 185; Robeson: Pub. Loc. 1925, c. 451.

§ 103-2. Hunting or going armed on Sunday.—If any person shall, except in defense of his own property, hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shotgun, rifle or pistol, he shall be guilty of a misdemeanor, and pay a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days. (Rev., s. 3842; Code, s. 3783; 1868-9, c. 18, ss. 1, 2; C. S. 3956.)

Local Modification.—Perquimans: 1935, c. 145.

§ 103-3. What process executed on Sunday.—It shall not be lawful for any sheriff, constable, or other officer to execute any summons, capias, or other process on Sunday, unless the same be issued for treason, felony or misdemeanor. (Rev., s. 2837; Code, s. 928; R. C., c. 31, s. 54; 1777, c. 118, s. 6; C. S. 3958.)

§ 103-4. Dates of public holidays. — The first day of January, the nineteenth day of January, the twenty-second day of February, Easter Monday, the twelfth day of April, the tenth day of May, the twentieth day of May, the thirtieth day of May, the fourth day of July, the first Monday in September, the eleventh day of November, Tuesday after the first Monday in November when a general election is held, the day appointed by the governor as a Thanksgiving Day, and the twenty-fifth day of December of each and every year, are declared to be public holidays; and whenever any such holiday shall fall upon Sunday, the Monday following shall be a public holiday: Provided, that Easter Monday and the thirtieth day of May shall be holidays for all State and National Banks only. (Rev., s. 2838; Code, s. 3784; 1891, c. 58; 1899, c. 410; 1901, c. 25; 1881, c. 294; 1907, c. 996; 1909, c. 888; 1919, c. 287; 1935, c. 212; C. S. 3959.)

§ 103-5. Acts to be done on Sunday or holidays.—Where the day or the last day for doing an act required or permitted by law to be done falls on Sunday or on a holiday the act may be done on the next succeeding secular or business day. (Rev., s. 2839; Code, ss. 3784, 3785, 3786; 1899, c. 733, s. 194; C. S. 3960.)

Chapter 104. United States Lands.

Sec.

Art. 1. Authority for Acquisition.

104-1. Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved.
104-2. Unused lands to revert to state.
104-3. Exemption of such lands from taxation.
104-4. Conveyances of such lands to be recorded.
104-5. Forest reserve in North Carolina authorized; powers conferred.
104-6. Acquisition of lands for river and harbor improvement; reservation of right to serve process.
104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.
104-8. Further authorization of acquisition of land.
104-9. Condition of consent granted in preceding section.
104-10. Migratory bird sanctuaries or other wild life refuges.
104-11. Utilities Commission to secure rights-of-way, etc., for waterway improvements by use of federal funds.

Art. 2. Inland Waterway.

104-12. Acquisition of land for inland waterway from Cape Fear River; grant of state lands.
104-13. Utilities Commission to secure right-of-way over private lands; condemnation by United States.
104-14. Use declared paramount public purpose.
104-15. Method of payment of expenses and awards.
104-16. State and United States may enter upon lands for survey, etc.
104-17. Maintenance of bridges over waterway.
104-18. Concurrent jurisdiction over waterway.

Art. 1. Authority for Acquisition.

§ 104-1. Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved. —The United States is authorized, by purchase or otherwise, to acquire title to any tract or parcel of land in the state of North Caroilna, not exceeding twenty-five acres, for the purpose of erecting thereon any customhouse, courthouse, postoffice, or other building, including lighthouses, lightkeepers' dwellings, life-saving stations, buoys and coal depots and buildings connected therewith, or for the establishment of a fishcultural station and the erection thereon of such buildings and improvements as may be necessary for the successful operations of such fishcultural station. The consent to acquisition by the United States is upon the express condition that the state of North Carolina shall so far retain a concurrent jurisdiction with the United States over such lands as that all civil and criminal process issued from the courts of the state of North Carolina may be executed thereon in like manner as if this authority had not been given, and that the state of North Carolina also retains authority to punish all violations of its criminal laws committed on any such tract of land. (Rev., s. 5426; Code, ss. 3080, 3083; 1887, c. 136; 1899, c. 10; 1870-1, c. 44, s. 5; C. S. 8053.)

§ 104-2. Unused lands to revert to state. — The consent given in § 104-1 is upon consideration of the United States building lighthouses, lighthousekeepers' dwellings, life-saving stations, buoys, coal depots, fish stations, post-offices, customhouses, and other buildings connected therewith, on the tracts or parcels of land so purchased, or that may be purchased; and that the title to land so conveyed to the United States shall revert to the state unless the construction of the aforementioned buildings be completed thereon within ten years from the date of the conveyance from the grantor. (Rev., s. 5426; Code, ss. 3080, 3083; 1899, c. 10; 1887, c. 136; 1870-1, c. 44, s. 5; C. S. 8054.)

§ 104-3. Exemption of such lands from taxation.—The lots, parcels, or tracts of land acquired under this chapter, together with the tenements and appurtenances for the purpose mentioned in this chapter, shall be exempt from taxation. (Rev., s. 5428; Code, s. 3082; 1870-1, c. 44, s. 3; C. S. 8055.)

§ 104-4. Conveyances of such lands to be recorded.—All deeds, conveyances, or other title papers for the same shall be recorded, as in other cases, in the office of the register of deeds of the county in which the lands so conveyed may lie, in the same manner and under the same regulations as other deeds and conveyances are now recorded, and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tract or legal division of any public land belonging to the United States, which may be set apart by the general government for the purpose before mentioned, by an order, patent, or other official document or paper so describing such land. (Rev., s. 5429; Code, s. 3081; 1870-1, c. 44, s. 2; 1872-3, c. 201; C. S. 8056.)

§ 104-5. Forest reserve in North Carolina authorized; powers conferred. — The United States is authorized to acquire by purchase, or by condemnation with adequate compensation, except as hereinafter provided, such lands in North Carolina as in the opinion of the federal government may be needed for the establishment of a national forest reserve in that region. This consent is given upon condition that the state of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the state of North Carolina against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. Power is hereby conferred upon the congress of the United States to pass such laws as it may deem necessary to the acquisition as hereinbefore provided, for incorporation in such national forest reserve such forest-covered lands lying in North Carolina as in the opinion of the federal government may be needed for this purpose, but as much as two hundred acres of any tract of land occupied as

a home by bona fide residents in this state on the eighteenth day of January, one thousand nine hundred and one, shall be exempt from the provisions of this section. Power is hereby conferred upon congress to pass such laws and to make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor, as in its judgment may be necessary for the management, control, and protection of such lands as may be from time to time acquired by the United States under the provisions of this section. (Rev., s. 5430; 1901, c. 17; 1929, c. 67, s. 1; C. S. 8057.)

§ 104-6. Acquisition of lands for river and harbor improvement; reservation of right to serve process.—The consent of the legislature of the state is hereby given to the acquisition by the United States of any tracts, pieces, or parcels of land within the limits of the state, by purchase or condemnation, for use as sites for locks and dams, or for any other purpose in connection with the improvement of rivers and harbors within and on the borders of the state. The consent hereby given is in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States, and with the acts of congress in such cases made and provided; and this state retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the provisions of this section, so far as that all civil and criminal process issued under authority of any law of this state may be executed in any part of the premises so acquired, or the buildings or structures thereon erected. (1907, c. 681; C. S. 8058.)

§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.—The consent of the state is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the state required for the sites for customhouses, courthouses, postoffices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this state. (1907, c. 25; C. S. 8059.)

§ 104-8. Further authorization of acquisition of land.—The United States is hereby authorized to acquire lands by condemnation or otherwise in this State for the purpose of preserving the navigability of navigable streams and for holding and administering such lands for National Park purposes: Provided, that this section and § 104-9 shall in no wise affect the authority conferred upon the United States and reserved to the State in §§ 104-5 and 104-6. (1925, c. 152, s. 1.)

§ 104-9. Condition of consent granted in preceding section.—This consent is given upon condition that the State of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. (1925, c. 152, s. 2.)

§ 104-10. Migratory bird sanctuaries or other wild life refuges. — The United States is authorized to acquire by purchase, or by condemnation with adequate compensation, such lands in North Carolina as in the opinion of the Federal Government may be needed for the establishment of one or more migratory bird sanctuaries or other wild life refuges. This consent is given upon condition that the State of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the commission of any crime without or within said jurisdiction, may be executed therein in like manner as if this consent had not been given. Power is hereby conferred upon the Congress of the United States to pass such laws as it may deem necessary to the acquisition as hereinbefore provided, for incorporation in such sanctuaries or refuges such lands lying in North Carolina as in the opinion of the Federal Government may be suitable and needed for this purpose. Power is hereby conferred upon Congress to pass such laws and to make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor, as in its judgment may be necessary for the management, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this section. (1929, c. 163, s. 1.)

§ 104-11. Utilities Commission to secure rights-of-way, etc., for waterway improvements by use of federal funds.—Hereafter whenever any waterway improvement in North Carolina by the use of federal funds is provided for upon condition that the state or locality shall furnish rights-of-way, permits for the dumping of dredged material, or furnish or do any other thing in connection with the proposed waterway improvement, the Utilities Commission is authorized and empowered to represent the State or locality in such matter of securing the rights-of-way, permits for the dumping of dredged material, or other things so required in connection with such waterway improvement; and in prosecuting such undertaking, the Utilities Commission may follow the same procedure provided in article two for the acquisi-

tion of rights-of-way for the intercoastal waterway from the Cape Fear river to the South Carolina line: Provided, however, that said Utilities Commission is not hereby authorized to enter into obligation or contract for the payment of any money or proceeds through condemnation or otherwise without the express approval of the governor and council of state. (1935, c. 240; 1937, c. 434.)

Art. 2. Inland Waterway.

§ 104-12. Acquisition of land for inland waterway from Cape Fear River; grant of state lands.—For the purpose of aiding in the construction of the proposed inland waterway by the United States from the Cape Fear River at Southport to the North Carolina-South Carolina State line, the Secretary of State is hereby authorized to issue to the United States of America a grant to the land located within said inland waterway, right-of-way, which is to be one thousand feet to seventeen hundred fifty feet wide in so far as such land is subject to grant by the State of North Carolina, the said grant to issue upon a certificate furnished to the Secretary of State by the Secretary of War, or by any authorized officer of the corps of engineers of the United States Army, or by any other authorized official, exercising control over the construction of the said waterway. Whenever in the construction of such inland waterway within this State, lands theretofore submerged shall be raised above the water by the deposit of excavated material, the land so formed shall become the property of the United States if within the limits of said inland waterway, right-of-way, herein set out one thousand feet to seventeen hundred fifty feet and the Secretary of State is hereby authorized to issue to the United States a grant to the land so formed within the limits above specified, the grant to issue upon a certificate furnished to the Secretary of State by some authorized official of the United States, as above provided. If said lands so required for the inland waterway right-of-way shall be marshlands, or sound lands, the title to which has heretofore been vested in the State Board of Education, the Governor of the State, as President thereof, and the Superintendent of Public Instruction as Secretary, are hereby authorized and required to execute proper conveyance to the United States of America for said marshlands or sound lands, free of cost, both to the State and to the United States Government, upon a certificate furnished to said Board of Education by the Secretary of War, or by any authorized officer of the corps of engineers of the United States Army, or by any other authorized official exercising control over the construction of the said inland waterway. (1931, c. 2, s. 1.)

§ 104-13. Utilities Commission to secure right-of-way over private lands; condemnation by United States.—If the title to any part of the lands acquired by the United States Government for the construction of such inland waterway from the Cape Fear River at Southport to the North Carolina-South Carolina State line shall be in any private person, company or corporation, railroad company, street railway company, telephone or telegraph company, or other public service corporation or shall have been donated or condemned for any public use by any political sub-division of the State, or if it may be necessary, for the purpose of obtaining the proper title to any lands, the title to which has heretofore been vested in the State Board of Education, then the Utilities Commission, in the name of the State of North Carolina, is hereby authorized and empowered, acting for and in behalf of the State of North Carolina, to secure a right-of-way one thousand to seventeen hundred fifty feet wide for said inland waterway across and through such lands or any part thereof, by purchase, donation or otherwise, through agreement with the owner or owners where possible, and when any such property is thus acquired, the Governor and Secretary of State shall execute a deed for the same to the United States; and if for any reason the said commission shall be unable to secure such right-of-way across any such property by voluntary donation by and/or with the owner or owners, the said Commission acting for and in behalf of the State of North Carolina is hereby vested with the power to condemn the same, and in so doing, the ways, means, methods and procedure of the chapter of this Code, entitled "Eminent Domain," shall be used by it as near as the same is suitable for the purposes of this article, and in all instances, the general and special benefits to the owner thereof shall be assessed as offsets against the damages to such property or lands.

As such condemnation proceedings might result in delay in the acquiring of title to all parts of the right-of-way and in the construction of the said inland waterway by the United States, said Utilities Commission is authorized to enter any of said lands and property and take possession of the same at the time hereinafter provided as needed for this use in behalf of the State or the United States Government for the purposes herein set out, prior to the bringing of the proceeding for condemnation and prior to the payment of the money for such land or property under any judgment in condemnation. In the event the owner or owners shall appeal from the report of the commissioners appointed in any condemnation proceeding hereunder, it shall not be necessary for said commission, acting in behalf of the State of North Carolina, or the United States Government, to deposit the money assessed by said commissioners with the clerk.

Whenever proceedings in condemnation are instituted in pursuance of the provisions of this section, the said commission upon the filing of the petition or petitions in such proceedings, shall have the right to take immediate possession, on behalf of the State, of such lands or property to the extent of the interest to be acquired and the order of the Clerk of the Superior Court of the county where the action is instituted, shall be sufficient to vest the title and possession in the State through the Utilities Commission. The Governor and Secretary of State shall, upon vesting of the title and possession, execute a deed to the United States and said lands or property may then be appropriated and used by the United States for the purposes aforesaid: Provided, that in every case the proceedings in condemnation shall be diligently prosecuted to final judgment in order that the just compensation, if any, to which the owners of the property are entitled may be ascertained and when so ascertained and determined, such compensation, if

any, shall be promptly paid as hereinafter in this article provided.

If the United States Government shall so determine, it is hereby authorized to condemn and use all lands and property which may be needed for the purposes herein set out and which is specifically described and set out in the paragraph next preceding, under the authority of said United States Government, and according to the provisions existing in the Federal Statutes for condemning lands and property for the use of the United States Government. In case the United States Government shall so condemn said land and property, the said Utilities Commission is hereby authorized to pay all expenses of the condemnation proceedings and any award that may be made thereunder, out of the money which may be appropriated for said purposes.

All sums which may be agreed upon between the said Utilities Commission and the owner of any property needed by the United States Government for said inland waterway and all sums which may be assessed in favor of the owner of any property condemned hereunder, shall constitute and remain a fixed and valid claim against the State of North Carolina until paid and satisfied in full, but the order of the clerk when entered in any condemnation proceeding shall divest the owner of the land condemned of all right, title, interest and possession in and to such land and property. (1931, c. 2, s. 2; 1937, c. 434.)

§ 104-14. Use declared paramount public purpose.— In such condemnation proceedings the uses for which such land or property is condemned are hereby declared to be for a purpose paramount to all other public uses, and the fact that any portion of it has heretofore been condemned by a railroad company, a street railway company, telephone or telegraph company, or other public service corporation, or by any political subdivision of the State of North Carolina, for public uses, or has been conveyed by any person or corporation for any such public uses, or vested in the State Board of Education, or by any other act dedicated to any public use, shall in no way affect the right of the State of North Carolina, or the United States Government, to proceed and condemn such land and property as hereinbefore provided. (1931, c. 2, s. 3.)

§ 104-15. Method of payment of expenses and awards.—Whenever said Commission has agreed with the owner of any such land or property as to the purchase price thereof, or the damage for the construction of the inland waterway has finally been determined in any condemnation proceeding necessary to secure such land or property, the said Commission is hereby authorized and directed to pay all of said sums and other expenses incident thereto by proper warrant upon the sum which may be appropriated for said purpose, and all such sums shall constitute and remain a fixed and valid claim against the State of North Carolina until paid and satisfied in full. (1931, c. 2, s. 4.)

§ 104-16. State and United States may enter upon lands for survey, etc.—For the purpose of determining the lands necessary for the uses herein set out, the Utilities Commission or the United States Government, or the agents of either, shall have the right to enter upon any lands along the general line of the right-of-way in this article specified, and make such surveys, and do such other acts as in their judgment may be necessary for the purpose of definitely locating the specific lines of said right-of-way and the lands required for said purposes, and there shall be no claim against the State of North Carolina or the United States for such acts as may be done in making said surveys. (1931, c. 2, s. 5; 1937, c. 434.)

§ 104-17. Maintenance of bridges over waterway.—The State Highway and Public Works Commission or the road governing body of any political subdivision of the State of North Carolina is hereby authorized and directed to construct, maintain and operate in perpetuity, all bridges over the waterway without cost to the United States. (1931, c. 2, s. 7; 1933, c. 172, s. 17.)

§ 104-18. Concurrent jurisdiction over waterway.—The State of North Carolina retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the provisions of this chapter, so far as that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired for such inland waterway, or for the buildings or constructions thereon erected for the purposes of such inland waterway. (1931, c. 2, s. 8.)

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SUBCHAPTER I. LEVY OF TAXES.

§ 105-1. Title and purpose of subchapter.—The title of this subchapter shall be "The Revenue Act." The purpose of this subchapter shall be to raise and provide revenue for the necessary uses and purposes of the government and state of North Carolina during the next biennium and each biennium thereafter, and the provisions of this subchapter shall be and remain in full force and effect until changed by law. (1939, c. 158, ss. A, B; 1941, c. 50, s. 1.)

Art. 1. Schedule A. Inheritance Tax.

§ 105-2. General provisions.—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

First. When the transfer is by will or by the intestate laws of this state from any person dying, seized or possessed of the property while a resident of the state.

Second. When the transfer is by will or intestate laws of this or any other state of real property or of goods, wares, and merchandise within this state, or of any property, real, personal, or mixed, tangible or intangible, over which the state of North Carolina has a taxing jurisdiction, including state and municipal bonds, and the decedent was a resident of the state at the time of death; when the transfer is of real property or intangible personal property within the state, or intangible personal property that has acquired a situs in this

state, and the decedent was a non-resident of the state at the time of death.

Third. When the transfer of property made by a resident, or non-resident, is of real property within this state, or of goods, wares and merchandise within this state, or of any other property, real, personal, or mixed, tangible or intangible, over which the state of North Carolina has taxing jurisdiction, including state and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (a) the possession or enjoyment of, or the income from, the property or (b) the right to designate the persons who shall possess or enjoy the property or the income therefrom. Every transfer by deed, grant, bargain, sale, or gift, made within three years prior to the death of the grantor, vendor, or donor, exceeding three per cent (3%) of his or her estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section.

Fourth. When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a non-resident decedent when such non-resident decedent's property consists of real property within this state or tangible personal property within the state, or intangible personal property that has acquired a situs in this state, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939, or of any property transferred pursuant to a power of appointment contained in any instrument.

Fifth. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this article, such appointment when made shall be deemed a transfer taxable under the provisions of this article, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will, and the rate shall be determined by the relationship between the beneficiary under the power and the donor; and whenever any person or corporation having such power of appointment so derived shall, for any reason whatever, omit or fail to exercise the same, in whole or in part, or where for any reason the said power has not been exercised, a transfer taxable under the provisions of this article shall be deemed to take place, to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure.

Sixth. Whenever any real or personal property, or both, of whatever kind or nature, tangible or intangible, is disposed of by will or by deed to any person or persons for life, or the life of the survivor, or for a term of years, or to any corporation for a term of years, with the power of appointment in such person or persons, or in such corporation, or reserving to the grantor or devisor the power of revocation, the tax, upon the death of the person making such will or deed, shall, on the whole amount of property so disposed of, be due and payable as in other cases, and the said tax shall be computed according to the relationship of the first donee or devisee to the devisor.

Seventh. Where real property is held by husband and wife as tenants by the entirety, the surviving tenant shall be taxable on one-half of the value of such property.

However, nothing in this article shall be construed as imposing a tax upon any transfer of intangibles not having a commercial or business situs in this State, by a person, or by reason of the death of a person, who was not a resident of this State at the time of his death, and, if held or transferred in trust, such intangibles shall not be deemed to have a commercial or business situs in this State merely because the trustee is a resident or, if a corporation, is doing business in this State, unless the same be employed in or held or used in connection with some business carried on in whole or in part in this State. (1939, c. 158, s. 1; 1941, c. 50, s. 2.)

§ 105-3. Property exempt. — The following property shall be exempt from taxation under this article:

(a) Property passing to or for the use of the state of North Carolina, or to or for the use of municipal corporations within the state or other political subdivisions thereof, for exclusively public purposes.

(b) Property passing to religious, charitable, or educational corporations, or to churches, hospitals, orphan asylums, public libraries, religious, benevolent, or charitable organizations, or passing to any trustee or trustees for religious, benevolent, or charitable purposes, where such religious, charitable, or educational institutions, corporations, churches, trusts, etc., are located within the state and not conducted for profit.

(c) Property passing to religious, educational, or charitable corporations, foundations or trusts, not conducted for profit, incorporated or created or administered under the laws of any other state: If such other state levies no inheritance or estate taxes on property similarly passing from residents of such state to religious, educational or charitable corporations, foundations or trusts incorporated or created or administered under the laws of this state; or if such corporation, foundation or trust is one receiving and disbursing funds donated in this state for religious, educational or charitable purposes.

(d) The amount of twenty thousand dollars ($20,000.00), only, of the total proceeds of life insurance policies, when such policy or policies are payable to a beneficiary or beneficiaries named in such policy or policies, and such beneficiary or beneficiaries are any such person or persons as are designated in § 105-4, subsection (a): Provided, that no more than twenty thousand dollars

($20,000.00) of any such policy or policies shall be exempt from taxation, whether in favor of one beneficiary or more, and the exemption thus provided shall be prorated between the beneficiaries in proportion to the amounts received under the policies, unless otherwise provided by the decedent; and also proceeds of all life insurance policies payable to beneficiaries named in subsections (a), (b), and (c) of this section. And also proceeds of all policies of insurance and the proceeds of all adjusted service certificates paid by the United States government to the beneficiary or beneficiaries or heirs-at-law of any deceased soldier of the World War under the present laws of congress or any amendment that may be hereafter made thereto. (1939, c. 158, s. 2.)

§ 105-4. Rate of tax—Class A.—(a) Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, or husband or wife of the person who died possessed of such property aforesaid, or stepchild of the person who died possessed of such property aforesaid, or child adopted by the decedent in conformity with the laws of this state or of any of the United States, or of any foreign kingdom or nation, at the following rates of tax (for each one hundred dollars ($100.00) or fraction thereof) of the value of such interest:

First $	10,000	above exemption	...	1	per cent
Over $	10,000	and to $ 25,000	..	2	per cent
Over $	25,000	and to $ 50,000	..	3	per cent
Over $	50,000	and to $ 100,000	..	4	per cent
Over $	100,000	and to $ 200,000	..	5	per cent
Over $	200,000	and to $ 500,000	..	6	per cent
Over $	500,000	and to $1,000,000	..	7	per cent
Over $1,000,000		and to $1,500,000	..	8	per cent
Over $1,500,000		and to $2,000,000	..	9	per cent
Over $2,000,000		and to $2,500,000	..	10	per cent
Over $2,500,000		and to $3,000,000	..	11	per cent
Over $3,000,000			.....	12	per cent

(b) The persons mentioned in this class shall be entitled to the following exemptions: Widows, ten thousand dollars ($10,000.00); each child under twenty-one years of age, five thousand dollars ($5,000.00); all other beneficiaries mentioned in this section, two thousand dollars ($2,000.00) each: Provided, a grandchild or grandchildren shall be allowed the single exemption or pro rata part of the exemption of the parent, when the parent of any one grandchild or group of grandchildren is deceased or when the parent is living and does not share in the estate: Provided, that any part of the exemption not applied to the share of the parent may be applied to the share of a grandchild or group of grandchildren of such parent. The same rule shall apply to the taking under a will, and also in case of a specific legacy or devise: Provided, that when any person shall die leaving a widow and child or children under twenty-one years of age, and leaving all or substantially all of his property by will to his wife, the wife shall be allowed an additional exemption of five thousand dollars ($5,000.00) for each child under twenty-one years of age. (1939, c. 158, s. 3.)

§ 105-5. Rate of tax—Class B.—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or descendant of the brother or sister, or shall be the uncle or aunt by blood of the person who died possessed as aforesaid, at the following rates of tax (for each one hundred dollars ($100.00) or fraction thereof) of the value of such interest:

First $	5,000		.....	4	per cent
Over $	5,000	and to $ 10,000	..	5	per cent
Over $	10,000	and to $ 25,000	..	6	per cent
Over $	25,000	and to $ 50,000	..	7	per cent
Over $	50,000	and to $ 100,000	..	8	per cent
Over $	100,000	and to $ 250,000	..	10	per cent
Over $	250,000	and to $ 500,000	..	11	per cent
Over $	500,000	and to $1,000,000	..	12	per cent
Over $1,000,000		and to $1,500,000	..	13	per cent
Over $1,500,000		and to $2,000,000	..	14	per cent
Over $2,000,000		and to $3,000,000	..	15	per cent
Over $3,000,000			.....	16	per cent

(1939, c. 158, s. 4.)

§ 105-6. Rate of tax—Class C.—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of relationship or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the following rates of tax (for each one hundred dollars ($100.00) or fraction thereof) of the value of such interest:

First $	10,000		.....	8	per cent
Over $	10,000	and to $ 25,000	..	9	per cent
Over $	25,000	and to $ 50,000	..	10	per cent
Over $	50,000	and to $ 100,000	..	11	per cent
Over $	100,000	and to $ 250,000	..	12	per cent
Over $	250,000	and to $ 500,000	..	13	per cent
Over $	500,000	and to $1,000,000	..	14	per cent
Over $1,000,000		and to $1,500,000	..	15	per cent
Over $1,500,000		and to $2,500,000	..	16	per cent
Over $2,500,000			.....	17	per cent

(1939, c. 158, s. 5.)

§ 105-7. Estate tax.—(a) A tax in addition to the inheritance tax imposed by this schedule is hereby imposed upon the transfer of the net estate of every decedent dying after March 24, 1939, whether a resident or nonresident of the state, where the inheritance tax imposed by this schedule is in the aggregate of a lesser amount than the maximum credit of eighty per cent (80%) of the federal estate tax allowed by the Federal Estate Tax Act as contained in the Federal Revenue Act of one thousand nine hundred and twenty-six, or subsequent acts and amendments, because of said tax herein imposed, then the inheritance tax provided for by this schedule shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this state shall be the maximum amount of credit allowed under said Federal Estate Tax Act; said additional tax shall be paid out of the same funds as any other tax against the estate.

(b) Where no tax is imposed by this schedule because of the exemptions herein or otherwise, and a tax is due the United States under the Federal Estate Tax Act, then a tax shall be due this state equal to the maximum amount of the credit allowed under said Federal Estate Tax Act.

(c) The administrative provisions of this sched-

ule, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Federal Revenue Act of one thousand nine hundred and twenty-six, or subsequent acts and amendments. (1939, c. 158, s. 6.)

§ 105-8. Credit allowed for gift tax paid.—In case a tax has been imposed under Schedule G of the Revenue Act of one thousand nine hundred and thirty-seven, or under subsequent acts, upon any gift, and thereafter upon the death of the donor, the amount thereof is required by any provision of this article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate under the provisions of this article, an amount equal to the tax paid with respect to such gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the decedent, as provided herein, shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate. (1939, c. 158, s. 6½.)

§ 105-9. Deductions.—In determining the clear market value of property taxed under this article, or schedule, the following deductions, and no others, shall be allowed:

(a) Taxes accrued and unpaid at the death of the decedent and unpaid ad valorem taxes accruing during the calendar year of death.

(b) Drainage and street assessments (fiscal year in which death occurred).

(c) Reasonable funeral and burial expenses.

(d) Debts of decedent.

(e) Estate and inheritance taxes paid to other states, and death duties paid foreign countries, and the net amount of federal estate taxes as finally assessed under the Revenue Act of one thousand nine hundred and twenty-six. No deduction will be allowed for federal estate taxes levied by subsequent acts and amendments.

(f) Amount actually expended for monuments not exceeding the sum of five hundred dollars ($500.00).

(g) Commissions of executors and administrators actually allowed and paid.

(h) Costs of administration, including reasonable attorneys' fees. (1939, c. 158, s. 7; 1941, c. 50, s. 2.)

§ 105-10. Where no personal representative appointed, clerk of superior court to certify same to commissioner of revenue.—Whenever an estate subject to the tax under this article shall be settled or divided among the heirs-at-law, legatees or devisees, without the qualification and appointment of a personal representative, the clerk of the superior court of the county wherein the estate is situated shall certify the same to the commissioner of revenue, whereupon the commissioner of revenue shall proceed to appraise said estate and collect the inheritance tax thereon as prescribed by this article. (1939, c. 158, s. 8.)

§ 105-11. Tax to be paid on shares of stock before transferred, and penalty for violation.—(a) Property taxable within the meaning of this article shall include bonds or shares of stock in any incorporated company incorporated in this state, regardless of whether or not such incorporated company shall have any or all of its capital stock invested in property outside of this state and doing business outside of this state, and the tax on the transfer of any bonds and/or shares of stock in any such incorporated company owning property and doing business outside of the state shall be paid before waivers are issued for the transfer of such shares of stock. No corporation of this state shall transfer any bonds or stock of said corporation standing in the name of or belonging to a decedent or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such transfer is served upon the commissioner of revenue at least ten days prior to such transfer, nor until said commissioner of revenue shall consent thereto in writing. Any corporation making such a transfer without first obtaining consent of the commissioner of revenue as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such bonds and/or stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars ($1,000.00), which liability for such tax, interest, and penalty, may be enforced by an action brought by the state in the name of the commissioner of revenue. The word "transfer" as used in this article shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by distribution, or by statute, descent, devise, bequest, grant, deed, bargain, sale, gift, or otherwise. A waiver signed by the commissioner of revenue of North Carolina shall be full protection for any such company in the transfer of any such stock.

(b) Any incorporated company not incorporated in this state and owning property in this state which shall transfer on its books the shares of stock of any resident decedent holder of bonds and/or shares of stock in such company exceeding in value two hundred dollars ($200.00) before the inheritance tax, if any, has been paid, shall become liable for the payment of said tax; and any property held by such company in this state shall be subject to execution to satisfy same. A receipt or waiver signed by the commissioner of revenue of North Carolina shall be full protection for any such company in the transfer of any such stock. (1939, c. 158, s. 9.)

§ 105-12. Commissioner of revenue to furnish blanks and require reports of value of shares of stock.—(a) The commissioner of revenue shall prepare and furnish, upon application, blank forms covering such information as may be necessary to determine the amount of inheritance tax due the state of North Carolina on the transfer of any such bonds and/or stock; he shall determine the value of such bonds and/or stock, and shall have full authority to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due.

(b) The commissioner of revenue shall have authority, under penalties provided in this article, to require that any reports necessary to a proper enforcement of this article be made by any such

incorporated company owning property in this state. (1939, c. 158, s. 10.)

§ 105-13. Life insurance policies. — The proceeds of all life insurance policies payable at or after death of the insured when the premiums have been paid by the insured, and whether payable to the estate of the insured or to a beneficiary or beneficiaries named in the policy, shall be taxable at the rates provided for in this article, subject to the exemptions in § 105-3. (1939, c. 158, s. 11.)

§ 105-14. Recurring taxes. — Where property transferred has been taxed under the provisions of this article, such property shall not be assessed and/or taxed on account of any other transfer of like kind occurring within two years from the date of the death of the former decedent: Provided, that this section shall apply only to the transferees designated in §§ 105-4 and 105-5. (1939, c. 158, s. 12.)

§ 105-15. When all heirs, legatees, etc., are discharged from liability.—All heirs, legatees, devisees, administrators, executors, and trustees shall only be discharged from liability for the amount of such taxes, settlement of which they may be charged with, by paying the same for the use aforesaid as hereinafter provided. (1939, c. 158, s. 13.)

§ 105-16. Discount for payment in six months; interest after twelve months; penalty after two years.—All taxes imposed by this article shall be due and payable at the death of the testator, intestate, grantor, donor, or vendor, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor, vendor, a discount of three per centum (3%) shall be allowed and deducted from such taxes; if not paid within twelve months from date of death of the testator, intestate, grantor, donor, or vendor, such tax shall bear interest at the rate of six per centum (6%) per annum, to be computed from the expiration of twelve months from the date of the death of such testator, intestate, grantor, donor, or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within two years from date of death of testator, intestate, grantor, donor, or vendor, then and in such case a penalty of five per centum (5%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of five per centum (5%) herein imposed may be remitted by the commissioner of revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the commissioner of revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay: Provided, that time for payment and collection of such tax may be extended by the commissioner of revenue for good reasons shown. (1939, c. 158, s. 14.)

§ 105-17. Collection to be made by sheriff if not paid in two years.—If taxes imposed by this article are not paid within two years after the death of the decedent, it shall be the duty of the commissioner of revenue to certify to the sheriff of the county in which the estate is located the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of two and one-half per cent (2½%) as sheriff's fees for collecting same, which fees shall be in addition to any salary or other compensation allowed by law to the sheriffs for their services; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as said officer is given for the collection of any and all other taxes. The sheriff shall make return to the commissioner of revenue of all such taxes within thirty days after collection. (1939, c. 158, s. 15.)

§ 105-18. Executor, etc., shall deduct tax.—The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to said tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money, he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for the use of the state; and no executor or administrator shall pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law; and every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the state shall be paid by him to the proper officer without delay. (1939, c. 158, s. 16.)

§ 105-19. Legacy for life, etc., tax to be retained, etc., upon the whole amount.—If the legacy or devise subject to said tax be given to a beneficiary for life or for a term of years, or upon condition or contingency, with remainder to take effect upon the termination of the life estate or the happening of the condition or contingency, the tax on the whole amount shall be due and payable as in other cases, and said tax shall be apportioned between such life tenant and the remainderman, such apportionment to be made by computation based upon the mortuary and annuity tables set out as §§ 8-46 and 8-47, and upon the basis of six per centum (6%) of the gross value of the estate for the period of expectancy of the life tenant in determining the value of the respective interests. When property is transferred or limited in trust or otherwise, and the rights, interest, or estate of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate, within the discretion of the revenue commissioner, which on the happening of any of the said contingencies or conditions would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith out of the property transferred, and the commissioner of revenue

shall assess the tax on such property. (1939, c. 158, s. 17.)

§ 105-20. Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc. —Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the commissioner of revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the state: Provided further, that no lien for inheritance or estate taxes which accrued prior to May first, one thousand nine hundred and twenty-eight shall attach or affect the land. (1939, c. 158, s. 18.)

§ 105-21. Computation of tax on resident and non-resident decedents.—A tax shall be assessed on the transfer of property, including property specifically devised or bequeathed, made subject to tax as aforesaid in this state of a resident or non-resident decedent, if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this article, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this article if such decedent had been a resident of this state, and all his property, real and personal, had been located within this state, as such taxable property within this state bears to the entire estate, wherever situated. It shall be the duty of the personal representative to furnish to the commissioner of revenue such information as may be necessary or required to enable the commissioner to ascertain a proper computation of his tax. Where the personal representative fails or refuses to furnish information from which this assessment can be made, the property in this state liable to tax under this article shall be taxed at the highest rate applicable to those who are strangers in blood. (1939, c. 158, s. 19.)

§ 105-22. Duties of the clerks of the superior court.—(a) It shall be the duty of the clerk of the superior court to obtain from any executor or administrator, at the time of the qualification of such executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical; the approximate value and character of the property or estate, both real and personal; the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the commissioner of revenue on or before the tenth day of each month; and the commissioner of revenue shall furnish the several clerks blanks upon which to make said report, but the failure to so furnish blanks shall not relieve the clerk from the duty herein imposed. The clerk shall make no report of a death where the estate of a decedent is less than two thousand dollars ($2,000.00) in value, when the beneficiary is husband or wife or child or grandchild of the decedent. Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the commissioner of revenue in an action to be brought by the commissioner of revenue.

(b) It shall also be the duty of the clerk of the superior court of each of the several counties of the state to enter in a book, prepared and furnished by the commissioner of revenue, to be kept for that purpose, and which shall be a public record, a condensed copy of the settlement of inheritance taxes of each estate, together with a copy of the receipt showing payment, or a certificate showing no tax due, as shall be certified to him by the commissioner of revenue.

(c) For these services, where performed by the clerk, the clerk shall be paid by the commissioner of revenue, when certificates and receipts are sent in to be recorded, as follows: For recording the certificate of the commissioner of revenue showing no tax due, the sum of fifty cents (50c). For recording the certificate of the commissioner of revenue showing that the tax received by the state is one hundred dollars ($100.00) or less, he shall be paid the sum of one dollar ($1.00). For recording the certificate of the commissioner of revenue showing that the tax received by the state is more than one hundred dollars ($100.00) and not over five hundred dollars ($500.00) he shall be paid the sum of two dollars ($2.00). For recording the certificate of the commissioner of revenue showing that the tax received by the state is more than five hundred dollars ($500.00) he shall be paid the sum of five dollars ($5.00), which sum shall be the maximum amount paid for recording the certificate of the commissioner of revenue for any one estate: Provided, that where the decedent owns real estate in one or more counties, other than the county in which the administration of the estate is had, then the fee of the clerks of the courts of such other counties for recording the certificates of the commissioner of revenue shall be fifty cents (50c) each, and the same fee shall be paid for like service by the clerks in case of the settlement of the estates of non-residents. The clerk of the superior court shall receive the sum of fifty cents (50c) for making up and transmitting to the commissioner of revenue the report required in this section, containing a list of persons who died leaving property in his county during the preceding month, etc.: Provided further, that where the clerk of the superior court has failed or neglected to make the report required of him in this section, in that case he shall only receive for recording the certificate of the commissioner of revenue the sum of fifty cents (50c).

The clerks of the superior courts of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this section are hereby repealed. (1939, c. 158, s. 20.)

§ 105-23. Information by administrator and executor.—Every administrator shall prepare a state-

ment in duplicate, showing as far as can be ascertained the names of all the heirs-at-law and their relationship to decedent, and every executor shall prepare a like statement, accompanied by a copy of the will, showing the relationship to the decedent of all legatees, distributees, and devisees named in the will, and the age at the time of the death of the decedent of all legatees, distributees, devisees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, together with the postoffice address of executor, administrator, or trustee. If any of the heirs-at-law, distributees, and devisees are minor children of the decedent, such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in and outside the state, and of all personal property, wherever situate, of the estate, of all insurance policies upon the life of the decedent, together with an appraisal under oath of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement; and also the full statement of all gifts or advancements made by deed, grant, or sale to any person or corporation, in trust or otherwise, within three years prior to the death of the decedent. The statement herein provided for shall be filed with the commissioner of revenue at Raleigh, North Carolina, within six months after the qualification of the executor or administrator, upon blank forms to be prepared by the commissioner of revenue. If any administrator or executor fails or refuses to comply with any of the requirements of this section, he shall be liable to a penalty in the sum of five hundred dollars ($500.00), to be recovered by the commissioner of revenue in an action to be brought by the commissioner of revenue to collect such sum in the superior court of Wake county against such administrator or executor. The commissioner of revenue, for good cause shown, may remit all or any portion of the penalty imposed under the provisions of this section. Every executor or administrator may make a tentative settlement of the inheritance tax with the commissioner of revenue, based on the sworn inventory provided in this section: Provided, that this does not apply to estates of less than two thousand dollars ($2,000.00) in value when the beneficiaries are husband or wife or children or grandchildren, or parent or parents of the decedent. If any executor, administrator, collector, committee, trustee or any other fiduciary within or without this state holding or having control of any funds, property, trust or estate, the transfer of which becomes taxable under the provisions of this article, shall fail to file the statements herein required, within the times herein required, the commissioner of revenue is authorized and shall be required to secure the information herein required from the best sources available, and therefrom assess the taxes levied hereunder, together with the penalties herein and otherwise provided. (1939, c. 158, s. 21.)

§ 105-24. Regulations governing access to safe deposits of a decedent.—No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest which would thereafter be assessed thereon under this article; but the commissioner of revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing any bank, safe deposit company, trust company, or any other institution to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the total amount of such deposit or deposits is three hundred dollars ($300.00) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the commissioner of revenue. Every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safe keeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative, or co-tenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of any such lock box and to furnish a copy of such inventory to the commissioner of revenue, to the executor, administrator, personal representative, or co-tenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of such lock box. The clerk of the superior court shall be paid by the representative of said estate at the time of his qualification the sum of two dollars ($2.00) for his services rendered as hereinbefore prescribed in this section, and in addition thereto he shall receive the same mileage as is now allowed by law to witnesses for going from his office to any place located in his county to perform such services. The clerks of the superior court of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this article are hereby repealed. Notwithstanding any of the provisions of this section

any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the commissioner of revenue a notice, in such form as the commissioner of revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this article on the succession to such securities, deposits, assets, or property, but in any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry. (1939, c. 158, s. 21½.)

§ 105-25. Supervision by commissioner of revenue.—The commissioner of revenue shall have complete supervision of the enforcement of all provisions of the Inheritance Tax Act and the collections of all inheritance taxes found to be due thereunder, and shall make all necessary rules and regulations for the just and equitable administration thereof. He shall regularly employ such deputies, attorneys, examiners, or special agents as may be necessary for the reasonable carrying out of its full intent and purpose. Such deputies, attorneys, examiners, or special agents shall, as often as required to do so, visit the several counties of the state to inquire and ascertain if all inheritance taxes due from estates of decedents, or heirs-at-law, legatees, devisees, or distributees thereof have been paid; to see that all statements required by this article are filed by administrators and executors, or by the beneficiaries under wills where no executor is appointed; to examine into all statements filed by such administrators and executors; to require such administrators and executors to furnish any additional information that may be deemed necessary to determine the amount of tax that should be paid by such estate. If not satisfied, after investigation, with valuation returned by the administrator or executor, the deputy, attorney, examiner, or appraiser shall make an additional appraisal after proper examination and inquiry, or may, in special cases, recommend the appointment by the commissioner of revenue of a special appraiser who, in such case, shall be paid five dollars ($5.00) per day and expenses for his services. The administrator or executor, if not satisfied with such additional appraisal, may appeal within thirty days to the commissioner of revenue, which appeal shall be heard and determined as other cases. From this decision the administrator or executor shall have the right to appeal to the superior court of the county in which said estate is situated for the purpose of having said issue tried; said appeal to be made in the same way and manner as is now provided by law for appeals from the decisions of the public utilities commission: Provided, that the tax shall first be paid, or satisfactory surety bond in double the amount of any alleged deficiency shall be filed with the commissioner pending an appeal; and if it shall be determined upon trial that said tax or any part thereof was illegal or excessive, judgment shall be rendered therefor with interest, and the amount of tax so adjudged overpaid or declared invalid shall be certified by the clerk of court to the commissioner of revenue, who is authorized and directed to draw his account on the state treasurer for the amount thereof. (1939, c. 158, s. 22.)

§ 105-26. Proportion of tax to be repaid upon certain conditions.—Whenever debts shall be proven against the estate of a decedent after the distribution of legacies from which the inheritance tax has been deducted in compliance with this article, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer, if it has been so paid in, upon certificate of the commissioner of revenue. (1939, c. 158, s. 23.)

§ 105-27. Commissioner of revenue may order executor, etc., to file account, etc.—If the commissioner of revenue shall discover that reports and accounts have not been filed, and the tax, if any, has not been paid as provided in this article, he shall issue a citation to the executor, administrator, or trustee of the decedent whose estate is subject to tax, to appear at a time and place therein mentioned, not to exceed twenty days from the date thereof, and show cause why said report and account should not be filed and said tax paid; and when personal service cannot be had, notice shall be given as provided for service of summons by publication in the county in which said estate is located; and if said tax shall be found to be due, the said delinquent shall be adjudged to pay said tax, interest and cost; if said tax shall remain due and unpaid for a period of thirty days after notice thereof, the commissioner of revenue shall certify the same to the sheriff, who shall make collection of said tax, cost and commissions for collection, as provided in § 105-16. (1939, c. 158, s. 24.)

§ 105-28. Failure of administrator, executor, or trustee to pay tax.—Any administrator, executor, or trustee who shall fail to pay the lawful inheritance taxes due upon any estate in his hands or under his control within two years from the time of his qualification shall be liable for the amount of the said taxes, and the same may be recovered in an action against such administrator, executor, or trustee, and the sureties on his official bond. Any clerk of the court who shall allow any administrator, executor, or trustee to make a final settlement of his estate without having paid the inheritance tax due by law, and exhibiting his receipt from the commissioner of revenue therefor, shall be liable upon his official bond for the amount of such taxes. (1939, c. 158, s. 25.)

§ 105-29. Uniform valuation.—(a) If the value of any estate taxed under this schedule shall have been assessed and fixed by the federal government for the purpose of determining the federal taxes due thereon prior to the time the report from the executor or administrator is made to the commissioner of revenue under the provisions of this

article, the amount or value of such estate so fixed, assessed, and determined by the federal government shall be stated in such report. If the assessment of the estate by the federal government shall be made after the filing of the report by the executor or administrator with the commissioner of revenue, as provided in this article, the said executor or administrator shall, within thirty days after receipt of notice of the final determination by the federal government of the value or amount of said estate as assessed and determined for the purpose of fixing federal taxes thereon, make report of the amount so fixed and assessed by the federal government, under oath or affirmation, to the commissioner of revenue. If the amount of said estate as assessed and fixed by the federal government shall be in excess of that theretofore fixed or assessed under this schedule for the purpose of determining the amount of taxes due the state from said estate, then the commissioner of revenue shall reassess said estate and fix the value thereof at the amount fixed, assessed, and determined by the federal government, unless the said executor or administrator shall, within thirty days after notice to him from the commissioner of revenue, show cause why the valuation and assessment of said estate as theretofore made should not be changed or increased. If the valuation placed upon said estate by the federal government shall be less than that theretofore fixed or assessed under this article, the executor or administrator may, within thirty days after filing his return of the amount so fixed or assessed by the federal government, file with the commissioner of revenue a petition to have the value of said estate reassessed and the same reduced to the amount as fixed or assessed by the federal government. In either event the commissioner of revenue shall proceed to determine, from such evidence as may be brought to his attention or which he shall otherwise acquire, the correct value of the said estate, and if the valuation is changed, he shall reassess the taxes due by said estate under this article and notify the executor or administrator of such fact. In the event the valuation on said estate shall be decreased, and if there shall have been an overpayment of the tax, the said commissioner shall, within sixty days after the final determination of the value of said estate and the assessment of the correct amount of tax against the same, refund the amount of such excess tax theretofore paid.

(b) If the executor or administrator shall fail to file with the commissioner of revenue the return under oath or affirmation, stating the amount or value at which the estate was assessed by the federal government as provided for in this section, the commissioner of revenue shall assess and collect from the executor or administrator a penalty equal to twenty-five per cent (25%) of the amount of any additional tax which may be found to be due by such estate upon reassessment and reappraisal thereof, which penalty shall under no condition be less than twenty-five dollars ($25.00) or more than five hundred dollars ($500.00) and which cannot be remitted by the commissioner of revenue except for good cause shown. The commissioner of revenue is authorized and directed to confer quarterly with the department of internal revenue of the United States government to ascertain the value of estates in North Carolina which have been assessed for taxation by the federal government, and he shall cooperate with the said department of internal revenue, furnishing to said department such information concerning estates in North Carolina as said department may request. (1939, c. 158, s. 26.)

§ 105-30. Executor defined.—Wherever the word "executor" appears in this article it shall include executors, administrators, collectors, committees, trustees, and all fiduciaries. (1939, c. 158, s. 27.)

§ 105-31. Additional remedies for enforcement of tax. — In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the commissioner of revenue in any court of competent jurisdiction in this state, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until the said taxes have been fully paid. (1939, c. 158, s. 28.)

§ 105-32. Reciprocal relations in respect to death taxes.—(a) The terms "death tax" and "death taxes" as used in the five following subsections, shall include inheritance, succession, transfer and estate taxes and any taxes levied against the estate of a decedent upon the occasion of his death.

(b) At any time before the expiration of eighteen months after the qualification in any probate court in this commonwealth of any executor of the will or administrator of the estate of any nonresident decedent, such executor or administrator shall file with such court proof that all death taxes, together with interest or penalties thereon, which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured, or that no such taxes, interest or penalties are due, as the case may be, unless it appears that letters testamentary or of administration have been issued on the estate of such decedent in the state of his domicile in the four following subsections called the domiciliary state.

(c) The proof required by subsection (b) may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state. If such proof has not been filed within the time limited in subsection (b), and if within such time it does not appear that letters testamentary or of administration have been issued in the domiciliary state, the

register of probate shall forthwith upon the expiration of such time notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate, and shall state in such notice so far as is known to him (a) the name, date of death and last domicile of such decedent, (b) the name and address of each executor or administrator, (c) a summary of the values of the real estate, tangible personalty, and intangible personalty, wherever situated, belonging to such decedent at the time of his death, and (d) the fact that such executor or administrator has not filed theretofore the proof required in subsection (b). Such register shall attach to such notice a plain copy of the will and codicils of such decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as they are known to such register. Within sixty days after the mailing of such notice the official or body charged with the administration of the death tax laws of the domiciliary state may file with such probate court in this commonwealth a petition for an accounting in such estate, and such official or body of the domiciliary state shall, for the purposes of this section, be a party interested for the purpose of petitioning such probate court for such accounting. If such petition be filed within said period of sixty days, such probate court shall decree such accounting, and upon such accounting being filed and approved shall decree either the payment of any such tax found to be due to the domiciliary state or subdivision thereof or the remission to a fiduciary appointed or to be appointed by the probate court, or other court charged with the administration of estates of decedents, of the domiciliary state, of the balance of the intangible personalty after the payment of creditors and expenses of administration in this commonwealth.

(d) No final account of an executor or administrator of a nonresident decedent shall be allowed unless either (1) proof has been filed as required by subsection (b), or (2) notice under subsection (c) has been given to the official or body charged with the administration of the death tax laws of the domiciliary state, and such official or body has not petitioned for an accounting under said subsection within sixty days after the mailing of such notice, or (3) an accounting has been had under said subsection (c), a decree has been made upon such accounting and it appears that the executor or administrator has paid such sums and remitted such securities, if any, as he was required to pay or remit by such decree, or (4) it appears that letters testamentary or of administration have been issued by the domicilary state and that no notice has been given under said subsection (c).

(e) Subsections (a) to (d), inclusive, shall apply to the estate of a non-resident decedent, only in case the laws of the domiciliary state contain a provision, of any nature or however expressed, whereby this commonwealth is given reasonable assurance, as finally determined by the commissioner, of the collection of its death taxes, interest and penalties from the estates of decedents dying domiciled in this commonwealth, when such estates are administered in whole or in part by a probate court, or other court charged with the administration of estates of decedents, in such other state.

(f) The provisions of subsections (a) to (e), inclusive, shall be liberally construed in order to insure that the domiciliary state of any non-resident decedent whose estate is administered in this commonwealth shall receive any death taxes, together with interest and penalties thereon, due to it from the estate of such decedent. (1939, c. 158, s. 29.)

Art. 2. Schedule B. License Taxes.

§ 105-33. Taxes under this article.—Taxes in this article or schedule shall be imposed as state license taxes for the privilege of carrying on the business, exercising the privilege, or doing the act named, and nothing in this article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this article or schedule.

(a) If the business made taxable or the privilege to be exercised under this article or schedule is carried on at two or more separate places, a separate state license for each place or location of such business shall be required.

(b) Every state license issued under this article or schedule shall be for twelve months, shall expire on the thirty-first day of May of each year, and shall be for the full amount of tax prescribed: Provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirty-first day of May of each year, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirty-first day of May, next following. Every county, city and town license issued under this article or schedule shall be for twelve months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(c) The state license thus obtained shall be and constitute a personal privilege to conduct the business named in the state license, shall not be transferable to any other person, firm, or corporation, and shall be construed to limit the person, firm, or corporation named in the license to conducting the business and exercising the privilege named in the state license to the county and/or city and location specified in the state license, unless otherwise provided in this article or schedule: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location, for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.

(d) Whenever, in any section of this article or schedule, the tax is graduated with reference to the population of the city or town in which the

business is to be conducted or the privilege exercised, the minimum tax provided in such section shall be applied to the same business or privilege when conducted or exercised outside of the municipality, unless such business is conducted or privilege exercised within one mile of the corporate limits of such municipality, in which event the same tax shall be imposed and collected as if the business conducted or the privilege exercised were inside of the corporate limits of such municipality: Provided, that with respect to taxes in this article, assessed on a population basis, the same rates shall apply to incorporated towns and unincorporated places or towns alike, with the best estimate of population available being used as a basis for determining the tax in unincorporated places or towns. The term "places or towns" means any unincorporated community, point or collection of people having a geographical name by which it may be generally known, and is so generally designated.

(e) All state taxes imposed by this article shall be paid to the commissioner of revenue, or to one of his deputies; shall be due and payable on or before the first day of June of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent state license and privilege taxes: Provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this article or schedule after the thirty-first day of May and prior to the thirty-first day of the following May of any year, then such person, firm, or corporation shall apply for and obtain a state license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such state license shall be and constitute a delinquent payment of the state license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.

(f) The taxes imposed and the rates specified in this article or schedule shall apply to the subjects taxed on and after the first day of June, one thousand nine hundred thirty-nine, and prior to said date the taxes imposed and the rates specified in the Revenue Act of one thousand nine hundred thirty-seven shall apply.

(g) It shall be the duty of a grantee, transferee, or purchaser of any business or property subject to the state license taxes imposed in this article to make diligent inquiry as to whether the state license tax has been paid, but when such business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the state license taxes imposed under this article, such property, while in the possession of such innocent purchaser, shall not be subject to any lien for such state license taxes.

(h) All county or municipal taxes levied by the board of county commissioners of any county, or by the board of aldermen or other governing body of any municipality within this state, under the authority conferred in this article, shall be collected by the sheriff or tax collector of such county and by the tax collector of such city, and the county or municipal license shall be issued by such officer.

(i) Any person, firm, or corporation who shall willfully make any false statement in an application for a license under any section of this article or schedule shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, which fine shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.

(j) Wherever the business taxed in §§ 105-61, 105-62, 105-79 and/or 105-84 is of a seasonal character at summer or winter resorts, license may be issued for such seasonal business at one-half of the annual license tax for the four months period from June first to October first in summer resorts and from December first to April first in winter resorts. (1939, c. 158, s. 100.)

§ 105-34. Amusement parks. — Every person, firm, or corporation engaged in the business of operating a park, open to the public as a place of amusement, and in which there may be either a bowling alley, trained animal show, penny or nickel machine for exhibiting pictures, theatrical performance, or similar entertainment, shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such amusement park, and shall pay for such license the following tax:

State license for two months	$200.00
State license for four months	400.00
State license for eight months	600.00
State license for twelve months	800.00

This section shall not apply to bathing beaches which are not operated for more than four months each year.

(a) The licensee shall have the privilege of doing any or all of the things set out in this section; but the operation of a carnival, circus, or a show of any kind that moves from place to place shall not be allowed under the state license provided for in this section.

(b) Counties shall not levy a license tax on the business taxed under this section. (1939, c. 158, s. 102.)

§ 105-35. Amusements—traveling theatrical companies, etc.—Every person, firm, or corporation engaged in the business of a traveling theatrical, traveling moving picture, and/or traveling vaudeville company, giving exhibitions or performances in any hall, tent, or other place not licensed under §§ 105-34 or 105-37, whether on account of municipal ownership or otherwise, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and pay for such license a tax of twenty-five dollars ($25.00) for each day or part of a day's exhibits or performances: Provided, that

(a) Artists exhibiting paintings or statuary work of their own hands shall only pay two dollars ($2.00) for such state license.

(b) Such places of amusement as do not charge more than a total of fifty cents (50c) for admission at the door, including a reserved seat, and shall perform or exhibit continuously in any given

place as much as one week, shall be required to pay for such state license a tax of twenty-five dollars ($25.00) per week.

(c) The owner of the hall, tent, or other place where such amusements are exhibited or performances held shall be liable for the tax.

(d) In lieu of the state license tax, hereinbefore provided for in this section, such amusement companies, consisting of not more than ten performers, may apply for an annual statewide license, and the same may be issued by the commissioner of revenue for the sum of three hundred dollars ($300.00), paid in advance, prior to the first exhibition in the state, shall be valid in any county of this state, and shall be in full payment of all state license taxes imposed in this section.

(e) Any traveling organization which exhibits animals or conducts side shows in connection with its exhibitions or performances shall not be taxed under this section, but shall be taxed as herein otherwise provided.

(f) The owner, manager, or proprietor of any such amusements described in this section shall apply in advance to the commissioner of revenue for a state license for each county in which a performance is to be given.

Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purposes of this subchapter.

(g) Counties, cities and towns may levy a license tax not in excess of the license tax levied by the state.

(h) Where the taxpayer elects to pay an annual state-wide license in the sum of three hundred dollars ($300.00) in advance, as provided for in subsection (d) of this section, counties, cities and towns may each levy a license tax not in excess of ten dollars ($10.00) per week, provided such places of amusement do not charge more than a total of fifty cents (50c) for admission at the door, as provided for in subsection (b) of this section. (1939, c. 158, s. 103.)

§ 105-36. Amusements—manufacturing, selling, leasing, or distributing moving picture films or checking attendance at moving picture shows.—Every person, firm, or corporation engaged in the business of manufacturing, selling, or leasing, furnishing, and/or distributing films to be used in moving pictures within this state shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of six hundred and twenty-five dollars ($625.00): Provided, that persons, firms, or corporations engaged exclusively in the business of selling, leasing or furnishing and/or distributing films for use in schools, public or private, and other institutions of learning, in this state shall pay a tax of twenty-five dollars ($25.00).

Any person, firm, or corporation engaged under contract or for compensation in the business of checking the attendance of any moving picture or show for the purpose of ascertaining attendance or amount of admission receipts at any theatre or theatres shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax of two hundred and fifty dollars ($250.00).

Counties, cities, and towns shall not levy a license tax on the business taxed under this section. (1939, c. 158, s. 104.)

§ 105-37. Amusements — moving pictures or vaudeville shows—admission.—Every person, firm, or corporation engaged in the business of operating a moving picture show or place where vaudeville exhibitions or performances are given or operating a theatre or opera house where public exhibitions or performances are given for compensation shall apply for and obtain in advance from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such state license for each room, hall, or tent used the following base tax:

In cities or towns of less than 1,500 population	$ 25.00
In cities or towns of 1,500 and less than 3,000 population	62.50
In cities or towns of 3,000 and less than 5,000 population	125.00
In cities or towns of 5,000 and less than 10,000 population	175.00
In cities or towns of 10,000 and less than 15,000 population	275.00
In cities or towns of 15,000 and less than 25,000 population	375.00
In cities or towns of 25,000 population or over	425.00

(a) For any moving picture show operated more than two miles from the business center of any city having a population of twenty-five thousand or over (for the purpose of this provision, the term "business center" to be defined as the intersection of the two principal business streets of the city), the base tax levied shall be two hundred dollars ($200.00).

In addition to the base tax levied in the above schedule of this section, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of tax upon all such gross receipts levied in Schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise. Reports shall be made to the commissioner of revenue in such form as he may prescribe within the first ten days of each month, covering all such gross receipts for the previous months and the additional tax herein levied shall be paid monthly at the time such reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax. Provided, if the tax upon admissions herein levied is not added to the admission price as a separate charge to any exhibition of motion pictures shown under percentage

royalty contracts, the gross receipts, with reference to such royalty contracts, shall be deemed to be the gross receipts from admissions after the percentage tax upon gross receipts shall have been paid or deducted.

(b) Upon any and all other forms of entertainment and amusement not otherwise taxed or specifically exempted in this article, for which an admission is charged, every person, firm, or corporation engaged in such business shall pay an annual license tax for each room, hall, or tent where such admission charges are made graduated according to population, as follows:

In cities or towns of less than 1,500 population	$10.00
In cities or towns of 1,500 and less than 3,000 population	15.00
In cities or towns of 3,000 and less than 5,000 population	20.00
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 15,000 population	30.00
In cities or towns of 15,000 and less than 25,000 population	40.00
In cities or towns of 25,000 population or over	50.00

In addition to the license tax levied in the above schedule of this subsection, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise, the additional tax upon gross receipts to be levied and collected as provided in this section for motion picture shows, or in accordance with such regulations of payments as may be made by the commissioner of revenue. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.

Provided, that athletic contests of all kinds, high school and elementary school contests, for which an admission is charged in excess of fifty cents (50c), including football, baseball, basketball, dances, wrestling, and boxing contests, shall pay an annual license tax of five dollars ($5.00), for each location where such charges are made, and an additional charge upon the gross receipts at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise, the additional tax upon gross receipts to be levied and collected as provided in this section for motion picture shows, or in accordance with such regulations of payments as may be made by the commissioner of revenue. The tax levied in this last portion of subsection (b), shall apply to all privately owned toll bridges, including all charges made for all vehicles, freight and passenger, and the minimum charge of fifty cents (50c), for admission shall not apply to bridge tolls.

(c) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half the base tax levied in this section. (1939, c. 158, s. 105.)

§ 105-38. Amusements — circuses, menageries, wild west, dog and/or pony shows, etc.—Every person, firm, or corporation engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other show, exhibition or performance similar thereto, not taxed in other sections of this article, shall apply for and obtain a state license from the commissioner of revenue for the privilege of engaging in such business, and pay for such license the following tax for each day or part of a day:

(a) Such shows and/or exhibitions traveling on railroads and requiring transportation of:

Not more than two cars	$ 30.00
Three to five cars, inclusive	45.00
Six to ten cars, inclusive	90.00
Eleven to twenty cars, inclusive	125.00
Twenty-one to thirty cars, inclusive	175.00
Thirty-one to fifty cars, inclusive	250.00
Over fifty cars	300.00

(b) Such shows and/or exhibitions traveling by automobiles, trucks, or other vehicles, other than railroad cars, and requiring transportation by:

Not over two vehicles	$ 7.50
Three to five vehicles	10.00
Six to ten vehicles	15.00
Eleven to twenty vehicles	25.00
Twenty-one to thirty vehicles	45.00
Thirty-one to fifty vehicles	60.00
Fifty-one to seventy-five vehicles	75.00
Seventy-six to one hundred vehicles	100.00
Over one hundred vehicles, per vehicle in excess thereof	5.00

It is the intent of this subsection that every vehicle used in transporting circus property or personnel, whether owned by the circus or by others, shall be counted in computing the tax.

(c) Every person, firm, or corporation by whom any show or exhibition taxed under this section is owned or controlled shall file with the commissioner of revenue, not less than five days before entering this state for the purpose of such exhibitions or performances therein, a statement, under oath, setting out in detail such information as may be required by the commissioner of revenue covering the places in the state where exhibitions or performances are to be given, the character of the exhibitions, the mode of travel, the number of cars or other conveyances used in transferring such shows, and such other and further information as may be required. Upon receipt of such statement, the commissioner of revenue shall fix and determine the amount of state license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the commissioner of revenue, with full and particular instructions as to the state license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the commissioner of revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the commissioner of revenue may, upon proper application made to him, refund the tax for such

canceled exhibitions or performances. Every such person, firm, or corporation shall give to the commissioner of revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.

(d) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the commissioner of revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy commissioner, the commissioner of revenue shall cause his division deputy to attend at one or more points in the state where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determinining the amount of state license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.

(e) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a state license of one thousand dollars ($1,000.00) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the commissioner of revenue or his duly authorized deputy.

(f) The provisions of this section, or any other section of this article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the state license tax imposed in this section.

(g) Every such person, firm, or corporation who shall give any such exhibitions or performances mentioned in this section within this state, before the statement provided for has been filed with the commissioner of revenue, or before the state license tax has been paid, or which shall, after the filing of such statement, give any such exhibitions or performances taxable at a higher rate than the exhibition or performance authorized by the commissioner of revenue upon the statement filed, shall pay a state license tax of fifty per cent (50%) greater than the tax hereinbefore prescribed, to be assessed and collected either by the commissioner of revenue or by his division deputy.

Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purposes of this subchapter.

(h) In lieu of the tax levied in § 105-86, each circus, or other form of amusement taxed under this section, advertising by means of outdoor advertising displays, a bill posting or as otherwise defined in § 105-86, shall pay a tax of one hundred dollars ($100.00) for a statewide license for the privilege of advertising in this manner, said tax to be in addition to the other taxes levied in this section.

(i) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one-half of the license tax levied by the state, but shall not levy a parade tax or a tax under subsection (h) of this section. (1939, c. 158, s. 106.)

§ 105-39. Amusement—carnival companies, etc. —Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, moving picture and vaudeville shows, museums and menageries, merry-go-rounds, ferris wheels, riding devices, and other like amusements, and enterprises, conducted for profit, under the same general management, or an aggregate of shows, amusements, eating places, riding devices, or any of them operating together on the same lot or contiguous lots or streets, traveling from place to place, whether owned and actually operated by separate persons, firms, or corporations or not, filling week-stand engagements, or giving week-stand exhibitions, under canvas or not, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business or amusement, and shall pay for such license for each week, or part of a week, a tax based according to the population of the city or town in which such carnival is showing as follows:

In cities or towns of less than 2,500 population	$100.00
In cities or towns of 2,500 population and less than 10,000	200.00
In cities or towns of more than 10,000 population	300.00

Provided that any carnival operating within a radius of five miles of any city shall pay the same tax as if they were actually showing within the city limits of said town. Provided further that if such a carnival operates over five miles from any city or town such a carnival shall be liable for a tax of one hundred dollars ($100.00) per week or part of a week.

Provided, that when a person, firm, or corporation exhibits only riding devices which are not a part of, nor used in connection with any carnival company, the tax shall be ten dollars ($10.00) per week for each such riding device, provided that

counties, cities and towns may levy and collect a license tax upon such riding devices not in excess of five dollars ($5.00) for each such device.

Provided, further, that it shall be unlawful under this section for the owners and/or operators of riding devices to operate, or cause to be operated, any show, game, stand or other attraction whatsoever.

(a) This section shall not repeal any local act prohibiting any of the shows, exhibitions, or performances mentioned in this section, or limit the authority of the board of county commissioners of any county, or the board of aldermen or other governing body of any city or town, in prohibiting such shows, exhibitions, or performances.

If the commissioner of revenue shall issue a state license for any such show, exhibition, or performance in any county or municipality having a local statute prohibiting the same, then the said state license shall not authorize such show, exhibition, or performance to be held in such county or municipality, but the commissioner of revenue shall refund, upon proper application, the tax paid for such state license.

(b) No person, firm, or corporation, nor any aggregation of same, giving such shows, exhibitions, or performances, shall be relieved from the payment of the tax levied in this section, regardless of whether or not the state derives a benefit from same. Nor shall any carnival operating or giving performances or exhibitions, in connection with any fair in North Carolina, be relieved from the payment of tax levied in this section. It is the intent and purpose of this section that every person, firm, or corporation, or aggregation of same which is engaged in the giving of such shows, exhibitions, performances, or amusements, whether the whole or a part of the proceeds are for charitable, benevolent, educational, or other purposes whatsoever, shall pay the state license taxes provided for in this section.

It is not the purpose of this article to discourage agricultural fairs in the state, and to further this cause, no carnival company will be allowed to play a "Still Date" in any county where there is a regularly advertised agricultural fair, fifteen days prior to the dates of said fair. An agricultural fair shall be construed as meaning one that has operated at least one year prior to March 24, 1939.

Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon the gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The commissioner of revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority or supervision as may be necessary to effectuate the purposes of this subchapter.

Nothing herein contained shall prevent American Legion Posts in North Carolina from holding fairs or tobacco festivals on any dates which they may select, provided said fairs and festivals have heretofore been held as annual events.

(c) Counties, cities and towns may levy a license tax on the business taxed hereunder not in excess of one-half of that levied by the state. (1939, c. 158, c. 107; 1941, c. 50, s. 3.)

§ 105-40. Amusements—certain exhibitions, performances, and entertainments exempt from license tax. — All exhibitions, performances, and entertainments, except as in this article expressly mentioned as not exempt, produced by local talent exclusively, and for the benefit of religious, charitable, benevolent, or educational purposes, and where no compensation is paid to such local talent shall be exempt from the state license tax. (1939, c. 158, s. 108.)

§ 105-41. Attorneys at law and other professionals.—Every practicing attorney at law, practicing physician, veterinary, surgeon, osteopath, chiropractor, chiropodist, dentist, oculist, optician, optometrist, any person practicing any professional art of healing for a fee or reward, civil engineer, electrical engineer, mining engineer, mechanical engineer, architect and landscape architect, photographer, canvasser for any photographer, agent of a photographer in transmitting pictures or photographs to be copied, enlarged or colored (including all persons enumerated in this section employed by the state, county, municipality, a corporation, firm or individual), and every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in the business of selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, or who is engaged in the business of leasing or offering to lease, renting or offering to rent, or of collecting any rents as agent for another for compensation, or who is engaged in the business of soliciting and/or negotiating loans on real estate as agent for another for a commission, brokerage and/or other compensation, shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business or profession, or the doing of the act named, and shall pay for such license twenty-five dollars ($25.00): Provided, that no professional man or woman shall be required to pay a privilege tax after he or she has arrived at the age of seventy-five years.

Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license twenty-five dollars ($25.00), and in addition shall pay a license of twelve and fifty one-hundredths dollars ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

Every licensed mortician or embalmer shall in like manner apply for and obtain from the commissioner of revenue a state-wide license for practicing his profession, whether for himself or in the employ of another of ten dollars ($10.00).

Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or corporation: Provided, that a licensed photographer having a located place of business in this state, shall be liable for

a license tax on each agent or solicitor, employed by him for soliciting business.

(a) Only one-half of the tax levied in this section shall be collected from those persons whose gross receipts from the business or profession for the preceding year did not exceed one thousand dollars ($1,000.00).

(b) License revocable for failure to pay tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the commissioner of revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next term of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person twenty days before the next term of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commissions having authority of law in this state with respect to the granting or continuing of license to practice any such profession.

(c) Counties, cities, or towns shall not levy any license tax on the business or professions taxed under this section; and the state-wide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this state. (1939, c. 158, s. 109; 1941, c. 50, s. 3.)

§ 105-42. Detectives. — Every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in business as a detective or what is ordinarily known as "secret service work," or who is engaged in the business of soliciting such business, shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business, and shall pay for such license a tax of twenty-five dollars ($25.00): Provided, any such person regularly employed by the United States government, any state or political subdivision of any state shall not be required to pay the license herein provided for. (1939, c. 158, s. 110.)

§ 105-43. Real estate auction sales.—(a) Every person, firm, or corporation engaged in the business of conducting auction sales of real estate for profit or compensation shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of two hundred and fifty dollars ($250.00.).

Provided, that any person, firm, or corporation engaged in the business of conducting auction sales in one county only in this state, shall be liable for a license tax in the amount of seventy-five dollars ($75.00).

(b) This section shall not apply to sales for foreclosure of liens or sales made by order of court.

(c) Counties, cities, and towns may levy a tax on the business taxed under this section not in excess of twelve and fifty one-hundredths dollars ($12.50) for each sale conducted in the county, city, or town: Provided, that the total tax levied by any county, city, or town on said business during any year shall not exceed twenty-five dollars ($25.00). (1939, c. 158, s. 111.)

§ 105-44. Coal and coke dealers.—(a) Every person, firm, or corporation, either as agent or principal, engaged in and conducting the business of selling and/or delivering coal or coke in carload lots, or in greater quantities, shall be deemed a wholesale dealer, and shall apply for and procure from the revenue commissioner a state license and pay for such license the sum of seventy-five dollars ($75.00): Provided, that if such wholesale dealer shall also sell and/or deliver coal or coke in less than carload lots, he shall not be subject to the retailer's license tax provided in this section.

(b) Every person, firm, or corporation engaged in and conducting the business of selling and/or delivering coal or coke at retail shall apply for and procure from the commissioner of revenue a state license, and shall pay for such license for each city or town in which such coal or coke is sold or delivered, as follows:

In cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 25,000 population	50.00
In cities or towns of 25,000 and over	75.00

Dealers or peddlers in coal who sell in quantities of not more than one hundred (100) pounds shall pay a state license tax of five dollars ($5.00); provided that this section shall not apply to persons, firms or corporations who deliver coal or coke to state institutions or public schools only.

(c) No county shall levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state.

(d) From the taxes levied under authority of this section, any person, firm or corporation owning or operating a coal mine in this state shall be allowed to deduct the amount of ad valorem taxes for the current year levied by any county in this state on the mine, mineral rights or land itself, from which said coal is mined: Provided, further, that any person, firm or corporation soliciting orders for pool cars of coal to be distributed without profit shall be subject to the license tax. (1939, c. 158, s. 112; 1941, c. 50, s. 3.)

§ 105-45. Collecting agencies. — Every person, firm, or corporation engaged in the business of collecting, for a profit, claims, accounts, bills, notes, or other money obligations for others, and of rendering an account for same, shall be deemed a collection agency, and shall apply for and re-

ceive from the commissioner of revenue a state license for the privilege of engaging in such business, and pay for such license a tax of fifty dollars ($50.00).

(a) This section shall not apply to a regularly licensed practicing attorney at law.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 113.)

§ 105-46. Undertakers and retail dealers in coffins.—Every person, firm, or corporation engaged in the business of burying the dead, or in the retail sale of coffins, shall apply for and procure from the revenue commissioner a state license for transacting such business within this state, and shall pay for such license the following tax:

In cities or towns of less than 500 population	$ 10.00
In cities or towns of 500 and less than 5,000 population	25.00
In cities or towns of 5,000 and less than 10,000 population	40.00
In cities or towns of 10,000 and less than 15,000 population	50.00
In cities or towns of 15,000 and less than 25,000 population	75.00
In cities or towns of 25,000 population or over	100.00

This section shall not apply to a cabinet-maker (who is not an undertaker) who makes coffins to order.

No county shall levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 114.)

§ 105-47. Dealers in horses and/or mules.—Every person, firm, or corporation engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules shall apply for and procure from the commissioner of revenue a state license for the privilege of engaging in such business in this state and shall pay for such license an annual tax for each location where such business is carried on as follows:

Where not more than one carload of horses and/or mules is purchased for the purpose of resale	$ 25.00
Where more than one carload and not more than two carloads of horses and/or mules are purchased for the purpose of resale	50.00
Where more than two carloads of horses and/or mules are purchased for the purpose of resale	100.00

For the purpose of calculating the amount of tax due under the above schedule, a carload of horses and/or mules shall be twenty-five (25) and purchases for the preceding license tax year shall be used as a medium for arriving at the amount of tax due for the ensuing year: Provided, however, that if during the current license year horses and/or mules are purchased for the purpose of resale in such quantities that would establish liability for a greater tax than that previously paid, it shall be immediately remitted to the commissioner of revenue with the license which has already been issued in order that it may be canceled and a corrected license issued.

In addition to the above license, every person, firm, or corporation engaged in the business of purchasing for the purpose of resale and/or selling horses and/or mules at public auction, either on his or its own behalf or for any other person, whether a commission or fee is or is not charged, shall apply for and procure from the commissioner of revenue a state license for each place of auction and shall pay for such license an annual tax of one hundred dollars ($100.00).

In addition to the above license, every transient vendor of horses and/or mules who has no permanent or established place of business in this state shall apply for and procure from the commissioner of revenue a state license for each county in which horses and/or mules are sold and shall pay for such license an annual tax of three hundred dollars ($300.00).

(a) In addition to the annual licenses levied in this section, every person, firm, or corporation, engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules shall pay a tax of three dollars ($3.00) per head on all such horses and/or mules purchased for the purpose of resale. "Purchase" shall be taken to mean and shall include all horses and/or mules acquired or received as a result of outright purchase or on consignment, account or otherwise for resale, either at wholesale or retail: Provided, however, that "purchases" shall not include the acquisition of horses and/or mules which are acquired or received as a result of an allowance for credit for horses and/or mules taken in part payment on horses and/or mules subject to the tax imposed in this section nor shall it include horses and/or mules which have been repossessed as a result of nonpayment of the original sales or purchase price. "Purchases" shall include all horses and/or mules acquired for the purpose of resale, either at wholesale or retail, whether such horses and/or mules are shipped into this state by railroad or brought in otherwise.

The original or first dealer or consignee, purchasing or receiving horses and/or mules in this state, shall be primarily liable for payment of the additional per-head tax levied in this section. Horse and/or mule auctioneers, engaged in the business of purchasing, acquiring or receiving on consignment, account or otherwise, either as principal or agent, horses and/or mules from out-of-state dealers or other persons and selling same at either private or public auction, shall be primarily liable for payment of the additional per-head tax levied in this section unless sold to a licensed dealer for the purpose of resale. In order to avoid double taxation, dealers purchasing or acquiring horses and/or mules from another established dealer located within this state may be relieved of reporting the additional per-head tax on such horses and/or mules acquired from another dealer located within this state, provided an official receipt or statement from the commissioner of revenue or his duly authorized agents is produced, showing that the additional per-head tax levied in this section has been paid.

(b) The additional per-head tax levied in this section on purchases of horses and/or mules purchased for the purpose of resale, either at whole-

sale or retail, shall be due and payable immediately upon receipt of such horses and/or mules within this state. The commissioner of revenue may, however, in his discretion, where he thinks circumstances justify it, permit licensed and established dealers to file monthly reports, which reports shall be due to be filed on or before the fifteenth (15th) of each month for all purchases during the preceding month, and such report when filed shall be accompanied by a remittance for the amount of tax shown to be due. Reports shall be filed in such form and in such manner as may be prescribed by the commissioner of revenue, and failure to file the report herein prescribed and pay the tax as shown to be due thereon shall subject such dealer to a penalty of five per cent (5%) of the amount of tax due for each month or fraction thereof that such report may be delinquent.

(c) Every person, firm, or corporation engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules shall keep a full, true and accurate record of all purchases and sales, including purchase invoices and freight bills covering such purchases and sales of all horses and/or mules until such purchases and sales, including purchase invoices and freight bills, have been checked by a duly authorized agent of the commissioner of revenue. Failure to comply with the provisions of this section in this respect shall be prima facie evidence of attempting to evade the additional taxes levied in this section and shall subject such dealer, in addition to all other penalties imposed by this article, to the additional per-head tax on all purchases and/or sales from whatever source such horses and/or mules are acquired or received, and it shall be the duty of the commissioner of revenue or his duly authorized agents to assess the additional tax upon an estimation of purchases and/or sales from the best information obtainable.

(d) As a condition to the issuance or the continuance of the annual license levied in this section, and in order to secure the payment of the additional per-head tax levied on purchases and/or sales in this section, the commissioner of revenue may in his discretion, when it appears reasonably necessary therefor, require any dealer in horses and/or mules, applying for a license under this section, to post a surety bond or other adequate security sufficient to guarantee and secure the payment of any tax due under this section.

(e) Any person, firm, or corporation, required to procure from the commissioner of revenue a license under this section, who shall purchase and sell or offer for sale by principal or agent any horses and/or mules without first having obtained such license, or shall fail, neglect or refuse to file any report and pay the additional taxes levied in this section when due and payable, shall in addition to the other penalties imposed by this article, be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed one hundred dollars ($100.00) and/or imprisoned not less than thirty (30) days within the discretion of the court.

(f) Counties, cities and towns may levy an annual license tax on the business taxed under this section not in excess of twelve dollars and fifty cents ($12.50). (1939, c. 158, s. 115; 1941, c. 50, s. 3.)

§ 105-48. Phrenologists.—Any person engaged in the practice of phrenology for compensation shall procure from the commissioner of revenue a state license for engaging in such practice, and shall pay for same a tax of two hundred dollars ($200.00) for each county in which such person does business.

Counties, cities, and towns may levy any license tax on the business taxed in this section. (1939, c. 158, s. 116.)

§ 105-49. Bicycle dealers.—Any person, firm, or corporation engaged in the business of buying and/or selling bicycles, supplies and accessories shall apply for and procure a state license from the commissioner of revenue for the privilege of transacting such business, and shall pay tax for such license as follows:

In cities and towns of less than 10,000 population	$10.00
In cities and towns of 10,000 and less than 20,000 population	20.00
In cities or towns of 20,000 population or more	25.00

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 117.)

§ 105-50. Pawnbrokers. — Every person, firm, or corporation engaged in and conducting the business of lending or advancing money or other things of value for a profit, and taking as a pledge for such loan specific articles of personal property, to be forfeited if payment is not made within a definite time, shall be deemed a pawnbroker, and shall pay for the privilege of transacting such business an annual license as follows:

In cities or towns of less than 10,000 population	$200.00
In cities or towns of 10,000 and less than 15,000 population	250.00
In cities or towns of 15,000 and less than 20,000 population	300.00
In cities or towns of 20,000 and less than 25,000 population	350.00
In cities or towns of 25,000 population or more	400.00

(a) Before such pawnbroker shall receive any article or thing of value from any person or persons, on which a loan or advance is made, he shall issue a duplicate ticket, one to be delivered to the owner of said personal property and the other to be attached to the article, and said ticket shall have an identifying number on the one side, together with the date at the expiration of which the pledger forfeits his right to redeem, and on the other a full and complete copy of this subsection; but such pawnbroker may, after the pledger has forfeited his right to redeem the specific property pledged, sell the same at public auction, deducting from the proceeds of sale the money or fair value of the thing advanced, the interest accrued, and the cost of making sale, and shall pay the surplus remaining to the pledger.

(b) Any person, firm, or corporation transacting the business of pawnbroker without a license as provided in this section, or violating any of the provisions of this section, shall be guilty of a misdemeanor and fined not less than fifty dollars

($50.00) nor more than five hundred dollars ($500.00).

(c) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1939, c. 158, s. 118.)

§ 105-51. Cash registers, adding machines, typewriters, refrigerating machines, washing machines, etc.—Every person, firm, or corporation engaged in the business of selling and/or delivering and/or renting cash registers, typewriters, adding or bookkeeping machines, billing machines, check protectors or protectographs, kelvinators, frigidaires, or other refrigerating machines, lighting systems, washing machines, mechanically or electrically operated burglar alarms, addressograph machines, multigraph and other duplicating machines, vacuum cleaners, mechanically or electrically operated oil burners and coal stokers, card punching, assorting and tabulating machinery, shall apply for and procure from the commissioner of revenue a state license for each place where such business is transacted in this state, and shall pay for such license a tax of ten dollars ($10.00).

Counties, cities, and towns shall not levy a license tax on the business taxed under this section. (1939, c. 158, s. 119.)

§ 105-52. Sewing machines.—(a) Every person, firm, or corporation engaged in the business of selling sewing machines within this state shall apply for and obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business and shall pay for such license a tax of one hundred dollars ($100.00) per annum for each such make of machines sold or offered for sale.

(b) In addition to the annual license tax imposed in subsection (a) of this section, such person, firm, or corporation engaged in the business taxed under this section shall pay a tax at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, on retail sales of merchandise on the total receipts during the preceding year from the sale, lease, or exchange of sewing machines and/or accessories within the state, which said tax shall be paid to the commissioner of revenue at the time of securing the annual license provided for in subsection (a) of this section: Provided, that the tax on sales in the preceding year, levied in this subsection, shall apply only for the fiscal year ending May thirty-first, one thousand nine hundred thirty-five: Provided further, that on and after June first, one thousand nine hundred thirty-five, the additional tax on sales levied in this subsection shall be assessed and collected under the provisions of Schedule E, §§ 105-164 to 105-187, the same as the tax on sales of other merchandise.

(c) Any person, firm, or corporation obtaining a license under the foregoing sections may employ agents and secure a duplicate copy of such license for each such agent by paying a tax of ten dollars ($10.00) to the commissioner of revenue. Each such duplicate license so issued shall contain the name of the agent to whom it is issued, shall not be transferable, and shall license the licensee to sell or offer for sale only the sewing machines sold by the holder of the original license.

(d) Any merchant or dealer who shall purchase sewing machines from a manufacturer or a dealer who has paid the license tax provided for in this section may sell such sewing machines without paying the annual state-wide license tax provided for in subsection (a), but shall procure the duplicate license provided for in subsection (c) of this section: Provided, that the tax imposed by this subsection shall be the only tax required to be paid by dealers in secondhand sewing machines exclusively.

(e) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties imposed in this article, pay an additional tax of double the state-wide annual license, and the duplicate tax imposed in this section.

(f) No county shall levy a license tax on the business taxed under this section, except that the county may levy a license tax not in excess of five dollars ($5.00) on each agent in a county who holds a duplicate license provided for in this section.

Cities and towns shall not levy a license tax on the business taxed under this section. (1939, c. 158, s. 120.)

§ 105-53. Peddlers.—(a) Any person, firm, or corporation who or which shall carry from place to place any goods, wares, or merchandise, and offer to sell or barter the same, or actually sells or barters the same, shall be deemed a peddler, except such person, firm, or corporation who or which is a wholesale dealer, with an established warehouse in this state and selling only to merchants for resale, and shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

Peddler, on foot, for each county	$10.00
Peddler, with horse or other animal, and with or without vehicle, each county, for each vehicle	15.00
Peddler, with vehicle propelled by motor or other mechanical power, for each county, for each vehicle	25.00

(b) Any person, firm, or corporation employing the service of another as a peddler, whether on a salary or commission basis, shall be liable for the payment of taxes levied in this section.

Provided, however, any person peddling fruits, vegetables, or products of the farm shall pay a license tax of twenty-five dollars ($25.00) per year, which license shall be state-wide. Counties, cities and towns may levy a tax under this subsection not in excess of one-half of the state tax. Provided, however, no county, city or town shall issue any license, or permit any person, firm, or corporation to do any business under the provisions of this subsection, until and unless such person shall produce and exhibit to the tax collector of such county, city or town, his or its state license for the privilege of engaging in such business.

(c) Any person, firm, or corporation who or which sells or offers to sell from a cart, truck, automobile, or other vehicle operated over and upon the streets and/or highways within this

state any fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section and shall pay the annual license tax levied in subsection (a) of this section with reference to the character of the vehicle employed. Any person, firm, or corporation who or which sells or offers for sale from any railway car fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section, and shall pay an annual tax of twenty-five dollars ($25.00). Nothing in this section shall apply to the sale of farm products raised on the premises owned or occupied by the person, firm, or corporation, his or its bona fide agent or employee selling same.

(d) Every itinerant salesman or merchant who shall expose for sale, either on the street or in a building occupied, in whole or in part, for that purpose, any goods, wares or merchandise, not being a regular merchant in such county, shall apply for in advance and procure a state license from the commissioner of revenue for the privilege of transacting such business, and shall pay for such license a tax of one hundred dollars ($100.00) in each county in which he shall conduct or carry on such business.

Any salesman or merchant, offering for sale goods, wares or merchandise, other than fruits and farm products, shall be deemed an itinerant, within the meaning of this subsection, who conducts said business within the county for less than six consecutive months, except in case of discontinuance for one of the reasons hereinafter mentioned. When any salesman or merchant, beginning said business, does not pay the tax herein levied in advance, on the ground of stated intention to become a regular merchant, the commissioner of revenue may, in his discretion, require said salesman or merchant to post satisfactory bond, or make a cash deposit, in the sum of one hundred dollars ($100.00), which bond or deposit shall be forfeited in payment of the tax herein levied in case such salesman or merchant discontinues said business in the county within less than six months for any reason other than death or disablement of said salesman or merchant, or insolvency of said business, or destruction of the stock by fire or other catastrophe. In like manner the tax collector of any county or city levying a tax, as permitted by subsection (h), on the business taxed in this subsection, may, in his discretion, require posting of satisfactory bond or cash deposit in an amount equivalent to the tax so levied by said county or city; and said bond or deposit shall in like manner be subject to forfeiture in payment of said tax. Any salesman or merchant failing to post such bond or make such deposit within three days after being notified to do so by the commissioner or collector, shall immediately become liable for the taxes levied or authorized to be levied on the business taxed in this subsection. When any salesman or merchant, having been required to post such bond or deposit, has conducted said business for six consecutive months, or has discontinued said business within six months for one of the reasons specifically mentioned herein, he shall be entitled to have said bond canceled or said deposit returned.

(e) The provisions of this section shall not apply to any person, firm, or corporation who sells or offers for sale books, periodicals, printed music, ice, wood or fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, poultry, eggs, livestock, or articles produced by the individual vendor offering them for sale, but shall apply to medicines, drugs, or articles assembled.

(f) The board of county commissioners of any county in this state, upon proper application, may exempt from the annual license tax levied in this section Confederate soldiers, disabled veterans of the Spanish-American War, disabled soldiers of the World War, who have been bona fide residents of this state for twelve or more months continuously, and the blind who have been bona fide residents of this state for twelve or more months continuously, widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to peddle within the limits of such county without payment of any license tax to the state.

(g) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the annual license levied by the state. But the board of county commissioners of any county may levy a license tax on the business taxed in this section not in excess of that levied by the state for each unincorporated town or village in the county with a population of one thousand or more within a radius of one mile in which such business is engaged in; and any county or city may levy on peddlers of goods, wares, or merchandise with vehicle propelled by motor or other mechanical power, taxed by the state under subsection (a) of this section, a tax not exceeding two hundred dollars ($200.00) for each vehicle, which said tax may, in the discretion of the governing body, be graduated in accordance with the size or weight of said vehicles, the amount of merchandising space in and on said vehicles, the average value of goods carried, the types of products offered for sale, or any other reasonable principle, except that the tax levied hereunder on account of a vehicle of one-half ton capacity or less shall not exceed twenty-five dollars ($25.00).

No county, city, or town shall levy any license tax under this section upon the persons so exempted in this section, nor upon drummers selling by wholesale. (1939, c. 158, s. 121; 1941, c. 50, s. 3.)

§ 105-54. Contractors and construction companies.—(a) Every person, firm, or corporation who, for a fixed price, commission, fee, or wage, offers or bids to construct within the state of North Carolina any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of ten thousand dollars ($10,000.00), shall apply for and obtain from the commissioner of revenue an annual state-wide license, and shall pay for such license a tax of one hun-

dred dollars ($100.00) at the time of or prior to offering or submitting any bid on any of the above enumerated projects.

(b) In addition to the tax levied in subsection (a) of this section, every person, firm, or corporation who, for a fixed price, commission, fee, or wage, undertakes or executes a contract for the construction, or who superintends the construction of any of the above enumerated projects, shall, before or at the time of entering into such projects and/or such contract, apply for and procure from the commissioner of revenue a state-wide license, and shall pay for such license the following tax:

When the total contract price or estimated cost of such project is over:

$ 5,000	and not more than $ 10,000	...$ 25.00
10,000	and not more than $ 50,000	... 50.00
50,000	and not more than $ 100,000	... 125.00
100,000	and not more than $ 250,000	... 175.00
250,000	and not more than $ 500,000	... 300.00
500,000	and not more than $ 750,000	... 400.00
750,000	and not more than $1,000,000	... 500.00
1,000,000	.....	625.00

(c) The application for license under subsection (b) of this section shall be made to the commissioner of revenue and shall be accompanied by the affidavit of the applicant, stating the contract price, if known, and if the contract price is not known, his estimate of the entire cost of the said improvement or structure, and if the applicant proposes to construct only a part of said improvement or structures, the contract price, if known, or his estimated cost of the part of the project he proposes to superintend or construct.

In the event the construction of any of the above mentioned improvements or structures shall be divided and let under two or more contracts to the same person, firm, or corporation, the several contracts shall be considered as one contract for the purpose of this article, and the commissioner of revenue shall collect from such person, firm, or corporation the license tax herein imposed as if only one contract had been entered into for the entire improvement or structure.

(d) In the event any person, firm, or corporation has procured a license in one of the lower classes provided for in subsection (b) of this section, and constructs or undertakes to construct or to superintend any of the above mentioned improvements or structures or parts thereof, the completed cost of which is greater than that covered by the license already secured, application shall be made to the commissioner of revenue, accompanied by the license certificate held by the applicant, which shall be surrendered to the commissioner of revenue, and upon paying the difference between the cost of the license surrendered and the price of the license applied for, the commissioner of revenue shall issue to the applicant the annual state-wide license applied for, showing thereon that it was issued on the surrender of the former license and payment of the additional tax.

(e) No employee or sub-contractor of any person, firm, or corporation who or which has paid the tax herein provided for, shall be required to pay the license tax provided for in this section while so employed by such person, firm, or corporation.

(f) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy an annual contractor's license tax not in excess of ten dollars ($10.00) when the license provided for under this section has been paid: Provided, that this subsection shall not be construed to prevent the collection of building, electrical, and plumbing inspection charges by municipalities to cover the actual cost of said inspection.

(g) The tax under this section shall not apply to the business taxed in § 105-91. (1939, c. 158, s. 122.)

§ 105-55. Installing elevators and automatic sprinkler systems.—Every person, firm, or corporation engaged in the business of selling or installing elevators or automatic sprinkler systems shall apply for and procure from the commissioner of revenue an annual state-wide license for the transaction of such business in this state, and shall pay for such license a tax of one hundred dollars ($100.00).

(a) Counties, cities, and towns in which there is located a principal office or a branch office may levy a tax on the business taxed under this section not in excess of that levied by the state.

Provided, however, no county, city, or town may collect tax under this section from any person, firm, or corporation who or which does not maintain an established place of business in said county, city or town.

(b) The businesses taxed and licensed hereunder shall not be liable for any tax or license levied under § 105-91. (1939, c. 158, s. 122½.)

§ 105-56. Repairing and servicing elevators and automatic sprinkler systems. — Every person, firm, or corporation engaged in the business of repairing or servicing elevators or automatic sprinkler systems, shall apply for and procure from the commissioner of revenue, an annual state-wide license for the transaction of such business in this state and shall pay for such license the following tax based on population:

Municipalities of less than two thousand population	$ 5.00
Municipalities of more than two thousand and less than five thousand population..	7.50
Municipalities of more than five thousand and less than ten thousand population..	10.00
Municipalities of more than ten thousand and less than twenty thousand population	12.50
Municipalities of more than twenty thousand and less than thirty thousand population	15.00
Municipalities of more than thirty thousand and less than forty thousand population	17.50
Municipalities of more than forty thousand and less than fifty thousand population	20.00
Municipalities of more than fifty thousand population	25.00

(a) Counties, cities and towns in which there is located a principal office or a branch office may levy a tax on the business taxed under this section not in excess of that levied by the state.

Provided, however, no county, city or town may collect tax under this section from any person, firm, or corporation who, or which, does not

maintain an established place of business in said county, city or town.

(b) The tax under this section shall not apply to the business taxed in §§ 105-55 and 105-91. (1939, c. 158, s. 122¾.)

§ 105-57. Mercantile agencies.—(a) Every person, firm or corporation engaged in the business of reporting the financial standing of persons, firms or corporations for compensation shall be deemed a mercantile agency, and shall apply for and procure from the commissioner of revenue a statewide license for the privilege of transacting such business within this state, and shall pay for such license a tax of five hundred dollars ($500.00), the said tax to be paid by the principal office in the state, and if no such principal office in this state, then by the agent of such mercantile agency operating in this state: Provided, however, that mercantile agencies not publishing a statewide credit or financial rating book shall pay only an annual tax of one hundred dollars ($100.00).

(b) Any person representing any mercantile agency which has failed to pay the license tax provided for in this section shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(c) Counties, cities, or towns shall not levy any license tax on mercantile agencies, as herein defined. (1939, c. 158, s. 123; 1941, c. 50, s. 3.)

§ 105-58. Gypsies and fortune tellers. — (a) Every company of gypsies or strolling bands of persons, living in wagons, tents, or otherwise, who or any of whom trade horses, mules, or other things of value, or receive reward for telling or pretending to tell fortunes, shall apply for in advance and procure from the commissioner of revenue a state license for the privilege of transacting such things, and shall pay for such license a tax of five hundred dollars ($500.00) in each county in which they offer to trade horses, mules, or other things of value, or to practice the telling of fortunes or any of their crafts. The amount of such license tax shall be recoverable out of any property belonging to any member of such company.

(b) Any person or persons, other than those mentioned in subsection (a) of this section, receiving rewards for pretending to tell and/or telling fortunes, practicing the art of palmistry, clairvoyance and other crafts of a similar kind, shall apply for in advance and procure from the commissioner of revenue a state license for the privilege of practicing such arts or crafts, and shall pay for such license a tax of two hundred dollars ($200.00) for each county in which they offer to practice their profession or crafts: Provided, that the tax levied under this section shall not apply to fortune tellers or other artists practicing the art of palmistry, clairvoyance, and other crafts of a similar kind, when appearing under contract in regularly licensed theatres taxed under § 105-37.

(c) Any county, city, or town may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1939, c. 158, s. 124.)

§ 105-59. Lightning rod agents.—(a) No manufacturer or dealer, whether person, firm, or corporation, shall sell, or offer for sale, in this state any brand of lightning rod, and no agent of such manufacturer or dealer shall sell, or offer for sale, or erect any brand of lightning rod until such brand has been submitted to and approved by the insurance commissioner and a license granted for its sale in this state. The fee for such license, including seal, shall be fifty dollars ($50.00).

(b) Upon written notice from any manufacturer or dealer licensed under the preceding subsection of the appointment of a suitable person to act as his agent in this state, and upon filing an application for license upon the prescribed form, the insurance commissioner may, if he is satisfied as to the reputation and moral character of such applicant, issue him a license as general agent of such manufacturer or dealer. Said license shall set forth the brand of lightning rod licensed to be sold, and the fee for such license, including seal, shall be fifty dollars ($50.00).

(c) Such general agent may appoint local agents to represent him in any county in the state by paying to the insurance commissioner a fee of ten dollars ($10.00) for each such county. Upon filing application for license of such local agent on a prescribed form and paying him a fee of three dollars ($3.00) for each county in which said applicant is to operate, the insurance commissioner may, if he is satisfied that such applicant is of good repute and moral character, and is a suitable person to act in such capacity, issue him a license to sell and erect any brand of lightning rod approved for sale by the general agent in such county applied for.

(d) Each general agent shall submit to the insurance commissioner semi-annually, on January thirty-first and July thirty-first, on prescribed forms, a sworn statement of gross receipts from the sale of lightning rods in this state during the preceding six months, and pay a tax thereon of eighty cents (80c) on each one hundred dollars ($100.00), such returns to be accompanied by an itemized list showing each sale, the county in which sold, and the agent making the sale.

(e) No county, city, or town shall levy a license or privilege tax exceeding twenty dollars ($20.00) on any dealer having a general office or selling from a receiving point.

(f) Licenses issued under this section are not transferable, are valid for only one person, and revocable by the insurance commissioner for good cause after hearing.

(g) Every agent licensed under this section shall, upon demand, exhibit his license to any officer of the law or citizen, and any person, firm, or corporation acting without a license or selling or offering for sale any brand of lighning rod not approved by the insurance commissioner, or otherwise violating any of the provisions of this article, shall be punished by a fine of not more than two hundred dollars ($200.00) and/or six months imprisonment for each offense. (1939, c. 158, s. 125.)

§ 105-60. Hotels.—Every person, firm, or corporation engaged in the operation of any hotel in this state shall apply for and procure from the commissioner of revenue a state license for the

privilege of transacting such business, and shall pay for such license the following tax:

(a) For hotels operating on the American plan for rooms in which rates per person per day are:

Less than two dollars	$ .60
Two dollars and less than three dollars	.90
Three dollars and less than four dollars and fifty cents	1.80
Four dollars and fifty cents and less than six dollars	4.20
Six dollars and less than seven dollars and fifty cents	5.40
Seven dollars and fifty cents and less than fifteen dollars	6.00
Fifteen dollars and over	7.20

(b) For hotels operating on the European plan for rooms in which the rates per person per day are:

Less than two dollars	$1.25
Two dollars and less than three dollars	3.00
Three dollars and less than four dollars and fifty cents	4.50
Four dollars and fifty cents and less than six dollars	5.50
Six dollars and less than seven dollars and fifty cents	6.50
Seven dollars and fifty cents and less than ten dollars	7.50
Ten dollars and over	8.50

(c) The office, dining room, one parlor, kitchen, and two other rooms shall not be counted when calculating the number of rooms in the hotel.

(d) Only one-half of the annual license tax levied in this section shall be levied or collected from resort hotels and boarding houses which are open for only six months or less in the year: Provided, that the minimum tax under any schedule in the section shall be five dollars ($5.00).

(e) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1939, c. 158, s. 126.)

§ 105-61. Tourist homes and tourist camps.—(a) Every person, firm, or corporation engaged in the business of operating a tourist home, tourist camp, or similar place advertising in any manner for transient patronage, or soliciting such business, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay the following tax:

Homes or camps having five rooms or less, ten dollars ($10.00); houses or camps having more than five rooms, two dollars ($2.00) per room. For the purpose of this section, the sitting-room, dining room, kitchen, and rooms occupied by the owner or lessee of the premises, or members of his family, for his or their personal or private use, shall not be counted in determining the number of rooms for the basis of the tax. The tax herein levied shall be in addition to any tax levied in § 105-62 for the sale of prepared food.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1939, c. 158, s. 126½.)

§ 105-62. Restaurants.—Every person, firm, or corporation engaged in the business of operating a restaurant, cafe, cafeteria, hotel, with dining service on the European plan, drug store, or other place where prepared food is sold, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business. The tax for such license shall be based on the number of persons provided with chairs, stools, or benches, and shall be one dollar ($1.00) per person, with a minimum tax of five dollars ($5.00): Provided, that the tax levied in this paragraph shall not apply to industrial plants maintaining a non-profit restaurant, cafe or cafeteria solely for the convenience of its employees.

(a) All other stands or places where prepared food is sold as a business, and drug stores, service stations, and all other stands or places where prepared sandwiches only are served, shall pay a tax of five dollars ($5.00).

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the state. (1939, c. 158, s. 127.)

§ 105-63. Cotton compresses. — Every person, firm, or corporation engaged in the business of compressing cotton shall pay an annual license tax of three hundred dollars ($300.00) on each and every compress.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 128.)

§ 105-64. Billiard and pool tables, and bowling alleys.—Every person, firm, or corporation who shall rent, maintain, own a building wherein there is a table or tables at which billiards or pool is played, whether operated by slot or otherwise, shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such billiard or pool tables, and shall pay for such license a tax for each table as follows:

Tables measuring not more than 2 feet wide and 4 feet long	$ 5.00
Tables measuring not more than 2½ feet wide and 5 feet long	10.00
Tables measuring not more than 3 feet wide and 6 feet long	15.00
Tables measuring not more than 3½ feet wide and 8 feet long	20.00
Tables measuring more than 3½ feet wide and 8 feet long	25.00

Every person, firm, or corporation who shall rent, maintain, or own a building wherein there is a bowling alley or alleys of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such bowling alley or alleys, and shall pay for such license a tax of twelve and fifty one-hundredths dollars ($12.50) for each alley kept or operated.

Provided, each such billiard or pool table so licensed shall receive a number and receipt from

the commissioner of revenue when the license is issued, and it shall be the duty of each operator to attach said numbered license to said table or machine and display the same at all times. Failure to have such license and receipt on display attached to said machine or table shall be prima facie evidence that the tax has not been paid hereunder.

(a) This section shall not apply to fraternal organizations having a national charter, American Legion Posts, Young Men's Christian Associations, and Young Women's Christian Associations.

(b) If the commissioner of revenue shall have issued any such state license to any person, firm, or corporation to operate any billiard or pool tables, bowling alley or alleys, in any city or town, the board of aldermen or other governing body of such city or town shall have the right at any time, and notwithstanding the issuance of such state license, to prohibit any billiard or pool tables, bowling alley or alleys of like kind within its limits, unless otherwise provided in its charter; and in the event any city or town shall exercise the right to prohibit the keeping and operation of such billiard or pool tables, bowling alley or alleys of like kind, the commissioner of revenue shall refund the proportion of the tax thereof during the time which the right is not allowed to be exercised bears to the time for which the tax is paid. And, where the commissioner of revenue has issued any such license and the said billiard or pool tables, bowling alley or alleys is or are to be, or are operated outside of the corporate limits of any incorporated city or town, the board of county commissioners may by resolution request that such license be revoked, and upon receipt of such resolution the commissioner of revenue shall forthwith revoke said license and refund the proportion of the tax thereof during the time which the right is not allowed to be exercised bears to the time for which the tax is paid.

(c) Counties may levy a license tax on the business taxed under this section upon such billiard or pool tables, bowling alleys as are located outside of incorporated cities or towns, and cities and towns may levy a license tax upon such as are within the city limits, but in neither case shall the license tax so levied be in excess of the tax levied by the state. (1939, c. 158, s. 129.)

§ 105-65. Merchandising, music, and weighing machines.—(1) Every person, firm, or corporation engaged in the business of operating, maintaining, or placing on location anywhere within the state of North Carolina, any machine or machines, in which is kept any article or merchandise to be purchased, any machine which plays records, or produces music, or any weighing machine, shall apply for and procure from the commissioner of revenue a statewide license to be known as an annual operator's license, and shall pay for such license the following tax:

Operators of Music Machines	$100.00
Operators of Cigarette Vendors	100.00
Operators of Slot Drink Vendors	100.00
Operators of Food Vending or Merchandising Machines	25.00
Operators of Weighing Machines	25.00

(2) In addition to the above annual operator's license, every person, firm, or corporation operating any of the above machines, shall apply for and obtain from the commissioner of revenue, what shall be termed a statewide license for each machine operated and shall pay therefor the following annual tax:

Music Machines	$10.00
Cigarette Vendors	5.00
Slot Drink Vendors	15.00
Weighing Machines	2.50
1c Food Vending or Merchandising Machines	.50
5c Food Vending or Merchandising Machines	1.00

Provided, that the above tax on food vending or merchandising machines shall not apply to machines that vend solely peanuts, neither shall the tax apply to machines that vend candy containing fifty per cent (50%) or more peanuts.

(3) The applicant for license under this section shall, in making application for license, specify the serial number of the machine or machines proposed to be operated, together with a description of the merchandise or service offered for sale thereby, and the amount of deposit required by or in connection with the operation of such machine or machines. The license shall carry the serial number to correspond with that on the application, and no such license shall under any condition be transferable to any other machines. It shall be the duty of the person in whose place of business the machine is operated or located to see that the proper state license is attached in a conspicuous place on the machine before its operation shall commence.

(4) If any person, firm, or corporation shall fail, neglect or refuse to comply with the terms and provisions of this section or shall fail to attach the proper state license to any machine as herein provided, the commissioner of revenue, or his agents, or deputies, shall forthwith seize and remove such machine, and shall hold the same until the provisions of this section have been complied with. In addition to the above provision the applicant shall be further liable for the additional tax imposed under § 105-112.

(5) Sales of merchandise herein referred to shall be subject to the provisions of Schedule "E", §§ 105-164 to 105-187, and the tax therein levied shall be paid by the operator of such machines.

(6) Counties, cities and towns may levy and collect a license tax not in excess of fifty per cent (50%) of the total amount collected by the state from music machines, weighing machines, and 1c and 5c food vending machines: Provided, that counties, cities and towns shall not levy and collect an annual operator's occupational license levied for the operation of the above named machines, neither shall any county, city or town levy and collect any tax whatsoever from operators of soft drink vendors: Provided, further, that counties, cities and towns shall not levy and collect any per machine license tax from operators of cigarette vendors. Counties, cities and towns may levy and collect an annual operator's occupational license on cigarette vendors not in excess of ten dollars ($10.00).

Counties, cities and towns levying a tax under the provisions of this section shall have power through their tax collecting officers, upon nonpayment of the tax levied by them, or of any interest or penalty thereon, or upon failure to attach the evidence of license issued by them to any such machines, to seize, remove and hold such machines until all such defaults have been remedied. (1939, c. 158, s. 130; 1941, c. 50, s. 3.)

§ 105-66. Bagatelle tables, merry-go-rounds, etc. —Every person, firm, or corporation that is engaged in the operation of a bagatelle table, merry-go-round or other riding device, hobby horse, switchback railway, shooting gallery, swimming pool, skating rink, other amusements of a like kind, or a place for other games or play with or without name (unless used solely and exclusively for private amusement or exercise), at a permanent location, shall apply for and procure from the commissioner of revenue a state license for the privilege of operating such objects of amusement, and shall pay for each subject enumerated the following tax:

In cities or towns of less than 10,000 population	$10.00
In cities or towns of 10,000 population and over	25.00

(a) The tax under this section shall not apply to machines and other devices licensed under §§ 105-64 and 105-65.

(b) Counties, cities or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1939, c. 158, s. 131.)

§ 105-67. Security dealers.—(a) Every person, firm, or corporation who or which is engaged in the business of dealing in securities as defined in §§ 78-1 to 78-24, or who or which maintains a place for or engaged in the business of buying and/or selling shares of stock in any corporation, bonds, or any other securities on commission or brokerage, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	$ 25.00
In cities or towns of 5,000 and less than 10,000 population	50.00
In cities or towns of 10,000 and less than 15,000 population	100.00
In cities or towns of 15,000 and less than 25,000 population	200.00
In cities or towns of 25,000 population and above	300.00

(b) Every dealer, as defined herein, who shall maintain in the state of North Carolina more than one office for dealing in securities, as hereinbefore defined, shall apply for and procure from the commissioner of revenue a license for the privilege of transacting such business at each such office, and shall pay for such license the same tax as hereinbefore fixed.

(c) Every foreign dealer, as dealer is hereinbefore defined, who shall maintain an office in this state, or have a salesman in this state, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business, and shall pay for such license the tax hereinbefore imposed.

(d) If such person, firm, or corporation described in sub-section (a) of this section maintains and/or operates a leased or private wire and/or ticker service in connection with such business the annual license tax shall be as follows:

In cities and towns of less than 10,000 population	$ 150.00
In cities and towns of 10,000 and less than 15,000 population	250.00
In cities and towns of 15,000 and less than 20,000 population	350.00
In cities and towns of 20,000 to 25,000 population	450.00
In cities and towns of 25,000 or more..	600.00

Provided, that the tax levied in subsection (d) shall not apply to private wire service not connected with or handling quotations of a stock exchange, grain or cotton exchange.

(e) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars ($50.00). (1939, c. 158, s. 132.)

§ 105-68. Cotton buyers and sellers on commission.—(1) Every person, firm, or corporation who or which engages in the business of buying and/or selling on commission any cotton, grain, provisions, or other commodities, either for actual, spot, or instant delivery, shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business in this state, and shall pay for such license a tax of fifty dollars ($50.00).

(2) Every person, firm, or corporation who or which engages in the business of buying or selling any cotton, grain, provisions, or other commodities, either for actual, spot, instant or future delivery, and also maintains and/or operates a private or leased wire and/or ticker service in connection with such business shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting such business in this state and shall pay for such license the following tax:

In cities and towns of less than 10,000 population	$ 100.00
In cities and towns of 10,000 and less than 15,000 population	200.00
In cities and towns of 15,000 and less than 25,000 population	400.00
In cities and towns of 25,000 population or more	600.00

Persons, firms, and corporations who pay the tax imposed in subsection (d) of § 105-67 shall not be required to pay the tax imposed in this subsection.

(3) Every person, firm, or corporation, domestic or foreign, who or which is engaged in the business of selling any cotton either for actual, spot, instant, or future delivery, in excess of five thousand bales per annum, shall be deemed to be a cotton merchant, shall apply for and obtain from the commissioner of revenue a state-wide license for each office or agency maintained in this

state for the sale of cotton and shall pay for each such license the following tax:

In cities and towns of less than 10,000 population	$ 50.00
In cities and towns of 10,000 and less than 15,000 population	100.00
In cities and towns of 15,000 and less than 25,000 population	200.00
In cities and towns of 25,000 population and over	300.00

(4) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars ($50.00). (1939, c. 158, s. 133.)

§ 105-69. Manufacturers, producers, bottlers and distributors of soft drinks.—(a) Every person, firm, or corporation or association manufacturing, producing, bottling and/or distributing in bottles, or other closed containers, soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices or imitations thereof, carbonated or malted beverages and like preparations, or preparations of any nature whatever commonly known as soft drinks, shall apply for and obtain from the commissioner of revenue a state license for the privilege of doing business in this state, and shall pay for such license the following base tax for each place of business:

Low-Pressure Equipment

Where the machine or the equipment unit used in the manufacture of the above beverage is a:

41 spouts, or greater capacity, low-pressure filler	$3,000.00
36 spouts and less than 41 spouts, low-pressure filler	2,500.00
32 and less than 36 spouts, low-pressure filler	2,000.00
24 and less than 32 spouts, low-pressure filler	1,000.00
18 and less than 24 spouts, low-pressure filler	750.00
12 and less than 18 spouts, low pressure filler	250.00

High-Pressure Equipment

Where the machine or the equipment unit used in the manufacture of the above mentioned beverages is a Royal (8-head), Shields (6-head), Adriance (6-head), or other high-pressure equipment having manufacturer's rating capacity of over sixty bottles per minute, two thousand five hundred dollars ($2,500.00).

Royal (4-head), Adriance (2-head), Shields (2-head), full equipment having manufacturer's rating capacity of over fifty and less than sixty bottles per minute, two thousand dollars ($2,000.00).

Royal (4-head), Adriance (2-head), Shields (2-head) (full automatic), or other high-pressure equipment having manufacturer's rating capacity of more than forty and less than fifty bottles per minute, one thousand dollars ($1,000.00).

Dixie (automatic), Shields (2-head hand feed), Adriance (1-head), Calleson (1-head), Senior (high-pressure), Junior (high-pressure), or Burns or other high-pressure equipment having manufacturer's rating capacity of more than twenty-four bottles and less than forty bottles per minute, one hundred fifty dollars ($150.00).

Single-head Shields, Modern Bond (power), Baltimore (semi-automatic), and all other machines or equipment having manufacturer's rating capacity of less than twenty-four bottles per minute and all foot-power bottling machines, one hundred dollars ($100.00).

Provided, that any bottling machine or equipment unit not herein specifically mentioned shall bear the same tax as a bottling machine or equipment unit of the nearest rated capacity as herein enumerated: Provided further, that where any person, firm, corporation, or association has within his or its bottling plant or place of manufacture more than one bottling machine or equipment unit, then such person, firm, corporation, or association shall pay the tax as herein specified upon every such bottling machine or equipment unit whether in actual operation or not: Provided further, that where no standard high or low-pressure bottling machine is used to fill the containers, a tax of fifty dollars ($50.00) shall apply. The tax levied in this section shall not apply to any product containing more than fifty per cent (50%) of milk, put up in containers for sale as food rather than soft drink preparations.

(b) Every person, corporation, or association distributing, selling at wholesale, or jobbing bottled beverages as enumerated in subsection (a) of this section shall pay an annual license tax for the privilege of doing business in this state, as follows:

In cities or towns of 30,000 inhabitants or more	$100.00
In cities or towns of 20,000 inhabitants and less than 30,000 inhabitants	90.00
In cities or towns of 10,000 inhabitants and less than 20,000 inhabitants	80.00
In cities or towns of 5,000 inhabitants and less than 10,000 inhabitants	70.00
In cities and towns of 2,500 inhabitants and less than 5,000 inhabitants	60.00
In rural districts and towns of less than 2,500 inhabitants	50.00

The tax levied in this subsection shall not include the right to sell products authorized to be sold under Schedule F, §§ 18-63 to 18-92.

(c) Every distributing warehouse selling or supplying to retail stores cereal or carbonated beverages manufactured or bottled within the state, but outside of the county in which such cereal or carbonated beverages are manufactured or bottled, shall pay one-half of the annual license tax for the privilege of doing business in this state provided for in subsection (b) of this section.

(d) Every distributing warehouse selling or supplying to retail stores cereal or carbonated beverages on which the tax has not been paid under the provisions of subsection (a) of this section shall pay the annual license tax for the privilege of doing business in the state provided in sub-section (b) of this section.

(e) Each truck, automobile, or other vehicle coming into this state from another state, and selling and/or delivering carbonated beverages on which the tax has not been paid under the provisions of subsection (a) of this section, shall pay an annual license tax for the privilege of doing business in this state, in the sum of two hundred dollars ($200.00) per truck, automobile, or vehicle.

The license secured from the state under this section shall be posted in the cab of the truck, automobile, or vehicle.

(f) No county shall levy a tax on any business taxed under the provisions of this section, nor shall any city or town in which any person, firm, corporation, or association taxed hereunder has its principal place of business levy and collect more than one-eighth of the state tax levied under this section; nor shall any tax be levied or collected by any county, city, or town on account of the delivery of the products, beverages, or articles enumerated in subsection (a) or (b) or (c) or (d) of this section when a tax has been paid under any of those subsections. (1939, c. 158, s. 134.)

§ 105-70. Packing houses.—Every person, firm, or corporation engaged in or operating a meat packing house in this state, and every wholesale dealer in meat packing-house products who owns, leases, or rents and operates a cold-storage room or warehouse in connection with such wholesale business, shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business in this state, and shall pay for such license the sum of one hundred dollars ($100.00) for each county in which is located such a packing house or a cold storage room or warehouse. Every person, firm, or corporation maintaining a cold-storage room or warehouse and distributing such products to other stores owned in whole or in part by the distributor for sale at retail shall be deemed a wholesale dealer or distributor in the meaning of this section. Counties shall not levy any tax on business taxed under this section. (1939, c. 158, s. 136.)

§ 105-71. Newspaper contests.—Every person, firm, or corporation that conducts contests and offers a prize, prizes, or other compensation to obtain subscriptions to newspapers, magazines, or other periodicals in this state shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such contests, and shall pay for such license the following tax for each such contest:

Monthly, weekly, semi-weekly newspaper, magazine or other periodical ..... $ 50.00
Daily newspaper or other daily periodical.... 200.00

Counties, cities and towns may levy a tax not to exceed one-half of that levied by the state under the provisions of this section. (1939, c. 158, s. 136.)

§ 105-72. Persons, firms, or corporations selling certain oils. — (a) Every person, firm, or corporation engaged in the business of selling illuminating or lubricating oil or greases, or benzine, naphtha, gasoline, or other products of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for the same a tax of two dollars and fifty cents ($2.50).

(b) In addition to the tax herein levied under subsection (a) of this section, such person, firm, or corporation shall pay to the commissioner of revenue, on or before the first day of July of each year, an annual additional license tax equal to five per cent (5%) of the total gross sales for the preceding year or part of the year that the business is so conducted or the privilege so exercised, when the total gross sales of such commodities exceed five thousand dollars ($5,000.00), or pro rata for a part of the year.

(c) The amount of such total gross sales shall be returned to the commissioner of revenue on or before the date specified in subsection (b) of this section by such person, firm, or corporation, verified by the oath of the person making the return, upon such forms and in such detail as may be required by the commissioner of revenue.

(d) Counties shall not levy any license tax on the business taxed under this section; but cities or towns in which there is located an agency, station, or warehouse for the distribution or sale of such commodities enumerated in this section may levy the following license tax:

In incorporated towns and cities of less than 10,000 population ..... $ 25.00
In cities and towns of 10,000 population and over 50.00

(e) Any person, firm, or corporation subject to this license tax, and doing business in this state without having paid such license tax, shall be fined one thousand dollars ($1,000.00), and in addition thereto double the tax imposed by this section.

(f) No license or privilege tax, other than the license tax permitted in this section to cities or towns, shall be levied or collected for the privilege of engaging in or doing the business named in this section from any person, firm, or corporation paying the inspection fees and charges provided for under the chapter, agriculture, except license taxes levied in §§ 105-89 and 105-99. (1939, c. 158, s. 137.)

§ 105-73. Building and loan associations.—Every building and loan association, domestic or foreign, operating under a charter granted by authority of the laws of this state or any other state, or the United States, for the purpose of making loans to its members only and of enabling its members to acquire real estate, make improvements thereon, and remove encumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, shall pay to the insurance commissioner, on or before the first day of April of each year, the following annual license tax for the privilege of doing business in the state:

(a) A tax of thirteen cents (13c) on each one hundred dollars ($100.00) of liability on actual book value of shares of stock outstanding on the thirty-first day of December of the preceding year, as shown by reports of such association to be made to the insurance commissioner. The tax levied herein shall be in addition to the license fee required under § 54-25, and expenses and cost of examination required under § 54-29.

(b) Counties, cities, and towns shall not levy any license tax on the business taxed in this section. (1939, c. 158, s. 138.)

§ 105-74. Pressing clubs, dry cleaning plants, and hat blockers.—Every person engaging in any of the businesses as herein defined shall apply for

and procure from the commissioner of revenue a state license for the privilege of conducting such a business, and pay for each such place of business the following tax in each city or town in which he operates any such place of business, except branch offices when located in the same city or town as the parent establishment shall pay one-half the tax levied on the parent establishment:

In cities or towns of less than 10,000 population:
Where not more than three (3) persons are employed ..... $ 12.50
Where more than three (3) persons are employed 25.00
In cities and towns of 10,000 population and over:
Where not more than three (3) persons are employed ..... $ 25.00
Where more than three (3) persons are employed 50.00

Every person, firm, or corporation soliciting cleaning work and/or pressing in any city or town where the actual cleaning and/or pressing is done in a cleaning plant or press shop located outside the city or town wherein said cleaning work and/or pressing is solicited shall procure from the commissioner of revenue a state license for the privilege of soliciting in said city or town, and pay for the same an amount equal to the tax which would be paid by said cleaning plant or press shop as if the said cleaning plant or press shop was actually located and being operated in the city or town in which the soliciting is done. This shall not apply to soliciting in cities or towns where there is no cleaning plant, press shop or established agency with fixed place of business, provided that the solicitor shall have paid a state and municipal license tax in this state.

Cities and towns, respectively, may levy a license tax not in excess of that levied by the state. Counties shall not levy a license tax on the business taxed under this section.

Definitions: For the purpose of this section, the following definitions shall apply:

"Dry cleaning, and/or hat blocking, and/or pressing establishments" shall mean any place of business, establishment or vehicle wherein the services of dry cleaning, wet cleaning as a process incidental to dry cleaning, spotting and/or pressing, finishing and/or reblocking hats, garments, or wearing apparel of any kind is performed.

"Retail outlet" shall mean any place of business or vehicle where garments are accepted to be dry cleaned and/or pressed, but where the actual dry cleaning and/or pressing is not performed on the premises or vehicles, and where the dry cleaning and/or pressing is performed by a dry cleaning plant or press shop operating under a trade name other than that of the retail outlet.

"Branch office" shall mean an additional establishment where garments are accepted to be dry cleaned and/or pressed, when same is owned and operated by a dry cleaning plant, press shop, or retail outlet and under the same trade name, but where the actual dry cleaning and/or pressing is not performed on the premises.

"Soliciting" as used herein shall mean the acceptance of any article or garment to be dry cleaned and/or pressed.

"Person" as used herein shall mean any person, firm, corporation, partnership, or association.

The term "employee" as used herein shall mean any person working either partially or full time for a cleaning plant, press shop, hat blocking establishment, retail outlet or branch office and shall include all drivers, solicitors and route salesmen irrespective of the method of payment they receive for their services, and shall also include independent contractors soliciting under the same style and firm name as the processing plant. It shall also include any member of the firm, association, corporation or partnership who actually performs any work of any nature in the business.

This section shall not apply to any bona fide student of any college or university in this state operating such pressing or dry cleaning business at such college or university during the school term of such college or university.

In addition to the annual tax levied in this section, it is hereby required, with respect to every such concern herein referred to, that with each delivery of articles of clothing or other articles herein referred to and cleaned or otherwise processed as herein referred to there shall be issued a charge ticket, to each of which tickets there shall be affixed a service stamp tax of one cent (1c) on all packages on which the charge is one dollar ($1.00) or less, and for packages of more than one dollar ($1.00), one cent (1c) for each dollar or fraction thereof, the amount of such tax to be added to such charge ticket and to be paid for by the customer. The stamps for such purpose are to be made available by the commissioner of revenue and by him sold to pressing and/or cleaning concerns at par and for cash only, as the same may be needed by the pressing and/or cleaning concerns of the state in order to meet the requirements of this section. It shall be unlawful for any person, firm, or corporation engaged in such business to make any delivery except in compliance with this section, and the violation of any of the provisions hereof is hereby declared to be a misdemeanor.

Any person, firm, or corporation that fails to comply with the provisions of this section and fails to place stamps on each delivery shall be liable for a tax of three per cent of the total amount of charges made for the particular dry cleaning, pressing and/or hat blocking from which the stamp was omitted. (1939, c. 158, s. 139.)

§ 105-75. Barber shops.—Every person, firm, or corporation engaged in the business of conducting a barber shop, beauty shop or parlor, or other shop of like kind shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

For each barber chair maintained in a barber shop $2.50
For each barber, manicurist, cosmetologist, beautician, or operator in beauty parlor, or other shop of like kind in any office, hotel, or other place 5.00

Counties shall not levy a license tax under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 140.)

§ 105-76. Shoeshine parlors. — Every person, firm, or corporation who or which maintains or operates a place of business wherein is operated a

shoeshine parlor, stand, or chair or other device shall apply for and procure from the commissioner of revenue a state license for the privilege of conducting such business and shall pay for such license a tax of one dollar ($1.00) per chair or stool.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of that levied by the state. (1939, c. 158, s. 141.)

§ 105-77. Tobacco warehouses. — Every person, firm, or corporation engaged in the business of operating a warehouse for the sale of leaf tobacco upon commission shall, on or before the first day of June of each year, apply for and obtain from the commissioner of revenue a state license for the privilege of operating such warehouse for the next ensuing year, and shall pay for such license the following tax:

For a warehouse in which was sold during the preceding year ending the first day of June:

Less than 1,000,000 pounds	$ 50.00
1,000,000 pounds and less than 2,000,000	75.00
2,000,000 pounds and less than 3,000,000	175.00
2,000,000 pounds and less than 4,000,000	250.00
4,000,000 pounds and less than 5,000,000	400.00
5,000,000 pounds and less than 6,000,000	500.00

For all in excess of 6,000,000 pounds, $500.00 and six cents per thousand pounds.

(a) If a new warehouse not in operation the previous year, the person, firm, or corporation operating such warehouse may procure a license by payment of the minimum tax provided in the foregoing schedule, and at the close of the season for sales of tobacco in such warehouse shall furnish the commissioner of revenue a statement of the number of pounds of tobacco sold in such warehouse for the current year, and shall pay an additional license tax for the current year based on such total volume of sales in accordance with the schedule in this section.

If an old warehouse with new or changed ownership or management, the tax shall be paid according to the schedule in this section, based on the sale during the preceding year, just as if the old ownership or management had continued its operation.

(b) The commissioner of agriculture shall certify to the commissioner of revenue, on or before the first day of June of each year, the name of each person, firm, or corporation operating a tobacco warehouse in each county in the state, together with the number of pounds of leaf tobacco sold by such person, firm, or corporation in each warehouse for the preceding year, ending on the first day of June of the current year.

(c) The commissioner of agriculture shall report to the solicitor of any judicial district in which a tobacco warehouse is located which the owner or operator thereof shall have failed to make a report of the leaf tobacco sold in such warehouse during the preceding year, ending the first day of June of the current year, and such solicitor shall prosecute any such person, firm or corporation under the provisions of this section.

(d) The tax levied in this section shall be based on official reports of each tobacco warehouse to the state department of agriculture showing amount of sales for each warehouse for the previous year.

(e) The commissioner of revenue or his deputies shall have the right, and are hereby authorized, to examine the books and records of any person, firm, or corporation operating such warehouse, for the purpose of verifying the reports made and of ascertaining the number of pounds of leaf tobacco sold during the preceding year, or other years, in such warehouse.

(f) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties provided for in this article, be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars ($500.00) and/or imprisoned, in the discretion of the court.

(g) No county shall levy any license tax on the business taxed under this section. Cities and towns may levy a tax not in excess of fifty dollars ($50.00) for each warehouse. (1939, c. 158, s. 142.)

§ 105-78. News dealers on trains.—Every person, firm, or corporation engaged in the business of selling books, magazines, papers, fruits, confections, or other articles of merchandise on railroad trains or other common carriers in this state shall apply for and obtain a state license from the commissioner of revenue for the privilege of conducting such business, and shall pay for such license the following tax:

Where such person, firm, or corporation operates on railroads or other common carriers on:

Less than 300 miles	$ 250.00
Three hundred and less than 500 miles	500.00
Five hundred miles or more	$1,000.00

This section shall not apply to any railroad company engaged in selling such articles to passengers on its train and paying the tax upon the retail sales of merchandise levied in Schedule E, §§ 105-164 to 105-187.

Counties, cities, and towns shall not levy any license tax on the business taxed under this section. (1939, c. 158, s. 143.)

§ 105-79. Soda fountains, soft drink stands. —Every person, firm, or corporation engaged in the business of operating a soda fountain or soft drink stand shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for such license the following tax:

On soda fountains.

On each carbonated draft arm of each soda fountain, a tax of ten dollars ($10.00).

On each stand at which soft drinks are sold, the same not being strictly a soda fountain, and on each place of business where bottled carbonated drinks are sold at retail, the license tax shall be five dollars ($5.00).

In addition to the license tax levied in this section, the tax shall be paid upon the gross sales at the rate of tax levied in Schedule E, §§ 105-164 to 105-187, upon the retail sales of merchandise, such tax to be paid at the time and in the manner required for the sales of other merchandise.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of

one-half of the base tax levied by the state. (1939, c. 158, s. 144.)

§ 105-80. Dealers in pistols, etc.—Every person, firm, or corporation who is engaged in the business of keeping in stock, selling, and/or offering for sale any of the articles or commodities enumerated in this section, shall apply for and obtain a state license from the commissioner of revenue for the privilege of conducting such business, and shall pay for such license the following tax:

For pistols	$ 50.00
For bowie knives, dirks, daggers, slingshots, leaded canes, iron or metallic knuckles, or articles of like kind	200.00
For blank cartridge pistols	200.00

(a) If such person, firm, or corporation deals only in metallic cartridges, the tax shall be five dollars ($5.00).

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1939, c. 158, s. 145; 1941, c. 50, s. 3.)

§ 105-81. Dealers in cap pistols, fireworks, etc.—Every person, firm, or corporation engaged in the business of selling or offering for sale fire crackers, fireworks, or other articles of like kind, cap pistols, or pistols so constructed that they can by treatment to release the hammer be used to fire caps, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for the same a tax of one hundred dollars ($100.00).

Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of twice that levied by the state. (1939, c. 158, s. 146.)

§ 105-82. Pianos, organs, victrolas, records, radios, accessories.—Every person, firm, or corporation engaged in the business of selling, offering or ordering for sale any of the articles hereinafter enumerated in this section shall apply for and obtain from the commissioner of revenue a state license for the privilege of conducting such business, and shall pay for each license the following tax:

For pianos and/or organs, graphophones, victrolas, or other instruments using discs or cylinder records, and/or the sale of records for either or all of these instruments, radios or radio accessories, an annual license tax of ten dollars ($10.00).

(a) Any person, firm, or corporation applying for and obtaining a license under this section may employ traveling representatives or agents, but such traveling agents or representatives shall obtain from the commissioner of revenue a duplicate license of such person, firm, or corporation who or which he represents, and pay for the same a tax of ten dollars ($10.00).

Each duplicate copy so issued is to contain the name of the agent to whom it is issued, the instrument to be sold, and the same shall not be transferable.

Representatives or agents holding such duplicate copy of such license are licensed thereby to sell or offer for sale only the instrument and/or articles authorized to be sold by the person, firm, or corporation holding the original license, and such license shall be good and valid in any county in the state.

(b) Every person, firm, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and shall pay a penalty of two hundred and fifty dollars ($250.00), and in addition thereto double the state license tax levied in this section for the then current year.

(c) Counties shall not levy any license tax on the business taxed under this section, except that the county in which the agent or representative holding a duplicate copy of the license aforesaid does business may impose a license tax not in excess of five dollars ($5.00). Cities or towns may levy a license tax on the business taxed under this section not in excess of one-half of that levied by the state. (1939, c. 158, s. 147.)

§ 105-83. Installment paper dealers.—(a) Every person, firm, or corporation, foreign or domestic, engaged in the business of dealing in, buying, and/or discounting installment paper, notes, bonds, contracts, evidences of debt and/or other securities, where a lien is reserved or taken upon personal property located in this state to secure the payment of such obligations, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business or for the purchasing of such obligations in this state, and shall pay for such license an annual tax of one hundred dollars ($100.00).

(b) In addition to the tax levied in subsection (a) of this section, such person, firm, or corporation shall submit to the revenue commissioner quarterly on the first day of January, April, July, and October of each year, upon forms prescribed by the said commissioner, a full, accurate, and complete statement, verified by the officer, agent, or person making such statement, of the total face value of the installment paper, notes, bonds, contracts, evidences of debt, and/or other securities described in this section dealt in, bought and/or discounted within the preceding three months and, at the same time, shall pay a tax of one-third of one per cent of the face value of such obligations dealt in, bought and/or discounted for such period.

(c) If any person, firm, or corporation, foreign or domestic, shall deal in, buy and/or discount any such paper, notes, bonds, contracts, evidences of debt and/or other securities described in this section without applying for and obtaining a license for the privilege of engaging in such business or dealing in such obligations, or shall fail, refuse, or neglect to pay the taxes levied in this section, such obligation shall not be recoverable or the collection thereof enforceable at law or by suit in equity in any of the courts of this state until and when the license taxes prescribed in this section have been paid, together with any and all penalties prescribed in this article for the non-payment of taxes.

(d) This section shall not apply to corporations organized under the state or national banking laws.

(e) Counties, cities and towns shall not levy any license tax on the business taxed under this section. (1939, c. 158, s. 148.)

§ 105-84. Tobacco and cigarette retailers and

jobbers.—Every person, firm, or corporation engaged in the business of retailing and/or jobbing cigarettes, cigars, chewing tobacco, snuff, or any other tobacco products shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax:

Outside of incorporated cities or towns and cities or towns of less than 1,000 population	$ 5.00
Cities or towns of 1,000 population and over	10.00

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 149.)

§ 105-85. Laundries.—Every person, firm, or corporation engaged in the business of operating a laundry, including wet or damp wash laundries, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	$ 12.50
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 15,000 population	37.50
In cities or towns of 15,000 and less than 20,000 population	50.00
In cities or towns of 20,000 and less than 25,000 population	60.00
In cities or towns of 25,000 and less than 30,000 population	72.50
In cities or towns of 30,000 and less than 35,000 population	85.00
In cities or towns of 35,000 and less than 40,000 population	100.00
In cities or towns of 40,000 and less than 45,000 population	112.50
In cities or towns of 45,000 population and above	125.00

Provided, however, that any laundry or other concern herein referred to where the work is performed exclusively by hand or home-size machines only, and where not more than four persons are employed, including the owners, the license tax shall be one-third of the amount stipulated in the foregoing schedule.

Every person, firm, or corporation soliciting laundry work or supplying or renting clean linen or towels in any city or town, outside of the city or town wherein said laundry or linen supply or towel supply business is established, shall procure from the commissioner of revenue a state license as provided in the above schedule, and shall pay for such license a tax based according to the population of the city or town, for the privilege of soliciting therein. The additional tax levied in this paragraph shall apply to the soliciting of laundry work or linen supply or towel supply work in any city or town in which there is a laundry, linen supply or towel supply establishment located in the said city or town. The soliciting of business for or by any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels shall and the same is hereby construed to be engaging in the said business. Any person, firm, or corporation soliciting in said city or town shall procure from the commissioner of revenue a state license for the privilege of soliciting in said city or town, said tax to be in the sum equal to the amount which would be paid if the solicitor had an establishment and actually engaged in such business in the said city or town; provided the solicitor has paid a state, county and municipal license in this state.

Counties, cities and towns, respectively, may levy a license tax not in excess of twelve dollars and fifty cents ($12.50) on any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linens or towels in instances when said work is performed outside the said county or town, or when the linen or towels are supplied by business outside said county or town.

In addition to the annual tax levied in this section, it is hereby required with respect to every laundry, including wet or damp wash laundries, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels, that with each delivery of laundry for which there is a charge made there shall be issued a charge ticket, to each of which tickets there shall be affixed a service stamp tax of one cent on all packages on which the charge is one dollar or less, and for packages of more than one dollar, one cent for each dollar or fraction thereof, the amount of such tax to be added to such charge ticket and be paid for by the customer. The stamps for such purpose are to be made available by the commissioner of revenue and by him sold to said laundries at par and for cash only, as the same may be needed by the laundries of the state in order to meet the requirements of this section. It shall be unlawful for any person, firm, or corporation engaged in such business to make any delivery except in compliance with this section, and the violation of any of the provisions is hereby declared to be a misdemeanor.

Any person, firm, or corporation that fails to comply with the provisions of this section and fails to place stamps on each delivery shall be liable for a tax of three per cent of the total amount of charges for the particular laundry work from which the stamps were omitted. (1939, c. 158, s. 150.)

§ 105-86. Outdoor advertising.—(a) Every person, firm, or corporation who or which is engaged in the business of outdoor advertising by placing, erecting or maintaining one or more outdoor advertising signs or structures of any nature by means of sign boards, poster boards, or printed bulletins, or other painted matter, or any other outdoor advertising devices, erected upon the grounds, walls or roofs of buildings, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay annually for said license as follows:

For posting or erecting 20 or more signs or panels	$25.00
For posting or erecting less than 20 signs or panels, for each sign or panel	1.00

And in addition thereto the following license tax for each city, town or other place in which such sign boards, poster boards, painted bulletins and other painted or printed matter or other outdoor advertising devices are maintained, in cities and towns of:

Less than 1,000 population	$ 5.00
1,000 to 1,999 population	10.00
2,000 to 2,999 population	15.00
3,000 to 3,999 population	20.00
4,000 to 4,999 population	25.00
5,000 to 7,499 population	30.00
7,500 to 14,999 population	50.00
15,000 to 24,999 population	100.00
25,000 to 49,999 population	150.00
50,000 population and over	200.00
In each county outside of cities and towns	25.00

Provided, that the tax levied in this section shall not apply to regularly licensed motion picture theatres taxed under § 105-37 upon any advertising signs, structures, boards, bulletins, or other devices erected by or placed by the theatre upon property which the theatre has secured by permission of the owner.

Every person, firm, or corporation who or which places, erects or maintains one or more outdoor advertising signs, structures, boards, bulletins or devices as specified in this section shall be deemed to be engaged in the business of outdoor advertising, but when the applicant intends to advertise his own business exclusively by the erection or placement of such outdoor advertising signs, structures, boards, bulletins or devices as specified in this section, he may be licensed to do so upon the payment annually of one dollar ($1.00) for each sign up to one thousand (1,000) in number, and for one thousand (1,000) or more, the sum of one thousand dollars ($1,000.00) for the privilege in lieu of all other taxation as provided in this section, except such further taxation as may be imposed upon him by cities or towns, acting under the power to levy not in excess of one-half of that specified in paragraph two of subsection (a) of this section.

(b) Every person, firm, or corporation shall show in its application for the state license herein provided for the name of each incorporated city or town within which, and the county within which, it is maintaining or proposes to maintain said sign boards, poster boards, painted bulletins or other painted or printed signs or other outdoor advertising devices within the state of North Carolina. No person, firm, or corporation, licensed under the provisions of this section, shall erect or maintain any outdoor advertising structure, device or display until a permit for the erection of such structure, device or display shall have been obtained from the commissioner of revenue. Application for such permit shall be in writing, signed by the applicant or his duly authorized agent, upon blanks furnished by the commissioner of revenue, in such form and requiring such information as said commissioner of revenue may prescribe. Each application shall have attached thereto the written consent of the owners or duly authorized agent of the property on which structures, device or display is to be erected or maintained, and shall state thereon the beginning and ending dates of such written permission: Provided, the subsection shall not apply to persons, firms, or corporations who or which advertise their or its own business exclusively, and who or which have been licensed therefor pursuant to subsection (a) of this section.

(c) It shall be unlawful for any person engaged in the business of outdoor advertising to in any manner paint, print, place, post, tack or affix, or cause to be painted, printed, placed, posted, tacked or affixed any sign or other printed or painted advertisement on or to any stone, tree, fence, stump, pole, building or other object which is upon the property of another without first obtaining the written consent of such owner thereof, and any person, firm, or corporation who in any manner paints, prints, places, posts, tacks or affixes, or causes to be painted, printed, posted, tacked or affixed any such advertisement on the property of another except as herein provided shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars ($50.00), or imprisonment of thirty days: Provided, that the provisions of this section shall not apply to legal notices.

(d) It shall be unlawful for any person, firm, or corporation to paint, print, place, post, tack or affix any advertising matter within the limits of the right of way of public highways of the state without the permission of the state highway and public works commission, or upon the streets of the incorporated towns of the state without permission of the governing authorities, and if and when signs of any nature are placed without permission within the highways of the state, or within the streets of incorporated towns, it shall be the duty of the highway and public works commission or any other administrative body or other governing authorities of the cities and towns of said state to remove said advertising matters therefrom.

(e) Every person, firm, or corporation owning or maintaining sign boards, poster boards, printed bulletins, or other outdoor advertisements of any nature within this state shall have imprinted on the same the name of such person, firm, or corporation in sufficient size to be plainly visible and permanently affixed thereto.

(f) A license shall not be granted any person, firm, or corporation having his or its principal place of business outside the state for the display of any advertising of any nature whatsoever, designed or intended for the display of advertising matter, until such person, firm, or corporation shall have furnished and filed with the commissioner of revenue a surety bond to the state, approved by him, in such sum as he may fix, not exceeding five thousand dollars ($5,000.00), conditioned that such licensee shall fulfill all requirements of law, and lawful regulations and orders of said commissioner of revenue, relative to the display of advertisements. Such surety bond shall remain in full force and effect as long as any obligations of such licensee to the state shall remain unsatisfied.

(g) No advertising, or other signs specified in this section, shall be erected in the highway right of way so as to obstruct the vision or otherwise to increase the hazards, and all signs upon the highways shall be placed in a manner to be approved by the said highway and public works commission.

(h) Any person, firm, or corporation who or

which shall refuse to or neglect to comply with the terms and provisions of this section, and who shall fail to pay the tax herein provided for within thirty days after the same shall become due, or who shall paint, print, place, post, tack, affix or display any advertising sign or other matter contrary to the provisions of this section, the highway and public works commission of the state of North Carolina or other governing body having jurisdiction over the roads and highways of the state, and the governing authorities of cities and towns and its agents and employees, and the board of county commissioners of the various counties of said state and its employees are directed to forthwith seize and remove or cause to be removed all advertisements, signs or other matter displayed contray to the provisions of this section.

For the purpose of more effectually carrying into effect the provisions of this section, the commissioner of revenue is authorized and directed to prepare and furnish to the highway and public works commission or other governing body having jurisdiction over the roads and highways of the state a sufficient number of permits to be executed by the owner, lessee or tenant occupying the lands adjacent to the highways of the state, upon which advertisements, signs or other matter displayed contrary to the provisions of this section, in words as follows:

"I, (we), (owner), (lessee), (tenant), authorize and direct the Highway and Public Works Commission of the State of North Carolina to remove from my lands the following signs and advertising matter placed upon my lands unlawfully or without my permission: .....

"This..... day of....., 19..„

.....

And the said highway and public works commission or other governing body having jurisdiction over the roads and highways of the state shall forthwith proceed, through its agents, servants and employees, wherever and whenever in its opinion it is necessary to secure the consent to the removal of said signs or other advertising matter from the lands of the owner, lessee or tenant, to secure said consent and to immediately remove said signs or other advertising matter from the lands adjacent to the highways of the state of North Carolina as herein directed.

(i) Every person, firm, or corporation who violates any of the provisions of this section shall be guilty of a misdemeanor, and in addition to the license tax and penalties provided for herein shall be fined not more than one hundred dollars ($100.00) for each sign so displayed, or imprisoned, in the discretion of the court.

(j) Counties shall not levy any license tax under this section, but cities and towns may levy a license tax not in excess of one-half of that levied by the state under paragraph two of subsection (a).

(k) Every person, firm, or corporation applying for a license as required in subsection (a) hereof shall state in his application the number of advertisements, advertising spaces or devices he proposes to erect and/or maintain. Upon issuing licenses to any applicant the commissioner of revenue shall issue a metal tag for each of the advertisements, advertising spaces or devices mentioned in the application, to be valid for one year from its issuance and showing on its face the date of its expiration. Such metal tag or device erected, maintained or used by him shall be attached by the advertiser in such way as to be plainly visible to the front of each advertisement or advertising space.

(l) Any advertisement, advertising space or device not bearing such a tag or bearing a tag which shows that it has expired, or otherwise erected or maintained contrary to the provisions of this section, shall be deemed a public nuisance and shall be summarily removed or destroyed by the state highway and public works commission.

(m) The following signs and announcements are exempted from the provisions of this section: Signs upon property advertising the business conducted thereon; notice or advertisements erected by public authority or required by law in any legal proceedings; any signs containing sixty (60) square feet or less bearing an announcement of any town or city advertising itself: Provided, the same is maintained at public expense.

No tax shall be levied under this section against any person, firm, or corporation erecting, painting, posting or otherwise displaying signs or panels advertising his or its own business containing twelve (12) square feet or less of advertising surface: Provided, that this exemption shall not apply if the signs or panels are displayed in more than five counties: And provided further, that subsection (l) shall not apply to signs and panels displayed under this paragraph. (1939, c. 158, s. 151.)

§ 105-87. Motor advertisers.—(a) Every person, firm, or corporation operating over the streets or highways of this state any motor vehicle or other mechanical conveyance equipped with radio, phonograph, or other similar mechanism to produce music, or having any loudspeaker attachment or other sound magnifying device to produce sound effects for advertising purposes, whether advertising his or its own products or those of others, shall be deemed a motor advertiser, shall procure from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license a tax of one hundred dollars ($100.00) for each vehicle or conveyance so used: Provided, that any such advertiser owning a located place of business in this state and advertising in not more than five counties shall pay one-fourth the tax provided in this section.

(b) Counties may levy a license tax on the business taxed under this section not in excess of one-fourth of that levied by the state, and cities and towns may levy a tax not in excess of ten dollars ($10.00). (1939, c. 158, s. 151½.)

§ 105-88. Loan agencies or brokers. — Every person, firm, or corporation engaged in the regular business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidences of debt for repayment of such loans in installment payments or otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business

in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the commissioner of revenue a state license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).

(a) Nothing in this section shall be construed to apply to banks, industrial banks, trust companies, building and loan associations, cooperative credit unions, nor installment paper dealers defined and taxed under other sections of this article, nor shall it apply to the business of negotiating loans on real estate as described in § 105-41, nor to pawnbrokers lending or advancing money on specific articles of personal property. It shall apply to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of such loan and interest an assignment of wages or an assignment of wages with power of attorney to collect same, or other order or chattel mortgage or bill of sale upon household or kitchen furniture.

(b) At the time of making any such loan, the person, or officer of the firm or corporation making the same, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, and the time in which said amount is to be paid, and the rate of interest and discount agreed upon.

(c) Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a misdemeanor, and in addition to double the tax due shall be fined not less than two hundred and fifty dollars ($250.00) and/or imprisoned, in the discretion of the court. No such loan shall be collectible at law in the courts of this state in any case where the person making such loan has failed to pay the tax levied herein, and/or otherwise complied with the provisions of this section.

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00). (1939, c. 158, s. 152.)

§ 105-89. Automobiles and motorcycle dealers and service stations.—(1) Automotive Service Stations.—Every person, firm, or corporation engaged in the business of servicing, storing, painting, repairing, welding, or upholstering motor vehicles, trailers, semi-trailers, or engaged in the business of retail selling and/or delivering of any tires, tools, batteries, electrical equipment, automotive accessories, including radios designed for exclusive use in automobiles, or supplies, motor fuels and/or lubricants, or any of such commodities, in this state, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	30.00
In cities or towns of 20,000 and less than 30,000 population	40.00
In cities or towns of 30,000 or more	50.00

(a) In rural sections where a service station is operated the tax shall be five dollars ($5.00), unless more than one pump is operated, in which event the tax shall be five dollars ($5.00) per pump.

(b) The tax levied in this section shall in no case be less than five dollars ($5.00) per pump.

(c) No additional license tax under this subsection shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this subsection.

(d) The tax imposed in § 105-53 shall not apply to the sale of gasoline to dealers for resale.

(e) Counties, cities, and towns may levy a license tax on each place of business located therein under this subsection not in excess of one-fourth of that levied by the state.

(2) Motorcycle Dealers.—Every person, firm, or corporation, foreign or domestic, engaged in the business of buying, selling, distributing, and/or exchanging motorcycles or motorcycle supplies or any of such commodities in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	25.00
In cities or towns of 20,000 and less than 30,000 population	30.00
In cities or towns of 30,000 population or more	40.00

(a) A motorcycle dealer paying the license tax under this subsection may buy, sell, and/or deal in bicycle and bicycle supplies without the payment of an additional license tax.

(b) No additional license tax shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this subsection.

(c) No motorcycle dealer shall be issued dealer's tags until the license tax levied under this subsection has been paid.

(d) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one-fourth of that levied by the state, with the exception that the minimum tax may be as much as ten dollars ($10.00).

(3) Automotive Equipment and Supply Dealers at Wholesale.—Every person, firm, or corporation engaged in the business of buying, selling, distributing, exchanging, and/or delivering automotive accessories, including radios designed for ex-

clusive use in automobiles, parts, tires, tools, batteries, and/or other automotive equipment or supplies or any of such commodities at wholesale shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on as follows:

In unincorporated communities and in cities or towns of less than 2,500 population	$ 25.00
In cities or towns of 2,500 and less than 5,000 population	30.00
In cities or towns of 5,000 and less than 10,000 population	50.00
In cities or towns of 10,000 and less than 20,000 population	75.00
In cities or towns of 20,000 and less than 30,000 population	100.00
In cities or towns of 30,000 population or more	125.00

Provided, any person, firm, or corporation engaged in the business enumerated in this section and having no located place of business, but selling to retail dealers by use of some form of vehicle, shall obtain from the commissioner of revenue a state-wide license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each vehicle used in carrying on such business fifty dollars ($50.00).

(a) For the purpose of this section, the word "wholesale" shall apply to manufacturers, jobbers, and such others who sell to retail dealers, except manufacturers of batteries.

(b) No additional license tax under this subsection shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this subsection.

(c) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one-half of that levied by the state, with the exception that the minimum tax may be as much as ten dollars ($10.00).

(d) No person, firm, or corporation paying the wholesalers' tax as levied in subsection three hereof shall be required to pay any additional tax under subsection one of this section for engaging in any of the types of business levied upon in said subsection one.

(4) Motor Vehicle Dealers.—Every person, firm, or corporation engaged in the business of buying, selling, distributing, servicing, storing and/or exchanging motor vehicles, trailers, semi-trailers, tires, tools, batteries, electrical equipment, lubricants, and/or automotive equipment, including radios designed for exclusive use in automobiles, and supplies in this state shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 1,000 population	$ 25.00
In cities or towns of 1,000 and less than 2,500 population	50.00
In cities or towns of 2,500 and less than 5,000 population	75.00
In cities or towns of 5,000 and less than 10,000 population	110.00
In cities or towns of 10,000 and less than 20,000 population	140.00
In cities or towns of 20,000 and less than 30,000 population	175.00
In cities or towns of 30,000 or more	200.00

Provided, that persons, firms, or corporations dealing in secondhand or used motor vehicles exclusively shall be liable for the tax as set out in the foregoing schedule unless such business is of a seasonal, temporary, transient, or itinerant nature, in which event the tax shall be three hundred dollars ($300.00) for each location where such business is carried on.

(a) Any person, firm, or corporation who or which deals exclusively in motor fuels and lubricants, and has paid the license tax levied under subsection one of this section, shall not be subject to any license tax under subsections two, three, and four of this section.

(b) No additional license tax under this subsection shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this subsection; nor shall the tax apply to dealers in semi-trailers weighing not more than five hundred pounds and carrying not more than one-thousand-pound load, and to be towed by passenger cars.

(c) No dealer shall be issued dealer's tags until the license tax levied under this subsection has been paid.

(d) Premises on which used cars are stored or sold when owned or operated by a licensed new car dealer under the same name shall not be deemed as a separate place of business when conducted within the corporate limits of any city or town in which such new car business is conducted.

(e) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one-fourth of that levied by the state, with the exception that the minimum tax may be as much as twenty dollars ($20.00): Provided, if such business is of a seasonal, temporary, transient, or itinerant nature, counties, cities, and towns may levy a tax of three hundred dollars ($300.00) for each location where such business is carried on. (1939, c. 158, s. 153.)

§ 105-90. Emigrant and employment agents.—(a) Every person, firm, or corporation, either as agent or principal, engaged in soliciting, hiring, and/or contracting with laborers, male or female, in this state for employment out of the state shall apply for and obtain from the commissioner of revenue a state license for each county for the privilege of engaging in such business, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in which such business is carried on.

(b) Every person, firm, or corporation who or which engages in the business of securing employment for a person or persons and charging therefor a fee, commission, or other compensation shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for

such license the following annual tax for each location in which such business is carried on:

In unincorporated communities and in cities and towns of less than 2,500 population	$100.00
In cities or towns of 2,500 and less than 5,000 population	200.00
In cities or towns of 5,000 and less than 10,000 population	300.00
In cities or towns of 10,000 or more population	500.00

Provided, that this section shall not apply to any employment agency operated by the federal government, the state, any county or municipality, or whose sole business is procuring employees for work in the production and harvesting of farm crops within the state: And provided further, that under this section the tax on any employment agency whose sole business is the placement of teachers and/or other school employees and which has been approved by the state superintendent of public instruction shall be twenty-five dollars ($25.00): Provided further, that the tax on employment agencies where the sole business is the placement of domestic servants or unregistered nurses for employment within the state shall be twenty-five dollars ($25.00).

(c) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor and fined, in addition to other penalties, not less than one thousand dollars ($1,000.00) and/or imprisoned, in the discretion of the court.

(d) Counties, cities and towns may levy a license tax on the business taxed under this section not in excess of that levied by the state. (1939, c. 158, s. 154.)

§ 105-91. Plumbers, heating contractors, and electricians.—Every person, firm, or corporation engaged in the business of a plumber, installing plumbing fixtures, piping or equipment, steam or gas fitter, or installing hot-air heating systems, or installing electrical equipment, or offering to perform such services, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license the following tax based on population:

Municipalities of less than two thousand population	$ 5.00
Municipalities of two thousand and less than five thousand population	7.50
Municipalities of five thousand and less than ten thousand population	10.00
Municipalities of ten thousand and less than twenty thousand population	12.50
Municipalities of twenty thousand and less than thirty thousand population	15.00
Municipalities of thirty thousand and less than forty thousand population	17.50
Municipalities of forty thousand and less than fifty thousand population	20.00
Municipalities of fifty thousand population or more	25.00

Provided, that when a licensed plumber employs only one additional person the tax shall be one-half: Provided further, that any person, firm, or corporation engaged exclusively in the businesses enumerated in and licensed under this section shall not be liable for the tax provided in §§ 105-54 to 105-56. All plumbing inspectors in cities or towns shall make a monthly report to the commissioner of revenue of all installation or repair permits issued for plumbing or heating.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of the base license tax levied by the state. (1939, c. 158, s. 155.)

§ 105-92. Trading stamps.—Every person, firm, or corporation engaged in the business of issuing, selling, and/or delivering trading stamps, checks, receipts, certificates, tokens, or other similar devices to persons, firms, or corporations engaged in trade or business, with the understanding or agreement, expressed or implied, that the same shall be presented or given by the latter to their patrons as a discount, bonus, premium, or as an inducement to secure trade or patronage, and that the person, firm, or corporation selling and/or delivering the same will give to the person presenting or promising the same, money or other thing of value, or any commission or preference in any way on account of the possession or presentation thereof, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license a tax of two hundred dollars ($200.00).

(a) This section shall not be construed to apply to a manufacturer or to a merchant who sells the goods, wares, or merchandise of such manufacturer, offering to present to the purchaser or customer a gift of certain value as an inducement to purchase such goods, wares or merchandise.

(b) Counties, cities, or towns may levy a license tax on the business taxed under this section and not in excess of that levied by the state. (1939, c. 158, s. 156.)

§ 105-93. Process tax.—(a) In every indictment or criminal proceeding finally disposed of in the superior court, the party convicted or adjudged to pay the cost shall pay a tax of two dollars ($2.00): Provided, that this tax shall not be levied in cases where the county is required to pay the cost.

(b) At the time of suing out the summons in a civil action in the superior court or other court of record, or the docketing of an appeal from the lower court in the superior court, the plaintiff or the appellant shall pay a tax of two dollars ($2.00): Provided, that this tax shall not be demanded of any plaintiff or appellant who has been duly authorized to sue or appeal in forma pauperis; but when in cases brought or in appeals in forma pauperis the costs are taxed against the defendants the tax shall be included in the bill of costs: Provided, that this tax shall not be levied in cases where the county is required to pay the cost and in tax foreclosure suits.

(c) No county, city, or town, or other municipal corporation shall be required to pay said tax upon the institution of any action brought by it, but whenever such plaintiff shall recover in such action, the said tax shall be included in the bill of costs and collected from the defendant.

(d) In any case where the party has paid the aforesaid cost in a civil action and shall recover in

the final decision of the case, then such cost so paid by him shall be retaxed against the losing party adjudged to pay the cost, plus five per cent (5%) which the clerk of the superior court may retain for his services, and this shall be received by him, whether he is serving on a salary or fee basis, and if on a salary basis, shall be in addition to such salary.

(e) This section shall not apply to cases in the jurisdiction of magistrates' courts, whether civil or criminal, except upon appeals to the superior court from the judgment of such magistrate, and shall not apply for the docketing in the superior court of a transcript of a judgment rendered in any other court, whether of record or not.

(f) The tax provided for in this section shall be levied and assessed by the clerk of the superior court or other court in all cases described herein; and on the first Monday in January, April, July, and October of each and every year he shall make to the commissioner of revenue a sworn statement and report in detail, showing the number of the case on the docket, the name of the plaintiff or appellant in civil action, or the defendant in criminal action, and accompany such report and statement with the amount of such taxes collected, or which should have been collected, by him in the preceding three months. Any clerk of the superior court failing to make the report and pay the amount of tax due under this section within the first fifteen days of the month in which such report is required to be made, shall be liable for a penalty of ten per cent (10%) on the amount of tax that may be due at the time such report should be made. (1939, c. 158, s. 157.)

§ 105-94. Morris Plan or industrial banks.— Every person, firm, or corporation engaged in the business of operating a Morris Plan or industrial bank in the state shall apply for and obtain a state license from the commissioner of revenue for the privilege of engaging in such business, and shall pay for such license the following tax:

When the total resources as of December thirty-first of the previous calendar year are—

Less than $250,000	$ 75.00
$250,000 and less than $500,000	150.00
$500,000 and less than $1,000,000	225.00
$1,000,000 and less than $2,000,000	300.00
$2,000,000 and less than $5,000,000	450.00
$5,000,000 and over	600.00

(a) Any such bank that shall begin business during the current tax year applicable to this article, the tax shall be calculated on the total resources at the beginning of business.

(b) Every person, firm, or corporation engaged in the business of soliciting loans or deposits for a Morris Plan or other industrial bank not licensed as such by the state for the county in which such person, firm, or corporation solicits business shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, and shall pay for such license a tax of fifty dollars ($50.00) per annum, in each county in which business is solicited.

(c) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half (½) of that levied by the state. (1939, c. 158, s. 158.)

§ 105-95. Marriage license. — There shall be levied on all marriage licenses a state license tax of three dollars on each such license, which shall be assessed and collected by the register of deeds of the county in which the license is issued.

The register of deeds of each county shall submit to the commissioner of revenue, on the first Monday in January, April, July, and October of each year a sworn statement or report in detail, showing the names of the persons to whom such license has been issued during the preceding three months, and accompany such sworn report or statement with the amount of such state taxes collected by him or that should have been collected by him in the preceding three months.

The counties may levy one dollar ($1.00) upon such marriage license, to be assessed and collected by the register of deeds and accounted for to the county treasurer at the same time and in the same manner as he accounts to the commissioner of revenue for the state tax. (1939, c. 158, s. 159.)

§ 105-96. Marble yards.—Every person, firm, or corporation engaged in the business of manufacturing, erecting, jobbing, selling, or offering for sale monuments, marble tablets, gravestones or articles of like kind, or, if a non-resident, selling and erecting monuments, marble tablets, or gravestones at retail shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state, and shall pay for such license the following tax:

In unincorporated communities and cities or towns of less than 2,000 population	$15.00
In cities or towns of 2,000 and less than 5,000 population	25.00
In cities or towns of 5,000 and less than 10,000 population	30.00
In cities or towns of 10,000 and less than 15,000 population	40.00
In cities or towns of 15,000 and less than 20,000 population	50.00
In cities or towns of 20,000 and less than 25,000 population	60.00
In cities or towns of 25,000 population or over	70.00

In addition to the license tax levied in this section, an additional tax shall be paid by the person, firm, or corporation engaged in the business taxed under this section of ten dollars ($10.00) for each person soliciting or selling.

Counties shall not levy any license tax on the business taxed under this section, but cities and towns in which the principal office or plant of any such business is located may levy a license tax not in excess of that levied by the state. (1939, c. 158, s. 160.)

§ 105-97. Manufacturers of ice cream.—(a) Every person, firm, or corporation engaged in the business of manufacturing or distributing ice cream at wholesale shall apply for and obtain from the commissioner of revenue a state license for each factory or place where manufactured and/or stored for distribution, and shall pay an annual state license tax of ten dollars ($10.00) in cities and towns of less than two thousand five hundred (2,500) population; twenty-five dollars ($25.00) in cities and towns having population between two

thousand five hundred (2,500) and ten thousand (10,000), and in cities and towns having a population of more than ten thousand (10,000), fifty dollars ($50.00), and an additional tax of one-half cent for each gallon manufactured, sold, and/or distributed. Reports shall be made to the commissioner of revenue in such form as he may prescribe within the first ten days of each month covering all such gross sales for the previous month, and the additional tax herein levied shall be paid monthly at the time such reports are made.

(b) For the purpose of this section the words "ice cream" shall apply to ice cream, frozen custards, sherbets, water ices, and/or similar frozen products.

(c) Every retail dealer selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in subsection (a) of this section shall pay an annual license tax for the privilege of doing business in this state of ten dollars ($10.00).

(d) Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-fourth of the above. (1939, c. 158, s. 161.)

§ 105-98. Branch or chain stores.—Every person, firm, or corporation engaged in the business of operating or maintaining in this state, under the same general management, supervision, or ownership, two or more stores, or mercantile establishments where goods, wares, and/or merchandise is sold or offered for sale, or from which such goods, wares, and/or merchandise are sold and/or distributed at wholesale or retail, or who or which controls by lease, either as lessor or lessee, or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein, shall be deemed a branch or chain store operator, and shall apply for and obtain from the commissioner of revenue a state license for the purpose of engaging in such business of a branch or chain store operator, and shall pay for such license a tax according to the following schedule:

On each and every such store operated in this state in excess of one—

For not more than four additional stores, for each such additional store	$ 65.00
For five additional stores and not more than eight, for each such additional store	85.00
For nine additional stores and not more than twelve, for each such additional store	95.00
For thirteen additional stores and not more than sixteen, for each such additional store	105.00
For seventeen additional stores and not more than twenty, for each such additional store	115.00
For twenty-one additional stores and not more than thirty, for each such additional store	140.00
For thirty-one additional stores and not more than fifty, for each such additional store	175.00
For fifty-one additional stores and not more than one hundred, for each such additional store	200.00
For one hundred and one additional stores and not more than two hundred, for each such additional store	225.00
For two hundred and one additional stores and over, for each such additional store	250.00

The term "chain store" as used in this section shall include stores operated under separate charters of incorporation, if there is common ownership of a majority of stock in such separately incorporated companies, and/or if there is similarity of name of such separately incorporated companies, and/or if such separately incorporated companies have the benefit in whole or in part of group purchase of merchandise, or of common management. And in like manner the term "chain store" shall apply to any group of stores where a majority interest is owned by an individual or partnership.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars ($50.00) for each chain store located in such city or town. For the purpose of ascertaining the particular unit in each chain of stores not subject to taxation by the state under this section, and therefore not liable for city license tax, the particular store in which the principal office of the chain in this state is located shall be designated as the unit in the chain not subject to this tax.

In enforcing the provisions of this section, the commissioner of revenue may prorate the total amount of tax for a chain to the several units and the amount so prorated may be recovered from each unit in the chain in the same way as other taxes levied in this article.

This section shall not apply to retail or wholesale dealers in motor vehicles and automotive equipment and supply dealers at wholesale who are not liable for tax hereunder on account of the sale of other merchandise. (1939, c. 158, s. 162.)

§ 105-99. Wholesale distributors of motor fuels.—Every person, firm, or corporation engaged in the business of distributing or selling at wholesale any motor fuels in this state shall apply to the commissioner for an additional annual license to engage in such business, and shall pay for such privilege an additional annual license tax determined and measured by the number of pumps owned or leased by the distributor or wholesaler through which such motor fuels are sold, at retail, according to the following schedule:

For the first 100 pumps	$ 4.00 per pump
For 101 additional pumps and not more than 200 pumps	5.00 per pump
For 201 additional pumps and not more than 300 pumps	6.00 per pump
For 301 additional pumps and not more than 400 pumps	7.00 per pump
For 401 additional pumps and not more than 500 pumps	8.00 per pump
For 501 additional pumps and not more than 600 pumps	9.00 per pump
For all over 600 pumps	10.00 per pump

Any contract or agreement, oral or written, express or implied by the terms or the effects of which the tax herein imposed shall be passed on directly or indirectly to any person, firm, or corporation not engaged in the business hereby taxed is hereby declared to be against the public policy of

this state and null and void, and any person, firm, or corporation negotiating such an agreement, or receiving the benefits thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

The tax herein imposed shall be in addition to all other taxes imposed by this chapter or under any other laws.

Counties, cities and towns shall not levy any tax by reason of the additional tax imposed by this section, but this section shall in no way affect the right given to counties, cities, and towns to levy taxes under § 105-89.

The business taxed under this section shall not be taxed under § 105-98. (1939, c. 158, s. 162½.)

§ 105-100. Patent rights and formulas.—Every person, firm, or corporation engaged in the business of selling or offering for sale any patent right or formula shall apply in advance and obtain from the commissioner of revenue a separate state license for each and every county in this state where such patent right or formula is to be sold or offered for sale, and shall pay for each such separate license a tax of ten dollars ($10.00).

Counties, cities, or towns may levy a license on the business taxed under this section not in excess of the taxes levied by the state. (1939, c. 158, s. 163.)

§ 105-101. Tax on seals affixed by officers.—Whenever the seal of the state, of the state treasurer, the secretary of state, or of any other public officer required by law to keep a seal (not including clerks of courts, notaries public, and other county officers) shall be affixed to any paper, the tax to be paid by the party applying for same shall be as follows:

For the Great Seal of the state, on any commission	$2.50
For the Great Seal of the state on warrants of extradition for fugitives from justice from other states, the same fee and seal tax shall be collected from the state making the requisition which is charged in this state for like service. For the seal of the state department, to be collected by the secretary of state	1.00
For the seal of the state treasurer, to be collected by him	1.00
For a scroll, when used in the absence of a seal, the tax shall be on the scroll, and the same as for the seal.	

(a) All officers shall keep a true, full, and accurate account of the number of times any of such seals or scrolls are used, and shall deliver to the governor of the state a sworn statement thereof.

(b) All seals affixed for the use of any county of the state, used on the commissions of officers of the national guard, and any other public officer not having a salary, under the pension law, or under any process of court, or to any commission issued by the governor to any person in the employ of the state, or to be employed by the state shall be exempt from taxation. (1939, c. 158, s. 166.)

§ 105-102. Junk dealers.—Every person, firm, or corporation engaged in the business of buying and/or selling or dealing in what is commonly known as junk, including scrap metals, glass, waste paper, waste burlap, waste cloth and cordage of every nature, kind and description, shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business in this state and shall pay for such license an annual tax for each location where such business is carried on, according to the following schedule:

In unincorporated communities and in cities or towns of less than 2,500 population	$ 25.00
In cities or towns of 2,500 and less than 5,000 population	30.00
In cities or towns of 5,000 and less than 10,000 population	50.00
In cities or towns of 10,000 and less than 20,000 population	75.00
In cities or towns of 20,000 and less than 30,000 population	100.00
In cities or towns of 30,000 population or more	125.00

Provided, that if any person, firm, or corporation shall engage in the business enumerated in this section within a radius of two miles of the corporate limits of any city or town in this state, he or it shall pay a tax based on the population of such city or town according to the schedule above set out. Counties, cities and towns may levy a license tax not in excess of one-half of that levied by the state; provided, however, that any person, firm, or corporation dealing solely in waste paper shall not be liable for said tax. (1939, c. 158, s. 168.)

Administrative Provisions of Schedule B.

§ 105-103. Unlawful to operate without license.—When a license tax is required by law, and whenever the general assembly shall levy a license tax on any business, trade, employment, or profession, or for doing any act, it shall be unlawful for any person, firm, or corporation without a license to engage in such business, trade, employment, profession, or do the act; and when such tax is imposed it shall be lawful to grant a license for the business, trade, employment, or for doing the act; and no person, firm, or corporation shall be allowed the privilege of exercising any business, trade, employment, profession, or the doing of any act taxed in this schedule throughout the state under one license, except under a state-wide license. (1939, c. 158, s. 181.)

§ 105-104. Manner of obtaining license from the commissioner of revenue.— (a) Every person, firm, or corporation desiring to obtain a state license for the privilege of engaging in any business, trade, employment, profession, or of the doing of any act for which a state license is required, shall, unless otherwise provided by law, make application therefor in writing to the commissioner of revenue, in which shall be stated the county, city, or town and the definite place therein where the business, trade, employment, or profession is to be exercised; the name and resident address of the applicant, whether the applicant is an individual, firm, or corporation; the nature of the business, trade, employment, or profession; number of years applicant has prosecuted such business, trade, employment, or profession in this state, and such other information as may be required by the commissioner of revenue. The application shall be ac-

companied by the license tax prescribed in this article.

(b) Upon receipt of the application for a state license with the tax prescribed by this article, the commissioner of revenue, if satisfied of its correctness, shall issue a state license to the applicant to engage in the business, trade, employment, or profession in the name of and at the place set out in the application. No license issued by the commissioner of revenue shall be valid or have any legal effect unless and until the tax prescribed by law has been paid, and the fact of such shall appear on the face of the license. (1939, c. 158, s. 182.)

§ 105-105. Persons, firms, and corporations engaged in more than one business to pay tax on each. — Where any person, firm, or corporation is engaged in more than one business, trade, employment, or profession which is made under the provisions of this article subject to state license taxes, such persons, firms, or corporations shall pay the license tax prescribed in this article for each separate business, trade, employment, or profession. (1939, c. 158, s. 183.)

§ 105-106. Effect of change in name of firm.— No change in the name of a firm, partnership, or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered as commencing business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a majority of the stock, if a corporation, the business shall be regarded as continuing. (1939, c. 158, s. 184.)

§ 105-107. License may be changed when place of business is changed. — When a person, firm, or corporation has obtained a state license to engage in any business, trade, employment, or profession at any definite location in a county, and desires to remove to another location in the same county, the commissioner of revenue may, upon proper application, grant such person, firm, or corporation permission to make such move, and may endorse upon the state license his approval of change in location. (1939, c. 158, s. 185.)

§ 105-108. Property used in a licensed business not exempt from taxation.—A state license, issued under any of the provisions of this article shall not be construed to exempt from other forms of taxation the property employed in such licensed business, trade, employment, or profession. (1939, c. 158, s. 186.)

§ 105-109. Engaging in business without a license.—(a) All state license taxes under this article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of June of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, but the fine shall not be less than twenty per cent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the state license tax which was due and payable on the first day of June of the current year, in addition to the state license tax imposed by this article, for each and every thirty days that such state license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the commissioner of revenue and paid with the state license tax, and shall become a part of the state license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.

The provisions of this section shall apply to taxes levied by the counties of the state under authority of this article in the same manner and to the same extent as they apply to taxes levied by the state.

(c) If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a state license under this article without such state license, he or it shall be guilty of a misdemeanor, and shall be fined and/or imprisoned in the discretion of the court; and if such failure, neglect, or refusal to apply for and obtain such state license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such state license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the state license tax imposed by this article, for each and every thirty (30) days that such state license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the commissioner of revenue and paid with the state license tax and shall become a part of the state license tax.

(d) If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the commissioner of revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes; and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant before some justice of the peace or recorder in the county for the violation of the provisions of this article and as provided in this article. (1939, c. 158, s. 187.)

§ 105-110. Each day's continuance in business without a state license a separate offense.—Each and every day that any person, firm, or corporation shall continue to exercise or engage in any business, trade, employment, or profession, or do any act in violation of the provisions of this article,

shall be and constitute a distinct and a separate offense. (1939, c. 158, s. 188.)

§ 105-111. Duties of commissioner of revenue.—(a) Except where otherwise provided, the commissioner of revenue shall be the duly authorized agent of this state for the issuing of all state licenses and the collection of all license taxes under this article, and it shall be his duty and the duty of his deputies to make diligent inquiry to ascertain whether all persons, firms, or corporations in the various counties of the state who are taxable under the provisions of this article have applied for the state license and paid the tax thereon levied.

(b) The commissioner of revenue shall continually keep in his possession a sufficient supply of blank state license certificates, with corresponding sheets and duplicates consecutively numbered; shall stamp across each state license certificate that is to be good and valid in each and every county of the state the words "state-wide license," and shall stamp or imprint on each and every license certificate the words "issued by the commissioner of revenue."

(c) Neither the commissioner of revenue nor any of his deputies shall issue any duplicate license unless expressly authorized to do so by a provision of this article or schedule, and unless the original license is lost or has become so mutilated as to be illegible, and in such cases the commissioner of revenue is authorized to issue a duplicate certificate for which the tax is paid, and shall stamp upon its face "duplicate." (1939, c. 158, s. 189.)

§ 105-112. License to be procured before beginning business.—(a) Every person, firm, or corporation engaging in any business, trade, and/or profession, or doing any act for which a state license is required and a tax is to be paid under the provisions of this article or schedule, shall, annually in advance, on or before the first day of June of each year, or before engaging in such business, trade, and/or profession, or doing the act, apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business, trade, and/or profession, or doing such act, and shall pay the tax levied therefor.

(b) Licenses shall be kept posted where business is carried on. No person, firm, or corporation shall engage in any business, trade, and/or profession, or do the act for which a state license is required in this article or schedule, without having such state license posted conspicuously at the place where such business, trade, and/or profession is carried on; and if the business, trade, and/or profession is such that license cannot be so posted, then the itinerant licensee shall have such license required by this article or schedule in his actual possession at the time of carrying on such business, trade, and/or profession, or doing the act named in this article or schedule, or a duplicate thereof.

(c) Any person, firm, or corporation failing, neglecting, or refusing to have the state license required under this article or schedule posted conspicuously at the place of business for which the license was obtained, or to have the same or a duplicate thereof in actual possession if an itinerant, shall pay an additional tax of twenty-five dollars ($25.00) for each and every separate offense, and each day's failure, neglect, or refusal shall constitute a separate offense. (1939, c. 158, s. 190.)

§ 105-113. Sheriff and city clerk to report.—The sheriff of each county and the clerk of the board of aldermen of each city or town in the state shall, on or before the fifteenth day of June of each year, make a report to the commissioner of revenue, containing the names and the business, trade, and/or the profession of every person, firm, or corporation in his county or city who or which is required to apply for and obtain a state license under the provisions of this article or schedule, and upon such forms as shall be provided and in such detail as may be required by the commissioner of revenue. (1939, c. 158, s. 191.)

Art. 3. Schedule C. Franchise Tax.

§ 105-114. Defining taxes in this article.—The taxes levied and assessed in this article or schedule shall be paid as specifically herein provided, and shall be for the privilege of engaging in or carrying on the business or doing the act named; and, if taxpayer be a corporation, shall be a tax also for the continuance of its corporate rights and privileges granted under its charter, if incorporated in this state, or by reason of any act of domestication if incorporated in another state, and such taxes and taxpayers shall be subject to other pertinent regulations mentioned in this chapter. The taxes levied in this article or schedule shall be for the fiscal year of the state in which said taxes become due, and the lien of such taxes shall attach annually to all real estate of the taxpayer within the state on the date that such taxes are due and payable; and said lien shall continue until such taxes, with any interest, penalty and costs which shall accrue thereon shall have been paid. (1939, c. 158, s. 201.)

§ 105-115. Franchise or privilege tax on railroads.—Every person, firm, or corporation, domestic or foreign, owning and/or operating a railroad in this state shall, in addition to all other taxes levied and assessed in the state, pay annually to the commissioner of revenue a franchise, license, or privilege tax for the privilege of engaging in such railroad business within the state of North Carolina, as follows:

(a) Such person, firm or corporation shall during the month of June each year furnish to the commissioner of revenue a copy of the report and statement required to be made to the state board of assessment by the Machinery Act in effect at the time such report is due, and such other and further information as the commissioner of revenue may require.

(b) The value upon which the tax herein levied shall be assessed by the commissioner of revenue and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the state of North Carolina shall be the value of the total property, tangible and intangible, in this state, for each such railroad company, as assessed for ad valorem taxation during the calendar year in which such report is due.

(c) The franchise or privilege tax which every such railroad company shall pay for the privilege of carrying on or engaging in intrastate commerce within this state shall be seventy-five one-hundredths of one per cent (75/100%) of the value

ascertained as above by the commissioner of revenue, and tax shall be due and payable within thirty days after date of notice of such tax.

(d) If any such person, firm, or corporation shall fail, neglect, or refuse to make and deliver the report or statements provided for in this section, the commissioner of revenue shall estimate, from the reports and records on file with the state board of assessment, the value upon which the amount of tax due by such company under this section shall be computed, and shall assess the franchise or privilege tax upon such estimate, and shall collect the same, together with such penalties herein imposed for failure to make the report and statement.

(e) It is the intention of this section to levy upon railroad companies a license, franchise, or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within this state, and not a part of interstate commerce; that the tax provided for in this section is not intended to be a tax for the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this state.

(f) No county, city or town shall levy a license, franchise, or privilege tax on the business taxed under this section. (1939, c. 158, s. 202.)

§ 105-116. Franchise or privilege tax on electric light, power, street railway, gas, water, sewerage, and other similar public-service companies not otherwise taxed.—(1) Every person, firm, or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or gas, or owning and/or operating a water or public sewerage system, or owning and/or operating a street railway, street bus or similar street transportation system for the transportation of freight or passengers for hire, shall, within thirty days after the first day of January, April, July and October of each year, make and deliver to the commissioner of revenue, upon such forms and blanks as required by him, a report verified by the oath of the officer or authorized agent making such report and statement, containing the following information:

(a) The total gross receipts for the three months ending the last day of the month immediately preceding such return from such business within and without this state.

(b) The total gross receipts for the same period from such business within this state.

(c) The total gross receipts from the commodities or services described in this section sold to any other person, firm, or corporation engaged in selling such commodities or services to the public, and actually sold by such vendee to the public for consumption and tax paid to this state by the vendee, together with the name of such vendee, with the amount sold and the price received therefor.

(d) The total amount and price paid for such commodities or services purchased from others engaged in the above named business in this state, and the name or names of the vendor.

(2) From the total gross receipts within this state there shall be deducted the gross receipts reported in subsection (1) (c) of this section: Provided, that this deduction shall not be allowed where the sale of such commodities was made to any person, firm, or corporation or municipality which is exempted by law from the payment of the tax herein imposed upon such commodities when sold or used by it.

(3) On every such person, firm or corporation there is levied an annual franchise or privilege tax of six per cent (6%), payable quarterly, of the total gross receipts derived from such business within this state, after the deductions allowed as herein provided for, which said tax shall be for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report herein provided for: Provided, the tax upon privately owned water companies shall be four per cent (4%) of the total gross receipts derived from such business within this state: Provided further, the tax on gas companies shall be at the rate of four per cent (4%) upon the first twenty-five thousand dollars ($25,000.00) of the total gross receipts, and the tax on all gross receipts in excess of twenty-five thousand dollars ($25,000.00) shall be at the rate of six per cent (6%).

(4) Any person, firm, or corporation failing to file report and pay tax found to be due in accordance with the provisions of this section at the time herein provided for shall, in addition to all other penalties prescribed by this article, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall in no case be less than two dollars ($2.00), and shall be added to the tax, together with interest accrued, and shall become an integral part of the tax.

(5) The report herein required of gross receipts within and without the state, shall include the total gross receipts for the period stated of all properties owned and operated by the reporting person, firm, or corporation on the first day of each calendar quarter year, whether operated by it for the previous annual period, or whether intermediately acquired by purchase or lease, it being the intent and purpose of this section to measure the amount of privilege or franchise tax in each calendar quarter year with reference to the gross receipts of the property operated for the previous calendar quarter year and to fix liability for the payment of the tax on the owner, operator, or lessor on the first day of January, April, July and October of each year.

(6) Companies taxed under this section shall not be required to pay the franchise tax imposed by §§ 105-122 or 105-123 unless the tax levied by §§ 105-122 and 105-123 exceed the tax levied in this section, and no county shall impose a franchise or privilege tax upon the business taxed under this section, and no city or town shall impose a greater privilege or license tax upon such companies than the aggregate privilege or license tax which is now imposed by any such city or town. (1939, c. 158, s. 203.)

§ 105-117. Franchise or privilege tax on Pullman, sleeping, chair, and dining cars.—(1) Every person, firm, or corporation, domestic or foreign, engaged in the business of operating in this state

any Pullman, sleeping, chair, dining or other similar cars, where an extra charge is made for the use or occupancy of same, shall annually, on or before the first day of August, make and deliver to the commissioner of revenue, upon such forms, blanks, and in such manner as may be required by him, a full, accurate, and true report and statement, verified by oath of the officer or authorized agent making such report, of the total gross receipts of such person, firm, or corporation from such business wholly within this state during the year ending the thirtieth day of June of the current year.

(2) Such person, firm, or corporation shall pay an annual privilege, license, or franchise tax of ten per cent (10%) of the total gross receipts derived from such business wholly within this state; which said tax shall be paid for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report and statements herein provided for.

(3) No county, city or town shall impose any franchise or privilege tax on the business taxed under this section. (1939, c. 158, s. 204.)

§ 105-118. Franchise or privilege tax on express companies.—(1) Every person, firm, or corporation, domestic or foreign, engaged in this state in the business of an express company as defined in this chapter, shall, in addition to a copy of the report required by the Machinery Act then in effect, annually, on or before the first day of August, make and deliver to the commissioner of revenue a report and statement, verified by the oath of the officer or authorized agent making such report or statement, containing the following information as of the thirtieth day of June of the current year:

(a) The average amount of invested capital employed within and without the state in such business during the year ending the thirtieth day of June of the current year.

(b) The total net income earned on such invested capital from such business during the year ending the thirtieth day of June of the current year.

(c) The total number of miles of railroad lines or other common carriers over which such express companies operate in this state during the year ending the thirtieth day of June of the current year.

(2) Every such person, firm, or corporation, domestic or foreign, engaged in such express business within this state shall pay to the commissioner of revenue, at the time of filing the report required in this section, the following annual franchise or privilege tax for the privilege of engaging in such express business within this state:

Where the net income of the average capital invested during the year ending the thirtieth day of June of the current year is six per cent (6%) or less, fifteen dollars ($15.00) per mile of railroad lines over which operated.

More than six per cent (6%) and less than eight per cent (8%), twenty-one dollars ($21.00) per mile of railroad lines over which operated.

Eight per cent (8%) and over, twenty-five dollars ($25.00) per mile of railroad lines over which operated.

(3) Every such person, firm, or corporation, domestic or foreign, who or which engages in such business without having had previous receipts upon which to levy the franchise or privilege tax, shall report to the commissioner at the time of beginning business in this state and pay for such privilege of engaging in business in this state a tax of seven dollars and fifty cents ($7.50) per mile of the railroad lines over which operated or proposed to operate.

(4) Counties shall not levy a franchise, privilege or license tax on the business taxed under this section; and municipalities may levy an annual franchise, privilege, or license tax on such express companies for the privilege of doing business within the municipal limits as follows:

Municipalities of less than 500 population..	$ 5.00
Municipalities of 500 and less than 1,000 population	10.00
Municipalities of 1,000 and less than 5,000 population	20.00
Municipalities of 5,000 and less than 10,000 population	30.00
Municipalities of 10,000 and less than 20,000 population	50.00
Municipalities of 20,000 and over.....	75.00

(1939, c. 158, s. 205.)

§ 105-119. Franchise or privilege tax on telegraph companies.—(1) Every person, firm or corporation, domestic or foreign, engaged in operating the apparatus necessary for communication by telegraph between points within this state, shall annually, on or before the first day of August, make and deliver to the commissioner of revenue, upon such forms and in such manner as required by him, a report verified by the oath of the officer or authorized agent making such report and statement, containing the following information:

(a) The total gross receipts from business within and without this state for the entire calendar year next preceding due date on such return.

(b) The total gross receipts for the same period from business within this state.

(2) On every such person, firm or corporation there is hereby levied an annual franchise or privilege tax of six per cent (6%) of the total gross receipts derived from business within this state. Such gross receipts shall include all charges for services, all rentals, fees, and all other similar charges from business which both originates and terminates in the state of North Carolina, whether such business in the course of transmission goes outside this state or not. The tax herein levied shall be for the privilege of carrying on or engaging in the business named in this state, and shall be paid to the commissioner of revenue at the time of filing the report herein provided for: Provided, that the tax on the first one thousand dollars ($1,000.00) of gross receipts of any such telegraph company shall be at the rate of four per cent (4%), and all gross receipts in excess of said first one thousand dollars ($1,000.00) shall be taxed at the rate of six per cent (6%).

(3) The report herein required shall include the total gross receipts for the period stated of all properties owned, leased, controlled and/or over which operated by such person, firm or corporation in this state.

(4) Any person, firm or corporation failing to file report and pay tax found to be due in accord-

ance with the provisions of this section at the time herein provided for shall, in addition to all other penalties prescribed in this article, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall in no case be less than two dollars ($2.00), and shall be added to the tax, together with interest accrued, and shall become an integral part of the tax.

(5) (a) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce.

(b) Counties shall not levy a franchise, privilege, or license tax on the business taxable under this section, and municipalities may levy the following license tax:

Less than 5,000 population	$10.00
5,000 and less than 10,000 population	15.00
10,000 and less than 20,000 population	20.00
20,000 population and over	50.00

(1939, c. 158, s. 206.)

§ 105-120. Franchise or privilege tax on telephone companies.—(1) Every person, firm or corporation, domestic or foreign, owning and/or operating a telephone business for the transmission of messages and/or conversations to, from, through, in or across this state, shall, within thirty days after the first day of January, April, July and October of each year, make and deliver to the commissioner of revenue a quarterly return, verified by the oath of the officer or authorized agent making such return, showing the total amount of gross receipts of such telephone company for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed.

(2) An annual franchise or privilege tax of six per cent (6%), payable quarterly, on the gross receipts of such telephone company, is herein imposed for the privilege of engaging in such business within this state. Such gross receipts shall include all rentals, other similar charges, and all tolls received from business which both originates and terminates in the state of North Carolina, whether such business in the course of transmission goes outside of this state or not: Provided, where any city or town in the state has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such telephone company, and is now collecting and receiving therefor a revenue tax not exceeding one per cent of such revenues, the amount so paid by such operating company, upon being certified by the treasurer of such municipality to the commissioner of revenue, shall be from time to time credited by the commissioner of revenue to such telephone company upon the tax imposed by the state under this section of this chapter.

(3) Any such person, firm or corporation, domestic or foreign, who or which fails, neglects, or refuses to make the return, and/or pay the tax at the time provided for in this section, shall pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall not be less than two dollars ($2.00) in any case, and shall be added to the tax, together with the interest accrued, and shall become an integral part of the tax.

(4) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce.

(5) Counties, cities and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section. (1939, c. 158, s. 207.)

§ 105-121. Franchise or privilege tax on insurance companies.—Every person, firm, or corporation, domestic or foreign, which contracts on his, their, or its account to issue any policies for or agreements for life, fire, marine, surety, guaranty, fidelity, employers' liability, liability, credit, health, accident, livestock, plate glass, tornado, automobile, automatic sprinkler, burglary, steam boiler, and all other forms of insurance shall apply for and obtain from the insurance commissioner a state license for the privilege of engaging in such business within this state and shall pay for such state license the following tax:

(1) The annual license or privilege tax, due and payable on or before the first day of April of each year, shall be for each such license issued to:

An insurance rate-making company or association	$200.00
A life insurance company or association	250.00
A fire insurance company or association of companies operating a separate or distinct plant of agencies	200.00
An accident or health insurance company or association	200.00
A marine insurance company or association	200.00
A fidelity or surety company or association	200.00
A plate-glass insurance company or association	200.00
A boiler insurance company or association	200.00
A foreign mutual insurance company or association	200.00
A domestic farmers' mutual insurance company or association	10.00
A fraternal order	25.00
A bond, investment, dividend, guaranty, registry, title guaranty, credit, fidelity, liability, or debenture company or association	200.00
All other insurance companies or associations except domestic mutual burial associations	200.00

On all domestic mutual burial associations, and on each additional branch thereof operated (and where any mutual burial association has designated more than one undertaker to operate for it), the tax shall be in each instance as upon a separate branch thereof:

With a membership of less than 5,000	$ 50.00
With a membership of 5,000 or less than 15,000	75.00
With a membership of 15,000 or more	100.00

When the paid-in capital stock and/or surplus of a life insurance company does not exceed one hundred thousand dollars ($100,000.00) the license tax levied in subsection one shall be one-half the amount named.

All such license fees shall be subject to the provisions of § 58-64 as to additional classes of business.

(2) Every such person, firm, or corporation, domestic or foreign, engaged in the business hereinbefore described in this section, shall by its general agent, president, or secretary, within the first fifteen days of February and August of each year, file with the insurance commissioner of this state a full, accurate, and correct report and statement, verified by the oath of such general agent or president, secretary, or some officer at the home or head office of the company or association in this country, of the total gross premium receipts including premiums or deposits on annuity contracts derived from such insurance business from the residents of this state, or on property located therein, during the preceding six months of the previous calendar year, and at the time of making such report and statement shall, except as hereinafter provided, pay to the insurance commissioner, in addition to other license taxes imposed in this section, a license or privilege tax for the privilege of engaging in such business in this state, a license tax of two and one-half per cent (2½%) upon the amount of such gross premium receipts, with no deduction for dividends, whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any deduction except for return premiums or return assessments. The rate of tax on premiums for liability under the Workmen's Compensation Act for all insurance companies collecting such premiums shall be four per cent (4%) on all premiums collected in this state on such liability insurance, and a corresponding rate of tax shall be collected from self-insurers: Provided, if any general agent shall file with the insurance commissioner a sworn statement showing that one-fifth of the entire assets of his company are invested and are maintained in any of the following securities or property, to-wit: bonds of this state or any county, city, town, or school district of this state; or in loans to citizens or corporations or organizations in this state; or stock in corporations of this state; or property situated within this state, then such tax shall be three-fourths per centum of such gross premium receipts: Provided, that the provisions herein as to tax and premium receipts shall not apply to domestic farmers' mutual fire insurance companies, nor to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except its members.

(3) Every special or district agent, manager, or organizer, general agent, local canvassing agent, resident or non-resident adjuster, or non-resident broker, representing any company referred to in this section, shall on or before the first day of April of each year apply for and obtain from the insurance commissioner a license for the privilege of engaging in such business in this state, and shall pay for such license for each company represented the following annual tax:

Special or district agent, manager, or organizer (including seal)	$ 5.00
General agent	6.00
Local or canvassing agent (including seal)	2.50
Resident fire insurance adjuster	2.00
Non-resident fire insurance adjuster	5.00
Non-resident broker	10.00

But any such company having assets invested and maintained in this state as provided in subsection three of this section shall pay the following license fees: for

Special agent (including seal)	$2.50
Local canvassing agent (including seal)	1.00

Any person not licensed as an insurance agent on April first, one thousand nine hundred and thirty-three, and applying for license thereafter, shall pay an examination fee of ten dollars ($10.00), to be paid to the insurance commissioner as other license fees and taxes: Provided, agents for farm mutual fire insurance companies shall not be required to take an examination and pay the examination fee.

In the event a license issued under this subsection is lost or destroyed, the insurance commissioner, for a fee of fifty cents ($0.50) may certify to its issuance, giving number, date, and form, which may be used by the original party named thereon in lieu of the said original license. There shall be no charge for the seal affixed to such certificate of said license.

(4) Any person, firm, or corporation, domestic or foreign, exchanging reciprocal or inter-insurance contracts as provided herein, shall pay through their attorneys an annual license fee, due and payable on the first day of April of each year, of two hundred dollars ($200.00) and two and one-half per cent (2½%) of the gross premium deposits, and also all other regular fees prescribed by law, to be reported, assessed, and paid as other gross premium taxes provided for in this section: Provided, the tax on workmen's compensation insurance premiums shall be the same as that fixed in subsection two of this section.

(5) Companies paying the tax levied in this section shall not be liable for franchise tax on their capital stock, and no county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company, association or agent paying the tax levied in this section. The license fees and taxes imposed in this section shall be paid to the insurance commissioner. (1939, c. 158, s. 208; 1941, c. 50, s. 4.)

§ 105-122. Franchise or privilege tax on domestic and foreign corporations.—(1) Every corporation, domestic and foreign, incorporated or, by any act, domesticated under the laws of this state, except as otherwise provided in this article or schedule, shall, on or before the thirty-first day of July of each year, make and deliver to the commissioner of revenue in such form as he may prescribe a full, accurate and complete report and statement verified by the oath of its duly authorized officers, containing such facts and information as may be required by the commissioner of revenue as shown by the books and records of the corporation as at the close of its last calendar or fiscal year next preceding July thirty-first of the year in which report is due.

(2) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of

tangible assets as permitted for income tax purposes shall be treated as deductable liabilities. Every such corporation, the capital stock of which is inadequate for its business needs, which is a subsidiary of another corporation or closely affiliated therewith by stock ownership, shall include its indebtedness owed to, endorsed or guaranteed by the parent or affiliated corporation (including a co-subsidiary of the same parent corporation) in the amount of capital stock, surplus and undivided profits in determining the basis for its franchise tax liability under this article. Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof. The capital stock for the purposes of this section shall be deemed to be inadequate to the extent that additional loans, credits, goods, supplies or other capital of whatsoever nature is furnished by the parent or affiliated corporation.

In determining the total amount of the capital stock, surplus and undivided profits, as herein defined, effect shall be given to the final judgment of any court approving a corporate reorganization entered prior to July first of any calendar year and since the close of the corporation's last calendar or fiscal year next preceding.

(3) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as herein provided, every such corporation permitted to do business in this state shall allocate to such business in this state a proportion of the total amount of its capital stock, surplus and undivided profits as herein defined, according to the following rules:

(A) If the principal business of a company in this state is manufacturing, or if it is in any form of collecting, buying, assembling, or processing goods and materials within this state the total amount of capital stock, surplus and undivided profits of such corporation shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or fiscal year of such corporation in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of manufacturing, collecting, buying, assembling, or processing within this state during the income year to the total cost of manufacturing, collecting, assembling, or processing within and without the state. The term "cost of manufacturing, collecting, buying, assembling, or processing within and without this state" as used herein shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis, this term shall be generally interpreted to include as elements of cost within and without this state the following:

(c) The total cost of all goods, materials, and supplies used in manufacturing, assembling, or processing, regardless of where purchased.

(d) The total wages and salaries paid or accrued during the income year in such manufacturing, assembling, or processing activities.

(e) The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling, or processing activities, not including, however, property, privilege, stamp or other taxes.

(f) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(g) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(h) The word "manufacturing" shall be defined as mining and all processes of fabricating or of curing raw material.

(B) If the principal business of a company in this state is selling, distributing, or dealing in tangible personal property within this state, the total amount of capital stock, surplus and undivided profits of such company shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or fiscal year of such company in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deduction on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, or branches located in North Carolina during the income year to the total sales made everywhere during said income year.

(c) The word "sales" as used in this section shall be defined as sale or rental of real estate and sale or rental of tangible properties.

(d) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(e) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(C) If the principal business in this state of a corporation is other than that described in subsection (A) or subsection (B) of this section, then the total amount of capital stock, surplus and undivided profits of such corporation shall be appor-

tioned to North Carolina on the basis of the ratio of its gross receipts in this state during the income year to its gross receipts for such year within and without the state.

(a) The words "gross receipts" as used in this subsection shall be taken to mean and include the entire receipts for business done by such corporation.

(D) The proportion of the total capital stock, surplus and undivided profits of each such corporation so allocated shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such corporation used in connection with its business in this state and liable for annual franchise tax under the provisions of this section.

(4) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection three of this section, which amount so determined shall in no case be less than the total assessed value (including total gross valuation returned for taxation of intangible personal property) of all the real and personal property in this state of each such corporation for the year in which report is due nor less than its total actual investment in tangible property in this state, every corporation taxed under this section shall annually pay to the commissioner of revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied, at the rate of one dollar and seventy-five cents ($1.75) per one thousand dollars ($1,000.00) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than ten dollars ($10.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this state: Provided, that the basis for the franchise tax on all corporations, eighty per cent (80%) of whose outstanding capital stock is owned by persons or corporations to whom or to which such stock was issued prior to January first, one thousand nine hundred thirty-five, in part payment or settlement of their respective deposits in any closed bank of the state of North Carolina, shall be the total assessed value of the real and tangible personal property of such corporation in this state for the year in which report and statement is due under the provisions of this section. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this state plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon.

(5) The report, statement and tax required by this section shall be in addition to all other reports required or taxes levied and assessed in this state.

Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section. (1939, c. 158, s. 210; 1941, c. 50, s. 4.)

§ 105-123. New corporations.—(1) No corporation, domestic or foreign, shall be permitted to do business in this state without paying the franchise tax levied in this article or schedule. When such domestic corporation is incorporated under laws of this state or such foreign corporation is domesticated in this state, and has not heretofore done business in the state, upon which a report might be filed under § 105-122 notice in writing thereof shall be given to the commissioner of revenue by such corporation, and it shall be competent for the commissioner of revenue and he is hereby authorized to obtain such information concerning the basis for the levy of the tax from such other information he can obtain and to that end may require of such corporation to furnish him such a report as may clearly reflect and disclose the amount of its issued and outstanding capital stock, surplus and undivided profits as set out in § 105-122, and information as to such other factors as may be necessary to determine the basis of the tax. When this has been determined, in accordance with the provisions of § 105-122 as far as the same may be applicable, and upon the information which he has secured, the commissioner of revenue shall thereupon determine the amount of franchise tax to be paid by such new corporation, and said tax shall be due and payable within thirty days from date of notice thereof from the commissioner of revenue, which tax, in no event, shall be less than a ratable proportion of the tax for the franchise privilege extended for one year on the determined basis, nor less than the minimum tax of ten dollars ($10.00); the tax levied in this section shall be for the period from date of incorporation or domestication to June thirtieth next following.

(2) Any corporation failing to notify the commissioner of revenue as provided for in subsection (1) of this section within sixty days after date of the incorporation or domestication of such corporation in this state shall be subject to all penalties and remedies imposed for failure to file any report required under this article or schedule.

(3) The provisions of this section shall apply only to corporations newly incorporated or newly domesticated in this state. (1939, c. 158, s. 211.)

§ 105-124. Review of returns—additional taxes.—Upon receipt of any report, statement and tax as provided by this article or schedule, the commissioner of revenue shall cause same to be reviewed and examined for the purpose of ascertaining if same constitute a true and correct return as required by this article or schedule. If the commissioner of revenue discovers from the examination of any return, or otherwise, that the franchise or privilege tax of any taxpayer has not been correctly determined, computed and/or paid, he may at any time within three years after the time when the return was due, give notice in writing, to the taxpayer of such deficiency plus interest at the rate of six per cent (6%) per annum from date when return was due, and any over-payment of the tax shall be returned to the taxpayer within thirty days after it is ascertained. In the case of any taxpayer who has failed to file any return or statement required under this article or schedule, the limitation of three years shall not apply and the commissioner of revenue shall, from facts within his knowledge, prepare tentative returns for such delinquent taxpayer, and shall assess the taxes, penalties and interest

upon these findings; this provision shall not be construed to relieve said taxpayer from liability for a return or from any penalties and remedies imposed for failure to file proper return. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after date of notice of such proposed assessment, the taxpayer shall apply in writing for such hearing, explaining in detail his objections to same. If no request for such hearing is made, such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision by mail, and such amount shall be due and payable within ten days after date of notice thereof. (1939, c. 158, s. 212.)

§ 105-125. Corporations not mentioned.—None of the taxes levied in §§ 105-122 and 105-123 shall apply to religious, fraternal, benevolent, or educational corporations not operating for a profit; nor to banking and insurance companies; nor to business leagues, boards of trade, clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, civic leagues operated exclusively for the promotion of social welfare, or chambers of commerce and merchants associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder, individual, or other corporations:

Provided, that each such corporation must, upon request by the commissioner of revenue, establish in writing its claim for exemption from said provisions. The provisions of §§ 105-122 and 105-123 shall apply to electric light, power, street railway, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck corporations to the extent and only to the extent that the franchise tax levied in §§ 105-122 and 105-123 exceed the franchise taxes levied in other sections of this article or schedule. The exemptions in this section shall apply only to those corporations specifically mentioned, and no other. (1939, c. 158, s. 213.)

§ 105-126. Penalties for non-payment or failure to file report.—(1) Any person, firm, or corporation, domestic or foreign, failing to pay the license, privilege, or franchise tax levied and assessed under this article or schedule when due and payable shall, in addition to all other penalties prescribed in this article, pay an additional tax of ten per cent (10%) and interest at the rate of six per cent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall not be less than two dollars ($2.00) in any case, and shall be added to the tax, together with the interest accrued, and shall become an integral part of the tax.

(2) Any person, firm, or corporation failing to file the report required in this article or schedule on or before the date specified shall pay a penalty of ten per cent (10%) of the tax found to be due, which penalty shall in no case be less than five dollars ($5.00). (1939, c. 158, s. 214.)

§ 105-127. When franchise or privilege taxes payable. — (1) Every corporation, domestic or foreign, from which a report is required by law to be made to the commissioner of revenue shall, unless otherwise provided, pay to said commissioner annually the franchise tax as required by §§ 105-122 and 105-123.

(2) It shall be the duty of the commissioner of revenue to mail to the registered address, last listed with the commissioner of revenue, of every such corporation, report forms to be used in complying with the provisions of this article or schedule, which forms shall contain a copy of so much of this and other sections of this article as relates to penalties for failure to pay said taxes.

(3) It shall be the duty of the treasurer or other officer having charge of any such corporation, domestic or foreign, upon which a tax is herein imposed, to transmit the amount of the tax due to the commissioner of revenue within the time provided by law for payment of same.

(4) Individual stockholders in any corporation, joint stock association, limited partnership, or company paying a tax on its entire capital stock shall not be required to list or pay ad valorem taxes on the shares of stock owned by them.

(5) Corporations in the state legally holding shares of stock in other corporations, upon which the tax has been paid to the state by the corporation issuing the same, shall not be required to list or pay an ad valorem tax on said shares of stock. (1939, c. 158, s. 215.)

§ 105-128. Power of attorney.—The commissioner of revenue shall have the authority to require a proper power of attorney of each and every agent for any taxpayer under this article. (1939, c. 158, s. 217.)

§ 105-129. Extension of time for filing returns; fraudulent return made misdemeanor. — (1) The return required by this article or schedule shall be due on or before the dates specified unless written application for extension of time in which to file, containing reasons therefor, is made to the commissioner of revenue on or before due date of such return. The commissioner of revenue for good cause may extend the time for filing any return under this article or schedule, provided interest at the rate of six per cent (6%) per annum from date return is due is paid upon the total amount of tax due.

(2) The provisions of this article with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent return. Any officer or agent of a corporation who shall knowingly make a fraudulent return under this article or schedule shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) and/or imprisoned at the discretion of the court. (1939, c. 158, s. 216.)

Art. 4. Schedule D. Income Tax.

§ 105-130. Short title.—This article shall be known and may be cited as the income tax article of the revenue act. (1939, c. 158, s. 300.)

§ 105-131. Purpose.—The general purpose of this article is to impose a tax for the use of the state government upon the net income in excess

of the exemption herein allowed, for the calendar year one thousand nine hundred and thirty-nine and each year thereafter collectible in the year one thousand nine hundred and forty and annually thereafter:

(a) Of every resident of the state.

(b) Of every domestic corporation.

(c) Of every foreign corporation and of every non-resident individual having a business or agency in this state or income from property owned, and from every business, trade, profession or occupation carried on in this state.

(d) The tax imposed upon the net income of corporations in this article is in addition to all other taxes imposed under this act. (1939, c. 158, s. 301.)

§ 105-132. Definitions. — For the purpose of this article, and unless otherwise required by the context:

1. The word "taxpayer" includes any individual, corporation, or fiduciary subject to the tax imposed by this article.

2. The word "individual" means a natural person.

3. A "head of a household" is an individual who actually maintains and supports in one household in this state one or more individuals who are closely related by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based on some moral or legal obligation.

4. The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporation, acting in any fiduciary capacity for any person, estate or trust.

5. The word "person" includes individuals, fiduciaries, partnerships.

6. The word "corporation" includes joint stock companies or associations and insurance companies.

7. The words "domestic corporation" mean any corporation organized under the laws of this state.

8. The words "foreign corporation" mean any corporation other than a domestic corporation.

9. The words "tax year" mean the calendar year in which the tax is payable.

10. The words "income year" mean the calendar year or the fiscal year upon the basis of which the net income is computed under this article; if no fiscal year has been established, they mean the calendar year.

11. The words "fiscal year" mean an income year, ending on the last day of any month other than December.

12. The word "paid", for the purposes of the deductions under this article, means "paid or accrued" and the words "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this article. The word "received", for the purpose of the computation of the net income under this article, means "received or accrued", and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this article.

13. The word "resident" applies only to individuals and includes, for the purpose of determining liability for the tax imposed with reference to the income of any income year, all individuals who, at any time during such income year, are domiciled in this state, or who, whether regarding their domicile as in this state or not, reside within this state for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, any individual who is present within the state for more than six months during such income year shall be deemed to be a resident of the state; but absence from the state for more than six months shall raise no presumption that the individual is not a resident of the state.

In cases in which it is demonstrated to the satisfaction of the commissioner of revenue that an individual was a resident of this state for only part of the income year, having moved into or removed from the state during such year, such individual shall, as to income received by him during the period of his residence, report for taxation all income required to be so reported by residents and shall, as to income received by him during the remainder of such year, report for taxation all income required to be so reported by nonresidents: Provided, that in the case of an individual removing from the state during such year, he shall not be regarded as having become a nonresident until he shall have both established a definite residence elsewhere and abandoned any domicile he may have acquired in this state.

The fact that an individual is a nonresident of the state at the time the tax becomes due and payable shall not affect his liability for the tax.

14. The words "foreign country" mean any jurisdiction other than the one embraced within the United States. The words "United States", when used in a geographical sense, include the states, and territories of Alaska and Hawaii, the District of Columbia, and the possessions of the United States. (1939, c. 158, s. 302; 1941, c. 50, s. 5.)

Imposition of Income Tax.

§ 105-133. Individuals.—A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to the net income of the taxpayer as herein defined, and upon income earned within the state of every non-resident having a business or agency in this state or income from property owned and from every business, trade, profession or occupation carried on in this state, computed at the following rates, after deducting the exemptions provided in this article.

On the excess over the amount legally exempted, up to two thousand dollars, three per cent (3%).

On the excess above two thousand dollars, and up to four thousand dollars, four per cent (4%).

On the excess above four thousand dollars, and up to six thousand dollars, five per cent (5%).

On the excess over six thousand dollars, and up to ten thousand dollars, six per cent (6%).

On the excess over ten thousand dollars, seven per cent (7%). (1939, c. 158, s. 310.)

§ 105-134. Corporations.

I. Domestic Corporations. — Every corporation organized under the laws of this state shall pay annually an income tax equivalent to six per cent on the entire net income, as herein defined, re-

ceived by such corporation during the income year.

II. Foreign Corporations. — Every foreign corporation doing business in this state shall pay annually an income tax equivalent to six per cent of a proportion of its entire net income, to be determined according to the following rules:

1. If the principal business of a company in this state is manufacturing, or if it is any form of collecting, buying, assembling, or processing goods and materials within this state, the entire net income of such corporation shall be apportioned by North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios:

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or the fiscal year of such corporation in the income year is to the book value of its entire real estate and tangible personal property then owned by it, with no deductions on account of encumbrances thereon.

(b) The ratio of the total cost of manufacturing, collecting, buying, assembling, or processing within this state during the income year to the total cost of manufacturing, collecting, buying, assembling, or processing within and without the state. The term "cost of manufacturing, collecting, buying, assembling, or processing within and without this state", as used herein, shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis, this term shall be generally interpreted to include as elements of cost within and without this state the following:

(c) The total cost of all goods, materials, and supplies used in manufacturing, assembling, or processing, regardless of where purchased.

(d) The total wages and salaries paid or accrued during the income year in such manufacturing, assembling or processing activities.

(e) The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling or processing activities, not including, however, property, privilege, stamp, or other taxes.

(f) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(g) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(h) The word "manufacturing" shall be defined as mining and all processes of fabricating or of curing raw materials.

2. If the principal business of a company in this state is selling, distributing or dealing in tangible personal property within this state, the entire net income of such company shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios.

(a) The ratio of the book value of its real estate and tangible personal property in this state on the date of the close of the calendar or fiscal year of such company in the income year is to the book value of its entire real estate and tangible property then owned by it, with no deduction on account of encumbrances thereon.

(b) The ratio of the total sales made through or by offices, agencies, or branches located in North Carolina during the income year to the total sales made everywhere during said income year.

(c) The word "sales" as used in this section shall be defined as sale or rental of real estate and sale or rental of tangible properties.

(d) The term "book value" as used herein shall be defined to mean original cost plus additions and improvements less reserve for depreciation on the date of the close of the calendar or fiscal year of such company, unless in the opinion of the commissioner of revenue the peculiar circumstances in any case justify a different basis.

(e) The words "tangible personal property" shall be taken to mean corporeal personal property such as machinery, tools, implements, goods, wares and merchandise, and shall not be taken to mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, or evidence of an interest in property and evidences of debt.

(f) Foreign insurance companies doing business in this state and returning premium receipts to the insurance commissioner, and paying the tax upon such premium receipts as provided in § 105-121 shall be exempt from this tax on income in so far as the income is derived from their insurance business. However, in case of a foreign insurance company owning real estate in this state from which rents are received it is required to file an income tax return reporting income received from such real estate in this state and take credit for actual expenses incurred in connection therewith.

3. If the principal business in this state of a corporation is other than that described in subsection 1 or subsection 2 of subdivision II of this section, then the total income of such corporation shall be apportioned to North Carolina on the basis of the ratio of its gross receipts in this state during the income year to its gross receipts for such year within and without the state.

(a) The words "gross receipts" as used in this subsection shall be taken to mean and include the entire receipts for business done by such company. (1939, c. 158, s. 311; 1941, c. 50, s. 5.)

§ 105-135. Income from stock in foreign corporations.—Income from stock in foreign corporations, in cash dividends, received by individuals, fiduciaries, partnerships (to be reported by partners on their individual returns) or corporations, resident in this state, or by non-resident fiduciary if held for a resident of this state, shall be reported and taxed as other income taxable under this article. Every individual, fiduciary, partner-

ship, or corporation owning such shares of stock, and receiving dividends from same, shall report such income to the commissioner of revenue, at the time required by this article for reporting other income, and shall pay the tax herein imposed at the same time and in the same way as tax upon other income is payable. With respect to corporations paying a tax in this state on a proportionate part of their total income, the holder of shares of stock in such corporation shall pay on the total dividends received an amount equaling the percentage of the corporation's income on which it has not paid an income tax to the state of North Carolina for the year in which said dividends are received by the taxpayer. (1939, c. 158, s. 311½.)

§ 105-136. Railroads and public-service corporations.—The basis of ascertaining the net income of every corporation engaged in the business of operating a steam, electric railroad, express service, telephone or telegraph business, or other form of public service, when such company is required by the interstate commerce commission to keep records according to its standard classification of accounting, shall be the "net revenue from operations" of such corporation as shown by their records, kept in accordance with that standard classification of accounts when their business is wholly within this state, and when their business is in part within and in part without the state. their net income within this state shall be ascertained by taking their gross "operating revenues" within this state, including in their gross "operating revenues" within this state the equal mileage proportion within this state of their interstate business, and deducting from their gross "operating revenues" the proportionate average of "operating expense" or "operating ratio" for their whole business, as shown by the interstate commerce commission standard classification of accounts:

Provided, that if the standard classification of operating expenses prescribed by the interstate commerce commission for railroads differs from the standard classification of operating expenses prescribed by the interstate commerce commission for other public-service corporations, such other public-service corporations shall be entitled to the same operating expenses as prescribed for railroads. From the net operating income thus ascertained shall be deducted "uncollectible revenue" and taxes paid in this state for the income year other than income taxes, and the balance shall be deemed to be their net income taxable under this article. That in determining the taxable income of a corporation engaged in the business of operating a railroad under this section, in the case of a railroad located entirely within this state, the net operating income shall be increased or decreased to the extent of any credit or debit balance received or paid, as the case may be, on account of car or locomotive hire; and when any railroad is located partly within and partly without this state, the said net operating income shall be increased or decreased to the extent of an equal mileage proportion within this state of any credit or debit balance received or paid, as the case may be, on account of car or locomotive hire.

For the purposes of this section the words "interstate business" shall mean, as to transportation companies, operating revenue earned within the state by reason of the interstate transportation of persons or property into, out of, or through this state, and as to transmission companies the interstate transmission of messages into, out of, or through the state.

The words "equal mileage proportion within the state" shall mean the proportion of revenue received by the company operating in this state from interstate business as defined in the preceding paragraph, which the distance of movement over lines in this state bears to the total distance of movement over lines of the company receiving such revenue. If the commissioner of revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by state lines as to each transaction involving interstate revenue, the commissioner of revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this state.

The words "proportionate average of 'operating expenses' or 'operating ratio'" shall mean the proportion of gross revenue of a company, on its whole business absorbed in operating expenses, as defined in the interstate commerce commission classification of accounts.

In determining the taxable income of a railroad company operating two or more lines of railroad not physically connected, and when one of such railroad lines is located wholly within this state, the actual earnings and expenses of such line in this state, in so far as they may be severable, shall be used in determining net income taxable in this state.

With respect to leased lines operated in this state where the operating company pays a tax on the income earned on such leased lines, without deduction for lease rental, and on a sum properly allocable to such leased lines equal to the amount of lease rental paid, such lease rental shall not be taxable income against the lessor; provided that the stockholders of any such lessor corporation who receive dividends on their stock in such corporation shall be entitled to such income tax exemption with respect to such dividends as they would have had if the lessor corporation had paid an income tax on such exempted lease rental.

All other public service corporations shall file under § 105-134. (1939, c. 158, s. 312; 1941, c. 50, s. 5.)

§ 105-137. Taxable year. — The tax imposed by this article for the year one thousand nine hundred and thirty-nine shall be assessed, collected, and paid in the year one thousand nine hundred and forty and for the year one thousand nine hundred and forty and years thereafter shall be assessed, collected, and paid in the year following the year for which the assessment is made. (1939, c. 158, s. 313.)

§ 105-138. Conditional and other exemptions.—The following organizations shall be exempt from taxation under this article:

1. Fraternal beneficiary societies, orders or associations.

(a) Operating under the lodge system or for

the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(b) Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.

2. Building and loan associations and cooperative banks without capital stock, organized and operated for mutual purposes and without profit.

3. Cemetery corporations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

4. Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

5. Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

6. Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

7. Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting expenses.

8. Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them.

9. Mutual associations formed under §§ 54-111 to 54-128, formed to conduct agricultural business on the mutual plan; or to marketing associations organized under §§ 54-129 to 54-158. (1939, c. 158, s. 314.)

§ 105-139. Fiduciaries.—The tax imposed by this article shall be imposed upon resident fiduciries having in charge funds or property for the benefit of a resident of this state, and/or income earned in this state for the benefit of a non-resident, and upon a non-resident fiduciary having in charge funds or property for the benefit of a resident of this state, which tax shall be levied, collected and paid annually with respect to:

(a) That part of the net income of estates or trusts which has not become distributable during the income year.

(b) The net income received during the income year by deceased individuals who, at the time of death, were residents and who have died during the tax year or the income year without having made a return.

(c) The entire net income of resident, insolvent, or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of such net income.

(d) The tax imposed upon a fiduciary by this article shall be a charge against the estate or trust. (1939, c. 158, s. 315.)

§ 105-140. Net income defined. — The words "net income" mean the gross income of a taxpayer, less the deductions allowed by this article. (1939, c. 158, s. 316.)

§ 105-141. Gross income defined.—1. The words "gross income" mean the income of a taxpayer derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, located in this or any other state or any other place, growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities, or the transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items shall be included in the gross income of the income year in which received by the taxpayer, unless, under the methods of accounting permitted under this article, any such amounts are to be properly accounted for as of a different period. The term "gross income" as used in this article shall include the salaries of all constitutional state officials taking office after the date of the enactment of this article by election, reelection or appointment, and all acts fixing the compensation of such constitutional state officials are hereby amended accordingly. The term "gross income" and the words "business, trade, profession, or occupation," and the words "salaries, wages, or compensation for personal services," as used in this article, shall include compensation received for personal service as an officer or employee of the United States, any territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, including compensation as an officer or employee of the executive, legislative, or judicial branches of the government of the United States and of the military, naval, coast guard or other services thereof.

The term "gross income" as used in this article shall include income from annuities based on three per cent (3%) of the consideration or cost of the annuity or contract as income yearly.

2. The words "gross income" do not include the following items, which shall be exempt from taxation under this article, but shall be reported in such form and manner as may be prescribed by the commissioner of revenue:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to beneficiaries or to the estate of the insured.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance endowment contracts, either during the term or at the maturity of the term mentioned in the contracts or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Interest upon the obligations of the United States or its possessions, or of the state of North Carolina, or of a political subdivision thereof: Provided, interest upon the obligations of the United States, shall not be excluded from gross income unless interest upon obligations of the

state of North Carolina or any of its political subdivisions is excluded from income taxes imposed by the United States. Except that interest upon the obligations of the United States or its possessions, or of the state of North Carolina, or of a political subdivision thereof, shall in no case be included in the "gross income" of any banking corporation organized under the banking laws of North Carolina.

(e) Any amounts received through accident or health insurance or under the Workmen's Compensation Act, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(f) In case of domestic insurance companies or associations paying a tax on their gross premium receipts, in addition to the above, (a) the net addition required by law to be made within the taxable year to reserve funds, including the actual deposit of sums with the commissioner of insurance or the treasurer of the state, pursuant to the law, as additions to guarantee or reserve funds for the benefit of policyholders, and (b) the sums paid within the taxable year on policy and annuity contracts to policyholders. (1939, c. 158, s. 317; 1941, c. 50, s. 5, c. 283.)

§ 105-142. Basis of return of net income.—1. The net income of a taxpayer shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but such method of accounting must be consistent with respect to both income and deductions, but if in any case such method does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the commissioner does clearly reflect the income, but shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this article.

2. A taxpayer may, with the approval of the commissioner of revenue, and under such regulations as he may prescribe, change the income year from fiscal year to calendar year or otherwise, in which case his net income shall be computed upon the basis of such new income year: Provided, that such approval must be obtained from the commissioner at least thirty days prior to the end of such income year.

3. An individual carrying on business in partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income, whether distributed or not, his distributive share of the net income of the partnership and dividends from foreign corporations for each income year.

4. Every individual taxable under this article who is a beneficiary of an estate or trust shall include in his gross income the distributive share of the net income of the estate or trust received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, the deed, or other instrument creating the estate, trust, or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary, in the case of income accumulated for future distribution), ratable in proportion to their respective interest. (1939, c. 158, s. 318.)

§ 105-143. Subsidiary corporations. — The net income of a corporation doing business in this state which is a subsidiary or affiliate of another corporation shall be determined by eliminating all payments to or charges by the parent corporation or other subsidiaries or affiliates of the parent corporation in excess of fair compensation for all services performed for or commodities or property sold, transferred, leased, or licensed to the parent or to its other subsidiary or affiliated corporations by the corporation doing business in this state. If the commissioner of revenue shall find as a fact that a report by such subsidiary or affiliated corporation does not disclose the true earnings of such corporation on its business carried on in this state, the commissioner may require that such subsidiary or affiliated corporation file a consolidated return of the entire operations of such parent corporation and of its subsidiaries and affiliates, including its own operations and income, and may determine the true amount of net income earned by such subsidiary or affiliated corporation in this state by taking the factor of investment in real estate and tangible personal property in this state and volume of business in this state and by relating these factors to the total investment of the parent corporation and its subsidiaries and affiliated corporations in real estate and tangible personal property in and out of this state and their total volume of business in and out of this state. The authority hereby given to require consolidated returns as aforesaid and to ascertain the true amount of income earned in this state on the basis herein prescribed may also be used by the commissioner as the basis of ascertaining the true net income earned in this state during the calendar year one thousand nine hundred and forty and for the three calendar years prior thereto. For the purposes of this section, a corporation shall be deemed a subsidiary of another corporation when, directly or indirectly, it is subject to control by such other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether such control is direct or through one or more subsidiary, affiliated, or controlled corporations, and a corporation shall be deemed an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether such control be direct or through one or more subsidiary, affiliated or controlled corporations. Upon such finding by the commissioner, the consolidated returns authorized by this section may be required whether the parent or controlling corporation or interest or its subsidiaries or affiliates are or are not doing business in this state. The provisions of this section do not apply to corporations subject to regulation by a regulatory body of this state which are required to maintain accounts in such manner as to reflect separately the business done in this state and file a report thereof with such regulatory body. This section shall not apply unless the commissioner further finds that the business in this state is handled or effected in such manner as to distort or not reflect the true income earned in this state and finds in addition either or both of the following facts: (a) that the several corporations are owned or con-

trolled by the same financial interests or (b) that they are members of a group of corporations associated together in carrying on a unitary business or are branches or parts of a unitary business or are engaged in different phases of the same general business or industry. If such consolidated return is required and is not filed within sixty days after demand, said subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file returns and in addition shall be subject to the penalty provided in § 105-230, and in such event the provisions of subsection 5 of § 105-161 shall apply.

If the capital of any such subsidiary or affiliated corporation which is not required to file a consolidated return as above provided is inadequate for its business needs apart from credit extended or indebtedness guaranteed by the parent or affiliated corporation, the commissioner shall, in determining the net income of such corporation, disregard its indebtedness owed to or guaranteed by the parent or affiliated corporation in determining the net income taxable under this article. The capital stock for the purposes of this section shall be deemed inadequate to the extent that additional loans, credits, goods, supplies or other capital of whatsoever nature is furnished by the parent or affiliated corporation.

Such subsidiary or affiliated corporation shall incorporate in its returns required under this section and article such information as the commissioner may reasonably require for the determination of the net income taxable under this article, and shall furnish such additional information as the commissioner may reasonably require. If the return does not contain the information therein required or such additional information is not furnished within thirty days after demand, the corporation shall be subject to a penalty of one hundred dollars a day for each day's omission, in addition to the penalty provided in § 105-230.

If the commissioner finds that the determination of the income of a subsidiary or affiliated corporation under a consolidated return as herein provided will produce a greater or lesser figure than the amount of income earned in this state, he may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this state; and if the corporation contends the figure produced is greater than the earnings in this state, it shall, within thirty days after notice of such determination, file with the commissioner a statement of its objections and of an alternative method of determination with such detail and proof as the commissioner may require, and the commissioner shall consider the same in determining the income earned in this state. In making such determination the findings and conclusions of the commissioner shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong.

The provisions of this section shall be in effect from and after February 28, 1941. (1939, c. 158, s. 318½; 1941, c. 50, s. 5.)

§ 105-144. Determination of gain or loss.—For the purpose of ascertaining the gain or loss from the sale or other disposition of property, real, personal, or mixed, the basis shall be, in the case of property acquired before January first, one thousand nine hundred and twenty-one, the fair market price or the value of such property as of that date and in all other cases the cost thereof. The cost of such property acquired prior to January first, one thousand nine hundred and twenty-one, would be used in all cases if such cost is known or determinable: Provided, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this article, such inventory value shall be taken in lieu of costs or market value. The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly: provided, no gain or loss shall be recognized upon the receipt of a corporation of property distributed in complete liquidation of another corporation, if the corporation receiving such property was on the date of the adoption of the plan of liquidation and has continued to be at all times until the receipt of the property the owner of stock (in such other corporation), possessing at least eighty per centum (80%) of the total combined voting power of all classes of stock entitled to vote, and the owner of at least eighty per centum (80%) of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends). (1939, c. 158, s. 319; 1941, c. 50, s. 5.)

§ 105-145. Exchanges of property.—1. When property is exchanged for other property of like kind, the property received in exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

2. In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.

3. When, in connection with the reorganization, merger or consolidation of a corporation, a taxpayer receives in place of stock or securities owned by him, new stock or securities, the basis of computing the gain or loss, if any, shall be, in case the stock or securities owned were acquired before January first, one thousand nine hundred and twenty-one, the fair market price of value thereof as of that date, and in all other cases the cost thereof.

4. The basis of property received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of § 105-144 shall be the same as it would be in the hands of the transferor. (1939, c. 158, s. 320.)

§ 105-146. Inventory.—Whenever, in the opinion of the commissioner of revenue, it is necessary, in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner of revenue may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income. (1939, c. 158, s. 321.)

§ 105-147. Deductions.—In computing net income there shall be allowed as deductions the following items:

1. All the ordinary and necessary expenses paid

during the income year in carrying on any trade or business, including:

(a) As to individuals, reasonable wages of employees for services rendered in producing such income.

(b) As to partnerships, reasonable wages of employees and a reasonable allowance for co-partners or members of a firm, for services actually rendered in producing such income, the amount of such salary allowance to be included in the personal return of the co-partner receiving same.

(c) As to corporations, wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such income.

2. Rentals or other payments required to be made as a condition of the continued use or possession for the purpose of the trade of property to which the taxpayer has not taken or is not taking title, or in which he has no equity.

3. Unearned discount and all interest paid during the income year on indebtedness except interest paid or accrued in connection with the ownership of real or personal property the current income from which is not taxable under this article. Interest on indebtedness incurred for the purchase of stock of corporations paying a tax on their entire net income under this article shall be deductible, and a ratable proportion of such interest with respect to corporations paying a tax on a proportion of their net income.

4. Taxes paid or accrued during the income year, except income taxes, gift taxes, taxes levied under § 105-135, inheritance and estate taxes, and taxes assessed for local benefit of a kind tending to increase the value of the property assessed. No deduction shall be allowed under this section for gasoline tax, sales tax, automobile license or registration fee by individuals not engaged in trade or business, nor shall deduction be allowed for taxes paid or accrued in connection with the ownership of property, the current income from which is not taxable under this article. All payments made by an employer into a federal fund as provided by the provisions of Title VIII and Title IX of the Federal Social Security Act, and all payments made by an employer as provided by a state unemployment compensation law: Provided, that none of the foregoing provisions shall apply to that part of such payments required to be deducted by an employer from the earnings of an employee.

5. Dividends from stock in any corporation, the income of which shall have been assessed, and the tax on such income paid by the corporation under the provisions of this article: Provided, that when only part of the income of any corporation shall have been assessed under this article, whether paid directly to the taxpayer or paid to the taxpayer by a trustee of a distributable trust, only a corresponding part of the dividends received therefrom shall be deducted.

6. Losses actually sustained during the income year of property used in trade or business or of property not connected with trade or business, if arising from fire, storm, shipwreck, or other casualties or theft and if not compensated for by insurance or otherwise. No deduction shall be allowed under this subsection for losses arising from personal loans or endorsements or other transactions of a personal nature not entered into for profit. A taxpayer shall be allowed to deduct losses in connection with the sale of securities only to the extent of the security gains during the income year, unless such losses resulted from the sale of stocks or bonds held by the taxpayer for a period of two years or more prior to the sale of such stocks or bonds.

7. Debts ascertained to be worthless and actually charged off within the income year, if connected with business and, if the amount has previously been included in gross income in a return under this article.

8. A reasonable allowance for depreciation and obsolescence of property used in the trade or business shall be measured by the estimated life of such property; and in case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion. The cost of property acquired since January first, one thousand nine hundred and twenty-one, plus additions and improvements, shall be the basis for determining the amount of depreciation, and if acquired prior to that date the book value as of that date of the property shall be the cost basis for determining depreciation.

In cases of mines, oil and gas wells, and other natural deposits, the cost of development not otherwise deducted will be allowed as depletion, and in the cases of leases, the deduction allowed may be equitably apportioned between the lessor and lessee.

In case the federal government determines depreciation or depletion of property for income tax purposes upon the basis of book value instead of original cost, the depreciation allowed under this article shall be upon the same basis.

9. Contributions or gifts made by individuals within the income year to corporations or associations operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of ten per centum (10%) of the taxpayer's net income, as computed without the benefit of this sub-division.

10. Resident individuals and domestic corporations having an established business in another state, or investment in property in another state, may deduct the net income from such business or investment if such business or investment is in a state that levies a tax upon such net income. The deduction herein authorized shall not include income received by residents of this state and domestic corporations from personal services (except as provided in § 105-151, stocks, bonds, notes, mortgages, securities, or bank or other deposits or credits, nor in any case shall it operate to reduce the taxable income actually earned in this state or properly allocable as income earned in this state.

11. In the case of a non-resident individual, the deductions allowed in this section shall be allowed only if and to the extent that they are connected with income arising from sources within the state; and the proper apportionment and allocation of

the deductions with respect to sources of income within and without the state shall be determined under rules and regulations prescribed by the commissioner of revenue.

12. In computing net income no deduction shall be allowed under this section relating to salaries, wages, or other expenses, rentals or other similar payments, interest or taxes, if (1) the same are not actually paid within the taxable year or within two and one-half (2½) months after the close thereof; and (2) if, by reason of the method of accounting of the person or corporation to whom the payment is to be made, the amount thereof is not, unless actually paid, includible in the gross income of such person or corporation for the taxable year in which or with which the taxable year of the taxpayer ends. (1939, c. 158, s. 322; 1941, c. 50, s. 5.)

§ 105-148. Items not deductible.—In computing net income no deduction shall in any case be allowed in respect of:

(a) Personal, living, or family expenses.

(b) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.

(c) Premiums paid on any life insurance policy.

(d) Contributions or gifts made by corporations.

(e) Income, excess profits and gift taxes, including federal tax or undistributed earnings.

(f) Social security and unemployment tax paid by employee.

(g) Contributions to individuals.

(h) Commutation expenses.

(i) Contributions or gifts by partnerships. (Partners may deduct their proportionate part of contributions on their individual returns.) (1939, c. 158, s. 323; 1941, c. 50, s. 5.)

§ 105-149. Exemptions. — 1. There shall be deducted from the net income the following exemptions:

(a) In the case of a single individual, a personal exemption of one thousand dollars ($1,000.00).

(b) In the case of a married man with a wife living with him, two thousand dollars ($2,000.00), or in the case of a person who is the head of a household and maintains the same and therein supports one or more dependent relatives, under eighteen years of age, or, if over eighteen years of age, incapable of self-support because mentally or physically defective, two thousand dollars ($2,000.00).

(c) A married woman having a separate and independent income, one thousand dollars ($1,000.00).

(d) In the case of a widow or widower having minor child or children, natural or adopted, two thousand dollars ($2,000.00).

(e) Two hundred dollars ($200.00) for each individual (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under eighteen years of age or is incapable of self-support because mentally or physically defective. Exemptions for the children of taxpayers shall be allowed under this subsection only to the person entitled to the $2,000.00 exemption provided in subsection (b) of this subdivision.

(f) In the case of a fiduciary filing a return for that part of the net income of estates or trusts which has not become distributable during the income year one thousand dollars ($1,000.00).

In the case of a fiduciary filing a return for the net income received during the income year by deceased resident or non-resident individuals, who have died during the tax year or income year, without having made a return, two thousand dollars ($2,000.00) if married and one thousand dollars ($1,000.00) if single.

In the case of a fiduciary filing a return for an insolvent or incompetent individual resident or non-resident where the fiduciary has complete charge of such net income the same exemption to which the beneficiary would be entitled.

2. The exemptions allowed by this section shall not apply to a resident of this state having income from a business or agency in another state, or with respect to non-resident having a taxable income in this state unless the entire income of such resident or non-resident individual is shown in the return of such resident or non-resident; and if the entire income is so shown, the exemption shall be prorated in the proportion of the income of this state to the total income.

3. The status on the last day of the income year shall determine the right to the exemptions provided in this section: Provided, that a taxpayer shall be entitled to such exemption for husband or wife or dependents who have died during the income year. (1939, c. 158, s. 324; 1941, c. 50, s. 5.)

§ 105-150. Exemption as to insurance or other compensation received by veterans.—Any American residing in the State of North Carolina who joined any of the allied armies during the World War and who, on account of injuries received while in service, receives insurance or compensation from any of the allied countries is hereby exempt from liability for income tax on such insurance or compensation in the State of North Carolina. (1929, c. 184.)

§ 105-151. Exemption of compensation for personal services of residents taxed elsewhere.—The salaries, wages, or other compensation received during the income year by a resident of this state for personal services rendered outside of this state shall not be taxable in this state if he is required to pay an income tax thereon to another state or taxing jurisdiction other than the United States; but the same shall be included in his return to this state for the purpose of prorating the exemptions allowed by § 105-149, as therein provided. (1939, c. 158, s. 325; 1941, c. 50, s. 5, c. 204, s. 1.)

§ 105-152. Returns.—1. Every resident or non-resident having a net income during the income year taxable in this state of one thousand dollars ($1,000.00) and over, if single, or if married and not living with husband or wife, or having a net income for the income year of two thousand dollars ($2,000.00) or over, if married and living with husband or wife, and every corporation doing business in the state shall make a return under oath, stating specifically the items of gross income and the deductions allowed by this

article, and such other facts as the commissioner of revenue may require for the purpose of making any computation required by this article. Every resident of the state having gross income from a business, agency or profession in excess of five thousand dollars ($5,000.00) and every nonresident having gross income from a business, agency or profession within this state in excess of five thousand dollars ($5,000.00) shall be required to make a return. When the commissioner of revenue has reason to believe any person or corporation is liable for tax under this article, he may require any such person or corporation to make a return.

2. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

3. The return by a corporation shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer.

4. The return of an individual, who, while living, received income in excess of the exemption during the income year, and who has died before making the return, shall be made in his name and behalf by the administrator, or executor of the estate, and the tax shall be levied upon and collected from his estate.

5. When the commissioner of revenue has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to distort his true net income and the net income property attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the state, and in determining same the commissioner of revenue shall have regard to the fair profit which would normally arise from the conduct of the trade or business.

6. When any corporation liable to taxation under this article conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of said corporations, the commissioner of revenue may determine the amount of taxable income of either or any such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained by the corporation or corporations liable to taxation under this article from dealing in such products, goods or commodities. (1939, c. 158, s. 326; 1941, c. 50, s. 5.)

§ 105-153. Fiduciary returns.—1. Every fiduciary subject to taxation under the provisions of this article, as provided in § 105-139, shall make a return under oath for the individual, estate or trust for whom or for which he acts, if the net income thereof exceeds the personal exemptions.

2. The return made by a fiduciary shall state specifically the items of gross income and the deductions and exemptions allowed by this article, and such other facts as the commissioner of revenue may prescribe.

3. Fiduciaries required to make returns under this article shall be subject to all the provisions of this article which apply to individuals. (1939, c. 158, s. 327.)

§ 105-154. Information at the source.—1. Every individual, partnership, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business in this state, in whatever capacity acting, including lessors or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and incomes above exemptions allowed in this article, paid or payable during any year to any taxpayer, shall make complete return thereof to the commissioner of revenue under such regulations and in such form and manner and to such extent as may be prescribed by him.

2. Every partnership having a place of business in the state shall make a return, stating specifically the items of its gross income and the deductions allowed by this article, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributable, and the amount of the distributive share of each individual, together with the distributive shares of corporation dividends. The return shall be sworn to by one of the partners.

3. Every corporation doing business or having a place of business in this state shall file with the commissioner of revenue, on such form and in such manner as he may prescribe, the names and addresses of all taxpayers, residents of North Carolina, to whom dividends have been paid and the amount of such dividends during the income year. (1939, c. 158, s. 328.)

§ 105-155. Time and place of filing returns.—Returns shall be in such form as the commissioner of revenue may from time to time prescribe, and shall be filed with the commissioner at his main office, or at any branch office which

he may establish, on or before the fifteenth day of March in each year, and for all taxpayers using a fiscal year, within seventy-five days after expiration of the fiscal year. In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the commissioner may allow further time for filing returns.

There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return, to the effect that the statements contained therein are true. The commissioner shall cause to be prepared blank forms for the said returns, and shall cause them to be distributed throughout the state, and to be furnished upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required. (1939, c. 158, s. 329.)

§ 105-156. Failure to file returns; supplementary returns.—If the commissioner of revenue shall be of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return or supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this article. If from a supplementary return or otherwise the commissioner finds any items of income, taxable under this article, have been omitted from the original return, or any items returned as taxable that are not taxable, or any item of taxable income over-stated, he may require the items so omitted to be disclosed to him under oath of the taxpayer, and to be added to or deducted from the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this article. The commissioner may proceed under the provisions of § 105-159, whether or not he requires a return or a supplementary return under this section. (1939, c. 158, s. 331.)

Collection and Enforcement of Income Tax.

§ 105-157. Time and place of payment of tax.—(1) The full amount of the tax payable, as shown on the face of the return, shall be paid to the commissioner of revenue at the office where the return is filed at the time fixed by law for filing the return. If the amount of the tax exceeds fifty dollars ($50.00), payment may be made in two installments: One-half on the date the return is filed, one-half on or before September fifteenth following, with interest on the deferred payment at the rate of six per cent (6%) per annum.

(2) If the time for filing the return be extended, interest at the rate of six per cent (6%) per annum from the time when the return was originally required to be filed to the time of payment shall be added and paid.

(3) The tax may be paid with uncertified check during such time and under such regulations as the commissioner of revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered. (1939, c. 158, s. 332.)

§ 105-158. Examination of returns.—1. As soon as practicable after the return is filed the commissioner of revenue shall examine and compute the tax, and the amount so computed by the commissioner shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the excess shall be paid to the commissioner within thirty days after notice of the amount shall be mailed by the commissioner, and any over-payment of tax shall be returned within thirty days after it is ascertained.

2. If the return is made in good faith and the under-statement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such under-statement, but interest shall be added to the amount of the deficiency at the rate of one-half (½) of one per cent (1%) per month or fraction thereof from the time said return was required by law to be filed until paid.

3. If the under-statement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the deficiency five per cent (5%) thereof, and, in addition, interest at the rate of one-half (½) of one per cent (1%) per month or fraction thereof from time said return was required by law to be filed until paid.

4. If the under-statement is found by the commissioner of revenue to be false or fraudulent, with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and interest at the rate of one-half (½) of one per cent (1%) per month or fraction thereof from time said return was required by law to be filed until paid. The provisions of this article with respect to revision and appeal shall apply to a tax thus assessed. (1939, c. 158, s. 333.)

§ 105-159. Corrections and changes.—If the amount of the net income for any year of any taxpayer under this article, as returned to the United States treasury department, is changed and corrected by the commissioner of internal revenue or other officer of the United States of competent authority, such taxpayer, within thirty days after receipt of internal revenue agent's report or supplemental report reflecting the corrected net income, shall make return under oath or affirmation to the commissioner of revenue of such corrected net income. If the taxpayer fails to notify the commissioner of revenue of assessment of additional tax by the commissioner of internal revenue the statute of limitations shall not apply. The commissioner of revenue shall thereupon proceed to determine, from such evidence as he may have brought to his attention or shall otherwise acquire, the correct net income of such taxpayer for the fiscal or calendar year, and if there shall be any additional tax due from such taxpayer the same shall be assessed and collected; and if there shall have been an over-payment of the tax the said commissioner shall, within thirty days after the final determination of the net income of such

taxpayer, refund the amount of such excess: Provided, that any taxpayer who fails to comply with this section as to making report of such change as made by the federal government within the time specified shall be subject to all penalties as provided in § 105-161, in case of additional tax due, and shall forfeit his rights to any refund due by reason of such change. (1939, c. 158, s. 334.)

§ 105-160. Additional taxes.—If the commissioner of revenue discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within three years (except where the taxpayer has failed to notify the commissioner of additional assessment by the federal department—see § 105-159) after the time when the return was due, give notice in writing to the taxpayer of such deficiency. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after giving notice of such proposed assessment he shall apply for such hearing in writing, explaining in detail his objections to same. If no request for such hearing is so made, such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision and such amount shall be due within ten days after notice is given. The provisions of this article with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or an additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. Upon failure to file returns and in the absence of fraud the limitation shall be five years. (1939, c. 158, s. 335.)

§ 105-161. Penalties.—1. If any taxpayer, without intent to evade any tax imposed by this article, shall fail to file a return of income and pay the tax, if one is due, at the time required by or under the provisions of this article, but shall voluntarily file a correct return of income and pay the tax due within sixty days thereafter, there shall be added to the tax an additional amount equal to five per cent thereof, but such additional amount shall in no case be less than one dollar and interest at the rate of one-half of one per cent (½%) per month or fraction thereof from the time said return was required by law to be filed until paid.

2. If any taxpayer fails voluntarily to file a return of income or pay the tax, if one is due, within sixty days of the time required by or under the provisions of this article, there shall be added to the tax an additional amount equal to twenty-five per cent (25%) thereof and interest at the rate of one-half of one per cent (½%) per month or fraction thereof, from the time such return was required to be filed until paid, but the penalty shall not be less than five dollars ($5.00).

3. If any taxpayer fails to file a return within sixty days of the time prescribed by this article, any judge of the superior court, upon petition of the commissioner of revenue or of any ten taxable residents of the state, shall issue a writ of mandamus requiring such person to file a return. The order of notice upon the petition shall be returnable not later than ten days after the filing of the petition. The petition shall be heard and determined on the return day or such day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. All writs and processes may be issued from the clerk's offices in any county, and, except as aforesaid, shall be returnable as the court shall order.

4. The failure to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the commissioner of revenue in Raleigh. The certificate of the commissioner of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this article, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

5. If any taxpayer who has failed to file a return or has filed an incorrect or insufficient return, and has been notified by the commissioner of revenue of his delinquency, refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the commissioner shall determine the income of such taxpayer, according to his best information and belief, and assess the same at not more than double the amount so determined. The commissioner may, in his discretion, allow further time for the filing of a return in such case.

6. Any person required under this article to pay any tax or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information for the purposes of computation, assessment or collection of any tax imposed by this article, who wilfully fails to pay this tax, make such return, keep such records or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment at the discretion of the court, within the limitations aforesaid. (1939, c. 158, s. 336.)

Revision and Appeal.

§ 105-162. Revision by commissioner of revenue.—A taxpayer may apply to the commissioner of revenue for revision of the tax assessed against him at any time within three years from the time of the filing of the return or from the date of the notice of assessment of any additional tax. The commissioner shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. (1939, c. 158, s. 340.)

§ 105-163. Appeal. — Any taxpayer may file formal exceptions to a finding by the commissioner of revenue, under the provisions of this article with respect to his taxable income, either to a matter of fact or law, as far as possible stating such exceptions separately. After they are filed, the commissioner shall pass upon the same formally, and notify the taxpayer immediately of his findings upon these exceptions. The taxpayer may, within ten days after notification of the commissioner's ruling upon these exceptions, appeal to the superior court of Wake county, upon paying the tax assessed by the commissioner and giving a bond for costs in the sum of two hundred dollars ($200.00): Provided, the taxpayer may within the above prescribed time first appeal to the state board of assessment on the exceptions to the findings of the commissioner; and provided further, that the commissioner may in his discretion require a surety bond or a deposit of state or government bonds in double the amount of the alleged deficiency. Appeal may then be taken by either the taxpayer or the commissioner to the superior court of Wake county as provided herein. Upon receipts of such notice and the taxes paid, and the filing of the cost bond in the sum of two hundred dollars ($200.00), the commissioner shall certify the record to the superior court of Wake county. In the superior court the proceedings shall be as follows:

The cause shall be entitled, "State of North Carolina on Relation of the Commissioner of Revenue vs. Appellant" (giving name). If there are exceptions to facts found by the commissioner, it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of such civil actions, except that the findings of the commissioner shall be prima facie correct. If only issues of law, or if issues of fact are raised, and the appellant shall waive jury trial at the time of taking the appeal, the appeal may be had to the superior court of the county in which the appellant resides, and the cause shall be heard by the judge holding court in the judicial district in which the appeal is docketed, at chambers, upon ten days notice to the parties of the time and place of hearing, and the said judge shall pass upon and determine all issues, both of law and fact, the state hereby waiving in such cases a trial by jury. Either party may appeal to the supreme court from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that the state, if it should appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal, and the supreme court may advance the cause on its docket so as to give the same a speedy hearing. Any taxes, interest, or penalties paid, found by the court to be in excess of those which can be legally assessed, shall be ordered refunded to the taxpayer, with interest from the time of payment. (1939, c. 158, s. 341.)

Art. 5. Schedule E. Sales Tax.

§ 105-164. Short title.—This article shall be known and and may be cited as the sales tax article of the revenue act. (1939, c. 158, s. 400.)

§ 105-165. Purpose.—The taxes levied in this article are to provide revenue for the support of the public schools of the state in substitution for the taxes formerly levied on property for this purpose. They are levied for the biennium of fiscal years beginning July first, one thousand nine hundred thirty-nine, and ending June thirtieth, one thousand nine hundred forty-one, and thereafter until otherwise provided by law.

The tax upon the sale of tangible personal property in this state is levied as a license or privilege tax for engaging or continuing in the business of a "wholesale" or "retail" merchant as defined in this article. Retail merchants may add to the price of merchandise the amount of the tax on the sale thereof, and when so added shall constitute a part of such price, shall be a debt from purchaser to merchant until paid, and shall be recoverable at law in the same manner as other debts. It is the purpose and intent of this article that the tax levied herein on retail sales shall be added to the sales price of merchandise and thereby be passed on to the consumer instead of being absorbed by the merchant.

Any retail merchant who shall, by any character of public advertisement, offer to absorb the tax levied in this article upon the retail sale of merchandise, or in any manner, directly or indirectly, advertise that the tax herein imposed is not considered as an element in the price to the consumer, shall be guilty of a misdemeanor. Any violations of the provisions of this section reported to the commissioner of revenue shall be reported by the commissioner of revenue to the attorney general of the state, to the end that such violations may be brought to the attention of the solicitor of the court of the county or district whose duty it is to prosecute misdemeanors in the jurisdiction. It shall be the duty of such solicitor to investigate such alleged violations and if he finds that this section has been violated to prosecute such violations. The provisions of this section are deemed necessary to prevent fraud and unfair practices, but it is the intent of the general assembly that if one or both of such provisions be held unconstitutional and void, that such invalid provision or provisions be considered separable and that the balance of this article be given effect. (1939, c. 158, s. 401.)

§ 105-166. Contingency.—If the Congress of the United States shall, at any time hereafter, enact any form of sales or production tax distributable in whole or in part to the several states, the governor and council of state shall estimate the proportion of such tax distributable to this state, and shall, by proclamation of the governor, abate a uniform percentage of all the taxes levied in this article equal in estimated revenue yield to the estimated proportion of yield of such federal tax, and from and after the effective date of such proclamation the commissioner of revenue shall enforce and collect only the remaining percentage of taxes levied in this article. (1939, c. 158, s. 402.)

§ 105-167. Definitions.—For the purposes of this article.

1. The word "person" shall mean any person,

firm, partnership, association, corporation, estate or trust.

2. The word "commissioner" shall mean the commissioner of revenue of the state of North Carolina.

3. The word "merchant" shall include any individual, firm, corporation, domestic or foreign, estate or trust, subject to the tax imposed by this article.

4. The words "wholesale merchant" shall mean every person who engages in the business of buying any article of commerce and selling same to merchants for resale. For the purposes of this article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

5. The words "wholesale sale" or "sale at wholesale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, jobber or dealer, wholesale or retail merchant, for the purpose of resale, but does not include a sale to users or consumers not for resale. The term "wholesale sale" shall include a sale of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of the tangible personal property which is manufactured.

6. The words "retail merchant" shall mean every person who engages in the business of buying or acquiring, by consignment or otherwise, any articles of commerce and selling same at retail.

7. The word "retail" shall mean the sale of any articles of commerce in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

8. The word "sale" or "selling" shall mean any transfer of title or possession, or both, exchange, or barter of tangible personal property, conditional or otherwise, however effected and by whatever name called, for a consideration paid or to be paid, in installments or otherwise, and shall include any of said transactions whereby title or ownership is ultimately to pass notwithstanding the retention of title or possession, or both, for security or other purposes, and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid or to be paid, in installments or otherwise: Provided, the provisions of this subsection shall not apply to the lease or rental of motion picture films used for exhibition purposes and for which a tax of three per cent is paid on the total admissions for such exhibitions.

9. The words "gross sales" shall mean the gross sales price at which such sales were made, whether for cash or on time, and if on time, the price charged on the books for such sales, without allowance for cash discount, and shall be reported as sales with reference to the time of delivery to the purchaser, except as this provision is modified by § 105-171. (1939, c. 158, s. 404; 1941, c. 50, s. 6.)

§ 105-168. Licenses; wholesale and retail sales tax rates; use tax on motor vehicles.—If any person, after the thirtieth day of June, one thousand nine hundred thirty-nine, shall engage or continue in any business for which a privilege tax is imposed by this article, such person shall apply for and obtain from the commissioner, upon the payment of the sum of one dollar ($1.00), a license to engage in and conduct such business upon the condition that such person shall pay the tax accruing to the state of North Carolina under the provisions of this article; and he shall thereby be duly licensed to engage in and conduct such business. The license tax levied in this section shall be a continuing license until revoked for failure to comply with the provisions of this article. License issued under Article V, chapter four hundred forty-five, Public Laws of one thousand nine hundred thirty-three, for the year one thousand nine hundred thirty-four—one thousand nine hundred thirty-five; under chapter three hundred seventy-one, Public Laws of one thousand nine hundred thirty-five, for the biennium one thousand nine hundred thirty-five—one thousand nine hundred thirty-seven, and chapter one hundred twenty-seven, Public Laws of one thousand nine hundred thirty-seven, for the biennium one thousand nine hundred thirty-seven—one thousand nine hundred thirty-nine, shall be deemed a continuing license under this section.

An additional tax is hereby levied for the privilege of engaging or continuing in the business of selling tangible personal property, as follows:

(a) Wholesale Merchants.—Upon every wholesale merchant as defined in this article, an annual license tax of ten dollars ($10.00). Such annual license shall be paid in advance within the first fifteen days of July in each year or, in the case of a new business, within fifteen days after business is commenced. There is also levied on each wholesale merchant an additional tax of one-twentieth of one per cent (1/20th of 1%) of the total gross sales of the business.

The sale of any article of merchandise by any "wholesale merchant" to any one other than to a licensed retail merchant for resale shall be taxable at the rate of tax provided in this article upon the retail sale of merchandise. In the interpretation of this article the sale of any articles of commerce by any "wholesale merchant" to any one not taxable under this article as a "retail merchant," except as otherwise provided in this article, shall be taxable by the wholesale merchant at the rate of tax provided in this article upon the retail sale of merchandise. The commissioner of revenue is authorized to make appropriate regulations, consistent with this article, to prevent abuse with respect to existing regulations defining transactions entitled to the rate of tax levied on sales at wholesale.

(b) Retail Merchants.—Upon every retail merchant, as defined in this article, a tax of three per cent (3%) of the total gross sales of the business of every such retail merchant: Provided, however, the maximum tax that shall be imposed upon the sale of any single article of merchandise shall be fifteen dollars ($15.00).

(c) Motor Vehicles.—In addition to the taxes levied in this article or in any other law, there is hereby levied and imposed upon every person, for the privilege of using the streets and highways of this state, a tax of three per cent (3%) of the sales or purchase price of any new or used motor vehicle purchased or acquired for use on the streets and highways of this state requiring registration thereof under the Motor Vehicle Laws of this state, which said amount shall not exceed fifteen dollars ($15.00), and shall be paid to the commissioner of revenue at the time of applying for certificate of title or registration of such motor vehicle. No certificate of title or registration plate shall be issued for same unless and until said tax has been paid: Provided, however, if such person so applying for certificate of title or registration and license plate for such motor vehicle shall furnish to the commissioner of revenue a certificate from a motor vehicle dealer licensed to do business in this state, upon a form furnished by the commissioner, certifying that such person has paid the tax thereon levied in this article, the tax herein levied shall be remitted to such person to avoid in effect double taxation on said motor vehicle under this article. The term "motor vehicle" as used in this section shall include trailers. (1939, c. 158, s. 405.)

§ 105-169. Exemptions.—The taxes imposed in this article shall not apply to the following:

(a) Sales by manufacturers or producers of their own manufactured products when sold to other manufacturers, producers, wholesale or retail merchants, for the purpose of resale except as this subsection is limited and modified by subsections four and five of § 105-167. The exemption in this subsection shall not extend to or include sales by manufacturers or producers of their own manufactured products when sold to users or consumers and not for the purpose of resale.

(b) It is not the intent of this article to exempt gasoline from the retail sales tax levied in this article, nor is it considered expedient to levy a tax upon the wholesale distribution of gasoline, payable at the source of distribution, and an additional tax upon the retail sale. Therefore, to carry out the intent of this article, a proportion of the tax of six cents per gallon, to be determined in the manner herein set out, shall be deemed in satisfaction of the tax upon retail sales levied in this article. The director of the budget, the chairman of the state highway and public works commission and the commissioner of revenue shall in the first fifteen days of each quarterly period, determine the total amount of gasoline sold in the state in the preceding three months, and the average retail price, inclusive of gasoline tax, and shall on this basis compute the amount of tax liability at the rate of tax levied in this article on retail sales, and the sum so computed shall be deducted from the tax of six cents per gallon, and credited by the state treasurer to the sales tax revenue levied in this article. These sums shall be available only after full provision is made for the expense of collecting highway revenues, for the administration of the highway and public works commission, for the service of the debt, and for reasonable maintenance of state and county highways, nor shall the application herein made become available to the general fund unless the director of the budget shall find such sum to be reasonably necessary to meet appropriations from the general fund. The amount so allocated to the general fund shall not be transferred from the highway fund, or become a definite charge against it until the surplus in the general fund at the end of the present fiscal year, together with current revenues, shall have been exhausted, or until the director of the budget shall find as a fact that such transfer is necessary to prevent a deficit in the general fund; nor shall such transfer or any part thereof be made until the appropriations from the highway fund, hereinabove referred to, have been provided for. In construing this provision the director of the budget shall not be required to take into account an incidental credit balance of the general fund.

(c) Sale of commercial fertilizer on which the inspection tax is paid, and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.

(d) Sales made to the state of North Carolina or any of its subdivisions, including sales of merchandise and articles of commerce to agencies of state or local governments for distribution in public welfare or relief work. This exemption shall not apply to sales made to organizations, corporations, and institutions that are not governmental agencies, owned and controlled by the state or local governments. Sales of building material made directly to the federal government or to state and local governments in this state shall be exempt from the tax on building material levied in this article, and sales of building material to contractors to be used in construction work for federal, state or local governments shall be construed as direct sales.

(e) The gross receipts from sales of tangible personal property which the state is prohibited from taxing under the constitution or laws of the United States of America or under the constitution of this state.

(f) Accounts of purchasers, representing taxable sales, on which the tax imposed by this article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales in so far as they represent taxable sales made after July first, one thousand nine hundred thirty-three, and to be added to gross sales if afterwards collected.

(g) Sales of public school books on the adopted list and the selling price of which is fixed by state contract, and Holy Bibles.

(h) Sales of used articles taken in trade, or a series of trades, as a credit or part payment on the sale of a new article, provided the tax levied in this article is paid on the full gross sales price of the new article. In the interpretation of this subsection, new article shall be taken to mean the original stock in trade of the merchant, and shall not be limited to newly manufactured articles. The resale of articles repossessed by the vendor shall likewise be exempt from gross sales taxable under this article.

(i) Conditional exemptions; sales by retail merchants of food and food products for human consumption.—The term "food and food products for

human consumption" shall be given its usual and ordinary meaning, but shall not include malt or vinous beverages, soft or carbonated drinks, sodas, or beverages such as are ordinarily sold or dispensed at stores, bars, stands or soda fountains or in connection therewith, candies or confectioneries, medicines, tonics, and preparations in liquid, powdered, granular, tablet, capsule, or pill form sold as dietary supplements; nor does "food and food products for human consumption" include prepared meals or foods sold or served on or off the premises by restaurants, cafes, cafeterias, hotel dining rooms, drug stores, or other places where prepared meals or foods are sold or served.

(j) Sales of ice, whether sold by the manufacturer, producer, wholesale or retail merchants.

(k) Sales of medicines sold on prescriptions of physicians, or medicines compounded, processed or blended by the druggist offering the same for sale at retail.

(l) Sales of products of farms, forests, mines, and waters when such sales are made by the producers in their original or unmanufactured state. Fish and sea foods shall be likewise exempt when sold by the fishermen.

(m) For the purposes of this article, sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants may be classified as wholesale sales and, therefore, only subject to the wholesale rate of tax.

(n) Sales of horses and/or mules.

(o) Sales of coffins or caskets which do not sell for more than one hundred dollars ($100.00).

(p) Sales of all equipment, furniture and furnishings sold to trustees of churches for use in church and Sunday school buildings.

(q) Sales of cotton, tobacco, peanuts and other farm products sold to manufacturers for further manufacturing or processing.

Every merchant selling merchandise to other merchants for resale shall deliver to the customer a bill of sale for each sale of merchandise, whether sold for cash or on credit, and shall make and retain a duplicate or carbon copy of each such bill of sale, and shall keep a file of all such duplicate bills of sale for at least three years from date of sale, or until inspected and audited by a representative of the department of revenue. Failure to comply with the provisions of this paragraph shall subject the seller to liability for tax upon such sales at the rate of tax levied in this article upon retail sales.

Unless records are kept in such manner as will accurately disclose separate accounting of sales of taxable and non-taxable merchandise and in such form as may be accurately and conveniently checked by the representative of the department of revenue, the exemptions herein made shall not be allowed, and it shall be the duty of the commissioner or his agents to assess a tax upon the total gross sales at the rate of tax levied upon retail sales, and if records are not kept showing total gross sales, it shall be the duty of the commissioner or his agents to assess a tax upon an estimation of sales upon the best information obtainable. (1939, c. 158, s. 406; 1941, c. 50, s. 6.)

§ 105-170. Taxes payable; failure to make return; duty and power of commissioner.—The taxes levied in this article shall be due and payable in monthly installments on or before the fifteenth day of the month next succeeding the month in which the tax accrues. Every taxpayer liable for the tax imposed by this article shall, on or before the fifteenth day of the month, make out or prepare a return on the blank report form furnished by the commissioner of revenue, showing the total gross sales, the sales exempted from the tax, the net taxable sales, the amount of tax covering sales in the preceding month, and shall mail same, together with the remittance for the amount of the tax, to the commissioner. Such monthly return shall be signed by the taxpayer or a duly authorized agent of the taxpayer.

(a) Delayed Returns.—If a delinquent return or a return without remittance for the amount of tax shown to be due is received by the commissioner or his duly authorized agents, the taxpayer shall be assessed with a five per centum penalty plus interest at one-half of one per centum per month from the date the tax was due. The penalty provided in this subsection shall not be less than one dollar ($1.00).

(b) Failure to Make Returns.—If the taxpayer shall fail to make or refuse to make the returns required under this article, then such returns shall be made by the commissioner or his duly authorized agents from the best information available, and such returns shall be prima facie correct for the purposes of this article, and the amount of tax due thereby shall be a lien against all the property of the taxpayer until discharged by payments, and if payment not be made within thirty days after demand therefor by the commissioner or his duly authorized agents, there shall be added not more than one hundred per centum as damages, together with interest at the rate of one per centum per month from the time such tax was due. If such tax be paid within thirty days after notice by the commissioner, then there shall be added not more than ten per centum as damages, and interest at the rate of one per centum per month from the time such tax was due until paid.

(c) Not to Issue Certificate of Title or License.—As an additional means of enforcement of the payment of the tax herein levied the department of revenue shall not issue a certificate of title or a license plate for any new or used motor vehicle sold by any merchant or dealer licensed to do business in this state until the tax levied for the sale of same in this article has been paid, or a certificate, duly signed by a dealer licensed to do business in this state, is filed at the time the application for title or license plate is made for such motor vehicle; such certificate to be on such form as may be prescribed by the commissioner of revenue, and that such certificate shall show that the said licensed dealer has assumed the responsibility for the payment of the tax levied under this article and agrees to report and remit the tax in his next regular monthly sales tax report required to be filed under this article. (1939, c. 158, s. 407.)

§ 105-171. Credit sales.—Any person taxable under this article having cash and credit sales may report such cash and credit sales separately, and upon making application therefor may obtain from the commissioner an extension of time for the payment of taxes due on such credit sales. Such extension shall be granted under such rules

and regulations as the commissioner may prescribe. When such extension is granted, the taxpayer shall thereafter include in each monthly report all collections made during the month next preceding and shall pay taxes due thereon at the time of filing such report. (1939, c. 158, s. 408.)

§ 105-172. Forms for making returns. — The monthly returns required under this article shall be made upon forms to be prescribed and provided by the commissioner. (1939, c. 158, s. 411.)

§ 105-173. Extension of time for making returns.—The commissioner for good cause may extend the time for making any return required under the provisions of this article, and may grant such additional time within which to make such return as he may deem proper, but the time for filing any such return shall not be extended beyond the fifteenth day of the month next succeeding the regular due date of such return. If the time for filing a return be extended, interest at the rate of one-half of one per centum per month from the time the return was required to be filed to the time of payment shall be added and paid. (1939, c. 158, s. 412.)

§ 105-174. Commissioner to correct error.—As soon as practicable after the return is filed the commissioner shall examine it; if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed.

Excessive Payments.—If the amount already paid exceeds that which should have been paid, on the basis of the tax so recomputed, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of this article.

Deficiency of Amount.—(a) If the amount already paid is less than the amount which should have been paid, the difference to the extent not covered by any credits under this article, together with interest thereon at the rate of one-half of one per centum per month from the time the tax was due, shall be paid upon notice and demand by the commissioner.

(b) If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations, with knowledge thereof, but without intent to defraud, there shall be added as damages ten per centum of the total amount of the deficiency in the tax, and interest in such a case shall be collected at the rate of one per centum per month of the amount of such deficiency in the tax from the time it was due, which interest and damages shall become due and payable upon notice and demand by the commissioner; provided, however, in the absence of fraud, no assessment authorized by this article shall extend to sales made more than three (3) years prior to the date of assessment; and in cases where an audit shall have been made under the direction of the commissioner of revenue any assessment in respect to such audit shall be made within one year after the completion of the audit.

(c) If any part of the deficiency is due to fraud with intent to evade the tax, then there shall be added as damages not more than one hundred per centum of the total amount of the deficiency in the tax, and in such case the whole amount of tax unpaid, including charges so added, shall become due and payable upon notice and demand by the commissioner, and an additional one per centum per month on the tax shall be added from the date such tax was due until paid.

(d) If the amount already paid is less than the amount which should have been paid, the commissioner or his duly authorized agent shall notify the taxpayer of the balance due, plus such interest and damages as are set forth in (a), (b), and (c) just preceding, and if this total amount is not paid or no appeal is taken within thirty days from the date of notice, such action shall be considered as a refusal on the part of the taxpayer to make a return, and the taxpayer shall be subject to such penalties or provisions as are provided in this article for failure to make a return.

If any taxpayer, subject to the provisions of this article, goes into bankruptcy, receivership, or turns over his stock of merchandise by voluntary transfer to creditors, the tax liability under this article shall constitute a prior lien on such stock of merchandise, subject to execution, and it shall be the duty of the transferee in any such case to retain the amount of the tax due from the first sales from such stock of merchandise and to pay the same to the commissioner of revenue. (1939 c. 158, s. 414; 1941, c. 50, s. 6.)

§ 105-175. Taxpayer must keep records.—It shall be the duty of every person engaging or continuing in this state in any business for which a privilege tax is imposed by this article to keep and preserve suitable records of the gross income, gross receipts and/or gross receipts of sales of such business, and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this article. And it shall be the duty of every such person to keep and preserve, for a period of three years, all invoices of goods and merchandise purchased for resale, and all such books, invoices, and other records shall be open for examination at any time by the commissioner or his duly authorized agent. (1939, c. 158, s. 415.)

§ 105-176. Tax shall be lien.—The tax imposed by this article shall be a lien upon the stock of goods and/or any other property of any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under § 105-170 within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the commissioner showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. (1939, c. 158, s. 416.)

§ 105-177. Aggrieved person may file petition.—If any person having made the return and paid the tax as provided by this article feels aggrieved by the assessment made upon him by the

commissioner, or, in the absence of a report, if an assessment has been made by the commissioner under the provisions of this article, the taxpayer may apply to the commissioner by petition, in writing, within thirty days after the notice is mailed to him, for a hearing and a correction of the amount of the tax so assessed upon him by the commissioner, in which petition he shall set forth the reasons why such hearing should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the commissioner shall notify the petitioner of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the matter as may appear to him just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with interest, in any proper action or suit against the commissioner, and the superior court of the county in which the taxpayer resides or is located shall have original jurisdiction of any action to recover any tax improperly collected. In any suit to recover taxes paid or to collect taxes, the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

Either party to such suit shall have the right to appeal to the supreme court of North Carolina as now provided by law. In the event a final judgment is rendered in favor of the taxpayer in a suit to recover illegal taxes, then it shall be the duty of the state auditor, upon receipt of a certified copy of such final judgment, to issue a warrant directed to the state treasurer in favor of such taxpayer to pay such judgment, interest, and costs. It shall be the duty of the state treasurer to honor such warrant and pay such judgment out of any funds in the state treasury.

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this article, or to restrain the enforcement of this article. (1939, c. 158, s. 417.)

§ 105-178. Warrant for collection of tax; tax shall constitute debt due state.—If any tax imposed or any portion of such tax be not paid within thirty days after the same becomes due, the commissioner shall proceed to enforce the payment of such tax in the manner provided by § 105-242. (1939, c. 158, s. 418, c. 370, s. 1.)

§ 105-179. Additional tax; remittances made to commissioner; records. — The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this article otherwise specifically provided. But no county, municipality, or district shall be authorized to levy any tax by virtue of the provisions of this article.

Remittances, How Made.—All remittances of taxes imposed by this article shall be made to the commissioner by bank draft, check, cashier's check, money order, or money, who shall issue his receipts therefor to the taxpayers, when requested, and shall deposit daily all monies received to the credit of the state treasurer as required by law for other taxes: Provided, no payment other than cash shall be final discharge of liability for the tax herein assessed and levied unless and until it has been paid in cash to the commissioner.

The commissioner shall keep full and accurate records of all monies received by him, and how disbursed; and shall preserve all returns filed with him under this article for a period of three years. (1939, c. 158, s. 420.)

§ 105-180. Letters in report not to be divulged.—Unless in accordance with the judicial order or as herein provided, the state department of revenue, its agents, clerks or stenographers, shall not divulge the gross income, gross proceeds of sales, or the amount of tax paid by any person as shown by the reports filed under the provisions of this article except to members and employees of the state department of revenue for the purpose of checking, comparing, and correcting returns, or to the governor, or to the attorney general, or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of this article. (1939, c. 158, s. 421; 1941, c. 50, s. 6.)

§ 105-181. Unlawful to refuse to make returns; penalty.—It shall be unlawful for any person to fail or refuse to make the return provided to be made in this article, or to make any false or fraudulent return or false statement in any return of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice-president, secretary or treasurer of any company to make or permit to be made for any company or association any false return, or any false statement in any return required by this article, with the intent to evade the payment of any tax hereunder; or for any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the commissioner or his duly appointed agent, as required by this article, or to fail or refuse to permit the inspection or appraisal of any property by the commissioner or his duly appointed agent, or to refuse to offer testimony or produce any record as required in this article. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars ($500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment, at the discretion of the court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law. Any company for which a false return or a return containing a false statement shall be made as aforesaid, shall be guilty of a misdemeanor, and may be punished by a fine of not more than one thousand dollars ($1,000.00). (1939, c. 158, s. 422.)

§ 105-182. Commissioner to make regulations.—The commissioner shall from time to time promulgate such rules and regulations not inconsistent with this article for making returns and for the ascertainment, assessment, and collection

of the tax imposed hereunder as he may deem necessary to enforce its provisions, and upon request shall furnish any taxpayer with a copy of such rules and regulations. (1939, c. 158, s. 423.)

§ 105-183. Commissioner or agent may examine books, etc.—The commissioner, or his authorized agents, may examine any books, papers, records, or other data bearing upon the correctness of any return, or for the purpose of making a return where none has been made, as required by this article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness shall fail to obey any summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper, or other data when required to do so, such failure or refusal shall be reported to the attorney general or the district solicitor, who shall thereupon institute proceedings in the superior court of the county where such witness resides to compel obedience to any summons of the commissioner, or his authorized agent. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts, to be paid from the proper appropriation for the administration of this article. (1939, c. 158, s. 424.)

§ 105-184. Excess payments; refund.—If upon examination of any monthly return made under this article it appears that an amount of tax has been paid in excess of that properly due, then the amount in excess shall be credited against any tax or installment thereof then due from the taxpayer, under any other subsequent monthly return, or shall be refunded to the taxpayer by certificate of over-payment issued by the commissioner to the state auditor, which shall be investigated and approved by the attorney general, and the auditor shall issue his warrant on the treasurer, which warrant shall be payable out of any funds appropriated for that purpose. (1939, c. 158, s. 425.)

§ 105-185. Prior rights or actions not affected by this subchapter.—Nothing in this subchapter shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due, under the Revenue Act of one thousand nine hundred thirty-seven, prior to March 24, 1939, whether such assessment, appeal, suit, claim or action shall have begun before March 24, 1939 or shall thereafter be begun; and the sections of the Revenue Act of one thousand nine hundred thirty-seven, amended or repealed by this subchapter, are expressly continued in full force, effect, and operation for the purpose of assessment and collection of any taxes due under any such laws prior to March 24, 1939, and for the imposition of any penalties, forfeitures, or claims for a failure to comply therewith. (1939, c. 158, s. 426.)

§ 105-186. To prevent unfair trade practices, commissioner of revenue may require tax passed on to consumer.—In order that fair trade practices may be encouraged and any deleterious effect of the retail sales tax levy may be minimized, the commissioner of revenue is empowered and directed to devise, promulgate and enforce regulations under which retail merchants shall collect from the consumers, by rule uniform as to classes of business, the sales tax levied upon their business by this article: Provided, that the commissioner of revenue shall have the power to change the regulations and methods under which the merchants shall collect the tax from the consumers, from time to time, as experience may prove expedient and advisable. Methods for the passing on by merchants to their customers the retail sales tax on sales to said customers may include plans which require both more and less than the prescribed rate of the tax on the sale price, the purpose being to enable the merchants to collect approximately the amount of the tax imposed on their total sales volume. The commissioner of revenue is hereby authorized and empowered to make and adopt rules and regulations requiring merchants to use tokens or stamps, or other means, if found to be practical, which may be determined by the commissioner to provide a method whereby the amount of the tax collected by the merchant from the customer shall be as nearly as possible the prescribed rate of the tax on each purchase. Such regulations as herein authorized shall be promulgated by the commissioner of revenue to become effective after reasonable notice to the retail merchants and when so promulgated they shall have the full force and effect of law. Any merchant who violates such rules and regulations shall be guilty of a misdemeanor and upon conviction shall be fined not less than five dollars ($5.00) nor more than five hundred dollars ($500.00) or be imprisoned for not more than six months, or be both fined and imprisoned in the discretion of the court: Provided, however, that every such violation shall be a separate offense hereunder. It shall be the duty of the solicitors of the several judicial districts of the state to prosecute violations of this section.

The provisions of this section shall not affect in any manner the character or validity of the sales tax levy as a merchants' license tax, and they may not be pleaded or considered in the event any provision of this subchapter is attacked as unconstitutional. (1939, c. 262.)

§ 105-187. Tax on building materials.—There is hereby levied and there shall be collected from every person, firm or corporation, an excise tax of three per cent of the purchase price of all tangible personal property purchased or used subsequent to June thirtieth, one thousand nine hundred thirty-nine, which shall enter into or become a part of any building or any other kind of structure in this state, including all materials, supplies, fixtures and equipment of every kind and description which shall be annexed thereto or in any manner become a part thereof, except rough and dressed lumber (but not millwork), brick or hollow tile, sand, gravel, crushed stone, rock and granite.

The provisions of this section shall not apply:

(a) In respect to the use of any such article of tangible personal property, the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this section, whether under the laws of this state or of some other state or territory of the United States; Pro-

vided, that if the tax imposed on the sale or use of such tangible personal property imposed by other laws on the sale or use of such property is less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference between the rate herein fixed and the rate by which the previous tax upon the sale or use of such property was computed: Provided, that the tax upon the use of a single article of merchandise shall be limited as provided in Schedule E, and shall not apply to tangible personal property exempt from tax and /or classified, when sold, as wholesale sales under the provisions of Schedule E preceding this section in Schedule E.

(b) In respect to such tangible personal property as shall enter into any building or structure erected or constructed under any contract with the federal government or any of its agencies, or with the state of North Carolina or any of its agencies or with any county or municipality in North Carolina or any of their agencies.

Every person liable for the tax imposed by this section shall report to the commissioner of revenue and pay the taxes herein levied in accordance with the provisions of Schedule E and in so far as the provisions of said article are appropriate and not inconsistent herewith, shall be liable for all penalties and shall be subject to all of the provisions of said article. The provisions of said article relating to the administration of said subchapter, auditing of returns and as to the authority and powers of the commissioner to make rules and regulations for the administration of this section, shall be deemed and taken as a part of this section. The definitions of terms, so far as may be applicable to this section, contained in Schedule E, shall be treated as definitions applicable to this section.

The taxes levied in this section shall be levied against the purchaser of the articles named. If purchases of building materials that are not exempt from tax are made by a contractor there shall be joint liability for the tax against both contractor and owner, but the liability of the owner shall be satisfied if affidavit is required of the contractor, and furnished by him, before final settlement is made, showing that the tax herein levied has been paid in full.

(c) A receipt given by a retail merchant maintaining a place of business in this state, showing thereon that the retail sales tax imposed by Schedule E, will be paid by such retail merchant on the articles of commerce included within said purchase, shall be sufficient to relieve the purchaser from further liability for tax imposed by this section: Provided further, that the commissioner may, by rule and regulation, provide that a similar receipt from a retailer who does not maintain a place of business in this state shall also be sufficient to relieve the purchaser of further liability for the tax to which such receipt may refer.

The term "retail merchant," as used in this subsection, shall include wholesalers, jobbers, manufacturers, or their agents, selling taxable building materials for use or consumption in this state to others than merchants for resale. (1939, c. 158, s. 427.)

Art. 6. Schedule G. Gift Taxes.

§ 105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax. — State gift taxes, as hereinafter prescribed, are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this state, real, personal and mixed, and any interest therein which shall in any one calendar year pass by gift made after March 24, 1939.

The taxes shall apply whether the gift is in trust or otherwise and whether the gift is direct or indirect. In the case of a gift made by a nonresident, the taxes shall apply only if the property is within the jurisdiction of this state. The taxes shall not apply to gifts made prior to March 24, 1939.

The tax shall not apply to the passage of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power (other than by the donor's death) shall be considered to be a passage from the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a passage by donor of such income by gift.

Gifts to any one donee not exceeding a total value of one thousand dollars ($1,000.00) in any one calendar year shall not be considered gifts taxable under this article.

The amount of tax on all gifts made taxable under this article shall be based on the relationship between the donor and donee, and graduated in proportion to the amount of such gifts. The rates of tax shall be as follows:

(a) Where the donee is lineal issue, or lineal ancestor, or husband, or wife of the donor, or child adopted by the donor in conformity with the laws of this state, or of any of the United States, or of any foreign kingdom or nation, or stepchild of the donor, (for each one hundred dollars ($100.00) or fraction thereof):

First $	10,000	above exemption	...	1 per cent
Over $	10,000	and to $ 25,000	...	2 per cent
Over $	25,000	and to $ 50,000	...	3 per cent
Over $	50,000	and to $ 100,000	...	4 per cent
Over $	100,000	and to $ 200,000	...	5 per cent
Over $	200,000	and to $ 500,000	...	6 per cent
Over $	500,000	and to $1,000,000	...	7 per cent
Over $	1,000.000	and to $1,500,000	...	8 per cent
Over $	1,500,000	and to $2,000,000	...	9 per cent
Over $	2,000,000	and to $2,500,000	...	10 per cent
Over $	2,500,000	and to $3,000,000	...	11 per cent
Over $	3,000,000		.....	12 per cent

(b) Where the donee is the brother or sister, or descendant of the brother or sister, or is the uncle or aunt by blood of the donor (for each one hundred dollars ($100.00) or fraction thereof):

First $	5,000		.....	4 per cent
Over $	5,000	and to $ 10,000	...	5 per cent
Over $	10,000	and to $ 25,000	...	6 per cent
Over $	25,000	and to $ 50,000	...	7 per cent
Over $	50,000	and to $ 100,000	...	8 per cent
Over $	100,000	and to $ 250,000	...	10 per cent
Over $	250,000	and to $ 500,000	...	11 per cent
Over $	500,000	and to $1,000,000	...	12 per cent

Over $1,000,000	and to $1,500,000	...	13 per cent
Over $1,500,000	and to $2,000,000	...	14 per cent
Over $2,000,000	and to $3,000,000	...	15 per cent
Over $3,000,000		.....	16 per cent

(c) Where the donee is in any other degree of relationship than is hereinbefore stated, or shall be a stranger in blood to the donor, or shall be a body politic or corporate (for each one hundred dollars ($100.00) or fraction thereof):

First $ 10,000		.....	8 per cent
Over $ 10,000	and to $ 25,000	...	9 per cent
Over $ 25,000	and to $ 50,000	...	10 per cent
Over $ 50,000	and to $ 100,000	...	11 per cent
Over $ 100,000	and to $ 250,000	...	12 per cent
Over $ 250,000	and to $ 500,000	...	13 per cent
Over $ 500,000	and to $1,000,000	...	14 per cent
Over $1,000,000	and to $1,500,000	...	15 per cent
Over $1,500,000	and to $2,500,000	...	16 per cent
Over $2,500,000		.....	17 per cent

A donor shall be entitled to a total exemption of twenty-five thousand dollars ($25,000.00) to be deducted from gift made to donees named in subsection (a) of this section, less the sum of amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in its entirety in a single year, or may be spread over a period not to exceed eight years. No exemption shall be allowed to donor for gifts made to donees named in subsections (b) and (c) of this section.

It is expressly provided, however, that the tax levied in this article shall not apply to so much of said property as shall so pass exclusively: (1) for state, county or municipal purposes within this state; (2) for charitable, educational, or religious purposes within this state; (3) to or for the exclusive benefit of any institution, association or corporation in this state, the property of which is exempt from taxation by the laws of this state; and (4) to or for the exclusive benefit of charitable, religious and educational corporations, foundations and trusts, not conducted for profit, incorporated or created or administered under the laws of any other state, when such other state levies no gift taxes upon property similarly passing from residents of such state to charitable, educational or religious corporations, foundations and trusts incorporated or created or administered under the laws of this state, or when such corporation, foundation or trust receives and disburses funds donated in this state for religious, charitable and educational purposes. (1939, c. 158, s. 600.)

§ 105-189. Transfer for less than adequate and full consideration. — Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this article, be deemed a gift and shall be included in computing the amount of gifts made during the calendar year. (1939, c. 158, s. 601.)

§ 105-190. Gifts made in property. — If the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. (1939, c. 158, s. 602.)

§ 105-191. Manner of determining tax; time of payment; application to department of revenue for correction of assessment. — The tax imposed by this article shall be paid by the donor on or before the fifteenth day of March following the close of the calendar year.

Report of the gifts shall be made by the donor to the state department of revenue on blank forms prepared by the state department of revenue and furnished on application to any taxpayer, and the amount of tax due shall be paid at the time such report is made. The department of revenue shall audit the returns made under this article, and if it is found that the amount of tax paid is less than the amount lawfully due under the provisions of this article shall forward a statement of the taxes determined to the person or persons primarily chargeable with the payment thereof, such additional taxes to be collected under the same rules and regulations contained in this subchapter for the collection of other taxes, and if an over-payment should be found to have been made, a refund of such over-payment shall be made to the taxpayer. Within one year after the tax has been determined, any person aggrieved by the determination, may apply in writing to the department of revenue, which may make such corrections of the taxes as it may determine proper: Provided, however, that the rejection of the application in whole or in part by the department of revenue shall not prevent any person from applying to the court, as hereinafter provided, for the correction of said taxes. (1939, c. 158, s. 603.)

§ 105-192. Penalties and interest.—In any case where a donor fails to file a return at the proper time, the department of revenue shall assess a penalty of ten per centum (10%) of the tax determined by it, together with interest upon such tax and penalty at the rate of six per centum (6%) per annum from the date when such report should have been filed until the date of the assessment.

If any tax, or any assessment of tax, penalties and interest, or any part thereof, be not paid when due it shall bear interest at six per centum (6%) per annum from the date of assessment until paid. (1939, c. 158, s. 604.)

§ 105-193. Lien for tax; collection of tax.— The tax imposed by this article shall be a lien upon all gifts that constitute the basis for the tax for a period of ten years from the time they are made. If the tax is not paid by the donor when due, each donee shall be personally liable, to the extent of their respective gifts, for so much of the tax as may have been assessed, or may be assessable thereon. Any part of the property comprised in the gift that may have been sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien hereby imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

If the tax is not paid within thirty days after it has become due, the department of revenue may use any of the methods authorized in this subchapter for the collection of other taxes to enforce the payment of taxes assessed under this article.

In any proceeding by warrant or otherwise to enforce the collection of said tax, the donor shall be liable for the full amount of the tax due by reason of all the gifts constituting the basis for such tax, and each donee shall be liable only for so much of said tax as may be due on account of his respective gift. (1939, c. 158, s. 605.)

§ 105-194. Period of limitation upon assessment; assessment upon failure or refusal to file proper return. — Except as provided in the next succeeding paragraph the amount of taxes imposed by this article shall be assessed within three years after the return was filed.

In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed at any time.

If a donor should fail or refuse on demand to file a correct and proper return as required by this article, the department of revenue may make an estimate of the amount of taxes due the state by such donor, and by the respective donees, from any information in its possession, and assess the taxes, penalties and interest due the state by such taxpayers. (1939, c. 158, s. 606.)

§ 105-195. Tax to be assessed upon actual value of property; manner of determining value of annuities, life estates and interests less than absolute interest. — Said taxes shall be assessed upon the actual value of the property at the time of the transfer by gift. In every case where there shall be a gift to take effect in possession or enjoyment after the expiration of one or more life estates, or at any time in the future, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he or she becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in such property, or any interest therein less than an absolute interest, shall be determined by the annuity tables provided for by § 8-47. In every case in which it is impossible to compute the present value of any interest in property so passing, the department of revenue may effect such settlement of the tax as it shall deem to be for the best interest of the state, and payment of the same so agreed upon shall be a full satisfaction of such taxes. (1939, c. 158, s. 607.)

§ 105-196. Application for relief from taxes assessed; appeal.—A taxpayer may apply to the commissioner of revenue for revision of the tax assessed against him at any time within three years from the time of the filing of the return or from the date of the notice of assessment of any additional tax. The commissioner shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to law and the facts, and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. The taxpayer shall have the right of appeal from any assessment, made by the commissioner of revenue in the same manner and form as set out in § 105-163 with respect to income taxes. (1939, c. 158, s. 608.)

§ 105-197. Returns; time of filing; extension of time for filing.—Any person who within the calendar year nineteen hundred thirty-nine, after March 24, 1939, or any calendar year thereafter, makes any gift or gifts taxed by this article shall report in duplicate, under oath, to the department of revenue, on forms provided for that purpose, showing therein an itemized schedule of all such gifts, the name and residence of each donee and the actual value of the gift to each, the relationship of each of such persons to the donor, and any other information which the department of revenue may require. Such returns shall be filed on or before the fifteenth day of March following the close of the calendar year. The department of revenue may grant a reasonable extension of time for filing a report whenever in its judgment good cause exists. (1939, c. 158, s. 609.)

Art. 7. Schedule H. Intangible Personal Property.

§ 105-198. Intangible personal property.—The intangible personal properties enumerated and defined in this article or schedule are hereby classified under authority of section three, Article V of the Constitution, and the taxes levied thereon are for the benefit of the state and the political subdivisions of the state as hereinafter provided and said taxes so levied for the benefit of the political subdivisions of the state are levied for and on behalf of said political subdivisions of the state to the same extent and manner as if said levies were made by the governing authorities of the said subdivisions for distribution therein as hereinafter provided. (1939, c. 158, s. 700.)

§ 105-199. Money on deposit.—All money on deposit (including certificates of deposit and postal savings) with any bank or other corporation, firm or person doing a banking business, whether such money be actually in or out of this state, having a business, commercial or taxable situs in this state, shall be subject to an annual tax, which is hereby levied, of ten cents (10c) on every one hundred dollars ($100.00) of the total amount of such deposit without deduction for any indebtedness or liabilities of the taxpayer.

For the purpose of determining the amount of deposits subject to this tax every such bank or other corporation, firm or person doing a banking business shall set up the credit balance of each depositor on the fifteenth day of each March, June, September and December in the calendar year next preceding the due date of tax return, and the average of such quarterly credit balances shall constitute the amount of deposit of each depositor subject to the tax herein levied; for the purposes of this section accounts having an average of quarterly balances for the year of less than one hundred dollars ($100.00)) may be disregarded.

The tax levied in this section upon money on deposit shall be paid by the cashier, treasurer or other officer or officers of every such bank or other corporation, firm or person doing a banking business in this state by report and payment to the commissioner of revenue on or before March fifteenth of each year; any taxes so paid as agent for the depositor shall be recovered from the owners thereof by the bank or other corporation, firm or person doing a banking business in this state by deduction from the account of the depositor on December sixteenth of each year or on such date thereafter as in the ordinary course of business it becomes convenient to make such charge. The tax

on deposits represented by time certificates shall be chargeable to the original depositor unless such depositor has given notice to the depository bank of transfer of such certificate of deposit. Accounts that have been closed during the year, leaving no credit balance against which the tax can be charged, may be reported separately to the commissioner of revenue and the tax due on such accounts shall become a charge directly against the depositor, and such tax may be collected by the commissioner of revenue from the depositor in the same manner as other taxes levied in this act; the bank or other corporation, firm or person doing a banking business in this state shall not be held liable for the payment of the tax due on accounts so reported. None of the provisions of this section shall be construed to relieve any taxpayer of liability for a full and complete return of postal savings and of all money on deposit outside this state having business, commercial or taxable situs in this state.

The tax levied in this section shall not apply to deposits by one bank in another bank, nor to deposits of the United States, state of North Carolina, political subdivisions of this state or agencies of such governmental units. Deposits representing the actual payment of benefits to World War veterans by the federal government, when not reinvested, shall not be subject to the tax levied in this section. (1939, c. 158, s. 701.)

§ 105-200. Money on hand. — All money on hand (including money in safe deposit boxes, safes, cash registers, etc.) on December thirty-first of each year, having a business, commercial or taxable situs in this state, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25c) on every one hundred dollars ($100.00) of the total amount of such money on hand without deduction for any indebtedness or liabilities of the taxpayer. (1939, c. 158, s. 702.)

§ 105-201. Accounts receivable. — All accounts receivable on December thirty-first of each year, having a business, commercial or taxable situs in this state, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25c) on every one hundred dollars ($100.00) of the face value of such accounts receivable: Provided, that from the face value of such accounts receivable there may be deducted the accounts payable of the taxpayer: provided further, that no deduction in any case shall be allowed under this section of any indebtedness of the taxpayer on account of capital outlay, permanent additions to capital or purchase of capital assets. The term "accounts payable" as used in this section shall not include: (a) reserves, secondary liabilities or contingent liabilities except upon satisfactory showing that the taxpayer will actually be compelled to pay the debt or liability; (b) taxes of any kind owing by the taxpayer; (c) debts owed to a corporation of which the taxpayer is parent or subsidiary or with which the taxpayer is closely affiliated by stock ownership or with which the taxpayer is subsidiary of same parent corporation unless the credits created by such debts are listed if so required by law for ad valorem or property taxation, for taxation at the situs of such credits; or (d) debts incurred to purchase assets which are not subject to taxation at the situs of such assets.

From the total face value of accounts receivable returned to this state for taxation by or in behalf of any taxpayer who or which also owns other such accounts receivable as have situs outside of this state, accounts payable of the taxpayer may be deducted only in the proportion which the total face value of accounts receivable taxable under this section bears to the total face value of all accounts receivable of the taxpayer.

The term "accounts payable" as used in this section shall be deemed to include current notes payable of the taxpayer incurred to secure funds which have been actually paid on his current accounts payable within one hundred and twenty days prior to the date as of which the intangible tax return is made. (1939, c. 158, s. 703; 1941, c. 50, s. 8.)

§ 105-202. Bonds, notes, and other evidences of debt.—All bonds, notes, demands, claims and other evidences of debt however evidenced, whether secured by mortgage, deed of trust, judgment or otherwise, or not so secured, having a business, commercial or taxable situs in this state on December thirty-first of each year shall be subject to annual tax, which is hereby levied of fifty cents (50c) on every one hundred dollars ($100.00) of the actual value thereof: Provided, that from the actual value of such bonds, notes, demands, claims and other evidences of debt there may be deducted like evidences of debt owed by the taxpayer on December thirty-first of the same year. The term "like evidences of debt" deductible under this section shall not include: (a) accounts payable; (b) taxes of any kind owing by the taxpayer; (c) reserves, secondary liabilities or contingent liabilities except upon satisfactory showing that the taxpayer will actually be compelled to pay the debt or liability; (d) evidences of debt owed to a corporation of which the taxpayer is parent or subsidiary or with which the taxpayer is closely affiliated by stock ownership or with which the taxpayer is subsidiary of same parent corporation, unless the credits created by such evidences of debt are listed, if so required by law for ad valorem or property taxation, for taxation at the situs of such credits; or (e) debts incurred to purchase assets which are not subject to taxation at the situs of such assets.

From the total actual value of bonds, notes, demands, claims and other evidences of debt returned to this state for taxation by or in behalf of any taxpayer who or which also owns other such evidences of debt as have situs outside of this state, like evidences of debt owed by the taxpayer may be deducted only in the proportion which the total actual value of evidences of debt taxable under this section bears to the total actual value of all like evidences of debt owned by the taxpayer.

The tax levied in this section shall not apply to bonds, notes and other evidences of debt of the United States, state of North Carolina, political subdivisions of this state or agencies of such governmental units, but the tax shall apply to all bonds and other evidences of debt of political subdivisions and governmental units other than those specifically excluded herein.

In every action or suit in any court for the collection on any bonds, notes, demands, claims or other evidences of debt, the plaintiff shall be required to allege in his pleadings or to prove at

any time before final judgment is entered (1) that such bonds, notes or other evidences of debt have been assessed for taxation for each and every tax year, under the provisions of this article, during which the plaintiff was owner of same, not exceeding five years prior to that in which the suit or action is brought; or (2) that such bonds, notes or other evidences of debt sued upon are not taxable hereunder in the hands of the plaintiff; or (3) that the suitor has not paid, or is unable to pay such taxes, penalties and interest as might be due, but is willing for the same to be paid out of the first recovery on the evidence of debt sued upon. When in any action at law or suit in equity it is ascertained that there are unpaid taxes, penalties and interest due on the evidence of debt sought to be enforced, and the suitor makes it appear to the court that he has not paid or is unable to pay said taxes, penalties and interest, but is willing for the same to be paid out of the first recovery on the evidence of debt, the court shall have authority to enter as a part of any judgment or decretal order in said proceedings that the amount of taxes, penalties and interest due and owing shall be paid to the proper officer out of the first collection on said judgment or decree. The title to real estate heretofore or hereafter sold under a deed of trust shall not be drawn in question upon the ground that the holder of the notes secured by such deed of trust did not list and return the same for taxation as required by this article. (1939, c. 158, s. 704.)

§ 105-203. Shares of stock. — All shares of stock owned by residents of this state or having business, commercial or taxable situs in this state on December thirty-first of each year, with the exceptions hereinafter provided, shall be subject to an annual tax, which is hereby levied, of thirty cents (30c) on every one hundred dollars ($100.00) of the total fair market value thereof.

The tax herein levied shall not apply to shares of stock in banks, banking associations, trust companies or insurance companies not exempted from an income tax under subsection 2(f) of § 105-134, which are otherwise taxed in this state, nor to shares of stock in building and loan associations which pay a tax as levied under § 105-73; nor shall the tax apply to shares of stock in corporations which pay to this state a franchise tax on their entire capital stocks, surplus and undivided profits or entire gross receipts as provided under Schedule C, §§ 105-114 to 105-129, together with the tax upon all of the net income, if any, of such corporations as provided under §§ 105-130 to 105-163. With respect to corporations which pay to this state a franchise tax on a part of their capital stock, surplus and undivided profits or part of their gross receipts as provided in Schedule C, §§ 105-114 to 105-129, and a tax upon a part of the net income of such corporations as provided under §§ 105-130 to 105-163, when such income is earned, there shall be exempt so much of the fair market value of such shares of stock as is represented by the percentage of net income on which tax is paid to this state.

Indebtedness incurred directly for the purchase of shares of stock may be deducted from the total value of such shares: Provided, the specific shares of stock so purchased are pledged as collateral to secure said indebtedness; provided, further, that only so much of said indebtedness may be deducted as is in the same proportion as the taxable value of said shares of stock is to the total value of said shares of stock. (1939, c. 158, s. 705; 1941, c. 50, s. 8.)

§ 105-204. Beneficial interest in foreign trusts. —The beneficial or equitable interest on December thirty-first of each year of any resident of this state, or of a nonresident having a business, commercial or taxable situs in this state, in any trust, trust fund or trust account (including custodian accounts) held by a foreign fiduciary, shall be subject to an annual tax, which is hereby levied, of thirty cents (30c) on every one hundred dollars ($100.00) of the total actual value thereof. (1939, c. 158, s. 706; 1941, c. 50, s. 8.)

§ 105-205. Funds on deposit with insurance companies.—All funds on deposit with insurance companies on December thirty-first of each year, belonging to or held in trust for a resident of this state or having acquired a taxable situs in this state, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25c) on every one hundred dollars ($100.00) thereof. The term "funds on deposit" as used in this section shall mean all funds accrued or accruing by virtue of the death of the insured or the original maturity of a policy contract where the party or parties entitled to receive such funds might withdraw same at their option upon stipulated notice; provided, that in the determination of the tax liability under this section the first twenty thousand dollars ($20,000.00) of such funds on deposit or paid over to and held by a bank as trustee shall be disregarded where such funds on deposit are payable wholly and exclusively to a widow and/or children of the person deceased whose death created such funds on deposit.

The tax levied in this section shall be paid by the treasurer, cashier or other officer or officers of every insurance company doing business in this state by report and payment to the commissioner of revenue on or before March fifteenth of each year; any taxes so paid as agent for the party or parties entitled to receive such funds shall be recovered from the owners thereof by deduction from the account of the owner on December thirty-first of each year or at such other time as in the ordinary course of business it becomes convenient to make such charge. (1939, c. 158, s. 707; 1941, c. 50, s. 8.)

§ 105-206. When taxes due and payable; date lien attaches; non-residents; forms for returns; extensions.—All taxes levied in this article or schedule shall become due and payable on the fifteenth day of March of each year, and the lien of such taxes shall attach annually to all real estate of the taxpayer within this state as of December thirty-first next preceding the date that such taxes become due and payable, regardless of the time at which liability for the tax may arise or the exact amount thereof be determined; and said lien shall continue until such taxes, with any interest, penalty and costs which shall accrue thereon, shall have been paid.

Every person, firm, association, corporation, clerk of court, guardian, trustee, executor, administrator, receiver, assignee for creditors, trustee in bankruptcy or other fiduciary owning

or holding any intangible personal properties defined and classified and/or liable for or required to pay any tax levied, in this article or schedule, either as principal or agent, shall make and deliver to the commissioner of revenue in such form as he may prescribe a full, accurate and complete return of such tax liability; such return, together with the total amount of tax due, shall be filed on or before the fifteenth day of March in each year.

For the purpose of protecting the revenue of this state and to avoid discrimination and prevent evasion of the tax imposed by this article, every resident or nonresident person, firm, association, trustee or corporation, foreign or domestic, engaged in this state, either as principal or as agent or representative of or on behalf of another, in buying, selling, collecting, discounting, negotiating or otherwise dealing in or handling any of the intangible property defined in this article, shall be deemed to be doing business in this state for the purposes of this article, and the principal, superior or person on whose behalf such business is carried on in this state shall likewise be deemed to be doing business in this state, for the purpose of this article, and where such business is carried on in this state by a corporation, foreign or domestic, it and its parent corporation or the corporation which substantially owns or controls it, by stock ownership or otherwise, shall be deemed to be doing business in this state, for the purpose of this article, and in all such cases the said intangible property acquired in the conduct of such business in this state, and outstanding on December 31 of each year, shall be deemed to have a situs in this state and subject to the tax imposed by this article, notwithstanding any transfer between any of such parties and notwithstanding that the same may be kept or may then be outside of this state, and any of the intangible property defined in this article and acquired in the conduct of any business carried on in this state, and/or having a business, commercial or taxable situs in this state, shall be subject to said tax and returned for taxation by the owner thereof or by the agent, person, or corporation in this state employed by such owner to handle or collect the same.

The commissioner of revenue shall cause to be prepared blank forms for said returns and shall cause them to be distributed throughout the state, and to be furnished upon application; but failure to receive or secure form shall not relieve any taxpayer from the obligation of making full and complete return of intangible personal properties as provided in this article or schedule.

The return required by this article or schedule shall be due on or before the date specified unless written application for extension of time in which to file, containing reasons therefor, is made to the commissioner of revenue on or before due date of return. The commissioner of revenue for good cause may extend the time for filing any such return, provided interest at the rate of six per cent (6%) per annum from due date of return is paid upon the total amount of tax due. (1939, c. 158, s. 708; 1941, c. 50, s. 8.)

§ 105-207. Penalties; unlawful to refuse to make returns.—If any taxpayer, without intent to evade any tax imposed by this article or schedule, shall fail to file a return and pay the tax, if any be due, at the time required by or under the provisions of this article or schedule, but who shall voluntarily file a complete and correct return and pay the tax due within sixty days after due date, there shall be added to the tax an additional amount equal to five per cent (5%) thereof, said additional amount in no case to be less than one dollar ($1.00), together with interest at the rate of one-half of one per cent (½ of 1%) per month or fraction thereof from the time said return was required to be filed until paid.

If any taxpayer fails voluntarily to file a return and/or pay the tax, if any be due, within sixty days after due date as required by this article or schedule, there shall be added to the tax an additional amount equal to twenty-five per cent (25%) thereof, said additional amount in no case to be less than two dollars ($2.00), together with interest at the rate of one-half of one per cent (½ of 1%) per month or fraction thereof from time said return was required to be filed until paid.

If any taxpayer who has failed to file a return or has filed an incorrect or insufficient return, and who has been notified by the commissioner of revenue of such delinquency, refuses or neglects within thirty days after such notice to file a proper return, the commissioner of revenue shall determine the tax liability of such taxpayer, according to his best information and belief, and shall assess the same at double the amount so determined plus the penalties and interest provided in this section for failure voluntarily to file return within sixty days after due date; the assessment so made by the commissioner of revenue shall be prima facie correct.

It shall be unlawful for any person to fail or refuse to make the return provided for in this article or schedule, or to make any false or fraudulent return or false statement in any return of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice-president, secretary, or treasurer of any company to make or permit to be made for any company or association any false return, or any false statement in any return required by this article, with the intent to evade the payment of any tax hereunder; or for any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the commissioner of revenue or his duly appointed agent, or to refuse to offer testimony or produce any record as required. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars ($500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment, at the discretion of the court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury, and, on conviction thereof, shall be punished in the manner provided by law for the offense of perjury. Any company for which a false return shall be made or a return containing a false statement as aforesaid, shall be guilty of a misdemeanor, and may be punished by a fine of not more than one thousand dollars ($1,000.00). (1939, c. 158, s. 709.)

§ 105-208. Examination of returns; additional taxes.—As soon as practicable after the return is filed the commissioner of revenue shall examine same together with any other facts within his knowledge, and shall compute the tax, and the amount so computed shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the deficiency shall be paid to the commissioner of revenue within thirty days after date of notice to the taxpayer of such deficiency, and any over-payment of tax shall be returned to the taxpayer within thirty days after it is ascertained.

If the return is made in good faith and the under-statement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such under-statement, but interest shall be added to the amount of the deficiency at the rate of six per cent (6%) per annum until paid. If the under-statement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the deficiency five per cent (5%) thereof, together with interest at the rate of six per cent (6%) per annum until paid. If the understatement is found by the commissioner of revenue to be false or fraudulent, with intent to evade the tax, any additional tax found to be due and payable shall be doubled together with interest at the rate of six per cent (6%) per annum upon the total amount of tax so found. The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment.

If the commissioner of revenue discovers from the examination of the return or otherwise that the intangible personal property of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within three years after the time when the return was due, give notice in writing to the taxpayer of such deficiency. Any taxpayer feeling aggrieved by such proposed assessment shall be entitled to a hearing before the commissioner of revenue, if within thirty days after giving notice of such proposed assessment he shall apply for such hearing in writing, explaining in detail his objections to same. If no request for such hearing is so made, such proposed assessment shall be final and conclusive. If the request for hearing is made, the taxpayer shall be heard by the commissioner of revenue, and after such hearing the commissioner of revenue shall render his decision. The taxpayer shall be advised of his decision and such amount shall be due within ten days after notice is given. The provisions of this article with respect to revision and appeal shall apply to the tax so assessed. The limitation of three years to the assessment of such tax or an additional tax shall not apply to the assessment of additional taxes upon fraudulent returns nor upon failure to file returns. (1939, c. 158, s. 710.)

§ 105-209. Information from the source; commissioner of revenue empowered to make regulations.—In addition to the other requirements of this article or schedule it shall be the duty of every domestic corporation and every foreign corporation doing business and/or owning property in this state, the shares of stock and bonds of which are subject to tax under the provisions of this article or schedule, to report not later than the fifteenth day of March of each year to the commissioner of revenue, in such form and manner as he may prescribe, the name and address of each registered stockholder or bondholder resident in this state as of the thirty-first day of December of each year; such report shall also include the number of shares of stock and/or the number of bonds, the par or face value of each, the dividends or interest paid on each such security during the calendar year next preceding date of report, all transfers of record made from residents of this state between the first and thirty-first days of December next preceding the date of the report herein required, and such other and further information as the commissioner of revenue may require.

The commissioner of revenue shall from time to time promulgate such rules and regulations, not inconsistent with this article or schedule for making returns and for the ascertainment, assessment and collection of the taxes imposed hereunder as he may deem necessary to enforce its provisions. (1939, c. 158, s. 711.)

§ 105-210. Moneyed capital coming into competition with the business of national banks.—On all moneyed capital coming into competition with the business of national banks there is hereby annually levied a tax at the same rate as is assessed upon the shares of stock of national banks located in this state at the place of residence of such national banks, less deduction of real estate otherwise taxed in this state, to the same extent and under the same corresponding conditions as this deduction is allowed in the assessment of such shares of stock of national banks located in this state: Provided, that bonds, notes or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital within the meaning of this section. (1939, c. 158, s. 712.)

§ 105-211. Conversion of intangible personal property to evade taxation not to defeat assessment and collection of proper taxes; taxpayer's protection.—Any taxpayer who shall, for the purpose of evading taxation under the provisions of this article or schedule, within thirty days prior to December thirty-first of any year, either directly or indirectly, convert any intangible personal property taxable under the provisions of this article or schedule, or with like intent shall, either directly or indirectly, convert such intangible personal property into a class of property which is taxable in this state at a lower rate than the intangible personal property so converted, shall be taxable on such intangible personal property as if such conversion had not taken place; the fact that such taxpayer within thirty days after December thirty-first of any year, either directly or indirectly, converts such property non-taxable in this state or taxable at the lower rate in this state into intangible personal property taxable at the higher rate shall be prima facie evidence of intent to evade taxation by this state, and the burden of proof shall be upon such taxpayer to show that the first conversion was for a bona fide purpose of invest-

ment and not for the purpose of evading taxation by this state.

Taxpayers making a complete return on or before March fifteenth of each year of all their holdings of intangible personal property as provided by this article or schedule (or by similar provisions of prior Revenue Act) shall not thereafter be held liable for failure to list such intangible personal property with the local taxing units of this state in previous years; the taxes levied in this article or schedule shall be in lieu of all other property taxes in this state on such intangible personal property. (1939, c. 158, s. 713.)

§ 105-212. Institutions exempted; conditional and other exemptions.—None of the taxes levied in this article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; insurance companies reporting premiums to the insurance commissioner of this state and paying a tax thereon under the provisions of § 105-121 shall not be subject to the provisions of §§ 105-201, 105-202 and 105-203; building and loan associations paying a tax under the provisions of § 105-73 shall not be subject to the provisions of §§ 105-201, 105-202 and 105-203; banks, banking associations and trust companies shall not be subject to the tax levied in this article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on deposit with such banks, banking associations and trust companies: provided, that each such institution must, upon request by the commissioner of revenue, establish in writing its claim for exemption as herein provided. The exemptions in this section shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

A clerk of any court of this state may, upon written application therefor, obtain from the commissioner of revenue a certificate relieving the depository bank of such clerk from the duty of collecting the tax levied in this article or schedule from deposits of said clerk: Provided, that such clerk of court shall be liable under his official bond for the full and proper remittance to the commissioner of revenue under the provisions of this article or schedule of taxes due on any deposits so handled. (1939, c. 158, s. 714.)

§ 105-213. Separate records by counties; disposition and distribution of taxes collected; purpose of tax.—The commissioner of revenue shall keep a separate record by counties of taxes collected under the provisions of this article or schedule, and shall not later than the twentieth day of July of each year submit to the state board of assessment an accurate account of such taxes collected during the fiscal year ending June thirtieth next preceding, showing separately by sections the total collections less refunds in each county of the state. The state board of assessment shall examine such reports and, if found to be correct, shall certify a copy of same to the state auditor and state treasurer. Twenty-five per cent (25%) of the total amount of such revenue shall be retained by the state for use in the maintenance and operation of the public school system of the state, and seventy-five per cent (75%) of such revenue shall be distributed to the counties and municipalities of the state on the following basis:

The amount distributable to each county and to the municipalities therein from the revenue collected under §§ 105-200, 105-201, 105-202 to 105-204 shall be determined upon the basis of the amounts collected in each county; the amount distributable to each county and to the municipalities therein from the revenue collected under §§ 105-199 and 105-205 shall be determined upon the basis of population in each county as shown by the latest federal decennial census. The amounts so allocated to each county shall in turn be divided between the county and all municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such distribution. Upon certification by the state board of assessment of the allocations herein provided for, it shall be the duty of the state auditor to issue a warrant on the state treasurer to the treasurer or other officer authorized to receive public funds of each county and municipality in the amount so allocated to each such county and municipality. It shall be the duty of the chairman of the board of county commissioners of each such county and the mayor of each such municipality therein to report to the state board of assessment such information as it may request for its guidance in making said allotments to said units; and upon failure of any such county or municipality to make such report within the time prescribed by said state board of assessment, said board may disregard such defaulting unit in making said allotments. The amounts so allocated to each county and municipality shall be distributed and used by said county or municipality in proportion to other property tax levies made for the various funds and activities of the taxing unit receiving said allotment. (1939, c. 158, s. 715; 1941, c. 50, s. 8.)

§ 105-214. Provision for administration. — For the administration of this article or schedule an appropriation is hereby made for the use of the department of revenue in addition to the appropriation in the Appropriation Act of a sum equal to four per cent (4%) of the total revenues collected under this article to be expended under allotments made by the director of the budget of such part of the whole appropriation as may be found necessary for the administration of this article.

The director of the budget may make estimates of the yield of revenue under this article and make advance appropriations based upon such estimate and to provide for the necessary expense of providing materials, supplies and other needful expenses to be incurred prior to the actual collection of taxes made under and by virtue of this article or schedule. The director of the budget may make such advance allotments from such estimates of revenue yield as he may find proper for the convenient and efficient administration of this article.

Out of the amounts which may become due and payable to the counties and municipalities there shall be deducted pro rata the cost of collection, enforcement and administration as determined by the director of the budget. (1939, c. 158, s. 716.)

§ 105-215. Unconstitutionality or invalidity; interpretation; repeal.—If any clause, sentence,

paragraph, or part of this article or schedule shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article or schedule, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof. All acts and parts of acts inconsistent with the provisions of this article or schedule are specifically hereby repealed. (1939, c. 158, s. 717.)

§ 105-216. Reversion to local units in case of invalidity.—If any clause, sentence, paragraph, or part of this article or schedule shall for any reason be adjudged by any court of competent jurisdiction to be invalid, and if by virtue of said judgment any one or all of the several taxes classified and levied in this article or schedule is/are held invalid, then the particular class or classes of intangible personal property affected by said judgment shall become subject to listing, assessment and taxation by the county, municipality, and other taxing jurisdictions in which said intangible personal property has situs in the same manner and at the same rates as applicable to real estate and other tangible properties: provided, that in such case said listing, assessment and taxation of such intangible personal property by said local taxing units shall become valid and effective as of the tax listing date next preceding March 24, 1939, and shall continue thereafter with full force and effect as if such properties were made taxable by the local taxing units by direct statutory enactment. (1939, c. 158, s. 718.)

§ 105-217. Power of attorney.—The commissioner of revenue shall have authority to require a proper power of attorney of each and every agent for any taxpayer under this article or schedule. (1939, c. 158, s. 719.)

Art. 8. Schedule I. Compensating Use Tax.

§ 105-218. Short title.—This article shall be known and may be cited as the "Compensating Use Tax Article." (1939, c. 158, s. 800; 1941, c. 50, s. 9.)

§ 105-219. Definitions.—The following words, terms, and phrases when used in this article have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Storage" means and includes any keeping or retention of possession in this state for any purpose except sale in the regular course of business of tangible personal property purchased from a retailer.

(b) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(c) The word "sale" or "selling" shall mean any transfer of title or possession, or both, exchange, or barter of tangible personal property, conditional or otherwise, however affected and by whatever name called, for a consideration paid or to be paid, in installments or otherwise, and shall include any of said transactions whereby title or ownership is ultimately to pass notwithstanding the retention of title or possession, or both, for security or other purposes, and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid or to be paid, in installments or otherwise: Provided, the provisions of this subsection shall not apply to the lease or rental of motion picture films used for exhibition purposes and for which a tax of three per cent is paid on the total admission for such exhibitions.

(d) "Purchase" means the buying of, giving an order for, or offering to buy tangible personal property as a result of which there occurs a sale or delivery of tangible personal property by a retailer to a person for the purpose of storage, use, or consumption in this state, and includes the procuring of a retailer to erect, install, or apply tangible personal property for use in this state.

(e) "Sales price" means the total amount for which tangible personal property is sold, including all cost of transportation or delivery to the purchaser, whether paid by the purchaser to the retailer or to the carrier, and any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expenses whatsoever: Provided, however, that the cost for labor or services rendered in erecting, installing, or applying property sold shall not be included as a part of the sales price: Provided, further, that where a manufacturer, producer or contractor erects, installs, or applies tangible personal property for the account of or under contract with the owner of realty or other property, the sales price shall be the fair market value of such property at the time and place of sale.

(f) "Person" means and includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number.

(g) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property, or peddling the same, or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this state, and every manufacturer, producer, or contractor engaged in business in this state and selling, delivering, erecting, installing, or applying tangible personal property for use in this state notwithstanding that said property may be permanently affixed to a building or to realty or to other tangible personal property: Provided, however, that when in the opinion of the commissioner it is necessary for the efficient administration of this article to regard any salesmen, solicitors, representatives, consignees, peddlers, or can-

vassers as agents of the dealers, distributors, consignors, supervisors, principals or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, principals, or employers, the commissioner may so regard them and may regard the dealers, distributors, consignors, supervisors, principals, or employers as retailers for purposes of this article.

(h) "Commissioner" means commissioner of revenue of the state of North Carolina.

(i) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses, but shall not include electricity, gas or water delivered by or through main lines or pipes either for commercial or domestic use or consumption.

(j) "Engaged in business in this state" shall mean the selling or delivering in this state or any activity in this state in connection with the selling or delivering in this state of tangible personal property for storage, use, or consumption in this state, and includes, but is not limited to, any of the following acts or methods of transacting business: Maintaining, occupying or using, permanently or temporarily, directly, indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, or, permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser, or solicitor operating in the state in such selling or delivering, and the fact that any corporate retailer, agent, or subsidiary, engaged in business in this state, may not be legally domesticated or qualified to do business in this state, shall be immaterial.

(k) "In this state" or "in the state" means within the exterior limits of the state of North Carolina, and includes all territory within such limits owned by or ceded to the United States of America. (1939, c. 158, s. 801; 1941, c. 50, s. 9.)

§ 105-220. Taxes levied.—An excise tax is hereby levied and imposed on the storage, use, or consumption in this state of tangible personal property purchased from a retailer within or without this state on or after July first, one thousand nine hundred and forty-one (1941), for storage, use or consumption in this state at the rate of three per cent of the sales price of such property, regardless of whether said retailer is or is not engaged in business in this state.

Where a retail sales tax has already been paid with respect to said property in this state by the purchaser thereof, then the amount of said tax shall be credited upon the tax imposed by this article.

Every person storing, using or otherwise consuming in this state tangible personal property purchased or received from a retailer either within or without this state shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this state: Provided, however, that a receipt from a registered retailer engaged in business in this state given to the purchaser in accordance with the provisions of this article shall be prima facie sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer, and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased said property.

The maximum tax imposed upon any single article of tangible personal property shall be limited as provided in § 105-168. (1939, c. 158, s. 802; 1941, c. 50, s. 9.)

§ 105-221. Exemptions.—The storage, use or consumption in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

(a) Tangible personal property expressly specified and exempted from the retail sales tax imposed by Schedule E, §§ 105-164 to 105-187.

(b) Tangible personal property, the sale of which is classified as a wholesale sale under the provisions of Schedule E.

(c) Tangible personal property, the storage, use or consumption of which is exempt from taxation under the Constitution of North Carolina and the Constitution of the United States.

(d) Motor fuels defined and taxed in subchapter V, as now or hereafter amended or supplemented, and upon which the said gasoline tax has been paid.

(e) Tangible personal property purchased or acquired prior to coming into this state and brought into this state by a person a nonresident thereof for his, her, its or their own use or enjoyment while temporarily in this state. (1939, c. 158, s. 803; 1941, c. 50, s. 9.)

§ 105-222. Registration. — Every retailer, engaged in business in this state, except those registered under Schedule E, §§ 105-164 to 105-187, who shall thereby be deemed to be registered under this article, selling or delivering tangible personal property for storage, use or consumption in this state shall within thirty days after July 1, 1941, register with the commissioner and give the name and address of all agents operating in this state and the counties in this state in which they operate, the location of any and all distribution or sales houses or offices or other places of business in this state, the number, location and place of use of all motor vehicles, motorcycles, or other vehicles or conveyances, used or operated in this state by said retailer or in the business of said retailer, or for or under the authority of or under contract with or license from said retailer, and such other information as the commissioner may require. (1939, c. 158, s. 804; 1941, c. 50, s. 9.)

§ 105-223. Retailer to collect tax from purchaser.—Every retailer engaged in the business of selling, or delivering tangible personal property for storage, use, or consumption in this state shall at the time of selling or delivering said tangible personal property or collecting the sales price thereof, add to the sales price of such tangible personal property the amount of the tax on the sale thereof, and when so added said tax shall constitute a part of such price, shall be a debt from the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as other debts. Said tax shall be stated and charged separately from the sales price and shown separately on the retailer's sales records, and shall be

paid by the purchaser to the retailer as trustee for and on account of the state, and the retailer shall be liable for the collection thereof and for its payment to the commissioner, and the retailer's failure to charge to or collect said tax from the purchaser shall not affect such liability. It is the purpose and intent of this article that the tax herein levied and imposed shall be added to the sales price of tangible personal property when sold at retail and thereby be borne and passed on to the purchaser instead of being absorbed by the retailer.

Any retailer who shall by any character of public advertisement offer to absorb the tax levied in this article, or in any manner, directly or indirectly, advertise that the tax herein imposed is not considered as an element in the price to the purchaser, shall be guilty of a misdemeanor. Any violations of the provisions of this section reported to the commissioner of revenue shall be reported by him to the attorney general of the state to the end that such violations may be brought to the attention of the solicitor of the court of the county or district whose duty it is to prosecute misdemeanors in the jurisdiction. It shall be the duty of such solicitor to investigate such alleged violations and if he finds that this section has been violated, prosecute such violators in accordance with the law.

Every retailer engaged in business in this state, as defined in this article, shall collect said tax notwithstanding (a) that the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the retailer at a point outside of this state as a result of solicitation by the retailer through the medium of a catalog or other written advertisement, or (b) that the purchaser's order or the contract of sale is made or closed by acceptance or approval outside of this state or before said tangible personal property enters this state, or (c) that the purchaser's order or the contract of sale provides that said property shall be, or it is in fact, procured or manufactured at a point outside of this state and shipped directly to the purchaser from the point of origin, or (d) that said property is mailed to the purchaser in this state from a point outside this state or delivered to a carrier at a point outside this state, f.o.b., or otherwise, and directed to the purchaser in this state, regardless of whether the cost of transportation is paid by the retailer or by the purchaser, or (e) that said property is delivered directly to the purchaser at a point outside this state, if it is intended to be brought to this state for storage, use, or consumption in this state: Provided, that in the event of direct delivery to the purchaser at a point outside of this state the tax imposed by this article shall be credited with any retail sales tax lawfully imposed and paid with respect to said property in the state where such delivery occurred, or (f) any combination, in whole or in part, of any two or more of the foregoing statements of fact. (1939, c. 158, s. 805; 1941, c. 50, s. 9; 1941, c. 204, s. 1.)

§ 105-224. Taxes payable; when returns are to be filed by retailer.—The tax imposed by this article shall be due and payable to the commissioner monthly on or before the fifteenth day of the month next succeeding the month in which the tax accrues. Every retailer engaged in business in this state shall, on or before the fifteenth day of the month following the month in which the tax accrues, file with the commissioner a return for the preceding month, in such form as may be prescribed by the commissioner, showing the total sales price of the tangible personal property sold and/or delivered by the retailer during such preceding month, the storage, use or consumption of which is subject to the tax imposed by this article, and such other information as the commissioner may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax herein required to be paid by the retailer during the month covered by the return. Returns shall be signed by the retailer or his duly authorized agent but need not be verified by oath. (1939, c. 158, s. 807; 1941, c. 50, s. 9.)

§ 105-225. Taxes payable; when returns are to be filed by purchaser.—The commissioner of revenue shall have authority to require every person storing, using or consuming tangible personal property in this state to file with the commissioner a return for the preceding month in such form as may be prescribed by him showing the total sales price of the tangible personal property purchased or received by such person during such preceding month, the storage, use or consumption of which is subject to the tax imposed by this article, and such other information as the commissioner may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax herein imposed during the month covered by the return. Returns shall be signed by the person liable for the tax or his duly authorized agent but need not be verified by oath.

No return or report shall be required under this section, however, of any person storing, using or consuming tangible personal property purchased from a registered retailer engaged in business in this state to whom said person has paid the tax imposed by this article. (1939, c. 158, s. 808; 1941, c. 50, s. 9.)

§ 105-226. Sales presumed to be for storage, use or consumption.—For the purpose of the proper administration of this article and to prevent evasion of the tax and the duty to pay the same herein imposed, it shall be prima facie presumed that tangible personal property sold by any person for delivery in this state, however made and by carrier or otherwise, is sold for storage, use or other consumption in this state, and a like presumption shall apply to tangible personal property delivered without this state and brought to this state by the purchaser thereof. (1939, c. 158, s. 809; 1941, c. 50, s. 9.)

§ 105-227. Provisions of other articles applicable.—All provisions not inconsistent with this article in Schedule E, §§ 105-164 to 105-187, and Schedule J, §§ 105-229 to 105-269, relating to administration, auditing, and making returns, promulgation of rules and regulations by the commissioner, imposition and collection of tax and the lien thereof, assessments, refunds, and penalties, are hereby made a part of this article and shall be applicable hereto. (1939, c. 158, s. 810; 1941, c. 50, s. 9.)

§ 105-228. Failure to register and file returns misdemeanor.—Any retailer failing or refusing

to register and give the information required in this article, and any retailer or other person failing or refusing to make any return required to be made under this article, or failing or refusing to make a supplemental return or to furnish other data or information required by the commissioner, or rendering a false or fraudulent return, shall be guilty of a misdemeanor and subject to a fine of not exceeding five hundred dollars ($500.00) for each such offense.

Any person required by this article to make, render or sign any return or report or to furnish other data or information, who makes any false or fraudulent return or report, or who furnishes any false data or information, with intent to defeat or evade the assessment or determination of any tax due under this article, shall be guilty of a misdemeanor, and shall for each such offense be fined not less than three hundred dollars ($300.00) and not more than five thousand dollars ($5,000.00) or be imprisoned not exceeding one year in the county jail or be subject to both said fine and imprisonment in the discretion of the court.

Any wilful violation of the provisions of this article, except as otherwise herein provided, shall be a misdemeanor and punishable as such. (1939, c. 158, s. 811; 1941, c. 50, s. 9.)

Art. 9. Schedule J. General Administration—Penalties and Remedies.

§ 105-229. Failure of person, firm, corporation, public utility and/or public service corporation to file report.—If any person, firm, or corporation required to file a report under any of the provisions of Schedules B and C of this subchapter fails, refuses, or neglects to make such report as required herein within the time limited in said schedule for making such report he or it shall pay a penalty of ten dollars ($10.00) for each day's omission. (1939, c. 158, s. 900.)

§ 105-230. Charter canceled for failure to report.—If a corporation required by the provisions of this subchapter to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this state, or as a foreign corporation domesticated in or doing business in this state, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this subchapter for making such report or return, or for paying such tax or fee, the commissioner of revenue shall certify such fact to the secretary of state. The secretary of state shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this state by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail every such domestic or foreign corporation of the action taken by him, and also shall immediately certify such suspension to the clerk of superior court of the county in which the principal office or place of business of such corporation is located in this state with instructions to said clerk, and it shall be the clerk's duty, to make appropriate entry upon the records of his office indicating suspension of the corporate powers of the corporation in question. (1939, c. 158, s. 901.)

§ 105-231. Penalty for exercising corporate functions after cancellation or suspension of charter.—Any person, persons or corporation who shall exercise or by any act attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are suspended, as provided in any section of this subchapter, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), to be recovered in an action to be brought by the commissioner of revenue in the superior court of Wake county. Any corporate act performed or attempted to be performed during the period of such suspension shall be invalid and of no effect. (1939, c. 158, s. 902.)

§ 105-232. Corporate rights restored.—Any corporation whose articles of incorporation or certificate of authority to do business in this state has been suspended by the secretary of state, as provided in § 105-230, or similar provisions of prior Revenue Acts, upon the filing, within ten years after such suspension or cancellation under previous acts, with the secretary of state, of a certificate from the commissioner of revenue that it has complied with all the requirements of this subchapter and paid all state taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to said suspension or cancellation, in the same manner as if said suspension or cancellation had not taken place), and upon payment to the secretary of state of an additional penalty of ten dollars ($10.00) to cover cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by him under the provisions of § 105-230 or similar provisions of prior Revenue Acts, and shall issue his certificate entitling such corporation to exercise again its rights, privileges, and franchises, and certify such reinstatement to the clerk of superior court in the county in which the principal office or place of business of such corporation is located with instructions to said clerk, and it shall be his duty to cancel from his records the entry showing suspension of corporate privileges. (1939, c. 158, s. 903; 1939, c. 370, s. 1.)

§ 105-233. Officers, agents, and employees; misdemeanor failing to comply with tax law.—If any officer, agent, and/or employee of any person, firm, or corporation subject to the provisions of this subchapter shall wilfully fail, refuse, or neglect to make out, file, and/or deliver any reports or blanks, as required by such law, or to answer any question therein propounded, or to knowingly and wilfully give a false answer to any such question wherein the fact inquired of is within his knowledge, or upon proper demand to exhibit to such commissioner of revenue or any of his duly au-

thorized representatives any book, paper, account, record, memorandum of such person, firm, or corporation in his possession and/or under his control, he shall be guilty of a misdemeanor and fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense. (1939, c. 158, s. 904.)

§ 105-234. Aiding and/or abetting officers, agents, or employees in violation of this subchapter a misdemeanor.—If any person, firm, or corporation shall aid, abet, direct, cause or procure any of his or its officers, agents, or employees to violate any of the provisions of this subchapter, he or it shall be guilty of a misdemeanor, and fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense. (1939, c. 158, s. 905.)

§ 105-235. Every day's failure a separate offense.—The wilful failure, refusal, or neglect to observe and comply with any order, direction, or mandate of the commissioner of revenue, or to perform any duty enjoined by this subchapter, by any person, firm, or corporation subject to the provisions of this subchapter, or any officer, agent, or employee thereof, shall, for each day such failure, refusal, or neglect continues, constitute a separate and distinct offense. (1939, c. 158, s. 906.)

§ 105-236. Penalty for bad checks.—When any uncertified check is tendered in payment of any obligation to the department of revenue, and such check shall have been returned to the office of the commissioner of revenue unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, then and in that event an additional tax shall be imposed equal to ten per cent (10%) of the tax due; and in no case shall the increase of said tax because of such failure be less than one dollar ($1.00) nor exceeding two hundred dollars ($200.00), and the said additional tax shall not be waived or diminished by the commissioner of revenue. This section shall apply to all taxes levied or assessed by the state. (1939, c. 158, s. 907.)

§ 105-237. Discretion of commissioner over penalties. — The commissioner of revenue shall have power, upon making a record of his reasons therefor, to reduce or waive any penalties provided for in this subchapter, except the penalty provided in § 105-236 relating to unpaid checks. (1939, c. 158, s. 908; 1939, c. 370, s. 1.)

§ 105-238. Tax a debt.—Every tax imposed by this subchapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a debt from the person, firm, or corporation liable to pay the same to the state of North Carolina. (1939, c. 158, s. 909.)

§ 105-239. Action for recovery of taxes.—Action may be brought at any time and in any court of competent jurisdiction in this state or other state, in the name of the state and at the instance of the commissioner of revenue, to recover the amount of any taxes, penalties, and interest due under this subchapter. This remedy is in addition to all other remedies for the collection of said taxes and shall not in any respect abridge the same. Any judgment shall be declared to have such preference and priority against the property of the defendant as is provided by law for taxes levied by this subchapter, and free from any claims for homestead or personal property exemption of the defendant therein. (1939, c. 158, s. 910.)

§ 105-240. Tax upon settlement of fiduciary's account.—No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this subchapter upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the commissioner of revenue and the receipt for the amount of tax herein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commissioner of revenue, with the approval of the attorney general, may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this subchapter, and the payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. (1939, c. 158, s. 911.)

§ 105-241. Taxes payable in national currency; for what period, and when a lien.—The taxes herein designated and levied shall be payable in the existing national currency. State, county, and municipal taxes levied for any and all purposes pursuant to this subchapter shall be for the fiscal year of the state in which they become due, except as otherwise provided, and the lien of such taxes shall attach annually to all real estate of the taxpayer within the state on the date that such taxes are due and payable, and said lien shall continue until such taxes, with any interest, penalty, and costs which shall accrue thereon, shall have been paid; in the settlement of the estate of any decedent where, by any order of court or other proceeding, the real estate of the decedent has been sold to make assets to pay debts, such sale shall not have the effect of extinguishing the lien upon the land so sold for state taxes, nor shall the same be postponed in any manner to the payment of any other claim or debt against the estate, save funeral expenses and cost of administration.

Whenever the property of any taxpayer liable to any tax imposed by this subchapter or under its authority shall be taken into receivership, the lien of the taxes upon the real estate shall not thereby be in any manner disturbed, and the personal property of the taxpayer liable to said tax upon which there is no prior specific lien shall be subject to a lien for the taxes imposed by this subchapter, or under its authority, from the time the receivership went into effect, subject to prior payment of costs of the receivership only.

The provisions of this section shall not have the effect of releasing any lien for state taxes imposed by other law, nor shall they have the effect of postponing the payment of the said state taxes or depriving the said state taxes of any priority in order of payment provided in any other statute under which payment of the said taxes may be required. (1939, c. 158, s. 912.)

§ 105-242. Warrant for the collection of taxes. —1. If any tax imposed by this subchapter, or any other tax levied by the state and payable to the commissioner of revenue, or any portion of such tax be not paid within thirty days after the same becomes due and payable, and after the same has been assessed, the commissioner of revenue shall issue an order under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the commissioner of revenue the money collected by virtue thereof within a time to be therein specified, not less than sixty days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

2. Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the set-off of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the commissioner of revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the commissioner of revenue or by any officer having authority to serve summonses. Said notice shall show:

(1) The name of the taxpayer and his address, if known:

(2) The nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and

(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no set-off against the taxpayer, he shall, within ten days after service of said notice, answer the same by sending to the commissioner of revenue by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or set-off, he shall state the same in writing under oath, and, within ten days after service of said notice, shall send two copies of said statement to the commissioner by registered mail; if the commissioner admits such defense or set-off, he shall so advise the garnishee in writing within ten days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or set-off, and any amount attached or garnished hereunder which is not affected by such defense or set-off shall be remitted to the commissioner as above provided in cases where the garnishee has no defense or set-off, and with like effect. If the commissioner shall not admit the defense or set-off, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within ten days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the commissioner of revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or set-off of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten per cent of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the commissioner of revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sale remedies to question his liability for said taxes, interest, and penalties shall be those provided in this subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the commissioner at any time within twelve months

after said intangible is paid to him and if the commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by § 105-407, and if such payment is denied, said party may appeal from the determination of the commissioner to the superior court of Wake county or to the superior court of the county wherein he resides or does business and the provisions of § 105-163 shall apply on such appeal. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

3. In addition to the remedy herein provided, the commissioner of revenue is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross-index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court (said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty and upon the execution thereon no homestead or personal property exemption shall be allowed).

4. The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes. (1939, c. 158, s. 913; 1941, c. 50, s. 10.)

§ 105-243. Taxes recoverable by action.—Upon the failure of any corporation to pay the taxes, fees, and penalties prescribed by this subchapter, the commissioner of revenue may certify same to the sheriff of the county in which such company may own property, for collection as provided in this subchapter; and if collection is not made, such taxes or fees and penalties thereon may be recovered in an action in the name of the state, which may be brought in the superior court of Wake county, or in any county in which such corporation is doing business, or any county in which such corporation owns property. The attorney general, on request of the commissioner of revenue, shall institute such action in the superior court of Wake county, or of any such county as the commissioner of revenue may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered is delinquent, and that the same has been unpaid for the period of thirty days after due date. (1939, c. 158, s. 914.)

§ 105-244. Additional remedies. — In addition to all other remedies for the collection of any taxes or fees due under the provisions of this subchapter, the attorney general shall, upon the request of the commissioner of revenue, whenever any taxes, fees, or penalties due under this subchapter from any public utility (not an agency of interstate commerce) or corporation shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility (not an agency of interstate commerce) has failed or neglected for ninety days to make or file any report or return required by this subchapter, or to pay any penalty for failure to make or file such report or return, apply to the superior court of Wake county, or of any county in the state in which such public utility (not an agency of interstate commerce) or corporation is located or has an office or place of business, for an injunction to restrain such public utility (not an agency of interstate commerce) or corporation from the transaction of any business within the state until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the cost of such application, which shall be fixed by the court. Such petition shall be in the name of the state; and if it is made to appear to the court, upon hearing, that such public utility (not an agency of interstate commerce) or corporation has failed or neglected, for ninety days, to pay such taxes, fees, or penalties thereon, or to make and file such reports, or to pay such penalties, for failure to make or file such reports or returns, such court shall grant and issue such injunction. (1939, c. 158, s. 915.)

§ 105-245. Failure of sheriff to execute order.—If any sheriff of this state shall wilfully fail, refuse, or neglect to execute any order directed to him by the commissioner of revenue and within the time provided in this subchapter, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer. (1939, c. 158, s. 916.)

§ 105-246. Actions, when tried.—All actions or processes brought in any of the superior courts of this state, under provisions of this subchapter, shall have precedence over any other civil causes pending in such courts, and the courts shall always be deemed open for trial of any such action or proceeding brought therein. (1939, c. 158, s. 917.)

§ 105-247. Municipalities not to levy income and inheritance tax.—No city, town, township, or county shall levy any tax on income or inheritance. (1939, c. 158, s. 918.)

§ 105-248. State taxes; purposes.—The taxes levied in this subchapter are for the expenses of the state government, the appropriations to its educational, charitable, and penal institutions,

pensions for Confederate soldiers and widows, the interest on the debt of the state, for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the state treasurer.

The taxes levied under authority of Section four hundred ninety-two of chapter four hundred twenty-seven of the Public Laws of one thousand nine hundred thirty-one, and remaining unpaid, shall be collected in the same manner as other county taxes and accounted for in the same manner as other taxes under the Daily Deposit Act. The county treasurer or other officer receiving such taxes in each county shall remit to the treasurer of the state on the first and fifteenth days of each month all taxes collected up to the time of such remittance under the levy therein provided for, and such remittance to the state treasurer shall also include the proportion of all poll taxes collected required by the constitution of the state to be used for educational purposes.

The tax levy therein provided for shall be subject to the same discounts and penalties as provided by law for other county taxes, and there shall be allowed the same percentage for collecting such taxes as for other county taxes. The obligation to the state under the levy therein provided for shall run against all taxes that become delinquent; and with respect to any property that may be sold for taxes, any public officer receiving such delinquent taxes, when and if such property may be redeemed or such tax obligations in any manner satisfied, shall remit such proportionate part of such tax levy to the state treasurer within fifteen days after receipt of same. At the end of each fiscal year the county accountant shall furnish the state treasurer a statement of the total amount of taxes levied in accordance with the provisions of this section, that are uncollected at the end of the fiscal year.

Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations, other than the bonds of this state and of the United States government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculation, or rent, shall be exempt, other than bonds of this state and of the United States government, unless said rent or the interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions. (1939, c. 158, s. 919.)

§ 105-249. Free privilege licenses for blind people.—Any blind person of the age of twenty-one years or more, desiring to operate a legitimate business of any kind to provide a livelihood for himself and dependents, if any, may apply to the welfare officer of the county in which he resides for free privilege license.

No one shall be eligible to the benefits provided for in this section who is not a blind person (the term "blind person" shall for the purposes of this section be construed to mean one who has suffered the total loss of his eyesight, or whose eyesight is so impaired as to unfit the person applying for the benefits under this section to engage in any labor, profession, or ordinary work in competition with his fellowmen with any degree of success, and/or any person suffering with impaired visions likely to produce total blindness), or who has an income of any kind amounting to twelve hundred ($1200.00) dollars, or more net per annum, or whose husband or wife has an income of any kind amounting to twelve hundred ($1200.00) dollars or more net per annum.

It shall be the duty of the county commissioners upon receipt of application from anyone applying for the benefits under this section, to make a thorough investigation to determine whether or not the applicant is entitled to the privilege or other license as provided for in this section. When the commissioners are satisfied that the applicant is capable of operating the business for which said privilege or other license is asked and that he is a deserving person, the commissioners shall then present to the state license department a letter requesting necessary privilege or other license to operate the aforesaid business, and the state license department shall issue free of charge the license requested. The commissioners shall present to the county license department a letter requesting county privilege license necessary to operate the aforesaid business, and the county license department shall likewise issue free of charge the privilege license requested. The county commissioners shall also present, when necessary, to the municipal license department a letter requesting city privilege license necessary to operate aforesaid business, and the municipal license department shall issue free of charge privilege license requested: Provided, that the free privilege license of this section shall not apply to the sale of any kind of fireworks. (1933, c. 53; 1935, c. 162; 1939, c. 306.

§ 105-250. Law applicable to foreign corporations.—All foreign corporations, and the officers and agents thereof, doing business in this state, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. (1939, c. 158, s. 920.)

§ 105-251. Information must be furnished. — Each company, firm, corporation, person, association, co-partnership, or public utility shall furnish the commissioner of revenue in the form of returns prescribed by him, all information required by law and all other facts and information in addition to the facts and information in this act specifically required to be given, which the commissioner of revenue may require to enable him to carry into effect the provisions of the laws which the said commissioner is required to administer, and shall make specific answers to all questions submitted by the commissioner of revenue. (1939, c. 158, s. 921.)

§ 105-252. Returns required.—Any company, firm, corporation, person, association, co-partner-

ship, or public utility receiving from the commissioner of revenue any blanks, requiring information, shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure.

The answers to such questions shall be verified under oath by such persons, or by the president, secretary, superintendent, general manager, principal accounting officer, partner, or agent, and returned to the commissioner of revenue at his office within the period fixed by the commissioner of revenue. (1939, c. 158, s. 922.)

§ 105-253. Personal liability of officers, trustees, or receivers.—Any officer, trustee, or receiver of any corporation required to file report with the commissioner of revenue, having in his custody funds of the corporation, who allows said funds to be paid out or distributed to the stockholders of said corporation without having satisfied the state board of assessment or commissioner of revenue for any state taxes which are due or have accrued, shall be personally responsible for the payment of said tax, and in addition thereto shall be subject to a penalty of not more than the amount of the tax, nor less than twenty-five per cent (25%) of such tax found to be due or accrued.

The secretary of state shall withhold the issuance of any certificate of dissolution to, or withdrawal of, any corporation, domestic or foreign, until the receipt by him of a notice from the commissioner of revenue to the effect that any such corporation has met the requirements with respect to reports and taxes required by this subchapter. (1939, c. 158, s. 923; 1941, c. 50, s. 10.)

§ 105-254. Blanks furnished by commissioner of revenue.—The commissioner of revenue shall cause to be prepared suitable blanks for carrying out the purposes of the laws which he is required to administer, and, on application, furnish such blanks to each company, firm, corporation, person, association, co-partnership, or public utility subject thereto. (1939, c. 158, s. 924.)

§ 105-255. Commissioner of revenue to keep records.—The commissioner of revenue shall keep books of account and records of collections of taxes as may be prescribed by the director of the budget; shall keep an assessment roll for the taxes levied, assessed, and collected under this subchapter, showing in same the name of each taxpayer, the amount of tax assessed against each, when assessed, the increase or decrease in such assessment; the penalties imposed and collected, and the total tax paid; and shall make monthly reports to the director of the budget and to the auditor and/or state treasurer of all collections of taxes on such forms as prescribed by the director of the budget. (1939, c. 158, s. 925.)

§ 105-256. Publication of statistics.—The commissioner of revenue shall prepare and publish annually statistics reasonably available, with respect to the operation of this subchapter, including amounts collected, classifications of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable. (1939, c. 158, s. 926.)

§ 105-257. Report on system of other states.—The commissioner of revenue shall biennially make report to the general assembly, the said report to contain all available data that may be assembled by his department with respect to the tax laws and systems of this and other states, and making such recommendations as may be useful in improving the tax laws and system of this state. (1933, c. 88, s. 2.)

§ 105-258. Powers of commissioner of revenue.—The commissioner of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due by any taxpayer under this subchapter, shall have the power to examine or cause to be examined, by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, and may take testimony and require proof material for his information, and may administer oaths to such person or persons. (1939, c. 158, s. 927.)

§ 105-259. Secrecy required of officials—penalty for violation.—Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of revenue, any deputy, agent, clerk, other officer, employee, or former officer or employee, to divulge and make known in any manner the amount of income, income tax or other taxes, set forth or disclosed in any report or return required under this subchapter.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the governor, attorney general, or their duly authorized representative; or the inspection by a legal representative of the state of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this subchapter; nor shall the provisions of this section prohibit the department of revenue furnishing information to other governmental agencies, of persons and firms properly licensed under Schedule B, §§ 105-33 to 105-113. The department of revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, §§ 105-33 to 105-113, with respect to parties liable for such taxes and as to parties who have paid such license taxes.

Reports and returns shall be preserved for three years, and thereafter until the commissioner of revenue shall order the same to be destroyed.

Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor, and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00) and/or imprisoned, in the discretion of the court; and if such offending person be an officer or employee of the state, he shall be dismissed from such office or employment, and shall

not hold any public office or employment in this state for a period of five years thereafter.

Notwithstanding the provisions of this section, the commissioner of revenue may permit the commissioner of internal revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish such officer or his authorized agent an abstract of the report or return of any taxpayer; or supply such officer with information concerning any item contained in any report or return, or disclosed by the report of any investigation of such report or return of any taxpayer. Such permission, however, shall be granted or such information furnished to such officer, or his duly authorized representative, only if the statutes of the United States or of such other state grants substantially similar privilege to the commissioner of revenue of this state or his duly authorized representative. (1939, c. 158, s. 928.)

§ 105-260. Deputies and clerks.—The commissioner of revenue may appoint such deputies, clerks and assistants under his direction as may be necessary to administer the laws relating to the assessment and collection of all taxes provided for in this subchapter; may remove and discharge same at his discretion, and shall fix their compensation within the rules and regulations prescribed by law. (1939, c. 158, s. 929.)

§ 105-261. Commissioner and deputies to administer oaths.—The commissioner of revenue and such deputies as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this subchapter or under the rules and regulations of the commissioner of revenue, and shall have access to all the books and records of any person, firm, corporation, county, or municipality in this state. (1939, c. 158, s. 930.)

§ 105-262. Rules and regulations.—The commissioner of revenue may, from time to time, make, prescribe, and publish such rules and regulations, not inconsistent with this subchapter, as may be needful to enforce its provisions. (1939, c. 158, s. 931.)

§ 105-263. Time for filing reports extended.—The commissioner of revenue, when he deems the same necessary or advisable, may extend to any person, firm, or corporation or public utility a further specified time within which to file any report required by law to be filed with the commissioner of revenue, in which event the attaching or taking effect of any penalty for failure to file such report or to pay any tax or fee shall be extended or postponed accordingly. Interest at the rate of six per cent (6%) per annum from the time the report or return was originally required to be filed to the time of payment shall be added to and paid with any tax that might be due on returns so extended. (1939, c. 158, s. 932.)

§ 105-264. Construction of the subchapter; population.—It shall be the duty of the commissioner of revenue to construe all sections of this subchapter imposing either license, franchise, inheritance, income, or other taxes. Such decisions by the commissioner of revenue shall be prima facie correct, and a protection to the officers and taxpayers affected thereby. Where the license tax is graduated in this subchapter according to the population, the population shall be the number of inhabitants as determined by the last census of the United States government: Provided, that if any city or town in this state has extended its limits since the last census period, and thereafter has taken a census of its population in these increased limits by an official enumeration, either through the aid of the United States government or otherwise, the population thus ascertained shall be that upon which the license tax is to be graduated. (1939, c. 158, s. 933.)

§ 105-265. Authority for imposition of tax.—This subchapter shall constitute authority for the imposition of taxes upon the subject herein revised, and all laws in conflict with it are hereby repealed, but such repeal shall not affect taxes listed or which ought or should have been listed, or which may have been due, or penalties or fines incurred from failure to make the proper reports, or to pay the taxes at the proper time under any of the schedules of existing law, but such taxes and penalties may be collected, and criminal offenses prosecuted under such law existing on March 24, 1939, notwithstanding this repeal. (1939, c. 158, s. 935.)

§ 105-266. Overpayment of taxes to be refunded with interest. — If the commissioner of revenue discovers from the examination of any return, or otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties, interests and costs, if any), such overpayment shall be refunded to the taxpayer within sixty days after it is ascertained together with interest thereon at the rate of six per cent (6%) per annum: Provided, that interest on any such refund shall be computed from a date ninety (90) days after date tax was originally paid by the taxpayer: Provided, further, that demand for such refund is made by the taxpayer within three years from the date of such overpayment. (1939, c. 158, s. 937; 1941, c. 50, s. 10.)

§ 105-267. Taxes to be paid; suits for recovery of taxes. — No court of this state shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this subchapter. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and notify such officer in writing that he pays same under protest. Such payment shall be without prejudice to any defense of rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the commissioner of revenue of the state, if a state tax, or if a county, city, or town tax, from the treasurer thereof for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such official in the courts of the state for the amount so demanded. Such suit, if against the state commissioner of revenue, must be brought in the superior court of Wake county, or in the county

in which the taxpayer resides, if the sum demanded is upwards of two hundred dollars ($200.00), and if for two hundred dollars ($200.00) or less, before any state court of competent jurisdiction in Wake county. If for a county, city or town tax, suit must be brought in a state court of competent jurisdiction in the county where the tax is collectible, and the defendant official has his official residence. If upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state. (1939, c. 158, s. 936.)

§ 105-268. Reciprocal comity.—The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend a like comity to this state. (1939, c. 158, s. 938.)

§ 105-269. Extraterritorial authority to enforce payment.—The commissioner of revenue, with the assistance of the attorney general, is hereby empowered to bring suits in the courts of other states to collect taxes legally due this state. The officials of other states which extend a like comity to this state are empowered to sue for the collection of such taxes in the courts of this state. A certificate by the secretary of state, under the Great Seal of the state, that such officers have authority to collect the tax shall be conclusive evidence of such authority. (1939, c. 158, s. 939.)

Art. 10. Liability for Failure to Levy Taxes.

§ 105-270. Repeal of laws imposing liability upon governing bodies of local units.—All laws and clauses of laws, statutes and parts of statutes, imposing civil or criminal liability upon the governing bodies of local units, or the members of such governing bodies, for failure to levy or to vote for the levy of any particular tax or rate of tax for any particular purpose, are hereby repealed, and said governing bodies and any and all members thereof are hereby freed and released from any civil or criminal liability heretofore imposed by any law or statute for failure to levy or to vote for the levy of any particular tax or tax rate for any particular purpose. (1933, c. 418.)

SUBCHAPTER II. ASSESSMENT, LISTING AND COLLECTION OF TAXES.

Art. 11. Short Title and Definitions.

§ 105-271. Official title.—This subchapter may be cited as the Machinery Act. (1939, c. 310, s. 1.)

§ 105-272. Definitions. — When used in this subchapter (unless otherwise specifically indicated by the context):

(1) The term "person" means an individual, trust, estate, partnership, firm or company.

(2) The term "corporation" includes associations, joint-stock companies, insurance companies, and limited partnerships where shares of stock are issued.

(3) The term "domestic" when applied to corporations or partnerships means created or organized under the laws of the state of North Carolina.

(4) The term "foreign" when applied to corporations or partnerships means a corporation or partnership not domestic.

(5) The term "commissioner" means the commissioner of revenue.

(6) The term "deputy" means an authorized representative of the commissioner of revenue or other commissioner or of the state board of assessment.

(7) The term "taxpayer" means any person or corporation subject to a tax or duty imposed by the Revenue Act or Machinery Act, or whose property is subject to any ad valorem tax levied by the state or its political subdivisions.

(8) The term "state license" means a license issued by the commissioner of revenue, usable, good and valid in the county or counties named in the license.

(9) The term "state-wide license" means a license issued by the commissioner of revenue, usable, good and valid in each and every county in this state.

(10) The term "intangible property" means patents, copyrights, secret processes and formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, bills and accounts receivable, and other like property.

(11) The term "tangible property" means all property other than intangible.

(12) The term "public utility" as used in this subchapter means and includes each person, firm, company, corporation and association, their lessees, trustees or receivers, elected or appointed by any authority whatsoever, and herein referred to as express company, telephone company, telegraph company, Pullman car company, freight line company, equipment company, electric power company, gas company, railroad company, union depot company, water transportation company, street railway company, and other companies exercising the right of eminent domain, and such term, "public utility," shall include any plant or property owned or operated by any such persons, firms, corporations, companies or associations.

(13) The term "express company" means a public utility company engaged in the business of conveying to, from, or through this state, or part thereof, money, packages, gold, silver, plate, or other articles and commodities by express, not including the ordinary freight lines of transportation of merchandise and property in this state.

(14) The term "telephone company" means a public utility company engaged in the business of transmitting to, from, through or in this state, or part thereof, telephone messages or conversations.

(15) The term "telegraph company" means a public utility company engaged in the business of transmitting to, from, through, or in this state, or a part thereof, telegraphic messages.

(16) The term "Pullman car company" means a public utility company engaged in the business of operating cars for the transportation, accommodation, comfort, convenience, or safety of passengers, on or over any railroad line or lines or other common carrier lines, in whole or in part within this state, such line or lines not being owned, leased, and/or operated by such railroad company, whether such cars be termed sleeping,

Pullman, palace, parlor, observation, chair, dining or buffet cars, or by any other name.

(17) The term "freight line company" means a public utility company engaged in the business of operating cars for the transportation of freight or commodities, whether such freight and/or commodities is owned by such company or any other person or company, over any railroad or other common carrier line or lines in whole or in part within this state, such line or lines not being owned, leased and/or operated by such railroad company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, refrigerator, fruit, meat, oil, or by any other name.

(18) The term "equipment company" means a public utility company engaged in the business of furnishing and/or leasing cars, of whatsoever kind or description, to be used in the operation of any railroad or other common carrier line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such railroad company.

(19) The term "electric power company" means a public utility company engaging in the business of supplying electricity for light, heat and/or power purposes to consumers within this state.

(20) The term "gas company" means a public utility company engaged in the business of supplying gas for light, heat, and/or power purposes to consumers within this state.

(21) The term "waterworks company" means a public utility company engaged in the business of supplying water through pipes or tubing and/or similar manner to consumers within this state.

(22) The term "union depot company" means a public utility company engaged in the business of operating a union depot or station for railroads or other common carrier purposes.

(23) The term "water transportation company" means a public utility company engaged in the transportation of passengers and/or property by boat or other water craft, over any waterway, whether natural or artificial, from one point within this state to another point within this state, or between points within this state and points without this state.

(24) The term "street railway company" means a public utility company engaged in the business of operating a street, suburban or interurban railway, either wholly or partially within this state, whether cars are propelled by steam, cable, electricity, or other motive power.

(25) The term "railroad company" means a public utility company engaged in the business of operating a railroad, either wholly or partially within this state, or rights of way acquired or leased and held exclusively by such company or otherwise.

(26) The terms "gross receipts" or "gross earnings" mean and include the entire receipts for business done by any person, firm, or corporation, domestic or foreign, from the operation of business or incidental thereto, or in connection therewith. The gross receipts or gross earnings for business done by a corporation engaged in the operation of a public utility shall mean and include the entire receipts for business done by such corporation, whether from the operation of the public utility itself or from any other source whatsoever.

(27) The terms "bank", "banker", "broker", "stock jobber" mean and include any person, firm, or corporation who or which has money employed in the business of dealing in coin, notes, bills of exchange, or in any business of dealing, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, acceptances, promissory notes, bonds, warrants or other written obligations, or stocks of any kind or description whatsoever, or receiving money on deposit.

(28) The terms "collector" and "collectors" mean and include county, township, city or town tax collectors, and sheriffs.

(29) The terms "list takers" and "assessors" mean and include list takers, assessors and assistants.

(30) The terms "real property", "real estate", "land", "tract", or "lot" mean and include not only the land itself, but also all buildings, structures, improvements and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto, except where the same may be otherwise denominated by this subchapter or the Revenue Act.

(31) The terms "shares of stock" or "shares of capital stock" mean and include the shares into which the capital or capital stock of an incorporated company or association may be divided.

(32) The terms "tax" or "taxes" mean and include any taxes, special assessments, costs, penalties, and/or interest imposed upon property or other subjects of taxation. (1939, c. 310, s. 2.)

Article 12. State Board of Assessment.

§ 105-273. Creation; officers.—The director of the department of tax research, the commissioner of revenue, the chairman of the public utilities commission, the attorney general, and the director of local government are hereby created the state board of assessment with all the powers and duties prescribed in the subchapter. The director of the department of tax research shall be the chairman of the said board, and shall, in addition to presiding at the meetings of the board, exercise the functions, duties, and powers of the board when not in session. The board may employ an executive secretary, whose entire time may be given to the work of the said board, and is authorized to employ such clerical assistance as may be needed for the performance of its duties; all expenses of said board shall be paid out of funds appropriated out of the general fund to the credit of the department of revenue of the state. (1939, c. 310, s. 200; 1941, c. 327, s. 6.)

§ 105-274. Oath of office.—The members of the board shall take and subscribe to the constitutional oath of office and file the same with the secretary of state. (1939, c. 310, s. 201.)

§ 105-275. Duties of the board. — The state board of assessment shall exercise general and specific supervision of the systems of valuation and taxation throughout the state, including counties and municipalities, and in addition it shall be and constitute a state board of equalization and review of valuation and taxation in this state. It shall be the duty of said board:

(1) To confer with and advise boards of county commissioners, tax supervisors, assessing officers, list takers, and all others engaged in the valuation and assessment of property, in the prepara-

tion and keeping of suitable records, and in the levying and collection of taxes and revenues, as to their duties under this subchapter or any other act passed with respect to valuation of property, assessing, levying or collection of revenue for counties, municipalities and other subdivisions of the state, to insure that proper proceedings shall be brought to enforce the statutes pertaining to taxation and for the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals failing, refusing or neglecting to comply with this subchapter; and to call upon the attorney general or any prosecuting attorney in the state to assist in the execution of the powers herein conferred.

(2) To prepare a pamphlet or booklet for the instruction of the boards of county commissioners, tax supervisors, assessing officers, list takers, and all others engaged in the valuation of property, preparing and keeping records, and in the levying and collecting of taxes and revenue, and have the same ready for distribution at least thirty (30) days prior to the date fixed for listing taxes. The said pamphlet or booklet shall, in as plain terms as possible, explain the proper meaning of this subchapter and the revenue laws of this state; shall call particular attention to any points in the law or in the administration of the laws which may be or which have been overlooked or neglected; shall advise as to the practical working of the revenue laws and the Machinery Act, and shall explain and interpret any points that seem to be intricate and upon which county or state officers may differ.

(3) To hear and to adjudicate appeals from boards of county commissioners and county boards of equalization and review as to property liable for taxation that has not been assessed or of property that has been fraudulently or improperly assessed through error or otherwise, to investigate the same, and if error, inequality, or fraud is found to exist, to take such proceedings and to make such orders as to correct the same. In case it shall be made to appear to the state board of assessment that any tax list or assessment roll in any county in this state is grossly irregular, or any property is unlawfully or unequally assessed as between individuals, between sections of a county, or between counties, the said board shall correct such irregularities, inequalities and lack of uniformity, and shall equalize and make uniform the valuation thereof upon complaint by the board of county commissioners under rules and regulations prescribed by it, not inconsistent with this subchapter: Provided, that no appeals shall be considered or fixed values changed unless notice of same is filed within sixty (60) days after the final values are fixed and determined by the board of county commissioners or the board of equalization and review, as hereinafter provided: Provided, further, that each taxpayer or ownership interest shall file separate and distinct appeals; no joint appeals shall be considered except by and with consent of the state board of assessment.

(4) To require from the register of deeds, auditor, county accountant, tax clerk, clerk of the court or other officer of each county, and the mayor, clerk or other officer of each municipality, on forms prepared and prescribed by the said board, such annual and other reports as shall enable said board to ascertain the assessed valuation of all property listed for taxation in this state under this or any other act, the rate and amount of taxes assessed and collected, the amount returned delinquent, tax sales, certificates of purchase at such tax sales held by the state, county or municipality, and such other information as the board may require, to the end that it may have full, complete, and accurate statistical information as to the practical operation of the tax and revenue laws of the state.

(5) To require the secretary of state, and it shall be his duty, to furnish monthly to the said board a list of all domestic corporations incorporated, charter amended or dissolved, all foreign corporations domesticated, charter amended, dissolved or domestication withdrawn during the preceding month, in such detail as may be prescribed by said board.

(6) To make diligent investigation and inquiry concerning the revenue laws and systems of taxation of other states, so far as the same are made known by published reports and statistics and can be ascertained by correspondence with officers thereof.

(7) To report to the general assembly at each regular session, or at such other times as it may direct, the total amount of revenue or taxes collected in this state for state, county, and municipal purposes, classified as to state, county, township, and municipality, with the sources thereof; to report to the general assembly the proceedings of the board and such other information and recommendations concerning the public revenues as required by the general assembly or that may be of public interest; to cause two thousand copies of said report to be printed on or before the first day of January in the year of the regular session of the general assembly, and place at the disposal of the state librarian one hundred (100) copies of said report for distribution and exchange, if and when funds are available for said purpose; and to forward a copy of said report to each member of the general assembly as soon as printed.

(8) To discharge such other duties as may be prescribed by law, and take such action, do such things, and prescribe such rules and regulations as may be needful and proper to enforce the provisions of this subchapter and the Revenue Act.

(9) To prepare for the legislative committee of succeeding general assemblies such suggestions of revision of the revenue laws, including the Machinery Act, as it may find by experience, investigation, and study to be expedient and wise.

(10) To report to the governor, on or before the first day of January of each year, the proceedings of said board during the preceding year, with such recommendations as it desires to submit with respect to any matters touching taxation and revenue.

(11) To keep full, correct and accurate records of its official proceedings.

(12) To properly administer the duties prescribed by Schedule H, §§ 105-198 to 105-217, with respect to division and certification of taxes collected thereunder; the state board of assessment shall hear and pass upon any matters relative thereto.

(13) To perform the duties imposed upon it with respect to the classification and assessment of property. (1939, c. 310, s. 202.)

§ 105-276. Powers of the board.—To the end that the board may properly discharge the duties placed upon it by law, it is hereby accorded the following powers:

(1) It may, in its discretion, prescribe the forms, books, and records that shall be used in the valuation of property and in the levying and collection of taxes, and how the same shall be kept; to require the county tax supervisors, clerks or boards of county commissioners, or auditor of each county to file with it, when called for, complete abstracts of all real and personal property in the county, itemized by townships and as equalized by the county board of equalization and review; and to make such other rules and regulations, not included in this subchapter or the Revenue Act, as said board may deem needful effectually to promote the purposes for which the board is constituted and the systems of taxation provided for in this and the Revenue Act.

(2) The board, its members or any duly authorized deputy shall have access to all books, papers, documents, statements, records and accounts on file or of records in any department of state, county or municipality, and is authorized and empowered to subpoena witnesses upon a subpoena signed by the chairman of the board, directed to such witnesses, and to be served by any officer authorized to serve subpoenas; to compel the attendance of witnesses by attachment to be issued by any superior court upon proper showing that such witness or witnesses have been duly subpoenaed and have refused to obey such subpoena or subpoenas; and to examine witnesses under oath to be administered by any member or authorized agent of the board.

(3) The board, its members or any duly authorized deputy are authorized and empowered to examine all books, papers, records or accounts of persons, firms and corporations, domestic and foreign, owning property liable to assessment for taxes, general or specific, levied by this state or its subdivisions. Said board, its members or any duly authorized deputy are also given power and authority to examine the books, papers, records or accounts of any person, firm or corporation where there is ground for believing that information contained in such books, papers, records and accounts is pertinent to the decision of any matter pending before said board, regardless of whether such person, firm or corporation is a party to the proceeding before the board. Books, papers, records or accounts examined under authority of this subdivision of this section shall be examined only after service of a proper subpoena, signed by the chairman of the board and served by an officer authorized to serve subpoenas upon the person having the custody of such books, papers, records or accounts.

Any person, persons, member of a firm, or any officer, director or stockholder of a corporation, bank or trust company who shall refuse permission to inspect any books, papers, documents, statements, accounts or records demanded by the state board of assessment, the members thereof, or any duly authorized deputy provided for in this subchapter or the Revenue Act, or who shall willfully fail, refuse, or neglect to appear before said board in response to its subpoena or to testify as provided for in this subchapter and the Revenue Act, shall, in addition to all other penalties imposed in this subchapter or the Revenue Act, be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(4) The board is authorized and empowered to direct any member or members of the board to hear complaints, to make examinations and investigations, and to report his or their findings of fact and conclusions of law to the board. Upon demand of any party to an appeal pending before the board, the board shall send one of its members or a special representative designated by it to make an actual examination of the property and other similar property in the same county and report to the board. The cost of making said examination shall be advanced by the county: Provided, that in cases in which the examination is demanded by a taxpayer, if the board's decision does not substantially affirm the contentions of the taxpayer, the board in its decision shall direct that the county advancing the cost may add such cost to the taxes levied against the property.

(5) The board shall have power to certify copies of its records and proceedings, attested with its official seal, and copies of records or proceedings so certified shall be received in evidence in all courts in this state with like effect as certified copies of other public records.

(6) The board may, upon its own motion or upon request of any tax supervisor or county board of commissioners, transmit or make available to a supervisor or duly authorized representative of such board of commissioners any information contained in any report to said state board, or in any report to the department of revenue or other state department to which said state board may have access, or any other information which said state board may have in its possession when, in the opinion of said board, such information will assist said supervisor or representative of the commissioners in securing an adequate listing of property for taxation or in assessing taxable property.

Except as herein specified, and except to the governor or his authorized agent or solicitor or authorized agent of the solicitor of a district in which such information would affect the listing or valuation of property for taxes, the state board shall not divulge or make public the reports made to it or to other state departments: Provided, this shall not interfere with the publication of assessments and decisions made by said board or with publication of statistics by said board; nor shall it prevent presentation of such information in any administrative or judicial proceedings involving assessments or decisions of said board.

Information transmitted or made available to local tax authorities under this section shall not be divulged or published by such authorities, and shall be used only for the purposes of securing adequate tax lists, assessing taxable property and presentation in administrative or judicial proceedings involving such lists or assessments.

(7) The board is authorized to exercise all powers reasonably necessary to perform the duties imposed upon it by this subchapter or other acts of this state. (1939, c. 310, s. 203.)

§ 105-277. Sessions of board, where to be held.—The regular sessions of the state board of assessment shall be held in the city of Raleigh

at the office of the chairman, and other sessions may be called at any place in the state to be decided by the board. (1939, c. 310, s. 204.)

Art. 13. Quadrennial and Annual Assessment.

§ 105-278. Listing and assessing in quadrennial years.—In one thousand nine hundred forty-one, and quadrennially thereafter, all property, real and personal, subject to taxation, shall be listed and assessed for ad valorem tax purposes: Provided, that in one thousand nine hundred forty-one, and quadrennially thereafter, the county boards of commissioners may determine whether real property in the respective counties and townships shall be revalued by horizontal increase or reduction or by actual appraisal thereof, or both. Where the horizontal method is used, the provisions of § 105-279 shall also apply: Provided, that the boards of county commissioners of the various counties of the State may, in their discretion, defer or postpone the revaluation and reassessment of real property required herein in the year one thousand nine hundred and forty-one, and all proceedings and actions heretofore taken by said board of county commissioners in any county in the State as to postponement, or as to increases or reductions or by actual appraisal thereof, are hereby in all respects ratified, validated, and confirmed. Any such board of county commissioners may, in its discretion, defer or postpone any such revaluation, reassessment, or reappraisal for the years one thousand nine hundred and forty-two and one thousand nine hundred and forty-three. But this second proviso shall not apply to any county for which a revaluation board of assessors or a board of equalization and review has been created or provided for by any act of the General Assembly of one thousand nine hundred and forty-one. (1939, c. 310, s. 300; 1941, c. 282, ss. 1, 1½.)

Local Modification.—Ashe, Rowan: 1941, c. 282, s. 2.

§ 105-279. Listing and assessing in years other than quadrennial years.—In the year one thousand nine hundred thirty-nine and in other than quadrennial years all property, real and personal, subject to taxation, shall be listed for ad valorem tax purposes. Property not subject to reassessment in such years shall be listed at the value at which it was assessed at the last quadrennial assessment. In all such years the following property shall be assessed or reassessed:

(1) All personal property (which for purposes of taxation shall include all personal property whatsoever, tangible or intangible, except personal property expressly exempted by law).

(2) All machinery, service station equipment, merchandise and trade fixtures, barber shop equipment, meat market equipment, restaurant and cafe fixtures, drug store equipment and similar property not permanently affixed to the real estate.

(3) All real property (which for purposes of taxation shall include all lands within the state and all buildings and fixtures thereon and appurtenances thereto) which:

(a) Was not assessed at the last quadrennial assessment.

(b) Has increased in value to the extent of more than one hundred dollars ($100.00) by virtue of improvements or appurtenances added since the last assessment of such property.

(c) Has decreased in value to the extent of more than one hundred dollars ($100.00) by virtue of improvements or appurtenances damaged, destroyed or removed since the last assessment of such property.

(d) Has increased or decreased in value since the last assessment of such property by virtue of some extraordinary circumstances, such circumstances being those of unusual occurrence in trade or business, and the facts in connection with which shall be found by the board of equalization in each case and entered upon the proceedings of said board.

(e) Has been subdivided into lots located on streets already laid out and open, and sold or offered for sale as lots, since the date of the last assessment of such property. This shall apply to all cases of subdivision into lots, regardless of whether the land is situated within or without an incorporated municipality: Provided, that where lands have been subdivided into lots, and more than five acres of any such subdivision remain unsold by the owner thereof, the unsold portion may be listed as land acreage, in the discretion of the tax supervisor.

(f) Was last assessed at an improper figure as the result of a clerical error.

(g) Was last assessed at a figure which manifestly is unjust by comparison with the assessment placed upon similar property in the county: Provided, that the power to reassess under this subdivision shall be exercised only by the board of equalization and review, subject to appeal to the state board of assessment. (1939, c. 310, s. 301.)

§ 105-280. Date as of which assessment is to be made.—All property, real and personal, shall be listed or listed and assessed, as the case may be, in accordance with ownership and value as of the first day of April, one thousand nine hundred thirty-nine, and thereafter all property shall be listed or listed and assessed in accordance with ownership and value as of the first day of January each year. (1939, c. 310, s. 302.)

§ 105-281. Property subject to taxation.—All property, real and personal, within the jurisdiction of the state, not especially exempted, shall be subject to taxation. (1939, c. 310, s. 303.)

§ 105-282. Article subordinate to sections 105-198 to 105-217.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Schedule H, §§ 105-198 to 105-217, but rather shall they be subordinate thereto. (1939, c. 310, s. 304.)

Art. 14. Personnel for County Tax Listing and Assessing.

§ 105-283. Appointment and qualifications of tax supervisors.—At or before the regular meeting next preceding the date as of which property is to be listed and assessed, the board of county commissioners of each county shall appoint as tax supervisor some person who shall be a freeholder in the county, who shall for one year immediately preceding the appointment, have been a resident of the county, and whose experience in

the valuation of real and personal property is satisfactory to the board.

In counties in which there is an auditor, tax clerk, county accountant, all-time chairman of the board of county commissioners, or other similar officer, either may be designated as supervisor by the board of county commissioners. (1939, c. 310, s. 400.)

§ 105-284. Term of office and compensation of supervisors.—The tax supervisor shall serve for one year or for such shorter period of time as the board may designate. In the case he is appointed for one year, he shall serve until his successor is appointed and has qualified, subject to removal for cause by the board of commissioners at any time. Any vacancy shall be filled by appointment by the board of commissioners.

The compensation of the supervisor shall be fixed by the board of commissioners, and he shall be allowed such expenses as the commissioners may approve. (1939, c. 310, s. 401.)

§ 105-285. Oath of office of supervisor.—Immediately after his appointment, and before entering upon the duties of his office, the supervisor shall file with the clerk of the board of commissioners the following oath, subscribed and sworn to before the chairman of the board of commissioners or some other officer qualified to administer oaths:

"I, ..., County Tax Supervisor for ..... County, North Carolina, for the year ....., do solemnly swear (or affirm) that I will discharge the duties of my office as supervisor according to the laws in force governing such office; so help me, God.

....."

(Signature)

(1939, c. 310, s. 402.)

§ 105-286. Powers and duties of tax supervisor.—(1) The supervisor shall have general charge of the listing and assessing of all property in the county in accordance with the provisions of law.

(2) He shall appoint the list takers and assessors, subject to the approval of the commissioners, as hereinafter provided.

(3) He shall, on the second Monday preceding the date as of which property is to be assessed or at some time during the week which includes said Monday, convene the list takers and assessors for general consideration of methods of securing a complete list of all property in the county, and of assessing, in accordance with law, all property which is to be assessed during the approaching listing period.

(4) He shall visit each list taker at least once during the period of listing, and shall confer with each list taker during said period as often as he or the list taker deems necessary, to the end that all property shall be listed and assessed according to law, and that assessments shall be equalized as between the various townships.

(5) He shall have power to subpoena any person for examination under oath and to subpoena any books, papers, records or accounts whenever he has reasonable grounds for the belief that such person has knowledge of such books, papers, records and accounts containing information which is pertinent to the discovery or the valuation of any property subject to taxation in the county, or which is necessary for compliance with the requirements as to what the tax list shall contain, hereinafter set forth. The subpoena shall be signed by the chairman of the county board of equalization and served by an officer qualified to serve subpoenas.

(6) He may require that any or all persons, firms and corporations, domestic and foreign, engaged in operating any business enterprise in the county shall submit, in connection with his or its regular tax list, a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery of valuation of property taxable in the county. Inventories, statements of assets and liabilities or other information not expressly required by this subchapter to be shown on the tax list itself, secured by the supervisor under the terms of this subdivision, shall not be open to public inspection.

Any supervisor or other official disclosing information so obtained, except as such disclosure may be necessary in listing or assessing property or in administrative or judicial proceedings relating to such listing or assessing, shall be guilty of a misdemeanor and punishable by fine not exceeding fifty dollars ($50.00).

(7) He shall have power, for good cause, and prior to the first meeting of the board of equalization and review, to change the valuation placed upon any property by the list taker, provided such property is subject to assessment for the current year, and provided that notice of such change is given to the taxpayer prior to the meeting of said board.

(8) He shall perform such other duties as may be imposed upon him by law, and shall have and exercise all powers reasonably necessary in the performance of his duties, not inconsistent with the constitution or the laws of this state. (1939, c. 310, s. 403.)

§ 105-287. Appointment, qualifications, and number of list takers and assessors.—Subject to the approval of the county commissioners, the supervisor, on or before the second Monday preceding the date as of which property is to be assessed, shall appoint some competent person to act as list taker and assessor in each township. With the approval of the commissioners he may appoint more than one such person for any township in which is situated an incorporated town or part of an incorporated town. In quadrennial years three such persons shall be appointed in each township, and more than three may be appointed in townships in which is located an incorporated town or part of an incorporated town; and in such years, at the time of their appointment, such appointees shall have been resident freeholders of the county for at least twelve months: Provided, that in any county adopting the horizontal method of revaluations in one thousand nine hundred forty-one, and quadrennially thereafter, the commissioners may appoint less than three list takers and assessors per township: Provided, further, that in quadrennial years the board of county commissioners may appoint one list taker and assessor in each township if in addition thereto at least two county-wide list takers and assessors are appointed; or said board may appoint not more than three qualified assessors to

assess all real estate in the county. In every year the persons appointed shall be persons of character and integrity, and shall have such experience in the valuation of types of property commonly owned in the county as shall satisfy the supervisor and the commissioners. (1939, c. 310, s. 404.)

§ 105-288. Term of office and compensation of list takers and assessors.—The list takers and assessors shall serve for such period as may be fixed by the commission. They shall receive for their services such compensation as the commissioners may fix. No list taker shall receive compensation until the supervisor has checked over the lists accepted by him, as hereinafter required, and certified that his work has been satisfactory. Each list taker shall make out his account in detail, specifying each day's services, which account shall be audited by the county accountant and approved by the commissioners. (1939, c. 310, s. 405.)

§ 105-289. Oath of list takers and assessors.—Before entering upon his duties each list taker and assessor shall take the following oath, which shall be filed with the clerk to the board of commissioners after having been subscribed and sworn to before some officer qualified to administer oaths:

"I, ..., List Taker and Assessor for ..... Township, ... County, North Carolina, do hereby solemnly swear (or affirm) that I will discharge the duties of my office according to the laws in force that govern said office; so help me, God.

....."

(Signature)

(1939, c. 310, s. 406.)

§ 105-290. Powers and duties of list takers and assessors.—(1) At least ten days before the date as of which property is to be assessed, each list taker shall post, in five or more public places in his township, a notice containing at least the following: (a) The date as of which property is to be assessed; (b) the date on which listing will begin; (c) the date on which the listing will end; (d) the times and places between the last two dates mentioned at which lists will be accepted; (e) a notice that all persons who, on the date as of which property is to be assessed, own property subject to taxation must list such property within the period set forth in the notice, and that failure to do so will subject such persons to the penalties prescribed by law.

In townships in which more than one list taker has been appointed the posting of these notices shall be the duty of one of them, to be designated by the supervisor.

In case the period of listing in any township shall be extended by the commissioners, as hereinafter permitted, it shall be the duty of the list taker who first posted the notices to post new notices in the same places, giving notice of the extension and notice of the times and places at which lists will be accepted during the extended period.

(2) Each list taker shall attend the meeting referred to in subdivision three of § 105-286.

(3) The list takers and assessors, under the supervision of the supervisor, shall secure lists of all real and personal property and polls subject to taxation in their townships, and shall assess all such property as is subject to assessment under the provisions of this subchapter. To this end they shall secure from each taxpayer or person whose duty it is to list property or poll in their respective townships a list containing the information hereinafter specified, and shall have the authority to visit any such person or his property, to investigate the value of any such property, and to examine under oath any such person present before them for the purpose of listing property. The supervisor may, in his discretion, require any list taker and assessor to visit each person in his township whose property or poll is subject to taxation.

(4) Each list taker and assessor shall have power to subpoena any person for examination under oath whenever he has reasonable grounds for belief that such person has knowledge which is pertinent to the discovery or valuation of property subject to taxation in his township or which is necessary for compliance with the requirements, hereinafter set forth, as to what the tax list shall contain.

(5) The list takers and assessors shall perform such duties in connection with the making up of the tax records and in connection with the discovery of unlisted property as hereinafter specified.

(6) The list takers and assessors shall perform such other duties as may be by law imposed upon them; and they shall have and exercise all powers necessary to the proper discharge of their duties not inconsistent with the constitution or the statutes of this state. (1939, c. 310, s. 407.)

§ 105-291. Employment of experts.—The board of county commissioners in each county, at the request of the county supervisor of taxation, may in their discretion employ one or more persons having expert knowledge of the value of specific kinds or classes of property within the county, such as mines, factories, mills and other similar property, to aid and assist the county supervisor of taxation and the list takers and assessors in the respective townships, or to advise with, aid and assist the board of equalization and review in arriving at the true value in money of the property in the county. Such expert, or experts, so employed by the board of county commissioners shall receive for their services such compensation as the board of county commissioners shall designate. (1939, c. 310, s. 408.)

§ 105-292. Clerical assistants. — The county commissioners may, in their discretion, upon recommendation of the supervisor, employ such clerical assistants to the supervisor as they deem proper, and at such compensation and for such terms as they deem proper. Such assistants shall perform such duties as the commissioners or the supervisor may assign to them. (1939, c. 310, s. 409.)

§ 105-293. Tax commission.—In all counties having a tax commission, said commission shall do and perform all the duties required by this subchapter to be performed by county commissioners except levying taxes, and all expenses incurred by said tax commission or its appointees in accordance with this subchapter shall be paid by the

county commissioners out of the general county funds. (1939, c. 310, s. 410.)

Art. 15. Classification, Valuation and Taxation of Property.

§ 105-294. Taxes to be on uniform ad valorem basis as to class.—All property, real and personal, shall as far as practicable, be valued at its true value in money, and taxes levied by all counties, municipalities and other local taxing authorities shall be levied uniformly on valuations so determined. The intent and purpose of this subchapter is to have all property and subjects of taxation assessed at their true and actual value in money, in such manner as such property and subjects are usually sold, but not by forced sale thereof, and the words "market value," "true value," or "cash value," whenever used in the tax laws of this state, shall be held to mean for what the property and subjects can be transmuted into cash when sold in such manner as such property and subjects are usually sold: Provided, nothing in this section shall be construed as conflicting with or modifying the provisions of Schedule H, §§ 105-198 to 105-217, or the provisions of this subchapter classifying other property.

It is hereby declared to be the policy of this state so to use its system of real estate taxation as to encourage the conservation of natural resources and the beautification of homes and roadsides, and all tax assessors are hereby instructed to make no increase in the tax valuation of real estate as a result of the owner's enterprise in adopting any one or more of the following progressive policies:

1. Planting and care of lawns, shade trees, shrubs and flowers for non-commercial purposes.
2. Repainting buildings.
3. Terracing or other methods of soil conservation, to the extent that they preserve values already existing.
4. Protection of forests against fire.
5. Planting of forest trees on vacant land for reforestation purposes (for ten years after such planting). (1939, c. 310, s. 500.)

§ 105-295. Land and buildings.—In determining the value of land the assessors shall consider as to each tract, parcel or lot separately listed at least its advantages as to location, quality of soil, quantity and quality of timber, water power, water privileges, mineral or quarry or other valuable deposits, fertility, adaptability for agricultural, commercial or industrial uses, the past income therefrom, its probable future income, the present assessed valuation, and any other factors which may affect its value.

In determining the value of a building the assessors shall consider at least its location, type of construction, age replacement cost, adaptability for residence, commercial or industrial uses, the past income therefrom, the probable future income, the present assessed value, and any other factors which may affect its value. Buildings partially completed shall be assessed in accordance with the degree of completion on the day as of which property is assessed. (1939, c. 310, s. 501.)

Art. 16. Exemptions and Deductions.

§ 105-296. Real property exempt.—The following real property, and no other, shall be exempted from taxation:

(1) Real property, if directly or indirectly owned by the United States or this state, however held, and real property owned by the state for the benefit of any general or special fund of the state, and real property lawfully owned and held by counties, cities, townships, or school district, used wholly and exclusively for public or school purposes.

(2) Real property, tombs, vaults and mausoleums set apart for burial purposes, except such as are owned and held for purposes of sale or rental.

(3) Buildings, with the land upon which they are situated, lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(4) Buildings, with the land actually occupied, wholly devoted to educational purposes, belonging to, actually and exclusively occupied and used for public libraries, colleges, academies, industrial schools, seminaries, or any other institutions of learning, together with such additional adjacent land owned by such libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, and also buildings thereon used as residences by the officers or instructors of such educational institutions.

(5) Real property belonging to, actually and exclusively occupied by Young Men's Christian Associations and other similar religious associations, orphanages, or other similar homes, hospitals and nunneries not conducted for profit, but entirely and completely as charitable.

(6) Buildings, with the land actually occupied, belonging to the American Legion or Post of the American Legion or any benevolent, patriotic, historical, or charitable association used exclusively for lodge purposes by said societies or associations, together with such additional adjacent land as may be necessary for the convenient use of the buildings thereon.

(7) Property beneficially belonging to or held for the benefit of churches, religious societies, charitable, educational, literary, benevolent, patriotic or historical institutions or orders, where the rent, interest or income from such investment shall be used exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said institutions or orders.

(8) The exemptions granted in subsections three, four, five, six, seven and eleven of this section shall apply to real property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when such property is exclusively used for or the income therefrom is exclusively used for religious, charitable, educational or benevolent purposes within this state.

(9) The real property of Indians who are not citizens, except lands held by them by purchase.

(10) Real property falling within the provisions of § 55-11, appropriated exclusively for public parks and drives.

(11) Real property actually used for hospital purposes, including homes for nurses employed by or in training in such hospitals, held for or owned by hospitals organized and operated as non-stock, non-profit, charitable institutions, without profit to the members or their successors, notwithstanding that patients able to pay are charged for services rendered: Provided, all revenues or receipts of such hospitals shall be used, invested, or held for the purposes for which they are organized; and provided, further, that where hospital property is used partly for such hospital purposes and partly rented out for commercial and business purposes, then only such proportion of the value of such building and the land on which it is located shall be exempt from taxation as is actually used for such hospital purposes. The provisions of this section shall be effective as to taxes for the year one thousand nine hundred and thirty-six and subsequent years. (1939, c. 310, s. 600; 1941, c. 125, ss. 1, 2.)

§ 105-297. Personal property exempt.—The following personal property, and no other, shall be exempt from taxation:

(1) Personal property, directly or indirectly owned by this state and by the United States, and that lawfully owned and held by the counties, cities, towns, and school districts of the state, used wholly and exclusively for county, city, town, or public school purposes.

(2) The furniture and furnishings of buildings lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any church or religious body, and private libraries of such ministers and the teachers of the public schools of this state.

(3) The furniture, furnishings, books, and instruments contained in buildings wholly devoted to educational purposes, belonging to and exclusively used by churches, public libraries, colleges, academies, industrial schools, seminaries, or other institutions.

(4) The endowment and invested funds of churches and other religious associations, charitable, educational, literary, benevolent, patriotic or historical institutions, associations or orders, when the interest or income from said funds shall be used wholly and exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said associations.

(5) Personal property belonging to Young Men's Christian Associations and other similar religious associations, orphan and other similar homes, reformatories, hospitals, and nunneries which are not conducted for profit and entirely and completely used for charitable and benevolent purposes.

(6) The furniture, furnishings, and other personal property belonging to any American Legion, or Post of American Legion, patriotic, historical, or any benevolent or charitable association, when used wholly for lodge purposes and meeting rooms by said association or when such personal property is used for charitable or benevolent purposes.

(7) The exemptions granted in subsections two, three, four, five, six and eleven of this section shall apply to personal property of foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when such property is exclusively used or the income therefrom is exclusively used for religious, charitable, educational or benevolent purposes within this state.

(8) Wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments, provisions and live stock, not exceeding the total value of three hundred dollars ($300.00), and all growing crops: Provided, that said three hundred dollars ($300.00) exemption shall be limited to: (1) each household, consisting of the head of the household and all the dependents, one three hundred dollars ($300.00) exemption to be distributed among the members of the household as they see fit; and (2) each single person, not residing with persons on whom he is dependent, as to eligible property actually owned by him.

(9) The intangible personal property referred to in Schedule H, §§ 105-198 to 105-217, which said intangible personal property shall be taxed or exempt in accordance with the provisions of said Schedule H, §§ 105-198 to 105-217: Provided, that the provisions of this subsection shall not be construed to modify the provisions of Article 25 or Article 26 of this subchapter.

(10) Tangible personal property held at any seaport destined for and awaiting foreign shipment.

(11) The furniture, furnishings, books, instruments, and all other tangible or intangible personal property held for or owned by hospitals organized and operated as non-stock, non-profit, charitable institutions, notwithstanding that patients of such hospitals able to pay are charged for services rendered: Provided, all revenues or receipts of such hospitals shall be used, invested, or held for the purposes for which they are organized. The provisions of this section shall be effective as to any assessment for taxes for the year one thousand nine hundred and thirty-six and subsequent years. (1939, c. 310, s. 601; 1941, c. 125, ss. 3, 4.)

§ 105-298. Deductions and credits.—(a) Private hospitals shall not be exempt from property taxes and other taxes lawfully imposed, but in consideration of the large amount of charity work done by them, the boards of commissioners of the several counties are authorized and directed to accept, as valid claims against the county, the bills of such hospitals for attention and services voluntarily rendered to afflicted or injured residents of the county who are indigent and likely to become public charges, when such bills are duly itemized and sworn to and are approved by the county physician or health officer as necessary or proper; and the same shall be allowed as payments on and credits against all taxes which may be or become due by such hospital on properties strictly used for hospital purposes, but to that extent only will the county be liable for such hospital bills: Provided, that the board of aldermen or other governing boards of cities and towns shall allow similar bills against the municipal taxes for attention and services voluntarily rendered by such hospitals to paupers or other indigent persons resident in any such city or town: Provided further,

that the governing boards of cities and towns shall require a sworn statement to the effect that such bills have not and will not be presented to any board of county commissioners as a debt against that county, or as a credit on taxes due that county. The provisions of this subsection shall not apply to public hospitals or to hospitals organized and operated as non-stock, non-profit, charitable institutions, which, for the purposes of this subchapter, shall be deemed public hospitals: Provided, however, that nothing in this subsection shall affect the liability of counties, cities, and towns to public hospitals, as herein defined, for services heretofore or hereafter rendered indigent patients or public charges and for which such counties, cities, or towns are or may be otherwise liable.

(b) All bona fide indebtedness incurred in the purchase of fertilizer and fertilizer materials owing by a taxpayer as principal debtor may be deducted from the total value of all fertilizer and fertilizer materials as are held by such taxpayer for his own use in agriculture during the current year: Provided, further, that from the total value of cotton stored in this state there may be deducted by the owner thereof all bona fide indebtedness incurred directly for the purchase of said cotton and for the payment of which the cotton so purchased is pledged as collateral. (1939, c. 310, s. 602; 1941, c. 125, s. 5, c. 221, s. 3.)

Local Modification.—Buncombe, Rockingham: 1939, c. 310, s. 602.

§ 105-299. Article subordinate to sections 105-198 to 105-217.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Schedule H, §§ 105-198 to 105-217, but rather shall they be subordinate thereto. (1939, c. 310, s. 603.)

Art. 17. Real Property—Where and in Whose Name Listed.

§ 105-300. Place for listing real property.—All real property subject to taxation, and not hereinafter required to be assessed originally by the state board of assessment, shall be listed in the township or place where such property is situated. (1939, c. 310, s. 700.)

§ 105-301. In whose name real property to be listed; information regarding ownership; permanent listing.—(1) Except as hereinafter specified, real property shall be listed in the name of its owner; and it shall be the duty of the owner to list the same. To this end the board of county commissioners in any county may require the register of deeds, when any transfer of title is recorded, other than a mortgage or deed of trust, to certify the same to the supervisor (or if there be no supervisor acting at the time, to the person in charge of the tax records), and the record of the transfer shall be entered upon the tax records. The certification from the register to the supervisor or other person shall include the name of the person conveying the property, the name of the person to whom it is conveyed, the township in which the property is situated, a description of the property sufficient to identify it, and a statement as to whether the parcel is conveyed in whole or in part. For his services in this respect the register shall be allowed, if on fees, the sum of ten cents (10c) per transfer certified, to be paid by the county, and if on salary, such allowance as may be made by the board of commissioners.

It shall also be within the power of any board of commissioners, in its discretion, to require that each person recording such conveyance of real property shall, before presenting it to the register of deeds, present it to the person in charge of the tax records, in order that the conveyance may be noted on the tax records and in order that adequate information concerning the location of the property may be obtained from the person recording the conveyance. If such presentation is required by the commissioners of any county, the register of deeds of that county shall not accept for recording any conveyance which has not first been submitted to the person in charge of the tax records and such person has obtained information for the tax records which he regards as satisfactory. The commissioners may allow the person in charge of the tax records such compensation for this service as they deem appropriate, but they shall not require the person presenting the deed to pay any fee therefor.

It shall also be within the power of the commissioners to authorize the installation of a system for the permanent listing of real estate, under which all real estate may be carried forward by the supervisor, the list takers or some person or persons designated by the supervisor, in the name of the proper person as defined by this subchapter, without requiring that such real estate be listed each year by such person. No such system shall be installed without the approval of the state board of assessment; and when such a system is installed, with the approval of the board, the board may authorize the commissioners to make such modifications of the listing requirements of this subchapter as the board may deem necessary: Provided, that nothing herein shall require the board's approval for any such system installed prior to April 3, 1939.

Any county may, in the discretion of the commissioners, require that all real estate be listed only in the name of the owner of record at the close of the day as of which property is listed and assessed.

(2) For purposes of tax listing and assessing, the owner of the equity of redemption in any property which is subject to a mortgage or deed of trust shall be considered the owner of such real estate.

(3) Real property of which a decedent died possessed, not under the control of an executor or administrator, may be assessed to the heirs or devisees of the deceased without naming them until they have given notice of their respective names to the supervisor and of the division of the estate. It shall be the duty of any executor or administrator having control of real property to list it in his fiduciary capacity until he shall have been divested of control of such property. The right of an administrator, administering upon the estate of an intestate decedent, to petition for the sale of real estate to make assets shall not be considered as control of such real estate for purposes of this subdivision.

(4) A trustee, guardian or other fiduciary having legal title to real property shall be regarded as the owner of such property for purposes of tax listing, except as elsewhere in this section pro-

vided, and he shall list such property in his fiduciary capacity.

(5) Where undivided interests in real property are owned by tenants in common, not being copartners, the supervisor, upon request and in his discretion, may allow the property to be listed by the respective owners in accordance with their respective undivided interests.

(6) Real property belonging to a partnership or unincorporated association shall be listed in the name of such partnership or association.

(7) Real property owned by a corporation shall be listed in the name of the corporation.

(8) When land is owned by one party and improvements thereon or mineral, timber, quarry, water power, or similar rights therein are owned by another party, the parties may list their interests separately or may, in accordance with contractual relations between them, have the entire property listed in the name of the owner of the land. Where in such a case the land and improvements or rights are listed by the separate owners, the taxes levied on the improvements, or rights, shall be a lien on the land, and the land shall be subject to foreclosure for non-payment of such taxes in the same manner as if such taxes were levied directly against said land: Provided, nothing herein contained shall prevent said taxes from being also a lien on said improvements, or rights.

(9) A life tenant or tenant for the life of another shall be considered the owner of real property for purposes of tax listing, but he shall indicate when listing such property that he is a life tenant. The taxes levied on property listed in the name of a life tenant shall be a lien on the entire fee: Provided, that this shall not prevent the life tenant from being liable for the taxes under § 105-410.

(10) If the owner or person in whose name the real property should properly be listed, as set forth in the foregoing subdivisions of this section, is unknown, the property may be listed in the name of the occupant, and either or both shall be liable for the taxes; and if there be no occupant, then it may be listed as property the owner of which is unknown: Provided, that wherever the property is so listed against the occupant or an unknown owner, or through error the property has been listed against some person other than the owner as defined in this section, and the name of the true owner is subsequently ascertained, the tax records may be changed so as to list said property against the owner, and the change shall have the same force and effect as if the property has been listed against the owner in the first instance. (1939, c. 310, s. 701.)

Art. 18. Personal Property—Where and in Whose Name Listed.

§ 105-302. Place for listing tangible personal property.—(1) In general, all tangible personal property and polls shall be listed at the residence of the owner, except as otherwise provided in this section. For purposes of this section the residence of a person who has two or more places in which he occasionally dwells shall be the place at which he resided for the longest period of time during the year preceding the date as of which property is assessed. The residence of a corporation, partnership or unincorporated association, domestic or foreign, shall be the place of its principal office in this state, and if a corporation, partnership or unincorporated association has no principal office in this state, its tangible personal property may be listed at any place at which said property is situated provided said property has a taxable situs within the state.

(2) Farm products produced in this state, owned by the producers, shall be listed where produced.

(3) Tangible personal property taxable in this state, owned by an individual nonresident of this state, shall be listed where situated.

(4) Subject to the provisions of subsection two of this section, tangible personal property shall be listed at the place where such property is situated, rather than at the residence of the owner, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property. Property stored in public warehouses and merchandise in the possession of a consignee or broker shall be regarded as falling within the provisions of this subdivision.

(5) The tangible personal property of a decedent whose estate is in the process of administration or has not been distributed shall be listed at the place at which it would be listed if the decedent were still alive and still residing at the place at which he resided at the time of his death.

(6) Tangible personal property held by a trustee, guardian or other fiduciary having legal title thereto shall be listed at the place where such property would be listed if the beneficiary were the owner; and if there are several beneficiaries in a case in which such property would be listed at the residence of the owner, the value of the property shall be listed at the various residences of the beneficiaries in accordance with their respective interests. This subdivision shall effect only cases in which the beneficiaries are residents of this state, but it shall apply whether the fiduciary is a resident or nonresident of this state. Property delivered by executors or administrators to themselves or others as testamentary trustees shall be controlled by this subsection rather than by subsection five of this section.

(7) In any case where the beneficiary is a nonresident of this state, tangible personal property having a taxable situs in this state, held by a trustee, guardian or other fiduciary having legal title, shall be listed at the place it would be listed if the trustee or other fiduciary were the beneficial owner of such property. (1939, c. 310, s. 800.)

§ 105-303. Intangible personal property.—The listing, assessing, and taxation of intangible personal properties and the administration relative thereto shall be subject to the provisions of Schedule H, §§ 105-198 to 105-217. (1939, c. 310, s. 801.)

§ 105-304. In whose name personal property should be listed.—(1) In general, personal property shall be listed in the name of the owner thereof on the day as of which property is assessed; and it shall be the duty of the owner to list the same. The owner of the equity of redemption in personal property subject to a chattel mortgage shall be considered the owner of the prop-

erty; and the vendee of personal property under a conditional bill of sale, or under any other sale contract by virtue of which title to the property is retained in the vendor as security for the payment of the purchase price, shall be considered the owner of the property, provided he has possession of such property or the right to use the same.

(2) Personal property of a corporation, partnership, firm or unincorporated association shall be listed in the name of such corporation, partnership, firm, or unincorporated association.

(3) Personal property of which a decedent died possessed, not under the control of an executor or administrator, may be assessed to the next of kin or legatees of the decedent without naming them until they have given notice of their respective names to the supervisor and have likewise given notice of the distribution of the estate; and for this purpose such next of kin or legatees may be designated as "heirs." It shall be the duty of an executor or administrator having control of such property to list it in his fiduciary capacity until he shall have been divested of such control.

(4) A trustee, guardian, or other fiduciary having legal title to personal property shall be regarded as the owner thereof for purposes of this section.

(5) In cases in which two or more persons are joint owners of personal property, each shall list the value of his interest.

(6) If any dispute shall arise as to the true owner of personal property, the person in possession thereof shall be regarded as the owner unless the list taker or supervisor shall be convinced that some other person is the true owner. (1939, c. 310, s. 802.)

§ 105-305. Article subordinate to sections 105-198 to 105-217.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Schedule H, §§ 105-198 to 105-217, but rather shall they be subordinate thereto. (1939, c. 310, s. 803.)

Art. 19. What the Tax List Shall Contain and Miscellaneous Matters Affecting Listing.

§ 105-306. What the tax list shall contain.—Each taxpayer or person whose duty it is to list property for taxation shall file with the proper list taker a tax list setting forth, as of the day on which property is assessed, the following information:

(1) The name and residence address of the taxpayer.

(2) The age of the taxpayer, if he is a male taxpayer, listing in the township of his residence.

(3) Each parcel of real property owned or controlled in the township, not subdivided into lots, together with the number of acres cleared for cultivation, waste land, woods and timber, mineral, quarry lands, and lands susceptible of development for water power, and the total acreage. Each separate parcel shall be described by name, if it has one, and by specifying at least two adjoining landowners, or by such other description as shall be sufficient to locate and identify said land by parol testimony. If all or part of such land shall lie within the boundaries of any incorporated town or any district in which a special tax is levied, such fact shall be specified.

(4) Each parcel of manufacturing property owned or controlled in the township, not subdivided into lots, together with the number of acres in said parcel or the dimensions thereof, the name of such parcel, if any, and the names of at least two adjoining land owners, or such other description as shall be sufficient to locate and identify said property by parol testimony. If all or part of such land shall lie within the boundaries of any incorporated town or any district in which a special tax is levied, such fact shall be specified.

(5) Each lot owned or controlled in the township together with the dimensions of said lot, the location of said lot, its street number, if any, its number or location on any map filed in the office of the register of deeds or such other description as shall be sufficient to locate and identify it by parol testimony. If any such lot shall lie within the boundaries of an incorporated town or any district in which a special tax is levied, such fact shall be specified.

(6) In conjunction with the listing of any real property listed under subdivisions (3), (4), or (5) of this section, a short description of any improvements thereon, belonging to the taxpayer listing such real property, shall be given. And if some person other than the taxpayer listing such real property shall own mineral, quarry, timber, water power or other separate rights with respect thereto, or shall own any improvements thereon, such fact shall be specified, together with the name of the person owning such rights or improvements, and a short description of such rights or improvements; though the owner of the land may or may not list such separate rights or improvements for taxes in accordance with the provisions of this subchapter.

(7) All mineral, quarry, timber, water power or other separate rights owned by the taxpayer with respect to the lands of another, and all improvements owned by such taxpayer located upon the lands of another. Such rights or improvements shall be listed separately with respect to each parcel or lot of land which is listed separately by the owner thereof, and such parcel or lot shall be identified in the same manner as it is identified on the tax list of the person listing the same: Provided, that such rights or improvements shall not be taxed against the owner thereof if, under the provisions of this subchapter, they are listed for taxes by the owner of the land.

(8) Every person listing real property shall list, in connection with each parcel or lot, every encumbrance thereon, together with the amount due on such encumbrance and the name and address of the person to whom such amount is due.

(9) The amount and value of all machinery and fixtures.

(10) A special description of any improvements, having a value in excess of one hundred dollars ($100.00), which have been begun, erected, damaged or destroyed since the time of the last assessment of such property.

(11) A list of horses, mules, jacks and jennets, cattle, hogs, sheep, goats and other live stock, poultry and dogs, with the number and value of each class shown separately.

(12) The number of open female dogs and the number of other dogs.

(13) The amount and value of farm machinery,

farm utensils, and carriages, carts, wagons, buggies, or other vehicles and harness.

(14) The amount and value of household and kitchen furniture, libraries, scientific instruments, tools of mechanics, wearing apparel, and provisions of all kinds.

(15) The amount and value of merchandise, manufactured goods, or goods in the process of manufacture. This subdivision is intended to include all tangible personal property whatever held for the purpose of sale or exchange or held for use in the business of the taxpayer.

(16) The amount and value of all office furniture, fixtures and equipment.

(17) The number and value of all motor vehicles, tractors, trailers, bicycles, flying machines, pleasure boats of any and all kinds, and their appliances.

(18) The number and value of all seines, nets, fishing tackle, boats, barges, schooners, vessels, and all other floating property.

(19) The number and value of billboards and signboards and the value of other property used in outdoor advertising.

(20) The number and value of radios, talking machines and musical instruments.

(21) The value of plated or silverware, clocks, watches, firearms and jewelry.

(22) The amount and value of all cotton, tobacco or other farm products owned by the original producer, or held by the original producer in any public warehouse and represented by warehouse receipts, or held by the original producer for any cooperative marketing or grower's association, together with a statement of the amount of any advance against said products: Provided, the same need not be listed if grown in the preceding year, and shall not be subject to taxation for the year following the year in which grown, but shall be listed and taxed for any year thereafter.

(23) The amount and value of all other cotton, tobacco or other farm products.

(24) The amount and value of all fertilizer and fertilizer materials.

(25) The value and a description of all other property whatever, not especially exempted by law.

(26) An itemized list of any type of personal property when such itemization is required by the list taker or supervisor.

(27) A statement setting forth a list of license taxes for which the person, firm or corporation listing may be liable to the state under the provisions of Schedule "B", §§ 105-33 to 105-113; and also a statement of liability for tax on intangible personal property owned.

(28) The oath of the taxpayer hereinafter set forth. (1939, c. 310, s. 900; 1941, c. 221, s. 1.)

§ 105-307. Duty to list; penalty for failure.—It shall be the duty of every person, firm or corporation, in whose name any property or poll is to be listed under the terms of this subchapter, to list said property or poll with the proper list taker or the supervisor, within the time allowed by law, on a list setting forth the information required by this subchapter. In addition to all other penalties prescribed by law, any person, firm or corporation whose duty it shall be to list any poll or property, real or personal, who willfully fails, refuses or neglects to list the same within the time allowed by law, or who removes or conceals property for the purpose of evading taxation, shall be guilty of a misdemeanor; and any person, firm or corporation aiding or abetting the removal or concealment of property for the purpose of evading taxation shall be guilty of a misdemeanor. The failure to list shall be prima facie evidence that such failure was wilful, and the board of county commissioners shall present the names of all such persons, firms and corporations to the grand jury. (1939, c. 310, s. 901.)

§ 105-308. Oath of the taxpayer.—Before accepting any completed tax list, it shall be the duty of the list taker to read and actually to administer the following oath (or so much thereof as may be pertinent) which shall be subscribed by the person filing the list:

"I, ..., do solemnly swear (or affirm) (that I am an officer or agent of the taxpayer named on the attached list, that as such I am duly authorized to submit said list, that I am familiar with the extent and value of all said taxpayer's property subject to taxation in this township) that the above and foregoing list is a full, true and complete list of all and each kind of property which it is the duty of the above named taxpayer to list as owner or fiduciary, as said list indicates, in ..... Township, ... County, North Carolina; and that I have not in any way connived at the violation or evasion of requirements of law in relation to the assessment of property; so help me, God.

....."

(Signature)

So much of the foregoing oath as appears in the second parentheses shall be used only in cases in which the list is submitted by an officer or agent. Any list taker who accepts a list without administering said oath shall be guilty of a misdemeanor. (1939, c. 310, s. 902.)

§ 105-309. Listing by agents. — Corporations, partnerships, firms and unincorporated associations, females, nonresidents of the township in which the property is to be listed, and persons physically unable to attend and file a list may have their lists submitted and sworn to by an officer or agent; but the list shall be filed in the name of the principal. (1939, c. 310, s. 903.)

§ 105-310. Listing by mail.—All tax lists submitted by mail must be accompanied by the oath of the taxpayer, as prescribed in this subchapter, duly sworn to before a notary public or other officer authorized to administer oaths, and must be mailed to the supervisor. The supervisor may accept or reject any such list in his discretion. (1939, c. 310, s. 904.)

§ 105-311. Length of the listing period; preliminary work.—Tax listing shall begin on the day as of which property is assessed (or on the first business day thereafter if said day is a Sunday or a holiday) and shall continue for thirty days. The board of county commissioners of any county may extend the time for listing for not more than an additional thirty days: Provided, that in years of quadrennial assessment the board of county commissioners may extend the time for listing for not more than an additional sixty days.

Nothing in this section shall be construed to

prevent any preparatory work, prior to the beginning of listing, which may be necessary or expedient in connection with an efficient listing or assessing of property; nor shall it prevent the assessment of real property by the list takers prior to the actual time at which it is listed by its owner or carried forward on the tax records: Provided, that no final assessment shall be made by a list taker prior to the day as of which property is required by law to be assessed. (1939, c. 310, c. 905.)

§ 105-312. Records of tax exempt property.—The person making up the tax records shall enter, in regular order, the name of the owner, a clear description of all real and personal property exempt from taxation, together with a statement of its value, for what purpose used, and the rent, if any, obtained therefrom. Each list taker shall secure the necessary information with respect to such property in his township. The list of such exempt property, when completed, shall be delivered by the county supervisor of taxation to the register of deeds of the county on or before the first day of October, and the register of deeds, on or before the first day of November, shall make duplicates thereof and transmit such duplicates to the state board of assessment and shall file the original list of exempt property in his office. (1939, c. 310, s. 906.)

§ 105-313. Forms for listing and assessing property.—All forms and books used in the listing and assessing of property for taxation shall have the approval of the state board of assessment. The board may, in its discretion, design and prescribe such forms and make arrangements for their purchase and distribution through the division of purchase and contract, the cost of same being billed to the counties. (1939, c. 310, s. 907.)

§ 105-314. Article subordinate to sections 105-198 to 105-217.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Schedule H, §§ 105-198 to 105-217, but rather shall they be subordinate thereto. (1939, c. 310, s. 908.)

Art. 20. Special Provisions Affecting Motor Vehicle Owners, Warehousemen, etc.

§ 105-315. Information to be given by motor vehicle owners applying for license tags.—Every motor vehicle owner applying to the state department of motor vehicles for motor vehicle license tags shall specify in the application the county in which each such motor vehicle is subject to ad valorem taxation. If any such vehicle is not subject to ad valorem taxation in any county of this state, such fact, with the reason therefor, shall be stated in the application. No state license tags shall be issued to any applicant until the requirements of this subdivision have been met. The commissioner of motor vehicles shall, upon request from any county, send to the supervisor of such county a list of motor vehicles subject to ad valorem taxation in such county as shown by the commissioner's records of applications filed during the year preceding the day as of which property is to be assessed, and shall charge the county the sum of thirty cents (30c) per hundred names for the same, said amount to be used by the commissioner as compensation for the preparation of said list. (1939, c. 310, s. 1000; 1941, c. 36, s. 4.)

§ 105-316. Warehouses and co-operative growers' or marketing associations to furnish lists.—(1) Every warehouse company or corporation and every growers' or marketing association receiving for storage cotton, tobacco or other products, commodities or property, and issuing warehouse receipts for same, shall, on the day as of which property is assessed, furnish to the supervisor of the county in which such property is stored a full and complete list of all persons, corporations, partnerships, firms or associations for whom such property is stored, except in cases in which farm produce is stored for its original producer who is a resident of another county in this state, together with the amount of such property stored for each owner and the amount advanced against such property by the warehouse or association. In all cases in which farm produce is stored for its original producer, who is a resident of another county in this state, the names of such producers shall be sent to the supervisors of the respective counties in which such producers reside, together with the amount of such produce stored for them and the amount advanced against such produce by the warehouse or association.

(2) Warehouse companies and corporations and growers' and marketing associations shall not be liable for taxation on the property stored with them by others, provided lists of the owners and amounts of such property are furnished to the respective supervisors under the provisions of subdivision (1) of this section. If such lists are not so furnished within fifteen days after the day as of which property is assessed, such warehouse or association shall be liable to the respective counties for the tax upon the full value of such property; and if failure to furnish such list is continued for ten days after demand for same by the supervisor of any county, such warehouse or association shall be liable for a penalty of two hundred fifty dollars ($250.00), in addition to the taxes, to be recovered by the proper county in an action in the superior court, and both tax and penalty may be recovered in the same action. (1939, c. 310, s. 1001.)

§ 105-317. Reports by consignees and brokers.—Every person, corporation, partnership, or unincorporated association in possession of property on consignment, and all brokers dealing in tangible personal property who have in their possession such property belonging to others, shall file with the supervisor of taxation of the county in which such property is located a full and complete list of the owners of such property, together with the amount of such property owned by each: Provided, that if such property is farm produce owned by the original producer, who is a resident of this state, the name of the owner and the amount of such property shall be reported to the supervisor of the county of which such owner is a resident. Consignees and brokers failing to make such reports shall be liable to payment of the tax, and a penalty of two hundred fifty dollars ($250.00), in the same manner and under the conditions set forth in subdivision (2) of § 105-316. (1939, c. 310, s. 1002.)

§ 105-318. Private banks, bankers, brokers and security brokers.—Every bank (not incorporated), banker, broker or security broker, at the time fixed by this subchapter for listing and assessing all real and personal property, shall make out and furnish to the list takers and assessors a sworn statement showing:

(1) The amount of property on hand and in transit.

(2) The amount of funds owned in the hands of other banks, bankers or brokers.

(3) The amount of checks or other cash items, the amount of which is not included in either of the preceding items.

(4) The amount of bills receivable, discounted or purchased, bonds and other credits due or to become due, including interest receivable and accrued, but not due, and interest due and unpaid.

(5) All other property appertaining to said business, other than real estate, which real estate shall be listed under this subchapter.

(6) The amount of deposits made with them by any other person, firm or corporation.

(7) The amount of all accounts payable, other than current deposit accounts. (1939, c. 310, s. 1003.)

§ 105-319. Persons, firms, banks and corporations dealing in securities on commission taxed as a private banker.—No person, bank, or corporation, without a license authorized by law, shall act as a stockbroker or private banker. Any person, bank, or corporation that deals in foreign or domestic exchange, certificates of debt, shares in any corporation or charter companies, bank or other notes, for the purpose of selling the same or any other thing for commission or other compensation, or who negotiates loans upon real estate securities, shall be deemed a security broker. Any person, bank, or corporation engaged in the business of negotiating loans on any class of security or in discounting, buying or selling negotiable or other papers or credits, whether in an office for the purpose or elsewhere, shall be deemed to be a private banker. Any person, firm, or corporation violating this section shall pay a fine of not less than one hundred nor more than five hundred dollars for each offense. (1939, c. 310, s. 1004.)

§ 105-320. Partnerships; liability of partners for tax.—For the purpose of listing and assessing property, a copartnership shall be treated as an individual, and its property, real and personal, shall be listed in the name of the firm. Each partner shall be liable for the whole tax. (1939, c. 310, s. 1005.)

§ 105-321. Article not to be construed in conflict with sections 105-198 to 105-217.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Schedule H, §§ 105-198 to 105-217, but rather shall they be subordinate thereto. (1939, c. 310, s. 1006.)

Art. 21. Procedure Subsequent to the Close of the Tax Listing Period.

§ 105-322. Review of abstracts by supervisor and list takers.—After the close of the list taking period, and not later than the first meeting of the board of equalization and review, the supervisor shall examine the abstracts turned in by each list taker, and, unless he is satisfied that said list taker has satisfactorily performed the duties of a list taker, shall not approve payment of any compensation to said list taker.

The supervisor shall meet with each of the list takers not later than the first meeting of the board of equalization, for the purpose of reviewing the abstracts generally to ascertain if the same scales of value have been used in all townships in the county, and if property has been listed at the valuation prescribed by law. (1939, c. 310, s. 1100.)

§ 105-323. Making up the tax records.—The list takers for their respective townships, or such other persons as the commissioners may designate, shall make out, on forms approved by the state board of assessment, tax records which may consist of a scroll designed primarily to show tax valuations and a tax book designed primarily to show the amount of taxes or may consist of one record designated to show both valuations and taxes. Such records for each township shall be divided into four parts: (1) White individual taxpayers (including lists filed by corporate fiduciaries for white individual beneficiaries); (2) colored individual taxpayers (including lists filed by corporate fiduciaries for colored individual beneficiaries); (3) Indian individual taxpayers (including lists filed by corporate fiduciaries for Indian individual beneficiaries); and (4) corporations, partnerships, business firms and unincorporated associations. Such records shall show at least the following information:

(a) The name of each person whose property is listed and assessed for taxation, entered in alphabetical order.

(b) The amount of valuation of real property assessed for county-wide purposes (divided into as many classes as the state board may prescribe).

(c) The amount of valuation of personal property assessed for county-wide purposes (divided into as many classes as the state board may prescribe).

(d) The total amount of real and personal property valuation assessed for county-wide purposes.

(e) The amount of ad valorem tax due by each taxpayer for county-wide purposes.

(f) The amount of poll tax due by each taxpayer.

(g) The amount of dog tax due by each taxpayer.

(h) The amount of valuation of property assessed in any special district or subdivision of the county for taxation.

(i) The amount of tax due by each taxpayer to any special district or subdivision of the county.

(j) The total amount of tax due by the taxpayer to the county and to any special district, subdivision or subdivisions of the county.

All changes in valuations affected between the close of the listing period and the meeting of the board of equalization and review shall be reflected on such records, and so much of such records as may have been prepared shall be submitted to the board at its meetings. Changes made by said board shall also be reflected upon such records, either by correction, rebate or additional charge. (1939, c. 310, s. 1101.)

§ 105-324. Tax receipts and stubs.—Such persons as the county commissioners may designate shall fill out the receipts and stubs for all taxes charged upon the tax books. The form of such receipts and stubs shall be approved by the state board of assessment and shall show at least the following:

(a) The name of the taxpayer charged with taxes.

(b) The amount of valuation of real property assessed for county-wide purposes.

(c) The amount of valuation of personal property assessed for county-wide purposes.

(d) The total amount of valuations of real and personal property assessed for county-wide purposes.

(e) The rate of tax levied for each county-wide purpose, the total rate for all county-wide purposes, and the rate levied for any special district or subdivision of the county, which tax is charged to the taxpayer.

(f) The amount of the valuation of property assessed in any special district or subdivision of the county.

(g) The amount of ad valorem tax due by the taxpayer for county-wide purposes.

(h) The amount of poll tax due by the taxpayer.

(i) The amount of dog tax due by the taxpayer.

(j) The amount of tax due by the taxpayer to any special districts or subdivisions of the county.

(k) The total amount of tax due by the taxpayer to the county and to any special district, subdivision or subdivisions of the county.

(l) Amount of discounts.

(m) Amount of penalties. (1939, c. 310, s. 1102.)

§ 105-325. Disposition of tax records and receipts.—The tax records shall be filed in the office of the supervisor or official computing the taxes of the office of the accountant or clerk to the board of commissioners, as the commissioners may direct. The tax receipts and stubs shall be delivered to the sheriff or tax collector on or before the first Monday in October of the year one thousand nine hundred thirty-nine, and annually thereafter, provided he has made settlement as by law required, and the sheriff or tax collector shall receipt for the same. In the discretion of the commissioners, a duplicate copy of the tax books may be made and delivered to the sheriff or tax collector at the same time.

A list of all appeals pending before the state board of assessment shall be delivered with said receipts; and there shall be delivered with said receipts an order, a copy of which shall be spread upon the minutes of the commissioners, directing the sheriff or tax collector to collect said taxes, which order shall have the force and effect of a judgment and execution against the property, real and personal, charged in the tax book and receipts, and shall be in substantially the following form:

"North Carolina, ... County, ... City. To the Sheriff of Tax Collector of ..... County, or ..... City, or Town:

You are hereby authorized, empowered and commanded to collect the taxes set forth in the tax books, filed in the office of ....., and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth, and such taxes are hereby declared to be a first lien on all real property of the respective taxpayers in ..... County, or ..... City or Town, and this order shall be a full and sufficient authority to direct, require and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this ..... day of ....., 19.....

.....(Seal)

Chairman, Board of Commissioners.

Attest:

.....

Clerk of Board." (1939, c. 310, s. 1103.)

§ 105-326. Compensation of officer computing taxes.—The board of county commissioners shall make an order for the payment to the register of deeds, auditor, tax clerk, supervisor, or other official such sum as may be in their discretion a proper compensation for the work of computing taxes, making out the tax book and copies thereof, and the making of such reports as may be required by the state board of assessment; but the compensation allowed for computing the taxes and making out the tax book is not to exceed ten cents (10c.) for each name appearing on the tax book, which shall include the original and duplicate tax book and also the receipts and stubs provided for in this subchapter. (1939, c. 310, s. 1104.)

§ 105-327. County board of equalization and review.—(1) Personnel.—The county board of equalization and review of each county shall be composed of the board of county commissioners. Nothing in this subchapter shall be construed as repealing any law creating a special board of equalization and review, or creating any board charged with the duty of equalization and review in any county.

(2) Compensation.—The members of the board of equalization and review shall be allowed the same per diem compensation and traveling expense, while actually engaged in the performance of their duties, as is ordinarily paid to the members of the board of county commissioners, such compensation to be paid by the county.

(3) Oath.—Before entering upon their duties each member of the board of equalization and review shall take and subscribe to the following oath and file the same with the clerk of the board of county commissioners: "I do solemnly swear (or affirm) that I will faithfully discharge my duties as a member of the Board of Equalization and Review of ..... County, North Carolina; and that I will not allow my actions as a member of said board to be influenced by personal or political friendships or obligations.

....."

(Signature.)

(4) Clerk.—The supervisor shall act as clerk to said board, shall be present at all meetings and give to the board such information as he may have or can obtain with respect to the valuation of taxable property in the county.

(5) Time of Meeting.—Said board shall hold its first meeting on the eleventh Monday follow-

ing the day on which tax listing began, and may adjourn from time to time as its duties may require; but it shall complete its duties not later than the third Monday following its first meeting.

(6) Notice of Meeting.—Notice of the time, place and purpose of the first meeting of said board shall be given by publishing said notice at least three times in some newspaper published in the county, the first publication to be at least ten days prior to said meeting.

(7) Powers and Duties.—(a) It shall be the duty of the board of equalization and review to equalize the valuation of all property in the county, to the end that such property shall be listed on the tax records at the valuation required by law; and said board shall correct the tax records for each township so that they will conform to the provisions of this subchapter.

(b) The board shall, on request, hear any and all taxpayers who own or control taxable property assessed for taxation in the county in respect to the valuation of such property or the property of others.

(c) The board shall examine and review the tax lists of each township for the current year; shall, of its own motion or on sufficient cause shown by any person, list and assess any real or personal property or polls subject to taxation in the county omitted from said lists; shall correct all errors in the names of persons, in the description of property, and in the assessment and valuation of any taxable property appearing on said lists; shall increase or reduce the assessed value of any property which in their opinion shall have been returned below or above the valuation required by law; and shall cause to be done whatever else shall be necessary to make said lists comply with the provisions of this subchapter: Provided, that said board shall not change the valuation of any real property from the value at which it was assessed for the preceding year except in accordance with the terms of §§ 105-278, and 105-279.

(d) The board may appoint committees, composed of its own members or other persons, to assist it in making any investigations necessary in its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county: Provided, that the board may, in its discretion, require the taxpayer to pay the cost of any appraisal by experts demanded by him when said appraisal does not result in material reduction of the valuation of the property appraised and where such valuation is not subsequently reduced materially by the board or by the state board of assessment.

(e) The board may subpoena witnesses, or books, records, papers and documents reasonably considered to be pertinent to the decision of any matter pending before it; and any member of the board may administer oaths to witnesses in connection with the taking of testimony. The chairman of the board shall sign the subpoena, and such subpoena shall be served by any officer qualified to serve subpoenas. (1939, c. 310, s. 1105.)

Local Modification.—Mecklenburg: 1941, c. 209; Wayne: 1941, c. 69.

§ 105-328. Giving effect to the decisions of the board.—All changes in names, descriptions or valuations made by the board of equalization shall be reflected upon the tax records by correction, rebate or additional charge; and when all such changes have been given effect, and the scroll or tax book has been totaled, the members of the board of equalization, or a majority thereof, shall sign a statement at the end of the scroll or tax book to the effect that the scroll is the fixed and permanent tax list and assessment roll for the current year, subject to the provisions of this subchapter. The omission of such endorsement shall not affect the validity of said scroll or tax book, or of any taxes levied on the basis of the valuations appearing in it. (1939, c. 310, s. 1106.)

§ 105-329. Appeals from the board of equalization and review to the state board of assessment.—Any property owner, taxpayer, or member of the board of county commissioners may except to the order of the board of equalization and review and appeal therefrom to the state board of assessment by filing a written notice of such appeal with the clerk of the board of county commissioners within sixty days after the adjournment of the board of equalization and review. At the time of filing such notice of appeal the appellant shall file with the clerk to the board of county commissioners a statement in writing of the grounds of appeal, and shall, within ten days after filing such notice of appeal with the clerk to the board of county commissioners, file with the state board of assessment a notice of such appeal and attach thereto a copy of the statement of the grounds of appeal filed with the clerk to the board of county commissioners. Each taxpayer or ownership interest shall file separate and distinct appeals; no joint appeals shall be considered except by and with consent of the state board of assessment.

The state board of assessment shall fix a time for the hearing of such appeal, and shall hear the same in the city of Raleigh, or such other place within the state as the said board may designate; shall give notice of time and place of such hearing to the appellant, appellee, and to the clerk to the board of county commissioners at least ten days prior to the said hearing; shall hear all the evidence or affidavits offered by the appellant, appellee, and the board of county commissioners, shall reduce, increase, or confirm the valuation fixed by the board of equalization and review and enter it accordingly, and shall deliver to the clerk of the board of county commissioners a certified copy of such order, which valuation shall be entered upon the fixed and permanent tax records and shall constitute the valuation for taxation. (1939, c. 310, s. 1107.)

§ 105-330. Powers of the commissioners with respect to the records after adjournment of the board of equalization.—After the board of equalization has finished its work and the changes effected by it have been given effect on the tax records, the board of county commissioners may not authorize any changes to be made on said records except as follows:

(1) To give effect to the decision of the state board of assessment on appeal.

(2) To add to the records any valuation certified by the state board of assessment with respect to property assessed in the first instance by

said state board, or to give effect to any valid corrections made in such assessments by the state board.

(3) To correct the name of any taxpayer appearing on said records erroneously, or to substitute the name of the person who should have listed property for the name appearing on the records as listing said property, or to correct descriptions on said records, and any such corrections or substitutions shall have the same force and effect as if the name of the taxpayer or the description had been correctly listed in the first instance.

(4) To correct valuations or taxes appearing erroneously on the records as the result of clerical errors.

(5) To add any discovered property under the provisions of this subchapter.

(6) To reassess property when the supervisor reports that, since the completion of the work of the board of equalization, facts have come to his attention which render it advisable to raise or lower the assessment of some particular property of a given taxpayer: Provided, that no such reassessment shall be made unless it could have been made by the board of equalization had the same facts been brought to the attention of said board of equalization: Provided further, that this shall not authorize reassessment because of events or circumstances not taking place or arising until after the tax listing day.

(7) The board of county commissioners may give the supervisor general authority to make any changes under this section except those under subsection (six); but neither the board nor the supervisor shall make any changes under subsection (three) or (six) which adversely affect the interests of any taxpayer without giving such taxpayer written notice and an opportunity to be heard prior to final determination. (1939, c. 310, s. 1108.)

§ 105-331. Discovery and assessment of property not listed during the regular listing period. —(1) Duty of Commissioners, Supervisors and List Takers; Carrying Forward Real Estate.—It shall be the duty of the members of the board of commissioners, the supervisor and the list takers to be constantly looking out for property and polls which have not been listed for taxation. After any tax list or abstract has been delivered to a list taker, the supervisor or the board of county commissioners, and such list taker, supervisor or board of county commissioners shall have reason to believe or sufficient evidence upon which to form a belief that the person, firm or corporation making such list or abstract, in person or by agent, has other personal property, tangible or intangible, money, solvent credits, or other thing liable for taxation, they or either of them shall take such action as may be needful to get such property on the tax list.

Either the list takers for the respective townships, the clerical assistants to the supervisor or the supervisor, as the supervisor may designate, shall examine the tax lists for the current year and the tax records for the preceding year, and carry forward all real property which was listed for the preceding year which has not been listed for the current year. In the discretion of the supervisor, such property may be listed on an abstract signed by the official or employee carrying it forward in the name of the taxpayer, or may be entered directly on the tax scroll or tax book by such official or employee. When such property is so listed in the name of the owner or in the name of the person last listing the same, the listing shall be as valid in every respect as if made by the owner; provided, that such listing shall not render any person individually liable to pay the taxes who is not under a duty to list such property.

(2) Procedure upon Discovery.—When property or polls are discovered they shall be listed in the name of the taxpayer by the supervisor or some person designated by him. The clerk to the board of commissioners or the supervisor shall mail a notice to the taxpayer at his last known address (or, if unknown, to the occupant or person in possession of such property) to the effect that the board of equalization at a designated meeting (or the county commissioners at their next regular meeting, in case the discovery is not made in time for consideration by the board of equalization) will assess the value of said property or approve the listing of said poll. At such meeting the board shall hear any objections presented by said taxpayer, render its decision and, if necessary under said decision, assess said property, subject to appeal to the state board of assessment, or approve the listing of said poll. Said property and polls may then be added to the regular tax records or placed in a separate record designated "Late Listings," which shall have the same force and effect as the regular records: Provided, nothing herein shall prevent valuation of such property or listing of such polls by agreement between the supervisor and taxpayer without action by the board of equalization or board of commissioners: Provided, further, nothing herein shall prevent the carrying forward of real estate, listed for the prior year in accordance with the terms of this subchapter, without notice to the owner or last person listing said realty unless, in years other than revaluation years, the valuation of such property is raised.

All property and polls not listed during the regular listing period shall, when eventually listed under this section or by the person carrying forward real estate, immediately be subject to the taxes for the various years for which listed or assessed, together with the penalties hereinafter set forth.

(3) Assessment for Previous Years; Penalties. —The county commissioners may assess any such property or list such poll for the preceding years during which it escaped taxation, not exceeding five, in addition to the current year. When real property is discovered which should have been listed for the current year, it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless the taxpayer shall produce satisfactory evidence that such property was actually listed for taxes during those years or some of them; provided, that this presumption shall not apply when real property is carried forward from the preceding year's records.

When personal property is discovered which should have been listed for the current year, it shall be presumed that such property should have been listed by the same taxpayer for the preceding five years, unless the taxpayer shall produce satisfactory evidence that such property was not

in existence, that it was actually listed for taxation or that it was not his duty to list the same during said years or some of them. Where it is shown that such property should have been listed by some other taxpayer during a part or all of such preceding years, it may be assessed against such other taxpayer for the proper years, with the penalties as hereinafter prescribed.

In a proper case, property may be listed for one or more prior years during which it escaped taxation, even though it has been regularly listed for the current years, is no longer in existence or is no longer subject to taxation in this state.

The penalty for failure to list property or a poll before the close of the regular listing period shall be ten per cent (10%) of the tax levied for the current year on such property or poll. Where such property or poll is taxed for years preceding the current year, the penalty, in addition to that for the current year, shall be ten per cent (10%) per annum. The minimum penalty shall be one dollar ($1.00). Taxes assessed for years preceding the current year shall be assessed at the rate of tax prevailing in the various preceding years.

The taxes and penalties for each year shall be shown separately on the records, but for the purpose of tax collection and foreclosure the total of all such taxes and penalties shall be regarded as taxes for the current year; and the schedule of discounts and penalties for payment or nonpayment of current taxes shall apply to such taxes and penalties for failure to list, despite the fact that such taxes and penalties for failure to list may not have been levied until the penalties for failure to pay have already accrued.

(4) Commissioners' Power to Compromise.—The board of county commissioners or the governing body of any municipal corporation is hereby authorized and empowered to settle or adjust all claims for taxation arising under this section or any other section authorizing them to place on the tax list any property omitted therefrom.

(5) Application to Cities and Towns.—The provisions of this section shall extend to all cities, towns and other municipal corporations having power to tax property or polls, and the power conferred and the duties imposed upon the board of county commissioners shall be exercised and performed by the governing body of the municipal corporation.

(6) Power to Employ Searchers.—The county commissioners, either separately or in conjunction with one or more municipal corporations in the county, may employ one or more competent men to make a diligent search and to discover and report to the board or the supervisor any unlisted property within the county, to the end that the same may be listed and assessed for taxation as provided in this section: Provided, nothing herein shall be construed as allowing a board of commissioners to appoint a tax collector unless it is otherwise authorized to do so by law.

(7) Tax Receipts.—Tax receipts for the taxes and penalties assessed against the property discovered shall be made up under the provisions of this subchapter, shall be delivered to the sheriff or tax collector, who shall be charged with the same, and shall have the same force and effect and shall be a lien on the property in the same manner as if they had been delivered to the sheriff or tax collector at the time of the delivery of the regular tax bills for the current year.

(8) Appeals.—Appeals may be had from the assessment fixed by the board of equalization or commissioners to the state board of assessment. Notice of said appeal must be served upon the clerk to the board of commissioners within sixty days after the assessment is fixed, and said appeal shall be in conformity with the provisions of this subchapter respecting appeals from boards of equalization. Each taxpayer or ownership interest shall file separate and distinct appeals; no joint appeals shall be considered except by and with consent of the state board of assessment.

(9) Classified Property.—Any property, discovered and listed under the provisions of this section, entitled to classification under the provisions of this subchapter, shall be classified and assessed in accordance with said provisions. (1939, c. 310, s. 1109.)

Art. 22. Assessment Procedure of Cities and Towns.

§ 105-332. Status of property and polls listed for taxation.—All property and polls validly listed for taxation in any county, municipal corporation or taxing district shall be thereby also validly listed for taxation by any county, municipal corporation or taxing district in which it has a taxable situs. Said situs shall be determined by the rules prescribed in this subchapter. (1939, c. 310, s. 1200.)

§ 105-333. Tax lists and assessment powers of cities and towns.—All cities and towns may obtain their tax lists from the county records without securing lists signed by the taxpayers, or may set up their own machinery for securing lists from the taxpayers, in the discretion of the governing body.

All cities and towns not situated in more than one county shall accept the valuations fixed by the county authorities, as modified by the state board of assessment, under the provisions of this subchapter: Provided, that nothing in this section shall be construed to modify the authority given to cities and towns under this subchapter with respect to discovered property.

With the exception of the provisions relating to dog taxes, the provisions of §§ 105-323 to 105-326 shall apply to cities and towns; and city and town governing bodies shall have the same powers conferred and the duties imposed by said sections upon the board of county commissioners, and wherever counties are referred to in said sections it shall be construed to include also cities and towns. (1939, c. 310, s. 1201.)

§ 105-334. Cities and towns situated in more than one county.—For the purpose of municipal taxation, all real and personal property and polls subject to taxation by cities and towns situated in two or more counties shall be listed and assessed as hereinafter set forth.

(1) The governing body of each such city or town shall, in quadrennial years, on or before the date fixed for the appointment of the county supervisor, appoint a city supervisor of taxation, and two or more persons to act as list takers and assessors, each of whom, including the super-

visor, shall have been resident freeholders in such city or town for a period of not less than twelve months. In years other than quadrennial years such governing body shall, on or before the date fixed for appointment of the county supervisor, appoint one resident freeholder as city supervisor of taxation and, in its discretion, one or more persons to act as list takers and assessors, each of whom shall have been a resident of such city or town for at least twelve months.

(2) With respect to property to be listed for taxation in the city or town the city supervisor shall have the same powers and duties given to the county supervisor under the terms of this subchapter; and the city list takers and assessors shall have the same powers and duties given to county list takers and assessors under the terms of this subchapter; and the procedure of listing and assessing shall be, as nearly as possible, the same as that specified for county listing and assessing under the terms of this subchapter.

(3) The governing body of each such city or town may designate some officer or employee of the city or appoint some other person to supervise the preparation of the tax records and receipts, and to make such reports as the state board of assessment may request or require, and may employ such clerical assistance in this connection as it may deem advisable.

Such governing body shall also be vested with the same powers and duties, with respect to the listing of property for city taxation, as are vested by this subchapter in the county commissioners with respect to the listing of property for county taxation, and shall, with the city supervisor as chairman, sit as a board of equalization and review; and appeals may be taken from said city board of equalization to the state board of assessment in the same manner as provided in this subchapter for appeals from the county boards of equalization.

(4) The intent and purpose of this section is to provide such cities and towns as lie in two or more counties only with the machinery necessary for listing and assessing taxes for municipal purposes. The powers to be exercised by and the duties imposed on such boards of aldermen, boards of commissioners or other governing bodies, boards of equalization and review, city supervisor of taxation, list takers and assessors, city clerk and taxpayers shall be the same, and they shall be subjected to the same penalties as provided in this subchapter for all boards of county commissioners, county auditors, registers of deeds, clerks of boards of county commissioners, county supervisors, list takers and assessors. The county commissioners in their discretion may adopt the tax lists, scroll, or assessment roll of such city or town as fixed and determined by the board of equalization and review of such cities or towns, and when so adopted, shall be considered to all intent and purpose the correct and valid list and the fixed and determined assessment roll for the purpose of county taxation.

(5) All expenses incident to the listing and assessing of the property for the purpose of municipal taxation as aforesaid shall be borne by the city or town for whose benefit the same is undertaken; provided, that where the county or counties in which such city or town lies shall adopt the list and the fixed, determined assessment of the city board of equalization and review, the county board of commissioners may reimburse the governing body in such amounts as in their discretion may be proper. (1939, c. 310, s. 1202.)

Art. 23. Reports to the State Board of Assessment and Local Government Commission.

§ 105-335. Report of valuation and taxes.—The clerk of the board of county commissioners, auditor, tax supervisor, tax clerk, county accountant or other officer performing such duties shall, at such time as the board may prescribe, return to the state board of assessment on forms prescribed by said board an abstract of the real and personal property of the county by townships, showing the number of acres of land and their value, the number of town lots and their value, the value of the several classes of live stock, the number of white and negro polls, separately, and specify every other subject of taxation and the amount of county tax payable on each subject and the amount payable on the whole. At the same time said clerk, auditor, supervisor or other officer shall return to the state board of assessment an abstract or list of the poll, county and school taxes payable in the county, setting forth separately the tax levied on each poll and on each hundred dollars value of real and personal property for each purpose, and also the gross amount of every kind levied for county purposes, and such other and further information as the state board of assessment may require. (1939, c. 310, s. 1300.)

§ 105-336. Clerks of cities and towns to furnish information.—The clerk or auditor of each city and town in this state shall annually make and transmit to the state board of assessment, on blanks furnished by said board, a full, correct, and accurate statement showing the assessed valuation of all property, tangible and intangible, within his city or town, and separately the amount of all taxes levied therein by said city or town, including school district, highway, street, sidewalk, and other similar improvement taxes for the current year, and the purposes for which the same were levied; and shall annually furnish to the local government commission a complete and detailed statement of the bonded and other indebtedness of the city or town, the accrued interest on the same, whether not due or due and unpaid, and the purposes for which said indebtedness was incurred. (1939, c. 310, s. 1301.)

§ 105-337. County indebtedness to be reported.—The auditor or county accountant of each county in this state shall make and deliver annually to the local government commission a full, correct and accurate statement of the bonded and other indebtedness of his county, including township, school districts, and special tax districts, the purposes for which the same was incurred, and all accrued interest, whether not due or due and unpaid. (1939, c. 310, s. 1302.)

§ 105-338. Penalty for failure to make report.—Every register of deeds, auditor, county accountant, supervisor of taxation, assessor, sheriff, clerk of superior court, clerk of board of county commissioners, county commissioners, board of Aldermen or other governing body of a city or

town, mayor, clerk of city or town, or any other public officer, who shall willfully fail, refuse, or neglect to perform any duty required, to furnish any report to the state board of assessment or local government commission as prescribed in this subchapter or the revenue act, or who shall wilfully and unlawfully hinder, delay or obstruct said board in the discharge of its duties, shall, for every such failure, neglect, refusal, hindrance or delay, in addition to the other penalties imposed in this subchapter and the revenue act, pay to the state board of assessment or local government commission for the general fund of the state the sum of one hundred dollars ($100.00), such sum to be collected by said board or local government commission. A delay of thirty days to make and furnish any report required or to perform a duty imposed shall be prima facie evidence that such delay was wilful. (1939, c. 310, s. 1303.)

Art. 24. Levy of Taxes and Penalties for Failure to Pay Taxes.

§ 105-339. Levy of taxes.—The tax levying authorities of the several counties, cities, towns and special districts shall, not later than Wednesday after the third Monday in August, levy such rate of tax for the general county purposes as may be necessary to meet the general expense of the county, not exceeding the legal limitation, and such rates for other purposes as may be authorized by law. (1939, c. 310, s. 1400.)

§ 105-340. Date as of which lien attaches.— The lien of taxes levied on property and polls listed pursuant to this subchapter shall attach to real estate as of the day as of which property is listed, regardless of the time at which liability for the tax may arise or the exact amount thereof be determined.

All penalties, interest and costs allowed by law shall automatically be added to the amount of such lien and shall be regarded as attaching at the same time as the lien for the principle amount of the taxes. Said lien shall attach to all real property of the taxpayer in the taxing unit.

Taxes, interest, penalties and cost shall be a lien on personal property from and after levy on or attachment and garnishment of such property. (1939, c. 310, s. 1401.)

§ 105-341. Levy of poll tax.—(1) There shall be levied by the board of county commissioners in each county a tax of two dollars ($2.00) on each taxable poll or male person between the ages of twenty-one and fifty years, and the taxes levied and collected under this section shall be for the benefit of the public school fund and the poor of the county.

(2) The board of county commissioners of every county shall have the power to exempt any person from the payment of poll taxes on account of indigency, and when any such person has been once exempted he shall not be required to renew his application unless the commissioners shall revoke the exemption. When such exemption shall have been made, the clerk of the board of county commissioners shall furnish the person with a certificate of such exemption, and the person to whom it is issued shall be required to list his poll, but upon exhibition of such certificate the list taker shall annually enter in the column intended for the poll the word "exempt," and the poll shall not be charged in computing the list.

(3) Cities and towns may levy a poll tax not exceeding that authorized by the constitution, and poll taxes so levied and collected may be used for any purpose permitted by law. (1939, c. 310, s. 1402.)

§ 105-342. What veterans exempt from poll tax; world war veterans. — Any honorably discharged veteran of any of the wars of the United States, now a resident of, and subject to capitation or poll tax in this State, and who received injuries in the line of duty in the military service, whether compensable or not, and all such honorably discharged veterans that have been, or are now, receiving compensation from the Federal Government for disability of service connected origin, shall be conclusively considered and presumed as having physical infirmities sufficient to warrant exemption from the payment of the capitation or poll tax under Article five, section one, of the Constitution of North Carolina: Provided, however, that with respect to veterans of the World War, this section and § 105-343 shall apply only to those who served not less than ninety days during the period between April sixth, one thousand nine hundred seventeen, and November eleventh, one thousand nine hundred eighteen, or to those of such veterans who served with the United States forces in Russia during the period between April sixth, one thousand nine hundred seventeen, and April first, one thousand nine hundred twenty. (1931, c. 193, s. 1.)

§ 105-343. Proof of service and injury must be furnished; exemption by county commissioners. — The veteran or soldier claiming exemption under § 105-342 shall furnish proof of such service and injury by producing to the board of commissioners of his county his or her discharge or release or certificate of such service or injury, signed by a recognized official of the United States War Department or the Adjutant General's office of this State, and said discharge, release or certificate shall be recorded with the register of deeds of such county prior to tax listing date in the year in which exemption is claimed under §§ 105-342 and 105-343. It shall be the duty of the register of deeds at or before tax listing time in each county, to notify the board of county commissioners of the registration with him of such discharge, release or certificate and thereupon, upon application of the veteran, said board of county commissioners may take the action authorized by §§ 105-342 and 105-343. (1931, c. 193, s. 2.)

§ 105-344. Exemption of pensions or compensations from taxation.—Every person receiving a pension or compensation from the state, or United States, or any foreign country or government, for and on account of wounds or physical disabilities contracted or sustained during the late war between the United States and Germany, and any of the allied countries coöperating with the United States, shall not be required to pay any tax of any kind upon such pension or com-

pensation, but the same shall be exempted from any and all taxes. This section shall apply to all such taxes for the year one thousand nine hundred and twenty-three, and thereafter. (1923, c. 259; C. S. 5168(aa).)

§ 105-345. Penalties and discounts for nonpayment of taxes.—All taxes assessed or levied by any county, city, town, special district or other political subdivision of this state, in accordance with the provisions of this subchapter, shall be due and payable on the first Monday of October of the year in which they are so assessed or levied, and if actually paid in cash:

(1) On or before the first day of November next after due and payable, there shall be deducted a discount of one-half of one per cent (½ of 1%).

(2) After the first day of November and on or before the first day of February next after due and payable, the tax shall be paid at par or face value.

(3) After the first day of February and on or before the first day of March next after due and payable, there shall be added to the tax a penalty of one per cent (1%).

(4) After the first day of March and on or before the first day of April next after due and payable, there shall be added to the tax a penalty of two per cent (2%).

(5) On and after the second day of April the penalty shall be, in addition to said two per cent (2%), one-half of one per cent per month or fraction thereof until paid from said day on the principal amount of such taxes, which shall continue to accrue on taxes not included in a certificate of sale and which, on taxes included in a certificate of sale, shall continue to accrue until the date of such certificate.

(6) Should any taxpayer desire to make a prepayment of his taxes between July first and October first of any year, he may do so by making payment to the county or city accountant, city clerk, auditor or treasurer, as the governing body may determine, and shall be entitled to the following discounts: If paid on or before July first, a deduction of two per cent (2%); if paid during the month of July, a deduction of one and one-half per cent (1½%); if paid during the month of August, a deduction of one per cent (1%). (1939, c, 310, s. 1403.)

Local Modification.—Beaufort: 1937, c. 65; Iredell: 1941, c. 332.

Art. 25. Banks, Banking Associations, Trust Companies and Building and Loan Associations.

§ 105-346. Banks, banking associations and trust companies.—The value of shares of stock of banks, banking associations, and trust companies shall be determined as follows:

(1) Every bank, banking association, industrial bank, savings institution, trust company, or joint-stock land bank located in this state shall list its real estate and tangible personal property, except money on hand, in the county in which such real estate and tangible personal property is located for the purpose of county and municipal taxation, and shall, during the second calendar month following the month in which local tax listing begins each year, list with the state board of assessment, on forms provided by the said state board, in the name of and for its shareholders, all the shares of its capital stock, whether held by residents or nonresidents, at its actual value on the day as of which property is assessed under this subchapter.

(2) The actual value of such shares for the purpose of this section shall be ascertained by adding together the capital stock, surplus, and undivided profits, and deducting therefrom the assessed value of such real and tangible personal property which such banking institutions shall have listed for taxation in the county or counties of this state wherein such real and tangible personal property is located, together with an amount according to its proportion of tax value of any buildings and lands wholly or partially occupied by such banking associations, institutions or trust companies, owned and listed for taxation by a North Carolina corporation in which such banking associations or institutions own ninety-nine per cent (99%) of the capital stock.

(3) In addition to the deductions allowed in item two of this section, there may be deducted from the items of surplus and undivided profits an amount not exceeding five per cent (5%) of the bills and notes receivable of such banking associations, institutions, or trust companies to cover bad or insolvent debts, investments in North Carolina state bonds, United States government bonds, joint-stock land bank bonds, and federal land bank bonds, at the actual cost of said bonds owned on and continuously for at least ninety days prior to the day as of which property is assessed in the current year. The value of such shares of capital stock of such banking associations, institutions, or trust companies shall be found by dividing the net amount ascertained above by the number of shares in the said banking associations, institutions or trust companies.

(4) If the state board of assessment shall have reason to believe that the actual value of such shares of stock of such banking associations, institutions, or trust companies, as listed with it, is not the true value in money, then the said board shall ascertain such true value by such an examination and investigation as seems proper, and increase or reduce the value as so listed to such an amount as it ascertains to be the true value for the purposes of this section.

(5) The value of the capital stock of all such banking associations, institutions, and trust companies as found by the state board of assessment, in the manner herein described, shall be certified to the county and municipality in which such bank or institution is located: Provided, that if any such banking association, institution, or trust company shall have one or more branches, the state board of assessment shall make an allocation of the value of the capital stock so found as between the parent and branch bank or banks or trust company in proportion to the deposits of the parent and branch bank, banks, or trust company, and certify the allocated values so found to the counties and municipalities in which the parent and the branch bank, banks, or trust company are located.

(6) The taxes assessed upon the shares of stock

of any such banking associations, institutions, or trust companies shall be paid by the cashier, secretary, treasurer, or other officer or officers thereof, and in the same manner and at the same time as other taxes are required to be paid in such counties, and in default thereof such cashier, secretary, treasurer, or other accounting officer, as well as such banking association, institution, or trust company, shall be liable for such taxes, and in addition thereto for a sum equal to ten per cent (10%) thereof. Any taxes so paid upon any such shares may, with the interest thereon, be recovered from the owners thereof by the banking association, institution, or trust company or officers thereof paying them, or may be deducted from the dividends accruing on such shares. The taxation of such shares of capital stock shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state coming in competition with the business of such banking associations, institutions, or trust companies.

(7) In case of the failure or refusal of any bank, banking association or trust company to make and deliver to the state board of assessment any statement or statements required by this subchapter, such bank, banking association or trust company shall forfeit and pay to the state of North Carolina the sum of one hundred dollars ($100.00) for each additional day such report is delinquent beyond the last day of the month in which said report is required to be made, such penalty to be sued for and recovered in any proper form of action in the name of the state of North Carolina on the relation of the state board of assessment, and such penalty, when collected, shall be paid into the general fund of the state. (1939, c. 310, s. 1500.)

§ 105-347. Building and loan associations.—(1) The secretary of each building and loan association organized and/or doing business in this state shall list with the local assessors all the tangible real and personal property owned on the day as of which property is assessed each year, which shall be assessed and taxed as like property of individuals.

(2) All foreign building and loan associations doing business in this state shall list for taxation, during the second calendar month following the month in which local tax listing begins each year, with the state board of assessment, through their respective agents, its stock held by citizens of this state, with the name of the county, city, or town in which the owners of said stock reside. In listing said stock for taxation the withdrawal value as fixed by the by-laws of each such association shall be furnished to the said board, and the stock shall be valued for taxation at such withdrawal value.

Any association or officer of such association doing business in the state who shall fail, refuse or neglect to so list shares owned by citizens of this state for taxation shall be barred from doing business in this state; any local officer or other person who shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed, neglected, or refused to so list for taxation the stock held by citizens of this state shall be guilty of a misdemeanor, and fined and/or imprisoned in the discretion of the court.

The value of the shares of stock so held by citizens of this state, as found by the state board of assessment, shall be certified to the register of deeds of the county in which such shareholders reside, shall be placed on the assessment roll in the name of such holders thereof, and taxed as other property is taxed. (1939, c. 310, s. 1501.)

§ 105-348. Article not to conflict with sections 105-198 to 105-217.—None of the provisions contained in any of the sections of this article shall be construed to conflict with Schedule H, §§ 105-198 to 105-217, but rather shall they be subordinate thereto. (1939, c. 310, s. 1502.)

§ 105-349. State board to keep record of all corporations, etc.; secrecy enjoined.—The state board of assessment shall prepare and keep a record book in which it shall enter a correct list of all the corporations, limited partnerships, joint-stock associations, banks, banking associations, industrial banks, savings institutions, and trust companies which it has assessed for taxation, and said record shall show the assessed valuation placed upon them; and the state board of assessment shall not divulge or make public any report of such corporation, partnership, or association required to be made to it, except as provided in this subchapter or the Revenue Act. (1939, c. 310, s. 1503.)

Art. 26. Public Service Companies.

§ 105-350. Telegraph companies.—Every joint-stock association, company, copartnership or corporation, whether incorporated under the laws of this state or any other state or any foreign nation, engaged in transmitting to, from, through, in, or across the state of North Carolina telegraph messages shall be deemed and held to be a telegraph company; and every such telegraph company shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by oath of the officer or agent of such company making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock of such association, company, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or cor-

poration situated outside the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina.

Ninth. Such other and further information as the state board of assessment may require. (1939, c. 310, s. 1600.)

§ 105-351. Telephone companies.—Every telephone company doing business in this state, whether incorporated under the laws of this state or any other state, or of any foreign nation, shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment of this state a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock of such association, company, copartnership, or corporation invested in the operation of such telephone business.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership, or corporation and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation, situated outside of the state of North Carolina, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships, and incorporated towns within the state of North Carolina.

Ninth. Such other and further information as the state board of assessment may require. (1939, c. 310, s. 1601.)

§ 105-352. Express companies. — Every joint-stock association, company, copartnership, or corporation, incorporated or acting under the laws of this state or any other state, or any foreign nation, engaged in carrying to, from, through, in or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, freight, or other articles, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents or receivers thereof, provided such joint-stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this subchapter; and every such express company shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such association, company, copartnership or corporation making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock or capital of said association, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share; and in case no shares of capital stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by the said association, company, copartnership or corporation, and subject to local taxation within the state of North Carolina, and the location and assessed value thereof in each county where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by the association, company, copartnership or corporation situated outside the state of North Carolina, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight, or express matter; (b) the to-

tal length of such lines or routes as are outside the state of North Carolina; (c) the length of such lines or routes within each of the counties, municipalities and townships within the state of North Carolina.

Ninth. Such other and further information as the state board of assessment may require. (1939, c. 310, s. 1602.)

§ 105-353. Sleeping-car companies. — Every joint-stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other state, or of any foreign nation, and conveying to, from, through, in or across this state, or any part thereof, passengers or travelers in palace cars, drawingroom cars, sleeping cars, dining cars, or chair cars, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping-car company for the purposes of this subchapter, and shall hereinafter be called "sleeping-car company"; and every such sleeping car company doing business in this state shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the day as of which property is assessed next preceding, showing:

First. The total capital stock of such sleeping car company invested in its sleeping-car business.

Second. The number of shares of such capital stock devoted to the sleeping-car business issued and outstanding and the par or face value of each share.

Third. Under the laws of what state it is incorporated.

Fourth. Its principal place of business.

Fifth. The names and post office addresses of its president and secretary.

Sixth. The actual cash value of the shares of such capital stock devoted to its sleeping-car business on the day as of which property is assessed next preceding such report.

Seventh. The real estate, structures, machinery, fixtures, and appliances owned by said sleeping-car company and subject to local taxation within this state, and the location and assessed value thereof in each county within this state where the same is asesssed for local taxation.

Eighth. All mortgages upon the whole or any part of its property, and the amounts thereof, devoted to its sleeping-car business.

Ninth. (a) The total length of the main line of railroad over which cars are run; (b) the total length of so much of the main lines of railroad over which the said cars are run outside of the state of North Carolina; (c) the length of the lines of railroads over which said cars are run within each of the counties within the state of North Carolina: Provided, that where the railroads over which said cars run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but single tracks; and in case it shall be required, such statement shall show in detail the number of miles of each or any particular railroad or system within the state. When the assessment shall have been made by the state board of assessment in accordance with § 105-358, the board shall thereupon notify the officer attesting such report of the amount assessed against it, and such sleeping-car company shall have twenty days within which to appear and make objection, if any it shall have, to said assessment. If no objection be made within twenty days, the state board of assessment shall certify to the county commissioners of the several counties through which such cars are used the value of the property of such sleeping-car company within such county in the proportion that the number of miles of railroad over which such cars are used in said county bears to the number of miles of railroad over which such cars are used within the state, together with the name and postoffice address of the officers attesting such report of such sleeping-car company, with the information that tax bills, when assessed, are to be sent to him by mail; and such value, so certified, shall be assessed and taxed the same as other property within said county. And when the assessment shall have been made in such county, the sheriff or county tax collector shall send to the address given by the state board of assessment to the county commissioners a bill for the total amount of all taxes due to such county, and such sleeping-car company shall have sixty days thereafter within which to pay said taxes; and upon failure of and refusal to do so such taxes shall be collected the same as other delinquent taxes are, together with a penalty of fifty per cent (50%) added thereto, and costs of collection. (1939, c. 310, s. 1603.)

§ 105-354. Refrigerator and freight-car companies.—Every person, firm, or corporation owning refrigerator or freight cars operated over or leased to any railroad company in this state or operated in the state shall be taxed in the same manner as hereinbefore provided for the taxing of sleeping-car companies, and the collection of the tax thereon shall be followed in assessing and collecting the tax on the refrigerator and freight cars taxed under this section: Provided, if it appears that the owner does not lease the cars to any railroad company, or make any contract to furnish it with cars, but they are furnished to be run indiscriminately over any lines on which shipper or railroad companies may desire to send them, and the owner receives compensation from each road over which the car runs, the state board of assessment shall ascertain and assess the value of the average number of cars which are in use within the state as a part of the necessary equipment of any railroad company for the year ending with the day as of which property is assessed, next preceding the report, and the tax shall be computed upon this assessment. In making distribution of any taxable valuation by virtue of the provisions of this section, the state board of assessment shall give primary consideration to the county or counties in which the taxpayer has the greater car mileage. (1939, c. 310, s. 1604.)

§ 105-355. Street railway, waterworks, electric light and power, gas, ferry, bridge, and other public utility companies.—Every street railway com-

pany, waterworks company, electric light and power company, gas company, ferry company, bridge company, canal company, and other corporations exercising the right of eminent domain, shall, during the second calendar month following the month in which local tax listing begins each year, make out and deliver to the state board of assessment a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the copartnership or corporation, showing:

First. The total capital stock of such association, company, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the day as of which property is assessed next preceding; and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county, municipality and township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation situate outside of the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situate.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of lines within each of the counties, municipalities and townships within the state of North Carolina.

Ninth. Such other and further information as the state board of assessment may require. (1939, c. 310, s. 1605.)

§ 105-356. State board of assessment may require additional information. — Upon the filing of the statements required in the preceding sections the state board of assessment shall examine the same and, if the board shall deem the same insufficient, or in case it shall deem that other information is requisite, it shall require such officer to make such other and further statements as said board may call for. In case of the failure or refusal of any bank, association, company, copartnership, or corporation to make out and deliver to the state board of assessment any statement or statements required by this subchapter, such bank, association, company, copartnership, or corporation shall forfeit and pay to the state of North Carolina one hundred dollars ($100.00) for each additional day such report is delayed beyond the last day of the month in which required to be made, to be sued for and recovered in any proper form of action in the name of the state of North Carolina on the relation of the state board of assessment, and such penalty, when collected, shall be paid into the general fund of the state. (1939, c. 310, s. 1606.)

§ 105-357. State board of assessment shall examine statements.—The state board of assessment shall thereupon value and assess the property of each association, company, copartnership, or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom and upon such other information as the board may have or obtain. For that purpose it may require the agents or officers of said association, company, copartnership, or corporation to appear before it with such books, papers, and statements as it may require, or may require additional statements to be made, and may compel the attendance of witnesses in case the board shall deem it necessary to enable it to ascertain the true cash value of such property. (1939, c. 310, s. 1607.)

§ 105-358. Manner of assessment.—Said state board of assessment shall first ascertain the true cash value of the entire property owned by the said association, company, copartnership, or corporation from said statement or otherwise for the purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, copartnership, or corporation in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, copartnership, or corporation shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital in case there should be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership, or corporation. Such state board of assessment shall, for the purpose of ascertaining the true cash value of property within the state of North Carolina, next ascertain from such statements or otherwise the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated within and without the state of North Carolina and not in any manner used in the general business of such associations, companies, copartnerships or corporations, which assessed value for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said state board of assessment shall next ascertain and assess the true cash value of the property, including intangible personal property, of the associations, companies, copartnerships, or corporations within the state of North Carolina by taking as a guide, as far as practicable, the proportion of the whole aggregate value of said associations, companies, copartnerships as above ascertained, after deducting the assessed value of such real estate without the state which the length of lines of said associations, companies, copartnerships or corporations, in the

case of telegraph and telephone companies, within the state of North Carolina bears to the total length thereof, and in the case of express companies and sleeping-car companies the proportion shall be in proportion of the whole aggregate value after such deduction, which the length of lines or routes within the state of North Carolina bears to the whole length of lines or routes of such associations, companies, copartnerships or corporations, and such amounts so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the state of North Carolina: Provided, the board shall, in valuing the fixed property in this state, give due consideration to the amount of gross and net earnings per mile of line in this state, and any other factor which would give a greater or less value per mile in this state than the average value for the entire system. From the entire value of the property within the state so ascertained there shall be deducted by the state board of assessment the assessed value for taxation of all real estate, structures, machinery, and appliances within the state listed with the local taxing authorities of this state if used in the general business of the taxpayer and subject to local taxation in the counties, as hereinbefore described in §§ 105-352 to 105-357, inclusive, and the assessed value for taxation of all intangible personal property returned and assessed under the provisions of Schedule H, §§ 105-198 to 105-217, and the residue of such value as ascertained, after deducting therefrom the assessed value of such properties, shall be by said board assessed to said associations: Provided, the state board of assessment shall also assess the value for taxation of all structures, machinery, appliances, pole lines, wire and conduit of telephone and telegraph companies within the state subject to local taxation, but land and buildings located thereon owned by said companies shall be assessed in like manner and by the same officials as though such property was owned by individuals in this state. (1939, c. 310, s. 1608.)

§ 105-359. Value per mile.—Said state board of assessment shall thereupon ascertain the value per mile of the property within the state by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state, by the number of miles within the state, and the result shall be deemed and held as value per mile of the property of such association, company, copartnership, or corporation within the state of North Carolina: Provided, the value per mile of telephone and telegraph companies shall be determined on a wire mileage basis. (1939, c. 310, s. 1609.)

§ 105-360. Total value for each county and municipality.—Said board of assessment shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, copartnership, or corporation in each county in the state through, across, and into or over which the lines of said association, company, copartnership or corporation extend, multiply the value per mile, as above ascertained, by the number of miles in each of such counties as reported in said statements or as otherwise ascertained, and the result thereof shall be by the secretary of said state board certified to the chairman of the board of county commissioners, respectively, of the several counties through, into, over, or across which the lines or routes of said association, company, copartnership, or corporation extend: Provided, the total value of street railways, electric light, power and gas companies, as determined in § 105-358 to be certified to each county, shall be the proportion which the locally assessed value of the physical property in each county bears to the total assessed value of the physical property in the state. Distribution and certification by the state board of assessment to the municipalities and other local taxing jurisdictions shall follow the same general rules governing such distribution to the several counties of the state with respect to value per mile and total value as herein set out. All taxes due the state from any corporation taxed under the preceding sections shall be paid by the treasurer of each company direct to the commissioner of revenue. (1939, c. 310, s. 1610.)

§ 105-361. Companies failing to pay tax; penalty.—In case any such association, company, copartnership, or corporation as named in this subchapter shall fail or refuse to pay any taxes assessed against it in any county, municipality or other taxing jurisdiction in this state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state of North Carolina by the solicitors of the different judicial districts of the state on the relation of the board of commissioners of the different counties of this state and the judgment in said action shall include a penalty of (50%) of the amount of taxes as assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the lines or routes of any association, company, copartnership, or corporation shall extend, or in any county where such association, company, copartnership, or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership, or corporation shall have refused to pay the whole of the taxes assessed against the same by the state board of assessment, or in case such association, company, copartnership, or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, such action may include the whole or any portion of the taxes so unpaid in any county or counties; but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions to each separate county or adjoining counties, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits shall be by said board accounted for as a credit to the respective counties for or on account of which such collections were made by the said board at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the state, and upon such settlement being made the treasurers of the several counties shall, at their next settlement, enter credits upon the proper duplicates in their offices, and at the next settlement with such county, report

the amount so received by him in his settlement with the state, and proper entries shall be made with reference thereto: Provided, that in any such action the amount of the assessments fixed by said state board of assessment and apportioned to such county shall not be controverted. (1939, c. 310, s. 1611.)

§ 105-362. State board made appraisers for public utilities. — The state board of assessment herein established is constituted a board of appraisers and assessors for railroad, canal, steamboat, hydroelectric, street railway, and all other companies exercising the right of eminent domain. (1939, c. 310, s. 1612.)

§ 105-363. Returns to state board by railroads, etc., companies.—The president, secretary, superintendent or other principal accounting officer within this state of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this state or not, shall, during the second calendar month following the month in which local tax listing begins each year, return to the state board of assessment, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within the state, viz: The number of miles of such railroad lines in each county and municipality in this state, and the total number of miles in the state, including the roadbed, right-of-way and super structures thereon, main and side tracks, depot buildings and depot grounds, section and tool houses and the land upon which they are situated and necessary to their use, water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad, or used in the daily operation, whether situated on the charter right-of-way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the state board of assessment, Pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: Provided, however, that all machines and repair shops, general office buildings, storehouses and contents thereof, located outside of the right-of-way shall be listed for purposes of taxation by the principal officers or agents of such companies with the list takers of the county where the real and personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the state board of assessment. It shall be the duty of the tax supervisor, county accountant and register of deeds, if requested so to do by the state board of assessment, to certify and send to the said board a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the board in accordance with § 105-365, before the apportionment is made to the counties and municipalities. The tax supervisor, county accountant and register of deeds shall also certify to the board the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the performance of the duties of their offices as the said board shall require of them; and the mayor of each city or town shall cause to be sent to the said board the local rate of taxation for municipal purposes. (1939, c. 310, s. 1613.)

§ 105-364. Railroads; annual schedule of rolling stock, etc., to be furnished to state board. — The movable property belonging to a railroad company shall be denominated, for the purposes of taxation, "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this state shall, during the second calendar month following the month in which local tax listing begins each year, return a list or schedule to the state board of assessment which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand-cars, and all other kinds of cars, and the value thereof, and a statement or schedule as follows:

(1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or, if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the state; (5) the total assessed value of all tangible property in the state. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the board, and with reference to amounts and value on the day as of which property is assessed for the year for which the return is made. (1939, c. 310, s. 1614.)

§ 105-365. Railroads; tangible and intangible property assessed separately. — (a) At such dates as real estate is required to be assessed for taxation the said board of assessment shall first determine the value of the tangible property of each division or branch of such railroad or rolling stock and all the other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as is in the case of private property.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted) as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property, and the franchise, as thus determined, shall be the true value of the property for the purpose of ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in such county bears to the entire length of each division or branch thereof, and the state board of assessment shall certify, on or before the first day of September, or as soon thereafter as practicable, to the chairman of the county commissioners and to the mayor of each city or

incorporated town the amounts apportioned to his county, city or town. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts. (1939, c. 310, s. 1615.)

§ 105-366. Railroads; valuation where road both within and without state.—When any railroad has part of its road in this state and part thereof in any other state, the said board shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the state board of assessment of such company as provided in § 105-365, and divide it in the proportion to the length such main line of road in this state bears to the whole length of such main line of road and determine the value in this state accordingly: Provided, the board shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in the month following the month in which said reports are required to be made, the said board shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said board may, if they see fit, require all argument and communications to be presented in writing. (1939, c. 310, s. 1616.)

§ 105-367. Railroads; in cases of leased roads.—If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed; and if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this state other than that which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company. (1939, c. 310, s. 1617.)

§ 105-368. Railroads; board may subpoena witnesses and compel production of records; penalty for failure to furnish required information.—The state board of assessment shall have power to summon and examine witnesses and require that books and papers shall be presented to them for the purpose of obtaining such information as may be necessary to aid in determining the valuation of any railroad company. Any president, secretary, receiver, or accounting officer, servant or agent of any railroad or steamboat company having any proportion of its property or roadway in this state who shall refuse to attend before the said board when required to do so, or refuse to submit to the inspection of said board any books or papers of such railroad company in his possession, custody, or control, or shall refuse to answer such questions as may be put to him by said board, or order touching the business or property, monies and credits, and the value thereof, of said railroad company, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be confined in the jail of the county not exceeding thirty days, shall be fined in any sum not exceeding five hundred dollars ($500.00) and costs, and any president, secretary, accounting officer, servant, or agent aforesaid so refusing as aforesaid shall be deemed guilty of contempt of such board, and may be confined, by order of said board, in the jail of the proper county until he shall comply with such order and pay the cost of his imprisonment. (1939, c. 310, s. 1618.)

§ 105-369. Taxes on railroads shall be a lien on property of the same.—The taxes upon any and all railroads in this state, including roadbed, right-of-way, depots, side tracks, ties, and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the day as of which property is assessed in each current year, against all claims or demands whatsoever of all persons or bodies corporate except the United States and this state, and the above described property or any part thereof may be taken and held for payment of all taxes assessed against said railroad company in the several counties of this state. (1939, c. 310, s. 1619.)

§ 105-370. Board of assessment to certify apportionment of valuation to counties and municipalities; payment of local taxes.—The state board of assessment shall, upon completion of the assessment directed in the preceding sections, certify to the register of deeds or tax supervisor of the counties and the clerk of the board of commissioners of the municipalities through which said companies operate the apportionment of the valuations as hereinbefore determined and apportioned by the board, and the board of county commissioners and taxing authorities of municipalities or other taxing jurisdictions respectively, shall assess against such valuation the same tax imposed for county, township, town, or other tax district purposes, as that levied on all other property in such county, township, town, or other taxing districts. This tax shall be paid to the sheriff or tax collector of the county and municipality. (1939, c. 310, s. 1620.)

§ 105-371. Canal and steamboat companies.—The property of all canal and steamboat companies in this state shall be assessed for taxation as above provided for railroads. In case any officer fails to return the property provided in this section, the board shall ascertain the length of such property in this state, and shall assess the same in proportion to the length at the highest rate at which property of that kind is assessed by them. (1939, c. 310, s. 1621.)

Art. 27. Collection and Foreclosure of Taxes.

§ 105-372. Definitions.—As used in this article, unless the context otherwise indicates:

(1) "Tax collector" or "collector" means sheriffs, tax collectors and all other officials charged with the duty of collecting taxes levied by or for counties, cities, school districts, road districts or other political subdivisions of this state.

(2) "Taxes" means property taxes (other than taxes levied under Schedule H, §§ 105-198 to 105-217), poll taxes and dog taxes levied by or for

counties, cities, school districts, road districts or other political subdivisions of this state.

(3) "Taxing unit" means any county, city, school district, road district or other political subdivision of this state by or for which taxes are levied.

(4) "City" means any incorporated city or town.

(5) "District" means any taxing unit other than counties and cities.

(6) "Person" means any individual, firm, corporation, company, partnership, trust, estate, or fiduciary. (1939. c. 310, s. 1700.)

§ 105-373. Appointment, terms, qualifications and bond of city tax collectors.—The governing body of each city in this state shall appoint a tax collector, who shall be some person of character and integrity, with experience in business or in collection work, to collect taxes levied by the city governing body. The governing body may, in its discretion, designate some official or employee of the city who has other duties, to perform also the duties of tax collector. The governing body shall fix the compensation of said collector and, subject to the provisions of this article, shall prescribe the amount of his bond and approve the sureties thereon. Any premiums on said bond shall be paid in such manner as the governing body may direct. No tax collector shall be allowed to begin his duties until he shall have furnished bond satisfactory to the governing body; nor shall any collector be permitted to continue collecting taxes after his bond has expired without renewal; nor shall any collector be allowed to collect any taxes not covered by his bond.

The collector shall serve for a term of one year and until his successor has been appointed and has qualified. The governing body may, during his term, remove him from office, for good cause shown, upon notice in writing and after giving him an opportunity to appear and be heard at a public session of said governing body: Provided, that no hearing shall be necessary in case of removal for failure to meet the conditions prerequisite prescribed by this article for the delivery of the tax books. Any vacancy caused by removal, resignation, death or otherwise shall be filled, for the unexpired term, by appointment of the governing body, unless otherwise provided by this article.

Appointments under this article shall be made during the first week in July, one thousand nine hundred thirty-nine, and annually thereafter. Until the first such appointments are made, city taxes shall be collected by the collectors now provided by law, notwithstanding any repealing clauses contained in this article.

Nothing in this section shall be construed to change the manner of appointment or term of any collector who collects both city and county taxes, or of any city collector whose manner of appointment or term is governed by the city charter. (1939, c. 310, s. 1701.)

§ 105-374. County sheriffs and tax collectors.—County and district taxes shall be collected by the sheriffs or tax collectors as provided by law: Provided, that district taxes levied by county commissioners and collected by county officials may, for collection and foreclosure purposes, be treated in the same manner as county taxes. (1939, c. 310, s. 1702.)

§ 105-375. General duties of tax collectors. — It shall be the duty of each tax collector to employ all lawful means for the collection of all taxes in his hands; to give such bond as may be required of him; to perform such duties in connection with the preparation of the tax records, receipts and stubs as the governing body may direct; to keep adequate records of all collections; and to account for all moneys coming into his hands. At each regular meeting of the governing body he shall submit a report of the amount collected on each year's taxes in his hands, the amount remaining uncollected, and the steps he is taking to encourage or enforce payment. The governing body may, at any time, require him to make settlement in full for all taxes in his hands. The governing body may also, at any time, require the collector to send out tax bills or notices, make personal calls upon delinquent taxpayers, or proceed to enforce payment by any lawful means. In addition to the taxes hereinbefore in this article defined, all license, privilege and franchise taxes levied by the taxing unit by which he is employed shall be collected by the collector.

The successor in office of any tax collector may continue and complete any process of tax collection, or any proceeding authorized by this article, begun by his predecessor. (1939, c. 310, s. 1703.)

§ 105-376. The tax lien and discharge thereof.—(a) Priority of the Tax Lien on Real Property.—(1) The lien of taxes shall attach to real property at the time hereinbefore in this subchapter prescribed.

(2) The liens of taxes of all taxing units shall be of equal dignity and shall be superior to all other assessments, charges, rights, liens, and claims of any and every kind in and to said property, regardless of by whom claimed and regardless of whether acquired prior or subsequent to the attachment of said lien for taxes: Provided, that nothing herein shall be construed as affecting such relative priority as may be prescribed by the Revenue Act for the lien of state taxes.

(3) The priority of the lien shall not be affected by transfer of title to the real property after the lien has attached, nor shall it be affected by death, receivership or bankruptcy of the owner of said property.

(b) Discharge of the Lien on Realty; Release of Separate Parcels.—The tax lien shall continue until the taxes, plus interest, penalties, and costs as allowed by law, have been fully paid.

When the lien of taxes of any taxing unit for any year attaches to two or more parcels of real estate owned by the same taxpayer, said lien may be discharged as to any parcel, at any time prior to advertisement of tax foreclosure sale, in the following manner: (1) Upon payment, by or on behalf of the listing taxpayer, of the taxes for said year on the parcel or parcels sought to be released, with penalties and interest thereon, plus all personal property, poll and dog taxes owed by said taxpayer for the same year, with interest and penalties thereon, and all costs allowed by law; or (2) upon payment, by or on behalf of any person (other than said listing taxpayer) having an

interest in said property, of the taxes for said year on the parcel or parcels sought to be released, with interest and penalties thereon, plus a proportionate part of personal property, poll and dog taxes owed by said listing taxpayer for the same year, with interest and penalties thereon, and a proportionate part of costs allowed by law. The proportionate parts shall be determined by the percentage of the total assessed value of the taxpayer's real estate represented by the assessed value of the parcel or parcels sought to be released.

Nothing in this section shall be construed to affect the rights of any holder of a tax sale certificate, other than a taxing unit, with respect to any certificate held on April 3, 1939.

When real estate listed as one parcel is subdivided, a part thereof may be released in the same manner, after the value of such part for tax purposes has been determined by the county tax supervisor or, if there is no supervisor, by the county accountant, and certified by him to the collector.

It shall be the duty of every collector accepting a payment, made under this section for the purpose of releasing less than all of the taxpayer's real property, to give the person making the payment a receipt setting forth the description of such property appearing on the tax list and bearing a statement that such property is being released; and it shall also be his duty to indicate the property released on the official records of his office. In case of failure on the part of the collector to issue such receipt or make such record, the omission may be supplied at any time.

When any parcel of real estate has been released, under this section, from the lien of taxes of any taxing unit for any year, such property shall not thereafter be subject to the lien of any other regularly assessed taxes of the same taxing unit for the same year, whether such other taxes be levied against the listing owner of said property or against some other person acquiring title thereto. No tax foreclosure judgment for such other taxes shall become a lien on such released property; and, upon appropriate request and satisfactory proof of release by any interested person, the clerk of the superior court shall indicate on the judgment docket that such judgment is not a lien on said released property: Provided, that failure to make such entry shall not have the effect of making said judgment a lien on said released property.

(c) Priority of Lien on Personal Property.—The tax lien, when it attaches to personal property, shall, in so far as it represents taxes assessed against the property to which it attaches, be superior to all other liens and rights, whether such other liens and rights are prior or subsequent to the tax lien in point of time. In so far as said tax lien represents taxes not assessed against such property, said tax lien on personal property shall be inferior to prior valid liens and superior to all subsequent liens. As between the liens of different taxing units, the lien first attaching shall be superior.

(d) Preference Accorded Taxes in Liquidation of Debtor's Estates.—In all cases in which a taxpayer's assets are in the hands of a receiver or assignee for the benefit of creditors, or are otherwise being liquidated or managed for the benefit of creditors, the taxes owed by such debtor, together with interest, penalties and costs, shall be a preferred claim, second only to administration expenses and specific liens: Provided, that this shall not be construed to modify or reduce the priority by this subchapter given to tax liens on real property or, in case of levy or attachment, the priority by this subchapter given to tax liens on personal property. (1939, c. 310, s. 1704.)

§ 105-377. All interested persons charged with notice of taxes.—All persons who have or may acquire any interest in any property which may be or may become subject to a lien for taxes are hereby charged with notice that such property is or should be listed for taxation, that taxes are or may become a lien thereon, and that if taxes are not paid such proceedings may be taken against said property as are allowed by law. Such notice shall be conclusively presumed, whether such persons have actual notice or not. (1939, c. 310, s. 1705.)

§ 105-378. Prepayments.—Payments on taxes, made before the tax books have been turned over to the collector, shall be made to such official as the governing body of the taxing unit may designate, and the official so designated shall give bond satisfactory to said governing body. If, at the time of such prepayment, the tax rate has not been finally fixed or the valuation of the taxpayer's property has not been finally determined, the prepayment may be made on the basis of the best information available to the collecting official. If it subsequently develops that there has been an overpayment, the excess shall be refunded by the taxing unit, without interest. If it develops that there has been an underpayment, the taxpayer shall be required to pay the balance due, and shall be allowed the same discount or charged the same penalty on such balance as in force with respect to other taxes for the same year at the time such balance is paid. Receipts issued for payments made on the basis of an estimate shall so state, and such receipts shall not release property from the tax lien; but official and final receipts, effecting such release, shall be made available to the taxpayer as soon as possible after determination that the tax has been fully paid. (1939, c. 310, s. 1706.)

§ 105-379. Delivery of tax books to collector; prerequisites thereto; procedure upon default.—(a) Time of Delivery.—The tax books shall be delivered to the collector, upon order of the governing body, on or before the first Monday in October, as hereinbefore in § 105-325 provided.

(b) Settlement and Bond as Prerequisites; Prepayments.—The tax books for the current year shall not be delivered to the collector until he shall have: (1) delivered to the chief accounting officer of the taxing unit the duplicates or stubs of such receipts as he may have issued for prepayments lawfully received by him; (2) demonstrated to the satisfaction of said chief accounting officer that all moneys received by him as such prepayments have been deposited to the credit of the taxing unit; (3) made his annual settlement, as hereinafter defined, for all taxes in his hands for collection; and (4) provided bond or bonds for the current taxes and all prior taxes in his hands

for collection satisfactory to the governing body: Provided, that this shall not authorize any governing body of any unit to accept a bond of lesser amount than that prescribed by any valid local statute applying to said unit.

Any other official who has accepted prepayments shall, prior to the delivery of the tax books to the collector, deliver the prepayment receipt duplicates or stubs to the chief accounting officer of the unit and shall demonstrate to the satisfaction of said chief accounting officer that all moneys received by him as such prepayments have been deposited to the credit of the taxing unit: Provided, that where said chief accounting officer has himself lawfully accepted prepayments, he shall, not later than the day on which the tax books are delivered to the collector, make settlement therefor with the governing body in such manner and form as said governing body may prescribe.

It shall be the duty of said chief accounting officer: (1) to reduce the original charge made against the tax collector by deducting from the total amount of taxes levied so much of the amount received as prepayments as need not be refunded under the provisions of this article; (2) to secure and retain in his office, available to the taxpayers upon request, the regular receipts for taxes paid in full by prepayments, and to credit such payments on the tax books or accounts delivered to the collector; (3) to prepare refunds for overpayments made by way of prepayment (such disbursements to be made in the same manner as other disbursements of funds of the taxing unit are made); and (4) to credit all partial prepayments as partial payments on the regular receipts or tax accounts.

(c) Procedure upon Default.—If, on or before the first Monday in October, the regular tax collector shall not meet the requirements prescribed in subsection (b), the governing body is hereby required immediately to appoint a special collector, not connected with the regular collector, and deliver to him the tax books for the current year. Said special collector shall give satisfactory bond in the same amount as would be required of the regular collector. He shall receive as compensation two per cent (2%) of his collections or such amount as may be fixed by the governing body; and the compensation received by him and the cost of his bond may, in the discretion of the governing body, be deducted from the compensation of the regular collector. If and when the regular collector shall meet the requirements specified in the preceding subsection, the special collector shall make full settlement, in the manner hereinafter provided for collectors retiring from office, and shall then turn over the tax books to the regular collector.

(d) Civil and Criminal Penalties.—(1) Any member of the governing body of any taxing unit who shall vote to deliver the tax books or tax receipts to a tax collector, before said collector has met the requirements prescribed in this section, shall be individually liable for the amount of taxes due by said collector; and any such member so voting, or who willfully fails to perform any duty imposed by this section, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court.

(2) Any tax collector or other official who shall fail to account for prepayments received in the manner prescribed by this section, and any chief accounting officer failing to perform the duties imposed upon him by this section, shall be guilty of a misdemeanor, subject to fine or imprisonment, or both, in the discretion of the court. (1939, c. 310, s. 1707.)

§ 105-380. Installment payments. — The governing body of any taxing unit may, in its discretion, allow payment of taxes in not more than four equal installments, the last of which shall be payable not later than the week preceding the day fixed for the beginning of advertisement of the tax sale. The governing body of any unit permitting such installment payments, shall: (a) provide that, upon default in any installment, penalties shall accrue immediately upon the entire balance remaining unpaid at the same rate which would have accrued had such installment plan not been adopted; or (b) provide that, upon default in any installment, penalties shall accrue upon the amount of such installment at the same rate which would have accrued had such installment plan not been adopted. Payments made to taxing units adopting installment plans shall not be credited on any installment until all prior installments, together with any penalties thereon, have been paid.

It shall be the duty of each governing body and each collector of a taxing unit adopting an installment plan to indicate, on the tax receipts and on any bills or notices sent to taxpayers, the due dates of the installments and the method by which penalties will be ascertained upon default in payment of any installment: Provided, that failure to fulfill this requirement shall not affect the validity of the taxes. (1939, c. 310, s. 1708.)

§ 105-381. Partial payments. — Unless otherwise directed by the governing body, the tax collector shall, at any time, accept partial payments on taxes and issue a partial payment receipt therefor. In crediting a payment on the tax for any year or on any instaliment, the payment shall first be applied to accrued penalties, interest and costs and then to the principal amount of such tax or installment. (1939, c. 310, s. 1709.)

§ 105-382. Payment of taxes; notes and checks. —Taxes shall be payable in existing national currency.

No tax collector shall accept a note of the taxpayer in payment of taxes.

Any collector may, in his discretion and at his own risk, accept checks in payment of taxes, and either issue the tax receipt immediately or withhold said receipt until the check has been collected. In any case in which a collector accepts a check and issues a receipt, and said check is thereafter returned unpaid, without negligence on the part of said collector in presenting said check for payment, the taxes for which said check was given shall be deemed unpaid; and the collector shall immediately correct his records and shall proceed to collect said taxes either by civil suit on the check or by the use of any remedy allowed for the collection of taxes: Provided, that the lien for said taxes shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value, when such purchasers

or lienholders acquire their rights, in good faith and without actual knowledge that such check has not been collected, after examination of the collector's records during the time such records showed the taxes as paid or after examination of the official receipt issued to the taxpayer.

In addition to penalties for nonpayment of taxes provided by this subchapter, and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving, in payment of taxes, a check which is returned because of insufficient funds or nonexistence of an account of the drawer, shall be ten per cent (10%) of the amount of such check, which shall be added to and collected in the same manner as such taxes. (1939, c. 310, s. 1710.)

§ 105-383. Statements of amount of taxes due.—Any tax collector shall, at the request of the owner or occupant of any land within the taxing unit, or of any person having a lien thereon or interest or estate therein, or of the duly authorized agent or attorney of any such person, furnish a written certificate of the amount of the taxes and assessments levied upon such land for the current year, if such amount has been definitely determined, and for all prior years for which taxes and assessments may be due, together with penalties, interest and costs accrued thereon: Provided, that this shall not require any collector to furnish information regarding taxes not in his hands for collection: Provided, further, that the person making such request shall specify in whose name said land was listed for taxation for each year for which such information is sought.

Any collector failing or refusing to furnish such certificate, upon request in good faith made as herein provided, shall be liable for a penalty of fifty dollars ($50.00). (1939, c. 310, s. 1711.)

§ 105-384. Place for collection of taxes.—Taxes shall be payable at the office of the collector: Provided, that the governing body of any taxing unit may for the convenience of the taxpayers, require the collector, in person or by deputy, to attend at other places, at times to be designated by said governing body, for the collection of taxes. Fifteen days' notice of such times and places shall be given by the collector by advertisement published in some newspaper published in the county, and, if there be no such newspaper published in the county, then by posting such notice at three or more places in said unit. (1939, c. 310, s. 1712.)

§ 105-385. Remedies against personal property.—(a) Time for.—From the first day of the fiscal year until taxes become due the collector shall not proceed against the personal property of the taxpayer, in the manner herein provided, unless there is reasonable ground for believing that the taxpayer is about to remove his property from the state. The collector may proceed against such personal property, in the manner herein provided, at any time after taxes are due and before filing of a tax foreclosure complaint or docketing of a judgment for said taxes as hereinafter provided. Every official charged with the duty of collecting taxes, current or delinquent, shall have power and authority to proceed against such personal property in the manner herein provided.

(b) Relation between Remedies against Personal Property and Remedies against Real Property.—The collector may proceed against the personal property of the taxpayer, as herein provided, in his discretion; and he shall proceed against such property: (1) if directed so to do by the governing body; or (2) upon demand by the taxpayer, mortgagee or other person holding a lien upon the real property of the taxpayer: Provided, that said taxpayer, mortgagee or other person making said demand shall furnish the collector with a written memorandum describing such personal property and stating where it can be found.

After the sale of a tax sale certificate, no person shall be allowed to attack the validity of the sale on the ground that the tax should have been procured from personal property; but this shall not be construed as prohibiting proceedings against personal property after said sale.

(c) Levy upon Personal Property.—Subject to the provisions of this article governing the priority of the lien acquired, the following property may be levied upon and sold for failure to pay taxes: (1) any personal property of the taxpayer, regardless of the time at which it was acquired and regardless of the existence or date of creation of mortgages or other liens thereon; (2) any personal property transferred by the taxpayer to relatives of the taxpayer; (3) personal property in the hands of a receiver for the taxpayer and in such cases it shall not be necessary for the collector to apply for an order of the court directing payment or authorizing the levy, but said collector may proceed as if the property were not in the hands of a receiver or in the custody of the law; (4) personal property of a deceased taxpayer: Provided, the levy is made prior to final settlement of the estate; (5) personal property transferred by the taxpayer, after the taxes levied for were due, by any type of transfer other than those hereinbefore mentioned in this subsection and other than by bona fide sale for value: Provided, the levy is made within sixty days after such transfer.

The levy and sale shall be governed by the laws regulating levy and sale under execution: Provided, that it shall not be necessary for said levy to be made or said sale to be conducted by the sheriff, and the collector is hereby given the same authority as a sheriff to make said levy and conduct said sale. The collector shall be entitled to fifty cents for each levy and fifty cents for each actual sale. Said fees, plus actual advertising costs, shall be added to and collected in the same manner as the taxes. The advertising costs, when collected, shall be used to reimburse the taxing unit, which shall advance the cost of said advertising; and the levy and sale fees, when collected, shall be treated in the same manner as other fees collected by said official.

(d) Attachment and Garnishment.—Subject to the provisions of this article governing the priority of rights acquired, the collector may attach wages or other compensation, rents, bank deposits, the proceeds of property subject to levy and sale, or other property incapable of manual delivery: Provided, the same belongs to the taxpayer or has been transferred to another under circumstances which would permit it to be levied upon if it were tangible, or is due to the taxpayer

or may become due to him within the calendar year; and the person owing same or having same in his possession shall become liable for the taxes to the extent of the amount he owes or has in his possession: Provided, that not more than ten per cent of wages or other compensation for personal services shall be liable to attachment and garnishment for failure to pay taxes.

To proceed under this subsection, the collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts or other things sought to be attached, a notice showing at least: (1) the name of the taxpayer; (2) the amount of the taxes, penalties and costs (including the fees allowed by this subsection) and year or years for which such taxes were levied; (3) the name of the taxing unit or units by which such taxes were levied; (4) a brief description of the thing sought to be attached; and (5) a statement that the person served has the right to appear, within ten days after service, before some designated justice of the peace or (if the amount is beyond the jurisdiction of a justice of the peace) the superior court in the county in which the taxing unit lies, and show cause why he should not be compelled to pay said taxes, penalties and costs.

Notices concerning two or more taxpayers may be combined if they are to be served upon the same person, but in such case the taxes, penalties and costs charged against each taxpayer must be set forth separately.

A copy of each notice shall be retained by the collector and a copy shall be filed, not later than the first business day following the day of service, with the justice or court before which the notice is returnable, together with a notation of service. Upon entry of judgment, by default or after appearance and hearing, in favor of the taxing unit, the person so served shall become liable for the taxes, penalties and costs: Provided, that payment shall not be required from amounts which are to become due to the taxpayer until they actually become due.

The fee for serving said notice shall be fixed by the governing body of the taxing unit, not exceeding twenty-five cents if the tax is less than ten dollars and fifty cents if the tax is ten dollars or more: Provided, if the taxes of more than one taxpayer are included in the notice, the service fee shall not exceed fifteen cents per taxpaper. The justice's fee shall be twenty-five cents if the tax is less than ten dollars and one dollar if the tax is ten dollars or more plus one dollar for each hearing actually held, but no justices' fees shall be charged except in cases in which judgment is actually entered. Costs in the superior court shall be the same as in other proceedings therein. Fees and costs shall be added to and collected as part of the taxes: Provided, that if judgment is rendered against the taxing unit such costs and fees shall be paid by the taxing unit. All fees collected by officers shall be disposed of in the same manner as other fees collected by such officers.

(e) Employees of State and Its Subdivisions.—Tax collectors may proceed against the wages, salary or other compensation of officials and employees of this state and its agencies and instrumentalities and officials and employees of political subdivisions of this state and their agencies and instrumentalities in the manner provided by subsection (d) of this section. In such cases the notice shall be served upon the treasurer of the employing government or agency or instrumentality and, if there is no treasurer, then upon the chief financial officer thereof. In the case of notices served upon the state treasurer, the notice shall state the place and character of the taxpayer's employment.

(f) Lists of Employees.—Any person, firm or corporation who shall, after written demand therefor, refuse to give the tax collector or tax supervisor a list of all employees of such person, firm or corporation who may be liable for taxes, shall be guilty of a misdemeanor. (1939, c. 310, s. 1713.)

§ 105-386. Collection of taxes outside the taxing unit.—If a taxpayer has no property in the taxing unit to which the taxes are due, but does have property in some other unit, or if the taxpayer has removed from the taxing unit in which the taxes are due and has left no property there and is known to be in some other unit in this state, it shall be the duty of the collector to send a copy of the tax receipt, with a certificate stating that such taxes are unpaid, to the collector of the unit in which such property is located or in which such taxpayer is known to be. Such receipt and certificate shall have the force and effect of a tax list of his own unit in the hands of the collector receiving it, and it shall be the duty of such collector to proceed immediately to collect such taxes by any means by which he could lawfully collect taxes of his own unit. The collector receiving such receipt and certificate shall report, within thirty days after such receipt, to the collector who sent the same, either that he has collected the same or is unable to collect the same by any lawful means or that he has begun proceedings for the collection of same. All collections made under this section shall be remitted to the unit levying the tax within five days after such collection, but the collector making collection shall retain ten per centum of the amount thereof, which shall be for his personal use. All reports under this section, reporting that the tax is uncollectible, shall be under oath and shall state that the collector has used due diligence and is unable to collect said taxes by levy, garnishment or otherwise. Upon failure to make such sworn report the collector receiving such receipt and certificate shall be liable on his bond for such taxes.

It shall be the duty of the governing body of each taxing unit to require reports from the tax collector, at such times as it may prescribe (but not less frequently than in connection with each annual settlement), concerning the efforts he has made to locate taxpayers who have removed from the unit, the efforts he has made to locate property in other units belonging to delinquent taxpayers, and the efforts he has made under this section to collect the taxes. (1939, c. 310, s. 1714.)

§ 105-387. Sales of tax liens on real property for failure to pay taxes.—(a) Report of Delinquent Taxes Which Are Liens on Real Property. —The tax collector of each county and district shall, on the first Monday in April each year, and the tax collector of each city shall, on the second Monday in April each year, report a list of all

taxpayers owing taxes for the current year which are liens on real property, and the governing body shall thereupon order sale of the tax lien on said real property of said taxpayers to be held at one of the times hereinafter prescribed. For purposes of all subsections of this section, district taxes collected by city tax collectors shall be regarded as city taxes.

(b) Date of Sale; Effect of Delay.—The county and district sale shall be held on the first Monday, and the city sale on the second Monday, in May or in any of the four succeeding months. Failure to hold said sale within the time prescribed shall not affect the validity of the taxes or the tax liens, nor shall it affect the validity of the sale when thereafter held. All sales held shall begin, in the case of county and district taxes, on the first Monday of the month and, in the case of city taxes, on the second Monday in the month: Provided, that where county and city taxes are collected by the same collector, the sale may be held on either of said Mondays.

No sale shall be delayed or restrained by order of any court of this state.

(c) Advertisement of Sale.—Public notice of the time, place and purpose of such sale shall be given by advertisement at the door of the courthouse or city hall for four successive weeks preceding such sale, and by advertisement once each week for four successive weeks preceding such sale in some newspaper published in the county. If there be no newspaper published in the county, such advertisement shall be posted in at least one public place in each township, in the case of county taxes, and in at least three public places in the city in the case of city taxes.

Said advertisement shall set forth, in addition to the time, place and purpose of such sale: (1) the name of each taxpayer owing taxes which are a lien on real estate; (2) a brief description of the land listed in the name of each; (3) the principal amount of the taxes owed by each. Failure to include penalties and costs in the amount advertised shall not be construed as a waiver of same, but such advertisement shall state generally that the amounts advertised are subject to be increased by such penalties and costs.

(d) Place and Hour of Sale. — All county and district sales shall be held at the courthouse door, and city sales shall be held at the courthouse door or at the city hall door as the collector may advertise. All sales shall begin at such hour as may be specified in the advertisement, and they may be continued from day to day, if continuance is necessary in order to complete the sales, without further advertisement.

(e) Manner of Sale.—The sale may be conducted by the collector or any deputy designated by him for the purpose. The tax liens on all parcels advertised against one taxpayer shall be sold as one lot at public outcry to the highest bidder: Provided, that in case of county sales, liens on parcels in different townships may be sold separately. The collector may, in his discretion, demand immediate payment from any successful bidder, and reject such bid upon failure to comply with said demand. No bid shall be received unless for an amount at least equal to the principal amount of the taxes plus all penalties and costs accrued thereon. In the absence of a bid at least equal to such sum the taxing unit shall become the purchaser, without submitting a formal bid, for an amount equal to such sum.

In all cases in which bids are accepted which exceed such sum the tax collector shall immediately report such excess to the governing body, and said governing body shall order such excess paid directly to the person entitled thereto or order it paid to the clerk of superior court for distribution as the court may direct.

(f) Costs of Sale.—Costs of sale, which shall be included in the minimum sale price, shall consist of actual advertising cost and a sale fee not exceeding fifty cents (50c) per parcel. Actual advertising cost per parcel shall be determined by the collector, and may be determined upon an advertising lineage basis or an average cost per insertion basis or by any other reasonable method. The taxing unit shall pay all advertising expense, and all advertising cost collected shall be paid to it for use as its governing body may direct. All sale fees collected shall be treated in the same manner as other fees collected by said collector.

(g) Payments during the Advertising Period.—At any time between the beginning of the advertisement and the time of actual sale, any parcel may be withdrawn from the sale list by payment of taxes and penalties as required by law and a proportionate part of the advertising cost as determined by the collector. Thereafter, such parcel shall be eliminated from the advertisement: Provided, that failure to eliminate such parcel shall not subject the collector to liability if the lien on said parcel is not thereafter actually sold.

(h) Failure of Collector to Attend Sale.—If any collector shall fail to attend any duly advertised sale, in person or by competent deputy, he shall be guilty of a misdemeanor and liable on his bond to a penalty of three hundred dollars.

(i) Land Listed in Wrong Name. — No sale shall be void because such real estate was charged in the name of any other person than the rightful owner, if such real estate be in other respects correctly described on the tax list: Provided, no sale of the lien on real estate listed in the name of the wrong person shall be valid when the rightful owner has listed the same and paid the taxes thereon.

(j) Irregularities Immaterial.—No irregularities in making assessments or in making the returns thereof in the equalization of property as provided by law, or in any other proceeding or requirement, shall invalidate the sale of tax liens on real estate or sale of real estate in tax foreclosure proceedings, nor in any manner invalidate the tax levied on any property or charged against any person. The following defects, omissions, and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceedings, shall be deemed to be irregularities within the meaning of this subsection; the failure of the assessors to take or subscribe an oath or attach an oath to an assessment roll; the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied, or charged against any property or the valuation of any property upon any record; the failure to make or serve any notice mentioned in this chapter; the failure or neglect of the collector to offer any tax

lien or real estate for sale at the time mentioned in the advertisement or notice of such sale; failure of the collector to adjourn the sale from day to day, or any irregularity or informality in such adjournment; any irregularity or informality in the order or manner in which tax liens or real estate may be offered for sale; the failure to assess any property for taxes or to levy any tax within the time prescribed by law; any irregularity, informality or omission in any such assessment or levy; any defect in the description, upon any assessment book, tax list, sales book, or other record, of real or personal property, assessed for taxation, or upon which any taxes are levied, or which may be sold for taxes, provided such description be sufficiently definite to enable the collector, or any person interested, to determine what property is meant or intended by the description, and in such cases a defective or indefinite description, on any book, list, or record, or in any notice or advertisement, may be made definite by the collector at any time by correcting such book, list or record, or may be made definite by using a correct description in any tax foreclosure proceeding authorized by this subchapter, and any such correction shall have the same force and effect as if said description had been correct on the tax list; any other irregularity, informality, or omission or neglect on the part of any person or in any proceedings, whether mentioned in this subsection or not; the neglect or omission to tax or assess for taxation any person or property; the overtaxation of persons or property liable to be taxed.

(k) Acts of De Facto Officers.—In all actions, proceedings, and controversies involving the title to real property held under and by virtue of a tax sale or any tax foreclosure proceedings authorized by this article, all acts of assessors, clerks, sheriffs, collectors, supervisors, commissioners and other officers de facto shall be deemed and construed to be of the same validity as acts of officers de jure.

(l) Proof of Sale. — The books and records of the office of the collector making the sale, or copies thereof properly certified, shall be deemed sufficient evidence to prove the sale of the tax lien on any real property under this section, the redemption thereof or the payment of taxes thereon.

(m) Wrongful Sale.—Any collector or deputy collector who shall sell, or assist in selling, the tax lien on any real property, knowing the same not to be subject to taxation, or that the taxes for which the lien is sold have been paid, or shall knowingly and willingly sell or assist in selling the tax lien on any real property for payment of taxes to defraud the owner of such real property, or shall knowingly and willingly cause foreclosure proceedings to be instituted against real property so sold, shall be guilty of a misdemeanor, and be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay the injured party all damages sustained by such act; and all such sales shall be void.

When by mistake or wrongful act of the collector a tax lien on real property has been sold on which no tax was due, the taxing unit shall reimburse the purchaser by paying to him the amount expended by him in such purchase, with interest thereon at six per cent per annum; and the collector shall be liable to the taxing unit upon his bond for all amounts so expended by it in excess of the amount received by it from said sale. Any amount paid by a taxing unit under this section for state taxes shall, on proper certificate from the chairman of the governing body, be allowed by the auditor and paid by the treasurer of the state, and the state shall have the right of recovery against the collector on his bond to the amount so paid.

(n) Joint Sales by Several Taxing Units. — Wherever the taxes of two or more taxing units are collected by the same collector, one sale shall be held for the taxes of both at such time as is prescribed by law for sales by either; and in the absence of bids the larger unit may become the purchaser, or such units may become joint purchasers, for the benefit of all according to their respective interests: Provided, that this shall not repeal any local law designating the purchaser in case of joint sales. (1939, c. 310, s. 1715.)

Local Modification.—Wayne: 1941, c. 40; Cumberland: 1941, c. 44, s. 1(a).

§ 105-388. Certificates of sale.—(a) Issued to Private Purchasers.—As soon as possible after sale, but not earlier than payment of the purchase price, the collector shall issue to each successful bidder, other than taxing units, a certificate of sale, for the tax lien on real property of each delinquent, purchased by him, dated as of the day of sale. Property held jointly by two or more owners shall be construed as the property of one delinquent for this purpose. Said certificate shall be in substantially the following form:

"North Carolina, ... (taxing unit) .....

I, ... tax collector of ..... (taxing unit) ..... do hereby certify that the tax lien on the following described real property in said taxing unit, to wit: ..... (describing the same) ....., was, on the ..... day of ....., ..., duly sold by me in the manner provided by law, for the delinquent taxes of ..... for the year ....., amounting to $....., including penalties thereon and costs allowed by law, when and where ..... (name of purchaser) ..... purchased said lien on said real property at the price of $ ....., said amount being the highest and best bid for same. And I further certify that unless payment of said lien is made, within the time and in the manner provided by law, said ..... (name of purchaser) ....., his heirs or assigns, shall have the right to foreclose said real property by any proceeding allowed by law.

"In witness whereof, I have hereunto set my hand this ..... day of .....

Tax Collector."

A copy of each such certificate shall be retained by the collector in a special book or file designated "Certificates of Sale for Taxes for the Year .....". All payments made on any such certificate shall be made to the collector for the use of the owner of such certificate, and all

such payments shall be credited by the collector on the copy of the certificate in his possession, and shall be remitted to the owner of the certificate upon proper receipt therefor. For failure to account for and pay over any such payments the collector shall be liable on his bond to the person entitled thereto. The copies of such certificates in the collector's office shall be the official records for the purpose of determining whether a lien exists in favor of any certificate owner other than a taxing unit. The owner of a certificate may assign it at any time, but said assignment shall not be effective until the collector shall have actually received written notice thereof from the assignor. Each such purchaser, his heirs or assignees, shall have a lien on the real property for the amount of the purchase price, plus interest thereon at the rate of eight per centum per annum, of the same dignity as similar liens owned by taxing units, and shall have the right to foreclose said lien, by action in the nature of an action to foreclose a mortgage, in the manner hereinafter prescribed: Provided, that the eight per cent per annum interest herein provided shall accrue only on so much of the purchase price as represents the amount of the tax, penalties to the date of sale, and the costs of advertising and sale. Each such purchaser, his heirs and assignees, shall also have a lien for other taxes and assessments levied against said property, paid by him after acquisition of said certificate, whether such taxes or assessments were charged before or after such acquisition. Said lien shall be entitled to the same priorities as the original lien of the taxes and assessments so paid.

(b) Issued to Taxing Units.—The governing body of each taxing unit which becomes the purchaser at a tax sale, as hereinbefore provided, shall determine whether or not it is necessary to issue certificates to and in the name of such unit. If, in the opinion of said governing body, the issuance of such certificates is not necessary in order to provide adequate records of tax liens and tax collections, the said certificates may be dispensed with and the collector ordered to mark or stamp the original tax receipts or accounts "Sold to ..... (name of tax unit) .....". If issuance of certificates is deemed necessary, they shall be issued in substantially the form set forth in subsection (a) of this section, with stubs or duplicates on which shall be reflected all payments or assignments. In either case, the taxing unit shall have the right to foreclose the real property by any method authorized by law; and in either case interest at the rate of eight per cent per annum shall accrue, on the amount bid by said unit, from the date of the sale.

(c) Prima Facie Case.—A certificate issued, or a tax receipt or account marked or stamped, in accordance with the provisions of subdivisions (a) or (b) of this section, shall be presumptive evidence of the regularity of all prior proceedings incident to the sale and of the due performance of all things essential to the validity thereof. (1939, c. 310, s. 1716.)

Local Modification.—Cumberland: 1941, c. 44, s. 1(b).

§ 105-389. Assignment of liens by taxing unit after sale.—At any time after the sale hereinbefore provided for, any taxing unit may assign any lien owned by it to any person who pays an amount which, if paid by the taxpayer, would be sufficient to discharge said lien. If a certificate has already been issued to the taxing unit, it shall be assigned to the person making the payment, and the copy of stub of such certificate or a copy of such stub, showing such assignment, shall be filed in the manner provided for certificates originally issued to private purchasers. If no certificate has been issued to the taxing unit, a certificate shall immediately be so issued, and said certificate shall be assigned to the person making such payment in the manner set forth in the preceding sentence. The collector to whom the payment is made shall have authority to make all such assignments and issue all such certificates.

The provisions of this section shall be construed as being in addition to the provisions of this article with respect to release of individual parcels of real property from the tax lien. The person making a payment, after the sale hereinbefore provided for, shall have the right to pay the entire amount or to pay an amount sufficient under the provisions of this article to release one or more specified parcels; and such person shall also have the right to demand either assignment of the lien on the property for which the payment is made or to demand complete release of such property from the lien, in his discretion. In cases in which an assignment is made upon payment of an amount less than the amount of the lien on all the real property in one certificate, new certificates may be made to effect the separation. (1939, c. 310, s. 1717.)

Local Modification.—Cumberland: 1941, c. 44, s. 1(c).

§ 105-390. Settlements. — (a) Annual Settlement of Tax Collector.—(1) Preliminary report. On the second Monday following the sale of certificates, the tax collector shall, under oath, report to the governing body: (1) action with respect to such sale; and (2) a list of those not listing land for taxes whose taxes remain unpaid, making oath that he has made diligent effort to collect such taxes out of the personal property of such taxpayers or by other means open to him for collection of such taxes, and reporting such other information as to such taxpayers as may be of interest to or required by the governing body (including a report on his efforts to make collection outside the taxing unit under the provisions of this article.)

(2) Insolvents. The governing body shall, upon receipt of said report, enter upon its minutes the list of such taxpayers listing no land as may be found by said governing body to be insolvents, and shall by resolution designate said list so entered in the minutes as the insolvent list to be credited to the collector in his settlement.

(3) Settlement for current taxes. On the first Monday of the month following sale of certificates, but not earlier than the first Monday of July, the collector shall make full settlement with the governing body of the taxing unit for all taxes, in his hands for collection, for the year involved in said sale. In such settlement the collector shall be charged with: (1) the total amount of all taxes for said year, in his hands for collection, including amounts originally

charged to him and all subsequent amounts charged on account of discovered property; (2) all penalties, interest and costs collected by him in connection with taxes for said year; and (3) all other sums to be collected by said collector. He shall be credited with: (1) all sums deposited by him to the credit of the taxing unit, or receipted for by the proper official of said unit, on account of taxes for said year; (2) releases allowed by the governing body as prescribed by statute; (3) the principal amount of taxes included in certificates sold to the taxing unit, for which he shall produce certificates duly executed or receipts or accounts duly stamped in accordance with the provisions of this article; (4) the principal amount of taxes for said year included in the insolvent list, determined as hereinbefore provided; (5) discounts allowed by law; and (6) commissions, if any, lawfully payable to him as compensation. For any deficiency the collector shall be liable on his bond, and, in addition, thereto, shall be liable to all criminal penalties provided by law.

Said settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of said governing body.

(4) Disposition of tax books after settlement. Uncollected taxes allowed as credits in the settlement prescribed in the preceding subsection, whether represented by sales to the taxing unit or included in the list of insolvents, shall be recharged to the collector or charged to some other person, in accordance with the provisions of any valid local statute governing tax collection in the particular taxing unit. In the absence of any local statute determining the matter: (1) Such taxes in cities, and in counties having tax collectors other than sheriffs, shall be recharged to the collector; and (2) such taxes, in counties having sheriffs as tax collectors, shall be charged to such other county officer or employee as the governing body may designate to perform the duties of delinquent tax collector.

The person so charged or recharged shall give bond satisfactory to the governing body; shall receive the tax receipts, certificates and records representing such uncollected taxes; shall have and exercise and perform all powers and duties conferred or imposed by law upon tax collectors; and shall receive such compensation as may be fixed by valid local statute or, in the absence of such statute, as the governing body may determine.

(b) Settlements for Delinquent Taxes. — Annually, at the time prescribed for the settlement hereinbefore in this section provided, all persons having in their hands for collection any taxes for years prior to the year involved in said settlement hereinbefore provided, shall settle with the governing body of the taxing unit for collections made on the taxes for each such prior year. Such settlement for the taxes of prior years shall be in such form as may be satisfactory to the chief accounting officer and the governing body of the taxing unit, and shall be entered in full upon the minutes of the governing body.

(c) Settlement at End of Term.—Whenever any tax collector or other person collecting taxes, current or delinquent, shall fail to succeed himself at the end of his term of office, he shall, on the last business day of his term, make full and complete settlement for all taxes in his hands and deliver the tax records, receipts and accounts to his successor in office. Such settlement shall be in such manner and form as may be satisfactory to the chief accounting officer and governing body of the taxing unit, and shall be entered in full upon the minutes of the governing body.

(d) Settlement upon Vacancy During Term.—In case of voluntary resignation of any person collecting taxes he shall, upon his last day in office, make full settlement for all taxes in his hands in the same manner as required herein for settlements made at the end of a term of office. In default of such settlement, or in case of a vacancy occurring during a term for any other reason, it shall be the duty of the chief accounting officer or, in the discretion of the governing body, of some duly qualified person appointed by it, immediately to prepare and submit to the governing body a report in the nature of a settlement made on behalf of the ex-collector; and such report, together with the action of the governing body, shall be entered in full upon the minutes of the governing body. In such cases the governing body may turn over the tax books to the successor collector immediately upon occurrence of the vacancy, or may make such temporary arrangements for collection of taxes as may be expedient: Provided, that no person shall be permitted to collect taxes until he shall have given bond satisfactory to the governing body.

(e) Effect of Approval.—Approval of any settlement by the governing body shall not relieve the collector or his bondsmen of liability for any shortage actually existing and thereafter discovered; nor shall it relieve the collector of any criminal liability.

(f) Penalties.—In addition to all other civil and criminal penalties, provided by law, any member of a governing body, collector, person collecting taxes, or chief accounting officer failing to perform any duty imposed upon him by this section shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1939, c. 310, s. 1718.)

Local Modification.—Cumberland: 1941, c. 44, s. 1(d) (e).

§ 105-391. Foreclosure of tax liens by action in nature of action to foreclose a mortgage.—(a) Time for Beginning Such Action.—Actions for the foreclosure of tax liens brought under this section shall be brought not less than six months after the sale hereinbefore provided for.

(b) Private Purchasers. — Foreclosure under this section shall be the sole remedy of certificate owners other than taxing units.

(c) Taxing Units.—Taxing units may proceed under this section, either on the original tax lien or the lien acquired at the tax sale hereinbefore provided for, with or without a certificate of sale, and the amount of recovery in either case shall be the same. To this end it is hereby declared that the original attachment of the tax lien is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of tax sale certificates to a taxing unit is a matter of convenience in record

keeping, within the discretion of the governing body of such unit, and that issuance of such certificates is not a prerequisite to perfection of said tax lien.

(d) General Nature of the Action.—The foreclosure action shall be an action in superior court, in the county in which the land is situated, in the nature of an action to foreclose a mortgage.

(e) Parties.—The listing taxpayer and spouse, if any, the current owner, all other taxing units having tax liens, all other lien-holders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summons in the manner provided by § 1-89: Provided, that alias summonses may be issued or service by publication begun at any time within one year after the issuance of the original summons.

The fact that the listing taxpayer or any other defendant is a minor, is incompetent or is under any other disability shall not prevent or delay the collector's sale or the foreclosure of the tax lien; and all such defendants shall be made defendants and served with summons in the same manner as in other civil actions.

Persons who have disappeared or cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons may be served by publication; and such persons, their heirs and assignees may be designated by general description or by fictitious names in such action. It is hereby declared that service of summons by publication against such persons, in the manner provided by law, shall be as valid in all respects as such service against known persons who are non-residents of this state.

(f) Complaint as a Lis Pendens.—The complaint in an action brought under this section shall, from the time of the filing thereof in the office of the clerk of superior court, serve as notice of the pendency of such action, and every person whose interest in such property is subsequently acquired or whose interest therein is subsequently registered or recorded shall be bound by all proceedings taken in such action after the filing of said complaint in the same manner as if said persons had been made parties to such action. It shall not be necessary to have said complaint cross indexed as a notice of action pending to have the effect prescribed by this subsection.

(g) Subsequent Taxes.—The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes which are or may become a lien on the same property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend said complaint to incorporate said taxes by specific allegation. In case of redemption before judgment of confirmation, the person redeeming shall be required to pay, before said action is discontinued, at least all taxes on said property which have at the time of discontinuance been due to plaintiff unit for more than one year, plus interest, penalties and costs thereon. Immediately prior to judgment of sale in such action, if there has been no redemption, the tax collector, or the attorney for plaintiff unit, shall file in said action a certificate setting forth all taxes which are a lien on said property in favor of the plaintiff unit, other than taxes the amount of which has not been definitely determined.

Any plaintiff in a tax foreclosure action, other than a taxing unit, may include in his complaint, originally or by amendment, all other taxes and assessments paid by him which were liens on the same property.

(h) Joinder of Parcels.—All real estate within one township, subject to liens for taxes levied against the same taxpayer by the same taxing unit for the first year involved in the action, shall be joined in one action: Provided, that where property is transferred by the listing taxpayer subsequent to such year, all subsequent taxes, penalties, interest and costs, for which said property is ordered sold under the terms of this subchapter, shall be prorated to such property in the same manner as if payments were being made to release such property under the provisions of this subchapter.

(i) Special Benefit Assessments.—A cause of action for the foreclosure of the lien of any special benefit assessment may be included in any complaint filed under this section.

(j) Joint Foreclosure by Two or More Taxing Units.—Liens of different taxing units on the same parcel, representing taxes in the hands of the same collector, shall be foreclosed in one action. Liens of different taxing units of the same parcel, representing taxes in the hands of different collectors, may be foreclosed in one action in the discretion of the governing bodies.

Liens of taxing units made parties defendant in any such action shall be alleged in an answer filed by such unit, and the collector of each such answering unit shall, prior to judgment, file a certificate of subsequent taxes similar to that filed by the collector of the plaintiff unit, and the taxes of each such answering unit shall be of equal dignity with the taxes of the plaintiff unit; and any such answering unit may, in case of payment of the plaintiff's taxes, continue such action until all taxes due to it for more than one year have been paid. It shall not be necessary for any such defendant unit to file a separate foreclosure action or proceed under § 105-392 with respect to any such taxes.

All taxes of any taxing unit which is properly served as a party defendant in such action, and which does not answer and file the certificate as aforesaid, shall be barred by the judgment of sale except to the extent that the purchase price at foreclosure sale, after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates, may be sufficient to pay said taxes: Provided, that if a defendant unit is plaintiff in another action pending against the same property, or has begun a proceeding under § 105-392, its answers may allege said fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof, and such disposition of the costs therein, as it may deem advisable: And provided, further, that any such order may be made by the clerk of the superior court, subject to appeal in the same

manner as appeals are taken from other orders of said clerk.

(k) Costs.—Costs may be taxed in any action brought under this section in the same manner as in other civil actions, subject to the provisions of this subsection; and upon collection of said costs, either upon redemption or upon payment of the purchase price at foreclosure sale, the fees allowed officers shall be paid to those entitled to receive the same: Provided, that the fees allowed any officer, whether for the personal use of such officer or for the benefit of the unit of which he is an official shall not exceed one-half the fees allowed in other civil actions: Provided, further, that no process tax for the use of the state shall be levied or collected in tax foreclosure actions, and, where the plaintiff is a taxing unit, no prosecution bond shall be required in such actions.

Said costs may include one reasonable attorney's fee for the plaintiff, which shall not exceed five dollars: Provided, that the governing body of any unit may, in its discretion, pay a greater sum to its attorney as a suit fee and said governing body may, in its discretion, allow a reasonable commission to its attorney on delinquent taxes collected by him after said taxes have been placed in his hands; or said governing body may arrange with its attorney for the handling of tax suits on a salary basis or make such other reasonable agreement with its attorney or attorneys as said governing body may approve; and any arrangement made may provide that attorney's fees collected as costs be collected for the use of the taxing unit: And provided, further, that when any taxing unit is made a party defendant in a tax foreclosure action and files answer therein, there may be included in the costs an attorney's fee for said defendant not exceeding three dollars.

In any action in which real property is actually sold after judgment, costs shall include a commissioner's fee to be fixed by the court, not exceeding five per centum of the purchase price; and in case of redemption between the date of sale and judgment of confirmation, said fee shall be added to the amount otherwise necessary for redemption. In case more than one sale is made of the same property in any action, the commissioner's fee may be based on the highest amount bid, but said commissioner shall not be allowed a separate fee for each such sale. The governing body of any plaintiff unit may request the court to appoint as commissioner a salaried official, attorney or employee of the unit and, if such appointment is made, may require that such commissioner's fees, when collected, be paid to plaintiff unit for use as it may direct.

(l) Contested Actions. — Any action brought under this section, in which an answer raising an issue requiring trial is filed within the time allowed by law, shall be entitled to a preference as to time of trial over all other civil actions.

(m) Judgment of Sale.—Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the property, or so much thereof as may be necessary for the satisfaction of: (1) taxes adjudged to be liens in favor of the plaintiff, other than taxes the amount of which has not been definitely determined, together with interest, penalties and costs thereon; and (2) taxes adjudged to be liens in favor of other taxing units, other than taxes the amount of which has not yet been definitely determined, if said taxes have been alleged in answers filed by said units, together with interest, penalties and costs thereon.

Said judgment shall appoint a commissioner to conduct said sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims and liens whatever, except that said sale shall be subject to taxes the amount of which cannot be definitely determined at the time of said judgment, subject to taxes and assessments of taxing units which are not parties to said action, and, in the discretion of the court, subject to taxes alleged in other tax foreclosure actions or proceedings pending against the same property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may render said judgment, subject to appeal in the same manner as appeals are taken from other judgments of said clerk.

(n) Advertisement of Sale.—The sale shall be advertised, and all necessary resales shall be advertised, in the manner provided by §§ 1-327, 1-328, or by such statute as may be enacted in substitution therefor.

(o) Sale.—The sale shall be by public auction to the highest bidder, and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday: Provided, that in actions brought by any city which is not a county seat the court may, in its discretion, direct said sale to be held at the city hall door. The commissioner conducting such sale may, in his discretion, require from any successful bidder a deposit equal to not more than twenty per centum of his bid, which said deposit, in the event that said bidder refuses to take title and a resale becomes necessary, shall be applied to pay the costs of sale and any loss resulting: Provided, that this shall not deprive the commissioner of the right to sue for specific performance of the contract.

(p) Report of Sale.—Within three days following said sale the commissioner shall report said sale to the court, giving full particulars thereof.

(q) Exceptions and Increased Bids.—At any time within twenty days after the filing of said report of sale any person having an interest in the property may file exceptions to said report, and at any time within said period an increased bid may be filed in the amount specified by and subject to the provisions (other than provisions in conflict herewith) of § 45-28, or to the provisions (other than provisions in conflict herewith) of any law enacted in substitution for said section.

(r) Judgment of Confirmation.—At any time after the expiration of said twenty days, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation; and in like manner he may apply for such judgment after the court has passed upon any exceptions filed, or after any necessary resales have been held and reported and twenty days have elapsed: Provided, that the court may, in its discretion, order resale of the property, in the absence of exceptions or increased bids, whenever it

deems such resale necessary for the best interests of the parties.

Said judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price.

Said judgment may be rendered by the clerk of superior court, subject to appeal in the same manner as appeals are taken from other judgments of said clerk.

(s) Application of Proceeds of Sale; Final Commissioner's Report.—After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows; first, to payment of all costs of the action, including commissioner's fee and attorney's fee, which said costs shall be paid to the officials or funds entitled thereto; then to the payment of taxes, penalties and interest for which said property was ordered to be sold, and in case the funds remaining are insufficient for this purpose they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered sold; then pro rata to the payment of any special benefit assessments for which said property was ordered sold, together with interest and costs thereon; then pro rata to payment of taxes, penalties, interest and costs of taxing units which were parties to said action but which filed no answers therein; then pro rata to payment of special benefit assessments of taxing units which were parties to said action but which filed no answers therein, together within interest and costs on said assessments; and any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of such directions, shall be paid into court for the benefit of the persons entitled thereto. The commissioner in all such cases shall make a full report to the court, within five days after delivery of the deed, showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds, accompanied by receipts evidencing all such disbursements.

In case the purchaser is a taxing unit such unit may proceed in accordance with the provisions hereinafter set forth in this section; and the commissioner shall make report accordingly.

(t) Bids by Taxing Units.—Any taxing unit, or two or more units jointly, may bid at foreclosure sale, and any taxing unit which becomes the successful bidder may assign its bid, or portion thereof, at any time, by private sale, for not less than the amount thereof.

(u) Payment of Purchase Price by Taxing Units; Status of Property Purchased by Taxing Units.—Any taxing unit which becomes the purchaser at final tax foreclosure sale may, in the discretion of its governing body, pay only such part of the purchase price as would not be distributed to itself and other taxing units on account of taxes, interest, penalties and such costs as accrued prior to the beginning of the foreclosure action. Thereafter, in such case, it shall hold said property for the benefit of all taxing units which have an interest in such property as hereinafter in this subsection defined. All net income from said property and the proceeds thereof, when resold, shall be first used to reimburse the purchasing unit for disbursements actually made by it in connection with the foreclosure action and the purchase of said property, and any balance remaining shall be distributed to the taxing units having an interest therein in proportion to their interests. The total interest of each taxing unit, including the purchasing unit, shall be determined by adding: (1) taxes of such unit, with interest, penalties and costs (other than costs already reimbursed to the purchasing unit), to satisfy which said property was ordered sold; (2) other taxes of such unit, with interest, penalties and costs, which would have been paid from the purchase price had said purchase price been paid in full; (3) taxes of such unit, with interest, penalties and costs, to which said sale was made subject; and (4) the principal amount of all taxes which may become liens on said property after purchase at foreclosure sale or which would have become liens but for such purchase: Provided, that no amount shall be included under clause (4) hereof for taxes for years in which, on the tax listing day, said property is being used by said purchasing unit for a public purpose.

If the amount of net income and proceeds of resale distributable exceeds the total interests of all units hereinbefore defined, the remainder shall be applied to any special benefit assessments to satisfy which said sale was ordered or to which said sale was made subject, and any balance then remaining shall accrue to the purchasing unit.

When any property, purchased as hereinbefore provided in this subsection, is permanently dedicated for use for a public purpose, the purchasing unit shall make settlement with other taxing units having an interest in such property, as hereinbefore defined, in such manner and in such amount as may be agreed upon by the governing bodies; and if no agreement can be reached the amount to be paid shall be determined by the resident judge of the superior court.

Nothing in this subsection shall be construed as requiring the purchasing unit to secure the approval of other interested taxing units before reselling said property or as requiring said purchasing unit to pay said other units in full if the net income and resale price are insufficient to make such payments.

Any taxing unit purchasing property at foreclosure sale may, in the discretion of its governing body, instead of following the foregoing provisions of this subsection, make full payment of the purchase price and thereafter it shall hold said property as sole owner in the same manner as it holds other real property, subject only to taxes and assessments, with interest, penalties and costs, to which said sale was made subject.

(v) Resale of Property Purchased by Taxing Units.—Property purchased at tax foreclosure sale by a taxing unit may be resold at any time for such price as the governing body may approve. Such resales shall be conducted in the manner provided by law for sales of other property of the various taxing units: Provided, that a city may, in the discretion of its governing body, resell such property to former owner or other person formerly having an interest in said property, at private sale, for an amount not less than its interest therein, if it holds said property as sole owner, or for an amount not less than the total interests of all taxing units (other than assessments due the

city holding title), if it holds said property for the benefit of all such units. (1939, c. 310, s. 1719.)

Local Modification.—Cumberland: 1941, c. 44, s. 1(f); High Point: 1941, c. 174.

§ 105-392. Alternative method of foreclosure.—(a) Docketing Taxes as a Judgment.—In lieu of following the procedure set forth in § 105-391, the governing body of any taxing unit may order the collecting official to file, not less than six months or more than two years (four years as to taxes of the principal amount of five dollars or less) following the collector's sale of certificates, with the clerk of superior court a certificate showing the name of the taxpayer listing the real estate on which such taxes are a lien, together with the amount of taxes, interest, penalties and costs which are a lien thereon, the year for which such taxes are due, and a description of such real property sufficient to permit its identification by parol testimony. The clerk of superior court shall enter said certificate in a special book entitled "Tax Judgment Docket for Taxes for the Year ....." and shall index the same therein in the name of the listing taxpayer. Immediately upon said docketing and indexing, said taxes, interest, penalties and costs shall constitute a valid judgment against said property, with the priority hereinbefore provided for tax liens, which said judgment, except as herein expressly provided, shall have the same force and effect as a duly rendered judgment of the superior court directing sale of said property for the satisfaction of the tax lien, and which judgment shall bear interest at the rate of six per cent per annum. The clerk shall be allowed fifty cents per certificate for such docketing and indexing, payable when such taxes are collected or such property is sold, and shall account for said fees in the same manner as other fees of his office are accounted for: Provided, that the governing body of any county, if said clerk is on salary, or said clerk, if he is on fees or salary plus fees, may require such fees to be advanced by the taxing unit.

The collecting official filing said certificate shall, at least two weeks prior to the docketing of said judgment, send a registered letter to the listing taxpayer, at his last known address, stating that the judgment will be docketed and that execution will issue thereon in the manner provided by law. However, receipt of said letter by said listing taxpayer, or receipt of actual notice of the proceeding by said taxpayer or any other interested person, shall not be required for the validity or priority of said judgment or for the validity or priority, as hereinafter provided, of the title acquired by the purchaser at the execution sale. It is hereby expressly declared to be the intention of this section that proceedings brought under it shall be strictly in rem. It is further declared to be the intention of the section to provide a simple and inexpensive method of enforcing payment of taxes necessarily levied, to the knowledge of all, for the requirements of local governments in this State; and to recognize, in authorizing such proceeding, that all those owning interests in real property know, or should know, without special notice thereof, that such property may be seized and sold for failure to pay such lawful taxes.

Nothing in this section shall be construed as a limitation of time on the right to foreclose a tax lien under § 105-391.

(b) Motion to Set Aside.—At any time prior to issue of execution, any person having an interest in said property may appear and move to set aside said judgment on the ground that the tax has been paid or that the tax lien on which said judgment is based is invalid.

(c) Issue of Execution.—At any time after six months and before two years from the indexing of said judgment, execution shall be issued at the request of the governing body of the taxing unit, in the same manner as executions are issued upon other judgments of the superior court, and said property shall be sold by the sheriff in the same manner as other property is sold under execution: Provided, that no debtor's exemption shall be allowed; and provided, further, that in lieu of any personal service of notice on the owner of said property, registered mail notice shall be mailed to the listing taxpayer, at his last known address, at least one week prior to the day fixed for said sale. The purchaser at said sale shall acquire title to said property in fee simple, free and clear of all claims, rights, interest and liens except the lien of other taxes and assessments not paid from the purchase price and not included in the judgment: Provided, that if a taxing unit has, by virtue of the taxes included in such a judgment, been made a defendant in a foreclosure action brought under § 105-391, it shall file answer therein and thereafter all proceedings shall be governed by order of court in accordance with the provisions of that section.

(d) Cancellation upon Payment.—Upon payment in full of any judgment docketed under this section, together with interest thereon and costs accrued to the date of payment, it shall be the duty of the collecting official receiving such payment immediately to certify the fact of such payment to the clerk of superior court, who shall thereupon cancel the judgment, the fee for such cancellation to be fifty cents (50c), which fee shall be included as part of accrued costs.

(e) Consolidation of Liens.—By agreement between the governing bodies, two or more taxing units may consolidate their liens for purposes of docketing judgment, or may have one execution issued for separate judgments, against the same property. In like manner one execution may issue for separate judgments in favor of one or more taxing units against the same property for different years' taxes.

In any advertisement or posted notice of sale under execution the sheriff may (and, at the request of the governing body of the taxing unit, shall) combine the advertisements or notices for properties to be sold under executions, against the properties of different taxpayers, in favor of the same taxing unit or group of units: Provided, that the property included in each judgment shall be separately described and the name of the listing taxpayer specified in connection with each.

(f) Special Assessments.—Street, sidewalk and other special assessments may be included in any judgment for taxes taken under this section; or such assessments may be included in a separate judgment docketed under this section, which is hereby declared to be made available as a method of foreclosing the lien of such assessments.

(g) Purchase and Resale by Taxing Unit.—Any taxing unit may become a bidder at said sale under execution, and may assign its bid by pri-

vate sale, for not less than the amount of such bid. Property purchased by any taxing unit may be resold at any time in the manner provided by law for sale of other property of such unit: Provided, a city may resell property to the former owner or other person formerly having an interest therein, at private sale, for not less than the amount of said unit's interest in such property (other than special assessments).

(h) Procedure if Section Declared Unconstitutional.—If any provisions of this section are declared invalid or unconstitutional by a court of competent jurisdiction, all taxing units which have proceeded under this section shall have one year from the date of the filing of such opinion (or, in case of appeal, from the date of the filing of the opinion on appeal) in which to institute foreclosure actions under § 105-391 for all taxes included in judgments taken under this section and for subsequent taxes due or which, but for purchase of such property by the taxing unit, would have become due; and such opinion shall not have the effect of invalidating the tax lien or disturbing the priority thereof. (1939, c. 310, s. 1720.)

Local Modification.—Cumberland: 1941, c. 44, s. 1(g).

§ 105-393. Time for contesting validity of tax foreclosure title.—No action or proceeding shall be brought to contest the validity of any title to real property acquired, by a taxing unit or by a private purchaser, in any tax foreclosure action or proceeding authorized by this subchapter or by other laws of this state in force at the time of acquisition of said title, nor shall any motion to reopen or set aside the judgment in any such tax foreclosure action or proceeding be entertained, after one year from the date on which the deed is recorded: Provided, that in cases of deeds recorded prior to April 3, 1939, such action or proceeding may be brought or motion entertained within one year after said date: Provided, further, that this shall not be construed as enlarging the time within which to bring such action or proceeding or entertain such motion. (1939, c. 310, s. 1721.)

§ 105-394. Facsimile signatures.—In the institution or prosecution of any suits or other proceedings under this subchapter, or in tax foreclosure proceedings under laws heretofore or hereafter in force, and in the giving of any notice preliminary to the institution thereof, it shall be sufficient and a compliance with the law that where any official or attorney required to sign summons, complaints, verifications of pleadings, notices, judgments or other papers, the name of said official or attorney may be affixed to said documents by stamping thereon the facsimile of the signature of said official or attorney with a rubber stamp by any person authorized by said official or attorney so to do; and said documents so stamped shall have the same legal force and effect as if said signature had been written by said official or attorney with his own hand, and all such signatures stamp as aforesaid shall be conclusively presumed to have been so stamped at the direction of the official or attorney whose signature it purports to be. (1939, c. 310, s. 1722.)

§ 105-395. Application of article.—All provisions of this article shall apply to all taxes originally due within fiscal years beginning on or after July first, one thousand nine hundred thirty-nine. With the exception of the provisions of §§ 105-378 to 105-380, the provisions of this article shall also apply to all taxes uncollected on April 3, 1939, originally due within the fiscal year beginning July first, one thousand nine hundred thirty-eight. Sections 105-373 to 105-377, 105-381 to 105-386, 105-390, 105-393, 105-394, and subsections (k) to (v), inclusive, of § 105-391 shall also apply, to the extent that such application does not affect any action already taken or affect private rights already vested on April 3, 1939, to all taxes, due and owing to taxing units on April 3, 1939, originally due within fiscal years beginning on or before July first, one thousand nine hundred thirty-seven, whether such taxes have heretofore been included in tax sales certificates or not, and whether such taxes are included in pending foreclosure actions or not; and § 105-392, and subsections (a) to (j), inclusive, of § 105-391 shall also apply to all taxes, due and owing to taxing units on April 3, 1939, originally due within fiscal years beginning on or before July first, one thousand nine hundred thirty-seven, which have not been included in any tax foreclosure proceedings pending or completed on April 3, 1939: Provided, that with respect to such taxes originally due within the fiscal years beginning on or before July first, one thousand nine hundred thirty-seven, the provisions of said § 105-392, and subsections (a) to (j), inclusive, of § 105-391 shall be in addition to, and not in substitution for, the provisions of laws in force immediately prior to April 3, 1939: Provided, further, that proceedings may be begun under the provisions of §§ 105-391 and 105-392, with respect to such taxes originally due within the fiscal years beginning on or before July first, one thousand nine hundred thirty-seven, at any time after six months and within one year following April 3, 1939 or within a longer period otherwise permitted by the terms of this article.

Except as in this section provided, the collection and foreclosure of taxes originally due within fiscal years beginning on or before July first, one thousand nine hundred thirty-eight, shall be under the provisions of laws in force immediately prior to April 3, 1939, including § 105-414. In all actions which may be brought under the provisions of section eight thousand thirty-seven of the Consolidated Statutes of North Carolina, the general advertisement, or six months' notice, prescribed by said section need not be made; and the failure to make such advertisement in any action heretofore brought under said section is hereby ratified, confirmed and approved, and, despite such failure, such action, with respect to defendants served with process in such action, either by personal service or service by publication, is hereby validated to the same extent as if said advertisement had been made.

Section 105-414 is hereby preserved in full force and effect as an alternative method for the foreclosure of taxes orginally due within fiscal years beginning on or after July first, one thousand nine hundred thirty-eight: Provided, that the provisions of subsections (f) to (v), inclusive, of § 105-391 shall apply in any such foreclosure action brought under said § 105-414.

Nothing in this section or this article shall be construed to require foreclosure of any taxes under the provisions of § 105-392, and subsections

(a) to (j), inclusive, of § 105-391, if such taxes have been or by the terms of this section may be included in any action instituted under laws in force immediately prior to April 3, 1939, whether such taxes be included in said action by the original complaint or by amendment thereto.

To the extent indicated in this section the laws in force immediately prior to April 3, 1939, are hereby preserved in full force and effect, any repeal clauses contained in this article or subchapter to the contrary notwithstanding. (1939, c. 310, s. 1723.)

Art. 28. General Provisions.

§ 105-396. Foreign corporations not exempt.—Nothing in this subchapter shall be construed to exempt from taxation at the value prescribed by law any property situated in this state belonging to any foreign corporation, unless the context clearly indicates the intent to grant such exemption. (1939, c. 310, s. 1800.)

§ 105-397. General purpose of subchapter.—It is the purpose of this subchapter except as otherwise herein provided to provide the machinery for the listing and valuing of property, and the levy and collection of taxes, for the year one thousand nine hundred thirty-nine, and annually thereafter, and to that end this subchapter shall be liberally construed, subject to the provisions set out in Schedule H, §§ 105-198 to 105-217. (1939, c. 310, s. 1802.)

Art. 29. Validation of Listings.

§ 105-398. Real property listings validated.—Listings of any real estate not otherwise listed, which have been carried forward on the tax list of any person by the county supervisor of taxation, list taker or assessor, at the same assessed value of said property as it was valued at in the last quadrennial assessment of taxes, unless the value thereof has been changed by the board of county commissioners as provided by law, are hereby validated, and are hereby declared to be legal and valid listings of the same as if listed by the owner or owner's agent or by the chairman of the board of county commissioners or otherwise, as provided by law.

This section shall be retroactive so as to include the period of time from the first day of May, one thousand nine hundred twenty-seven, to and including the eleventh day of May, one thousand nine hundred thirty-five.

The counties of Alamance, Ashe, Beaufort, Bertie, Brunswick, Cabarrus, Camden, Carteret, Clay, Currituck, Dare, Durham, Greene, Halifax, Harnett, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Macon, Moore, Northampton, Pasquotank, Pitt, Polk, Randolph, Richmond, Robeson, Rowan, Rutherford, Sampson, Surry, Transylvania, Wake, Warren, and Wayne are hereby exempted from the provisions of this section. (1937, c. 259, ss. 1-3.)

Local Modification.—Nash: 1939, c. 298.

SUBCHAPTER III. COLLECTION OF TAXES.

Art. 30. General Provisions.

§ 105-399. Subchapter to remain in force.—The provisions of this subchapter shall continue in force whether or not brought forward in subsequent acts to raise revenue or acts to provide for the assessment and collection of taxes, commonly called "revenue acts" and "machinery acts," unless and until expressly repealed or amended by, or clearly inconsistent with, subsequent legislation; it being the intention of the general assembly that this subchapter shall be a standing provision for the government of the matters embraced herein, and not to be repealed by implication because omitted in whole or in part from subsequent legislation on the subject of taxation. (Rev., s. 2849; C. S. 7972.)

§ 105-400. Application and construction.—The provisions of this subchapter shall apply to all taxes as defined in this chapter, whether state, county, town, city, or other municipal subdivision; and shall be liberally construed in favor of, and in furtherance of, the collection of such taxes. (Rev., s. 2850; C. S. 7973.)

§ 105-401. Terms defined.—Unless such construction or definition would be manifestly inconsistent with or repugnant to the context, the words and phrases following, whenever used in this subchapter, shall be construed to include in their meaning the definitions set opposite the same in this section:

1. "Tax," "taxes." Any taxes, special assessments or costs, interest or penalty imposed upon property or polls.

2. "He." Male, female, company, corporation, firm, society, singular or plural number.

3. "Real property." Real estate, land, tract, lot—not only the land itself, whether laid out in town or city lots or otherwise with all things therein, but also all buildings, structures, and improvements and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto, and all estates therein.

4. "Sheriff." Every person who is by law authorized to collect taxes, either state or municipal. (Rev., s. 2851; C. S. 7974.)

§ 105-402. Sheriff includes tax collector.—Whenever in this chapter a duty is imposed upon the sheriff of a county of which a tax collector has been or may be appointed, it shall be incumbent upon the tax collector to perform such office instead of the sheriff, and such tax collector shall collect all the taxes, have all the emoluments and be subject to all the penalties as provided in case of sheriffs in this chapter, and it shall be the duty of all persons having tax moneys in hand to account for and settle with such tax collector. (Rev., s. 5263; 1917, c. 234, s. 111; 1919, c. 92, s. 111; C. S. 7975.)

§ 105-403. No taxes released. — No board of county commissioners, or council, or board of aldermen or commissioners of any city or town shall have power to release, discharge, remit, or commute any portion of the taxes assessed and levied against any person or property within their respective jurisdictions for any reason whatever; and any tax so discharged, released, remitted, or commuted may be recovered by civil action from the members of any such board at the suit of any citizen of the county, city, or town, as the case may be, and when collected shall be paid to the proper treasurer. Nothing in this section shall be construed to prevent the

proper authorities from refunding taxes as provided in this chapter; nor to interfere with the powers of any officers or boards sitting as a board of equalization of taxes; nor construed to exempt any taxpayer or property from liability for taxes released, discharged, remitted, or commuted in violation of this section. (Rev., s. 2854; 1901, c. 558, s. 31; C. S. 7976.)

§ 105-404. Uncollected inheritance taxes remitted after 20 years.—All inheritance taxes levied by the State which remain uncollected twenty years or more after the death of the person upon whose estate said taxes were levied shall be, and they are hereby remitted. (1935, c. 483.)

§ 105-405. Taxing authorities authorized to release or remit taxes.—The board of county commissioners or city council or board of aldermen or city commissioners, or any other governing body in any city or town, shall have power to release, discharge, remit or commute any portion of the taxes assessed and levied against any person or property within their respective jurisdictions when there has been destruction or partial destruction or any damage to the property assessed for valuation when such destruction, partial destruction or damage occurs between midnight of April first and midnight of June thirtieth of any year, and when said destruction or partial destruction or damage has been caused by tornado, cyclone, hurricane or other wind or windstorm: Provided, application for release, discharge, remission or commutation is made to the aforesaid governing body within one year of the date of said destruction, partial destruction or damage: Provided further, that in cases of applicants for such relief who have received, or may receive, reimbursements for such damage or destruction from insurance policy contracts or otherwise, or whose property has been restored or rehabilitated, wholly or partially, by the Red Cross or any public welfare agency or organization without full value having been paid therefor by the property owner, such applicant shall, as a condition precedent to the relief herein provided for, list for taxation for the year for which relief is asked the equivalent in value of such reimbursement or restoration or rehabilitation; and provided further, that such governing body shall apply this section uniformly to all persons and property within its jurisdiction. This section shall be retroactive to and including April first, one thousand nine hundred and thirty-six. (1937, c. 15.)

§ 105-406. Remedy of taxpayer for unauthorized tax.—Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part, nor to restrain the sale of any property for the nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer. (Rev., s. 2855; 1901, c. 558, s. 30; C. S. 7979.)

§ 105-407. Refund of taxes illegally collected and paid into state treasury.—Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the state treasury in excess of the amount legally due the state, the state auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the attorney-general, and the treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: Provided, demand is made for the correction of such error or errors within two years from the time of such payment. (Ex. Sess. 1921, c. 96; C. S. 7979(a).)

Art. 31. Rights of Parties Adjusted.

§ 105-408. Taxes paid in judicial sales and sales under powers.—In all civil actions and special proceedings wherein the sale of any real estate shall be ordered, the judgment shall provide for the payment of all taxes then assessed upon the property and remaining unpaid, and for the payment of such sums as may be required to redeem the property, if it has been sold for taxes and such redemption can be had; all of which payments shall be adjudged to be made out of the proceeds of sale. The judgment shall adjust the disbursements for such taxes and expenses of redemption from tax sales between the parties to the action or proceeding in accordance with their respective rights. And whenever any real estate shall be sold by any person under any power of sale conferred upon him by any deed, will, power of attorney, mortgage, deed of trust, or assignment for the benefit of creditors, the person making such sale must pay out of the proceeds of sale all taxes then assessed upon such real estate and such sums as shall be necessary to redeem the land, if it has been sold for taxes and such redemption is practicable. This section shall apply both to taxes and special assessments for paving, drainage, or other improvements; provided, that the person making such sale,

whether under order of court or in the exercise of a power, shall be required, in cases where special assessments are payable in installments, to pay only such installments of special assessments as have become due at the date of such sale. The failure to comply with this section and pay such taxes or assessments shall not vacate or affect the lien of such taxes or assessments, but such lien shall be discharged only to the extent payment is actually made. (Rev., s. 2857; 1901, c. 558, s. 47; 1929, c. 231, s. 1; C. S. 7980.)

§ 105-409. Tax paid by holder of lien; remedy.—Any person having a lien or encumbrance of any kind upon real estate may pay the taxes due by the owner thereof in so far as the same are a lien upon such real estate, and the amount of taxes so paid shall, from the time of payment, operate as a lien upon such real estate in preference to all other liens, which lien may be enforced by action in the superior court in term. The money so paid may also be recovered by action for moneys paid to his use against the person legally liable for the payment of such taxes. (Rev., s. 2858; Code, s. 3700; 1901, c. 558, s. 46; 1879, c. 71, s. 55; C. S. 7981.)

§ 105-410. Forfeiture by life tenant failing to pay.—Every person shall be liable for the taxes assessed or charged upon the property or estate, real or personal, of which he is tenant for life. If any tenant for life of real estate shall suffer the same to be sold for taxes by reason of his neglect or refusal to pay the taxes thereon, and shall fail to redeem the same within one year after such sale, he shall thereby forfeit his life estate to the remainderman or reversioner. The remainderman or reversioner may redeem such lands, in the same manner that is provided for the redemption of other lands. Moreover, such remainderman or reversioner shall have the right to recover of such tenant for life all damages sustained by reason of such neglect or refusal on the part of such tenant for life. If any tenant for life of personal property suffer the same to be sold for taxes by reason of any default of his, he shall be liable in damages to the remainderman or reversioner. (Rev., s. 2859; Code, ss. 3698, 3699; 1901, c. 558, s. 45; 1879, c. 71, ss. 53, 54; C. S. 7982.)

§ 105-411. Remedies of cotenants and joint owners.—Any one of several tenants in common, or joint tenants or copartners shall have the right to pay his share of the taxes assessed or due upon the real estate held jointly or in common, or, if such estate has been sold for taxes, he may redeem his share by paying his proportionate part of the amount required for redeeming the whole. Where he has paid his share of the taxes or amount required for the redemption and the land has been or shall be divided by actual partition the share set apart to him in severalty shall be free from the lien of, and shall not be liable to be subjected in any manner to, the payment of the residue of taxes assessed upon such property; but such residue of taxes and the costs and penalties incident thereto shall be a lien upon the residue of such real estate, which residue shall be subjected to the satisfaction thereof; and when he has paid his share of the taxes, or amount necessary to redeem, and the real estate is sold under judicial proceedings for partition, his share of the proceeds shall not be diminished by disbursements for the residue of such taxes or for redeeming the property, and the costs and penalties incident thereto. Any such part owner in real estate shall have the right to pay the whole of the taxes assessed thereon and all costs and penalties incident to such taxes, and to redeem such real estate as a whole when it has been sold for taxes, and all sums by him so paid in excess of his share of such taxes, costs, and penalties and amounts required for redemption, shall constitute a lien upon the shares of his cotenants or associates, payment whereof, with interest, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding. When one tenant in common, joint tenant, or copartner shall have paid his proportionate part of the taxes, as allowed by this section, before a sale for taxes, the sheriff shall except his undivided interest from the sale and in the certificate of sale and deed for the property. (Rev., s. 2860; 1901, c. 558, ss. 13, 14, 47; C. S. 7983.)

§ 105-412. Fiduciaries to pay taxes.—It shall be the duty of every guardian, executor, administrator with the will annexed, agent, trustee, receiver, or other fiduciary in whose care or control any property or estate, real or personal, may be, to pay the taxes thereon out of the trust funds in his hands, if any there be; and if he fail so to do he shall become personally liable for such taxes, and such liability may be enforced by an action against him in the name of the sheriff. If he permit such property to be sold by reason of his negligence to pay the taxes when he has funds in hand, he shall be liable to his ward, principal, or cestui que trust for all actual damages incident to such neglect. This section shall not have the effect of relieving the estates held in trust or under the control of fiduciaries from the lien of such taxes. (Rev., s. 2862; Code, ss. 3698, 1595; 1879, c. 71, s. 53; R. C., c. 54, s. 27; 1868-9, c. 201, s. 32; 1762, c. 69, s. 14; C. S. 7985.)

Art. 32. Tax Liens.

§ 105-413. Tax lien on railroad property.—The taxes upon any and all railroads in this state, including roadbed, right of way, depots, sidetracks, ties and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the first day of May in each current year, against all claims or demands whatsoever of all persons or bodies corporate, except the United States and this state; and the above described property or any part thereof may be taken and held for payment of all taxes assessed against such railroad company in the several counties in this state. (Rev., ss. 2865, 5296; 1917, c. 234, s. 98; 1919, c. 92, s. 98; C. S. 7989.)

§ 105-414. Tax lien enforced by action to foreclose.—A lien upon real estate for taxes or assessments due thereon may be enforced by an action in the nature of an action to foreclose a mortgage, in which action the court shall order a sale of such real estate, or so much thereof as

shall be necessary for that purpose, for the satisfaction of the amount adjudged to be due on such lien, together with interest, penalties, and costs allowed by law, and the costs of such action. When such lien is in favor of the state or county, or both, such action shall be prosecuted by and in the name of the county; when the lien is in favor of any other municipal corporation the action shall be prosecuted by and in the name of such corporation. When such lien is in favor of any private individual or private corporation holding a certificate of tax sale or deed under a tax sale, whether as original purchaser at a tax sale or as assignee of the county or other municipal corporation or of any other holder thereof, such action shall be prosecuted in the name of the real party in interest. (Rev., s. 2866; 1901, c. 558, ss. 42, 43; C. S. 7990.)

Local Modification.—Wayne: Pub. Loc. 1939, c. 190.

Art. 33. Time and Manner of Collection.

§ 105-415. Sureties of sheriff may collect, when.—If any sheriff shall die during the time appointed for collecting taxes, his sureties may collect them, and for that purpose shall have all power and means for collecting the same from the collectors and taxpayers as the sheriff would have had, and shall be subject to all the remedies for collecting and settling the taxes, on their bond or otherwise, as might have been had against the sheriff if he had lived. (Rev., ss. 2868, 5264; 1917, c. 234, s. 112; 1919, c. 92, s. 112; C. S. 7993.)

§ 105-416. Sheriff collecting by deputy.—When the sheriff shall collect by his deputies they shall, before the clerk of the board of commissioners or before a justice of the peace of the county, take and subscribe an oath faithfully and honestly to account for the taxes with the sheriff or other person authorized to receive the same. Such oath shall be filed with the register of deeds and kept in the office of the board of commissioners, and for failure of any deputy sheriff to pay over such taxes as he may collect he shall be guilty of a misdemeanor. (Rev., s. 5241; 1917, c. 234, s. 88; 1919, c. 92, s. 88; C. S. 7995.)

§ 105-417. Compromise of tax claims due by railroad companies in which state owns majority of stock, authorized.—The commissioner of revenue of the state of North Carolina and the governing bodies of any county, municipality, or other taxing subdivision in this state, are hereby authorized within their discretion to accept in full settlement for all taxes which have heretofore become due settlements thereof which may be less than the full amount of such taxes, penalties and costs as to any taxes which may be due by any railroad company in North Carolina in which the state of North Carolina is the owner of more than a majority of the outstanding capital stock; and said settlement may be accepted by said officials if in their judgment the acceptance of the same will be for the best interests and to the advantage of the respective taxing units holding such tax claims. (1939, c. 76.)

Art. 34. Tax Sales.

Part. 1. Sale of Realty.

§ 105-418. Sales on dates other than first Monday in June validated.—All sales of land for failure to pay taxes, held or conducted by any sheriff or any tax collector of any county, city, town or other municipality during the year one thousand nine hundred thirty, on any day subsequent to or other than the first Monday in June of said year, are hereby, approved, confirmed, validated and declared to be proper, valid and legal sales of such land and legally binding in all respects, and all certificates of sale made and issued upon and in accordance with such sales are hereby approved and validated to all intents and purposes, and with such full force and legal effect as if said sales had been held and conducted on said first Monday of June, one thousand nine hundred thirty. (1931, c. 160.)

§ 105-419. Tax sales for 1931-32 on day other than law provides and certificates validated.—All sales of land for failure to pay taxes, held or conducted by any sheriff or any tax collector of any county, city, town or other municipality during the year one thousand nine hundred thirty-one and one thousand nine hundred thirty-two, on any day subsequent to or other than the first Monday in June of said year, are hereby, approved, confirmed, validated and declared to be proper, valid and legal sales of such land and legally binding in all respects, and all certificates of sale made and issued upon and in accordance with such sales, be, and they are hereby, approved and validated to all intents and purposes, and with such full force and legal effect as if said sales had been held and conducted on said first Monday of June, one thousand nine hundred thirty-one and one thousand nine hundred thirty-two. (1933, c. 177.)

Local Modification.—Durham, Mecklenburg: 1933, c. 177.

§ 105-420. Taxes sales for 1933-34 and certificates validated.—All sales of land for failure to pay taxes held or conducted by any sheriff or any tax collector of any county, city, town or other municipality during the years one thousand nine hundred thirty-three and one thousand nine hundred thirty-four or on any date subsequent to or other than the date prescribed by law and all certificates of sale executed and issued pursuant to and in accordance with such sales be and the same are hereby approved, confirmed and validated and shall have the same force and legal effect as if said sales had been held and conducted on the date prescribed by law.

The board of county commissioners of any county or the governing board of any city, town or other municipality may by resolution order the sheriff or tax collecting officer of the said county, city, town or other municipality to advertise in the manner provided by law and sell all land for the taxes of any year levied by the said county, city, town or other municipality, which land has not heretofore been legally sold for the failure to pay said taxes. The sale or sales herein authorized shall be held not later than the first Monday in September, one thousand nine hundred thirty-five, and certificates of sale shall be issued in accordance with and pursuant to said sale or sales in the same manner as if said sale or sales had been held and conducted as provided by law. Any sale held and conducted under the provisions of this paragraph and all certificates issued pursuant

to such sales shall be and the same are hereby approved, confirmed and validated and shall have the same force and legal effect as if said sale had been held and conducted on the date prescribed by law.

All actions instituted in any county, city, town or other municipality for the foreclosure of certificates of sale issued for the taxes of the years one thousand nine hundred twenty-seven, one thousand nine hundred twenty-eight, one thousand nine hundred twenty-nine, one thousand nine hundred thirty, one thousand nine hundred thirty-one and one thousand nine hundred thirty-two subsequent to October first, one thousand nine hundred thirty-four, and all such actions instituted before October first, one thousand nine hundred thirty-five, shall be and the same are hereby approved, validated and declared to be legally binding and of the same force and effect as if said actions were instituted prior to October first, one thousand nine hundred thirty-four: Provided, that this section shall not be construed to repeal any private or local act passed by the general assembly of one thousand nine hundred thirty-five. (1935, c. 331.)

§ 105-421. Notices of sale for taxes by publication validated.—All sales of real property under tax certificate foreclosures, made since January first, one thousand nine hundred twenty-seven, where the original notice of sale was published for four successive weeks, and any notice of resale was published for two successive weeks, preceding said sales, whether the notice of sale was required to be published in a newspaper or at courthouse door, or both, shall be, and the same are in all respects validated as to publication of said notice: Provided said publication was completed as above set out within ten days of the date of the sale.

The provisions of this section shall not apply to the counties of Alleghany, Beaufort, Cabarrus, Camden, Carteret, Caswell, Currituck, Halifax, Harnett, Henderson, Hertford, Hyde, Iredell, Johnston, Jones, Macon, Mitchell, Moore, Nash, New Hanover, Perquimans, Pitt, Polk, Rowan, Rutherford, Scotland, Surry, Wake, Warren, Washington, and Wayne. (1937, c. 128.)

Part 2. Refund of Tax Sales Certificates.

§ 105-422. Tax liens for 1926 and prior years, not yet foreclosed, barred. — All tax liens held by counties, municipalities, and other governing agencies for the year one thousand nine hundred twenty-six and the years prior thereto, whether evidenced by the original tax certificates, or tax sales certificates, and upon which no foreclosure proceedings have been instituted, are hereby declared to be barred and uncollectible: Provided, that no part of this section shall be construed as applying to liens for street and/or sidewalk improvements. (1933, c. 181, s. 7; 1933, c. 399.)

Local Modification.—McDowell: 1933, c. 399; Pamlico, Richmond: 1933, c. 181, s. 7.

§ 105-423. Counties excepted.—None of the provisions of § 105-422 shall apply to Davidson, Forsyth, Orange, Hyde and Mecklenburg Counties: Provided, that § 105-422 shall not be mandatory in the following counties or municipalities therein, but within the discretion of the governing bodies of the said counties or municipalities therein, to-wit: Alleghany, Beaufort, Cleveland, Gaston, Polk, Granville, Catawba, Lincoln, Wilkes, Guilford, Surry, Moore, Richmond, Camden, Durham, Rockingham, Burke, Caldwell, New Hanover, Halifax, Union and Hertford. (1933, c. 181, s. 14, cc. 226, 314, 329, 351, 377, 389, s. 2, 391, 424, 427, s. 2, 471, 502.)

Local Modification.—Alamance: 1933, c. 402; Brunswick: 1935, c. 370; Caswell: 1935, cc. 354, 370; Catawba: 1933, c. 315; Chatham: 1933, c. 536; Clayton, Town of: 1935, c. 419; Columbus: 1933, c. 486; Dare: 1933, c. 505; Granville: 1933, c. 304; Johnston: 1933, c. 459; Nash: 1933, cc. 389, 423; Pitt: 1933, c. 513; Scotland: 1933, c. 218.

Art. 35. Sheriff's Settlement of Taxes.

§ 105-424. Time and manner of settlement. — The sheriff or other accounting officer shall, on or before the second Monday of January in each year, settle his estate tax account with the commissioners of his county and pay the amount for which said sheriff or collector is liable to the treasurer of the state, in such manner or at such place as he shall direct, on or before the third Monday of said month: Provided, the state treasurer may extend the time on a sufficient amount to cover the state tax on the land sales in each county to the first Monday in May. The commissioners shall forthwith report to the state auditor the amount due from such accounting officer, setting forth therein the net amount due to each fund; and the treasurer, upon a statement from the state auditor, shall open an account against such officer and debit him accordingly. Upon the failure of the board of county commissioners to make this report to the state auditor on or before the third Monday of January of each year, or if a report has been filed which is not correct and the commissioners fail to file an amended and corrected report within thirty days after being notified so to do by the state auditor, the commissioners of such county shall each personally be liable to a penalty of one hundred dollars, and it shall be the duty of the state auditor forthwith to institute an action in the county of Wake to enforce the same. The sheriff or tax collector, in making his settlements as aforesaid, shall file with the commissioners a duplicate of the list required in this chapter. In such settlement the sheriff or other officer shall be charged with the amount of public tax as the same appears by the abstract of the taxables transmitted to the state auditor; also with all double taxes on unlisted property by him received, and with other tax which he may have collected or for which he is chargeable. The state auditor shall give to each sheriff or tax collector a certified statement embracing the subjects of taxation contained in both lists and the amount of tax on each subject which the sheriff or tax collector shall deposit with the clerk of the commissioners of his county for public inspection. The sheriffs and tax collectors shall receive five per cent on all taxes collected by them for state, county, township, school district, or other purposes whatsoever, up to the sum of fifty thousand dollars, and upon all such sums so collected by him in excess thereof he shall receive two and one-half per cent commission, and the sheriffs or tax collectors shall receive for their own use, in addition to other fees or salary received by them, a com-

mission of five per cent on all privilege and license taxes collected under schedule B of the revenue act, and any provision in any local act in conflict with this provision is hereby repealed. (Rev., s. 5245; 1917, c. 234, s. 101; 1919, c. 92, s. 101; C. S. 8042.)

Local Modification.—Buncombe: C. S. 8042.

SUBCHAPTER IV. LISTING OF AUTOMOBILES IN CERTAIN COUNTIES.

§ 105-425. Listing by owner required.—Every owner of a motor vehicle in the counties specified herein shall list such motor vehicle for taxes in such counties at the same time residents of such counties are or may be required by law to list real and/or personal property for taxation. (1931, c. 392, s. 1.)

§ 105-426. Commissioner of motor vehicles to furnish list of registered automobiles to counties.—The Commissioner of Motor Vehicles shall furnish to the tax listing authorities of the counties enumerated in § 105-429, or to the tax collectors thereof, a list showing the names and addresses of all owners of motor vehicles in such counties as of January first in each year. The list shall also show the make, type and character of such motor vehicle and the date of registration thereof. This list shall be furnished as soon after the first day of January in each year as it can be prepared and furnished. The cost of preparing such lists shall be paid by the authorities of the enumerated counties to which the lists are furnished. (1931, c. 392, s. 2.)

§ 105-427. Listing by county authorities where owners fail to list.—The tax listing authorities of the counties specified herein shall compare said list of motor vehicle owners with the tax lists of such counties and if it appears that any owner of a motor vehicle has failed to list any motor vehicle registered in his name, it shall be the duty of such tax listing authorities or of the tax collectors of such counties to list such motor vehicle for purposes of taxation, together with any other property of such person, and the tax collectors of such counties shall collect the taxes thereon in the same manner as other taxes of such counties. (1931, c. 392, s. 3.)

§ 105-428. Basis of tax valuation.—All motor vehicles shall be valued or appraised for purposes of taxation upon the rule or standard of valuation established by "The Automobile Blue Book," or any other standard of value which may be reasonable, equitable and just. (1931, c. 392, s. 4.)

§ 105-429. Counties to which article applicable. — This article shall apply to the following counties: Alamance, Buncombe, Cabarrus, Camden, Caswell, Chowan, Currituck, Cleveland, Columbus, Durham, Gates, Guilford, Halifax, Harnett, Henderson, Hertford, Johnston, Iredell, Lee, Nash, Moore, McDowell, Orange, Pasquotank, Perquimans, Pitt, Polk, Rowan, Rutherford, Swain, Wayne and Watauga. (1931, c. 392, s. 5.)

SUBCHAPTER V. GASOLINE TAX.

Art. 36. Gasoline Tax.

§ 105-430. Definitions; "motor fuel," "distributor". — The following words, terms, and phrases hereinafter used for the purpose of this article are defined as follows:

(a) "Motor Fuel" shall mean (a) all products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classification or uses; and (b) any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); with the exception that the term "motor fuel" shall not include commercial solvents which distill, by American Society for Testing Materials Method D-86, not more than nine (9%) per centum at 176° F. and which have a distillation range of 125° F. or less, of liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(b) "Distributor" is any person, firm, association of persons, corporation, municipality, county, or other political subdivision or agency that has on hand or in his or its possession in this State, or that produces, refines, manufactures, or compounds such motor fuels in this State for sale, distribution, or use herein. (1927, c. 93, s. 1; 1931, c. 145, s. 24; 1941, c. 376, s. 1.)

§ 105-431. Purpose of article; double taxation not intended.—The purpose of this article is to provide for the payment and collection of a tax on the first sale of motor fuels when sold, or the use, when used, in this State; double taxation is not intended. Motor fuels manufactured, produced, or sold for exportation, and exported are not taxable and should not be included in the reports hereinafter required to be made by distributors. (1927, c. 93, s. 2; 1931, c. 145, s. 24.)

§ 105-432. Sales in tank car shipments.—In the administration of this article the first sale shall not be construed to embrace the sale in tank car shipments from port terminals to licensed distributors within the State, but the tax hereinafter levied on such motor fuel shall be levied against and paid by such licensed distributor. (1927, c. 93, s. 2½; 1931, c. 145, s. 24.)

§ 105-433. Application for license as distributor.—Any distributor engaged in business on April 1, 1931, shall, within thirty days thereafter, and any other distributor shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Commissioner of Revenue on a form prescribed and furnished by him setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such

distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Commissioner of Revenue may require. Each distributor shall at the same time file a bond in such amount, not exceeding twenty thousand dollars ($20,000) in such form and with such surety or sureties as may be required by the Commissioner of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. Upon approval of the application and bond, the Commissioner of Revenue shall issue to the distributor a non-assignable license with a duplicate copy for each place of business of said distributor in this State, which shall be displayed in a conspicuous place at each such place of business and shall continue in force until surrendered or cancelled. No distributor shall sell, offer for sale, or use any motor fuels within this State until such license has been issued. Any distributor failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five thousand dollars ($5,000.00), or imprisoned for not more than twenty-four months, or both. (1927, c. 93, s. 3; 1931, c. 145, s. 24.)

§ 105-434. Gallon tax.—There is hereby levied and imposed a tax of six cents per gallon on all motor fuels sold, distributed, or used within this State. The tax hereby imposed and levied shall be collected and paid by the distributor producing, refining, manufacturing, or compounding within this State, or holding in possession within this State motor fuels for the purpose of sale, distribution, or use within the State, and shall be paid by such distributor to the Commissioner of Revenue in the manner and at the times hereinafter specified. No county, city, or town, or political sub-division shall levy or collect any tax upon the sale or distribution of motor fuels herein defined. For the purpose of determining the amount of the tax, it shall be the duty of every distributor to transmit to the Commissioner of Revenue not later than the twentieth day of each month, upon forms prescribed and furnished by such commissioner, a report under oath or affirmation showing the quantity of motor fuel sold, distributed, or used by such distributor within this State during the preceding calendar month, and such other information as the said commissioner may require: Provided, that any distributor may, if he elects to do so, use as the measure of the tax levied and assessed against him by this section the gross quantity of motor fuel purchased, produced, refined, manufactured, and/or compounded by such distributor, plus the amount of motor fuel on hand at the beginning of the period when such method of computation is used, less a tare of two per cent (2%) on gross monthly receipts of motor fuels not exceeding 150,000 gallons, and less a tare of one and one-half per cent (1½%) on gross monthly receipts of such fuels in excess of 150,000 gallons and not exceeding 250,000 gallons, and less a tare of one per cent (1%) on gross monthly receipts of such fuels in excess of 250,000 gallons. Provided, that if any licensed distributor who has elected to pay the tax levied herein on the amount of motor fuel purchased, produced, refined, manufactured, or compounded, in lieu of the amount sold, distributed, or used, shall lose any such fuel by reason of lightning, flood, or windstorm, and it is clearly proved to the satisfaction of the commissioner of revenue, that the loss is in excess of the 1% allowed during the calendar year in which it occurs, the amount of motor fuel lost in excess of the 1% shall be excluded from the measure of his tax. Provided, further, that the commissioner of revenue shall have power under such rules and regulations as he may adopt for the purpose to refund to any non-licensed distributor the tax on any motor fuel purchased by and delivered to him taxpaid that is lost by lightning, flood, or windstorm, after it is delivered to him and before it is sold, but such loss must be clearly proved to the satisfaction of the commissioner. (1927, c. 93, s. 4; 1929, c. 40, s. 1; 1931, c. 145, s. 24; 1941, cc. 16, 146.)

§ 105-435. Tax on fuels not included in definition; permits to operate vehicles; reports by holders of permits.—(a) Every person who owns or operates over the highways of this state, any motor vehicle propelled by a motor which uses any product not included within the definition of "motor fuels" hereinbefore set out to generate power for the propulsion of said vehicle, shall pay to the commissioner of revenue, for the use of the highways of this state, a tax of six cents (6c) per gallon on the fuel used in such vehicle upon the highways of this state.

(b) The owner or operator of such a vehicle on July 1, 1941, or any person who purchases such a vehicle subsequent thereto, shall, before it is operated on the highways of this state, apply to the commissioner of revenue, on forms prescribed by him, for a permit to operate such vehicle on the highways of the state and shall make the tax payments herein levied direct to the department of revenue. Upon receipt and approval of such application the commissioner of revenue shall issue to such owner or operator a non-assignable permit which shall remain in effect until new license plates are required to be purchased and at that time shall be surrendered and a new permit showing the correct license number shall be issued. This permit shall at all times be in the possession of the operator of such vehicle and subject to inspection by any agent of the department of revenue or any dealer from whom such operator desires to purchase fuel. The holder of a permit issued under the provisions of this section shall be subject to the same laws and to the rules and regulations of the commissioner of revenue in regard to the payments of tax and filing reports that licensed distributors of motor fuel are subject to, and such person shall also be subject to any other rules and regulations promulgated by the commissioner of revenue for the proper administration of this section: Provided, however, no bond shall be required. Provided, further, any person duly licensed as a motor fuel distributor under the provisions of this article who owns and operates motor vehicles for his own use and utilizes in such vehicles fuel not defined as motor fuel in this article, is authorized to pay the tax levied in this section on such fuel at the same

time and in the same manner as is provided for motor fuel distributors, and such tax shall be subject to the tares allowed by law to motor fuel distributors. In the event that a person elects to qualify as a motor fuel distributor and pay the tax as authorized by this proviso, it shall not be necessary for such person to secure the permit or make the reports required by this section, but such person shall comply with all the laws relating to motor fuel distributors.

(c) For the purpose of determining the amount of tax due, the owner or operator of every motor vehicle holding a permit issued under the provisions of this section shall file a report on or before the twentieth day of each month showing the number of miles each vehicle was operated over the highways of the state, the amount of fuel used during the preceding month and such other information as the commissioner of revenue may require. At the time of filing his report, said person shall pay to the commissioner of revenue the tax levied in paragraph (a) of this subsection.

(d) It shall be unlawful for any distributor, dealer or other person knowingly to sell fuel for use in such vehicles to owners or operators who do not hold permits as required by this section without collecting the tax herein levied and remitting the same to the commissioner of revenue as required on sales of motor fuel. It shall also be unlawful for any person who does not hold a permit, as provided herein, to operate such vehicles over the highways of the state on fuel on which the tax is not paid as provided herein.

If the owner or operator of any such vehicle shall fail to secure a permit, file a report or pay the tax as herein provided, his motor vehicle license shall be cancelled. It shall be the duty of the commissioner of revenue, upon such failure, to certify the same to the department of motor vehicles or such agency of the state as has charge of issuing motor vehicle licenses and upon receipt of such certification the department of motor vehicles or such other agency of the state as has charge of issuing motor vehicle licenses shall immediately have the license of the vehicle or vehicles returned for cancellation.

(e) Any person violating any of the provisions of this section shall be required to pay to the commissioner of revenue all taxes found to be due and, in addition thereto, a penalty of twenty-five per centum (25%) thereof, and such person shall also be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court. (1941, c. 376, s. 2.)

§ 105-436. Payment of tax.—Every distributor, at the time of making the report required by § 105-434, shall pay to the Commissioner of Revenue, the amount of tax due for the month covered by such report. The tax so paid shall be transferred promptly by the said commissioner to the State Treasurer as other receipts of his office and the State Treasurer shall place the same to the credit of the "State Highway Fund." (1927, c. 93, s. 5; 1931, c. 145, s. 24.)

§ 105-437. Action by commissioner of revenue if distributor fail to report.—If any distributor shall wilfully fail, neglect or refuse to make the reports required by § 105-434 within the time therein provided, the Commissioner of Revenue shall immediately inform himself as best he may as to all matters and things required to be set forth in such reports, and from such information as he may be able to obtain, determine and fix the amount of the tax due the State from such delinquent distributor for the period covering the delinquency, adding to the tax so determined and as a part thereof, an amount equal to twenty-five per cent (25%) of the tax, to be collected and paid. The said Commissioner shall proceed immediately to collect the tax including the additional twenty-five per cent and transmit the same in the manner provided in § 105-436 for the disposition of other taxes. (1927, c. 93, s. 6; 1931, c. 145, s. 24.)

§ 105-438. Record of transactions.—Every distributor of motor fuels shall keep a record of all such fuels purchased, received, sold, delivered or used by him, which shall include the number of gallons so purchased, received, sold, delivered, or used, and the dates of such purchases and sales, which records shall be preserved for a period of two years and shall at all times during the business hours of the day be subject to inspection by the Commissioner of Revenue or his deputies, or such other officers as may be duly authorized by said Commissioner. (1927, c. 93, s. 8; 1931, c. 145, s. 24.)

§ 105-439. Rebates for fuels sold to U. S. Government or for use in aircraft. — The Commissioner of Revenue is authorized under such rules and regulations as he may adopt for that purpose, to relieve any distributor from the payment of the tax herein levied for any motor fuels sold to the United States Government, and/or gasoline of such quality that it is not adapted for use in ordinary automotive vehicles, but is designed for and sold and used exclusively in aircraft motors, when it appears to the satisfaction of the Commissioner of Revenue that the tax herein imposed has not been added to the sale price of such motor fuel, and the Commissioner of Revenue is likewise authorized to refund by warrant drawn upon the State Treasurer to the person paying the same, any tax paid under the provisions of this article which constitutes an unlawful burden upon interstate commerce, in conflict with the provisions of the Constitution of the United States: Provided, that any claims for such rebate, which are not filed with the Commissioner of Revenue in accordance with forms to be provided by the Commissioner of Revenue within sixty days after the payment of said tax, shall be deemed to have been waived. (1931, c. 145, s. 24.)

§ 105-440. Penalty for making false claim for rebate. — Any person who shall wilfully make any false or fraudulent report as the basis for claim for rebate or deduction under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined and imprisoned in the discretion of the court. (1927, c. 93, s. 10; 1931, c. 145, s. 24.)

§ 105-441. Enumeration of acts constituting misdemeanor; cancellation of license and bond.—Any distributor who shall fail, neglect, or refuse to make the reports herein required or pay the taxes herein imposed, or who shall refuse to permit the Commissioner of Revenue or any agent appointed by him, to examine the books and records of such

distributor pertaining to the motor fuels made taxable by this article or who shall make any false, or fraudulent report or statement hereunder, or who does, or attempts to do, anything whatsoever to avoid a full disclosure of the quantity of motor fuels sold, distributed or used within this State shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars ($100.00) and not more than five thousand dollars ($5,000.00) or, in the case of an individual or the officer or employee charged with the duty of making such report for a corporation, to be imprisoned not exceeding twenty-four months, or both; and the commissioner of revenue may forthwith cancel the license of such distributor and notify him in writing of such cancellation by registered mail to be sent to his last known address. In the event that the license of any distributor is cancelled as above provided, and in the event such distributor shall have paid to the state of North Carolina all the taxes due and payable by him under this article, together with any and all penalties accruing under the provisions of this article, then the Commissioner of Revenue shall cancel and surrender the bond theretofore filed by said distributor. (1927, c. 93, s. 11; 1931, c. 145, s. 24; 1933, c. 544, s. 10.)

§ 105-442. Actions for tax; double liability.—If any person, firm or corporation shall fail to pay the amount of tax levied in § 105-434 within the time specified in § 105-436 it shall be the duty of the commissioner of revenue to proceed at once to enforce the payment of said tax, and to this end the commissioner of revenue shall have and may exercise all the remedies provided in the revenue laws of the state for enforcing payment of other taxes, including the right of execution through the sheriffs of the several counties of the state upon any property of the delinquent taxpayer, and shall, with the assistance of the attorney general whenever necessary, bring appropriate action in the courts of the state for the recovery of such tax. If it shall be found as a fact that such failure to pay was willful on the part of such person, firm or corporation, judgment shall be rendered against such person, firm or corporation for double the amount of tax found to be due, together with interest, and the amount of taxes and penalties shall be paid into the state treasury to the credit of the state highway fund. All remedies which now or may hereafter be given by the laws of the state of North Carolina for the collection of taxes are expressly given herein for the collection of taxes levied in this article or of judgment recovered under authority of this article. It shall also be the duty of the commissioner of revenue to revoke the license of any licensed distributor who shall refuse, fail or neglect to pay the taxes levied in § 105-434 within the time specified in § 105-436, and whose account shall remain delinquent for any part of said tax for ten days thereafter. (1927, c. 93, s. 12; 1931, c. 145, s. 24; 1933, c. 137, s. 1.)

§ 105-443. Auditing books of licensed distributors.—It shall be the duty of the commissioner of revenue, by competent auditors, to have the books and records of every licensed distributor in the state examined at least twice each year to determine if such distributor is keeping complete records as provided in § 105-438, and to determine if correct reports have been made to the state department of revenue by every such distributor covering the total amount of tax liability of such licensed distributor. It shall also be the duty of such auditors to check the records of each distributor with the records of shipment by railroad companies, or by boats or trucks, or other available sources of information, and also to check the records covering the receipt and distribution of any other liquid petroleum products handled by each distributor. (1933, c. 137, s. 1.)

§ 105-444. License constitutes distributor trust officer of state for collection of tax.—The licensing of any person, firm or corporation as a wholesale distributor of gasoline shall constitute such distributor an agent or trust officer of the state for the purpose of collecting the tax on the sale of gasoline imposed in this article. When any such person, firm or corporation who adds the amount of the tax levied in this article to the customary market price for gasoline and collects the same, shall fail to remit the gasoline tax to the commissioner of revenue upon the terms and as provided herein, such failure shall constitute embezzlement of state funds, and upon conviction under this section any individual, partner or officer or agent of any association, partnership or corporation shall be guilty of a felony, and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 137, s. 1.)

§ 105-445. Application of proceeds of gasoline tax.—The fund derived from the tax herein levied shall be for the exclusive uses of the purposes set out in this article, and disbursed on vouchers drawn by the State Highway and Public Works Commission in accordance with the acts of the General Assembly dealing with the subject matter herein referred to. (1931, c. 145, s. 24; 1933, c. 172, s. 17.)

§ 105-446. Tax rebate fuels not used in motor vehicles on highways.—Any person, association, firm, or corporation, who shall buy in quantities of ten gallons or more at any one time any motor fuels as defined in this article for the purpose of use, and the same is actually used, for a purpose other than the operation of a motor vehicle designed for use upon the highways, on which motor fuels the tax imposed by this article shall have been paid, shall be reimbursed at the rate of five cents per gallon of the amount of such tax or taxes paid under this article: Provided, however, that motor vehicles designed for use but not used upon the highways of this state shall be entitled to the refund of gasoline tax as herein provided, upon the following conditions and in the following manner:

(a) Before using such motor fuels the person, association, firm, or corporation proposing to use the same shall apply to the commissioner of revenue, upon blanks to be furnished by him, for a refund permit. Such application shall state the use for which the motor fuels for which taxes are to be refunded are to be used. If such motor fuels are to be used in a gasoline motor or engine, the application shall state the make and kind of such motor, the serial number thereof, and the purpose for which it is proposed to use the same. If such motor fuels are to be used for some purpose other than the operation of an engine, the application shall state the nature and

kind of process in which such motor fuels are to be used, and the method and manner in which such motor fuels are to be used, stored and kept. In all cases such application shall state the approximate number of gallons of such motor fuels to be used per month, and shall give such other information as the commissioner of revenue shall require. In making application for refund permit, the person making application may combine one or more of the uses above specified in the same application. Dealers in motor fuel engaged in selling such fuel to motor boats owned by non-residents, and which boats are not documented in this state, may apply to the commissioner of revenue for a permit on forms to be prescribed by the commissioner of revenue, which permit shall entitle the said dealer to be furnished with blanks by the commissioner of revenue in such form as may be prescribed by him, for the use of such non-resident boat owners to file applications for refunds as provided in this article, and said non-resident boat owners shall not be required to secure permits. Such application for refund shall be filed in the name of the non-resident boat owner on blanks furnished by dealers holding permits. Said applications must be accompanied by an invoice of the dealer holding permit, showing the number of gallons of motor fuel delivered into the tanks of said boats and shall furnish such other information as the commissioner of revenue shall require. Applications must be sworn to before a notary public of this state and filed with the commissioner of revenue. Upon approval of said applications by the commissioner of revenue, said applications shall be paid as other applications for refund are paid: Provided, however, that such non-residents must file applications with the commissioner of revenue within thirty days from the date of purchase of said gasoline and that said applications may be paid immediately upon approval. The application shall be accompanied by a fee of one dollar, to be returned if the refund permit is not issued. Such fees, if retained, shall be paid by the commissioner of revenue to the state treasurer, to be credited by him to the state highway fund.

(b) If, upon the filing of such application, the commissioner of revenue shall be satisfied that the same is made in good faith and that the motor fuels upon which the said tax refund is requested are to be used exclusively for one of the purposes set forth above and specified in said application, he shall issue to said applicant a refund permit specifying the terms and conditions under which refunds on such motor fuels will be made, which refund permits will expire with the fiscal year in which it is issued. Refund permits issued under this article shall state the name of the person, association, firm, or corporation to whom and for whose benefit it is issued, the purposes for which the motor fuels upon which tax refunds are to be made under the provisions thereof are to be used and the approximate number of gallons expected to be used per month for such purposes, and the commissioner of revenue shall determine such amount. Such refund permits shall bear serial numbers and shall not be transferable, nor shall any right or claim for refund under the same be transferable: Provided, however, that the commissioner of revenue shall not be required to issue any refund permit for use of motor fuels unless and until the applicant therefor shall have satisfied the commissioner of revenue that provisions have been made for the storage of such motor fuels in a manner prescribed by the commissioner of revenue, so as to segregate the same from motor fuels for use in vehicles upon the highways.

(c) All claims for refunds for tax or taxes for motor fuels under the provisions of this article shall be filed with the commissioner of revenue on forms to be prescribed by him, between the first and the fifteenth day of January, April, July, and/or October of each year, and at such periods only, and shall cover only the motor fuels so used during the three months immediately preceding the filing of such application. Such application shall be accompanied by ticket, invoice, or other document from the retail dealer or distributor for motor fuels, issued at the time of purchase of such motor fuel and showing the purchase of the number of gallons of motor fuels on which said refund is requested, and upon which shall be written or stamped at the time of purchase appropriate words showing the purpose for which the said motor fuel is purchased and that refund will be requested. The application shall be sworn to before the clerk of the superior court or a notary public of the county in which the applicant resides or has his place of business, and such attesting officer is authorized to charge therefor a fee of not exceeding twenty-five cents. Provided, that claims for refund of the tax on motor fuel that are not filed with the Commissioner of Revenue within the time specified in this section, but that are filed within 30 days thereafter, may be paid by the Commissioner of Revenue after first deducting 10% from said claims as a penalty for not filing them within the time specified.

(d) If the commissioner of revenue shall be satisfied that the motor fuels specified in such application for refund have been legitimately used for the purpose specified in the refund permit issued to such applicant, he shall issue to such applicant a warrant upon the state treasurer for the said taxes paid on such motor fuels under this article.

(e) No refund of tax or taxes shall be paid on motor fuels except under a refund permit and to the person, association, firm, or corporation named in said refund permit in the manner herein provided for.

(f) If the commissioner of revenue shall be satisfied that the holder of any refund permit issued under the provisions of this article has violated the conditions thereof, or has collected or sought to collect any refund of tax or taxes thereunder upon any motor fuels not used in strict accordance with said refund permit, he shall issue notice to the holder of such refund permit to show cause why the refund permit should not be cancelled, which notice shall state a time and place of hearing upon said notice. If upon such hearing the commissioner shall find as a fact that the permit holder has violated the terms of his permit, he shall cancel such refund permit and the holder thereof shall be required to repay all tax or taxes which have been refunded to him under such permit.

(g) Any applicant for a refund permit or any

holder of a refund permit may appeal from the decision of the commissioner of revenue upon any matters arising under this section to the state board of assessment, who shall hear the matters presented on such appeal at a time and place to be fixed by said state board of assessment. Such state board of assessment shall have authority to cause the attendance of witnesses in behalf of such applicant or of the commissioner of revenue, and shall have authority to administer oaths and take testimony.

(h) The commissioner of revenue is hereby authorized and directed, if at any time in his opinion there is reason to doubt the accuracy of the facts set forth in any application for tax refund, to refer the matter to any agent of the department of revenue or to any member of the state highway patrol, and such person so designated shall make a careful investigation of all the facts and circumstances relating to said application in the use of the motor fuel therein referred to, and shall have a right to have access to the books and records of any retailer or distributor of motor fuel products for the purpose of obtaining the necessary information concerning such matters, and shall make due report thereof to the commissioner of revenue.

(i) If any court of last resort shall hold that the provisions for refund herein set out shall render the levying and collecting of the tax hereinbefore provided invalid, it is the intention of the general assembly that such provisions for refund shall be annulled and the tax shall be levied without any provisions for such refund and that this article shall be so construed.

Any person making a false return or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00), or imprisoned not exceeding two years, in the discretion of the court. 1931, c. 145, s. 24, c. 304; 1933, c. 211; 1937, c. 111; 1941, c. 15.)

§ 105-447. Reports of carriers. — Every person, firm or corporation engaged in the business of, or transporting motor fuel, whether common carrier or otherwise, and whether by rail, water, pipe line or over public highways, either in interstate or in intrastate commerce, to points within the state of North Carolina, and every person, firm or corporation transporting motor fuel by whatever manner to a point in the state of North Carolina from any point outside of said state shall be required to keep for a period of two years from the date of each delivery records on forms prescribed by, or satisfactory to, the commissioner of revenue of all receipts and deliveries of motor fuel so received or delivered to points within the state of North Carolina, including duplicate original copies of delivery tickets or invoices covering such receipts and deliveries, showing the date of the receipt or delivery, the name and address of the party to whom each delivery is made, and the amount of each delivery; and shall report, under oath, to the commissioner of revenue, on forms prescribed by said commissioner of revenue, all deliveries of motor fuel so made to points within the state of North Carolina. Such reports shall cover monthly periods, shall be submitted within the first ten days of each month covering all shipments transported and delivered for the previous month, shall show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, the name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car, and the number of gallons contained therein if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein, and the consignor and consignee if shipped by water; the license number of each tank truck and the number of gallons contained therein, and the consignor and consignee if transported by motor truck; if delivered by other means the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel as the commissioner of revenue may require: Provided, that the commissioner of revenue may modify or suspend the provisions of this section with regard to reports of interstate or intrastate shipments or deliveries upon application of any licensed distributor: Provided, also, that the commissioner of revenue shall have full power to require any distributor to make additional reports and to produce for examination duplicate originals of delivery tickets or invoices covering both receipts and deliveries of products as herein provided. The reports herein provided for shall cover specifically gasoline, kerosene, benzine, naphtha, crude oil, or any distillates from crude petroleum. Any person, firm or corporation refusing, failing or neglecting to make such report shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1929, c. 230, s. 1; 1933, c. 137, s. 1.)

§ 105-448. Forwarding of information to other states.—The commissioner of revenue of the state of North Carolina shall, upon request duly received from the officials to whom are intrusted the enforcement of the motor fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation or shipment by any person of motor fuel. (1933, c. 137, s. 1.)

§ 105-449. Exemption of gasoline used in public school transportation; false returns, etc. — 1. Any person, firm or corporation holding a North Carolina state contract for the sale of gasoline to be used in public school transportation in North Carolina shall invoice gasoline so sold and delivered to the county boards of education at the prevailing contract price, less the state tax on gasoline. A copy of such invoice showing the board of education to whom the gasoline is delivered, the kind of gasoline sold, the gallons sold, and the contract price per gallon, shall be submitted to the North Carolina department of revenue each month, supported with an official purchase order from the county board or boards of education, which invoice or invoices and supporting purchase order shall exempt the gasoline pur-

chased by said board or boards of education for use in North Carolina public school transportation from the six cents tax per gallon state gasoline tax.

2. The commissioner of revenue of North Carolina is hereby authorized and directed to accept such invoices and supporting purchase orders, duly notarized, in lieu of the six cents per gallon tax imposed by the laws of North Carolina upon said gasoline: Provided, when any authorized dealer has already paid the state gasoline gallon tax and furnishes the commissioner of revenue with proper invoices and supporting purchase orders as required in subsection one of this section, then such dealer shall be entitled to a refund by the commissioner of revenue of six cents per gallon from the gasoline fund for each gallon so sold and delivered to the county boards of education for use in public school transportation in school busses, service trucks, and gasoline delivery wagons used only for school purposes.

3. It is the intent and purpose of this section to relieve gasoline used in the public school system of North Carolina from the six cents gasoline tax now imposed by the state and thereby to that extent reduce the cost of public school transportation.

4. Any person making a false return or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00), or imprisoned not exceeding two years, in the discretion of the court. (1941, c. 119.)

SUBCHAPTER VI. TAX RESEARCH.

Art. 37. Department of Tax Research.

§ 105-450. Provision for department of tax research.—The governor may, in his discretion, separate the statistical and research unit of the department of revenue and designate it as a department of tax research. (1941, c. 327, s. 1.)

§ 105-451. Appointment of director; salary.—When so designated the department shall be directed by an officer to be designated as the director of the department of tax research, who shall be appointed by and responsible to the governor, and shall serve at the will of the governor. The director shall be paid an annual salary to be fixed by the governor with the approval of the advisory budget commission, payable in monthly installments, and shall likewise be allowed his traveling expenses when away from Raleigh on official business. (1941, c. 327, s. 2.)

§ 105-452. Clerical assistants and office equipment.—The director is authorized to employ such additional clerical assistants and to obtain such additional office equipment as may be approved by the governor and the advisory budget commission. (1941, c. 327, s. 3.)

§ 105-453. Study of taxation; data for governor and general assembly; examination of persons, papers, etc.—It shall be the duty of the director to make a statistical analysis by groups and by counties of receipts under each article of the Revenue Act, and to make a thorough study of the subject of taxation as it relates to taxation within and by the state of North Carolina, including cities, counties, and subdivisions, their exercise and power of taxation; and to make a study of the taxation in other states, including the subjects of listing property for taxation, the classification of property for taxation, exemptions, and tax collections and tax collecting, and he shall have the power and authority to make a comparative study of the subject of taxation in all its phases, including the relation between state taxation and federal taxation, and said director shall assemble, classify and digest for practical use all available data on the subject of taxation, to the end that the same may be submitted to the governor and general assembly and may also be available for all citizens and officials of the state who are interested therein.

To carry out the purposes of this article, the director of the department of research shall have the same authority as given the state board of assessment in § 105-276, to examine persons, papers and records and to acquire reports from state departments and counties, cities and towns. (1941, c. 327, s. 4.)

§ 105-454. Purpose of creation of department.—The creation of the department of tax research is for the purpose of securing for the public and the general assembly, as well as for the executive department of the state, at a minimum cost, all such information that the public and the general assembly and the executive department should have relative to tax matters, including methods and systems of taxation in other states, to the end that the executive department and the general assembly in dealing with matters of revenue and taxation may have such information and tax data available for consideration. (1941, c. 327, s. 5.)

§ 105-455. Submission of proposed amendments to budget advisory commission.—The director of the department of tax research shall prepare and submit to the budget advisory commission such amendments to the Revenue and Machinery Acts as the survey made by the director indicates should be made, for their consideration in preparing amendatory Revenue and Machinery Acts for the general assembly. (1941, c. 327, s. 7.)

§ 105-456. Publication of biennial report.—The director of the department of tax research shall make and publish two thousand (2,000) copies of a biennial report, combined with the biennial report of the state board of assessment, of such scope as may be approved by the governor, which shall include recommendations and a digest of the most important factual statistics of state and local taxation. (1941, c. 327, s. 8.)

§ 105-457. Expenses of department of tax research.—All expenses of the department of tax research, except the appropriation for the statistical and research unit and such allotments as may be made by the governor from the contingency and emergency fund, shall be borne by the state department of revenue and all accounts kept by, and vouchers issued by, the accounting division of the department of revenue. (1941, c. 327, s. 9.)

SUBCHAPTER VII. PAYMENTS RECEIVED FROM TENNESSEE VALLEY AUTHORITY IN LIEU OF TAXES.

Art. 38. Equitable Distribution between State and Local Governments.

§ 105-458. Apportionment of payments in lieu of taxes between state and local units.—The payments received by the state and local governments from the Tennessee Valley Authority in lieu of taxes under section thirteen of the Act of Congress creating it, and as amended, shall be apportioned between the state and the local governments in which the property is owned or an operation is carried on, on the basis of the percentage of loss of taxes to each, determined as hereinafter provided: Provided, however, that the minimum annual payment to any local government from said fund, including the amounts paid direct to said local government by the Authority, shall not be less than the amount of annual actual tax loss to such local government based upon the two year average of taxes on said property next prior to its being taken over by the Authority. (1941, c. 85, s. 1.)

§ 105-459. Determination of amount of taxes lost by virtue of T. V. A. operation of property; proration of funds.—The state board of assessment shall determine each year, on the basis of current tax laws, the total taxes that would be due to both the state of North Carolina and the local governments in the same manner as if the property owned and/or operated by the Authority were owned and/or operated by a privately owned public utility: Provided, however, in making said calculations the state board of assessment shall use the tax rate fixed by the local government unit and taxing district involved for the tax year next preceding such calculations. The state board of assessment and the treasurer of the state of North Carolina shall then prorate the funds received from the Authority by the state and local governments between the state and local governments upon the basis of the foregoing calculations. (1941, c. 85, s. 2.)

§ 105-460. Distribution of funds by state treasurer.—The treasurer of the state of North Carolina shall then ascertain the payments to be made to the state and local governments upon the basis of the provisions of § 105-459 and he is authorized and directed to distribute the same between the state and local governments in accordance with the foregoing provisions of § 105-459. The treasurer of the state of North Carolina is further authorized and directed to pay said sums to the state and local governments each month or so often as he shall receive payments from the Authority, but not more often than once each month, after first deducting from any sum to be paid a local government such amount as has theretofore been paid direct to said local government by the Authority for the same period: Provided, however, that the minimum annual payment to any local government from said fund shall not be less than the average annual tax on the property taken by the Authority for the two years next preceding the taking. (1941, c. 85, s. 3.)

§ 105-461. Duty of county accountant, etc.—The county accountant or other proper officer of each local government to which this subchapter is applicable shall:

(a) Certify to the state board of assessment and the treasurer of the state of North Carolina the tax rate fixed by the governing body of such local government immediately upon the fixing of the same;

(b) certify each month to the treasurer of the state of North Carolina a statement of the amount received by the local government direct from the Authority. No local government shall be entitled to receive its distributive share of said fund from the treasurer of the state of North Carolina until the foregoing information has been properly furnished. If any such local government shall fail to furnish the information herein required within ten days from and after receipt by it from the state board of assessment of request for the same, forwarded by registered mail, then and in that event it shall be barred from participating in the benefits provided for the period for which the same is requested. (1941, c. 85, s. 4.)

§ 105-462. Local units entitled to benefits; prerequisite for payments.—Any local governments within the state in which the authority now or may hereafter own property or carry on an operation shall be entitled to the benefits arising under this subchapter: Provided, however, that no payment shall be made to them by the treasurer of the state of North Carolina until such time as such local governments shall have certified to the state board of assessment and the treasurer of the state of North Carolina the average annual tax loss it has sustained by the taking of said property for the two years immediately preceding the taking thereof: Provided, further, that in the event of any disagreement between said local governments and the treasurer of the state of North Carolina as to such annual tax loss, then the same shall be determined by the state board of assessment, and its decision thereon shall be final. (1941, c. 85, s. 5.)

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Art. 1. Department of Agriculture.

Part 1. Board of Agriculture.

§ 106-1. Constitutional provision.—The general assembly shall establish a department of agriculture, immigration, and statistics, under such regulations as may best promote the agricultural interests of the state, and shall enact laws for the adequate protection and encouragement of sheep husbandry. (Rev., s. 3930; Const., Art. III, s. 17; C. S. 4666.)

§ 106-2. Department of agriculture, immigration, and statistics established; board of agriculture, membership, terms of office, etc.—The department of agriculture, immigration, and statistics is created and established and shall be under the control of the commissioner of agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The board of agriculture shall consist of the commissioner of agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of ten other members from the state at large, so distributed as to reasonably represent the different sections and agriculture of the state. In the appointment of the members of the board the governor shall also take into consideration the different agricultural interests of the state, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the state, one who shall be a practical poultry man to represent the poultry interest of the state, one who shall be a practical peanut grower to represent the peanut interest, one who shall be a man experienced in marketing to represent the marketing of products of the state. The members of such board shall be appointed by the governor, by and with the consent of the senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present board of agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged board of agriculture, the governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such board shall be filled by the governor for the unexpired term. The commissioner of agriculture and the members of the board of agriculture shall be practical farmers engaged in their profession. (Rev., s. 3931; Code, s. 2184; 1901, c. 479, ss. 2, 4; 1907, c. 497, s. 1; 1931, c. 360, s. 1; 1937, c. 174; C. S. 4667.)

§ 106-3. Compensation of members. — Each member of the board of Agriculture shall receive compensation for each day he attends a session of the board and for each day necessarily spent in traveling to and from his residence. He shall also receive necessary traveling expenses for the distance to and from Raleigh. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem rate and mileage as is fixed for attending meetings of the board. (Rev., s. 3932; 1901, c. 479, s. 3; 1919, c. 247, s. 10½; C. S. 4668.)

§ 106-4. Meetings of board.—The board of agriculture, herein established, hereafter called "the board," shall meet for the transaction of business in the city of Raleigh at least twice a year, and oftener, if called by the commissioner of agriculture. (Rev., s. 3935; 1901, c. 479, s. 3; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2; C. S. 4669.)

§ 106-5. Executive committee and finance committee.—The board shall elect from its numbers an executive committee of four, of which committee the commissioner shall also be ex officio a member and chairman. The board shall elect a finance committee of five from its numbers. The board shall prescribe the powers and duties of these committees, and the commissioner may call meetings of these committees whenever in his

opinion such meetings are desirable for the good of the department. (Rev., s. 3936; 1907, c. 876, s. 1; C. S. 4670.)

§ 106-6. Moneys received to be paid into state treasury.—All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cottonseed meal and concentrated commercial feeding stuff, and from the sale of any property seized and condemned under the provisions of this chapter, and all other moneys which may come into the hands of the commissioner of agriculture or other officer, member or employee of the department of agriculture by virtue of this chapter, shall be paid into the state treasury by the commissioner of agriculture, and shall be kept on a separate account by the treasurer as a fund for the exclusive use and benefit of the department of agriculture. (Rev., s. 3937; Code, s. 2208; 1876-7, c. 174, s. 22; C. S. 4671.)

§ 106-7. Power of board.—The board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the department. (Rev., s. 3933; 1901, c. 479, s. 3; C. S. 4672.)

§ 106-8. May require bonds of officers.—Bonds may be required for such amounts as the board may think best for all officers of the department who handle funds. (Rev., s. 3934; 1901, c. 479, s. 14; C. S. 4673.)

§ 106-9. Annual report.—The board shall annually make a report to the governor, to be transmitted by him to the general assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended. (1907, c. 876, s. 2; C. S. 4674.)

Part 2. Commissioner of Agriculture.

§ 106-10. Election; term; vacancy.—The commissioner of agriculture shall be elected at the general election for other state officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such commissioner shall be filled by the governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (Rev., s. 3938; 1901, c. 479, s. 4; C. S. 4675.)

§ 106-11. Salary of commissioner of agriculture.—The salary of the commissioner of agriculture shall be six thousand dollars a year, payable monthly. (Rev., s. 2749; 1901, c. 479, s. 4; 1905, c. 529; 1907, c. 887, s. 1; 1913, c. 58; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; C. S. 3872.)

§ 106-12. To appoint secretary and other officials.—The commissioner of agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the department of agriculture. He shall, subject to the approval of a majority of the board, appoint heads of divisions and their assistants. (Rev., s. 3939; 1901, c. 479, s. 4; 1913, c. 202; C. S. 4676.)

§ 106-13. To investigate purchases, sources, and manufacture of fertilizer. — The commissioner of agriculture shall investigate all complaints made by purchasers of fertilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fish-scrap, nitrate of soda, cotton-seed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and to publish the same in The Bulletin; but he shall not expose to the public the name of any manufacturer in this state who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this state: Provided, such corporation or company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price-list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary. (Rev., s. 3940; 1901, c. 479, s. 4; C. S. 4677.)

§ 106-14. To establish regulations for transportation of livestock.—The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§ 106-15. Agricultural experiment station and branch stations.—The work of investigation in agriculture required in this chapter may be designated by the board of agriculture as an agricultural experiment station, and the four test farms now in operation be and the same are hereby designated and established as branch experiment stations, to be conducted as at present under the auspices of the board of agriculture and out of its funds. (1907, c. 876, s. 5; C. S. 4682.)

§ 106-16. Sale and conveyance of test farms; use of proceeds.—The board of agriculture is hereby authorized and empowered to sell at the discretion of said board any land or lands which may be conveyed to the state or the department of agriculture for the purpose of conducting "test farms"; and a deed, signed by the commissioner of agriculture and attested by the secretary of the board of agriculture in the name of the state and the board of agriculture, shall be sufficient to convey title to the purchaser or purchasers. The proceeds of any sale may be used by the board of agriculture in the work of the department, except so much of said money as may be necessary to reimburse any one who has contributed to the purchase

money. This amount shall be returned to the contributors. (1909, c. 97; 1917, c. 45; C. S. 4683.)

§ 106-17. Acquisition of test farm.—The Department of Agriculture is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than one hundred acres in the sandhill section of North Carolina, and in northeastern North Carolina composed of the counties of Currituck, Camden, Pasquotank, Perquimans, Chowan and Gates, to be developed and used as a "test farm" for the purposes of work in investigation in agriculture.

Such "test farm" when acquired and established shall be operated, managed and controlled as other "test farms" in the State. (1927, c. 182, ss. 1, 2.)

§ 106-18. Peanut Test Farm.—The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a test farm in some suitable place in the peanut section of Eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said test farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut test farm as may be necessary for its proper conduct and in the same way as is now being done for the other test farms in the State. The test farm shall be established, operated and controlled by the Department of Agriculture as the other test farms for the study of other farm crops. (1937, c. 218.)

§ 106-19. State chemist; duties of office.—The department of agriculture shall employ an analyst or state chemist, skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the state chemist to analyze such fertilizers and products as may be required by this department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the department, analyze for citizens of the state such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the department of benefit to the development of the material interest of the state, when such samples are supplied under rules by the department, and he shall carry on such other investigations as the department may direct. He shall make regular reports to the department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same. (Rev., s. 3941; 1901, c. 479, s. 11; C. S. 4684.)

§ 106-20. Inoculating culture for leguminous crops.—The board of agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the state applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the department of agriculture. (Ex. Sess. 1913, c. 43; C. S. 4685.)

§ 106-21. Timber conditions to be investigated and reported.—The department of agriculture shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same. (Rev., s. 3942; 1901, c. 479, s. 13; C. S. 4686.)

§ 106-22. Joint duties of commissioner and board.—The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall:

1. General.—Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged—

2. Commercial Fertilizers.—With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to solicitors and to the general assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this state, whereby the interests of the farmers may be injuriously affected, and shall publish such information in The Bulletin of the department;

3. Cattle and Cattle Diseases.—With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this state, or from one section of it to another, and may coöperate with the United States department of agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

4. Honey and Bee Industry.—With investigations adapted to promote the improvement of the honey and bee industry in this state, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the state to another, and may cooperate with the United States department of agriculture in establishing and maintaining quarantine lines or districts. The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the commissioner of agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees

and/or used apiary equipment moved in violation of these regulations.

5. Insect Pests.—With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a misdemeanor;

6. New Agricultural Industries.—With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the state, especially the culture of truck and market gardens, the grape and other fruits;

7. Drainage and Irrigation; Fertilizer Sources.—With the investigation of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulæ for composting adapted to the different crops, soils, and materials;

8. Farm Fences.—With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

9. Sales of Fertilizers, Seeds, and Food Products.—With the enforcement and supervision of the laws which are or may be enacted in this state for the sale of commercial fertilizers, seeds and food products, and with authority to make regulations concerning the same;

10. Inducement of Capital and Immigration.—With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this state, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring home-seekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

11. Diversified Farming.—With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

12. Farmers' Institutes.—With the holding of farmers' institutes in the several counties of the state, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the state. He may secure such assistants as may be necessary or beneficial in holding such institutes.

13. Publication of Bulletin.—The commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The department may determine the number of bulletins which shall be issued each year.

14. Reports to Legislature.—He shall transmit to the general assembly at each session a report of the operations of the department with suggestions of such legislation as may be deemed needful.

15. State Museum.—He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the state. (Rev., ss. 3294, 3724, 3944; 1901, c. 479, s. 4; 1917, c. 16; 1939, c. 173; C. S. 4688.)

Part 4. Coöperation of Federal and State Governments in Agricultural Work.

§ 106-23. Legislative assent to Adams act for experiment station.—Legislative assent be and the same is hereby given to the purpose of an act of congress approved March sixteenth, one thousand nine hundred and six, entitled "An act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams act, and the money appropriated by this act be and the same is hereby accepted on the part of the state for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the act of congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C. S. 4689.)

Part 5. Coöperation Between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; coöperation.—The department of agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The said department is authorized to coöperate with the United States department of agriculture and the several boards of county commissioners of the state, to accomplish the purpose of §§ 106-24 to 106-26. (1921, c. 201, s. 1; 1941, c. 343; C. S. 4689(a).)

§ 106-25. Department to furnish report books or forms for procuring and tabulating information; duties of tax supervisors and list takers; information confidential.—The said department shall annually provide and submit report books or forms to the official in charge of tax listing in each county of the state, as may be necessary for procuring and tabulating all statistical survey information required by §§ 106-24 to 106-26. The tax supervisor or other person charged with tax supervision of each county in the state shall prepare each township book and supply to each list taker of each county the report books or forms provided herein,

and shall instruct such list taker as to his duties in carrying out the provisions of §§ 106-24 to 106-26. Such report books or forms shall be furnished the list taker before he enters upon his duties as list taker. It shall be the duty of each list taker and his assistants in each county of the state to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, shall return and deliver the said books or forms to the tax supervisor or other person performing such duties, within ten days after the time prescribed by law for securing the tax lists of his county. The tax listing supervisor or other person charged with tax supervision in such county shall inspect said books or forms for the purpose of determining whether or not at least ninety per cent of the tracts of land of such county are reported on in such report books or forms before accepting or paying the person performing these duties for his services. Upon being satisfied that the report books or forms are properly filled out in accordance with §§ 106-24 to 106-26, the tax supervisor or other person charged with tax listing supervision shall, within ten days after acceptance thereof, transmit and deliver such report books or forms to the department of agriculture. The information required in §§ 106-24 to 106-26 shall be held confidential by the tax supervisor or other person charged with this duty of tax supervision, by the list taker or his assistants obtaining the same, and by the department of agriculture. No information shall be required hereunder on farm tracts consisting of less than three acres. (1921, c. 201, s. 2; 1941, c. 343; C. S. 4689(b).)

§ 106-26. Compensation of list takers; examination of report books, etc., by department of agriculture.—As compensation for services performed under the provisions of §§ 106-24 to 106-26, the list taker or his assistants shall be paid an amount to be determined by the board of county commissioners of the county in which such services are performed. Upon receipt by the department of agriculture of the report books or forms, herein provided for, they shall be examined in order to determine whether or not they have been properly filled out in accordance with the provisions of §§ 106-24 to 106-26. Upon being satisfied that the information desired is in proper form, the tax supervisor or other person charged with tax supervision delivering the same shall be receipted therefor. If report books or forms are not complete in accordance with the provisions of §§ 106-24 to 106-26, they shall be duly returned to such tax supervisor or person charged with his duties, in order that the same may be properly completed. (1921, c. 201, s. 3; 1941, c. 343; C. S. 4689(c).)

Art. 2. North Carolina Fertilizer Law of 1933.

§ 106-27. Title.—This article shall be known by the short title of "The North Carolina fertilizer law of one thousand nine hundred and thirty-three," as amended by the legislature of one thousand nine hundred and forty-one. (1933, c. 324, s. 1; 1941, c. 368.)

§ 106-28. Enforcing official.—This article shall be administered by the commissioner of agriculture of the state of North Carolina, hereinafter referred to as the "commissioner." (1933, c. 324, s. 2; 1941, c. 368.)

§ 106-29. Definitions.—When used in this article:

(a) The word "person" includes individuals, partnerships, associations and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(c) The term "manufacturer" means a person engaged in the business of preparing, mixing or manufacturing mixed fertilizers or fertilizer materials; and the term "manufacture" means preparation, mixing or manufacturing.

(d) The word "sell" or "sale" includes exchange.

(e) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, other recognized plant foods, or combinations of these ingredients in forms available to plants, which is or may be used with another such substance in the compounding of mixed fertilizers, or for direct application to the soil, excepting unmanipulated animal manures and vegetable products.

(f) The term "mixed fertilizer" means any combination or mixture of fertilizer materials designed and fitted for use in inducing crop yields or plant growth when applied to the soil.

(g) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trade mark, or other designation.

(h) The term "grade" means the minimum percentage of total nitrogen (N); phosphoric acid (P_2O_5) in available form (comprising the water and citrate soluble phosphoric acid) except as provided for in paragraph (e) of § 106-30; and available potash (K_2O). These are to be stated in this order, and when applied to mixed fertilizers, in whole numbers only.

(i) The term "official sample" means any sample of mixed fertilizer or fertilizer material registered under this article which is taken by an authorized inspector of the department of agriculture according to the methods prescribed under § 106-35, paragraphs (b), (c), (d), (e) and (f).

(j) The word "ton" means a ton of 2,000 pounds avoirdupois.

(k) The term "per cent" or "percentage" means the percentage by weight.

(l) The word "formula" as used in this article means a statement of all materials used in compounding the mixed fertilizer and the amount of each of such materials used in a ton, or a statement of the pounds or fractional parts of the nitrogen, available phosphoric acid and available potash that are derived from each fertilizer material used. When the formula of any mixed fertilizer is printed on a tag attached to the container this constitutes an open formula. An open formula shall express the quantity and grade of the crude stock materials used in making a fertilizer mixture. For example: 1000 lbs. superphosphate, 16% P_2O_5; 277 lbs. cotton seed meal, 5.76% N; 200 lbs. nitrate of soda, 16% N; 156 lbs. sulphate of ammonia, 20.5% N; 160 lbs. muriate of potash, 50% K_2O; and 207 lbs. limestone. (1933, c. 324, s. 3; 1937, c. 430, s. 1; 1941, c. 368.)

§ 106-30. Registration.—(a) All manufacturers, dealers or agents who may desire to sell or offer for sale hereafter in this state any fertilizers or fertilizer materials shall register annually on or before the first day of December or before offering for sale with the commissioner of agriculture upon forms furnished by said commissioner the name of each brand and grade of fertilizer or fertilizer material which they may desire to sell or offer for sale in the state, either by themselves or their agents together with the name and address of the applicant, and the following information with respect to each brand, grade or analysis in the following order:

(1) Net weight of each package in pounds.

(2) Brand name and grade.

(3) Guaranteed analysis showing the minimum percentages of plant food and other information in the following order:

A. In mixed fertilizers: (Other than those branded for tobacco.)

Total nitrogen, per cent (whole numbers only): Provided, further that the wording "total available nitrogen" may be stated and printed on the bag or tag, but that such guarantee be interpreted as "total nitrogen."

Water insoluble nitrogen, per cent of total, in multiples of five;

Available phosphoric acid, per cent (whole numbers only);

Available potash, per cent (whole numbers only);

Whether the fertilizer is acid forming or non-acid forming;

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

B. In mixed fertilizers: (Branded for tobacco.)

Total nitrogen, per cent (whole numbers only): Provided, further that the wording "total available nitrogen" may be stated and printed on the bag or tag, but that such guarantee be interpreted as "total nitrogen."

(Optional) nitrogen in the form of nitrate, per cent of total in multiples of five;

Water insoluble nitrogen, per cent of total in multiples of five;

Available phosphoric acid, per cent (whole numbers only);

Available potash, per cent (whole numbers only); and the maximum percentage of chloride expressed as:

Chlorine, per cent.

Whether the fertilizer is acid forming or non-acid forming.

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

C. In fertilizer materials: (if claimed).

Total nitrogen, per cent: Provided, further, that the wording "total available nitrogen" may be stated and printed on the bag or tag, but that such guarantee be interpreted as "total nitrogen."

Available phosphoric acid, per cent;

Available potash, per cent;

Or other recognized plant foods, per cent.

(4) The name and address of the person guaranteeing the registration.

(5) The sources from which such nitrogen, phosphoric acid and potash are derived.

(6) Whether or not the brand will be sold with an open formula.

(b) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer.

(c) The person offering for sale or selling any brand of mixed fertilizer or fertilizer material shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(d) In the case of bone, tankage and other organic materials in which the phosphoric acid content is not shown by laboratory methods to be available but eventually becomes available in the soil, the phosphoric acid may be guaranteed as total phosphoric acid: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid.

(e) In no case, except in the case of unacidulated mineral phosphates and basic slag, shall the term total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(f) For the privilege of such registrations, the person engaged in the manufacture and sale of fertilizers and fertilizer materials shall pay to the commissioner of agriculture of the state of North Carolina at the time of offering the same for registration the sum of two dollars ($2.00) for each grade and brand name registered by each person shipping into or manufacturing fertilizer or fertilizer materials in this state and no grade and brand name shall be registered without the payment of said sum. The brand name registered by a person shall not be entitled to registration by another person and the person having first registered and used said brand name shall be entitled to it even should said brand name not be offered for current registration. The registration of all grades and brands of fertilizers or fertilizer materials shall expire on November thirtieth of the year for which they are registered. Brands that were registered during a previous year shall be required to be registered before they are again offered for sale in North Carolina: Provided that all persons heretofore registering fertilizer or fertilizer material with the commissioner of agriculture and having paid the registration fee required by chapter three hundred and twenty-four, Public Laws of one thousand nine hundred and thirty-three, shall be given credit on future registration fees required under this article for the unearned or unused portion of the fees so paid on a pro rata basis of the period covered by said fee.

(g) Every person proposing to manufacture or deal in mixed fertilizers and fertilizer materials shall, after filing the statement above provided for with the commissioner of agriculture, receive from the said commissioner a certificate stating that he

has complied with the foregoing sections, which certificate shall be furnished by the commissioner without any charge therefor. The said certificate when furnished shall authorize the party receiving the same to manufacture for sale in this state, or to sell in this state, directly or through dealers or agents, the brands and grades named in said certificate. No person who has failed to pay the fee, to file the statement, and to receive the certificate of authority shall be authorized to manufacture or offer for sale in this state mixed fertilizers and fertilizer materials; and any person so manufacturing for sale in this state, or so dealing or selling without having paid the fee, filed the statement, and received the certificate, except dealers and agents selling, or offering for sale, fertilizers on which the fee has been paid by, and certificate issued to, the manufacturers as provided for in the preceding sections of this article, shall be guilty of a misdemeanor for each violation and shall be subject to a fine not exceeding five hundred dollars ($500.00). (1933, c. 324, s. 4; 1937, c. 430, s. 2; 1941, c. 368.)

§ 106-31. Marking.—(a) Each person who sells or offers for sale mixed fertilizer or fertilizer materials in this state shall associate with each shipment the information required by items (1) to (4), both inclusive, of paragraph (a) and by paragraph (d) of § 106-30. If shipped in bags, barrels or other containers commonly used, the brand name and either the grade or guaranteed analysis (total nitrogen, available phosphoric acid and available potash) shall be printed on the package. If more than one grade is sold under one brand name, the grade shall be printed on the package. Additional information required by this section shall appear either on the package or on a tag, affixed at the end of the package and in the case of bags with ears, the tag, if used, shall be affixed between the ears.

(b) If shipped in bulk by rail, said information shall be printed on a suitable label which shall be fastened on the inside wall of the car near the door.

(c) If shipped in bulk by boat, truck, wagon, or other vehicle, said information shall be attached to the copy of the invoice delivered to the purchaser or other receiver.

(d) If shipped in packages weighing less than fifty pounds, said information shall be printed on the tag or container in which the material is delivered to the purchaser.

(e) If the fertilizer is registered for sale with an open formula it is required that a separate tag be attached to the container, which tag shall state only the formula, the brand name and the name and address of the person guaranteeing the registration.

(f) The statement on the open formula tag shall constitute a guarantee of the kinds, amounts, and analysis of fertilizer materials in the container to which the tag is attached.

(g) If the analysis of any brand of fertilizer sold or offered for sale with an open formula shall show that this statement is false, the commissioner may revoke the right to sell or offer for sale such brand with an open formula for a period of two years.

(h) Any manufacturer or other producer who shall have suffered three such revocations in any two year period shall not be permitted to register any brand with an open formula for two years following the last revocation.

(i) The tags, labels or certificates, when required by this section, shall be furnished by the manufacturer.

(j) Magnesium oxide (MgO), calcium oxide (CaO), and sulphur (S) may be claimed as ingredients in all mixed fertilizers, but when so claimed the minimum percentages of total magnesium oxide (MgO), total calcium oxide (CaO) and total sulphur (S) shall be guaranteed; excepting that the sulphur guarantees for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.

(k) Additional plant food, elements, compounds, or classes of compounds determinable by chemical control methods, may be guaranteed only by permission of the commissioner by and with the advice of the director of the North Carolina Experiment Station. When any such additional plant food, elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection, and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. The commissioner shall also fix penalties for failure to fulfill such guarantees. (1933, c. 324, s. 5; 1937, c. 430, s. 3; 1941, c. 368.)

§ 106-32. Use of the term "high grade".—The words "high grade" shall not appear upon any tag, bag, or other container of any mixed fertilizer which contains, by the guaranteed analysis, a total of less than twenty per cent of available plant food (total nitrogen—available phosphoric acid—available potash). (1933, c. 324, s. 6; 1941, c. 368.)

§ 106-33. Tonnage tax.—(a) Inspection Tax of Fertilizer; Tax Tags.—For the purpose of defraying expenses of the inspection and of otherwise determining the value of mixed fertilizers and fertilizer materials in this state, there shall be paid to the department of agriculture a charge of twenty-five cents per ton or one cent for each individual package containing fifty pounds net or less and more than five pounds on such mixed fertilizers and fertilizer materials, which charge shall be paid before a delivery is made to agents, dealers, or consumers in this state. On individual packages of five pounds or less, there shall be paid in lieu of the tonnage tax an annual registration fee of twenty-five dollars ($25.00) for each brand or grade offered for sale in packages of five pounds or less. Each bag, barrel, or other container of such mixed fertilizer or fertilizer material shall have attached thereto a tag to be furnished by the department of agriculture stating that all charges specified in this section have been paid, and the commissioner, with the advice and consent of the board of agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will insure the enforcement of this article. Whenever any manufacturer of mixed fertilizer or fertilizer materials shall have paid the charges required by this section, his goods shall not be liable to further tax, whether by city, town, or county: Provided, this shall not exempt the mixed fertilizer or fertilizer materials from an ad valorem tax.

(b) Issuance and Exchange of Tax Tags.—The tax tags required under this section shall be

issued each year by the commissioner and be sold to persons applying for the same at the tax rate provided in paragraph (a) of this section. Undetached tags left in the possession of persons registering mixed fertilizers or fertilizer materials at the end of any calendar year may be exchanged for tags of the succeeding year, on or before March first.

(c) Tax Tags on Shipments in Bulk.—If any manufacturer, dealer, agent or other seller of fertilizer shall desire to ship in bulk any mixed fertilizer or fertilizer materials, the said manufacturer or seller of fertilizer shall send with the bill of lading sufficient cancelled tax tags to pay the tax on the amount of goods shipped, and the agent of the railroad or other transportation company shall deliver the tags to the consignee when the goods are delivered. (1933, c. 324, s. 7; 1941, c. 368.)

§ 106-34. Inspection.—It shall be the duty of the commissioner, personally or by agents, duly authorized in writing, to make such inspection of mixed fertilizer or fertilizer material in this state, to have such samples taken, and to have such analyses made as in his judgment may be necessary to ascertain whether or not persons offering, selling or distributing mixed fertilizer or fertilizer materials are complying with the provisions of this article. (1933, c. 324, s. 8; 1941, c. 368.)

§ 106-35. Official sample, liability for deficiency or damage.—(a) Samples of mixed fertilizer or fertilizer material complying with the definition set forth in paragraph (i) of § 106-29 and taken as hereafter prescribed in paragraphs (b), (c), (d), (e) and (f) of this section shall constitute official samples.

(b) For the purposes of analysis by the commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the commissioner in accordance with §§ 106-30 and 106-31, the commissioner, or an official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of mixed fertilizer or fertilizer material. No sample shall be taken from less than five containers. If the lot comprises five (5) or more containers, portions shall be taken from each one up to a total of ten (10) containers. If the lot comprises from ten (10) to one hundred (100) containers, portions shall be taken from ten (10) containers. Of lots comprising more than one hundred (100) containers, portions shall be taken from ten (10) per cent of the total number of containers.

(c) In sampling mixed fertilizer or fertilizer materials, in bulk, either in a factory or a car, at least ten portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(d) In sampling, a core sampler shall be used that removes a core from the bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of mixed fertilizer or fertilizer material under the provision of this paragraph shall be placed in a tight container and shall be forwarded to the commissioner with proper identification marks.

(e) The commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling mixed fertilizers or fertilizer materials which shall have been adopted by the Association of Official Agricultural Chemists. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this article in lieu of those prescribed in paragraphs (b), (c) and (d) of this section.

(f) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(g) The commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and of § 106-36.

(h) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section and § 106-36 do not conform to the provisions of this article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this state during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods.

(i) In the trial of any suit or action wherein there is called in question the value or composition of any lot of mixed fertilizer or fertilizer material, a certificate signed by the fertilizer chemist and attested with the seal of the department of agriculture, setting forth the analysis made by the chemists of the department of agriculture, of any sample of said mixed fertilizer or fertilizer material, drawn under the provisions of this section or § 106-36 and analyzed by them under the provisions of the same, shall be prima facie proof that the fertilizer was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. (1933, c. 324, s. 9; 1941, c. 368.)

§ 106-36. Samples by purchaser or consumer.—Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(a) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(b) The sample shall be drawn in the presence of the manufacturer, seller or a representative

designated by either party together with two disinterested freeholders; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders; Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the department of agriculture in taking samples and shall be drawn, mixed and divided as directed in paragraphs (b), (c), (d), (e) and (f) of § 106-35, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed in a separate, tight container, securely sealed, properly labeled, and one sent to the commissioner for analysis and the other to the manufacturer. A certified statement in a form which will be prescribed and supplied by the commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under the observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the commissioner. No sample may be taken under the provisions of this section except within thirty days after the actual delivery to the consumer.

(c) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the state as those drawn by an official inspector of the department as provided for in § 106-35. (1933, c. 324, s. 10; 1941, c. 368.)

§ 106-37. Chemical analyses.—(a) the commissioner shall have the power at all times and in all places to have collected by an authorized inspector, samples of any mixed fertilizer or fertilizer material offered for sale in the state and to have the same analyzed.

(b) The official methods of analysis prescribed by the Association of Official Agricultural Chemists shall be followed in making the chemical analyses provided for in this section.

(c) If the state chemist is required by law to make analyses or determinations for any ingredients before the Association of Official Agricultural Chemists shall have adopted an official, or tentative, method for such determination, then the state chemist shall prescribe a method of analysis to be used and he shall send a copy of such methods to every manufacturer, whose brands are registered in this state, at least six months before such provisions of the law become effective. (1933, c. 324, s. 11; 1937. c. 430, s. 4; 1941, c. 368.)

§ 106-38. Plant food deficiency.—(a) The commissioner, in determining for administrative purposes whether or not any mixed fertilizer or fertilizer material is deficient in plant food, shall be guided solely by the official sample as defined in § 106-29, and as provided for in paragraphs (b), (c), (d), (e) and (f) of § 106-35 and the samples taken under the provisions of § 106-36.

(b) If the analysis shall show that any mixed fertilizer falls as much as five per cent and not more than ten per cent below the guaranteed analysis in the total value of the guaranteed nitrogen, available phosphoric acid and available potash, twice the value of such deficiency shall be assessed against the manufacturer, dealer, or agent who sold such fertilizer. If the fertilizer shall fall over ten per cent below the guaranteed analysis in the total value of the guaranteed nitrogen, available phosphoric acid and available potash, the penalty assessed shall be four times the value of the deficiency: Provided, that in no case shall the total assessed penalties exceed the value of the goods to which it applies.

If the analysis shall show that any fertilizer or fertilizer material falls short of the guaranteed analysis in any one ingredient, a penalty shall be assessed in accordance with the following tolerances and penalties:

(c) Total Nitrogen and/or Total Available Nitrogen.—A penalty of three times the value of the deficiency, if such deficiency is in excess of twenty points (which shall mean 0.20 of one per cent) on goods that are guaranteed two per cent nitrogen; twenty-five points (which shall mean 0.25 of one per cent) on goods that are guaranteed three per cent nitrogen; thirty-five points (which shall mean 0.35 of one per cent) on goods that are guaranteed four per cent; forty points (which shall mean 0.40 of one per cent) on goods that are guaranteed five per cent up to and including eight per cent; and fifty points (which shall mean 0.50 of one per cent) on goods guaranteed over eight per cent.

(d) Available Phosphoric Acid.—A penalty of three times the value of the deficiency, if such deficiency exceeds forty points (which shall mean 0.40 of one per cent) on goods guaranteed up to and including ten per cent; and fifty points (which shall mean 0.50 of one per cent) on goods guaranteed over ten per cent available phosphoric acid.

(e) Available Potash.—A penalty of three times the value of the deficiency, if such deficiency is in excess of twenty points (which shall mean 0.20 of one per cent) on goods that are guaranteed two per cent potash; thirty points (which shall mean 0.30 of one per cent) on goods guaranteed three per cent of potash; forty points (which shall mean 0.40 of one per cent) on goods guaranteed four per cent; fifty points (which shall mean 0.50 of one per cent) on goods that are guaranteed four per cent up to and including eight per cent; and sixty points (which shall mean 0.60 of one per cent) on goods guaranteed from nine per cent to twenty per cent; and one hundred points (which shall mean 1.00 per cent) on goods guaranteed over twenty per cent.

(f) Chlorine.—If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than five-tenths (0.5) per cent, a penalty shall be assessed equal to ten per cent of the value of the fertilizer for each additional five-tenths (0.5) per cent of excess or fraction thereof.

(g) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five per cent (or one hundred pounds calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate equivalent, or fraction thereof in excess of the one hundred pounds allowed, may

be assessed and paid as under paragraph (a) of this section.

(h) Calcium Oxide.—If the calcium oxide content guaranteed falls as much as one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton for each additional one-half unit or fraction thereof shall be assessed.

(i) Magnesium Oxide.—If the magnesium oxide content falls as much as five-tenths (0.5) per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each additional one-fourth per cent deficiency or fraction thereof.

(j) Sulphur.—If the sulphur content is found to be as much as one and one-half per cent below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of fifty cents per ton for each additional one-half unit or fraction thereof, shall be assessed; and in the case of mixed fertilizers branded for tobacco, if the maximum sulphur content shall exceed the guarantee by more than one and one-half per cent, a penalty of fifty cents per ton for each additional one-half unit or fraction there, shall be assessed.

(k) Water Insoluble Nitrogen.—A penalty of three times the value of the deficiency shall be assessed, if the deficiency shall exceed ten points (which shall mean 0.10 of one per cent) for goods guaranteed up to and including fifty-hundredths per cent (0.50%); twenty points (which shall mean 0.20 of one per cent) for goods guaranteed from five-tenths per cent to one per cent; thirty points (which shall mean 0.30 of one per cent) for goods guaranteed from one per cent to two per cent; and fifty points (which shall mean 0.50 of one per cent) for goods guaranteed above two per cent and up to and including five per cent and 100 points (which shall mean 1.00 per cent) tolerance above five per cent.

(l) Nitrate Nitrogen.—A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed ten points (0.10 of one per cent) for goods guaranteed up to and including five-tenths (0.50 per cent); fifteen points (0.15 of one per cent) for goods guaranteed from five-tenths (0.50 per cent) to one (1) per cent; twenty-five points (0.25 of one per cent) for goods guaranteed from one (1) per cent to two (2) per cent and thirty-five points (0.35 of one per cent) for goods guaranteed above two (2) per cent.

(m) Additional Plant Foods.—If any additional plant foods, elements or compounds are guaranteed, tolerances and penalties for same shall be set up by the commissioner.

(n) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from date of notice by the commissioner to the manufacturer, dealer or agent, receipts taken therefor, and promptly forwarded to the commissioner of agriculture: Provided, that penalties shall not be assessed for both deficiency in total value and deficiencies in individual ingredients, but whichever shall be determined to be the greater shall be assessed. If said consumers can not be found, the amount of penalty assessed shall be paid to the commissioner of agriculture who shall deposit the same into the department of agriculture fund, of which the state treasurer is custodian. Such sums as shall thereafter be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall be paid from said fund on order of the commissioner of agriculture, and may be used by the commissioner of agriculture as he may see fit for the purposes of promoting the agricultural program of the state. (1933; c. 324, s. 12; 1937, c. 430, s. 5; 1941, c. 368.)

§ 106-39. Commercial value. — The approximate retail value per pound and per unit of the various ingredients of mixed fertilizers and fertilizer materials, namely: Nitrogen, phosphoric acid and potash, may be computed by the commissioner and be used to establish the relative value of the mixed fertilizers and fertilizer materials sold or offered for sale in this state. The commissioner is authorized to furnish such relative values to any persons engaged in the manufacture or sale of mixed fertilizers or fertilizer materials in this state upon application and to publish the same under the provisions of § 106-46. (1933, c. 324, s. 14; 1941, c. 368.)

§ 106-40. Minimum plant food content; branding of low grade fertilizers.—No superphosphate, no fertilizer with a guarantee of two plant food ingredients, or no complete mixed fertilizer shall be sold or offered for sale for fertilizer purposes within this state which contains less than fourteen per cent of plant food (total nitrogen—available phosphoric acid—potash). This shall not apply to natural animal or vegetable products not mixed with other materials.

Any mixed fertilizer containing two plant food ingredients, or any mixed fertilizer containing less than sixteen units of plant food (total nitrogen—available phosphoric acid—potash) shall be branded "low grade" and shall carry a "red tag" reading as follows:

"THIS IS A LOW GRADE FERTILIZER.

It costs too much per unit of nitrogen—available phosphoric acid and potash because it contains only fourteen or fifteen units (whichever the case may be) of these plant foods. You are paying too much for bagging, freight, labor, etc., on too much inert material." (1933, c. 324, s. 15; 1937, c. 430, s. 6; 1941, c. 368.)

§ 106-41. Injurious fillers.—It shall be unlawful for any person to manufacture, offer for sale or sell in this state any mixed fertilizer or fertilizer material containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of deceiving or defrauding the purchaser. (1933, c. 324, s. 16; 1941, c. 368.)

§ 106-42. Materials containing unavailable plant food. — (a) It shall be unlawful for any person to offer for sale or to sell in this state for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(b) This section shall not apply to the sub-

stances mentioned in paragraph (a) when they have been treated or processed in such manner as to make available the plant food constituents contained therein. (1933, c. 324, s. 17; 1941, c. 368.)

§ 106-43. Deception and fraud. — It shall be unlawful for any person to make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this state, or to use any misleading or deceptive trade mark or brand name in connection therewith. The commissioner is hereby authorized to refuse registration for any mixed fertilizer or fertilizer material with respect to which this section is violated. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive or fraudulent. (1933, c. 324, s. 18; 1941, c. 368.)

§ 106-44. Sales of materials to consumers.— Nothing in this article shall abridge the right of a consumer of mixed fertilizer or fertilizer materials to buy materials from any manufacturer or dealer for his own use and not for resale, provided the tonnage tax has been paid thereon, if subject thereto, and that the provisions of this article otherwise in respect to such materials have been complied with. (1933, c. 324, s. 19; 1941, c. 368.)

§ 106-45. Reports of shipments.—It is required of each person registering mixed fertilizers and fertilizer materials under this article that he furnish the commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this state. Said statement shall include all sales for the periods of January first to and including June thirtieth and of July first to and including December thirty-first of each year. The commissioner may, in his discretion, either invoke a penalty on, or cancel the registration of, any person failing to comply with this section if the above statement is not made within thirty days from date of notification. The commissioner, however, in his discretion, may grant a reasonable extension of time. (1933, c. 324, s. 20; 1941, c. 368.)

§ 106-46. Publications. — The commissioner is authorized to publish at such time and in such form as he may deem proper information concerning the production and use of mixed fertilizers and fertilizer materials, and shall publish an annual report which shall contain a statement of money received and expended from the sale of tax tags and appropriately classified statistics of fertilizer sales in this state. Reports of the department chemists' findings based on official samples of mixed fertilizer or fertilizer material sold within the state as compared with the guaranteed analyses registered under §§ 106-30 and 106-31 shall be published by the commissioner as promptly as possible after the completion of analyses, or at least annually. (1933, c. 324, s. 21; 1941, c. 368.)

§ 106-47. Regulations. — The board of agriculture by and with agreement of the director of the North Carolina Experiment Station is empowered to adopt from time to time grades of mixed fertilizer which shall be sold in this state: Provided, the number of grades shall not be less than thirty-five or in excess of fifty grades, and to issue rules, regulations and set standards as may be necessary for the enforcement of this article. (1933, c. 324, s. 22; 1941, c. 368.)

§ 106-48. Misdemeanors.—Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(a) The violation of any of the provisions of §§ 106-41, 106-42, or 106-43.

(b) The filing with the commissioner of any false statement of fact in connection with the registration under § 106-30 of any mixed fertilizer or fertilizer material.

(c) Forcibly obstructing the commissioner or any official inspector authorized by the commissioner in the lawful performance by him of his duties in the administration of this article.

(d) Knowingly taking a false sample of mixed fertilizer or fertilizer material for use under any provision of this article; or knowingly submitting to the commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any mixed fertilizer or fertilizer material sold or offered for sale in this state for the purpose of deceiving or defrauding such other person.

(e) The fraudulent tampering with any lot of mixed fertilizer or fertilizer material so that as a result thereof any sample of such mixed fertilizer or fertilizer material taken and submitted for analysis under this article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this article, if done prior to such analysis and disposition of the sample under the direction of the commissioner.

(f) The delivery to any person by the fertilizer chemist or his assistants or other employees of the commissioner of a report that is wilfully false and misleading on any analysis of mixed fertilizer or fertilizer material made by the department in connection with the administration of this article.

(g) Selling or offering for sale in this state mixed fertilizer or fertilizer material without marking the same as required by § 106-31.

(h) Selling or offering for sale in this state mixed fertilizer or fertilizer material containing less than the minimum content required by § 106-40. (1933, c. 324, s. 23; 1941, c. 368.)

§ 106-49. Penalties for unauthorized sale, sale without tax tags, and misuse of tax tags.—(a) Forfeiture for Unauthorized Sale, Release from Forfeiture.—All fertilizers and fertilizer materials sold or offered for sale contrary to the provisions of this article as stated in paragraphs (a), (b), and (e) of § 106-30, and (a), (b), (c), (d), (e) and (g) of § 106-31 and § 106-32 shall be subject to seizure, condemnation, and sale by the commissioner. The net proceeds of such sale shall be placed to the credit of the state treasurer for the use of the department of agriculture. The commissioner, however, may, in his discretion, release the fertilizers so seized and condemned upon payment of the required tax or charge, a fine of ten dollars ($10.00), and all costs and expenses incurred by the department in any proceedings con-

nected with such seizure and condemnation, and upon compliance with all other requirements of this article.

(b) Method of Seizure and Sale of Forfeiture.—Such seizure and sale shall be made under the direction of the commissioner by any officer or agent of the department. The sale shall be made at the courthouse door in the county in which seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand name or name of the goods, the quantity, and why seized and offered for sale.

(c) Sale without Tag; Misuse of Tag; Penalty; Forfeiture.—Every merchant, trader, manufacturer, broker, or agent who shall sell or offer for sale any mixed fertilizer or fertilizer material without having attached thereto such tags as are required by paragraphs (a) and (c) of § 106-33, or who shall use the required tags a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any such fertilizer, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, or offered for sale, or removed, said penalty to be recovered by the commissioner by suit brought in the name of the state, and any amount so recovered shall be paid, one-half to the informer and one-half to the state treasurer for the use of the department of agriculture. If any such fertilizer shall be condemned as provided by law, it shall be the duty of the commissioner to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients thereof to be put upon each bag, barrel, or package, and fix the commercial value at which it may be sold. It shall be unlawful for any person to sell or offer for sale or remove any such fertilizer, or for agent of any railroad or other transportation company to deliver any such fertilizer in violation of this section. Any person who shall sell or offer for sale or remove any fertilizer in violation of the provisions of this section shall be guilty of a misdemeanor.

(d) Deficiencies of Weight Made Good.—Any fertilizer which is found by an inspector of the department of agriculture to be short in weight, the manufacturer of said fertilizer shall within five days of official notice from the department of agriculture make good such deficiency and pay to the consumer a penalty equal to four times the value of the actual shortage. The commissioner in his discretion may allow reasonable tolerances for short weight not due to loss through handling and transporting. (1933, c. 324, s. 24; 1941, c. 368.)

§ 106-50. Sales and exchanges between manufacturers, etc.—Nothing in this article shall be construed to restrict or avoid sales or exchanges of fertilizer or fertilizer materials to each other by importers, manufacturers or manipulators who mix fertilizer materials for sale, or as preventing the free and unrestricted shipments of fertilizers or fertilizer materials to manufacturers or manipulators who have registered their brands as required by the provisions of this article. (1941, c. 368.)

Art. 3. Fertilizer Laboratories.

§ 106-51. Certification of fertilizer laboratories.—The commissioner of agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the commissioner of agriculture shall supply such information. (1933, c. 551.)

Art. 4. Insecticides and Fungicides.

§ 106-52. Rules and standards. — The department of agriculture shall have power to make rules, regulations and adopt standards to carry out the designs and purposes of this article. (1927, c. 53, s. 1.)

§ 106-53. Registration. — Before any manufacturer or dealer shall sell, offer or expose for sale in this State any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide he shall register with the Department of Agriculture the name of each brand of said preparation, the name and address of the manufacturer or dealer, the minimum per cent of each and every toxic chemical or compound present, and the specific name of each active ingredient used in its manufacture and the weight of the packages in which the material is packed. The words "paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides" mentioned and used in this article, shall apply only to insecticides and fungicides used on cotton, tobacco, all field crops, gardens, orchards, fruits, etc., for the control or destruction of insect life and fungus diseases. (1927, c. 53, s. 2.)

§ 106-54. Labels to be affixed.—Every lot, package or parcel of paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, offered or exposed for sale within this State, shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language clearly and truly certifying

(a) the net weight of the lot, package or parcel;

(b) the name, brand or trademark;

(c) the name and address of the manufacturer, importer, jobber, firm, association, corporation, dealer or person, etc., responsible for placing the commodity on the market;

(d) the minimum per cent of each and every toxic chemical or compound present.

(e) the specific name of each active ingredient used in its manufacture. (1927, c. 53, s. 3.)

§ 106-55. Refusal and cancellation of registration.—The Commissioner shall have the power to refuse to register any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide under a name, brand or trademark, which would be misleading or deceptive. Should any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide be registered in the State and it is afterward discovered that such

registration is in violation of any of the provisions of this article, the Commissioner shall cancel such registration. (1927, c. 53, s. 4.)

§ 106-56. Registration fee; expiration of registration certificate; renewal.—All manufacturers or distributors, for the purpose of defraying the expenses connected with the enforcement of this article, before selling, offering or exposing for sale in this state any paris green, calcium arsenate, lead arsenate or any other insecticides and fungicides, shall pay annually to the department of agriculture a registration fee of ten dollars ($10.00) for each and every brand of the aforementioned insecticides and fungicides registered as required under § 106-53. All certificates of registration shall expire on the thirty-first day of December next following the date of issuance and shall be subject to renewal upon receipt of annual registration fees. (1927, c. 53, s. 5; 1939, c. 284, s. 1.)

§ 106-57. Certificates entitling manufacturers or distributors to sell; unlawful sale, etc. — To manufacturers or distributors who have duly registered their brands and have paid registration fees on paris green, calcium arsenate, lead arsenate or other insecticides and fungicides in compliance with the requirements of this article, there shall be issued by the department of agriculture certificates which shall entitle said manufacturers or distributors to sell all duly registered brands until the expiration of such certificates as provided under § 106-56. When any manufacturer or distributor shall have duly complied with the provisions of this article, no other agency representing such manufacturer or distributor shall be required to register or pay registration fees on such brands as have been duly registered. It shall be unlawful for any manufacturer or distributor, or their agents to sell, offer or expose for sale in this state any of the aforementioned insecticides or fungicides which have not been duly registered and for which annual registration fees have not been paid. (1927, c. 53, s. 6; 1939, c. 284, s. 1.)

§ 106-58. Requirement of identifying color or medium.—For the purpose of safeguarding the legitimate uses of paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides and to prevent the poisoning of man or animal by confusion with or mixing with foods and feeds, either by accident or intent, it shall be required as a qualification for registration that all such aforesaid insecticides and fungicides which are likely to be confused with or which are not readily apparent when mixed with such foods or feeds, shall bear or contain some identifying added color or medium to differentiate them from, or to show their presence when contained in such foods or feeds; provided that no commodity intended for insecticidal, fungicidal or similar purposes which is already developed, or new products for these purposes which may appear from time to time shall be excluded from registration where there is not available or has not been developed a suitable identifying color or medium; and, provided that in the absence of a suitable identifying color or medium, the commissioner shall have authority himself or through representatives designated by him to co-operate with manufacturers and distributors in the development of suitable safe guards; final decision, with due right of appeal, resting in the discretion of the board of agriculture. (1927, c. 53, s. 7; 1929, c. 196, s. 1; 1939, c. 284, s. 1.)

§ 106-59. Statement mailed; what shown.—Every manufacturer and dealer who has registered paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for sale within the state of North Carolina shall mail to the commissioner on forms provided by the commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, and the initials and numbers of the car, if sold in car lots. (1927, c. 53, s. 8; 1933, c. 233; 1939, c. 284, s. 4.)

§ 106-60. Entrance for inspection or sampling; analysis.—The Commissioner in person, or by deputy, shall have the power to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take samples for analysis from any lot, package or parcel of insecticides or fungicides. It shall be unlawful for any person to oppose entrance of said Commissioner or deputy or in any way interfere with the discharge of his duty. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of the United States, and shall be made by chemists of the Department of Agriculture. Where a method of analysis is required before the association of official agricultural chemists has adopted an official or tentative one, and pending appearance of an official method by the association of official agricultural chemists, such methods as may be available or may be developed, subject to approval by the board of agriculture, may be used; provided that such method upon being used shall be immediately available for use and checking to all persons, firms or corporations concerned, and results from such methods shall be subject to a reasonable period of consideration and hearings before any proceedings based upon them are instituted. (1927, c. 53, s. 9; 1939, c. 284, s. 2.)

§ 106-61. Use of stamp a second time; adulterated and misbranded articles; injunction.—It shall be unlawful for any manufacturer or distributor to sell, offer or expose for sale in this state any paris green, calcium arsenate, lead arsenate or any other insecticides or fungicides which are adulterated or misbranded within the meaning of this article. Any paris green, calcium arsenate, lead arsenate and any other insecticide or fungicide shall be deemed to be adulterated if its strength or purity fall below the professed standard or quality under which it is sold; or if any substance has been substituted wholly or in part for the article; or if any valuable constituent of the article has been wholly or in part abstracted; or if it be in any way depreciated or be in departure from the true and honest value represented. Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to

the lot, package or parcel, or, if any false or misleading statements concerning its value are made on the lot, package or parcel, or in any printed advertising matter issued by the manufacturer or dealer that registered paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, or if the number of net pounds set forth upon the package, lot, or parcel is not correct. It shall be the duty of the Attorney-General when requested by the Commissioner, to institute suit to enjoin any manufacturer, or dealer, resident or non-resident, from manufacturing or selling or soliciting orders for the sale of paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, for use in this State without complying with all the provisions in this article, which injunction may be issued without bond or advance cost. (1927, c. 53, s. 10; 1939, c. 284, s. 3.)

§ 106-62. Seizure of articles.—Any paris green, calcium arsenate or any other insecticide or fungicide sold, offered or exposed for sale within this State in violation of any provisions of the article shall be liable to seizure at the instance of the Commissioner. Upon complaint being filed by the Commissioner in person or by duly authorized deputy, with any district judge or a justice of the peace, describing the paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide and the place where it is believed paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is sold, offered or exposed for sale in violation of the law, such district judge or justice of the peace shall issue his warrant directing the sheriff or any of his deputies to search such place, and if the law is being violated to seize the paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant and to seize all paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide found there in violation of the law, and if the admission into such place is refused, the officer executing said warrant is hereby authorized to force open the same. If it shall appear at the hearing before the district judge or a justice of the peace, who issued said writ, that the paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide was sold, exposed or offered for sale in violation of any provisions of this article, said paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide shall be condemned and delivered to an officer or agent of the Commissioner, to be destroyed or to be sold at his discretion. The sale shall be made at the court-house in the county in which the seizure is made. Said paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide shall be sampled and subjected to analysis if necessary or tagged, or branded and otherwise brought into compliance with the requirements of this article, before being sold. The Commissioner, however, may, in his discretion, release the paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide seized or condemned upon the payment of the required tax or charge and all costs and expenses incurred in any proceedings connected with such seizure and condemnation, and upon compliance with all other requirements of this article. (1927, c. 53, s. 11.)

§ 106-63. Copy of analysis in evidence.—A copy of the analysis made by any chemist of the Department of Agriculture of any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide certified to by him shall be admissible as evidence in any court of the State on trial of any issue involving the merits of the insecticides and fungicides covered by this article. (1927, c. 53, s. 12.)

§ 106-64. Articles in transit. — Nothing contained in this article shall interfere with paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide passing through the State in transit, nor shall it apply to the delivery of materials to manufacture paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for manufacturing purposes. (1927, c. 53, s. 13.)

§ 106-65. Violation of article.—Any manufacturer or dealer violating any provision or section in this article, or any rule, regulation or standard of the Department of Agriculture promulgated under this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (1927, c. 53, s. 14.)

Art. 5. Seed Cotton and Peanuts.

§ 106-66. Sale of seed-cotton or peanuts.—If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose, and to be open to inspection by the public at all business hours, the date of such buying or receiving, the number of pounds in each lot, the true name of the person or persons from whom bought or received and that he is the owner thereof, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the state to allege and prove that the defendant bought or received the seed-cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (Rev., s. 3812; 1887, c. 199; 1905, cc. 201, 523; 1929, c. 281, s. 1; C. S. 5083.)

§ 106-67. Traveling seed-cotton buyers must report; failure a misdemeanor.—Any person engaged in traveling from house to house or from place to place buying or trading for seed-cotton shall keep a correct record of the name and post-office address of each person from whom he buys or with whom he trades for seed-cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed-cotton,

showing the name and postoffice address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this section shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1919, c. 43; C. S. 5084.)

Art. 6. Cotton-Seed Meal.

§ 106-68. Cotton-seed meal defined; inspection tax.—Cotton-seed meal is a product of the cotton seed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture of cotton-seed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty-five cents per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (1917, c. 242, s. 1; 1939, c. 286; C. S. 4704.)

§ 106-69. Bags to be branded with specified particulars.—All cotton-seed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

1. Cotton-seed meal (with brand and grade).
2. Weight of package.
3. Ammonia and protein.
4. Name and address of manufacturer. (1917, c. 242, s. 2; C. S. 4705.)

§ 106-70. Grades and standards established.—No person, firm, or corporation shall offer for sale any cotton-seed meal except as provided in § 106-69, graded and classed as follows:

1. Prime cotton-seed meal by analysis must contain at least seven and one-half per cent of ammonia or thirty-eight and fifty-six one-hundredths per cent of protein.
2. Good cotton-seed meal by analysis must contain at least seven per cent of ammonia, or thirty-six and no one-hundredths per cent of protein.
3. Ordinary cotton-seed meal by analysis must contain at least six and one-half per cent of ammonia, or thirty-three and forty-four hundreths per cent of protein. (1917, c. 242, s. 3; C. S. 4706.)

§ 106-71. Rules to enforce statute; misdemeanor.—The board of agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person wilfully violating any of the regulations made by the board of agriculture in connection with the provisions of this article shall be guilty of a misdemeanor. (1917, c. 242, s. 4; C. S. 4707.)

§ 106-72. Sales without tag; misuse of tag; penalty; forfeiture.—Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cotton-seed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cotton-seed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the commissioner of agriculture by suit brought in the name of the state, and any amount so recovered shall be paid one-half to the informant and one-half to the state treasurer for the use of the department of agriculture. If any such cotton-seed meal shall be condemned, as provided by law, it shall be the duty of the department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cotton-seed meal, or for any agent of any railroad or other transportation company to deliver any such cotton-seed meal in violation of this section. (1917, c. 242, s. 4; C. S. 4708.)

§ 106-73. Sales contrary to article a misdemeanor.—Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cotton-seed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Rev., s. 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2; C. S. 4709.)

§ 106-74. Forfeiture for unauthorized sale; release from forfeiture.—All cotton-seed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the commissioner of agriculture. The net proceeds from such sale shall be placed in the general fund of the department and accounted for upon its books. The commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the department in any proceedings connected therewith. (1917, c. 242, s. 5; C. S. 4710.)

§ 106-75. Method of seizure and sale on forfeiture.—Such seizure and sale shall be made under the direction of the commissioner of agriculture by an officer or agent of the department; the sale to be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (1917, c. 242, s. 5; C. S. 4711.)

§ 106-76. Collection and analysis of samples.—The department of agriculture shall have the same authority and powers for taking and analyzing samples of cotton-seed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cotton-seed meal as are prescribed and followed

for taking samples of fertilizer and fertilizer materials. (1919, c. 271; C. S. 4712.)

§ 106-77. Sales below guaranteed quality; duties of commissioner.—When the commissioner of agriculture shall be satisfied that any cotton-seed meal is five per cent below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cotton-seed meal shall fall as much as ten per cent below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said deficiency be made good to all persons who, in the opinion of the commissioner, have purchased the said meal; and the commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within thirty days after notice to the company. If the commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer shall resist such collection or payment, the commissioner shall immediately publish the analysis and the facts in the bulletin and in such newspapers in the state as he may deem necessary. (1917, c. 242, s. 7; C. S. 4713.)

§ 106-78. Adulteration prohibited.—It shall be unlawful for any manufacturer to adulterate cotton-seed meal in the process of manufacture or otherwise. (1917, c. 242, s. 8; C. S. 4714.)

Art. 7. Pulverized Limestone and Marl.

§ 106-79. Board of agriculture authorized to make and sell lime to farmers.—The North Carolina board of agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the state, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the state at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant. (1919, c. 182, s. 1; C. S. 4715.)

§ 106-80. Convict labor authorized.—With the approval of the governor, when requested by the board of agriculture, the chairman of state highway and public works commission may furnish a superintendent with a squad of able-bodied convicts, not to exceed fifty, to do such work as the commissioner, with the authority of the board, may deem necessary to mine, prepare, load and dispose of the material. The board shall pay the state quarterly such amount as shall be agreed upon by the chairman of state highway and public works commission and the board of agriculture for their work, out of the proceeds of the sales, and the state shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales. (1919, c. 182, s. 2; 1933, c. 172, s. 18; C. S. 4716.)

Art. 8. Sale, etc., of Agricultural Liming Material, etc.

§ 106-81. Regulation of sale, etc., of agricultural liming material, etc.—All agricultural liming material, agricultural liming material with potash, and land plaster, hereinafter named either as the aforesaid separate items, or collectively as "materials coming under this article," or as "said materials", to be sold, offered, or exposed for sale in this state, shall be subject to regulation as provided by the following sections of this article. (1941, c. 275, s. 1.)

§ 106-82. Registration of brands by manufacturers and vendors.—Every manufacturer or vendor proposing to sell, offer or expose for sale in this state, the materials coming under this article shall, annually on or before the first day of January of each year, or before offering said materials for sale in this state, register with the commissioner of agriculture, on forms to be furnished by said commissioner, each brand of the said materials that he proposes to offer for sale during the next ensuing calendar year, or remainder thereof, giving for each brand the information prescribed in the following subsections:

(a) Net weight when sold in packages.

(b) A brand or trade name truly descriptive of the product.

(c) The guaranteed analysis showing:

(1) In case of agricultural liming materials; the minimum per cent of calcium expressed as calcium carbonate ($CaCO_3$) and of magnesium expressed as magnesium carbonate ($MgCO_3$) if the product be unburned or a mixture of both burned and unburned material; or as calcium oxide (CaO) and magnesium oxide (MgO) if the product be in the burned state and, in either case, the total neutralizing value expressed as calcium carbonate equivalent or neutralizing equivalent, and the fineness of the material, excepting that guarantee of screen analysis shall not be required for the products from completely burned limestone or shells. (The terms "Calcium Carbonate Equivalent" and "Neutralizing Equivalent," for the purpose of this article, shall mean one and the same thing. Fineness shall be determined by screens complying with the specifications of the United States Bureau of Standards.)

(2) In case of agricultural liming material with potash, the same requirement as for agricultural liming material, subsection (c) (1) of this section, but including also the minimum per cent of available potash as the oxide (K_2O). (The potash content of agricultural liming material with potash shall not be below four percent, and the guarantee for said potash content shall be in whole numbers only.)

(3) In case of land plaster, the minimum per cent of calcium sulfate ($CaSO_4$).

(d) The name and address of the manufacturer or vendor guaranteeing the registration.

(e) In case of combinations of materials from different sources, the source, chemical form, and minimum per cent of each material in truly descriptive terms. (1941, c. 275, s. 2.)

§ 106-83. Labelling.—All of the said materials sold, offered, or exposed for sale in this state shall have attached thereto, or be accompanied by a

plainly printed statement giving the information as required under § 106-82, subsections (a), (b), (c), (d) and (e). In case of materials sold in packages, the said information shall be plainly printed upon the package, or upon a tag or label attached thereto, of such quality and in such manner that it shall withstand normal handling, and, in case of material sold in bulk, the said statement shall be delivered to the purchaser either with the material, or with the invoice therefor. (1941, c. 275, s. 3.)

§ 106-84. Registration and tonnage fees; tags showing payment; license certificates.—(a) For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this article, there shall be paid, by the manufacturers or vendors, to the department of agriculture, for each brand or grade of said materials registered as required under § 106-82, an annual registration fee of five dollars ($5.00) for each calendar year or part thereof, said fee to be paid at the time of registration.

(b) Likewise, in addition to the above stated registration fee there shall be paid upon said materials sold in this state, in the manner specified under subsection (c) of this section, tonnage fees as follows: For agricultural liming material, five cents per ton; for agricultural liming material with potash, twenty-five cents per ton; and for land plaster, five cents per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose of use in the manufacture of fertilizer.

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the department of agriculture, stating that all charges specified in this article have been paid, and the commissioner of agriculture, with the advice and consent of the board of agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the commissioner of agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

(d) To manufacturers or vendors of the materials covered in this article, who have registered their brands of the said materials and paid registration fees as required herein, shall be issued by the commissioner of agriculture, without further charge, certificates licensing said manufacturers or vendors, themselves or through their agents, to sell in this state the brands of materials named in said certificate, for the period of time designated therein. (1941, c. 275, s. 4.)

§ 106-85. Report of sales.—In addition to the statement required under § 106-82, each manufacturer or vendor of the materials covered in this article shall, on or before the first day of February of each year, file with the department of agriculture a written report showing the total number of net tons of each brand and grade of the said materials sold by him, or his representatives or agents in this state, during the last preceding year. License for the sale of said materials within this state shall not be issued for a succeeding year to any manufacturer or vendor for the continued sale of his product unless and until said report has been made. (1941, c. 275, s. 5.)

§ 106-86. Administration; inspections, sampling and analysis.—It shall be the duty of the commissioner of agriculture to institute the necessary proceedings and have prepared the necessary equipment to put into effect the provisions of this article, and to authorize the collecting of official samples of the materials covered by it, to have them analyzed, and to have results published for the information of the public. For this purpose such inspectors or representatives as he may duly authorize shall have full access, ingress and egress to and from all places of business, manufacture, storage, transportation, handling or sale of any of the said materials. They shall also have power to open any container or package containing or supposed to contain any of the said materials, and to take therefrom samples for analysis. The official methods and recommendations of the Association of Official Agricultural Chemists as to sampling and analyzing shall be used in administering this article. (1941, c. 275, s. 6.)

§ 106-87. Deficiencies; refunds to consumers.—Should any of the materials coming under this article be found, by procedures authorized thereunder, to be deficient in the constituents as claimed by the manufacturer or vendor thereof, said manufacturer or vendor, upon being officially notified of such deficiency by the commissioner of agriculture, shall, within ninety days following such notification, make refunds to the consumers of the deficient materials as follows: In case of "agricultural liming material" or "agricultural liming material with potash", excepting potash deficiency of the latter, if the deficiency be five per cent or more, there shall be refunded an amount equal to three times the value of such deficiency. In case of "potash" deficiency in "agricultural liming material with potash," there shall be refunded an amount equal to three times the value of the deficiency, if such deficiency is in excess of forty points (which shall mean 0.40 of one per cent) on goods guaranteed four per cent; fifty points (which shall mean 0.50 of one per cent) on goods that are guaranteed five per cent up to and including eight per cent; and sixty points (which shall mean 0.60 of one per cent) on goods guaranteed nine per cent and up to and including twenty per cent; and one hundred points (which shall mean 1.00 per cent) on goods guaranteed over twenty per cent; and in case of land plaster, for deficiencies in excess of one per cent, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the commissioner of agriculture for deposit with the state treasurer to the credit of the department of agriculture, where said refund shall be held for payment to the proper consumer upon order of said commissioner. Where the consumer to whom

the refund is due cannot be found within a period of two years, such refund shall, after said period, revert to the department of agriculture for expenditure by said commissioner in promoting the agricultural program of the state. (1941, c. 275, s. 7.)

§ 106-88. Violations and penalties.—Any person or persons selling, offering or exposing for sale in this state any of the materials covered in this article, without first having registered said materials, paid the fees required, secured the required license, and otherwise complied with the requirements of this article; or who shall have caused to be submitted, or to be associated with said registrations or materials, false, fraudulent, or misleading statements; or who shall have caused to be incorporated into said materials any substances which shall be harmful to plants or plant growth; shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for the first offense and not less than one hundred dollars for each subsequent offense. (1941, c. 275, s. 8.)

§ 106-89. Certified analysis as evidence.—In the trial of any suit or action wherein there is called in question the value of composition of any of the materials covered by this article, a certified statement of the analysis made by the chemists of the department of agriculture shall be admissible as prima facie evidence of the content, value, or composition of said materials. (1941, c. 275, s. 9.)

§ 106-90. Revocation of licenses; seizure of materials.—The commissioner of agriculture is hereby authorized to revoke any license and require forfeit of fees paid under such license when it is ascertained that the registration upon which said license was issued has given false information in its statement relative to the kind, quality, composition or fineness of the materials sold, or offered for sale, under the provisions of this article; and to seize and withhold from sale or distribution any such materials where it is shown that they are being dispensed in violation of said article. (1941, c. 275, s. 10.)

§ 106-91. Regulations and standards.—The commissioner of agriculture, under the authority of the board of agriculture, is further empowered to prescribe and enforce such reasonable rules and regulations relating to the sale of the materials covered in this article as are consistent with the purpose of the article and are deemed necessary to carry into effect its full intent and meaning; and, conjointly with the state board of agriculture and the director of the North Carolina Experiment Station, to formulate and prescribe such definitions and standards as may be required for said purpose. (1941, c. 275, s. 11.)

§ 106-92. Construction of article.—Nothing in this article shall be construed to restrict or avoid sales or exchanges of the materials coming under this article to each other by importers, manufacturers or manipulators who mix said materials for sale, or as preventing the free and unrestricted shipments of said materials to manufacturers or manipulators who have registered their brands as required by the provisions of this article. (1941, c. 275, s. 12.)

Art. 9. Commercial Feeding Stuffs.

§ 106-93. Packages to be marked with statement of specified particulars.—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this state shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trade-mark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, all four constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (1909, c. 149, s. 1; C. S. 4724.)

§ 106-94. Weight of packages prescribed.—All concentrated commercial feeding stuffs shall be in standard-weight bags or packages of twenty-five, fifty, seventy-five, one hundred, one hundred twenty-five, one hundred fifty, one hundred seventy-five, and two hundred pounds. (1909, c. 149, s. 1; C. S. 4725.)

§ 106-95. "Concentrated commercial feeding stuffs" defined.—The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock, poultry and other animals, except hays, straws, and corn stover, when the same are not mixed with other materials, nor shall it apply to the whole seeds or grains of cereals when not mixed with other materials. (1909, c. 149, s. 2; 1939, c. 354, s. 1; C. S. 4726.)

§ 106-96. Copy of statement and sample filed for registration.—Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this state any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguishing name or trade-mark, file for registration with the commissioner of agriculture a copy of the statement required in § 106-93, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. For each and every statement so filed, there shall be paid to the commissioner of agriculture an annual registration fee of one dollar ($1.00), payable at the time of registration and thereafter on or before the last day of December of each year. (1909, c. 149, s. 3; 1939, c. 354, s. 2; C. S. 4727.)

§ 106-97. Agent released by statement of manufacturer.—When a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs files a statement, as required by § 106-96,

no agent or seller of such manufacturer, importer, or jobber, shall be required to file such statement. (1909, c. 149, s. 4; C. S. 4728.)

§ 106-98. Power to refuse or to cancel registration.—The commissioner of agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the board of agriculture. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the commissioner of agriculture shall have the power to cancel such registration. (1909, c. 149, s. 5; C. S. 4729.)

§ 106-99. Inspection tax on feeding stuffs; tax tags.—Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined in this article, shall pay to the commissioner of agriculture an inspection tax of twenty-five cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this state, and shall affix to or accompany each car shipped in bulk, and to each bag, barrel, or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the commissioner of agriculture stating that all charges specified in this section have been paid: Provided, whenever any concentrated commercial feeding stuff, as herein above defined, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamps to cover same: Provided, that the inspection tax of twenty-five cents per ton shall not apply to whole seeds and grains when not mixed with other materials. It is further provided that, upon demand, said inspection tags or stamps shall be redeemed by the department issuing said tags or stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said tags or stamps shall be returned for redemption within the time fixed by the board of agriculture: Provided further, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale. The commissioner of agriculture is hereby empowered to prescribe the form of such tax tags or stamps. (1909, c. 149, s. 6; 1939, c. 286; C. S. 4730.)

§ 106-100. Sale unauthorized by article or below grade; forfeiture; release from forfeiture.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this state, any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of this article, and the lot of feeding stuff in question shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, and the proceeds from said sales shall be covered into the state treasury for the use of the department executing the provisions of this article. The commissioner of agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the department of agriculture in any proceedings connected with such seizure and withdrawal. (1909, c. 149, s. 7; C. S. 4731.)

§ 106-101. Method of seizure and sale on forfeiture.—Such seizure and sale shall be made under the directon of the commissioner of agriculture, or an officer of the department of agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. (1909, c. 149, s. 7; C. S. 4732.)

§ 106-102. Collection and analysis of sample.—The commissioner of agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this state under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a

reasonable length of time by the department of agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The department of agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in § 106-93, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample does not differ within reasonable limits from the statement prescribed in § 106-93 appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Rev., s. 3808; 1909, c. 149, s. 9; C. S. 4733.)

§ 106-103. Rules and standards to enforce statute.—The board of agriculture is empowered to adopt standards for concentrated commercial feeding stuffs and such rules and regulations as may be necessary for the enforcement of this article, and a violation of such rules and regulations shall be a misdemeanor. (Rev., s. 3808; 1909, c. 149, s. 9; C. S. 4734.)

§ 106-104. Sales without tag; misuse of tag; counterfeiting tag.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this state any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps, labels, or tags as required by the provisions of this article, or who shall use the required tax stamps, labels, or tags a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent, or dealer who shall counterfeit or use a counterfeit of such tax stamps, labels, or tags, shall be guilty of a violation of the provisions of this article. (1909, c. 149, s. 10; C. S. 4735.)

§ 106-105. Refusal to comply with the article or hindering its enforcement.—Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of such provisions. (Rev., s. 3827; 1903, c. 325, s. 8; 1909, c. 149, s. 11; C. S. 4736.)

§ 106-106. Violation of article a misdemeanor.—Any manufacturer, importer, jobber, agent, or dealer who shall violate any of the provisions of this article, upon conviction thereof, shall be fined not exceeding fifty dollars for the first offense nor more than two hundred dollars for each subsequent offense, and the proceeds from such fines shall be covered into the state treasury for use of the department of agriculture in executing the provisions of this article. (1909, c. 149, s. 12; C. S. 4737.)

§ 106-107. Notice of charges to accused; hearing before commissioner.—Whenever the commissioner of agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer, or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture. (1909, c. 149, s. 13; C. S. 4738.)

§ 106-108. Commissioner to certify solicitor and furnish analysis.—If it appears that any of the provisions of this article have been violated the commissioner of agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. (1909, c. 149, s. 13; C. S. 4739.)

§ 106-109. Solicitor to prosecute violations.—It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases prescribed. (1909, c. 149, s. 14; C. S. 4740.)

§ 106-110. Certificate of analyst as evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 149, s. 13; C. S. 4741.)

Art. 10. Mixed Feed Oats.

§ 106-111. Unlawful to sell mixed feed oats unless ground.—It shall be unlawful for any person, firm, or corporation to sell, or offer or expose for sale or distribution within the State the feeding material known as "mixed feed oats" unless it first be ground. The duty of enforcing this section and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. The Department of Agriculture shall adopt such rules and regulations as may be necessary for the efficient enforcement of this section. Every violation of the provisions of this section shall be deemed a misdemeanor and punishable by a fine not to exceed one hundred dollars. (1931, c. 106.)

Art. 11. Stock and Poultry Tonics.

§ 106-112. Application and affidavit for registration.—Before any condimental, patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic", "remedial," or other "medicinal" properties, either is sold, offered or exposed for sale in the state, the manu-

facturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this state shall file with the commissioner of agriculture a statement that he desires to offer such "stock or poultry tonic," "stock or poultry regulator" "stock or poultry conditioner," or similar preparation for sale in this state, and also a certificate, the execution of which shall be sworn to before a notary public or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand, or trademark under which the said preparation or preparations will be sold, together with the guaranty that said preparation or preparations are not injurious to the health of domestic animals and that they do not conflict with the drug requirements of article 12 of the chapter, Foods, Drugs and Cosmetics, and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design, or device on the label or package regarding the substances contained therein shall be true and correct, and any claim made for the feeding, condimental, tonic, or medicinal value shall not be false or misleading in any particular, and file with the commissioner of agriculture a labeled package of each brand of goods, showing claims made for same, which labeling and claims shall not be changed during the fiscal year for which registration is made without the consent of the commissioner of agriculture. (1909, c. 556, s. 1; C. S. 4742.)

§ 106-113. Registration fee.—For the expense incurred in registering, inspecting, and analyzing "stock or poultry tonics," "stock or poultry regulators," "stock or poultry conditioners," and similar preparations defined in this article, a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the commissioner of agriculture during the month of January in each year, said fees to be used by the commissioner of agriculture for executing the provisions of this article. (1909, c. 556, s. 2; C. S. 4743.)

§ 106-114. Sale of unregistered tonics a misdemeanor. — Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trademarked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by § 106-112, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the commissioner of agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense and in the sum of one hundred dollars for each subsequent offense. (1909, c. 556, s. 3; C. S. 4744.)

§ 106-115. Notice of violation charged; hearing before commissioner.—Whenever the commissioner of agriculture becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture. (1909, c. 556, s. 4; C. S. 4745.)

§ 106-116. Issuance of "stop sale" orders by commissioners; confiscation or sale of products.—If it appears that any of the provisions of this article have been violated, the commissioner of agriculture or his authorized representative is hereby authorized to issue a "stop sale" order which shall prohibit further sale of any product offered in violation of this article until the law has been complied with or said violation has otherwise been legally disposed of. The commissioner of agriculture or his authorized representative is further authorized to confiscate and seize any product sold or offered for sale in violation of this article and shall have the authority to sell said product if it can be made to conform to this article or to destroy same if it cannot be made to conform with this article. Such sale shall be made at the courthouse door in the county in which the seizure is made, after 30 days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name of the product, the quantity, why seized and offered for sale. The proceeds from such sale, after deducting the necessary expense of said sale, shall be deposited with the state treasurer for the use of the department of agriculture. (1909, c. 556, s. 4; 1941, c. 199, s. 1; C. S. 4746.)

§ 106-117. Prosecution of violations.—If any person, firm or corporation shall violate any provision of this article, it shall be the duty of the commissioner of agriculture or his authorized representative to cause proceedings to be commenced and prosecuted in a court of competent jurisdiction in the district where the violation occurred. (1909, c. 556, s. 5; 1941, c. 199, s. 2; C. S. 4747.)

§ 106-118. Certificate of analyst as evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 556, s. 4; C. S. 4748.)

§ 106-119. Purpose of article.—This article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this state, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trade-marked "stock or poultry tonics," "stock or poultry regulators," "stock or poultry conditioners," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products. (1909, c. 556, s. 6; C. S. 4749.)

Art. 12. Food, Drugs and Cosmetics.

§ 106-120. Title of article.—This article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

§ 106-121. Definitions.—For the purpose of this article—

(a) The term "commissioner" means the commissioner of agriculture; the term "department" means the department of agriculture, and the term "board" means the board of agriculture.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clauses (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(e) The term "device" (except when used in paragraph (k) of this section and in §§ 106-122, subsection (j), 106-130, subsection (f), 106-134, subsection (c) and 106-137, subsection (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such terms shall not include soap.

(g) The term "official compendium" means the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, official National Formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment.

(q) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.) (1939, c. 320, s. 2.)

§ 106-122. Certain acts prohibited.—The following acts and the causing thereof within the state of North Carolina are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale,

or offering for sale of any article in violation of §§ 106-131 or 106-135.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or refusal to permit the taking of a sample, as authorized by § 106-140.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of § 106-125.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 106-135, or that such drug complies with the provisions of such section. (1939, c. 320, s. 3.)

§ 106-123. Injunctions restraining violations. — In addition to the remedies hereinafter provided the commissioner of agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 106-122; irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ 106-124. Violations made misdemeanor.—(a) Any person who violates any of the provisions of § 106-122 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment in county jail for not more than six months or a fine of not more than two hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment in county jail for not more than twelve months, or a fine of not more than four hundred dollars, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 106-122, subsection (a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the commissioner of agriculture to furnish the commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the state of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5.)

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.—(a) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe, that any food, drug, device or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the judge of any recorder's, county, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labelled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the department of agriculture that the article is no longer in violation of this article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the department of agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious

to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6.)

§ 106-126. Prosecutions of violations.—It shall be the duty of any solicitor of a recorder's county, or superior court to whom the commissioner of agriculture reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such solicitor for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the commissioner of agriculture or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding. (1939, c. 320, s. 7.)

§ 106-127. Report of minor violations in discretion of commissioner.—Nothing in this article shall be construed as requiring the commissioner of agriculture to report for the institution of proceedings under this article, minor violations of this article, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ 106-128. Establishment of reasonable standards of quality by board of agriculture.—Whenever in the judgment of the board of agriculture such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the secretary of the United States department of agriculture under authority conferred by section four hundred one (401) of the Federal Act. (1939, c. 320, s. 9.)

§ 106-129. Foods deemed to be adulterated.—A food shall be deemed to be adulterated—

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 106-132; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin: Provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States department of agriculture. (1939, c. 320, s. 10.)

§ 106-130. Foods deemed misbranded.—A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board of agriculture.

(f) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 106-128, unless (1) it conforms to such

definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided by § 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by § 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board of agriculture.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board of agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact: Provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board of agriculture: Provided, further, that for the purpose of complying with the provisions of this article, as it pertains to bottled soft drinks, either the bottle crown or the crown together with the blown-in-the-bottle or annealed-to-the-bottle statements, now in usual and common use in this state, shall be deemed sufficient labeling and no paper label shall be necessary. (1939, c. 320, s. 11.)

§ 106-131. Permits governing manufacture of foods subject to contamination with micro-organisms.—(a) Whenever the commissioner of agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with micro-organisms during manufacture, processing, or packing thereof in any locality in this state, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the commissioner as provided by such regulations.

(b) The commissioner of agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the commissioner of agriculture shall have access to any factory or establishment, the operator of which holds a permit from the commissioner of agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 106-132. Regulations by board of agriculture as to use of deleterious substances.—Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of § 106-129, subsection (a); but when such substance is so required or cannot be so avoided, the board of agriculture shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of clause (2) of § 106-129, subsection (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) § 106-129, subsection (a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (1939, c. 320, s. 13.)

§ 106-133. Drugs deemed to be adulterated.—A drug or device shall be deemed to be adulterated—

(a) (1) If it consists in whole or in part of any

filthy, putrid or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health, or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified by the United States department of agriculture.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed by the United States department of agriculture. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor. (1939, c. 320, s. 14.)

§ 106-134. Drugs deemed misbranded.—A drug or device shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board of agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, of sulphonmethane; or any chemical derivative of such substances, which derivative has been by the board after investigation, found to be, and by regulations under this article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenedtidin, amidopyrine, antipyrine atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board of agriculture.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the board of agriculture shall promulgate regulations exempting such drug or device from such requirements.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the board of agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(h) If it has been found by the department of agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the board of agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official

compendium until the commissioner of agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is a drug sold at retail for use by man and contains any quantity of aminopyrine, barbituric acid, cinchophen, dinitrophenol, or sulfanilamide; unless it is sold on a written prescription signed by a member of the medical, dental or veterinary profession who is licensed by law to administer such drug, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession.

(l) A drug sold on a written prescription signed by a member of the medical, dental or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to a diagnosis by mail) shall be exempt from the requirements of this section if—(1) such member of the medical, dental or veterinary profession is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. (1939, c. 320, s. 15.)

§ 106-135. Regulations for sale of new drugs. —(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has become effective under section five hundred and five of the Federal Act, or (2) when not subject to the Federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the commissioner of agriculture an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the commissioner may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) (2) of this section shall become effective on the sixtieth day after the filing thereof, except that if the commissioner of agriculture finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply—(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs provided the drug is plainly labeled "For investigational use only": or (2) to a drug sold in this state at any time prior to the enactment of this article or introduced into interstate commerce at any time prior to the enactment of the Federal Act; or (3) to any drug which is licensed under the virus, serum, and toxin Act of July first, one thousand nine hundred and two (U. S. C. one thousand nine hundred and thirty-four ed. title forty-two, chapter four).

(d) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall be exempt from the requirements of this section if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

(e) An order refusing to permit an application under this section to become effective may be revoked by the commissioner of agriculture. (1939, c. 320, s. 16.)

§ 106-136. Cosmetics deemed adulterated. — A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States department of agriculture. (1939, c. 320, s. 17.)

§ 106-137. Cosmetics deemed misbranded.—A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board of agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading. (1939, c. 320, s. 18.)

§ 106-138. False advertising.—(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19.)

§ 106-139. Regulations by board of agriculture.—(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the board of agriculture, except that the commissioner of agriculture is hereby authorized to promulgate regulations under § 106-131. The board is hereby authorized to make the regulations promulgated under this article conform, in so far as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this article shall be conducted by the commissioner of agriculture or such officer, agent, or employee as the commissioner may designate for the purpose.

(c) A representative duly designated by the North Carolina board of pharmacy, and a representative duly designated by the North Carolina board of health shall sit with the commissioner of agriculture, or his duly authorized agent, and assist in all hearings conducted in accordance with the provisions of § 106-134, subsections (d), (f), (g), and (h); and in all cases of hearings and/or investigations, under § 106-134, subsections (d), (f), (g), and (h) and under § 106-135, subsections (a), (b), and (d), transcripts of all findings and recommendations shall be submitted to the board of pharmacy and the board of health for approval.

(d) Before promulgating any regulation contemplated by §§ 106-128; 106-130, subsection (j); 106-131; 106-134, subsections (d), (f), (g), and (h), or 106-138, subsection (b), the commissioner of agriculture shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the board of agriculture (which date shall not be prior to ninety days after its promulgation, except such regulations as may be promulgated under § 106-131, which regulations shall become effective on the date of promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e) All proposed definitions and standards for drugs shall, prior to promulgation by the board of agriculture be submitted to the board of pharmacy and the board of health for approval. (1939, c. 320, s. 20.)

§ 106-140. Further powers of commissioner of agriculture for enforcement of article.—The commissioner of agriculture or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose: (1) of inspecting such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, to determine if any of the provisions of this article are being violated, and (2) to secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the commissioner of agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated. (1939, c. 320, s. 21.)

§ 106-141. Appointment of inspectors. — (a) In the appointment of any drug inspector in carrying out the provisions of this article, the commissioner of agriculture shall confer with the North Carolina board of pharmacy.

(b) The commissioner of agriculture is authorized to conduct the examinations and investigations for the purposes of this article through officers and employees of the department or through any health, food or drug officer or employee of the state, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the department of agriculture the arrangements for such examinations and investigations shall be approved by the directing head of such agency. (1939, c. 320, s. 22.)

§ 106-142. Publication of reports of judgments, decrees, etc.—(a) The commissioner of agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The commissioner of agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner of agriculture from collecting, reporting, and illustrating the results of the investigations of the department. (1939, c. 320, s. 23.)

§ 106-143. Article construed supplementary.—Nothing in this article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the state board of health, or any local health department, in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, fin fish, or other foods, or food products, or the production, handling, or processing thereof; but this article shall be construed to be in addition thereto. (1939, c. 320, s. 24½.)

§ 106-144. Exemptions.—Meats and meat products subject to Federal Meat and Inspection Act approved March four, one thousand nine hundred and seven, as amended, are exempted from the provisions of this article so long as such meats and meat products remain in possession of the processor. (1939, c. 320, s. 24⅔.)

§ 106-145. Effective date.—This article shall be in full force and effect from and after January first, one thousand nine hundred and forty: Provided, that the provisions of § 106-139 shall become effective on April 3, 1939 and thereafter the commissioner of agriculture is authorized hereby to conduct hearings, and the board is authorized to promulgate regulations which shall become effective on and after the effective date of this article as the board shall direct. (1939, c. 320, s. 25.)

Art. 13. Canned Dog Foods.

§ 106-146. Labeling of canned dog food required.—Every can of dog food sold, offered or exposed for sale within this state shall have printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the net weight of the can (provided, that all canned dog foods shall be in cans of one-half pound, or one pound, or multiples of one pound); the name, brand or trade mark under which the article is sold; the name and address of the manufacturer; the name of each and all ingredients of which the article is composed; a guarantee that the contents are wholesome and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, all three constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (1939, c. 307, s. 1; 1941, c. 290, s. 1.)

§ 106-147. "Canned dog food" defined.—The term "canned dog food" shall be held to include any article of food, packed in cans or hermetically sealed containers, and used for food for dogs or cats. (1939, c. 307, s. 2.)

§ 106-148. Registration of copies of labels with commissioner of agriculture.—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this state any canned dog food, shall, for each and every canned dog food bearing a distinguishing name or trademark, file for registration with the commissioner of agriculture a copy of the statement required in § 106-146, giving in addition the percentage of moisture contained in said products, and accompany said statement, upon request, by a sealed can containing at least one pound of said dog food. (1939, c. 307, s. 3; 1941, c. 290, s. 2.)

§ 106-149. Power of commissioner of agriculture to refuse or revoke registration upon failure to comply with regulations.—The commissioner of agriculture shall have the power to refuse the registration of any canned dog food under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the board of agriculture. Should any canned dog foods be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the commissioner of agriculture shall have the power to cancel such registration. (1939, c. 307, s. 4.)

§ 106-150. Annual registration fee; tax stamps.—Upon registration of each brand or kind of dog food, the manufacturer, agent or distributor thereof shall pay to the commissioner of agriculture an annual registration fee of five dollars ($5.00) payable at the time of registration, and thereafter on or before the last day of June of each year. Furthermore, each such manufacturer, agent or distributor shall pay to the commissioner of agriculture an inspection tax at the rate of two cents for each carton of forty-eight cans and shall affix to each such carton a stamp to be furnished by the commissioner of agriculture stating that all charges specified in this section have been paid. Said stamps shall be redeemed by the department issuing said stamps, upon surrender of

same, accompanied by an affidavit that the same have not been used: Provided, said stamps shall be returned for redemption within the time fixed by the board of agriculture. (1939, c. 307, s. 5.)

§ 106-151. Samples for analysis.—The commissioner of agriculture, together with his deputies, agents and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels and packages of whatsoever kind used in the manufacture, importation or sale of any canned dog food, and shall have power and authority to open any package containing or supposed to contain any canned dog food, and to take therefrom, in the manner hereinafter prescribed, samples for analysis, upon tender and full payment of the selling price of said sample. The department of agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such samples. (1939, c. 307, s. 6.)

§ 106-152. Adoption of standards, etc.—The board of agriculture is empowered to adopt standards for canned dog foods and such rules and regulations as may be necessary for the enforcement of this article. (1939, c. 307, s. 7.)

§ 106-153. Confiscation and sale by commissioner of agriculture in event of violation.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribution in this State any canned dog food, as defined in § 106-147, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any canned dog food which contains substantially a smaller percentage of crude protein or crude fat or a larger percentage of crude fiber or moisture than certified to be contained, or who shall adulterate any canned dog food with foreign substances, of little or no food value, or with injurious substances, shall be guilty of a violation of this article, and the lot of canned dog food in question shall be subject to seizure, condemnation and sale by the commissioner of agriculture, and the proceeds from said sales shall be covered into the state treasury for the use of the department executing the provisions of this article. Such seizure and sale shall be made under the direction of the commissioner of agriculture by an officer of the department of agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after advertisement in some newspaper published or circulating in such county. The advertisement shall state the brand or name of the goods, the quantity and why seized and offered for sale. The commissioner of agriculture, however, may in his discretion release the canned dog food so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the department of agriculture in any proceedings connected with such seizure and withdrawal. (1939, c. 307, s. 8.)

§ 106-154. Failure to use tax stamps or improper use of stamps.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribute in this state any canned dog food without having attached thereto or furnished therewith tax stamps, as required by the provisions of this article, or who shall use the required tax stamps a second time to avoid the payment of the tax, or any manufacturer, importer, jobber, agent or dealer who shall counterfeit or use a counterfeit of such tax stamps, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 9.)

§ 106-155. Failure to comply with requirements.—Any manufacturer, importer, jobber, agent or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent or dealer or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 10.)

§ 106-156. Violations made misdemeanor.—Any manufacturer, importer, jobber, agent or dealer who shall violate any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense, nor more than two hundred dollars for each subsequent offense. (1939, c. 307, s. 11.)

§ 106-157. Notification by commissioner as to violations.—Whenever the commissioner of agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture, and if it appears that any of the provisions of this article have been violated the commissioner of agriculture shall certify the facts to the solicitor of the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1939, c. 307, s. 12.)

§ 106-158. Prosecution of violations.—It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed: Provided, that the provisions of this article shall not apply to any canned dog foods now in the hands or in the stock of any dealer or manufacturer. (1939, c. 307, s. 13.)

Art. 14. State Inspection of Slaughterhouses.

§ 106-159. Application for permit.—Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (1925, c. 181, s. 1.)

§ 106-160. Investigation of sanitary conditions; issuance of permit.—It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (1925, c. 181, s. 2.)

§ 106-161. Municipalities, inspection of meats.—Municipal corporations shall have power and authority under this article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county. (1925, c. 181, s. 3.)

§ 106-162. Fees for inspection.—The officials of municipalities or counties in which such inspection is maintained, shall have full power and authority to fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection charge shall be made within the State. (1925, c. 181, s. 4.)

§ 106-163. Inspection conducted by veterinarian.—No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (1925, c. 181, s. 5.)

§ 106-164. Number of permit to identify meats; revocation of permit.—To each establishment complying with the provisions of this article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation. (1925, c. 181, s. 6.)

§ 106-165. Carcasses marked when inspected.—All meat carcasses inspected and passed in accordance with this article shall be branded with a rubber stamp bearing the number of the establishment and the words "N. C. Inspected and Passed." (1925, c. 181, s. 7.)

§ 106-166. Rules and regulations for inspection; power of commissioner.—The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this article. (1925, c. 181, s. 8.)

§ 106-167. Failure of butchers to keep record misdemeanor.—If any butcher shall fail to keep a book of registration and register the ear-mark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars for each offense: Provided, this shall apply only to the counties of Rockingham, Bertie, Edgecombe, Halifax, Martin, Orange, Pitt, Wilson, Wayne, Jones, Warren, Johnston, Richmond, Northhampton, Franklin, Craven, Chowan, Harnett, and Gates, and Warsaw township in Duplin county. (Rev., s. 3803; 1889, c. 318; 1895, c. 363; 1891, c. 38; 1891, c. 557; 1893, c. 116; 1903, c. 82; 1905, c. 31; 1909, c. 865, s. 1; C. S. 5099.)

§ 106-168. Local: Sales of calves for veal.—It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this section shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars nor more than thirty dollars, or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense.

This section shall apply to the following counties only: Alamance, Alexander, Ashe, Cherokee, Clay, Franklin, Gaston, Lee, Madison, McDowell, Mitchell, Robeson, Rutherford, Sampson, Wake and Wilson. (Ex. Sess. 1913, c. 80; 1915, c. 2; 1917, c. 93; Pub. Loc. 1917, cc. 299, 470; 1921, c. 85; 1925, c. 11; Pub. Loc. 1927, c. 143.)

Local Modification.—Alamance: Pub. Loc. 1913, c. 616; Pub. Loc. 1917, c. 391; Alexander: Pub. Loc. 1917, c. 180; Alleghany: Pub. Loc. 1927, c. 473; Anson: Pub. Loc. 1927, c. 422; Avery: Pub. Loc. 1927, c. 143; Buncombe: Pub. Loc. 1919, c. 191; Durham: 1915, c. 155; Lincoln: Pub. Loc. 1919, c. 159; Haywood, Macon, Swain, Graham and Jackson: Pub. Loc. 1297, c. 472; Transylvania: Pub. Loc. 1919, c. 191; Watauga: Pub. Loc. 1927, c. 473; Wilkes: Pub. Loc. 1913, c. 731; Ex. Sess. 1921, c. 12.

Art. 15. Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. Inspection; meat stamped as approved or condemned.—All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than one thousand beef cattle are slaughtered per annum, or more than ten thousand hogs or swine are slaughtered per annum, or more than five hundred sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; that said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plan

be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection—Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Ex. Sess. 1924, c. 11, s. 1.)

§ 106-170. Fees for inspection.—The charges for said inspection shall be as follows: twenty-five cents for each and every beef cattle or cow inspected; ten cents for each and every hog inspected, and ten cents for each and every sheep inspected; ten cents for each and every veal calf inspected; no further inspection shall be necessary within the State except such inspection as is provided for in §§ 106-120 to 106-145. No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Ex. Sess. 1924, c. 11, s. 2; 1925, c. 311.)

§ 106-171. Veterinary not available; who to inspect.—Should no regularly licensed veterinary surgeon be available for the purposes of this article, then the duties provided herein to be performed by said inspector shall be performed by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Ex. Sess. 1924, c. 11, s. 3.)

§ 106-172. Collection of fees; remuneration of inspector.—The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located; said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same; the salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Ex. Sess. 1924, c. 11, s. 4.)

§ 106-173. Slaughter houses, etc., under federal inspection, exempt from provisions of state inspection laws.—The provisions of §§ 106-159 to 106-172 shall not be applicable to any slaughter house or meat packing plant, or any person, firm or corporation engaged in the business of the operation thereof, where such slaughter house or meat packing plant is operated under federal inspection pursuant to the provisions of the meat inspection act of the United States, approved March 4, 1907, as amended. (1939, c. 329.)

Art. 16. Bottling Plants for Soft Drinks.

§ 106-174. Specifications of places of manufacture and sale.—Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be properly lighted and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling of soft drinks shall be conducted with due regard for the purity and wholesomeness of the product therein produced. (1935, c. 372, s. 1.)

§ 106-175. Soft drink defined.—The term "soft drink" as used herein shall include all soda waters, orangeade, root beers, and similar beverages, carbonated or otherwise, or ingredients used in the preparation of same. (1935, c. 372, s. 2.)

§ 106-176. Establishment and equipment kept clean; containers sterilized. — The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily, all bottles and other containers used must be sterilized in caustic soda or alkali solution in not less than three per cent alkali or other solution of the equivalent sterilizing effect as prescribed by the rules and regulations adopted by the board of agriculture. (1935, c. 372, s. 3; 1937, c. 232.)

§ 106-177. Protection from contamination. — Soft drinks in the process of manufacture, preparation, bottling, storing, or distribution must be protected from flies, other insects and filthy products, and, as far as may be necessary, from all other foreign or injurious contamination. (1935, c. 372, s. 4.)

§ 106-178. Refuse removed daily.—All refuse and other waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily. (1935, c. 372, s. 5.)

§ 106-179. Syrup room screened.—The doors, windows and other openings of the syrup room used for the preparation of soft drinks by bottling establishments shall be fitted with wire screens of not coarser than fourteen-mesh wire gauze and the door or doors shall be fitted with self-closing screens. (1935, c. 372, s. 6.)

§ 160-180. Washroom and toilet.—Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks. (1935, c. 372, s. 7.)

§ 106-181. Use of deleterious substances prohibited.—The use of soap bark or any other substance deleterious to health in soft drinks is prohibited, and the container must bear the name of the material and the name and address of the manufacturer or jobber. (1935, c. 372, s. 8.)

§ 106-182. Enforcement by commissioner of agriculture; inspectors; obstruction a misdemeanor.—It shall be the duty of the commissioner of agriculture to enforce the provisions of this article. The food inspectors or experts of the department of agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector or expert of the department in the performance of his duty in connection with this article shall be guilty of a violation thereof. (1935, c. 372, s. 9.)

§ 106-183. Violation of article a misdemeanor.—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1935, c. 372, s. 10.)

§ 106-184. Bottler's inspection fee.—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this State shall pay to the commissioner of agriculture an inspection fee of ten dollars during the month of June of each year or before any such bottling plant shall be operated thereafter. (1935, c. 372, s. 11.)

Art. 17. Marketing and Branding Farm Products.

§ 106-185. Establishment of standard packages, etc., authorized.—The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and state brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this article shall be construed to mean any or all of the crops or products named above in this section. (1919, c. 325, s. 1; 1921, c. 140; C. S. 4781.)

§ 106-186. Power to employ agents and assistants.—The board of agriculture is charged with the execution of the provisions of this article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C. S. 4782.)

§ 106-187. Board of agriculture to investigate marketing of farm products.—It shall be the duty of the board of agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States department of agriculture. (1919, c. 325, s. 3; C. S. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc.—After investigation, and from time to time as may be practical and advisable, the board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a state brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this state: Provided, that no standard established or requirement for marking prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated. (1919, c. 325, s. 4; C. S. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this state any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded."

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five per cent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five per cent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a re-

ceptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this state any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S. 4785.)

§ 106-190. Inspectors or graders authorized; revocation of license.—The board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this article, or has violated any provision of this article, or of the rules and regulations made hereunder, the board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C. S. 4786.)

§ 106-191. Appeal from classification. — The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C. S. 4787.)

§ 106-192. Certificate of grade prima facie evidence.—A certificate of the grade or other classification of any farm product issued under this article shall be accepted in any court of this state as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C. S. 4788.)

§ 106-193. Unwholesome products not classified; health officer notified.—Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the state or of any county or municipality thereof. (1919, c. 325, s. 9; C. S. 4789.)

§ 106-194. Inspection and sampling of farm products authorized.—Agents and employees are authorized from time to time to ascertain the amount of any farm products in this state, to inspect the same in the possession of any person engaged in the business of marketing them in this state, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing-house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (1919, c. 325, ss. 10, 11; C. S. 4790.)

§ 106-195. Rules and regulations; how prescribed.—The board of agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the secretary of agriculture of the United States, prescribed under any act of congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C. S. 4791.)

§ 106-196. Violation of article or regulations a misdemeanor.—Any person who violates any provision of this article, or of the rules and regulations made under the article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who willfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both in the discretion of the court. (1919, c. 325, ss. 13, 14; C. S. 4792.)

Art. 18. Shipper's Name on Receptacles.

§ 106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor.—Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the state, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C. S. 5087.)

Art. 19. Trademark for Standardized Farm Products.

§ 106-198. Adoption, design and copyright of trademark, etc.—The board of agriculture shall adopt an official trademark, brand, or label, the design of which shall incorporate the words "Tar Heel" superimposed on an outline map of North Carolina, to identify North Carolina farm products of grade and quality in keeping with standards to be set up by the board governing its use. The board of agriculture shall cause this trademark to be copyrighted to prevent imitation and infringement. (1941, c. 155, s. 1.)

§ 106-199. Regulation of use of trademark.—The trademark may be used only in the manner

prescribed by the board of agriculture and under the rules and regulations to be laid down by the board for its protection and use, and only on products meeting the quality, condition, pack and grade standards prescribed by the board consistent with §§ 106-185 to 106-196. No person, firm or corporation shall use this trademark on any product until the official inspection service of the department of agriculture certifies that the product meets the requirements of quality, condition, pack and grade standard set up by the board for the product. (1941, c. 155, s. 2.)

§ 106-200. License for use of trademark.—Growers, handlers, shippers or processors may procure a license to use the trademark on standardized products by applying to the commissioner of agriculture. The commissioner may investigate the integrity and business methods of each applicant and may refuse licenses to applicants whose use might endanger the reputation of the trademark. The commissioner may suspend, revoke or cancel the license of any user who violates the terms of his license or of any rule or regulation of the board concerning its use. The board of agriculture may charge reasonable and uniform fees for the issuance of these licenses and for the use of the trademark by these licensees, and shall use these revenues to apply on the cost of administering this article and to carry out a program of merchandising and advertising for standardized identified North Carolina farm products. (1941, c. 155, s. 3.)

§ 106-201. Licensing of providers of approved designs; furnishing list of growers, etc.—To facilitate the procurement of tags, labels, packages, bags or containers properly designed and constructed to display the official North Carolina state trademark, the following regulations shall be established:

(a) Manufacturers or distributors of tags, labels, packages, bags or containers shall apply to the commissioner of agriculture for a provider's license, and shall submit samples or designs of such tags, labels, packages, bags or containers for the commissioner's approval as to their construction, adaptability and practicability for the use planned. The commissioner shall license manufacturers or distributors of approved designs as approved providers of such articles, subject to rules, regulations and a reasonable license fee to be prescribed by the board of agriculture.

(b) No such license shall be issued until the provider agrees to furnish such trademarked supplies only to persons, partnerships or corporations within the state licensed to use the trademark. The approved provider shall immediately report to the commissioner of agriculture, on blanks provided for that purpose, each sale and shipment of such authorized supplies, the name of the purchaser, the quantity and type of supplies sold, and the point to which it was shipped or delivered. The commissioner shall furnish approved providers with current lists of growers, shippers, handlers or processors licensed to use the North Carolina trademark.

(c) The commissioner of agriculture may suspend, revoke or cancel licenses of approved providers for violation of any of the terms of this license, in which case equitable arrangements will be made for disposal of manufactured goods in stock. (1941, c. 155, s. 4.)

§ 106-202. Violation made misdemeanor.—Any person, firm or corporation who knowingly violates any of the provisions of this article or any of the rules and regulations promulgated under it by the board of agriculture, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both, for each offense. (1941, c. 155, s. 5.)

Art. 20. Standard Weight of Flour and Meal.

§ 106-203. Standard-weight packages for corn products; violation a misdemeanor.—It shall be unlawful for any person or persons to pack for sale, or offer for sale in this state, any corn meal, grits, hominy, or corn flour, except in bags or packages containing by standard net avoirdupois weight one pound, two pounds, three pounds, four pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds, and one hundred pounds, or multiples of one hundred pounds, respectively. Each bag or package shall have plainly and legibly printed or marked thereon the net weight of contents thereof, in pounds, avoirdupois, and such weights shall be a true and correct statement thereof: Provided, that the provisions of this section shall not apply to the retailing of meal direct to customers from bulk stock, when purchased and delivered by actual weight or measure, or to exchange of corn for meal by mills grinding for toll. Any violation of this section shall be a misdemeanor and, upon conviction, the offender shall be fined not less than twenty-five dollars nor more than five hundred dollars. (1919, c. 74, ss. 2, 3; C. S. 4794.)

§ 106-204. Flour to be sold in standard-weight and stamped packages.—It shall be unlawful for any person to pack for sale, sell, or offer for sale in this state, flour, except in packages containing by standard weight twelve pounds, twenty-four pounds, forty eight pounds, ninety-eight pounds, or one hundred and ninety-six pounds of flour, with the weight plainly stated on the outside of the package. This section is not applicable to the retailing of flour direct to customers, nor to the packing or selling of flour in packages less than one-eighth of a bushel. (1909, c. 555, s. 3; 1911, c. 145; 1915, c. 10; C. S. 4795.)

§ 106-205. Inspections to enforce article.—The board of agriculture shall cause to be made from time to time, under rules and regulations to be prescribed by them in accordance with the provisions of this article, such inspections or examinations as may be necessary to determine whether the provisions of this article have been violated. (1909, c. 555, s. 4; C. S. 4796.)

§ 106-206. Commissioner to notify solicitor of violations and certify facts.—If it shall appear from such inspection or examination that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the fact to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the inspector, under oath, who made the examination. (1909, c. 555, s. 4; C. S. 4797.)

§ 106-207. Violation of article a misdemeanor.—Any person or persons violating any provision

of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment in the discretion of the court except as otherwise provided in § 106-203. (1909, c. 555, s. 5; C. S. 4798.)

§ 106-208. Forfeiture for unauthorized sale; release from forfeiture.—Meal or flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article: Provided, that the commissioner of agriculture may in his discretion order the release of the meal or flour seized when the owner of same shall offer to pack it in accordance with the provisions of §§ 106-203 and 106-204 in this article, and it shall appear to the satisfaction of the commissioner that said owner did not intend to violate the provisions of the law. (1909, c. 555, s. 5; C. S. 4799.)

§ 106-209. Rules to enforce article.—The board of agriculture shall have authority to make uniform rules and regulations for carrying out the provisions of this article. (1909, c. 555, s. 6; C. S. 4800.)

Art. 21. Artificially Bleached Flour.

§ 106-210. Collection and analysis of samples; publication of results.—For the purpose of regulating the labeling and sale of artificially bleached flour, the board of agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the state obtained, and shall cause same to be analyzed or examined by the state food chemist or other experts of the department of agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this article. The board of agriculture is hereby authorized to make such publication of the results of the examination, analysis, and so forth as they may deem proper. (1917, c. 249, s. 1; C. S. 4801.)

§ 106-211. Entry to secure samples.—The food inspectors of the department of agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same. (1915, c. 278, s. 2; C. S. 4802.)

§ 106-212. Commissioner to notify solicitor of violations and certify facts.—If it shall appear from such inspection or examination or both that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1915, c. 278, s. 3; C. S. 4803.)

§ 106-213. Label for artificially bleached flour.—Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths of an inch in size, the legend: "Artificially Bleached." (1915, c. 278, s. 4; C. S. 4804.)

§ 106-214. Statement required to be filed before sale.—Before any artificially bleached flour shall be offered for sale in this state the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this state shall file with the commissioner of agriculture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such. (1915, c. 278, s. 5; C. S. 4805.)

§ 106-215. Inspection fee for registering brands.—For the purpose of defraying expenses incurred in the enforcing of the provisions of this article, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the state, the manufacturer, dealer, or agent registering same shall pay to the commissioner of agiculture an inspection fee of fifteen dollars, and during the month of January in each year, or before such flour is offered for sale in the state, said fees to be used by the board and commissioner of agriculture for executing the provisions of this article. (1917, c. 249, s. 2; C. S. 4806.)

§ 106-216. Violation of article a misdemeanor.—Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in § 106-213, or who shall violate any of the provisions of the article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundred dollars, or be imprisoned not to exceed six months, or both, in the discretion of the court. (1915, c. 278, s. 7; C. S. 4807.)

§ 106-217. Forfeiture for unauthorized sale; release from forfeiture.—The flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into treasury for use in executing the provisions of this article: Provided, that the commissioner of agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the department in the seizure of the same, and upon compliance with the requirements of this article, when it shall appear to the commissioner that said owner did not intend to violate the law. (1915, c. 278, s. 7; C. S. 4808.)

§ 106-218. Seller to furnish samples on payment.—Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the board of agriculture to secure same, and who shall apply for such sample. (1915, c. 278, s. 8; C. S. 4809.)

§ 106-219. Refusing samples or obstructing article a misdemeanor.—Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of § 106-218, or any person who shall wilfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or imprisoned, in the discretion of the court. (1915, c. 278, s. 8; C. S. 4810.)

Art. 22. Inspection of Bakeries.

§ 106-220. Sanitary condition of rooms; drainage; toilets.—Every room or other place occupied or used as a bakery for the preparation, production, storage, or display of bread, cakes, or other bakery products intended for sale for human consumption, shall be clean, properly lighted, and ventilated. The floors, walls, and ceilings of the rooms in which the dough or pastry is mixed, handled, or prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled, stored, or displayed, shall be kept and maintained in a clean and sanitary condition. All openings into such rooms, including windows and doors, shall be properly screened to exclude flies. Every such bakery shall be provided with adequate drainage and suitable wash sinks. If a toilet or water closet is maintained in connection with such bakery, it must be of sanitary construction, and such toilet or water closet shall be well ventilated and kept in a sanitary condition. (1921, c. 173, s. 1; C. S. 7251(k).)

§ 106-221. Tables, shelves, and implements; refuse; sleeping rooms.—All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing or handling bakery products or the ingredients of same, must be thoroughly cleaned daily when in use, and kept in a clean, sanitary condition. All refuse, dirt, and waste matter subject to decomposition and decay incident to the production of bakery products must be removed from the bakery daily. The work rooms of bakeries, where bakery products are made, stored or displayed, shall not be used as sleeping or living rooms, and shall at all times be separate and closed from any such room. (1921, c. 173, s. 2; C. S. 7251(l).)

§ 106-222. Employees; sitting or lying on tables; cleanliness.—No employee or other person shall sit or lie upon any of the tables, troughs, shelves, etc., which are used for the dough or other bakery products. Before beginning the work of preparing or mixing the ingredients, or after using toilet or water closet, every person engaged in the preparation or handling of bakery products shall wash the hands and arms thoroughly, and for this purpose sufficient wash basins or sinks, together with soap and clean towels, shall be provided by the bakery. (1921, c. 173, s. 3; C. S. 7251(m).)

§ 106-223. Use of tobacco.—No person shall use tobacco in any form in any bakery or bread manufacturing plant where bread or other bakery products are manufactured or stored. (1921, c. 173, s. 3a; C. S. 7251(n).)

§ 106-224. Ingredients and materials.—All ingredients used in the manufacture or making of bread or any other bakery products shall be pure and wholesome, and shall contain no substance that is poisonous or deleterious to health. All materials and ingredients used in bakery products shall be stored, handled, and kept in a way to protect them from spoilage and contamination, and no material shall be used which is spoiled or contaminated, or which may render the product unwholesome or unfit for food. (1921, c. 173, s. 4; C. S. 7251(o).)

§ 106-225. Adulterants; stale products; infections.—No material or ingredient may be used which may deceive the purchaser, or which lowers or lessens the nutritive value of the product. No bread or other bakery products shall be sold or offered for sale for human food that has by age or otherwise become stale. All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted so as to prevent the distribution of contamination or diseases and so as to prevent the distribution of the bakery infection in bread commonly known as "rope" or other bakery infections. No bread or other bakery products shall be returned by any dealer, restaurant, cafe or hotel keeper to bakery or distributor after same has been in stock where it may have been subject to contamination, and no bakery or distributor shall directly or indirectly accept any such bread or other bakery products or make any allowance for such products. (1921, c. 173, s. 5; 1925, c. 286; C. S. 7251(p).)

§ 106-226. Department of agriculture to enforce law; examination of plant and products.—It shall be the duty of the department of agriculture to enforce this article, and the board of agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure proper compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all bakeries or storage rooms where bakery products are made, stored, or kept, and any person who shall prevent or attempt to prevent any duly authorized expert in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1921, c. 173, s. 6; C. S. 7251(q).)

§ 106-227. Closing of plant; report of violation of article to solicitor.—If it shall appear from examination that any provision of this article has been violated, the commissioner of agriculture shall have authority to order the bakery or place closed until the law has been complied with. If the owner or operator of same refuses or fails to comply with the law, the commissioners shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 173, s. 7; C. S. 7251(r).)

§ 106-228. Regulations; establishment; violation.—The board of agriculture is authorized to establish such regulations, not in conflict with this article, as may be necessary to make provisions of this article effective, and to insure the proper compliance of same, and a violation of the regulations shall be deemed to be a violation of this article. (1921, c. 173, s. 8; C. S. 7251(s).)

§ 106-229. Inspection fee.—For the purpose of defraying expenses incurred in the enforcement of this article the owner or operator of each public bakery or bakery furnishing bakery products to the public operated in this state shall pay to the commissioner of agriculture during the month of May of each year, an inspection fee of ten dollars.

Provided, that no inspection fee shall be required of farm women in North Carolina who make cakes and breads and sell the same on the home demonstration curb markets. (1921, c. 173, s. 9; 1937, c. 281; C. S. 7251(t).)

§ 106-230. Violation of article a misdemeanor.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 173, s. 10; C. S. 7251(u).)

§ 106-231. Inspectors.—The inspectors who shall carry out the provisions of this article shall be the same inspectors who shall be sent out by the department of agriculture to inspect bottling works and general food inspections. (1921, c. 173, s. 10a; C. S. 7251(v).)

§ 106-232. Article supplemental to municipal ordinances.—Nothing in this article shall have the effect of repealing or rendering void ordinances upon this subject now in force in any municipality in North Carolina, but this article shall be construed to be supplemental and in addition thereto. (1921, c. 173, s. 11; C. S. 7251(w).)

Art. 23. Oleomargarine.

§ 106-233. Definitions.—(a) The word "person" shall mean person, firm, or corporation, either principal or agent.

(b) Any word used shall indicate the singular or plural as the case demands.

(c) The word "oleomargarine" shall mean: all substance heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of tallow, beef extracts, suet, lard, lard oil, fish oil, or fish fat, vegetable oil, annato, and other coloring matter, intestinal fat and offal fat, if (first) made in imitation or semblance of butter, or (second) calculated or intended to be sold as butter or for butter, or (third) churned, emulsified, or mixed in cream, milk, water, or other liquid and containing moisture in excess of one per centum of common salt. This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor to any of the following containing condiments or spices: salad dressings, mayonnaise dressings, or mayonnaise products. (1931, c. 229, s. 1.)

§ 106-234. Sale of colored oleomargarine prohibited.—It shall be unlawful to sell, offer for sale, or merchandise in any manner whatsoever oleomargarine which is of a yellow color in imitation or semblance of butter as defined in § 106-235. (1931, c. 229, s. 2.)

§ 106-235. License to sell uncolored oleomargarine. — Every person desiring to manufacture, sell, or offer or expose for sale, or have in possession with intent to sell, oleomargarine not made or colored so as to look like butter, shall make application for a license to do so in such form as prescribed by the State Commissioner of Agriculture, but this provision shall not apply to any person engaged in the retail sale of oleomargarine.

If the said application is satisfactory to the State Commissioner of Agriculture, there shall be issued to the applicant a license authorizing him to engage in the manufacture or sale of oleomargarine, which shall not contain any color or ingredient that causes it to resemble yellow butter, for which said license the applicant shall pay: If a wholesaler or distributor, the sum of seventy-five dollars ($75.00) annually for each separate plant or establishment operated or maintained in this State by such wholesaler or distributor. The said license fees shall be collected by the State Department of Agriculture, and covered into the State Treasury as a part of the Agricultural Fund. This license shall not authorize the manufacture, sale, exposing for sale, or having in possession with intent to sell any oleomargarine made or colored so as to look like yellow butter as herein provided. For the purpose of this article oleomargarine or articles or products in semblance of butter shall be deemed to look like and be in semblance of or in imitation of butter or a shade of butter when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in terms of Lovibond tintometer scale, or its equivalent.

All licenses shall expire on the thirty-first day of December of each year. (1931, c. 229, s. 3; 1939, c. 282, ss. 1, 2.)

§ 106-236. Display of signs.—It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine not in imitation of yellow butter which is not marked and distinguished by the word oleomargarine on the outside of each tub, package, or parcel. A placard with the words, OLEOMARGARINE SERVED HERE, printed in Gothic letters one inch long, shall be displayed in some conspicuous place in each dining-room, cafe, hotel, or wherever oleomargarine is served to the public as a food. The provisions of this section shall not apply to boarding houses. A boarding house is defined as being any person or establishment selling or offering for sale meals under contract, only on a daily basis or multiple of days. (1931, c. 229, s. 4; 1939, c. 282, s. 3.)

§ 106-237. Article enforced by Commissioner of Agriculture.—This article shall be administered and enforced by the State Department of Agriculture, which shall prescribe necessary rules and regulations therefor. Any license which is issued under the terms and conditions prescribed in § 106-235 can be revoked by the State Commissioner of Agriculture upon the submission to him of evidence that this article has been violated by the holder of such license. (1931, c. 229, s. 5.)

§ 106-238. Penalties. — Every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon con-

viction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court. (1931, c. 229, s. 6.)

Art. 24. Excise Tax on Certain Oleomargarines.

§ 106-239. Tax imposed; rules and regulations; penalties; disposition of proceeds.—There is hereby imposed an excise tax of ten cents per pound on all oleomargarine sold, offered or exposed for sale, or exchanged in the State of North Carolina, containing any fat and/or oil ingredient other than any of the following fats and/or oils: Cottonseed oil, peanut oil, corn oil, soya bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat. Such excise tax shall be in the form of a revenue stamp in such denominations as will best carry out the provisions of the law. Said stamps shall be properly safeguarded as to their manufacture, preservation and distribution and shall be in the charge of the state department of agriculture.

The state department of agriculture is hereby empowered to promulgate such rules and regulations as are consistent with the provisions of this section.

Any person violating any of the provisions of this section, or any of the rules or regulations promulgated by the state department of agriculture for the purpose of carrying out its provisions, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00), or imprisoned in the county jail not to exceed two months, or both fined and imprisoned.

All moneys derived from the sale of revenue stamps hereunder shall be paid into the state department of agriculture for the enforcement of this section. (1935, c. 328).

Art. 25. Sale of Eggs.

§ 106-240. Regulation of marketing and branding of eggs.—The regulation of marketing and branding eggs shall be only as authorized under the provisions of this article and of §§ 106-185 to 106-196. (1939, c. 193.)

§ 106-241. Containers of cold storage eggs required to be labeled as such.—Any person, firm or corporation offering for sale cold storage eggs either wholesale or retail, shall cause crates containing the eggs or any other type of container to be stamped or printed with the words "Cold Storage Eggs." (1939, c. 291, s. 1.)

§ 106-242. Restaurant, etc., menu or card required to show cold storage eggs.—Any hotel, restaurant, inn, or any other establishment serving cold storage eggs to the public shall cause to be written on their menu, or printed on a card, "Cold Storage Eggs." (1939, c. 291, s. 2.)

§ 106-243. Labelling of invoices.—Every person selling eggs which have been in storage thirty days or more, either within or without the state, to a retail store, hotel, restaurant, inn, or any other establishment, shall furnish an invoice with the wording "Cold Storage Eggs." A copy of such invoice shall be kept on file by the person selling and the one buying at their respective places of business for a period of sixty days and shall be available and open for inspection at all reasonable times by the department of agriculture. (1939, c. 291, s. 3.)

§ 106-244. Examination of eggs by commissioner of agriculture, etc., authorized.—In all cases the final determination as to the meeting of the above requirements shall be made by candling. In carrying out the provisions of this article, the commissioner of agriculture, his employees, or agents are authorized to enter on any business day, during the usual hours of business, any store, warehouse, market or place where eggs are sold or offered for sale and to make such examination as is necessary to determine the class of eggs sold or offered for sale. (1939, c. 291, s. 4.)

§ 106-245. Violations made misdemeanor.—Any person wilfully or intentionally violating the provisions of this article shall be guilty of a misdemeanor and shall be fined or imprisoned within the discretion of the court. (1939, c. 291, s. 5.)

Art. 26. Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-246. Cleanliness and sanitation enjoined; wash rooms and toilets, living and sleeping rooms; animals.—For the protection of the health of the people of the state, all places where ice-cream, frozen custard, milk sherbet, sherbet, water ices, and other similar frozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all work rooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable wash rooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows, or other openings. (1921, c. 169, s. 1; 1933, c. 431, s. 1; C. S. 7251(a).)

Local Modification.—Mecklenburg and Cabarrus: 1933, c. 431, s. 5; Burke and Catawba: 1939, c. 294.

§ 106-247. Cleaning and sterilization of vessels and utensils.—Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice-cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C. S. 7251(b).)

§ 106-248. Purity of products.—All cream, ice-cream, butter, cheese, or other products produced in places named herein shall be pure, wholesome, and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the board of agriculture pro-

vided for in § 106-253, and whole milk, sweet cream, and ice cream mix shipped into this state from other states shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing grade or standard of quality of product. (1921, c. 169, s. 3; 1933, c. 431, s. 2; C. S. 7251(c).)

§ 106-249. Receivers of products to clean utensils before return.—Every person, company, or corporation who shall receive milk, cream, or ice-cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C. S. 7251(d).)

§ 106-250. Correct tests of butter fat; tests by board of agriculture.—Creameries and factories that purchase milk and cream from producers of same on a butter-fat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this article. The board of agriculture, under regulations provided for in § 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C. S. 7251(e).)

§ 106-251. Department of agriculture to enforce law; examinations.—It shall be the duty of the department of agriculture to enforce this article, and the board of agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice-cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the department in the performance of his duty in connection with this article shall be guilty of a violation of the article. (1921, c. 169, s. 6; C. S. 7251(f).)

§ 106-252. Closure of plants for violation of article; certificate to sclicitor of district.—If it shall appear from the examinations that any provision of this article has been violated, the commissioner of agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of place refuses or fails to comply with the order, law, or regulations, the commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 169, s. 7; C. S. 7251(g).)

§ 106-253. Standards of purity and sanitation.—The board of agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. (1921, c. 169, s. 8; 1933, c. 431, s. 3; C. S. 7251(h).)

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories.—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor, or operator of each ice-cream factory where ice cream, frozen custard, milk sherbet, sherbet, water ices and/or other similar frozen food products are made or stored or cheese factory or creamery in this state that disposes of its product at wholesale to retail dealers, to be resold, shall pay to the commissioner of agriculture during the month of July of each year an inspection fee of twenty dollars ($20), and each maker of ice-cream, frozen custard, milk sherbet, sherbet, water ices, and/or other similar frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the commissioner of agriculture an inspection fee of five dollars ($5) during the month of July of each year. (1921, c. 169, s. 9; 1933, c. 431, s. 4; C. S. 7251(i).)

§ 106-255. Violation of article a misdemeanor; punishment.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C. S. 7251(j).)

Art. 27. Records of Purchases of Milk Products.

§ 106-256. Annual reports to dairy division by creameries, milk distributing plants, etc.—Every person, firm or corporation owning or operating a milk processing plant, creamery, milk distributing or cream buying station in this state, where milk or cream is received, shall file on or before April first of each year, upon blanks furnished, a report to the dairy division of the state department of agriculture, showing the amount of milk and cream received by such plants or stations during the calendar year preceding. The said report shall show the amount of butter, cheese, ice cream or other dairy products manufactured. (1939, c. 327, s. 1.)

§ 106-257. Records of purchases of cream.—Records of the purchase of cream shall be kept at each plant or station for a period of six months from the date of purchase, and shall show the date of purchase, the net pounds of cream purchased, the butterfat tests, the price of butterfat, and the amount paid therefor, in such manner as may be required on the report blanks provided. When payment for cream is made in cash, receipts of such payments shall be kept with the records, otherwise canceled checks or facsimile impressions shall be kept as receipts with records. Such records shall be available for inspection by any authorized representative of the commissioner of agriculture. (1939, c. 327, s. 21.)

§ 106-258. Individual plant records treated as confidential.—Any individual plant records shall be treated as confidential by anyone handling them and such individual records shall not be pub-

lished or made accessible to any unauthorized person or representative. (1939, c. 327, s. 3.)

§ 106-259. Failure to comply with provisions of article made misdemeanor.—Any person, firm or corporation owning or operating a creamery, cheese plant, condensed milk plant, ice cream plant, milk depot, or milk distributing plant, or milk or cream buying station, failing to comply with the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1939, c. 327, s. 4.)

Art. 28. Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined.—Wherever the word "milk" appears hereinafter in this article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk. (1941, c. 162, s. 1.)

§ 106-261. Reports to commissioner of agriculture as to milk purchased and sold.—Every person, firm, or corporation that purchases milk on a classification basis and/or that purchases both inspected and uninspected milk for processing and distribution and sale in North Carolina shall, not later than the twenty-fifth of each month following the month such business is carried on, furnish information to the commissioner of agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which this milk was distributed or sold. Such reports shall include all milk purchased from producers and/or purchased, sold, or transferred between plants, distributors, affiliates and subsidiaries. (1941, c. 162, s. 2.)

§ 106-262. Powers of commissioner of agriculture.—The commissioner of agriculture shall have the power:

(a) to require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was disposed;

(b) to designate any area of the state as a natural marketing area for the sale of milk;

(c) to set up the classifications of milk that may be necessary to properly carry out and enforce the provisions of this article for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given. (1941, c. 162, s. 3.)

§ 106-263. Distribution of milk in classification higher than that in which purchased.—It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks period. (1941, c. 162, s. 4.)

§ 106-264. Inspections and investigations by commissioner.—For the purpose of administering this article the commissioner of agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the state, and may take testimony for the purpose of ascertaining facts which in the judgment of the commissioner are necessary to administer this article. The commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful.—It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor.—Any person, firm, or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000.00), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7.)

Art. 29. Inspecting, Grading, and Testing Milk and Dairy Products.

§ 106-267. Inspecting, grading, and testing milk products by department of agriculture.—The state department of agriculture shall have full power to make and promulgate rules and regulations for the dairy division of the department of agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this state; to regulate the manner of testing the same not inconsistent with the standard methods as promulgated by the American public health association, and of all inspections which may be lawfully made except those relating to public health and sanitation, in the handling, treatment, and sale of the said milk products, and such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the commissioner of agriculture on this subject, and may license Babcock testers and revoke license.

The commissioner of agriculture shall be given authority to inspect all Babcock testers, glassware, and scales, as provided for in these regulations, and condemn such as are not found accurate and in good repair. He shall visit either in person, or by a deputy, all creameries, cheese factories, milk depots, etc., where milk and cream, and milk products are sold in this state, as often as may be necessary, and shall super-

vise in any practical way, the work of all licensed testers as provided for in this section.

The commissioner of agriculture and his deputies shall be authorized and empowered to make such tests as are necessary to settle disputes when called upon by either buyer or seller of milk, cream, or other dairy products where such disputes arise over dissatisfaction regarding weight or tests of dairy products. Such tests shall be regarded as correct, and shall be used as a basis for settlement in such disputes. (1933, c. 550, ss. 1-3.)

§ 106-268. Misbranding milk or cream prohibited.—It shall be unlawful for any person, firm, association or corporation to sell or offer for sale in any city, county, or other unit of local government which has adopted the public health service milk ordinance, or within one mile of the boundaries thereof, milk or cream in any container, bottle, or can bearing any legend, letter or symbol likely to be misleading, or indicating that such milk or cream has been graded, unless said milk or cream does conform in every respect with the requirements of said public health service milk ordinance. Any person violating the provisions of this section is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $50.00, nor less than $10.00. (1933, c. 343, s. 1.)

Art. 30. Farm Crop Seed Improvement Division.

§ 106-269. Creation and purpose; election of director.—There is hereby created in the Agricultural Extension Service of the State College of Agriculture and Engineering a division to be known as the Farm Crop Seed Improvement Division, and it shall be the duty and function of this division to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. The Director of said Division shall be selected as the heads of other divisions of the State College of Agriculture and Engineering are selected and said division shall have the necessary cooperation of all other members of the college staff of said State College of Agriculture and Engineering for the proper carrying out of the purposes of this article. (1929, c. 325, s. 1.)

§ 106-270. State board of farm crop seed improvement.—The Governor, the Commissioner of Agriculture and the Dean of the School of Agriculture of the State College of Agriculture and Engineering, are hereby created a State Board of Farm Crop Seed Improvement. (1929, c. 325, s. 2.)

§ 106-271. Powers of Board.—The said board shall have control, management and supervision of the production, distribution and certification of pure-bred crop seeds under the provisions of this article. (1929, c. 325, s. 3.)

§ 106-272. Co-operation of other departments with Board; rules and regulations; fees for certification.—In so far as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively co-operate with the said Board in carrying out the purpose of this article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, including rules and regulations fixing fees for certification and fixing the market price of certified seed, necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this article. (1929, c. 325, s. 4.)

§ 106-273. North Carolina Crop Improvement Association.—For the purpose of carrying out more fully the provisions of this article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

§ 106-274. Certification of crop seeds.—For the purposes of this article the certification of crop seeds hereunder shall be defined to be a guarantee by the North Carolina Crop Improvement Association herein provided for that the said seed conform to the stated origin, adaptation, variety name, variety purity, quality, germination, seed purity, and any other qualification necessary for the determining of the proper quality or value of crop seed. (1929, c. 325, s. 6.)

§ 106-275. False certification of pure-bred crop seeds made misdemeanor.—It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

§ 106-276. Supervision of certification of crop seeds.—Certification of crop seeds in so far as it concerns the origin, adaptation, variety name, variety purity and quality shall be subject to the supervision of the director of the Division of Farm Crop Seed Improvement. Certification of crop seeds in so far as it concerns germination and purity tests shall be subject to the supervision of the State Department of Agriculture. The North Carolina Crop Improvement Association may certify any crop seeds when the certification thereof shall have been approved by both the director of the Division of Farm Crop Seed Improvement and by the State Department of Agriculture. (1929, c. 325, s. 7.)

Art. 31. North Carolina Seed Law.

§ 106-277. Short title.—This article shall be known by the short title of "The North Carolina Seed Law." (1941, c. 114, s. 1.)

§ 106-278. Administration.—This article shall be administered by the commissioner of agriculture of the state of North Carolina hereinafter referred to as the "commissioner." (1941, c. 114, s. 2.)

§ 106-279. Definitions.—When used in this article:

a. The word "person" includes a person, firm, partnership, corporation, company, society, association, trustee, or receiver.

b. The term "agricultural seeds" shall include the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural or field seeds, and mixtures of such seeds.

c. The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds.

d. The term "inert matter" includes sand, dirt, chaff, and other foreign substances, and broken seed incapable of germination.

e. The term "weed seeds" shall mean the seeds of all plants generally recognized within this state as weeds, and shall include noxious weed seed.

f. Noxious weed seeds shall be divided into two classes, "primary noxious weed seeds" and "secondary noxious weed seeds," which are defined in (1) and (2) of this subsection:

(1) "Primary noxious weed seeds" are the seeds of perennial weeds such as not only reproduce by seed but also spread by underground roots or stems, and which when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.

(2) "Secondary noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice.

g. The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

h. The term "grower" shall mean any person who produces directly as landlord, tenant, sharecropper, or lessee, the seed sold.

i. The term "dealer" shall mean any person not classified as a "grower," selling or offering for sale any seeds for planting purposes, and shall include any person who has seed grown under contract for resale for planting purposes. (1941, c. 114, s. 3.)

§ 106-280. Attachment of seed analysis tags to containers of seeds for sale; information required on tags.—Each container of agricultural or vegetable seeds weighing ten (10) pounds or more which is sold, offered for sale, or exposed for sale within this state for planting purposes, shall have attached thereto a North Carolina seed analysis tag purchased from the department of agriculure, for one cent each, and in case such seed are shipped into this state said tag shall be secured by the person shipping such seed into the state before shipment to agent, retailer or other person, on which is plainly written or printed the following information:

a. For Agricultural Seeds:

(1) Lot number or other identification.

(2) Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of five per cent (5%) of the whole and the percentage by weight of each. Where more than one component is required to be named the word "mixture" or "mixed" shall be associated with the name on the label.

(3) Origin, if known; if unknown, so stated.

(4) Percentage by weight of agricultural seeds other than those required to be named on the label.

(5) Percentage by weight of inert matter.

(6) Percentage by weight of all weed seeds.

(7) The name and approximate number per pound of secondary noxious weed seeds when present singly or collectively in excess of the tolerances prescribed in the rules and regulations under this article.

(8) For each named agricultural seed.

(a) Percentage of germination exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) The calendar month and year the test was completed to determine such percentages.

(9) Name and address of the person who labeled said seed or who sells, offers or exposes said seed for sale. Provided that the provisions of (2), (4), (5), (6), and (7) of subsection "a" of this section shall not apply to cotton, corn, and tobacco except the name of kind or kind and variety, shall be shown as required in (2).

b. For Vegetable Seeds:

(1) Name of kind and variety of seeds.

(2) For seeds on which the germination equals or exceeds the standards last adopted under the rules and regulations of this article the words "NORTH CAROLINA STANDARD" may be used in lieu of the actual germination.

(3) For seeds which germinate less than the standard last established by the commissioner and board of agriculture under this article:

(a) Percentage of germination exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) Calendar year and month the test was completed to determine such percentages.

(d) The words "BELOW STANDARD."

(4) The name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale: Provided, that in cases where the required analysis and other information regarding the seed is present on the seedsman's label or tag, accompanied by the official North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis" or other words to that effect, the provisions of this section shall be deemed to have been complied with, and undefaced tags or labels of the previous year may be exchanged for tags or labels of the current year. Provided, further, that no tag or label shall be required, unless requested, on seeds sold directly to, and in the presence of, the consumer and taken from a bag or container properly labeled in accordance with the provisions of this section, but this shall in no way exempt from the analysis given on the tag or label attached to such container.

c. For vegetable seeds in containers of less than ten (10) pounds which germinate less than the

standards last adopted by the commissioner and board of agriculture the actual germination shall be shown.

d. Provided, that the official tag or label of the North Carolina Crop Improvement Association shall be considered a "North Carolina seed analysis tag" when fees applicable to said tag have been paid to the department of agriculture. (1941, c. 114, s. 4.)

§ 106-281. Prohibited acts.—It shall be unlawful:

a. For any person within this state to sell, offer or expose for sale any seed defined in this article for seeding purposes:

(1) Unless the test to determine the percentage of germination shall have been completed within a nine-month period exclusive of the calendar month in which the test was completed prior to sale or exposure for sale.

(2) Not labeled in accordance with the provisions of this article, or having a false or misleading label: Provided that the provisions of § 106-280 shall not apply to seed consigned to or in storage in a seed cleaning or processing establishment for cleaning or processing when each lot of such seed is labeled "to be cleaned or processed," or to seed being sold by a grower to a dealer. Provided further that any labeling or other representation which may be made with respect to such seed shall be subject to this article.

(3) Any seeds containing primary noxious weed seeds, subject to tolerances prescribed in the rules and regulations under this article.

b. For any person within this state:

(1) To detach, alter, deface or destroy any label provided for in this article or to alter or substitute seed in a manner that may defeat the purposes of this article.

(2) To hinder or obstruct in any way any authorized person in the performance of his duties under this article.

(3) To fail to comply with an order of the commissioner or his authorized agent to withdraw from sale any seed which do not comply with the requirements of this article. (1941, c. 114, s. 5.)

§ 106-282. Authority of commissioner and his agents.—For the purpose of carrying out the provisions of this article, authority is hereby delegated to the commissioner or his authorized agents:

a. To sample, inspect, make analysis of and test agricultural and vegetable seeds transported, sold, offered or exposed for sale within this state for seeding purposes, at such time and place and to such extent as he may deem necessary to determine whether or not this article has been complied with.

b. To adopt and prescribe, by and with the advice of the board of agriculture, rules and regulations governing the methods of sampling, inspecting, making analyses, testing and examining agricultural and vegetable seeds, and to make regulations governing tolerances allowed in the administration of this article; also to adopt grades and standards for seeds and to name noxious weed seeds.

c. To issue "stop sale" orders which shall prohibit further sale of any lot of seed which the commissioner or his authorized agent has reason to believe is being offered or exposed for sale in violation of any of the provisions of this article, until the law has been complied with, or said violation otherwise legally disposed of.

d. To establish and maintain a seed laboratory with adequate facilities and personnel for such inspecting, sampling, and testing as may be necessary for the efficient enforcement of this article.

e. To publish or cause to be published at intervals information covering the findings of the seed laboratory.

f. To withdraw from sale seed not having a reasonable viability or that are extremely impure, or that are of distinct low quality otherwise, notwithstanding they may be properly labeled, when such withdrawal is in the interest of normal crop production.

g. To make rules and regulations under which any person, of this state shall have the privilege of having samples of seed tested free of charge in the state seed laboratory. (1941, c. 114, s. 6.)

§ 106-283. Sources of funds for expenses; licensing of seed dealers; inspection stamps.—For the purpose of providing a fund to defray the expenses of the inspection, examination, and analysis prescribed in this article:

a. Each seed dealer selling, offering or exposing for sale in, or export from, this state any agricultural, vegetable, or flower seeds, other than packet or package seeds, for seeding purposes, shall register with the department of agriculture the name of such dealer and shall obtain a license annually on January first of each year, and shall pay for such license as follows:

(1) Twenty-five dollars ($25.00), if a wholesaler, or a wholesaler and retailer.

(2) Ten dollars ($10.00), if a retailer with sales in excess of one hundred dollars ($100.00) for the calendar year. Each branch of any wholesaler or retailer shall be required to obtain a retail license.

(3) One dollar ($1.00), if a retailer at a permanent location with sales not in excess of one hundred dollars ($100.00). Provided, that if and when the seed sales for the calendar year shall exceed one hundred dollars ($100.00), application must be made for a ten dollar ($10.00) license, credit to be given for the one dollar ($1.00) license previously secured: Provided, further that no owner or operator of any harvester or threshing machine operating on a share basis and selling only the seed obtained in this manner shall come under the provisions of this section.

b. A one dollar ($1.00) inspection stamp shall be purchased from the department of agriculture for each seventy-two (72) dozen packets or packages of vegetable or flower seeds, or fraction thereof. The said stamp shall be secured by the producer, grower, jobber or other person, firm or corporation shipping such seed into the state before shipment to agent or retailer, and shall be furnished to said agent or retailer for attachment to display case: Provided, also, that any producer, grower, jobber or other person, firm or corporation, residing within this state shall secure said stamp before furnishing any such seed to any agent or retailer within the state for resale. The said stamp or stamps shall be attached to the display case before the seed are offered or exposed for sale,

and shall expire at the end of the calendar year for which issued: Provided further that in cases where package seed of one kind or variety are offered or exposed for sale in boxes or display cases not in excess of three dozen packages, a ten cent stamp shall be purchased from the department of agriculture and attached to said box or display case. (1941, c. 114, s. 7.)

§ 106-284. Violations made misdemeanor; prosecutions; release of seeds after compliance.—Every violation of the provisions of this article shall be deemed a misdemeanor and punishable by a fine not to exceed five hundred dollars ($500.00), and if the commissioner shall find, upon examination, analysis, or test, that any person has violated any of the provisions of this article, he or his duly authorized agent or agents may institute proceedings in a court of competent jurisdiction against such person; or the commissioner, in his discretion, may report the results of such examination to the attorney general, together with sworn statement of the analyst, duly acknowledged, and such other evidence of such violation as he shall deem necessary. Said sworn statement shall be admitted as evidence in any court of this state in any proceeding instituted under this article; but, upon a motion of the accused, such analyst shall be required to appear as a witness and be subject to cross-examination: Provided, however, that no prosecution for violation of this article, if such violations are based on tests or analyses, shall be instituted except in the manner following: When the commissioner of agriculture finds that this article has been violated, as shown by test, examination or analysis, he shall give notice to the person responsible for labeling the seeds, designating a time and place for a hearing. This hearing shall be private, and the person or firm involved shall have the right to introduce evidence, either in person, or by agent or attorney. If, after said hearing, or without said hearing, in case said person fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, he shall proceed as herein provided. Moreover, it shall be the duty of the attorney general, or, in his discretion, he may act through the attorney of the county or city in which such violation has occurred, to institute proceedings at once against the person charged with such violations: Provided, such proceedings for violations shall be instituted according to the laws of this state: Provided, further that when the provisions of this article have been fully complied with regarding any seeds which have been withdrawn from sale, or have been ordered by the commissioner to be disposed of for other than seeding purposes, the commissioner, may in his discretion, release the same for sale upon the payment of all costs and expenses incurred by the department of agriculture in any proceedings connected with such withdrawal. (1941, c. 114, s. 8.)

Art. 32. Linseed Oil.

§ 106-285. Inspection and analysis authorized.—For the purpose of protection of the people of the state from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the board of agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the state obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the department of agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this article or is otherwise offered for sale in violation of this article. (1917, c. 172, s. 1; C. S. 4832.)

§ 106-286. "Raw" and "boiled" linseed oil defined.—The term "raw linseed oil" as used herein shall be construed to mean the oil obtained wholly from commercially pure linseed or flaxseed, and the term "boiled linseed oil" as used herein shall be construed to mean linseed oil that has been heated in the process of its manufacture to a temperature of not less than two hundred and twenty-five degrees Fahrenheit. (1917, c. 172, s. 2; C. S. 4833.)

§ 106-287. "Adulterated" linseed oil defined.—For the purpose of this article linseed oil shall be deemed to be adulterated if it be not wholly the product of commercially pure and well cleaned linseed or flaxseed, and unless the oil also fulfills the requirements of the chemical test for pure linseed oil, described in the edition of the United States Pharmacopœia for the year nineteen hundred. (1917, c. 172, s. 3; C. S. 4834.)

§ 106-288. Sale of prohibited products; statement required of dealer.—No person, firm, or corporation, by himself or agent or as the agent of any other person, firm, or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell under the name of raw linseed oil or boiled linseed oil, or under any name or device that suggests raw or boiled linseed oil, any article which is not wholly the product of commercially pure linseed or flaxseed, or that is adulterated or misbranded within the meaning of this article, except as is hereinafter provided, and any manufacturer, wholesaler, or jobber desiring to do business in the state shall file with the commissioner of agriculture a statement to that effect and furnish the name of the oil or oils which he proposes to sell by sample or otherwise, and that the oil or oils will comply with the requirements of this article. (1917, c. 172, s. 4; C. S. 4835.)

§ 106-289. Drying agents; label to state name and percentage.—Boiled linseed oil which has been heated to a temperature of not less than two hundred and twenty-five degrees Fahrenheit may contain drying agents not to exceed four per cent by volume, provided that the name and per cent of each drying agent present be plainly stated in connection with the name of the oil on the receptacle containing same: and Provided further, that the statement is printed in letters that meet the requirements of the regulations adopted by the board of agriculture under this article. (1917, c. 172, s. 5; C. S. 4836.)

§ 106-290. Compounds, imitations, and substitutes regulated.—Nothing in this article shall be construed to prohibit the sale of compound linseed oil, or imitation linseed oil, or any substance to be used as a substitute for linseed oil, provided the receptacle containing same shall be plainly and legibly stamped, stenciled, or marked compound

linseed oil, or imitation oil, or with the name of the substance to be used for linseed oil, as the case may be: and Provided further, that the name is stenciled or marked on the container of same in a manner that will meet the requirements of the regulations adopted by the board of agriculture under this article. (1917, c. 172, s. 6; C. S. 4837.)

§ 106-291. Containers to be marked with specified particulars.—Before any raw linseed oil or any boiled linseed oil or any boiled linseed oil with drying agents added or any compound linseed oil or any imitation linseed oil or any other substance used or intended to be used as a substitute for linseed oil shall be sold or offered for sale in this state, the container in which same is kept for sale or sold shall have distinctly, legibly, and durably painted, stamped, stenciled, or marked thereon the true name of such oil or substance, setting forth in bold-face capital letters that meet the regulations prescribed by the board of agriculture, whether it be raw linseed oil or boiled linseed oil with drying agent added, or a compound linseed oil or an imitation linseed oil or a substitute for linseed oil, as the case may be; and the container, if a wholesale package, shall also bear the name and address of the manufacturer or jobber of such oil. (1917, c. 172, s. 7; C. S. 4838.)

§ 106-292. Entry for samples authorized.—The inspectors or agents of the department of agriculture, authorized to make inspection under this article, shall have authority, during business hours, to enter all stores, warehouses, or any other place where products named in this article are stored or sold or offered for sale, for the purpose of inspection and obtaining samples of such products. (1917, c. 172, s. 8; C. S. 4839.)

§ 106-293. Refusing samples or obstructing article forbidden.—Every person who offers for sale or delivers to a purchaser any article named in this article shall furnish, within business hours and upon the payment or tender of the selling price, a sample of such product to any person duly authorized to secure the same, and who shall apply to such vender for such sample of such article in his possession; and any dealer or vender who refuses to comply, upon demand, with the requirements of this section, or any person who shall impede, hinder, or obstruct or otherwise prevent or attempt to prevent any chemist, inspector, or agent of the department in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1917, c. 172, s. 8; C. S. 4840.)

§ 106-294. Violations of article a misdemeanor.—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense and for each subsequent offense in the discretion of the court. (1917, c. 172, s. 9; C. S. 4841.)

§ 106-295. Forfeiture for unauthorized offer; disposal of proceeds.—The oil offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizer; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article. (1917, c. 172, s. 9; C. S. 4842.)

§ 106-296. Commissioner to notify solicitor of violations and certify facts.—If it shall appear from the inspection or other examination of oils that any of the provisions of this article have been violated, besides the action above provided for, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish the officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1917, c. 172, s. 10; C. S. 4843.)

§ 106-297. Solicitor to prosecute.—It shall be the duty of the solicitor to prosecute such cases for fines and penalties provided for in this article in courts of competent jurisdiction. (1917, c. 172, s. 10; C. S. 4844.)

§ 106-298. Inspection tax.—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article there shall be paid to the commissioner of agriculture an inspection tax of one-half cent per gallon for any and all linseed oil or compound linseed oil or any substance used or intended to be used as a substitute for linseed oil, which payment shall be made before the delivery of such oil to any agent, retail dealer, or consumer in this state. (1917, c. 172, s. 11; C. S. 4845.)

§ 106-299. Tax tags.—Each can, barrel, tank, or other container of oils named in this article shall have attached thereto an inspection tag or stamp stating that the inspection charges specified in this article have been paid; and the commissioner of agriculture, with the advice and consent of the board, is hereby authorized to prescribe a form for such tags or stamps: Provided, that they shall be such as to meet the requirements of the trade of linseed oil. (1917, c. 172, s. 11; C. S. 4846.)

§ 106-300. Refilling containers and misuse of tags prohibited.—The refilling of a container bearing an inspection tag or stamp on which the inspection tax has not been paid or the use of an inspection tag or stamp a second time shall constitute a violation of this article. (1917, c. 172, s. 12; C. S. 4847.)

§ 106-301. Rules to enforce article; misdemeanor.—The board of agriculture is hereby authorized to adopt such rules and regulations in regard to handling linseed oil, refilling containers, and use of inspection tags or stamps a second time, as will insure the enforcement of the provisions of this article, and a violation of the said rules or regulations shall constitute a violation of this article. (1917, c. 172, s. 13; C. S. 4848.)

§ 106-302. Dealer released by guaranty of wholesaler.—No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the manufacturer, jobber, wholesaler, or other party from whom he purchased such article, designating it, to the effect that the same is not adulterated or misbranded within the meaning of this article. Said guaranty,

to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such cases said party or parties, if in this state, shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular manufacturer, jobber, or wholesaler, or for the sale of oil which is not properly labeled, branded, stamped, or tagged, or on which the inspection tax has not been paid. (1917, c. 172, s. 14; C. S. 4849.)

Art. 33. Adulterated Turpentine.

§ 106-303. Sale of adulterated turpentine misdemeanor.—If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned for thirty days. (Rev., s. 3830; 1897, c. 482; C. S. 5089.)

Art. 34. Animal Diseases.

Part 1. Quarantine.

§ 106-304. Proclamation of live-stock quarantine.—Upon the recommendation of the commissioner of agriculture, it shall be lawful for the governor to issue his proclamation forbidding the importation into this state of any and all kinds of live stock from any state where there is known to prevail contagious or infectious diseases among the live stock of such state. (1915, c. 174, s. 1; C. S. 4871.)

§ 106-305. Proclamation of infected feedstuff quarantine.—Upon the recommendation of the commissioner of agriculture, it shall be lawful for the governor to issue his proclamation forbidding the importation into this state of any hay, feedstuff, or other article dangerous to live stock as a carrier of infectious or contagious disease from any state where there is known to prevail contagious or infectious disease among the live stock of such state. (1915, c. 174, s. 2; C. S. 4872.)

§ 106-306. Rules to enforce quarantine.—Upon such proclamation being made, the commissioner of agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the live stock in this state. (1915, c. 174, s. 3; C. S. 4873.)

§ 106-307. Violation of proclamation or rules.—Any person, firm, or corporation violating the terms of the proclamation of the governor, or any rule or regulation made by the commissioner of agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1915, c. 174, s. 4; C. S. 4874.)

Part 2. Foot and Mouth Disease.

§ 106-308. Appropriation to combat the disease.—If the foot and mouth disease shall occur or seem likely to appear in this state and the agricultural department has no funds available to immediately meet the situation in coöperation with the United States department of agriculture, the state treasurer, upon the approval of the governor, shall set aside out of funds not otherwise appropriated such sum as the governor shall deem necessary and who will notify the treasurer of the amount, to be known as the foot and mouth appropriation, to be used by the state agricultural department in the work of preventing or eradicating this disease.

The same shall be paid only for work in this connection upon warrants approved by the commissioner of agriculture. (1915, c. 160, s. 1; C. S. 4875.)

§ 106-309. Disposition of surplus funds.—If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the state treasurer shall return such part of the appropriation as is not expended to the general fund, and the commissioner of agriculture shall furnish the governor an itemized statement of the money expended, and all moneys set aside out of the state funds and used for the purpose of eradicating said disease under the provisions of this article shall be paid back to the state funds by the department of agriculture out of the first funds received by said agricultural department available for such purpose. (1915, c. 160, s. 2; C. S. 4876.)

Part 3. Hog Cholera.

§ 106-310. Burial of hogs dying natural death required.—It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten for each offense, at the discretion of the court. (1915, c. 225; C. S. 4877.)

§ 106-311. Hogs affected with cholera to be segregated and confined.—If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them, so that they shall not have access to any ditch, canal, branch, creek, river or other water-course which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3297; 1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1903, c. 106; 1899, c. 47; 1913, c. 120; C. S. 4490.)

§ 106-312. Shipping hogs from cholera-infected territory.— It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor. (1917, c. 203; C. S. 4491.)

§ 106-313. Price of serum to be fixed.—The department of agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C. S. 4878.)

§ 106-314. Manufacture and use of serum and virus restricted.—It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the state anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the state department of agriculture, or produced in a plant which is licensed by the United States department of agriculture, bureau of animal industry, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the state of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the state department of agriculture or produced in a plant which is licensed by the United States department of agriculture, bureau of animal industry, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the state unless and until permission has been given in writing by the state veterinarian for such distribution, sale or use. Said permission to be canceled by the state veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C. S. 4879.)

Local Modification.—Edgecombe: 1933, c. 139; Nash: 1935, cc. 67, 222; Pitt: 1935, c. 352; Wilson: 1933, c. 58.

§ 106-315. Written permit from state veterinarian for sale, use or distribution of hog cholera virus, etc.—No hog cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the state unless permission has been given in writing by the state veterinarian for such distribution, sale, or use, said permission to be cancelled by the state veterinarian when he deems same necessary: Provided, that the provisions of this section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1939, c. 360, s. 5.)

§ 106-316. Counties authorized to purchase and supply serum.—If the county commissioners of any county in the state deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the state department of agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the state veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C. S. 4881.)

§ 106-317. Regulation of transportation or importation of hogs into state.—To prevent the spread of hog cholera or other contagious or infectious hog disease in the state of North Carolina, it is hereby declared to be unlawful to transport or import, into this state any hog from any other state or territory for any purpose whatsoever, except upon the certificate of a duly licensed practicing veterinarian in the county or corresponding territorial district where the shipment originated that such hog is not infected with cholera or other contagious or infectious hog disease and is not transported or imported from a locality in which hog cholera or other contagious or infectious hog disease is prevalent; said certificate shall be issued within ten days prior to inspection: Provided, §§ 106-317 to 106-322 shall not apply to hogs brought into this state for immediate delivery to recognized slaughter houses intended for immediate slaughter and hogs destined to public livestock markets operating under the supervision of the department of agriculture, but the burden shall be on the person transporting said hogs to prove the fact that such hogs are so destined: Provided, further, that the presentation of a way bill of lading on any shipment of hogs being transported by a common carrier shall satisfy this burden. (1941, c. 373, s. 1.)

§ 106-318. Veterinarian's certificate subject to inspection by police officers, etc. — Until delivery of any such hog, the owner or agent in charge shall at all times have in his possession said certificate of the licensed veterinarian and, upon request, he shall produce it for inspection by any police officer or inspection agent of this state or any county thereof. (1941, c. 373, s. 2.)

§ 106-319. Burial of hogs dying in transit.—It shall be the duty of any owner or agent having in charge any hog being transported or imported, into this state who shall, before delivery, lose a hog by any form of natural or unnatural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of said hog. (1941, c. 373, s. 3.)

§ 106-320. Duty of county commissioners to provide for inspections. — It shall be the duty of the county commissioners of each county of the state of North Carolina to provide sufficient and adequate inspection of hogs transported or imported into said county from any other state or territory, and to examine into the authenticity and sufficiency of the certificate of the veterinarian, and to refuse admittance into the county of any hog not certified as provided by §§ 106-317 to 106-322. (1941, c. 373, s. 4.)

§ 106-321. Violation of sections 106-317 to 106-322 made misdemeanor.—Any person violating the provisions of §§ 106-317 to 106-322 shall be guilty of a misdemeanor. (1941, c. 373, s. 5.)

§ 106-322. Effect of sections 106-317 to 106-322.—Sections 106-317 to 106-322 shall not repeal article 34, chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease.—If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and para-tuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the state veterinarian is authorized, within his discretion, to agree on the part of the state, in the case of cattle destroyed for Bang's disease and tuberculosis, and para-tuberculosis to pay one-third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the state be more than twelve dollars and fifty cents for any grade animal nor more than twenty-five dollars for any pure-bred animal. In the case of horses or mules destroyed for glanders to pay one-half of the appraised value, said half not to exceed one hundred dollars. (1919, c. 62, s. 1; 1929, c. 107; 1939, c. 272, ss. 1, 2; C. S. 4882.)

§ 106-324. Appraisal of cattle affected with Bang's disease and tuberculosis.—Cattle affected with Bang's disease and tuberculosis and para-tuberculosis shall be appraised by three men—one to be chosen by the owner, one by the United States bureau of animal industry, and one by the state veterinarian. If the United States bureau of animal industry is not represented, then the appraisers shall be chosen, one by the owner, one by the state veterinarian, the third to be chosen by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; 1929, c. 107; 1939, c. 272, s. 1; C. S. 4883.)

§ 106-325. Appraisal of animals affected with glanders; report.—Animals affected with glanders shall be appraised by three men—one to be chosen by the owner, one to be chosen by the state veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the state veterinarian, and a copy sent to the state veterinarian at once. (1919, c. 62, s. 3; C. S. 4884.)

§ 106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to state veterinarian; contents.—Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the state veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the state veterinarian: Provided, that the state veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States department of agriculture. (1919, c. 62, s. 4; 1939, c. 272, ss. 1, 3; C. S. 4885.)

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis.—Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the state veterinarian to be marketed, shall market the cattle within thirty days and shall obtain from the purchaser a report in triplicate. One copy to be sent to the state veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; 1939, c. 272, s. 1; C. S. 4886.)

§ 106-328. Report on salvage.—When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the state veterinarian, in triplicate shall be made, signed by the owner and the United States bureau of animal industry or state inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C. S. 4887.)

§ 106-329. Compensation when killing ordered.—Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the state veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the state veterinarian. (1919, c. 62, s. 7; C. S. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens.—When animals have been destroyed pursuant to this article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C. S. 4889.)

§ 106-331. State not to pay for feed of animals ordered killed.—Expense for the care and feeding of animals held for slaughter shall not be paid by the state. (1919, c. 62, s. 9; C. S. 4890.)

§ 106-332. Disinfection of stockyards by owners.—Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States bureau of animal industry or state veterinarian. (1919, c. 62, s. 10; C. S. 4891.)

§ 106-333. Payments made only on certain conditions.—No payments shall be made for any animal slaughtered in the following cases:

1. If the owner does not disinfect premises, etc., as directed by an inspector of the United States bureau of animal industry or the state veterinarian.

2. For any animals destroyed where the owner has not complied with all lawful quarantine regulations.

3. Animals reacting to a test not approved by the state veterinarian.

4. Animals belonging to the United States.

5. Animals brought into the state in violation of the state laws and regulations.

6. Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.

7. Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the state.

8. Animals which have not been within the state of North Carolina for at least one hundred and twenty days prior to the discovery of the disease.

9. Where owner does not use reasonable care in protecting animals from disease.

10. Where owner has failed to submit the necessary reports as required by this article.

11. Any unregistered bull. (1919, c. 62, s. 11; 1939, c. 272, s. 4; C. S. 4892.)

§ 106-334. Owner's claim for indemnity supported by reports.—The owner must present his claim for indemnity to the state veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the state or United States bureau of animal industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; 1939, c. 272, s. 1; C. S. 4893.)

§ 106-335. State veterinarian to carry out provisions of article; how moneys paid out.—The state veterinarian is authorized, himself or by his representative, to do all things specified in this article. All moneys authorized to be paid shall be paid from the state treasury on warrants approved by the auditor, and the state treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C. S. 4894.)

Part 5. Tuberculosis.

§ 106-336. Animals reacting to tuberculin test.—All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C. S. 4895(a).)

§ 106-337. Animals to be branded.—All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T", not less than two inches high, and promptly report the same to the state veterinarian. (1921, c. 177, s. 2; C. S. 4895(b).)

§ 106-338. Quarantine; removal or sale; sale and use of milk.—The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the state veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C. S. 4895(c).)

§ 106-339. Seller liable in civil action.—Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C. S. 4895(d).)

§ 106-340. Responsibility of owner of premises where sale is made.—When cattle are sold or otherwise disposed of in this state by a nonresident of this state, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the department of agriculture. (1921, c. 177, s. 5; C. S. 4895(e).)

§ 106-341. Sale of tuberculin.—No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C. S. 4895(f).)

§ 106-342. Notice to owner of suspected animals; quarantine.—When the state veterinarian receives information, or has reason to believe that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the state veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the state veterinarian within ten days after said notice, then the state veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the state veterinarian have been complied with, and the quarantine canceled by the state veterinarian. (1921, c. 177, s. 7; C. S. 4895(g).)

§ 106-343. Appropriations by counties; elections.—The several boards of county commissioners in the state are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to coöperate effectively with the state and federal departments of agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in ten days after said appropriation is voted, one-fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the

county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in §§ 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and coöperative tuberculosis eradication shall be taken up with the state and federal departments of agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C. S. 4895(h).)

§ 106-344. Petition for election if commissioners refuse coöperation; order; effect.—If the board of commissioners of any county should exercise their discretion and refuse to coöperate as set out in § 106-343, then if a petition is presented to said board by one-fifth of the qualified voters of the county requesting that an election be held as provided in § 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall order said election to be held in the way provided in § 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall coöperate with the state and federal governments as herein provided. (1921, c. 177, s. 9; C. S. 4895(i).)

§ 106-345. Importation of cattle.—Whenever a county board shall coöperate with the state and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C. S. 4895(j).)

§ 106-346. Amount of appropriation. — When coöperative tuberculosis eradication shall be taken up in any county as provided for in §§ 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one-half of the expense of said coöperative tuberculosis eradication. (1921, c. 177, s. 11; C. S. 4895(k).)

§ 106-347. Qualified veterinarian.—The words "qualified veterinarian" which appear in §§ 106-336 to 106-350 shall be construed to mean a veterinarian approved by the state veterinarian and the chief of the United States bureau of animal industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C. S. 4895(l).)

§ 106-348. Rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis. (1921, c. 177, s. 13; C. S. 4895(m).)

§ 106-349. Violation of law a misdemeanor.—Any person or persons who shall violate any provision set forth in §§ 106-336 to 106-350, or any rule or regulation duly established by the state board of agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1921, c. 177, s. 14; C. S. 4895(n).)

§ 106-350. Sale of affected animals a felony.—Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in § 106-338 shall be guilty of a felony, and punishable by imprisonment of not less than one year or not more than five years in the state prison. (1921, c. 177, s. 15; C. S. 4895(o).)

Part 6. Cattle Tick.

§ 106-351. Systematic dipping of cattle or horses.—Systematic dipping of all cattle or horses infested with or exposed to the cattle tick, (Margaropus annulatus) shall be taken up in all counties or portions of counties that shall at anytime be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the state veterinarian acting under the authority as hereinafter provided in §§ 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the state board of agriculture not in conflict with §§ 106-351 to 106-363. (1923, c. 146, s. 1; C. S. 4895(p).)

§ 106-352. Counties not embraced in quarantine zones.—If it shall be determined by the state veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the county commissioners of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the state veterinarian. (1923, c. 146, s. 3; C. S. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost.—The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the state veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the state veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of §§ 106-351 to 106-363, except §§ 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C. S. 4895(s).)

§ 106-354. Local state inspectors; commissioned as quarantine inspectors; salaries, etc.—The state veterinarian shall appoint the necessary number of local state inspectors to assist in systematic tick eradication, who shall be commissioned by the commissioner of agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the services of any of said inspectors is

not satisfactory to the state veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; 1925, c. 275, s. 6; C. S. 4895(t).)

§ 106-355. Enforcement of compliance with law.—If the county commissioners shall fail, refuse or neglect to comply with the provisions of §§ 106-351 to 106-363, the state veterinarian shall apply to any court of competent jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of §§ 106-351 to 106-363. (1923, c. 146, s. 6; C. S. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period.—Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every fourteen days in a vat properly charged with arsenical solution as recommended by the United States bureau of animal industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the state board of agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (Margaropus annulatus) in such county or counties. (1923, c. 146, s. 7; C. S. 4895(v).)

§ 106-357. Service of notice.—Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C. S. 4895(w).)

§ 106-358. Cattle placed in quarantine; dipping at expense of owner.—Cattle, horses or mules infested with or exposed to the cattle tick (Margaropus annulatus) the owner or owners of which, after five days written notice from a quarantine inspector of such animals as is provided for in § 106-357, shall fail or refuse to dip such animals regularly every fourteen days in a vat properly charged with arsenical solution, as recommended by the United States bureau of animal industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C. S. 4895(x).)

§ 106-359. Expense of dipping as lien on animals; enforcement of lien.—Any expense incurred in the enforcement of § 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff of the county after twenty days advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within thirty days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within twelve months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C. S. 4895(y).)

§ 106-360. Duty of sheriff.—It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of §§ 106-351 to 106-363 and the regulations of the North Carolina department of agriculture. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable at the discretion of the court. (1923, c. 146, s. 11; C. S. 4895(z).)

§ 106-361. Rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C. S. 4895(aa).)

§ 106-362. Penalty for violation.—Any person, firm or corporation who shall violate any provisions set forth in §§ 106-351 to 106-363 or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall willfully fail to comply with any provision of §§ 106-351 to 106-363 shall be guilty of a misdemeanor. (1923, c. 146, s. 13; C. S. 4895(bb).)

§ 106-363. Damaging dipping vats a felony.—Any person or persons who shall wilfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a felony and upon conviction shall be imprisoned not less than two years nor more than ten years in the state prison. (1923, c. 146, s. 14; C. S. 4895(cc).)

Part 7. Rabies.

§ 106-364. Definitions. — The following definitions shall apply to §§ 106-364 to 106-387:

(a) The term "dog" shall mean dogs of any sex.

(b) The term "vaccination" shall be under-

stood to mean the administration of anti-rabic vaccine approved by the department of agriculture, containing not less than twenty percent (20%) of fixed virus material, non-virulent and potent as shown by the required tests of the United States bureau of animal industry. (1935, c. 122, s. 1.)

§ 106-365. Annual vaccination of all dogs.—In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of every dog to have same vaccinated annually by a rabies inspector in accordance with the provisions of §§ 106-364 to 106-387. And it shall be the further duty of the owner of said dog to properly restrain same and to assist the rabies inspector in administering the vaccine. (1935, c. 122, s. 2; 1941, c. 259, s. 2.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

§ 106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians.—It shall be the duty of the county health officers of the several counties, and in those counties where health officers are not employed, it shall be the duty of the board of county commissioners, to appoint, subject to the approval and confirmation of the commissioner of agriculture of North Carolina, a sufficient number of rabies inspectors to carry out the provisions of §§ 106-364 to 106-387. In the appointment of rabies inspectors preference shall always be given to graduate licensed veterinarians and said veterinarians may be appointed to carry out the provisions of §§ 106-364 to 106-387 in the entire county. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience can demonstrate the ability to perform the duties required under §§ 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3.)

Local Modification.—Davie: 1937, c. 255. Person and Union: 1941, c. 259, s. 12½.

§ 106-367. Time of vaccination.—The vaccination of all dogs in the counties shall begin annually on April first and shall be completed within ninety (90) days from the date of beginning the vaccination in the several counties. (1935, c. 122, s. 4.)

§ 106-368. Publication of notice of date of vaccination; duty of owner.—The rabies inspector shall give due notice through the newspaper of the county and by posting notice at the court house and at one or more public places in each township of the county of the date on which the vaccination of all dogs shall be started in a county and it shall be the duty of the owner of every dog in said county to have said dog, or dogs, at either of two or more points in the township for the purpose of having same vaccinated, said points and date to be designated by the rabies inspector. (1935, c. 122, s. 5; 1941, c. 259, s. 4.)

§ 106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination.—The state department of agriculture shall purchase the proper rabies vaccine provided for in §§ 106-364 to 106-387 and supply same to the rabies inspector at a cost of not to exceed fifty cents per dose. and a uniform metal tag, serially numbered and suitably lettered and to show the year issued. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259, s. 5.)

§ 106-370. Notice to sheriff of each county and his duty to assist.—The rabies inspector shall notify the sheriff of the county of the date when the vaccination of dogs in said county shall begin and it shall be the duty of the sheriff and his deputies to assist the rabies inspector in the enforcement of §§ 106-364 to 106-387. (1935, c. 122, s. 7; 1941, c. 259, s. 6.)

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.—When the rabies inspector has carried out the provisions of §§ 106-364 to 106-387 as to § 106-368 in all townships of the county, it shall be the duty of the sheriff with the assistance of the rabies inspector to make a thorough canvass of the county and frequently thereafter to determine if there are any dogs that are not wearing the metal tag provided for in § 106-369. If such dogs are found the sheriff shall notify the owner to have same vaccinated by a rabies inspector and to produce the certificate provided for in § 106-369, within three days. If the owner shall fail to do this he shall be prosecuted in accordance with the provisions of §§ 106-364 to 106-387. If the owner of a dog not wearing a tag cannot be found it shall be the duty of said officer to destroy said dog. (1935, c. 122, s. 8.)

§ 106-372. Fee for vaccination; dog tax credit; penalty for late vaccinations.—The rabies inspector shall collect from the owner of each dog vaccinated as provided for in § 106-368, not more than seventy-five cents for each dog, the same to be credited on the dog tax when certificate of vaccination is presented to the sheriff or tax collector of said county. Any owner who fails to have his dog vaccinated at the time the rabies inspector is in the township in which the owner resides as provided in § 106-368, shall have said dog vaccinated in accordance with § 106-371 and shall pay the rabies inspector the additional sum of twenty-five cents to be retained by him for each dog treated: Provided, that in cases where dogs are vaccinated in accordance with § 106-371, the total charge for such treatment shall not exceed seventy-five cents, only fifty cents of which shall be credited on such dog tax. (1935, c. 122, s. 9; 1941, c. 259, s. 7.)

Local Modification.—Edgecombe, Nash and Wilson: 1941, c. 259, s. 7. Person and Union: 1941, c. 259, s. 12½.

§ 106-373. Vaccination of dogs after annual vaccination period.—It shall be the duty of the owner of any dog born after the annual vaccination of dogs in his county or any dog that was not six months old at the time of said annual vaccination to take the same when six months old to a rabies inspector for the purpose of having same vaccinated. The fee charged in such cases by the rabies inspector shall not exceed seventy-five cents per animal. (1935, c. 122, s. 10, c. 344; 1941, c. 259, s. 8.)

Local Modification.—Edgecombe, Nash and Wilson: 1941, c. 259, s. 8. Person and Union: 1941, c. 259, s. 12½.

§ 106-374. Vaccination and confinement of dogs brought into state.—All dogs shipped or otherwise brought into this State, except for exhibition purposes where the dogs are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompanied by a certificate issued by a qualified veterinarian showing that said dog is apparently free from rabies and has not been exposed to same and that said dog has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate. (1935, c. 122, s. 11.)

§ 106-375. Quarantine of districts infected with rabies.—The county health officer may declare quarantine against rabies in any designated district when in its judgment this disease exists to the extent that the lives of persons are endangered and all dogs in said district shall be confined on the premises of the owner or in a veterinary hospital: Provided a dog may be permitted to leave the premises of the owner if on leash or under the control of its owner or other responsible person. (1935, c. 122, s. 12; 1941, c. 259, s. 9.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

§ 106-376. Killing stray dogs in quarantine districts. — When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsible for their control, any police officer or deputy sheriff shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13.)

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated.—Every animal having rabies, and every animal known to have been bitten by another animal having rabies, shall be killed immediately by its owner or a peace officer: Provided that if any animal known to have been bitten by a dog having rabies, but which has not developed the disease, shall have been vaccinated in accordance with §§ 106-364 to 106-387 before being bitten, such animal shall be closely confined until it shall have been determined by the rabies inspector or a registered veterinarian that the animal has rabies, before it shall be required to be killed. (1935, c. 122, s. 14.)

§ 106-378. Confinement of suspected dogs.—Every person who owns or has possession of an animal which is suspected of having rabies or which has symptoms of or has been exposed to the disease, shall confine such animal at once in some secure place for at least three weeks and until released by a rabies inspector for the purpose of determining whether such animal has the disease. (1935, c. 122, s. 15, c. 344; 1941, c. 259, s. 10.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

§ 106-379. Dogs having rabies to be killed; heads ordered to a laboratory.—Every animal, after it has been determined that it has rabies, shall be killed at once by a peace officer or its owner, and the head of every animal suspected of having rabies which may have died shall be properly prepared and sent at once to the laboratory approved by the state board of health. (1935, c. 122, s. 16.)

§ 106-380. Notice to county health officer and rabies inspector when person bitten; confinement of dog.—When a person has been bitten by a dog or animal, which has rabies or which is suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to immediately notify the county health officer and give their names and addresses; and the owner of person having such dog or animal in his possession or under his control shall immediately notify the rabies inspector and shall securely confine said animal on his premises or surrender it to a veterinary hospital for inspection and observation. After the preliminary examination and observation the animal may be released in the custody of the owner to be kept under quarantine and observation for twenty-one (21) days, and until released by the rabies inspector, if the animal is found not to have rabies. (1935, c. 122, s. 17; 1941, c. 259, s. 11.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

§ 106-381. Confinement or leashing of vicious dogs.—When an animal becomes vicious, and a menace to the public health the owner of such animal or person harboring or having such animal in his possession shall not permit such animal to run at large unless on leash in the care of a responsible person, or muzzled with a proper fitting muzzle, securely fastened to prevent such animal from biting a person or another animal. (1935, c. 122, s. 18.)

§ 106-382. Administration of law in cities and larger towns; coöperation with sheriffs.—In towns or cities with a population of five thousand (5000), or more, the responsibility for assistance in the enforcement of §§ 106-364 to 106-387 shall be with the public safety or police department of said town or city, and this department shall be subject to the same rules, regulations and penalties as the sheriffs of the several counties; and it shall further be the duty of the public safety or police department in towns or cities assisting in the enforcement of §§ 106-364 to 106-387 to co-operate with the sheriff of any county in the carrying out of the provisions of §§ 106-364 to 106-387 for a distance of one mile beyond the city limits. (1935, c. 122, s. 19.)

§ 106-383. Regulation of content of vaccine; doses.—Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold or offered for sale unless said rabies vaccine shall contain not less than twenty percent (20%) of fixed virus material and be non-virulent and potent as shown by the required tests of the United States bureau of animal industry. Said rabies vaccine shall be recommended in doses of not less than five (5) c. c. each for dogs and other small animals; relatively larger doses being recommended for larger animals. (1935, c. 122, s. 20.)

§ 106-384. Law declared additional to other laws on subject.—The provisions of §§ 106-364 to 106-387 shall not be construed to repeal or change

any laws heretofore enacted but shall be in addition thereto except insofar as said laws heretofore enacted and enforced shall actually conflict with the provisions of §§ 106-364 to 106-387 and prevent the proper enforcement of said provisions. And the said laws enacted and now in force shall remain in full force and effect except as they do actually conflict with the enforcement of the provisions of §§ 106-364 to 106-387 in which §§ 106-364 to 106-387 and the provisions thereof shall prevail. (1935, c. 122, s. 21.)

§ 106-385. Violation made misdemeanor.—Any person who shall violate any of the provisions of §§ 106-364 to 106-387 or any provision of any regulation of quarantine established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten ($10.00) dollars or more than fifty ($50.00) dollars, or to imprisonment of not less than ten (10) days or more than thirty (30) days in the discretion of the court. (1935, c. 122, s. 23.)

§ 106-386. Present dog tax limited.—No county, city or town shall levy any additional taxes on dogs other than the tax now levied. (1935, c. 122, s. 24.)

§ 106-387. Disposition of funds.—Any money collected under the provisions of §§ 106-364 to 106-387 in excess of the cost of operations and enforcement shall become a part of the agricultural fund of the State of North Carolina. (1935, c. 190.)

Part 8. Bang's Disease.

§ 106-388. Animals affected with, or exposed to Bang's disease, declared subject to quarantine, etc.—It is hereby declared that the disease of animals known as Bang's disease, contagious abortion, abortion disease, bovine infectious abortion, or Bang's bacillus disease, is of a contagious and infectious character, and animals affected with, or exposed to, or suspected of being carriers of said disease shall be subject to quarantine and the rules and regulations of the department of agriculture. (1937, c. 175, s. 1.)

§ 106-389. "Bang's disease" defined; co-operation with federal department of agriculture. — Bang's disease shall mean the disease wherein an animal is infected with the Bang bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with Bang's disease if it reacts to a seriological test, or if the Bang bacillus has been found in the body or its secretions or discharge, or if it has been treated with a live culture of the Bang bacillus. The control and eradication of Bang's disease in the herds of the state shall be conducted as far as the funds of the department of agriculture will permit, and in accordance with the rules and regulations made by the said department. Said department of agriculture is hereby authorized to co-operate with the United States department of agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2.)

§ 106-390. Blood samples; diseased animals to be branded and quarantined; sale, etc.—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the state veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the state veterinarian. (1937, c. 175, s. 3.)

§ 106-391. Civil liability of vendors.—Any person or persons who knowingly sell or otherwise dispose of, to another, an animal affected with Bang's disease shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4.)

§ 106-392. Sales by non-residents.—When cattle are sold, or otherwise disposed of, in this state, by a non-resident of this state, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-399 and the regulations of the department of agriculture. (1937, c. 175, s. 5.)

§ 106-393. Duties of state veterinarian; quarantine for failure to comply with recommendations.—When the state veterinarian receives information, or has reason to believe that Bang's disease exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the state veterinarian or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the state veterinarian within ten days after said notice, then the state veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined. Said quarantine shall remain in effect until the said recommendations of the state veterinarian have been complied with and the quarantine is canceled by the state veterinarian. (1937, c. 175, s. 6.)

§ 106-394. Co-operation of county boards of commissioners.—The several boards of county commissioners in the state are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to co-operate effectively with the state and federal departments of agriculture in the eradication of Bang's disease in their respective counties. (1937, c. 175, s. 7.)

§ 106-395. Compulsory testing. — Whenever a county board shall co-operate with the state and federal governments, as provided for in §§ 106-388 to 106-399, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle, and no cattle, except for immediate slaughter, shall be brought into the county unless accompanied by a proper test chart and health

certificate issued by a qualified veterinarian, showing that the cattle have passed a proper test for Bang's disease. (1937, c. 175, s. 8.)

§ 106-396. "Qualified veterinarian" defined. — The words "qualified veterinarian" shall be construed to mean a veterinarian approved by the state veterinarian and chief of the United States bureau of animal industry for the testing of cattle intended for interstate shipment. (1937, c. 175, s. 9.)

§ 106-397. Authority to promulgate and enforce rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-399 and for the effective control and eradication of Bang's disease. (1937, c. 175, s. 10.)

§ 106-398. Violation made misdemeanor.—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-399, or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of §§ 106-388 to 106-399, shall be guilty of a misdemeanor. (1937, c. 175, s. 11.)

§ 106-399. Punishment for sales of animals known to be infected.—Any person or persons who shall wilfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with Bang's disease, except as provided for in §§ 106-388 to 106-399, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars and not more than two hundred dollars, or imprisoned for a term of not less than thirty days or more than two years. (1937, c. 175, s. 12.)

Part 9. Control of Livestock Diseases.

§ 106-400. Permit from state veterinarian for sale, transportation, etc., of animals affected with disease.—No person or persons shall sell, trade, offer for sale or trade, or transport by truck or other conveyance on any public road or other public place within the state any animal or animals affected with a contagious or infectious disease, except upon a written permit of the state veterinarian and in accordance with the provisions of said permit. The state veterinarian, or his authorized representative, is hereby empowered to examine any livestock that are being transported or moved, sold, traded, offered for sale or trade on any highway or other public place within the state for the purpose of determining if said animals are affected with a contagious or infectious disease, or are being transported or offered for sale or trade in violation of §§ 106-400 to 106-405. If the animals are found to be diseased or are being moved, sold, offered for sale or trade in violation of §§ 106-400 to 106-405, they shall be placed under quarantine in accordance with the provisions of §§ 106-400 to 106-405 in a place to be determined by the state veterinarian or his authorized representative. Any animal or animals shipped or otherwise moved into this state in violation of federal laws or regulations shall be handled in accordance with the provisions of §§ 106-400 to 106-405. (1939, c. 360, s. 1.)

§ 106-401. Notice of quarantine; removal of quarantine.—The state veterinarian, or his authorized representative, is hereby authorized to quarantine any animal or animals affected with, exposed to, or injected with any material capable of producing a contagious or infectious disease, and to give public notice of such quarantine by posting or placarding the entrance to or any part of the premises on which the animals are held with a suitable quarantine sign, said animal or animals to be maintained by the owner or person in charge, as provided for in §§ 106-400 to 106-405, at the owner's expense. No animal or animals under quarantine shall be moved from the premises except upon a written permit from the state veterinarian or his authorized representative. Said quarantine shall remain in effect until cancelled by official notice from the state veterinarian and shall not be cancelled until the sick and dead animals have been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2.)

§ 106-402. Confinement and isolation of diseased animals required.—Any animal or animals affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal or animals in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3.)

§ 106-403. Disposition of dead animals and fowls.—It shall be the duty of the owner or person in charge of any animals or fowls that die from any cause and the owner, lessee, or person in charge of any land upon which any animals or fowls die, to bury the same to a depth of at least three feet beneath the surface of the ground, or to completely burn said animals or fowls, within twenty-four hours after the death of said animals or fowls, or to otherwise dispose of the same in a manner approved by the state veterinarian. It shall be unlawful for any person to remove the carcasses of dead animals or fowls from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. (1919, c. 36; 1927, c. 2; 1939, c. 360, s. 4; C. S. 4488.)

§ 106-404. Animals affected with glanders to be killed. — If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3296; Code, s. 2489; 1891, c. 65; 1881, c. 368, s. 8; C. S. 4489.)

§ 106-405. Violation made misdemeanor. — Any person or persons who shall knowingly and willfully violate any provisions of §§ 106-400 to

106-405 shall be guilty of a misdemeanor. (1939, c. 360, s. 6.)

Local Modification.—Macon: 1939, c. 360, s. 7.

Art. 35. Public Livestock Markets.

§ 106-406. Permits for public livestock markets.—Any person, firm or corporation operating a public livestock market within the state of North Carolina shall be required to obtain from the commissioner of agriculture a permit authorizing the operation of such market. Application for a permit shall be made on forms furnished by the commissioner of agriculture and shall show full name and address of all persons having financial interest in the market, name of the officers, manager and person in charge, the name under which the market will operate, location, and facilities for holding and segregating animals, and such other information as the commissioner of agriculture may require. In considering such application, the commissioner of agriculture shall take into consideration the markets already in existence, the applicant's general reputation for fair dealing, the facilities for conducting a market and such other facts as he may have, and may, after proper hearing of the parties concerned, decline to issue a permit or may revoke a permit already issued if, in his judgment, it is for the best interest of the livestock industry. (1941, c. 263, s. 1.)

§ 106-407. Bonds required of operators; exemptions as to permits and health requirements.—The commissioner of agriculture shall require the operator of said livestock market to furnish a bond acceptable to the commissioner of agriculture of two thousand dollars ($2,000.00) to secure the performance of all obligations incident to the operation of the livestock market, including prompt payment of proceeds for purchase or sale of livestock: Provided, that said bond shall not be required by a livestock market association organized under a law which requires such association to be bonded or a market operating under the Federal Packers and Stockyards Act. A livestock market where horses and mules are sold exclusively, or a market that sells only finished livestock that are shipped for immediate slaughter, shall be exempt from the health requirements of this article, as set forth in §§ 106-409 and 106-410 and shall not be required to secure a permit as provided for in § 106-406. (1941, c. 263, s. 2.)

§ 106-408. Marketing facilities prescribed; records of purchases and sales.—All public livestock markets operating under this article shall have proper facilities for handling livestock, which shall include proper pens for holding and segregating animals, properly protected from weather; an adequate water supply; satisfactory scales if animals are bought, sold, or exchanged by weight, said scales to be approved by the North Carolina division of weights and measures; and such other equipment as the commissioner of agriculture may deem necessary for the proper operation of the market. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected at least weekly in accordance with the regulations issued in accordance with this article. Said market shall keep a complete permanent record showing from whom all animals are received and to whom sold, the weight, if purchased or sold by weight, the price paid and the price received, such record to be available to the commissioner of agriculture or his authorized representative. (1941, c. 263, s. 3.)

§ 106-409. Health certificates for cattle removed for nonslaughter purposes; identification; information form; bill of sale. — No cattle except those for immediate slaughter shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved by the commissioner of agriculture, showing that such animals are apparently healthy and come directly from a herd all of which animals in the herd have passed a negative test for Bang's disease within twelve months prior to the date of sale, or that said animal or animals have passed a satisfactory test for Bang's disease made within thirty days prior to sale and such other tests and vaccinations as the commissioner of agriculture may require. Every such animal shall be identified by an approved numbered ear tag and description. A copy of said certificate shall be kept on file by the market. No test for Bang's disease shall be required on steers and all cattle less than six months of age, but such animals shall be subject to all other provisions of this article. All cattle removed from any public livestock market for immediate slaughter shall be identified in an approved manner and the person removing same shall sign a form in duplicate showing number of cattle, their description, where same are to be slaughtered or resold for slaughter within ten days, said animals to be accompanied by bill of sale properly endorsed, or if used for other purposes, said animals must meet the health requirements of this section, and such other information as may be required. (1941, c. 263, s. 4.)

§ 106-410. Health certificates for swine removed for nonslaughter purposes; identification; information form; bill of sale.—No swine, except those for immediate slaughter, shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved by the commissioner of agriculture, showing that such animals are apparently healthy and that they have received a proper dose of anti-hog cholera serum not more than twenty-one days or a proper dose of serum and virus not less than thirty days prior to the date of sale, and such other vaccinations as may be required by the commissioner of agriculture. All such swine shall be identified by an approved, numbered ear tag and descriptions which shall be entered on the health certificate. A copy of said certificate shall be kept on file by the market. All swine removed from any public livestock market for immediate slaughter shall be identified by a distinguishing paint mark or by other methods approved by the commissioner of agriculture and the person removing same shall sign a form in duplicate showing number of hogs, their description, where same are to be slaughtered or resold for slaughter within ten days, said animals to be accompanied by bill of sale properly endorsed, or if used for other purposes, said animals must meet the health requirements of this section, and such other information as may be required. (1941, c. 263, s. 5.)

§ 106-411. Regulation of use of livestock removed from market.—Any person or persons who shall remove from a livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for slaughter within ten days, said animals to be accompanied by bill of sale properly endorsed, or if used for other purposes, said animals must meet the health requirements of this article. The owner of said animals shall be charged with the responsibility of having said animals slaughtered or made to comply with the health provisions of this article and shall be liable for all damages resulting from diverting them to other uses or failing to have them slaughtered, in addition to the criminal liability imposed in this article. (1941, c. 263, s. 6.)

§ 106-412. Admission of animals to market; quarantine of diseased animals; sale prohibited; regulation of trucks, etc.—No animal known to be affected with a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the commissioner of agriculture or his authorized representative. All animals affected with or exposed to any contagious or infectious disease of animals or any animal that reacts to a test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon permission of the commissioner of agriculture or his authorized representative, and for immediate slaughter only. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said cost shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s. 7.)

§ 106-413. Application of article; private sales by farmers exempt.—The private sale of any animal or animals by a farmer on the farm shall not be subject to the provisions of this article except that no person or persons shall sell, trade, or otherwise dispose of any animal or animals affected with a contagious or infectious disease or that the owner or person in charge has reason to believe are so affected, except upon permission of the commissioner of agriculture or his authorized representative, and for immediate slaughter only. The provisions of this article shall apply to all animals sold on any public highway, right of way, street, or other public place, and no animal affected with a contagious or infectious disease shall be offered for sale, sold, traded, or otherwise disposed of on any public highway, right of way, street, or other public place, except upon permission of the commissioner of agriculture or his authorized representative and for immediate slaughter only. (1941, c. 263, s. 8.)

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health.—No cattle, swine, or other livestock affected with a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this state except upon written permission of the commissioner of agriculture or his authorized representative for immediate slaughter only to a designated slaughter point. The burden of proof to establish the health of any animal transported on the public highways of this state, sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with a contagious or infectious disease knowingly, or who has reasons to believe that the animal is so affected, shall be liable for all damages resulting from such sale or trade. (1941, c. 263, s. 9.)

§ 106-415. Fees for permits; term of permits; cost of tests, serums, etc.—The commissioner of agriculture is hereby authorized to collect a fee of twenty-five dollars ($25.00) for each permit issued to a public livestock market under the provisions of this article. The fees provided for in this article shall be used exclusively for the enforcement of this article. All permits issued under the provisions of this article shall be effective until the following July first unless cancelled for cause. The cost of all tests, serums, vaccine, and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and said cost shall constitute a lien against all of said animals. (1941, c. 263, s. 10.)

§ 106-416. Rules and regulations.—The commissioner of agriculture, by and with the consent of the state board of agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this article. (1941, c. 263, s. 11.)

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the state board of agriculture, or any officer or inspector who shall wilfully fail to comply with any provision of this article shall be guilty of a misdemeanor. A market operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12.)

§ 106-418. Exemption from health provisions.—The health provisions of this article shall not apply to no-sale cattle offered for sale by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina. (1941, c. 263, s. 12½.)

Art. 36. Crop Pests.

§ 106-419. Crop pest commission.—The board of agriculture shall be the crop pest commission. (1909, c. 90, s. 1; C. S. 4896.)

§ 106-420. Powers and duties of commission; establish regulations.—The board of agriculture shall, from time to time, as it may deem necessary, prepare and publish a list of dangerous crop pests, known to be within the state, or liable to be introduced, and shall also publish methods for exterminating such pests as it may deem capa-

ble of being economically exterminated, for repressing such as cannot be economically exterminated, and for preventing their spread within the state. It may also adopt regulations not inconsistent with the laws or constitutions of this state and of the United States, for preventing the introduction of dangerous crop pests from without the state, and for governing common carriers in transporting plants liable to harbor such pests to and from the state; which regulations shall have the force of law. Any violation of any such regulations shall be a misdemeanor, and the person violating the same shall upon conviction be fined or imprisoned in the discretion of the court. (Rev., s. 3980; 1897, c. 264, s. 2; 1909, c. 90, s. 1; C. S. 4897.)

§ 106-421. Crop pests declared nuisance; method of abatement.—No person shall knowingly and wilfully keep upon his premises any plant infested by any dangerous crop pest, listed and published as such by the board of agriculture, or permit dangerous weed pests to mature seed or otherwise multiply upon his land, except under such regulations as the board of agriculture may prescribe. All such infested plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the board of agriculture, take such measures as may be prescribed to eradicate such pests. If such action is not taken, or is improperly executed within ten days after such notification, the board of agriculture shall cause such premises to be freed from such pests by the best available method. The cost of such work shall be a lien upon the premises, and may be recovered, together with cost of action, before any court having jurisdiction. The notice shall be written and mailed to the usual or known address, or left at the ordinary place of business of the owner or his agent. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infested plant or crop, when done by the order of the board of agriculture. (Rev., s. 3981; 1897, c. 264, s. 3; 1909, c. 90, s. 1; C. S. 4898.)

§ 106-422. Right to enter and inspect premises.—Whenever the board of agriculture has reason to suspect that any pest, listed as dangerous, exists in any portion of the state, it shall cause an investigation to be made by some person capable of determining the specific identity of such pest, and, if it be found to exist, the board of agriculture shall further appoint a competent person as its agent to inspect such infested premises, and to take such measures for treating the same as the board may direct. Any duly authorized agent of the board of agriculture shall have authority to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year. (Rev., s. 3982; 1897, c. 264, s. 4; 1909, c. 90, s. 1; C. S. 4899.)

§ 106-423. Preventing inspection or hindering execution of article a misdemeanor.—If any one shall seek to prevent inspection of his premises as provided in § 106-422, or shall otherwise interfere with any agent of the commission, or board of agriculture while in performance of his duties under § 106-422, he shall, upon conviction, be fined not less than five nor more than fifty dollars for each offense, or may be imprisoned for not less than ten nor more than thirty days. (Rev., s. 3713; 1907, c. 876; C. S. 4900.)

Art. 37. Cotton Grading.

§ 106-424. Federal standards recognized.—The standards or grades of cotton established or which may be hereafter established by the secretary of agriculture by virtue of acts of congress shall be recognized as the standards in transactions by and between citizens of this state in transactions relating to cotton. (1915, c. 23, s. 1; C. S. 4901.)

§ 106-425. Duplicates of federal samples may be used. — The commissioner of agriculture shall obtain from the secretary of agriculture a duplicate of each of these samples as represent cotton produced in this state for the use of the citizens of the state who may desire to use them in settlement of any disputed transaction. (1915, c. 23, s. 2; C. S. 4902.)

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.—The North Carolina department of agriculture shall have authority to employ expert cotton graders to grade cotton in this state under such rules and regulations as they may adopt. The above institutions may seek the aid of the United States department of agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S. 4903.)

§ 106-427. County commissioners to coöperate.—Any board of commissioners of any county in North Carolina is authorized and empowered to coöperate with either, or both, of the above-named institutions in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S. 4904.)

§ 106-428. Grading done at owner's request; grades as evidence.—The expert graders employed by either of the above-named institutions, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the secretary of agriculture by virtue of any act of congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this state. (1915, c. 175, s. 3; C. S. 4905.)

§ 106-429. Grader's certificate admissible as evidence.—In the event of any dispute or trial pending in any of the courts of this state, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the state, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert. (1915, c. 175, s. 4; C. S. 4906.)

Art. 38. Marketing Cotton and Other Agricultural Commodities.

§ 106-430. Purpose of law.—In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for cotton and other agricultural commodities, in order to enable growers of cotton and other agricultural commodities more successfully to withstand and remedy periods of depressed prices, in order to provide a modern system whereby cotton and other agricultural commodities may be more profitably and more scientifically marketed, and in order to give these products the standing to which they are justly entitled as collateral in the commercial world, a warehouse system for cotton and other agricultural products in the state of North Carolina is hereby established as hereinafter provided. (1919, c. 168, s. 1; 1921, c. 137, s. 1; 1941, c. 337, s. 1; C. S. 4925(a).)

§ 106-431. Definition of "other agricultural commodities." — The term "other agricultural commodities" as used in this article shall mean such agricultural commodities other than cotton as shall be designated by the board of agriculture, through rules and regulations adopted pursuant to this article, as suitable to be stored in the warehouses operating under this article. (1941, c. 337, s. 1½.)

§ 106-432. Board of agriculture administers law, makes rules, appoints superintendent. — The provisions of this article shall be administered by the state board of agriculture, through a suitable person to be selected by said board, and known as the state warehouse superintendent. In administering the provisions of this article the board of agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this article, and to fix and prescribe reasonable charges for storing cotton and other agricultural commodities in the local warehouses and publish the same from time to time as it may deem necessary. (1919, c. 168, s. 2; 1921, c. 137, s. 2; 1941, c. 337, s. 2; C. S. 4925(b).)

§ 106-433. Employment of officers and assistants. — The board of agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties. (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S. 4925(c).)

§ 106-434. Bonds of superintendent and employees.—The person named as state warehouse superintendent shall give bond to the state of North Carolina in the sum of fifty thousand dollars ($50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the state, to be approved as other bonds for state officers. The superintendent shall, to safeguard the interests of the state, require bonds from other employees authorized in § 106-433 in amounts as large at least as he may find ordinary business experience in such matters would suggest as ample. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S. 4925(d).)

§ 106-435. Fund for support of system; collection and investment.—In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a state warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: That on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June thirty, one thousand nine hundred and twenty-two, twenty-five (25) cents shall be collected through the ginner of the bale and paid into the state treasury, to be held there as a special guarantee or indemnifying fund to safeguard the state warehouse system against any loss not otherwise covered. The state tax commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the state treasury to the credit of the state warehouse system. Not less than ten per centum of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgages to aid and encourage the establishment of warehouses operating under this system, such investments to be made by the board of agriculture with the approval of the governor and attorney-general: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than ten years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the state board of agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of §§ 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S. 4925(e).)

§ 106-436. Registration of gins; gin records and reports; payment of tax.—If the special levy authorized by § 106-446 is made, it shall be the duty of the commissioner of agriculture to require the registration of all gins operating within the state, and to furnish the certificates of registration, numbered serially, free upon application; and each person, firm, partnership, or corporation receiving the said certificate of registration shall post it conspicuously in the gin to which it applies. For failure to make application and secure such certificate of registration, and to post same as required in this section, before beginning operation, each person, firm, partnership, or corporation shall be subject to a penalty of five dollars ($5) for each and every day such gin shall be operated prior to securing and posting such certificate of registration. The penalty herein provided for shall be recovered by the state in a civil action

to be brought by the state commissioner of agriculture in any court of competent jurisdiction, and it shall be the duty of the attorney-general to prosecute all such actions. Each person, firm, partnership, or corporation operating a gin shall keep a record, on forms furnished or approved by the commissioner of agriculture, showing the names and addresses of the owners of the cotton ginned, the number of bales ginned, and the date of each ginning; and each such operator of a gin shall report the number of bales ginned, and pay the tax levied in § 106-435 to the state at least once every thirty days after beginning operation, and shall send a true copy of the report to the commissioner of agriculture. (1921, c. 137, s. 6; C. S. 4925(f).)

§ 106-437. Qualifications of warehouse manager.—No man shall be employed as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the state warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S. 4925(g).)

§ 106-438. Warehouse superintendent to accept federal standards. — The state warehouse superintendent shall accept as authority the standards and classifications of cotton established by the federal government. (1919, c. 168, s. 9; 1921, c. 137, s. 8; C. S. 4925(h).)

§ 106-439. Duties of superintendent; manner of operating warehouse system.—The state warehouse superintendent shall have the power to lease for stated terms property for the warehousing of cotton and other agricultural commodities: Provided, no rent shall be paid until the operating expenses of each such warehouse so leased shall have been paid from the income of the warehouse so leased, and in no case shall the state be responsible for any rent except from the income of such warehouse so leased in excess of operating expenses; and said superintendent shall fix the terms upon which private or corporate warehouses may obtain the benefits of state supervision and operation. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the state for operation under the terms of this article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the state board of agriculture. The violation of such rules by any officer of the system shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from such state management; and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to § 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; 1941, c. 337, s. 3; C. S. 4925(i).)

§ 106-440. Power of superintendent to sue or to be sued; liability for tort.—The said superintendent shall also have the power to sue, or to be sued, in the courts of this state in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the county of Wake or in the county in which the cause of action arose. (1919, c. 168, s. 11; 1921, c. 137, s. 10; C. S. 4925(j).)

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts. — When agricultural commodities other than cotton have been stored in warehouses operated under this article and have been graded and standardized in conformity with the grades and standards heretofore or hereafter promulgated by the board of agriculture, acting under the provisions of §§ 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the board of agriculture may be issued. As soon as possible after any lint cotton, properly baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or state classifier and legally weighed. Official negotiable receipts of the form and design approved by the board of agriculture shall be issued for such cotton under the seal and in the name of the state of North Carolina, stating the location of the warehouse, the name of the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or by the state warehouse superintendent or his duly authorized agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the state warehouse system for fluctuations in weight due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in § 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; 1925, c. 225; 1941, c. 337, s. 4; C. S. 4925(k).)

§ 106-442. Transfer of receipt; issuance and effect of receipt.—The official negotiable receipt issued under § 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to

be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, it being the duty of the local manager accepting same for storage to satisfy himself as to the title to the same by requiring the depositor of the cotton or other agricultural commodity to sign a statement appearing on the face of the official receipt to the effect that there is no lien, mortgage, or other valid claim outstanding against such cotton or other agricultural commodity, and any person falsely signing such a statement shall be punished as provided for false pretenses in § 14-100. (1921, c. 137, s. 12; 1941, c. 337, s. 5; C. S. 4925(l).)

§ 106-443. Issuance of false receipt a felony; punishment.—The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the state penitentiary for a period of not less than one or more than five years, or by a fine not exceeding ten times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; 1941, c. 337, s. 6; C. S. 4925(m).)

§ 106-444. Delivery of cotton without receipt or failure to cancel receipt.—Any manager, employee, agent, or servant who shall deliver cotton or other agricultural commodity from a warehouse under this article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton or other agricultural commodity, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or imprisonment not more than five years, or both fine and imprisonment, in the discretion of the court. (1919, c. 168, s. 14; 1921, c. 137, s. 14; 1941, c. 337, s. 7; C. S. 4925(n).)

§ 106-445. Rules for issuance of duplicate receipts.—The state warehouse superintendent, or his duly authorized agent, and the manager of the local warehouse are authorized to issue a duplicate receipt for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the state warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the state warehouse superintendent and the local manager from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the board of agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; 1941, c. 337, s. 8; C. S. 4925(o).)

§ 106-446. State not liable on warehouse debts; tax on cotton continued if losses sustained. — No debt or other liability shall be created against the state by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the state, except that expenses of supervision may be paid by the board of agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required of all officers and supplemental indemnifying or guarantee fund mentioned in § 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose especial financial benefit it is established, it is hereby provided that in the eventuality that the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, such losses shall be made good by having the State Board of Assessment repeat for another twelve months selected by it the special levy on ginned cotton, as prescribed in § 106-435, for the two years ending June thirtieth of the year one thousand nine hundred and twenty-three. (1919, c. 168, s. 16; 1921, c. 137, s. 16; 1941, c. 337, s. 9; C. S. 4925(p).)

§ 106-447. Insurance of cotton; premiums; lien for insurance and storage charges.—The superintendent shall insure, or shall require the local manager to insure and keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton and other agricultural commodities on storage. In case of loss, the superintendent shall collect the insurance due and pay the same, ratably, to those lawfully entitled to it, insurance policies to be in the name of the state and the premium collected from the owners of the cotton and other agricultural commodities, the state to have a lien on the cotton and other agricultural commodities for insurance and storage charges as in the case of other public warehouses in the state. (1919, c. 168, s. 17; 1921, c. 137, s. 17; 1941, c. 337, s. 10; C. S. 4925(q).)

§ 106-448. Superintendent to negotiate loans on receipts and sell cotton for owners.—The state warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner or owners of the warehouse receipts and cotton or other agricultural commodities stored in such warehouses to aid, assist, and coöperate, or as the duly authorized agent of such owner or owners (which authorization shall be in writing), to secure and negotiate loans upon the warehouse receipts. And upon like written request or authorization of said owner or owners, and his or their duly authorized agent, he may sell and dispose of such warehoused cotton or other agricultural commodities for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said superintendent, in writing. And for said loan or sales the said superintendent shall charge reasonable and just commissions, without discrimination,

all of which shall be accounted for and held as part of the fund for the maintenance and operation of the state warehouse system: Provided however, that the state incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided, further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by reason of which the owner or owners of such warehoused cotton or other agricultural commodities suffers damage or loss. (1919, c. 168, s. 18; 1921, c. 137, s. 18; 1941, c. 337, s. 11; C. S. 4925(r).)

§ 106-449. Construction of the 1941 amendment.—The provisions of Chapter 337 of the Public Laws of 1941, amending this article, shall not apply to the storage of tobacco in any form. (1941, c. 37, s. 11½.)

§ 106-450. Compliance with United States warehouse law.—The state warehouse superintendent may, upon approval of the board of agriculture, operate or cause to be operated, subject to the United States warehouse act, any or all of the warehouses leased by him under the provisions of this article, and he is authorized to comply with said United States warehouse act and the regulations thereunder. (1921, c. 137, s. 19; C. S. 4925(s).)

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined.—Any person, firm or corporation operating any public cotton gin; that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways: (1) mark in color upon the bagging of the bale, in figures; (2) attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number; (3) impress the serial number upon one of the bands or ties around the bale. Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1923, c. 167.)

Art. 39. Leaf Tobacco Warehouses.

§ 106-452. Maximum warehouse charges.—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum: Provided, that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed four per centum. (Rev., s. 3042; 1895, c. 81; 1941, c. 291; C. S. 5124.)

§ 106-453. Oath of tobacco weigher.—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ....., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated. (Rev., s. 3043; 1895, c. 81, s. 2; C. S. 5125.)

§ 106-454. Warehouse proprietor to render bill of charges; penalty.—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by any one injured thereby. (Rev., s. 3044; 1895, c. 81, ss. 3, 4; C. S. 5126.)

§ 106-455. Tobacco purchases to be paid for by cash or check to order.—The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

Art. 40. Leaf Tobacco Sales.

§ 106-456. Accounts of warehouse sales required.—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco warehouse doing business in this state shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S. 4926.)

§ 106-457. Monthly reports to commissioner; results classified.—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the commissioner of agriculture at Raleigh, North Carolina. The report so made to the commissioner of agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (1907, c. 97, s. 2; Ex. Sess. 1921, c. 76; C. S. 4927.)

§ 106-458. Commissioner to keep record and publish in bulletin.—The commissioner of agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the state, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The commissioner of agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the state, or having a large circulation therein. (1907, c. 97, s. 3; Ex. Sess. 1921, c. 76; C. S. 4928.)

§ 106-459. Penalty for failure to report sales.—Any warehouse failing to make the report as required by § 106-457 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the department of agriculture for expense of advertising. (1915, c. 31, s. 1; C. S. 4929.)

§ 106-460. Commissioner to publish failure; certificate as evidence. — The commissioner shall, on the 14th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the commissioner under seal of the department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; Ex. Sess. 1921, c. 76; C. S. 4930.)

§ 106-461. Nested, shingled or overhung tobacco.—It shall be unlawful for any person, firm or corporation to sell or offer for sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

1st. Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;

2nd. Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and

3rd. Overhanging tobacco: That is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

Local Modification.—Alamance, Person, Rockingham, Surry, Vance and Warren: 1933, c. 467, s. 5.

§ 106-462. Sale under name other than that of true owner prohibited. — It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

Local Modification.—Alamance, Person, Rockingham, Surry, Vance and Warren: 1933, c. 467, s. 5.

§ 106-463. Allowance for weight of baskets and trucks.—It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

Local Modification.—Alamance, Person, Rockingham, Surry, Vance and Warren: 1933, c. 467, s. 5.

§ 106-464. Violation made misdemeanor. — Any person, firm or corporation violating the provisions of §§ 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1933, c. 467, s. 4.)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited. — Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as non-stock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to-wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than three million pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; A fee of one hundred dollars ($100.00) in those towns in which during said period of time more than three million and less than ten million pounds of tobacco was sold; A fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than ten million and less than twenty-five million pounds of tobacco was sold; A fee of three hundred dollars ($300.00) in those towns in which during said period of time more than twenty-five million pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

It shall be unlawful and punishable as of a mis-

demeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. That any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268.)

Art. 41. Dealers in Scrap Tobacco.

§ 106-466. Application for license; amount of tax; exceptions.—Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the state of North Carolina shall first procure from the commissioner of revenue of North Carolina a license so to do, and for that purpose shall file with the said commissioner of revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situated; and shall pay to the said commissioner of revenue of North Carolina, to be placed in the general fund for the use of the state, an annual license tax of five hundred dollars ($500.00) for each and every county in North Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of leaves of tobacco are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this article: Provided, that the tax herein levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant. (1935, c. 360, s. 1; 1937, c. 414, s. 1; 1939, c. 389, s. 1; 1941, c. 246.)

§ 106-467. Report to commissioner of agriculture each month.—On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in § 106-466 shall make a report to the commissioner of agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ 106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc. — (a) If any person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the commissioner of revenue as herein provided shall be displayed in a conspicuous place in said warehouse, office or place of business. Such license so obtained shall not be transferable and shall authorize such person, firm or corporation to engage in the business described in this article only on the premises described in the license. Only one original license shall be issued to any person, firm or corporation, which will authorize such person, firm or corporation to engage in such business in the county for which such license is issued. If such person, firm or corporation shall have no warehouse, office, or fixed place of business in the county where such business is carried on, if the original license is to be issued to a firm, partnership or copartnership, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such firm, partnership or copartnership. If such license is to be issued to a corporation, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such corporation and the license so issued will authorize only the individual designated thereon to engage in such business for or on behalf of such person, firm, partnership, copartnership or corporation, and none other. If such person, firm or corporation carries on the business herein described through agents, representatives, solicitors, or peddlers other than those named on the original license issued, as herein provided, additional and like licenses, for which there shall be paid the sum of two hundred fifty dollars ($250.00), shall be obtained for such additional agents, representatives, solicitors, or peddlers for each county in which such business is carried on, in the manner hereinafter set out, and all original and additional licenses issued to persons, firms or corporations which have no warehouse, office or fixed place of business shall be carried on the person of such licensee and shall be exhibited when requested or demanded by any law enforcement officer of North Carolina, or any person from whom such tobacco is bought, or to whom the same may be sold.

Any person, firm or corporation applying for and obtaining a license under this article may employ traveling representatives, agents, peddlers, or solicitors for the purpose of buying and/or selling scrap tobacco, but such traveling representatives, agents or peddlers shall apply for and obtain from the commissioner of revenue a separate additional license on behalf of such person, firm or corporation whom or which he represents and shall pay for such license a tax of two hundred fifty dollars ($250.00) for each additional license so issued. Every such additional license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Such traveling representative, agent or peddler engaged in such business shall carry on his person the license so obtained, which shall be exhibited when requested or demanded by any law enforcement officer of North Carolina or any

person from whom such tobacco is bought or to whom the same may be sold.

(b) Any such person, firm or corporation described in subsection (a) of this section, who is engaged in the business of buying and/or selling scrap tobacco within the meaning of this article, and who maintains and operates in connection therewith a plant or factory where such scrap tobacco is processed, manufactured, or redried, shall apply for and obtain from the commissioner of revenue a license to engage in such business and for that purpose shall file with the commissioner of revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in such business, and the place or places where his, their, or its principal office is situated, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in this state in which the applicant proposes to engage in such business. The license so issued shall authorize the person, firm or corporation to whom it is issued to engage in such business only on the premises designated in the license. Persons, firms or corporations taxed under this subsection shall not be required to pay the license tax provided for in subsection (a) of this section. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue and no license shall be issued for less than the full amount of the tax prescribed. (1935, c. 360, s. 3; 1937, c. 414, s. 3; 1939, c. 389, s. 2.)

§ 106-469. Violation made misdemeanor. — Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ 106-470. Exemptions.—Nothing in this article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year one thousand nine hundred thirty-seven, or to purchases or sales of scrap or untied tobacco which has been processed, redried or manufactured. (1937, c. 414, s. 4½; 1939, c. 389, s. 3.)

Art. 42. Production, Sale, Marketing and Distribution of Tobacco.

§ 106-471. Definitions.—As used in this article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

"Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of the state or federal government.

"Similar act" means an act of another state containing provisions substantially the same as this article, except that the omission of provisions requiring the establishment of acreage quotas for individual farms shall not be deemed a substantial variation from this article.

"Kind of tobacco" means one or more types of tobacco as classified in the service and regulatory announcement number one hundred and eighteen of the bureau of agricultural economics of the United States department of agriculture as listed below, according to the name or names by which known:

Types eleven, twelve, thirteen and fourteen, known as flue-cured tobacco.

Type thirty-one, known as burley tobacco.

"Crop year" means the period from May first of one year to April thirtieth of the succeeding year, both dates inclusive.

"Surplus tobacco" means the quantity of tobacco marketed from the crop produced on a farm in any crop year in excess of the marketing quota for such farm for such year.

"Buyer or handler" means any person who buys tobacco from the producer thereof, or who sells tobacco for the producer thereof, and pays the producer for such tobacco, or who redries or otherwise processes tobacco for the producer thereof prior to the sale of such tobacco by the producer, or any producer who markets tobacco produced by him directly to the consumer.

"Dealer" means any person who buys and resells tobacco prior to the redrying, conditioning, or processing thereof.

"Producer" means any person who has the right during any year to sell, or to receive a share of the proceeds derived from the sale of, tobacco produced by him or on land owned or leased by him.

"Operator" means any person who, as owner-operator, or as cash rent, standing rent, or share rent tenant, operates a farm (i. e., a tract or tracts of land operated as a unit with the same machinery and other equipment) on which tobacco is produced, and includes a share-cropper who operates a farm if the owner-operator or tenant does not provide for the obtaining of marketing certificates with respect to the tobacco crop of the farm. (1937, c. 22, s. 1.)

§ 106-472. North Carolina tobacco commission created; members; county and district committeemen; vacancies; compensation.—There is hereby created a commission to be known as the North Carolina tobacco commission (hereinafter referred to as the "commission"). The commission shall consist of seven (7) members, and each of the four (4) tobacco belts, viz: eastern belt, middle belt, old belt and border belt, shall have one or more representatives selected as follows: When this article becomes effective, the director of the state argicultural extension service shall arrange for a meeting of tobacco producers in each county (any county in which there are less than one hundred tobacco producers shall be grouped with another adjoining county), at which three (3) tobacco producers shall be elected, by the producers attending the meeting, to serve as county committeemen for one crop year. The director of the state agricultural extension service shall divide the state into six (6) districts and arrange for a meeting of the county committeemen elected in each district, at which meeting the county committeemen in each district shall nominate from among their number three (3) producers to serve as district committeemen. From the three (3) district committeemen nominated in each district the governor shall appoint one producer to serve for a period of one crop year as a member of the commission. The director of the state agricultural extension service shall serve, or shall

appoint one member of his staff to serve, as a member of the commission. Vacancies on the commission during any crop year shall be filled by the governor by the appointment of another district committeeman for the remainder of such year from the district in which the vacancy occurs: Provided, that the director of the state agricultural extension service shall fill the vacancy in the case of the member of the commission appointed by him. At the end of each crop year the tobacco commission shall be selected for the succeeding crop year in the manner provided above. Each member of the commission not already in the employment of the state shall be paid the sum of ten dollars ($10.00) for each day actually spent in the performance of his duties, and shall be reimbursed for subsistence, not exceeding five dollars ($5.00) per day, and for necessary travel expenses. (1937, c. 22, s. 2.)

§ 106-473. Compacts with governors of other states; referendum on question of enforcement. — The governor is authorized and directed to negotiate and enter into a compact with respect to each kind of tobacco with the governor of each of the states producing such kind of tobacco: Provided, (1) that any compact shall not become effective until it has been entered into by the states of North Carolina, Virginia, South Carolina and Georgia, and any compact with respect to burley tobacco shall not become effective until it has been entered into by the states of North Carolina, Kentucky, Virginia and Tennessee; (2) that a compact with respect to any kind of tobacco shall not become effective during any crop year unless entered into prior to the first day of such crop year, and (3) that any provisions in such compact or compacts which relate to the establishment of tobacco acreage quotas as provided herein shall not become effective unless and until the consent of the congress of the United States shall be given to a compact or compacts providing for the establishment of tobacco acreage quotas. This article shall be enforced with respect to any kind of tobacco upon the establishment of a compact with respect to such kind of tobacco, and its enforcement with respect to such kind of tobacco shall be suspended upon the withdrawal from such compact by any state required as a party thereto. If an injunction issued by a court of competent jurisdiction against the enforcement of a similar act of any state is made permanent so as to stop the administration of said act in such state during any crop year, the enforcement of this article may be suspended by the commission with respect to the kind of tobacco covered by such compact until such time as the compact is again made effective or the injunction dissolved, as the case may be. Upon the filing with the commission of a petition or petitions by fifteen per cent or more of the producers of any kind of tobacco in this state requesting that the enforcement of this article be suspended with respect to such kind of tobacco, the commission shall conduct a referendum within sixty days after the receipt of such petition or petitions to determine whether the producers of such kind of tobacco in the state are in favor of the enforcement of this article, and if the commission finds that one-third or more of the producers who vote in the referendum are not in favor of the enforcement of the article, such findings of the commission shall be certified to the governor, who shall proclaim the article inoperative for the crop year next succeeding the crop year in which the referendum is conducted. (1937, c. 22, s. 3.)

§ 106-474. Cooperation with other states and secretary of agriculture in making determinations. —The commission shall meet and co-operate with the tobacco commissions of other states that are parties to a compact, and any persons designated by the secretary of agriculture of the United States to serve in an advisory capacity, for the purposes of making certain determinations enumerated in this section, and when such determinations are agreed upon by a majority of the members of the commission for this state, and a majority of the members of the commissions for other states, such determinations shall be accepted and followed in the administration of this article.

(a) Determine from statistics of the United States department of agriculture a marketing quota, which for any kind of tobacco shall be that quantity of such kind of tobacco produced in the United States which is estimated to be required for world consumption during any crop year, increased or decreased, as the case may be, by the amount by which the world stocks of such kind of tobacco at the beginning of such crop year are less than or greater than the normal world stocks of such kind of tobacco.

(b) Determine a tobacco marketing quota for each state, for each kind of tobacco, for each crop year for which this article is in effect with respect to such kind of tobacco. The marketing quota for each state for each kind of tobacco shall be that percentage of the quantity determined under sub-section (a) of this section which is equal to the percentage that the total production of such kind of tobacco in the state for the year or years set forth below is of the total production of such kind of tobacco in the United States for such year or years:

Flue-cured tobacco, one thousand nine hundred and thirty-five, and burley tobacco, one thousand nine hundred and thirty-three, one thousand nine hundred and thirty-four, and one thousand nine hundred and thirty-five.

(c) Determine a base tobacco yield for each state for each kind of tobacco. The base tobacco yield for each kind of tobacco for each state shall be the total production of such kind of tobacco in such state in the year or years named in sub-section (b) of this section, divided by the total harvested acreage of such kind of tobacco in such state in such year or years.

(d) Determine and make such adjustments from year to year in the percentage of the marketing quota to be assigned to each state, or in the base yield for each state, or both (as determined pursuant to sub-sections (b) and (c) of this section and as adjusted in any preceding year pursuant to this sub-section), not exceeding two per cent (2%) decrease or five per cent (5%) increase in any crop year of the percentage of the said marketing quota assigned to each state, or five per cent (5%) decrease or increase of the base yield for each state in any crop year, as are determined to be necessary to correct for any abnormal conditions of production during the year or years specified in subsection (b) of this sec

tion, and trends in production during or since such year or years in any state as compared with other states: Provided, that the percentages of the marketing quota for any kind of tobacco for all states producing such kind of tobacco, as adjusted pursuant to this sub-section, for any year shall equal one hundred per cent (100%).

(e) Determine and make adjustments in the marketing quota established pursuant to sub-sections (b) and (d) of this section for any kind of tobacco for any crop year, not exceeding ten per cent (10%) of said quota, from time to time during that period from August first to December fifteenth of such year if, upon the study of supply and demand conditions for such kind of tobacco, the commission finds that such adjustments are required to effectuate the purpose of this article and of similar acts of other states: Provided, that any such adjustment shall apply uniformly to all states and only during the crop year in which such adjustment is made.

(f) Determine regulations with respect to the transfer of marketing certificates among producers of any kind of tobacco within the states which are parties to a compact with respect to such kind of tobacco, and such other regulations as may be deemed appropriate to the uniform administration and enforcement of this article and of similar acts of other states. (1937, c. 22, s. 4.)

§ 106-475. Tobacco acreage and marketing quotas for each farm.—The commission shall establish tobacco acreage and tobacco marketing quotas for each crop year for any farm on which tobacco is grown, such quotas to be determined as follows:

(a) For any farm for which a base tobacco acreage and a base tobacco production have previously been determined by the agricultural adjustment administration of the United States department of agriculture, as shown by the available records and statistics of that department, the base tobacco acreage and base tobacco production so last determined shall constitute the tobacco acreage and tobacco marketing quotas, subject to such adjustments as are recommended by the county committee of the county in which the farm is located and approved by the commission as being in conformity with the provisions of sub-sections (c) and (d) of this section.

(b) For any farm for which a base tobacco acreage and base tobacco production have not been previously determined by the agricultural adjustment administration of the United States department of agriculture, the tobacco acreage and tobacco marketing quotas shall be established in conformity with the provisions of sub-sections (c) and (d) of this section: Provided, that the total of the tobacco acreage and of the tobacco marketing quotas established for such farms in any crop year shall not exceed two per cent (2%) of the total tobacco acreage and tobacco marketing quotas, respectively, established pursuant to sub-section (a) of this section, plus the tobacco acreage and the tobacco marketing quotas established for farms in preceding years pursuant to this sub-section.

(c) The tobacco acreage and the tobacco marketing quotas established for each farm shall be fair and reasonable as compared with the tobacco acreage and the tobacco marketing quotas for other farms which are similar with respect to the following: The past production of tobacco on the farm and by the operator thereof; the percentage of total cultivated land in tobacco and in other cash crops; the land, labor, and equipment available for the production of tobacco; the crop rotation practices and the soil and other physical factors affecting the production of tobacco. The acreage quota for farms in a county shall not exceed such maximum percentage of the cultivated acreage as shall be fixed by the county committee, and the maximum so set by the county committee shall not exceed a percentage which will insure the adjustment of the inequalities existing in such county.

(d) The total of the tobacco acreage quotas for any kind of tobacco established for all farms in the state in any crop year shall not exceed a tobacco acreage quota for the state determined by dividing the marketing quota for such kind of tobacco for the state by the base tobacco yield for such kind of tobacco for the state, determined in accordance with sub-sections (c) and (d) of § 106-474.

The tobacco acreage and the tobacco marketing quotas for any kind of tobacco established for each farm in any crop year pursuant to sub-sections (a) and (b) of this section shall be adjusted so that the aggregate of the tobacco acreage quotas and the aggregate of the tobacco marketing quotas for all farms in the state does not exceed the tobacco acreage and the tobacco marketing quotas, respectively, for such kind of tobacco established for the state for such year; and the commission shall prescribe such regulations with respect to such adjustments as will tend to protect the interests of small producers.

(e) If, after marketing quotas are established for farms for any kind of tobacco in any crop year, there is an adjustment, pursuant to sub-section (e) of § 106-474, in the marketing quota for such kind of tobacco for the state for such year, the marketing quotas for all farms in the state shall be adjusted accordingly.

(f) If a base tobacco yield is not determined by the several state commissions the commission for this state shall determine a base yield for the state in accordance with the procedure specified in sub-sections (c) and (d) of § 106-474.

(g) In each county there shall either be published in one local newspaper the following information for each township of the county: (1) the name of each tobacco grower in that township; (2) the number of his tobacco tenants; (3) his total cultivated acres; (4) his total tobacco acreage and tobacco marketing quota; (5) the per cent of his cultivated land represented by his tobacco acreage quota, or else there shall be posted in at least five public places in each township a report for that township showing this information. One copy of such information shall be filed in the office of the clerk of the superior court in the county.

(h) No reduction shall be required in the flue-cured tobacco acreage quota established for any farm if such quota is three and two-tenth acres or less: Provided, that if the operator of the farm reduces the acreage of tobacco grown on the farm in any year below the acreage quota, a proportionate reduction may be required in the marketing quota for the farm.

(i) The terms of this article, relating to the fixing of acreage or marketing quotas, shall not apply to any grower of burley tobacco, with or without an established acreage base, whose acreage is two acres or less. (1937, c. 22, s. 5; c. 24, ss. 1-3.)

§ 106-476. Notification of quotas established and adjustments; marketing and resale certificates; charge for surplus tobacco; administrative committees, agents and employees; hearings and investigations; collection of information; regulations. — The commission is authorized and directed:

(a) To notify as promptly as possible the operator of each farm, for which acreage and marketing quotas are established, of the amount of such quotas for the farm and of any adjustment thereof which may be made from time to time pursuant to this article.

(b) Upon application therefor by the operator of the farm, or by the person marketing the tobacco grown thereon, to issue to the buyer or handler who purchases or handles such tobacco, marketing certificates for an amount of tobacco not in excess of the marketing quota for the farm (as adjusted pursuant to subsection (d) of § 106-475, on which such tobacco is produced, or not in excess of the quantity of tobacco harvested from the crop produced on such farm, whichever is smaller: Provided, that the commission (in accordance with regulations prescribed by the commission) may provide for the issuance and transfer of marketing certificates for an amount of tobacco equal to the amount by which the said quantity marketed falls below the said marketing quota for any farm: Provided further, that any regulations pertaining to such issuance and transfer shall be uniform as to the same kind of tobacco in all states entering into a compact with respect to such kind of tobacco.

(c) Upon application therefor by any buyer or handler to issue marketing certificates for surplus tobacco produced on the farm upon payment of a charge of twenty-five per cent (25%) of the gross value, or of one and one-half cents (1½c) per pound, whichever is larger, of the tobacco covered by such certificates. The buyer or handler, in settling with the grower, shall deduct from the proceeds of sale of such surplus tobacco or, if not sold, from any advance or loan thereon, the amount of such charge, which charge shall be deemed an assessment upon the producer for the purposes of paying the costs, charges, and expenditures provided for by this article.

(d) Upon application therefor by any tobacco dealer to issue, under such terms and conditions as the commission shall by regulations prescribe, resale certificates for such tobacco purchased by any dealer during any day as such dealer specified will be resold prior to the redrying or processing thereof, where marketing certificates or resale certificates have been issued for such tobacco pursuant to the provisions of this article.

(e) To establish or provide for the establishment of such committees of tobacco producers, and to appoint such agents and employees as the commission finds necessary for the administration of this article, and to fix the compensation of the members of the county committees referred to in § 106-472, and of such agents and employees: Provided, that the rates of compensation for such committeemen, agents and employees shall be comparable with rates of compensation to persons employed in similar capacities in connection with the administration of the agricultural conservation program, and acceptable to the federal authority.

(f) To provide for the making of such investigations and the holding of such hearings as the commission finds necessary in connection with the establishment of acreage and marketing quotas for farms and to designate persons to conduct such investigations and hold such hearings in accordance with regulations prescribed by the commission.

(g) To provide for collection of such information pertaining to the acreage of tobacco grown for harvest on each farm as the commission may consider necessary for the purpose of checking such acreage with the acreage quota for the farm and to prescribe any such regulations as may be necessary in connection therewith.

(h) To prescribe such other regulations as the commission finds necessary to the exercise of the powers and the performance of the duties vested in it by the provisions of this article. (1937, c. 22, s. 6.)

§ 106-477. Board of adjustment and review for each county. — The county committee of each county shall be and it is hereby constituted the board of adjustment and review for its county, whose duty it shall be to adjust and distribute the total base acreage and marketing quotas allocated to the several farms in the county by the commission so as to effectuate the provisions of this article.

(a) The county board of adjustment and review may designate a clerk for such board.

(b) The board of adjustment and review shall meet on the first Monday in January of each and every year, after giving ten days' notice (by publication in a newspaper published in the county) of the time, place and purpose of the meeting, and may adjourn from day to day while engaged in the adjustment and review of the acreage and marketing quotas of the county, but shall complete their duties on or before the first Monday in February of each and every year: Provided, however, that the commission shall designate the time within which the said adjustment and review shall be made for the year one thousand nine hundred and thirty-seven.

(c) The board of adjustment and review, on request, shall hear any and all producers, operators, and applicants in the county in respect to their acreage or marketing quotas, or the quotas of others; and after due notice to the person or persons affected, shall allow, increase, or reduce such acreage or marketing quotas as in their opinion will make a fair and equitable allotment within the meaning of this article; and shall cause to be done whatever else may be necessary to make the distribution of county acreage and marketing quotas comply with the provisions of this article; and after the completion of the adjustment and review, a list showing the details thereof shall be prepared, and a majority of the board shall endorse thereon and sign the statement to the effect that the same is the fixed list of quotas for the current year, and said list, or a certified

copy thereof, shall be filed in the office of the clerk of the superior court within three days after the completion of the adjustment and review.

(d) Any producer, operator, or person claiming or challenging an allotment quota may except to the decision of the board of adjustment and review and appeal therefrom to the commission by filing in duplicate a written notice of such appeal with the county committee within ten days after the filing of the list of quotas in the office of the clerk of the superior court. At the time of filing such notice of appeal the appellant shall file with the county committee a statement in duplicate of the grounds of appeal; and within three days after the filing thereof the county committee shall forward or cause to be forwarded to the commission one copy each of the notice of appeal and statement of grounds of appeal. The commission shall, on or before the first Monday in March thereafter, hear and determine such appeal, after first giving due notice of the time and place of such hearing to the appellant and to the chairman of the county committee. At the hearing the commission shall hear relevant and pertinent testimony or affidavits offered by the appellant or county committee; and thereafter, by order, shall modify or confirm the decision of the county board of adjustment and review, and shall deliver to the county committee a certified copy of such order, which shall be binding upon all parties concerned for the current year. (1937, c. 24, s. 4.)

§ 106-478. Handling of funds and receiving payments.—The commission is authorized:

(a) To accept, deposit with the state treasurer and provide for the expenditure of such funds as the congress of the United States may advance or grant to the state for the purpose of administering this article. Such expenditures shall be in accordance with the act of congress authorizing or making such advance or grant.

(b) To receive, through such agents as it may designate, all payments covering the sale of marketing certificates pursuant to sub-section (c) of § 106-476; to provide for the fixing of an adequate bond for any person responsible for receiving and disbursing any funds of or administered by the commission; and to provide for the expenditure of such funds in the manner prescribed in § 106-480. (1937, c. 22, s. 7.)

§ 106-479. "Tobacco commission account" deposited with state treasurer.—All receipts from the sale of marketing certificates pursuant to subsection (c) of § 106-476 and all funds granted or advanced to the state by the congress of the United States for the purpose of administering this article shall be deposited with the state treasurer and shall be placed by him in a special fund known as the "Tobacco Commission Account," and the entire amount of such receipts and funds hereby is appropriated out of such tobacco commission account and shall be available to the commission until expended. (1937, c. 22, s. 8.)

§ 106-480. Purposes for which funds expended; reserve necessary.—Funds of or administered by the commission shall be expended, in accordance with regulations prescribed by the commission, for the following purposes: First, to repay to the treasurer of the United States any funds advanced by the United States to the commission for the purpose of administering this article: Provided, the United States requires such repayment. Second, to pay any expenses lawfully incurred in the administration of this article, including expenses of any agency of the state incurred at the request of the commission. Third, to make payment to tobacco producers whose sales of tobacco, because of loss by fire or weather, or diseases affecting their tobacco crops adversely during any crop year, are less than the marketing quotas for their farms for such year. Such payments shall be at a rate per pound of such deficit determined by dividing the funds available for such payments by the total number of pounds by which the sales of tobacco by all producers fell below the marketing quotas for their farms: Provided, that such deficit is due to loss by fire or weather, or disease affecting their crops adversely; and Provided further, that such rate of payment shall in no event exceed five cents (5c) per pound, and that no such payments shall be made until there is established as a reserve an amount necessary to pay the expenses which the commission estimates will be incurred in the administration of this article for a period of one crop year. (1937, c. 22, s. 9.)

§ 106-481. Unlawful to sell, buy, etc., without marketing certificate; restrictions upon dealers.—Upon the establishment of marketing quotas for any kind of tobacco for individual farms for any crop year, pursuant to the provisions of this article, it shall be unlawful:

(a) For any person knowingly to sell, to buy, to redry or to condition or otherwise process any of such kind of tobacco harvested in such crop year unless the marketing certificates therefor have been issued as provided in this article.

(b) For any dealer to resell any of such kind of tobacco for which marketing certificates have not been issued as aforesaid prior to the redrying, conditioning, or processing thereof, except in his own name, or to resell any such tobacco except that purchased and owned by him and covered by a marketing certificate or resale certificate previously issued showing such dealer to be the purchaser of such tobacco, or to redry, condition, or process or to have redried, conditioned, or processed, prior to the resale thereof, any such tobacco covered by a resale certificate unless the resale certificate issued with respect thereto is surrendered to the commission. (1937, c. 22, s. 10.)

§ 106-482. Violation punishable by forfeiture of sum equal to three times value of tobacco.—Any person wilfully selling, buying, redrying, conditioning, or processing tobacco of any kind with respect to which this article is effective for which marketing certificates or resale certificates have not been issued as provided in this article, or any person wilfully participating or aiding in the selling, buying, redrying, conditioning, or processing of tobacco not covered by such marketing or resale certificates, or any person offering for sale or selling any tobacco except in the name of the owner thereof, shall forfeit to the state a sum equal to three times the current market value of such tobacco at the time of the commission of such act, which forfeiture shall be recoverable in a civil suit brought in the name of the state. (1937, c. 22, s. 11.)

§ 106-483. Forfeiture for harvesting from acre-

age in excess of quota. — Any operator wilfully harvesting or wilfully permitting the harvesting of tobacco on a farm from an acreage in excess of the acreage quota for the farm shall forfeit to the state a sum equal to fifty dollars ($50.00) per acre of that acreage harvested in excess of the acreage quota for the farm, which forfeiture shall be recoverable in a civil suit brought in the name of the state. (1937, c. 22, s. 12.)

§ 106-484. Violation of article a misdemeanor. — Any person violating any provisions of this article, or of any regulation of the commission issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not more than fifty dollars ($50.00) for the first offense and not more than one hundred dollars ($100.00) for each subsequent offense. (1937, c. 22, s. 13.)

§ 106-485. Penalty for failure to furnish information on request of commission.—All tobacco producers, warehousemen, buyers, dealers, and other persons having information with respect to the planting, harvesting, marketing, or redrying or conditioning or processing of tobacco in this state for sale or resale to manufacturers, domestic or foreign, shall from time to time, upon the written request of the commission or its duly authorized representative, furnish such information and file such returns as the commission may find necessary or appropriate to the enforcement of this article. Any person wilfully failing or refusing to furnish such information or to file such return, or wilfully furnishing any false information or wilfully filing any false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not more than one hundred dollars ($100.00) for each such offense. (1937, c. 22, s. 14.)

§ 106-486. Courts may punish or enjoin violations.—All courts of this state of competent jurisdiction are hereby vested with jurisdiction specifically to punish violations of this article, and the superior courts of the state are vested with jurisdiction, upon application of the commission, to enjoin and restrain any person from violating the provisions of this article or of any regulations issued pursuant to this article. (1937, c. 22. s. 15.)

§ 106-487. Attorneys for state to institute proceedings, etc., commission to report violations to solicitors, etc.—Upon the request of the commission it shall be the duty of the several attorneys for the state, in their respective jurisdictions, to institute proceedings to punish for the offenses, enforce the remedies, and to collect the forfeitures provided for in this article, and it shall be the duty of the commission to call to the attention of the prosecuting officers of the state any violation of any of the criminal provisions of this article. (1937, c. 22, s. 16.)

§ 106-488. Receipts from surplus produced in other states, paid to commission of such states; co-operation with other commissions. — In order to assure the proper co-ordination of the administration of this article with the administration of similar acts of other states, marketing certificates and resale certificates shall be issued by the commission, in accordance with regulations prescribed by the commission, with respect to tobacco marketed in this state, or redried, conditioned, or processed in this state prior to the first sale thereof, or resold, even though such tobacco was produced in another state, and the receipts from sales of marketing certificates for surplus tobacco produced in such other state shall be paid to the commission of the state in which such tobacco was produced, and the commission shall co-operate with and assist the commission of any other state in obtaining such records as may be necessary to the administration of any similar act of such state. (1937, c. 22, s. 18.)

§ 106-489. Form and provisions of compact. — The compact referred to in § 106-473 shall contain the provisions shown below, subject to such alterations or amendments as shall not be in conflict with the provisions of this article, and as shall be agreed upon from time to time by the states which enter into such compact.

COMPACT

This agreement entered into this ..... day of ..... between the State of ..... by ....., Governor; the State of ..... by ....., Governor; the State of ..... by ....., Governor, and the State of ..... by ....., Governor, Witnesseth:

Whereas, the parties hereto have each enacted a state statute providing for the regulation and control of the production and sale of tobacco in the states, and providing for the protection of the producers' tobacco crops from the adversities of unfavorable weather, crop diseases, and fire; and

Whereas, it is the desire of the parties uniformly to enforce each state statute so as to accomplish the purposes for which each act was enacted:

Now, therefore, the parties do hereby jointly and severally agree as follows:

(1) To co-operate with each other in establishing for each crop year a marketing quota for each state for each kind of tobacco referred to in the respective state statutes with respect to which such state statutes are or will be in effect for such crop year.

(2) To co-operate with each other in formulating such regulations as will assure uniform and effective administration and enforcement of each of the aforesaid state statutes.

(3) Not to depart from or fail to enforce to the best of its ability any regulation concerning the enforcement of the state statutes without the consent of a majority of the members of the tobacco commissions of each of the several parties to this compact.

In witness whereof, the parties have hereunto set their hands as of the day of the year first above written.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

State of.....
By.....
Governor.

(1937, c. 22, s. 19.)

Art. 43. Threshers of Wheat.

§ 106-490. Licensing of power threshers. — It shall be the duty of any person, firm or corporation who shall engage in power threshing in any county in North Carolina to first secure a license from the county in which the operator resides: Provided, that securing of a license in one county shall be sufficient to allow the person, firm or corporation to operate in any county of the State. (1935, c. 329, s. 1.)

§ 106-491. Issuance by registers of deeds; expiration date; fee; threshers of own crops exempted. —It shall be the duty of the register of deeds of each of the several counties of the State to issue a license to engage in threshing in that county to any person, firm or corporation applying for same. Every license issued under the provisions of this article shall expire on the first day of April succeeding the date of the issue of such license. To defray the necessary expenses involved, the register of deeds may make a charge not to exceed fifty cents for each license issued: Provided, that operators who thresh their own crops only shall be exempt from any license cost. (1935, c. 329, s. 2.)

§ 106-492. Records and reports of threshers, violation made misdemeanor.—It shall be the duty of every person, firm or corporation, who shall engage in threshing for others or themselves, in any county of the State, to keep a complete and accurate record of the acreages harvested and amounts threshed for each farm, and to promptly make, upon blanks to be furnished by the register of deeds of the county, reports showing the acreages and the amounts threshed by said person, firm or corporation, in said county during the preceding season. A violation of the provisions of this section shall be deemed a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars: Provided, the register of deeds shall give thirty days' notice to the licensee before indictment is made, and if the licensee makes said report within said time no indictment shall be made. (1935, c. 329, s. 3.)

§ 106-493. Public notice of requirements; prosecution for noncompliance.—It shall be the duty of the register of deeds of each of the several counties of the State to give public notice of these requirements before the threshing seasons and to make diligent inquiry as to whether the provisions of § 106-492 have been complied with, and upon failure of any person, firm or corporation to comply with same, to swear out a warrant before some justice of the peace of the county and the procedure thereon shall be as in other criminal cases. (1935, c. 329, s. 4.)

§ 106-494. Report of register of deeds to commissioner of agriculture.—It shall be the duty of the register of deeds of each of the several counties in the State to promptly submit, upon blanks to be furnished by the commissioner of agriculture, a report to the commissioner of agriculture showing the crop acreages harvested and amounts that have been threshed in the said county in the preceding crop season. (1935, c. 329, s. 5.)

§ 106-495. Commissioner to furnish blank forms to registers of deeds; publication of reports.—It shall be the duty of the commissioner of agriculture to furnish to the registers of deeds of the several counties of the State, on or before the first day of May in each year, a sufficient number of blank forms for threshers' licenses, operators' threshing reports, and registers' of deeds summary reports. The commissioner of agriculture shall also collect and publish the county results of these reports prior to the next threshing season. (1935, c. 329, s. 6.)

Art. 44. Unfair Practices by Handlers of Farm Products.

§ 106-496. Protection of producers of farm products against unfair trade practices. — The board of agriculture is hereby authorized to make rules and regulations necessary to protect producers of farm products from loss through financial irresponsibility and unfair, harmful and unethical trade practices of persons, firms and corporations (hereinafter referred to as "handlers") and their agents, who incur financial liability for farm products. (1941, c. 359, s. 1.)

§ 106-497. Permits required of handlers of farm products not operating on cash basis. — No person shall act as a handler of farm products on any basis except a cash basis, until he obtains a permit from the commissioner of agriculture. The commissioner of agriculture may require from each applicant such verified information as he sees fit in order to determine the applicant's financial responsibility and reputation, and the board may make rules and regulations as to issuing permits. (1941, c. 359, s. 2.)

§ 106-498. Establishment of financial responsibility before permit issued; bond. — No such permit shall be issued to any handler who is not operating on a strictly cash basis and who is incurring or may incur financial liability to any grower, until such person, firm, or corporation shall furnish to the commissioner of agriculture sufficient and satisfactory evidence of their ability to carry out their contract or furnish a satisfactory bond in an amount not to exceed ten thousand ($10,000) dollars. The commissioner of agriculture may require a new bond or additional bonds up to the ten thousand dollar ($10,000.00) limit when he finds it necessary for the protection of the producer. Such bonds shall be payable to the state in favor of every contract producer or consignor of farm products, and shall be continued upon compliance with all the provisions of this article, and the faithful fulfilment of all contracts, and for the faithful accounting for and handling of produce by such handler, and for payment to the producer of the net proceeds of all consignments and sales. Any producer claiming to be injured by the fraud, deceit or wilful negligence of any commission merchant or contractor, or by his failure to comply with this article or with the terms of a written contract between such parties, may bring action on the bond against both principal and surety in any court of competent jurisdiction and may recover the damages found by the court to be caused by such acts complained of. (1941, c. 359, s. 3.)

§ 106-499. Contracts between handlers and producers; approval of commissioner.—No handler

shall enter into any written contract with a producer in North Carolina, for the production, delivery, or sale of farm products, until he files with the commissioner of agriculture a true copy of the contract and it is examined and approved by the commissioner. The commissioner may withhold his approval in his discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this article. (1941, c. 359, s. 4.)

§ 106-500. Additional powers of commissioner to enforce article.—In order to enforce this article, the commissioner of agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

(a) To inspect or investigate transactions for the sale or delivery of farm products to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, farm products and other articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under his contracts and to pay for it as agreed;

(b) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this article or of rules, regulations, and orders made by the board or the commissioner. Any party disobeying any order or subpoena of the commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the commissioner;

(c) To issue all such rules and regulations, with the approval of the board, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this article. (1941, c. 359, s. 5.)

§ 106-501. Violation of article or rules made misdemeanor.—Any person who violates the provisions of this article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both. (1941, c. 359, s. 6.)

Art. 45. Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart. — For the purpose of the holding annually of a State Fair and exposition which will properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart two hundred acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1.)

§ 106-503. Board of agriculture to operate fair.—The State Fair provided for in § 106-502, shall be managed, operated and conducted by the board of agriculture established in § 106-2. To that end, said board of agriculture shall, at its first meeting after the ratification of this section, take over said State Fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State Fair and shall hold and conduct said State Fair with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said Fair, and/or lease said Fair properties so as to provide a State Fair. (1931, c. 360, s. 3.)

§ 106-504. Lands dedicated by State may be repossessed at will of general assembly.—Any lands which may be dedicated and set apart under the provisions of this article may be taken possession of and repossessed by the State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence. — Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, not exceeding ten thousand dollars in value, as may be needful to promote the objects of their association.

The corporate existence shall continue as long as there are ten members, during the will and pleasure of the general assembly. (Rev., ss. 3868, 3869; Code, s. 2220; R. C., c. 2, ss. 6, 7; 1852, c. 2. ss. 1, 2, 3; C. S. 4941.)

§ 106-506. Organization; officers; new members.—Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (Rev., s. 3869; Code, s. 2221; R. C., c. 2, s. 7; 1852, c. 2, s. 3; C. S. 4942.)

§ 106-507. Exhibits exempt from state and county taxes.—Any society or association organized under the provisions of this chapter, desiring to be exempted from the payment of state, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than sixty (60) days prior to the opening date of its fair, file an application with the commissioner of revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for

which the exemption is asked, and also the date and place they are to be exhibited. The commissioner of revenue shall immediately refer said application to a committee consisting of the president of the North Carolina association of agricultural fairs, the commissioner of agriculture, and the director of the extension service of North Carolina State College for approval or rejection. If the application is approved by said committee, the commissioner of revenue shall issue a permit to said society or association authorizing it to exhibit within its fair grounds and during the period of its fair, without the payment of any state, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved: Provided, however, that the commissioner of revenue shall have the right to cancel said permit at any time upon the recommendation of said committee. Any society or association failing to so obtain a permit from the commissioner of revenue or having its permit canceled shall pay the same state, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the state shows, carnivals, or other attractions. (Rev., s. 3871; 1905, c. 513, s. 2; 1935, c. 371, s. 107; C. S. 4944.)

§ 106-508. Funds to be used in paying premiums.—All moneys so subscribed, as well as that received from the state treasury as herein provided, shall, after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their by-laws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufactures, mechanical implements, tools and productions as are of the growth and manufacture of the county, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county wherein such societies are respectively organized. (Rev., s. 3873; Code, s. 2223; R. C., c. 2, s. 9; 1852, c. 2, s. 7; C. S. 4945.)

§ 106-509. Annual statements to state treasurer.—Each agricultural society entitled to receive money from the state treasurer shall, through its treasurer, transmit to the treasurer of the state, in the month of December or before, a statement showing the money received from the state, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (Rev., s. 3874; Code, s. 2224; R. C., c. 2, s. 10; 1852, c. 2, s. 8; C. S. 4946.)

§ 106-510. Publication of statements required.—Each agricultural society receiving money from the state under this chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the state; and evidence that the requirements of this chapter have been complied with shall be furnished to the state treasurer before he shall pay to such society the sum of fifty dollars for the benefit of such society for the next year. (Rev., s. 3875; Code, s. 2225; R. C., c. 2, s. 11; 1852, c. 2, s. 9; C. S. 4947.)

§ 106-511. Records to be kept; may be read in evidence.—The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party. (Rev., s. 3876; Code, s. 2226; R. C., c. 2, s. 12; 1852, c. 2, s. 5; C. S. 4948.)

Part 3. Protection and Regulation of Fairs.

§ 106-512. Lien against licensees' property to secure charge. — All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fair grounds, or which shall rent any ground space for carrying on any kind of business in such fair grounds, either upon stipulated price or for a certain per cent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C. S. 4950.)

§ 106-513. Notice of sale to owner. — Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property ten days before such sale, if he or it be a resident of the state, but if a nonresident of the state, or his or its residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C. S. 4951.)

§ 106-514. Unlawful entry on grounds a misdemeanor.—If any person, after having been expelled from the fair grounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over the enclosing structure of said fair grounds and enter the same, or shall enter the enclosure of said fair grounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3669; Code, s. 2795; 1901, c. 291; 1870-1, c. 184, s. 3; C. S. 4952.)

§ 106-515. Assisting unlawful entry on grounds a misdemeanor.—It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days. (1915, c. 242, ss. 3, 4; C. S. 4953.)

§ 106-516. Vendors and exhibitors near fairs to pay license. — Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, ferris wheel, or any other device for public amusement, within one-fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as a principal or agent: Provided, this section shall not apply to any business established sixty days prior to the beginning of such fair. (1915, c. 242, s. 5; C. S. 4954.)

§ 106-517. Application for license to county commissioners.—Every such person mentioned in § 106-516 shall apply in advance for a license to the board of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of twelve months from its date. (1915, c. 242, s. 6; C. S. 4955.)

§ 106-518. Unlicensed vending, etc., near fairs a misdemeanor.—Any person violating the provisions of §§ 106-516 and 106-517 shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars or imprisonment not to exceed thirty days, at the discretion of the court. (1915, c. 242, s. 7; C. S. 4956.)

§ 106-519. Commissioners may refuse to license shows within five miles.—The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild west show, dog and pony show, carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments sixty days prior to the date of such exhibition. (1913, c. 163, s. 1; C. S. 4957.)

§ 106-520. Local aid to agricultural, animal, and poultry exhibits.—Any city, town, or county may appropriate not to exceed one hundred dollars to aid any agricultural, animal, or poultry exhibition held within such city, town, or county. (1919, c. 135; C. S. 4958.)

Art. 46. Erosion Equipment.

§ 106-521. Counties authorized to provide farmers with erosion equipment.—The county commissioners in the several counties of the State are hereby authorized and empowered to purchase the necessary equipment to be used as provided in this article by farmers in the cultivation of their lands in such manner as may best tend to prevent erosion; and they are authorized to put such equipment as they deem necessary for the purpose in the hands of farmers who may apply for the same, either by way of resale to the said farmers, or upon a rental basis, or by guarantee, as may in their judgment be deemed best, of the purchase price of the said equipment directly sold to the said farmers. (1935, c. 172, s. 1.)

§ 106-522. Application for assistance.—Any person or persons, corporation or concern, engaged in the cultivation of a farm or farms in this State may apply to the county commissioners for assistance under this article, stating in the said application as nearly as may be the size or area of the cultivated lands, its condition, the kind of soil, the amount of erosion, if any, the topography of the farm, its present manner of drainage and the kinds of crops usually cultivated thereon. It shall also state what means have been used heretofore, if any, to prevent soil erosion, and specifically the extent to which erosion now exists upon the premises. At any time subsequent to the said application, if relief is extended to him, he shall, when so requested by the said county commissioners or any other person delegated by them to receive the information, make detailed reports as to the condition of his said cultivated lands, the extent to which provision has been made thereon to prevent soil erosion, with the results of same. There shall also be stated in the said application the kind and quantity of equipment which, in the judgment of the applicant, is necessary for use upon his farm. (1935, c. 172, s. 2.)

§ 106-523. Investigation and extending relief.—Upon the filing of such application the county commissioners shall cause due investigation to be made with reference thereto, and for their guidance; shall fully consider the same and if, in their opinion, the relief asked for should be extended, they shall thereupon proceed to supply or have supplied such equipment as in their judgment may be necessary under the circumstances, as provided in this article. (1935, c. 172, s. 3.)

§ 106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment. — The county commissioners are authorized and empowered to purchase the equipment by them deemed to be necessary and supply the applicant therewith, upon such terms and conditions of purchase, rental or repayment as may be deemed by them just and proper, and which will save the county from loss in the matter. To that end, they are authorized to accept from the applicant such notes and security, if any by them are deemed necessary, or shall make with them such rental contracts as may be reasonably prudent and safe in the premises. They are further authorized and empowered, when in their judgment it may be deemed advisable, to guarantee the payment to the seller, for such equipment as may be directly purchased by the applicant for the use aforesaid: Provided, however, that the purchase of the said equipment has been previously approved by the county commissioners. (1935, c. 172, s. 4.)

§ 106-525. Guarantee of payment where equipment purchased by federal agencies. — Where the said equipment may be purchased by any federal agency and by it furnished to any person, persons, firm or corporation engaged in the actual cultivation of the soil, the county commissioners are authorized, under such terms and conditions as to them may seem advisable, and as shall conserve the public interest and be just and proper to the county, to guarantee the payment of the purchase

price of such equipment in full or the interest upon the obligations made in their purchase, and may do so in full or in part. (1935, c. 172, s. 5.)

§ 106-526. Expense of counties extending relief made lien on premises of applicant.—In the event the county commissioners shall extend any relief under this article, to the extent of the money furnished or the obligation of the county with respect thereto, the same shall be a lien upon the premises, lands and tenements of the owner and applicant for such relief, securing the repayment of the funds furnished by the county and securing the county against any loss by reason of its obligation in any respect, the said lien to be foreclosed in all respects as provided in the law for deeds of trust or real estate mortgages: Provided, however, that in case the county itself has entered into an obligation in order to extend to any persons herein named the relief provided in this article, the county shall not be postponed in its relief until loss is actually incurred by it, but may proceed in accordance with the contract and agreement made with the applicant for relief, and when the obligations of the county in any respect are due: Provided, further, that the lien created by this section shall not be effective as against innocent purchasers for value unless and until notice of such lien shall be docketed in the office of the clerk of the superior court of the county in which the land lies in the manner and form provided by law for perfecting laborer's or mechanic's liens against real property. (1935, c. 172, s. 6.)

§ 106-527. Counties excepted.—This article shall not apply to the counties of Alleghany, Alexander, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison, Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

Art. 47. State Marketing Authority.

§ 106-528. State policy and purpose of article.—It is declared to be the policy of the state of North Carolina and the purpose of this article to promote, encourage and develop the orderly and efficient marketing of products of the home, farm, sea and forest; to establish, maintain, supervise and control, with the coöperation of counties, cities and towns, centrally located markets for the sale and distribution of such products, so as to promote a steady flow of commodities, properly graded and labelled, into the channels of trade at the time and place to enable the producer to get the market price and the consumer to get a product in keeping with the price paid. (1941, c. 39, s. 1.)

§ 106-529. State marketing authority created; members and officers; commodity advisers; meetings and expenses.—To secure these aims, there is hereby created an incorporated public agency of the state, to be known as the state marketing authority, hereinafter referred to as the "authority." It shall consist of the members of the state board of agriculture, and the commissioner of agriculture shall be the chairman. They shall perform the duties and exercise the powers herein set out as a part of their official duties as members of the board of agriculture. The governor shall appoint from time to time commodity advisers to plan with the authority the programs undertaken in their respective communities. The authority shall elect and prescribe the duties of a secretary-treasurer, who shall not be a member of the authority. He shall give bond in such amount as the authority shall determine in some reliable surety company doing business in North Carolina, and the authority shall pay the premiums. The authority shall meet in regular session annually at a fixed place and date, and shall meet in special session at such other times and places as the chairman may request. The members shall receive no salary, but shall receive actual expenses plus seven dollars per day for actual time spent in performing their duties. (1941, c. 39, s. 2.)

§ 106-530. Powers of authority.—The authority shall have the following powers:

(1) To sue and be sued in its corporate name in any court or before any administrative agency of the state or of the United States, and to enter into agreements with the United States department of agriculture or any other legally constituted state or federal agency, or with any county, city or town in the furtherance of the purposes of this article.

(2) To plan, build, construct, or cause to be built or constructed, or to purchase, lease or acquire the use of any warehouses or other facilities that may be necessary for the successful operation by the authority of wholesale markets for products of the home, farm, sea and forest at chosen points in North Carolina. The authority may make such contracts as may be needed for these purposes. In no case shall the authority be responsible for any rent except from the income of the market in excess of other operating expenses. The authority may select and employ for each market capable managers, who shall be familiar with the problems of the grower and the distributor, and of the marketing of farm products, and who shall have the business ability and training to operate a market and to plan for its proper development and growth in order best to serve the interests of producers, distributors, consumers in the area, and the general public. The managers may employ assistants and agents with the approval of the authority. The authority may make such regulations as will promote the policy of this article, as to the manner in which the markets shall be operated, the business conducted, and stalls sublet to dealers.

(3) To fix the terms upon which individual, coöperative or corporate wholesale merchants, warehouses or warehousemen may place their facilities or services under the supervision and regulation of the authority. The authority may extend to any such wholesale merchants, warehouses or warehousemen marketing benefits in the form of inspection, market informational and news service and may make regulations as to the operation of such facilities or services and as to forms, reports, handling, grades, weights, packages, labels, and other standards for the products handled by such merchants, warehouses or warehousemen.

(4) To fix rentals and charges for each type of service or facility in the markets under its control, taking into consideration the cost of such facility

or service, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves for repairs, depreciation, expansion, and similar items. These rentals and charges shall not bring any profit to any agency over and above the costs of operation, necessary reserves, and debt service.

(5) To issue permits to itinerant dealers in intrastate commerce, who express a willingness to come under the program of the state marketing authority. Such permits shall enable the holders to solicit orders and to buy and sell produce under the rules and regulations of the authority and in conformance with §§ 106-185 to 106-196 and not inconsistent with the United States Perishable Agricultural Commodities Act, one thousand nine hundred and thirty (46 Stat. 531).

(6) To issue bonds and other securities to obtain funds to acquire, construct, and equip warehouses to be used in carrying out the purposes of this article. The bonds shall be entitled "North Carolina Marketing Authority Bonds" and shall be issued in such form and denominations and shall mature at such time or times, not exceeding thirty years after their date, and shall bear such interest, not exceeding five per cent per annum, payable either annually or semi-annually, as the authority shall determine. They shall be signed by the chairman of the authority, and the corporate seal affixed or impressed upon each bond and attested by the secretary-treasurer of the authority. The coupons shall bear the facsimile signature of the chairman officiating when the bonds are issued. Any issue of these bonds and notes may be sold publicly, or at private sale for not less than par to the Reconstruction Finance Corporation or other state or federal agency, or may be given in exchange to any county, city, town or individual for the lease or purchase of property to be used by the authority. To secure such indebtedness, the authority may give mortgages or deeds of trust, executed in the same manner as the bonds, on the property purchased or acquired, and may pledge the revenues from the markets in excess of operating expenses, interest and insurance: Provided, that each market shall be operated on a separate financial basis, and only such revenues and properties of each separate market shall be liable for the obligations of that market. No obligations incurred by the authority shall be obligations of the state of North Carolina or any of its political subdivisions, or a burden on the taxpayers of the state or any political subdivision. This does not prevent the state or any of its agencies, departments or institutions, or any private or public agency from making a contribution to the authority, in money or services or otherwise.

Bonds and notes issued under this article shall be exempt from all state, county or municipal taxes or assessments of any kind; the interest shall not be taxable as income, nor shall the notes, bonds, nor coupons be taxable as part of the surplus of any bank, trust company or other corporation.

Any resolution or resolutions authorizing any bonds shall contain provisions which shall be a part of the contract with the holders of the bonds, as to:

(a) Pledging the fees, rentals, charges, dues, tolls, and inspection and sales fees, and other revenues to secure payment of the bonds;

(b) the rates of the fees or tolls to be charged for the use of the facilities of the warehouse or warehouses, and the use and disposition of the revenues from its operation;

(c) the setting aside of reserves or working funds, and the regulation and disposition thereof;

(d) limitations on the purposes to which the proceeds of sale of any issue of bonds may be applied;

(e) limitations on the issuance of additional bonds; and

(f) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(7) To accept grants in aid or free work.

(8) To adopt, use and alter a corporate seal.

(9) To dispossess tenants for nonpayment of rent and for failure to abide by the regulations of the authority.

(10) To hire necessary agents, engineers, and attorneys, and to do all things necessary to carry out the powers granted by this article. (1941, c. 39, s. 3.)

§ 106-531. Discrimination prohibited; restriction on use of funds.—The authority shall not permit:

(1) Any discrimination against the sale, on any of the markets under their control, of any farm product because of type of operator or area of production.

(2) The use of any of its funds for any purpose other than for the support, necessary expansion, and operation of this state marketing system, or the use of any of its funds to establish any retail market or to build or furnish more than one market in any town. (1941, c. 39, s. 4.)

§ 106-532. Fiscal year; annual report to governor.—The authority shall operate on a fiscal year, which shall be from July first to June thirtieth. The commissioner of agriculture shall file an annual report with the governor containing a statement of receipts and disbursements and the purposes of such disbursements, and a complete statement of the financial condition of the authority, and an account of its activities for the year. (1941, c. 39, s. 5.)

§ 106-533. Application of revenues from operation of warehouses. — All rentals and charges, fees, tolls, storage and sales commissions and revenues of any sort from operation of each warehouse shall be applied to the payment of the cost of operating and administering the warehouse and market facilities including interest on bonds and other evidences of indebtedness issued therefor, and the cost of insurance against loss by injury to persons or property, and the balance shall be paid to the secretary-treasurer of the authority and be used to provide a sinking fund to pay at or before maturity all bonds and notes and other evidences of indebtedness incurred for and on behalf of the building, constructing, maintaining and operating of each warehouse. A separate sinking fund account shall be kept for each market, and no market shall be liable for the obligations of any other market. (1941, c. 39, s. 6.)

§ 106-534. Exemption from taxes and assessments. — The authority shall be regarded as performing an essential governmental function in constructing, operating or maintaining these markets, and shall be required to pay no taxes or assessments on any property acquired or used by it for the purposes herein set out. (1941, c. 39, s. 7.)

Art. 48. Relief of Potato Farmers.

§ 106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system. —From and after March 15, 1941, every person, firm, or association or corporation engaged in the practice of supplying growers of Irish potatoes in this state with seed potatoes and fertilizer and other supplies for the purpose of growing a crop of Irish potatoes under the system commonly known as the share planting system and who enter into a contract with such grower and/or growers on or before planting them to furnish such grower with seed potatoes, fertilizer or other necessary supplies, or to perform services in connection with the gathering of such crop and marketing the same, shall at the time of entering into such contract, agree in writing, with such grower that he or it will guarantee that the grower shall receive at the time such potatoes are marketed an amount of not less than ten dollars ($10.00) for each bag of seed potatoes planted by the grower or growers from such person, firm, association or corporation who, under the agreement, furnished such seed potatoes and other supplies to the grower or growers thereof. (1941, c. 354, s. 1.)

Local Modification.—Bladen, Durham, Greene, Lenoir, Pender, Randolph, Rockingham, Sampson and Union: 1941, c. 354, s. 5.

§ 106-536. Additional net profits due grower not affected. — The minimum amount to be paid the grower by those furnishing said supplies under the terms of this article shall in no wise affect any additional net profit due the grower, should any such additional profits be shown. (1941, c. 354, s. 2.)

§ 106-537. Minimum payments only compensation for labor and use of equipment, land, etc. — The payment of the stipulated ten dollars ($10.00) per bag of said seed potatoes furnished said grower or growers by any firm, person, association or corporation shall be compensation only for labor and work done and for the use of any animal or machine and equipment used or furnished by said grower or growers, and also use of land in growing said potato crop, and this amount shall be paid to said grower from returns from said crops so produced; and the said ten dollars ($10.00) shall not be computed as any part of any other expenses furnished by said person, firm, association or corporation furnishing other materials or supplies for the purpose of said share planting. (1941, c. 354, s. 3.)

§ 106-538. Time of payments; article not applicable to landlord-tenant contracts.—The said sum of ten dollars ($10.00) per bag of seed potatoes shall be paid to said grower or growers by said firm, person, association or corporation as herein provided, for share planting of potatoes, not later than thirty (30) days after the delivery of last potatoes grown under the share planting contract existing between said grower or growers and the said person, firm, association or corporation: Provided that nothing in this article shall apply to contracts entered into between landowners and their respective tenants. (1941, c. 354, s. 4.)

Chapter 107. Agricultural Development Districts.

Sec.

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§ 107-1. Clerk's power to establish; public use. —The clerk of the superior court (hereinafter called the "clerk" or "the court") of any county of the state of North Carolina shall have jurisdiction, power, and authority to establish agricultural development districts in his county for the purpose of clearing and putting in suitable condition for the beginning of cultivation good grades of lands, forested or cut-over, suitable for agriculture, and it is hereby declared that the said development shall be considered a public benefit and conducive to the public welfare. (1917, c. 131, s. 1; C. S. 4959.)

§ 107-2. Landowners' petition and deposits. — Whenever a petition signed by all the landown-

ers in a proposed agricultural development district shall be filed in the office of the clerk of the superior court of any county in which a part of said lands is located, setting forth and certifying that it is their desire and intention to form an agricultural development district (hereinafter called "the district") of an area aggregating not less than one thousand acres, and that it is their purpose, when cleared and put into condition for cultivation, to sell the said land to settlers on long time terms and at reasonable prices.

They shall deposit with the clerk—

a. A certified check for not less than one thousand dollars, plus ten cents per acre for each additional acre in the proposed district, from which funds the clerk shall from time to time meet the actual expenses of examining and verifying and other expenses incidental to forming the district.

b. A complete map of the lands to be included in the district.

c. A soil map showing the types of soils.

d. A drainage map showing the natural drainage of the lands, and any proposed system of drainage it is intended to establish.

e. Certificates of title by a reputable attorney of the county.

f. An estimate of the cost of improvements under the plan submitted.

g. A certificate that the lands when improved will have a market value of at least twice the amount of the total cost of the proposed improvement. (1917, c. 131, s. 2; C. S. 4960.)

§ 107-3. Viewers' appointment. — The clerk shall then appoint a board of viewers (hereinafter called "the viewers"), composed of three members, one a competent civil engineer and the other two practical agriculturists, to examine the lands and data submitted to the clerk by the landowners, and report as to the facts being virtually as stated, or to give their opinion as to any variations. (1917, c. 131, s. 2; C. S. 4961.)

§ 107-4. Viewers' report. — Their written report shall be filed within two weeks from the date of their appointment. The clerk shall consider this report. If the viewers report that the project is not practicable or will not be for the public welfare, and the clerk shall approve such findings, the petition shall be dismissed at the cost of the petitioners. (1917, c. 131, s. 2; C. S. 4962.)

§ 107-5. Plan submitted to department of conservation and development.—If the viewers report that the project is practicable, and that it will be for the public welfare and conducive to the general welfare of the community, and the court shall so find, then all of the data and reports of the proceedings shall be submitted to the department of conservation and development, who shall designate:

1. An engineer to survey and approve of the boundaries and drainage and road plans.

2. An attorney of reputation to examine and approve of the chains of title submitted.

3. A forester to make an estimate of the cost of clearing.

4. A soil expert to report on the availability of the land for agricultural purposes. (1917, c. 131, s. 3; C. S. 4963.)

§ 107-6. District established, if department approves.—The department of conservation and development shall consider these reports, data, and plans, and, if he approves the same, shall so certify to the clerk of the court, who shall then declare the district established. (1917, c. 131, s. 3; C. S. 4964.)

§ 107-7. Board of agricultural development commissioners appointed. — After the said district shall have been declared established as aforesaid, and the complete plans therefor approved, the clerk shall appoint two persons, one of whom shall be a landowner of the district, the other a practical agriculturist of good character, not a landowner of the district, and these two shall choose a third, who may or may not be a landowner of the district, and the three so appointed and chosen shall be designated as the Board of Agricultural Development Commissioners of ..... District. (1917, c. 131, s. 4; C. S. 4965.)

§ 107-8. Commissioners incorporated; powers; officers; superintendent's bond. — Such commissioners when so appointed and chosen shall be immediately created a body corporate under the name and style of the Board of Agricultural Development Commissioners of .... District (hereinafter called "the commissioners" or "the board of commissioners"), with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and vice-chairman. They shall also elect a secretary, within or without their body, and shall adopt by-laws for the government of their proceedings. The treasurer of the county in which the proceedings are instituted shall be ex officio treasurer of such board of commissioners. Such board of commissioners shall adopt a seal, which it may alter at pleasure. They shall have and possess such powers as are herein granted. The name of such district shall constitute a part of its corporate name. The commissioners shall appoint a competent person as superintendent of construction; such person shall furnish a bond, to be approved by the commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties. Such bond shall be in favor of the board of commissioners. In the event of any vacancy in the membership of the board of commissioners the remaining members shall fill such vacancy, subject to the approval of the court. (1917, c. 131, s. 4; C. S. 4966.)

§ 107-9. Classification of lands according to benefits.—It shall be the further duty of the viewers to personally examine the lands in the district and classify them with reference to the benefits they will receive from the improvements to be made. The land benefits shall be separated into five classes. The land receiving the highest benefit shall be marked Class A; that receiving the next highest benefit, Class B; that receiving the next highest benefit, Class C; that receiving the next highest benefit, Class D; and that receiving the smallest benefit, Class E. The holdings of any one landowner need not necessarily be all in one class, but the number of acres

in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined, and the total number of acres in each class in the entire district shall be ascertained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five cents per acre is assessed against the land in Class A, four cents per acre shall be assessed against the land in Class B, and three cents per acre in Class C, and two cents per acre in Class D, and one cent per acre in Class E. This shall form the basis of assessment for benefits to the lands of the district. (1917, c. 131, s. 5; C. S. 4967.)

§ 107-10. Appeal from viewers' report. — Any party aggrieved may, within ten days after the confirmation of the viewers' report, appeal to the superior court in term-time. Such an appeal shall be taken and prosecuted as now provided in special proceedings. Such an appeal shall be based and heard only upon such exceptions theretofore filed by the complaining party, either as to issue of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. (1917, c. 131, s. 6; C. S. 4968.)

§ 107-11. Letting contract for construction. — The commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein said district is located, and such additional publication elsewhere as they deem expedient, of time and place of letting the work of construction, and in such notice they shall specify the approximate amount of work to be done, the time fixed for the completion thereof, and the date appointed for the letting. They, together with the superintendent of the district, shall convene and let to the lowest responsible bidder, either as a whole or in part, or in sections, as they deem most advantageous for the district, the proposed work. The landowners may bid on the work, and in the event of their securing the contract, the work shall be done at actual cost, it being distinctly understood that the landowners are to receive no profit from said contract, and any saving effected shall inure to the benefit of the district. No bids shall be entertained that exceed the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. The commissioners shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by so doing. The successful bidder shall be required to enter into a contract with the board of commissioners, and to execute a bond for the faithful performance of such contract, with sufficient surety, in favor of the board of commissioners for the use and benefit of the district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract the superintendent of construction shall act only in an advisory capacity to the board of commissioners. The contract shall be based on the plans and specifications submitted by the commissioners in a report, and confirmed by the court, the original of which shall remain on file in the office of the clerk and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under authority of the commissioners, and on the date therefor appointed for the opening of bids. All bids must be accompanied by a certified check for three per centum of the amount of the bid. (1917, c. 131, s. 7; C. S. 4969.)

§ 107-12. Payment for work done. — The superintendent of construction shall make monthly estimates of the amount of work done and shall furnish one copy to the contractor and file the other with the secretary of the board of commissioners, and the commissioners shall within five days after filing of such estimate meet and direct the secretary to draw a warrant in favor of the contractor for ninety per centum of the work done according to the specifications and contract; and upon the presentation of such, properly signed by the chairman or vice-chairman and secretary, to the treasurer of the district, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent, he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the fund as before provided. In the event that the landowners receive the contract, the monthly payments shall cover only the actual cost of the work, as certified by the superintendent of construction, to whose certificates shall be attached all payrolls and vouchers. If any contractor to whom said work shall have been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the commissioners against such contractor and his bond in the superior court, for damages sustained in the district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1917, c. 131, s. 8; C. S. 4970.)

§ 107-13. Record book kept by clerk.—The clerk shall provide a suitable book to be known as the Record Book of the Agricultural Development Commissioners of ..... District, in which he shall cause to be recorded every petition, motion, order, record, judgment, or finding of the board of commissioners in every transaction which may come before it, in such a way as to make a complete and continuous record of the case; copies of all the maps and plans are to be furnished by the commissioners, and marked by the clerk "Official Copy," which shall be kept on file by him in his office, and one of the copies shall be pasted or otherwise attached to his record. (1917, c. 131, s. 9; C. S. 4971.)

§ 107-14. Assessment rolls; preparation; contents; execution.—After the classification of the land and ratios of assessment of the different classes to be made thereon has been confirmed by the court, the commissioners shall ascertain the total cost of improvement, including all in-

cidental expenses, and shall certify under the hand of the chairman and secretary of the board of commissioners to the clerk the said total cost, and said certificate shall be forthwith recorded in the record book and open to the inspection of any landowner in the district. The commissioners shall immediately prepare in duplicate the assessment rolls or agricultural improvement tax lists, giving therein the names of the owners of the land in the district as ascertained from the public records, a brief description of the several tracts of land assessed, and the assessment against each tract of land. The first of these assessment rolls shall provide assessments sufficient for the payment of interest on the bond issue to accrue the third year after their issue and the installment of principal to fall due at the expiration of the third year after the date of issue, together with such amounts as shall have to be paid for the collection and handling of the same. The second assessment roll shall make like provision for the fourth year, and in like manner assessment rolls shall make provision for each succeeding year during the life of the bonds. Each of the said assessment rolls shall specify the time when collectible, and shall be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of the assessment made by the viewers. These assessment rolls shall be signed by the clerk and by the secretary of the board of commissioners. (1917, c. 131, s. 10; C. S. 4972.)

§ 107-15. Filing and collection of assessment rolls; to be lien on land.—One copy of each of said assessment rolls shall be filed in the record book and one copy shall be delivered to the sheriff or other county tax collector, after the clerk has appended thereto an order directing the collection of said assessment, and the said assessment shall thereupon have the force and effect of a judgment as in the case of state and county taxes. These assessments shall constitute a first and paramount lien, second only to state and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner, by the same officers, as the state and county taxes are collected. (1917, c. 131, s. 10; C. S. 4973.)

§ 107-16. When assessments due; sale of delinquent lands.—The said assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff to sell the land or lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door in the county in which the lands are located, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on the first Monday of February of each year; and if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the land may be readvertised and sold on the first Monday in March succeeding, during the same hours, without any order therefor. In all other respects, except as to the time of the sale of the land, the existing laws as to the collection of state and county taxes shall have application to the collection of assessments under this article. (1917, c. 131, s. 10; C. S. 4974.)

§ 107-17. Settlement by tax collector.—It shall be the duty of the sheriff or tax collector to pay over to the county treasurer promptly the moneys so collected by him upon said tax assessments, to the end that the said treasurer may have funds in hand to meet the payment of interest and principal due upon outstanding bonds as they mature. (1917, c. 131, s. 10; C. S. 4975.)

§ 107-18. Payment of interest and installments on bonds; county treasurer's liability.—It shall be the duty of the county treasurer, and without any previous order from the commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to said bonds, and also to pay the annual installments of principal due on said bonds at the time and place as evidenced by said bonds; and the said county treasurer shall be guilty of a misdemeanor and subject, on conviction, to fine and imprisonment, in the discretion of the court, if he shall neglect or fail to make prompt payment of said interest and principal of said bonds, and shall likewise be liable in a civil action for all damages which may accrue to the board of commissioners or holders of said bonds, to either or both of which a right of action is hereby given. (1917, c. 131, s. 10; C. S. 4976.)

§ 107-19. New assessment on sale of land.—When any land in the district is sold, as provided in § 107-16, the court shall assess the new owner thereof, and deduct the amount of the new assessment from the assessment of the former owner, and correct the assessment rolls accordingly. (1917, c. 131, s. 10; C. S. 4977.)

§ 107-20. Advertisement of intention to issue bonds.—The commissioners shall give notice for three weeks, by publication in some newspaper published in the county in which the district or a part of the district is situated, and shall also post a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of improvement, giving the amount of the bonds to be issued, the rate of interest they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may within fifteen days after the publication of said notice pay to the county treasurer the full amount for which his land is liable, to be assessed from the classification sheet and certificate of the board of commissioners, showing the total cost of improvements, and have his lands released from liability to be assessed for such improvements. (1917, c. 131, s. 11; C. S. 4978.)

§ 107-21. Landowner's waiver.—Each and every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of the bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right

of defense to the payment of any assessment which may be levied for the payment of the bonds because of any irregularity or defect in the proceedings prior to this time, except in the case of an appeal as hereinbefore provided, which is not affected by this waiver. (1917, c. 131, s. 12; C. S. 4979.)

§ 107-22. Bond issue.—At the expiration of fifteen days after the expiration of the notice of the bond issue, the board of commissioners may issue bonds of the district for an amount equal to the total estimated cost of the improvements, less such amounts as shall have been paid in in cash to the county treasurer, plus an amount sufficient to pay interest on the bond issue for the three years next following the date of the issue: Provided, that the total principal amount of the bonds to be issued shall not exceed fifty dollars per acre for the land to be improved.

These bonds shall bear six per cent interest per annum, payable semiannually, and shall be paid in twenty equal installments. The first installment of the principal shall mature at the expiration of three years from the date of issue, and one installment for each succeeding year for nineteen additional years. The commissioners shall sell these bonds at not less than par and apply the proceeds to the payment of interest on said bonds for the three years next following the date of issue, and the payment of other expenses of the district provided for in this chapter. The proceeds from such bonds shall be for the exclusive use of the district specified on their face. The bonds shall be numbered by the board of commissioners and recorded in the record book, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinbefore provided. If any installment of principal or interest represented by said bonds shall not be paid at the time and in the manner when the same shall be due and payable, and such default shall continue for a period of six months, the holder or holders of such bond or bonds upon which default has been made shall have a right of action against said district, or the board of commissioners of said district, wherein the court may issue a writ of mandamus against said district, its officers, including the tax collector and treasurer, directing the levying of a tax or specific assessment as herein provided and the collection of the same in such sum as may be necessary to meet any unpaid installment of principal and interest and the cost of said action; and such other remedies are hereby vested in the holder or holders of such bond or bonds in default as may be authorized by law; and the right of action is hereby vested in the holder or holders of such bond or bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this chapter. The official bonds of the tax collector and the county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such official bonds may be increased by the board of county commissioners. (1917, c. 131, s. 13; C. S. 4980.)

§ 107-23. Fees allowed sheriff and treasurer. — The fee allowed the sheriff or the tax collector for collecting the tax as prescribed in this chapter shall be two per centum of the amount collected, and the fee allowed the county treasurer for disbursing the revenue obtained from the sale of the bonds shall be one per centum of the amount disbursed: Provided, no fee shall be allowed to the sheriff or other tax collector, or to the county treasurer, for collecting or receiving the revenue obtained from the sale of said bonds, nor for disbursing the revenue raised for paying off said bonds: Provided further, that in those counties where the sheriff, tax collector, and treasurer are on a salary basis, no fee whatever shall be allowed for collecting or disbursing the funds of the district. (1917, c. 131, s. 13, (2d); C. S. 4981.)

§ 107-24. Fees and expenses under chapter. — Any engineer employed under the provisions of this chapter shall receive such compensation for his services as shall be fixed and determined by the commissioners. The viewers, other than the engineer, shall receive five dollars per day; the rodman, axeman, chainman, and other laborers shall receive not to exceed two dollars per day. All other fees and costs incurred under the provisions of this chapter shall be the same as are usual for like services in other cases. Said costs and expenses shall be paid, by order of the court, out of the funds provided for that purpose, and the board of commissioners shall issue warrants therefor when funds shall be in the hands of the treasurer. Any engineer, viewer, superintendent of construction, or other person appointed under this chapter may be removed by the court, upon petition, for corruption, neglect of duty, or other good and satisfactory cause shown. (1917, c. 131, s. 14; C. S. 4982.)

§ 107-25. Liberal construction; defects in proceeding.—The provisions of this chapter shall be liberally construed to promote the objects herein declared and for the general welfare of the state. The collection of assessments shall not be defeated, whether proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the commissioners; but such orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person, or modify his assessment or liability, it shall in no manner affect the rights and legality of any other person than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this chapter shall exclude all other remedies. (1917, c. 131, s. 15; C. S. 4983.)

Chapter 108. Board of Charities.

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Art. 1. State Board of Charities and Public Welfare.

§ 108-1. Election, term of office, and compensation.—There shall be elected by the general assembly, upon the recommendation of the governor, seven persons who shall be styled "The State Board of Charities and Public Welfare," and at least one of such persons shall be a woman. At the session of the general assembly for the year one thousand nine hundred and seventeen all the members of such board shall be elected, three for a term of two years, two for a term of four years, and two for a term of six years, and thereafter the term shall be six years for all. The election shall be by a concurrent vote of the general assembly, and appointments to fill vacancies in the board arising from any cause whatsoever, except expiration of term, shall be made for the residue of such term by the governor. The governor shall designate the chairman of the board so selected, which chairmanship so designated may be changed as the governor may deem best to promote the efficiency of the service. The members of the board shall serve without pay, except that they shall receive their necessary expenses: Provided, however, that the chairman of the said board, when acting as a member of the state board of allotments and appeal—established in article 3 of this chapter—shall receive a per diem to be fixed by the director of the budget, together with actual expenses incurred in attending meetings. (Rev., s. 3913; Code, s. 2331; 1868-9, c. 170, s. 1; 1909, c. 500; 1917, c. 170, s. 1; 1937, c. 319, s. 1; C. S. 5004.)

§ 108-2. Meetings of board.—The board shall hold meetings at least quarterly, and whenever called in session by the chairman, and shall make such rules and orders for the regulation of its own proceedings as it deems proper. (Rev., ss. 2807, 3914; Code, s. 2332; 1868-9, c. 170, s. 2; 1909, c. 899; 1917, c. 170, s. 1; C. S. 5005.)

§ 108-3. Powers and duties of board.—The board shall have the following powers and duties, to-wit:

1. To investigate and supervise, through and by its own members or its agents or employees, the whole system of the charitable and penal institutions of the state, and to recommend such changes and additional provisions as it may deem needful for their economical and efficient administration.

2. To study the subjects of nonemployment, poverty, vagrancy, housing conditions, crime, public amusement, care and treatment of prisoners, divorce and wife desertion, the social evil and kindred subjects and their causes, treatment, and prevention, and the prevention of any hurtful social condition.

3. To study and promote the welfare of the dependent and delinquent child and to provide, either directly or through a bureau of the board, for the placing and supervision of dependent, delinquent, and defective children.

4. To inspect and make report on private orphanages, institutions, maternity homes, and persons or organizations receiving and placing children, and to require such institutions to submit such annual reports and information as the state board may determine: Provided, that the term "maternity homes" used hereinbefore in this sub-section shall be construed to include institutions or homes maintained not only for the purpose of receiving pregnant women for care previous to, during and following delivery, but institutions or lying-in homes wherein pregnant women are received for care previous to and following delivery, the said delivery taking place in a hospital to which this statute does not apply.

5. To grant license for one year to such persons or agencies to carry on such work as it believes is needed and is for the public good, and is conducted by reputable persons or organizations, and to revoke such license when in its opinion the public welfare or the good of the children therein is not being properly subserved; Provided, subsection five shall not apply to any orphanage chartered by the laws of the State of North Carolina, owned by a religious denomination or a fraternal order, and having a plant and assets not less than sixty thousand dollars ($60,000), nor shall it apply to orphanages operated by fraternal orders, under charters of other states, which have complied with the corporation laws of North Carolina and have that amount of property.

6. To issue bulletins and have same printed and in other ways to inform the public as to social conditions and the proper treatment and remedies for social evils.

7. To issue subpœnas and compel attendance of witnesses, administer oaths, and to send for persons and papers whenever it deems it necessary in making the investigations provided for herein or in the other discharge of its duties, and to give such publicity to its investigations and findings as it may deem best for the public welfare.

8. To employ, by and with the approval of the governor, a trained investigator of social service problems who shall be known as the commissioner of public welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties.

9. To recommend to the legislature social legislation and the creation of necessary institutions.

10. To have the authority to establish, maintain and provide rules and regulations for the administration of a system of personnel standards on a merit basis with a uniform schedule of compensation for all employees of the state board and of the county welfare departments: Provided, that the compensation schedule for employees of the state board shall be established in conformity with the provisions of the State Personnel Act.

11. To attend, either through its members or agents, social service conventions and similar conventions, and to assist in promoting all helpful publicity tending to improve social conditions of the state, and to pay out of the funds appropriated to the state board office expenses, salaries of employees, and all other expenses incurred in carrying out the duties and powers hereinbefore set out.

12. To receive, hold and administer for the purposes for which it is organized, any funds donated to it, either by will or deed, and to administer said funds in accordance with the instructions of the will or deed creating them.

13. To accept donations and gifts or any and all kinds of commodities, services or moneys which may be donated or given by the Federal or State government, or by any political subdivision of the State. Such donations shall be used exclusively by said board for relief purposes in this State, and said board is hereby fully authorized and empowered, under rules and regulations adopted by it, to provide for the distribution thereof.

14. To furnish to the Federal Government, or any of its agencies, such services as may be required in selecting. certifying, or referring persons who may be eligible for Civilian Conservation Corps, or persons who may be eligible for employment by the Work Projects Administration, the Resettlement Administration, the Surplus Commodities Corporation, or any other agency of the Federal Government engaged in relief or Allied activities. The State Board of Charities and Public Welfare is also authorized to certify to the Surplus Commodities Corporation the persons eligible to receive such commodities as may be distributed for relief purposes. (Rev., ss. 3914, 3915; Code, ss. 2332, 2333; 1868-9, c. 170, s. 3; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; 1937, c. 436, ss. 3, 5; 1941, c. 270, s. 1; C. S. 5006.)

§ 108-4. Investigate and report on mental and physical infirmities. — The board shall also give special attention to the causes of insanity, defect or loss of the several senses, idiocy, and the deformity and infirmity of the physical organization. They shall, besides their own observation, avail themselves of correspondence and exchange of facts of the labors of others in these departments, and thus be able to afford the general assembly data to guide them in future legislation for the amelioration of the condition of the people, as well as to contribute to enlighten public opinion and direct it to interests so vital to the prosperity of the state. The state board shall keep and report statistics of the matters hereinbefore referred to and shall compile these reports and analyze them with a view of determining and removing the cause in order to prevent crime and distress. (Rev., s. 3916; Code, s. 2334; 1868-9, c. 170, s. 4; 1917, c. 170, s. 1; C. S. 5007.)

§ 108-5. Inspection of county prisons; reports required. — The state board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties and superintendents of public welfare and other county officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the state board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the state board. (Rev., s. 3917; Code, s. 2335; 1868-9, c. 170, s. 5; 1917, c. 170, s. 1; C. S. 5008.)

§ 108-6. Biennial reports to general assembly. —The state board shall biennially prepare and submit to the general assembly a complete and full report of its doings during the preceding two years, showing the actual condition of all the state institutions under its supervision, with such suggestions as it may deem necessary and pertinent, which shall be printed, and shall report such other matters as it may think for the benefit of the people of the state. (Rev., s. 3918; Code, s. 2338; 1868-9, c. 170, s. 8; 1870-1, c. 106; 1917, c. 170, s. 1; C. S. 5009.)

§ 108-7. Attention secured for insane and other unfortunates. — Whenever the board shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any almshouse or other place, whether such insane person is a public charge or otherwise, it shall be the duty of the board to cause such insane person to be conveyed to the proper state hospital for the insane, there to receive the best medical attention. So, also, it shall be their care that all the unfortunate shall receive benefit from the charities of the state. (Rev., s. 3919; Code, s. 2336; 1868-9, c. 170, s. 6; 1917, c. 170, s. 1; C. S. 5010.)

§ 108-8. Public institutions to furnish information.—The board may require the superintendents or other officers of the several charitable and penal institutions of the state to report to them any matter relating to the inmates of such institutions, their manner of instruction and treatment, with structure of their buildings, and to furnish them any desired statistics upon demand. (Rev., s. 3920; Code, s. 2337; 1868-9, c. 170, s. 7; 1917, c. 170, s. 1; C. S. 5011.)

§ 108-9. Relatives ineligible to appointment in state institutions.—No person shall be appointed to any place or position in any of the state institutions under the supervision of the state board who is related by blood or marriage to any member of the state board or to any of the principal officers, superintendents, or wardens of state institutions. (1917, c. 170, s. 1; C. S. 5012.)

§ 108-10. Failure of officers to furnish information. — If the board of commissioners of any county or the justices of the peace of any township, or any officer or employee of any charitable or penal institution of the state shall fail, refuse, or neglect to furnish any information required by law to be furnished to the state board of charities and public welfare, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the state, they shall be guilty of a misdemeanor. (Rev., s. 3566; Code, s. 2341; 1891, c. 491, s. 2; 1869-70, c. 154, s. 3; C. S. 5013.)

Art. 2. County Boards of Charities and Public Welfare.

§ 108-11. County welfare boards; appointment; duties.—Each of the several counties of the state shall have a county welfare board composed of three members who shall be appointed as follows: The board of county commissioners shall appoint one member who may be one of their own number to serve as ex officio member of the county welfare board with the same powers and duties as

the other two members, or they may appoint a person not of their own number to serve on the county welfare board; the state board of charities and public welfare shall appoint one member; and the two members so appointed shall select the third member. In the event the two members thus appointed are unable to agree upon the selection of the third member, such third member shall be appointed by the resident judge of the superior court of the district in which the county is situated.

The respective appointments shall be made on or before the first day of April, one thousand nine hundred and forty-one and shall be effective as of that date. In order to secure overlapping terms of office and to give continuity of policy, the first appointment of the county commissioners shall be for a term of two years; the first appointment of the state board shall be for a term of three years, and the first appointment of the third member shall be for a term of one year; but at the expiration of the terms of the three appointees their successors shall be appointed for terms of two years each. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible in the future to succeed himself after three successive terms as a member of a county welfare board: Provided, however, that no member shall serve more than six successive years.

The county welfare boards of the several counties shall have the duty of selecting the county superintendent of public welfare, shall act in advisory capacity to county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and with bettering social conditions generally, including cooperation with other agencies in placing indigent persons in gainful enterprises, shall prepare the administrative budget for the county welfare department for submission to and approval by the board of county commissioners, and shall have such other powers and duties as may be prescribed by law, particularly those set forth in the laws pertaining to old age assistance and aid to dependent children. The county welfare board shall meet with the superintendent of public welfare and advise with him in regard to problems pertaining to his office, and the superintendent of public welfare shall be the executive officer of the board and shall act as its secretary. (1917, c. 170, s. 1; 1919, c. 46, s. 3; 1937, c. 319, s. 3; 1941, c. 270, s. 2; C. S. 5014.)

Local Modification.—Wake: 1941, c. 270, s. 2; Wilkes: 1939, c. 106.

§ 108-12. Meetings of the board.—The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the state board, and shall meet at least once a month with the superintendent of welfare and advise with him in regard to problems pertaining to his office. Members of the county board may be reimbursed for expenses incurred in the attendance at official meetings. (1917, c. 170, s. 1; 1919, c. 46, s. 4; 1937, c. 319, s. 4; 1941, c. 270, s. 3; C. S. 5015.)

Local Modification.—Mecklenburg: 1941, c. 270, s. 3.

§ 108-13. County superintendent of welfare; appointment; salary.—On the first Monday in June, one thousand nine hundred and forty-one, or as soon thereafter as practical, the several county welfare boards shall appoint a superintendent of public welfare for the county in accordance with the rules and regulations of the merit system plan adopted by the state board of charities and public welfare. In making such appointment the county board may reappoint the superintendent of public welfare whose term expires on the thirtieth day of June one thousand nine hundred and forty-one and who was serving as superintendent of public welfare prior to the first day of January one thousand nine hundred and forty, if such person is certified by the merit system supervisor as having passed the merit system examination on a qualifying basis; or the county board may appoint as superintendent of public welfare any person who was employed by a county welfare department prior to the first day of January one thousand nine hundred and forty and who has been promoted to the duties and responsibilities of superintendent if such person meets the minimum requirements of the position of superintendent of public welfare and shall be certified by the merit system supervisor as having passed the merit system examination; or the county board may appoint as superintendent of public welfare a person from an open competitive or promotional register as certified by the merit system supervisor. The superintendent so appointed shall assume his duties on the first day of July, one thousand nine hundred and forty-one. All subsequent vacancies in the position of superintendent of public welfare shall be filled by the county board from an open competitive or promotional register.

The county welfare board may dismiss a superintendent of public welfare in accordance with the merit system rules of the state board of charities and public welfare and any superintendent so dismissed shall have the right of appeal to the merit system council, as provided for in the merit system plan.

The county welfare board shall determine the salary to be paid the superintendent of public welfare, in accordance with the merit system compensation plan, either at the time of his appointment or at such time as they may be in regular or called session for the purpose, and the salary shall be paid by the respective counties from federal, state and county funds: Provided that in counties where financial conditions render it urgently necessary, the state board may cause to be paid out of any state or federal fund available for the purpose, such portion of the salary of the superintendent of welfare of any county as, in the discretion of the state board, may be necessary. Levy of taxes for the special purpose of payment of the salary of the county welfare superintendent is hereby authorized and directed. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; C. S. 5016.)

Local Modification.—Mecklenburg: 1941, c. 270, s. 4.

§ 108-14. Powers and duties of county welfare superintendent. — The county superintendent of public welfare shall have the following powers and duties:

1. To act as executive officer of county welfare

board and to appoint office personnel in accordance with merit system regulations of the state board of charities and public welfare, whose salaries shall be paid by the county from federal, state and county funds: Provided, that in counties where financial conditions render it urgently necessary, the state board may cause to be paid out of any state and federal funds available for the purpose such portion of the salaries as, in the discretion of the state board may be necessary.

2. To admininster old age assistance and aid to dependent children under the supervision of the state board of charities and public welfare and in accordance with the provisions of the old age assistance and aid to dependent children acts.

3. To have the care and supervision of indigent persons in the county and to administer funds provided by the county commissioners for such purposes.

4. To act as agent for the state board of charities and public welfare in relation to any work to be done by the state board in the county; and to make, under the direction of the state board, such investigations in the county in the interest of social welfare as the state board may desire or direct.

5. To issue employment certificates to children in such form and under such regulations as may be prescribed by the state department of labor.

6. To prepare and submit to the eugenics board of North Carolina petitions for sterilization of county institutional and non-institutional cases and to arrange for operations authorized by the eugenics board.

7. To serve as investigating officer and chief probation officer for all juvenile courts in the county and to have oversight of dependent and delinquent children including those on parole or probation, of such dependent children as may be placed in the county by the state board, and of those children conditionally released from state institutions for juvenile delinquents.

8. To assist and cooperate with the commissioner of paroles and the parole supervisor in the oversight and actual supervision of persons on parole in the county and to coöperate with probation commission and its representatives.

9. Under direction of the state board to look after and keep up with the condition of persons discharged from hospitals for the insane.

10. To investigate cases for adoption and supervise placements for adoption.

11. To supervise boarding homes under rules and regulations of the state board.

12. To cooperate with existing agencies in the promotion of wholesome recreation facilities in the county. (1917, c. 170, s. 1; 1919, c. 46, s. 3; 1941, c. 270, s. 5; C. S. 5017.)

Art. 3. Division of Public Assistance.

§ 108-15. Division of public assistance created.—There is hereby created in the state board of charities and public welfare a division of public assistance, including (a) assistance to aged needy persons, and (b) aid to dependent children, as administered under authority of this article. (1937, c. 288, s. 1.)

§ 108-16. Director of public assistance.—The commissioner of welfare, with the advice and approval of the governor, shall employ a whole-time executive to be known as "director of public assistance." Such director, under the authority and supervision of the commissioner of welfare, shall have charge of the administration of the division herein created, and shall actively direct its affairs; and shall perform such other duties as may be required of him by the rules and regulations adopted by the state board. He shall see that this article is properly administered, that the requirements thereof are carried out in a timely and orderly manner, that administration of this division shall be kept at all times properly co-ordinated and efficiently maintained in agreement with other agencies of the state and with the federal government; and shall perform such other duties as are customary in his position.

The director of public assistance shall receive such salary and compensation as may be fixed by the director of the budget; and his tenure of office shall be such as may be fixed by rules and regulations of the department relative thereto and approved by the governor, subject to termination when, in the opinion of the governor and the commissioner of welfare, the public interest may demand it. (1937, c. 288, s. 2.)

Part 1. Old Age Assistance.

§ 108-17. Short title.—This title may be cited as the "Old Age Assistance Act." (1937, c. 288, s. 30.)

§ 108-18. Establishment of relief.—The care and relief of aged persons who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the state may equitably enjoy, and with due regard for other necessary objects of public expenditure, a state-wide system of old age relief is hereby established, to operate uniformly throughout the state and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the state, and each and every county thereof, and, whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of old age assistance, as defined and provided for in this article. (1937, c. 288, s. 3.)

§ 108-19. Definitions.—As used in this article, "state board" shall mean the state board of charities and public welfare, established by this chapter.

"The county board of welfare" shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modification as may be made by law.

"Applicant" shall mean any person who has applied for relief under this title.

"Recipient" shall mean any person who has received assistance under the provisions of this title.

"Assistance" as used under this title means the money payments to needy aged persons.

"Deputies" and "supervisors" shall mean such persons as may be designated and appointed by the state board to exercise its power and duty of supervision under this article.

"Social security board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law. (1937, c. 288, s. 4; 1939, c. 395, s. 1.)

§ 108-20. Acceptance of federal grants.—The provisions of the Federal Social Security Act, relating to grants in aid to the state for old age assistance and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 5.)

§ 108-21. Eligibility. — Assistance shall be granted under this article to any person who:

(a) Is sixty-five years of age and over;

(b) Is a citizen of the United States or has been residing in the United States for a period of ten years and has legally declared his intention to become a citizen;

(c) Has not sufficient income, or other resources, to provide a reasonable subsistence compatible with decency and health;

(d) Is not an inmate of any public institution at the time of receiving assistance. An inmate of such institution may, however, make application for such assistance, but the assistance, if allowed, shall not begin until after he ceases to be an inmate.

(e) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years prior to the filing of application for assistance pursuant to the provisions of this article.

(f) Has been a resident of this state for two out of the five years preceding his application and for one year immediately preceding the same: Provided, that this requirement shall not render ineligible any resident of the state who has resided therein five years during the nine years immediately preceding the application for old age assistance, and has resided therein continuously for one year immediately preceding the application. Residents of the state who have not resided in any one county for the one year period necessary to acquire a settlement therein shall, if otherwise eligible, receive assistance out of the state appropriation to the full amount of the benefits awarded. Eligibility of such persons upon application shall be determined as in other cases and reported to the state board of allotments and appeal.

Eligibility of applicants to receive benefits under this title, and the amount of assistance given, and such other conditions of award as it may be necessary to determine shall be determined in the manner hereinafter set out.

The amount of assistance which any person shall receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the state board; and shall be sufficient when added to all other income and support of recipients to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding thirty dollars ($30.00) per month or three hundred sixty dollars ($360.00) during one year; and of this not more than fifteen dollars ($15.00) per month nor more than one hundred eighty dollars ($180.00) in one year shall be paid out of state and county funds. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232.)

§ 108-22. State old age assistance fund. — A fund shall be created to be known as "The State Old Age Assistance Fund." This fund shall be created by appropriations made by the state from its ordinary revenues and such grants as may be made for old age assistance under the Federal Social Security Act. Said fund shall be used exclusively for the relief of aged persons coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the state for such purpose shall be supplemented by the amount provided under the Federal Social Security Act for old age assistance and such further amount as the state may appropriate for the administration of this article. From said fund there shall be paid as hereinafter provided three-fourths of the benefit payments to aged persons in accordance with the provisions hereof, and the other one-fourth of said payments shall, subject to the provisions of § 108-74, be provided by the several counties of the state as hereinafter required. The cost of administering the provisions of this title shall be, in part, paid from said fund in accordance with § 108-39. (1937, c. 288, s. 7.)

§ 108-23. State appropriation.—At its present session, and biennially thereafter, the general assembly shall appropriate out of its ordinary revenues, for the use of such fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the aged persons coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the state to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 8.)

§ 108-24. County fund.—Annually, at the time other taxes are levied in each of the several counties of the state, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the state and federal funds available for expenditure in said county for old age assistance. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 9.)

§ 108-25. Appropriations not to lapse.—No appropriation made for the purposes of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended

shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article. (1937, c. 288, s. 10.)

§ 108-26. Custody and receipt of funds.—The treasurer of the state of North Carolina is hereby made ex officio treasurer of the State Old Age Assistance Fund herein established, including therein such grants in aid for old age assistance as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the "State Old Age Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 11.)

§ 108-27. Department of charities and public welfare.—The powers and duties of the state board of charities and public welfare, established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of commissioner of welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the state board of charities and public welfare, through the commissioner of welfare as the executive head of the department, is hereby empowered to organize the department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 12.)

§ 108-28. Certain powers and duties of state board of charities and public welfare.—The state board shall:

(a) Supervise the administration of assistance to the needy aged under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(d) Co-operate with the federal government in matters of mutual concern pertaining to assistance to the needy aged, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(e) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish an annual report and such interim reports as may be necessary;

(g) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, non-residents or transients, and co-operate with other agencies of the state and federal governments in providing such assistance and services and in the study of the problems involved;

(h) The state board is hereby authorized and empowered to receive grants in aid from the federal government or any state or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the state treasurer and credited to the account of the North Carolina state board of charities and public welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 13; 1939, c. 395, s. 1.)

§ 108-29. Certain powers and duties of local boards—county welfare boards. — The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the state board, and in accordance with the rules and regulations prescribed by said state board.

The county boards of welfare shall:

(a) Report to the state board at such times and in such manner and form as the state board may from time to time direct;

(b) Submit to the state board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the state board. Make and report to the state board and to the county board of commissioners such investigation as may be required in order that said state board and boards of county commissioners may be fully informed as to the assistance required by aged persons coming within the eligibility provisions of this article, and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the state board under authority thereof. (1937, c. 288, s. 14.)

§ 108-30. Application for assistance; determination therein.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the state board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the state board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to appli-

cants for assistance under this article such aid and assistance in the preparation of applications as may be necessary. The application shall contain a statement of the amount of property, both real and personal, in which the applicant has an interest, and of all income which he may have at the time of filing the application, and shall contain such other information as may be required by the rules and regulations of the state board. One copy of the application shall be forwarded to the state board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the applicant, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the state board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed thirty dollars ($30.00) per month or three hundred sixty dollars ($360.00) in one year, and there shall not be paid thereupon out of state and county funds more than fifteen dollars ($15.00) per month or more than one hundred eighty dollars ($180.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application or granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the state board of allotments and appeal. The state board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of old age assistance and in accordance with the rules and regulations of the state board for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving old age assistance, directly or indirectly derived from the records, papers, files, or communications of the state board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 15; 1939, c. 395, s. 1; 1941, c. 232.)

§ 108-31. Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deems that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the state board of allotments and appeal. (1937, c. 288, s. 16.)

§ 108-32. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 17.)

§ 108-33. State board of allotments and appeal. — For the purpose of making allotment of state and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, there shall be created within the state board of charities and public welfare and as an agency of said board, subject to its supervision and control by rules and regulations adopted by it, a body to be known as "The State Board of Allotments and Appeal," consisting of three members as follows:

The chairman of the state board of charities and public welfare;

The commissioner of welfare;

The director of public assistance, established by this article; all of whom shall be ex officio members of the state board of allotments and appeal. The chairman of the state board of charities and public welfare shall be the chairman of the board of allotments and appeal.

If an application is not acted upon by the county welfare board within a reasonable time, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the board of allotments and appeal in the manner and form prescribed by the said board of allotments and appeal. The board of allotments and appeal shall, upon receipt of such an appeal, give the applicant or recipient, the board of county commissioners and the county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the board of allotments and appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare or the board of county commissioners, as in the judgment of the board of allotments and appeal may be just and proper.

Upon any appeal from the board of county commissioners or county board of welfare, it shall be the duty of such board to forward to the board of allotments and appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon

the application and the action of the board of commissioners or county board of welfare, and such papers and documents or other matter as may be required under the rules of the state board of allotments and appeal, or under its order in the particular matter.

When the state board of allotments and appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and county board of welfare. The decision of the state board of allotments and appeal shall be final.

The state board of allotments and appeal may also, on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare, and may consider any application upon which a decision has not been made within thirty days. The state board of allotments and appeal may make such additional investigation as it may deem necessary in all cases, and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the state board of allotments and appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state board of allotments and appeal. All decisions of the state board of allotments and appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and county board of welfare.

The state board may authorize hearings of appeals in any county by other representatives selected by said board, subject to final determination by the state board of allotments and appeal. (1937, c. 288, s. 18; 1939, c. 395, s. 1.)

§ 108-34. Periodic reconsideration and changes in amount of assistance. — All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the state board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning old age assistance and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient, and a copy of such notice shall be sent to the state board and board of county commissioners. Such action on the part of the county board shall be subject to review by the state board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the state board of allotments and appeal as in cases of original awards. (1937, c. 288, s. 19.)

§ 108-35. Removal to another county. — Any recipient who moves to another county in this state shall be entitled to receive assistance in the county to which he has moved, and the board of county commissioners of the county from which he has moved shall transfer all necessary records relating to the recipient to the county board of commissioners of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, not in excess of amount paid before removal, and thereafter assistance shall be paid by the county to which such recipient has moved.

In the event that a resident of this state has not lived in any county of the state for the twelve months period necessary to acquire a settlement therein, nevertheless, if otherwise eligible, such resident shall be allowed assistance upon application to the board of welfare of the county in which he has been domiciled, in the same manner as assistance is allowed to persons in the county who have acquired a settlement therein; but such allowance of assistance shall be paid entirely out of the State Old Age Assistance Fund, without participation of the county therein; and in allocating funds to the county for the purpose of disbursement to recipients under this article, the state board of allotments and appeal is authorized and empowered to reserve out of such allocations and to transmit to the counties concerned a sufficient amount of the state fund to provide for disbursement to such residents who have not acquired settlement in any county. (1937, c. 288, s. 20.)

§ 108-36. Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning aged persons in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the state board of allotments and appeal may require. Such reports shall be made on forms furnished by the state board, or in compliance with the rules and regulations of said state board. A copy thereof shall be immediately forwarded to the state board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purposes of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, annually, on or before the first day of May, make a report to the state board of allotments and appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the board of allotments and appeal may require. (1937, c. 288, s. 21.)

§ 108-37. Allocation of funds.—As soon as may

be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the state board of allotments and appeal shall proceed to ascertain and determine the amount of state and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The board shall, at the same time, determine the amount to be raised in each of the respective counties by taxation to supplement the state and federal funds allotted to such county. The allotment of state and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the board of allotments and appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the board of allotments and appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for both payments of grants to recipients and for administrative purposes. (1937, c. 288, s. 22; 1939, c. 395, s. 1.)

§ 108-38. Administration expenses.—The state board of allotments and appeal shall annually allocate to the several counties of the state, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of this article by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, one-half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for the purpose of carrying out the provisions of this article. The other half of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county superintendent of welfare and the state board of charities and public welfare. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232.)

§ 108-39. Transfer of state and federal funds to the counties.—The state old age assistance fund shall be drawn out on the warrant of the state auditor, issued upon order of the state board, evidenced by the signature of the commissioner of welfare. Quarterly, and oftener, if in the sound judgment of the state board it may be necessary, the state board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds, for a reasonable period. Before transferring said funds the state board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of state funds to be so transferred. The state board of allotments and appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county old age assistance fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the state board may require such additional protection to such funds as they may deem proper.

When in the judgment of the state board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the state board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the state board may demand and require that the funds raised by taxation in any county be transmitted to the treasurer of the state, subject to disbursement under such rules and regulations as the state board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the state treasurer for

disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 24.)

§ 108-40. Accounts and reports from county officers. — The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board and its authorized auditors, supervisors and deputies. (1937, c. 288, s. 25.)

§ 108-41. Further powers and duties of state board.—The state board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 26.)

§ 108-42. Fraudulent acts made misdemeanor.—Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled; and whoever aids or abets in buying or in any way disposing of the property, either real or personal, of a recipient of assistance with the intent to defeat the purposes of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 27.)

§ 108-43. Limitations of article. — All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 28.)

Part 2. Aid to Dependent Children.

§ 108-44. Short title.—This title may be cited as the "Aid to Dependent Children Act." (1937, c. 288, s. 60.)

§ 108-45. Establishment of relief. — The care and relief of dependent children who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of state concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the state may equitably enjoy, and with due regard for other necessary objects of public expenditure, a statewide system of aid to dependent children is hereby established, to operate uniformly throughout the state and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the state, and each and every county thereof, and whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of aid to dependent children as defined and provided for in this article. (1937, c. 288, s. 31.)

§ 108-46. Definitions.—As used in this article, "state board" shall mean the state board of charities and public welfare, established by this chapter.

"The county board of welfare" shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modifications as may be made by law.

"Applicant" shall mean any person who has applied for relief for dependent children under this title.

"Recipient" shall mean any person who has received assistance for dependent children under the provisions of this title.

"Assistance" as used under this title means the money payments for aid to dependent children.

"Social security board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law. (1937, c. 288, s. 32; 1939, c. 395, s. 1.)

§ 108-47. Acceptance of federal grants.—The provisions of the Federal Social Security Act, relating to grants in aid to the state for aid to dependent children, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 33.)

§ 108-48. Amount of relief. — The maximum amount to be allowed per month under this article shall not exceed eighteen dollars ($18.00) for one child and twelve dollars ($12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixy-five dollars ($65.00), except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars ($65.00) per month would be insufficient to secure the purpose above set forth. (1937, c. 288, s. 34.)

§ 108-49. Dependent children defined. — The term "dependent child" as used in this article shall mean a child under sixteen years of age, or under eighteen years of age if regularly attending school, who is living with his or her father, mother, grand-

father, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home; who has resided in the state of North Carolina for one year immediately preceding the application for aid; or who was born within the state within one year immediately preceding the application if the mother has resided in the state for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support: Provided, that in all cases of desertion every effort shall be made in compliance with the provisions of §§ 14-322—14-335 inclusive, to apprehend the parent and charge him with the support of the said child, but this provision shall in no wise affect the eligibility of a dependent child, or children, for aid to dependent children, or the right of the county board of welfare to make awards therefor. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232.)

§ 108-50. Eligibility.—To be eligible to receive aid for a dependent child or children as hereinbefore defined in § 108-49, the said father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, adoptive father, adoptive mother, grandfather-in-law, great-grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in whose own home the said dependent child resides shall maintain a safe and proper home for himself, or themselves, and said dependent child or children. (1937, c. 288, s. 36; 1941, c. 232.)

§ 108-51. State aid to dependent children fund.—A fund shall be created to be known as "The State Aid to Dependent Children Fund." This fund shall be created by appropriations made by the state from its ordinary revenues and such grants as may be made for aid to dependent children under the Federal Social Security Act. Said fund shall be used exclusively for the relief of dependent children coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the state for such purpose shall be supplemented by the amount provided under the Federal Social Security Act for aid to dependent children and such further amount as the state may appropriate for the administration of this article. From said fund there shall be paid as hereinafter provided three-fourths of the benefit payments to dependent children in accordance with the provisions hereof, the other one-fourth of said payments shall, subject to the provisions of § 108-74, be provided by the several counties of the state as hereinafter required. The cost of administering the provisions of this title shall be, in part, paid from said funds in accordance with § 108-68.

In the event that the Federal Social Security Act is amended by providing for a larger percentage of contributions to said fund, the provisions herein made shall be construed to accept such additional grants, and the amounts to be provided for aid to dependent children by state and counties shall be adjusted proportionately. (1937, c. 288, s. 37; 1941, c. 232.)

§ 108-52. State appropriation.—At its present session, and biennially thereafter, the general assembly shall appropriate out of its ordinary revenues, for the use of such fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the dependent children coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the state to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 38.)

§ 108-53. County fund.—Annually, at the time other taxes are levied in each of the several counties of the state, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the state and federal funds available for expenditure in said county for aid to dependent children. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 39.)

§ 108-54. Appropriations not to lapse.—No appropriation made for the purpose of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article. (1937, c. 288, s. 40.)

§ 108-55. Custody and receipt of funds.—The treasurer of the state of North Carolina is hereby made ex officio treasurer of the state aid to dependent children fund herein established, including therein such grants in aid to dependent children as may be received from the federal government for administration and distribution in this state; and the said treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The treasurer shall keep the funds in a separate account, to be known as the state aid to dependent children fund, and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other state funds. The said fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 41.)

§ 108-56. General powers and duties of department of charities and public welfare.—The powers and duties of the state board of charities and public welfare established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of commissioner of welfare established thereunder, are not hereby

abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the state board of charities and public welfare, through the commissioner of welfare as the executive head of the department, is hereby empowered to organize the department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 42.)

§ 108-57. Certain powers and duties of state board of charities and public welfare.—The state board shall:

(a) Supervise the administration of assistance to dependent children under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the state board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(d) Co-operate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(e) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish an annual report and such interim reports as may be necessary.

(g) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, non-residents or transients, and co-operate with other agencies of the state and federal governments in providing such assistance and services and in the study of the problems involved.

(h) The North Carolina state board of charities and public welfare is hereby authorized and empowered to receive grants in aid from the federal government or any state or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the state treasurer and credited to the account of the North Carolina state board of charities and public welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 43; 1939, c. 395, s. 1.)

§ 108-58. Certain powers and duties of local boards—county welfare boards. — The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the state board, and in accordance with the rules and regulations prescribed by said state board.

County boards of welfare shall:

(a) Report to the state board at such times and in such manner and form as the state board may from time to time direct;

(b) Submit to the state board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the state board. Make and report to the state board and to the county board of commissioners such investigation as may be required in order that the said state board and boards of county commissioners may be fully informed as to the assistance required by dependent children coming within the eligibility provisions of this article; and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the state board under authority thereof. (1937, c. 288, s. 44.)

§ 108-59. Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the state board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the state board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of the applications as may be necessary. One copy of the application shall be forwarded to the state board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the children for whom application is made, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the state board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation, and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars ($18.00) for one child and twelve dollars ($12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total

amount shall not exceed sixty-five dollars ($65.00) except in extraordinary circumstances in which it appears to the satisfaction of the state board that a total of sixty-five dollars ($65.00) per month would be insufficient to secure the purposes above set forth. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the state board of allotments and appeal.

The state board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of aid to dependent children and in accordance with the rules and regulations of the state board for any person or persons to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving aid to dependent children, directly or indirectly derived from the records, papers, files, or communications of the state board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 45; 1939, c. 395, s. 1; 1941, c. 232.)

§ 108-60. Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deem that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the state board of allotments and appeal. (1937, c. 288, s. 46.)

§ 108-61. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 47.)

§ 108-62. State board of allotments and appeal.—For the purpose of making allotment of state and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, the state board of allotments and appeal, created under § 108-33 shall as an agency of the state board have complete and final jurisdiction. If an application is not acted upon by the county welfare board within thirty days or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the board of allotments and appeal in the manner and form prescribed by the said board of allotments and appeal. The board of allotments and appeal shall, upon receipt of such an appeal, give the applicant or recipient and the board of county commissioners and county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the board of allotments and appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare and the board of county commissioners, as in the judgment of the board of allotments and appeal may be just and proper.

Upon any appeal from the board of county commissioners, it shall be the duty of such board to forward to the state board of allotments and appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners, and such papers and documents or other matter as may be required under the rules of the board of allotments and appeal, or under its order in the particular matter.

When the state board of allotments and appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and the county board of welfare. The decision of the state board of allotments and appeal shall be final.

The state board of allotments and appeal may also on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare and may consider any application upon which a decision has not been made within thirty days. The state board of allotments and appeal may make such additional investigation as it may deem necessary in all cases and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the state board of allotments and appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the board of allotments and appeal. All decisions of the state board of allotments and appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and the county board of welfare.

The state board may authorize hearings of appeals in any county by other representatives selected by said boards, subject to final determination by the state board of allotments and appeal. (1937, c. 288, s. 48.)

§ 108-63. Periodic reconsideration and changes in amount of assistance. — All assistance grants

made under this article shall be reconsidered as frequently as may be required by the rules of the state board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning aid to dependent children and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient and a copy of such notice shall be sent to the state board and board of county commissioners. Such action on the part of the county board shall be subject to review by the state board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the state board of allotments and appeal as in cases of original awards. (1937, c. 288, s. 49.)

§ 108-64. Removal to another county.—Any resident who moves to another county and continues to have such dependent children in custody in this state shall be entitled to receive assistance in the county to which he has moved, and the board of county commissioners of the county from which he has moved shall transfer all necessary records relating to the recipient to the county board of commissioners of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved.

In the event that the applicant and the dependent children are residents of this state and have not lived in any county of the state for the twelve months' period necessary to acquire a settlement therein, nevertheless, if otherwise eligible, such residents shall be allowed assistance upon application to the board of welfare of the county in which he has been domiciled, in the same manner as assistance is allowed to persons in the county who have acquired a settlement therein; but such allowance of assistance shall be paid entirely out of the state aid to dependent children fund, without participation of the county therein; and in allocating funds to the county for the purpose of disbursement to recipients under this article, the state board of allotments and appeal is authorized and empowered to reserve out of such allocations and to transmit to the counties concerned a sufficient amount of the state fund to provide for disbursement to such residents who have not acquired settlement in any county. (1937, c. 288, s. 50.)

§ 108-65. Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning dependent children in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the state board of allotments and appeal may require. Such reports shall be made on forms furnished by the state board or in compliance with the rules and regulations of said state board. A copy thereof shall be immediately forwarded to the state board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purpose of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, on or before the first day of April, make a report to the state board of allotments and appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the board of allotments and appeal may require. (1937, c. 288, s. 51.)

§ 108-66. Allocation of funds.—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the state board of allotments and appeal shall proceed to ascertain and determine the amount of state and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The board shall, at the same time, determine the amounts to be raised in each of the respective counties by taxation to supplement the state and federal funds allotted to such county. The allotment of state and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the board of allotments and appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the board of allotments and appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chair-

man of the welfare board, for both payments of grants to recipients and for administrative purposes. (1937, c. 288, s. 52; 1939, c. 395, s. 1; 1941, c. 232.)

§ 108-67. Administration expenses.—The state board of allotments and appeal shall annually allocate to the several counties of the state, in accordance with the total amount of benefit payments to be paid in each county for aid to dependent children therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of this article by the several counties, shall be determined by the state board of allotments and appeal upon budgets submitted to said board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, one-half of such costs shall be allocated and paid to the respective counties by the state board of allotments and appeal from the appropriation made by the state for the purpose of carrying out the provisions of this article. The other half of said county administrative expenses shall be paid by the respective counties. The state board of allotments and appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice, it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payments of such part of such county's administrative expenses. (1937, c. 288, s. 53; 1941, c. 232.)

§ 108-68. Transfer of state and federal funds to the counties. — The aid to dependent children fund shall be drawn out on the warrant of the state auditor, issued upon order of the state board, evidenced by the signature of the commissioner of welfare. Quarterly, and oftener, if in the sound judgment of the state board it may be necessary, the state board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds for a reasonable period. Before transferring said funds the state board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of state funds to be so transferred. The state board of allotments and appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-third of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county aid to dependent children fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the state board may require such additional protection to such funds as they may deem proper.

When in the judgment of the state board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the state board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the state board may demand and require that the funds raised by taxation in any county be transmitted to the treasurer of the state, subject to disbursement under such rules and regulations as the state board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the state treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 54.)

§ 108-69. Accounts and reports from county officers. — The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the state board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the state board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the state board and its authorized auditors, supervisors, and deputies. (1937, c. 288, s. 55.)

§ 108-70. Further powers and duties of state board.—The state board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 56.)

§ 108-71. Fraudulent acts made misdemeanor. —Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain by means of wilfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s 57.)

§ 108-72. Limitations of article. — All assistance granted under this article shall be deemed to

be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 58.)

§ 108-73. Equalizing fund.—The state board of allotments and appeal is authorized and directed to set apart and reserve out of the appropriation authorized to be made by the state under § 108-23, relating to old age assistance, and under § 108-52, relating to aid to dependent children, such an amount of said funds appropriated by the state to the respective funds as shall be found by the state board of allotments and appeal to be necessary for the purpose of equalizing the burden of taxation in the several counties of the state, and the benefits received by the recipients of awards under this article, and such amount shall be expended and disbursed solely for the use and benefit of needy aged persons and dependent children coming within the eligibility provisions of this article. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the state board of allotments and appeal, producing, as far as practicable, a just and fair distribution thereof: Provided, however, that no county shall be entitled to share in such equalizing fund unless the rate of tax necessary to be levied in such county for the purposes of this article is in excess of ten cents on the one hundred dollar valuation of taxable property therein: Provided further, the state board of allotments and appeal shall not allot to any county from such equalizing fund more than three-fourths of the cost to such county in excess of the amount produced in such county by a levy and collection of a tax rate of ten cents on the one hundred dollar valuation of taxable property therein.

After determining the amount to be allotted to any county from such equalizing fund, the state board of allotments and appeal shall determine the amount to be raised in such county by taxation to supplement the state and federal funds allotted to said county as in this article otherwise provided, and it shall be mandatory upon the boards of county commissioners in the several counties to annually levy taxes in accordance therewith. (1937, c. 288, s. 62.)

General Provisions.

§ 108-74. Organization; appointment of agencies; employment.—The state board shall have opportunity to set up such organization as may in its judgment be deemed proper to secure the economic and efficient administration of this article, not inconsistent with other provisions hereof. It may delegate such powers as may be lawfully delegated to such persons and agencies as will expedite the prompt execution of the duties of the board in ministerial matters; may appoint auditors, accountants, supervisors, and deputies, and other agents to aid it in its supervisory powers and to secure the proper care of the funds and administration of the law; and may employ clerical and other assistance. Except as herein otherwise provided, the salaries and compensation paid to the personnel shall be fixed by the budget commission, and the number of salaried persons and employees shall be subject to the approval of the budget commission. The organization shall likewise be such as to meet the approval of the Federal Social Security Authority in charge of the old age assistance.

The board is further authorized to pay ordinary expenses incident to administration, and to fix and pay per diem compensation to members of boards to whom new duties have been given and of whom additional service is required under this article. Such compensation shall be subject to the approval of the director of the budget. (1937, c. 288, s. 63.)

§ 108-75. County funds; how provided.—Wherever in this article provisions are made requiring the several counties to annually levy or annually levy and collect taxes to provide for such amounts as such counties are required to pay for old age assistance, or for aid to dependent children, or for the cost of administration, such provisions shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1937, c. 288, s. 63½.)

§ 108-76. Termination of federal aid.—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become or be in force unless and until the governor of the state of North Carolina has issued a proclamation, duly attested by the secretary of state of the state of North Carolina, to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the state funds on hand shall be converted into the general fund of the state for such use as may be authorized by the director of the budget, and the county funds accumulated by the provisions of this article in the respective counties of the state shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 288, s. 63½-A.)

Art. 4. Home Boarding Fund.

§ 108-77. State boarding home fund created.—The general assembly of North Carolina shall make appropriations to the state board of charities and public welfare for the purpose of providing aid for needy and dependent children and paying their necessary subsistence in boarding homes. The state board of charities and public welfare, from said appropriations, shall maintain a fund to be known and designated as the state boarding home fund, from which said fund there shall be paid, in accordance with the rules and regulations adopted by the state board of charities and public welfare, the amount necessary to provide homes for the needy and dependent children coming within the eligibility provisions of this article. (1937, c. 135, s. 1.)

§ 108-78. No benefits to children otherwise provided for.—No needy or dependent child shall be eligible for the benefits provided in this article if such child is eligible for benefits provided by

Part 2 of Article 3 entitled "Aid to Dependent Children." (1937, c. 135, s. 2.)

§ 108-79. Administration of fund by state board of charities and public welfare.—From the fund so provided, the state board of charities and public welfare may provide for payment of the necessary costs of keeping needy and dependent children in suitable boarding homes, including the children committed to the state board of charities and public welfare under the provisions of § 110-29, provided such children so committed to such state board of charities and public welfare are ineligible for assistance under the "Aid to Dependent Children Act" hereinbefore referred to. Said fund shall be expended under the rules and regulations adopted by the state board of charities and public welfare. (1937, c. 135, s. 3.)

Art. 5. Regulation of Organizations and Individuals Soliciting Public Alms.

§ 108-80. Regulation of organizations, institutions, etc., soliciting public aid for charitable purposes.—All organizations, institutions or associations formed outside the state of North Carolina for charitable purposes, who through agents or representatives or by mail publicly solicit and receive public donations or sell memberships in this state, and all individuals, firms, or organizations selling merchandise, periodicals, books for advertising space of any kind, upon the representation or under the pretense that the whole or any part of the profit derived from the sale or barter of such merchandise, periodicals, books or advertising space, shall be used for charitable purposes, shall be required to file with the state board of charities and public welfare a statement setting forth the name and location of such organization, institution or association, the purposes for which said organization, institution or association exists, the names of its principal officers and soliciting agents, the purposes for which the money solicited is to be expended and the terms under which solicitors are employed. In the case of the selling of merchandise, periodicals, books for advertising space of any kind for charitable purposes, such statement shall set forth the full name of the individual, firm or organization conducting the same, the location at which the sale is to be conducted, the names of all organizations, institutions or associations for whose benefit the sale is conducted, the purposes for which the proceeds thereof are to be expended and the terms, including salaries and commissions, under which all employees are employed. (1939, c. 144, s. 1.)

§ 108-81. License required for soliciting alms, etc.—It shall be unlawful for an individual to engage in the business of soliciting alms or begging charity for his or her own livelihood upon the streets or highways of this state or through door to door solicitation without first securing a license from the proper licensing agency hereinafter provided for. Any person desiring to engage in the business of begging or soliciting alms shall file with the proper licensing agency hereinafter provided for a written application for a license, stating in the application the name of the person desiring the license, his or her address for the past five years, the purpose for which he or she desires to solicit alms, the manner in which said funds shall be disbursed, and any other reasonable information which may be requested on the license form. The carrying of merchandise by the individual soliciting alms or begging charity shall not exempt the individual so begging from the provisions of this article. (1939, c. 144, s. 1.)

§ 108-82. Issuance of license for blind persons by state commission for blind.—If the individual soliciting alms is blind or visually handicapped, or if the organization, institution or association is soliciting public aid in behalf of the blind or visually handicapped, the application for license shall be referred to the North Carolina state commission for the blind, which application shall be approved or disapproved, giving reasons therefor. If the said application is approved, the license shall be issued by the North Carolina state commission for the blind to said individual, organization, institution or association, its agents and representatives, without expense, authorizing said individual, organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations or sell memberships in any county, city or township in the state. (1939, c. 144, s. 1.)

§ 108-83. Issuance by state department of vocational rehabilitation for crippled, etc., persons.—If the individual soliciting alms is handicapped, or if the organization, institution or association is soliciting public aid in behalf of the crippled, the application for license shall be referred to the North Carolina state department of vocational rehabilitation, which application shall be approved or disapproved, giving reasons therefor. If the said application is approved, the North Carolina state department of vocational rehabilitation shall issue to said individual, organization, institution or association, its agents and representatives, a license, without expense, authorizing said individual, organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations or sell memberships in any county, city or township in the state. (1939, c. 144, s. 1.)

§ 108-84. License for deaf persons issued by bureau of labor for the deaf.—If the individual publicly soliciting alms has impaired hearing, or if the organization, institution or association is soliciting public aid in behalf of the deaf or hard of hearing, the application for license shall be referred to the bureau of labor for the deaf, which application shall be approved or disapproved, giving reasons therefor. If the said application is approved, the bureau of labor for the deaf shall issue to said individual or to said organization, institution or association, its agents and representatives, a license, without expense, authorizing said individual or said organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations or sell memberships in any county, city, or township in the state. (1939, c. 144, s. 1.)

§ 108-85. Other licenses issued by state board of charities and public welfare.—All other applicants desiring to solicit alms publicly, and all other organizations, institutions or associations desiring to solicit public aid for charitable purposes shall make application to the state board

of charities and public welfare, and the application for license shall be approved or disapproved, with the reasons therefor. If said application is approved, the state board of charities and public welfare shall issue to the said individual or to the said organization, institution or association, its agents and representatives, a license, without expense, authorizing said individual or said organization, institution or association to publicly solicit alms or to publicly solicit and receive public donations, or sell memberships in any county, city or township in the state. Such license shall be valid for one year from and after the date of its issuance, and may be renewed from time to time in the same manner as is herein provided for the original granting thereof. Any license issued to an individual or to an organization, institution or association, under the provisions of this article, may be revoked by the issuing agency for cause shown, and after reasonable notice to said individual or to said organization, institution or association and after due opportunity to be heard. Nothing in this article, however, shall be construed to prohibit any local organization, institution or association from publicly soliciting funds or donations within the county in which such organization, institution or association is located. (1939, c. 144, s. 1.)

§ 108-86. Solicitors required to have on person, copy of license with photograph attached.—It shall be unlawful for any agent or representative of any organization, institution or association formed for charitable purposes, which is licensed under the provisions of this article, to publicly solicit and receive donations in this state, unless such agent or representative is provided with a copy of the license of the organization, institution or association which he represents, or by whom he is employed. Attached to such copy of said license, there shall be a photograph of the individual soliciting made within the past twelve months, which photograph must be attested and countersigned by the president, secretary or treasurer of said organization, institution or association by which such agent or representative is employed, or which he represents, certifying that such agent or representative is authorized by such organization, institution or association, to publicly solicit and receive donations for the same. (1939, c. 144, s. 2.)

§ 108-87. Exemptions.—The provisions of this article shall not apply to any appeal or solicitation made in a public religious or charitable or educational service or in a meeting of any lodge or church or Sunday school or charitable organization, or through the public press, American Legion and other patriotic organizations. (1939, c. 144, s. 2a.)

§ 108-88. Violations made misdemeanor.—Any person who shall violate any provisions of this article or who shall solicit alms without first applying for and obtaining a license as herein provided, or who shall solicit funds under any such license and thereafter divert the same to purposes other than that for which they were contributed, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars, or imprisonment not to exceed six months. (1939, c. 144, s. 3.)

§ 108-89. Repeal of laws.—Sections 14-336, 14-337 and 14-338 are hereby repealed only in so far as they are in direct conflict with the provisions of this article. (1939, c. 144, s. 5.)

§ 108-90. Application of article.—Nothing in this article shall apply to any church, religious denomination, civic club, or lodge, which is either located in, resident in, or has communicants or members resident in this state, or their officers, employees or representatives, or to institutions or agencies fostered or promoted by the same. (1939, c. 144, s. 5a.)

Chapter 109. Bonds.

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Art. 1. Official Bonds.

§ 109-1. Irregularities not to invalidate.—When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the state for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the state for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (Rev., s. 279; Code, s. 1891; R. C., c. 78, s. 9; 1842, c. 61; 1869-70, c. 169, s. 16; C. S. 324.)

§ 109-2. Penalty for officer acting without bond.—Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the state for each attempt so to exercise his office. (Rev., s. 278; Code, s. 1882; R. C., c. 78, s. 8; C. S. 325.)

§ 109-3. Condition and terms of official bonds.—Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (Rev., s. 308; Code, s. 1874; 1869-70, c. 169; 1876-7, c. 275, s. 5; 1895, c. 207, s. 4; 1899, c. 54, s. 54; C. S. 326.)

§ 109-4. When county may pay premiums on bonds.—In all cases where the officers or any of them named in § 109-3 are required to give a bond, and the said officer or officers are paid by a set or fixed salary, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. (1937, c. 440.)

§ 109-5. Annual examination of bonds; security strengthened.—The bonds of the officers named in § 109-3 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (Rev., s. 308; Code, s. 1874; 1869-70, c. 169; 1876-7, c. 275, s. 5; 1895, c. 207, s. 4; 1899, c. 54, s. 54; C. S. 327.)

§ 109-6. Effect of failure to renew bond.—Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (Rev., s. 309; Code, s. 1875; 1869-70, c. 169, s. 2; C. S. 328.)

§ 109-7. Justification of sureties.—Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (Rev., s. 310; Code, s. 1876; 1869-70, c. 169, s. 3; 1879, c. 207; 1889, c. 7; 1891, c. 385; 1901, c. 32; C. S. 329.)

§ 109-8. Compelling justification before judge; effect of failure.—When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer, not exceeding twenty days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the twenty days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (Rev., s. 316; Code, s. 1885; 1874-5, c. 120; C. S. 330.)

§ 109-9. Successor bonded; official bonds considered liabilities.—The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of § 109-7. (Rev., s. 317; Code, s. 1886; 1874-5, c. 120, s. 2; C. S. 331.)

§ 109-10. Judge to file statement of proceedings with commissioners.—When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him. (Rev., s. 318; Code, s. 1887; 1874-5, c. 120, s. 3; C. S. 332.)

§ 109-11. Approval, acknowledgment and custody of bonds.—The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safe keeping. (Rev., s. 311; Code, s. 1877; 1869-70, c. 169, s. 4; 1879, c. 207, s. 2; C. S. 333.)

§ 109-12. Clerk records vote approving bond; penalty for neglect.—It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (Rev., s. 312; Code, ss. 1878, 1881; 1869-70, c. 169, ss. 5, 8; R. C., c. 78, s. 7; 1790, c. 327; 1809, c. 777; C. S. 334.)

§ 109-13. When commissioner liable as surety.—Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (Rev., s. 313; Code, s. 1879; 1869-70, c. 169, s. 6; C. S. 335.)

§ 109-14. Record of board conclusive as to facts stated.—In all actions under § 109-13 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (Rev., s. 314; Code, s. 1881; 1869-70, c. 169, s. 8; C. S. 336.)

§ 109-15. Person required to approve bond not to be surety.—No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (Rev., s. 315; Code, s. 1887; 1874-5, c. 120, s. 3; C. S. 337.)

Art. 2. Bonds in Surety Company.

§ 109-16. State officers may be bonded in surety company.—All persons who are required to give bond to the state of North Carolina to be received by the governor or by any department of the state government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the state of North Carolina, subject to such regulations as the governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the insurance commissioner as to the condition of such company as required by law. (Rev., s. 272; 1901, c. 754; C. S. 338.)

§ 109-17. When surety company sufficient surety on bonds and undertakings.—A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein, shall be sufficient when it is executed or guaranteed by a corporation authorized in this state to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it i

given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings. (Rev., s. 273; 1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706; C. S. 339.)

§ 109-18. Clerk to notify county commissioners of condition of company. — Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this state, and of each surety company whose license has been revoked, in which any officer of the county has been bonded. (Rev., ss. 295, 4803; C. S. 340.)

§ 109-19. Release of company from liability.—A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings. (Rev., s. 274; 1899, c. 54, s. 48; C. S. 341.)

§ 109-20. Company not to plead ultra vires.—Any company which executes any bond, obligation or undertaking under the provisions of this article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability. (Rev., s. 275; 1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5; C. S. 342.)

§ 109-21. Failure to pay judgment is forfeiture.—If a surety company against which a judgment is recovered fails to discharge the same within sixty days from the time such final judgment is rendered, it shall forfeit its right to do business in this state, and the insurance commissioner shall cancel its license. (Rev., s. 275; 1901, c. 706, s. 1, subsec. 5; C. S. 343.)

§ 109-22. On presentation of proper bond officer to be inducted.—Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the state of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office. (Rev., s. 276; 1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5; C. S. 344.)

§ 109-23. Expense of fiduciary bond charged to fund.—A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship to the extent of bond premiums actually paid per annum on the account of such bonds as the clerk, judge or court may allow. (Rev., s. 277; 1901, c. 706, s. 1, subsec. 5; 1939, c. 382; C. S. 345.)

Art. 3. Mortgage in Lieu of Bond.

§ 109-24. Mortgage in lieu of bond required to be given. — An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the state of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for thirty days. (Rev., s. 265; Code, s. 118; 1874-5, c. 103, s. 2; C. S. 346.)

§ 109-25. Mortgage in lieu of security for appearance, costs, or fine.—Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the state of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk or justice of the peace in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

Where such mortgage upon real property is executed before a justice of the peace the power of sale shall be enforced by the clerk of the court of the county in which the criminal proceeding is had.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale of the mortgaged property, as shall also the following fees, to wit: For each sale of real property mortgaged under this section the clerk shall receive two dollars, and for each sale of personal property mortgaged under this section the clerk or justice of the peace who enforces the power of sale shall receive one dollar. (Rev., s. 266; Code, s. 120; 1874-5, c. 103, s. 3; 1891, c. 425, ss. 1, 2, 3; C. S. 347.)

§ 109-26. Cancellation of mortgage in such proceedings.—Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administra-

tor, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the Superior Court of the county where such action was pending or where the mortgage in lieu of bond is recorded by entry of 'satisfaction' upon the margin of the record where such mortgage is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name as a witness thereto, and such cancellation shall have the effect to discharge and release all the right, title and interest of the State of North Carolina in and to the property described in such mortgage. (Rev., s. 267; 1905, c. 106; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1; C. S. 348.)

§ 109-27. Validating statute.—All acts heretofore done by the several Superior Court clerks, canceling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

§ 109-28. Clerk of court may give surety by mortgage deposited with register.—In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the state, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (Rev., s. 268; Code, s. 122; 1874-5, c. 103, s. 6; C. S. 349.)

§ 109-29. Mortgage in lieu of bond to prosecute or defend in civil case.—It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for thirty days. (Rev., s. 269; Code, s. 117; 1874-5, c. 103, s. 1; C. S. 350.)

§ 109-30. Affidavit of value of property required.—In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed, or of the justice, to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (Rev., s. 270; Code, s. 121; 1874-5, c. 103, s. 4; C. S. 351.)

§ 109-31. When additional security required.—If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (Rev., s. 271; Code, s. 119; 1874-5, c. 103, s. 5; C. S. 352.)

Art. 4. Cash Deposit in Lieu of Bond.

§ 109-32. Cash deposit in lieu of bond; conditions and requirements.—In lieu of any written undertaking or bond required by law in any action pending in any court of the state, the party required to make such undertaking or bond may make a cash deposit of the amount required by law in lieu of the said undertaking or bond, and such cash deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; C. S. 352(a).)

Art. 5. Actions on Bonds.

§ 109-33. Bonds in actions payable to court officer may be sued on in name of state.—Bonds and other obligations taken in the course of any proceeding at law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the state. (Rev., s. 280; Code, s. 51; R. C., c. 13, s. 11; C. S. 353.)

§ 109-34. Liability and right of action on official bonds.—Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry-taker, surveyor, sheriff, coroner, constable, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the state, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (Rev., s. 281; Code, s. 1883; R. C., c. 78, s. 1; 1793, c. 384, s. 1; 1833, c. 17; 1825, c. 9; 1869-70, c. 169, s. 10; C. S. 354.)

§ 109-35. Complaint must show party in interest; election to sue officer individually.—Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury. (Rev., s. 282; Code, s. 1884; R. C., c.

78, s. 2; 1793, c. 384, ss. 2, 3; 1869-70, c. 169, s. 11; C. S. 355.)

§ 109-36. Summary remedy on official bond. — When a sheriff, coroner, constable, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days notice in writing of the motion must have been previously given. (Rev., s. 283; Code, s. 1889; R. C., c. 78, s. 5; 1819, c. 1002; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2; C. S. 356.)

§ 109-37. Officer unlawfully detaining money liable for damages.—When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum per annum from the time of detention until payment. (Rev., s. 284; Code, s. 1890; R. C., c. 78, s. 9; 1819, c. 1002, s. 2; 1868-9, c. 169; C. S. 357.)

§ 109-38. Evidence against principal admissible against sureties.—In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions. (Rev., s. 285; Code, s. 1345; R. C., c. 44, s. 10; 1844, c. 38; 1881, c. 8; C. S. 358.)

§ 109-39. Officer liable for negligence in collecting debt.—When a claim is placed in the hands of any sheriff, coroner or constable for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof. (Rev., s. 286; Code, s. 1888; R. C., c. 78, s. 3; 1844, c. 64; 1869-70, c. 169, s. 12; C. S. 359.)

Chapter 110. Child Welfare.

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Art. 1. Child Labor Regulations.

§ 110-1. Minimum age.—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between fourteen and sixteen years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law; and Provided, that boys twelve years of age and over securing a certificate from the department of labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of § 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under § 95-11. Nothing in this article shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1.)

§ 110-2. Hours of labor. — No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day; and Provided further, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the state commissioner of labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2.)

§ 110-3. Lunch period.—No minor under sixteen years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ 110-4. Posting of hours. — Every employer shall post and keep conspicuously posted in the establishment wherein any minor under eighteen is employed, permitted, or allowed to work, a printed abstract of this article and a list of the occupations prohibited to such minors, to be furnished by the state department of labor. (1937, c. 317, s. 4.)

§ 110-5. Time records.—Every employer shall keep a time-book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the state department of labor. (1937, c. 317, s. 5.)

§ 110-6. Hazardous occupations prohibited for minors under sixteen.—No minor under sixteen years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under sixteen years of age shall be employed, permitted or allowed to work in or about or in connection with: Construction work of any kind, ship building, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth

inch; power-driven wood-working machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat grinding machines, dough brakes or mixing machines in bakeries or cracker making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

§ 110-7. Hazardous occupations prohibited for minors under eighteen.—No minor under the age of eighteen years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under eighteen be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room. Nor shall any girl under the age of eighteen years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages.

Nor shall any minor under eighteen years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the state department of labor and the said state department of labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. (1937, c. 317, s. 7.)

§ 110-8. Employment of minors in street trades; sale or distribution of newspapers, etc. — No boy under fourteen years of age and no girl under eighteen years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under sixteen years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after seven p. m. or before 6 a. m., or unless he has an employment certificate issued in accordance with § 110-9. The state commissioner of labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this article or existing law.

Nothing in this section shall be construed to prevent male persons over fourteen years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after eight o'clock p. m. and before five o'clock a. m., and that the hours of work and the hours in school do not exceed eight in any one day, except boys twelve years of age and over who have secured a certificate from the department of labor for the sale or distribution of newspapers, magazines or periodicals: Provided further, that such person shall not be permitted or allowed to work more than four hours per day nor more than twenty-four hours per week: Provided further, that nothing in this article shall be construed to prevent boys twelve years of age and over, upon securing a proper certificate from the department of labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than seventy-five customers are served in one day): Provided, that such boys shall not be employed between the hours of seven o'clock p. m. and six o'clock a. m., nor for more than ten hours in any one week. (1937, c. 317, s. 8.)

§ 110-9. Employment certificate required. — Before any minor under eighteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required. (1937, c. 317, s. 9.)

§ 110-10. Officers authorized to issue certificates.—The employment certificate required by this article shall be issued only by county or city superintendents of public welfare in such form and under such conditions as may be prescribed by the state department of labor. (1937, c. 317, s. 10.)

§ 110-11. Refusal and revocation of employment certificate.—The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the commissioner of labor. (1937, c. 317, s. 11.)

§ 110-12. Method of issuing employment certificates.—The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desir-

ing employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by some one duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

(a) A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

(b) A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

(c) Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

(d) In the case none of the aforesaid proofs of age shall be obtainable, and only in such case, the issuing officer may accept the signed statement of the physician authorized to make the physical examinations required by this section, stating that, after examination, it is his opinion that the minor has attained the age required by law for the occupation in which he expects to engage. Such statement shall be accompanied by an affidavit, signed by the minor's parents or guardian, certifying to the name, date and place of birth of the minor and that the proofs of age specified in the preceding sub-divisions of this section cannot be produced.

(3) A statement of physical fitness, signed by a public health, public school or other physician assigned to this duty by the issuing officer with the approval of the state department of labor, setting forth that such minor has been thoroughly examined by such physician and that he is either physically fit to be employed in any legal occupation, or that he is physically fit to be employed under certain limitations, specified in the statement. If the statement of physical fitness is limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated. The minor shall not be charged a fee for such examination or statement of physical fitness. The method of making such examinations shall be prescribed by the state department of labor.

(4) A school record signed by the principal of the school which the minor has last attended or by some one duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the prospective employer of the minor for whom the employment certificate is issued, and such certificate shall be valid only for the employer named therein and for the occupation designated in the promise of employment. (1937, c. 317, s. 12.)

§ 110-13. Employment certificate as evidence.—Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ 110-14. Regular and vacation employment certificates.—Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ 110-15. Duties of employers in regard to employment certificates.—Every employer receiving an employment certificate shall, during the period of the minor's employment, keep such certificate on file at the place of employment and accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this article. The failure of any employer to produce for inspection such employment certificate shall be prima facie evidence of the unlawful employment of the minor. (1937, c. 317, s. 15.)

§ 110-16. Certificates of age. — Upon request, it shall be the duty of the officer authorized to issue employment certificates to issue to any person between the ages of eighteen and twenty-one desiring to enter employment a certificate of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this article, and such certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 16.)

§ 110-17. State supervision of the issuance of employment certificates.—The state department of labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the state department of labor within one week after issuance. The state department of labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ 110-18. Rules and regulations.—The commissioner of labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this

article as may be deemed necessary by said commissioner. (1937, c. 317, s. 18.)

§ 110-19. Inspection and prosecutions.—It shall be the duty of the state department of labor and of the inspectors and agents of said state department of labor to enforce the provisions of this article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said state department of labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the article, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed.

Any person authorized to enforce this article may require an employer of a minor for whom an employment certificate is not on file to either furnish him within ten days the evidence required for an employment certificate showing that the minor is at least eighteen years of age, or to cease to employ or permit or allow such minor to work. (1937, c. 317, s. 19.)

§ 110-20. Penalties.—Whoever employs or permits or allows any minor to be employed or to work in violation of this article, or of any order or ruling issued under the provisions of this article, or obstructs the state department of labor, its officers or agents, or any other persons authorized to inspect places of employment under this article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00), or imprisonment for not more than thirty days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice from the state department of labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the article shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this article may be recovered by the state in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

Art. 2. Juvenile Courts.

§ 110-21. Exclusive original jurisdiction over children.—The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

1. Who is delinquent or who violates any municipal or state law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

2. Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child; or

3. Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the state, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the state. (1919, c. 97, s. 1; C. S. 5039.)

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts. — There shall be established in each county of the state a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of ..... county.

The clerk of the superior court of each county in the state shall act as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county. Proceedings in such cases may be initiated before such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article: Provided, that in counties, where the county seat is a city containing twenty-five thousand inhabitants, or more, the board of commissioners of such counties shall have the right in their discretion to coöperate with the governing body of such city in the election of a judge of a juvenile court provided for in § 110-44, which judge when so elected shall perform all the duties, and possess all the powers and jurisdiction conferred by this article upon the clerk of superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article; such judge to be so elected by the joint action of the governing bodies of such city and county shall hold office for the term of one year, and until his successor shall be duly elected, and the county availing itself of the provisions of this section shall pay said judge for services rendered the county (outside of city) such sum as the county commissioners of said county shall deem just and proper. (1919, c. 97, s. 2; Ex. Sess. 1920, c. 85; C. S. 5040.)

Local Modification.—Buncombe: 1935, c. 220; 1941, c. 208, s. 3; Forsyth: 1935, c. 385; 1941, c. 110; Mecklenburg: 1937, c. 251.

§ 110-23. Definitions of terms. — The term "court" when used in this article without modification shall refer to the juvenile courts to be established as herein provided. The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the judge of the joint city and county juvenile court elected as provided in § 110-22. The term "child" shall mean any minor less than sixteen years of age. The term "adult" shall

mean any person sixteen years of age or over. (1919, c. 97, s. 3; C. S. 5041.)

§ 110-24. Sessions of court; records; general provisions.—Sessions of the court shall be held at such times and in such places within the county as the judge shall from time to time determine. In the hearing of any case coming within the provisions of this article the general public may be excluded and only such persons admitted thereto as have a direct interest in the case. Sessions of the court shall not be held in conjunction with any other business of the superior court, and children's cases shall not be heard at the same time as those against adults.

The court shall maintain a full and complete record of all cases brought before it, to be known as the juvenile record. All records may be withheld from indiscriminate public inspection in the discretion of the judge of the court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication under the provisions of this article shall operate as a disqualification of any child for any public office, and no child shall be denominated a criminal by reason of such adjudication, nor shall such adjudication be denominated a conviction.

This article shall be construed liberally and as remedial in character. The powers hereby conferred are intended to be general and for the purpose of effecting the beneficial purposes herein set forth. It is the intention of this article that in all proceedings under its provisions the court shall proceed upon the theory that a child under its jurisdiction is the ward of the state and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case. (1919, c. 97, s. 4; C. S. 5042.)

§ 110-25. Petition to bring child before court.—Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact. (1919, c. 97, s. 5; C. S. 5043.)

§ 110-26. Issuance of summons; traveling expenses allowed.—Upon the filing of the petition or upon the taking of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parent, or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses shall be a charge upon the county in which the petition is filed. (1919, c. 97, s. 6; 1939, c. 50; C. S. 5044.)

§ 110-27. Custody of child may be immediate; release; bail.—If it appears from the petition that the child is embraced within subdivision one of the first section of this article, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for. (1919, c. 97, s. 7; C. S. 5045.)

§ 110-28. Service of summons.—Service of summons shall be made personally by reading to and leaving with the persons summoned a true copy thereof: Provided, that if the court is satisfied that reasonable but unsuccessful effort has been made to serve the summons personally upon any of the parties named therein, or if it shall appear to the satisfaction of the court that it is impracticable to serve a summons personally upon any of them, the court may make an order providing for service of the summons by registered mail or by publication or otherwise in such manner as the judge shall determine. It shall be sufficient to confer jurisdiction if service is effected at any time before the time fixed in the summons for the return thereof; but the court, if requested by the child or a parent, or, in case there is no parent, by the person having the guardianship, custody or supervision of the child, shall not proceed with the hearing earlier than three days after the service. Failure to serve a summons upon any person other than said child shall not impair the jurisdiction of the court to proceed in cases arising under subdivision one of the first section of this article, provided that for good cause shown the court shall have made an order dispensing with such service.

If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court or bring the child, he may be proceeded against as for contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual, or that the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued on the order of the court either against the parent or guardian or other person having custody of the child or with

whom the child may be, or against the child himself.

The sheriff or other lawful officer of the county in which the action is taken shall serve all papers as directed by the court, but the papers may be served by any person delegated by the court for that purpose. (1919, c. 97, s. 8; C. S. 5046.)

§ 110-29. Hearing; disposition of child. — Upon the return of the summons or other process or after any child has been taken into custody, at the time set for the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the state, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may—

1. Place the child on probation subject to the conditions provided hereinafter; or

2. Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

3. Commit the child to the custody of the state board of charities and public welfare, to be placed by such board in a suitable institution, society or association as described in subsection four of this section, or in a suitable family home and supervised therein; or

4. Commit the child to a suitable institution maintained by the state or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the state and approved by the state board of charities and public welfare authorized to care for children, or to place them in suitable family homes; or

5. Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

6. If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law. (1919, c. 97, s. 9; 1929, c. 84; C. S. 5047.)

§ 110-30. Child to be kept apart from adult criminals; detention homes. — No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime. Provisions shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children temporarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may arrange with any incorporated institution, society or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the state board of charities and public welfare, appoint a matron or superintendent or both and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society or association for the care of children residing or found within the county who may be detained therein. (1919, c. 97, s. 10; C. S. 5048.)

§ 110-31. Probation officers; appointment and discharge; compensation.—The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the state board of charities and public welfare.

The county superintendent of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the state board of charities and public welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof.

Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the state board of charities and public welfare.

The state board of charities and public welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the state board of charities and public welfare. (1919, c. 97, s. 11; C. S. 5049.)

§ 110-32. Probation; conditions; revocation. — When the court places any child or adult on probation as provided in this article it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: That the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officers; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation. (1919, c. 97, s. 12; C. S. 5050.)

§ 110-33. Duties and powers of probation officers.—It shall be the duty of a probation officer to make such investigations before, during or after the trial or hearing of any case coming before the court as the court shall direct, and to report thereon in writing. The probation officer shall take charge of any child before or after the trial or hearing when so directed by the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct the probationer and other persons responsible for the welfare of the probationer regarding same, and shall enforce all the conditions of probation. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring of reports, and in other ways, and shall report upon the progress of each case under his supervision at least monthly to the court. Such officer shall use all suitable methods not inconsistent with the conditions imposed by the court to aid and encourage persons on probation and to bring about improvement in their conduct and condition. Such officer shall keep detailed record of his work. He shall keep accurate and complete accounts of all moneys collected from persons under his supervision; he shall give receipts therefor and shall make at least monthly returns thereof; such officer shall make such report to the state board of charities and public welfare as it may from time to time require, and shall perform such other duties as the court under whose direction such officer is serving shall direct. Every probation officer shall have all the powers of a peace officer within the jurisdiction of the court which he serves. With the approval or under the direction of the judge of the court in which a probation officer is serving, such officer is authorized and empowered to act as probation officer over any person on probation transferred to his supervision from any other court and may act as parole officer over any person released from a correctional institution when requested to do so by the authorities thereof and when authorized so to act by the judge of the court in which such probation officer is serving. (1919, c. 97, s. 13; C. S. 5051.)

§ 110-34. Support of child committed to custodial agency.—Whenever any child is committed by the court to the custody of an institution, association, society or person other than its parent or guardian, compensation for the care of such child, when approved by the order of the court, shall be a charge upon the county, but the court may at the issuance and service of an order to show cause on the parent or other person having the duty under the law to support such child adjudge that such parent or other person shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and wilful failure to pay such sum may be punished as a contempt of court. (1919, c. 97, s. 14; C. S. 5052.)

§ 110-35. Selection of custodial agency. — In committing any child to any institution or other custodial agency other than one supported and controlled by the state or in placing the child under any guardianship other than that of its natural guardians, the court shall as far as practicable select as the custodial agency an institution, society or association governed by persons of like religious faith as the parents of such child or an

individual holding the same religious belief. (1919, c. 97, s. 15; C. S. 5053.)

§ 110-36. Modification of judgment; return of child to parents.—Any order or judgment made by the court in the case of any child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child, except that a child committed to an institution supported and controlled by the state may be released or discharged only by the governing board or officer of such institution.

Any parent or guardian, or, if there be no parent or guardian, the next friend of any child who has been or shall hereafter be committed by the court to the custody of an institution other than an institution supported and controlled by the state, or to the custody of any association, society or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that application for the release of the child has been made to and denied by such institution, association, society or person, or that the said institution, association, society or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served by the court upon such institution, association, society or person, whose duty it shall be to file a reply to the same within five days. If, upon examination of the petition and reply, the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear the facts and determine the question at issue, and may return such child to the custody of its parents or guardian or direct such institution, association, society or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require.

Any child while under the jurisdiction of the court shall be subject to the visitation of the probation officer or other agent of the court authorized to visit such child. (1919, c. 97, s. 16; C. S. 5054.)

§ 110-37. Guardian appointed if welfare of child promoted.—Whenever in the course of a proceeding instituted under this article it shall appear to the court that the welfare of any child within the jurisdiction of the court will be promoted by the appointment of an individual as general guardian of its person, when such child is not committed to an institution or to an incorporated society or association, or by the appointment of an individual or corporation as general guardian of its property, the court shall have jurisdiction to make such appointment, either upon the application of the child or of some relative or friend, or upon the court's own motion, and in that event an order to show cause may be made by the court to be served upon the parent or parents of such child in such manner and for such time, prior to the hearing, as the court may deem reasonable. In any case arising under this article the court may determine as between parents or others whether the father or mother or what person shall have the custody and direction of said child, subject to the provisions of the preceding section. (1919, c. 97, s. 17; C. S. 5055.)

§ 110-38. Medical examination of child; disposition if mentally defective.—The court, in its discretion, either before or after a hearing, may cause any child within its jurisdiction to be examined by one or more duly licensed physicians, who shall submit a written report thereon to the court. If it shall appear to the court that any child within the jurisdiction of the court is mentally defective he may cause the child to be examined by two licensed physicians, and on the written statement of the two examining physicians that it is their opinion that the child is mentally defective, feeble-minded, or epileptic the court may commit such child to an institution authorized by law to receive and care for mentally defective, feeble-minded or epileptic children, as the case may be. No child shall be committed to such institution unless the parent or parents or the guardian or custodian of such child, if such there be, are given an opportunity for a hearing.

Whenever a child within the jurisdiction of the court and under the provisions of this article appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in a hospital or otherwise, and the expense thereof, when approved by the court, shall be a charge upon the county or the appropriate subdivision thereof; but the court may adjudge that the person or persons having the duty under the law to support such child shall pay a part or all of the expenses of such treatment as provided in § 110-34 of this article. (1919, c. 97, s. 18; C. S. 5056.)

§ 110-39. Neglect by parents; encouraging delinquency by others; penalty.— A parent, guardian or other person having the custody of a child who omits to exercise reasonable diligence in the care, protection or control of such child, causing it to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the state as provided in this article, or who permits such child to associate with vicious, immoral or criminal persons, or to beg or solicit alms, or to be an habitual truant from school, or to enter any house of prostitution or assignation or any place where gambling is carried on, or to enter any place which may be injurious to the morals, health, or general welfare of such child, and any such person or any other person who knowingly or wilfully is responsible for, encourages, aids, causes or connives at or who knowingly or wilfully does any act to produce, promote or contribute to the condition which caused such child to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the state, shall be guilty of a misdemeanor. (1919, c. 97, s. 19; C. S. 5057.)

§ 110-40. Appeals.—An appeal may be taken from any judgment or order of the juvenile court to the superior court having jurisdiction in the county by the parent or, in case there is no parent, by the guardian, custodian or next friend of any child, or by any adult described in §§ 110-38 and 110-39 of this article whose case has been heard by the juvenile court. Such appeal shall be taken in the manner provided for appeals to the superior court; and written notice of such appeal shall be filed with the juvenile court within five days after the issuance of the judgment or

order of such court. (1919, c. 97, s. 20; C. S. 5058.)

§ 110-41. Compensation of judge. — The judge of the juvenile court shall be paid a reasonable compensation for his services, the amount to be determined by the county commissioners, and the amount thus determined by the county commissioners shall be charged against the public funds of the county. And such compensation shall be independent of any compensation which may come to him as clerk of the superior court. (1919, c. 97, s. 21; C. S. 5059.)

§ 110-42. Public officers and institutions to aid. —It is hereby made the duty of every state, county or municipal official or department to render such assistance and coöperation within his or its jurisdiction or power as shall further the objects of this article. All institutions or other agencies to which any person coming within the provisions of this article may be sent are hereby required to give such information concerning such child to the court or to any other officer appointed by it as said court or official may require for the purposes of this article. The court is authorized to seek the coöperation of all societies, organizations or individuals to the end that the court may be assisted in every way in the discharge of its duties. (1919, c. 97, s. 22; C. S. 5060.)

§ 110-43. Rules of procedure devised by court. —The court shall have power to devise and publish rules to regulate the procedure in cases coming within the provisions of this article and for the conduct of all probation and other officers of the court in such cases. The court shall devise and cause to be printed for public use such forms for records and for various petitions, orders, processes, and other papers in the cases coming within this article as shall meet the requirements thereof, and all expenses incurred in complying with the provisions of this article shall be a public charge. (1919, c. 97, s. 23; C. S. 5061.)

§ 110-44. City juvenile courts and probation officers.—Every city in North Carolina where the population was, by the census of one thousand nine hundred and twenty, ten thousand or more shall maintain a juvenile court, to which is hereby given the powers, duties and obligations of this article to be exercised within their territorial boundaries. Such city juvenile courts shall conduct their business in accordance with the procedure set forth in this article as applying to the county juvenile court. It is hereby made the duty of governing bodies of such cities to make provision for such courts and bear the expense thereof, either by requiring the recorder to act as a juvenile judge or by the appointment of a separate judge. The governing bodies of such cities shall also appoint one or more assistant probation officers who shall serve within its jurisdiction under the general supervision of the chief probation officer of the county, which chief probation officer of the county is hereby made the chief probation officer of the city court herein provided for. The salary of the juvenile court judge shall be fixed and paid by the governing body of the city, and such governing bodies are hereby given authority to expend such sums from the public funds of the city as may be required to carry this article into effect.

In case it may appear to the governing bodies of such cities herein described that it would be best to allow the county juvenile court to transact the business of the city, they may make such provisions and agreements with the county commissioners for the expense of the joint court as may be agreed upon, and in such event such a city is hereby permitted to make such arrangement in lieu of establishing a city juvenile court. But in case the county commissioners will not agree to such arrangement, then the city must establish a juvenile court, as provided in this section.

Any town of five thousand population which is not a county seat, and in which there is a recorder's court, may, if deemed advisable and necessary by the governing body, provide for the conduct of a juvenile court within the territorial jurisdiction of such recorder's court: Provided, that the provisions and procedure of this article are fully followed as in case for towns of ten thousand inhabitants. (1919, c. 97, s. 24; 1923, c. 193; C. S. 5062.)

Art. 3. Control over Indigent Children.

§ 110-45. Institution has authority of parent or guardian.—Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this state, which shall be an institution existing under and by virtue of the laws of this state, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C. S. 5063.)

§ 110-46. Regulations of institution not abrogated.—Nothing in this article shall be construed in any way to abrogate any of the rules and regulations of such institutions in so far as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C. S. 5064.)

§ 110-47. Enticing a child from institution. — It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child. (1917, c. 133, s. 3; C. S. 5065.)

§ 110-48. Violation a misdemeanor. — Any person violating any of the provisions of §§ 110-45, 110-46 and 110-47 shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 133, s. 4; C. S. 5066.)

§ 110-49. Permits and licenses must be had by institutions caring for children.—No individual,

agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this state for the purpose of caring for and placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Charities and Public Welfare. The said board shall issue such permit recommending such business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in § 108-3, subsection 5, shall annually procure a license from the State Board of Charities and Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association, violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; 1931, c. 226, s. 6; C. S. 5067.)

Art. 4. Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-50. Bringing child into State for adoption without consent of State Board of Charities and Public Welfare.—No person, agency, association, institution or corporation shall bring or send into the State any child for the purpose of placing him out or procuring his adoption without first obtaining the consent of the State Board of Charities and Public Welfare. Such person, agency, association or corporation shall conform to the rules of the board and shall enter into a written agreement with the board to remove such child from the State, when requested so to do by the said board; that it will place the child under written contract approved by the board; that the person with whom the child is placed shall be responsible for his proper care and training; that the board and its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed out by the board and its agents. Before the child shall be brought or sent into the State for the purpose of placing him in a home, the person, agency, association, institution or corporation so bringing or sending such child shall first notify the State board of its intention, shall certify to the State board that such child does not have a contagious or incurable disease, is not deformed, feeble-minded or of vicious character, and shall obtain from the State board a certificate stating such home is, in the opinion of the said board, a suitable home for the child. The person, agency, association, institution or corporation bringing or sending the child into the State shall report once a year or when the child is placed in another home, or at such other times as the board may direct as to the location and well-being of the child, so long as he shall remain within the State and until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 1.)

§ 110-51. Bond required. — No child shall be brought into the State under § 110-50 until a justifiable and continuous bond not to exceed one thousand dollars ($1,000) be furnished and maintained by the said person, agency, association, institution or corporation for the proper fulfillment of the requirements of § 110-50. Said bond shall be made in favor of and filed with the State Board of Charities and Public Welfare with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the State. (1931, c. 226, s. 2.)

§ 110-52. Consent of board before sending child out of State. -- No child shall be taken or sent out of the State for the purpose of placing him in a home, otherwise than by a parent, grandparent or guardian, unless the person, agency, association, institution or corporation so taking or sending him shall give the State Board of Charities and Public Welfare notice of its intention and furnish such information as the board may require. Such person, agency, association, institution or corporation shall place the child under written contract, approved by the board, that the person with whom the child is placed shall be responsible for his proper care and training and thereafter shall report to the board once a year and at such other times as the board may direct as to the location and well-being of such child until he shall have reached the age of eighteen years, or shall have been legally adopted. (1931, c. 226, s. 3.)

§ 110-53. Consent of board where parents of child have not established legal settlement.—No person, agency, association, institution or corporation shall accept for the purpose of placing him out or procuring his adoption any child either legitimate or illegitimate born in this State of parents who have not established legal settlement in the State without first obtaining the written consent of the State Board of Charities and Public Welfare. (1931, c. 226, s. 4.)

§ 110-54. Requisites for legal settlements. — No juvenile delinquent or dependent, coming from without the State of North Carolina, can acquire a settlement in this State, so as to constitute him or her a charge of the State, unless such juvenile delinquent or dependent has been continuously in the State of North Carolina for a period of three years. (1931, c. 226, s. 5.)

§ 110-55. Violation of article a misdemeanor.— Every person acting for himself or for an agency who violates any of the provisions of this article or who shall intentionally make any false statements to the State Board of Charities and Public Welfare shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7.)

§ 110-56. Definitions. — The term "b o a r d" wherever used in this article shall be construed to mean the State Board of Charities and Public Welfare. The terms "he" and "his" and "him" wherever used in this article shall apply to a female as well as a male child. (1931, c. 226, s. 8.)

Chapter 111. Commission for the Blind.

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Art. 1. Organization and General Duties of Commission.

§ 111-1. Commission created; appointment by governor; ex-officio members.—There shall be established a state commission, to be known as the North Carolina State Commission for the Blind, consisting of three persons, to be appointed by the governor within thirty days after March 5, 1935. The superintendent of the State School for the Blind and the state supervisor of vocational rehabilitation shall be ex-officio members of this commission. (1935, c. 53, s. 1.)

§ 111-2. Term of office.—The full term of office of the members of this commission, with the exception of the superintendent of the State School for the Blind and the state supervisor of vocational rehabilitation, shall be five years. The term of office of the said ex-officio members shall be contemporaneous with their tenure of office as superintendent of the State School for the Blind and state supervisor of vocational rehabilitation, respectively. Of the first commission appointed, one member shall be appointed for a term of five years, one for a term of three years, one for a term of one year. At the expiration of the term of any member of the commission, his successor shall be appointed for a term of five years. (1935, c. 53, s. 2.)

§ 111-3. Additional members of commission for blind; meeting place.—In addition to the members of the North Carolina state commission for the blind, as provided in § 111-1, there shall be three additional persons, to be appointed by the governor within thirty days after March 20, 1937. The secretary of the state board of health, the director of the North Carolina employment service, and the commissioner of public welfare of North Carolina shall also be ex officio members of this commission, and their term of office shall be contemporaneous with their tenure of office as secretary of the state board of health, director of the North Carolina employment service, and commissioner of public welfare. Of the three additional members, to be appointed by the governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina state commission for the blind shall be held in the city of Raleigh. (1937, c. 285.)

§ 111-4. Register of state's blind.—It shall be the duty of this commission to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the commission to be of value. (1935, c. 53, s. 3.)

§ 111-5. Information and aid bureaus. — The commission shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the commission in disposing of the products of their home industry. (1935, c. 53, s. 4.)

§ 111-6. Training schools and workshops; training outside state; sale of products; direct relief; matching of Federal funds. — The commission may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and

maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may co-operate with shops already established. The commission may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the commission such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the state, they may be arranged for, at the discretion of the board, outside of the state. The commission may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the North Carolina state commission for the blind under the provisions of this chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the North Carolina state commission for the blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of §§ 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the Federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16.)

§ 111-7. Promotion visits. — The commission may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the commission may deem advisable. (1935, c. 53, s. 6.)

§ 111-8. Investigations; eye examination and treatment.—It shall be the duty of this commission to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and co-operate in any such measure for the State of North Carolina as may seem wise. The commission may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified ophthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7.)

§ 111-9. Officers and agents; annual report.—The commission may appoint such officers and agents as may be necessary to carry out the provisions of this chapter and their compensation shall be fixed within the limits of the annual appropriation by the director of personnel, but no person employed by the commission shall be a member thereof. The annual report shall present a concise review of the work of the commission for the preceding year, with such suggestions and recommendations for improving the conditions of the blind and preventing blindness as may seem expedient. (1935, c. 53, s. 8.)

§ 111-10. Compensation and expenses of commission.—The members of the commission shall receive no compensation for their services; but their traveling and other necessary expenses, incurred in the performance of their official duties, shall be audited by the state auditor and paid by the treasurer of the state, out of the moneys that may be appropriated therefor. (1935, c. 53, s. 9.)

§ 111-11. Qualifications of beneficiaries. — The beneficiaries of the commission shall be persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. No person shall benefit from the provisions of this chapter unless he has been a resident of North Carolina for at least one year next preceding the receiving of such benefit. (1935, c. 53, s. 10; 1939, c. 124.)

§ 111-12. Work of state board of health unaffected.—Nothing herein shall be construed to in any way abridge the rights and privileges of the state board of health in the treatment of the blind, or in accumulating and disseminating information in reference to the blind and in the prevention of blindness. (1935, c. 53, s. 11.)

Art. 2. Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations.—The North Carolina state commission for the blind shall be charged with the supervision of the administration of assistance to the needy blind under this article, and said commission shall establish objective standards for personnel to be qualified for employment in the administration of this article, and said commission shall make all rules and regulations as may be necessary for carrying out the provisions of this article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this article. (1937, c. 124, s. 2.)

§ 111-14. Application for benefits under article; investigation and award by county commissioners.—Any person claiming benefit under this article, shall file with the commissioners of the county in which he or she has a legal settlement an application in writing, in duplicate, upon forms prescribed by the North Carolina state commission for the blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the state of North Carolina and who is actively engaged in the treatment of diseases of the human eye, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the North Carolina state commission for the blind, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at

any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the North Carolina state commission for the blind. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the North Carolina state commission for the blind, not inconsistent with this article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124.)

§ 111-15. Eligibility for relief.—Blind persons having the following qualifications shall be eligible for relief under the provisions of this article:

(1) Whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this state able to provide for them who are legally responsible for their maintenance; and

(3) Who have been residents of the state of North Carolina one year immediately preceding the application; and

(4) Who are not inmates of any charitable or correctional institution of this state or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not publicly soliciting alms in any part of the state, and who are not, because of physical or mental condition, in need of continuing institutional care. (1937, c. 124, s. 4.)

§ 111-16. Application transmitted to commission; notice of award; review by commission. — Promptly after an application for aid is made to the board of county commissioners under this article the North Carolina state commission for the blind shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the North Carolina state commission for the blind and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the North Carolina state commission for the blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the North Carolina state commission for the blind. Notice of such appeal must be given in writing to the board of county commissioners, and within thirty days after the receipt of such notice the board of county commissioners shall transmit to the North Carolina state commission for the blind copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the North Carolina state commission for the blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the North Carolina state commission for the blind shall hear the said appeal under such rules and regulations not inconsistent with this article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said commission, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive secretary of the North Carolina state commission for the blind, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases, whether or not any appeal shall be taken by the applicant, the North Carolina state commission for the blind shall carefully examine such award or decision, as the case may be, and shall, in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action, and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina state commission for the blind shall make any order increasing or decreasing the award allowing or disallowing the same, the applicant or the board of county commissioners shall have the right, within ten days from notice thereof, to have such order reviewed by the members of the North Carolina state commission for the blind. The procedure in such cases shall be as provided in this section on appeals to the commission by the applicant. (1937, c. 124, s. 5.)

§ 111-17. Amount and payment of assistance; source of funds.—When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this article, as provided in § 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the North Carolina state commission for the blind, but in no case in an amount to exceed thirty dollars per month to be paid from county, state and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July first, one thousand nine hundred thirty-seven, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the North Carolina state commission for the blind, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this article and the total amount of such county's one-

fourth part thereof required to be paid by such county. All such counties shall make an appropriation in their budgets which shall be found to be ample to pay their part of such payments and, at the time of levying other taxes, shall levy sufficient taxes for the payment of the same. This provision shall be mandatory on all of the counties in the state. Such taxes so levied shall be and hereby are declared to be for this special purpose and levied with the consent of the general assembly. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the North Carolina state commission for the blind until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's one-fourth part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six per cent, and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the state shall cause to be transmitted to the state treasurer one-fourth of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July first, one thousand nine hundred thirty-seven. The state treasurer shall deposit said funds and credit same to the account of the North Carolina state commission for the blind to be employed in carrying out the provisions of this article. (1937, c. 124, s. 6.)

§ 111-18. Payment of awards.—After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina state commission for the blind. the North Carolina state commission for the blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina state commission for the blind shall determine. Such payment shall be made by warrant of the state auditor, drawn upon such funds in the hands of the state treasurer, at the instance and request and upon a proper voucher signed by the executive secretary of the North Carolina state commission for the blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure. (1937, c. 124, s. 7.)

§ 111-19. When applications for relief made directly to state commission.—If any person, otherwise entitled to relief under this article, shall have the residence requirements in the state of North Carolina, but no legal settlement in any one of the counties therein, his or her application for relief under this article shall be made directly to the North Carolina state commission for the blind, in writing, in which shall be contained all the facts and information sufficient to enable the said commission to pass upon the merits of the application. Blank forms for such application shall be furnished by the North Carolina state commission for the blind. If the said commission finds the applicant entitled to assistance within the rules and regulations prescribed by it, and consonant with the provisions of this article, relief shall be given to such person coming under the rules of eligibility to such extent as the North Carolina state commission for the blind may consider just and proper, but not in excess of the amounts specified in § 111-17. Payment of the benefits thus awarded, however, shall be made entirely out of the funds provided by the state, together with such funds which may be added thereto as federal grants in aid, and shall not be a charge upon the funds locally raised by taxation in the counties until such person shall have resided in some county for sufficient time to acquire a settlement therein; thereafter payments shall be made as in other cases. (1937, c. 124, s. 8.)

§ 111-20. Awards subject to reopening upon change in condition.—All awards to needy blind persons made under the provisions of this article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The North Carolina state commission for the blind and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations bi-annually, or more often, as may be found necessary. The North Carolina state commission for the blind may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the North Carolina state commission for the blind, and shall be subject to the right of appeal and review, as provided in § 111-16. (1937, c. 124, s. 9.)

§ 111-21. Disqualifications for relief.—No aid to needy blind persons shall be given under the provisions of this article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged. (1937, c. 124, s. 10.)

§ 111-22. Beneficiaries not deemed paupers. — No blind person shall be deemed a pauper by reason of receiving relief under this article. (1937, c. 124, s. 11.)

§ 111-23. Misrepresentation or fraud in obtaining assistance.—Any person who shall obtain, or attempt to obtain, by means of a wilful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred ($500.00) dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this article. (1937, c. 124, s. 12.)

§ 111-24. Cooperation with federal social security board; grants from federal government.—The North Carolina state commission for the blind is hereby empowered and authorized and directed to co-operate with the federal social security board, created under Title X of the Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this article, including the making of such reports in such form and containing such information as the federal social security board may from time to time require, and comply with such regulations as said board may from time to time find necessary to assure the correctness and verification of such reports.

The North Carolina state commission for the blind is hereby further empowered and authorized to receive grants in aid from the United States government for assistance to the blind and grants made for payment of cost of administering the state plan for aid to the blind, and all such grants so received hereunder shall be paid into the state treasury and credited to the account of the North Carolina state commission for the blind in carrying out the provisions of the article. (1937, c. 124, s. 13.)

§ 111-25. Acceptance and use of Federal aid.—The commission for the blind may expend, under the provisions of the Executive Budget Act, such grants as shall be made for paying the cost of administering this chapter by the federal government under Title X of the Social Security Act. (1937, c. 124, s. 14.)

§ 111-26. Termination of federal aid.—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the governor of the state of North Carolina has issued a proclamation duly attested by the secretary of the state of North Carolina to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the state funds on hand shall be converted into the general fund of the state for such use as may be authorized by the director of the budget, and the county funds accumulated by the provisions of this article in the respective counties of the state shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

§ 111-27. Commission to promote employment of needy blind persons; vending stands on public property.—For the purpose of assisting blind persons to become self-supporting, the North Carolina state commission for the blind is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said commission may cooperate with the federal government in the furtherance of the provisions of the act of congress known as the Randolph-Sheppard Bill (H. R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of congress which may be hereafter enacted.

The board of county commissioners of each county and the commissions or officials in charge of various state and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any state, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the North Carolina state commission for the blind: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123.)

§ 111-28. Commission authorized to receive federal, etc., grants for benefit of needy blind.—The North Carolina state commission for the blind is hereby authorized and empowered to receive grants in aid from the federal government or any state or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the state treasury and credited to the account of the North Carolina state commission for the blind, to be used in carrying out the provisions of this law.

The North Carolina state commission for the blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or state or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this state.

Whenever the words "Social Security Board" appear in §§ 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The North Carolina state commission for the blind is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and co-operate with other agencies of the state and federal governments in the provision of such assistance and services and in the study of the problems involved.

The North Carolina state commission for the blind is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the State Commission for the Blind, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the State Commission for the Blind or the board of county commissioners or the county welfare department, or acquired in the course of the performance of official duties. (1939, c. 124; 1941, c. 186.)

Chapter 112. Confederate Homes and Pensions.

Sec.

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Art. 1. Confederate Woman's Home.

§ 112-1. Incorporation and powers of association.—Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives and widows of North Carolina Confederate soldiers and other worthy dependent women of the Confederacy who are bona fide residents of this state.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence for forty years. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the state, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S. 5134.)

§ 112-2. Board of directors appointed; officers

and duties.—The powers conferred by this article shall be exercised by a board of directors, consisting of seven members, to be appointed by the governor of the state and who shall hold office for the term of two years, and in case of a failure to appoint, the members of such board of directors shall hold their offices until their successors are appointed. The board of directors shall elect a president and a secretary, and the treasurer of North Carolina shall be the treasurer of the Woman's Confederate Home Association. The board of directors shall appoint such other officers, agents, or employees as they shall see fit, and prescribe the duties of such officers and employees; establish rules and regulations for the maintenance and government of the home, and have entire control and management of it; prescribe the rules for the admission of the inmates and their discharge, and take whatever action may be desirable in reference to the collection and disbursement of subscriptions, either to the home or to the needy Confederate women elsewhere in the state. The accounts of the officers and employees shall be duly audited and published and report thereof made as now required by law from the other state institutions. (1913, c. 62, s. 2; C. S. 5135.)

§ 112-3. Location of home.—The board of directors shall locate the Confederate woman's home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the home. (1913, c. 62, s. 2; C. S. 5136.)

§ 112-4. Advisory board of lady managers. — Mrs. Hunter Smith, Mrs. N. B. Mann, Mrs. T. L. Costner, Mrs. R. F. Dalton, Mrs. F. A. Woodard, Mrs. W. H. Mendenhall, Mrs. E. C. Chambers, Mrs. Charles S. Wallace, Mrs. M. O. Winstead, Mrs. Marshall Williams are appointed an advisory board of lady managers for a term of two years, whose duties it shall be to assist the directors in the equipment and management of the home as they may be requested to do, shall solicit contributions for the home and generally shall use all the powers given to and perform all the duties required of them by the board of directors. The successors in office of said lady managers shall be selected one from each congressional district in the state. All vacancies in said advisory board, whether from expiration of office or otherwise, shall, subject to the limitations herein set out respecting the way of selection, be filled by the board of directors. (1913, c. 62, s. 3; C. S. 5137.)

§ 112-5. Reversion of property.—If the land on which the said home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this state, the same shall revert to the person or persons donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the state; but in all cases of non-user for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the state. (1913, c. 62, s. 4; C. S. 5138.)

§ 112-6. Compensation of directors. — The directors provided for in this article shall be entitled to their actual expenses incurred in attending the meetings of the board of directors since their appointment, and also in attending future meetings of the board, the same to be paid out of the funds of the Confederate woman's home. (1915, c. 206; C. S. 5139.)

Art. 2. Pensions.

Part 1. Pension Boards.

§ 112-7. State board; examination of applications.—The governor, attorney-general, and auditor shall be constituted a state board of pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent by the county boards. Such applications as are approved by the state board shall be paid by the treasurer, upon the warrant of the auditor. (1921, c. 189, s. 1; C. S. 5168(a).)

§ 112-8. State board to make rules. — The state board of pensions is empowered to prescribe rules and regulations for the more certainly carrying into effect this article according to its true intent and purpose. (1921, c. 189, s. 2; C. S. 5168(b).)

§ 112-9. Auditor to transmit lists to clerks of court; publication of list. — The auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post-offices, as allowed by the state board of pensions. (1921, c. 189, s. 3; 1929, c. 296, s. 1; C. S. 5168(c).)

§ 112-10. County board. — The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the state auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 4; 1929, c. 92, s. 1; 1933, c. 465, s. 1; C. S. 5168(d).)

§ 112-11. Compensation of members of the county board of pensions. — Each member of the county board of pensions shall be entitled to two dollars a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners. (Rev., s. 2783; 1903, c. 273, s. 19; C. S. 3913.)

§ 112-12. Examination and classification by county board; certificate of disability.—All persons entitled to pensions under this article, not now drawing pensions, shall appear before the county board of pensions for examination and classification in compliance with the provisions of this article: Provided, that all such as are unable to attend shall present a certificate from a creditable physician, living and practicing medicine in the community in which the applicant resides, that the applicant is unable to attend. (1921, c. 189, s. 5; Ex. Sess. 1924, c. 106; 1941, c. 152, s. 1; C. S. 5168(e).)

§ 112-13. Annual revision of pension roll. — On the first Mondays of February and July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of ten days to the pensioner who is alleged not to be rightfully on the state pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list. (1921, c. 189, s. 6; Ex. Sess. 1924, c. 106; C. S. 5168(f).)

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-14. Persons disabled in militia service; their widows and orphans.—Every person who may have been disabled by wounds in the militia service of the state, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers. (Rev., s. 4990; Code, s. 3472; R. C., c. 84; C. S. 5147.)

§ 112-15. Blind or maimed Confederate soldiers. —All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive four hundred and twenty dollars a year. (Rev., s. 4991; 1901, c. 332, s. 5; 1899, c. 619; 1907, c. 60; 1921, c. 189, s. 7; Ex. Sess. 1924, c. 83; 1925, c. 275, s. 6, subsec. 24; C. S. 5168(g).)

§ 112-16. Helpless or demented widows of Confederate soldiers.—Every widow of a Confederate soldier who married and was widowed prior to one thousand eight hundred and sixty-six and who has not remarried and who bore and raised legitimate child or children of the deceased Confederate soldier, and who has lost her mind, or become helpless, and is not confined in an asylum, or is not an inmate of any charitable institution, shall receive the same pay and in the same manner as blind Confederate soldiers. (1923, c. 3; C. S. 5168(h).)

§ 112-17. List of blind and disabled soldiers to be sent to governor. — The clerk of the Superior Court shall, under his seal of office, certify to the Governor the names and the number of soldiers examined in his county who are blind and maimed, or who have become paralyzed and are totally disabled by reason thereof; upon such certificate the Auditor, with the approval of the Governor, is authorized to issue his warrant on the Treasurer to pay the sum of four hundred and twenty dollars ($420.00) annually for each blind and maimed person, named in the certificate, and the clerk shall pay out such money monthly to the persons entitled to the same. (1921, c. 189, s. 8; 1927, c. 96, s. 1; 1941, c. 152, s. 2; C. S. 5168(i).)

§ 112-18. Classification of pensions for soldiers and widows.—There shall be paid out of the Treasury of the State, on the warrant of the Auditor, to every person who has been for twelve months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the war between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the war between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in § 112-17, who are now disabled from any cause to perform manual labor, three hundred and sixty-five dollars ($365.00).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, two hundred dollars ($200.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, three hundred dollars ($300.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January first, eighteen hundred and eighty, and to such widows who were married to such soldiers subsequent to January first, eighteen hundred and eighty, and who are now on the pension rolls, by virtue of previous statutes, one hundred dollars ($100.00). Provided, that the State Board of Pensions upon the recommendation of the County Pension Board, may add to Class B list of pensions such widows of Confederate Veterans who were married to the deceased Veterans prior to the year one thousand eight hundred and ninety-nine and who are now more than sixty years of age, as in the judgment of the said State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; C. S. 5168(j).)

§ 112-19. Certain widows of Confederate soldiers placed on Class B pension roll.—All widows of Confederate soldiers who have lived with such soldiers for a period of ten years prior to the death of such soldier, and where the death of the soldier occurred since the year one thousand eight hundred ninety-nine, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general state pension laws as modified hereby. (1937, cc. 181, 454.)

§ 112-20. Persons not entitled to pensions. — No person shall be entitled to receive the benefits of this article—

1. Who is an inmate of the soldiers' home at Raleigh;

2. Who is confined in an asylum or county home;

3. Who receives a pension from any other state or from the United States;

4. Who holds a national, state, or county office, which pays annually in salary or fees the sum of three hundred dollars ($300);

5. Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged, or who was in service at the surrender shall be considered a deserter in the meaning of this section;

6. Who is receiving aid from the state under any act providing for the relief of soldiers who are blind or maimed;

7. Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds two thousand dollars ($2,000), or who, having owned property in excess of two thousand dollars ($2,000), has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, one thousand eight hundred and eighty-five: Provided, that the county board of pensions may place upon the pension roll, in the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as two thousand dollars ($2,000) or more for taxation, and who may appear to the board from special circumstances worthy to be placed upon the pension roll. (1921, c. 189, s. 10; C. S. 5168(k).)

§ 112-21. Removal from pension lists of persons eligible for old age assistance.—All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for old age assistance under the provisions of §§ 108-15 to 108-76, from and after the first day of June, one thousand nine hundred thirty-nine, shall not be entitled to any pension provided by the provisions of chapter ninety-two, entitled "Confederate Homes and Pensions," and any acts of the general assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, one thousand nine hundred thirty-nine, the county board of welfare in every county in this state shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for old age assistance under the provisions of §§ 108-15 to 108-76 without any applications being made by such persons for old age assistance as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have been made, the county board of welfare shall notify the county pension board in the county of such county board of welfare of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of welfare, and revision of the pension list as aforesaid, notify the state board of pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of welfare, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the state board of pensions, and such certification from the county board of welfare to the state board of pensions shall be sufficient authority for removal of such names from the pension list by the state board of pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amounts necessary for payment of awards for old age assistance shall be paid entirely out of state and federal funds.

In the event it is determined by the county board of welfare that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of welfare shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the state board of pensions, the state board of pensions shall certify the revised list of pensioners to the state auditor and the state auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the state board of pensions. (1937, c. 227; 1939, c. 102.)

Part 3. Application for Pensions.

§ 112-22. Forms provided by auditor. — The auditor of the state shall provide a form of application (according to the terms of this article), and have the same printed and sent to the clerks of the superior court of the several counties of the state for use of applicants. (1921, c. 189, s. 11; C. S. 5168(l).)

§ 112-23. Application by person, guardian or receiver.—No soldier, officer, sailor, or widow shall be entitled to the benefits of this chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver. (1921, c. 189, s. 12; C. S. 5168(m).)

§ 112-24. Applications by persons not on rolls. —Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and regiment or battalion in which he served at the time of receiving the wound; the time and place of receiving the wound; whether he is holding an office in the state, United States, or county from which he is receiving the sum of three hundred dollars ($300) in fees or salary; whether he is worth in his own right or in the right of his wife, property at its assessed value for taxation to the amount of two thousand dollars ($2,000); whether he is receiving any aid from the state of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the state; and whether he is a citizen of the state of North Carolina. Such application shall be verified by the oath of the applicant made before any one empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application, and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the auditor of the state under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall accompany the certificate so sent to the auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them. (1921, c. 189, s. 13; C. S. 5168(n).)

§ 112-25. Time for forwarding certificate; auditor to issue warrant.—It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the auditor of the state, immediately after the certificate required by § 112-24 is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the state board of pensions being satisfied of the truth and genuineness of the application, the auditor shall issue his warrant on the state treasurer for the same. (1921, c. 189, s. 14; C. S. 5168(o).)

§ 112-26. Subsequent certificate; suggestion of fraud.—After an application has once been passed upon and allowed by the county and state boards, it shall be necessary only for the applicant to file with the auditor of state a certificate from the clerk of the superior court of the county in which the application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the auditor's office, and that the applicant is alive, but still disabled, and a citizen of this state, and still entitled to the benefits of this article, which certificate may be passed upon by the state board, upon suggestions of fraud, before the auditor draws his warrant upon such certificate. (1921, c. 189, s. 15; C. S. 5168(p).)

Part 4. Payment of Pensions; Warrants.

§ 112-27. Payment of pensions in advance; acknowledgment of receipt of warrants. — Pensions are payable monthly in advance, and the state auditor shall divide into twelve equal installments the yearly amount due each pensioner and shall transmit to the clerks of the superior court of the various counties warrants for the same on or before the first day of each calendar month, the installment then due. It shall be the duty of the clerk of the superior court to acknowledge to the auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants. (1921, c. 189, s. 16; 1939, c. 187, s. 1; C. S. 5168(q).)

§ 112-28. Warrants payable to pensioner or order; indorsement; copy of power of attorney.— The auditor shall issue his warrant payable to the pensioner, or order, and such warrants shall not be paid by the treasurer without the indorsement of the payee or his duly appointed attorney in fact, specially authorized to make such indorsement; and if such indorsement is made by the attorney in fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or a justice of the peace or notary public of the county in which the payee resides shall be attached to the warrant. (1921, c. 189, s. 17; 1941, c. 152, s. 3; C. S. 5168(r).)

Part 5. Funds Provided for Pensions.

§ 112-29. Limit and distribution of appropriation. — The State Auditor is authorized, empowered and directed to apportion, distribute and divide the money appropriated by the State for pensions, and to issue warrants to the several pensioners pro rata in their respective grades: Provided, that if the money appropriated by the General Assembly for the Confederate soldiers, widows and servants is more than enough to pay them the amounts mentioned in this chapter, or if for any other cause, after paying the Confederate soldiers, widows and servants the amount stipulated in their respective grades as set out in this chapter, there should be an excess of the money appropriated for the first year, then the balance in the fund so appropriated for the first year shall revert and supplement the fund appropriated for the second year of the biennium: Provided, further, that if any moneys herein appropriated for the purposes aforesaid, shall not be needed to pay the Confederate soldiers, widows and servants the amounts stipulated in their respective grades, then such moneys shall be paid by the State Board of Pensions into the treasury and become a part of the general fund appropriated by the State for other purposes: Provided, that no greater amount shall be paid out under this chapter than is appropriated under the general appropriation maintenance act. (1921, c. 189, s. 20; 1927, c. 96, s. 4; C. S. 5168(u).)

§ 112-30. Increase by counties; special tax. —The county commissioners of each county

in the state are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents on the hundred dollars valuation of property and six cents on each taxable poll for the purpose of increasing the pensions of Confederate soldiers and widows.

Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

The amount collected under this section shall be disbursed by the county commissioners pro rata to the various pensioners in such county as shown by the state pension list for that county. (1921, c. 189, s. 21; C. S. 5168(v).)

Local Modification.—Cumberland: 1907, c. 555.

Part 6. Miscellaneous Provisions.

§ 112-31. Officer failing to perform duties. — Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court. (1921, c. 189, s. 22; C. S. 5168(w).)

§ 112-32. Speculation in pension claims a misdemeanor.—Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor or widow of a deceased soldier or sailor, allowed under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both in the discretion of the court. (1921, c. 189, s. 23; C. S. 5168(x).)

§ 112-33. County payment of burial expenses.— Whenever in any county of this state a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding thirty dollars ($30), to be applied toward defraying the burial expenses of such deceased pensioner or widow. (1921, c. 189, s. 24; C. S. 5168(y).)

§ 112-34. State payment of burial expenses. —Whenever in any county of this state a Confederate pensioner on the pension roll shall die, and such fact has been determined by the state auditor, the state auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a state warrant in the amount of one hundred dollars ($100.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to Old Age Assistance under the provisions of § 112-21. (1939, c. 187, s. 2; 1941, c. 152, s. 4.)

§ 112-35. Peddling without license. — All ex-Confederate soldiers who are without means of support other than their manual labor, and who are incapacitated to perform manual labor for any reason other than by their vicious habits, and now citizens of this state, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this state without a license therefor. Before any soldier shall be entitled to the benefits of this section he shall make application to the county board of pensioners of the county of which he is a resident, and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the war between the states, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of two thousand dollars ($2,000) in his own name or in the name of his wife, deeded to her by him since the first day of March, one thousand nine hundred and two. (1921, c. 189, s. 25; C. S. (5168(z).)

§ 112-36. Taking fees for acknowledgments by pensioners.—It shall be unlawful for any clerk of the Superior Court, notary public or any magistrate to charge any Confederate pensioner or the widow of such Confederate pensioner receiving a pension from the State of North Carolina for taking acknowledgments in connection with pension papers.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1925, c. 68.)

§ 112-37. Officers required to check roll of pensioners with record of vital statistics. — It shall be the duty of the Register of Deeds and the Clerk of the Court of each county in the State of North Carolina to check the roll of pensioners furnished the Clerks of the Court of the various counties of the State, with the record of vital statistics in the office of the Register of Deeds, within ten days after receipt of the pension roll, which roll shall be furnished by the State Auditor on or before October fifteenth and April fifteenth of each year, and certify under their hands and seals of their office, the names of all deceased pensioners with dates of their death, whose names appear upon the pension roll, to the State Auditor. The State Auditor at the time of furnishing the pension rolls to the Register of Deeds and Clerk of the Superior Court of each county, as herein provided, shall also furnish copies of said pension rolls to the State Registrar of Vital Statistics, who shall cause the same to be checked against the vital statistics records in his office and certify to the State Auditor the names of all persons appearing on said pension rolls, which the records in his office show to be deceased, together with the dates of their death. (1931, c. 144.)

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113-305. Moccasin river and Big and Little Contentnea creeks: Obstructions and nets in.
113-306. Neuse and Trent rivers: Stationary, set, or dutch nets.
113-307. Neuse and Trent rivers: Size of seine bars regulated.
113-308. Neuse river: Obstructions in, by dams, nets, etc.
113-309. Neuse river: Certain nets regulated.
113-310. Neuse, Trent, Moccasin, White Oak and New Rivers; perch traps prohibited, minimum size of other traps.
113-311. Pamlico and Tar rivers: Dutch, etc., nets prohibited.
113-312. Pamlico and Tar rivers: Lay days.
113-313. Pamlico river: Dutch, etc., nets allowed under regulation.
113-314. Perquimans river: Nets in, regulated.
113-315. Roanoke river: Drift nets in, regulated.
113-316. Scuppernong river and Lake Phelps: nets in, regulated.
113-317. Scuppernong river: Nets obstructing channel or near bridges.
113-318. Scuppernong river and tributaries: Obstructions and nets in.
113-319. Scuppernong river: Nets near Norfolk and Southern railroad bridge.
113-320. Trent river: Use of nets regulated.
113-321. Counties on Pamlico sound: Size of fish caught or sold.
113-322. Brunswick, New Hanover and Pender: Size of bars in nets.
113-323. Brunswick, Cumberland, New Hanover, Sampson, and Harnett: Close season for fish.
113-324. New Hanover, Onslow, and Pender: Purse nets and seines for food fish.
113-325. Beaufort: Nets regulated in certain creeks.
113-326. Beaufort: Fishing by residents in Bath creek.
113-327. Beaufort: Certain nets in Blount's creek.
113-328. Beaufort: Certain nets in Durham and Lee's creeks.
113-329. Beaufort: Certain nets in Nixon's creek.
113-330. Beaufort: Certain nets in North creek.
113-331. Bladen: Manner of fishing in Brown Marsh and Horseshoe swamps.
113-332. Bladen: White lake; hook and line only.
113-333. Brunswick: Mullet fishing; purse nets.
113-334. Brunswick: Nonresidents must have license.
113-335. Carteret: Cedar Island township; hauling nets with power.
113-336. Carteret: Use of dutch nets.
113-337. Carteret: Size of seine mesh.
113-338. Carteret: Length of nets.
113-339. Carteret: Joining nets together.
Sec.
113-340. Carteret: Obstructions to fish prohibited.
113-341. Carteret: Pound nets in Neuse river.
113-342. Carteret: Purse nets for mullet prohibited.
113-343. Carteret and Onslow: Purse nets prohibited for food fish.
113-344. Chatham: Fishways in Haw river.
113-345. Clay: Fishing regulated.
113-346. Columbus: Traps and nets in Porter swamp.
113-347. Currituck county: Fishing in Atlantic township.
113-348. Currituck county: Dutch nets in Currituck sound.
113-349. Currituck county: Shipping or selling fish.
113-350. Currituck county: Right of search.
113-351. Dare: Dutch and pound nets prohibited.
113-352. Dare: Fishing in Kitty Hawk bay regulated.
113-353. Greene: Size of mesh; fishing on another's land.
113-354. Hertford and Northampton: Fish in Potecasi creek protected.
113-355. Hyde: Pound and dutch nets prohibited.
113-356. Hyde: Drag nets prohibited in Rose bay.
113-357. Hyde: Drag nets prohibited in Slade's river and Fortescue creek.
113-358. Hyde: Slade's river; nets in.
113-359. New Hanover: Nets in Masonboro and Myrtle Grove sounds.
113-360. New Hanover: Seines in Atlantic ocean.
113-361. Onslow: Obstructions in Cypress swamp and Haws run.
113-362. Onslow: Stop nets prohibited.
113-363. Onslow: Nets and seines in ocean regulated.
113-364. Onslow: Seines and nets in New river.
113-365. Onslow County: Ban on use of haul nets and seines in New River.
113-366. Pamlico county: Use of nets regulated.
113-367. Pamlico county: Nets in Dawson's creek.
113-368. Pamlico county: Drag nets prohibited in certain streams.
113-369. Pasquotank county: Pound or fyke nets in Pasquotank river.
113-370. Pasquotank county: Nets in Hatley creek.
113-371. Pasquotank and Perquimans: Gill nets allowed.
113-372. Robeson: Fishing in Lumber river.
113-373. Robeson: Nets and traps; close season; limit catch.
113-374. Sampson: Fishing regulated.
113-375. Tyrrell: Alligator river and Frying Pan creek; nets in.
113-376. Wayne: Nets and traps in Neuse and Little rivers.
113-377. Taking shad prohibited in certain area.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Art. 1. Organization and Powers.

§ 113-1. Meaning of terms.—In this article, unless the context otherwise requires, the expression "department" means the Department of Conservation and Development; "board" means the Board of Conservation and Development; and "director" means the Director of Conservation and Development. (1925, c. 122, s. 3.)

§ 113-2. Department created.—There is hereby created and established a department to be known as the "Department of Conservation and Development," with the organization, powers

and duties hereafter defined in this article. (1925, c. 122, s. 2.)

§ 113-3. Duties of the department.—It shall be the duty of the department, by investigation, recommendation and publication, to aid

(a) In the promotion of the conservation and development of the natural resources of the State;

(b) In promoting a more profitable use of lands, forests and waters;

(c) In promoting the development of commerce and industry;

(d) In coördinating existing scientific investigations and other related agencies in formulating and promoting sound policies of conservation and development; and

(e) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State. (1925, c. 122, s. 4.)

§ 113-4. Board of Conservation and Development.—The control and management of the department shall be vested in a board to be known as the "Board of Conservation and Development," to be composed of fifteen members. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-5. Appointment and terms of office of board.—After May 1, 1941, the Governor shall appoint fifteen persons to be members of the Board of Conservation and Development. In making the appointments, the Governor shall take into consideration the functions and activities of the Board, and he shall select members who are qualified to represent the different activities and functions of the department, giving as near as possible proportional representation to each and all of the functions and activities of said department. The terms of office of the board members shall be four years, and until their successors are appointed and qualified. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-6. Meetings of the Board. — The said Board shall be required to meet at least twice per year; once in January and once in July, the exact time and place to be designated by the chairman of the Board, and the Board may hold such other meetings at different times and places as may be deemed by the Board necessary to the proper conduct of the business of the department. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-7. Compensation of Board.—The members of the Board shall receive not more than five dollars per diem and actual travel expenses while in attendance on Board meetings or while engaged in the business of the department. (1925, c. 122, s. 8; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-8. Powers and duties of the board.—The board shall have control of the work of the department, and may make such rules and regulations as it may deem advisable to govern the work of the department and the duties of its employees.

It shall make investigations of the natural, industrial and commercial resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in § 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water-powers, with recommendations and plans for promoting their more profitable use, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing the laws relating to all fish.

It shall make investigations of the existing conditions of trade, commerce and industry in the State, with the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of these interests.

The board may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to coöperate with other departments and agencies of the State in obtaining and making public such information.

It shall be the duty of the board to arrange and classify the facts derived from the investigations made, so as to provide a general source of information in regard to the State, its advantages and resources. (1925, c. 122, s. 9; 1927, c. 57.)

§ 113-9. Director of Conservation and Development. — The Governor shall appoint a suitable person as Director of Conservation and Development, who shall have charge of the work of the department, under the supervision of the board. The director shall serve for such time as the Governor may designate in his appointment, not to exceed, however, the term of office of the Governor making the appointment, and until his successor is appointed and qualified. (1925, c. 122, s. 12.)

§ 113-10. Duties of the director.—It shall be the duty of the director, under the supervision of the board and under such rules and regulations as the board may adopt, to make, or cause to be made, examinations and surveys of the economic and natural resources of the State and investigations of its industrial and commercial enterprises and advantages, and to perform such other duties as the board may prescribe in carrying out the objects of the department. (1925, c. 122, s. 13.)

§ 113-11. Compensation of the director.—The director shall receive an annual salary to be fixed by the Governor not to exceed the sum of six thousand dollars. (Rev., s. 2757; 1905, c. 542, ss. 2, 3; 1925, c. 122, s. 14; C. S. 6122(r).)

§ 113-12. Assistants.—The director shall ap-

point, subject to the approval of the board, such experts and assistants as may be found necessary to enable him to carry on successfully the work of the department, among whom he may appoint, subject to the approval of the board and as may be found necessary, a State geologist and a State forester. To the State forester and the State geologist such duties may be assigned by the said director, subject to the approval of the board, as may be desired, including those heretofore exercised by those officers so designated. (1925, c. 122, s. 15.)

§ 113-13. Power to examine witnesses. — The board, or the director, is authorized, in the performance of their duties, to administer oaths and to subpœna and examine witnesses. (1925, c. 122, s. 10.)

§ 113-14. Reports and publications.—The board shall prepare a report to be submitted by the governor to each general assembly showing the nature and progress of the work and the expenditures of the department.

The board may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such reports and information shall be published and distributed as the board may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11.)

§ 113-15. Advertising of state resources and advantages.—It is hereby declared to be the duty of the department of conservation and development to map out and to carry into effect, under the direction and with the approval of the director of the budget, a systematic plan for the nation-wide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the state of North Carolina and all of its resources. (1937, c. 160.)

§ 113-16. Cooperation with agencies of the Federal government.—The board is authorized to arrange for and accept such aid and cooperation from the several United States Government bureaus and other sources as may assist in completing topographic surveys and in carrying out the other objects of the department.

The board is further authorized and directed to cooperate with the Federal power commission in carrying out the rules and regulations promulgated by that commission; and to act in behalf of the State in carrying out any regulations that may be passed relating to water-powers in this State other than those related to making and regulating rates. The provisions of this section are extended to apply to cooperation with authorized agencies of other States. (1925, c. 122, s. 18; 1929, c. 297, s. 2.)

§ 113-17. Agreements, negotiations and conferences with Federal Government.—The Department of Conservation and Development is delegated as the state agency to represent North Carolina in any agreements, negotiations, or conferences with authorized agencies of adjoining or other States, or agencies of the Federal Government, relating to the joint administration or control over the surface or underground waters passing or flowing from one State to another: Provided, that in all matters relating to pollution of said waters the department and the State Board of Health, acting jointly, are hereby designated as the official agency under the provisions of this section. (1929, c. 297, s. 1.)

§ 113-18. Department authorized to receive funds from Federal Power Commission. — All sums payable to the State of North Carolina by the Treasurer of the United States of America under the provisions of section seventeen and other sections of the Federal Water Power Act shall be paid to the account of the State Department of Conservation and Development as the authorized agent of the State for receipt of said payments. Such sums shall be used by the Department of Conservation and Development in prosecuting investigations for the utilization and development of the water resources of the State. (1929, c. 288.)

§ 113-19. Coöperation with other State departments.—The board is authorized to coöperate with the North Carolina Utilities Commission in investigating the water-powers in the State, and to furnish the Utilities Commission such information as is possible regarding the location of the water-power sites, developed water-powers, and such other information as may be desired in regard to water-power in the State; the board shall also coöperate as far as possible with the Department of Labor, the State Department of Agriculture, and other departments and institutions of the State in collecting information in regard to the resources of the State and in preparing the same for publication in such manner as may best advance the welfare and improvement of the State. (1925, c. 122, s. 16; 1927, c. 57, s. 1; 1931, c. 312; 1933, c. 134, s. 8.)

§ 113-20. Coöperation with counties and municipal corporations.—The board is authorized to coöperate with the counties of the State in any surveys to ascertain the natural resources of the county; and with the governing bodies of cities and towns, with boards of trade and other like civic organizations, in examining and locating water supplies and in advising and recommending plans for other municipal improvements and enterprises. Such coöperation is to be conducted upon such terms as the board may direct. (1925, c. 122, s. 17.)

§ 113-21. Coöperation of counties with state in making water resource survey.—The board of county commissioners of any county of North Carolina is authorized and empowered, in their discretion, to coöperate with the Department of Conservation and Development or other association, organizations, or corporation in making surveys of any of the natural resources of their county, and to appropriate and pay out of the funds under their control such proportional part of the cost of such survey as they may deem proper and just. (1921, c. 208; 1935, c. 122, s. 4.)

§ 113-22. Control of State forests.—The board and director shall have charge of all State forests, and measures for forest fire prevention. (1925, c. 122, s. 22.)

§ 113-23. Control of Mount Mitchell Park and other State parks.—The board shall have the control and management of Mount Mitchell Park and of any other parks which have been or may be acquired by the State as State parks. (1925, c. 122, s. 23.)

§ 113-24. Protection of waterfowl food growing in public waters.—The director of the state department of conservation and development shall have absolute control and authority over all the aquatic plant foods or other waterfowl food growing in the public waters of North Carolina. None of same shall be sold, transported or shipped from the State except by permission in writing obtained from the director of the state department of conservation and development. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned not less than ninety (90) days nor more than six (6) months, or both such fine and imprisonment, in the discretion of the court. (1935, c. 135; 1941, c. 205.)

§ 113-25. Notice to department before beginning business of manufacturing products from mineral resources of State.—Every person, firm or corporation engaging in the manufacture or production of any product from any natural resources, classified as mineral products, shall before beginning such operation, or if already engaged in such business, within ninety days after March 9, 1927, notify the department of its intention to begin or continue such business, and also notify said department of the product or products it intends to produce.

Every person, firm or corporation now engaged or hereafter engaging in the manufacture or production of any product from any natural resources of the State classified as mineral products, shall notify the department when such person, firm or corporation shall discontinue such manufacture or production.

Any person, firm or corporation failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than twenty-five dollars and not less than five dollars, in the discretion of the court. (1927, c. 258.)

§ 113-26. Department authorized to dispose of mineral deposits belonging to state.—The State Department of Conservation and Development is fully authorized and empowered to sell, lease, or otherwise dispose of, any and all mineral deposits belonging to the State of North Carolina which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State; and the said Department of Conservation and Development is authorized and empowered to convey or lease the right to such person, or persons, as it may, in its discretion, determine to take, dig and remove from such bottoms such mineral deposits found therein belonging to the State of North Carolina as may be sold or leased, or otherwise disposed of to them by the said department. The department is authorized, in its discretion, to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the said department and to the best interest of the State of North Carolina: Provided, however, that before any such sale, lease, or contract is made the same shall be approved by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation, and subject to such other terms and conditions as may be imposed by the said department.

All of the proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the Treasury of the State, but the same shall be used exclusively by the Department of Conservation and Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including therein any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 385.)

§ 113-27. Investigation of coasts, ports and waterways of State.— The department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to coöperate with agencies of the Federal and State Government and other political sub-divisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the department to represent the State in connection with such duties. (1931, cc. 139, 266; 1937, c. 434.)

§ 113-28. Reimbursement of government for expense of emergency conservation work.—When and if, upon the sale of state land or its products, the director of conservation and development determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other purposes" approved March thirty-first, one thousand nine hundred and thirty-three, one-half of such profit from such sale of land, or one-half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States government for monies expended by it under such act, for the work so done, to the extent and at the rate of one dollar per man per day, for the time spent in such work, but not exceeding in the aggregate three dollars per acre. The director of conservation and development shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by

the department of conservation and development, or paid over to it by any other authorized agency making the sale, to be so retained by such department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the department of conservation and development is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said department of conservation and development as now authorized and directed by law. This section shall not be construed to authorize the sale of state lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress. (1935, c. 115.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

Art. 2. Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by division of forestry.—The department of conservation and development through the division of forestry shall inaugurate the following policy and plan looking to the coöperation with private and public forest owners in this state in so far as funds may be available through legislative appropriation, gifts of money or land, or such coöperation with landowners and public agencies as may be available:

a. The extension of the forest fire prevention organization to all counties in the state needing such protection.

b. To coöperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

c. To furnish trained and experienced experts in forest management, to inspect private forest lands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said department.

d. To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

e. To acquire small areas of suitable land in the different regions of the state on which to establish small, model forests which shall be developed and used by the said department of conservation and development as state demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1.)

§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.—The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said department of conservation and development title to such tax delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the state forester may be suitable for the purposes named in § 113-29, paragraph "e". (1939, c. 317, s. 2.)

§ 113-31. Procedure for acquisition of delinquent tax lands from counties.—In the carrying out of the provisions of § 113-30, the several boards of county commissioners shall furnish forthwith on written request of the department of conservation and development a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the state forester of the department of conservation and development shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in § 113-30, request shall be made through the director of said department to the county commissioners for the acquisition of such land by the department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the department through fee simple deed or other legal transfer, said deed to be approved by the attorney general of North Carolina, and shall then receive payment from the department as above outlined. (1939, c. 317, s. 3.)

§ 113-32. Purchase of lands for use as demonstration forests.—Where no suitable tax-delinquent lands are available and in the judgment of the department of conservation and development the establishment of a demonstration forest is advisable, the department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the attorney general, but nothing in §§ 113-29 to 113-33 shall allow the department of conservation and development to acquire land under the right of eminent domain. (1939, c. 317, s. 4.)

§ 113-33. Forest management appropriation.—Necessary funds for carrying out the provisions of §§ 113-29 to 113-33 shall be set up in the regular budget as an item entitled forest management. (1939, c. 317, s. 5.)

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States.—The governor of the state is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the state, the same to be held, protected, and administered by said board as state forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the state, suitable chiefly for the production of timber, as state forests, for experimental, demon-

stration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State Park activities with which the Department of Conservation and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this sentence can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the Clerk of the Superior Court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this sentence shall not be exercised. The attorney-general of the state is directed to see that all deeds to the state for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. Such state forests shall be subject to county taxes assessed on the same basis as are private lands, to be paid out of money in the state treasury not otherwise appropriated.

The board of conservation and development is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farm land acquired by said federal government as may be suitable for the purpose of creating and maintaining state-controlled forests, game refuges, public shooting grounds, state parks, state lakes, and other recreational areas or to enter into long-time leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of long-time public use, supplemented by such necessary appropriations as may be made by the general assembly. The department of conservation and development is further empowered to segregate state hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, state parks, state lakes, and other recreational areas to be deposited in the state treasury to the credit of the department to be used for the administration of these areas. (1915, c. 253, s. 1; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; C. S. 6124.)

Local Modification.—Stokes: 1941, c. 118, s. 2.

§ 113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc. — Timber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. Said Department shall have authority to establish on these or other State lands under its charge forest nurseries for the growing of trees for planting on such State forest lands and to procure or acquire tree seeds for nursery for forest use. Such planting stock as is not required in the State forests may be sold at not less than cost to landowners within the State for planting purposes, but all such planting shall be done under plans approved by the Department. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars or by imprisonment for not exceeding thirty days. (1931, c. 111.)

§ 113-36. Application of proceeds from sale of products.—All money received from the sale of wood, timber, minerals, or other products from the state forests shall be paid into the state treasury and to the credit of the Board of Conservation and Development; and such money shall be expended in carrying out the purposes of this article and of forestry in general, under the direction of the Board of Conservation and Development. (1915, c. 253, s. 2; 1925, c. 122, s. 22; C. S. 6125.)

§ 113-37. Legislative authority necessary for payment.—Nothing in this article shall operate or be construed as authority for the payment of any money out of the state treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the general assembly. (1915, c. 253, s. 2½; C. S. 6126.)

§ 113-38. Distribution of funds from sale of forest lands.—All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (Thirty-five Stat., two hundred sixty), for the counties of Avery, Buncombe, Burke, Haywood, Henderson, Jackson, Macon, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forest lands shall be located.

All funds which may hereafter come into the hands of the state treasurer from like sources shall be likewise distributed. (Ex. Sess. 1920, c. 6; 1921, c. 179, s. 17; 1933, c. 537, s. 1; 1939, c. 152; C. S. 6126(a).)

§ 113-39. License fees for hunting and fishing on government-owned property unaffected. — No wording in § 113-113, or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the

state of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, state or non-resident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the state of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2.)

§ 113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition. — The department of conservation and development is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the department are desirable for state forests or state parks. (1935, c. 430, s. 1.)

§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules and regulations.—When lands are acquired or leased under § 113-40, the department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of §§ 113-40 to 113-44. (1935, c. 430, s. 2.)

§ 113-42. Disposition of revenues received from lands acquired.—All revenues derived from lands now owned or later acquired under the provisions of §§ 113-40 to 113-44 shall be set aside for the use of the department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty per cent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the general assembly may prescribe, and fifty per cent shall be paid into the school fund to be used in the county or counties in which lands are located. (1935, c. 430, s. 3.)

§ 113-43. State not obligated for debts created hereunder.—Obligations for the acquisition of land incurred by the department under the authority of §§ 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State. (1935, c. 430, s. 4.)

§ 113-44. Disposition of lands acquired.—The department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of state forests and state parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into. (1935, c. 430, s. 5.)

Art. 3. Private Lands Designated as State Forests.

§ 113-45. Governor may designate state forests. —The governor of the state, upon the written application of any owner or owners of wooded lands situated in North Carolina above contour line two thousand feet, may at his discretion declare the lands of such owner or owners, or such parts thereof as he may deem advisable, a "state forest of North Carolina." (1909, c. 89, s. 1; C. S. 6127.)

§ 113-46. Publication of declaration.—The declaration of the governor shall be published, at the expense of the applicant, in three consecutive issues of any newspaper published in the county or counties wherein the lands declared a state forest reserve are situated, if there be one; if no paper is published in the county or counties, then in a paper published in an adjoining county; and after such publication the said lands shall be a state forest of North Carolina for the term of thirty years. (1909, c. 89, s. 2; C. S. 6128.)

§ 113-47. Duty of the landowners.—The owner or owners, when making such written application, shall agree in writing to treat in a conservative manner the proposed state forest described in the application, such manner to be in accordance with a working plan approved by the Department of Conservation and Development; and the owner or owners of such proposed state forest, when making such application, shall agree to pay annually into the school fund of the county wherein such proposed state forest or a part thereof is situated one-half cent for every acre of such proposed state forest situated within the county; and if the owner or owners thereafter shall fail to make such annual payment, then the declaration of the governor establishing the said state forest shall be null and void to all intents and purposes. (1909, c. 89, s. 3; 1925, c. 122, s. 22; C. S. 6129.)

§ 113-48. State forest wardens appointed.—The governor shall appoint at his discretion, with the approval of the commissioners of the county wherein a state forest is situated, as state forest wardens such a man or men over twenty-one years of age as may be designated for appointment by the owner or owners of such state forest. Such state forest wardens are to receive no compensation other than that which the owner or owners of the state forest may pay to them. (1909, c. 89, s. 4; C. S. 6130.)

§ 113-49. Powers of state forest wardens.—The state forest wardens may make arrest on sight, without warrant, for any criminal offense, as provided in the chapter on Criminal Law for setting fire to woods, for camp-fires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the state forest. They shall safeguard against trespass, and notably against fire, in the state forest for which they have been appointed; and, as far as the enforcement of the provisions of this article is concerned, the state forest warden shall have all the powers, privileges, and protection otherwise had by sheriffs under any law now in force. (1909, c. 89, s. 5; C. S. 6131.)

§ 113-50. Fines imposed.—The minimum fine for any offense mentioned in the preceding section committed within any state forest shall be fifty dollars if within the jurisdiction of the superior court, and twenty-five dollars if within the jurisdiction of a justice of the peace. (1909, c. 89, s. 6; C. S. 6132.)

Art. 4. Protection against Forest Fires.

§ 113-51. Board of Conservation and Development.—The State Board of Conservation and Development may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this state, and it is hereby authorized to enter into an agreement with the secretary of agriculture of the United States for the protection of the forested watersheds of streams in this state. (1915, c. 243, s. 1; 1925, c. 122, s. 22; C. S. 6133.)

§ 113-52. State forester and forest wardens.—The forester of the Department of Conservation and Development, who shall be called state forester, and shall be ex officio state forest warden, may appoint, with the approval of the Board of Conservation and Development, one county forest warden and one or more deputy forest wardens in each county of the state in which after careful investigation the amount of forest land and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization. (1915, c. 243, s. 2; 1925, c. 106, s. 1, c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; C. S. 6134.)

§ 113-53. Duties of state forester.—The state forester, as the state forest warden, shall have supervision of forest wardens, shall instruct them in their duties, issue such regulations and instructions to all forest wardens as he may deem necessary for the purposes of this article, and cause violations of the laws regarding forest fires to be prosecuted. (1915, c. 243, s. 3; 1925, c. 106, s. 1; 1927, c. 150, s. 2; C. S. 6135.)

§ 113-54. Duties of forest wardens; payment of expenses by state and counties.—Forest wardens shall have charge of measures for controlling forest fires; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the state forester; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the state forester, and shall perform such other acts and duties as shall be considered necessary by the state forester for the protection of the forested area of the counties from fire. The warden shall keep an itemized account of all expenses thus incurred and send such accounts, verified by affidavit, to the state forester monthly, for his examination. Upon approval by the state forester such accounts shall be sent by the state forester to the board of county commissioners of the county in which such expenses have been incurred, and upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to have issued a warrant on the county treasury for the payment of one-half of such account, said payments of counties' share of such expenditures to be made within one month after receipt of such statements from the state forester, provided that the total payments by the county shall not exceed five (5) mills per acre of total woodland area in said county in any one calendar year, unless specifically authorized by the county commissioners to meet an emergency; appropriations for meeting the counties' share of the fire control costs to be set up annually by the commissioners in the county budget. (1915, c. 243, s. 4; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; C. S. 6136.)

§ 113-55. Powers of forest wardens to prevent and extinguish fires.—Forest wardens shall prevent and extinguish forest fires and enforce all statutes of this state now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest warden may arrest, without a warrant, any person or persons taken by him in the act of violating any of the laws for the protection of forests and woodlands, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drouth the state forester may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland the forest warden shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest warden or his deputies may summon any male resident between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest warden or person summoned by him for crossing or working upon lands of another in connection with his duties as forest warden. (1915, c. 243, s. 6; 1925, c. 106, ss. 1, 2; 1925, c. 240; 1927, c. 150, s. 4; C. S. 6137.)

§ 113-56. Compensation of forest wardens.—Forest wardens shall receive compensation from the Board of Conservation and Development at a reasonable rate to be fixed by said board not to exceed the sum of thirty cents per hour for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in fighting or extinguishing any fire, according to an itemized statement to be rendered the state forester every month, and approved by him. Forest wardens shall render to the state forester a statement of the services rendered by the men employed by them or their deputy wardens, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the state forester. If said bill

be duly approved by the state forester, it shall be paid by direction of the Board of Conservation and Development out of any funds provided for that purpose. (1915, c. 243, s. 7; 1924, c. 60; 1925, c. 106, ss. 1, 3, c. 122, s. 22; C. S. 6138.)

§ 113-57. Woodland defined.—For the purposes of this article, woodland is taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated. (1915, c. 243, s. 11; C. S. 6139.)

§ 113-58. Misdemeanor to destroy posted forestry notice.—Any person who shall maliciously or wilfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the state forester, under the provisions of this article, or any other act which may be passed for the purpose of protecting the forests in this state from fire, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or imprisoned not exceeding thirty days. (1915, c. 243, s. 5; C. S. 6140.)

§ 113-59. Coöperation between counties and state in forest fire protection.—The board of county commissioners of any county are hereby authorized and empowered, in their discretion, to coöperate with the Department of Conservation and Development in the protection from fire of the forests within their respective counties, and to appropriate and pay out of the funds under their control for such protection an amount not to exceed one-half of the total expended by said department in such county during any one year for such protection: Provided, that said board of county commissioners may in addition agree with the Department of Conservation and Development to pay any part of or all the expenses incurred in extinguishing forest fires within said county after satisfying themselves that such expenses were legitimate and proper. (1921, c. 26; 1925, c. 122, s. 22; C. S. 6140(a).)

§ 113-60. Instructions on forest preservation.—It shall be the duty of all district, county, township wardens, and all deputy wardens provided for in this chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire wardens all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such wardens by the State and Federal forestry agencies touching or dealing with forest fires and forest preservation.

It shall be the duty of the various wardens herein mentioned under the direction of the State Forester, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and wardens shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3.)

Art. 5. Corporations for Protection and Development of Forests.

§ 113-61. Private limited dividend corporations may be thus formed. — Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the director of the department of conservation and development shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of state of North Carolina, except where such provisions are in conflict with this article. (1933, c. 178, s. 1.)

§ 113-62. Manner of organizing.—A corporation formed under this article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of state of North Carolina, except where such provisions are in conflict with this article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this article and that it consents to be and shall be at all times subject to the rules, regulations and supervision of the director of the department of conservation and development, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules and regulations from time to time imposed by the director of the department of conservation and development. (1933, c. 178, s. 2.)

§ 113-63. Directors.—There shall not be less than three directors, one of whom shall always be a person designated by the director of the department of conservation and development, which one need not be a stockholder. (1933, c. 178, s. 3.)

§ 113-64. Duties of supervision by director of department of conservation and development. — Corporations formed under this article shall be regulated by the director of the department of conservation and development in the manner provided in this article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties, which cannot be fairly charged to any particular corporation or corporations, shall be charged to and paid by, all the corporations then organized and existing under this article pro-rata according to their respective stock capitalizations. The director of the department of conservation and development shall:

(a) From time to time make, amend, and re-

peal rules and regulations for carrying into effect the provisions of this article and for the protection and development of forests subject to its jurisdiction.

(b) Order all corporations organized under this article to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the director of the department of conservation and development, or to refrain from doing any acts in violation thereof.

(c) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the director of the department of conservation and development.

(d) Require every such corporation to file with the director of the department of conservation and development annual reports and, if the director of the department of conservation and development shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the director of the department of conservation and development may require. (1933, c. 178, s. 4.)

§ 113-65. Powers of director. — The director of the department of conservation and development may:

(a) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(b) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The director of the department of conservation and development shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(c) Enforce the provisions of this article and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5.)

§ 113-66. Provision for appeal by corporations to governor.—If any corporation organized under this article is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the director of the department of conservation and development, or any valuation or appraisal of any of its property made by the director of the department of conservation and development, or any failure of or refusal by the director of the department of conservation and development to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the governor by filing with him a claim of appeal upon which the decision of the governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the governor in a written mandate to the director of the department of conservation and development, who shall abide thereby and take such action as the same may direct. (1933, c. 178, s. 6.)

§ 113-67. Limitations as to dividends. — The shares of stock of corporations organized under this article shall have a par value and, except as provided in § 113-69 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum per annum on stock having a preference as to dividends, or eight per centum per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7.)

§ 113-68. Issuance of securities restricted.—No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the state of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the director of the department of conservation and development. (1933, c. 178, s. 8.)

§ 113-69. Limitation on bounties to stockholders.—Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in § 113-67 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9.)

§ 113-70. Earnings above dividend requirements payable to state. — Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in § 113-67 shall be paid over to the state of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the director of the department of conservation and development shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10.)

§ 113-71. Dissolution of corporation. — Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the state of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within twenty years of the date of its organization unless the same is accompanied

by a certificate of the director of the department of conservation and development consenting to such dissolution. (1933, c. 178, s. 11.)

§ 113-72. Cutting and sale of timber. — Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the director of the department of conservation and development, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12.)

§ 113-73. Corporation may not sell or convey without consent of director, or pay higher interest rate than 6%.—No such corporation shall:

(a) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the director of the department of conservation and development of the terms of such sale, transfer or assignment, and unless the director of the department of conservation and development shall consent thereto, and if the director of the department of conservation and development shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and supervision of the director of the department of conservation and development for such period as the latter may require;

(b) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum per annum without the consent of the director of the department of conservation and development.

(c) Mortgage any real property without first having obtained the consent of the director of the department of conservation and development. (1933, c. 178, s. 13.)

§ 113-74. Power to borrow money limited.— Any such corporation formed under this article may, subject to the approval of the director of the department of conservation and development, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the director of the department of conservation and development, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the director of the department of conservation and development for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14.)

§ 113-75. Director to approve development of forests. — No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the director of the department of conservation and development, and such approval shall not be given unless:

(1) The director of the department of conservation and development shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the director of the department of conservation and development shall require of the activities to be included in the project, such statement to set forth the proposals as to (a) fire prevention and protection, (b) protection against insects and tree diseases, (c) protection against damage by livestock and game, (d) means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and (e) planting and spacing of trees.

(2) There shall be submitted to the director of the department of conservation and development a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the director of the department of conservation and development as to where such funds are to be secured.

(3) The director of the department of conservation and development shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained yield basis except in so far as the director of the department of conservation and development shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the director of the department of conservation and development, and that it will at all times comply with such rules and regulations concerning the project as the director of the department of conservation and development shall from time to time impose. (1933, c. 178, s. 15.)

§ 113-76. Application of corporate income.— The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the director of the department of conservation and development to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus and/or to the payment of dividends not exceeding the maximum fixed by this article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16.)

§ 113-77. Reorganization of corporations.—Reorganization of corporations organized under this article shall be subject to the supervision of the director of the department of conservation and development and no such reorganization shall be had without the authorization of the director of the department of conservation and development. (1933, c. 178, s. 17.)

Art. 6. Coöperation for Development of Federal Parks, Parkways and Forests.

§ 113-78. Committee to foster program for de-

velopment of federal parks, etc.—The governor of the state of North Carolina is authorized and empowered to appoint a committee of three persons from each of the counties of Surry, Alleghany, Ashe, Wilkes, Caldwell, Watauga, Burke, Avery, Yancey, Mitchell, Henderson, Buncombe, Haywood, Jackson, Swain and McDowell, and any other counties in the state of North Carolina desiring to actively participate in the program of coöperation contemplated by this act. (1941, c. 377, s. 1.)

§ 113-79. Meeting of committee; executive committee; duties of executive secretary.—The members of said committee shall meet within thirty days after their appointment and shall elect or appoint an executive committee, from their membership, of not less than three nor more than five members, and it shall be the duty of such executive committee to select and recommend to the governor for appointment a full time executive secretary as the representative of the various counties interested, to contact the different federal and state agencies and departments and assist in the formulation of a workable plan between the federal agencies, the state agencies, and the various counties of the state as set out in § 113-78, in order that the people in the counties affected, and also the people in the state as a whole, may receive the full economic and social benefits from the operation of federal parks and parkways to which they are entitled. (1941, c. 377, s. 2.)

§ 113-80. Appointment of executive secretary; additional duties; salary.—The governor of the state is authorized, upon the recommendation of the executive committee above referred to, to appoint an executive secretary, whose duties, in addition to those set out in § 113-79, shall be fixed by the executive committee, the governor and the director of the department of conservation and development. The salary of said executive secretary shall be fixed by the governor and the advisory budget commission. (1941, c. 377, s. 3.)

§ 113-81. Department of conservation and development authorized to make agreements with federal and state agencies.—The department of conservation and development of the state of North Carolina is authorized to enter into agreements with the proper agencies of the federal and state governments in order to promote said program of coöperation, but no agreement shall be entered into until same has been approved by the executive committee hereinbefore set up and by the governor of the state. (1941, c. 377, s. 4.)

SUBCHAPTER III. GAME LAWS.

Art. 7. North Carolina Game Law of 1935.

§ 113-82. Title of article.—This article shall be known by the short title of "The North Carolina Game Law." (1935, c. 486, s. 1.)

Local Modification.—Currituck: 1935, c. 160.

§ 113-83. Definitions.—For the purpose of this article the following shall be construed, respectively, to mean:

Board—Board of conservation and development.

Commissioner—Commissioner of game and inland fisheries.

Person—The plural or singular as the case demands, including individuals, associations, partnerships, and corporations, unless the context otherwise requires.

Take—Whenever it is made lawful to "take" birds or animals, or parts thereof, or birds' nests or eggs, it shall mean the pursuit, hunting, capture or killing of birds or animals, or collecting of birds' nests or eggs in the manner, at the time, and by means specifically permitted. Whenever it is made unlawful to "take" birds or animals or parts thereof, or birds' nests or eggs, the word "take" shall include pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting birds or animals, collecting birds' nests or eggs, and all lesser acts, such as disturbing or annoying birds or animals, or placing or using any net or other device for the purpose of taking birds or animals, whether or not they result in the taking of such birds or animals.

Open Season—The time during which birds or animals may be lawfully taken. Each period of time prescribed as an open season shall be construed to include the first and last days thereof.

Closed Season—The time during which birds or animals may not be taken.

Transport — Shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation, carriage, or export.

Common Carrier — Railroad companies, boat lines, express companies, bus lines, and any person transporting persons or property for hire.

Game Animals—Deer, bear, fox, squirrels and rabbits.

Fur Bearing Animals — Skunk, muskrat, raccoon, opossum, beaver, mink, otter and wildcat.

Non-Game Animals—All wild animals except game and fur bearing animals.

Upland Game Birds—Quail, commonly known as Bob White or Partridge, Wild turkey, grouse, and pheasants of all kinds.

Migratory Wild Waterfowl—Anatidaw or waterfowl, including brant, wild duck, geese and swans; migratory wild birds, gruiae or cranes, including little brown, sandhill, and whooping cranes, rallidae, or rails, including coots, gallinules, sora, and other rails; limicolae, or shore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, sand pipers, snipes, stilts, surf birds, turnstones, willet, woodcock, and yellow legs; columbidae or pigeons, including doves and wild pigeons.

Non-Game Birds—All wild birds except upland game birds and migratory game birds.

Game—All game animals and game birds. (1935, c. 486, s. 2.)

§ 113-84. Powers and duties of the board of conservation and development.—It shall be unlawful to take or pursue any of the wild life of the State at any time or in any manner, except at such times and in such manner as the supply of said wild life may justify, and the said board is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

1. Fix seasons and bag limits or close seasons on any species of game, bird, or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the

maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the board.

2. Establish and close to hunting or trapping game or bird refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof to hunting or trapping.

3. Acquire by purchase, grant, condemnation, lease, agreement, gift, or devise lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:

(a) Game farms or game refuges.

(b) Lands or waters suitable for game, bird, or fur-bearing animal restoration, propagation or protection.

(c) For public hunting or trapping areas to provide places where the public may hunt or trap in accordance with the provisions of law or the regulations of the board.

(d) To extend and consolidate by exchange lands or waters suitable for the above purposes.

(e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird or fur-bearing animal, needed for propagation or stocking purposes, or to exercise control measures of undesirable species.

4. Enter into coöperative agreements with educational institutions and state, federal, or other agencies, to promote wild life research and to train men for wild life management.

5. Enter into coöperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals, for the development of game, bird or fur-bearing animal management and demonstration projects. (1935, c. 486, s. 4.)

§ 113-85. Limitations on powers.—Nothing in this article, however, shall be construed to authorize the board to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law. (1935, c. 486, s. 4.)

§ 113-86. Organization of work. — The board shall establish such departmental bureaus or divisions and shall authorize the commissioner to employ such experts, clerks, or other employees as it may deem necessary for the conduct of the work of the board, and it shall fix their salaries or other compensation, which shall be paid out of the game and fish fund. The board shall authorize such scientific and other studies as may be deemed necessary to its work, and shall collect, classify and disseminate such statistics, data and information as in its discretion will tend to promote the objects of this article. (1935, c. 486, s. 4.)

§ 113-87. Permits to kill game injurious to agriculture.—The board shall have power to issue permits to kill any species of birds or animals which may become seriously injurious to agriculture or other interests in any particular community, or such birds or animals may be captured alive by it or under its discretion and planted in other sections of the State for re-stocking, or may be disposed of in such other manner as it may determine: Provided, that birds and animals committing depredations may be taken at any time without a permit while committing, or about to commit, such depredations. Any permit issued pursuant to this section shall expire within four (4) months after the date of issuance. (1935, c. 486, s. 4.)

§ 113-88. Publication of rules and regulations of board.—Rules, regulations and orders of the board shall be published in the following manner: Those having general application throughout the State shall be published at least once in some newspaper published in and having general circulation throughout the State and at each county court house door; those of special character having local application only shall be published at least once in some newspaper published in and having general circulation in the locality wherein such rules, regulations and orders are applicable and at the county court house door; but, if no such newspaper is so published and circulated, copies of such rules, regulations and orders shall be posted in at least three conspicuous places in the locality in which they are applicable and at the county court house door. Such rules, regulations and orders may also be given such other publicity as the board may deem desirable. (1935, c. 486, s. 5.)

§ 113-89. County game commissions. — This article shall not be construed to dissolve any game commissions now existing in the several counties, nor to prohibit the creation of game commissions in the several counties and such commissions now existing and such as may be created shall exist, but supervision of the provisions of this article and the direction of the policies and administration of this article and other laws which may exist for the same purpose as this shall be vested in and abide with the board and the powers of such county commissions as may exist or may be created shall be of a nature advisory and recommendatory to the board and the exercise of any powers by them shall require the approval of the board of conservation and development. (1935, c. 486, s. 6.)

§ 113-90. Appointment of commissioner; salary; expenses; bond; office. — The director with the approval of the board shall appoint a commissioner, who shall receive a salary fixed by the board, not exceeding five thousand dollars per annum, payable monthly upon his own requisition. The commissioner shall be reimbursed for his actual and necessary traveling expenses, not to exceed one thousand five hundred dollars per annum, incurred in the discharge of his official business when he is away from the place where his office is located, to be paid by proper voucher. The commissioner shall give bond in the sum of ten thousand dollars, to be approved by the state treasurer, conditioned upon his faithful performance of the duties imposed upon him by the provisions of this article. The bond shall be filed with the state treasurer and the premiums paid from the state game fund. The commissioner shall have his office in the offices of the board at the capital. (1935, c. 486, s. 7.)

§ 113-91. Powers of commissioner.—In accordance with, and subject to, such rules and regula-

tions as may from time to time be adopted by the board relating thereto, the commissioner shall have the following powers:

(a) To Issue Permits. The commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars ($2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a state game department or commission to re-stock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this article and to the regulations of the board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens of any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this article.

(b) To Employ Deputies. The commissioner may employ such game protectors, deputy game protectors, refuge keepers, employees, and agents as shall be necessary for the proper carrying out of the provisions of this article, and with the approval of the board shall arrange the compensation for such protectors, deputy protectors, refuge keepers, employees and agents. Qualifications for the office of game protector shall be considered in the appointment of all game and fish protectors who shall be required to pass an examination showing their knowledge of provisions of the game and fish laws, the purposes of the protection of wild life, and essential matters of administration of these statutes. Said examination shall be prepared under the supervision of the commissioner and given in the county or district in which the said protector will serve and shall be conducted under the direction of the commissioner or some suitable person designated by him. The commissioner shall have general supervision and control over all such protectors, deputy protectors, refuge keepers, and employees, and shall enforce all the provisions of this article and any other laws now in force or hereafter enacted for the protection of wild birds and animals, and shall exercise all necessary powers incident thereto. It shall be the duty of the protectors, deputy protectors, refuge keepers, and employees to obey and carry out the instructions and directions of the commissioner for the enforcement of this article.

(c) To Prepare Form of License. It shall be the duty of the commissioner to prepare forms of licenses and other forms necessary for use in the administration of the provisions of this article and to properly distribute them to the officers and persons required to issue licenses or use such forms. Each license shall be issued in the name of the commissioner and countersigned by the officer or person issuing it. Each licensee shall sign his name in ink on the license issued him. The commissioner shall cause the license accounts of officers and persons issuing licenses to be examined and audited at least once during each year, and shall require such officers and persons promptly to pay him, in accordance with the provisions of this article, all monies received by them from the sales of licenses.

(d) To Execute Warrants. The commissioner and each of his deputies shall have power to execute all warrants issued for violation of this article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to seize and confiscate all instruments or devices illegally used in taking wild birds or animals, and to hold the same to be disposed of as provided in this article; to arrest without warrant any persons committing a violation of this article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(e) To Dispose of Seized Game and Devices. All game birds and the edible portions of game animals seized under the provisions of this article shall be disposed of by the commissioner, or under his direction, by gift to hospitals, charitable institutions or almshouses in the county taken within the State. Non-game birds or parts thereof and the plumes or skins of wild birds or birds of foreign species shall be disposed of by the commissioner by gift to scientific educational institutions within the State, or may be retained by him for use of the board, or in his discretion they may be destroyed. The commissioner shall take a receipt from the donee for any such gift, and file such receipt in his office, and he shall keep a permanent record of such gifts. The heads, antlers, horns, hides, skins, or feet, or parts of any game or fur-bearing animal, seized under the provisions of this article, if the person from whom the same were seized, is convicted of violating any of the provisions of this article, or if the owner thereof is unknown, may be sold for cash by the commissioner, or under his direction, at public auction to the highest bidder. Notice of the time and place of such sale, together with a description of the articles to be sold, shall be given by the commissioner or under his direction in such manner as he may determine to be best calculated to bring the best price therefor: Provided, that if the property seized is perishable, that same may be disposed of by the commissioner immediately. The commissioner or his deputies authorized to make the sale shall issue to the purchaser a certificate stating that the purchaser has the legal right to be in possession of the articles bought, and anyone so acquiring said article or articles from the State, other than the person from whom they were seized, shall have the right to possess the same. If the person from whom any of said articles were seized be acquitted of the charge of violating any of the provisions of this article, the article so seized, unless it be an instrument or device, the use of which is prohibited by this article, or money derived from the sale thereof if it was perishable property, shall be returned to him. It shall be, and is hereby made, the duty of each deputy to make a full and complete report to the commissioner of all property by him confiscated because of a violation of the game laws of this State, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The commissioner shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this article. (1935, c. 486, s. 8.)

§ 113-92. Officers constituted deputy game protectors. — All sheriffs, deputy sheriffs, police officers, forest wardens, park patrolmen, refuge keepers, constables and all other peace officers are hereby made deputy game protectors, and it shall be made their duty to aid in the enforcement of this law. The arrest fee taxed in bills of cost in criminal actions growing out of the violation of this article or violation of laws regulating fishing, except commercial fishing, when the arrest is made by a game protector or a deputy game protector, shall be paid by the Justice of the Peace or other Criminal Court taxing same into the general school fund of the county where the violation took place. No fee shall be taxed in bills of cost for the use and benefit of a game protector or deputy game protector, who appears as a witness at the trial of such case. Any game protector or deputy game protector, who takes arrest fees or witness fees in violation of this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned or both in the discretion of the court, and in addition thereto, upon conviction, he shall forfeit his office. This article shall not apply to sheriffs or deputy sheriffs, who are on fee basis and who make arrests and appear as witnesses in such cases. In no event shall the cost of an action involving the violation of the game and fish laws be taxed against the county or state. (1935, c. 486, s. 9; 1939, c. 119.)

§ 113-93. Protectors, deputy protectors, and refuge keepers constituted special forest wardens. —The commissioner, protectors, deputy protectors and refuge keepers are hereby made ex-officio special forest wardens and charged with the duty of reporting to the forest wardens all infractions of the forest fire law and to assist forest wardens in extinguishing forest fires and generally enforcing the laws and regulations for the preservation of the forests. (1935, c. 486, s. 10.)

§ 113-94. Payment to state treasurer of license fees. — The commissioner shall promptly pay to the state treasurer all monies received by him from the sale of hunting licenses or from any other source arising through the administration of this article, and the state treasurer shall deposit all such money in a special fund, to be known as the state game fund, and which is hereby reserved, set aside, appropriated and made available until expended as may be directed by the board in the enforcement of this article and for the purposes of this article. (1935, c. 486, s. 11.)

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the commissioner, game protectors and such other persons as the commissioner may authorize in writing:

License Fees

Non-resident hunting license	$15.25
State resident hunting license	2.10
Combination hunting and fishing license	3.10
County hunting license	1.10

Said applicant, if a resident of this State, shall pay to the officer or person issuing the license the sum of one ($1.00) dollar as a license fee, and the sum of ten (10c) cents as a fee to the officer or person, other than the commissioner, for issuing the same, and shall obtain a county resident hunt-

ing license, which shall entitle him to take game birds and animals in the county of his residence, or shall pay to the officer or person issuing the license the sum of two dollars ($2.00) as a license fee and the sum of ten (10c) cents as a fee to the officer or person other than the commissioner for issuing the same and shall obtain a resident state hunting license, which shall entitle him to take game birds and animals in any county of the State at large, as authorized by this article. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a non-resident of this State, or a resident for less than six months, or an alien, shall pay to the officer or person issuing the license fifteen ($15.00) dollars as a license fee and the sum of twenty-five (25c) cents as a fee to the officer or person other than the commissioner for issuing the same and shall obtain a non-resident hunting license, which shall entitle him to take game birds and game animals as authorized by this article. The commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a state resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of three ($3.00) dollars as a license fee and ten (10c) cents as a fee for issuing same, which shall entitle him to hunt and fish in any county of the State at large according to the law: Provided, it shall be lawful for any person or persons, whether a resident or non-resident of the state of North Carolina, to hunt foxes with dogs in Northampton county without procuring a hunting license.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars ($10.00), the board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a non-resident license to any game agent of the United States or of a state of the United States without payment of any fees, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a non-resident who holds fee simple title to lands in North Carolina may hunt on such lands by payment of a license fee of five ($5.00) dollars plus twenty-five (25c) cents for the issuing officer. Such non-resident must make a sworn application to the commissioner, on forms provided by said commissioner, setting forth the location of such lands, the non-resident's title thereto, and such other information as may be required by the commissioner, and if such non-resident be a corporation, then only the non-resident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a non-resident landowner's hunting license, as herein provided.

Any non-resident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license. (1935, c. 486, s. 12; 1937, c. 45, s. 1.)

§ 113-96. Trappers' Licenses.—Any person who shall at any time take fur-bearing animals by trapping, shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of two dollars ($2.00) as a license fee, and the sum of twenty-five cents ($.25) as a fee to the officer or person other than the commissioner of game and inland fisheries, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of three dollars ($3.00) as a license fee and the sum of twenty-five cents ($.25) as a fee to the officer or person other than the commissioner, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars ($25.00) as a license fee, and the sum of twenty-five cents ($.25) as a fee to the officer or person, other than the commissioner, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the commissioner, and shall be distinguished from the general hunting licenses above provided. The manner of taking fur-bearing animals by trapping, shall be as provided in this article. The board is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this article. (1929, c. 278, s. 3.)

§ 113-97. Term and use of license.—Each license shall be void after the first day of August next succeeding the date of its issuance. Each licensee shall have his license on his person at all times when he is taking game animals or game birds, and shall exhibit the same for inspection to any game protector or other officer requesting to see it. No person shall alter or loan, change, or transfer any license issued pursuant to the provisions of this article, nor shall any person other than the person to whom it is issued use the same. (1935, c. 486, s. 13.)

§ 113-98. Exemption.—Any person who is a resident of this State, and any dependent member of his family under twenty-one years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this article, on lands owned by such resident without a license; and a minor member of a

family resident of this State, under sixteen years of age, may hunt under the license of his parent or guardian; but such minor must carry such license when so hunting, unless accompanied by such parent or guardian; and a non-resident minor child of any resident of this State may lawfully procure and use the same license required of a resident, when such non-resident child is actually visiting such resident parent: Provided, that a party who leases a farm for cultivation shall not be required to obtain a license to hunt thereon. (1935, c. 486, s. 14.)

§ 113-99. Disposition of license fees. — The license fees provided to be paid in this article shall be remitted by the officers or persons issuing the license on the first and fifteenth of each month to the commissioner with a schedule setting forth the name and address of each licensee, the serial number and classification of the license, and the amount paid for each license issued, except that the officer or person issuing licenses shall, before making such remittance, deduct and retain as his fee the amount of fees provided to be paid to him by the provisions of this article for issuing license. On or before the first day of April of each year, each officer or person authorized to issue license shall forward to the commissioner the stubs of licenses issued by him and all unused licenses, together with a report covering the number of licenses issued and the amount of license money received by him; the commissioner shall tabulate the total number of licenses of all kinds issued in the State and the fees received therefor, and he shall include such data in his biennial report. (1935, c. 486, s. 15.)

§ 113-100. Open season.—The open seasons for taking game animals and game birds, subject to changes by the board of conservation and development from time to time as the supply of wild life shall justify, are as follows:

Bear .....October 1 to January 1
Deer (male) .....October 1 to January 1
Mink, Muskrat, Otter .....November 1 to February 15
Opossum, Raccoon (with gun or dogs) .....October 1 to February 1
Opossum, Raccoon (trapping) .....November 1 to February 15
Quail .....Thanksgiving Day of each year to February 15
Rabbit .....Thanksgiving Day of each year to February 15
Squirrel .....September 15 to January 15
Turkey .....Thanksgiving Day of each year to February 1
Woodcock .....December 1 to December 31
Ruffed Grouse ....November 20 to December 15
Wildcat, Weasel, Skunk .....No closed season
Beaver, Bufflalo, Elk, Doe Deer and Pheasants .....No open season
Dove, Ducks, Geese, Brant and other migratory waterfowl ....Federal regulations
Snipe, Sora, Marsh Hens, Rails, Gallinules .....Federal regulations
Fox .....County regulations

The open and closed season on all migratory wild fowl shall conform with the United States biological survey legislation, irrespective of seasons as set forth by the North Carolina Game Law. (1935, c. 486, s. 16.)

§ 113-101. Bag Limits.—It shall be unlawful to take a greater number of each species of birds or animals per day or per season than is enumerated in the following table. The Board of Conservation and Development may alter these bag limits as changes in the supply of wild life may justify.

	Per Day	Per Season
Bear	No limit	No limit
Deer	1	3
Mink, Muskrat, Otter	No limit	No limit
Opossum, Raccoons	No limit	No limit
Quail	10	150
Rabbit	No limit	No limit
Squirrel	10	No limit
Turkey	1	3
Ruffed Grouse	2	10

Woodcock—Federal regulations.
Dove, Ducks, Geese, Brant and other migratory waterfowl—Federal regulations.
Snipe, Sora, Marsh Hens, Rails, Gallinules—Federal regulations.
Wildcat, Weasel and Skunk—No limit.
Fox—County regulations.

Game birds and game animals lawfully taken may be possessed during the open season therefor and the first ten (10) days next succeeding the close of such open season, but a person may not have in possession at any one time more than two (2) deer, two (2) wild turkeys and two days' bag limit of other game animals or game birds.

The bag limit, possession limit and open seasons on dove and all other migratory birds and wild fowl shall be the same as that prescribed by the United States biological survey legislation irrespective of bag limits, possession limits and seasons set forth by the North Carolina Game law. (1935, c. 486, s. 17.)

§ 113-102. Protected and unprotected game.—Birds and animals for which no open season is provided shall be classed as protected and it shall be unlawful to take or possess them at any time. Unprotected birds and animals may be taken, possessed, bought, sold and transported at any time in any manner.

1. Unprotected Birds: English Sparrows, Great Horned Owls, Cooper's Hawks, Sharp-Shinned Hawks, Crows, Jays, Blackbirds, Starlings and Buzzards and their nests and eggs.

2. Unprotected Animals: Wildcats, Weasels and Skunks: Provided, that unprotected birds and animals may not be killed by the use of poison or dynamite except under permit issued by the commissioner.

3. No person shall take squirrels at any time in any public park. Rabbits and squirrels lawfully taken may be bought and sold during the open season and may be possessed for the first five days next succeeding the close of such season except that the board shall have the power to prohibit the sale of rabbits and squirrels at such times as conditions require. Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild

deer while swimming or in water to its knees. (1935, c. 486, s. 18.)

§ 113-103. Unlawful possession. — The possession, transportation, purchase or sale of any dead game animals, dead game birds, or parts thereof during the closed season in North Carolina, though said animals, birds, or any parts thereof were taken or killed without the State in the open season in such State, shall be unlawful; and the possession of same shall be prima facie evidence of the violation thereof: Provided, said animals or birds or parts thereof belong to any one of the family or classes protected by the North Carolina Game Law as amended to date.

The commissioner, all game protectors, deputy game protectors and refuge keepers shall have the power to enter and search any refrigeration plant, refrigerators and ice boxes of all public refrigerating storage plants, meat shops, hotels, restaurants, or other public eating places, in which such officer, making such search, has reasonable grounds to believe that game taken, killed or stored in violation of the North Carolina Game Law has been concealed or stored, and which will furnish evidence of a violation of such laws; and such search may be made without warrant, except that no dwelling may be searched without a warrant. (1935, c. 486, s. 19.)

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the board, in any hotel, restaurant, café, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset with a shot gun not larger than number ten (10) gauge, or a rifle, unless otherwise specifically permitted by this article. No person shall take any game animals or game birds or migratory game birds from any automobile, or by aid of or with the use of any jack-light, or other artificial light, net, trap, snare, fire, salt-lick or poison; nor shall any such jack-light, net, trap, snare, fire, salt-lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken from an airplane, power boat, sail boat, or any boat under sail, or any floating device towed by a power boat or sail boat; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shot gun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground. (1935, c. 486, s. 20; 1939, c. 235, s. 1; C. S. 2124.)

§ 113-105. License to engage in business of game propagation; sale and transportation regulated.—Any person desiring to engage in the business of propagating in captivity upland game birds, ducks and geese, or any of them on land of which he is the owner or lessee and selling same pursuant to the provisions of this section, may make application in writing to the commissioner for a license to do so. The commissioner, when it shall appear that such application is made in good faith, shall upon the payment of a fee of two dollars ($2.00), issue to each applicant a license permitting such licensee to propagate such game birds on land of which he is the owner or lessee, the location of which shall be stated in such application and such license; to sell and ship such propagated game birds in the State from the State alive at any time for breeding or stocking purposes and take such propagated game birds except quail and wild turkey in any manner and at any time and sell the carcasses for food as hereinafter prescribed: Provided, that propagated upland game birds may be killed by shooting only during the open season as established by the board; and, provided further, that propagated migratory game birds may be killed by shooting only during the open season for migratory game birds. Each such license shall expire on the thirty-first day of December of the year in which it is issued. Each holder of a game bird propagating license shall keep such license prominently displayed at the place of business specified therein.

Every person holding a game bird propagating license issued by the commissioner shall keep accurate, written records, showing the number of game birds of each species propagated, bought, or sold, and the disposition thereof. These records shall be kept permanently on the premises stated in such license and shall be open for inspection by any duly authorized representative of the commissioner at all reasonable times.

Migratory game birds propagated in accordance with this section shall not be bought or sold for food, unless each bird before attaining the age of four weeks, shall have had removed from the web of one foot a portion thereof in the form of a "V" large enough to make a well defined mark, which shall be sufficient to identify it as a bird propagated in accordance with this section of the North Carolina Game Law. Migratory game birds propagated in accordance with this section may be bought, sold or offered for sale for food only after being tagged with an indestructible metal tag which shall be supplied by the board.

Common carriers shall receive and transport game birds tagged as aforesaid but to every package containing such propagated game birds shall be affixed a tag or label upon which shall plainly be printed or written the name, address and license number of the person by whom such propagated game birds are shipped and the name and address of the person to whom such propogated game birds are to be transported and number of each kind contained therein. The board shall be entitled to receive and shall collect for each tag to be affixed to the carcass of each game bird propagated, in accordance with this section, the sum of five cents. The said tags shall remain affixed as aforesaid until the carcasses of such propagated game birds shall be finally prepared for consumption: Provided, that the owner or proprietor of a hotel, restaurant, boarding house, or the manager of a club, may sell a portion of a tagged game bird to a guest, customer, or member, for consumption on the premises.

The proprietor or keeper of a hotel, restaurant or café, boarding house or club, desiring to serve game to his patrons, may make application to the department of conservation and development for a license to do so. The department, when it shall appear that such application is made in good faith, shall upon the payment of a fee of ten dollars ($10.00) issue to each such applicant a license permitting the holder thereof to buy and possess game birds lawfully tagged, and to serve such game to his patrons for consumption at any time, but only on the premises, the location of which shall be definitely stated in such license and the application therefor. Each such license to serve game birds shall expire on the thirty-first day of December in the year in which it is issued. Each person holding a license to serve game birds shall keep such license prominently displayed at the place of business specified therein. The holder of a license to serve game birds may purchase only game birds tagged in accordance with law. Each holder of a license to serve game birds shall keep accurate written records of each and every purchase, which records shall contain the name and address of the person or corporation from whom such game birds were purchased, the date of each transaction and the number and kind of game birds included in each purchase. These records shall be kept permanently at the place of business specified in the license and shall be open for inspection by any duly authorized representative of the department at all reasonable times. Each holder of a license to serve game birds shall send a certified copy of these records for the previous calendar year to the department not later than January fifteenth. The department shall furnish the forms on which these records are to be kept. The board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds raised in domestication pursuant to the provisions of this article. (1935, c. 486, s. 29.)

§ 113-106. Unlawful transportation.—No common carrier or employee of such carrier shall, while engaged in such business, transport for the owner any wild animals or birds or any part thereof, or nest or eggs of any bird, nor shall any such carrier or employee knowingly receive or possess the same for shipment for another, unless the person offering the same for shipment is in possession of valid hunting license or collecting permit. A person who is a resident of this State may transport within the State during the open season therefor, game birds and game animals lawfully taken. A person who is a nonresident of the State and a holder of a valid nonresident hunting license, may, under a permit issued by the commissioner, transport within this State, or from a point within to a point without, during the open season therefor, game birds and game animals or parts thereof lawfully taken by him, but he shall not transport out of the State during any one open season more than two male deer and two wild turkeys, or during one calendar week more than two days' bag limit of other game animals and game birds. A person may transport, buy, or sell at any time or in any manner, non-game animals and the fur of fur-bearing animals lawfully taken and tagged. A person may transport, and possess at any time and in any manner the head, antlers, hides, feet or skin of game animals or game birds lawfully taken. A person may buy and sell at any time the mounted specimens of heads, antlers, hides and feet of game animals, and the skins of game birds lawfully taken and possessed: Provided, the person selling such specimens has a written permit issued by the commissioner, authorizing him to do so. (1935, c. 486, s. 22; 1941, c. 231, s. 1.)

§ 113-107. Marking packages in which game transported. — Any package in which any wild animal or bird or parts thereof or egg or nest of any wild bird is transported shall have clearly and conspicuously marked on the outside thereof, the names and addresses of the consignor and consignee, together with an accurate statement of the number and kinds of animals or birds or parts thereof, or eggs or nests, contained therein. (1935, c. 486, s. 23.)

§ 113-108. Privately owned public hunting grounds.—In order to improve hunting, to open to the hunting public lands well stocked with game, and to give landowners some income through game protection and propagation, the State of North Carolina, through the department of conservation and development, is authorized to

recognize, list, and assist the owners in protecting their lands which are a part of public hunting grounds organized under this section of the North Carolina Game Law, subject to the following conditions, stipulations, and such rules as the conservation board may adopt for the regulation of said hunting grounds:

(1) The minimum area recognized under this article is one thousand (1,000) acres;

(2) Owners of land included in a hunting ground formed under this article must organize, adopt rules and regulations for the operation of said hunting grounds, and be recognized by the department of conservation and development before such hunting grounds are put into operation under this article;

(3) The department of conservation and development will list and assist in advertising such public hunting grounds as are formed under this article, subject to such rules and regulations as may be adopted by the board from time to time, and in accordance with the North Carolina Game Law and this article. The department of conservation and development will furnish at cost to the owners of public hunting grounds posters to be used in posting such lands, such posters to state that the lands are posted under this section of the North Carolina Game Law and in case of withdrawal of recognition by the department such posters shall be removed from the land affected within ten days after notice to owner or owners;

(4) Owners of public hunting grounds shall require of each and every hunter the prescribed hunting licenses as set forth elsewhere in the North Carolina Game Law;

(5) The owners of public hunting grounds may require of each and every hunter a per day rate for hunting, rates to be approved by the department of conservation and development, said rates not to exceed four dollars ($4.00). In addition to charges for privileges of shooting game, landowners may charge a dog hire when landowners furnish dogs, dogs to be furnished only by request of the hunter;

(6) When any group of owners of a public hunting ground, organized under this article, decide to promote the hunting of certain kinds of game, said kinds of game used for stocking to be propagated in game breeding plants organized and operated under the game and other laws of North Carolina, the owner shall be permitted to charge hunters such fees and rates as are approved by the board of conservation and development;

(7) No hunter is allowed to quit the hunting grounds at the end of the day's or part of a day's hunting without seeing the authority who gave him permission to hunt on said hunting grounds and paying all accounts due said authority;

(8) No construction or interpretation shall be put on this section or any part thereof as to permit the sale of dead game killed in accordance with this article, abrogate the bag limits, time of hunting, open and closed seasons as prescribed elsewhere in the North Carolina Game Law;

(9) No person shall hunt or discharge firearms upon any public hunting grounds organized under this section without being accompanied by one of the landowners or a personal representative of one landowner, or after securing, on the day of the hunt, or day preceding the hunt, written permission to hunt under the authority of this article, said written permission to bear the name in full, age, and address of the hunter, under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars ($25.00) for each and every offense;

(10) When hunting grounds or any part thereof, organized and operated under this article are used for purposes not consistent with the federal, state and local laws, the department of conservation and development shall withdraw recognition from the area of such parts thereof as are deemed advisable, and report the case to the proper civil officials. (1935, c. 486, s. 24.)

§ 113-109. Punishment for violation of article. —Any person who takes, possesses, transports, buys, sells, offers for sale or has in possession for sale or transportation any wild bird, animal, or part thereof, or nest or egg of any bird, in violation of any of the provisions of this article, or who violates any other provisions of this article, or fails to perform any duty imposed upon him by this article, or who violates any lawful order, rule or regulation promulgated by the board, shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not more than fifty dollars ($50.00) or imprisoned for not more than thirty days, and upon the second offense and conviction thereof shall be fined not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars, or by imprisonment for not more than six months, or both, in the discretion of the court. And in all cases of conviction under this section, the court in which such conviction is had shall require the surrender of any hunting license then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction to the board. Such revocation of license shall be mandatory for the remainder of the period for which the license was issued. Any person who shall swear or affirm to any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury. Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall upon conviction be fined not less than one hundred dollars ($100.00) or imprisoned for not less than sixty (60) days or both fined and imprisoned in the discretion of the court: Provided further, that any person taking or having in possession doe (female) deer in violation of this article shall be fined not less than fifty dollars ($50.00) or imprisoned not less than thirty (30) days or both fined and imprisoned in the discretion of the court. Any person, firm or corporation who buys or sells, or offers to buy or sell, quail, grouse and wild turkeys in violation of the provisions of this article shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or imprisoned for not more than sixty days, or both fined and imprisoned in the discretion of the court. (1935, c. 486, s. 25; 1939, c. 235, s. 2, c. 269; 1941, c. 231, s. 2; 1941, c. 288.)

Local Modification.—Beaufort, Gaston, Granville, Lincoln,

Mecklenburg: 1937, c. 352; Buncombe: 1937, c. 352, 1941, 156; Pitt: 1941, c. 285.

Art. 8. Fox Hunting Regulations.

§ 113-110. Closed season.—The closed season of each year during which foxes shall not be hunted with gun, chased with dogs, killed, trapped or destroyed, shall, as to the several counties or parts of counties specified, be as follows:

Alamance ..... Feb. 1 to Oct. 1
(P. L. 1911, c. 654.)
Alleghany ..... Mar. 1 to Oct. 1
(P. L. 1915, c. 274.)
Buncombe ..... Mar. 1 to Sept. 1
(P. L. 1917, c. 658.)
Burke ..... Mar. 1 to Dec. 1
South of Catawba river
(1907, c. 388.)
Chatham ..... Feb. 1 to Sept. 1
(1909, c. 174; P. L. 1911, c. 135.)
Clay .....Mar. 1 to Nov. 15
(P. L. 1919, c. 260.)
Cleveland ..... Mar. 1 to Dec. 1
(1907, c. 388.)
Duplin ..... Feb. 15 to Sept. 15
(P. L. 1911, c. 407.)
Franklin ..... Mar. 1 to Oct. 15
(P. L., Ex. Sess. 1913, c. 169.)
Granville ..... Mar. 1 to Sept. 1
(P. L. 1919, c. 282.)
Halifax ..... Mar. 1 to Sept. 15
(P. L. 1913, c. 591.)
Harnett ..... April 1 to Sept. 1
(1909, c. 667.)
Hoke ..... Mar. 2 to Sept. 15
(P. L. 1915, c. 459.)
Lee ..... Apr. 1 to Aug. 15
(P. L., Ex. Sess. 1913, c. 111.)
Lincoln ..... Feb. 1 to Nov. 15
(P. L. 1913, c. 659.)
Montgomery ..... Jan. 15 to Oct. 15
(P. L. 1911, c. 400.)
Moore .....Mar. 1 to Oct. 1
(P. L. 1911, c. 291.)
New Hanover ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Onslow ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Pender ..... Feb. 15 to Sept. 15
(P. L. 1911, c. 407.)
Randolph ..... Jan. 15 to Nov. 1
(P. L. 1919, c. 76.)
Richmond ..... Mar. 15 to Sept. 1
(P. L. 1911, c. 382.)
Robeson ..... Mar. 1 to Oct. 1
(P. L. Ex. Sess. 1924, c. 92.)
Sampson ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Scotland ..... Mar. 2 to Aug. 15
(P. L. 1917, c. 57.)
Surry ..... Jan. 1 to Nov. 1
(P. L. 1919, c. 168.)
Wayne ..... Feb. 15 to Sept. 15
(P. L. 1917, c. 673.)
Wilkes ..... Feb. 15 to Oct. 1
(P. L. 1913, c. 77; C. S. 2110.)

Local Modification.—Anson: Pub. Loc. 1929, c. 244; Stanly: 1929, c. 176.

§ 113-111. No closed season in certain counties.—It shall be lawful to hunt, take or kill foxes at any time in Ashe, Avery, Iredell, Lenoir, Henderson, Pitt, Haywood and Watauga counties. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319.)

§ 113-112. Police power of protectors in enforcing county laws relative to foxes.—All game protectors duly appointed by the Department of Conservation and Development and all ex officio game protectors named in the North Carolina Game Law shall be authorized and empowered as fully as is the sheriff and other local officers to enforce local and county laws relating to the open and closed seasons to hunt or protect red and grey foxes. (1931, c. 143, s. 5.)

Art. 9. Federal Regulations on Federal Lands.

§ 113-113. Legislative consent; violation made a misdemeanor.—The consent of the general assembly of North Carolina in hereby given to the making by the congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and non-game birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of congress of March first, one thousand nine hundred and eleven, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U. S. Stat. at Large, p. 961), and acts of congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wild life from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or non-game birds and fish, by any person, firm or corporation, including any agency, department or instrumentality of the United States Government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any Act of Congress, except in accordance with the provisions of article 7 of this subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States Government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; 1939, c. 79, ss. 1, 2; C. S. 2099.)

Art. 10. Regulation of Fur Dealers; Licenses.

§ 113-114. Fur dealer's license; fees. — Every person, firm or corporation who engages in the business of buying and selling raw furs, pelts or skins of fur-bearing animals shall before beginning such business, and annually thereafter, obtain a license from the Department of Conservation and Development. The fees for such licenses shall be as follows:

1. For a resident state-wide license, the sum of twenty-five dollars.

This license will entitle the holder to buy and

sell furs in any or all of the counties in North Carolina.

2. For a resident county license, the sum of ten dollars. This license will entitle the holder to buy and sell furs only in the county designated in the license. The fee for each additional county shall be ten dollars.

3. For a resident county license which entitles the dealer to buy or sell only at a fixed place of business in the county of his residence, the sum of five dollars.

4. For a nonresident of the state, the sum of one hundred dollars for a state-wide license.

These licenses shall be issued through the game protectors or agents of the Department of Conservation and Development as a part of their official duties. The funds so received from the sale of the above licenses shall be deposited with the state treasurer to the credit of the Department of Conservation and Development and they shall be expended for the protection and promotion of the fur-bearing industry in North Carolina and for the administration and enforcement of this article and for no other purpose. (1929, c. 333, ss. 1, 2; 1933, c. 337, s. 1.)

§ 113-115. Annual report of furs bought.—Every person, firm or corporation who takes out a fur dealer's license shall report to the Department of Conservation and Development on April first of each year and every year the total amount of furs bought by such dealer, including the species of fur bearing animals and the number of each, and such other information as required by the Department of Conservation and Development. (1929, c. 333, s. 3.)

§ 113-116. What counties may levy tax.—No county, city or town shall have the right to levy any license on resident fur dealers except that the county in which such dealers or buyers maintain a place of business or residence may charge and collect from such dealers a license tax of not more than five dollars per annum. (1929, c. 333, s. 4; 1933, c. 337, s. 2.)

§ 113-117. Permits may be issued to nonresident dealers.—It shall be lawful for the department of conservation and development to issue permits to nonresident dealers for the purchase of raw furs from only statewide licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3; 1935, c. 471, s. 1.)

§ 113-118. Licenses for each employee of dealer; fees; residence requirement.—All bona fide members of a resident firm or corporation and their bona fide regular employees, all such members and employees being residents of North Carolina, shall be required to take out a license showing their employment and shall pay therefor the sum of twenty-five dollars each. Provided that the employees of a resident firm or corporation operating under a county resident fur dealer's license shall be required to pay only the sum of ten dollars ($10.00). Applicants for resident fur dealers license must have actually resided in the state for six months next before making application for such license. (1929, c. 333, s. 6; 1933, c. 337, s. 4; 1935, c. 471, s. 3.)

§ 113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer.—Any nonresident person, firm or corporation or any agent or person acting as agent therefor, who in any manner purchases or solicits to purchase furs in North Carolina, except as provided in § 113-117, shall be subject to and shall procure from the department of conservation and development a nonresident fur dealer's license before he shall be entitled to purchase or solicit to purchase furs as above set out in this section. (1929, c. 333, s. 7; 1935, c. 471, s. 2.)

§ 113-120. Violation a misdemeanor.—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars or imprisoned not more than sixty days for the first offense, and on conviction of second violation of this article such person, firm or corporation shall pay not less than two hundred dollars or be imprisoned not more than six months or both in the discretion of the court. (1929, c. 333, s. 8.)

Art. 11. Miscellaneous Provisions.

§ 113-121. Possession of firearm silencer, while hunting game, made unlawful.—It shall be unlawful for any person while hunting game in this state to have in his possession a shotgun, pistol, rifle, or any firearm equipped with a silencer of any type or kind or any device or mechanism designed to silence, muffle, or minimize the report of such firearm, whether such silencer or device or mechanism is separate from or attached to such firearm.

If any person shall be convicted of a violation of this section he shall be fined not less than one hundred ($100.00) dollars or imprisoned not less than sixty days, or both, in the discretion of the court. (1937, c. 152.)

§ 113-122. Sanctuary on Grandfather Mountain; molestation of game a misdemeanor.—Part of Grandfather Mountain situate in the counties of Avery, Caldwell and above the Yonahlossee Road on one side, and above the elevation of four thousand feet on the other side, is established as a sanctuary for the preservation and protection of deer, squirrels and other wild animals (except wildcats), and wild turkey, pheasants, eagles, hawks, ravens and all other bird life.

It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established by the preceding paragraph, any deer, squirrels, or other wild animals (except wild-cats), any wild turkeys, pheasants, eagles, hawks, ravens, or any kind of bird life. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 191; 1925, c. 212; C. S. 2105(a), 2105(b).)

§ 113-123. Assent of State to Act of Congress providing for aid in wild life restoration projects.—The State of North Carolina hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in wild life restoration projects, and for other purposes," approved September second, one thousand nine hundred thirty-seven (Public, number four hundred fifteen, seventy-fifth Congress), and the North Carolina Department of Conservation and Development is hereby authorized, empowered, and directed to perform such acts as

may be necessary to the conduct and establishment of cooperative wild life restoration projects, as defined in said Act of Congress, in compliance with said Act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wild life in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Division of Game and Inland Fisheries under the direction of the North Carolina Department of Conservation and Development. (1939, c. 271.)

§ 113-124. Birds kept as pets or for breeding.—It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating. (Rev., s. 1876; 1903 (Pr.), c. 337, ss. 6, 7; C. S. 2103.)

§ 113-125. Local by counties: Bird dogs running at large.—It shall be unlawful for the owner or any person having the care of any pointer or setter dog to permit the same to run at large unmuzzled during the breeding season of quail, namely, from April the first to September first of any year. When any pointer or setter dog shall be found ranging unmuzzled in the field or woods it shall be prima facie evidence that the owner of such pointer or setter dog has violated the provisions of this section, and upon conviction such owner or his agent shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not longer than thirty days.

This section shall apply only to the counties of Davidson, Durham, Greene, Guilford, Forsyth, Iredell, Johnston, Moore, Transylvania and Yancey. (1909, c. 775; C. S. 2132.)

§ 113-126. Deer; fire-hunting; compelling testimony.—When more persons than one are engaged in committing the offense of fire-hunting, anyone may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense. (Rev., s. 3462; Code, ss. 1058, 1059; R. C., c. 34, ss. 95, 96; 1774, c. 103; 1784, c. 212, ss. 1, 3; 1801, c. 595; 1856-7, c. 24; 1879, c. 92; 1905, c. 388; 1925, c. 194; C. S. 2125.)

Local Modification.—Currituck: C. S. 2125.

SUBCHAPTER IV. FISH AND FISHERIES.

Art. 12. General Provisions for Administration.

§ 113-127. Definitions.—When used in this subchapter,

(1) "Fish" or "fishes" includes porpoises and other marine mammals, fishes, mallusca, and crustaceans, and "fishing" or "fisheries" includes all operations involved in using, setting or operating apparatus employed in killing or taking such animals or in transporting and preparing them for market.

(2) "Board" means the Board of Conservation and Development. (1915, c. 84, s. 24; C. S. 1865.)

§ 113-128. Administrative machinery for enforcing laws relating to fish.—The state of North Carolina shall have exclusive jurisdiction and control over all the fisheries of the state, wherever located. The laws relating to fish shall be enforced by the Board of Conservation and Development through the Commissioner of Game and Inland Fisheries, appointed pursuant to § 113-90, and through the Commissioner of Commercial Fisheries appointed pursuant to § 113-129. (1915, c. 84, ss. 1, 18; 1917, c. 290, ss. 1, 9; Ex. Sess. 1921, c. 42, s. 1; 1923, c. 168, s. 1; C. S. 1869.)

§ 113-129. Commissioner of commercial fisheries.—The Board of Conservation and Development shall appoint a commercial fisheries commissioner, who shall be responsible to the Board and shall make semiannual reports to them at such time as they may require. His term of office shall be four years or until his successor is appointed and qualified, and in case of a vacancy in the office the appointment shall be to fill the vacancy. By and with the consent of the Board, the commissioner may appoint assistants or may remove them and appoint their successors. Their duties shall be prescribed by the commissioner. The salary of the commissioner and his assistants shall be fixed by the Board with the approval of the Budget Bureau, and if the commissioner is absent or unable to act, the Board shall appoint one of the assistant commissioners to have and to exercise all his powers. The commissioner and his assistants shall each execute and file with the secretary of state a bond, payable to the state of North Carolina, in the sum of five thousand dollars for the commissioner and twenty-five hundred dollars for each assistant, with sureties to be approved by the secretary of state, the condition being that they will faithfully perform their duties and will account for and pay over, pursuant to law, all moneys received by them in their office. (1915, c. 84, s. 1; 1917, c. 290, s. 1; 1925, c. 310; C. S. 1870.)

§ 113-130. Fish inspectors. — The commercial fisheries commissioner may appoint, with the approval of the board, inspectors in each county having fisheries under his jurisdiction. These inspectors shall serve under the direction of the commissioner and assist him at such times as he may require. (1915, c. 84, s. 2; C. S. 1871.)

§ 113-131. Commissioner of commercial fisheries and assistants not to be financially interested in fisheries.—The Commercial fisheries commissioner, assistant fisheries commissioners and inspectors shall not be financially interested in any fishing industry in North Carolina. (1915, c. 84, s. 8; 1921, c. 194, s. 1; C. S. 1872.)

§ 113-132. Clerical force and office for commercial fisheries commissioner.—The commissioner of commercial fisheries shall rent and equip an office, which will be adequate for his business, in some town conveniently located to the maritime fisheries, and he is authorized with the consent of the board to employ such clerks and other employees as may be necessary for the proper carrying on of the work of his office. (1915, c. 84, s. 3; C. S. 1873.)

§ 113-133. Boats and equipment for commercial fisheries commissioner.—The commercial fisheries

commissioner is authorized, with the consent of the board, to purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to fulfill the duties specified in this chapter. (1915, c. 84, s. 4; C. S. 1874.)

§ 113-134. "Commercial fisheries fund" derived from imposts.—All license fees, taxes, rentals, of bottoms for oyster or clam cultivation and other imposts upon the fisheries, in whatever manner collected, shall, except as otherwise provided in this chapter, be deposited with the state treasurer to the credit of the commercial fisheries fund, to be drawn upon as directed by the board. (1915, c. 84, s. 9; C. S. 1875.)

Art. 13. Powers and Duties of Board and Commissioners.

§ 113-135. Duties of the Board.—It is the duty of the board of conservation and development, through its agents, the commissioner of game and inland fishing and the commissioner of commercial fishing and their assistants:

To enforce all acts relating to the fish and fisheries of North Carolina.

To make regulations that will keep open for the passage of fishes all inlets and not less than one-third of the width of all sounds and streams, or such greater proportions of their width as may be necessary.

To make such rules and regulations as they think proper to procure statistics as to the annual products of the fisheries of the state.

To collect and compile statistics showing the annual product of the fisheries of the state, the capital invested, and the apparatus employed, and any fisherman refusing to give these statistics shall be refused a license for the next year. Provided, however, the board may extend the time of his operations if any fisherman fail or refuse to give statistics as required in this section.

To prepare and have on file maps based on the charts of the United States coast and geodetic survey, of the largest scale published, showing as closely as may be the location of all fixed apparatus employed during each fishing season.

To have surveyed and marked in a prominent manner those areas of waters of the state in which the use of any or all fishing appliances are prohibited by law or regulation, and those areas of waters in the state in which oyster tonging or dredging is prohibited by law.

To prosecute all violations of the fish laws, and whenever necessary, to employ counsel for this purpose.

To remove pending trial nets or other appliances found being fished or used in violation of the fisheries laws of the state.

To carry on investigations relating to the migrations and habits of the fish in the waters of the state, also investigations relating to the cultivation of the oyster, clam, and other mollusca, and of the terrapin and crab, and for this purpose to employ scientific assistance.

To collect all license fees, rentals, or other imposts, and to pay them into the state treasury to the credit of the proper fisheries fund. On or before the twenty-fifth day of each month there shall be mailed to the treasurer of the state a consolidated statement showing the amount of taxes and license fees collected during the preceding month, and by and from whom collected.

To administer oaths and to send for and examine persons and papers; the commissioners also shall have this power. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S. 1883.)

§ 113-136. Regulations as to fish, fishing, and fisheries made by board.—The Board of Conservation and Development is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, escallops, and other water products as it may deem necessary; and all regulations, prohibitions, restrictions and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this section; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. (1915, c. 84, s. 21; 1917, c. 290, s. 7; 1925, c. 168, s. 2; 1935, c. 35; C. S. 1878.)

Local Modification.—Beaufort, Buncombe, Gaston, Granville, Lincoln, Mecklenburg: 1937, c. 352.

§ 113-137. Regulations affecting existing interests not effective for two years.—In making regulations the board shall give due weight and consideration to all factors which will affect the value of the present investment in the fisheries, and no changes in the existing laws which, if they should go into effect immediately, would tend to cause fishermen to lose their property shall go into effect until two years from the date that the change has been made by the board. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S. 1879.)

§ 113-138. Hearing before changes as to certain regulations.—If, however, a petition signed by five or more voters of the district or community which will be affected by the proposed changes is filed with the board through the commissioners, their assistants or deputies, asking that they have a hearing before any proposed change in the territory, size of mesh, length of net, or time of fishing shall go into effect, petitioning that they be heard regarding such change, the board shall in that event designate by advertisement for a period of thirty days at the courthouse and three other public places in the county affected, and also by publication in a newspaper of the county, if such is published in said county, once a week for two consecutive weeks, a place at which said board will meet and hear argument for and against said change, and may ratify, rescind, or alter this previous order of change as may seem just in the premises. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S. 1880.)

§ 113-139. Reports of board to legislature; pub-

lication.—The board shall cause to be prepared and submitted to each legislature a report showing the operations, collections and expenditures of the board; and it shall also cause to be prepared for publication such other reports, with necessary illustrations and maps, as will adequately set forth the results of the work and the investigations of the board, all such reports, illustrations, and maps to be printed and distributed at the expense of the state, as are other public documents, as the board may direct. (1915, c. 84, s. 15; C. S. 1882.)

§ 113-140. Violations investigated; nets seized and sold; bond of commissioner liable.—It is the duty of the commissioner of game and inland fisheries and the commissioner of commercial fisheries, or any of their assistants or deputies, upon a complaint made either orally or in writing, stating that any of the laws relating to fish or fisheries are being violated at any particular place, to go to such place and investigate same. They shall seize and remove all nets or other appliances set or being used in violation of the fisheries laws of the state, sell them at public auction after advertisement for twenty days at the courthouse and three other public places in the county in which the seizure was made, and apply the proceeds of sale to the payment of costs and expenses of such removal, and pay any balance to the school fund of the county nearest to where the offense is committed. The failure of the commissioners or their deputies to perform the above prescribed duty shall render their bonds liable to a penalty of five hundred dollars, one half to go to the informant and the other one half to be paid to the school fund of the county in which the action is brought. (1911, c. 18; 1941, c. 113; C. S. 1884.)

§ 113-141. Arrests without warrant; investigation of unlawful transportation of seafood.—The commissioner of game and inland fisheries and the commissioner of commercial fisheries, their assistants and deputies, shall have power, without warrant, to arrest any person or persons violating any of the fishery laws in their presence, who shall be carried before a magistrate for trial as is required by law in case of persons arrested without warrant. Authority also expressly is vested in the commissioners, their assistants and deputies, when they or either of them has reason to believe that any seafood products are unlawfully possessed, or are being transported unlawfully, or are about to be transported unlawfully, without the license tax therefor and thereon having been paid, to stop, or cause to be stopped, any vehicle or conveyance of transportation, of whatsoever kind, for the purpose of investigation and examination; and if upon such investigation and examination it appears that any seafood products are unlawfully possessed, or that the license tax therefor and thereon has not been paid, the said commissioners, their assistants or deputies, making such investigation and examination shall have the power and authority, without first having applied for and obtained warrant so to do, to arrest the person or persons owning and/or having in his or their possession for transportation and actually engaged in the transportation of the said seafood products on which said license taxes have not been paid, and take him, or them, for trial before some magistrate in the county where such arrest is made; and it shall not be obligatory upon the said commissioners, their assistants or deputies, first to apply for and obtain warrant before making such investigation and inspection. (1915, c. 84, s. 6; 1917, c. 290, s. 2; 1935, c. 118; C. S. 1885.)

§ 113-142. Taking fish for scientific purposes.—The board and the United States Fish and Wild Life Service may take and cause to be taken for scientific purposes or for fish culture any fish or other marine organism at any time from the waters of North Carolina, any law to the contrary notwithstanding; and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture: Provided, that in taking fish for fish culture in the hatcheries of this state the fish shall only be taken while the hatcheries are in operation and only between the hours of four and eleven p. m. (1915, c. 84, s. 7; C. S. 1886.)

Art. 14. Licenses for Fishing in Inland Waters.

§ 113-143. Fishing licenses for persons above 16 years of age.—In order to raise revenue with which to maintain and operate the state fish hatcheries, provide additional nurseries and administer the inland fishing laws, a license is hereby required of all persons above the age of sixteen (16) years to fish by any and all methods of hook and line or rod and reel fishing in the waters of North Carolina, other than in waters of the county in which such person permanently resides or in waters abutting thereon, as hereinafter provided. (1929, c. 335, s. 1.)

§ 113-144. Resident state license. — Any person, upon application to the director of the department of conservation and development, his assistants, wardens, or agents, authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a bona fide resident of the State of North Carolina, shall, upon the payment of a license fee of two ($2.00) dollars for the use of the department and a fee of ten ($.10) cents for the use of the official authorized to issue licenses, be entitled to a "resident state license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under the preceding section. (1929, c. 335, s. 2.)

§ 113-145. Non-resident state license. — Any person, without regard to age or sex, upon application to the director of the department of conservation and development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a non-resident of the state, shall, upon the payment of five ($5.00) dollars for the use of the department and ten ($.10) cents for the use of the official authorized in writing to issue licenses, be entitled to a "non-resident state fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143: Provided that any non-resident of the state desiring to fish for one day or more in the waters of the state of North Carolina may do so upon payment to the clerk of the court or game warden of the county in which the non-resident desires to fish the sum of one dollar and ten cents ($1.10) for each day, the sum of ten

cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of one dollar and ten cents ($1.10) the clerk of the court or game warden shall issue a permit allowing said non-resident to fish: Provided further, that any resident of the state desiring to fish for one day or more in the waters of any county in the state of North Carolina other than the county within which he resides may do so upon payment to the clerk of the court or game warden of a county in which he desires to fish the sum of sixty cents (60c) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of sixty cents (60c), the clerk of the court or game warden shall issue a permit allowing said non-resident to fish. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236; 1935, c. 478.)

§ 113-146. County licenses and daily permits. —The board of county commissioners in any of the counties of the state of North Carolina may, by resolution entered upon its minutes, require a resident county license or daily fishing permit. If any of said boards shall adopt this resolution, then the resident county license shall be one dollar and ten cents ($1.10) for each year, or fifty ($.50) cents for a daily fishing permit. Whenever any such resolution is adopted the board of county commissioners shall at once notify the department of conservation and development enclosing therein a copy of said resolution, and the said county license and daily fishing permit shall be issued in the same manner and by the same agent, and the proceeds thereof shall be remitted to the department in the same manner as herein provided for State resident licenses and for non-resident fishing licenses. (1929, c. 335, s. 4.)

Local Modification.—Catawba: 1939, c. 181.

§ 113-147. Clerk of superior courts may sell licenses and account for same to department.— In addition to the wardens and agents of the department of conservation and development authorized to sell fishing licenses as hereinbefore provided, upon written application, any clerk of superior court of North Carolina shall also be authorized and empowered to sell fishing licenses and shall account therefor to the department in the same manner as wardens, and the handling of said licenses shall then become an official duty of such clerk of superior court. (1929, c. 335, s. 5.)

§ 113-148. Department to furnish forms; what licenses must show; signature of licensee; licenses to become void on December 31 of year issued; license button to be worn in plain view.—All licenses shall be issued on forms prepared and supplied by the department of conservation and development, the cost of which shall be paid from any funds that may come into its hands from the sale of fishing licenses. The license shall show the name, age, occupation and residence of the licensee and the date of its issuance. It shall also contain the signature of the licensee and shall authorize the person named therein, in all cases where a resident county license is bought, to fish in any of the waters within the county in which the applicant permanently resides, under the restrictions and requirements of existing laws and the rules and regulations of the department during the year, the date of which is inscribed thereon. In all cases where either resident or non-resident State fishing licenses are bought, they shall also contain the signature of the licensee and shall authorize the person named therein to fish in any of the waters of the state of North Carolina under the restrictions and requirements of existing laws and regulations of the department during the year, the date of which is inscribed thereon. All licenses issued under and by virtue of this article shall become void on the thirty-first day of December next following the date of issuance. The licenses may contain such other information as the department may require. There shall also be issued with each license a license button bearing the serial number of the license which must be worn in plain view at all times by licensee when fishing. Such buttons to be furnished by the department and paid for out of funds coming into its hands from the sale of fishing licenses as required under this article. (1929, c. 335, s. 6.)

§ 113-149. Record of all licenses issued to be kept.—All clerks of superior court in various counties of the State who make application as hereinbefore provided, also assistants, wardens or agents who are authorized to issue fishing licenses shall keep such record of licenses issued by them as the department of conservation and development may require and same shall be open at all times for inspection by any official charged with the enforcement of the fishing laws. (1929, c. 335, s. 7.)

§ 113-150. Reports.—Every clerk of superior court who issues fishing licenses under and by virtue of this article shall, on the first of each month forward to the department of conservation and development a report covering the sale of licenses issued by them, on forms furnished by the department and shall attach thereto check for amount due said department. All assistants, wardens or agents authorized by the department to issue fishing licenses shall make full and complete report of their sales as required by the department. The full amount collected by each issuing officer, less the ten-cent fee on each license issued, must accompany each report. (1929, c. 335, s. 8.)

§ 113-151. Deposit of proceeds of licenses with state treasurer; use of, by department. — All moneys collected and received under and by virtue of this article, except the issuing fees, shall be deposited in the name of the state treasurer as provided by §§ 147-77 to 147-84, and shall be used by the department of conservation and development in the work of propagating and protecting game fish in North Carolina and in the administration of the inland fishing laws and for no other purpose. (1929, c. 335, s. 9.)

§ 113-152. Licenses to be kept about person of licensees; license button to be worn on outside. —No person shall fish as provided herein in any of the waters of North Carolina unless the license hereinbefore provided for be kept about the person of the licensee or exhibited upon the request of any official charged with the duty and responsibility of issuing licenses and enforcing the fishing law. No person shall fish, as provided in this article, in any of the waters of North Carolina unless license button provided for herein be at such time continually displayed on the outer gar-

ment in such manner that the license figures are plainly visible. (1929, c. 335, s. 10.)

§ 113-153. Transfer of licenses forbidden.—No person shall alter, loan or transfer any license authorized by this article, or give false or misleading information to any official authorized to issue licenses, in the application therefor. (1929, c. 335, s. 11.)

§ 113-154. Licenses not additional to propagation license; to what waters applicable. — No person required by law to procure a license to propagate fish for sale, shall be required in addition to secure a license provided by this article in order to enable such person to exercise the rights conferred by the license. The provisions of this article shall not apply to the Atlantic Ocean, the sounds or other large bodies of water near the sea coast which do not, in the judgment of the department of conservation and development, need to be stocked or protected; nor shall they prevent the owner of any land or members of his family under twenty-one years of age from fishing thereon without a license. (1929, c. 335, s. 13.)

§ 113-155. Fishing without landowner's permission.—If any person shall, without having first obtained permission of the owner, fish or attempt to catch fish from the land of another after being forbidden, either personally or by notices written or printed, posted at the courthouse door and at three places on said land, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3480; Code, s. 2831; 1895, c. 147; 1915, c. 271, s. 1; C. S. 2127.)

§ 113-156. Persons having resided in state for six months presumed to be residents.—All persons who have lived in this state for at least six months immediately preceding the date of making application for a license, shall be deemed resident citizens for the purpose of this article. (1929, c. 335, s. 14.)

§ 113-157. Violation made misdemeanor; punishment.—Any person violating the provisions of this article shall be guilty of a misdemeanor and on conviction shall be fined not exceeding fifty ($50.00) dollars or imprisoned not exceeding thirty days in the discretion of the court. (1929, c. 335, s. 15.)

Art. 15. Commercial Licenses and Regulations.

§ 113-158. Licenses to fish; issuance, terms, and enforcement.—Each and every person, firm, or corporation, before commencing or engaging in any kind of fishing in the state, shall file with an inspector of the county in which he desires to fish, or with the commissioner of commercial fisheries or any of his assistant commissioners, a sworn statement as to the number and kind of nets, seines, or other apparatus intended to be used in fishing. Upon filing this sworn statement on oath the commissioner shall issue or cause to be issued to the said party or parties a license as prescribed by law; said applicant shall pay a license fee equal in amount to the fee or tax prescribed by law for fishing different kinds of apparatus in the waters of the State of North Carolina, or for tonging or dredging for oysters, as the case may be. The commissioner shall keep in a book especially prepared for the purposes an exact record of all licenses, to whom issued, the number and kinds of nets, boats, and other apparatus licensed, and the license fees received. He shall furnish to each person, firm, or corporation in whose favor a license is issued a special tag which will show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorized to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the commissioner. All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet and on the opposite side of mainsail, above all reef points, in black letters not less than twenty inches long, the initial letter of the county granting the license and the number of said license, the number to be painted on canvas and furnished by the commissioner, for which he shall receive the sum of fifty cents. Any boat or vessel used in catching oysters without having complied with the provisions of this section may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings, shall be paid into the school fund. The licenses to fish with nets shall all terminate on December thirty-first. Any person who shall willfully use for fishing purposes any kind of net whatever, without having first complied with the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars for each and every offense. (1915, c. 84, s. 10; 1917, c. 290, s. 9; C. S. 1887.)

§ 113-159. Resident may catch shellfish for own use.—No tax shall be levied or collected from bona fide residents or citizens of this state who take fish, oysters, clams, escallops, or crabs other than with dredges for his own personal or family's use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars or imprisoned not exceeding thirty days. (1917, c. 290, s. 6; C. S. 1888.)

§ 113-160. Licenses for oyster boats; schedule.—The commissioner of commercial fisheries, assistant commissioners, or inspectors, may grant license for a boat to be used in catching oysters upon application made, according to law, and the payment of a license tax as follows: On any boat or vessel without cabin or deck, and under custom-house tonnage, using scrapes or dredges, measuring over all twenty-five feet and under thirty, a tax of two dollars and fifty cents; fifteen feet and under twenty-five feet, a tax of one dollar and fifty cents; on any boat or vessel with cabin or deck and under custom-house tonnage, using scrapes or dredges, measuring over all thirty feet or under, a tax of four dollars; over thirty feet, a tax of five dollars; on any boat or vessel using scoops, scrapes, or dredges required to be registered or enrolled in the custom house, a tax of seventy-five cents a ton on gross tonnage. No vessel propelled by steam, gas or electricity, and no boat or vessel not the property absolutely of a citizen or citizens of this state, shall receive li-

cense or be permitted in any manner to engage in the catching of oysters anywhere in the waters of this state. (1915, c. 84, s. 11; 1933, c. 106; C. S. 1889.)

§ 113-161. Boats using purse seines or shirred nets; tax. — (a) All boats or vessels of any kind used in operating purse seines or shirred nets shall pay a license fee of one dollar and twenty-five cents ($1.25) per ton on gross tonnage, customhouse measurement, which shall be independent of and separate from the seine or net tax on the seines or nets used on said boats or vessels. This license fee shall be for one year from January first of each year and shall not be issued for any period of less than one year.

(b) Any boat or vessel operating purse seines or shirred nets without first having complied with the provisions of this section shall be seized, forfeited, and advertised for twenty days at the courthouse door and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds of such sale, less the cost of the proceedings, shall be paid into the school fund of the county where seized. Any person, firm, or corporation operating such boat or vessel in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) Every operator of all boats or vessels of any kind used in operating purse seines or shirred nets on the public waters of this State shall, in addition to the fee prescribed in subsection (a) of this section, pay a license fee for each nonresident person or persons employed by him on such boat or vessel in the amount of five dollars ($5.00) for each such person. This license fee shall be for one year from January first of each year and shall not be issued for any period of less than one year. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(d) All operators of boats or vessels of any kind used in operating purse seines or shirred nets shall apply for and obtain a license for each such purse seine or shirred net, and shall pay for such license a tax in the amount of five dollars ($5.00): Provided, that the tax herein levied on purse seines or shirred nets shall be in lieu of all other taxes levied by law against such seines or nets.

(e) Nothing in this section shall apply to boats fishing for edible fish. (1915, c. 84, s. 12; 1917, c. 290, s. 3; 1919, c. 333, s. 3; 1933, c. 106, s. 2; 1939, c. 191; C. S. 1890.)

§ 113-162. Licenses for various appliances and their users; schedule.—The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina:

Anchor gill nets, fifty cents for each hundred yards or fraction thereof.

Stake gill nets, twenty-five cents for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, twenty-five cents for each hundred yards or fraction thereof.

Pound nets, one dollar and fifty cents on each pound; the pound is construed to apply to that part of net which holds and from which the fish are taken.

Submarine pounds, or submerged trap nets, one dollar and fifty cents for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, fifty cents each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, fifty cents per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, seventy-five cents per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, one dollar per one hundred yards or fraction thereof.

Fyke nets, twenty-five cents each.

For each trot line used in taking hard crabs, one dollar and fifty cents.

Resident motor boats used in taking shrimp, three dollars ($3.00) for each boat.

Motor boats used in hauling nets, two dollars and fifty cents ($2.50) for each boat.

Motor boats used in dredging crabs or escallops, three dollars ($3.00) for each boat.

For each trawl used in taking fish or shrimp, one dollar ($1.00).

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

In addition to the officers now empowered by law, the clerks of the superior courts in the state are authorized to issue nonresident angler's license under this chapter in accordance with rules and regulations to be prescribed by the board. (1915, c. 84, s. 14; 1917, c. 290, s. 5; 1919, c. 333, s. 3; 1925, c. 168, s. 1; 1927, c. 59, ss. 5, 7; 1931, c. 117; 1933, c. 106, s. 3; 1933, c. 433; C. S. 1891.)

§ 113-163. License tax on dealers and packers. —An annual license tax, for the year beginning January 1st in each year, to be collected by the commissioner of commercial fisheries, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On—

oysters, two dollars and fifty cents;
escallops, two dollars and fifty cents;
clams, two dollars and fifty cents;
crabs, for shipment out of the state, two dollars and fifty cents;
fish, two dollars and fifty cents;
shrimp, two dollars and fifty cents: Provided, no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets. (1917, c. 290, s. 5; 1919, c. 333, ss. 1, 2; 1933, c. 106, s. 4; C. S. 1892.)

§ 113-164. Purchase tax on dealers; schedule; collection.—All dealers in and all persons who purchase, catch, or take for canning, packing, shucking, or shipping the sea products enumerated below shall be liable to a tax to be collected by the commissioner of commercial fisheries as follows: On—

Oysters, two cents a bushel, except coon oys-

ters, one cent a bushel; escallops, five cents a gallon; clams, four cents a bushel; soft crafts, one and one-quarter cents a dozen; hard crabs, five cents a barrel; shrimp, cooked or green, fifteen cents per one hundred pounds: Provided, however, no license tax shall be imposed or required for trot lines used for taking hard crabs from public grounds: Provided, further, that no license tax shall be imposed or required for power boats used for dredging escallops or crabs: Provided, further, that no license shall be required of any person who takes oysters for shucking and sells such oysters at retail on local markets.

But none of these products shall be twice taxed, and no tax shall be imposed on oysters, escallops, or clams taken from private beds or gardens. Upon failure to pay said tax, the license provided in the preceding section shall at once be null and void and no further license shall be granted during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the state of North Carolina on relation of the commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the commercial fisheries fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor. (1915, c. 84, s. 13; 1917, c. 290, s. 4; 1919, c. 333, s. 1; 1921, c. 194, s. 2; Ex. Sess. 1921, c. 42, ss. 2-4; 1923, c. 170; 1925, c. 168, s. 3; 1927, c. 59, ss. 1, 2; 1929, c. 113; 1933, c. 106, s. 5; 1935, c. 151; 1939, c. 304; C. S. 1893.)

§ 113-165. License tax on trawl boats.—There shall be levied annually upon each trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of twenty-five cents per gross ton, and on each trawl boat, or boat used for trawling purposes, not documented in the customs house a license tax of two dollars, and a tax of one dollar for each net. (1933, c. 106, s. 6.)

§ 113-166. Printed regulations furnished dealers.—It is the duty of the commissioner of commercial fisheries, upon issuing any license under the provisions of this subchapter to furnish with said license the printed regulations controlling the waters in which such fisherman applying therefor proposes to fish. (1917, c. 290, s. 12; C. S. 1894.)

§ 113-167. Dealers to keep and furnish statistics.—All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, escallops, clams, crabs, shrimp, and fish taken from the public grounds or natural beds of the state, or the natural waters or streams of the state, shall keep a permanent record of all such products, showing the quantity of each of said products so purchased, packed, canned, or shipped, the kind of fish, from whom each of said species of fish, mollusca, or crustaceans were purchased, a statement of all these facts shall be made whenever required by the commissioner, but shall be at least at the end of each month. All such records shall be open at all times to the commissioner, assistant commissioner, or any one under the direction of the commissioner. (1917, c. 290, s. 11; C. S. 1895.)

§ 113-168. Disturbing marks or property of commission prohibited.—Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the board in marking the restricted areas relating to any and all fishing, or marking other areas in which oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, or shall injure or destroy any boat or other property of any kind used by the board or any officer or employee thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court; and any person anchoring or mooring a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars and imprisoned thirty days in jail, at the discretion of the court. (1915, c. 84, s. 22; 1917, c. 290, s. 8; C. S. 1896.)

§ 113-169. Edible fish used only as food.—Any person, firm or corporation who catches or causes to be caught any edible fish in the waters of the state of North Carolina for any other purpose than as food, and any person, firm or corporation who shall use any edible fish for fertilizing purposes shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days. (1915, c. 84, s. 23; C. S. 1868.)

§ 113-170. Explosives, drugs, and poisons prohibited.—It shall be unlawful to place in any of the waters of this state any dynamite, giant or electric powder, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking, killing or injuring fish. And any one violating this section shall, upon conviction, be fined not less than one hundred dollars and imprisoned not less than thirty days. (1915, c. 84, s. 19; C. S. 1897.)

§ 113-171. Possession of fish killed by explosives as evidence.—The possession of fish killed by explosive agencies shall be prima facie evidence that explosives were used for the purpose of killing fish by the person in possession thereof. (Rev., s. 2466; Code, s. 3405; 1889, c. 312; 1911, c. 170; C. S. 1898.)

§ 113-172. Discharge of deleterious matter into waters prohibited.—It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the state any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said water; and any person, persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: Provided, this section shall not apply to corporations chartered either by general law or special act before the 4th day of March, 1915. (1915, c. 84, s. 20; C. S. 1899.)

§ 113-173. Operation of boats in violation of rules and laws forfeits boats and apparatus.—If any person, firm, or corporation shall use or operate any boat or vessel of any kind, in violation of any rule of the board, or any of the fish laws, it shall be the duty of the board to revoke any license issued and seize such boat or vessel and any apparatus or appliance so used or operated; but the board shall have authority to compromise by agreement with the owner of such boat or ap-

pliance for any such violation, and may return such boat or appliance so seized to the owner and reinstate license. (1919, c. 333, s. 5; C. S. 1900.)

§ 113-174. Violations of fisheries law misdemeanor; licenses forfeited.—Upon failure of any person, firm or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm or corporation may be revoked by the board, and upon satisfactory settlement may be reinstated, with the consent of the board. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor. (1917, c. 290, s. 11; 1919, c. 333, s. 4; C. S. 1901.)

Art. 16. Shellfish; General Laws.

§ 113-175. Oyster bed defined.—A natural oyster or clam bed, as distinguished from an artificial oyster or clam bed, shall be one not planted by man, and is any shoal, reef or bottom where oysters are to be found growing in sufficient quantities to be valuable to the public. (Rev., s. 2371; 1893, c. 287, s. 1; C. S. 1902.)

§ 113-176. Board to lease.—The board shall have power to lease to any duly qualified person, firm or corporation, for purposes of oyster or clam culture, any bottom of the waters of the state not a natural oyster bed, as defined in this article, nor a clam reservation, as defined in this article, in accordance with the provisions of this article. (1909, c. 871, ss. 1, 9; 1919, c. 333, s. 6; C. S. 1903.)

§ 113-177. Lessee to be citizen.—Any citizen of North Carolina, or firm or corporation organized under the laws of the state and doing business within its limits, shall be granted the privilege of taking up bottoms for purposes of oyster or clam culture, under the provisions of this article. (1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; C. S. 1904.)

§ 113-178. Areas leased in different waters.—The area which may be taken up for purposes of oyster or clam culture shall be not less than one acre nor more than fifty acres, with the exception of the open waters of Pamlico sound (and for the purposes of this article open waters of Pamlico sound shall mean the waters that are outside of two miles of the shore line), in which the minimum limit shall be five acres and the maximum shall be two hundred acres: Provided that the limit of entry in Core sound, North river, Newport river, Bogue sound, and all bays and creeks bordering on these waters, and in Jones bay, Rose bay, Abels bay, Swan Quarter bay, Middle bay, Bay river, Deep bay, Juniper bay, West and East Bluff bays, Wysocking bay, Fire creek, Stumpy Point bay, Mouse Harbor bay, Maw bay and Broad creek, tributaries of Pamlico sound, shall be one acre as a minimum and ten acres as a maximum: Provided further, however, that after March 9, 1910, the minimum area in Core sound, North river, Newport river, Bogue sound, and all bays and creeks bordering on these waters, and in Jones bay, Rose bay, Abels bay, Swan Quarter bay, Middle bay, Bay river, Deep bay, Juniper bay, West and East Bluff bays, Wysocking bay, Fire creek, Stumpy Point bay, Mouse Harbor bay, Maw bay and Broad creek, tributaries of Pamlico sound, shall be one acre and the maximum fifty acres; but no person, firm, corporation or association shall severally or collectively hold any interest in any lease or leases aggregating an area of greater than fifty acres, except in the open waters of Pamlico sound, where the aggregate area shall be two hundred acres. (1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; Ex. Sess. 1921, c. 46, s. 1; C. S. 1905.)

Local Modification.—Brunswick, New Hanover, Pender: C. S. 1905.

§ 113-179. Prerequisites for lease; application; deposit; survey; location.—Such persons, firms or corporations desiring to avail themselves of the privileges of this article shall make written application, on a form to be prepared by the board, setting forth the name and address of the applicant, describing as definitely as may be the location and extent of the bottom for which application is made, and requesting the survey and leasing to the applicant of said bottom. As soon as possible after the application is received, the commissioner of commercial fisheries shall cause to be made a survey and map of said bottom at the expense of the applicant. The commissioner shall also thoroughly examine said bottoms by sounding and by dragging thereover a chain to detect the presence of natural oysters. Should any natural oysters be found, the commissioner shall cause examination to be made to ascertain the area and density of oysters on said bottom or bed, to determine whether the same is a natural bed, under the definition contained in this article. He shall be assisted in this examination on tonging ground by an expert tonger, to be appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert tonger may be able to take in a specified time; and on dredging ground the commissioner shall be assisted by an expert dredger, appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert dredger may be able to take in a specified time. The commissioner shall require the bodies of bottoms applied for to be as compact as possible, taking into consideration the shape of the body of water and the consistency of the bottom. No application shall be entertained nor lease granted for a piece of bottom within two hundred yards of a known natural bottom, bed or reef. A deposit of ten dollars will be required of each applicant at the time of making his application, said sum to be credited to the cost of the survey of the bottom applied for. (1909, c. 871, ss. 3, 9; 1919, c. 333, s. 6; C. S. 1906.)

§ 113-180. Execution of lease; notice and filing; marking and planting.—Immediately upon the completion of the survey and the mapping thereof, and the payment by the applicant of the cost of said survey and map, the commissioner of commercial fisheries shall execute to the applicant, upon a form approved by the attorney-general of the state, a lease for the bottoms applied for. A copy of the lease, map of the survey and a de-

scription of the bottom, defining its position, shall be filed in the office of the commissioner. After the execution of said lease, the lessee shall have the sole right and use of said bottoms, and all shells, oysters and culls thereon or placed thereon shall be his exclusive property so long as he complies with the provisions of this law. The lessee shall stake off and mark the bottoms leased in the manner prescribed by the commissioner, and failure to do so within a period of thirty days of an order so to do issued by the commissioner shall subject said lessee to a fine of five dollars per acre for each sixty days default in compliance with said order. The corner stakes, at least, of each lease shall be marked with signs plainly displaying the number of the lease and the name of the lessee. The lessee shall, within two years of the commencement of his lease, have planted upon his holdings a quantity of shells equal to an average of fifty bushels of seed oysters or shells per acre of holdings, and within four years from the commencement of his lease a quantity of oysters or shells equal to an average of not less than one hundred and twenty-five bushels per acre. The commissioner shall, upon granting any lease, publish a notice of the granting of same in a newspaper of general circulation in the county wherein the bottom leased is located. (1909, c. 871, ss. 4, 9; 1919, c. 333, s. 6; C. S. 1907.)

§ 113-181. Term and rental.—All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of fifty cents per acre per year for the first ten years and one dollar per acre per year for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years, of the lease. This rental shall be in lieu of all other taxes and imposts whatever, and shall be considered as all and the only taxation which can be imposed by the state, counties, municipalities or other subordinate political bodies. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding. (1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6; 1933, c. 346; C. S. 1908.)

§ 113-182. Nature of lessee's rights; assignment and inheritance.—The said lease shall be heritable and transferable, in whole or in part, provided the qualifications of the heirs and transferees are such as are described by this article. Nonresidents, acquiring by inheritance or process sale, or persons already holding the maximum area permitted by this article, shall within a period of twelve months from the time of acquisition dispose of said prohibited or excess of holding to some qualified person, firm or corporation, under penalty of forfeiture. The lease shall be subject to mortgage, pledge, seizure for debt and the same other transactions as are other property rights in North Carolina. No transfer shall be of effect unless of court record, until entered on the books of the commissioner of commercial fisheries. (1909, c. 871, ss. 6, 9; 1919, c. 333, s. 6; C. S. 1909.)

§ 113-183. Renewal of lease.—The term of each lease granted under the provisions of this article shall be for a period of twenty years from the first day of April preceding the date of granting of said lease. At the expiration of the first lease, the lessee, upon making written application on the prescribed form, shall be entitled to successive leases on the same terms as applied to the last ten years of the first lease, for a period not exceeding ten years each. (1909, c. 871, ss. 7, 9; 1919, c. 333. s. 6; C. S. 1910.)

§ 113-184. Forfeiture of lease for nonpayment.—The failure to pay the rental of bottoms leased for each year in advance on or before the first day of April, or within thirty days thereafter, shall ipso facto cancel said lease and shall forfeit to the state the said leased bottoms and all oysters thereon, and upon said forfeiture the commissioner of commercial fisheries is hereby authorized to lease the said bottoms to any qualified applicant therefor: Provided, that no forfeiture shall be valid, however, under the provisions of this section, unless there shall have been mailed by the commissioner to the last address of the lessee upon the books of the commissioner a thirty days' notice of the maturity of said rental. (1909, c. 871, ss. 8, 9; 1919, c. 333, s. 6; C. S. 1911.)

§ 113-185. Contest over grant of lease; time for contest; decision; appeal.—If any person, within four months of the publication of the notice of granting of any lease, make claim that a natural oyster bottom, bed or reef exists within the boundaries of said lease, he shall, under oath, state his claim, and request the commissioner of commercial fisheries to cancel the said lease: Provided, however, that each such claim and petition shall be accompanied by a deposit of twenty-five dollars. No petition unaccompanied by said deposit shall be considered by the commissioner. The commissioner shall, in person, examine into said claim, and, if the decision should be against the claimant, the deposit of twenty-five dollars shall be forfeited to the state and deposited to the credit of the commercial fisheries fund. Should, however, the claim be sustained and a natural bed be found within the boundary of the lease, the said natural bed shall be surveyed and marked with stakes or buoys, at the expense of the lessee, and the said natural bed be thrown open to the public fishery. If no such claim be presented within a period of four months, or if when so presented it fail of substantiation, as provided, the lessee shall thereafter be secure from attack on such account, and his lease shall be incontestable so long as he complies with the other provisions of this article. In each and every such case the decision of the commissioner shall be subject to review and appeal before a judge of the superior court, who shall render a decision without the aid of a jury, and his decision shall be final. (1909, c. 871, s. 9; 1919, c. 333, s. 6.)

§ 113-186. License to catch oysters; oath of applicant. — Any person desiring to catch oysters from the public grounds and natural oyster beds

shall make and subscribe to the following oath, before some officer qualified to administer oaths:

I, ... (state if owner, lessee, master, captain, mate, foreman, or agent of any boat used, or that may be used, in dredging oysters from the public grounds of the state), being an applicant for oyster license, do solemnly swear that I am a citizen of North Carolina, and have been a resident of the state for the two years next preceding this day; that my place of residence is now in .... County; that I will not, if granted license, employ any nonresident or unlicensed person as an assistant or serve as an assistant to any nonresident who is owner, lessee, master, captain, mate or foreman, or who has any interest in, or in the profits derived from, any boat that is used or that may be used in dredging oysters from the public grounds of the state, or unlicensed person, nor will I transfer, assign, or otherwise dispose of my license to any person, firm or corporation; that I will not knowingly or willfully violate or evade any of the laws or regulations of the state relating to oyster industry: so help me, God.

He shall then present to and file said oath with the commissioner, assistant commissioner or inspector, who, if satisfied with the truth of the statement made in the oath of application, shall issue to him an oysterman's license in the following form:

State of North Carolina, ... County.

....., a resident of ..... County, having this day made application to me for an oysterman's license, and having filed with me the oath prescribed by law, I do hereby grant to him license to catch oysters from the public grounds of this state from the fifteenth day of October, ..., until the first day of next April.

Witness my hand and official seal, this the .... day of ....., 19.... .....,
Commissioner of Commercial Fisheries,
Assistant Commissioner, or Inspector
(as the case may be).

(Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6; C. S. 1913.)

§ 113-187. Filing oath; recording license; fees.—The oath and a record of the license shall be kept by the commissioner, assistant commissioner or inspector, and for issuing and recording the same he shall receive from the applicant a fee of twenty-five cents, which, together with all other license fees collected under this chapter, shall be paid over to the state treasurer and constitute part of the commercial fisheries fund. No fee shall be charged by the clerk for administering the oath. (Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6; C. S. 1914.)

§ 113-188. Nonresidents not to be licensed or hired as oystermen.—No person shall be licensed to catch oysters from the public grounds of the state who is owner, lessee, master, captain, mate or foreman, or who owns an interest in or who is an agent for any boat that is used or that may be used in dredging oysters from the public grounds of the state, who is not a bona fide resident of this state and who has not continuously resided therein for two years next preceding the date of his application for license, and no nonresident shall be employed as a laborer on any boat licensed to dredge oysters under this subchapter who has an interest in or who receives any profit from the oysters caught by any boat permitted to dredge oysters on the public grounds of the state. Any person, firm or corporation employing any nonresident laborer forbidden by this section, upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars. (Rev., s. 2408; 1903, c. 516, s. 6; 1905, c. 525, s. 3; C. S. 1915.)

§ 113-189. Tax on oysters exported from state.—All oysters going out of the state in any boat or vessel shall be taxed at the rate of two cents per tub. (1907, c. 969, s. 11; Ex. Sess. 1913, c. 42, s. 3; C. S. 1916.)

§ 113-190. Monthly report of licenses to be filed.—The commissioner of commercial fisheries, assistant commissioner or inspector who are authorized to issue license or to collect a license tax shall, on or before the fifteenth day of each month, mail to the board a statement, showing all licenses issued during the preceding month, to whom issued and for what purpose, and the amount of tax collected by them from all sources under the oyster laws, and shall at the same time remit said amount direct to the state treasurer. They shall at the same time mail to each inspector asking for the same a list of all persons to whom license has been issued and of all boats or vessels licensed, and for what purpose. (Rev., s. 2412; 1903, c. 516, s. 4; 1905, c. 525, s. 6; C. S. 1918.)

§ 113-191. Certain shellfish beds real property for taxation, etc.—All grounds taken up or held under authority of chapter 119 of the Public Laws of 1887 or previous acts for the purpose of cultivating shellfish shall be subject to taxation as real estate, and shall be so considered in the settlement of the estates of deceased or insolvent persons. (Rev., s. 2380; 1887, c. 119, s. 9; C. S. 1919.)

§ 113-192. Close season for oysters; exceptions.—If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this state between the fifteenth day of April and the fifteenth day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs from March fifteenth to May first and with dredges from March fifteenth to April fifth, in any year, to be used for planting on private grounds entered and held under the laws of this state, upon the condition further that they shall not be removed from said private grounds within a period of three months from time of planting: Provided further, that oysters may be taken with hand-tongs only for home consumption. (Rev., s. 2383; 1907, c. 969, ss. 4, 13; 1913, c. 85; 1915, c. 120; C. S. 1920.)

Local Modification.—Carteret, New Hanover, Onslow, Pender: C. S. 1920.

§ 113-193. Oyster dealers to keep records.—All persons engaged in buying, packing, canning, shucking or shipping oysters shall keep a permanent record of all oysters either bought or caught by them, or by persons for them, when and from whom bought, the number of bushels and the price paid therefor. All these records shall at all times be open to the examination and

inspection of the commissioner of commercial fisheries, assistant commissioner and inspector, and upon request shall be verified by the parties making them. If any person engaged in buying, packing, canning, shucking or shipping oysters taken or caught from the public grounds or natural oyster beds of the state shall fail to keep a permanent record of all oysters bought by him or caught by him, or by persons for him, when and from whom bought, the number of bushels and the price paid therefor, or shall fail upon demand to exhibit such record as required by law, or shall fail to verify the same, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., ss. 2396, 2418; 1903, c. 516, s. 5; 1915, c. 136, s. 2; C. S. 1921.)

§ 113-194. Oyster measure.—All oysters measured in the shell shall be measured in a circular tub with straight sides and straight, solid bottom, with holes in the bottom not more than one-half inch in diameter. The said measures shall have the following dimensions: A bushel tub shall measure eighteen inches from inside to inside across the top, sixteen inches from inside to inside chimb to the bottom and twenty-one inches diagonal from inside chimb to top. All measures found in the possession of any dealer not meeting the requirements of this section shall be destroyed by the commissioner of commercial fisheries, assistant commissioner or inspector. (Rev., s. 2417; 1903, c. 510, s. 12; 1907, c. 969, s. 10; Ex. Sess. 1913, c. 42, s. 2; C. S. 1922.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1923.

§ 113-195. Illegal measures prohibited.—If any person shall in buying or selling oysters use any measure other than that prescribed by law for the measurement of oysters, or if any dealer in oysters shall have in his possession any measure for measuring oysters other than that prescribed by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2399; 1903, c. 516, s. 12; C. S. 1924.)

§ 113-196. Dredging regulated as to territory and season.—Any bona fide resident of the state duly licensed according to law and using a licensed boat or vessel may use scoops, scrapes or dredges in catching or taking oysters from the fifteenth day of November in each year to the first day in April following, from the public grounds and natural oyster beds in the broad open waters of Pamlico sound, Pamlico river, Neuse river and Shoal river, except in those portions of said sound and rivers in which the use of such instruments and implements is prohibited as herein provided. No person shall use any implement or instrument except hand-tongs in catching oysters in any bay, river, creek, strait, or any tributary of such, which borders upon or empties into Pamlico sound, Pamlico river, or Long Shoal river, except as hereinafter provided; and any point inside of a line drawn from the farthest or extreme outward point of land or marsh on the one side to the farthest or extreme outward point of land or marsh on the opposite side of any creek, strait or bay shall be construed to be within the said creek, strait or bay for the purpose of this section. Nor shall any person use any implement or instrument except hand-tongs in the waters of Pamlico sound from what is known as the reef or reefs in the eastern portion of said sound to the line of banks bordering its eastern shores; nor along the shores of Pamlico county inside of a line beginning at Maw point and running to the west end of Brant island, thence to Pamlico point; nor in the waters of Pamlico sound north of a line running from Long Shoal light to Gull Shoal life-saving station, from the first day of February of each year to the fifteenth day of November, nor in any of the waters of Carteret county. And for the purpose of this section, the northern boundary of said county shall be a line extending from Swan point to Harbor island light, thence a line to Southwest Straddle light, thence a line to Northwest point light, thence a line to the middle of Ocracoke inlet; nor in the waters of Neuse river above a line in said river running from Carbacon buoy to the western point of land at Pierce's creek. (Rev., 2413; 1903, c. 516, ss. 13, 14, 15; 1905, c. 507, s. 2; C. S. 1925.)

§ 113-197. Illegal dredging prohibited; evidence.—If any person shall use any scoops, scrapes or dredges for catching oysters except at the times and in the places in this chapter expressly authorized, or shall between the fifth day of April and the fifteenth day of November of any year carry on any boat or vessel any scoops, scrapes, dredges or winders, such as are usually or can be used for taking oysters, he shall be guilty of a misdemeanor.

If any boat or vessel shall be seen sailing on any of the waters of this state during the season when the dredging of oysters is prohibited by law in the same manner in which they sail to take or catch oysters with scoops, scrapes or dredges, the said boat or vessel shall be pursued by any officer authorized to make arrests, and if said boat or vessel apprehended by said officer shall be found to have on board any wet oysters or the scoops, scrapes, dredges or lines, or deck wet, indicating the taking or catching of oysters at said time, and properly equipped for catching or taking oysters with scoops, scrapes or dredges, such facts shall be prima facie evidence that said boat or vessel has been used in violation of the provisions of the law prohibiting the taking or catching of oysters with scoops, scrapes or dredges in prohibited territory or at a season when the taking or catching of oysters with scoops, scrapes or dredges is prohibited by law, as the case may be. (Rev., ss. 2385, 2397; 1903, c. 516, ss. 13, 14, 15, 28; C. S. 1926.)

§ 113-198. Dredging prohibited in certain waters of Pamlico sound.—It shall be unlawful for any person to use any rakes, scrapes, scoops or dredges, or any other instrument or implement other than ordinary hand-tongs, for the purpose of taking or catching oysters from the public oyster grounds or natural oyster beds in any of the waters of Pamlico sound or its tributaries north of a line running from West Bluff bay to the center of Ocracoke inlet; any person found guilty of the violation of this prohibition shall be punished by a fine not less than twenty-five dollars or imprisoned not less than thirty days. (1909, c. 559; C. S. 1927.)

§ 113-199. Culling required; size limit.—All oysters taken from the public grounds of this state, with whatsoever instrument or implement, shall be culled, and all oysters whose shells measure less than two and one-half inches in longest diameter, except such as are attached to a large oyster and cannot be removed without destroying the small oyster, and all shells taken with the said oysters shall be returned to the public ground when and where taken, and no oysters shall be allowed by the inspectors to be marketed which shall consist of more than ten per cent of such small oysters and shells, except "coon" oysters and oysters largely covered with mussels: Provided, these musseled oysters must not contain more than five per cent of shells or small oysters under regulation size. (Rev., s. 2415; 1903, c. 516, s. 11; 1905, c. 525; 1907, c. 969, s. 8; Ex. Sess. 1913, c. 42, s. 1; C. S. 1928.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1929.

§ 113-200. Taking unculled oysters for planting permitted to residents.—Residents of the state of North Carolina shall be permitted to take oysters without culling from natural rocks at any time during the year for planting purposes only, in the waters of North Carolina. (1917, c. 153; C. S. 1930.)

§ 113-201. Unculled oysters seized and scattered on public grounds.—Whenever oysters are offered for sale or loaded upon any vessel, car or train, without having been properly culled according to law, the commissioner of commercial fisheries, assistant commissioner, or inspector shall seize the boat, vessel, car or train containing the same and shall cause the said oysters to be scattered upon the public grounds, and the costs and expenses of said seizure and transportation shall be a prior lien to all liens on said boat, vessel, car or train, and if not paid on demand the officers making the seizure shall, after advertisement for twenty days, sell the same and make title to the purchaser, and after paying expenses as aforesaid pay the balance, if any, into the commercial fisheries experimental and oyster demonstration fund. For the towing of said boat, a charge of three dollars and fifty cents per hour shall be charged against said boat for towage. (Rev., s. 2416; 1903, c. 516, s. 3; 1907, c. 969, ss. 9, 13; C. S. 1931.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1931.

§ 113-202. Shells to be bought and scattered on public beds.—The commissioner of commercial fisheries is hereby empowered to expend one-half of the balance to the credit of the commercial fisheries experimental and oyster demonstration fund on the fifteenth day of April in each year for the purpose of buying oyster shells and scattering the same on the natural oyster grounds of the state during the months of April and May. (Rev., s. 2421; 1903, c. 516, s. 20; C. S. 1932.)

§ 113-203. Perjury in application for oyster license.—If any person shall make any false statement for the purpose of procuring any license, which may be required by law, to catch oysters, or to engage in the oyster industry, he shall be guilty of perjury and punished as provided by law. (Rev., s. 2390; 1903, c. 516, s. 17; C. S. 1933.)

§ 113-204. Catching oysters without license.—If any person shall catch oysters from the public grounds of the state without having first obtained a license according to law, or shall employ any person as agent or assistant, or shall as the agent or assistant of any person catch oysters from the public grounds, without all of said persons having first obtained a license according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2386; 1903, c. 516, s. 6; C. S. 1934.)

§ 113-205. Oyster dealing without license.—If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds, or natural oyster beds of the state, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2395; 1903, c. 516, s. 9; 1915, c. 136, s. 1; C. S. 1935.)

§ 113-206. Use of unlicensed boat in catching oysters.—If any person shall use any boat or vessel in catching oysters, which boat has not been licensed according to law, and which is not in all respects complying with the law regulating the use of such vessels, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars nor less than ten dollars or imprisoned not more than thirty nor less than ten days for the first offense, but for the second or subsequent offense he shall be guilty of a misdemeanor and punished at the discretion of the court. (Rev., s. 2387; 1903, c. 516, s. 8; C. S. 1936.)

§ 113-207. Failure to stop and show license.—If any person using a boat or vessel for the purpose of catching oysters shall refuse to stop and exhibit his license when commanded to do so by the commissioner of commercial fisheries, assistant commissioner or any inspector, he shall be guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than fifty dollars. (Rev., s. 2389; 1903, c. 516, s. 26; C. S. 1937.)

§ 113-208. Displaying false number on boat.—If any person shall display any other number on the sail than the one specified in his license or display a number when the boat or vessel has not been licensed, he shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars. (Rev., s. 2388; 1903, c. 516, s. 27; C. S. 1938.)

§ 113-209. Catching oysters for lime.—If any person shall take or catch any live oysters to be burned for lime or for any agricultural or mechanical purpose, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that shells may be taken which do not contain more than five per cent of live oysters. (Rev., s. 2400; Code, s. 3389; 1885, c. 182; 1907, c. 969. ss. 12, 13; C. S. 1939.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1939.

§ 113-210. Catching oysters Sunday or at night.—If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the state at night or on Sunday, he shall

be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2384; 1903, c. 516, s. 16; C. S. 1940.)

§ 113-211. Unloading at factory Sunday or at night.—If any person shall unload any oysters from any boat, vessel or car at any factory or house for shipping, shucking or canning oysters on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector. (Rev., s. 2394; 1903, c. 516, s. 16; C. S. 1941.)

§ 113-212. Oyster-laden boats in canals regulated.—No boat or vessel loaded with oysters shall be permitted by the inspectors of South Mills and Coinjock to pass through the canals, which does not have a certificate showing that the cargo has been inspected and the tax paid thereon. (Rev., s. 2420; 1903, c. 516, s. 17; C. S. 1942.)

§ 113-213. Sale or purchase of unculled oysters.—If any person shall sell or offer for sale, transport or offer to transport out of the state, or from one point in the state to another, or have in his possession any oysters which have not been properly culled according to law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It is unlawful for any person, firm or corporation to purchase oysters which have not been properly culled according to law, and for each violation he shall upon conviction be fined two hundred dollars or be imprisoned in the discretion of the court. (Rev., s. 2392; 1903, c. 516, s. 3; 1907, c. 969, ss. 5, 13; C. S. 1943.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1943.

§ 113-214. Boat captain's purchase of unculled oysters.—The captain of any run or buy boat who shall purchase oysters which have not been properly culled according to law shall upon conviction be fined two hundred dollars or imprisoned in the discretion of the court, and the having of unculled oysters aboard of his boat shall be prima facie evidence of his having purchased them. When any person, firm or corporation shall furnish the captain of any run or buy boat with funds with which to purchase oysters, they shall not be held responsible for his acts and shall not be deemed the purchaser of such oysters. (1907, c. 969, ss. 5, 13; C. S. 1944.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1944.

§ 113-215. Larceny from private grounds.—Any person who shall feloniously take, catch or capture or carry away any shellfish from the bed or ground of another shall be guilty of larceny and punished accordingly. (Rev., s. 2401; 1887, c. 119, s. 15; C. S. 1945.)

§ 113-216. Injury to private grounds; work at night.—If any person shall willfully commit any trespass or injury with any instrument or implement upon any ground upon which shellfish are being raised or cultivated, or shall remove, destroy or deface any mark or monument lawfully set up for the purpose of marking any grounds, or shall work on any oyster ground at night, he shall be guilty of a misdemeanor. But nothing in the provisions of this section shall be construed as authorizing interference with the capture of migratory fishes or free navigation or the right to use on any private grounds any method or implement for the taking, growing or cultivation of shellfish. (Rev., s. 2402; 1887, c. 119, s. 11; C. S. 1946.)

Art. 17. Experimental Oyster Farms.

§ 113-217. Establishment of experimental oyster farms.—There shall be established in the sounds or other bodies of suitable water in North Carolina in the manner hereafter set forth two or more experimental and demonstration oyster farms for the purpose of showing proper scientific and practical procedure for the private cultivation of oysters. (1941, c. 159, s. 1.)

§ 113-218. Construction and management.—The construction and management of said oyster farms shall be vested in the Division of Commercial Fisheries of the North Carolina Department of Conservation and Development, with the cooperation of the Fishery Biological Laboratory of the United States Fish and Wildlife Service at Beaufort, North Carolina. (1941, c. 159, s. 2.)

§ 113-219. Disposition of proceeds from sale of oysters.—Proceeds from the sale of oysters and any other income derived from the operation of the said oyster farms shall be kept in a separate fund and expended only for the maintenance of such farms as may be established or for the further development of the oyster and other shellfish resources of the State. (1941, c. 159, s. 3.)

Art. 18. Propagation of Oysters.

§ 113-220. Board to plant natural oyster beds; material; selection of planting ground.—The board of conservation and development is authorized, empowered, and directed to make all necessary and proper arrangements and to take the necessary steps to provide for the planting in the natural oyster beds of the public waters of North Carolina all shells, "coon oysters," or "seed oysters," or such other material as is well adapted for the propagation of oysters. The said board shall select such territory or planting ground in the public waters of North Carolina as is best adapted to the culture of oysters, and is most conveniently located with reference to existing beds or shells, "coon oysters," or "seed oysters," or other material well adapted for the propagation of oysters. (1921, c. 132 s. 1; C. S. 1959(a).)

§ 113-221. Location and boundaries of planting; propagating material; manner and time of planting; supervision of work.—The said board may designate the location and boundaries of said territory for such planting, and may further designate what oyster propagating materials shall be planted in said territory, the manner and time of said planting, and from what territory the said materials can be secured. The said board shall carefully supervise or cause to be carefully supervised by its properly designated agents, the planting of such beds and the distribution of said oyster propagating materials in said territory or beds. (1921, c. 132, s. 2; C. S. 1959(b).)

§ 113-222. Purchase of material; pay for work; contracts; limit of cost.—The said board may purchase the necessary shells, "coon oysters," "seed oysters," or other propagating materials, and may cause same to be distributed in a designated territory or territories, and the said board may provide proper compensation for any work or labor connected with the procuring of said materials, or the planting or distributing of said materials; or the said board may let out by private contract any part of the said procuring or distributing materials, or both: Provided, that the complete and entire cost of planting any of said propagating materials shall not exceed the sum of ten cents per bushel of said material so distributed, and the said board may not make any contract which will result in making the cost of planting of any quantity of said material exceed ten cents per bushel. (1921, c. 132, s. 3; C. S. 1959(c).)

§ 113-223. Marking boundary of planted grounds; protection.—It shall be the duty of the said board to plainly and clearly mark and define the limits and boundaries of any territory which may be planted with oyster propagating materials under the provisions of this article. The said board may prohibit the taking of any oysters from any such territory or area for such length of time as the board may determine, and the said board may regulate the manner of such taking as the said board may determine: Provided, that the said board shall prohibit any taking oysters from any territory or area so planted for at least two years after such planting. (1921, c. 132, s. 5; C. S. 1959(e).)

§ 113-224. Acts violative of law constituting misdemeanor.—Any person violating any proper regulations or prohibitions of said board may, under the authority of § 113-223, or any person who shall take oysters from any territory or area within two years after the planting of oyster propagating material in such territory or area under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1921, c. 132, s. 6; C. S. 1959(f).)

§ 113-225. Enforcement of law.—It shall be the duty of the said board and its assistants to enforce the provisions of this article, and the regulations and prohibitions of said board may, under the authority of this article, be enforced in the same manner as is provided for enforcing the fishing laws of this state, and the regulations of said board adopted under the authority of said laws, and the said board and its assistants shall have the same powers and duties and obligations with respect to the enforcement of this article as said board and its assistants have with respect to other fishing laws of this state. (1921, c. 132, s. 7; C. S. 1959(g).)

§ 113-226. Planting of certain kinds of oysters prohibited.—It shall be unlawful for any person, persons, firm or corporation to plant, store, distribute or in any way deposit the Japanese, Portugese or Mongolian oysters in any of the waters of North Carolina. Any person, persons, firm or corporation violating or attempting to violate this section shall be guilty of a felony, and, upon conviction, shall be fined not less than one thousand ($1,000.00) dollars or imprisoned not less than one (1) year, or both, in the discretion of the court. (1933, c. 235.)

Art. 19. Terrapin.

§ 113-227. Drag-nets prohibited to nonresidents.—If any person who is not a citizen and who has not resided in the state continuously for the preceding two years shall use any drag-net or other instrument for catching terrapin he shall be guilty of a misdemeanor. (Rev., s. 2369; Code, ss. 3375, 3376; C. S. 1957.)

§ 113-228. Diamond-back terrapin protected.—If any person shall take or catch any diamond-back terrapin between the fifteenth day of April and the fifteenth day of August of any year, or any diamond-back terrapin at any time, of less size than five inches in length upon the bottom shell, or shall interfere with, or in any manner destroy any eggs of the diamond-back terrapin, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten dollars for each and every diamond-back terrapin so taken or caught, and a like sum for each and every egg interfered with or destroyed: Provided, this section shall not apply to parties empowered by the state to propagate the said diamond-back terrapin; and the possession of any diamond-back terrapin between the fifteenth days of April and August shall be prima facie evidence that the person having the same has violated this section. It shall be the duty of all sheriffs and constables to give immediate information to some justice of the peace of any violation of this section. (Rev., s. 2370; Code, s. 3377; 1899, c. 582; 1881, c. 115, ss. 1, 6; C. S. 1958.)

Local Modification.—Carteret: C. S. 1959.

Art. 20. Salt Fish and Fish Scrap.

§ 113-229. Inspectors for salt fish; duties; fees.—The board of county commissioners of every county where fish are packed for sale or shipment shall appoint and qualify one or more sworn inspectors of fish at or near all packing localities, whose duty it shall be to inspect all salt fish packed for sale or shipment; and all barrels, half-barrels and packages of fish inspected and approved by them shall be branded with the word "inspected" and the name of the inspector. Said board shall regulate and prescribe the duties, powers and fees of said inspector, which fees shall not exceed five cents per barrel of two hundred pounds net and two and one-half cents per half-barrel of one hundred pounds net and smaller packages, to be paid by the shipper. This section shall not apply to fishermen who may sell their fish to packers and shippers by weight or otherwise, as they may agree: Provided, that in any county where the board of county commissioners have not already appointed an inspector as is provided in this section, upon a petition of two or more persons it shall be mandatory upon the said board of county commissioners to immediately appoint an inspector in accordance with the provisions above. Upon failure to do so for five days after said

petition has been filed, said board shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars for each member or be imprisoned not more than thirty days: Provided, said petition be filed with the clerk of the board of commissioners five days before regular meeting of said board. (1909, c. 663, s. 1; 1911, c. 171; C. S. 1960.)

§ 113-230. Salt fish sold by weight; marked on package.—All salt fish packed for market shall be sold at their net weight, which shall be marked on every package; and any person packing or offering for sale salt fish, fraudulently marking the net weight on the package, shall for each offense be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, or both, at the discretion of the court. (1909, c. 663, s. 2; C. S. 1961.)

§ 113-231. Salt mullet; special marking.—Each package of salt mullets packed and offered for sale shall be marked or stamped "large," "medium" or "small," and all packages containing any other kind of fish shall be marked plainly with the name of the fish contained, and any person who shall pack as principal or shall have the same done by others for him shall be deemed the packer and shall stamp his name and place of packing, together with net weight and size of fish, as prescribed in this section, on the head of each package before offering for sale or shipment, and on failure to pack and stamp as herein prescribed, or if any person shall pack or stamp said package falsely, so as to misrepresent the weight or size of the fish in said package, he shall be guilty of a misdemeanor and fined not less than five nor more than fifty dollars for each offense, and may be imprisoned at the discretion of the court, not to exceed thirty days: Provided, this section shall not apply to packages containing less than fifty pounds net fish: Provided further, this section shall not apply to fishermen themselves, but shall apply only to merchants and others who may be classed as packers or brokers, within the proper meaning of the term. (1909, c. 663, s. 3; C. S. 1962.)

§ 113-232. Measures for fish scrap and oil.—For the purpose of uniformity in the trade of manufacturing fish scrap and oil in the state of North Carolina, there is hereby established a standard measure of twenty-two thousand cubic inches for every one thousand fish. Any person, firm, corporation or syndicate buying or selling menhaden fish for the purpose of manufacturing within the borders of this state, who shall measure the fish by any other standard (more or less) than is prescribed in this section, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. Each day said measure is unlawfully used shall constitute a separate and distinct offense. (1911, c. 101; C. S. 1963.)

Art. 21. Commercial Fin Fishing; General Regulations.

§ 113-233. Right of fishing in grantee of land under water.—Whenever any person acquires title to lands covered by navigable water under the subchapter Entries and Grants of the chapter entitled State Lands, the owner or person so acquiring title has the right to establish fisheries upon said lands; and whenever the owner of such lands improves the same by clearing off and cutting therefrom logs, roots, stumps or other obstructions, so that the said land may be used for the purpose of drawing or hauling nets or seines thereon for the purpose of taking or catching fish, the person who makes or causes to be made the said improvements, his heirs and assigns, shall have prior right to the use of the land so improved, in drawing, hauling, drifting or setting nets or seines thereon, and it shall be unlawful for any person, without the consent of such owner, to draw or haul nets or seines upon the land so improved by the owner thereof for the purpose of drawing or hauling nets or seines thereon. This section shall apply where the owner of such lands shall erect platforms or structures of any kind thereon to be used in fishing with nets and seines. Every person who shall willfully destroy or injure the said platforms or structures, or shall interfere with or molest the owner in the use of such lands as aforesaid, or in any other manner shall violate this section, shall be guilty of a misdemeanor. This section shall not relieve any person from punishment for the obstruction of navigation. (Rev., s. 2460; Code, s. 3384; 1874-5, c. 183, ss. 1-6; C. S. 1964.)

§ 113-234. Seines prohibited to nonresidents; exceptions.—If any person who has not resided in the state continuously for at least twelve months next preceding the day on which he shall begin to take fish shall use, or cause to be used, in any of the waters of the state, any weir, hedge, net, or seine, for the purpose of taking fish for sale or exportation, or if any person shall assist in using, or be interested in using or causing to be used, in any such waters for the purpose aforesaid, any weir, hedge, net, seine or tongs in the use of which any such nonresident person may have an interest, he shall be guilty of a misdemeanor. Nothing herein shall prevent any person from fishing with seines hauled to the shore at any fishery, the title to which fishery or any interest therein having been acquired by such person by lease, purchase or inheritance. This section shall not extend to servants employed to fish by any persons allowed to fish in the navigable waters of the state. No nonresident of the state shall make any sale, assignment or transfer of any fishery, weir, or other fishing apparatus, or privilege mentioned in this section, to any citizen of the state for the purpose of operating and working said fishery, weir, or other fishing apparatus as aforesaid, under the name and ownership of such citizen, or as the servant or employee of any citizen; and any sale, transfer or assignment not made bona fide and for a full consideration shall be null and void.

Upon affidavit founded upon information and belief that any nonresident of the state is operating any such fishery, weir, or other fishing apparatus as aforesaid in the waters of the state, under such sale, assignment or transfer, as the pretended servant or employee of any citizen of the state, it shall be the duty of the justice of the peace before whom said affidavit is made to issue

a warrant against the said nonresident and citizen under whose name said fishery is operated, and upon conviction the said offenders shall be guilty of a misdemeanor, and shall, for every offense, be fined not more than fifty dollars, or imprisoned not more than thirty days. Upon the said trial, the burden of proof shall be on the defendants to prove the bona fides and full consideration of said sale or transfer. (Rev., s. 2467; Code, ss. 3379, 3380; R. C., c. 81, s. 5; 1844, c. 40, s. 1; 1876-7, c. 33; 1883, c. 171; 1931, c. 81; C. S. 1965.)

§ 113-235. Fishing with nets, etc., by non-residents prohibited.—It shall be unlawful for any person, firm or corporation, which has not been a bona fide resident of the state for twelve months continuously, next preceding the date on which the fishing shall commence, to use or cause to be used in the waters of the state, which shall include the distance of three nautical miles, measured from the outer beaches or shores of the state of North Carolina out and into the waters of the Atlantic Ocean, any seines, trawls or nets of any kind for the purpose of taking fish for sale or exportation. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, for the first offense shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00), or imprisoned for not less than six months nor more than twelve months, or both in the discretion of the court. And for any subsequent conviction for a violation of this section such defendant shall be fined not less than one thousand dollars ($1,000.00) nor more than two thousand dollars ($2,000.00), or imprisoned for not let less than twelve months nor more than two years in the discretion of the court.

The finding by the commissioner of commercial fisheries, or any of his duly authorized agents, of any vessel, boat, or other craft within the distance of three nautical miles, as defined in this section, having any seines, trawls, or nets of any kind or a similar device aboard with fresh or live fish on deck or in the hold thereof or in any portion of the said vessel, boat, or craft, shall be prima facie evidence that the operator or operators and masters and members of the crew of said vessel, boat, or other craft are guilty of a violation of this section.

It shall be the duty of the commissioner whenever he has reasonable grounds to believe that this section is being violated in any particular place, to go himself or send a duly authorized deputy to such place and such officer finding that the provisions of this section are being violated is hereby authorized and empowered to seize and remove all nets, machinery, or other appliances or paraphernalia being used in violation of this section, and to sell the same at public auction, after advertisement for ten days at the court house door in the county in which the seizure was made, or in which the seized property is taken under the provisions of this section, and apply the proceeds from said sale, first to payment of costs and expenses of such sale and removal, and pay the balance of said proceeds remaining, if any, to the school fund of the county in which or nearest to where the offense is committed.

Such commissioner, or his authorized deputy, is further authorized and empowered to seize any boat, vessel or ship of any kind or nature, used in thus violating the law, and to bring the same into the nearest port in said state having sufficient depth of water to properly accommodate such boat, vessel or ship so seized. Such boat, vessel or ship so found being used contrary to the provisions of this statute, shall be forfeited to the state and the said commissioner is hereby authorized, empowered and directed to institute proceedings for the purpose of condemning and selling such boat, vessel or ship, in the name of the state, in the superior court in the county in which such seized boat, vessel or ship is taken under the provisions of this section. The owner of such boat may execute and deliver to the commissioner a bond, with adequate security, not less than the value of such boat, conditioned to return said boat to the custody of said commissioner, if upon the trial of the cause in the superior court as aforesaid it should be determined that the said boat was forfeited.

This authority to seize the said boat, under the circumstances hereinbefore detailed, shall in no way affect the liability of the owners and those operating the boat and thus using it in fishing, to be prosecuted for the misdemeanor hereinbefore defined. Provided, nothing contained in this section shall be construed to prevent any person, firm or corporation, which has been a bona fide resident of the state of North Carolina for twelve months continuously next preceding the date on which the fishing shall commence from employing non-resident employees in connection with fishing as authorized by law. (1931, c. 36, s. 1; 1937, c. 261.)

§ 113-236. Fishing within three-mile limit permitted with pound nets.—It shall be lawful to set pound nets of not less than one and one-quarter inch bar, when fished, in the Atlantic ocean within the three-mile limit and between Cape Hatteras and the Virginia line, but not nearer to any inlet than three miles nor nearer the beach or ocean shore than four hundred yards. (1931, c. 118, s. 1.)

§ 113-237. Permission to set up apparatus to be granted by department of conservation and development and federal government; license fee.—Application for entry for the purpose of constructing permanent and semi-permanent, or stationary fishing apparatus within the three-mile limit under the provisions of this and the preceding section shall be made to the department of conservation and development. Permits for the erection of such fishing apparatus, nets, wires or devices, may be granted by the department of conservation and development if such construction is deemed not to be a menace to public safety or navigation. No construction, or any part of a construction, to be erected under the authority of this section shall be made until permission is secured from the department of conservation and development and from the federal government. The license fee for the erection of fishing apparatus, nets, wires, or other construction which is an integral part of such fishing device, under the authority of this and the preceding section, shall be at the rate of twenty-five dollars per pocket per year, and said license shall expire each year on

December thirty-one: Provided, however, the license fee herein levied shall not apply where the investment for such apparatus does not exceed the sum of one thousand dollars. (1931, c. 118, s. 2.)

§ 113-238. Taking of shrimp by non-residents prohibited. — It shall be unlawful for a person, who has not in good faith resided in the State of North Carolina for a period of twelve months to take shrimp within the territorial waters of the State. (1931, c. 117, s. 2.)

§ 113-239. Closed season for residents taking shrimp. — It shall be unlawful for any resident of the State of North Carolina to take shrimp for commercial purposes in any of the waters of said State between the fifteenth day of May and the fifteenth day of August in any year: Provided, however, that any such resident may take such shrimp to be used as bait only, but not exceeding one bushel per day per boat. (1931, c. 117, s. 3.)

§ 113-240. Violation of two preceding sections made misdemeanor.—Any person, firm or corporation offending against the provisions of §§ 113-238 and 113-239 shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1931, c. 117, s. 4.)

§ 113-241. Regulations subject to approval of department.—The provisions of §§ 113-238, 113-239, and 113-240 and all other provisions of chapter one hundred seventeen of the Public Laws of 1931, regulating the taking of shrimp in the public waters of the State, are made subject to the approval and supervision of the department of conservation and development under the general law theretofore existing. (1931, c. 331.)

§ 113-242. Menhaden fishing forbidden to non-residents.—It is unlawful for any person, firm, or corporation, not a citizen or resident of the state of North Carolina, to catch, capture, or otherwise take any menhaden or fatbacks within the waters of the state of North Carolina to the extreme limits of the state's jurisdiction in and over said waters; and for the purpose of this section the following boundaries are hereby declared to be the boundaries to which the waters of the said state extend, to wit: a distance of three nautical miles, measured from the outer beach or shores of the state of North Carolina out and into the waters of the Atlantic ocean; and any portions or portion of any water within a distance of three nautical miles from said waters of the Atlantic ocean to any beach or shore of said state shall be deemed, for the purposes of this section, within the waters of said state: Provided, that any citizen or resident of the state of North Carolina, whether person, firm, or corporation, may take, capture, or catch any menhaden or fatbacks at any time, subject to existing laws; provided, it shall be lawful for non-residents of the State to catch, or capture menhaden (fat-backs) from the waters of North Carolina, North of Cape Hatteras, on the payment to the commissioner of commercial fisheries of seventy-five cents per ton on gross tonnage of such boats as they may operate, licenses issued under this proviso to expire December thirty-first of each year.

It is unlawful for any nonresident person, persons, firm, or corporation knowingly to buy, cook, or manufacture into fertilizer any menhaden or fatbacks caught, taken, or captured contrary to the provisions of the above.

Any person, persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction in any county opposite the place at which said act is done, shall be fined not less than twenty-five hundred dollars or imprisoned for two years, or both, in the discretion of the court: Provided, that each catch, or taking, or purchase, or act of manufacture, shall constitute a distinct and separate offense.

It is the duty of the commissioner or assistant commissioner, whenever an affidavit is delivered to him stating that the affiant is informed and believes that this section is being violated at any particular place, to go himself or send a duly authorized deputy to such place, to investigate the same, and such officer shall seize and remove all nets, machinery, or other appliances and paraphernalia setting or being used in violation of this section, sell same at public auction and apply the proceeds of such sale to the payment of costs and expenses of such removal, and pay any balance remaining into the school fund of the county nearest to the place where the offense is committed. (1911, c. 102; 1921, c. 234; 1923, c. 154, ss. 2, 3; 1927, c. 59, s. 4; C. S. 1966.)

§ 113-243. Menhaden fishing with nets regulated.—If any person shall catch any menhaden or fatbacks within the waters of the state of North Carolina, to the extreme limits of the state's jurisdiction as defined in the preceding section, in any purse net or purse seine with a bar of less than one inch and with a mesh of less than two inches, or shall knowingly cook or manufacture for fertilizer any menhaden or fatbacks caught in any net or seine having bars of less than one inch or having meshes of less than two inches, at any place within the state of North Carolina, he shall be guilty of a misdemeanor, and for each and every offense shall be fined not less than five hundred dollars or imprisoned for one year, or both, in the discretion of the court. Every person found fishing with such illegal nets for menhaden or fatbacks within three miles of the shore of any county shall be presumed to have violated this section. And all such persons, firms or corporations shall be subject to all the pains and penalties prescribed in this section, and they may be prosecuted in the courts of any county in this state. All persons aiding and abetting shall be guilty as principals. (Rev., s. 2438; 1905, cc. 274, 508; C. S. 1967.)

Local Modification.—Brunswick, Dare, New Hanover, Pender: C. S. 1967.

§ 113-244. Poisoning streams.—If any person shall put any poisonous substance for the purpose of catching, killing or driving off any fish in any of the waters of a creek or river, he shall be guiity of a misdemeanor. (Rev., s. 3417; Code, s. 1094; 1883, c. 290; C. S. 1968.)

§ 113-245. Putting explosives in waters forbidden.—No person, firm or corporation shall put or place in any waters within or on the boundaries of this State any electricity, explosives or poisonous substances whatsoever for the purpose of catching, injuring or killing fish. No person, firm or corporation shall allow substances, poi-

sonous to fish to be turned into or allowed to run, flow, wash or be emptied into any waters within this commonwealth, designated by the board as fish producing waters, unless it be shown to the satisfaction of the board or to the proper court that every reasonable and practicable means has been used to abate and prevent the pollution of waters in question by emptying into same any deleterious or poisonous substances: Provided this section shall not apply to dyestuffs or sewage discharged from cotton mills.

In prosecutions under this section for pollution of water by substances known to be injurious to fish or fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish.

No person shall fish or trespass with intent to fish in or upon any waters or bed or banks of any water, or any land controlled or owned, or occupied by the Board. No person shall wilfully or maliciously destroy or damage any ponds, property or appliance whatsoever of the board, nor interfere, obstruct, pollute or diminish the natural flow of water into or through any State fish hatchery.

Any person violating any of the provisions of this section shall, on conviction, be fined not less than one hundred dollars for each and every offense: Provided, further, that this section shall apply only to such fish producing streams designated as such by the board, and that no prosecution under this section shall be instituted except by said board. (1927, c. 107.)

§ 113-246. Fish offal in navigable waters.—If any person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the state, any fish offal, in any quantity that shall be likely to hinder or prevent the passage of fish along such channel, or if any person shall throw or cause to be thrown into the waters known as the Frying Pan, tributary to the Great Alligator river, in Tyrrell county, any fish offal in any quantities whatsoever, he shall be guilty of a misdemeanor. (Rev., s. 2444; Code, ss. 3386, 3389, 3407; C. S. 1969.)

§ 113-247. Sunday fishing.—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months. (Rev., s. 3841; Code, s. 1116; 1883, c. 338; 1933, c. 438; C. S. 1970.)

Local Modification.—Onslow: 1933, c. 51.

§ 113-248. Robbing nets.—If any person shall, without authority of the owner, take any fish from any nets of any kind, he shall be guilty of a misdemeanor. (Rev., s. 2478; Code, s. 3418; 1883, c. 137, s. 5; C. S. 1971.)

§ 113-249. Vessel injuring nets.—If any master or other person having the management or control of a vessel or boat of any kind, in the navigable waters of the state, shall willfully, wantonly, and unnecessarily do injury to any seine or net which may be lawfully hauled, set or fixed in said waters for the purpose of taking fish, he shall forfeit and pay to the owner of such seine or net, or other person injured by such act, one hundred dollars, and shall be guilty of a misdemeanor. (Rev., s. 2465; Code, ss. 3385, 3389; C. S. 1972.)

§ 113-250. Injury to fishing structures.—If any person shall willfully destroy or injure any platform or structure on any land covered by navigable waters, which land has been duly entered and granted and over which the owner has, according to law, acquired a prior right of fishery, or shall interfere with or molest the owner in the use thereof or of said prior right of fishery, he shall be guilty of a misdemeanor. If any person shall willfully destroy or injure any platform or structure erected in any navigable waters by the owner of the adjoining land for the purpose of drawing or hauling nets or seines thereon, or shall interfere with or molest the owner in the use of any such lands, he shall be guilty of a misdemeanor. (Rev., ss. 3414, 3415; Code, s. 2753; 1874-5, c. 183, ss. 2-4; C. S. 1973.)

§ 113-251. Obstructing passage of fish in streams.—If any person shall set a net of any description across the main channel of any river or creek, or shall erect, so as to extend more than three-fourths of the distance, across any such river or creek any stand, dam, weir, hedge or other obstruction to the passage of fish, or shall erect any stand, dam, weir, or hedge, in any part of any river or creek that may be left open for the passage of fish, or who, having erected any dam where the same was allowed, and shall not make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish, he shall be guilty of a misdemeanor. (Rev., s. 2457; Code, ss. 3387, 3388, 3389; 1909, c. 466, s. 1; C. S. 1974.)

Local Modification.—Onslow: C. S. 1974.

§ 113-252. Dams for mills and factories regulated; sluiceways.—No person shall place or allow to remain any dam for mill or factory purposes in the Chowan river between Holliday's island and the Virginia line; in the Meherrin river between its mouth and the Virginia line; in the Roanoke river from the mouth of the Cashie river to the Virginia line; in the Dan river from the crossing of the state line to a point nearest Danbury; in the Neuse river from New Bern to Neuse station in Wake county; in Contentnea creek from its junction with the Neuse to the junction of Turkey and Moccasin creeks; in the Cape Fear river from Wilmington to the junction of Haw and Deep rivers and thence in Haw river to the line of Chatham and Alamance counties, and also in Deep river to the Randolph and Chatham line; in Rocky river from its mouth to the crossing of the Pittsboro and Ashboro road; in the New Hope river from its mouth to the Orange county line; in Northeast Cape Fear river from Wilmington to South Washington; in Black river from its mouth to the junction of the Coharie; in the South river from its junction with the Black river to the crossing of the Fayetteville and Warsaw public road; in Lumber river from the state line to the northern boundary of Robeson county; in the Yadkin river from the state line to Patterson's factory; in Elk creek, a tributary of the Yadkin river, from its mouth to Daniel Wheeler's in Watauga county; in Stony Fork creek, a tributary of the Yadkin river, from its mouth to John Jones's old store; in Ararat

river from its mouth to the bridge at Mount Airy; in North Fork of Catawba from its mouth to Turkey Cove; in Broad river from the state line to Reedy Patch creek; in Green river from its mouth to its junction with North Pacolet; in the Tennessee river from the state line to its junction with the Nantahala; in Pigeon river from the state line to the Forks of Pigeon; in the French Broad river from the state line to Brevard and in the Swannanoa river; in Toe river from the state line to the confluence of the North and South Forks of Toe; in New river from the state line to the point of divergence from the western boundary line of Alleghany county; in Little river in Johnston county from its junction with Neuse river in Wayne county to the Wake county line; in Cane river from the mouth of same to mouth of Bolling creek in Yancey county, also Old Fields of Toe on North Toe river in Mitchell county; Johns river from its mouth to the forks of said river near Carrell Moore's in Caldwell county; Catawba river from the South Carolina line to the town of Old Fort in McDowell county, unless the owner thereof shall construct thereon at his own expense a sluiceway for the free passage of fish, of a width not less than three feet nor more than ten feet: Provided, such sluiceway shall be constructed according to plans and specifications to be furnished by the board of agriculture, and shall not injure the water-power of such owner: Provided further, in order to ascertain whether sluiceways will or will not injure the water-power aforesaid, the owner of such dam may select two disinterested persons and the board of agriculture two others, who may select the fifth person to aid in the arbitration and settlement of such complaint: Provided further, this section shall not apply to Pigeon river in Haywood county: Provided also, it shall be lawful for any person to remove any obstruction in the main channel of the Cape Fear river to the width of one hundred feet, for the free passage of fish in the county of Harnett. This proviso, however, shall not apply to any dam or obstruction placed or kept upon said river by the Cape Fear iron and steel company. (Rev., s. 2462; Code, s. 3410; 1901, c. 208; 1880, c. 34; 1881, cc. 21, 32, 250, 320; 1905, c. 278; P. L. 1913, c. 758; C. S. 1975.)

§ 113-253. Sluiceways and fish passages; regulation and enforcement.—The sluiceways referred to in the preceding section shall be so constructed and placed upon such dams by the owner thereof within sixty days after notice has been given by the board of agriculture, under a penalty of one hundred dollars per day for each day thereafter that such dam shall remain without such sluiceway, and shall be kept open by him during the months of February, March, April, May, June, October and November, and at all other times when there is sufficient water to supply both the water-power and the sluiceway, a fine of fifty dollars per day for each day said sluiceway shall be allowed to remain closed, and any person who shall fish with net, trap, hook and line, or who shall take in any way whatsoever any fish within two hundred feet of said sluiceway, shall be subject to a fine of one dollar for each fish so taken, or a fine of fifty dollars for each offense, or imprisonment for thirty days.

No other obstruction to the passage of fish shall exist or be built between the designated points in the streams mentioned in this and the preceding section unless an opening of not less than twenty-five feet, and not more than seventy-five feet, embracing the main channel of said streams, shall be made by the owner of such obstructions within twenty days after notice from the board of agriculture to make such opening under penalty of fifty dollars per day for each day such obstruction shall remain unopened. Said notice shall be served by the sheriff of the county, and his return shall be prima facie evidence of notice in any suit for such penalty. (Rev., ss. 2463, 2464; Code, ss. 3411, 3412; 1880, c. 34, ss. 2, 3; C. S. 1976.)

Art. 22. Cooperation with United States Bureau of Fisheries.

§ 113-254. Fish cultural operations by U. S.—The United States Fish and Wild Life Service is hereby granted the right to conduct fish cultural operations and scientific investigations in the several waters of North Carolina and to erect such fish hatcheries and fish propagating plants as are duly authorized by the Congress of the United States at such times as may be considered necessary and proper by said commissioner and his agents, any laws of the State to the contrary notwithstanding. (1931, c. 268.)

Art. 23. Propagation of Fish.

§ 113-255. By Whom issued.—The department of conservation and development is authorized to issue an artificial propagation license for the propagation of all species of trout and all species of bass, upon written application therefor signed by the applicant and upon the payment to said department the sum of five dollars; for all other species of fish, the sum of fifty cents: Provided, that any commercial fisherman who has paid the required license or licenses upon his fishing nets, devices or gear shall not be required to pay an additional license to deal in live fish for propagation purposes. (1929, c. 198, s. 1; 1933, c. 430, s. 1.)

§ 113-256. Applications; when licenses expire.—Applications shall be made on blanks prepared by the department of conservation and development and shall show the size, character and purpose of the propagation plant and such other matters as the department may require. All licenses issued under this article shall expire on the first day of January next following the date of issue. (1929, c. 198, s. 2.)

§ 113-257. Erection of dams, ponds, etc.—No dams, ponds, or other devices which will prevent the free migration of fish shall be erected or placed by a person licensed under this article, in any stream, flowing over his property. No person shall use the ponds so licensed for any purpose other than for commercial fish purposes. (1929, c. 198, s. 3.)

§ 113-258. What license authorizes.—The license issued under this article authorizes the licensee to carry on the business of propagation and sale of the species of fish authorized by the license,

or the eggs thereof, during the year for which the license is issued. The license authorizes the licensee to catch and kill the fish authorized by the license from the licensed ponds in any manner whatsoever except with explosives or poisonous substances. The license further authorizes the licensee to sell or dispose of in any manner whatsoever the fish authorized by the license, or the eggs thereof, at any time of the year, and it authorizes express and railroad companies to receive and transport same. (1929, c. 198, s. 4.)

§ 113-259. Catching fish from streams.—The license issued under this article does not authorize the catching of fish out of any streams flowing over the property of the licensee. (1929, c. 198, s. 5.)

§ 113-260. Certificate or invoice of sale.—A person selling fish under the license provided by this article shall furnish the purchaser with a certificate or invoice of the sale, bearing the date of sale, the number of the license under which sold, the number of fish, and number of pounds sold. The certificate or invoice must be shown by the holder on demand of any fish or game protector or any other person authorized to enforce the fishing laws. The certificate or invoice shall authorize the sale of the fish so purchased for a period of six days after its date of issue. (1929, c. 198, s. 6.)

§ 113-261. Annual reports of transactions.—A person holding an artificial propagation license under this article shall annually on the first day of January file with the department of conservation and development a written statement duly sworn to, showing the number, value, and number of pounds of fish or the eggs thereof sold or disposed of during the year. The books and property of the person licensed under this article shall be open to the department or its agents for inspection at all reasonable times. (1929, c. 198, s. 7.)

§ 113-262. From what waters stock taken.—No person licensed under this article shall in any manner stock or maintain his establishments with any species of fish or eggs thereof taken from any waters within this state not owned, occupied or controlled by them. This section does not prohibit the exchange of fish eggs or the fry of any species of fish with the department of conservation and development. (1929, c. 198, s. 8.)

§ 113-263. Killing domestic and predatory birds and animals.—A license issued under this article authorizes the licensee or his agent to kill, after five days' notice to their owner if known, any domestic bird or fowl trespassing on the waters or lands controlled, used, or occupied entirely for the artificial propagation of fish. Such license also authorizes the licensee or his agent to kill any wild birds or wild animals destructive to fish life whenever found on such waters or lands. (1929, c. 198, s. 9.)

§ 113-264. Necessity for license; trespassing upon licensees' property.—No person shall artificially propagate any species of fish without first procuring the license provided by this article. No person receiving a license, as provided by this article, shall operate a propagating plant different from that designated in the license. No person operating a propagating plant for which a license has been issued for the operation of such a plant shall catch fish out of any stream flowing over the property of the licensee. No person shall fish or trespass with intent to fish in or upon any waters, or ponds or banks of any waters, or any banks owned, controlled or occupied by persons licensed by this article. No person shall wilfully or maliciously destroy or damage any ponds, property, or appliances whatever of a propagating plant licensed under this article. No person shall interfere or obstruct, pollute or diminish the natural flow of water into or through a propagation plant licensed under this article. (1929, c. 198, s. 10.)

§ 113-265. Punishment for violation.—Any person violating any provisions of this article shall on conviction be sentenced to pay a fine of not less than one hundred dollars or imprisoned in the discretion of the court. (1929, c. 198, s. 11.)

Art. 24. Shellfish; Local Laws.

§ 113-266. New Hanover, Onslow and Pender: Close season for oysters.—If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this state between the first day of April and the first day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs only during the month of April in any year, to be used for planting on private grounds, entered and held under the laws of this state: Provided further, that oysters may be taken with hand-tongs only for home consumption: Provided further, that coon oysters may be taken from October first to May first of each year in the waters of Onslow and Carteret counties: Provided also, that it shall be lawful to take or catch oysters on public oyster grounds north of the line running from Point Peter to Duck island, except between a line running from the east end of Hog island to the beach and from Ballast point to the beach in Dare county, to be sold to residents or nonresidents, from April first to May fifteenth of each year, upon the payment by the purchaser of a tax of one and one-half cents per tub.

This section applies only to the counties of New Hanover, Onslow and Pender. (Rev., s. 2383; 1903, c. 516, s. 22; 1905, c. 525, ss. 5, 8; 1907, c. 936, s. 4; C. S. 1947.)

§ 113-267. Brunswick, New Hanover and Pender: Clams protected.—It shall be unlawful for any person, firm or corporation to take clams in the counties of Brunswick, New Hanover or Pender, from any of the waters thereof, for the purpose of bedding, for market, or for shipment from the said counties, from the twenty-fifth day of March to the fifteenth day of December of each year: Provided, however, that citizens of the said counties shall have the privilege at all times of the year to catch clams for selling in any of the said counties, in small quantities, for table use only. It shall be unlawful for any person, firm or corporation to purchase clams in the counties of New Hanover or Pender for the pur-

pose of shipping from the said counties, or for any person, firm or corporation to ship from the said counties of Brunswick, New Hanover or Pender any clams at any time from the twenty-fifth day of March to the fifteenth day of December of every year, and in Brunswick county from the first day of March to the first day of December of every year. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined for each offense not exceeding fifty dollars or imprisoned not more than thirty days, in the discretion of the court. (1909, c. 879; P. L. 1913, c. 805; C. S. 1948.)

§ 113-268. Brunswick: Clams; size limit. — It shall be unlawful for any person or persons to catch any clams for use or for sale under one and one-half inches in diameter in the waters of Brunswick county; and upon conviction shall be guilty of a misdemeanor. (P. L. 1913, c. 805; C. S. 1949.)

§ 113-269. Brunswick: Fire on oyster beds; raking.—In Brunswick county it shall be unlawful for any person or persons to build a fire upon any natural oyster bed or rock at a place where oysters are in a state of growth. It shall be unlawful for any person or persons to rake with clam rake any oyster bed or oyster rock. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (1915, c. 138; C. S. 1950.)

§ 113-270. Carteret: Clams in Newport River.—It shall be unlawful for any person or persons, firm or corporation, between the fifteenth day of April and the fifteenth day of October of any year, to take any clams from the waters of Newport river and its tributaries, for the purpose of shipping, selling, marketing or bedding the same. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars for each offense, or imprisoned not exceeding thirty days, or both, in the discretion of the court. (1907, c. 840; C. S. 1951.)

§ 113-271. New Hanover: Catching oysters in Myrtle Grove Sound.—If any person shall take or catch any oysters from Myrtle Grove sound, from Perrine's or Whitaker's creek to the headwaters of said sound in New Hanover county, from the first day of May until the first day of September, except for his own consumption, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than twenty days. (Rev., s. 2426; Code, s. 3423; 1883, c. 358, ss. 1, 2; C. S. 1952.)

§ 113-272. New Hanover: Clams in Masonboro sound.—It shall be unlawful for any person or persons to use any rake or other instrument with more than two prongs for the purpose of taking clams from any natural oyster rock or the other waters of Masonboro sound, in the county of New Hanover, between what is known as Fowler's landing to Cockle Shell point, in said county, a distance of about one mile. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 521; C. S. 1953.)

§ 113-273. Onslow: Catching oysters and clams in certain waters.—It shall be unlawful for any person to take or catch any oysters or clams from the natural oyster beds heretofore staked off and defined by the shellfish commissioners of Onslow county, or from any ground, between the first days of April and October of each year, lying north of the following lines, to wit: Beginning at triangulation point "Mount Millow," on the western shore of New river, and running thence eastwardly to triangulation point "pond," the eastern shore of New river. It shall be unlawful for any person during the months of May, June and July of each year to take or catch oysters or clams from the natural oyster beds within the grounds lying south of the line mentioned above. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction or confession in open court shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It shall be the duty of the commissioner of commercial fisheries to keep the lines marking the natural oyster beds in said waters properly marked and staked off. (1907, c. 949; C. S. 1954.)

§ 113-274. Onslow: Catching oysters in Stump sound.—It shall be unlawful for any person, firm or corporation to catch, take or carry away from the oyster beds in the waters of Stump sound, in Onslow county, between Alligator bay and the Pender county line, any oysters except for home consumption between the first day of March and the twenty-fifth day of October in any year. Any person, firm or corporation violating this section shall, upon conviction, be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. (1915, c. 130; C. S. 1955.)

§ 113-275. Onslow: Clams in Brown sound and Queen's creek.—It shall be unlawful for any person, firm or corporation to catch or take any clams from the waters herein described between the first day of April and the first day of October. Said territory shall be as follows: Beginning at the mouth of Queen's creek, in Onslow county, and running the various courses of the said Queen's creek channel to Bogue inlet, including all the waters south of said channel to the Horse ford, between Brown sound and New river: Provided, this shall not be so construed as to prohibit any one from catching clams for their own table use only. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 514; C. S. 1956.)

Art. 25. Commercial Fin Fishing; Local Regulations.

§ 113-276. Inlets; nets in, regulated.—If any person shall set any pound net, dutch net or hedge net within two miles of Oregon inlet or Hatteras inlet or within ten miles of New inlet in Dare county, or shall between the first day of January and the first day of May following of any year, set or operate any seine or stationary

nets of any kind in the main channels within three miles of the inside mouths of Ocracoke, Hatteras, Oregon, or any other inlet north of Ocracoke inlet, connecting the waters of the Atlantic ocean with any of the sounds or other inland waters, or shall fish with seines or nets of any description in the waters of Bear inlet or Brown's inlet or within one mile of Bear inlet or Brown's inlet, on the eastern or western beach of said inlets, except at regularly established fisheries on said Bear or Brown's inlet beaches, or shall fish with seines or nets on the inside of said Bear or Brown's inlet within one-fourth mile of said inlets between the first day of October and the first day of April, he shall be guilty of a misdemeanor. (Rev., s. 2450; 1893, c. 216; 1903, c. 724; 1903, c. 416; C. S. 1977.)

§ 113-277. Pamlico and sounds to the north: Net stakes to be removed. — Every person who shall set or use any net in the waters of Pamlico, Croatan, Currituck or Albemarle sounds or their tributaries, except Perquimans river, shall be required to pull up and remove his broken, decayed and abandoned net stakes within thirty days from the day the nets are taken from them, and not later than the first day of June, and any person failing to pull up and remove his stakes, as required by this section, shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 2448; Code, ss. 3382, 3414; 1883, c. 69; R. C., c. 81, s. 8; 1844, c. 40, s. 7; 1852, c. 13; 1893, c. 147; Ex. Sess. 1908, c. 19, s. 1; C. S. 1978.)

§ 113-278. Pamlico, Croatan, and Albemarle sounds and inlets: Fishing regulated. — If any person shall set or fish any net, seine or appliance of any kind for catching fish at any place within a radius of two and one-half miles either way from Roanoke marshes lighthouse, at a distance more than five hundred yards from the shore of Roanoke island or the mainland on the western side of Croatan and Pamlico sounds, except that on the western side of Pamlico and Croatan sounds fishing shall be permitted in that territory extending one thousand yards from the shore, beginning at the two-and-one-half-mile limit heretofore defined and extending to the southern end of the Roanoke marshes, on the Pamlico sound side, and to the north end of the same marshes of the Croatan side, but in neither case shall the nets within this one-thousand-yard limit be within one and one-quarter miles in any direction from the Roanoke marshes lighthouse; or shall set or fish any pound or dutch net on the eastern side of Pamlico sound within ten miles of the Roanoke marshes lighthouse, except such as shall be fished within one thousand yards of Roanoke island or Hog island shores; or shall set or fish any dutch or pound net on the eastern side of Pamlico sound more than two thousand yards west of a line running south-southeast (magnetic) from Big island to a point on the twelve-foot curve westerly of Chicamacomico or south of said point more than two thousand yards from the twelve-foot curve, as marked on the chart of the coast and geodetic survey, corrected from data obtained to November twenty-second, one thousand nine hundred and four; or shall set or fish any dutch or pound net on the west side of Pamlico sound, in said sound, extending into the water more than two thousand yards from the shore; or shall set or fish any pound or dutch net in Croatan sound farther from the shore than one-fifth of the width of said sound at that point; or shall set or fish any net, seine or appliance of any kind for catching fish at any place within the area of one-sixth the width of the sound or river on either side of a line passing through the middle of the channel of Croatan sound and the middle of Albemarle sound, up Chowan river as far as Cannon's ferry, and other tributaries of Albemarle sound (provided, this clause does not apply to seines used on the rivers); or shall set or fish any pound or dutch net in the Albemarle sound more than two thousand yards from the shore of the mainland, or in Chowan river farther from the shore than one-third of the width of said river, at the place where said nets are fished or set, or within one-fourth mile of any wharf used by a steamer on said river; or shall set or fish any net or appliance of any kind for catching fish within one mile on either side of a line running westerly or southwesterly from the center of New inlet to an intersection with the line extending from Big island southwest (magnetic), or within one mile on either side of a line six miles long running southwesterly from the center of Oregon inlet to a point two thousand yards west of the continuation of the said line running from Big island south-southeast (magnetic), or within one mile on either side of a line six miles long running from the center of Hatteras inlet in a northwesterly direction, these restricted areas to include the channels extending from Oregon, New and Hatteras inlets, respectively, he shall be guilty of a misdemeanor and be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. The provisions of this section shall apply only to that part of each year in which shad and herring fishing are permitted by law in the several waters, except that in Albemarle and Croatan sounds the provisions of this section shall apply for the entire year, as far as it relates to pound nets. The commissioner of commercial fisheries is authorized, in determining the boundaries of the restricted areas on either side of Roanoke marshes, to run straight lines from the stake two thousand yards from the shore in the two-and-one-half-mile radius from Roanoke marshes lighthouse to the stake five hundred yards eastward from the point of Roanoke marshes, and shall run straight lines from the stake one-fifth the width of Croatan sound in the two-and-one-half-mile radius from Roanoke marshes lighthouse south to the stake five hundred yards from the eastward point of Roanoke marshes; that the boundary lines marking the restricted areas in these sounds shall be run in straight lines from stake to stake, located at certain points, but said stakes not to be in any case more than three miles apart. The place of trial for offenses under this section shall be the county opposite where the act was committed. (1909, c. 540, s. 3; C. S. 1979.)

§ 113-279. Albemarle and Croatan sounds and inlets: Drift nets.—If any person shall drift or fish any drift nets between the first day of February

and the first day of May of any year, within two miles of the mouth of any river emptying into Albemarle sound, or within three miles of any seine-beach on the Albemarle or Croatan sounds while being fished, or within ten miles of Ocracoke, Hatteras, Oregon or New inlets, or within ten miles of the Roanoke marshes, he shall be guilty of a misdemeanor, and be fined not less than fifty dollars or imprisoned not less than thirty days: Provided, the people of Dare county shall be allowed to use drift nets for herring. (Rev., s. 2446; Code, s. 3390; 1881, c. 274, ss. 1, 2; 1883, c. 145; C. S. 1980.)

§ 113-280. Albemarle sound and tributaries: Nets and net stakes.—No person shall set or fish any dutch net or pound net in Roanoke river, Cashie or Middle and Eastmost rivers, or within two miles of the mouth of said rivers, or within one mile of the mouth of any other river emptying into Albemarle sound, or less than two miles in width at its mouth, and any such net set within one mile of the mouth of any other river emptying into said sound shall not extend into the main channel at its mouth. No person shall set or fish with a dutch net or pod net within half a mile to the eastward or westward of the outside windlasses or snatch-blocks of any seine fishery in operation on said sound; and any such net set or fished within one mile of such windlasses or snatch-blocks of any seine fishery in operation shall run at right angles to the shore from the shore, and shall not extend farther into the sound from the water's edge than the distance from such windlasses or snatch-blocks to the line of such net; and all persons who shall set or fish any such net in said sound shall pull up and remove the stakes used for the same by the first day of June next succeeding the fishing season, and if any person shall set or fish any dutch net or pod net in said sound in violation of this section he shall be guilty of a misdemeanor, and be subject to a penalty of three hundred dollars: Provided, that dutch nets may be used in Cashie river two and one-half miles from its mouth, if they do not extend more than one-third the width of said river from the shore, and such nets may be along the sound shore on the Bertie county side between the following points along said shore, to wit: Commencing at the mouth of Cherry Tree Cut branch, Kentrock field and Landing field, and running around the shore to the mouth of Morgan swamp, thence to Rock Spring branch, and that any nets set or fished within that line shall not extend from the shore in any direction a greater distance than six hundred and fifty yards measured at high water, and within this distance of six hundred and fifty yards is to be included the nets, hedges and all parts thereof. (Rev., s. 2439; Code, s. 3383; 1889, c. 122; 1891, c. 322; 1895, c. 245; 1899, c. 310; 1899, c. 412; 1909, c. 540, s. 2; 1911, c. 23; C. S. 1981.)

§ 113-281. Albemarle sound in certain parts: Gill nets.—It is unlawful to set, fish or use any gill nets of any description, either stake, anchor or drift, for commercial purposes in the Albemarle sound west of a line drawn straight from Batt's island on northern side of Albemarle sound to mouth of Scuppernong river on south side of said sound, except between the hours of four o'clock and eleven o'clock p. m., and then said nets or combinations of such nets shall not be more than six hundred yards in length, and there shall not be allowed to any boat more than six hundred yards of such gill nets.

It is the duty of the commissioner of commercial fisheries or other persons entrusted with the enforcement of the fishery laws of the state to seize and remove any gill net of any description being set, setting or being used in violation of this article, or which is more than six hundred yards in length, and to dispose of the same as provided by law.

It is the duty of the commissioner to keep a deputy, assistant or inspector on the waters of Albemarle sound to enforce this section and the other fish laws applicable to Albemarle sound, and the failure of the commissioner to perform this duty shall render his official bond liable to the penalty prescribed in the third preceding section which regulates fishing in Pamlico, Croatan and Albemarle sounds and inlets.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars (one-half to go to the informant and the other half to the school fund), or imprisoned in the discretion of the court. (1911, c. 18; 1913, c. 43; C. S. 1982.)

§ 113-282. Albemarle sound off Tyrrell county: Gill nets.—It is unlawful for any person, firm or corporation to set or use for catching fish any anchor gill net within fourteen hundred yards of any stake gill net of from four and one-half inch to five and one-half inch mesh in that part of the Albemarle sound embraced in the following area: Commencing on the east shore of the Scuppernong river where said river empties into the Albemarle sound, thence north to the middle of the Albemarle sound, thence along the middle of the Albemarle sound to a point in the sound opposite Newberry pier, thence to the shore at Newberry pier, and along the sound shore to the beginning. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned for not more than thirty days. (1915, c. 112; C. S. 1983.)

§ 113-283. Albemarle sound in certain parts: Anchor, drift, and stake nets.—If any person shall set or fish an anchor, drift or staked gill net in the waters of Albemarle sound or its tributaries west of a line running from Skinner's point buoy to Roanoke lighthouse, or if any person shall east of said line set or fish in the waters of said sound or its tributaries any anchor, drift or staked gill net longer than one thousand yards, or combination of such nets longer than one thousand yards; or shall set or fish any anchor, drift or staked gill nets within one and one-half miles of any seine grounds on the said sound or rivers emptying therein or within one-half mile of any dutch net stand where the same is now located in said sound or rivers, unless said seine ground or dutch-net stand is owned by the person setting such nets; or shall set or fish any line or row of anchor, drift or staked gill nets anywhere in said sound or rivers nearer to any other row of such nets than half the length of the longer of said

row he shall be guilty of a misdemeanor and shall be fined not exceeding one hundred dollars or be imprisoned not more than thirty days. And any person who shall willfully violate the provisions of this section shall forfeit and pay for each violation of the same the sum of one hundred dollars, to be recovered in a civil action by any one who will sue therefor; one-half of said recovery shall inure to the benefit of the public school fund: Provided, that nothing in this section shall prevent the setting of gill nets in the Chowan river or its tributaries above Holliday's island: Provided further, that one-third of said stream, along the channel, shall be kept free from any class of net: Provided further, that no pound net shall be set within one hundred yards of any other pound net set by another person in Chowan river, north of Holliday's island. (Rev., s. 2451; 1897, c. 51; 1899, c. 41; 1899, c. 130; 1911, c. 104; C. S. 1984.)

§ 113-284. Albemarle sound: Nets near wharves or Norfolk Southern railroad bridge.—It is unlawful to set any pound or dutch nets in Albemarle sound nearer to either side of the Norfolk Southern railroad bridge across said sound than three hundred yards, or to set any stake, drift, or anchor gill nets nearer to either side of said bridge than one-half mile. It is unlawful to set any net of any description in front of a wharf, that is, between the pier of any wharf now used as a landing for any steamboat and the middle of the stream on which the wharf is built. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court. (1911, c. 163; C. S. 1985.)

§ 113-285. Croatan marshes: Nets and fishing apparatus near.—If any person, for the purpose of taking fish, shall between the first day of February and the first day of May, of the same year, use or cause to be used, at or within half a mile of the marshes separating the waters of Croatan and Pamlico sounds, any weir, hedge, net or seine, he shall be guilty of a misdemeanor. (Rev., s. 2424; Code, s. 3378; R. C., c. 81, s. 4; 1844, c. 40, s. 3; C. S. 1986.)

§ 113-286. Currituck sound: Nets used regulated.—It is unlawful for any person or persons, firm or corporation to fish in the waters of Currituck sound with a drag, haul, seine or any other kind of net of whatsoever kind with a bar of less than one and three-eighths inches, or a mesh of less than two and three-quarters inches. Any person or persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned more than thirty days, in the discretion of the court. (1913, c. 29; C. S. 1987.)

§ 113-287. Pamlico sound: Nets to be set north and south. — Every net (unless the same be a drag-net and hauled to the shore) which may be used for catching shad in that portion of the waters of Pamlico sound lying between a line drawn eastwardly from Stumpy Point and Mount Pleasant in Hyde county to a point ten miles south of Hatteras inlet in said sound, shall be set and fixed in said waters in a direction from north to south, and shall not be used in any other manner; and any person offending against this section shall, for every offense, forfeit five dollars. (Rev., s. 2433; Code, s. 3381; 1889, c. 261; R. C., c. 81, s. 7; 1844, c. 40, s. 6; C. S. 1988.)

§ 113-288. Pamlico sound; tributaries, rivers, and waters of Carteret county: Nets regulated.—There shall be no pound or other tarred nets with a mesh smaller than one and one-half inches bar, before tarring, fished in Pamlico, Tar, and Neuse rivers, Pamlico sound and the waters of Carteret county, and there shall be no pound or stake nets fished within three miles of the inside mouths of Ocracoke inlet nor in the principal channel or channels of said inlet nor within one mile of said channel or channels until the said channel or channels reach deep water, at any time, and the other inlets north of it shall be left under § 113-278 of this chapter. No stake or pound net which shall be fished in any of the waters mentioned in this section, without being tarred, shall have a mesh of less than one and three-eighths inches bar. The bunt, which must not be longer than thirty yards, of all seines and haul-nets fished in the waters of Pamlico, Tar and Neuse rivers and Pamlico sound shall not be smaller than one and one-eighth inches bar net, but nothing herein shall apply to nets fishing for menhaden. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars and imprisoned at the discretion of the court: Provided, this section shall apply only to that part of the year beginning January fifteenth and ending May fifteenth. (1907, c. 948, ss. 1-4; 1909, c. 540, s. 4; C. S. 1989.)

§ 113-289. Pamlico sound; waters of Pamlico county: Nets regulated.—It is unlawful for any person or association of persons or corporation to set or cause to be set, fish or cause to be fished in Pamlico sound from the mouth of Bay river to Neuse river and in Neuse river, more than four pound, pod or dutch nets in any one string, with leads of more than two hundred yards in length for each pound or net, or at a greater distance than one and one-half miles from the shore at right angles or thereabouts from the place opposite where such net may be set; and it is unlawful for any person, association of persons or corporation to set or cause to be set any pound, pod, or dutch net or string of nets of any kind, or fish any such nets nearer to a net or string of nets already set and being fished than five hundred yards, and no pound, pod, or dutch net nor any lead thereto shall be set other than at right angles or thereabouts from the shore. It is unlawful for any person or persons, firm or corporation to use, set or fish any drag or haul net in the waters of Smith's creek or its tributaries in Pamlico county.

It is unlawful for any person or persons or corporation to set or fish or cause to be set or fished any pound, pod, or dutch net in the waters of Pamlico county on the south or east side thereof, or in Neuse river, of a size smaller than one and one-quarter mesh or bar measure or two and one-half inches string measure.

Any person, persons or corporation who shall violate any of the above provisions shall be guilty of a misdemeanor, and shall be fined not

exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court, and shall also forfeit such net or nets any portion of which may be set beyond such distance from the shore or set in any manner or place forbidden in this section.

It is the duty of the sheriff of Pamlico county, upon reliable information that any person or persons or corporation has set or caused to be set any pound or dutch net, or that any portion of any such net has been set at a greater distance than one and one-half miles from the shore from the mouth of Bay river to Neuse river and from Neuse river to Baird's creek, or nearer than five hundred yards to any nets already set, to ascertain the truth thereof, and if such report be correct, take into possession at once any such net so set, and after ten days public notice at three public places in his county sell the same at public sale, and from the proceeds he shall retain the actual cost of taking such net, and a fee for services of two and one-half dollars and the remainder of said proceeds he shall pay one-half to the informer and the other to be paid to the county treasurer, who shall place the same to the credit of the public school fund of the county.

It is lawful for any person or persons to set pound, pod, or dutch nets in the manner prescribed in this section in the waters of Pamlico county and in Neuse river upon the north side thereof from its mouth to Baird's creek, at any time during the year, and from the northern end of outer Swan island to Adams creek on the south side of Neuse river, from the first day of January to the first day of May. (P. L. 1913, c. 752, s. 5; C. S. 1990.)

§ 113-290. Roanoke sound: Nets in.—It is unlawful for any person or persons to set any pound nets or any other kind of nets east of a line beginning at a point one thousand yards east of Hog Island point and running direct to a point two hundred yards east of Broad creek point; thence following the east shore of Roanoke island to Ballast point; or set or fish any pound or dutch nets or any other kind of net in that portion of Roanoke sound north of a line extending from Ballast point east ten degrees north farther from the shore than one-fifth of the width of said sound. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. This section shall not prevent the setting of pound nets inside of Shallow Bag bay, and shall apply only to that part of each year in which shad and herring fishing is permitted by law in the several waters. (1911, c. 26; C. S. 1991.)

§ 113-291. Black river: Fishing regulated.—It is unlawful for any person or persons to catch or take fish, either by rod or hook, seines, nets, striking, muddying the pools or lagoons, feeling by hand, gigging or in any other method or in any manner whatsoever, during the months of May, June, July and August, excepting Tuesday and Friday of each week in each year, in the waters of Black river and its tributaries, in the counties of Pender and Bladen. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not less than five dollars nor more than ten dollars or imprisoned not more than thirty days, one-half of the fine to be paid to the informer and one-half to the school fund. (1909, c. 478; C. S. 1992.)

§ 113-292. Black river and Mingo creek: Only hook and line.—If any person shall fish in that part of Black river in Sampson and Cumberland counties and below the Atlantic coast line railway bridge, or Mingo creek in said counties below the Averasboro and Clinton road otherwise than with a hook and line, he shall be guilty of a misdemeanor. (Rev., s. 2471; 1895, c. 276; C. S. 1993.)

§ 113-293. Black river in Bladen, Cumberland and Sampson: Close season.—It is unlawful for any person to catch with hook and line, seine, or destroy with gun or any gig or striking iron the fish in the waters of Black river and its tributaries in the counties of Bladen, Cumberland and Sampson from the fifteenth of May until the fifteenth of August in each year. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned in the county jail not more than thirty days, for each and every offense. (P. L. 1913, c. 623, s. 1; C. S. 1994.)

§ 113-294. Black river and Six Runs; Obstructing channel; lay days.—It is unlawful for any person or persons to fish in that part of Black river from the Cape Fear river to the mouth of Great Coharie, and in that part of Six Runs river from its mouth to where it is crossed by the Atlantic coast line railroad, with any wire trap, net or contrivance whatever that will obstruct the free passage of fish in said waters, from the first day of March to the fifteenth day of June of each year, except from six o'clock p. m. to six o'clock a. m. on Tuesday, Thursday and Saturday nights. It is unlawful for any person or persons fishing as permitted in the foregoing to leave, or permit being left, in the parts of the said streams defined in the foregoing, any wire trap, net or contrivance whatever that will obstruct the free passage of fish, or any parts of any such wire trap, net or contrivance, at any time during which such fishing is prohibited. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 169; C. S. 1995.)

§ 113-295. Cape Fear river: Nonresidents may not fish.—If any person who is a nonresident of the state shall catch fish, for marketable purposes, in the waters of the Cape Fear river, or any of its tributaries, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. (Rev., s. 3416; 1895, c. 230; C. S. 1996.)

§ 113-296. Cape Fear river: Nets and seines regulated.—If any person shall use any net for catching sturgeon in the waters of New Hanover county, the bars of the meshes of which net shall be less than ten inches in the diamond; or shall haul a seine or nets or pod fish within three hundred yards of any established fishery, except with the nets of such fishery; or shall set or fish any stationary nets in the waters of the Cape Fear river, except on the east side there f and in New Hanover county; or shall set any net in said river otherwise than east or west; or shall own or con-

trol more than one line of nets; or shall operate or fish any shad nets in Cape Fear river below the mouth of Brunswick river between the twentieth day of April and the fifteenth day of January; or shall set any set net or stationary net of any kind in the Cape Fear river north of the mouth of the Brunswick river, or in the Brunswick river; or shall operate any drift net in the Cape Fear river of more than three hundred yards in length, or shall catch shad in said river with seines or nets from the twentieth of April to the fifteenth of January, he shall be guilty of a misdemeanor. The possession of a sturgeon net with meshes of a size smaller than allowed by this section shall be prima facie evidence of having fished the same. In setting nets in Cape Fear river as allowed by this section the following rules shall prevail: They shall begin at a point one hundred yards from the edge of the channel on the east side of said river and running thence due east one hundred and twenty yards, then leaving a gap of one hundred and twenty yards. Then from the east end of said gap another net may be set one hundred and twenty yards only, and to continue in the same proportion, always requiring a gap of one hundred and twenty yards to intervene between each one hundred and twenty yards of nets so set, and no net or sets of nets of any kind shall be placed opposite said gaps, within a distance of a half mile of same, and none of the nets so set shall be nearer than a half-mile of the west shore of said Cape Fear river. An established fishery in the meaning of this section is one where there is a camp for the use of the hands, and where the seine or nets and boats used by the said fishery are kept, and where the said fishery was established prior to the first day of January, one thousand eight hundred and ninety-nine. (Rev., s. 2468; Code, s. 3403; 1901, c. 173; 1899, c. 440; 1881, c. 280; 1907, c. 752; C. S. 1997.)

§ 113-297. Cape Fear river: Fish traps regulated.—If any person shall construct, operate or maintain any fish traps in the Cape Fear river, or shall fail to remove all traps now in the channel of said river within sixty days from the first day of March, one thousand nine hundred and five; or shall fail on the first day of June of each year to remove the slats or fingers from any fish trap allowed to be operated in said river under this section, he shall be guilty of a misdemeanor. This section shall not apply to Brunswick or New Hanover counties or to a fish trap which extends to not more than one-third the channel of said river. (Rev., s. 2483; 1905, c. 500; C. S. 1998.)

§ 113-298. Cape Fear and Northeast rivers: Nets in.—It is unlawful to fish with dutch, pod, fyke or other pound nets, or stake or stationary nets, or nets of like kind, in the waters of the Cape Fear river below the mouth of Black river, twelve miles above Wilmington, or in the waters of Northeast river below the Castle Hayne bridge. Drift nets shall be permitted in the waters of the Cape Fear river within the territory as above described in this section, and its tributaries, between February first and May first of each year. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days. (1909, c. 841; P. L. 1911, c. 278; C. S. 1999.)

§ 113-299. Cape Fear, Northeast, and Black rivers: Obstructing fish; fishing between Saturday evening and Monday evening.—If any person shall with seines or nets of any kind catch any fish in the waters of the Cape Fear river from its mouth to the Bladen county line, or in the waters of the Northeast Cape Fear or Black rivers in Pender county between six o'clock p. m. on Saturday and six o'clock p. m. on Monday, or shall obstruct the free passage of fish in the waters of said rivers, he shall be guilty of a misdemeanor. (Rev., s. 2470; 1885, c. 226; 1887, c. 71; 1907, c. 811; C. S. 2000.)

§ 113-300. Cape Fear river, northeast branch: Seines, nets and traps.—If any person shall fish in the northeast branch of the Cape Fear river with seine, net or trap, from the twenty-third day of February to the first day of July of any year, between the hours of six o'clock p. m. on Saturday and six o'clock p. m. on Monday of each week, or shall at any time use more than one seine at a time in any fishing hole in said river, or use, set or place in said river any hedge, trap or other obstruction which will prevent the free passage of fish up said river, which said hedge, trap or other obstruction shall extend more than one-third across the main channel of the said river, he shall be guilty of a misdemeanor. This section shall not apply to that portion of said river which lies between the city of Wilmington and a point on said river known as The Three Cypresses, twelve miles distant from said city of Wilmington. (Rev., s. 2469; 1889, c. 182; 1891, c. 198; C. S. 2001.)

§ 113-301. Goose and Oyster creeks: Drag or haul nets unlawful.—It is unlawful for any person or persons to fish with a drag or haul net of any description in the waters of Oyster creek and its tributaries and Goose creek or its tributaries (said creek being a dividing line between the counties of Pamlico and Beaufort). Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1907, c. 222; P. L. 1911, c. 381; C. S. 2002.)

§ 113-302. Little river: Obstructions in.—If any person shall place any obstruction in Little river, dividing the counties of Pasquotank and Perquimans, and allow it to remain for a longer time than ten days, he shall be guilty of a misdemeanor, and fined not less than five dollars nor more than ten dollars: Provided, nothing in this section shall be so construed as to prohibit citizens from fishing with dip-nets in said river during the months of March and April in each year. (Rev., s. 2443; Code, s. 3400; 1881, c. 18; C. S. 2003.)

§ 113-303. Lumber river: Close season for traps in.—It is unlawful for any person to set any trap for the purpose of catching fish in Lumber river or its tributaries in Columbus and Robeson counties, between the first day of April and the first day of September in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 608; C. S. 2004.)

§ 113-304. Lumber river and waters of Robeson, Columbus, Hoke, and Scotland: Fishing regulated.—It is unlawful for any person, firm or corporation to fish with seine, trap, nets, or by gigging, muddying, striking, dynamiting, shooting, or using lime or other chemicals by which fish may be killed, in Lumber river or any of its tributaries, or other rivers, lakes, ponds, or swamps of Robeson, Columbus, Hoke and Scotland counties: Provided, that gill nets may be set in these waters during six months in each year, beginning with October and ending with March: and Provided further, that in Robeson and Hoke counties owners of private lakes and ponds may fish therein with seines, nets or traps from July first to September thirtieth.

Any person, firm, or corporation violating this section shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars nor less than ten dollars, the fine to be paid to the school fund of the county in which the offense was committed, or imprisoned not more than thirty days nor less than ten days in the county jail, the county commissioners of said counties having the privilege of sending the said person or persons so convicted to the chain-gang of their respective counties or to hire them out in case there is no chain-gang. The police force of said counties have full power and authority to arrest, without warrant, any and all persons violating this section. (P. L. 1915, c. 358; P. L. 1917, cc. 368, 415; C. S. 2005.)

Local Modification.—Columbus: Pub. Loc. 1917, c. 394.

§ 113-305. Moccasin river and Big and Little Contentnea creeks: Obstructions and nets in.—It is unlawful for any person or persons to hedge or otherwise obstruct the free passage of water, fish, timber, rafts or boats in the run of Moccasin river or Big Contentnea creek, from Rountree's bridge in Wilson county to the mouth of said river or creek, or to make any like obstruction in the run of Little Contentnea creek. It is unlawful for any person or persons to fish with traps of any description in the waters of either of said streams, except from Rountree's bridge to Barefoot's mill: Provided, no hedge or trap shall obstruct more than one-third of the waters of Contentnea creek. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars and not more than fifty dollars or imprisoned not more than thirty days; and one-half of the fine so imposed shall be paid to the person who reports such offenses to the proper lawful officer, and the other half to the common school fund of the county in which the misdemeanor is committed. (1907, c. 615; Ex. Sess. P. L. 1913, c. 252; C. S. 2006.)

§ 113-306. Neuse and Trent rivers: Stationary, set, or dutch nets.—No person or association of persons shall set or place or cause to be set or placed any stationary, set or dutch nets in either Neuse or Trent rivers above the point of conflux of the said Neuse and Trent rivers. No person or association of persons or corporation shall set, cause to be set, fish or cause to be fished, use or cause to be used any dutch net, pound net or other stationary trap net or seine of similar description, by whatever name known, in the waters of Neuse river above Wilkinson's point, on Pamlico side. Any person or association of persons setting or placing any nets, as described above, on any day or part of a day, above the point of conflux of the said Neuse and Trent rivers, shall be guilty of a misdemeanor. Any person or association of persons or corporation setting or placing or causing to be set or placed any nets, as described above, on any day or part of a day, above Wilkinson's point, in Neuse river, shall be guilty of a misdemeanor. Any person or association of persons or corporation violating the provisions of this section shall upon conviction be fined fifty dollars or imprisoned thirty days for each and every violation. Any party who is the informant against any one violating this section shall, upon conviction of such person so violating the section, receive one-half of the fine prescribed. (1909, c. 801; P. L. 1911, c. 616; C. S. 2007.)

§ 113-307. Neuse and Trent rivers: Size of seine bars regulated.—If any person shall use any drag-net or seine with bars of less size than one and a quarter inch in the Neuse and Trent rivers, or in any of the tributaries thereof, except for the purpose of catching herring, from the fifteenth day of January to the fifteenth day of May of each year, he shall be guilty of a misdemeanor, and fined not less than five nor more than fifty dollars for every offense. This section shall not apply to the waters of the Neuse and its tributaries above the Wayne and Johnston county line. (Rev., s. 2454; Code, s. 3395; 1881, c. 146, ss. 1, 2; C. S. 2008.)

§ 113-308. Neuse river: Obstructions in, by dams, nets, etc.—Any person who shall construct a dam, put in traps, dutch net, wire seine, or anything else in Neuse river between its mouth and the Falls of Neuse in Wake county, for the purpose of obstructing the passage of fish in said river, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this section shall not apply to seines, set nets, running or skimming nets: Provided, this section shall not prevent the use of traps in Wayne county, where the trap and its wings do not extend more than one-third across the stream. (Rev., s. 2474; Code, s. 3422; 1885, c. 391; 1893, c. 354; 1883, c. 301, ss. 1, 2; 1895, c. 403; 1901, c. 395; C. S. 2009.)

§ 113-309. Neuse river: Certain nets regulated.—If any person shall use or cause to be used any dutch net, pound net, or other stationary trap net, or seine of similar description, by whatever name known, in the waters of Neuse river for the purpose of taking fish therefrom, except the ordinary set net in use in said river prior to the first day of January, one thousand eight hundred and ninety-seven, he shall for each day's use thereof as aforesaid forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by warrant before any justice of the peace in the counties of Carteret, Craven and Pamlico or Lenoir, and shall be applied to the use of the public schools of said counties, and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six

months nor more than twelve months: Provided, that a resident and citizen of the state may fish with dutch, trap or pound nets in the waters of Neuse river on the Pamlico side of said river between the mouth of said river and Upper Broad creek not more than five hundred yards from the shore. (Rev., s. 2453; Code, s. 3397; 1897, c. 145; 1899, cc. 299, 422, 435; 1901, c. 74; 1903, c. 704; 1905, c. 817; C. S. 2010.)

§ 113-310. Neuse, Trent, Moccasin, White Oak and New Rivers; perch traps prohibited, minimum size of other traps.—It shall be unlawful for any person, firm or corporation to place perch traps in the commercial waters of Neuse River, Trent River, Moccasin River, White Oak River and New River or any of the tributaries thereof and it shall be unlawful to place any fish traps in the commercial waters of said streams with a mesh smaller than five inches. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1931, c. 333.)

§ 113-311. Pamlico and Tar rivers: Dutch, etc., nets prohibited.—If any person shall set down or fish any dutch, pod, fyke or pound net or net of like kind in the waters of Pamlico or Tar rivers or their tributaries except in the manner, and in the part, and during the time, which such nets are by law allowed to be fished, he shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, and shall be imprisoned in the county jail not less than thirty and not more than sixty days. (Rev., s. 2428; Code, s. 3417; 1903, c. 52; C. S. 2011.)

§ 113-312. Pamlico and Tar rivers: Lay days.—If any person, from the fifteenth day of February to the tenth day of May of every year, from twelve o'clock meridian of Saturday until sunrise Monday morning of each week, shall fish any seine, set net, drift net, or any other net of any name or kind whatever, in the waters of Pamlico or Tar rivers and tributaries, except bow or skim nets, he shall be guilty of a misdemeanor. (Rev., s. 2427; Code, s. 3416; 1883, c. 137, s. 3; C. S. 2012.)

§ 113-313. Pamlico river: Dutch, etc., nets allowed under regulation. — It shall be lawful to fish with dutch, pod, fyke or other pound nets, or nets of like kind, in the waters of Pamlico river below a line beginning on the southern shore of Pamlico river at Maule's point, and running due north to a point on the northern shore of said river: Provided, that no dutch, pod, fyke or pound net, or other net of like kind, shall extend out in said river more than one-fourth of the distance across said river from the shore, and that none of said dutch, pod, fyke or pound nets shall be set, placed down or fished nearer to each other than five hundred yards, measuring up and down the river; nor shall they be placed, set down or fished within five hundred yards of any seine beach in actual use for hauling a seine, nor within one mile of the mouth of Bath creek: Provided, no nets of the kind enumerated in this section, or other nets of like kind, shall be placed down, set or fished in said rivers between the tenth day of May and the first day of July in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, in the discretion of the court. (Rev., s. 2429; Code, s. 3417; 1903, c. 52; 1909, c. 540, s. 1; 1909, c. 700; C. S. 2013.)

§ 113-314. Perquimans river: Nets in, regulated.—If any person shall fish with any seine, or set any dutch net or hedge within one mile of a straight line commencing at Stephenson's point on the north side of Perquimans river and running in a southwesterly direction to the nearest point of land on the south side of said river known as Belgrade bluff, or shall haul any seine or set any dutch net or other kind of net so as to extend beyond the middle of said river at any part thereof, he shall be guilty of a misdemeanor. (Rev., s. 2441; 1893, c. 147, ss. 1, 2, 4; C. S. 2014.)

§ 113-315. Roanoke river: Drift nets in, regulated.—It is unlawful to fish any drift nets in the Roanoke river over twenty yards in length, and no net shall drift within three hundred yards of another net and no two nets shall drift abreast of each other. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court: Provided, it shall be lawful on the Roanoke River from Halifax to the Power Dam at Roanoke Rapids to fish from January 1st to June 1st of each year with skim nets, dip nets, and fish traps with or without wings or hedgings. (1911, c. 163, s. 3; 1933, c. 336; C. S. 2015.)

§ 113-316. Scuppernong river and Lake Phelps: Nets in, regulated. — It is unlawful for any person, firm or corporation to set or in any manner fish with more than one hundred yards of gill nets within the waters of Lake Phelps or Scuppernong in Tyrrell and Washington counties, or to set or in any manner fish with more than one pound, pod, or dutch net, and shall be restricted to the months of February, March, and April of each year. Any person, firm, or corporation violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 378; 1911, c. 129; C. S. 2016.)

§ 113-317. Scuppernong river: Nets obstructing channel or near bridges. — If any person shall set any kind of a fish weir or pod net, gill net or net of any kind in the Scuppernong river using more than one-half of the channel of said river, or within one hundred yards of the public bridges at Columbia and the Cross landing, crossing said river, he shall be guilty of a misdemeanor, and fined a sum not to exceed fifty dollars, or imprisoned not to exceed thirty days: Provided, this section shall not apply to the hauling of seines. (Rev., s. 2445; Code, s. 3408; 1885, c. 18; 1903, c. 91; C. S. 2017.)

§ 113-318. Scuppernong river and tributaries: Obstructions and nets in.—It shall be unlawful for any person, firm or corporation to set or fish any net or place any other obstruction of any kind within one hundred and fifty yards of the mouth of any creek or drainway emptying into Scuppernong river; or for any person, firm or corpora-

tion to set or fish any net or place any obstruction more than one-third of the total width of Scuppernong river at the point of setting the same: Provided, this section shall not apply below Cross Landing bridge. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor. (P. L. 1919, c. 88; C. S. 2018.)

§ 113-319. Scuppernong river: Nets near Norfolk and Southern railroad bridge.—It is unlawful for any person to fish any pound or dutch nets within fifty yards of the Norfolk and Southern railroad bridge across Scuppernong river. Any person violating this section shall be guilty of a misdemeanor and punished by a fine of not more than one-hundred dollars nor less than twenty-five dollars, in the discretion of the court. (Ex. Sess. 1908, c. 82; 1909, c. 119; C. S. 2019.)

§ 113-320. Trent river: Use of nets regulated.—If any person shall set any trap, dutch, pound or pod net of any description whatever in Trent river, or shall at any time extend his set nets more than one-third the distance across the Trent river from either side, or shall set any net nearer to any other net than one hundred yards either on the same or on the opposite side of the river, or shall fish with seines or set nets of any description in Trent river from its mouth to upper Tucker bridge, between the hours of twelve o'clock noon on Saturday and twelve o'clock noon on Monday of each week, or shall set or haul a net or seine of any description between the town of Trenton and Brown's mill on said river from the sixteenth day of May to the first day of August in each year, he shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or be imprisoned not less than ten nor more than thirty days. (Rev., s. 2455; Code, s. 3397; 1893, c. 447; 1897, c. 294; C. S. 2020.)

§ 113-321. Counties on Pamlico sound: Size of fish caught or sold.—It is unlawful for any person to buy, sell, offer for sale, or to have in his possession any blue fish, trout or drum under eight inches in length, or any mullet under six inches in length, or any croakers, spots and hogfish under five inches in length, or sea mullet, flounders, mackeral and hickory shad less than eight inches long, or butterfish and steerfish less than four and one-half inches long, at any time during the year. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars. This section shall only apply to the counties of Beaufort, Carteret, Dare, Hyde, and Pamlico. (1909, c. 474, ss. 3, 4; 1909, c. 906; C. S. 2021.)

§ 113-322. Brunswick, New Hanover and Pender: Size of bars in nets.—If any person shall use in any of the waters of Brunswick, New Hanover and Pender counties any nets, seines, set-downs, fish traps or any other nets of any description for the purpose of taking fish, the bars of the meshes of which nets, seines, set-downs, or fish traps shall be less than one and one eighth inches in length, he shall be guilty of a misdemeanor. (Rev., s. 2470; 1885, c. 226; 1887, c. 71; C. S. 2022.)

§ 113-323. Brunswick, Cumberland, New Hanover, Sampson, and Harnett: Close season for fish.—If any person shall catch or destroy with seines, nets, firearms, bows and arrows, or by muddying or stirring the waters, or by striking any fish of any kind in the waters of Black or South rivers, or the waters of Big Coharie, Little Coharie, Bear Skin and Big swamps in the counties of New Hanover, Sampson, Cumberland and Harnett, and of the waters of Six Runs in the counties of New Hanover and Sampson, and of the waters of the Cape Fear river in the counties of New Hanover and Brunswick, and of the northeast branch of the Cape Fear river in the county of New Hanover, between the fifteenth days of May and August of each year, he shall be guilty of a misdemeanor, and fined not to exceed five dollars. (Rev., s. 2472; Code, s. 3409; 1889, c. 414; 1871-2, c. 152; 1879, c. 283; 1881, c. 369; C. S. 2023.)

§ 113-324. New Hanover, Onslow, and Pender: Purse nets and seines for food fish.—It is unlawful for any person, firm, or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of New Hanover, Onslow and Pender counties, extending to the extreme limits of the state's jurisdiction in and over such waters, making the boundaries of said counties to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of said counties out into the waters of the Atlantic ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said counties for the purpose of this section. It is unlawful for any person, firm, or corporation to purchase, trade for, or deal in, or sell any food fish caught as is set forth above. Any person, firm, corporation, partnership, or association who knowingly rents, leases or permits to be used any purse seine or purse net, rents or leases any vessel, boat or steamer upon which is used a purse seine or purse net in the catching of food fish in the waters of said counties shall be guilty of a misdemeanor. Any person who furnishes information upon which any person, firm, or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor. (P. L. 1913, c. 717; C. S. 2024.)

§ 113-325. Beaufort: Nets regulated in certain creeks.—It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets, fyke nets, thrash nets or any set or gill nets longer than thirty yards on top line, in the waters of Bath creek, Blount's creek, Jordan's creek, Pungo creek, Wright's creek, or their tributaries, in Beaufort county, during the months of March, April, May, June and July of each and every year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense. (1909, c. 586; C. S. 2025.)

§ 113-326. Beaufort: Fishing by residents in Bath creek.—It is lawful for any person or persons who are resident citizens of Beaufort county to fish with any kind of nets, except pound nets or purse nets, in the waters of Bath creek from

Bath creek bridge to the mouth of said creek. (P. L. 1911, c. 547; C. S. 2026.)

§ 113-327. Beaufort: Certain nets in Blount's creek.—It is unlawful for any person or persons to use or fish with any drag net or slash net in the waters of Blount's creek or its tributaries. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days for each offense. (P. L. 1911, c. 120; C. S. 2027.)

§ 113-328. Beaufort: Certain nets in Durham and Lee's creeks.—It is unlawful for any person to catch fish with seine, drag nets, purse nets, thrash nets or hauling nets of any description in the waters of Durham creek, Lee's creek, or their tributaries, in Beaufort county. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than ten dollars for each and every offense. (1907, c. 439; C. S. 2028.)

§ 113-329. Beaufort: Certain nets in Nixon's creek.—It is unlawful for any person or persons to use or fish with any drag nets, purse nets, or pound nets in the waters of Nixon's creek in Beaufort county. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not exceeding thirty dollars or imprisoned not more than twenty days for each offense. (P. L. 1911, c. 525; C. S. 2029.)

§ 113-330. Beaufort: Certain nets in North creek.—It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets or fyke nets in the waters of North creek and its tributaries in Beaufort county. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense. (1907, c. 629; C. S. 2030.)

§ 113-331. Bladen: Manner of fishing in Brown Marsh and Horseshoe swamps.—It is unlawful for any person to fish with a seine or by muddying the water or by means of any lime, dynamite, or any other such material or substance in Brown Marsh and Horseshoe swamps in Bladen county. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned for thirty days. This section shall apply only to Brown Marsh township in Bladen county. (P. L. 1915, c. 187; C. S. 2031.)

§ 113-332. Bladen: White lake; hook and line only.—It is unlawful to catch, kill, or destroy fish in White lake in Bladen county by means of nets, traps, by gigging, by shooting, or by any other means or methods, except by hook and line: Provided, that set hooks, bobs, and trolls shall be construed as being hooks and lines. Any person violating the provisions of this section shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (P. L. 1913, c. 295; C. S. 2032.)

§ 113-333. Brunswick: Mullet fishing; purse nets.—If any person, firm or corporation shall fish for and catch any mullets with any purse seine or purse net in the waters within the limits of Brunswick county, extending to the extreme limits of the state's jurisdiction in and over said waters—and for the purpose of this section, any portion of any water within a distance of three nautical miles from the outer shores of said county shall be deemed the waters of said county—or if the master or any employee on any steamboat engaged in fishing for menhaden or fatbacks shall discharge from said boat fish offal, blood or slime within a distance of one-half of a mile of any established mullet fishery on the Brunswick county coast between the first of August and the thirty-first of December of each year, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court. For the purposes of this section an established fishery is declared to be that point on the beach occupied by the surfboat and seine in regular use. (Rev., s. 2481; 1905, c. 748; C. S. 2033.)

§ 113-334. Brunswick: Nonresidents must have license. — It is unlawful for any nonresident of this state to engage in the business of gathering oysters, clams and terrapins for gain, or for market, within the limits of Brunswick county without first obtaining from the county commissioners of said county a license to carry on such business, which license may be granted by the county commissioners of said county upon paying to the treasurer of said county, to be used for county purposes, the sum of fifty dollars for each nonresident engaged in such business, and twenty-five dollars for each nonresident hand employed: Provided, that such license so granted shall be for one year and shall expire on the first day of October of each year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor. (1907, c. 68; C. S. 2034.)

§ 113-335. Carteret: Cedar Island township; hauling nets with power.—It is unlawful for any person or persons, firm or corporation to pull any haul net within the waters of Cedar Island township, Carteret county, with steam, gasoline or any other motor power. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and be fined or imprisoned, or both, in the discretion of the court. (1915, c. 281; C. S. 2035.)

§ 113-336. Carteret: Use of dutch nets.—If any person shall use or cause to be used any dutch net, pound net or other stationary trap, net or seine of similar description, by whatever name known, in the waters of Carteret county for the purpose of taking fish therefrom, he shall for each day's use thereof forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by a warrant before any justice of the peace in the county of Carteret, and shall be applied to the use of the public schools of said county; and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor, and fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve months: Provided, this section shall not apply to the ordinary set nets heretofore in use in the waters of said county. (Rev., s. 2435; Code, s. 3420; 1883, c. 199; C. S. 2036.)

§ 113-337. Carteret: Size of seine mesh.—If any person shall catch mullets in the waters of Carteret county with a seine or net having a mesh of less than one and one-eighth inch, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 2434; 1895, c. 25; 1903, c. 508; C. S. 2037.)

§ 113-338. Carteret: Length of nets.—It is unlawful for any person, firm, corporation, or syndicate, to fish any net or seine in the waters of the state of North Carolina within the boundaries of Carteret county more than two hundred and seventy-five yards in length: Provided, this length shall not apply to purse seines used for the purpose of catching menhaden (fatbacks) only. Any person, firm, corporation, or syndicate violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or be imprisoned not more than thirty days, in the discretion of the court. Each day said nets or seines are fished shall constitute a separate offense under this section. (1911, c. 130, s. 1; C. S. 2038.)

§ 113-339. Carteret: Joining nets together.—When a condition arises that a crew of fishermen find it advantageous to join two or three nets together for the purpose of temporary fishing, it shall be lawful under this section to do so under the following rules and regulations, namely: Provided: (a) The total length of nets joined together shall not exceed eight hundred and twenty-five yards. (b) That not more than one of the nets, whose length shall not exceed two hundred and seventy-five yards, as provided in the preceding section, shall be owned by any one person, firm, corporation, or syndicate thus fishing. (c) That not less than two men shall be permitted to fish with each net thus joined together. (d) That no position or haul shall be held by anchoring boat (except when occupied by men fishing same), buoys, stakes, or any other device. (e) That no seines or nets shall be hauled by capstans. (f) That no nets of smaller mesh than 1⅜ inch bar or 2 6/8 inch stretched measure shall be joined together for the purpose of fishing under this section. (g) That each net thus joined shall have two staffs. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months.

This section applies only to the waters of the state within the boundaries of Carteret county, and within such waters it does not authorize the fishing of nets joined as specified at any stationary fishery, or where the said waters are of less width than one and one-fourth miles. (1911, c. 130, s. 2; C. S. 2039.)

§ 113-340. Carteret: Obstructions to fish prohibited.—If any person shall obstruct any navigable water or passageway for fish in Carteret county by placing bushes, posts or any stationary material or fixtures in such a manner as to prevent the free passage of fish, he shall be guilty of a misdemeanor and fined not less than one hundred dollars. Nothing in this section shall be construed to prohibit any person from using a lawful net or seine in any way or manner except as a stop net or seine. This section shall not apply to any net that the fish can pass freely by one end. (Rev., s. 2436; 1903, c. 520; C. S. 2040.)

§ 113-341. Carteret: Pound nets in Neuse river.—It is lawful to fish pound nets from January first to May fifteenth of each year within the waters of that portion of Carteret county with a line beginning at the northwest point of outward Swan island, running a due north course; from such line running up the Neuse river to the spar buoy at the entrance of Adams creek: Provided, that not more than five nets shall be set in any one stand: Provided further, that not more than one-fourth of the river in width shall be used for the purpose of fishing under this section. Any person, firm, corporation, or syndicate fishing with pound nets in the waters of Carteret county at any other time except as prescribed in this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars or imprisoned not less than six months, in the discretion of the court. It is expressly enacted that every day such fishing is done in violation of this section shall constitute a separate offense. (1911, c. 128; C. S. 2041.)

§ 113-342. Carteret: Purse nets for mullet prohibited.—If any person shall fish for or catch any mullets with any purse seine or purse net in any waters within the limits of Carteret county, extending to the extreme limits of the state's jurisdiction in and over such waters, he shall be guilty of a misdemeanor and be fined not less than five hundred dollars or imprisoned not less than one year. For the purposes of this section the following boundaries are hereby declared to be the boundaries to which the waters of said county extend, to wit: A distance of three nautical miles, measured from the outer beach or shores of Carteret county out and into the waters of the Atlantic ocean; and any portions of any water within a distance of three miles from said waters of the Atlantic ocean to any beach or shore of said county shall be deemed the waters of said county for the purposes of this section. (Rev., s. 2437; 1903, c. 583; 1905, cc. 274, 508; C. S. 2042.)

§ 113-343. Carteret and Onslow: Purse nets prohibited for food fish.—It is unlawful for any person, firm or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of Carteret and Onslow counties extending to the extreme limits of the state's jurisdiction in and over such waters, making the boundaries of said county to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of Carteret and Onslow counties out into the waters of the Atlantic ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said county for the purposes of this section. It is unlawful for any person, firm or corporation to purchase, buy, or trade for, or deal in, or sell any food fish caught as is set forth in this section. Any person, firm or corporation violating any provision of this section shall be deemed

guilty of a misdemeanor, and shall be fined not less than three hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court. Any person who shall furnish information upon which any person, firm or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor. (1907, c. 857; 1911, cc. 126, 204; C. S. 2043.)

§ 113-344. Chatham: Fishways in Haw river.—All persons maintaining dams across Haw river in the county of Chatham shall, upon thirty days' notice from the board of commissioners of said county, establish fishways in said dams; and if said fishways shall not be made within three months from the service of the notice, said persons so offending shall be guilty of a misdemeanor, and fined at the discretion of the court. (Rev., s. 2476; Code, s. 3402; 1881, c. 343, ss. 1, 2; C. S. 2044.)

§ 113-345. Clay: Fishing regulated.—It is unlawful for any person or persons to fish the waters of Clay county in any other manner than hook and line. Any violator of this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars, or imprisoned not less than thirty days. (P. L. 1919, c. 407; C. S. 2045.)

§ 113-346. Columbus: Traps and nets in Porter swamp.—It is unlawful for any person or persons to set any fish traps or nets in the waters of Porter swamp in Columbus county in such manner as to prevent the free passage of fish. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned not less than ten days nor more than thirty days for each offense. (P. L. 1911, c. 748; C. S. 2047.)

§ 113-347. Currituck county: Fishing in Atlantic township.—It is unlawful for any person or persons to catch fish with seine or set net, or nets of any kind, in the waters of Atlantic township between the fifteenth day of April and the twentieth day of October in each year, within the following boundaries in said township: Beginning at a cedar stump standing on the beach north of Caffie's inlet life-saving station and extending a west course five hundred yards from the shore; thence paralleling the shore a southerly course to the Dare county line. It is unlawful to set any pound or dutch nets in the waters of said township. Nothing herein shall prevent the catching or selling of twenty-five pounds of fish on any one day for home consumption; nor prevent the catching of eels, mullets and herrings at any time during each year; nor prohibit fishing at night. Any person violating the provisions of this section or any part thereof shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not more than fifty dollars nor less than twenty dollars or imprisoned not more than thirty days. (1909, c. 619; C. S. 2048.)

§ 113-348. Currituck county: Dutch nets in Currituck sound.—If any firm, company or corporation shall operate or cause to be operated in the waters of Currituck county, or be interested in any manner whatsoever in more than six pound or dutch nets, or use more than one hundred yards of hedging to a net, or set a stand of such nets exceeding eight hundred yards in length from land to the extreme outward end; or if any person shall set any pound or dutch nets to the east of the center of Currituck sound, except that part from the west point of Mackey's island north of the Virginia line; or if any person shall leave any landing or anchorage before sunrise for the purpose of fishing in Currituck sound or tributaries, or shall continue to fish after dark, he shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than fifty dollars. This section shall not prohibit fishing after dark in that part of said sound west of a line beginning at the north point of Bell's island, thence north not more than one thousand yards from the mainland to the mouth or entrance of Tull's creek, nor night fishing between the thirty-first day of March and the twentieth day of October five hundred yards from the shore from Martin's point to Kitty Hawk bay. (Rev., s. 2430; 1905, c. 273, ss. 3-7; C. S. 2049.)

§ 113-349. Currituck county: Shipping or selling fish.—If any person shall catch or capture any fish with nets or other appliances in the waters of Currituck county between the fifteenth day of April and the twentieth day of October of each year, or shall sell or ship out of the county or state any fresh fish between said dates; or if any person shall be found with more than twenty-five pounds of freshwater fish in his possession between the thirty-first day of March and the twentieth day of October of each year, herrings, mullets, shad and eels excepted; or if any person shall in said county catch eels for market between the thirtieth day of April and the twentieth day of September following in each year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars and not less than twenty-five dollars. Any citizen may catch not to exceed twenty-five pounds at any time for home consumption, and sell or give not more than ten pounds to any one person in one day. (Rev., s. 2431; 1905, c. 273, s. 1; 1907, c. 520; C. S. 2050.)

§ 113-350. Currituck county: Right of search.—If any constable, game warden or justice of the peace of Currituck county shall be informed, or have cause to suspect, that either of the two preceding sections is being violated, he is hereby authorized and empowered to examine the contents of any fishing boat, or packages in transit, and any person or common carrier refusing to exhibit the contents of any fishing boat or package to such officer shall be guilty of a misdemeanor, and shall be fined not less than twenty-five and not more than fifty dollars. (Rev., s. 2432; 1905, c. 273, ss. 2, 7; C. S. 2051.)

§ 113-351. Dare: Dutch and pound nets prohibited.—It is unlawful for any person, firm or corporation to set any dutch or pound net within the space or area of water bounded and described as follows: Beginning at Hollowell's wharf, at Nag's Head, and running thence a due west course to the channel in Roanoke sound; thence northwest to the Currituck county line; thence with said Currituck county line to the shore.

Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined fifty dollars or imprisoned thirty days in

the discretion of the court. (1913, c. 113; C. S. 2052.)

§ 113-352. Dare: Fishing in Kitty Hawk bay regulated.—If any person shall take, catch or capture any fish with nets or other appliances in that part of the waters of Kitty Hawk bay and its tributaries lying in Dare county, between the thirtieth day of April and the fifteenth day of October of each year, or shall sell or ship out of the county any chub or perch between said dates, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. Nothing in this section shall prevent any citizen from catching fish at any time for home consumption. (Rev., s. 2484; 1905, c. 363; C. S. 2053.)

§ 113-353. Greene: Size of mesh; fishing on another's land.—It is unlawful for any person or persons to fish with or set any nets with less meshes than one and one-fourth inches square. No person or persons shall fish with nets of any kind on another person's land without first getting permission from the owner of the lands to do so, except in navigable streams, as rivers or large creeks. Any person or persons violating this section shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than five dollars nor more than twenty dollars for each offense. This section shall apply to Greene county only. (P. L. 1915, c. 494; C. S. 2054.)

§ 113-354. Hertford and Northampton: Fish in Potecasi creek protected.—It is unlawful for any person to use, set or in any manner to fish with any fish trap, fyke net, seine or drag net in the waters of Potecasi creek, in Hertford and Northampton counties, from its mouth to the Creeksville mill, in Northampton county. Any person violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 662; C. S. 2055.)

§ 113-355. Hyde: Pound and dutch nets prohibited.—It is unlawful for any person to set or use any pound or dutch net south of the dividing line between Dare and Hyde counties on the west side of Pamlico sound along the shores of Hyde county, more than two thousand yards from a line drawn from point to point along said shore. Any person violating this section shall be deemed guilty of a misdemeanor and upon conviction shall remove said nets at once: Provided, that any person failing to remove said nets after conviction shall be subject to a fine of not less than ten nor more than fifty dollars. (1915, c. 59; C. S. 2056.)

§ 113-356. Hyde: Drag nets prohibited in Rose bay.—It is unlawful for any person to use or take fish from the waters of Rose bay, or any of its tributaries, in Hyde county, with drag nets or drop nets. Any person violating this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars nor more than fifty dollars. (P. L. Ex. Sess. 1913, c. 264; P. L. 1915, c. 349; C. S. 2057.)

§ 113-357. Hyde: Drag nets prohibited in Slade's river and Fortescue creek.—The name of Slade's creek in Hyde county is hereby changed to Slade's river, and by such name the said watercourse shall in future be designated in all official maps, records, laws and other official documents authorized by the state of North Carolina. Fishing with drag nets is prohibited in said river and tributaries and in the waters of Fortescue's creek, in said county. Any violation of the provisions of this section relating to the manner of fishing shall be a misdemeanor, and shall be punished by a fine of not exceeding fifty dollars or imprisonment not exceeding thirty days, in the discretion of the court. (1909, c. 520; C. S. 2058.)

§ 113-358. Hyde: Slade's river; nets in.—The mouth of Slade's river in Hyde county is hereby fixed and located by running a straight line from Aquillas point on Pungo river to Sandy point on said Pungo river. It is unlawful for any person, firm or corporation to set, fish, or use any kind of net except stake gill nets on the east of said line. Any one violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not more than thirty days, in the discretion of the court. (1911, c. 59; C. S. 2059.)

§ 113-359. New Hanover: Nets in Masonboro and Myrtle Grove sounds. — If any person shall use any fyke nets or set down seines, or place any fish trap for the purpose of catching fish in the waters of Masonboro and Myrtle Grove sounds in New Hanover county, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than twenty days. (Rev., s. 2425; Code, s. 3421; 1883, c. 288, ss. 1, 2; C. S. 2061.)

§ 113-360. New Hanover: Seines in Atlantic ocean.—It is unlawful for any person, firm or corporation to fish with seines, purse, pod or pound nets, or with any kind of nets, except cast nets, in the waters of the Atlantic ocean in New Hanover county within the following limits:

Beginning at a point on the beach on the north side of the mouth of Moore's inlet and extending southwardly along the strand of the Atlantic ocean to a point on the north of the mouth of Masonboro inlet, and extending one mile out from the shore line. The above shall not apply to the use of set nets between the first day of November and the first day of May next following. Any person violating this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars and imprisoned not more than sixty days. (1915, c. 104; C. S. 2062.)

§ 113-361. Onslow: Obstructions in Cypress swamp and Haws run.—It is unlawful for any person, firm or corporation to fell any trees in or in any way obstruct the natural flow of the waters of Cypress swamp and Haws run in Onslow county. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1907, c. 772; C. S. 2063.)

§ 113-362. Onslow: Stop nets prohibited.—It is unlawful for any person, firm or corporation to

set, place, fix, establish or operate any stop net that will prevent or interrupt the passage of any fish in the water of any creek or sound in Onslow county, between New river and the Carteret county line in said county. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and on conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1915, c. 133; C. S. 2064.)

§ 113-363. Onslow: Nets and seines in ocean regulated.—It is unlawful for any person, firm or corporation to set any net or seine on the coast of Onslow county for a longer time than one hour at any one time. Any person violating this provision shall, upon conviction, be fined not less than one hundred dollars or imprisoned not less than three months. One-half of said fine shall go to the party or parties reporting such offenses and furnishing sufficient evidence to convict. In the event any offender shall be unable to pay fine, his boats, nets and other fishing paraphernalia shall be forfeited and sold to the highest bidder for cash at courthouse door after twenty days notice, and proceeds of said sale be applied to cost and fine and any surplus paid to the defendant: Provided, however, this section shall not tend to convict any party who shall catch more fish than can be taken up in one hour. (1915, c. 184; C. S. 2065.)

§ 113-364. Onslow: Seines and nets in New river.—It is unlawful for any person, firm, corporation or association to catch fish with haul seine, purse net, or drop net in the waters of New river in the main channel between Hatche's Rock and New River inlet, or within one-half mile of said inlet in the Atlantic ocean. Any person, firm, corporation or association violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court; fifty dollars of said fine to be paid to the person or persons furnishing evidence sufficient to convict. (P. L. 1913, c. 707; C. S. 2066.)

§ 113-365. Onslow County: Ban on use of haul nets and seines in New River.—It shall be unlawful to haul or drag seines or nets of any size, length or description by any means whatsoever within the waters of New River and its tributaries in Onslow County: Provided, that this section shall not be construed to prevent the transportation of seines or nets by boat: Provided further, that this section shall not apply to shrimp seines not over one hundred and fifty yards in length operated exclusively by hand and for the purpose of catching shrimp only as provided by law or regulation on April 10, 1933.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1933, c. 253.)

§ 113-366. Pamlico county: Use of nets regulated.—If any person shall set or fish any dutch or pound nets in the waters of Pamlico county, or shall use any seine or drag net in the waters of said county, including the north side of Neuse river from the mouth of the river to the mouth of upper Broad creek, from the first day of May to the first day of January next ensuing, or shall at any time catch fish with a seine or drag net along the shores of said county on any day of the week except Monday, Wednesday and Friday, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 2452; 1885, c. 198; 1889, c. 544; 1893, c. 334; C. S. 2067.)

§ 113-367. Pamlico county: Nets in Dawson's creek.—It is unlawful for any person to fish with drag or haul net of any description in the waters of Dawson's creek, in Pamlico county. Any person violating this section shall be deemed guilty of a misdemeanor, and fined or imprisoned, at the discretion of the court. (P. L. 1911, c. 470; C. S. 2068.)

§ 113-368. Pamlico county: Drag nets prohibited in certain streams.—It is unlawful for any person to haul or use any drag net in the waters of Vandemere creek and its tributaries, Smith's creek, Chappel's creek and its tributaries, Trent creek and its tributaries, and Bay river and its tributaries, from the mouth of Trent creek to the head of both its northwest and southwest prongs, for the purpose of catching or taking fish from said waters. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or imprisoned not less than five days nor more than ten days for each and every offense. (1909, c. 692; C. S. 2069.)

§ 113-369. Pasquotank county: Pound or fyke nets in Pasquotank river.—It is unlawful for any person, firm or corporation to fish in Pasquotank river above Stinking Gut on either side of said river with pound or fyke nets, or any other kind of net with mudge or leads: Provided, this section shall not be construed to prohibit fishing in said territory with gill nets. Any person, firm or corporation violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars or imprisoned not to exceed thirty days, in the discretion of the court. (P. L. 1913, c. 752, s. 6; C. S. 2070.)

§ 113-370. Pasquotank county: Nets in Hatley creek.—If any person shall haul or fish with a drag net, or set a pound net in Big Hatley creek, or Little Hatley creek, within two hundred yards of the mouth of either of said creeks, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 2442; 1895, c. 389; 1903, c. 497; 1911, c. 127; C. S. 2071.)

§ 113-371. Pasquotank and Perquimans: Gill nets allowed.—It is lawful for fishermen fishing in the Albemarle sound lying opposite to Perquimans and Pasquotank counties, and its tributaries lying and being in said counties, to set gill nets as near as one hundred and fifty yards of any pound or dutch nets fished in said waters: Provided, that any net shall not be set beyond the line now prohibited in said waters. (1911, c. 138; C. S. 2072.)

§ 113-372. Robeson: Fishing in Lumber river.—It is unlawful for any person to fish with

seine, nets, traps, gigging, or by muddying, striking or dynamiting, in Lumber river or the other rivers, creeks, lakes or ponds in Robeson county: Provided, that this does not apply to persons fishing on their own premises. Any person violating this section shall be guilty of a misdemeanor and on conviction shall be fined not more than fifty dollars nor less than ten dollars, one-half to go to the informant, or imprisoned not more than thirty days nor less than ten days in jail, with privilege to county commissioners of Robeson county, or adjacent county, to hire out. (P. L. 1911, c. 529; P. L. Ex. Sess. 1913, c. 272; C. S. 2073.)

§ 113-373. Robeson: Nets and traps; close season; limit catch.—It is unlawful for any person to set any trap or net for the purpose of catching fish in Lumber river or any of its tributaries in Robeson county between the first day of April and the first day of September in any year. It is unlawful at all times for any person to catch or take more than twelve of the fish known as "red breasts" and trout from Lumber river or any of its tributaries in Robeson county, in any one day, whether said fish be caught with hook and line, net, trap or in any other manner. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (P. L. 1911, c. 703; C. S. 2074.)

§ 113-374. Sampson: Fishing regulated.—It is unlawful for any person to fish in any of the rivers, creeks, or other streams of Sampson county by means of lime, dynamite, pod nets, bag nets, traps, or by any means or contrivance whereby the free passage of fish is obstructed. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (P. L. 1915, c. 464, ss. 2, 3; C. S. 2075.)

§ 113-375. Tyrrell: Alligator river and Frying Pan creek; nets in.—If any person shall fish any pound net, gill net, seine or nets of any kind in Alligator river within one mile of the mouth of Frying Pan creek in Tyrell county, or shall set any weir or fish net of any kind or any other obstruction that prevents the passage of fish in said creek from its mouth to Jarmin's point, at the two pines and low cypress, he shall be guilty of a misdemeanor. If any person shall set any pound net or dutch net in Alligator river within one-half mile of the mouth of Frying Pan creek in Tyrrell county, or in Frying Pan creek within three miles of where it enters into Alligator river, he shall be guilty of a misdemeanor and shall be fined fifty dollars or imprisoned thirty days, or both, at the discretion of the court. (Rev., ss. 2447, 2449; 1889, c. 105; 1899, c. 465; 1905, c. 282; C. S. 2076.)

§ 113-376. Wayne: Nets and traps in Neuse and Little rivers.—The citizens of Wayne county are hereby permitted to put in fish traps and gill stick nets in Neuse and Little rivers, within the limits of Wayne county. (P. L. 1911, c. 465; C. S. 2077.)

§ 113-377. Taking shad prohibited in certain area.—It shall be unlawful for any person, firm or corporation to take shad fish from the waters of the Atlantic Ocean anywhere within five miles of the Cape Fear river bar. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not less than one hundred dollars or imprisoned not less than sixty days; for the second offense shall be fined not less than five hundred dollars or imprisoned not less than four months, for each and every offense. (1935, c. 137.)

Chapter 114. Department of Justice.

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Art. 1. Attorney General.

§ 114-1. Creation of department of justice under supervision of attorney general. — There is hereby created a department of justice which shall be under the supervision and direction of the attorney general, as authorized by article III, section eighteen, of the constitution of North Carolina. (1939, c. 315, s. 1.)

§ 114-2. Duties.—It shall be the duty of the attorney general—

1. To defend all actions in the supreme court in which the state shall be interested, or is a party; and also when requested by the governor or either branch of the general assembly to appear for the state in any other court or tribunal in any cause or matter, civil or criminal, in which the state may be a party or interested.

2. At the request of the governor, secretary of state, treasurer, auditor, utilities commission, commissioner of banks, insurance commissioner or superintendent of public instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

3. To represent all state institutions, including the state's prison, whenever requested so to do by the official head of any such institution.

4. To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

5. To give, when required, his opinion upon all questions of law submitted to him by the general assembly, or by either branch thereof, or by the governor, auditor, treasurer, or any other state officer.

6. To pay all moneys received for debts due or penalties to the state immediately after the receipt thereof into the treasury.

7. To compare the warrants drawn by the auditor on the state treasury with the laws under which they purport to be drawn. (Rev., s. 5380; Code, s. 3363; 1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; 1893, c. 379; 1901, c. 744; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97; C. S. 7694.)

§ 114-3. To devote whole time to duties. — The attorney general shall devote his whole time to the duties of the office and shall not engage in the private practice of law. (1929, c. 1, s. 1.)

§ 114-4. Assistants; compensation; assignments.—The attorney general shall be allowed to appoint three assistant attorneys general, and each of such assistant attorneys general shall receive a salary to be fixed by the director of the budget. One assistant attorney general shall be assigned to the state department of revenue, and the salary of the assistant attorney general so assigned shall be paid by the state department of revenue. The other assistant attorneys general shall perform such duties as may be assigned by the attorney general: Provided, however, the provisions of this section shall not be construed as preventing the attorney general from assigning additional duties to the assistant attorney general assigned to the state department of revenue. (1925, c. 207, s. 1; 1937, c. 357.)

§ 114-5. Additional clerical help.—The attorney general shall be allowed such additional clerical help as shall be necessary; the amount of such help and the salary therefor shall be fixed by the Budget Bureau and the attorney general. (1925, c. 207, s. 2.)

§ 114-6. Duties of attorney general as to civil litigation.—The attorney general shall continue to perform all duties now required of his office by law and to exercise the duties now prescribed by law as to civil litigation affecting the state, or any agency or department thereof, and shall assign to the members of the staff all duties to be performed in connection with criminal prosecutions and civil litigation authorized by this article or by existing laws. (1939, c. 315, ss. 7, 8.)

§ 114-7. Salary of attorney general.—The attorney general shall receive an annual salary of seven thousand five hundred dollars, payable monthly. (1929, c. 1, s. 2.)

§ 114-8. Fees of attorney general.—In all appeals to the supreme court of persons convicted of criminal offenses, a fee of ten dollars against each person who shall not reverse the judgment shall be allowed the attorney general, to be taxed among the costs of that court. The attorney general shall pay these fees into the state treasury. (Rev., s. 2747; Code, s. 3737; 1873-4, c. 170; 1907, c. 994, s. 1; C. S. 3871.)

Art. 2. Division of Legislative Drafting and Codification of Statutes.

§ 114-9. Creation of division; powers and duties. —The attorney general shall set up in the department of justice a division to be designated as the division of legislative drafting and codification of statutes. There shall be assigned to this division by the attorney general duties as follows:

(a) To prepare bills to be presented to the general assembly at the request of the governor, and the officials of the state and departments thereof, and members of the general assembly, and to advise with said officials in connection therewith, and to advise with and assist counties, cities, and towns in the drafting of legislation to be submitted to the general assembly.

(b) To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated, and the Consolidated Statutes made complete by including therein all such general public statutes as have been enacted since the last codification thereof, including the acts of the 1941 general assembly, all of which shall be inserted in appropriate places under chapters and subdivisions of chapters as may be found proper and necessary, the sections thereof to be numbered consecutively, as in the Consolidated Statutes of one thousand nine hundred nineteen, but section numbers may be left at the end of chapters which may be available for future enactments of pertinent laws. To supervise the preparation of thorough, accurate and full alphabetical cross indexes of all laws contained in such recodification, and provide for proper cross indexes to the constitution of the United States, the constitution of this state, and the statutes of the United States providing for the authentication of records, naturalization of aliens, and the removal

of causes from state courts to federal courts, and other subjects which may be properly included as appendixes in such recodification.

(c) Immediately after the completion and indexing of the recodification of the general public statutes of North Carolina, said division shall cause to be printed and published, in accordance with specifications prepared by the division, and under contract to be let by the Division of Purchase and Contract, five hundred copies of said recodification as a legislative edition, to be used for examination, consideration and action by the members of the General Assembly of one thousand nine hundred and forty-three, and for the examination and consideration of the Judges, commissions, committees, and heads of State Departments, as hereinafter specified. Such legislative edition shall set forth all the general public laws of North Carolina found by the division to be intended to be in effect, together with any supplemental or implementing legislation recommended by the division as essential to make a complete and clear statement of said laws, in such form and with such arrangement, numbering system, tables of contents, and editorial aids as said division shall determine, and with a complete and effective index. The legislative edition need not contain annotations or supplementary material.

As soon as the legislative edition of the proposed code has been published, one copy thereof shall be placed in the hands of each of the Justices of the Supreme Court, the regular, emergency and special judges of the Superior Court, the administrative heads of State Departments, the legislative commission on recodification, and the Advisory Committee and, immediately upon their election, or as soon thereafter as possible, the members of the General Assembly of the regular session of one thousand nine hundred and forty-three. (1939, c. 315, s. 5; 1941, c. 35.)

Art. 3. Division of Criminal and Civil Statistics.

§ 114-10. Division of criminal and civil statistics.—The attorney general shall set up in the department of justice a division to be designated as the division of criminal and civil statistics. There shall be assigned to this division by the attorney general duties as follows:

(a) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(b) To collect and correlate similar information on the operations of the various courts of the state engaged in civil law administration so as to show the volume of civil litigation, including quasi judicial proceedings before all of the commissions set up under the laws of this state, such information to provide a geographical distribution, the condition of the dockets in the several courts and counties, and such other information as may appear significant and helpful.

(c) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the governor and the general assembly with the information so collected biennially, or more often if required by the governor.

(d) To perform all the duties heretofore imposed by law upon the attorney general with respect to criminal statistics.

(e) To perform such other duties as may be from time to time prescribed by the attorney general. (1939, c. 315, s. 2.)

§ 114-11. Courts and officials thereof to furnish statistical data. — All courts, officers and officials thereof, shall furnish all statistical data with respect to such courts as is hereinbefore mentioned, such information to be furnished on forms provided by the attorney general, and to be furnished at such time or times as may be required by the attorney general. Any clerk or officer of any court in the state of North Carolina who shall willfully fail or refuse to furnish such statistical data, after demand therefor has been made by the attorney general, shall be subject to be amerced, upon motion of the attorney general, in the sum of two hundred dollars ($200.00) in the superior court of the county in which such officer resides. (1939, c. 315, s. 4.)

Art. 4. State Bureau of Investigation.

§ 114-12. Bureau of investigation created; powers and duties.—In order to secure a more effective administration of the criminal laws of the state, to prevent crime, and to procure the speedy apprehension of criminals, the attorney general shall set up in the department of justice a division to be designated as the state bureau of investigation. The division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

§ 114-13. Director of the bureau; personnel. — The attorney general shall appoint a director of the bureau of investigation, who shall serve at the will of the attorney general, and whose salary shall be fixed by the Budget Bureau under §§ 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the bureau. The salaries of such assistants shall be fixed by the Budget Bureau under §§ 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now pro-

vided for similar employees in other state departments and bureaus. (1937, c. 349, s. 4; 1939, c. 315, s. 6.)

§ 114-14. General powers and duties of director and assistants.—The director of the bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be statewide. The director of the bureau and his assistants shall, at the request of the governor, give assistance to sheriffs, police officers, solicitors, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the commissioner of paroles in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the governor. (1937, c. 349, s. 5.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of governor; witness fees and mileage for director and assistants.—The bureau shall, through its director and upon request of the governor, investigate and prepare evidence in the event of any lynching or mob violence in the state; shall investigate all cases arising from frauds in connection with elections when requested to do so by the board of elections, and when so directed by the governor. Such investigation, however, shall in no wise interfere with the power of the attorney general to make such investigation as he is authorized to make under the laws of the state. The bureau is authorized further, at the request of the governor, to investigate cases of frauds arising under the Social Security Laws of the state, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the governor so to do. In all such cases it shall be the duty of the department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the director of the bureau, and of his assistants, may be required by the governor in connection with the investigation of any crime committed anywhere in the state, when called upon by the enforcement officers of the state, and when, in the judgment of the governor, such services may be rendered with advantage to the enforcement of the criminal law.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the director and any of his assistants who are witnesses in cases arising in courts of this state. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the treasurer of the state of North Carolina, and there credited to the bureau of identification and investigation fund. (1937, c. 349, s. 6.)

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by state; radio system.—In the said bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the prosecuting officers of the state in the discharge of their duties. In the personnel of the bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the state, both educational and departmental, shall be made available to the bureau, and scientists and doctors now working for the state through its institutions and departments may be called upon by the governor to aid the bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the governor for such service.

The state radio system shall be made available to the bureau for use in its work. (1937, c. 349, s. 7.)

§ 114-17. Co-operation of local enforcement officers.—All local enforcement officers are hereby required to co-operate with the said bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s. 8.)

§ 114-18. Governor authorized to transfer activities of central prison identification bureau to the new bureau; photographing and finger printing records.—The records and equipment of the identification bureau now established at Central Prison shall be made available to the said bureau of investigation, and the activities of the identification bureau now established at Central Prison may, in the future, if the governor deem advisable, be carried on by the bureau hereby established; except that the bureau established by this article shall have authority to make rules and regulations whereby the photographing and finger printing of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this state to service upon the roads, may be taken and filed with the bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

Chapter 115. Education.

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SUBCHAPTER I. THE PUBLIC SCHOOL SYSTEM.

Art. 1. Interpretations.

§ 115-1. A general and uniform system of schools.—A general and uniform system of public schools shall be provided throughout the state, wherein tuition shall be free of charge to all children of the state between the ages of six and twenty-one years. The length of term of each school shall be as authorized by the provisions of the School Machinery Act; however, unless the term is suspended as provided by § 115-351 the term shall not be less than eight months or one hundred and sixty days.

Every man or woman twenty-one years of age or over who has not completed a standard high school course of study, or who desires to study the vocational subjects taught in such school, shall be given equal privileges with every other student in school. (1923, c. 136, s. 1; 1939, c. 358, s. 4; C. S. 5383.)

§ 115-2. Separation of races. — The children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race, and no such child shall be considered a white child. The descendants of the Croatan Indians, now living in Robeson, Sampson, and Richmond counties, shall have separate schools for their children. (1923, c. 136, s. 1; C. S. 5384.)

§ 115-3. Schools provided for both races; taxes. —When the school officials are providing schools for one race it shall be a misdemeanor for the officials to fail to provide schools for the other races, and it shall be illegal to levy taxes on the property and polls of one race for schools in a district without levying it on all property and polls for all races within said district. (1923, c. 136, s. 1; C. S. 5385.)

§ 115-4. The school system defined. — The school system of each county shall consist of

eleven years or grades, except when the provisions of §§ 115-5 to 115-7 have been complied with, in which event the system shall consist of twelve years or grades; and shall be graded on the basis of a school year of not less than one hundred and sixty days. The first seven or eight years or grades shall be styled the elementary school, and the remaining years or grades shall be styled the high school: Provided, the system, for convenience in administration, may be divided into three parts, the elementary school, consisting of the first six or seven grades, and a junior and senior high school, embracing the remaining grades, if better educational advantages may be supplied. (1923, c. 136, s. 2; 1941, c. 158, s. 1; C. S. 5386.)

§ 115-5. Twelve grades authorized upon request by local unit.—Upon the request of the county board of education or the board of trustees of a city administrative unit, the state school commission shall provide for the operation of a school system to embrace twelve grades in accordance with such plans as may be promulgated by the state superintendent of public instruction in any high school district for which such request is made at the time the organization statement is submitted. (1941, c. 158, s. 1.)

§ 115-6. Provision for cost of operating twelve grades. — When the request for the extension of the system of the public school to embrace twelve grades is submitted as provided in § 115-5, the cost of the same shall be paid from the appropriation made for the operation of the state eight months' school term in the same manner and on the same standards, subject to the provisions of §§ 115-5 to 115-7, as provided in the "School Machinery Act." (1941, c. 158, s. 2.)

§ 115-7. Application blanks for requesting twelve grades; allotment of teachers. — The state superintendent of public instruction and the state school commission shall provide the necessary blanks and forms for requesting an extension of the public school system to embrace twelve grades as herein provided, in the organization statements to be submitted by the several administrative units of the state in preparation for the school term of one thousand nine hundred and forty-two-forty-three, and annually thereafter, and the state school commission shall allot teachers for the school year one thousand nine hundred and forty-two-forty-three for any district heretofore operating a school program embracing twelve grades upon the basis of attendance for the preceding year: Provided, that for any district requesting to operate for the first time a system embracing twelve grades the allotment of teachers shall be based on a fair and equitable estimate of the prospective increase in attendance, as submitted by the requesting unit, and the average attendance for the preceding year. (1941, c. 158, s. 3.)

§ 115-8. Administrative units classified. — Each county of the State shall be classified as a county administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the executive officer. A city administrative unit shall be classified as an area within a county that comprises a school population of 1000 or more and which has been or may be approved by the State School Commission as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of trustees or school commissioners with a city superintendent as the administrative officer.

§ 115-9. The term "district" defined.—The term "district" as used in this chapter is hereby defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include an incorporated town or city, or a township, or a part of a township. There shall be two different kinds of districts: (1) The non-local tax district, that is, one attendance area of the county administrative unit under the control of the county board of education, or the attendance area in a City Administrative Unit under the control of a Board of Trustees, but having no special local tax funds for supplementing the State and county funds; (2) The local tax district, that is, one or more attendance areas of a county administrative unit having a school population of 1000 or more and under the control of the county board of education, or the attendance area in a City Administrative Unit under the control of a Board of Trustees, but having in addition to State and county funds a special local tax fund voted by the people for supplementing State and county funds. A local tax district may embrace one or more elementary schools and/or a high school. (1923, c. 136, s. 3; C. S. 5387.)

§ 115-10. Schools classified and defined. — The different types of public schools are classified and defined as follows: (1) An elementary school, that is, a school that embraces a part or all of the eight elementary grades; (2) A high school, that is, a school that embraces a high school department of one or more grades above the elementary grades and containing not less than twenty pupils in average daily attendance; (3) A union school, that is, a school embracing both elementary and high school grades. (1923, c. 136, s. 4; C. S. 5388.)

§ 115-11. Officials defined. — The governing board of the county administrative unit is "The County Board of Education". The governing board of a school district is "The District Committee". The governing board of a city administrative unit is "The Board of Trustees"; and wherever any other name is used to designate the governing board of a city administrative unit, the name "Board of Trustees" is hereby declared to be its equivalent.

The executive officer of the county administrative unit, and the executive officer of the city administrative unit, shall be called "Superintendent". The executive head of a district or school shall be called "Principal". (1923, c. 136, s. 5; C. S. 5389.)

§ 115-12. School day defined.—A school day is defined to mean the number of hours each day the public schools are conducted and the time teachers are employed to instruct pupils or to supervise their activities. (1923, c. 136, s. 6; C. S. 5390.)

§ 115-13. Part-time classes defined. — The term "part-time classes" is defined to mean the period

provided for those pupils who may be able to attend school for only one or more recitations or exercises daily. (1923, c. 136, s. 7; C. S. 5391.)

§ 115-14. A standard high school defined.—A standard high school is defined as a high school that presents the following minimum requirements: A school term of not less than one hundred and sixty days; four years or grades of work beyond the elementary school; three teachers holding required certificates; not less than forty-five pupils in average daily attendance, a program of studies approved by the state superintendent of public instruction, and such equipment as may be deemed necessary by the state superintendent of public instruction to make the instruction beneficial to pupils: Provided, however, that in schools maintaining a nine months' term, meeting all other requirements, and offering superior instruction, fewer than forty-five pupils in average daily attendance may be considered. (1923, c. 136, s. 8; 1927, c. 40; C. S. 5392.)

§ 115-15. Public school funds defined.—All revenues of the state for the maintenance and support of the public school system of the state shall be divided into three funds, as follows:

(a) The state literary fund—or all funds of the state heretofore derived from the sources enumerated in section four, Article IX of the state constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon, shall be a fund separate and distinct from the other funds of the state, to be known as the state literary fund, and shall be loaned by the state board of education to county boards of education, in accordance with law, for the purpose of aiding in the erection and equipment of schoolhouses.

(b) The special building fund—or all funds derived from the sale of state bonds authorized by the general assembly to be sold and loaned by the state board of education to county boards of education for the special purpose of aiding in the erection and equipment of schoolhouses, and designated by the general assembly as a special building fund.

(c) The state public school fund—or all other funds derived from all other sources in accordance with law, and deposited in the state treasury for the support and maintenance of the public school system and all forfeitures, fines and penalties imposed by the state board of education for the failure of any company or corporation to keep any contract entered into between the state board of education and said company. (1923, c. 136, s. 9; C. S. 5393.)

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Art. 2. The State Board of Education.

§ 115-16. Incorporation and general corporate powers.—The governor, lieutenant-governor, secretary of state, treasurer, auditor, superintendent of public instruction, and attorney-general shall constitute the state board of education, and by the name, the state board of education, are created a corporation, with the right to sue and be sued, to have a common seal, to take, hold, and dispose of property, to make contracts and by-laws; and it is vested with all other powers conferred on corporations under the chapter on corporations, so far as such powers are necessary or convenient to the attainment of the object of the board or to the performance of its duties. (Const., Art. IX, ss. 8, 9, 10; Rev., s. 4030; Code, s. 2503; 1881, c. 200; 1903, c. 567, s. 7; C. S. 5394.)

§ 115-17. Power to purchase at mortgage sales; payment of drainage assessments.—The State Board of Education is authorized to purchase, at public sale, any land or lands upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district already constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual. (1924, c. 24.)

§ 115-18. Power to adjust debts for purchase price of lands sold; sale of mortgages, etc. — The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds or other evidence of indebtedness without payment, when, in the discretion of the said board, it appears that it is proper to do so. Said Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness. (1925, c. 220.)

§ 115-19. Succeeds to "President and directors of literary fund of North Carolina."—The state board of education shall succeed to all the powers and trusts of the "President and directors of the literary fund of North Carolina," and shall have full power to legislate and make all needful rules and regulations for the government of the public schools and for the management of the state educational fund; but all such acts, rules, and regulations of the board may be altered, amended, or repealed by the general assembly, and when so altered, amended, or repealed shall not be reënacted by the board, and the board shall succeed to and have all the property, powers, rights, privileges, and advantages which in any wise belonged or appertained to the "President and directors of the literary fund of North Carolina," and may, in its own name, assert, use, apply, and enforce the same. (Const., Art. IX, s. 10; Rev., s. 4033; Code, s. 2506; 1881, c. 200, s. 4; R. C., c. 66; R. S., cc. 66, 67; C. S. 5395.)

§ 115-20. Officers; quorum; meetings; expenses.—Of the board, the governor shall be president, the superintendent of public instruction shall be secretary, and the treasurer of the state shall be treasurer. A majority of the board shall constitute a quorum for the transaction of business. The board shall hold its meetings in the executive office, and shall meet at such times as a majority of the members shall appoint; but the governor may call a meeting at any time. The contingent expenses of the board shall be provided for by the general assembly. (Const., Art. IX, ss. 9, 12,

13; Rev., s. 4031; Code, s. 2504; 1881, c. 200, s. 2; C. S. 5396.)

§ 115-21. Record of proceedings. — All the proceedings of the board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the superintendent of public instruction. (Rev., s. 4032; Code, s. 2505; 1881, c. 200, s. 3; C. S. 5397.)

§ 115-22. Reports to general assembly. — The state board of education shall report to the general assembly the manner in which the state literary fund has been applied or invested, with such recommendations for the improvement of the same as to it shall seem expedient. (Rev., s. 4034; Code, s. 2507; R. C., c. 66, s. 4; 1825, c. 1268, s. 2; 1903, c. 567, s. 1; C. S. 5398.)

§ 115-23. Investments.—The state board of education is authorized to invest in North Carolina four per cent bonds or in other safe interest-bearing securities, the interest on which shall be used as may be directed from time to time by the general assembly for school purposes. (Rev., s. 4035; 1891, c. 369; C. S. 5399.)

§ 115-24. State treasurer keeps accounts of literary fund; reports to general assembly. — The state treasurer shall keep a fair and regular account of all the receipts and disbursements of the state literary fund, and shall report the same to the general assembly at the same time when he makes his biennial account of the ordinary revenue. (Rev., s. 4034; Code, s. 2507; R. C., c. 66, s. 4; 1825, c. 1268, s. 2; 1903, c. 567, s. 1; C. S. 5400.)

§ 115-25. Acceptance of federal aid for physical education.—The state board of education is authorized to accept any federal funds that may be appropriated now or hereafter by the federal government for the encouragement of physical education and to make all needful rules and regulations for promoting physical education. (1921, c. 146, s. 14; C. S. 5401.)

Art. 3. State Superintendent of Public Instruction.

§ 115-26. Office at capital; copies of papers therein.—The superintendent of public instruction shall keep his office at the seat of government. Copies of his acts and decisions and of all papers kept in his office and authenticated by his signature and official seal shall be of the same force and validity as the original. (Rev., s. 4089; 1900, c. 525; C. S. 5402.)

§ 115-27. Salary of state superintendent of public instruction. — The salary of the state superintendent of public instruction shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2745; Code, s. 2737; 1879, c. 240, s. 8; 1901, c. 4, ss. 9, 11; 1903, c. 435, s. 2; 1903, c. 567, s. 6; 1903, c. 603; 1905, c. 533, ss. 2, 15, 16; 1907, c. 830, ss. 6, 11; 1907, c. 994; 1915, c. 247; 1917, cc. 167, 285; 1919, c. 293; 1919, c. 247, s. 5; 1921, c. 11, s. 1; 1935, c. 441; 1941, c. 1; C. S. 3869.)

§ 115-28. Powers and duties.—The state superintendent of public instruction is empowered and it shall be his duty:

1. Looks after Schools, Reports to Governor.—To look after the school interests of the state, and to report biennially to the governor at least five days previous to each regular session of the general assembly. His report shall give information and statistics of the public schools, and recommend such changes in the school law as shall occur to him.

2. Directs Schools, Enforces and Construes School Law. — To direct the operations of the public schools and enforce the laws and regulations in relation thereto.

3. Receives Evidence as to Superintendents' Performance of Duties. — To receive evidence as to unfitness or negligence of any superintendent, and when necessary to report it to the local school authorities for action.

4. Sends Circular Letter to School Officers.—To send to each school officer a circular letter enumerating his duties as prescribed in this chapter.

5. Investigates Other School Systems.—To correspond with leading educators in other states, to investigate systems of public schools established in other states, and, as far as practicable, to render the results of educational efforts and experiences available for the information and aid of the legislature and the state board of education.

6. Acquaints Himself with Local Educational Wants, Delivers Lectures, etc.—To acquaint himself with the peculiar educational wants of the several sections of the state, and to take all proper means to supply such wants, by counseling with local school authorities, by lectures before teachers' institutes, and by addresses before public assemblies on subjects relating to public schools and public school work.

7. Travels in Connection with Loan Fund, etc. —To go to any county when necessary for the due execution of the law creating a permanent loan fund for the erection of public schoolhouses. He shall include in his annual reports a full showing of everything done under the provisions of the law creating such permanent loan fund.

8. Signs Requisitions on Auditor.—To sign all requisitions on the auditor for the payment of money out of the state treasury for school purposes.

9. Has Publications Made, etc.— To have the school laws published in pamphlet form and distributed on or before the first day of May of each year; to have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education; and to have printed all forms necessary and proper for the purposes of this chapter. (Rev., ss. 4089, 4090, 4091, 4092; 1900, c. 525; 1901, c. 4, ss. 8, 9; 1903, c. 435, s. 1; 1903, c. 751, ss. 11, 12; 1909, c. 525, s. 2; 1923, c. 198; C. S. 5403.)

§ 115-29. Division of professional service. — There shall be created in the office of the superintendent of public instruction a division of professional service, having a director and such assistants, clerks, and stenographers as may be necessary and consistent with the appropriation made for this division. All rules and regulations governing the certification of teachers passed by the state board of examiners and institute conductors, and now in force, shall be continued in full force and effect until amended or repealed by the au-

thority of the state board of education, which is hereby constituted the legal board for certificating or providing for the certification of all teachers. (1921, c. 146, s. 16; C. S. 5404.)

§ 115-30. Division of negro education. — To secure better supervision of negro education in all normal schools, training schools, high schools, elementary schools, and teacher training departments in all colleges for negroes over which the state now or hereafter may have any control, the state board of education is authorized, upon the recommendation of the superintendent of public instruction, to employ a director of negro education, and such supervisors, assistants, both clerical and professional, as may be necessary to carry out the purposes of this section not inconsistent with the amount of the appropriation, and to define the duties of the same. (1921, c. 146, s. 17; C. S. 5405.)

§ 115-31. Division of publications.—There shall be created in the office of the superintendent of public instruction a division of publications, having a director and such assistants as may be needful to carry out the provisions of this law. The director shall be appointed by the superintendent of public instruction, and the salary and expenses shall be fixed by the budget bureau.

All publications issued from the office of the superintendent of public instruction shall be edited by the director and no printing shall be authorized until approved by the superintendent of public instruction.

The director of publications, with the approval of the superintendent of public instruction, shall have control of all publications and such other duties as may be assigned him by the superintendent of public instruction. All county or city superintendents and other public school officials receiving publications from the office of the superintendent of public instruction shall be required to keep a record of publications received, the number of each on hand at the close of the year, and whenever it shall appear that the county or city superintendent or other school officials are careless or negligent in using or distributing the publications, bulletins, blanks, etc., received from the office of the superintendent of public instruction, the state superintendent of public instruction shall report the same to the county board of education, which board shall investigate the matter, and the county superintendent shall be required by the board of education to carry out the provisions of this law. The salary and expenses of the director shall be paid out of the state public school fund. (1921, c. 146, s. 18; C. S. 5406.)

Art. 4. Boys' Road Patrol.

§ 115-32. Boys' road patrol organized. — The state board of education, whose duty it shall be to appoint a director of the work of the boys' road patrol in the state of North Carolina is hereby charged with the duty of organizing a brigade of school boys in this state to be called the Boys' Road Patrol, and to be composed of boys who attend the public schools of the state. (1915, c. 239, s. 1; 1925, c. 300, s. 1; 1937, c. 399, s. 1; C. S. 4931.)

§ 115-33. Duties of patrol.—The duties of such patrol shall be to look after the maintenance of the road lying near the home of each member of the patrol, to drag and ditch same by the use of machinery placed in the care of the patrol by the state and county in such manner as the state board of education shall direct, to prevent forest fires by extinguishing fire along the public highway, to study safety rules and methods, and to practice research along safety lines to the end of removing hazards from the highways. (1915, c. 239, s. 2; 1925, c. 300, s. 2; 1937, c. 399, s. 2; C. S. 4932.)

§ 115-34. Regulations for patrol; prizes authorized.—The State Board of Education is specially empowered and directed to devise, organize, and adopt all such rules and regulations as may be necessary for effectually carrying out the purposes of this article; may award suitable prizes and pay all expenses of successful competitors and others engaged in such work in attendance upon meetings and for other purposes. (1915, c. 239, s. 3; 1925, c. 300, s. 3; C. S. 4933.)

§ 115-35. Funds for support. — All moneys for the carrying out of this article shall be provided by the counties themselves in coöperation with the State of North Carolina. The commissioners of the counties of North Carolina are empowered to make annual donations out of the county funds for the purposes of this article. (1915, c. 239, ss. 4, 6; 1925, c. 300, s. 4; C. S. 4934.)

§ 115-36. Minimum preliminary appropriation by county.—Said brigade shall not be organized in any county until the commissioners of said county set apart and appropriate not less than one hundred dollars for the purposes of this article, to be spent in said county by the State Board of Education. (1915, c. 239, s. 5; 1925, c. 300, s. 5; C. S. 4935.)

SUBCHAPTER III. DUTIES, POWERS AND RESPONSIBILITIES OF COUNTY BOARDS OF EDUCATION.

Art. 5. The Board: Its Corporate Powers.

§ 115-37. How constituted. — The county board of education in each county shall consist of the number of members which have been or may be appointed by the General Assembly in its biennial act or acts appointing members of boards of education. The term of office shall be for two years, except as may be otherwise provided in the said act or acts.

The members appointed under said act or acts shall qualify by taking the oath of office on or before the first Monday in April. (1923, c. 136, ss. 10, 11, c. 175, ss. 1, 3; Pub. Loc., Ex. Sess., 1924, cc. 63, 189; 1925, c. 104; Pub. Loc. 1925, c. 153; Pub. Loc. 1927, cc. 579, 583; 1929, cc. 202, 215; Pub. Loc. 1929, c. 335; 1931, cc. 39, 278, 313, 363; 1933, c. 208; 1935, c. 485; 1937, cc. 38, 79, 395; 1939, c. 392; 1941, c. 380; C. S. 5410.)

§ 115-38. How nominated and elected. — In all the counties of the state there shall be nominated in the year one thousand nine hundred and twenty-four, and biennially thereafter, at the party primaries or conventions, at the same time and in the same manner as that in which other county officers are nominated, a candidate or candidates, by each political party of the state, for member or members of the county board of education to take the place of the member or members of said

board whose term next expires. The names of the persons so nominated in such counties shall be duly certified by the chairman of the county board of elections, within ten days after their nomination is declared by said county board of elections, to the superintendent of public instruction, who shall transmit the names of all persons so nominated, together with the name of the political party nominating them, to the chairman of the committee on education in the next session of the general assembly within ten days after it convenes. The general assembly shall elect or appoint one or more, from the candidates so nominated, members of the county board of education for such county. Upon failure of the general assembly to elect or appoint members as herein provided, such failure shall constitute a vacancy, which shall be filled by the state board of education. The term of office of each member shall begin on the first Monday of April of the year in which he is elected, and shall continue until his successor is elected and qualified. (1923, c. 136, s. 12; C. S. 5412.)

§ 115-39. County board of elections to provide for nominations.—The county board of elections, under the direction of the state board of elections, shall make all necessary provisions for such nominations as are herein provided for. (1923, c. 136, s. 13; C. S. 5413.)

§ 115-40. Members to qualify. — Those persons who shall be elected members of the county board of education by the general assembly must qualify by taking the oath of office on or before the first Monday in April next succeeding their election. A failure to qualify within that time shall constitute a vacancy. Those persons elected or appointed to fill a vacancy must qualify within thirty days after notification thereof. A failure to qualify within that time shall constitute a vacancy. (1923, c. 136, s. 14; C. S. 5414.)

§ 115-41. Vacancies in nominations. — If any candidate shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election by the general assembly of the member or members of the county board of education for the county of such candidate, the vacancy caused thereby may be filled by the action of the county executive committee of the political party of such candidate. (1923, c. 136, s. 15; C. S. 5415.)

§ 115-42. Vacancies in office.—All vacancies in the membership of the board of education in such counties by death, resignation, or otherwise shall be filled by the action of the county executive committee of the political party of the member causing such vacancy until the meeting of the next regular session of the general assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the general assembly in such cases shall have occurred before the primary or convention held in such county, then in that event nominations for such vacancies shall be made in the manner hereinbefore set out, and such vacancy shall be filled from the candidates nominated to fill such vacancy by the party primaries or convention of such county. All vacancies that are not filled by the county executive committee under the authority herein contained within thirty days from the occurrence of such vacancies shall be filled by appointment by the state board of education. (1923, c. 136, s. 16; 1931, c. 380; C. S. 5416.)

§ 115-43. Eligibility for the office. — No person shall be eligible as a member of the county board of education who is not known to be a man of intelligence, of good moral character, of good business qualifications, and known to be in favor of public education. No person, while actually engaged in teaching in the public schools or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, and no member of a district committee or board of trustees, shall be eligible as a member of the county board of education. (1923, c. 136, s. 17; C. S. 5417.)

§ 115-44. Organization of the board.—At the first meeting of the new board in April the members of the board shall organize by electing one of its members as chairman for a period of one year or until his successor is elected and qualified. The superintendent of public instruction shall be ex officio secretary to the board. He shall keep the minutes of the meetings of the board, but shall have no vote: Provided, that in the event of a vacancy in the county superintendency the board may elect one of its members to serve temporarily as secretary to the board. (1923, c. 136, s. 18; C. S. 5418.)

§ 115-45. The board a body corporate.—The board of education shall be a body corporate by the name and style of "The Board of Education of ..... County." By that name it shall hold all school property belonging to the county, and it shall be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January first, one thousand nine hundred, or who became bodies corporate by special act of the general assembly, but who have since ceased to be bodies corporate; and where land or lands were conveyed by deed bearing date prior to January first, one thousand nine hundred, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land or lands are not now being used for educational purposes either by the county board of education of the county or the board of trustees of a special charter district wherein same are located the clerk of the superior court of the county wherein such property or such land or lands are located shall convey said property or land or lands to the county board of education, unless same is located in a special charter district. In that event said property or land or lands shall be conveyed to the board of trustees of the special charter district. (1923, c. 136, s. 19; C. S. 5419.)

§ 115-46. Compensation of members. — The board of education may fix the compensation of each member at not to exceed five dollars per diem and five cents a mile to and from the place of meeting. And no member of the board shall receive any compensation for any services rendered except the per diem provided in this section for attending meetings of the board and traveling expenses when attending meetings of the board, or such other traveling expenses as may be incurred while performing duties imposed upon any member by authority of the board. (1923, c. 136, s. 20; C. S. 5420.)

§ 115-47. Removal for cause.—In case the state superintendent shall have sufficient evidence that any member of the county board of education is not capable of discharging or is not discharging the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of the county board of education, who shall call a meeting of the board at once to investigate the charges, and if found to be true, the board shall declare the office vacant. (1923, c. 136, s. 21; C. S. 5421.)

§ 115-48. Meetings of the board. — The county board of education shall meet on the first Monday in January, April, July and October. It may elect to hold regular monthly meetings, and to meet in special sessions as often as the school business of the county may require. (1923, c. 136, s. 22; C. S. 5422.)

§ 115-49. Powers; suits and actions. — (a) The county board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all moneys or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the county commissioners as is hereinafter provided.

(b) In all actions brought in any court against a county board of education for the purpose of compelling the board to admit any child or children who have been excluded from any school by the order of the board, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show to the contrary. (1923, c. 136, s. 23; C. S. 5423.)

§ 115-50. Power to subpœna and to punish for contempt.—The board shall have power to issue subpœnas for the attendance of witnesses. Subpœnas may be issued in any and all matters which may lawfully come within the powers of the board, and which in the discretion of the board require investigation; and it shall be the duty of the sheriffs, coroners and constables to serve such subpœnas upon payment of their lawful fees.

The county board of education of each county shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt it in the transaction of official business. (1923, c. 136, s. 24; C. S. 5424.)

§ 115-51. Witness failing to testify, misdemeanor.—Any witness who shall willfully and without legal excuse fail to appear before the county board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (1923, c. 136, s. 25; C. S. 5425.)

§ 115-52. Appeals to board from county officers. —An appeal shall lie from all county school officers to the county board of education, and such appeals shall be regulated by rules to be adopted by the county board of education. (1923, c. 136, s. 26; C. S. 5426.)

§ 115-53. Superior court to review board's action.—The superior courts of the state may review any action of the county board of education affecting one's character or right to teach. (1923, c. 136, s. 27; C. S. 5427.)

Art. 6. The Direction and Supervision of the School System.

§ 115-54. To provide for all the children of the county.—It is the duty of the county board of education to provide an adequate school system for the benefit of all the children of the county, as directed by law. (1923, c. 136, s. 28; C. S. 5428.)

§ 115-55. General powers.—All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other officials, are conferred and imposed upon the county board of education. (1923, c. 136, s. 29; C. S. 5429.)

§ 115-56. General control.—The county board of education, subject to any paramount powers vested by law in the State School Commission or any other authorized agency, shall have general control and supervision of all matters pertaining to the public schools in their respective counties, and they shall execute the school laws in their respective counties. But whenever duties are assigned to the county board of education in this subchapter, they shall not be construed so as to take away from the board of trustees of any city administrative unit any duties or other powers assigned to said board of trustees by the general assembly. (1923, c. 136, s. 30; C. S. 5430.)

§ 115-57. Fixing time of opening and closing schools.—The time of opening and closing the public schools in the several public school districts of the state, except in city administrative units, shall be fixed and determined by the county board of education in their respective counties. The board may fix different dates for opening the schools in different townships, but all the schools of each township must open on the same date, as nearly as practicable. (1923, c. 136, s. 32; C. S. 5432.)

§ 115-58. Determination of length of school day. —The length of the school day shall be determined by the county board of education for all public schools under its jurisdiction and by the board of trustees of all other schools: Provided, the minimum time for which teachers shall be employed in the schoolroom or on the school grounds supervising the activities of children shall not be less than six hours. But county boards of education may authorize rural schools

in certain seasons of the year, when the agricultural needs of the farm demand it, to be conducted for less than six hours a day: Provided further, it shall be the duty of the county boards of education and boards of trustees, wherever needs are presented, to provide part-time classes for pupils above the compulsory school age and for such other pupils as are unable because of physical defects to attend school for the full time designated for the classes in which they may be enrolled. (1923, c. 136, s. 33; C. S. 5433.)

§ 115-59. Duty to enforce the compulsory school law.—It shall be the duty of teachers, principals, county or city superintendents of public instruction and attendance officers to enforce the compulsory school law in accordance with the rules and regulations adopted by the state board of education; and if they shall fail to perform their duties in this respect, it shall be the duty of the county board of education or board of trustees of the city administrative unit to withhold the salary of such a person or to remove such a one from office. Any school official failing to obey the law in regard to compulsory attendance shall be guilty of a misdemeanor and may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 34; C. S. 5434.)

§ 115-60. Continuous school census.—The state board of education shall adopt such rules and regulations as may be necessary for taking a complete census of the school population and for installing and keeping in the office of the county superintendent in each county of the state a continuous census of the school population. The cost of taking and keeping the census shall be a legitimate item in the budget and shall be paid out of the incidental fund. If any parent, guardian, or other person having the custody of a child, refuses to give any properly authorized census taker, teacher, school principal, or other school official charged with the duty of obtaining the census of the school population of any district, the necessary information to enable such person to obtain an accurate and correct census, or shall knowingly and willfully make any false statement to any person duly authorized to take the school census of any district relative to the age or the mental or physical condition of any child, he shall be deemed guilty of a misdemeanor and shall be fined not to exceed twenty-five dollars or imprisoned not to exceed thirty days in the discretion of the court. (1921, c. 179, s. 16; 1925, c. 95; C. S. 5435.)

§ 115-61. The location of high schools. — Since the cost of good high school instruction is too great to permit the location of small high schools close together, it shall be the duty of the county board, wherever the needs demand it, to locate not more than one standard high school in each township or its equivalent: Provided, it shall be discretionary with county boards of education to continue standard high schools in existence in 1923 contrary to the provisions of this section, and to establish such high schools in townships in which city schools are already located. (1923, c. 136, s. 36; C. S. 5437.)

§ 115-62. Subjects taught in the elementary schools.—The county board of education shall provide for the teaching of the following subjects in all elementary schools: Spelling, reading, writing, grammar, language and composition, English, arithmetic, drawing, geography, the history and geography of North Carolina, history of the United States, elements of agriculture, health education, including the nature and effect of alcoholic drinks and narcotics, and fire prevention.

It shall be the duty of the state superintendent of public instruction to prepare a course of study outlining these and other subjects that may be taught in the elementary schools, arranging the subjects by grades and classes, giving directions as to the best methods of teaching them, and including type lessons for the guidance of the teachers. The board of education shall require these subjects in both public and private schools to be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language shall be guilty of a misdemeanor, and may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 39; C. S. 5440.)

§ 115-63. Instruction on alcoholism and narcotism.—In addition to health education, which is now required by law to be given in all schools supported in whole or in part by public money, thorough and scientific instruction shall be given in the subject of alcoholism and narcotism.

The State Superintendent of Public Instruction is hereby authorized and directed to prepare, or cause to be prepared, for the use of all teachers who are required by this section to give instruction in the subjects of alcoholism and narcotism, a course of study on health education, which shall embrace suggestions as to methods of instruction, outlines of lesson plans, lists of accurate and scientific source material, suggested adaptations of the work to the needs of the children in the several grades, and shall specify the kind of work to be done in each grade, and the amount of time to be devoted to such instruction. The state textbook commission and the state board of education shall be authorized, directed and empowered to select, approve, and adopt a simple, scientific textbook, which textbook shall be free from political propaganda, and approved by the state board of health and the faculty of the Medical School of the University of North Carolina, on the effects of alcoholism and narcotism on the human system, and/or a different or revised text on "health" which shall contain chapters giving complete, detailed, and scientific information on the subjects, to be taught as a unit of work every year in the appropriate elementary grade, or grades, of the public schools of North Carolina. Adequate time shall be given to teach the subject efficiently. The work in the subject of alcoholism and narcotism shall be a part of the work required for promotion from one grade to another: Provided also, that provision shall be made in the course of study prepared by the state department of public instruction for teachers, aids and devices for the assistance of teachers in teaching the effects of alcoholism and narcotism on the human system.

In all normal schools, teacher training classes, summer schools for teachers, and other institutions giving instruction preparatory to teaching

or to teachers actually in service, adequate time and attention shall be given to the best methods in teaching health education, with special reference to the nature of alcoholism and narcotism.

It shall be the duty of all officers and teachers, principals and superintendents in charge of any school or schools, comprehended within the meaning of this section, to comply with its provisions; and any such officer or teacher who shall fail or refuse to comply with the requirements of this section shall be subject to dismissal by the proper authorities. (1929, c. 96, ss. 1-3; 1935, c. 404.)

§ 115-64. Instruction in Americanism. — There shall be taught in the public schools of North Carolina a course of instruction which shall be known as Americanism.

There shall be included in the term "Americanism" the following general items of instruction:

(a) Respect for law and order.
(b) Character and ideals of the founders of our country.
(c) Duties of good citizenship.
(d) Respect for the national anthem and the flag.
(e) A standard of good government.
(f) Constitution of North Carolina.
(g) Constitution of the United States.

The course of instruction in Americanism shall be taught not less than thirty hours during each and every school year and shall not be optional in the grade or grades in which said course is taught. The state board of education shall, as soon as convenient, adopt some suitable and proper textbook which will conform as near as possible and practicable to the carrying out of the general items of instruction as herein contained, and the state superintendent shall prepare or have prepared such outline courses of study, and shall distribute the same among the teachers of the state, as will give them proper direction in carrying out the provisions of this law.

The state board of education shall, before the beginning of the next school year, adopt such suitable rules and regulations as may be necessary as to the time, manner, grade or grades in which said course of Americanism shall be taught. (1923, c. 49; C. S. 5441, 5442.)

§ 115-65. Kindergartens may be established. — Upon a petition by the board of directors or trustees or school committee of any school district, endorsed by the county board of education, the board of county commissioners, after thirty days notice at the courthouse door and three other public places in the district named, shall order an election to ascertain the will of the people within said district whether there shall be levied in such a district a special annual tax of not more than fifteen cents on the one hundred dollars worth of property and forty-five cents on the poll for the purpose of establishing kindergarten departments in the schools of said district. The election so ordered shall be conducted under the rules and regulations for holding special tax elections in special school districts, as provided in article 23 of this chapter.

The ballots to be used in said election shall have written or printed thereon the words, "For Kindergartens" and "Against Kindergartens."

If a majority of the qualified voters shall vote in favor of the tax, then it shall be the duty of the board of trustees or directors or school committee of said district to establish and provide for kindergartens for the education of the children in said district of not more than six years of age, and the county commissioners shall annually levy a tax for the support of said kindergarten departments not exceeding the amount specified in the order of election. Said tax shall be collected as all other taxes in the county are collected and shall be paid by the sheriff or tax collector to the treasurer of the said school district to be used exclusively for providing adequate quarters and for equipment and for the maintenance of said kindergarten department. (1923, c. 136, s. 40; C. S. 5443.)

§ 115-66. Board shall provide schools for Indians in certain counties.—It shall be the duty of the county board of education to provide separate schools for Indians as follows:

The persons residing in Robeson and Richmond counties, supposed to be descendants of a friendly tribe once residing in the eastern portion of the state, known as Croatan Indians, and who have heretofore been known as "Croatan Indians," or "Indians of Robeson County," and their descendants, shall be known and designated as the "Cherokee Indians of Robeson County"; and the persons residing in Person county supposed to be descendants of a friendly tribe of Indians and "White's Lost Colony," once residing in the eastern portion of this state, and known as "Cubans," and their descendants, shall be known and designated as the "Indians of Person County."

The Indians mentioned above and their descendants shall have separate schools for their children, school committees of their own race and color, and shall be allowed to select teachers of their own choice, subject to the same rules and regulations as are applicable to all teachers in the general school law, and there shall be excluded from such separate schools all children of the negro race to the fourth generation. The County Superintendent in and for Robeson County shall keep in his office a record of schools for the Cherokee Indians of Robeson County, which said record shall disclose the operation of such schools, separate and apart from the record of the operation of schools for the other races. (1923, c. 136, s. 42; 1931, c. 141; C. S. 5445.)

Local Modification.—Pembroke state college for Indians, Robeson: 1929, c. 195; 1941, c. 323, s. 1.

Art. 7. Children at Orphanages.

§ 115-67. Permitted to attend public schools. — Children living in and cared for and supported by any institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the unit or district in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of the unit or district.

Provided, that the provisions of this section shall be permissive only, and shall not be mandatory. (1919, c. 301, s. 1; 1927, c. 163, s. 1; C. S. 5446.)

§ 115-68. After eight months, tuition fees may be charged.—The board of trustees in special tax districts or city administrative units may charge such tuition fees as may be agreed upon between the authorities of said institution and the board of trustees for the attendance of such orphan children for the remainder of the school term, after the provision for eight months school has been complied with. (1919, c. 301, s. 3; C. S. 5448.)

Art. 8. Instruction of Illiterates—Adult Education.

§ 115-69. Program of adult education provided.—The state board of education is authorized to provide rules and regulations for establishing and conducting schools to teach adults, and the said schools when provided for shall become a part of the public school system of the state, and shall be conducted under the supervision of the state superintendent of public instruction. Appropriations made in the budget appropriations act for the purpose of carrying out the provisions of this section shall be disbursed on vouchers issued by the state superintendent of public instruction. (1937, c. 198, ss. 2, 3.)

Art. 9. Miscellaneous Provisions Regarding School Officials.

§ 115-70. Limitations of the board in selecting a county superintendent.—If any board shall elect a person to serve as superintendent of public instruction in a county or city administrative unit who does not qualify, or cannot qualify according to the provisions of the School Machinery Act, before taking the oath of office, the election is null and void, and it shall be the duty of the board of education to elect only a person that can qualify. (1923, c. 136, s. 44; C. S. 5453.)

§ 115-71. Office and assistance for superintendent.—The county board of education shall provide an office for the county superintendent, at the county seat in the courthouse if possible. It shall provide office supplies for the superintendent, such as stationery, stamps and other necessary supplies in the conduct of his business. The county board of education may employ clerical assistance to aid the county superintendent. (1923, c. 136, s. 45; C. S. 5454.)

§ 115-72. Removal of superintendent for cause.—The county board of education or the board of trustees of a city administrative unit is authorized to remove a superintendent who is guilty of immoral or disreputable conduct, or shall fail or refuse to perform the duties required of him by law.

In case the state superintendent shall have sufficient evidence at any time that any superintendent of public instruction is not capable of discharging or is not discharging the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall report the matter to the county board of education or the board of trustees of a city administrative unit which shall hear the evidence in the case; and, if, after careful investigation, it shall find the charges true, it shall declare the office vacant at once and proceed to elect his successor. This section shall not deprive any superintendent of the right to try his title to office in the courts of the state. (1923, c. 136, s. 46; C. S. 5455.)

§ 115-73. Prescribing duties of superintendent not in conflict with law and constitution.—All acts of the county board of education or the board of trustees of a city administrative unit not in conflict with state law shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board. (1923, c. 136, s. 47; C. S. 5456.)

§ 115-74. Removal of committeemen for cause.—In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges, and shall remove such committeeman and appoint his successor if sufficient evidence shall be produced to warrant his removal and the best interests of the schools demand it. (1923, c. 136, s. 49; C. S. 5458.)

§ 115-75. Advising with the committee in regard to needs of district.—The county board of education shall advise with the committee of each district before the school budget is prepared, and seek such information as may be helpful in planning the work for the ensuing year, in providing the number and grade of teachers needed, and the amount needed to thoroughly equip the school building or buildings of the district. The county board of education shall keep the committees informed as to the plans and purposes of the board and shall seek in every way possible to secure their coöperation in providing adequate educational opportunities for all the children of the district, for the enforcement of the compulsory school law, for teaching adult illiterates, and for the encouragement of vocational education in the county. (1923, c. 136, s. 50; C. S. 5459.)

§ 115-76. Supervisors or assistant county superintendent.—The county board of education shall have authority to employ an assistant county superintendent or to employ a supervisor or supervisors to aid the county superintendent in supervising the instruction in the elementary and high schools of the county: Provided, that the salary for the same is provided in the budget and approved by the county commissioners. The duties of the supervisor or the assistant county superintendent shall be outlined by the county superintendent of public instruction: Provided further, the supervisor or assistant county superintendent shall not be assigned to regular clerical work in the office of the county superintendent. And no part of the salary of any supervisor or assistant county superintendent shall be paid out of the state public school fund, unless the duties assigned to the same are first approved by the state superintendent of public instruction. (1923, c. 136, s. 51; C. S. 5460.)

§ 115-77. Authority of board over teachers, supervisors and principals.—The county board of education or the board of trustees of a city administrative unit upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing

the conduct of teachers, principals and supervisors, under jurisdiction of the county board of education or the board of trustees of a city administrative unit, the kind of reports they shall make and their duties in the care of school property.

The county board of education or the board of trustees of a city administrative unit shall have power to investigate and pass upon the moral character of any teacher or school official in the public schools of the unit, and to dismiss such teacher or school official, if found of bad moral character; also to investigate and pass upon the moral character of any applicant for employment in any public school in the unit. Such investigation shall be made after written notice of not less than ten days to the person whose character is to be investigated.

If the superintendent reports to the board that the work of any teacher, principal or supervisor is unsatisfactory, or that either is not observing the rules and regulations of the board, the board has full authority at any time during the year, upon notice of ten days, to investigate the charges and, if sustained, to reduce the salary of the teacher, supervisor or principal to the next lower salary in the salary schedule, and finally to discharge the same for failure to perform the duties as prescribed by the board. (1923, c. 136, s. 53; C. S. 5461.)

§ 115-78. Providing for training of teachers. — The county board of education or the board of trustees of a city administrative unit is authorized to provide for the professional growth of the teachers while in service, and to pass rules and regulations requiring teachers to coöperate with the superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1923, c. 136, s. 54; C. S. 5462.)

§ 115-79. Pay of teachers. — The board of education or the board of trustees shall not authorize the payment of the salary of any teacher or school official for a shorter term than one month, unless he or she is providentially hindered from completing the term.

It is the duty of the board of education or the board of trustees to provide monthly for the prompt payment of all salaries due teachers and other school officials, and to meet other necessary operating expense. (1923, c. 136, s. 55; C. S. 5463.)

§ 115-80. Authority to borrow.—If the taxes for the current year are not collected when the salaries and other necessary operating expenses come due, and the money is not available for meeting the necessary expenses, it shall be the duty of the county board of commissioners to borrow against the amount approved in the budget and to issue short-term notes for the amounts so borrowed in accordance with the provisions of the county finance act and the local government act. The interest on all such notes shall be provided by the commissioners in addition to the amount approved in the budget unless this item is specifically taken care of in the budget. But if the county board of education shall willfully create a debt that shall in any other way cause the expenses for the year to exceed the amount authorized in the budget, without the approval of the county commissioners, the indebtedness shall not be a valid obligation of the county, and the members of the board responsible for making the debt may be held liable for the same. (1923, c. 136, s. 56; 1927, c. 239, s. 18; C. S. 5464.)

§ 115-81. Salary schedule for teachers. — Every county board of education or the board of trustees of a city administrative unit may adopt, as to teachers and school officials not paid out of state funds, a salary schedule similar to the standard salary schedule authorized by the School Machinery Act, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any county board of education or the board of trustees of any city administrative unit shall fail to adopt such a schedule, the state salary schedule shall automatically be in force, and the difference in salaries suggested shall be maintained. From other than state funds, no teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the county board of education or of the board of trustees of the city administrative unit a higher salary is allowed for special fitness, special duties or under extraordinary circumstances. Whenever a higher salary is thus allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, the county board of education, upon the recommendation of the committee of a district may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1923, c. 136, s. 57; C. S. 5465.)

§ 115-82. Salary warrants. — All salary warrants for teachers, principals and other regular employees of county administrative units shall be issued only on the basis of written monthly certifications signed by the chairman and secretary of the district committee and filed with the County Board of Education; or in city administrative units, such certifications shall be signed by the chairman and Secretary of the Board of Trustees. Such certification shall specify the length of service rendered by each person and the amount due and payable therefor, and shall specify that part of the total amount to be charged to state funds and that part to be charged to county, unit or district funds: Provided, that the County Board of Education or Board of Trustees of a city administrative unit, in case of dispute as to any claim, may in regular or called session finally determine the validity of said claim and order settlement thereof in accordance with their findings. Each warrant drawn in payment of any claim, including salaries or for any other purpose, shall specify the fund to which the warrant is chargeable. If any part of any warrant drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified. In the payment of salary warrants, the County Board of Education or Board of Trustees of a city administrative unit may require the teacher's report at the end of

each month to be properly attested by the chairman and secretary of the local committee or of the Board of Trustees before issuing salary warrants: Provided, that the final report of membership and attendance from any district, whether by a teacher, principal, or superintendent, shall be subscribed and sworn to before an officer authorized to administer oaths by such teacher, principal or superintendent making said report, before the last warrant for salary or salaries in said district may be issued: and provided further, that the county superintendent or city superintendent of schools shall be authorized and directed to attest such signature and oath without fee or charge when so requested. (1923, c. 136, ss. 58, 197; 1927, c. 239, ss. 17, 20; 1931, c. 430, s. 17; 1939, c. 358, s. 20; C. S. 5466.)

Art. 10. Erection, Repair and Equipment of School Buildings.

§ 115-83. Provision for school buildings and equipment. — School buildings, properly lighted, and equipped with suitable desks for children and tables and chairs for teachers, are necessary in the maintenance of an eight-months school term.

It shall be the duty of the county boards of education, with respect to county administrative units, and the Boards of Trustees, with respect to city administrative units, to present these needs and the cost thereof each year to the county commissioners. The county commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing the respective units with buildings suitably equipped, and it shall be the duty of the county commissioners to provide the funds for the same. (1923, c. 136, s. 59; C. S. 5467.)

§ 115-84. Erection or repair of schoolhouses. — The building of all new schoolhouses and the repairing of all old schoolhouses over which the county board of education has jurisdiction shall be under the control and direction of and by contract with the county board of education, provided, however, that in the building of all new schoolhouses and the repairing of all old schoolhouses which may be located in a city administrative unit, the building of such new schoolhouses and the repairing of such old schoolhouses shall be under the control and direction of and by contract with the board of education or the board of trustees having jurisdiction over said city administrative unit. But the board shall not be authorized to invest any money in any new house that is not built in accordance with plans approved by the state superintendent, nor for more money than is made available for its erection. All contracts for buildings shall be in writing, and all buildings shall be inspected, received, and approved by the county superintendent of public instruction, or by the superintendent of schools where such school buildings are located in a city administrative unit, before full payment is made therefor: Provided, this section shall not prohibit county boards of education and boards of trustees from having the janitor or any other regular employee to repair the buildings. From any moneys loaned by the state to any one of the several counties for the erection, repair or equipment of school buildings, teacherages and dormitories, the state board of education, under such rules as it may deem advisable, not inconsistent with the provisions of this article, may retain an amount not to exceed fifteen per cent of said loan until such completed buildings, erected or repaired, in whole or in part, from such loan funds, shall have been approved by such agent as the state board of education may designate: Provided, that upon the proper approval of the completed building, the state treasurer, upon requisition of the state superintendent of public instruction, authorized and directed by the state board of education, shall pay to the treasurer of the county the remaining part of said loan, together with interest from the date of the loan at a rate not less than three per cent on monthly balances. (1923, c. 136, s. 60; 1925, c. 221; 1937, c. 353; C. S. 5468.)

§ 115-85. Acquisition of sites. — The county board of education or board of trustees of any city administrative unit may receive by gift or by purchase suitable sites for schoolhouses or other school buildings. But whenever any such board is unable to obtain a suitable site for a school or school building by gift or purchase, the board shall report to the county or city superintendent of public instruction, who shall, upon five days notice to the owner or owners of the land, apply to the clerk of the superior court of the county in which the land is situated for the appointment of three appraisers, who shall lay off by metes and bounds not more than ten acres, and shall assess the value thereof. They shall make a written report of their proceedings, to be signed by them, or by a majority of them, to the clerk, within five days of their appointment, who shall enter the same upon the records of the court. The appraisers and officers shall serve without compensation. If the report is confirmed by the clerk, the chairman and the secretary of the board shall issue an order on the treasurer of the county school fund or, if a city administrative unit, upon the treasurer of such unit, in favor of the owner of the land thus laid off, and upon the payment, or offer of payment, of this order, the title to such land shall vest in fee simple in the corporation. Any person aggrieved by the action of the appraisers, including the county board of education or the board of trustees of any city administrative unit, may appeal to the superior court in term, upon giving bond to secure the board against such costs as may be incurred on account of the appeal not being prosecuted with effect. If the lands sought to be condemned hereunder, or any part of said lands, shall be owned by a nonresident of the state, before the clerk shall appoint appraisers therefor, notice to such nonresident owner shall be given of such proceedings to condemn, by publication for thirty days in some newspaper published in the county, and if no newspaper is published in the county, then by posting such notice at the courthouse door and three other public places in the county for the period of thirty days: Provided, where sites have already been acquired and additional adjacent lands are necessary such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed ten acres. (1923, c. 136, s. 61; 1924, c. 121, s. 1; 1929, c. 309, ss. 1, 2; C. S. 5469.)

§ 115-86. Sale of school property. — When in the opinion of the board, any schoolhouse, schoolhouse site or other public school property has become unnecessary for public school purposes, it may sell the same at public auction after advertising the said property for the period of time and in like manner as to places and publication in newspapers as now prescribed for sales of real estate under deeds of trust: Provided further, that the sale shall be reported to the office of the clerk of the superior court and remain open for ten (10) days for an increase bid, and if the said bid is increased the property shall be re-advertised in the manner as re-sales under deeds of trust, and if there is no raised or increased bid within ten (10) days, the chairman and secretary of the board shall execute a deed to the purchaser, and the proceeds shall be paid to the treasurer of the county school fund. After the sale of school property, as herein provided for, has been had and in the opinion of the board the amount offered for the property, either at the first or any subsequent sale, is inadequate, then, upon a finding of such fact by the board, the said board is authorized to reject such bid and to sell the property at private sale: Provided, the price offered is in excess of that offered at such public sale. (1933, c. 494, s. 2; 1937, c. 117.)

§ 115-87. Deeds to property.—All deeds to the county board of education or the board of trustees of a city administrative unit shall be registered and delivered to the clerk of the superior court for safe-keeping, and the secretary of the said board shall keep an index, by townships and school districts, of all such deeds in a book for that purpose. (1923, c. 136, s. 63; C. S. 5471.)

§ 115-88. Board cannot erect or repair building unless site is owned by board.—The county board of education or the board of trustees of a city administrative unit shall make no contract for the erection or repair of any school building unless the site on which it is located is owned by the said board, and the deed for the same is properly registered and deposited with the clerk of the court. Provided, it shall be lawful for the county board of education to borrow from the State Literary or Special Building Funds for the benefit of city administrative units and to allocate the proceeds of the county school building bonds between city and county administrative unit schools in proportion to the respective needs of the city unit schools and the county unit schools at the time when such county bonds are authorized: Provided further, that the title to the site in any city administrative units so aided shall be vested in the board of trustees of the unit. (1923, c. 136, s. 64; 1925, c. 180, s. 1; 1933, c. 299; 1939, c. 358, s. 5; C. S. 5472.)

§ 115-89. Loans for building schoolhouses. — The county board of education may make loans for the erection of schoolhouses to local tax districts or city administrative units, but all such loans shall be made upon written petition of a majority of the committee of the local tax district or board of trustees of the city administrative unit, and said petition shall authorize the county board of education to deduct a sufficient amount from the local taxes or the county fund due said district or unit to meet the payments as they come due. If the loan is made without a written petition from the committee or the board of trustees, the county board of education shall have no lien upon the local taxes for the repayment of the loan. (1923, c. 136, s. 156; C. S. 5554.)

§ 115-90. Duty of board to keep buildings in repair.—It is the duty of the county board of education or the board of trustees of a city administrative unit to keep all school buildings in good repair, and to that end it should appoint a member of the committee or some other responsible person to care for the property during vacation. Such repairs shall be paid for as authorized by the School Machinery Act. All principals and teachers shall be held responsible for the safekeeping of buildings during the school session, and all breakage and damage shall be repaired by those responsible for the same, and if at the end of the session the building or buildings have not been properly cared for by the principal and teachers, the board of education or the board of trustees of a city administrative unit, upon the recommendation of the superintendent, may reserve enough of the salary belonging to the principal and teachers to repair the damage permitted through the carelessness of the principal and teachers: Provided, principal and teachers shall not be held responsible for damages that they could not have prevented by reasonable supervision in the performance of their duties. (1923, c. 136, s. 65; C. S. 5473.)

§ 115-91. Duty of board to provide equipment for school buildings.—It is the duty of the county board of education or the board of trustees of a city administrative unit to provide suitable supplies for school buildings under its jurisdiction, such as window shades, fuel, chalk, erasers, blackboards, and other necessary supplies, and to provide standard high schools with reference books, library, maps and equipment for teaching science, and the teachers and principal shall be held responsible for the proper care of the same during the school term. (1923, c. 136, s. 66; C. S. 5474.)

§ 115-92. Sanitary school privies. — The county board of education shall provide upon recommendation of the state board of health, two sanitary privies at each public school not having adequate water-carried sewerage facilities, one for boys and one for girls. Sanitary privies shall be considered an essential and necessary part of the equipment of each public school, and may be paid for in the same manner as desks and other essential equipment of the school are paid for, and a failure on the part of the county board of education and county superintendent to make provision for sanitary privies, or a failure on the part of the county commissioners to provide the funds, shall be considered a misdemeanor, and either the county board, the county superintendent, or the county commissioners may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 68; C. S. 5475.)

§ 115-93. Type of privies to be installed. — The less expensive pit-type as recommended by the state board of health may be installed in rural districts in connection with the smaller school buildings. But the kind of privy in all buildings shall be sufficient to protect the health and sani-

tation of the children and the community. (1923, c. 136, s. 69; C. S. 5476.)

§ 115-94. Privies to be kept sanitary. — The county board of education shall require of the district committee that the privies shall be kept in a sanitary condition. They shall be governed in this particular by rules and regulations of the state board of health. And the county board of education shall provide a reasonable expense fund wherever necessary to keep the privies in a sanitary condition. Failure of the committeemen to keep privies at public schoolhouses in proper sanitary condition or a failure to notify the county board of education of their unsanitary condition shall be considered a misdemeanor and shall subject them severally and personally to fine and imprisonment, or both, in the discretion of the court.

It shall be the duty of the teachers and principals to report the unsanitary condition of the privies to the committee of the district, or the county superintendent. (1923, c. 136, ss. 70, 141; C. S. 5477.)

§ 115-95. Use of school property. — It shall be the duty of the county boards of education, as to county administrative units, and the Boards of Trustees, as to city administrative units, to encourage the use of the school buildings for civic or community meetings of all kinds that may be beneficial to the members of the community. The State School Commission, and the county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other than school purposes. (1923, c. 136, s. 71; 1939, c. 358, s. 8; C. S. 5478.)

§ 115-96. Providing good water supply. — It is the duty of the school committeemen to see that the schools have good water supply, and wherever a school is without a good water supply it is the duty of the committee to report the condition to the county superintendent before and even after the opening of school, and it shall be the duty of the county superintendent to present the need to the county board of education, and it shall be the duty of the county board of education to make such provision as will give the teachers and children a good supply of wholesome water. (1923, c. 136, s. 142; C. S. 5544.)

Art. 11. Creating and Consolidating School Districts.

§ 115-97. School districts. — The state school commission, with the advice of the county board of education shall maintain in each county a convenient number of school districts.

There may be one district and one school committee for both races, or the races may have separate districts and separate school committees. The state school commission, with the advice of the county board of education shall consult the convenience and necessities of each race in fixing the boundary lines of school districts for each race, and it shall be the duty of the county board of education to record, in a book kept for the purpose, the location of each school district and the boundary lines of each. (1923, c. 136, s. 73; C. S. 5480.)

§ 115-98. Districts formed of portions of contiguous counties.—School districts may be formed out of portions of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the state school commission. In case of the formation of such district, the pro rata part of the public school money due for teaching the children residing in one county shall be apportioned by the county board of education of that county, and paid to the treasurer of the other county in which the schoolhouse is located, to be placed to the credit of the school district so formed.

In case of a disagreement between the two county boards as to the pro rata part due the county in which the school is located, the evidence shall be laid before the state school commission, which shall determine from the evidence submitted and from the approved budget for that school, on file in its office, the amount due, and the pro rata part of each county shall be certified to the county board of education of each county, and the county board of education of the county in which the joint school is located may recover by due process of law from the county board of education in the other county the amount due the joint school for the school term from that county. (1923, c. 136, s. 74; C. S. 5482.)

§ 115-99. Consolidation of schools or school districts.—The county board of education is hereby authorized and empowered to consolidate schools located in the same district, and, with the approval of the state school commission, to consolidate school districts, over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school in the consolidated district. (1923, c. 136, s. 75; C. S. 5483.)

§ 115-100. Transferring families from non-local tax to local tax or city administrative units.—The county board of education, with the approval of the state school commission, may transfer from non-local tax territory to local tax districts or city administrative units, an individual family or individual families who reside on real property contiguous to said local tax districts or city administrative units, upon written petition of the taxpayers of said family or families, and there shall be levied upon the property and poll of each individual so transferred the same tax as is levied upon other property and polls of said district or unit: Provided, however, that any transfer to a city administrative unit shall be subject to the approval of the board of trustees. (1923, c. 136, s. 78; C. S. 5486.)

§ 115-101. School trucks and automobiles exempt from taxation; registration. — All trucks or automobiles owned or controlled by the county board of education and used for transporting pupils to school or used by school nurses or home and farm demonstration agents, or county superintendents and supervisors, in the prosecution of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the De-

partment of Motor Vehicles: Provided, that the Department of Motor Vehicles, upon proper proof being filed with it that any motor vehicle for which license is herein required is owned by the state or any department thereof or by any county, township, city or town, or by any board of education, may collect not exceeding one dollar for the registration and numbering of such motor vehicle. (1923, c. 136, s. 82; C. S. 5490.)

SUBCHAPTER IV. COUNTY SUPERINTENDENTS' POWERS, DUTIES AND RESPONSIBILITIES.

Art. 12. General Duties.

§ 115-102. Not to teach; to reside in county. — Every county superintendent shall reside in the county of which he is superintendent. It shall not be lawful for him to teach a school while the public schools of his county are in session, nor shall he be regularly employed in any other capacity that may limit or interfere with his duties as superintendent except as authorized by § 115-353. (1923, c. 136, s. 86; C. S. 5494.)

§ 115-103. Oath of office.—The county superintendent of public instruction, before entering upon the duties of office, shall take oath for the faithful performance thereof. (1923, c. 136, s. 87; C. S. 5495.)

§ 115-104. Vacancies.—In case of vacancy by death, resignation, or otherwise, in the office of county superintendent, such vacancy shall be filled by the county board of education. (1923, c. 136, s. 88; C. S. 5496.)

§ 115-105. Secretary to county board. — The county superintendent shall be ex officio the secretary of the county board of education. He shall record all proceedings of the board, issue all notices and orders that may be made by the board pertaining to the public schools, schoolhouses, sites, or districts (which notices or orders it shall be the duty of the secretary to serve by mail or by personal delivery, without cost). He shall also record all school statistics. The records of the board and the county superintendent shall be kept in the office provided for that purpose by the board. (1923, c. 136, s. 89; C. S. 5497.)

§ 115-106. Report on condition of school buildings.—It shall be the duty of the county superintendent to inspect all school buildings or have them thoroughly inspected before the opening of school, and report their condition to the committee and to the county board of education, with such recommendations as will make them comfortable and sanitary. (1923, c. 136, s. 93; C. S. 5500.)

§ 115-107. Attending meetings of state and district associations of superintendents. — Unless providentially hindered, the county superintendent shall attend continuously during its session the annual meeting of the state association of county superintendents and the annual meeting of the district association of county superintendents, and the county board of education of his county shall pay out of the county school fund his traveling expenses including board while in attendance upon such meeting. (1923, c. 136, s. 94; C. S. 5501.)

§ 115-108. Reports to state superintendent. — The county superintendent shall make such reports to the state superintendent as are required by law. The state superintendent of public instruction shall have authority to call on the county superintendent for school statistics and for reports on any phase of the school work or school conditions of the county, and it shall be the duty of the county superintendent to supply the information promptly and accurately. (1923, c. 136, s. 95; C. S. 5502.)

Art. 13. Duty of County Superintendent Toward Committeemen, Teachers and Principals.

§ 115-109. Notifying committeemen of their duties.—The county superintendent shall notify committees of the rules and regulations of the county board of education and their duties in the school district. He shall notify the committees, before the opening of the school, of the appropriation for teachers' salaries, incidental and building funds, the amount of any local tax supplement funds due each district, the salary schedule in force in the county, the law governing the payment of all district funds, the duties of the committeemen in the care and use of school buildings, and all other duties that may be helpful in conducting the school in each district. (1923, c. 136, s. 97; C. S. 5503.)

§ 115-110. Distributing blanks and books.—It shall be the duty of the county superintendent to distribute to the various school committees and to teachers of his county all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the state superintendent of public instruction, who shall give instruction for proper use of same. (1923, c. 136, s. 98; C. S. 5504.)

§ 115-111. Keeping record of all teachers.—The county superintendent shall keep a record of all teachers employed in the county, the kind of certificate held by each teacher, the length of service, success as a teacher, and the salary allowed. (1923, c. 136, s. 100; C. S. 5506.)

§ 115-112. Approving selection of all teachers. —No election of a principal, supervisor, teacher, assistant, or supply teacher shall be deemed valid until such election has been approved by the county superintendent and county board of education. No teacher shall be employed by a committee or approved by a county superintendent who is under eighteen years of age. And no superintendent shall approve the selection of any teacher or principal for a given school year who has willfully broken his or her written contract with some other superintendent for that year: Provided, a teacher shall have the right to resign her position after giving thirty days' notice: Provided further, the superintendent shall not approve the selection of a teacher holding a second or third grade certificate unless it is impracticable to secure a resident teacher who holds a higher certificate. (1923, c. 136, s. 101; 1939, c. 358, s. 7; C. S. 5507.)

§ 115-113. Administering oaths to teachers. — The county superintendent shall have authority to administer oaths to teachers and all subordinate school officials when an oath is required of the same. (1923, c. 136, s. 103; C. S. 5509.)

§ 115-114. Advising with teachers, principals and supervisors.—The county superintendent shall advise with teachers, principals, and supervisors as to the best methods of instruction, school organization and school government, and to that end he shall keep himself informed as to the progress of education, both in his own county and in other counties, cities, and states. And teachers, principals, and supervisors shall coöperate with him in putting into use the best methods of instruction, school organization and school government. (1923, c. 136, s. 104; C. S. 5510.)

§ 115-115. Visiting schools.—The county superintendent shall be required to visit each public school of his county at least twice while the schools are in session. He shall inspect school buildings and grounds in order to advise committeemen and the county board of education as to the physical needs of the school, and he shall inform himself of the condition and needs of the several districts of his county. (1923, c. 136, s. 105; C. S. 5511.)

§ 115-116. Holding teachers' meetings. — The county superintendent shall hold each year such teachers' meetings as in his judgment will improve the efficiency of the instruction in school. He may, with the coöperation of the supervisors or principals, outline reading courses for teachers and organize the teachers into special study groups, and, if necessary, not exceeding three school days may be set apart for this purpose.

If a superintendent shall fail to advise with his teachers and to provide for the professional growth of his teachers while in service, the state superintendent shall notify the county board of education, and, after due notice, if he shall fail to perform his duties in this respect, either the county board of education may remove him from office or the state board of education may revoke his certificate. (1923, c. 136, s. 106; C. S. 5512.)

§ 115-117. May suspend teachers. — The county superintendent shall have authority to suspend any teacher who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall willfully refuse to coöperate in teachers' meetings: Provided, any teacher who may be suspended by the superintendent may have the right to appeal either to the county board of education or to the courts. (1923, c. 136, s. 107; C. S. 5513.)

§ 115-118. Illegal to keep teacher in service without a certificate.—It shall be unlawful for any board of trustees or school committee that receives any public school money from the county, state, or district, to keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent who does not hold a certificate in compliance with law.

The county or city school superintendent or other officials are forbidden to approve any voucher for salary of any person kept in service in violation of the provisions of this section, and the treasurer of the county, or city schools is hereby forbidden to pay out of school funds the salary of any such person: Provided, that nothing herein shall prevent the employment of temporary substitutes or emergency teachers under such rules as the county board of education may prescribe. (1923, c. 136, s. 110; C. S. 5515.)

§ 115-119. Contracts with teachers.—No contract entered into between a school committee or board of trustees and a teacher shall be valid until the contract is approved and signed by the superintendent. The contract shall show the salary allowed and such rules and regulations governing teachers in school as the county board of education or board of trustees may direct. No voucher for the salary of a teacher shall be signed by the superintendent unless a copy of the contract has been filed with him. (1923, c. 136, s. 111; C. S. 5516.)

§ 115-120. How teachers shall be paid. — When a teacher is properly elected and the contract has been properly signed and deposited as required by law, vouchers shall be written each school month by the superintendent, signed in accordance with law, and delivered to teachers, principals, and other employees. It shall be the duty of the board of education or the board of trustees to provide the funds for the prompt payment of teachers' salaries.

In all union schools the principal of the school may present monthly pay rolls in duplicate of all teachers, signed by two members of the committee. The superintendent may use this pay roll as his authority for issuing vouchers for the salary of each teacher: Provided, the county superintendent shall keep in his office a duplicate of the pay roll approved by him. (1923, c. 136, s. 112; C. S. 5517.)

§ 115-121. When superintendent may withhold pay of teachers.—The chairman and secretary of the county board of education, or of the board of trustees of a city administrative unit may refuse to sign the salary voucher for the pay of any teacher, supervisor or principal who delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law the vouchers shall be signed and the teachers paid. (1923, c. 136, s. 113; C. S. 5518.)

§ 115-122. Schools required to report. — All teachers and principals shall be required to make to the superintendent of the administrative unit in which employed such reports as the governing board of the unit may direct: Provided that when such reports are for the state superintendent of public instruction a copy of each shall be made for the county or city superintendent, as the case may be. All superintendents of county and city administrative units shall make such reports to the State superintendent of public instruction as are required by him. (1923, c. 136, s. 114; C. S. 5519.)

§ 115-123. Reporting defective children. — It shall be the duty of the superintendent to report through proper legal channels the names and addresses of parents, guardians or custodians of deaf, dumb, blind, and feeble-minded children to the principal of the institution provided for each,

and upon the failure of the county superintendent to make such reports he shall be fined five dollars for each child of the class mentioned above not so reported. (1923, c. 136, s. 117; C. S. 5520.)

Art. 14. Duty of County Superintendent in Regard to School Funds.

§ 115-124. Duty in preparing school budgets.— The county superintendent shall keep the records of his office in such detail and in such an orderly way that the information for the budgets required by law may be prepared promptly, and he shall see that the budgets are prepared promptly and accurately, and he shall keep the records in his office so that any county official or citizen of the county may, upon request, see what the school in each district is costing, and what the total cost is to the county. It shall be his duty to sign all budgets and to take oath that the information contained therein is correct. (1923, c. 136, s. 118; C. S. 5521.)

§ 115-125. Duty to keep complete record of finances. — The county superintendent shall keep in his office a complete record of the school finances of the county, what is appropriated to each district, and the division of the funds between the county and the city administrative units, the amount of loans from state and dates of payment, the amount of bond issues in each district, the rate of interest, date of payment, and he shall so keep his records that the school accounts may be audited with the least expense to insure a complete audit in accordance with law, and if he shall fail to keep the records of the acts of the county board of education so that they may be audited in accordance with law, the county board of education may remove him from office. (1923, c. 136, s. 119; C. S. 5522.)

§ 115-126. Record of local taxes. — The county superintendent shall keep in his office a record of all taxing districts in his county, the boundaries of each, the number of taxable polls, and the valuation of the taxable property and the special tax rate voted and levied for schools. On or before September first of each year he shall supply the county treasurer with a complete list of all such districts, and the estimated amount of tax to be collected in each district.

The treasurer shall keep a separate account of each such district, and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the lawful expenses of such district to which the funds collected belong. And no funds derived from local or special taxes shall be paid out by the treasurer except as provided in § 115-368, and if the treasurer shall fail to perform his duties as outlined in this section, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 120; C. S. 5523.)

§ 115-127. Record of fines, forfeitures, and penalties.—It shall be the duty of the county superintendent to keep a record of all fines, forfeitures and penalties due the school fund, and to this end all county officials that in any way handle such funds shall on demand report the same to the county superintendent; and he shall see that these funds are deposited with the treasurer and placed to the credit of the school fund. (1923, c. 136, s. 121; C. S. 5524.)

§ 115-128. Disbursement of funds. — It is the duty of the county superintendent to approve and sign all vouchers for the disbursement of all district funds except the funds belonging to city administrative units. And the treasurer shall honor no voucher that is not first approved and signed by the county superintendent or the secretary of the board of education. And no order shall be signed by the county superintendent or the secretary of the board for more money than is apportioned to and raised by local or special taxes in that district for the fiscal year. Nor shall he endorse the order of any teacher who does not produce a certificate as required by law, nor for more money than the salary schedule in force in the county would entitle the teacher to receive.

It shall be the duty of the county superintendent or the secretary of the board to sign all vouchers issued by order of the county board of education and signed by the chairman of the board, and no voucher shall be paid by the treasurer that is not properly signed. (1923, c. 136, s. 122; C. S. 5525.)

§ 115-129. City superintendent, powers, duties and responsibilities. — All the powers, duties and responsibilities imposed by this subchapter upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units.

SUBCHAPTER V. SCHOOL COMMITTEES —THEIR DUTIES AND POWERS.

Art. 15. In Non-Local Tax Districts.

§ 115-130. Eligibility.—Each school committeeman shall be a person of intelligence, of good moral character, and of good business qualifications, and known to be in favor of public education.

In all Indian schools authorized by law the committeemen may be selected from Indians residing in the district. (1923, c. 136, s. 125; C. S. 5528.)

§ 115-131. Oath of office.—Each school committeeman before entering on the duties of office shall take oath for the faithful performance thereof, and this oath may be taken before the county superintendent. (1923, c. 136, s. 126; C. S. 5529.)

§ 115-132. Committeemen cannot teach. — No person while serving as a member of any district committee shall be eligible to be elected as a teacher of any public school, or as a member of the county board of education, and should such person be elected to teach in any public school or private school receiving public funds or as a member of the county board of education before resigning as a member of the district committee, said election is hereby declared null and void. (1923, c. 136, s. 128; C. S. 5531.)

§ 115-133. Organization of committee. — The school committee, at their first meeting after the membership has been completed by the county board of education, shall elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county superintendent and recorded by him. (1923, c. 136, s. 129; C. S. 5532.)

§ 115-134. How to employ teachers. — The school committee shall meet at a convenient time and place for the purpose of electing teachers and no teacher shall be employed by any committee except at regularly called meetings of such committee. No election of any teacher or assistant teacher shall be deemed valid until such election has been approved by the county superintendent and county board of education, and no contract for teachers' salaries shall be made during any year to extend beyond the term of a majority of the committee, nor for more money than accrues to the credit of the district for the fiscal year during which the contract is made. (1923, c. 136, s. 130; 1939, c. 358, s. 7; C. S. 5533.)

§ 115-135. Power to contract with private schools.—In any school district where there may be a private school regularly conducted for at least six months in the year, unless it is a sectarian or denominational school, the school committee with the approval of the county superintendent may contract with the teacher of such private school to give instruction to all pupils of the district between the ages of six and twenty-one years in the branches of learning taught in the public schools, as prescribed by law, without charge to pupils and free of tuition. The amount paid such private school for each pupil in the public school branches, based on the average daily attendance, shall not exceed the regular tuition rates in such school for branches of study. (1923, c. 136, s. 135; C. S. 5537.)

§ 115-136. Powers as to school property. — The school committee shall be entrusted with the care and custody of all schoolhouses, schoolhouse sites, grounds, books, apparatus, or other school property in the district, with full power to control same, as they may deem best for the interest of the public schools and the cause of education, not in conflict with the rules and regulations governing school property adopted by the county board of education: Provided, if the committee is unable or shall fail to take due care of the schoolhouse and to protect all property belonging to it, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1923, c. 136, s. 136; C. S. 5538.)

§ 115-137. Reports to board.—The school committee shall make such reports to the county board of education as the board may deem necessary. (1923, c. 136, s. 138; C. S. 5540.)

§ 115-138. Superintendent and committee to keep records of receipts, expenditures and contracts.—The county superintendent shall keep by districts an itemized statement of all moneys apportioned to such district, the amount received and expended by each committee for each school, and a copy of all contracts made by them with teachers. It is the duty also of the committee to keep up with the funds of the district. It should know what the budget for the district contains, in order to know how much money is available and how it is spent. It is their duty to know the salary schedule and the limitations placed on committeemen in making contracts with teachers. It is illegal for committeemen to employ teachers at a salary higher than that contained in the authorized salary schedule; therefore, when the school budget is submitted it is the duty of each committeeman to examine it carefully to see how much money is allowed for teachers' salaries, and how many and what grade of teachers may be employed with the money allowed in the budget. (1923, c. 136, s. 139; C. S. 5541.)

§ 115-139. Obeying orders of sanitary committee or board of health.—It shall be the duty of teachers, principals, superintendent, committee, and all other governing boards having authority over the maintenance, support, and conduct of a public school to obey the rules and regulations of the sanitary committee or board of health for the protection of health in the district. (1923, c. 136, s. 143; C. S. 5545.)

SUBCHAPTER VI. TEACHERS AND PRINCIPALS.

Art. 16. Their Powers, Duties and Responsibilities.

§ 115-140. Health certificate required for teachers. — Any person serving as county superintendent, city superintendent, teacher, janitor, or any employee in the public schools of the state shall file in the office of superintendent each year, before assuming his or her duties, a certificate from the county physician, or other reputable physician of the county, certifying that the said person has not an open or active infectious state of tuberculosis; or any other contagious disease.

The county physician shall make the aforesaid certificate on a form supplied by the state superintendent of public instruction, and without charge to the person applying for the certification. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1923, c. 136, s. 159; C. S. 5556.)

§ 115-141. How to apply for a position. — It is the duty of teachers, in making application for a position to teach, first to file the application with the superintendent, stating the kind and the number of the certificate held, when the certificate expires, experience in teaching, the position last held, and a statement that the applicant has no contagious disease. The application should also state that the applicant, if elected, will not break the contract, without the approval of the superintendent who approved the contract, without giving at least thirty days notice, and that he or she will observe the rules and regulations adopted by the board of trustees or the county board of education under whose jurisdiction he or she is employed to teach. (1923, c. 136, s. 160; C. S. 5557.)

§ 115-142. When teacher may annul contract.— The teacher may, after entering into a written

contract, annul the contract by giving the superintendent a written notice of at least thirty days, and the superintendent shall pay for the full time the teacher has taught: Provided, the teacher has taught as much as twenty days. But if the teacher breaks the contract without giving thirty days notice, it shall be the duty of the superintendent to report the name of the teacher to the state superintendent, and the certificate held may either be revoked or reduced to the next lower grade. And no other superintendent shall employ or recommend for employment in any year a teacher who has broken his or her contract for that year; and no teacher who has willfully broken his or her written contract can again legally be elected for that year. This section shall also apply alike to principals and supervisors. (1923, c. 136, ss. 161, 162; C. S. 5558.)

§ 115-143. How teachers may be dismissed. — The school committee of a district or board of trustees of a city administrative unit, with the approval of the superintendent, may dismiss a teacher for immoral or disreputable conduct in the community or for failure to comply with the provisions of the contract. The superintendent, with the approval of the committee or the board of trustees, has authority, and it is his duty, to dismiss a teacher who may prove himself or herself incompetent or may willfully refuse to discharge the duties of a public school teacher, or who may be persistently neglectful of such duties. But no teacher shall be dismissed until charges have been filed in writing in the office of the superintendent. The superintendent shall give the teacher at least five days notice, in which time he or she shall have the opportunity to appear before the committee or board of trustees of the district or unit in which the teacher is teaching. And after a full and fair hearing, the action of the committee or board of trustees shall be final: Provided, the teacher shall be given the right to appeal to the county board of education or to the courts.

Every teacher dismissed for cause shall be reported by the superintendent to the state superintendent, who shall have authority to revoke the certificate and debar the teacher from teaching in any other county. (1923, c. 136, ss. 131, 163; C. S. 5534, 5560.)

§ 115-144. Duties of teachers. — It shall be the duty of all teachers to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of the children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercise for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in public school music; to ascertain the cause for non-attendance of pupils, and report all violators of the compulsory school law to the attendance officer in accordance with the rule governing attendance and reports; and to enter actively into the plans of the superintendent for the professional growth of the teachers. (1923, c. 136, s. 165; C. S. 5562.)

§ 115-145. Power to suspend or dismiss pupils. —A teacher in a school having no principal, or the principal of a school, shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. But every suspension for cause shall be reported at once to the attendance officer, who shall investigate the cause and shall deal with the offender in accordance with rules governing the attendance of children in school. (1923, c. 136, s. 166; C. S. 5563.)

§ 115-146. Duty to make reports to superintendent.—Every teacher or principal of a school under the jurisdiction of the county board receiving aid from the public school fund shall be required to make such reports as are required by the county board of education, and the county superintendent shall not approve the voucher for the pay of teachers at the end of each month until the monthly reports required are made, and at the end of the year until the final reports are made: Provided, the county superintendent may require teachers to make reports to principals, and principals to make reports to the superintendent. (1923, c. 136, s. 167; C. S. 5564.)

§ 115-147. Care of the school building.—It is the duty of the teachers and principals in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the school day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of the term a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible under the provisions of this section. If any child in school shall carelessly or willfully damage school property, the teacher shall report the damage to the parent, and if he refuses to repair the same, the teacher shall report the offense to the superintendent of public welfare. (1923, c. 136, s. 168; C. S. 5565.)

§ 115-148. Principal of union school.—The principal of a union school shall be the executive officer of the school, and all teachers in both the high school and in the elementary school departments shall be responsible to the principal. He shall have authority, subject to the approval of the county superintendent, to grade and classify the pupils, and exercise discipline over the pupils of the school. He shall make all reports to the county superintendent, and give suggestions to teachers for the improvement of instruction in school. And it shall be the duty of each teacher in a union school to coöperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit

among its patrons. (1923, c. 136, s. 171; C. S. 5568.)

Art. 17. Certification of Teachers.

§ 115-149. Requirement as to holding certificates. — All the teachers and principals employed in the public schools of the state or in schools receiving public funds for the maintenance of an eight-months school term shall be required to hold certificates in accordance with the law, and no contract for the employment of teacher or principal is valid until the certificate is secured. (1923, c. 136, s. 158; C. S. 5569.)

§ 115-150. Examinations, accrediting, and certificates.—The state board of education shall have entire control of examining, accrediting without examination, and certificating all applicants for the position of teacher, principal, supervisor, superintendent, and assistant superintendent in all public elementary and secondary schools of North Carolina, urban and rural. The board shall prescribe rules and regulations for examining, accrediting without examination, and certificating all such applicants for the renewal and extension of certificates and for the issuance of life certificates. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S. 5570.)

§ 115-151. Certificate prerequisite to employment.—No person shall be employed or serve in the public schools as teacher, principal, supervisor, superintendent, or assistant superintendent who shall not be certificated for such position by the state board of education in accordance with the law. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S. 5571.)

§ 115-152. Teacher must be eighteen.—No certificate to teach shall be issued to any person under eighteen years of age. (Rev., s. 4163; C. S. 5572.)

§ 115-153. Approval of certificates; refusal of approval; appeal and review.—No certificate issued by the board shall be valid until approved and signed by the superintendent of the county administrative unit, or the superintendent of the city administrative unit, in the schools of which the holder of said certificate applies to teach. Any certificate when so approved by said county or city superintendent shall be of state-wide validity, and in case such county or city superintendent shall refuse to approve and sign any such certificate, he shall notify the state board of education and state in writing the reasons for such refusal. The said board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S. 5574.)

§ 115-154. Employment of persons without certificate unlawful; appropriations withheld; salaries not paid.—It shall be unlawful for any board of trustees or school committee or any public school that receives any public school money from county or state to employ or keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent who does not hold a certificate in compliance with the provisions of the law. Upon notification to the state board of education or to the county board of education that any school committee or board of trustees is employing or keeping in service a teacher, supervisor, principal, superintendent, or assistant superintendent in violation of the provisions of this section, the state board of education shall withhold from such county or city administrative unit any and all appropriations from the state for such school, and said county board of education shall withhold from said school any and all appropriations from the county school fund until compliance with the law.

The county or city superintendent or other official is forbidden to approve any voucher for salary for any person employed in violation of the provisions of this section, and the treasurer of the county or city schools is hereby forbidden to pay out of the school fund the salary of any such person: Provided, that nothing herein shall prevent the employment of temporary substitute or emergency teachers under such rules as the state board of education may prescribe. (1917, c. 146, s. 6; 1921, c. 146, s. 16; C. S. 5582.)

§ 115-155. Classes of first-grade certificates. — There shall be the following classes of first-grade certificates: (1) Superintendents' and assistant superintendents'; (2) High school principals'; (3) High school teachers'; (4) Elementary school teachers'; (5) Elementary supervisors'; and (6) Special. The state board of education may subdivide and shall define in detail the different classes of first-grade certificates, determine the time of their duration and validity, prescribe the standards of scholarship for same, and the rules and regulations for them and for their issuance, and their renewal or extension. (1917, c. 146, s. 9; 1921, c. 146, s. 16; C. S. 5583.)

§ 115-156. Colleges to aid as to certificates. — Each and every college or university of the state is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates without restrictions, except as set forth in the rules and regulations of the state board of education, applying alike to all departments, work, and instructors of each and every college or university in this state. (1933, c. 497.)

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS.

Art. 18. County Board of Education: Budget.

§ 115-157. Contents of the school budget.—The school budget prepared by the county board of education shall provide three separate school funds (a) a current expense fund, (b) a capital outlay fund, and (c) a debt service fund.

(a) The current expense fund shall include (1) Expenses of general control—per diem of board of education, salaries of superintendents, attendance officer, and clerical assistants, travel and communication, office supplies and expense, and other necessary expenses of general control; (2) instructional service—salaries of teachers, principals, and supervisors, and any other necessary items of instruction; (3) operation of school plant —wages of janitors and other employees, fuel, water, light and power, janitors' supplies, expenses for care of grounds, and other necessary

expenses of operation; (4) maintenance of plant—upkeep of grounds, repair of buildings, repair and replacement of heating, lighting and plumbing equipment, instructional apparatus, furniture, and other equipment, and other necessary expenses of maintenance; (5) fixed charges — rent, insurance and other necessary fixed charges; (6) auxiliary agencies—replacement of and repair of library books, transportation of pupils, and other necessary auxiliary activities.

(b) The capital outlay fund shall provide for the purchase of sites, the erection of school buildings, including dormitories and teachers' homes, improvement of new school grounds, alteration and addition to buildings, installation of heating, lighting and plumbing, purchase of furniture, including instructional apparatus for new buildings, office equipment, acquisition of trucks and other vehicles for the transportation of pupils and for the better operation and administration of schools, and other necessary capital outlay.

(c) The debt service fund shall provide for the payment of all loans due the State, the interest and principal on bonds, payments to the sinking fund, payment of district indebtedness for schools assumed by the county, apportionment to districts voting bonds or to districts borrowing from the county board of education and all other indebtedness which is payable during the fiscal year for which the budget is prepared. (1923, c. 136, s. 175; 1925, c. 180, s. 5; 1927, c. 239, s. 1; 1933, c. 299; C. S. 5596.)

§ 115-158. Debt service fund. — The county board of education shall set forth in the budget the amount of the interest and installments on all loans due the state, and of all interest and installments on bonds and other evidences of indebtedness that may fall due. This shall be a separate item in the budget, and the commissioners shall levy annually a tax sufficient, clear of all fees, commissions, rebates, delinquents and the cost of collection, to repay the same; and if the taxes are not collected when the repayments fall due, the commissioners shall borrow the money and place the amount to the credit of the county board of education.

The county board of education, with the approval of the board of commissioners may include in the debt service fund in the budget the indebtedness of all districts, including city administrative units, and districts formerly known as special charter districts, lawfully incurred in erecting and equipping school buildings necessary for the school term, and when such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, then the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of this fund among the schools of the county as provided in this section. (1923, c. 136, s. 179; 1925, c. 180, s. 6; 1933, c. 299; C. S. 5599, 5600.)

Art. 19. Powers, Duties and Responsibilities of the Board of County Commissioners in Providing Certain Funds.

§ 115-159. Commissioners to levy tax.—The commissioners are required to levy annually a tax sufficient to repay interest and installments on all loans from the state, and interest and installments on bonds and notes falling due according to the debt service fund as set forth in the approved school budget. And this shall be a separate tax, and, after all interest and installments are paid each year, any balance that may remain shall be accounted for by the treasurer, and it shall be applied the following year to the repayment of interest and installment on loans. But if the amount secured from this tax is not sufficient for these needs it shall be the duty of the commissioners to borrow any amount needed to meet these payments. (1923, c. 136, s. 185; 1927, c. 239, s. 11; C. S. 5606.)

§ 115-160. Procedure in cases of disagreement or refusal of county commissioners to levy school taxes.—In the event of a disagreement between the county board of education and the board of county commissioners as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, the county board of education and the board of county commissioners shall sit in joint session, and each board shall have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board. In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between said two boards, and shall render his decision thereon within ten days. But either the county board of education or the board of county commissioners shall have the right to appeal to the superior court within thirty days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive, and shall give judgment requiring the county commissioners to levy the tax which will provide the amount of the current expense fund, the capital outlay fund and the debt service fund, which he finds necessary to maintain the schools in every school district in the county. Any board of county commissioners failing to obey such order and to levy the tax ordered by the court shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of court. In case of an appeal to the superior court, all papers and records relating to the case shall be considered a part of the record for consideration by the court. (1923, c. 136, s. 187; 1925, c. 180, s. 4; 1927, c. 239, ss. 12, 13; 1933, c. 299; C. S. 5608.)

§ 115-161. Commissioners may demand a jury trial.—The county commissioners shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding term of the superior court, and shall have precedence over all other business of the court: Provided, that if the judge holding the court shall certify to the governor, either before or during such term, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said term, the governor shall immediately call a special term of the superior court for said county, to convene as early as possible, and assign a

judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such term. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the county commissioners shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the supreme court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the commissioners to levy for the ensuing year a rate sufficient to pay the debt service fund, to produce, together with what may be received from the state public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1923, c. 136, s. 188; 1927, c. 239, s. 14; C. S. 5609.)

§ 115-162. Commissioners to estimate what per cent school fund is of total county fund.—It is the duty of the county commissioners to furnish the county board of education, as soon as the tax books for the year are completed, a statement showing what per cent the school fund is of the total county fund, and at least this same per cent of the amount of taxes as they are collected and deposited in the treasury shall be placed to the credit of the county board of education. (1923, c. 136, s. 191; C. S. 5612.)

§ 115-163. Commissioners require sheriff to settle. — Every sheriff or tax collector shall deposit the county and other local taxes collected by him with the county treasurer as often as he shall collect or have in his possession at any one time a sum equal to five hundred dollars ($500.00).

On or before the close of the fiscal year the sheriff in settling with the board of county commissioners shall exhibit the total amount of the school fund from all sources received, the net amount paid over to the county treasurer, and the net amount due each of the following funds: (1) The current expense fund, (2) the capital outlay fund, and (3) the debt service fund. The sheriff shall also exhibit the amount of uncollected taxes due because of insolvent polls, releases, errors, and rebates allowed by the board of county commissioners, and other causes for failure to collect the entire amount of the taxes due, and the sheriff shall furnish to the county board of education at the time of his settlement with the county commissioners, as provided in this section, a complete itemized copy of his statement. (1923, c. 136, s. 192; 1927, c. 239, s. 15; C. S. 5613.)

§ 115-164. Duty of sheriff or tax collector.—It shall be the duty of the sheriff or the tax collector in collecting the taxes of local tax districts to keep the funds of each district separate from all other funds, and when public school funds are deposited with the treasurer, the sheriff or tax collector shall specify which funds belong to local tax districts and to what district the local tax funds belong. (1923, c. 136, s. 148; C. S. 5550.)

Art. 20. The Treasurer: His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-165. Treasurer shall disburse funds.—The county treasurer of each county shall be the treasurer of the school funds in his county. He shall receive and disburse all public school funds and shall keep the same separate and distinct from all other funds. In all counties in which the office of county treasurer has been abolished all banks or other corporations handling public school funds shall be required to keep the same accounts, perform the same duties as required of the county treasurer, and to give the same bond and make the same reports as are required of the treasurer of the county board of education. (1923, c. 136, s. 193; C. S. 5614.)

§ 115-166. Operation of county school budget.—(a) Duty of County Board of Education.—On or before the first Monday in each month the county board of education shall file with the county board of commissioners a written statement showing the condition of the annual school budget at the close of the preceding month. This statement shall also include a careful estimate of the necessary expenditures which will be made during the current month from the local school budget. In like manner each city administrative unit shall prepare and file with the county board of commissioners a similar statement, which shall be the guide in determining for the city administrative unit the amount which shall be included in the monthly statement of cash needs: Provided, that no payment to city administrative unit shall be made until a copy of the audit for the previous year for the city administrative unit has been filed as provided by law.

(b) Duty of the County Board of Commissioners.—It shall be the duty of the board of county commissioners to provide when and as needed the funds necessary to meet the monthly expenditures as set forth in the statements prepared by the county board of education and the governing body of the city administrative unit in accordance with the budget. (1923, c. 136, s. 194; 1925, c. 138, s. 2; 1927, c. 239, s. 16; C. S. 5615.)

§ 115-167. Action against the treasurer to recover funds.—After final settlement with the sheriff, if it shall appear that any part of the public school fund received by the county treasurer has not been properly placed to the credit of the respective board, either the county board of education or the city administrative unit board of trustees, as the case may be, shall bring action on the treasurer's bond to recover any part of the fund still belonging to the respective board. If the county treasurer fails to perform his duties as herein and above prescribed, he shall be guilty of a misdemeanor and be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 195; C. S. 5616.)

§ 115-168. County board of education to have accounts of the board of education and the county treasurer of the public school fund audited.— On or before the first day of August of each year the county board of education shall cause to be audited the books of the treasurer of the county school fund and the accounts of the county board of education, and shall provide for the cost of the same,

where a county auditor is not provided by special statute, out of the current expense fund. The auditor's report shall show:

(a) For the School Term.—(1) Sources of revenues and purposes for which expenditures were made; (2) comparison of approved school budget with the actual transactions; (3) statement of salary paid each teacher, principal, supervisor, or superintendent, and all other employees employed in the county system, showing what part was paid out of the State and county school fund, and what part was paid out of the local tax funds; (4) the auditor shall compare the expenditures with the budget approved by the State Superintendent of Public Instruction, and report whether all salaries and other expenses have been paid in accordance with law; (5) the auditor shall check the average daily attendance by districts as shown in the budget against the monthly reports from the district listing the high school and elementary school average daily attendance separately, and including a statement covering the average daily attendance maintained during the scholastic year which the financial transactions cover and also the average daily attendance maintained during the year next preceding the year covered by the financial transactions contained in the audit; (6) statement of oustanding indebteness, including county school bonds, amounts due the State Board of Education, and all unpaid accounts; (7) appraisal of all school property; and (8) all other items which will aid in making a complete audit.

(b) For Local Tax Districts.—In similar details, the audit of the county board of education shall include accounts of local tax districts and special county taxes.

(c) For City Administrative Unit.—In like manner and in similar details, unless otherwise provided in special act, the board of trustees of each city administrative unit shall cause to be audited the accounts of the treasurer and board of trustees of the city administrative unit.

At least a consolidated statement of the report of the auditor shall be published in some newspaper circulating in the county, or in bulletin form, and one copy of the complete report shall be sent to the State Superintendent of Public Instruction, and one copy shall be given to the chairman of the board of county commissioners, and one copy to the chairman of the county board of education.

If the board of education or board of trustees shall fail to have all accounts audited as provided herein, the State Superintendent shall notify the State Auditor and said State Auditor shall send an auditor to said county and have the accounts audited in accordance with the provisions of this section, and all expenses for the same shall be paid by the county board of education or the board of trustees, as the case may be. (1923, c. 136, s. 198; 1927, c. 239, s. 19; C. S. 5618.)

§ 115-169. Action on the treasurer's bond.—The board of county commissioners shall bring action in the name of the state for any breach of the bond of the treasurer or for any failure to account properly for the funds received by him, except in cases where action is otherwise provided for. If the commissioners shall fail to bring such action, it may be brought in the name of the state upon the relation of any taxpayer. (1923, c. 136, s. 200; C. S. 5620.)

§ 115-170. Annual report to state superintendent.—The treasurer of any county or city administrative unit school fund shall report to the state superintendent of public instruction, on the first Monday of August of each year, the entire amount of money received and disbursed by him during the preceding school year, designating by items the amount received, respectively, from property tax, poll tax, fines, forfeitures and penalties, auctioneers, estrays, from the state treasurer and from the other sources. He shall also designate by item the sum paid to teachers of each race, respectively, the sums paid for schoolhouses, school sites in the several districts, and for all other purposes, specifically and in detail, by item. (1923, c. 136, s. 201; C. S. 5621.)

§ 115-171. Report to board.—On the same date that he reports to the state superintendent, he shall file a duplicate of such report in the office of the county board of education or board of trustees of the city administrative unit. He shall make such other reports as the board may require from time to time. (1923, c. 136, s. 202; C. S. 5622.)

§ 115-172. Exhibit books, vouchers, and money to board.—The treasurer of the school fund shall, when required by the county board of education or board of trustees of the city administrative unit, produce his books and vouchers for examination, and shall also exhibit all moneys due the public school fund at such settlement required by this article. (1923, c. 136, s. 203; C. S. 5623.)

§ 115-173. Duties on expiration of term.—Each treasurer of the school fund, in going out of office, shall deposit in the office of the board of education or board of trustees of the city administrative unit his books in which are kept his school accounts, and all records and blanks pertaining to his office. If his term expires on the thirtieth day of November during any fiscal school year, or if for any reason he shall hold office beyond the thirtieth day of November and not for the whole of the current fiscal school year, he shall at the time he goes out of office file with the board and with his successor a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the state superintendent of public instruction the receipts and disbursements for the current fiscal year. (1923, c. 136, s. 204; C. S. 5624.)

§ 115-174. Penalty for failure to report.—If any treasurer of the county or city administrative unit school fund shall fail to make reports required of him at the time and in the manner prescribed, or to perform any other duties required of him by law, he shall be guilty of a misdemeanor and be fined not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00) or imprisoned not less than thirty days nor more than six months, in the discretion of the court. (1923, c. 136, s. 205; C. S. 5625.)

§ 115-175. Treasurer of city administrative unit bonded.—The treasurer of every city administra-

tive unit shall be required by the board of trustees of said unit to execute a justified bond, with security, in an amount to be fixed by the board of trustees, not less than one-half the total amount of money received by him or his predecessor during the previous year, conditioned for the faithful performance of his duties as treasurer of the funds of the unit, and for the payment over to his successor in office of any balance of school moneys that may be in his hands unexpended. This bond shall be a separate bond, not including liabilities for other funds, and shall be approved by the board of trustees of said unit; and that board may from time to time, if necessary, require him to strengthen his bond. (1923, c. 136, s. 206; C. S. 5626.)

§ 115-176. Speculating in teachers' salary vouchers.—If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or state officer shall engage in the purchasing of any teacher's salary voucher at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation thereon, he shall be guilty of a misdemeanor and shall be fined or imprisoned, and shall be liable to removal from office at the discretion of the court. (1923, c. 136, s. 208; C. S. 5627.)

Art. 21. Fines, Forfeitures and Penalties

§ 115-177. Constitutional provisions.—All moneys, stocks, bonds and other property belonging to a county school fund, also the net proceeds from the sale of estrays, also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the state, and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties in this state. (Sec. 5, Art. IX, Constitution.) (1923, c. 136, s. 209; C. S. 5628.)

§ 115-178. Statement of fines kept by clerk.—It is the duty of the clerks of the several courts and of the several justices of the peace to enter in a book, to be supplied by the county, an itemized detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public. (1923, c. 136, s. 210; C. S. 5629.)

§ 115-179. Fines paid to treasurer for schools; annual report.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within sixty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners. (1923, c. 136, s. 211; C. S. 5630.)

§ 115-180. Failure to file report of fines.—If any officer who is by law required to file any report or statement of fines or penalties with the county board of education shall fail so to do at or before the time fixed by law for the filing of such report, he shall be guilty of a misdemeanor. (1923, c. 136, s. 212; C. S. 5631.)

§ 115-181. Fines and penalties to be paid to school fund.—Whenever any officer, including justices of the peace, receives or collects a fine, penalty, or forfeiture in behalf of the state he shall, within thirty days after such reception or collection, pay over and account for the same to the treasurer of the county board of education for the benefit of the fund for maintaining the free public schools in such county. Whenever any fine or penalty is imposed by any officer the said fine or penalty shall be at once docketed, and shall not be remitted except for good and sufficient reasons, which shall be stated on the docket. (1923, c. 136, s. 213; C. S. 5632.)

§ 115-182. Misappropriation of fines a misdemeanor.—Any officer, including justices of the peace, violating § 115-181, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, at the discretion of the court. (1923, c. 136, s. 214; C. S. 5633.)

§ 115-183. Unclaimed fees of jurors and witnesses paid to school fund.—All moneys due jurors and witnesses which remain in the hands of any clerk of the superior court on the first day of January after the publication of a third annual report of the said clerk showing the same, shall be turned over to the county treasurer for the use of the school fund of the county, and it is the duty of said clerk to indicate in his report any moneys so held by him for a period embracing the two annual reports. (1923, c. 136, s. 215; C. S. 5634.)

§ 115-184. Use by public until claimed.—The money aforesaid, while held by the clerks, shall be paid, on application, to the person entitled thereto; and after it ceases to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner. (1923, c. 136, s. 216; C. S. 5635.)

SUBCHAPTER VIII. LOCAL TAX ELECTIONS FOR SCHOOLS.

Art. 22. School Districts Authorized to Vote Local Taxes.

§ 115-185. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-186. How elections may be called.—The citizens of any duly created school district are hereby authorized to petition for a local tax election for schools, as follows: A written petition signed by twenty-five qualified voters who have resided at least twelve months within the district, or if fewer than seventy-five of such qualified voters, reside in the territory, then by one-third of such qualified voters, shall be presented to the county board of education asking for an election in the district to ascer-

tain whether there shall be levied in said district a local annual tax not to exceed fifty cents (50c) on the one hundred dollar ($100.00) valuation of all property, real and personal, to supplement the funds for the eight months public school term for that district: Provided, that the petition for an election to be held in any city administrative unit shall be presented to the board of trustees of said district. (1923, c. 136, s. 219; C. S. 5639.)

§ 115-187. The board to consider petition.—The county board of education or the board of trustees, as the case may be, shall receive the petition and give it due consideration. If the board shall approve the petition for an election, it shall be endorsed by the chairman and secretary of the board and a record of the endorsement shall be made in the minutes of the board. The petition shall then be presented to the board of county commissioners or the governing body authorized to order the election, and it shall be the duty of the board of county commissioners or said governing body to call an election and fix the date for the same: Provided, the county board of education or board of trustees, as the case may be, may, for any good and sufficient reason, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held. In the case of a city administrative unit coterminous with or situated entirely within an incorporated city or town, said petition shall be presented to the governing body of said city or town, and the election shall be ordered by said governing body. (1923, c. 136, s. 220; 1925, c. 143, s. 1; C. S. 5640.)

§ 115-188. Rules governing election for local taxes.—In all elections held under this law the board of county commissioners, or the body authorized to order said election, shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of said election when the returns have been filed with them by the officers holding the election, and shall record such determination on their records. The notice of the election shall be given by publication at least three times in some newspaper published or circulated in the territory. It shall set forth the boundary lines of the district, the maximum rate of tax to be levied, which shall not exceed fifty cents (50c) on the one hundred dollar ($100.00) valuation of property, real and personal, and the purpose of the tax. The first publication shall be at least thirty days before the election. A new registration of the qualified voters of the territory shall be ordered, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in said district at least twenty days before the close of the registration books. This notice of registration may be considered one of the three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article such election shall be held in accordance with the law governing general elections. The ballots to be used in said election shall have written or printed thereon the words "For local tax," and "Against local tax." All other details of said election shall be fixed by the board or other governing body ordering the election, and the expenses of holding and conducting the election in all districts other than in city administrative units shall be provided by the county board of education out of the current expense fund of the county. But the expenses of conducting the election in all city administrative units shall be paid by the board of trustees of said unit out of the local tax funds of the unit. (1923, c. 136, s. 221; C. S. 5641.)

§ 115-189. Levy and collection of taxes.—In case a majority of the qualified voters in the district or unit referred to above shall vote at the election in favor of the tax, it shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes, and the maximum rate so voted shall be levied, unless the county board of education or board of trustees shall request a levy at a lower rate, in which event the rate requested, shall be levied and collected; and the superintendent of schools and the officer in charge of tax records shall keep records in their respective offices showing the valuation of the property, real and personal, in the district or unit, the rate of tax authorized annually to be levied, and the amount annually derived from the local tax, and it shall be illegal for any part of the local tax fund to be used for any purpose other than to supplement the funds for an eight months school term in the district or unit. (1923, c. 136, s. 222; C. S. 5642.)

§ 115-190. Increasing levy in districts having less than fifty cent rate.—Authority is hereby given any local tax district or special bond tax unit having voted a maximum rate less than fifty cents (50c) to increase the levy to a maximum of fifty cents (50c) on the one hundred dollars ($100.00) valuation of property, real and personal. Such increase shall be made after an election has been held as provided for in this article. (1923, c. 136, s. 223; 1925, c. 143, s. 2; C. S. 5643.)

§ 115-191. Frequency of election.—In the event that a majority of the qualified voters of a district or unit do not at the election cast their votes for the local tax, another election or elections under the provisions of this article may be held after the lapse of six months in the same district or unit. (1923, c. 136, s. 225; C. S. 5645.)

§ 115-192. Enlargement of local tax or special charter districts.—Upon a written petition of a majority of the governing board of any district, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this article: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the terri-

tory is to be added. If a majority of the qualified voters in such new territory shall vote in favor of such tax, the new territory shall become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of the qualified voters at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1923, c. 136, s. 226; 1925, c. 151; 1927, c. 88; C. S. 5646.)

§ 115-193. Abolition of district upon election.—Upon petition of one-half of the qualified voters residing in any local tax district established under this article, the same shall be indorsed and approved by the county board of education, and the board of county commissioners shall order another election in the district for submitting the question of revoking the tax and abolishing the district, to be held under the provisions prescribed in this act for holding other elections. It shall be the duty of the board of education to indorse the petition when presented, containing the proper number of names of qualified voters, and this provision is made mandatory, and the board is allowed no discretion to refuse to indorse the same when so presented. If at the election a majority of the qualified voters in the district shall vote "Against Local Tax," the tax shall be deemed revoked and shall not be levied, and the district shall be discontinued: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes counties, petition of twenty-five per cent (25%) of the number of registered voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient: Provided, further, that in said counties, this section shall not apply to that part of such tax, if any, in said district as may be necessary to pay the interest on or amortization of any bonded or other indebtedness, incurred in consequence of the voting of said special tax district but to that extent, and to that extent only, shall said special tax district be maintained. (1923, c. 136, s. 227; 1931, c. 372; C. S. 5647.)

§ 115-194. Local tax district in debt may not be abolished.—The provisions of this article as to abolishing local tax districts shall not apply when such local tax district is in debt in any sum whatever. (1923, c. 136, s. 228; C. S. 5648.)

§ 115-195. Election for abolition not oftener than once a year.—No election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition revoking such tax shall be approved by the county board of education oftener than once a year: Provided, this section shall not apply to any indirect abolition or reduction of taxes as may be elsewhere provided. (1923, c. 136, s. 229; C. S. 5649.)

§ 115-196. Enlarging boundaries of district within incorporated city or town.—The boundaries of a district situated entirely within the corporate limits of a city or town, but not coterminous with such city or town, may be enlarged so as to make the district coterminous with such city or town either in the manner prescribed by this section or in the manner prescribed by § 115-192. Provided, however, that no district shall be enlarged under this section if the new territory necessary to be added to such district, in order to make it coterminous with such city or town, has any bonded debt incurred for school purposes, other than debt payable by taxation of all taxable property in such district and such new territory. In cases where the local annual tax voted to supplement the funds of the eight months public school term is of the same rate in such district and in the new territory necessary to be added to such district in order to make the district coterminous with such city or town, the county board of education shall have power to enlarge the boundaries of the district as aforesaid. In cases where such tax rates are not the same, the boundaries of the district shall become so enlarged upon the adoption of a proposition for such enlargement by a majority of the qualified voters of such new territory. The governing body of such city or town may at any time, upon petition of the board of education or other governing body of such district, or upon its own initiative if the governing body of the city or town is also the governing body of the district, submit the question of enlarging the district as aforesaid to the qualified voters of such new territory proposed to be added to such district at any general or municipal election or at a special election called for said purpose. Such an election may be ordered and held and a new registration for said election provided under the rules governing elections for local taxes as provided under the article, except that the election and registration shall be ordered by and held under the supervision of and the result of the election determined by the governing body of such city or town. The ballots to be used in said election shall have printed or written thereon the words: "For the enlargement of.... school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended," and "Against the enlargement of ..... school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended." If a majority of the qualified voters of such new territory proposed to be added to such district shall vote in favor of such enlargement, said district shall thereupon become coterminous with said city or town, and there shall be levied annually in such new territory all taxes previously voted in said district for the purpose of supplementing the funds for the eight months public school term for said district and for the purpose of paying the principal or interest of any bonds or other indebtedness previously issued or

incurred by said district; and a vote in favor of such enlargement shall be deemed and held to be a vote in favor of the levying of such taxes. The validity of the said election and of the registration for said election and of the correctness of the determination of the result of said election shall not be open to question except in an action or proceeding commenced within thirty days after the determination of the result of said election. At the same time that said election is held, it shall be lawful to hold an election in the entire territory of said city or town on the question of issuing bonds of said city or town or of said school district as so enlarged, for school purposes, and levying sufficient tax for the payment of said bonds, or on the question of levying a local annual tax on all taxable property in said city or town or in said school district as so enlarged, to supplement the funds for the eight months public school term for said district, in addition to taxes for the payment of bonds, in the same manner that would be lawful if said district had been so enlarged prior to the submission of said questions. One registration may be provided for all of said simultaneous elections. (1923, c. 136, s. 230; 1925, c. 143, s. 3; C. S. 5650.)

§ 115-197. Local tax districts from portions of contiguous counties.—a. Local tax districts may be formed as provided in this section out of contiguous portions of two or more counties.

The petition for such a district must be initiated as petitions for local tax elections are initiated under the provisions of this article, must be endorsed by the county boards of education of such contiguous counties and each county board of education shall certify to the board of county commissioners of its county that the metes and bounds of the proposed joint local tax district are in accordance with and are an integral part of the lawfully adopted plan of organization in so far as they pertain to said county.

The board of commissioners of each county, in compliance with the provisions of this article relating to the conduct of local tax elections, shall then call and hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion and the returns canvassed and recorded as required in this article for local tax districts.

b. In case the election carries in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district; which shall be and become a body corporate by the name and style of '..... Joint Local Tax School District of .... Counties.' The county board of education having the largest school census and the largest area in the part of the joint local tax districts lying in its county shall determine the location of the schoolhouse; but if the largest census and area do not both lie in the same county, then the county boards shall jointly select the site for the building, and in case of a disagreement they shall submit the question to the board of arbitration, consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of the board of arbitration shall be binding upon all county boards of education concerned.

c. The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred in this section. This said committee shall have all the powers and duties of committee of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

d. The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Act and County Fiscal Control Act in the corporate name of the district, signed by the chairman and secretary of the school committee, sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for interest and principal shall be levied and collected as provided in subsection c above for the levy and collection of local taxes.

e. The committee shall have the same power to call and hold elections to ascertain the will of the voters of the district upon the question of increasing the local tax levy to a maximum rate of fifty cents on the one hundred dollars ($100.00) valuation of taxable property as it has in the case of bond elections. But local tax elections called and held in such joint districts shall be held under the general provisions of this article governing local tax elections, except that the district committee is hereby granted the powers

of county boards of education and boards of commissioners as to local tax elections.

f. The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Building Funds or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount is to be repaid by the district from district funds.

g. All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

h. The county board of education and county superintendent of public instruction of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts subject only to the limitations of this section.

i. It shall be the duty of the committee of the joint school district to prepare a budget in accordance with the law requiring budgets. The said budget, which shall show the proportionate part of the expenses to be contributed by each county, the several parts to be ascertained on the basis of the proportions of the total district school census living in each respective county, shall be filed by the committee with the county board of education of each county, and it shall be the duty of each board, if it approves the district budget, to incorporate it in the county budget to be submitted to the commissioners each year. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

j. All districts formed before the ratification of this amendment under the provisions of section two hundred and thirty-two, chapter one hundred and thirty-six, Public Laws of one thousand nine hundred and twenty-three, and all districts incorporated before the ratification of this amendment, under the provisions of section two hundred and thirty-three of said chapter, are hereby authorized and empowered to exercise all the powers and privileges conferred by this section as amended. (1923, c. 136, s. 232; 1924, c. 32; C. S. 5651.)

§ 115-198. District already created out of portion of two or more counties.—Districts that have already been created out of portions of two or more counties may be incorporated in the following manner: Upon petition of the county board of education of each county, calling for an election the commissioners of each county shall call an election which shall be conducted in all respects as an election for voting local taxes. The ballots to be used in said election shall have written or printed thereon the words, "For Incorporation," and, "Against Incorporation." If a majority of the qualified voters in the portion in each county shall cast their ballots for incorporation, the district is thereby incorporated and shall possess all the authority of incorporated districts as provided in this article. (1923, c. 136, s. 233; C. S. 5652.)

Art. 23. Special School Taxing Districts.

§ 115-199. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-200. School taxing districts created.—The following territorial divisions of a county are hereby declared to be special school taxing districts in which special school taxes may be voted as hereinafter provided: (1) A township; (2) two or more contiguous or consecutive districts, all of which may be embraced within one common boundary; (3) two or more contiguous or consecutive townships, all of which may be embraced within one common boundary; (4) one or more districts and one or more townships contiguous, all of which may be embraced within one common boundary, and (5) the entire county excluding one or more tonwships or one or more special charter districts. (1923, c. 136, s. 234; C. S. 5655.)

§ 115-201. Boundary lines.—The county board of education, after ascertaining in what special school taxing district it is desirable to levy a special local tax, to supplement the eight months school term, shall define or describe the boundary lines so as to include the territorial divisions embracing only the special school taxing district in which a special school tax election for schools is to be called, and to exclude all other territory. The boundary lines of the special school taxing district, having been defined and recorded on the minutes of the board of education, a special school tax election may be held as hereinafter provided to equalize school advantages within the special school taxing district. (1923, c. 136, s. 235; C. S. 5656.)

§ 115-202. Petition for an election.—The petition for an election in a special school taxing district shall be made as follows: The governing school boards of at least a majority of the school districts within the special school taxing district shall indorse the petition, and it shall be approved by the county board of education. Said petition shall state the maximum rate of tax to be voted on, which rate shall not exceed fifty cents (50c) on the one hundred dollars ($100.00) valuation of all property, real and personal:

Provided, however, that when a special school taxing district created in accordance with the provision of this article includes or embraces two or more school districts having indebtedness incurred for the erection of school buildings, the maximum rate of fifty cents (50c) specified in this section may be exceeded by an additional rate necessary to take care of the combined aforesaid indebtedness of the several districts incurred for the erection of such school buildings. (1923, c. 136, s. 236; 1927, c. 37; C. S. 5657.)

§ 115-203. The election.—Whenever a petition properly indorsed and approved is presented to the board of county commissioners, said board shall call an election in said special school taxing district and fix a date for holding the same. The rules governing the election, the levy and collection of taxes, and the frequency of elections in a special school taxing district shall be the same as rules governing elections, the levy and collection of taxes, and the frequency of elections as provided in article 22. (1923, c. 136, s. 237; C. S. 5658.)

§ 115-204. Special school taxing districts.—If a majority of the qualified electors in the special school taxing district shall vote in favor of the special school tax, then it shall operate to repeal all school taxes theretofore voted in any local tax district located within said special school taxing district, except such taxes as may have been voted in said local tax district to pay the interest on bonds and to retire bonds outstanding. But the county board of education shall have the authority to assume all indebtedness, bonded and otherwise, of said local tax district and pay all or a part of the interest and installments out of the revenue derived from the rate voted in the special school taxing district: Provided, the revenue is sufficient to equalize educational advantages and pay all or a part of the interest and installments on said bonds. (1923, c. 136, s. 238; C. S. 5659.)

§ 115-205. Organization of the schools in special school taxing districts.—The county board of education is hereby authorized to organize the schools in a special school taxing district after a special school tax has been voted, in such a way as to equalize educational opportunities within said district. (1923, c. 136, s. 239; C. S. 5660.)

Art. 24. County Tax for Supplement in Which Part of Local Taxes May Be Retained.

§ 115-206. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-207. Election upon petition of county board of education.—Upon the petition of the county board of education of any county, the county commissioners shall order an election to be held in the county to ascertain the will of the people whether there shall be levied on all taxable property and polls in the county a special county tax, not to exceed fifty cents (50c) on the one hundred dollars ($100.00) valuation of property, to supplement the eight months school fund. (1923, c. 136, s. 242; C. S. 5663.)

§ 115-208. Rules governing election.—The election shall be conducted for the county as nearly as may be under the "Rules Governing Elections for Local Taxes" as provided in this subchapter. (1923, c. 136, s. 243; C. S. 5664.)

§ 115-209. Maximum tax levy.—In the event that a majority of the qualified voters at said election shall vote in favor of a special county tax, said tax shall be in addition to all taxes theretofore voted in any local tax district except as provided in § 115-210. The maximum rate voted shall be annually levied and collected each year in the same manner and at the same time as other taxes of the county are levied and collected, unless the county board of education shall petition for a lower rate. In that event the county commissioners shall levy the rate requested. (1923, c. 136, s. 244; C. S. 5665.)

§ 115-210. The rate in local tax districts. — Whenever the maximum special county tax rate levied or to be levied under the provisions of this article is less than fifty cents (50c), each local tax or special school taxing district shall have the authority to levy an additional rate, not in excess of the local tax rated voted in the district.

All indebtedness, bonded or otherwise, of said district or districts may be assumed by the county board of education; and such indebtedness, if assumed by the county board of education, shall be paid out of the special county tax levied under the provisions of this article. (1923, c. 136, s. 245; 1925, c. 180, s. 2; 1933, c. 299; C. S. 5666.)

§ 115-211. Subsequent elections upon failure of first.—In case a majority of qualified voters of said election in any county shall fail to vote for said special county tax, on petition of a majority of the members of the county board of education of the county, the county commissioners may, after six months, order another election in the same manner and under the same rules governing elections for local taxes. (1923, c. 136, s. 246; C. S. 5667.)

§ 115-212. Payment of election expenses.—The expenses of holding said election shall be paid out of the school fund of the county. (1923, c. 136, s. 247; C. S. 5668.)

Art. 25. Legal Attendance of Pupils in School Districts.

§ 115-213. Children residing in a school district shall have the advantage of the public school.— The following persons residing in local tax or special school taxing districts shall be entitled to all the privileges and advantages of the public schools of said district or districts unless removed from school for cause:

(a) All residents of the district who have not completed the prescribed course for graduation in the high school.

(b) All children whose parents have recently moved into the district for the purpose of making their legal residence in the same.

(c) Any child or children living with either

the father or the mother or guardian who has made his or her permanent home within the district.

(d) Any child received into the home of any person residing in the district as a member of the family, who receives board and other support free of cost. (1923, c. 136, s. 240; C. S. 5661.)

§ 115-214. Credits on tuition to nonresidents whose children attend in district.—Any parent or person in loco parentis residing outside of any local tax or special school taxing district, and owning property within said district, whose child, children, or wards shall attend school in said district, shall be entitled to receive as a credit on the tuition of said child, children, or wards the amount of special school taxes paid on said property. The county board of education may arrange with any such district to send any child or children residing in the county to the school in such district, if they are without adequate educational advantages, for the eight months term, and to pay the actual cost of the instruction of the children, including the appropriations from the eight months school fund. (1923, c. 136, s. 241; C. S. 5662.)

SUBCHAPTER IX. BONDS AND LOANS FOR BUILDING SCHOOLHOUSES.

Art. 26. Funding or Refunding Loans from State Literary and Special Building Funds.

§ 115-215. State board of education authorized to accept funding or refunding bonds of counties for loans; approval by local government commission.—In any case where a loan has heretofore been made from the state literary fund or from any special building fund of the State to the county board of education of a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the state board of education be and the same is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the local government commission. (1935, c. 399, s. 1.)

§ 115-216. Issuance of bonds as part of general refunding plan.—In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligations to put same into effect, the state board of education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1935, c. 399, s. 2.)

Art. 27. Collection of Amounts Due State Literary and Revolving Funds.

§ 115-217. Collecting delinquent amounts due by counties; offsetting amounts due counties on account of road contracts.—In all instances where any sum or amount is due from any county or board of education or school unit therein to the state or to the literary fund or to the revolving fund set up by the general assembly providing loans for the construction of school buildings, and where any sum or amount is payable to such county by reason of any contract made on behalf of the state highway commission or its successor, the state highway and public works commission, for loans made to such commission by such county in behalf of roads, it shall be competent and lawful to offset the amount due such county on account of any contract made with the state highway commission or its successor, the state highway and public works commission, not assigned prior to the passage of this article, by the amount due by such county or board of education or school unit in said county to the State or to the literary fund or the revolving fund set up by the general assembly providing loans for construction of school buildings. (1935, c. 411, s. 1.)

§ 115-218. Crediting sums due counties for road loans.—If the amount due such county on account of loans made to the state highway commission or its successor, the state highway and public works commission, and not assigned prior to the passage of this article, is insufficient to pay the amount due the State or the literary fund or to the revolving fund by such county, then the amount due such county on account of loans to the highway commission shall be credited on the amount due by such county to the State or literary fund or revolving fund. (1935, c. 411, s. 2.)

§ 115-219. Provisions of article to be observed by state officers.—The treasurer and other officers of the State charged with the duty of disbursing any funds by reason of such contract between the state highway commission or the state highway and public works commission already made or hereafter to be made are required to observe the provisions of § 115-218 and shall not issue or authorize issuance of any voucher contrary thereto. (1935, c. 411, s. 3.)

Art. 28. Loans from State Literary Fund.

§ 115-220. Loans by state board from state literary fund.—The state board of education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may make loans from the state literary fund to the county board of education of any county for the building and improving of public schoolhouses or dormitories for rural high schools and teacherages in such county; but no warrant for the expenditure of money for such purposes shall be issued by the auditor except upon the order of the state superintendent of public instruction, with the approval of the state board of education. (1923, c. 136, s. 273; C. S. 5683.)

§ 115-221. Terms of loans.—Loans made under the provisions of this article shall be payable in ten installments, shall bear interest at four per centum, payable annually, and shall be evidenced by the note of the county board of education, executed by the chairman and secretary thereof, and deposited with the state treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be

paid by the county board on the tenth day of February after the tenth day of August subsequent to the making of such loan and the remaining installments, together with the interest, shall be paid, one each year, on the tenth day of February of each subsequent year till all shall have been paid. (1923, c. 136, s. 274; C. S. 5684.)

§ 115-222. How secured and paid.—At the January meeting of the county board of education, before any installment shall be due on the next tenth day of February, the county board shall set apart out of the school funds an amount sufficient to pay such installments and interest to be due, and shall issue its order upon the treasurer of the county school fund therefor, who, prior to the tenth day of February, shall pay over to the state treasurer the amount then due. And any amount loaned under the provisions of this law shall be a lien upon the total school funds of such county, in whatsoever hands such funds may be; and upon failure to pay any installment or interest, or part of either, when due, the state treasurer may deduct a sufficient amount for the payment of the same out of any fund due any county from any state appropriation for public schools, or he may bring action against the county board of education of such county, any person in whose possession may be any part of the school funds of the county, and the tax collector of such county; and if the amount of school funds then on hand be insufficient to pay in full the sum so due, then the state treasurer shall be entitled to an order directing the tax collector of such county to pay over to the state treasurer all moneys collected for school purposes until such debt and interest shall have been paid: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by the authorities of any county or any district. (1923, c. 136, s. 275; C. S. 5685.)

§ 115-223. Loans by county boards to school districts.—The county board of education, from any sum borrowed under the provisions of this article, may make loans only to districts that have already levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in ten annual installments, with interest thereon at four per centum, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by the authorities of the district. (1923, c. 136, s. 276; C. S. 5686.)

§ 115-224. Appropriation from loan fund for free plans and inspection of school buildings.—The state board of education may annually set aside and use out of the funds accruing to the interest of said state loan fund a sum not exceeding twelve thousand dollars ($12,000.00), to be used for providing plans for modern school buildings to be furnished free of charge to districts, for providing proper inspection of school buildings and the use of state funds, and for such other purposes as said board may determine, to secure the erection of a better type of school building and better administration of said state loan fund. (1923, c. 136, s. 277; C. S. 5687.)

Art. 29. Relending Certain Funds.

§ 115-225. Payment of loans before maturity; relending.—For the purpose of providing funds to be loaned to the counties of the state for erecting school buildings and providing facilities for maintaining the school term, the state board of education is authorized to accept payment from any district and/or county for the full amount of loans due the state on loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven before the maturity of such loans.

The state board of education is authorized to relend any payments made by counties to counties for the period that the loans would have run had they not been paid before maturity, and at the same rate of interest.

The state board of education shall follow the laws, rules and regulations set up for making loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven in lending money made available by the payment of loans from the said funds before the maturity date thereof.

In making loans from funds made available from payments on the special building funds before maturity, the state board of education shall be governed by laws and amendments to the constitution enlarging or restricting the borrowing power of counties and/or municipalities. (1937, c. 115, ss. 1-4.)

Art. 30. State Bond Sinking Fund Act.

§ 115-226. Title.—This article shall be known and may be cited as "The State School Bond Sinking Fund Act." (1927, c. 177, s. 1.)

§ 115-227. State treasurer to set aside moneys.—From all moneys heretofore or hereafter received in repayment of the principal of or in payment of interest upon loans from the special building funds created under each of the acts known as chapter 147, Public Laws of 1921, sections 278-284, chapter 136, Public Laws of 1923, and chapter 201, Public Laws of 1925, the State Treasurer shall from time to time set aside moneys sufficient for paying interest upon the bonds of the State issued under the same act, and shall use the

moneys so set aside in paying such interest when due. (1927, c. 177, s. 2.)

§ 115-228. Remainder declared sinking fund.— The remainder of such repayments of principal and payments of interest under each of said acts, except repayments of the first four annual installments of principal of the original loans made under said Chapter 201, Public Laws of 1925, is hereby declared to constitute a sinking fund, and shall be kept as a separate fund and used for the payment of the principal of the bonds of the state issued under the same act, as such principal shall fall due. (1927, c. 177, s. 3.)

§ 115-229. Duty of State Sinking Fund Commission.—It shall be the duty of the State Sinking Fund Commission to provide for the custody, investment and application of the three sinking funds hereby created. All the provisions of law now or hereafter in force in respect of the custody, investment and application of State sinking funds by said commission including penalties, shall apply to and govern said commission in the custody, investment and application of the said three funds. (1927, c. 177, s. 4.)

§ 115-230. State Treasurer to have custody of notes and evidences of debt.—The State Treasurer shall have the custody of all notes and other evidences of indebtedness on account of such loans, and it shall be the duty of each and every officer or person now having the custody or disposal of any such notes or evidences of indebtedness to deliver the same to the State Treasurer. (1927, c. 177, s. 5.)

§ 115-231. Obligation of treasurer's bond.— The official bond of the State Treasurer shall cover each and all of his duties under the act. (1927, c. 177, s. 6.)

SUBCHAPTER X. BONDS TO PAY OUTSTANDING INDEBTEDNESS OF SPECIAL CHARTER SCHOOL DISTRICTS.

Art. 31. Issuance and Levy of Tax for Payment.

§ 115-232. Issued under supervision of Local Government Commission. — The governing body of any special charter school district may, with the approval of the Local Government Commission, issue bonds of the district to such an amount as may be required to pay indebtedness, other than bonded indebtedness, of the district heretofore incurred and now outstanding whether represented by the original obligation or by renewals, or otherwise. The issue and sale of such bonds shall be subject to the provisions of the Local Government Act relating to the issue and sale of public securities, §§ 159-1 et seq. (1931, c. 180, s. 1.)

§ 115-233. Special tax to be levied and collected.—The authorities charged by law with the duty of levying and collecting school taxes in each special charter school district that shall have issued bonds hereunder, shall annually levy and collect, in addition to all other taxes, a special tax sufficient to meet the interest and principal of all bonds issued by the said district under the authority hereof. (1931, c. 180, s. 2.)

SUBCHAPTER XI. SCHOOL DISTRICT REFUNDING AND FUNDING BONDS.

Art. 32. Issuance and Levy of Tax for Payment.

§ 115-234. "School district" defined.—As used in this article the term "school district" shall be deemed to include each special school taxing district, local tax district and special charter district by which or on behalf of which bonds have heretofore been issued and are now outstanding. (1935, c. 450, s. 1.)

§ 115-235. Continuance of school districts till bonds paid. — Notwithstanding the provisions of any law heretofore enacted or enacted hereafter at the present regular session of the general assembly which affect the continued existence of school districts or the levy of taxes therein for the payment of bonds, each such school district shall continue in existence with the boundaries heretofore established until all bonds thereof now outstanding or bonds issued to refund the same, together with the interest thereon, shall be paid. (1935, c. 450, s. 2.)

§ 115-236. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.—The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of §§ 159-59 to 159-62, and the Local Government Act §§ 159-1 et seq. and acts amendatory thereof and supplemental thereto. The tax levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1935, c. 450, s. 3.)

§ 115-237. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.— In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Act and acts amendatory thereof and

supplemental thereto, except in the following respects:

(a) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

(b) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, §§ 160-379 and 160-383 of the Municipal Finance Act, as amended, shall be read and understood as if they contained no requirements in respect to such matters.

(c) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1937, c. 126; 1941, c. 148.)

SUBCHAPTER XII. SCHOOL DISTRICT TAXES AND SINKING FUNDS.

Art. 33. Transfer to County Treasurer.

§ 115-238. Taxes collected in school districts where bonds assumed by county directed to county treasurer. — In all cases in which the bonds of special school districts have been or may hereafter be assumed by the county in which such district is located, all taxes levied and collected for the purpose of paying the interest upon said bonds and creating a sinking fund for the retirement of said bonds shall be paid to the county treasurer by the sheriff or tax collector. (1935, c. 242, s. 1.)

§ 115-239. Allocation to district bonds of taxes collected.—If a uniform debt service tax is levied and collected by the county in which school district bonds are now outstanding and have been assumed by the county, all of said tax so levied and collected shall be paid to the county treasurer and the county treasurer shall allocate to each issue of school district bonds its proportionate part of the tax so levied and collected each year. (1935, c. 242, s. 2.)

§ 115-240. All sinking fund moneys and securities likewise directed to county treasurers. — In all cases where school district bonds have been assumed or may hereafter be assumed by the county in which district is located any and all moneys and securities held by the treasurer, trustee or committee of such district or sinking fund commissioner such officer is authorized to transfer any and all moneys and securities belonging to such sinking fund account to the county treasurer of such county and upon the transfer of such funds and securities and a proper accounting therefor such district treasurer, trustee, committee or sinking fund commissioner shall be discharged from further responsibility for the administration of and accounting for such sinking funds. (1935, c. 242, s. 3.)

Local Modification.—Richmond: 1935, c. 242, § 4.

SUBCHAPTER XIII. VOCATIONAL EDUCATION.

Art. 34. Duties, Powers and Responsibilities of State Board for Vocational Education.

§ 115-241. Acceptance of benefits of federal vocational education act.—The state of North Carolina hereby accepts all of the provisions and benefits of an act passed by the senate and house of representatives of the United States in Congress assembled, entitled "An act to provide for the promotion of vocational education; to provide for coöperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for coöperation with the states in the preparation of teachers of vocational subjects, and to appropriate money and regulate its expenditure"; approved February twenty-third nineteen hundred and seventeen. (1923, c. 136, s. 285; C. S. 5695.)

§ 115-242. State board for vocational education created.—There is hereby created a state board for vocational education, to consist of four members, as follows: The state superintendent of public instruction and three other members, to be appointed by the governor, one to represent agriculture, one to represent home economics, and one to represent trades and industries. The terms of office of these men shall be, for one member two years, for one member four years, and for one member six years, who shall serve till their successors are appointed; and thereafter each member shall be appointed for a term of four years. (1923, c. 136, s. 286; C. S. 5696.)

§ 115-243. Powers and duties of board.—The state board for vocational education shall have all necessary authority to coöperate with the federal board for vocational education in the administration of the federal vocational educational act, to administer any legislation pursuant thereto enacted by the state of North Carolina, and to administer the funds provided by the federal government and the state of North Carolina for the promotion of vocational education in agricultural subjects, trade and industrial subjects and home economics subjects. It shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education in the state of North Carolina, and to provide for the preparation of teachers in such subjects. Subject to the approval of the Budget Bureau, it shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the state of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the result of such investigations, and to issue other publications as seem necessary to the board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to coöperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for the teachers, directors, and supervisors of such subjects; to coöperate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations

the qualifications to be possessed by persons engaged in the training of vocational teachers. (1923, c. 136, s. 287; C. S. 5697.)

§ 115-244. State superintendent to enforce article.—The state superintendent of public instruction shall serve as executive officer of the state board for vocational education, and shall designate, by and with the advice and consent of the board, such assistants as may be necessary to properly carry out the provisions of this article. The state superintendent shall also carry into effect such rules and regulations as the board may adopt, and shall prepare such reports concerning the condition of vocational education in the state as the board may require. (1923, c. 136, s. 288; C. S. 5698.)

§ 115-245. State appropriation to equal federal appropriation.—The state of North Carolina appropriates out of the state public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the state of North Carolina from the federal treasury, under the provisions of the Smith-Hughes act and the industrial rehabilitation act. Provided, that only such portion of above state appropriation shall be used as may be absolutely necessary to carry on the work outlined in this article and to meet the federal requirements. (1923, c. 136, s. 289; C. S. 5699.)

§ 115-246. State treasurer authorized to receive and disburse vocational education fund.—The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriation made by said act of Congress or any other acts of Congress passed subsequent thereto, and he is authorized to receive and to provide for the proper custody of the same and to make disbursement thereof in the manner provided for in said acts and for the purpose therein specified. He shall also pay out moneys appropriated by the state of North Carolina for the purpose of carrying out the provisions of this article upon the order of the state board for vocational education. (1923, c. 136, s. 290; 1941, c. 277; C. S. 5700.)

§ 115-247. Coöperation of county authorities with state board; funds.—The county board of education, board of county commissioners, or the board of trustees of any city administrative unit may coöperate with the state board for vocational education in the establishment of vocational schools or classes giving instruction in agricultural subjects, or trade or industrial subjects, or in home economics subjects, or all three subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that nothing in this article shall be construed to repeal any appropriations heretofore made by any of said boards for said purposes. (1923, c. 136, s. 291; C. S. 5701.)

§ 115-248. Report to governor.—The state board for vocational education shall make a report annually to the governor, setting forth conditions of vocational education in the state, a list of the schools to which federal and state aid have been given, and a detailed statement of the expenditures of federal funds and state funds provided for in this article. (1923, c. 136, s. 292; C. S. 5702.)

Art. 35. Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ 115-249. Acceptance of federal aid.—The state of North Carolina hereby accepts all of the provisions and benefits of an act passed by the senate and house of representatives of the United States in Congress assembled to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to civil employment, approved June second, one thousand nine hundred twenty. (1923, c. 136, s. 315; C. S. 5725.)

§ 115-250. Coöperation; objects and plans; compensation of officials; expenses; publications.—The state board for vocational education shall have all necessary authority to coöperate with the federal board for vocational education in the administration of the act of congress providing for the vocational rehabilitation of persons injured in industry and otherwise; to administer any legislation pursuant thereto enacted by the state of North Carolina; and to administer the funds provided by the federal government and the state of North Carolina under the provisions of § 115-245. It shall have full authority to formulate plans for the promotion of vocational rehabilitation. Subject to the approval of the budget bureau, the board shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the state of North Carolina; and to pay such compensation and other expenses of administration as are necessary from funds appropriated under this law. It shall have authority to make studies and investigations relating to vocational rehabilitation; to publish the result of such investigations and to issue other publications as seem necessary to the board; to promote and aid in the establishment of schools, departments, or classes giving instruction in vocational subjects for rehabilitation purposes; and to prescribe qualifications for the teachers, directors, and supervisors of such subjects. (1923, c. 136, s. 316; C. S. 5726.)

§ 115-251. State appropriation from state public school fund.—The state of North Carolina appropriates out of the state public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the state of North Carolina from the federal treasury under an act of Congress to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to civil employment: Provided, that only such portions of the above state appropriation shall be used as may be absolutely necessary to carry on the work outlined in articles thirty-four and thirty-five. (1923, c. 136, s. 317; C. S. 5727.)

§ 115-252. Coöperation with state board of health; reports as to persons under treatment.—The state board of health shall, (a) coöperate with the state board for vocational education in arranging with all public and private hospitals, clinics, dispensaries, health officers, and practicing physicians, to send to the state board for vocational education prompt and complete reports of any persons under treatment in such hospitals, clinics, dispensaries, or by such physicians or

health officers, for any injury or disease that may render them permanently, physically, and vocationally handicapped to such an extent that they are or will be unable to support themselves, and (b) coöperate generally with the state board for vocational education in carrying out the provisions of this article. (1923, c. 136, s. 318; C. S. 5728.)

§ 115-253. State appropriation. — The state of North Carolina shall appropriate for each fiscal year a necessary amount of money from the state treasury to the state board for vocational education for the purpose of assisting worthy persons who enter training under the federal vocational rehabilitation act: Provided, (1) that this fund shall be used only to pay for the actual living expenses of deserving persons, as determined by investigation of the board, who have no other means of paying said living expenses; (2) that this fund shall be paid out by the state treasurer on the order of the state board for vocational education; (3) that not to exceed ten dollars per week for not more than twenty weeks, unless an extension of time is granted by the board, be paid for the maintenance of any one person in training; (4) that the said state board for vocational education shall keep an accurate account of all expenditures, showing date, the person to whom paid, for what paid, and the amount of each warrant, and shall make a report of same to the governor on or before the first of January each year. (1923, c. 136, s. 319; C. S. 5729.)

Art. 36. Textile Training School.

§ 115-254. Commission to investigate suitable site for textile training institute.—The governor of North Carolina is hereby authorized to appoint a commission composed of seven persons, five of whom shall be experienced textile operators, and two selected at large as to qualifications described by the governor. The said committee shall investigate the various cities of the Piedmont section of North Carolina for the selection of a site to establish what will later be known as "North Carolina Textile Institute", or some appropriate name to be selected by the commission. (1941, c. 360, s. 1.)

§ 115-255. Chairman of commission; operation of institution by state board for vocational education.—The governor of North Carolina shall be chairman of the above named commission, and the operation and administration of said institution shall be placed in the hands of the state board for vocational education or such board as it may appoint or designate as its representative in the administration of said institution. (1941, c. 360, s. 2.)

§ 115-256. Persons eligible to attend institute; subject taught.—Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the state of North Carolina. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1941, c. 360, s. 3.)

§ 115-257. Allocation of funds for erection of buildings; contributions; use of federal funds.—The governor of North Carolina and the council of state may allocate a sum not to exceed fifty thousand ($50,000.00) dollars from the contingency and emergency fund or any other funds available for the purpose of erecting buildings for said institute, and the commission shall be authorized to accept the contributions of land and money from interested persons, and shall be authorized to lease and accept loans from machinery manufacturers for the operation of the plant. Vocational education funds appropriated to the state board for vocational education by the federal government and by the general assembly of North Carolina shall be used for instructional purposes in said institute, according to the rules and regulations governing the expenditure of state funds. (1941, c. 360, s. 4.)

SUBCHAPTER XIV. TEXTBOOKS AND PUBLIC LIBRARIES.

Art. 37. Textbooks for Elementary Grades.

§ 115-258. State board of education adopts textbooks.—The state board of education is hereby authorized to adopt, for the exclusive use in the public elementary schools of North Carolina, supported wholly or in part out of the public funds, textbooks and publications, including instructional materials, to meet the needs of such schools in each grade and on each subject matter in which instruction is required to be given by law. It shall adopt for a period of five years from a multiple list submitted by the textbook commission, as hereinafter provided, two basal primers for the first grade and two basal readers for each of the first three grades, and one basal book or series of books on all other subjects contained in the outline course of study for the elementary grades where a basal book or books are recommended for use: Provided, the state board of education may adopt not exceeding three basal books on the subject of North Carolina history and, if such multiple adoption is made, the state board of education may by rules and regulations prescribe the manner of use of such books in the public schools of the state: Provided further, the state board of education may enter into contract with a publisher for a period less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1923, c. 136, s. 320; 1933, c. 464, s. 1; 1939, c. 68; C. S. 5730.)

§ 115-259. Books adopted for an indefinite period.—At the expiration of the contract now existing between the state board of education and the publisher for any particular book or books, the state board of education, upon satisfactory agreement with the publisher, may continue the contract for any particular book or books indefinitely; that is, for a period not less than one nor more than five years.

The state board of education may, at any time it finds a book unsatisfactory, call for a new report from the textbook commission on the subject adopted for an indefinite length of time. Moreover, the textbook commission at any time, with the approval of the state superintendent of public instruction, may recommend to the state board of education that a given book adopted indefinitely is unsatisfactory or may be greatly improved by the adoption of a new book or books.

In the event that a change of textbooks contracted for for an indefinite length of time is deemed necessary by the state board of education or by the textbook commission, the publisher shall be given at least three months notice prior

to the first day of May, and at the expiration of which time the state board of education is authorized to adopt from a list submitted by the textbook commission a new book or books on said subject. Moreover, the publisher of any textbook desiring to end a contract that has been extended indefinitely shall give the state board of education at least three months notice prior to the first day of May. In either event, when it becomes necessary to substitute a new book for an old one on the adopted list, the state board of education shall call for new recommendations from the textbook commission on that book, and proceed as in the first instance. (1923, c. 136, s. 321; C. S. 5731.)

§ 115-260. Classification of textbooks. — The textbooks in use in the public schools are hereby divided into two classes: (1) major subjects, which include readers, arithmetics, language and grammar, history and geography; and (2) all other books on all other subjects shall be considered as minor subjects. (1923, c. 136, s. 322; C. S. 5732.)

§ 115-261. Basal and supplementary books.—All textbooks to be adopted by the state board of education shall be basal books or supplementary books necessary to complete the course of study. (1923, c. 136, s. 322; 1933, c. 464, s. 2; C. S. 5733.)

§ 115-262. Basal books not to be displaced by supplementary.—The state board of education is hereby authorized to select and adopt all supplementary books and instructional material necessary to complete the course of study for all schools. Such supplementary books shall neither displace nor be used to the exclusion of basal books. (1923, c. 136, s. 324; 1933, c. 464, s. 3; C. S. 5734.)

§ 115-263. The textbook commission.—The governor and the superintendent of public instruction shall appoint a textbook commission composed of seven members to be selected from among the teachers, supervisors, principals, and superintendents actually engaged in school work in the state, to serve for five years or until their successors are appointed and qualified, and the governor and superintendent of public instruction shall have authority to fill any vacancy that may occur in the textbook commission, or to remove for sufficient cause any member of the commission. (1923, c. 136, s. 325; C. S. 5735.)

§ 115-264. Organization of commission.—Immediately after the appointment of the textbook commission the superintendent of public instruction shall cause said textbook commission to meet in his office and organize by electing a chairman and secretary, and shall adopt such rules and regulations to govern their work as may be deemed necessary, subject to the approval of the state superintendent of public instruction. The work of the textbook commission shall then be apportioned among the members, and the rules and regulations governing its work shall be published in the daily papers, and a copy shall be sent to all publishers that may submit bids and samples of books for adoption.

The several members of the textbook commission may work independently, seeking information from every legitimate source, but if the members of the textbook commission receive information from representatives of book companies they shall keep a record of each such visit and the purpose of the visit. (1923, c. 136, s. 326; C. S. 5736.)

§ 115-265. Compensation of commission.—Each member of the textbook commission shall be paid out of any funds under the control of the State Board of Education upon the approval of the budget bureau, on the requisition of the superintendent of public instruction, two hundred dollars ($200) for services, and, in addition, the necessary traveling expenses authorized by the superintendent of public instruction: Provided, that the chairman of this commission shall be paid two hundred and twenty-five dollars ($225.00). The members so appointed shall serve for a period of five years, or until their successors are appointed, and shall be subject to the call of the state board of education at any time during their term of service: Provided further, that for any service rendered more than one year after appointment each member shall be paid a per diem of five dollars ($5.00) and necessary traveling expenses. (1923, c. 136, s. 327; 1927, c. 249; C. S. 5737.)

§ 115-266. Duties of commission.—The textbook commission shall first prepare, subject to the approval of the superintendent of public instruction, and publish at the expense of the state, an outline course of study setting forth what subjects shall be taught in each of the elementary grades. It shall give in outline the number of basal and supplementary books on each subject to be used in each grade in accordance with the law.

After the outline course of study has been prepared and published, the textbook commission shall then prepare a multiple list of basal books to be submitted to the state board of education. The multiple list shall contain not less than four nor more than eight books or series of books on all subjects for each grade. No book shall be included in the multiple list that a majority of the textbook commission deems unsuitable, or that does not conform to the outline course of study.

The textbook commission shall report whether any of the major subjects containing a series of books may be divided, taking one part from one series and another part from another series of books on the same subject, and the commission's report in this respect shall be binding on the state board of education. (1923, c. 136, s. 328; 1933, c. 464, s. 4; C. S. 5738.)

§ 115-267. State board of education makes all contracts.—(a) The state board of education shall make all needful rules and regulations governing the advertisement for bids, when and how prices shall be submitted, when and how sample books for adoption shall be submitted, the nature of the contract to be entered into between the state board of education and the publishers, the nature and kind of bond, if any is necessary, and all other needful rules and regulations governing the adoption of books for all public schools not otherwise specified in this article. After a contract has been entered into between the state board of education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, etc., the attorney-general shall bring suit against said company, when requested by the state board of education, for such amount as may be sufficient to enforce the contract or to com-

pensate the state because of the loss sustained by a failure to keep this contract. (b) It shall be unlawful for any local distributing agency distributing State-adopted textbooks to charge, or to make any deduction from, the purchase price of such textbooks when returned by the purchaser without having been subjected to use or damage. Any person violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction fined not less than fifty dollars or imprisoned not more than thirty days. (1923, c. 136, s. 329; 1925, c. 69; 1933, c. 464, s. 5; C. S. 5739.)

§ 115-268. Not more than one major subject to be changed in any one year.—Not more than one major and two minor subjects shall be changed in any one year: Provided, satisfactory arrangements as to prices and distribution may be made. (1923, c. 136, s. 330; C. S. 5740.)

§ 115-269. Publishers to register all agents or employees.—Publishers submitting books for adoption shall register in the office of the state superintendent of public instruction all agents or other employees of any kind authorized to represent said company in the state, and this registration list shall be open to the public for inspection. (1923, c. 136, s. 331; C. S. 5741.)

§ 115-270. Acquisition of manuscripts for textbooks permitted; publication thereof by state board of education.—The said board of education is hereby authorized and empowered in its discretion to purchase and/or acquire a manuscript or manuscripts for school textbooks or supplementary books used or to be used in any or all grades of the public schools of North Carolina and to procure the printing and publishing of such books under contract through competitive bids or otherwise as it may in its discretion determine to be for the best interest of the public schools of the state; and if said board of education finds that by the acquisition of any such manuscript or manuscripts, and that by the making of any such contract for any such school books, either basal or supplementary, such books can be furnished to the public schools of the state at a price less than the same may be acquired from publishers, then it shall be the duty of said board of education to acquire such manuscripts and cause the same to be published and said books to be distributed in accordance with such rules and regulations and under such terms and conditions as it may deem advisable, having due regard to the standard of the school books so published, after taking into consideration the substance of such books and their adaptability for use in the schools of the state. (1933, c. 464, s. 6.)

§ 115-271. Contracts for distribution of textbooks through depositories or a state agency. — The state board of education is authorized and empowered to make and enter into all such contracts as may be necessary to provide for the proper distribution of textbooks either through a depository or depositories, or through the state division of purchase and contract or other state agency, utilizing county boards of education or city boards of trustees, if found feasible, for local distribution, as to it may seem advisable; and is further authorized and empowered to make all needed rules, regulations, and contracts governing the disposition, sale, and return of school books as are not disposed of to the patrons of the schools, and to determine the nature of the contract or contracts to be entered into between the state board of education and the publisher or publishers, for the distribution of school textbooks adopted by it or in use in any of the public schools of the state. It may also determine the nature and kind of bond, if necessary, to be given by any depository or other agency carrying out the terms of this article, to the end that school textbooks shall be delivered to the patrons of the schools at the lowest possible net cost. (1933, c. 464, s. 7.)

Art. 38. Textbooks for High Schools.

§ 115-272. State Board of Education may adopt textbooks.—The State Board of Education is hereby authorized to adopt textbooks for the use in all public high schools of the State, supported in whole or in part out of public funds, and the high school textbooks adopted by the State Board of Education in accordance with the provisions of this article shall be used by all the public high schools of the State. (1931, c. 359, s. 1.)

§ 115-273. State committee on high school textbooks.—The Governor and the State Superintendent of Public Instruction shall appoint a State committee on high school textbooks, consisting of five members, five of whom are actively engaged in school work, who shall serve for a term of five years without compensation except for reimbursement out of the State Treasury upon the requisition of the State Superintendent of Public Instruction for actual expenses incurred by attendance upon meetings of the committee that may be called by or under the direction of the State Superintendent of Public Instruction. (1931, c. 359, s. 2.)

§ 115-274. Grouping of high school instruction; examination of books; submission of multiple list and annual reports. — It shall be the duty of the State Committee on high school textbooks to list all the high school fields of instruction in five separate groups as nearly equal as possible in the cost of textbooks. The Committee on high school textbooks shall further arrange these groups in the order in which they will be considered, and notify the State Board of Education in its first report of this arrangement. During the first year of its term of office, it shall be the further duty of the State Committee on high school textbooks to make a thorough examination of any and all books submitted by any publisher in the first group of fields of instruction as arranged by said State Committee on high school textbooks, with a view of determining whether the contents, quality and price of said books are such as to make them suitable and desirable for use in the public high schools of the State, and submit, not later than the first day of January, one thousand nine hundred and thirty-four, a multiple list not exceeding three books in each field of instruction in the first group. Not later than January first in each succeeding year, the State Committee on high school textbooks shall make a similar report on the fields of instruction in the order fixed by it, unless it receives a notice

from the State Board of Education prior to May first in said year that such report is not desired. (1931, c. 359, s. 3.)

§ 115-275. Selection of one book per subject by State Board of Education; indefinite contract with publishers; annual report by publishers. — It shall be the duty of the State Board of Education to select one book in each field of instruction from the multiple list submitted by the State Committee on high school textbooks for exclusive use in the public high schools of the State for a period not less than five years. In case the State Board of Education finds it impossible to make a satisfactory contract for any one of the books on the multiple list, then it shall notify the State Committee on high school textbooks that it cannot make a satisfactory contract for any book on the multiple list in that field of instruction. The State Committee on high school textbooks shall then submit another multiple list in that field of instruction from which the State Board of Education shall make an adoption. It shall be the further duty of the State Board of Education to make an indefinite contract with all the publishers having books in groups two, three, four and five for a period not less than one year nor more than five years, and these books shall continue in use until the State Board of Education, in accordance with the provisions of this article, shall adopt a book for State-wide use in any given field of instruction: Provided, that the contract shall require each publisher to report annually to the State Board of Education the total sales of each book in the State of North Carolina. (1931, c. 359, s. 4.)

§ 114-276. Attorney General to bring suit on publishers' contracts in event of failure to execute. —After a contract has been entered into between the State Board of Education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, an adequate supply of the edition of books as adopted, etc., the Attorney General shall bring suit against said company when requested by the State Board of Education, for such an amount as may be sufficient to enforce the contract or to compensate the State because of the loss sustained by failure to keep this contract. (1931, c. 359, s. 5.)

§ 115-277. Sale of books at lower price elsewhere reduces price to State.—If the publishers of any high school textbook on the adopted list in this State shall contract with another state, or with any county, city or town or other municipality, or shall place its books on sale anywhere in the United States, for or at a less price than that in its contract with the State of North Carolina, it shall be, and is hereby, made a part of the contract of that company to furnish that book to the high schools of this State at a price not to exceed that for which the book is furnished, sold, or placed on sale in any other state, or in any such other county, city, town or other municipality. (1931, c. 359, s. 6.)

§ 115-278. Adoption made exclusive.—The textbooks for high school instruction adopted under the provisions of this article shall be for the exclusive use of the high schools of this State when so adopted and placed upon the approved list in the manner as set out in this article. (1931, c. 359, s. 7.)

Art. 39. Furnishing Textbooks.

§ 115-279. Free textbooks.—Any county board of education, the committee of any local tax district, or the board of trustees of any city administrative unit in the state is authorized to purchase books for the use of pupils in said county or district to be loaned to said pupils, without charge for the same, under such needful rules and regulations governing the loan of said textbooks as the said board may prescribe.

If instruction is given in the manual and domestic arts, the county board of education, the committee or board of trustees may, in its discretion, purchase and lend the necessary implements and materials to the pupils. And it shall also in a similar manner procure such apparatus, reference books, and other means of illustration as may be needed in the school.

1. The board of county commissioners, in addition to levying taxes for the current expense fund, the capital outlay fund, and the debt service fund, is hereby authorized to levy an additional tax to be known as the "tax for supplying free textbooks," which shall be sufficient to pay the cost of purchasing and loaning textbooks after an estimate has been submitted and approved by the commissioners. Any committee of a local tax district, or any board of trustees of a city administrative unit in a county not supplying free textbooks, is hereby authorized to use any part of the local tax funds, not otherwise appropriated in the district, to carry out the provisions of this section.

2. In the event that the county board of education, or the board of county commissioners, or both, shall fail to provide in the budget a sum sufficient to supply free textbooks in accordance with this section, or in the event that the sum derived from the local taxes in any local tax district is insufficient to provide free textbooks in such district or unit after other necessary expenses are met, the question of supplying free textbooks may be submitted to the qualified voters in the following manner:

Whenever the written petition of one-fourth of the qualified voters of a county, or of a local tax district or city administrative unit, setting forth the tax rate to be levied and calling for an election to be held upon the question of levying an additional special annual tax with which to purchase and supply free textbooks, is presented to the governing board, said board shall present the petition to the tax leving authority of said county, district or unit, which body shall order an election and conduct the same as near as may be under the rules governing the election for local taxes. If a majority of the qualified voters in said county, district or unit, shall cast their ballots "for free textbooks," the tax shall be levied and collected as all other county or local taxes for schools are levied and collected. It shall be the duty of the governing body of the school to purchase books for the use of the pupils in said county, district or unit, and loan the same to pupils without charge in accordance with this section. (1923, c. 136, s. 340; C. S. 5750.)

§ 115-280. Rental of textbooks.—The county board of education or the board of trustees of any

local tax district or city administrative unit is hereby authorized to rent such books to the children of any school district at a rental price not to exceed that set by the state commission; and wherever books are rented that have not been contracted for by the state, the rental price shall not exceed that set by the state commission. (1923, c. 136, s. 341; C. S. 5751.)

§ 115-281. County and local boards to make rules; to use incidental expense fund.—The county board of education or the board of trustees of any local tax district or city administrative unit is hereby authorized to make all needful rules and regulations governing the rental of public school textbooks, and to apply any funds of the current expense fund remaining to the credit of the county or the city administrative unit to the purposes of this article: Provided, that before any amount is appropriated from this fund for these purposes, provisions shall be made for all needful expenses of said schools. (1923, c. 136, s. 342; C. S. 5752.)

§ 115-282. Books for indigent children.—County boards of education or the board of trustees of any local district or city administrative unit may set aside an amount not to exceed one hundred dollars ($100.00) from the incidental expense fund to be used in purchasing public school textbooks, to be used in the manner designated, namely, that when it shall appear that the education of any child is limited because of the inability of said child to purchase necessary textbooks or to pay the rental price, said board or boards may loan free of cost all necessary books to any such child during the term of the school, subject to rules and regulations by the county board of education or the board of trustees of any local tax district or city administrative unit, and approved by the state superintendent of public instruction. (1923, c. 136, s. 343; C. S. 5753.)

§ 115-283. State superintendent to inform local school authorities.—The state superintendent of public instruction is hereby requested to inform all superintendents of schools of the provisions of this article. (1923, c. 136, s. 344; C. S. 5754.)

§ 115-284. Local units authorized to establish capital fund for renting of textbooks.—The board of county commissioners in any county, upon the request of the county board of education therein, or of the board of trustees, of any city administrative unit therein, is hereby authorized and empowered to establish a capital fund in such county under the terms of and in accordance with the provisions of §§ 115-284 to 115-291, which fund shall be used by the county board of education, or by the board of trustees of any city administrative unit making such request for the operation of a system of textbook rentals to the patrons of the public schools of the county or city administrative unit, for which such capital fund may be established: Provided, however, that before any such request shall be presented to the board of county commissioners, the county board of education, or the board of trustees of any city administrative unit presenting the same shall obtain the approval of the State school commission as hereinafter provided. It shall be the duty of the State school commission to prepare rules and regulations governing the establishment of rental depositories in accordance with the provisions of §§ 115-284 to 115-291. It shall be the duty of the State Superintendent of Public Instruction to acquaint the public school officials with the rules and regulations of the school commission and to present to said commission for its approval or rejection all applications for such permission. (1931, c. 210, s. 1; 1933, c. 562, s. 2.)

§ 115-285. Computation of amount of fund.—The necessary amount of such capital fund shall be determined by the board of county commissioners upon the basis of a comprehensive budget estimate prepared by the county board of education, or the board of trustees of any city administrative unit making such request, not exceeding, however, the extent and amount thereof approved by the State school commission. (1931, c. 210, s. 2; 1933, c. 562, s. 2.)

§ 115-286. Budget estimate to be made up; repayments to fund out of rental fees.—Before the board of commissioners of any county shall establish such capital fund it shall be the duty of the county board of education, or the board of trustees of any city administrative unit making request therefor to prepare a budget estimate covering a definite and specified period showing the estimated income from rentals for each year, the estimated cost of textbooks and supplies for each year and a balanced budget at the end of a specified and definite period. Such budget shall be prepared in accordance with rules and regulations to be adopted and promulgated by the State school commission. It shall be the duty of the county board of education, or the board of trustees of any city administrative unit requesting and securing the establishment of any such capital fund for its benefit to make provision for the payment out of rental fees of the principal fund of the capital fund and the interest arising thereon in the manner and within the term provided for in the certificate of approval granted by the State school commission, and it shall be the duty of the State school commission in granting the approval to any such request to specify in its order granting said approval the time within which said repayments shall be made and the amount of such repayment to be made during each year of such time. (1931, c. 210, s. 3; 1933, c. 562, s. 2.)

§ 115-287. Details of administration of fund; record of receipts and disbursements; annual audit. — Any capital fund established under the provisions of §§ 115-284 to 115-291 shall be placed to the credit of the county board of education, or the board of trustees of any city administrative unit making request therefor, which board shall administer the fund under such rules and regulations as the said board may prescribe, with the approval of the State school commission, not in conflict, however, with the provisions of §§ 115-284 to 115-291. It shall be the duty of the county board of education, or the board of trustees of any city administrative unit for whose benefit such capital fund is established, to keep accurate record of receipts and disbursements made from this fund and to cause such records and the accounts thereof to be audited in July of each and every year and a copy of said audit shall be kept as a part of the permanent records of the office of said commission and one copy thereof shall be filed with the board of county commissioners of the

county, one copy with the State Superintendent of Public Instruction and one copy with the State school commission. It shall be unlawful for the county board of education, or the board of trustees of any city administrative unit to use any part of the funds so provided for any purpose, even temporarily, other than the purposes for which said fund is established and in accordance with the provisions of §§ 115-284 to 115-291. (1931, c. 210, s. 4; 1933, c. 562, s. 2.)

§ 115-288. Purchase of books, etc., with fund; schedules of rentals; patrons may purchase at cost.—The county board of education, or board of trustees of any city administrative unit for whose use and benefit such capital fund has been established is hereby authorized to purchase textbooks and instructional supplies and pay for same out of the said capital fund, together with such rental fees as said board may determine upon and to rent such textbooks and instructional supplies and to rent or furnish said textbooks and instructional supplies to the patrons of the public schools of such county, or such city administrative unit: Provided, that the rental fees charged therefor shall be in accordance with schedules submitted to and approved by the State school commission: Provided, further, that any patron of the public schools may purchase textbooks at net cost from any rental depository. (1931, c. 210, s. 5; 1933, c. 562, s. 2.)

§ 115-289. Handling of fund by fiscal agent; warrants on fund. — Such capital fund so established shall be deposited with the fiscal agent of the county to the credit of the county board of education, or board of trustees of any city administrative unit for which said fund is established and shall be paid out upon a warrant signed by the chairman and secretary of such board and approved by such officer as the County Fiscal Control Act may require: Provided, that such officer required to approve the same by the County Fiscal Control Act shall receive no additional compensation for such services. (1931, c. 210, s. 6.)

§ 115-290. Units and counties excepted.—Sections 115-284 to 115-291 shall not apply to any county, or territory formerly known as a special charter district which has heretofore established a fund for the purchase and rental of textbooks to patrons of the public schools of such county, or territory formerly known as a special charter district: Provided, however, that the county board of education, or the board of trustees of any city administrative unit may, with the approval of the majority of any such board, bring themselves under the provisions of §§ 115-284 to 115-291. (1931, c. 210, s. 7.)

Local Modification.—Caswell, Richmond: 1931, c. 210, s. 7.

§ 115-291. Fumigation and disinfection of books.—The State Superintendent of Public Instruction, in conjunction with the State Board of Health, shall adopt rules and regulations governing the use and fumigation and/or disposal of textbooks from quarantined homes and for the regular disinfection of all textbooks used in the public schools of the State: Provided, that said rules shall be attached to any rules and regulations that the State school commission may promulgate. (1931, c. 210, s. 8; 1933, c. 562, s. 2.)

Art. 40. State Textbook Commission.

§ 115-292. Textbook commission created. — There is hereby created a state textbook commission of five members, to be composed as follows:

The state superintendent of public instruction, as ex officio chairman, the attoney general, the director of the division of purchase and contract, and two members to be appointed by the governor for a term of two years each. The said appointive members are to receive as compensation such per diem and travel expenses as is now provided by law. All the powers and duties heretofore conferred by law upon the state textbook purchase and rental commission, together with such other powers and duties as may be conferred by the provisions of this article, shall be vested in the state textbook commission. The expenses and costs of the commission for carrying out the provisions of this article are to be paid out of the appropriation made available in Chapter 169, Public Laws of 1937. (1937, c. 169, s. 1.)

§ 115-293. Powers and duties of commission.—The state textbook commission is hereby authorized and directed to administer funds and to establish rules and regulations necessary to:

(1) Acquire by contract and/or purchase such textbooks and instructional supplies that are or may be on the adopted list of the state of North Carolina as the commission may find necessary to carry out the provisions of this article.

(2) Provide a system of distribution of said textbooks and supplies to the children in the public schools of the state, and distribute such books as are provided under the rental system without the use of any depository other than some agency of the state.

(3) Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades of the elementary public schools of North Carolina as may be determined by the state textbook commission. Title to said books shall be vested in the state. For the purposes of this article, the elementary grades shall be considered the grades from one to seven, inclusive. The basal elementary textbooks in the hands of the state textbook purchase and rental commission, when this measure is put in effect, shall become a part of the stock of books needed to carry out the provisions of this article. Provided, the state textbook commission may furnish basal elementary textbooks on a rental basis in any or all elementary grades if it is deemed necessary.

(4) Provide books for high school children in the public high schools of North Carolina on a rental basis. Said rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks. Provided, that free basal books may be furnished to high school children if sufficient funds are available and if the commission finds it advisable to take such action.

(5) Provide supplementary readers for the elementary children in the public elementary schools of North Carolina on a rental basis. Said rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks.

(6) Provide and distribute all blanks, forms, and reports necessary to keep a careful records of all the books, including their use, state of repair and

such other information as the commission may require.

(7) Buy, sell, or rent library books to be placed in the public schools of this state from a list to be selected by the state superintendent of public instruction, with the approval of the state board of education, and to be placed in such schools as may be designated by the state textbook commission: Provided, that such library books shall be purchased in accordance with rules and regulations duly promulgated by the state board of education.

(8) Provide for the use of said textbooks without charge to the indigent children of the state.

(9) Cause an annual audit to be made of the affairs of the said commission and a certified copy of same to be furnished the governor and council of state.

Nothing in this section shall be construed to prevent the purchase of textbooks needed for any child in the public schools of the state from said commission by any parent, guardian, or person in loco parentis.

Whenever any county or city administrative unit has paid over to the state textbook purchase and rental commission, in rentals, a sum equal to the price fixed by said commission for the sale of rental textbooks, said county or city administrative unit may, at its option, with the approval of the commission, withdraw from the textbook rental system set up under rules and regulations adopted by the commission, and upon such withdrawal, shall become the absolute owner of all such textbooks for which the purchase price has been paid in full to the said commission. (1935, c. 422, s. 2; 1937, c. 169, s. 2; 1939, c. 90; 1941, c. 301.)

§ 115-294. Books not interchangeable between white and colored schools.—Books shall not be interchangeable between the white and colored schools, but shall continued to be used by the race first using them. (1935, c. 422, s. 2.)

§ 115-295. Purchases through division of purchase and contract. — The purchase of all textbooks and supplies under the provisions of this article adopted as now provided by law shall be made through the division of purchase and contract. (1935, c. 422, s. 3.)

§ 115-296. Rentals paid to state treasury; disinfecting books.—All sums of money collected as rentals under the provisions of this article shall be paid monthly as collected into the state treasury, to be entered as a separate item known as the "state textbook rental fund." Disbursement of said funds shall only be had by order of the council of State: Provided, that the state textbook commission in conjunction with the state board of health shall adopt rules and regulations governing the use and fumigation for the regular disinfection of all textbooks used in the public schools of the State. (1935, c. 422, s. 4; 1937, c. 169, s. 1.)

§ 115-297. Local rental systems unaffected; rental fees limited; purchases from state commission allowed.—Any county or city board of education now operating a textbook rental system shall be permitted to continue such local rental system without interference from the state commission: Provided, that the rental fees charged by such local rental authority shall not exceed the rental charges set by the state commission: Provided, further, that such local textbook rental authority may purchase from the state commission textbooks for its local use. (1935, c. 422, s. 5.)

§ 115-298. Legal custodians of books furnished by state.—The county board of education in each county administrative unit and the school governing board in each city administrative unit shall be designated the legal custodians of all books furnished by the state, either for free use or on a rental basis. It shall be the duty of the said boards to provide adequate and safe storage facilities for the proper care of said books. (1937, c. 169, s. 3.)

§ 115-299. Duties and authority of superintendents of local administrative units; withholding salary for failure to comply with section.—It shall be the duty of the superintendent of each administrative unit as ex officio agent of the commission to administer the provisions of this article and the rules and regulations of the state textbook commission, in so far as said article and said rules and regulations may apply to said unit. He shall also have authority to require the co-operation of principals and teachers to the end that the children may receive the highest possible service, and that all books and moneys may be properly accounted for. In the event any teacher or principal shall fail to comply with the provisions of this section, it shall be the duty of the superintendent to withhold the salary checks of said principal or teacher until the duties imposed hereby have been performed.

In the event any superintendent shall fail to comply with the provisions of this section it shall be the duty of the State School Commission and the State Superintendent of Public Instruction to withhold salary checks of said superintendent and the State Treasurer shall not pay same until the duties imposed hereby have been performed, and it shall be the duty of the Secretary of the State Textbook Commission to notify the State School Commission, the State Superintendent of Public Instruction, and the State Treasurer in the event any superintendent shall fail to comply with the provisions of this section, and no payments shall be made until notice has been received from the Secretary of the State Textbook Commission that the provisions of this section have been complied with. (1937, c. 169, s. 4; 1941, c. 190.)

Art. 41. Public Libraries.

§ 115-300. Rules and regulations governing their establishment.—The state board of education is hereby authorized to adopt such rules and regulations governing the establishment of public libraries receiving state aid as will best serve the educational interest of the people. It shall have authority to use all of the state appropriation for rural libraries, to encourage the establishment of county circulating libraries, or to coöperate with the state library commission in providing circulating libraries for schools. (1923, c. 136, s. 345; C. S. 5755.)

§ 115-301. Aid in establishing local libraries.—The state board of education may use such portion of the state appropriation to rural libraries as it may deem necessary to aid the public schools in establishing local libraries as provided herein.

When the patrons and friends of any union school in which a standard high school is or is to be maintained shall raise by private subscription

and tender to the treasurer of the county school fund for the establishment of a library to be connected with the school the sum of fifty dollars, the county board of education shall appropriate from the current expense fund the sum of fifty dollars for this purpose.

As soon as the county board shall have made an appropriation for a library in the manner prescribed, the county superintendent shall inform the secretary of the state board of education of the fact, whereupon the state board, if the funds on hand are sufficient, shall remit to the treasurer of the county school fund the sum of fifty dollars additional for the purchase of books. (1923, c. 136, s. 346; C. S. 5756.)

SUBCHAPTER XV. COMPULSORY ATTENDANCE IN SCHOOLS.

Art. 42. General Compulsory Attendance Law.

§ 115-302. Parent or guardian required to keep child in school; exceptions.—Every parent, guardian or other person in the state having charge or control of a child between the ages of seven and fourteen years shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse the child temporarily from attendance on account of sickness or distance of residence from the school, or other unavoidable cause which does not constitute truancy as defined by the state board of education. The term "school" as used in this section is defined to embrace all public schools and such private schools as have tutors or teachers and curricula that are approved by the county superintendent of public instruction or the State Board of Education.

All private schools receiving and instructing children of compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children as are required of public schools; and attendance upon such schools, if the school or tutor refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district, town or city which the child shall be entitled to attend: Provided, instruction in a private school or by private tutor shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1923, c. 136, s. 347; 1925, c. 226, s. 1; C. S. 5757.)

§ 115-303. State board of education to make rules and regulations; method of enforcement.—It shall be the duty of the state board of education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The board shall prescribe what shall constitute truancy, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the state. It shall be the duty of all school officials to carry out such instructions from the state board of education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that § 115-302 shall not be in force in any city or county that has a higher compulsory attendance law now in force than that provided herein; but in any such case it shall be the duty of the state board of education to investigate the same and decide that any such law now in force has a higher compulsory attendance feature than that provided by this article.

Mental incapacity shall be an excuse for nonattendance, and is interpreted to mean feeblemindedness or such nervous disorder as to make it either impossible for such child to profit by instruction given in the school or impracticable for the teacher properly to instruct the normal pupils of the school. In the case of feeble-minded children the teacher shall designate the same in her reports to the County Superintendent of Public Welfare, and it shall be his duty to report all such cases to the State Board of Charities and Public Welfare. Whereupon said Board shall make, or cause to be made, an examination to ascertain the mental incapacity of said child and report the same to the county or city superintendent involved. Upon receipt of said report the local school authorities are hereby authorized, under such limitations and rules as the State Board of Education may adopt, to exclude said child from the public school when it is ascertained that the child can not benefit by said instruction and his presence becomes a source of disturbance to the rest of the children. In all such cases in which a child is excluded from school a complete record of the whole transaction shall be filed in the office of the county or city superintendent and kept as a public record. (1923, c. 136, s. 348; 1931, c. 453; C. S. 5758.)

§ 115-304. Attendance officers; reports; prosecutions.—The state superintendent of public instruction shall prepare such rules and procedure and furnish such blanks for teachers and other school officials as may be necessary for reporting each case of truancy or lack of attendance to the chief attendance officer referred to in this article. Such rules shall provide, among other things, for a notification in writing to the person responsible for the nonattendance of any child, that the case is to be reported to the chief attendance officer of the county unless the law is immediately complied with. The county board of education in a county administrative unit and the board of trustees in a city administrative unit may employ special attendance officers to be paid from funds derived from fines, forfeitures and penalties, or other local funds, and said officers shall have full authority to prosecute for violations of this article: Provided that in any unit where a special attendance officer is employed, the duties of chief attendance officer or truant officer as provided by law shall, in so far as they relate to such unit, be transferred from the county superintendent of public welfare to the special attendance officer of said unit. (1923, c. 136, s. 349; 1939, c. 270; C. S. 5759.)

§ 115-305. Violation of law; penalty.—Any parent, guardian, or other person violating the provisions of this article shall be guilty of a misde-

meanor, and upon conviction shall be liable to a fine not less than five dollars nor more than twenty-five dollars, and upon failure or refusal to pay such fine, the said parent, guardian or other person shall be imprisoned not exceeding thirty days in the county jail. (1923, c. 136, s. 350; C. S. 5760.)

§ 115-306. Investigation and prosecution by county superintendent or attendance officer.—The county superintendent of public welfare or chief school attendance officer or truant officer provided for by law shall investigate and prosecute all violators of the provisions of this article. The reports of unlawful absence required to be made by teachers and principals to the chief attendance officer shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1923, c. 136, s. 351; 1925, c. 226, s. 2; C. S. 5761.)

§ 115-307. Investigation as to indigency of child.—If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and fourteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance officer shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making a bona fide effort to comply with the compulsory attendance act, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the county board of education of the county or, in city administrative units, to the board of trustees in which the case may arise. (1923, c. 136, s. 352; C. S. 5762.)

§ 115-308. Aid to indigent child.—The county board of education shall in its discretion order aid to be given the family from the current expense fund of the county school budget to an extent not to exceed ten dollars per month for such child during the continuance of the compulsory term; and shall at the same time require said officer to see that the money is used for the purpose for which it is appropriated and to report from time to time whether it shall be continued or withdrawn. And the county board of education is hereby authorized in making out the county budget to provide a sum to meet the provisions of this article. (1923, c. 136, s. 353; C. S. 5763.)

Art. 43. Compulsory Attendance of Deaf and Blind Children.

§ 115-309. Deaf and blind children to attend school; age limits; minimum attendance.—Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a state school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of seven and eighteen years. Parents, guardians, or custodians of every such blind or deaf child between the ages of seven and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf as is herein provided: Provided, that the board of directors of any school for the deaf or blind may exempt any such child from attendance at any session or during any year, and may discharge from their custody any such blind or deaf child whenever such discharge seems necessary or proper. Whenever a deaf or blind child shall reach the age of eighteen and is still unable to become self-supporting because of its defects, such a child shall continue in said school until it reaches the age of twenty-one, unless it becomes self-supporting sooner. (1923, c. 136, s. 354; C. S. 5764.)

§ 115-310. Parents, etc., failing to send deaf child to school guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any deaf children between the ages of seven and eighteen years failing to send such deaf child or children to some school for instruction, as provided in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided: Provided, (1) that parents, guardians, or custodians may elect two years between the ages of seven and eighteen years that a deaf child or children may remain out of school, and (2) that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the approval of the executive committee of such institution, shall in his and their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge. (1923, c. 136, s. 355; C. S. 5765.)

§ 115-311. Parents, etc., failing to send blind child to school, guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any blind child or children between the ages of seven and eighteen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided, (1) that this section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on such parents, guardians, or custodians directing that such child be sent to the school whereof they have charge; and (2) that the authorities of the state school for the blind and the deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1923, c. 136, s. 356; C. S. 5766.)

§ 115-312. County superintendent to report defective children.—It shall be the duty of the county superintendent to report through proper

legal channels, the names and addresses of parents, guardians, or custodians of deaf, dumb, blind, and feeble-minded children to the principal of the institution provided for each, and upon the failure of the county superintendent to make such reports, he shall be fined five dollars for each child of the class mentioned above not so reported. (1923, c. 136, s. 357; C. S. 5767.)

SUBCHAPTER XVI. RURAL RECREATION.

Art. 44. School Extension Work.

§ 115-313. Moving pictures for rural communities; cost. — It shall be the duty of the state superintendent of public instruction to provide for a series of rural entertainments, varying in number and cost and consisting of moving pictures selected for their entertaining and educational value, which entertainments may be given in the rural schoolhouses of the state as herein provided. The cost of such entertainment shall be borne one-third by the state and two-thirds by the county board of education or the rural school community desiring said entertainment. (1917, c. 186, ss. 1, 2; C. S. 5776.)

§ 115-314. State superintendent to supply information and provide for entertainments; community deposit.—It shall be the duty of the state superintendent of public instruction to inform the various county boards of education of the number, character, and cost of the entertainments provided by him under the provisions of this article; and upon application of any county board of education, agreeing to pay two-thirds of the cost of any such entertainments, it shall be the duty of the state superintendent of public instruction to provide for the giving of such entertainments in the rural schoolhouse or houses designated in the application. Any rural school community shall be entitled to the benefits of this article by depositing with its county board of education two-thirds of the cost of entertainments desired, and in all cases it shall be the duty of the county board of education receiving such deposits to make immediate application to the state superintendent of public instruction as herein provided. (1917, c. 186, s. 3; C. S. 5777.)

§ 115-315. Health and agricultural authorities to coöperate.—The state board of health and the commissioner of agriculture are hereby authorized and directed to coöperate with the state superintendent of public instruction in arranging for the entertainments provided for by this article, to the end that the entertainment may, if it is deemed advisable, include the subjects of public health and agriculture. (1917, c. 186, s. 4; C. S. 5778.)

SUBCHAPTER XVII. HEALTH.

Art. 45. Physical Examination of Pupils.

§ 115-316. State board of health and state superintendent to make rules for physical examination.—It shall be the duty of the state board of health and the state superintendent of public instruction to prepare and distribute to the teachers in all public schools of the state instructions and rules and regulations for the physical examination of pupils attending the public schools. (1919, c. 192, s. 1; C. S. 5779.)

§ 115-317. Teachers to make examinations; state covered every three years.—Upon receipt of such instructions, rules and regulations, it shall be the duty of every teacher in the public schools to make a physical examination of every child attending the school and enter on cards and official forms furnished by the state board of health a record of such examination. The examination shall be made at the time directed by the state board of health and the state superintendent of public instruction, but every child shall be examined at least once every three years. The state board of health and the state superintendent of public instruction shall so arrange the work as to cover the entire state once every three years. (1919, c. 192, s. 2; C. S. 5780.)

§ 115-318. Record cards transmitted to state board of health; punishment for failure.—The teacher shall transmit the record cards and other blank forms made by him or her to the North Carolina state board of health, and if any teacher fails within sixty days, after receiving the aforesaid forms and requests for examination and report, to make such examination and report as herein provided, the teacher shall be guilty of a misdemeanor and subject to a fine of not less than ten dollars nor more than fifty dollars or thirty days in prison. (1919, c. 192, s. 3; C. S. 5780(a).)

§ 115-319. Disposition of records; reexamination of pupils.—The North Carolina state board of health shall have the records filed by the teacher carefully studied and classified, and shall notify the parent or guardian of every child whose card shows a serious physical defect to bring such child before an agent of the state board of health on some day designated by the state board of health between the hours of nine a. m. and five p. m. for the purpose of having said child thoroughly examined; and if, upon receipt of such notice, any parent or guardian shall fail or refuse to bring said child before the agent of the state board of health without good cause shown, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than fifty dollars or imprisoned not more than thirty days: Provided, that the distance the child must be carried shall not exceed ten miles.

No pupil or minor shall be compelled to submit to medical examination or treatment whose parent or guardian objects to the same. Such objection may be made by a written and signed statement delivered to the pupil's teacher or to any person who might conduct such examination or treatment in the absence of such objection. (1919, c. 192, s. 4; C. S. 5780(b).)

§ 115-320. Treatment of pupils, expenses.—Within thirty days after the completion of the examination of the children by the agent of the state board of health and after written statement of the proper authority hereinafter designated, a sum not exceeding ten dollars per hundred children enrolled in the county or city shall be paid to the state board of health to be used exclusively for the purpose of treating school children for defects other than dental, the same to be paid by the county commissioners of the county, and in cities or towns having a separate school system, to be paid by the city manager, city council, city board

of aldermen, or city commissioners. Any funds so paid and not needed in enforcing the provisions of this article shall be returned to the county or city from which it was received. (1919, c. 192, s. 5; C. S. 5780(c).)

§ 115-321. Free dental treatment.—The state board of health shall provide free dental treatment for as many school children as possible each year. (1919, c. 102, s. 14, c. 192, s. 6; C. S. 5780(d).)

SUBCHAPTER XVIII. STATE BOARD OF EDUCATION TO LICENSE CERTAIN INSTITUTIONS.

Art. 46. State Board of Education to Regulate Degrees.

§ 115-322. Right to confer degrees restricted.—No educational institution hereafter created or established by any person, firm, or corporation in this state shall have power or authority to confer degrees upon any person except as herein provided. (1923, c. 136, s. 358; C. S. 5780(e).)

§ 115-323. Powers to grant license to confer degrees.—The state board of education is authorized to issue its license to confer degrees in such form as it may prescribe to any educational institution hereafter established by any person, firm, or corporation in this state; but no educational institution hereafter established in the state shall be empowered to confer degrees unless it has income sufficient to maintain adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, and unless its baccalaureate degree is conferred only upon students who have completed a four-year college course, preceded by the usual four-year high school course, or their equivalent. (1923, c. 136, s. 359; C. S. 5780(f).)

§ 115-324. Inspection of institutions; revocation of license.—All institutions licensed under this article shall file such information with the state superintendent of public instruction as the state board of education may direct, and it shall have full authority to send an expert to visit any institution applying for a license to confer degrees under this article. And if any one of them shall fail to keep up the required standard the state board of education shall revoke the license to confer degrees, subject to a right of review of this decision by a judge of the superior court upon action instituted by the educational institution whose license had been revoked. (1923, c. 136, s. 360; C. S. 5780(g).)

SUBCHAPTER XIX. STATE BOARD OF COMMERCIAL EDUCATION.

Art. 47. Licensing of Commercial Schools.

§ 115-325. Commercial college or business school defined.—A commercial college or business school shall be defined as follows: Any person, partnership, association of persons, or any corporation, or operators of correspondence schools, within the state of North Carolina, which teaches, publicly, for compensation, any or all the branches of accounting, bookkeeping, stenotype, stenography, typing, telegraphy, and other commercial subjects which are usually taught in commercial colleges or business schools: Provided, however, that any person or individual who undertakes to give instruction in the above subjects to five or less students shall not be construed as the operator of a commercial college or business school. (1935, c. 255, s. 1; 1937, c. 184.)

§ 115-326. Securing permit before operating.—Any person, partnership, association of persons, or any corporation, or operators of correspondence schools, within the state of North Carolina, desiring to open a commercial college or to establish a branch college or school in this state for the purpose of teaching bookkeeping, stenography, stenotype, typing, telegraphy, and other courses which are usually taught in commercial colleges, before commencing business, must secure a permit from the state board of commercial education of the state of North Carolina authorizing such person, partnership, association of persons or corporation to open and conduct such commercial college or branch college or school. (1935, c. 255, s. 2; 1937, c. 184.)

§ 115-327. State board of commercial education created; membership.—The state board of commercial education shall consist of the director of the division of instructional service, the director of the division of vocational education and two persons who are owners and operators of duly licensed business or commercial schools which have been in operation within the state for five years, and the state superintendent of public instruction, who will be chairman of the board and ex officio secretary. The two members who are commercial school owners or operators shall be appointed by the governor and shall serve for three years or until their successors have been appointed and taken office. (1935, c. 255, s. 2; 1937, c. 184.)

§ 115-328. Application for permit; investigation; fees.—Application for such permit to open and conduct a business or correspondence school shall state specifically the name of such person, partnership or corporation, and said application shall be filed with the state board of commercial education at Raleigh. If, after due investigation on the part of said board, it is shown to the satisfaction of said board that said applicant is professionally qualified to conduct said school and possesses good moral character for fair and honest dealings, then said board shall approve said application and issue permit to said applicant. Before such permit shall be issued, the applicant shall pay to the state board of commercial education a fee of ten ($10) dollars as a minimum, and twenty-five ($25) dollars as a maximum, the amount needed being left to the discretion of the board of commercial education, which fee shall be paid annually on the first day of July to the said board so long as said school shall continue to operate. Said fees shall be used for office and traveling expenses by said board or its authorized representatives for investigating applications for conducting commercial schools and also complaints against such schools, and the secretary of the board shall keep an account of all moneys received and disbursed which account shall be open at all times to inspection by all persons operating commercial schools and licensed by said board. (1935, c. 255, s. 3; 1937, c. 184.)

§ 115-329. Execution of bond required; filing and recording.—Before the board of commercial

education shall issue such permit, the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand ($1,000) dollars, signed by a solvent guaranty company authorized to do business in the state of North Carolina, or by two solvent sureties, payable to the clerk of the superior court of the county in which such college, branch college, or school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and all contracts, made and entered into by said college or branch college or school, acting by and through its officers and agents, with any student who desires to enter such college and to take any course in commercial training, and will pay back to such student all amounts collected for tuition and fees in case of failure on the part of the parties obtaining a permit from the board of commercial education to open and conduct a commercial college, or branch college or school, to comply with its contracts to give the instructions contracted for, and for the full period evidenced by such contract. Such bond shall be filed with the clerk of superior court of the county in which the college or branch or school executing the bond is located, and recorded by such clerk in a book provided for that purpose.

The requirement herein specified for giving the aforesaid bond of one thousand dollars ($1,000.00) shall apply to all commercial colleges, business schools and correspondence schools and branches thereof operating in North Carolina, and the said board of commercial education shall not issue any permit or license to any person, firm, or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of superior court has been filed with said board of commercial education. Operators' bonds of one thousand dollars ($1,000.00) each shall be required for each branch of such commercial colleges, business schools, or correspondence schools operated within the state by any person, partnership, or corporation. (1935, c. 255, s. 4; 1937, c. 184.)

§ 115-330. Right of action upon bond in event of breach; revocation of permit; board generally to supervise schools.—In any and all cases where the party receiving the permit from the board of commercial education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then said student, parent or guardian entering into the contract shall have a cause of action against the sureties on the bond as herein provided for the full amount of the payments made to such person, with six (6) per cent interest from the date of payment of said amount. For a proven violation of its contracts with its students, the board of commercial education is authorized to revoke the license issued to the offending school. Through periodic reports required of licensed commercial schools and by inspections made by the members of the board of commercial education or its authorized representatives, the board of commercial education shall have general supervision over commercial schools of the State, the object of said supervision being to protect the public welfare by having the licensed commercial schools to maintain proper school quarters, equipment and teaching forces and of having the school carry out its advertised promises and its contracts made with its students and patrons. (1935, c. 255, s. 5.)

§ 115-331. Operating school without permit made misdemeanor. — Any person, or each member of any partnership, or each member of any association of persons, or each officer of any corporation who opens and conducts a commercial college or branch college or school without first having obtained the permit required in § 115-326, and without first having executed the bond required in § 115-329, shall be guilty of misdemeanor and punishable by a fine of not less than one hundred ($100.00) dollars, nor more than five hundred ($500.00) dollars, and each day said college continues to be open and operated shall constitute a separate offense. (1935, c. 255, s. 6.)

§ 115-332. Institutions exempted. — The provision of this article shall not apply to any established university, professional, or liberal arts college, regular high school or any state institution which has heretofore adopted or which may hereafter adopt one or more commercial courses, provided the tuition fees and charges, if any, made by such university, college, high school or state institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, or high school; but the provisions of this article shall apply to all commercial colleges, business schools and correspondence schools operated within the state of North Carolina as commercial institutions. (1935, c. 255, s. 7; 1937, c. 184.)

§ 115-333. Application of article to non-residents, etc.—All persons, partnerships, associations of persons, which are non-residents of North Carolina, or corporations organized and chartered under the laws of any other state, must comply with the provisions of this article before such can open and conduct a commercial college or branch college, or school in the State of North Carolina. (1935, c. 255, s. 8.)

§ 115-334. Solicitors. — All persons soliciting students within the state of North Carolina for commercial colleges, business schools or correspondence schools located within or without the state of North Carolina, shall be required to secure on July first of each year an annual license from the board of commercial education, such license to cost two dollars ($2.00). When application is made for such license by a solicitor he shall submit to said board for its approval a copy of the contract offered prospective students and used by his said school, together with advertising material and other representations made by said school to its students or prospective students. When a license is issued to such solicitor he shall receive a license card permitting him to solicit students for his school, but such license shall be issued only on an annual basis expiring June thirtieth of each year and must be renewed to entitle such solicitor to solicit students thereafter. Every commercial college, business school, or correspondence school employing such solicitors shall be responsible for the acts, representations and contracts made by its solicitors. Any person soliciting students for any such schools without

first having secured a license from the board of commercial education shall be guilty of a misdemeanor and be punishable by a fine of fifty dollars ($50.00) or thirty days imprisonment, or both, at the discretion of the court. (1937, c. 184.)

SUBCHAPTER XX. OBSERVANCE OF SPECIAL DAYS.

Art. 48. Special Days to Be Observed in Public Schools.

§ 115-335. North Carolina Day.—The twelfth day of October in each and every year, to be called "North Carolina Day," may be devoted, by appropriate exercises in the public schools of the state, to the consideration of some topic or topics of our state history, to be selected by the superintendent of public instruction: Provided, that if the said day shall fall on Saturday or Sunday, then the celebration shall occur on the Monday next following: Provided, further, that if the said day shall fall at a time when any such schools may not be in session, the celebration may be held within one month from the beginning of the term, unless the superintendent of public instruction shall designate some other time. (1923, c. 136, s. 367; C. S. 5780(n).)

§ 115-336. Temperance or Law and Order Day.—There shall be one day in each scholastic year of the public and high schools of the state of North Carolina, to be known as Temperance or Law and Order Day, and the fourth Friday in January in each year, or some other day to be set by the superintendent of public instruction to suit local conditions, is hereby designated as Temperance or Law and Order Day. This day shall be observed as such in each public and high school of the state, or if preferred, in each subdivision thereof. The state superintendent of public instruction shall have prepared and furnished in due time to every teacher of said public and high school for the state a suitable program to be used on said Temperance or Law and Order Day.

The state superintendent of public instruction may have prepared and furnished to the teachers in the public and high schools placards printed in large type which shall set forth in attractive style statistics, epigrams, mottoes and up-to-date scientific truths showing the evils of intemperance and lawlessness.

When placards are distributed it shall be the duty of every teacher in the state, paid entirely or in part out of the public funds, to keep posted in a conspicuous place in the schoolroom occupied by said teacher one of said placards. (1923, c. 136, s. 368; C. S. 5780(o).)

§ 115-337. Arbor Day.—Friday following the fifteenth day of March of each year shall be known as Arbor Day, to be appropriately observed by the public schools of the state. The superintendent of public instruction shall issue each year a program for its observance by the school children of the state in order that they may be taught to appreciate the true value of trees and forests to their State. The superintendent of public instruction is authorized to provide a suitable program and plan of instruction to county school officials under his charge for the appropriate observance of this day. (1923, c. 136, s. 369; 1927, c. 73; C. S. 5780(p).)

§ 115-338. Other Days.—The superintendent of public instruction is hereby authorized to provide suitable material for the proper observance in schools of the birthdays of Washington, Lee, Jackson, of Armistice Day, Memorial Day, and such other days as may be deemed of educational and patriotic value not only to the children but to the citizens of the state. All literature necessary for the proper observance of the days specified in this article shall be prepared by the superintendent of public instruction and printed at the expense of the state. (1923, c. 136, s. 370; C. S. 5780(q).)

§ 115-339. Combined programs. — The state superintendent of public instruction may fix a later or an earlier date for the observance of any special day the observance of which is required for a specific date if it shall appear to him to be more convenient; and he may combine the programs required to be issued in the foregoing sections so as to require the observance of any two or more of the special days at the same time. (1923, c. 136, s. 371; C. S. 5780(r).)

SUBCHAPTER XXI. COMPENSATION TO CHILDREN INJURED IN SCHOOL BUSSES.

Art. 49. Certain Injuries to School Children Compensable.

§ 115-340. School commission authorized to pay claims. — The school commission of North Carolina is hereby authorized and directed to set up in its budget for the operation of the public schools of the State a sum of money which it deems sufficient to pay the claims hereinafter authorized and provided for. (1935, c. 245, s. 1.)

§ 115-341. Payment of medical or funeral expenses to parents or custodians of children.—The state school commission is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor, or administrator of any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the State, medical, surgical, hospital, and funeral expenses incurred on account of such injuries and/or death of such child in an amount not to exceed the sum of six hundred and no one-hundredths dollars ($600.00). (1935, c. 245, s. 2.)

Local Modification.—Surry: 1935, c. 458.

§ 115-342. Claim must be filed within one year.—The right to compensation as authorized under § 115-341 shall be forever barred, unless a claim be filed with the state school commission within one year after the accident, and if death results from the accident, unless a claim be filed with the said commission within one year thereafter. (1935, c. 245, s. 3.)

§ 115-343. Approval of claims by school commission final.—The state school commission is hereby authorized and empowered, under rules and regulations to be promulgated by said school commission, to approve any claim authorized by this subchapter, and when such claim is so approved, such action shall be final; any payment made by the school commission for hospital and

medical treatment shall be deducted from the benefits provided in § 115-341, and said commission is hereby authorized to pay medical and hospital and funeral bills provided for in this subchapter, not to exceed, however, the benefits herein provided for. (1935, c. 245, s. 4.)

§ 115-344. Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child.—The claims authorized in § 115-341 shall be paid by the said school commission, regardless of whether or not the injury received by said school child shall have been due to the negligence of the driver of the said school bus: Provided that whenever there is recovery on account of said accident by the father, mother, guardian, or administrator of such child, against any person, firm, or corporation, the amount expended by the state school commission hereunder shall constitute a paramount lien on any judgment recovered by said parent, guardian, or administrator, and shall be discharged before any money is paid to said parent, guardian, or administrator, on account of said judgment. (1935, c. 245, s. 5.)

§ 115-345. Disease and injuries incurred while not riding on bus not compensable.—Nothing in this subchapter shall be construed to mean that the State shall be liable for sickness, disease, and for personal injuries sustained while not actually riding on the bus to and from the school, and for personal injuries received otherwise than by reason of the operation of such bus. (1935, c. 245, s. 6.)

§ 115-346. Application to terms additional to eight months term.—The provisions of this subchapter shall be applicable to any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the state during the ninth month, or any term of public school additional to the regular eight months school term: Provided, that nothing herein contained shall be construed as imposing any obligation upon the state school commission to provide funds for this purpose. The tax levying authorities of any school district which provides a supplement for the maintenance of a ninth month or additional school term are hereby authorized and directed to set up in their respective budgets a sum of money which is deemed sufficient to pay the claims authorized by this subchapter, and to pay out of such sum the expenses authorized to be paid in accordance with the provisions of this subchapter. No person, firm, or corporation making voluntary contributions for an extended term shall be liable on account of any accident or injury. (1939, c. 267.)

SUBCHAPTER XXII. SCHOOL LAW OF 1939.

§ 115-347. Purpose of the law.—The purpose of this subchapter is to provide for the administration and operation of a uniform system of public schools of the state for the term of eight months without the levy of an ad valorem tax therefor, and it is the purpose of this general assembly to change the policy heretofore followed by previous general assemblies of re-enacting biennially the School Machinery Act, and this subchapter shall remain in force until repealed or amended by subsequent acts of the general assembly. (1939, c. 358, s. 1(a).)

Local Modification.—Hyde, Ocracoke Island: 1937, c. 303.

§ 115-348. Appropriation. — The appropriation made under Title nine "(IX-1)-Support of Eight Months' Term Public Schools," of "an act to make appropriations for the maintenance of the state's departments, bureaus, institutions, and agencies, and for other purposes," and such funds as may be made available by acts of the Congress of the United States for public schools, and such other funds as may be made available from all other sources for the support of the eight months' term public schools, for the year ending June thirtieth, one thousand nine hundred forty, and annually thereafter, shall be apportioned for the operation of an eight months' school term as hereinafter provided. (1939, c. 358, s. 1(b).)

§ 115-349. State school commission; membership; appointment, term of office and compensation; powers and duties; executive secretary; costs and expenses.—The state school commission shall be constituted as follows: The lieutenant-governor as ex officio chairman, the state superintendent of public instruction as vice-chairman, the state treasurer, and one member from each congressional district to be appointed by the governor. The said appointive members shall serve for a period of two years from the time of their appointment and receive such compensation as now provided by law. All the powers and duties heretofore conferred by law upon the state school commission, together with such other powers and duties as may be conferred by this subchapter, shall be vested in the state school commission. The said school commission may appoint an executive secretary, who shall select other employees necessary for the proper administration of this subchapter to be approved by the state school commission, subject to the provisions of § 143-35 et seq. The cost and expenses of said commission shall be paid out of the appropriation made for the public schools as provided in § 115-348. (1939, c. 358, s. 2.)

§ 115-350. Administration of funds for eight months' term; executive committee.—In addition to the duties and powers vested in the state school commission as set out in § 115-349, together with such powers as may be conferred by law, it shall be the duty of the said commission, in accordance with the provisions of this subchapter, to administer funds for the operation of the schools of the state for one hundred sixty days on standards to be determined by said commission and within the total funds set out in § 115-348. The state school commission may designate from its membership an executive committee, composed of the lieutenant-governor, the state superintendent of public instruction, the state treasurer, and two other members, with whom the executive secretary may confer with reference to the administration of this subchapter when the commission is not in session. The purpose of this provision is to provide an agency for consultation and advice as to questions arising between meetings of the commission, and for the purpose of effectuating a closer unity between the different agencies dealing

with the schools. The secretary shall keep a record of the proceedings of any meetings of the executive committee in the same manner as proceedings of the full commission are kept and recorded. (1939, c. 358, s. 3.)

§ 115-351. Length of school term; school month defined; payment of salaries.—The six months' school term required by article nine of the Constitution is hereby extended to embrace a total of one hundred sixty days of school in order that there shall be operated in every county and district in the state, which shall request the same, a uniform term of eight months: Provided, that the state school commission, or the governing body of any administrative unit, may suspend the operation of any school or schools in such unit, not to exceed a period of forty days of said consolidated term, when in the sound judgment of said commission, or the governing body of any administrative unit, the low average in any school does not justify its continuance, or necessity may require it: Provided, that all schools served by the same school bus or busses shall have the same opening date.

A school month shall consist of four weeks and not less than twenty teaching days, no day of which shall be a Saturday, unless in case of emergency, and subject to the approval of the local committee and the superintendent of the administrative unit; and salary warrants for the payment of all state teachers, principals, and others employed for the school term shall be issued each school month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the state school commission on or before October first of each school year. Before such request shall be filed, it shall be approved by the governing board, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of eight shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period less than eight months. (1939, c. 358, s. 4.)

Local Modification.—Watauga: 1941, c. 27.

§ 115-352. School organization.—All school districts, special tax, special charter, or otherwise, as constituted on May 15, 1933, are hereby declared non-existent as of that date; and it shall be unlawful for any taxes to be levied in said district for school operating purposes except as provided in this article. The State School Commission, in making provision for the operation of the schools, shall classify each county as an administrative unit, and shall, with the advice of the county boards of education, make a careful study of the district organization as the same was constituted under the authority of § 4 of chapter 562 of the Public Laws of 1933, and as modified by subsequent school machinery acts. The Commission may modify such district organization when it is deemed necessary for the economical administration and operation of the state school system, and it shall determine whether there shall be operated in such district an elementary or a union school. Provisions shall not be made for a high school with an average daily attendance of less than sixty pupils, nor an elementary school with an average daily attendance of less than twenty-five pupils, unless a careful survey by the state superintendent of public instruction and the state school commission reveals that geographic or other conditions make it impracticable to provide for them otherwise. Funds shall not be made available for such schools until the said survey has been completed and such schools have been set up by the said school commission.

It shall be within the discretion of the state school commission, wherever it shall appear to be more economical for the efficient operation of the schools, to transfer children living in one administrative unit or district to another administrative unit or district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such unit or district to which the said children are transferred: Provided further, the provision as to the nonpayment of tuition shall not apply to children who have not been transferred as set out in this section.

City administrative units as now constituted shall be dealt with by the state school authorities in all matters of school administration in the same way and manner as are county administrative units: Provided, that in all city administrative units as now constituted the trustees of the said special charter districts, included in said city administrative unit, and their duly elected successors, shall be retained as the governing body of such district; and the title to all property of the said special charter district shall remain with such trustees, or their duly chosen successors; and the title to all school property hereafter acquired or constructed within the said city administrative unit, shall be taken and held in the name of the trustees of said city administrative unit; and the county board of commissioners of any county shall provide funds for the erection or repair of necessary school buildings on property, the title to which is held by the board of trustees as aforesaid, and the provisions of § 115-88, to the extent in conflict herewith, is hereby repealed: Provided, that nothing in this subchapter shall prevent city administrative units, as now established, from consolidating with the county administrative unit in which such city administrative unit is located, upon petition of the trustees of the said city administrative unit and the approval of the county board of education and the county board of commissioners in said county: Provided, further, that nothing in this subchapter shall affect the right of any special charter district, or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by existing law, and nothing herein shall be construed to restrict the county board of education and/or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by existing law.

The board of trustees for any special charter district in any city administrative unit shall be

appointed as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of such board of trustees, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county board of education of the county embracing such special charter district. (1939, c. 358, s. 5.)

§ 115-353. Administrative officers. — The administrative officer in each of the units now designated shall be a county superintendent of schools for a county administrative unit and a city superintendent of schools for a city administrative unit.

The salaries of county superintendents and city superintendents shall be in accordance with a state standard salary schedule to be fixed and determined by the state board of education and state school commission as provided for in § 115-359; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teachers' and principals' salaries are now published: Provided, that it shall be lawful for the county superintendent of schools in any county, with the approval of the state superintendent of public instruction, to serve as principal of a high school of said county; and the sum of not exceeding three hundred dollars ($300.00), to be paid from state instructional service funds, may be added to his salary and shall be included in the budget approval by the state school commission: Provided, further, that a county superintendent may also be elected and serve as a city superintendent in any city administrative unit in the county which he serves as county superintendent: Provided, further, that a county superintendent may serve as welfare officer and have such additional compensation as may be allowed by the county commissioners of such county, to be paid from county funds, subject to the approval of the state school commission.

At a meeting to be held the first Monday in April, one thousand nine hundred thirty-nine, or as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education shall meet and elect a county superintendent of schools, subject to the approval of the state superintendent of public instruction and the state school commission, who shall take office July first and shall serve for a period of two years, or until his successor is elected and qualified. The county board of education shall give public notice of the date of the election in a paper published or circulating in the county and shall post a notice of the same at the courthouse door at least fifteen days before the date of the election. A certification to the county board of education by the state superintendent of public instruction showing that the person proposed for the office of county superintendent of schools is a graduate of a four year standard college, or at the present time holds a superintendent's certificate, and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious disease, shall make any citizen of the state eligible for this office. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the state superintendent of public instruction.

In all city administrative units, the superintendent of schools shall be elected by the board of trustees, or other school governing agency of such unit, to serve for a period of two years; and the qualifications, approval, and date of election shall be the same as for county superintendents. The city superintendent is hereby ex officio secretary to the governing body of said city administrative unit.

At its first regular meeting in April or as soon thereafter as practicable, the board of trustees, or other governing board of a city administrative unit, shall elect principals, teachers, and other necessary employees of the schools within said unit on the recommendation of the city superintendent. (1923, c. 136, s. 43; 1939, c. 358, s. 6; C. S. 5452.)

§ 115-354. School committees. — At the first regular meeting during the month of April, one thousand nine hundred thirty-nine, or as soon thereafter as practicable, and biennially thereafter, the county boards of education shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three nor more than five persons for each school district, whose term of office shall be for two years: Provided, that in the event of death or resignation of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term: Provided, that in units desiring the same, by action of the county board of education and subject to the approval of the state school commission, one-third of the members may be selected for a term of one year, one-third of the members for a term of two years, and one-third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms.

The district committees shall elect the principals for the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The principals of the districts shall nominate and the district committees shall elect the teachers for all the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The distribution of the teachers between the several schools of the district shall be subject to the approval of the county board of education. In the event the local school authorities herein provided for are unable to agree upon the nomination and election of teachers, the county board of education shall select the teacher or teachers, which selection shall be final for the ensuing school term. All principals and teachers shall enter into a written

contract upon forms to be furnished by the state superintendent of public instruction before becoming eligible to receive any payment from state funds. It shall be the duty of the county board of education in a county administrative unit, and of the governing body of a city administrative unit, to cause written contracts on forms to be furnished by the state to be executed by all teachers and principals elected under the provisions of this subchapter before any salary vouchers shall be paid: Provided that such contract shall continue from year to year until said teacher or principal is notified as provided in § 115-359: Provided, further, that such teacher or principal shall give notice to the superintendent of schools of the administrative unit in which said teacher or principal is employed, within ten days after the close of school, of his or her acceptance of employment for the following year: Provided, further, that the county board of education may appoint an advisory committee of three members for each school building in the said school district, who shall care for the school property and perform such other duties as may be defined by the county board of education. (1939, c. 358, s. 7; 1941, c. 267, s. 2.)

Local Modification.—Onslow: 1941, c. 149.

§ 115-355. Organization statement and allotment of teachers.—On or before the twentieth day of May in each year, the several administrative officers shall present to the state school commission a certified statement showing the organization of the schools in their respective units, together with such other information as said commission may require. The organization statement as filed for each administrative unit shall indicate the length of term the state is requested to operate the various schools for the following school year, and the state shall base its allotment of funds upon such request. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the state school commission may promulgate, the state school commission shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the state budget, provided that loss in attendance due to epidemics or apparent increase in attendance due to the establishment of army camps or other national defense activities shall be taken into consideration in the initial allotment of teachers: Provided, further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance.

It shall be the duty of the governing body in each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the state school commission to make changes in the allocation of teachers to meet requirements of the said unit. (1939, c. 358, s. 8; 1941, c. 267, s. 3.)

§ 115-356. Objects of expenditure. — The appropriation of state funds, as provided under the provisions of this subchapter, shall be used for meeting the costs of the operation of the public schools as determined by the state school commission, for the following items:

1. General Control:
   a. Salaries of superintendents
   b. Travel of superintendents
   c. Salaries of clerical assistants for superintendents
   d. Office expense of superintendents
   e. Per diem county boards of education in the sum of one hundred dollars ($100.00) to each county
   f. Audit of school funds
2. Instructional Service:
   a. Salaries for white teachers, both elementary and high school
   b. Salaries for colored teachers, both elementary and high school
   c. Salaries of white principals
   d. Salaries of colored principals
   e. Instructional supplies
3. Operation of Plant:
   a. Wages of janitors
   b. Fuel
   c. Water, light and power
   d. Janitors' supplies
   e. Telephone expense
4. Auxiliary Agencies:
   a. Transportation
      (1) Drivers and contracts
      (2) Gas, oil, and grease
      (3) Mechanics
      (4) Parts, tires, and tubes
      (5) Replacement busses
      (6) Compensation for injuries and/or death of school children as now provided by law
   b. Libraries
   c. Health

In allotting funds for the items of expenditures hereinbefore enumerated, provision shall be made for a school term of only one hundred sixty days.

The state school commission shall effect all economies possible in providing state funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action shall have authority to increase or decrease on a uniform percentage basis the salary schedule of teachers, principals, and superintendents in order that the appropriation of state funds for the public schools may insure their operation for the length of term provided in this subchapter: Provided, however, that the state school commission and county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other purposes.

The objects of expenditure designated as maintenance of plant and fixed charges shall be supplied from funds required by law to be placed to the credit of the public school funds of the county and derived from fines, forfeitures, penalties, dog taxes, and poll taxes, and from all other sources except state funds: Provided, that when necessity shall be shown, and upon the approval of the county board of education or the trustees of any city administrative unit, the state school commission may approve the use of such funds in any administrative unit to supplement any object or item of the current expense budget, including the supplementing of the teaching of vocational subjects; and in such cases the tax levying author-

ities of the county administrative unit shall make a sufficient tax levy to provide the necessary funds for maintenance of plant, fixed charges, and capital outlay: Provided, further, that the tax levying authorities in any county administrative unit, with the approval of the state school commission, may levy taxes to provide necessary funds for teaching vocational agriculture and home economics and trades and industrial vocational subjects supported in part from federal vocational educational funds: Provided, further, that nothing in this subchapter shall prevent the use of federal and/or privately donated funds which may be made available for the operation of the public schools under such regulations as the state board of education may provide. (1939, c. 358, s. 9.)

§ 115-357. State budget estimate.—The state budget estimate shall be determined by the state school commission for each county and city administrative unit by ascertaining the sum of the objects of expenditure according to and within the limits fixed by this subchapter, and within the meaning of the rules and regulations promulgated by the state school commission; and the certification of same shall be made to each county superintendent, city superintendent, and the state superintendent of public instruction on or before June first of each year. (1939, c. 358, s. 10.)

§ 115-358. Salary costs.—Upon receipt of notice from the state school commission of the total number of teachers, by races and for county and city administrative units separately, the state superintendent of public instruction shall then determine, in accordance with the schedule of salaries established, the total salary cost in each and every administrative unit for teachers, principals, and superintendents to be included in the state budget for the next succeeding fiscal year for the consolidated school term as herein defined. This amount as determined from a check of the costs for the preceding year with adjustments resulting from changes in the allotment of teachers, shall be certified to the state school commission; together with the number of elementary and high school teachers and principals employed in accordance with the provisions of this subchapter, separately by races, and for city and county administrative units. (1939, c. 358, s. 11.)

§ 115-359. State standard salary schedule. — The state board of education and the state school commission shall fix and determine a state standard salary schedule for teachers, principals, and superintendents, which shall be the maximum standard state salaries to be paid from state funds to the teachers, principals, and superintendents; and all contracts with teachers and principals shall be made locally by the county board of education and/or the governing authorities of city administrative units, giving due consideration to the peculiar conditions surrounding each employment, the competency and experience of the teacher or principal, the amount and character of work to be done, and any and all other things which might enter into the contract of employment: Provided, however, that the compensation contracted to be paid out of state funds to any teacher, principal, or superintendent shall be within the maximum salary limit to be fixed by the state board of education and the state school commission, as above provided, and within the allotment of funds as made to the administrative unit for the item of instructional salaries: Provided, further, that no teacher or principal shall be required to attend summer school during the years one thousand nine hundred forty-one and one thousand nine hundred forty-two, and the certificate of such teacher or principal as may have been required to attend such school shall not lapse but shall remain in full force and effect, and all credits earned by summer school and/or completing extension course or courses shall not be impaired, but shall continue in full force and effect.

Any teacher or principal desiring election as teacher or principal in a particular administrative unit who was not employed by said unit during a current year shall file his or her application in writing, with the county or city superintendent of schools.

It shall be the duty of such county superintendent or administrative head of a city administrative unit to notify all teachers and/or principals now or hereafter employed, by registered letter, of his or her rejection prior to the close of the school term subject to the allotment of teachers made by the state school commission: Provided, further, that principals and teachers desiring to resign must give not less than thirty days' notice prior to opening of school in which the teacher or principal is employed to the official head of the administrative unit in writing. Any principal or teacher violating this provision may be denied the right to further service in the public schools of the state for a period of one year unless the county board of education or the board of trustees of the administrative unit where this provision was violated waives this penalty by appropriate resolution.

In the employment of teachers, no rule shall be made or enforced which discriminates with respect to the sex, marriage, or nonmarriage of the applicant. (1939, c. 358, s. 12; 1941, c. 267, ss. 4, 5.)

§ 115-360. Principals allowed.—In all schools with fewer than fifty teachers allowed under the provisions of this subchapter, the principals shall be included in the number of teachers allowed. In schools with fifty or more teachers, one whole time principal shall be allowed; that for each forty teachers in addition to the first fifty, one additional whole time principal, when and if actually employed, shall be allowed: Provided, that in the allocation of state funds for principals, the salary of white principals shall be determined by the number of white teachers employed in the white schools, and the salary of colored principals shall be determined by the number of colored teachers employed in the colored schools: Provided, further, that where the schools of a district are under the control of the same district committee, the district principal shall have general supervision of all the schools in the district: Provided, further, that where a white school and a colored school are both under the control of the same district committee, and where the principal of the white school is called upon by the district committee to perform certain duties in connection with the operation of the colored school such as aiding in the employment of teachers and in the general

supervision of the colored school, the state school commission and the state board of education may in their discretion take such service into consideration in the fixing of the principal's salary and may make a reasonable allowance for same. (1939, c. 358, s. 13; 1941, c. 267, s. 6.)

§ 115-361. Local supplements. — The county board of education in any county administrative unit and the school governing board in any city administrative unit, with the approval of the tax levying authorities in said county or city administrative unit and the state school commission, in order to operate schools of a higher standard than that provided by state support in said administrative unit having a school population of one thousand (1,000) or more, but in no event to provide for a term of more than one hundred eighty (180) days, may supplement the funds from state or county allotments available to said administrative unit: Provided, that before making any levy for supplementing said allotments, an election shall be held in said administrative unit or district to determine whether there shall be levied a tax to provide said supplemental funds, and to determine the maximum rate which may be levied therefor. Upon the request of the county board of education in a county administrative unit and/or the school governing authorities in a city administrative unit, the tax levying authorities of such unit shall provide for an election to be held under laws governing such elections as set forth in articles 22, 23 and 24 of this chapter: Provided, that the rate voted shall remain the maximum until revoked or changed by another election: Provided, further, that nothing herein contained shall be construed to abolish any city administrative unit heretofore established under § 142-20 et seq.

Upon a written petition of a majority of the governing board of any district which has voted a supplementary tax, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this section: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of the qualified voters in such new territory shall vote in favor of such tax, the new territory shall be and become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of the qualified voters at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1939, c. 358, s. 14.)

§ 115-362. County boards may supplement funds of any district for special purposes.—The county board of education in any county administrative unit, with the approval of the tax levying authorities in said unit and the state school commission, in order to provide a twelfth grade, a ninth month, or additional vocational teachers, or for all of said purposes, including the cost necessary for transportation of students for the said twelfth grade or ninth month, in any district in said county administrative unit, having a school population of one thousand (1,000) or more, but in no event to provide for a term of more than one hundred eighty days, may supplement the funds now available to said district: Provided, that before making any levy for supplementing said allotments, an election shall be held in said district to determine whether there shall be levied a tax to provide said supplemental funds and to determine the maximum rate which may be levied therefor. Before said election can be held in such district, a petition of the district committee setting out the purposes for which said election is to be had and the maximum rate of tax which may be levied shall be approved by the county board of education, the tax levying authorities of said county, and the state school commission. When such approval is had, then upon the request of the county board of education, the tax levying authorities of such unit shall provide for an election under the laws governing such elections as are set forth for county and city administrative unit supplementary elections in § 115-361. (1939, c. 358, s. 14½.)

§ 115-363. Local budgets. — (a) The request for funds to supplement state school funds, as permitted under the above conditions, shall be filed with the tax levying authorities in each county and city administrative unit on or before the fifteenth day of June on forms provided by the state school commission. The tax levying authorities in such units may approve or disapprove this supplemental budget in whole or in part, and upon approval being given, the same shall be submitted to the state school commission, which shall have authority to approve or disapprove any object or item contained therein. In the event of approval by the state school commission, the same shall be shown in detail upon the minutes of said tax levying body, and a special levy shall be made therefor, and the tax receipt shall show upon the face thereof the purpose of said levy.

(b) In the same manner and at the same time, each county and/or city administrative unit may file a capital outlay budget, subject only to the approval of the tax levying authorities and the state school commission.

(c) In the same manner and at the same time, each county and/or city administrative unit shall file a debt service budget, which shall include debt service budgets of special bond tax districts, as set forth in § 115-364, and which shall be subject to the approval of the tax levying authorities in each such unit and the state school commission: Provided, that nothing in this subchapter shall prevent counties, local taxing districts and/or special charter districts from levying taxes to provide for debt service requirements.

The tax levying authorities in each of the above named units filing budgets from local funds shall report their action on said budgets on or before the tenth day of July, and the same shall be reported to the state school commission on or before the twentieth day of July. The action of the state school commission on all requests for local funds budgets shall be reported to boards of edu-

cation and/or school governing authorities of city administrative units and the tax levying authorities in such units on or before the twentieth day of August.

All county-wide current expense school funds shall be apportioned to county and city administrative units monthly, and it shall be the duty of the county treasurer to remit such funds monthly as collected to each administrative unit located in said county on a per capita enrollment basis. County-wide expense funds shall include all funds for currrent expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and including also all fines, forfeitures, penalties, poll and dog taxes and funds for vocational subjects.

All county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of budgets submitted by said units to the county commissioners and for the amounts and purposes approved by said commissioners. Capital outlay funds so provided for expenditure by the county administrative unit shall be paid out upon warrants drawn by the county board of education, and those provided for expenditure by a city administrative unit shall be paid out upon warrants drawn by the governing board of the city administrative unit: Provided, that funds derived from payments on insurance losses shall be used in the replacement of buildings destroyed, or in the event the buildings are not replaced, said funds shall be used to reduce the indebtedness of the special bond taxing unit to which said payment has been made, or for other capital outlay purposes within said unit. All county-wide debt service funds shall be apportioned to county and city administrative units and distributed at the time of collection and when available shall be expended in the same manner as are county-wide current expense school funds: Provided, that the payments to any administrative unit shall not exceed the actual needs of said units, including sinking fund requirements. The per capita enrollment basis shall be determined by the state school commission and certified to each administrative unit: Provided, further, that the debt service apportionment between county and city administrative units shall apply only to debt service for capital outlay obligations incurred by counties and cities prior to July 1, 1937, except in those counties where special legislation has been enacted providing for the issuance of school building bonds in behalf of school districts, and special bond tax units. The provisions of this Act shall not apply to refunding bonds issued for school capital outlay obligations. (1939, c. 358, s. 15; 1941, c. 200, c. 267, s. 7.)

§ 115-364. School indebtedness.—If a boundary, territorial district, or unit in which a special bond tax has heretofore been voted or in anyway assumed prior to July first, one thousand nine hundred thirty-three, has been or may be divided or consolidated, and the whole or a portion of which has been or may be otherwise integrated with a new district so established under any reorganization and/or redistricting, such territorial unit, boundary, or district, special taxing or special charter, which has been abolished for school operating purposes, shall remain as a district for the purpose of the levy and collection of the special taxes theretofore voted in any unit, boundary, or district, special taxing or special charter, for the payment of bonds issued and/or other obligations so assumed, the said territorial boundary, district, or unit shall be maintained until all necessary taxes have been levied and collected therein for the payment of such bonds and/or other indebtedness so assumed. Such boundary, unit, or district shall be known and designated as the "..... Special Bond Tax Unit" of ..... County.

All uncollected taxes which have been levied in the respective school districts for the purposes of meeting the operating costs of the schools shall remain as a lien against the property as originally assessed and shall be collectible as are other taxes so levied and, upon collection, shall be made a part of the debt service fund of the special bond tax unit, along with such other funds as may accrue to the credit of said unit; and in the event there is no debt service requirement upon such district, all amounts so collected for whatever purpose shall be covered into the county treasury to be used as a part of the county debt service for schools: Provided, that unpaid teacher's vouchers for the year in which the tax was levied shall be a prior lien: Provided, further, that nothing in this subchapter shall be construed as abolishing special taxes voted in any city administrative unit since July first, one thousand nine hundred thirty-three. (1939, c. 358, s. 16.)

§ 115-365. The operating budget.—It shall be the duty of the county board of education in each county and the school governing authorities in each city administrative unit, upon receipt of the tentative allotment of state funds for operating the schools and the approval of all local funds budgets, including supplements to state funds for operating schools of a higher standard, funds for extending the term, funds for debt service, and funds for capital outlay, to prepare an operating budget on forms provided by the state and file the same with the state superintendent of public instruction and the state school commission on or before the first day of October. Each operating budget shall be checked by the state school authorities to ascertain if it is in accordance with the allotment of state funds and the approval of local funds; and when found to be in accordance with same, shall be the total school budget for said county or city administrative unit. (1939, c. 358, s. 17.)

§ 115-366. Bonds. — The state school commission, subject to the approval of the local government commission, shall determine and provide all bonds necessary for the protection of the state school funds.

The tax levying authorities in each county and city administrative unit, subject to the approval of the local government commission, shall provide such bonds as the state school commission may require for the protection of county and district school funds. (1939, c. 358, s. 18.)

§ 115-367. Provision for the disbursement of state funds.—The payment of the state fund to the county and city administrative units may be made in monthly installments, at such time and in such amounts as may be practical to meet the needs and necessities of the eight months' school term

in the various county and city administrative units: Provided, that prior to the payment of any monthly installment, it shall be the duty of the county board of education or the board of trustees to file with the state superintendent of public instruction and the state school commission a certified statement of all salaries, together with all other obligations that may be due and payable, said statement to be filed on or before the fifteenth day of each month next preceding the maturity of the obligations.

When it shall appear to the state school commission from said certified statement that any amounts are due and necessary to be paid, such amounts shall be certified to the state superintendent, who shall draw a requisition on the state auditor covering the same; and upon receipt of notice from the state treasurer showing the amount placed to their credit, the duly constituted authorities may issue state warrants in the amount so certified: Provided, that no funds shall be released for payment of salaries of administrative officers of county or city units if any reports required to be filed with the state school authorities are more than thirty days overdue. (1939, c. 358, s. 19.)

§ 115-368. How school funds shall be paid out.—The school funds shall be paid out as follows:

1. State School Funds.—School funds shall be released only on warrants drawn on the state treasurer signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the board of trustees for city administrative units, and countersigned by such officer as the county government laws may require.

2. County and District Funds.—All county and district funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties and the chairman and the secretary of the board of trustees for city administrative units and countersigned by such officer as the county government laws may require: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of and are within the budget amounts appropriated for the particular administrative unit. Upon the basis of budget approval and upon receiving the certificate of per capita enrollment as set out in § 115-363, the county auditor or accountant shall ascertain and determine the proportion of all taxes levied by the county which shall be apportionable to the county administrative unit and any city administrative unit therein. As taxes are collected within said county, the proportion thereof allocable to the county administrative unit and any city administrative unit in said county shall be set up to the credit of such administrative unit by the county accountant or auditor. All funds due to the county administrative unit set up and ascertained as aforesaid shall be paid out as hereinbefore provided, and all funds due any city administrative unit therein shall be paid out as hereinbefore provided.

3. Records and Reports.—The state superintendent of public instruction and state school commission shall have full power and authority to make rules and regulations to prescribe the manner in which records shall be kept by all county and city administrative units as to the expenditure of current expense funds, capital outlay funds, and debt service funds, derived from local sources, and to prescribe for making reports thereof to the state superintendent of public instruction. (1939, c. 358, s. 20; 1941, c. 267, s. 8.)

§ 115-369. Audit.—The state school commission, in co-operation with the state auditor, shall cause to be made an audit of all school funds, state, county, and district; and the cost of said audit shall be borne by each fund audited in proportion to the total funds audited, as determined by the state school commission. The tax levying authorities for county and city administrative units shall make provision for meeting their proportionate part of the cost of making said audit, as provided in this subchapter.

Copies of said audits shall be filed with the state school commission, the state auditor, and the state superintendent of public instruction not later than October first after the close of the fiscal year. (1939, c. 358, s. 21.)

§ 115-370. Workmen's compensation and sick leave.—The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the state school commission shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from state school funds. Liability of the state for compensation shall be confined to school employees paid by the state from state school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the state operated eight months school term. The state shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act, whether all of said compensation for the eight months school term is paid from state funds or in part supplemented by local funds. The county and city administrative units shall be liable for workmen's compensation for school employees whose salaries or wages are paid by such local units from local funds, and such local units shall likewise be liable for workmen's compensation of school employees employed in connection with teaching vocational agriculture, home economics, trades and industrial vocational subjects, supported in part by state and federal funds, which liability shall cover the entire period of service of such employees. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The state school commission is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall not exceed three dollars per day.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and

such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter. (1939, c. 358, s. 22.)

§ 115-371. Age requirement and time of enrollment.—Children to be entitled to enrollment in the public schools for the school year one thousand nine hundred thirty-nine-forty, and each year thereafter, must be six years of age on or before October first of the year in which they enroll, and must enroll during the first month of the school year. (1939, c. 358, s. 22½.)

§ 115-372. Purchase of equipment and supplies.—It shall be the duty of the county boards of education and/or the governing bodies of city administrative units to purchase all supplies, equipment and materials in accordance with contracts and/or with the approval of the state division of purchase and contract: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the state purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1939, c. 358, s. 23.)

§ 115-373. Determination of manner of heating school buildings.—For the purpose of determining the most economical manner and method of heating school buildings, including type of insulation, the school commission in co-operation with state department of public instruction is hereby authorized to conduct experiments in the different types of heating. (1939, c. 358, s. 23½.)

§ 115-374. School transportation. — The control and management of all facilities for the transportation of public school children shall be vested in the state of North Carolina under the direction and supervision of the state school commission, which shall have authority to promulgate rules and regulations governing the organization, maintenance, and operation of the school transportation facilities. The tax levying authorities in the various counties of the state are authorized and empowered to provide in the capital outlay budget adequate buildings and equipment for the storage and maintenance of all school busses. Provision shall be made for adequate inspection each thirty days of each vehicle used in the transportation of school children, and a record of such inspection shall be filed in the office of the superintendent of the administrative unit. It shall be the duty of the administrative officer of each administrative unit to require an adequate inspection of each bus at least once each thirty days, the report or reports of which inspection shall be filed with the administrative officers. Every principal, upon being advised of any defect by the bus driver, shall cause a report of such defect to be made to this administrative officer immediately, whose duty it shall be to cause such defect to be remedied before such bus can be further operated. The use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day: Provided, in cases of sudden illness or injury requiring immediate medical attention of any child or children while attending the public schools, the principal of the school may send the child or children by school bus, if no other vehicle is available, to the nearest doctor or hospital for medical treatment; provided the expense of such transportation shall be paid from county funds.

The state school commission is authorized and empowered, under rules and regulations to be adopted by said school commission, to permit the use and operation of school busses during the extended term in any administrative unit; but such administrative unit shall be responsible for the costs of operating such school busses during such extended term and shall be liable for workmen's compensation in connection therewith: Provided, the school commission, in its discretion, may effect workmen's compensation coverage for all employees paid from local funds; also may extend the provisions of §§ 115-340 to 115-346 to children being transported to and from school for the ninth month, or twelfth grade, or both.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter.

The State School Commission is authorized and empowered, under rules and regulations to be adopted by said School Commission, to permit the use and operation of school busses for the transportation of school children on necessary field trips while pursuing the courses of vocational agriculture, home economics, trade and industrial vocational subjects, to and from demonstration projects carried on in connection therewith; provided that under no circumstances shall the total round trip mileage for any one trip exceed twenty-five miles nor on any such trip shall a State owned school bus be taken out of the State of North Carolina. The costs of operating such school buses for said purpose, including the liability for workmen's compensation therewith and the employment of drivers of such buses, shall be paid for out of State funds, and the drivers of such busses shall be selected and employed as is provided for the operation of busses for the regularly organized school day under § 115-378: Provided, further, that the State School Commission shall approve and designate any busses used for the purposes herein set forth. (1939, c. 358, s. 24; 1941, cc. 214, 267, s. 9, c. 315.)

§ 115-375. Operation of school busses one day prior to opening of term.—The State School Commission is hereby empowered, in order to properly organize the public schools of the State, to operate the school busses one day prior to the opening of the regular school term for the purpose of registration of students, organizing classes, distributing textbooks, and such other purposes as will promote the efficient organization and operation of the public schools of the State. The costs of operating the same for said purpose, including the liability for workmen's compensation therewith, shall be paid out of State funds. (1941, c. 101.)

§ 115-376. Bus routes. — In establishing the route to be followed by each school bus operated

as a part of the state school transportation system, in all schools where transportation is now or may hereafter be provided, the state school commission shall, in co-operation with the district principal, unless road or other conditions make it inadvisable, route the busses so as to get within one mile of all children who live more than one and one-half miles from the school to which they are assigned: Provided, that all routes so established shall be subject to the approval of the county board of education and with a view to the needs of the students to the end that the necessity of students waiting on the road for busses in inclement weather be eliminated. The state shall not be required to provide transportation for children living within one and one-half miles of the school in which provision for their instruction has been made. All bus routes thus established shall be filed with the county board of education prior to the opening of school; and in the event any of said routes are disapproved by the county board of education, notice of same shall be filed with the state school commission, and a hearing on such appeal shall be had by said commission within thirty days. (1939, c. 358, s. 25; 1941, c. 267, s. 10½.)

§ 115-377. Purchase of new equipment. — It shall be the duty of the tax levying authorities in the various counties, and they are hereby authorized, empowered, and directed to make provision in the capital outlay budget for the purchase under state contract of new busses needed to relieve overcrowding and to provide for the transportation of children not transported during the school year one thousand nine hundred thirty-nine. It shall be the duty of the state school commission to determine the rated capacity of each public school bus transporting children to or from school, and it shall be the duty of the local school authorities to see that no bus is loaded more than twenty-five per cent (25%) above its rated capacity. The county boards of education shall determine when the busses are overcrowded as specified in this section, and the state shall provide for the operation of all new busses purchased by the counties. It shall be the duty of the state of North Carolina to purchase all school busses used as replacements for old publicly owned busses which were operated by the state during the school year one thousand nine hundred forty, forty-one. It shall be the duty of the state school commission to promulgate rules and regulations that will insure for the children the greatest possible safety, including a standard signaling device for giving the public due notice that the bus is making a stop. Before purchasing new school busses, the state school commission shall cause to be made a thorough study of the most modern materials and construction for insuring the safest equipment possible within the funds available. The state school commission, in its discretion, may effect fire insurance coverage on the school busses, or act as a self-insurer. (1939, c. 358, s. 26; 1941, c. 267, ss. 8½, 10.)

§ 115-378. Bus drivers.—The authority for selecting and employing the drivers of school busses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school and the county or city superintendent of schools: Provided, that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible; and it shall be lawful to employ student drivers wherever such is deemed advisable. The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the state school commission for that particular type of employee. (1939, c. 358, s. 27.)

§ 115-379. Contract transportation. — In counties where school transportation is provided by contract with private operators, the state shall provide funds for operating costs on the standards adopted for publicly owned busses, and it shall be the duty of the tax levying authorities in the various counties to provide in the capital outlay budget the additional funds necessary to pay contracts. (1939, c. 358, s. 28.)

§ 115-380. Co-operation with highway and public works commission in maintenance of equipment.—The state school commission is hereby authorized to negotiate with the highway and public works commission in co-ordinating all facilities for the repair, maintenance, and upkeep of equipment to be used by the state school commission in the school transportation system. In all cases where this is done, the state highway and public works commission shall be reimbursed in the amount of the actual cost involved for labor and parts to be determined by an itemized statement filed with the state school commission. (1939, c. 358, s. 29.)

§ 115-381. Lunch rooms may be provided.— In such cases as may be deemed advisable by the trustees or school committee in any school, and where the same may be deemed necessary because of the distance of the said school from places where meals may be easily obtained, it shall be permissible for the said trustees and the said school committees, as a part of the functions of the said public schools, to provide cafeterias and places where meals may be sold, and operate or cause the same to be operated for the convenience of teachers, school officers, and pupils of the said schools. There shall be no personal liability upon the said trustees and school committees, or members thereof, arising out of the operation of the said eating places, and it is understood and declared that the same are carried on and conducted in connection with the public schools, and because of the necessities arising out of the consolidation of the said schools and the inconvenience and interruption of the school day caused by seeking meals elsewhere: Provided, that no part of the appropriation made by the state for the public schools shall be expended for the operation of said cafeterias or eating places, nor shall the provisions of § 115-370 apply to the employees of the cafeterias or eating places, except such persons as are regularly employed otherwise in the schools. (1939, c. 358, s. 30.)

§ 115-382. Miscellaneous funds. — It shall be the duty of the county superintendent of public instruction to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes are correctly accounted for to the school fund each year, and to examine the records

of the several courts of the county, including courts of justices of the peace, at least once every three months to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund, are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be his duty to make prompt report thereof to the state school commission and also to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of poll taxes, dog taxes, fines, forfeitures, and penalties to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court: Provided, however, that this section shall not be construed as making unlawful the use of such portions of said funds for other purposes as may be provided by the provisions of this subchapter. The clear proceeds of poll taxes, dog taxes, fines, forfeitures and penalties shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including justices of the peace, who shall wilfully fail or refuse to account for all poll taxes, dog taxes, fines, forfeitures or penalties coming into the hands of such officer, shall, upon conviction thereof, be guilty of a felony and imprisoned in the state's prison in the discretion of the court, or fined in the discretion of the court, or both. (1939, c. 358, s. 31.)

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Art. 1. The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Constitutional provisions. — The general assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof, in anywise granted to or conferred upon the trustees of such University; and the general assembly may make provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of such University. The general assembly shall provide that the benefits of the university, as far as practicable, be extended to the youth of the state free of expense for tuition; also that all the property which has heretofore accrued to the state, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the university, and the general assembly shall establish and maintain, in connection with the university, a department of agriculture, of mechanics, of mining, and of normal instruction. (Rev., s. 4259; Const., art. 9, ss. 6, 7, 14; C. S. 5781.)

§ 116-2. Consolidated University of North Carolina.—The University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women are hereby consolidated and merged into "The University of North Carolina." (1931, c. 202, s. 1.)

§ 116-3. Incorporation and corporate powers.—The trustees of the university shall be a body politic and corporate, to be known and distinguished by the name of the "University of North Carolina," and by that name shall have perpetual succession and a common seal; and by that name shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the university, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the university, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the university, or according to the terms of donation.

The corporation, by its corporate name, shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

In addition to these powers, the board of trustees shall succeed to all the rights, privileges, duties and obligations by law, or otherwise, enjoyed by or imposed upon the University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women, prior to March 27, 1931. (Rev, ss. 4260, 4261; Code, ss. 2610, 2611, 2630; R. S., vol. 2, pp. 424, 425; 1789, c. 305, ss. 1, 2; 1874-5, c. 236, s. 2; 1931, c. 202, s. 4; C. S. 5782.)

§ 116-4. Trustees; number, election and term.—There shall be one hundred trustees of the University of North Carolina, at least ten of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. The General Assembly in one thousand nine hundred and thirty-one shall elect such trustees, and their terms of office shall commence on July 1, 1932.

Twenty-five of the trustees shall be elected for terms expiring April 1, 1933, twenty-five for terms

expiring April 1, 1935, twenty-five for terms expiring April 1, 1937, and twenty-five for terms expiring April 1, 1939. As and when their terms respectively expire, their successors shall be elected by the General Assembly by joint ballot for terms of eight years. The superintendent of public instruction is ex officio a trustee of the University.

The members of the board of trustees of the University or other state institutions of North Carolina shall be deemed commissioners of public charities within the meaning of the proviso to section seven of Art. XIV of the Constitution of North Carolina. (Rev., s. 4268; Const. Art. 9, s. 6; Code, ss. 2620, 2625; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; 1909, c. 432; 1917, c. 47; 1931, c. 202, ss. 4, 5; 1937, c. 139; C. S. 5789.)

§ 116-5. Living Governors made honorary members of board of trustees.—Each of the former Governors of North Carolina now living is hereby made an honorary member of the Board of Trustees of the University of North Carolina for life, with the power to vote on all matters coming before said board of trustees for consideration. The present Governor of North Carolina, and each succeeding Governor, shall, at the expiration of the term of office of each, automatically become an honorary member of the Board of Trustees of the University of North Carolina for life, with the power to vote on all matters coming before the said board of trustees for consideration. (1941, c. 136.)

§ 116-6. Trustees may remove members of board.—The board of trustees shall have power to vacate the appointment and remove a trustee for improper conduct, stating the cause of such removal on the journal; but this shall not be done except at a regular meeting of the board, and there shall be present at the doing thereof at least twenty of the members of the board. (Rev., s. 4270; Code, s. 2619; R. S., vol. 2, p. 432; C. S. 5790.)

§ 116-7. Filling vacancies in board.—Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the general assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section. (Rev., ss. 4271, 4272; Code, s. 2622; 1804, c. 647; 1805, c. 678, s. 2; 1873-4, c. 64, s. 3; 1891, c. 98; 1907, c. 828; C. S. 5791.)

§ 116-8. Meetings of trustees, regular and special; quorum.—There shall be two regular meetings of the board of trustees each calendar year. One of these regular meetings shall be in the city of Raleigh, which meeting shall be held during the session of the general assembly during the years that body convenes. The other regular meeting shall be held at such time and place as the governor may appoint. At any of the regular meetings of the board any number of trustees, not less than ten, shall constitute a quorum and be competent to exercise full power and authority to do the business of the corporation; and the board or the governor shall have power to appoint special meetings of the trustees at such time and place as, in their opinion, the interest of the corporation may require; but no special meeting shall have power to revoke or alter any order, resolution, or vote of any regular meeting; and the board of trustees at any regular meeting may, by resolution, vote, or ordinance, from time to time, as to it shall seem meet, limit, control, and restrain the business to be transacted, and the power to be possessed and exercised by special meetings of the board, called according to law, and the powers of such special meetings shall be limited, controlled and restrained accordingly. And every order, vote, resolution, or other act done, made, or adopted by any special meeting, contrary to any order, resolution, vote, or ordinance of the board at any regular meeting shall be absolutely, to all intents and purposes, null and void. (Rev., s. 4269; Code, ss. 2616, 2618, 2621; R. S., vol. 2, p. 433; 1873-4, c. 64, s. 2; C. S. 5792.)

§ 116-9. Governor to preside at trustees' meetings or appoint presiding officer.—The governor shall preside at all the meetings of the board at which he may be present; and if, by indisposition or other cause, the governor shall be absent from any meeting of the board, he may appoint, in writing, some other person, being a trustee, to act in his stead for the time being, which appointee shall preside accordingly; and if at any time the governor shall be absent from the meeting of the board and shall not have appointed some trustee to act in his stead it shall be lawful for the board to appoint some one of their number to preside for the time being. (Rev., s. 4263; Code, s. 2615; R. S., vol. 2, p. 432; 1805, c. 678; C. S. 5788.)

§ 116-10. Rules and regulations.—The trustees shall have power to make such rules and regulations for the management of the university as they may deem necessary and expedient, not inconsistent with the constitution and laws of the state. (Rev., s. 4273; Code, s. 2623; 1873-4, c. 64, s. 4; C. S. 5794.)

§ 116-11. Executive committee. — The trustees shall have power to appoint from their own number an executive committee which shall be clothed with such powers as the trustees may confer. (Rev., s. 4267; Code, s. 2624; 1873-4, c. 64, s. 5; C. S. 5795.)

§ 116-12. President and faculty.—The trustees shall have the power of appointing a president of the University of North Carolina and such professors, tutors, and other officers as to them shall appear necessary and proper, whom they may remove for misbehavior, inability, or neglect of duty. (Rev., s. 4264; Code, s. 2613; R. S., vol. 2, p. 427; 1789, c. 305, s. 7; C. S. 5796.)

§ 116-13. Treasurer; duties and bond.—The trustees shall elect and commission some person to be treasurer for the corporation during the term of two years and until his successor shall be elected and qualified; which treasurer shall enter into bond, with sufficient sureties, payable to the state of North Carolina, in the sum of not less than ten thousand dollars, conditioned for the faithful discharge of his office and the trust re-

posed in him, and that all moneys and chattels belonging to the corporation that shall be in his hands at the expiration of his office shall then be immediately paid and delivered into the hands of the succeeding treasurer. Every treasurer shall receive all moneys, donations, gifts, bequests, and charities whatsoever that may belong or accrue to the corporation during his office, and at the expiration thereof shall account with the trustees for the same, and the same pay and deliver over to the succeeding treasurer; and on his neglect or refusal so to pay and deliver the same proceedings may be had against him as is or may be provided for the recovery of moneys from sheriffs or other persons chargeable with public moneys. (Rev., s. 4265; Code, s. 2612; R. S., vol. 2, p. 426; 1789, c. 305, s. 4; C. S. 5797.)

§ 116-14. Vacancies in offices of secretary and treasurer.—In case the office of secretary or treasurer of the corporation shall be vacant from any cause whatever in the recess of the board of trustees, the president shall appoint a suitable person to fill the same until the annual meeting of the board of trustees, at which time the board shall elect a proper person to fill such vacancy. (Rev., s. 4266; Code, s. 2617; R. S., vol. 2, p. 433; C. S. 5798.)

§ 116-15. Extension work.—It shall be the duty of the faculty of the University to extend its influence and usefulness as far as possible to the persons of the state who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S. 5837.)

§ 116-16. Awarding of degrees, etc., by consolidated University.—The faculty of the University, that is to say, the president and professors, shall have the power of conferring all such degrees or marks of literary distinction as are usually conferred by colleges or universities. All degrees or marks of literary distinction conferred by the University of North Carolina or any of its component colleges as herein specified, shall be conferred by the faculty of the University of North Carolina or the faculty of any one of its component colleges by and with the consent of the board of trustees, but degrees or marks of literary distinction conferred by the faculty of any one of the said colleges shall designate the college through or by which said degree or mark of literary distinction is conferred. (1931, c. 202, s. 11; C. S. 5796.)

§ 116-17. Application of receipts.—All receipts shall be applied to the maintenance and promotion of the particular unit of the university receiving same and to the objects specified in any laws making appropriations for its support, or in accordance with the expressed wishes of any donor, as far as practicable. (1907, c. 406, s. 17; C. S. 5815.)

§ 116-18. Gifts and endowments belong to institution to which made; administration of such funds.—All gifts and endowments, whether moneys, goods or chattels, or real estate, heretofore or hereafter given or bestowed upon or conveyed to any one of the institutions, as existing before March 27, 1931, shall continue thereafter to be used, enjoyed, and administered by the particular unit to which they were given or conveyed; but if there were trusts, they shall be administered by said unit in accordance with the provisions of the trust deed creating them, for the benefit of the particular institution to which such trust deed was executed. The administration of all these funds, endowments, gifts, and contributions shall, however, be under the control of the board of trustees of the University of North Carolina. (1931, c. 202, s. 12.)

§ 116-19. Tax exemption.—The lands and other property belonging to the corporation shall be exempt from all kinds of public taxation. (Rev., s. 4262; Const., art. 5, s. 5; Code, s. 2614; R. S. vol. 2, p. 428; 1789, c. 306, s. 3; C. S. 5783.)

§ 116-20. Escheats to university.—All real estate which has heretofore accrued to the state, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation. (Rev., s. 4282; Const., art. 9, s. 7; Code, s. 2626; R. C., c. 113, s. 11; 1789, c. 306, s. 2; C. S. 5784.)

§ 116-21. Evidence making prima facie case.—In all cases where land situated in this state is claimed by the University of North Carolina by right of escheat, it shall be sufficient to prove, in order to make out a prima facie case of escheat, that the land claimed was granted by the state of North Carolina; that the grantee, or any subsequent owner thereof, died without disposing of said land either by conveyance or will, registered or probated prior to the institution of the action, and that for fifty (50) years subsequent to the death of the last known owner, no person has appeared to claim the land either as devisee, grantee, or heir. (Ex. Sess. 1920, c. 43; C. S. 5784(a).)

§ 116-22. Unclaimed personalty on settlements of decedents' estates to university.—All sums of money or other estate of whatever kind which shall remain in the hands of any executor, administrator, or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator, or collector to the University of North Carolina; and that corporation is authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto; and if no such claim shall be preferred within ten years after such money or other estate be received by such corporation, then the same shall be held by it absolutely. (Rev., s. 4283; Const., art. 9, s. 7; Code, ss. 2627, 1504; 1868-9, c. 113, s. 76; R. S., c. 46, s. 20; 1784, c. 205, s. 2; 1809, c. 763, s. 1; C. S. 5785.)

§ 116-23. Other unclaimed personalty to university.—Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become

due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such property or dividend shall be received by it, then the same shall be held by it absolutely. (Rev., s. 4284; Code, ss. 2628, 2629; C. S. 5786.)

§ 116-24. Certain unclaimed bank deposits to university.—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such deposit shall be received by it, then the same shall be held by it absolutely. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. (1937, c. 400; 1939, c. 29.)

§ 116-25. Other escheats. — Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation engaged in construction work in North Carolina for services rendered in such construction work within the state are hereby declared to be escheats coming within the laws of this state, and the same shall be paid to the University of North Carolina immediately upon the expiration of one year from the time the same became due.

Rebates and returns of overcharges due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the utilities commission, shall be paid to the University of North Carolina.

All monies now in the hands of clerks of the superior court, the state treasurer, or any other officer or agency of the state or county, or any other depository whatsoever, as proceeds of the liquidation of state banks by receivers appointed in the superior court prior to the liquidation Act of one thousand nine hundred twenty-seven, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All monies now in the hands of the treasurer of the state, represented by state warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the University of North Carolina.

All monies, claims, or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such monies, claims, or property shall be received by it, then the same shall be held by it absolutely.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund. (1939, c. 22.)

§ 116-26. Application of receipts.—All receipts heretofore had or hereafter to be had from dividends, escheated property, derelict property, money or other property in the hands of executors, administrators, or collectors, and from any source whatever under authority of the state, and all interest thereon, shall be exclusively devoted by the trustees to the maintenance of the university. (Rev., s. 4285; Code. s. 2630; 1874-5, c. 236, s. 2; C. S. 5787.)

Part 2. North Carolina State College of Agriculture and Engineering of the University of North Carolina.

§ 116-27. Operation of State College at Raleigh.—The North Carolina State College of Agriculture and Engineering shall from and after March 27, 1931 be conducted and operated as part of the University of North Carolina. It shall be located at Raleigh, North Carolina, and shall be known as the North Carolina State College of Agriculture and Engineering of the University of North Carolina. (1931, c. 202, s. 2.)

§ 116-28. Object of the college.—The object of this college shall be to teach the branches of learning relating to agricultural and mechanical arts and such other scientific and classical studies as the board of trustees may elect to have taught, and to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life. (1907, c. 406, s. 3; C. S. 5807.)

§ 116-29. Share in appropriations by congress.—The appropriations made or which may hereafter be made by the congress for the benefit of colleges of agricultural and mechanical arts shall be divided between the white and colored institutions in this state in the ratio of the white population to the colored, as ascertained by the preceding national census. (1907, c. 406, s. 1; C. S. 5808.)

§ 116-30. Board to accept gifts and congressional donations.—The board of trustees shall use, as in its judgment may be proper, for the purposes of such college and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The board of trustees shall have power to accept and receive on the part of the state, property, personal, real or mixed, and any donations from the United States congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and

shall expend the amount so received in accordance with the acts of the congress in relation thereto. (1907, c. 406, s. 6; C. S. 5816.)

§ 116-31. Land scrip fund.—The board of trustees shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars, issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the state treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of such college in accordance with the act of the congress approved July second, one thousand eight hundred and sixty-two, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts." (1907, c. 406, s. 8; C. S. 5817.)

§ 116-32. Agricultural experiment station.—The agricultural experiment and control station shall be connected with the college and controlled by the board of trustees. (1907, c. 406, s. 12; C. S. 5825.)

§ 116-33. Land for experimental purposes.—The State Highway and Public Works Commission and the board of trustees of the University of North Carolina are hereby authorized to enter into an agreement for the benefit and use of the North Carolina State College of Agriculture and Engineering of the University of North Carolina whereby a certain portion of the land located near Method, North Carolina, and in the possession of the State Highway and Public Works Commission may be conveyed to the University for a term of years or in fee simple, to be used by said college for research, experimental or demonstration purposes, and whenever an agreement is entered into, the Governor and Secretary of State are authorized to execute a lease or deed conveying to the University the number of acres of land agreed upon. (1925, c. 198, s. 1.)

§ 116-34. Joint employment by college and state.—Whenever it shall be to the advantage of the North Carolina State College of Agriculture and Engineering and any department of the State government to employ jointly any person, the board of trustees and the governing authority of the department, on the approval of the Governor, are hereby authorized to make such employment and to prorate the amount of the salary and other expenses that each shall be required to pay. (1925, c. 198, s. 2.)

§ 116-35. Co-ordinating committee of college and department of agriculture created.—A co-ordinating committee is hereby created consisting of thirteen members as follows: The president of the board of trustees of the University of North Carolina, who shall be ex officio chairman of said committee, the president of the University, the dean of administration of State College of Agriculture and Engineering, and the dean of agriculture, the commissioner of agriculture, the assistant commissioner of agriculture, and the state chemist or any other officer in the department of agriculture which the commissioner of agriculture may designate, three members of the board of trustees of the University of North Carolina who have a practical knowledge of agriculture, to be appointed by the president of the said board, and three members of the state board of agriculture, to be appointed by the commissioner of agriculture, the members so appointed to serve for a term of two years or until their successors are duly appointed. (1939, c. 255, s. 1.)

§ 116-36. Duties of co-ordinating committee.—It shall be the duty of the co-ordinating committee herein created to deal with and handle any existing matters of duplication, overlapping or disagreement, and such controversial matters as may arise in the future in the agricultural agencies of the State College of Agriculture and Engineering and the department of agriculture. Whenever there is an overlapping or disagreement in consequence of closely allied functions and duties of the said agencies, it shall be the duty of the co-ordination committee to allocate, after due consideration, such duties and functions as may be in disagreement or overlapping, and that are not already allocated by law, to the proper agency as it may deem wise, and to require such co-operation between the employees in the agencies as it may deem necessary. The co-ordinating committee may investigate, on complaint, or on its own initiative, any overlapping, duplication or disagreement and the decision of the said committee shall be binding on all parties. (1939, c. 255, s. 2.)

§ 116-37. Findings of committee to be binding on commissioner of agriculture and president of University.—The findings and recommendations of the co-ordinating committee shall be binding on the commissioner of agriculture and the president of the University of North Carolina and it shall be their duty to see that the findings and recommendations of the committee shall be put into effect in their respective departments. (1939, c. 255, s. 3.)

Part 3. Woman's College of the University of North Carolina.

§ 116-38. Operation of College for Women at Greensboro. — The North Carolina College for Women shall from and after March 27, 1931, be conducted and operated as a part of the University of North Carolina. It shall be located at Greensboro, North Carolina, and shall be known as the Women's College of the University of North Carolina. (1931, c. 202, s. 3.)

§ 116-39. Objects of institution.—The objects of the Woman's College of the University of North Carolina shall be to teach young white women all branches of knowledge recognized as essential to a liberal education, such as will familiarize them with the world's best thought and achievement and prepare them for intelligent and useful citizenship; to make special provision for training in the science and art of teaching, school management, and school supervision; to provide women with such training in the arts, sciences, and industries as may be conducive to their self-support and community usefulness; to render to the people of the state such aid and encouragement as will tend to the dissemination of knowledge, the fostering of loyalty and patriotism, and the pro-

motion of the general welfare. (1919, c. 199, s. 2; C. S. 5835.)

§ 116-40. Admission of students.—The board of trustees shall make rules and regulations for the admission of students, but shall not discriminate against any county in the number of students allowed it, in case all applicants cannot be accommodated. Each county shall have representation in proportion to its white school population, if it desires it; and, should any county fail to avail itself of its proportional number, the board of trustees may recognize applicants from counties which already have their proportionate representation. (Rev., s. 4254; 1891, c. 139, s. 4; C. S. 5836.)

§ 116-41. Dining halls. — For the benefit of those who may desire to avail themselves of it dining halls shall be established at which meals shall be furnished at actual cost. (Rev., s. 4257; 1891, c. 139, s. 12; 1905, c. 502; 1919, c. 199, s. 4; C. S. 5838.)

Part 4. Miscellaneous Provisions.

§ 116-42. License for operating billiard tables, etc., to be approved by President of University.—No person, firm or corporation shall apply for or receive from the governing body, or the representative of such governing body, of any county or incorporated city or town, any license or authorization to set up, maintain or keep in Chapel Hill, or within five miles thereof, any public billiard table or other public table of any kind, by whatever name called, at which games of chance or skill may be played, without first obtaining written permission therefor from the President of the University of North Carolina. Nor shall any person, firm or corporation apply for or receive a license from any such governing body, or the representative thereof, to keep, maintain or operate within the Town of Chapel Hill or within five miles of the boundaries thereof, any house, place or establishment wherein ten pin alleys, bowling alleys, or other games of chance or skill shall be operated or conducted without first obtaining written permission therefor from the President of the University of North Carolina. (Rev., s. 4278; Code, s. 2644; R. C., c. 113, s. 5; R. S., c. 116, s. 4; 1794, c. 429; 1931, c. 41; C. S. 5802.)

§ 116-43. License for exhibiting any form of amusements and entertainments to be approved by President of University.—No person, firm or corporation shall apply for or obtain from the governing body, or the representative of such governing body, or any county or incorporated city or town any license or permit to exhibit within the Town of Chapel Hill or within five miles thereof any theatrical, sleight of hand, equestrian performance, or any dramatic recitation, or any rope or wire dancing, natural or artificial curiosities, or any concert, serenade or performance in music, singing or dancing, without first securing a written permission for said performance from the President of the University of North Carolina. A copy of the President's permission shall be filed with the governing body, or the representative of such governing body, or any county or incorporated city or town at the time said license or permit is applied for in all cases covered by this section. (Rev., s. 4279; Code, s. 2645; R. C., c. 113, s. 6; R. S., c. 116, s. 3; 1824, c. 1252; 1931, c. 41; C. S. 5803.)

§ 116-44. Violation of two preceding sections; misdemeanor; jurisdiction; participant must testify.—Any person violating §§ 116-42 or 116-43 shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars, or be imprisoned not less than ten days nor more than thirty days; and if the offender is not brought to trial before some justice of the peace within twelve months after the commission of the offense, the superior court in term for the county in which the offense was committed may take jurisdiction of the same and punish the offender at the discretion of the court. No person shall be excused or incapacitated from testifying touching the violation of any of the two next preceding sections by reason of his having been a participant in the offenses; but the testimony of such person shall not be used against him in any criminal prosecution on account of such participation. (Rev., s. 4280; Code, s. 2646; R. C., c. 113, s. 7; 1879, c. 232, s. 3; C. S. 5804.)

Art. 2. Western Carolina Teachers' College.

§ 116-45. Western Carolina Teachers' College.—The Western Carolina Teachers' College, successor to The Cullowhee Normal and Industrial School created a public institution by Chapter 369 of the Private Laws of 1905, is and shall remain a corporation under the name of the Western Carolina Teachers' College, with power to sue and be sued, to make contracts and to exercise all other corporate rights and privileges incident to a public educational institution of the state and necessary to the management of the school. (1905 (Pr.), c. 369; 1925, c. 270; C. S. 5839.)

§ 116-46. Trustees; appointment; terms; to hold property.—The board of trustees of the Western Carolina Teachers' College shall consist of nine persons to be appointed by the Governor, and shall hold office for four years from and after their appointment. Within thirty days from March 10, 1925, the Governor shall appoint five members of the board. Within six months from March 10, 1925, the Governor shall appoint four others members of the board. At the time of making the appointments as herein provided for the Governor shall designate which members of the present board are to be succeeded by his appointees. Any vacancies occurring in the board shall be filled by the Governor. The Governor shall transmit the names of his appointees to the Senate at the next session of the General Assembly for confirmation. The said board is hereby created a body corporate, to be known as "the board of trustees of Western Carolina Teachers' College." All property, real, personal, or mixed, of every kind and character, now owned and under the control of the board of trustees of the Cullowhee Normal and Industrial School at Cullowhee, or owned and under the control of the State Board of Education or of any other person or corporation for the use and benefit of the Cullowhee Normal and Industrial School, is hereby transferred to and the title thereof is hereby vested in the board of trustees of the Western Carolina Teachers' Col-

lege who shall take, receive and hold the same for the use and benefit of the Western Carolina Teachers' College; the trustees may purchase and hold real and personal property; receive donations, which donations shall be received by them for the purposes expressed by the donors thereof and shall be used for such purpose and no other, and do all other things necessary, proper and useful to carry out the provisions of this article. All property now owned by the Cullowhee Milling Company, a corporation, the stock of which is owned by the trustees, shall be transferred to the board of trustees of the Western Carolina Teachers' College and the said corporation shall be dissolved according to law. The trustees shall take over the property of the Cullowhee Milling Company and use it for the benefit of the Western Carolina Teachers' College as fully as if it was now owned by the Cullowhee Normal and Industrial School and not by the Cullowhee Milling Company. (1925, c. 270, s. 2; 1929, c. 251, s. 2.)

§ 116-47. Meeting and organization of trustees.—It shall be the duty of said board of trustees to hold at Cullowhee an annual meeting, at which meeting they shall qualify and organize, and consider recommendations of the president of the normal school, and such other business as may properly come before them. The board shall elect, at such meeting, a chairman and vice chairman, and appoint such committees among their membership as they may deem proper and wise for the conduct of this institution. They may also hold such special meetings from time to time as they may deem necessary. (1925, c. 270, s. 3.)

§ 116-48. Trustees to hold property.—It shall be the duty of the board of trustees of the Western Carolina Teachers' College to take and hold all property, of whatever kind, heretofore held by the trustees of the Cullowhee Normal and Industrial School. The said boards of trustees and their successors in office shall hold in trust, for the State of North Carolina, all such property as is herein transferred to them, or to be later acquired by them for the purposes of said school. (1925, c. 270, s. 4; 1929, c. 251, s. 2.)

§ 116-49. Duties of trustees.—It shall be the duty of the board of trustees to provide for the spending of all moneys whatsoever belonging to, appropriated to, or in any way acquired by, the Western Carolina Teachers' College; they shall provide for the erection of all buildings, the making of all needed improvements, the maintenance and enlargement of the physical plant of the said normal school, and may do all things deemed useful and wise by them for the good of the school: Provided, however, that before letting contracts for the erection of any new buildings, the plans for the same shall be approved by the State Superintendent of Public Instruction, by the Secretary of the State Board of Health, and by the Insurance Commissioner of North Carolina. (1925, c. 270, s. 5; 1929, c. 251, s. 2.))

§ 116-50. Election of president, teachers, employees; qualifications of teachers.—It shall be the duty of the board of trustees to elect a president of the said normal school, to fix his salary, and his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office and their respective salaries. No person shall be elected as a teacher or shall teach in the regular classes of the Western Carolina Teachers' College whose academic and professional qualifications are lower than that represented by graduation from a standard college or its undoubted equivalent: Provided, that persons who do not have such qualifications may be elected and may teach as a substitute or temporary teacher. (1925, c. 270, s. 6; 1929, c. 251, s. 2.)

§ 116-51. Awarding of degrees.—The trustees, upon the recommendation of the faculty, are hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions. (1925, c. 270, s. 1; 1929, c. 251, s. 1.)

§ 116-52. Duties of president. — It shall be the duty of the president to act as secretary of the board of trustees, to keep, in a book to be provided for the purpose, a full and complete record of all meetings of said board, and he shall be the custodian of all records, deeds, contracts and the like. He shall, with the approval of the chairman of the board, call all meetings of the board, giving proper notice to each member of every such meeting. Whenever the term of office of any member or members of the board of trustees is about to expire, or should a vacancy occur for any reason, the president shall immediately notify the Governor, to the end that he may make appointment pursuant to § 116-46. The president shall be the administrative and executive head of the institution. He shall prepare annually, for the board of trustees, a detailed report of the normal school for the preceding year, a copy of which report shall be sent to the State Superintendent of Public Instruction, and a copy shall be filed in the office of the president. (1925, c. 270, ss. 7, 11.)

§ 116-53. Purpose of school, standards. — The central purpose of the Western Carolina Teachers' College shall be to prepare teachers for the public schools of North Carolina. To that end, the president shall prepare courses of study, subject to the approval of the State Superintendent of Public Instruction. It shall be the duty of the State Superintendent to visit the Western Carolina Teachers' College from time to time, and to advise with the president about standards, equipment and organization, to the end that a normal school of high grade shall be maintained. The standards shall not be lower in the main, than the average standard of normal schools of like rank in the United States. (1925, c. 170, s. 8; 1929, c. 251, s. 2.)

§ 116-54. Practice or demonstration school.—It shall be the duty of the board of education and county superintendent of Jackson County to cooperate with the board of trustees of the Western Carolina Teachers' College in maintaining a practice or demonstration school. It shall be the duty of board of trustees to furnish buildings, equipment, water and lights for such practice school; while the county board of education and

the local school authorities shall furnish fuel and janitors, and shall pay all teachers in the practice school the regular State or county salary schedule, with the proviso that any excess in salaries on account of specially qualified teachers shall be paid by the board of trustees of the normal school. The qualifications of teachers in the practice school shall be fixed by the board of trustees; the nomination of such teachers shall be made jointly by the county superintendent and the president; but the practice teachers shall be elected by the school authorities of the local school district. The practice school, while under the general administration and control of the normal school authorities, shall remain an integral part of the county school system, and be subject to the same regulations as to supervision, standards, records, and the like as other graded schools of the county. In case of any disagreement between the officials herein referred to, said dispute shall be referred to the State Superintendent of Public Instruction, whose decision shall be final. (1925, c. 270, s. 9; 1929, c. 251, s. 2.)

§ 116-55. Endowment fund. — The board of trustees are hereby authorized to establish a permanent endowment fund, to be loaned to needy and worthy students. The board may receive gifts and donations, and may, after furnishing lights and power to the normal school, sell excess current, if any there shall be, at a rate approved by the utilities commission, to the people in the community, and set aside for said endowment any moneys coming to the institution from such sources. The board of trustees are hereby empowered to make rules and regulations for the proper safeguarding and loaning of said funds. (1925, c. 270, s. 10; 1933, c. 134, s. 8; 1941, c. 97.)

Art. 3. East Carolina Teachers' College.

§ 116-56. Incorporation and corporate powers.— The trustees of the East Carolina Teachers' College, established by an act of the general assembly of North Carolina of one thousand nine hundred and seven, and located at Greenville, North Carolina, shall be and are hereby constituted a body corporate by and under the name and style of "The Board of Trustees of the East Carolina Teachers' College," and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges incident to corporations of like character as are necessary for the proper administration of said college. (1907, c. 820, ss. 11, 12, 16; 1911, c. 159, s. 1; Ex. Sess. 1921, c. 27, s. 1; C. S. 5863.)

§ 116-57. Object of college.—The college shall be maintained by the state for the purpose of giving to young white men and women such education and training as shall fit and qualify them to teach in the public schools of North Carolina. (1907, c. 820, s. 15; 1911, c. 159, s. 2; C. S. 5864.)

§ 116-58. Diplomas and certificates.—The board of trustees, upon the recommendation of the faculty, shall give those students in said college who have completed the prescribed course of study a diploma of graduation, and shall have the power to confer degrees; and they may upon the recommendation of the faculty grant certificates of proficiency for the completion of special courses. (1907, c. 820, s. 14; 1911, c. 159, s. 5; Ex. Sess. 1920, c. 68, s. 1; C. S. 5865.)

§ 116-59. Board of Trustees. — The board of trustees of the East Carolina Teachers' College shall consist of 12 members, who shall be appointed by the Governor and confirmed by the Senate; in addition to this number, the superintendent of Public Instruction shall be ex officio chairman.

The twelve appointed members of the first board of trustees authorized by this section shall be appointed for terms beginning July 1, 1929, and shall serve as follows: four members for two years, four members for four years and four members for six years. Thereafter the members of the board shall serve for terms of six years and until their successors are appointed and qualified.

Members of the board of trustees may be removed from office by the Governor and Council of State after a hearing before them, upon complaint being filed by the chairman of the board.

Whenever a trustee shall fail to be present for one year at the regular meetings of the board, his place as trustee shall be deemed vacant, and said vacancy shall be filled by the Governor subject to the approval of the Senate when it next convenes. (1907, c. 820, s. 15; 1911, c. 159, s. 2; 1925, cc. 94, 306, s. 7; 1927, c. 164; 1929, c. 259; C. S. 5866.)

§ 116-60. Course of study.—The board of trustees shall have power to prescribe the course of study of said college and shall lay special emphasis on those subjects taught in the public schools of the state, and on the art and science of teaching. (1907, c. 820, s. 13; 1911, c. 159, s. 4; Ex. Sess. 1920, c. 68, s. 2; C. S. 5867.)

§ 116-61. Discrimination against counties.—The board of trustees shall make no rules that discriminate against one county in favor of another in the admission of pupils into said college. (1907, c. 820, s. 17; C. S. 5868.)

§ 116-62. Power of exclusion from dormitories. —When, in the judgment of the board of trustees, the best interest of the college will be promoted thereby, the board may decline to admit young men into the rooms of the dormitories. (1911, c. 159, s. 6; C. S. 5869.)

§ 116-63. Vesting the rights and titles. — All rights and titles heretofore acquired in any way for the use and benefit of said college shall vest and remain in the said board of trustees as herein incorporated. (1911, c. 159, s. 7; Ex. Sess. 1921, c. 27, s. 2; C. S. 5870.)

§ 116-64. Biennial reports to governor.—The trustees shall report biennially to the governor, before the meeting of each general assembly, the operation and condition of said college. (1907, c. 820, s. 15; 1911, c. 159, s. 8; C. S. 5871.)

Art. 4. Appalachian State Teachers College.

§ 116-65. Name of school.—The name of the institution first known as the "Appalachian State Training School" and later changed to "Appala-

chian State Normal School" at Boone, North Carolina, formerly operated under the provisions of §§ 5855-5862 of the Consolidated Statutes of 1919, is hereby changed to the "Appalachian State Teachers College." (1925 (Pr.), c. 204, s. 1; 1929 (Pr.), c. 66.)

§ 116-66. Trustees; transfer of property.—The board of trustees of the Appalachian State Teachers College, shall consist of nine persons to be appointed by the Governor. Within thirty days from March 10th, 1925, the Governor shall name five members of the board and in naming the said five members, he shall designate which members of the present board are to be succeeded by the five so named. Within six months from March 10th, 1925, the Governor shall name the four other members of the said board and in naming the said four other members, he shall designate which of the members of the present board are to be succeeded by two of the four so named. The term of office of the first five named by the Governor shall expire on the first day of May, one thousand nine hundred and twenty-seven. The term of office of the last four named by the Governor shall expire on the first day of May, one thousand nine hundred and twenty-nine. Any vacancies occurring in said board shall be filled by the Governor. The Governor shall transmit the names of the trustees appointed by him to the Senate at the next session of the General Assembly for confirmation. The said board is hereby created a body corporate to be known as "The board of trustees of the Appalachian State Teachers College." All property, real, personal or mixed of every kind and character now owned and under the control of the board of trustees of the Appalachian Training School or the Appalachian State Normal School, at Boone, North Carolina, or owned and under the control of the State Board of Education for the use and benefit of the Appalachian Training School or the Appalachian State Normal School, or under the control and in the possession of any other person for the use and benefit of the said institutions, is hereby transferred to and the title thereof vested in the board of trustees of the Appalachian State Teachers College, who shall take, receive and hold the same for the use and benefit of the said school; the said trustees may purchase, and hold real and personal property, receive donations and do all things necessary and useful to carry out the provisions of this article. (1925 (Pr.), c. 204, s. 2; 1929 (Pr.), c. 66.)

§ 116-67. Term of office of trustees; vacancies.—Except as herein otherwise provided, the trustees of the Appalachian State Teachers College shall be appointed for the term of four years each. Whenever the term of office of any member or members of the board of trustees is about to expire, or should a vacancy occur for any reason, the president shall immediately notify the Governor, to the end that he may make appointments. (1925 (Pr.), c. 204, s. 12; 1929 (Pr.), c. 66.)

§ 116-68. Meetings.—It shall be the duty of said board of trustees to hold at Boone an annual meeting at which meeting they shall qualify and organize, and consider recommendations of the president of the College, and such other business as may properly come before them. The board shall elect, at such meeting, a chairman and vice chairman, and appoint such committees among their membership as they may deem proper and wise for the conduct of this institution. They may also hold such special meetings from time to time as they may deem necessary. (1925 (Pr.), c. 204, s. 3; 1929 (Pr.), c. 66.)

§ 116-69. Duty to hold property.—It shall be the duty of the board of trustees of the Appalachian State Teachers College to take and hold all property, of whatever kind, heretofore held by the trustees of the Appalachian Training School or the Appalachian State Normal School. The said board of trustees and their successors in office shall hold in trust, for the State of North Carolina, all such property as is herein transferred to them, or to be later acquired by them for the purpose of said school. (1925 (Pr.), c. 204, s. 4; 1929 (Pr.), c. 66.)

§ 116-70. Duty to provide for spending of moneys and erection of buildings, improvements, etc.—It shall be the duty of the board of trustees to provide for the spending of all moneys whatsoever belonging to, appropriated to, or in any way acquired by the Appalachian State Teachers College; they shall provide for the erection of all buildings, the making of all needed improvements, the maintenance and enlargement of the physical plant of said normal school, and may do all things deemed useful and wise by them for the good of the school, not contrary to the educational policies of the State or the laws of North Carolina: Provided, however, that before letting contracts for the erection of any new buildings, the plans for the same shall be approved by the State Superintendent of Public Instruction, by the Secretary of the State Board of Health, and by the Insurance Commissioner of North Carolina. (1925 (Pr.), c. 204, s. 5; 1929 (Pr.), c. 66.)

§ 116-71. Election of president and faculty.—It shall be the duty of the board of trustees to elect a president of the said normal school, to fix his salary, and his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office and their respective salaries. (1925 (Pr.), c. 204, s. 6; 1929 (Pr.), c. 66.)

§ 116-72. Board to confer degrees.—The trustees, upon recommendation of the faculty, are hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions in America. (1929 (Pr.), c. 66.)

§ 116-73. President to keep record of board meetings; reports.—It shall be the duty of the president to act as secretary of the board of trustees, to keep in a book to be provided for the purpose a full and complete record of all meetings of said board, and he shall be the custodian of all records, deeds, contracts and the like. He shall, with the approval of the chairman of the board, call all meetings of the board, giving proper notice to each member of every such meeting. The president shall be the administrative and executive head of the institution. He shall prepare annually for the board of trustees a detailed report of the normal school for the preceding year,

a copy of which report shall be sent to the State Superintendent of Public Instruction, and a copy shall be filed in the office of the president. (1925 (Pr.), c. 204, s. 7; 1929 (Pr.), c. 66.)

§ 116-74. Purpose of school; state superintendent to visit school.—The central purpose of the Appalachian State Teachers College shall be to prepare teachers for the public schools of North Carolina. To that end the president shall prepare courses of study, subject to the approval of the State Superintendent of Public Instruction. It shall be the duty of the State Superintendent to visit the Appalachian State Teachers College from time to time, and to advise with the president about standards, equipment and organization, to the end that a normal school of high grade be maintained. The standards shall not be lower, in the main, than the average standard of normal schools of like rank in the United States: Provided, however, that no person shall teach in the regular classes of the normal school, unless as a substitute or temporary teacher, whose academic and professional qualifications are lower than that represented by graduation from a standard college, or its undoubted equivalent. (1925 (Pr.), c. 204, s. 8; 1929 (Pr.), c. 66.)

§ 116-75. Practice or demonstration school.—It shall be the duty of the board of education and county superintendent of Watauga County to cooperate with the board of trustees of the Appalachian State Teachers College in maintaining a practice or demonstration school. It shall be the duty of the board of trustees to furnish buildings, equipment, water and lights for such practice school; while the county board of education and the local school authorities shall furnish fuel and janitors, and shall pay all teachers in the practice school the regular State or county salary schedule, with the proviso that any excess in salaries on account of specially qualified teachers shall be paid by the board of trustees of the normal school. The qualifications of teachers in the practice school shall be fixed by the board of trustees; the nomination of such teachers shall be made jointly by the county superintendent and the president; but the practice teachers shall be elected by the school authorities of the local school district. The practice school while under the general administration and control of the normal school authorities, shall remain an integral part of the county school system, and be subject to the same regulations as to supervision, standards, records and the like as other graded schools in the county. In case of any disagreement between the bodies herein referred to, said dispute shall be referred to the State Superintendent of Public Instruction, whose decision shall be final. (1925 (Pr.), c. 204, s. 9; 1929 (Pr.), c. 66.)

§ 116-76. To establish permanent endowment fund.—The board of trustees are hereby authorized to establish a permanent endowment fund, to be loaned to needy and worthy students. The board may receive gifts and donations and may, after furnishing lights and power to the normal school, sell excess current, if any there shall be, at a rate approved by the Utilities Commission, to the people in the community, and set aside for said endowment any moneys coming to the institution from such sources. The board of trustees are hereby empowered to make rules and regulations for the proper safeguarding and loaning of said funds. (1925 (Pr.), c. 204, s. 10; 1929 (Pr.), c. 66; 1933, c. 134, ss. 1, 8.)

§ 116-77. Hunting and fishing on premises.—It shall be unlawful for anyone to hunt or fish on the premises of the Appalachian State Teachers College without written permission. Any person so doing shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court. He may have a preliminary hearing before any justice of the peace or before the mayor of the town of Boone. The board of trustees may fix a fee for hunting or fishing upon said premises and set aside any proceeds therefrom for the loan fund. (1925 (Pr.), c. 204, s. 11; 1929 (Pr.), c. 66.)

§ 116-78. Infirmary arrangement to be made with Watauga Hospital, Inc.—The Trustees of the Appalachian State Teachers College are hereby authorized to make such contract or contracts with the Watauga Hospital, Incorporated, for the reception of and treatment in of the officers, teachers and students of the Appalachian State Teachers College in the Watauga Hospital, Incorporated, as may secure the benefit of medical treatment for them.

The trustees are further authorized and empowered to pay any cost of such treatment, nursing and care to the Watauga Hospital, Incorporated, from time to time in accordance with the contract or contracts hereinbefore authorized, provided, such Appalachian State Teachers College shall thereby assume no responsibility for the proper conduct of the said Watauga Hospital, Incorporated.

The said Board of Trustees may aid in the construction of the Watauga Hospital, Incorporated, out of any funds available or hereafter may be secured for the purpose of erecting an infirmary. (1929, c. 212; 1929 (Pr.), c. 66.)

Art. 5. Pembroke State College for Indians.

§ 116-79. Incorporation and corporate powers; location.—The Pembroke State College for Indians shall be and remain a state institution for educational purposes, in the county of Robeson, under the name and style aforesaid, and by that name may have perpetual succession, sue and be sued, contract and be contracted with; have and hold school property, including buildings, lands, and all appurtenances thereto, situated in the county of Robeson, at any place in that county to be selected by the trustees between Bear swamp and Lumber river; acquire by purchase, donation, or otherwise, real and personal property for the purpose of establishing and maintaining a school of high grade for teachers of the race of Cherokee Indians of Robeson county in North Carolina. (Rev., s. 4236; 1887, c. 400, ss. 1, 6; 1911, cc. 168, ss. 1, 2, 215, s. 4; 1913, c. 123, ss. 4, 6; 1941, c. 323, s. 1; C. S. 5843.)

Local Modification.—Robeson County and Pembroke State College for Indians: 1929, c. 195; 1941, c. 323.

§ 116-80. Supervision by State Board of Education.—The State Board of Education shall make all needful rules and regulations concerning the expenditure of funds, the selection of president,

teachers and employees of said Pembroke State College for Indians. The State Board of Education shall control and supervise said school to the same extent substantially as that provided for the organization, control and supervision of the white normal and training schools; and it may change the organization to suit conditions in so far as the needs of the school and the funds appropriated demand such change. (1931, c. 276, s. 3; 1941, c. 323, s. 2.)

§ 116-81. Trustees.—The Governor shall appoint eleven trustees for the Pembroke State College for Indians. The terms of office of nine of such trustees shall begin on April 1, 1937, and the terms of office of the remaining two shall begin on April 1, 1939. The terms of office of all trustees shall be four years and until the successors of such trustees are appointed and qualified. The trustees shall be such as the Governor shall determine, after such inquiry and consideration as he may desire to make, to be fit, competent and proper for the discharge of all the duties that shall devolve upon them as such trustees. The Governor shall fill all vacancies. The Governor shall transmit to the senate at the next session of the General Assembly following their appointment the names of persons appointed by him for confirmation.

The Governor shall have the power to remove any member of the board of trustees provided for in this section whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14; 1929, c. 238; 1931, c. 275; 1941, c. 323.)

§ 116-82. President; election and duties.—The trustees shall elect one of their own number president of the corporation, whose duties shall be such as devolve upon such officers in similar cases, or such as shall be defined by the trustees. (Rev., s. 4237; 1887, c. 400, s. 2; 1911, c. 168, s. 2; C. S. 5845.)

§ 116-83. Trustees to employ and discharge teachers and manage school.—The board of trustees of said Pembroke State College for Indians shall have the power to employ and discharge teachers, to prevent negroes from attending said school, and to exercise the usual functions of control and management of said school, their action being subject to the approval of the state board of education. (1911, c. 168, s. 3; 1941, c. 323, s. 1; C. S. 5846.)

§ 116-84. Department for teaching of deaf, dumb and blind.—The board of trustees of the Pembroke State College for Indians are hereby authorized, empowered and directed to employ some person trained in the teaching of the deaf and dumb or blind and to provide a department in said school in which said deaf, dumb and/or blind Indian children of Robeson and surrounding counties may be taught, no provisions being now made for the teaching of said children, the said teacher to be employed in the same manner and under the same rules and regulations governing other teachers in the said school. (1935, c. 435; 1941, c. 323, s. 1.)

§ 116-85. Admission and qualification of pupils.—Persons of the Indian race of Robeson County who are descendants of those that were determined to constitute those who were within the terms and contemplation of chapter fifty-one, Laws one thousand eight hundred and eighty-five, and within the census taken pursuant thereto by the County Board of Education of Robeson County, of either sex, resident in North Carolina, who are not under thirteen years of age, may attend the Pembroke State College for Indians, and children not under eleven years of age may be admitted who can stand an approved examination in spelling, reading, writing, primary geography, and the fundamental rules of arithmetic. (Rev., s. 4241; 1887, c. 400, s. 10; 1893, c. 515, s. 2; 1911, c. 215, ss. 2, 3; 1913, c. 123, s. 4; 1929, c. 195, s. 6; 1941, c. 323, s. 1; C. S. 5847.)

§ 116-86. Tax exemption. — All property, real and personal, acquired by this corporation, by purchase, donation, or otherwise, as long as it is used for educational purposes, shall be exempt from taxation, whether on the part of the state or county. (Rev., s. 4239; 1887, c. 400, s. 8; C. S. 5848.)

Art. 6. Vocational and Normal School for Indians in Certain Counties.

§ 116-87. Establishment of vocational and normal school for Indians.—The state board of education is hereby authorized and empowered to establish a vocational and normal school at any place it may deem most suitable for teaching and training the young Indian men and women not otherwise provided for. (1941, c. 370, s. 1.)

§ 116-88. Courses of instruction; preparatory department; removing or closing school.—In said vocational and normal school so created there shall be provided such courses of instruction in vocational education, teacher training and higher education as the state board of education and the state superintendent of public instruction may deem necessary and proper in order to furnish said Indians the necessary and proper educational facilities. A preparatory department may be established in connection with any such school, and the said state board of education shall have the power and authority to remove or close any such school established under the authority contained in this article. (1941, c. 370, s. 2.)

§ 116-89. Board of trustees; powers; terms and compensation; election of teachers.—The governor of the state of North Carolina shall have the power to appoint a board of six trustees for any school created under the provisions of this article, which board shall have the general management of such school and such other powers for the management thereof as are not vested in the state board of education or the state superintendent. In addition to the six members above provided for, the state superintendent of public instruction shall be ex officio a member of said board of trustees and chairman thereof.

Two members of the board of trustees shall be appointed for a term of two years, two for four years, and two for six years, and thereafter, as vacancies occur by the expiration of the term of office of each, his successor shall be appointed for a term of six years. Vacancies occurring by resignation or death, or otherwise, of any member of said board of trustees before the expiration of this

term of office, shall be filled by the governor for the unexpired term. The original appointments shall be made by the governor in the month of May, one thousand nine hundred and forty-one. The members of the board of trustees shall receive no compensation for their services other than actual expenses while attending meetings of the board.

The board of trustees shall elect one of its members as secretary. Said board shall have the power, subject to the approval of the state superintendent of public instruction, to elect the teachers who shall teach in any such school. (1941, c. 370, s. 3.)

§ 116-90. Disbursement of funds for expenses.—All disbursements, including disbursements for salaries and other expenses, shall be disbursed and expended under the terms of the Executive Budget Act. (1941, c. 370, s. 4.)

§ 116-91. Election of superintendent; salary; duties.—The state board of education shall elect a superintendent of any school established under the provisions of this article, and fix his salary. His duties shall be outlined by the state board of education and he shall perform such other duties in the educational department of the state as the state superintendent of public instruction may direct. His salary and expenses shall be paid out of the annual appropriation hereinafter provided for upon the requisition of the state superintendent of public instruction. (1941, c. 370, s. 5.)

Art. 7. Negro Agricultural and Technical College of North Carolina.

§ 116-92. Establishment and name.—A college of agricultural and mechanical arts is hereby established for the colored race to be located at some eligible site within this state. Such institution shall be denominated The Negro Agricultural and Technical College of North Carolina. (Rev., s. 4221; 1891, c. 549, ss. 1, 2; 1915, c. 267; C. S. 5826.)

§ 116-93. Object of college.—The leading object of the institution shall be to teach practical agriculture and the mechanic arts and such branches of learning as relate thereto, not excluding academical and classical instruction. (Rev., s. 4222; 1891, c. 549, s. 3; C. S. 5827.)

§ 116-94. Board of trustees; appointment; vacancies; president. — The management and control of the college and the care and preservation of all of its property shall be vested in a board of trustees, who shall be elected by the general assembly. The board of trustees shall consist of fifteen members, five of whom shall be elected at each regular session of the general assembly and shall hold office for six years. Any vacancy which, for any cause, may occur, shall be filled by the governor for the unexpired term. The board shall annually elect one of their number to be president of the board of trustees. (Rev., s. 4223; 1891, c. 549, s. 4; 1899, c. 389, s. 1; C. S. 5828.)

§ 116-95. Meetings of board; compensation; executive board.—The number and times of the meeting of the board of trustees shall be fixed by the board, and the trustees shall not receive any pay or per diem, but only their traveling expenses and hotel fare, and that only for four times in each year. The board of trustees shall have power to elect an executive board of three of their own number, who shall have the immediate management of the institution when the full board is not in session. (Rev., s. 4224; 1899, c. 389, ss. 2, 3; C. S. 5829.)

§ 116-96. Powers of trustees.—The board of trustees shall have power to prescribe such rules for the management and preservation of good order and morals at the college as are usually made in such institutions; shall have power to appoint its president, instructors, and as many other officers or servants as to them shall appear necessary and proper, and shall fix their salaries, and shall have charge of the disbursement of the funds, and have general and entire supervision of the establishment and maintenance of the college, and the president and instructors in the college, by and with the consent of the board of trustees, shall have the power of conferring such certificates of proficiency or marks of merit and diplomas as are usually conferred by such colleges. (Rev., s. 4225; 1891, c. 549, s. 5; C. S. 5830.)

§ 116-97. Admission of pupils.—In addition to the powers hereinbefore granted, the board of trustees shall have power to make such rules and regulations with respect to the admission of pupils to the college for the various congressional districts of this state as they may deem equitable and right, having due regard to the colored population thereof. (Rev., s. 4226; 1891, c. 549, s. 7; C. S. 5831.)

§ 116-98. Power to receive property, and proportion of congressional donations.—The board of trustees is empowered to receive any donation of property which may be made to the college, and shall have power to invest or expend the same for the benefit of the college; and shall have power to accept on behalf of this college such proportion of the fund granted by the congress of the United States to the state of North Carolina for industrial and agricultural training as is apportioned to the colored race, in accordance with the act or acts of the congress in relation thereto. (Rev., s. 4227; 1891, c. 549, ss. 6, 12; C. S. 5832.)

Art. 8. North Carolina College for Negroes.

§ 116-99. Trustees of the North Carolina College for Negroes at Durham.—There shall be twelve (12) trustees for the North Carolina College for Negroes at Durham. Within thirty days from March 10, 1925, the Governor shall appoint seven (7) members of said board and within six months from March 10, 1925, the Governor shall appoint five (5) members of said board. The terms of office of such trustees shall be four years and until successors are appointed and qualified. At the time of making such appointments he shall designate the members of the present board who are to be succeeded by his appointees. All vacancies are to be filled by the Governor. The Governor shall transmit to the Senate at the next session of the General Assembly following his appointment the names of the persons appointed by him for confirmation. The Governor shall have the power to remove any member of the board of

trustees whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9a, 13, 14.)

§ 116-100. Graduate courses for negroes; superintendent of Public Instruction as ex-officio member of boards of trustees.—The board of trustees of the North Carolina College for Negroes is hereby authorized and empowered to establish from time to time such graduate courses in the liberal arts field as the demand may warrant, and the funds of the said North Carolina College for Negroes justify. Such courses so established must be standard.

The board of trustees of the North Carolina College for Negroes is authorized and empowered to establish departments of law, pharmacy and library science at the above-named institution whenever there are applicants desirous of such courses. Said board of trustees of the North Carolina College for Negroes may add other professional courses from time to time as the need for the same is shown, and the funds of the state will justify.

The board of trustees of the Negro Agricultural and Technical College at Greensboro may add graduate and professional courses in agricultural and technical lines as the need for same is shown and the funds of the state will justify, and establish suitable departments therein.

In the event there are negroes resident in the state properly qualified who can certify that they have been duly admitted to any reputable graduate or professional college and said graduate or professional courses are not being offered at the North Carolina College for Negroes, then the board of trustees of the North Carolina College for Negroes when said certification has been presented to them by the president and faculty of the North Carolina College for Negroes, may pay tuition and other expenses for said student or students at such recognized college in such amount as may be deemed reasonably necessary to compensate said resident student for the additional expense of attending a graduate or professional school outside of North Carolina, and the budget commission may upon such presentation reimburse the North Carolina College for Negroes the money so advanced. It is further provided that the student applying for such admission must furnish proof that he or she has been duly admitted to said recognized professional college. In the case of agricultural or technical subjects such students desiring graduate courses should apply to the Agricultural and Technical College at Greensboro, North Carolina. The general provisions covering students in the liberal arts field as stated in this section shall apply. In no event shall there be any duplication of courses in the two institutions.

Said boards of trustees are authorized, upon satisfactory completion of prescribed courses, to give appropriate degrees.

It is further stipulated that the superintendent of public instruction for North Carolina shall be a member ex officio of the boards of trustees of the North Carolina College for Negroes and Agricultural and Technical College at Greensboro, and shall advise with the boards of trustees of said Colleges upon the courses to be offered, and the certification of students to other colleges. In case of needless duplication of graduate or professional courses in either college, the superintendent of public instruction shall be charged with the duty of reporting the same to the board of trustees of either institution, and the same shall be remedied. In case of failure to remedy the same, he shall report such failure to the budget bureau which will have the power and authority in its judgment to withhold any part of the appropriation from the institution so offending until said duplication is discontinued.

The board of trustees of the North Carolina College for Negroes and the trustees of the agricultural and Technical College, in the event that the budget of the institutions will not permit this section to be carried out on account of lack of funds, shall present the situation to the assistant director of the budget, the governor of North Carolina and the council of state; and they are hereby empowered to provide such funds as may be necessary to carry out the purposes of the same. (1939, c. 65.)

Art. 9. Negro State Teachers Colleges.

§ 116-101. Power of state board of education to establish.—The state board of education is hereby empowered to establish normal schools at any place it may deem most suitable, either in connection with one of the colored schools of high grade in the state, or otherwise, for teaching and training young men and women of the colored race, from the age of fifteen to twenty-five years, for teachers in the common schools of the state for the colored race. A preparatory department may be established in connection with the colored normal schools. And such board shall have the power to remove or close any of the existing state normal schools for the colored race. (Rev., s. 4180; Code, ss. 2651, 2652; 1881, cc. 91, 141, s. 5; 1879, c. 54, ss. 1, 2; 1876-7, c. 234, s. 2; 1901, c. 565, s. 1; C. S. 5850.)

§ 116-102. State board of education to control and manage Negro State Teachers Colleges.—The state board of education shall have supervision, and shall prescribe rules and regulations for the control, management, and enlargement of each of the following normal schools: the Elizabeth City State Teachers College, Elizabeth City; Fayetteville State Teachers College, Fayetteville; Winston-Salem Teachers College, Winston-Salem.

The state board of education shall make all needful rules and regulations concerning the expenditure of funds, the selection of principals, teachers, and employees. (1921, c. 61, s. 8; 1925, c. 306, s. 9; 1925 (Pr.), c. 170; 1931, c. 276, s. 1; 1939, cc. 178, 253; C. S. 5775.)

§ 116-103. Trustees for Negro State Teachers Colleges.—The Governor shall appoint a board of nine trustees for each of the following institutions: The Elizabeth City State Teachers College, at Elizabeth City; The Fayetteville State Teachers College at Fayetteville; and the Winston-Salem Teachers College at Winston-Salem. Four trustees for each college shall be appointed by the Governor within thirty days after March 10, 1925; the other five members shall be appointed within six months after March 10, 1925. At the

time of making such appointment the Governor shall name which of the present boards are to be succeeded by his appointees. The Governor shall fill all vacancies. He shall transmit to the Senate at the next session of the General Assembly following his appointment the names of persons appointed by him for confirmation. The terms of office of the members of each board shall be four years and until their successors are appointed and qualified. The Governor shall have the power to remove any member of any of the boards whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14.)

§ 116-104. Four-year courses; granting of degrees.—The State Board of Education is hereby authorized and empowered to establish in the Elizabeth City State Teachers College, the Fayetteville State Teachers College, and the Winston-Salem Teachers College, four-year courses in the field of elementary education to train elementary teachers qualified to obtain grammar grade and primary class A certificates, and to train elementary school principals for rural and city schools.

The degrees to be granted by the said institutions for a completion of the four-year courses of study shall be subject to §§ 115-322 to 115-324, which give the State Board of Education authority to regulate degrees. (1925 (Pr.), c. 170; 1939, cc. 178, 253.)

Art. 10. State School for the Blind and the Deaf in Raleigh.

§ 116-105. Incorporation and management. — The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, shall be a corporation under the name and style of The State School for the Blind and the Deaf, and shall be under the management of a board of directors and superintendent. (Rev., 4187; Code, s. 2227; 1881, c. 211, s. 1; 1917, c. 35, s. 1; C. S. 5872.)

§ 116-106. Directors; appointment; terms; vacancies.—There shall be eleven (11) directors of the School for the Blind and Deaf at Raleigh, to be appointed by the Governor. Within thirty days from March 10, 1925, the Governor shall appoint six directors and within six months from March 10, 1925, the Governor shall appoint five directors. At the time of making the appointment the Governor shall designate which of the present members of the board are to be succeeded by his nominees and appointees. The terms of the directors shall be four years from their appointment and until their successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of any of the board of directors whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (Rev., s. 4188; Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; 1925, c. 306, ss. 10, 13, 14; C. S. 5873.)

§ 116-107. President, executive committee, and other officials; election, terms, and salaries.—The board of directors shall organize by electing one of its number president and three an executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent, who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and a physician whose terms of office shall be for two years; and such other officers, agents, and teachers as shall be deemed necessary. The compensation for officers and agents and teachers, mentioned in this section, shall be fixed by the board, and shall not be increased nor reduced during their term of service. The board shall have power to erect any buildings necessary, make improvements, and in general do all matters and things which may be beneficial to the good government of the institution, and to this end may make by-laws for the government of the same. The board of directors may term the head teacher of the white department "principal," and the chief officer of the colored department "principal of the colored department." (Rev., s. 4189; Code, s. 2229; 1881, c. 211, s. 3; 1917, c. 35, ss. 1, 2; C. S. 5874.)

§ 116-108. Meetings of the board.—The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall serve without reward, save their traveling expenses incurred in the discharge of their official duties. (Rev., s. 4190; Code, s. 2230; 1881, c. 211, s. 4; C. S. 5875.)

§ 116-109. Admission of pupils; how admission obtained.—The board of directors shall, on application, receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for the colored all colored deaf-mutes and blind children, residents of this state, not of confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that application shall be made and applicants received at stated times, which shall be at the commencement of some scholastic year.

In case of deaf-mutes the following questions shall be answered:

Name?

Is the child white or colored?

When and where was he born?

Was he born deaf?

At what age did he lose his hearing?

By what disease or accident did he become deaf?

Is the deafness total or partial?

Have any attempts been made to remove the deafness?

Is there any ability to articulate or read on the lips?

Have any attempts been made to communicate instruction?

Is he laboring under any bodily infirmity?

Does he show any signs of mental imbecility or idiocy?

Has he had the smallpox or been vaccinated?

Has he had the scarlet fever?

Has he had the measles?

Has he had the mumps?

Has he had the whooping-cough?

Are there any other cases of deafness in the family?

Are there any cases of deafness among relatives or ancestors?

What is the name of the father?

What is the name of the mother?

What is the occupation of the father?

What is his postoffice address?

Is either of the parents dead?

Has a second connection been formed by marriage?

Was there any relationship between the parents previous to marriage?

In case of blind applicants the following questions shall be answered:

Name?

Is the child white or colored?

When and where was he born?

Was he born blind?

At what age did he become blind?

By what disease or accident did he become blind?

Is the blindness total or partial?

Have any attempts been made to remove the blindness?

Have any attempts been made to communicate instruction?

Is he laboring under any bodily infirmity?

Does he show any signs of mental inbecility or idiocy?

Has he had the smallpox or been vaccinated?

Has he had the scarlet fever?

Has he had the measles?

Has he had the mumps?

Has he had the whooping-cough?

Are there any other cases of blindness in the family?

Are there any cases of blindness among relatives or ancestors?

What is the name of the father?

What is the name of the mother?

What is the occupation of the father?

What is his postoffice address?

Is either of the parents dead?

Has a second connection been formed by marriage?

Was there any relationship between the parents previous to marriage?

When the application is made, it shall be filed in the office of the superintendent, and on reception of applicant a record of such pupil shall be made and entered in a book to be kept for that purpose. (Rev., s. 4191; Code, s. 2231; 1881, c. 211, s. 5; 1917, c. 35, s. 1; C. S. 5876.)

§ 116-110. Admission of curable blind.—The directors of the institution for the blind, in the city of Raleigh, shall set apart space in said institution for the use of the curable blind who, by reason of poverty, are unable to pay for treatment. It shall be the duty of the directors of the institution for the blind in Raleigh to admit into such institution, from time to time, such of the blind of the state as they may deem to be curable. (Rev., s. 4192; 1895, c. 461; C. S. 5877.)

§ 116-111. Admission of pupils from other states.—The board may, on such terms as they deem proper, admit as pupils persons of like infirmity from any other state: Provided, such power shall not be exercised to the exclusion of any child of this state, and the person so admitted shall not acquire the condition of a resident of the state by virtue of such pupilage. (Rev., s. 4193; Code, s. 2232; 1881, c. 211, s. 6; C. S. 5878.)

§ 116-112. Board may confer degrees. — The board may, upon the recommendation of the superintendent and faculty, confer such degree or marks of literary distinction as may be thought best to encourage merit. (Rev., s. 4194; Code, s. 2233; 1881, c. 211, s. 7; 1917, c. 35, s. 1; C. S. 5879.)

§ 116-113. Election of officers.—The board of directors shall, on the second Monday in May, one thousand nine hundred and five, and every three years thereafter, elect an officer to be styled superintendent. They may elect all officers and teachers at the same time. The terms of office of the superintendent and the steward shall begin June first, and the terms of all other officers and teachers shall begin September first, and for the periods named in this article. The superintendent shall be a man of good moral character, and shall have experience as a teacher in the deaf, dumb, and blind school of North Carolina, or some similar institution, for the term of two or more years. He shall have charge of the institution in all its departments, and shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (Rev., s. 4195; Code, s. 2234; 1881, c. 211, s. 8; 1889, c. 539, 1893, c. 137; 1901, c. 707, s. 2; 1917, c. 35, s. 1; C. S. 5880.)

§ 116-114. State treasurer is ex officio treasurer of institution.—The state treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (Rev., s. 4196; Code, s. 2235; 1881, c. 211, s. 9; C. S. 5881.)

§ 116-115. Reports of board to governor.—The board shall make a report to the governor on the first of January next before the regular meeting of the general assembly, showing the condition of the institution in its various departments, and shall give any information the governor shall desire from time to time. (Rev., s. 4196; Code, s. 2235; 1881, c. 211, s. 9; C. S. 5882.)

§ 116-116. Removal of officers.—The board shall have power to remove any officer, employee, or teacher for gross immorality, wilful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved, and entered on record. The board shall fill all vacancies which may occur from any cause. (Rev., s. 4197; Code, s. 2236; 1881, c. 211, s. 10; C. S. 5883.)

§ 116-117. Employees.—The superintendent, subject to the control of the board, shall have power to employ all employees and fix their compensation, and to discharge them at pleasure. (Rev., s. 4198; Code, s. 2237; 1881, c. 211, s. 11; 1917, c. 35, s. 1; C. S. 5884.)

§ 116-118. When clothing, etc., for pupils paid for by county.—Where it shall appear to the satisfaction of the Superintendent of Public Welfare and the Chairman of the Board of County Commissioners that the parents of any deaf or blind child of the county, are then unable to provide

such child with clothing and/or traveling expenses to and from the State School for the Blind and the Deaf, and the North Carolina School for the Deaf, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses provided for herein, then, upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the Board of County Commissioners of the county in which such child resides shall issue or cause to be issued, its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child; provided, that the amount, in no case, shall exceed forty-five dollars ($45.00) per annum for each child, in addition to such amounts as may be necessary to defray the actual traveling expenses to and from said institution. For such amount so furnished, the parents, or other person upon whom such child is, or may be, legally dependent, and such child, shall be and remain liable for the payment thereof, together with 5% per annum interest thereon from the date of each payment by the county. At any time after any of such payments, in the discretion of the Board of Commissioners, or any succeeding board, a suit may be instituted in some court of competent jurisdiction in said county, or in any other county in the State according to the venue now or hereafter fixed by law for the recovery of the same, which suit shall be prosecuted by the person who may now or hereafter perform the duties of County Attorney, and the parents of such child shall be liable therefor jointly and severally, and all other persons who are made liable therefor herein shall be liable severally for such amounts and interest and the costs of suit. (Rev., s. 4199; Code, s. 2238; 1879, c. 332, s. 1; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; 1927, c. 86; 1929, c. 181; C. S. 5885.)

§ 116-119. Title to farm vested in directors.— The farm of one hundred acres, now held by the said school, west of the city of Raleigh, shall be held in fee simple by the board of directors of said institution, to be improved, or used, or disposed of, or exchanged for lands more convenient, as the best interests of the said institution, in its judgment, may require or demand. (Rev., s. 4201; 1901, c. 707, s. 3; C. S. 5886.)

Art. 11. North Carolina School for the Deaf at Morganton.

§ 116-120. Incorporation and location.—There shall be maintained a school for the white deaf children of the state which shall be a corporation under the corporate name of The North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina school for the deaf shall be classed and defined as an educational institution. (Rev., s. 4202; 1891, c. 399, s. 1; 1915, c. 14; C. S. 5888.)

§ 116-121. Directors; terms; vacancies. — The North Carolina School for the Deaf at Morganton shall be under the control and management of a board of directors consisting of seven (7) members. Within thirty days from March 10, 1925, the Governor shall appoint four directors, and within six months from March 10, 1925, the Governor shall appoint three directors. At the time of making such appointment the Governor shall designate which of the present board are to be succeeded by his appointees. The terms of the said trustees shall be four years from the date of their appointment and until successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the state to remove such person, and the Governor shall not be required to give any reason for such removal. (Rev., s. 4203; 1891, c. 399, s. 2; 1901, c. 210; 1925, c. 306, ss. 11, 13, 14; C. S. 5889.)

§ 116-122. Organization of board; other officials; salaries.—The board of directors shall organize by appointing one of its number president and three an executive committee, who shall hold office for two years; they shall elect a superintendent, who shall be ex officio secretary of the board and whose term of office shall be three years, and such other officers, teachers, and agents as shall be deemed necessary. The compensation for officers, teachers, and agents shall be fixed by the board, and shall not be increased or reduced during their term of service. (Rev., s. 4206; 1893, c. 131, ss. 1, 2; 1915, c. 14; C. S. 5890.)

§ 116-123. Superintendent. — The superintendent shall be a teacher of knowledge, skill, and ability in his profession and experience in the management and instruction of the deaf. He shall possess good executive ability and shall be the chief executive officer of the institution. He shall devote his whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits as provided for in this article, and under the supervision of the board. The board shall elect all teachers and subordinate officers by and with the consent and recommendation of the superintendent. (Rev., s. 4206; 1893, c. 131, ss. 1, 2; 1915, c. 14; C. S. 5891.)

§ 116-124. Pupils admitted; education. — The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all white deaf children resident of the state not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of eight and twenty-three years: Provided, that the board of directors may admit students under the age of eight years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who have been bona fide citizens of North Carolina for a period of two years shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the

admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the state and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting. (Rev., s. 4204; 1891, c. 399, ss. 7, 8; 1907, c. 929; 1915, c. 14; 1941, c. 123; C. S. 5892.)

§ 116-125. Powers of board.—The board shall have power to make such by-laws, rules, and regulations, not inconsistent with the laws of the state, as may be necessary for the proper management of said school and its officers; and shall conduct the school in such way, as far as practicable, as to make it self-sustaining. The board is further authorized to make such arrangements with the board of directors of the state hospital at Morganton as may be agreed upon to promote convenience and economy for joint water supply and lighting arrangements. (Rev., s. 4205; 1891, c. 399, ss. 8, 9, 10; C. S. 5893.)

Art. 12. The Caswell Training School.

§ 116-126. Incorporation and general corporate powers.—The Caswell Training School, formerly established as the North Carolina School for the Feeble-minded, by chapter eighty-seven of the public laws of nineteen hundred and eleven, shall be and remain a corporation invested with all property and rights of property heretofore held under the former name, and under this name may acquire and hold all such property as may be devised, bequeathed, or conveyed to it, and may use all the authority, privileges, and possessions that said corporation exercised under the former title and name, and shall be subject to all legal liability outstanding against it under the former title and name. (1915, c. 266, s. 1; C. S. 5894.)

§ 116-127. Objects of the school.—The purpose and aim of the Caswell training school is to segregate, care for, train, and educate, as their mentality will permit, the state's mental defectives; to disseminate knowledge concerning the extent, nature, and menace of mental deficiency; to suggest and initiate methods for its control, reduction, and ultimate eradication from our people; and to maintain an extension bureau for instructing the public in the care of the mental defectives who remain in their homes and for the after-care of discharged inmates of the institution; and to create and maintain a psychological clinic for the study and observation of mental defectives charged with crime, and to give expert advice in all cases of mental defect. (1919, c. 224, s. 1; C. S. 5895.)

§ 116-128. State treasurer to keep accounts and pay out moneys.—The state treasurer shall keep full accounts of said school and shall pay out all moneys upon the warrant of the superintendent thereof, countersigned by two members of the board of directors under such rules and regulations as the board of directors may establish. (1911, c. 87, s. 8; 1913, c. 191, s. 2; 1919, c. 295; C. S. 5897.)

§ 116-129. Persons admitted; county commissioners to approve.—There shall be received into the Caswell training school, subject to such rules and regulations as the board of directors may adopt, feeble-minded and mentally defective persons of any age when in the judgment of the officer of public welfare and the board of directors of said institution it is deemed advisable. All applications for admission must be approved by the local county welfare officer and the judge of the juvenile court or the clerk of the court of the county wherein said applicant resides. (1911, c. 87, s. 3; 1915, c. 266, s. 2; 1919, c. 224, s. 2; 1923, c. 34; C. S. 5898.)

§ 116-130. Persons authorized to make application for minors.—The application for the admission of a child below the age of twenty-one years shall be made, first, by the father, if the father and mother are living together; second, by the one having custody of the child, if the father and mother are not living together; third, by a guardian duly appointed; fourth, by the superintendent of any county home, or by the person having the management of any orphanage, association, charity, society, children's home workers, ministers, teachers, or physicians, or other institutions where children are cared for. Under items third and fourth, consent of parents, if living, is not required. (1915, c. 266, s. 3; C. S. 5899.)

§ 116-131. Procedure for admission of adult.—1. Affidavit. In case of mentally defective persons who are twenty-one years or over, any responsible person residing in the county may file in the office of the clerk of the superior court of the county an affidavit stating that some person of the county is not being properly maintained or cared for by those having such person in charge; that such person is feeble-minded, and is over twenty-one and is in good bodily health, and is not helpless, is not afflicted with any chronic or contagious disease; that said person is a legal resident of the state and county where the application is filed, together with such other statements as may be necessary to show that he or she is a proper person to be admitted to such institution, and that his or her admission thereto would be in conformity to the rules and regulations established by the board of directors for the admission and care of such person.

2. Summons upon affidavit. Upon the filing of the affidavit in the office of the clerk of the superior court by the proper person, the clerk shall issue a summons to such person named in the application or petition, requiring him or her to be and appear before said court, or the judge thereof, at some time to be fixed by the clerk, not more than ten days thereafter.

3. Action upon affidavit. The judge or clerk shall, as soon as convenient, pass upon said application or petition, and it shall be the duty of said court to examine such witnesses as may be necessary, among whom shall be at least one physician, to prove the truth or falsity of the statements in said application or petition.

4. Order of commitment. If the court finds that each and all of the allegations contained in

said application or petition are true, and that said person is a proper person to be cared for in said institution, it shall be its duty to make an order committing the care and custody of said person to said institution.

5. Transcript to superintendent; costs paid by county. It shall be the duty of the clerk of said court to make a certified copy of said application or petition and the finding and judgment of said court, and transmit the same, together with a statement of such facts as can be ascertained concerning the personal and family history of such person, to the superintendent of the institution at Kinston, North Carolina. The costs of said proceedings shall be allowed and paid by the board of county commissioners of the county. (1915, c. 266, s. 4; C. S. 5900.)

§ 116-132. Decision by superintendent and notice to clerk.—Upon receipt of such order of commitment, it shall be the duty of the superintendent of the institution at once to consider the application and to determine whether or not said person shall be admitted to the institution, and to notify the clerk of the court of his decision, and if there is room for any more inmates, or as soon thereafter as there shall be room in the institution, to notify the clerk that such person will be received in the institution. With such notice the superintendent shall send a list of such clothing as shall be prescribed by the board of trustees of the institution, and a blank form of certificate of health and freedom of exposure to contagious disease at such time. In case the parents or custodian of such person shall be financially unable to furnish the clothing as required, the clerk shall procure the clothing at a cost not to exceed twenty dollars, and the payment for same shall be made out of the county treasury by the board of county commissioners upon the certificate of the clerk of the court. (1915, c. 266, s. 5; C. S. 5901.)

§ 116-133. Conveyance to and from school upon discharge.—Upon receiving notice that such person can be admitted to the institution, the clerk shall order the parents, custodian, or applicant to convey such person to the institution without expense to the institution or the county. In case such parents, custodian, or applicant is financially unable to bear such expense, the clerk shall cause the person to be conveyed to the institution in the same manner and in accordance with the same forms as are now provided by law for the transfer of patients to insane hospitals, so far as they are applicable. And when any child or person, who is or has been an inmate of the institution, is dismissed or discharged from said institution in accordance with the rules and regulations of said institution, the parent or guardian of such child or person shall come, or send some responsible person, to receive said child or person and convey same to his or her legal residence, without cost to the institution; and in case the parent or guardian of said child or person is wholly unable to bear such expense, then the commissioners of said county shall allow such expense. (1915, c. 266, s. 6; C. S. 5902.)

§ 116-134. Clothing and conveyance of children at cost of county.—In case the parents of a child below the age of twenty-one are wholly unable to bear the expense of furnishing the clothing of said child as required by the rules and regulations of the board of directors of said school, or of furnishing the money for transportation of such child to the school, it shall be the duty of the county from which the child is sent to bear such cost, in the manner provided for adults in the other sections of this article. (1915, c. 266, s. 7.)

§ 116-135. Expenditure of sums by superintendent of Caswell Training School for student work authorized. — The superintendent of Caswell Training School is hereby authorized and empowered in his discretion, when funds are available, to pay children of the school for work done at the Caswell Training School: Provided, that the amount of money so expended shall not exceed fifteen hundred dollars ($1,500.00) in any one fiscal year. (1939, c. 278.)

§ 116-136. Discharge of pupils.—Any pupil of said school may be discharged or returned to his or her parents or guardian when in the judgment of the directors it will not be beneficial to such pupil, or will not be for the best interests of said school, to retain the pupil therein. (1915, c. 266, s. 9; C. S. 5904.)

§ 116-137. Certain acts prohibited for protection of inmates.—It shall be unlawful:

(a) For any person to advise, or solicit, or to offer to advise, or solicit, any inmate of said school to escape therefrom;

(b) For any person to transport, or to offer to transport, in automobile or other conveyance any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees or any other person acting under the superintendent and teachers thereof;

(c) For any person to engage in, or to offer to engage in, prostitution with any inmate of said school;

(d) For any person to receive, or to offer to receive, any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(e) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable him or her to conceal his or her identity.

The term "inmate" as used in this section shall be construed to include any and all boys and girls, men or women, committed to, or received into, said Caswell training school under the provisions of the law made and provided for the receiving and committing of persons to said Caswell training school; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse.

Any person who shall knowingly and wilfully violate sub-sections (a) and (b) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; that any person who shall knowingly and wilfully violate sub-sections (c), (d) and (e) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1937, c. 235.)

Art. 13. Colored Orphanage of North Carolina.

§ 116-138. Creation; powers.—The corporation created by chapter forty-seven, Private Laws of one thousand eight hundred and eighty-seven, be, and it is hereby, continued as a body corporate for a period of sixty years from March 8, 1927, under the name and style of "The Colored Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars, to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract and be contracted with, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1.)

§ 116-139. Directors; selection, self-perpetuation, management of corporation.—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek and Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the Board of Directors of said "The Colored Orphanage of North Carolina." The Governor of North Carolina shall appoint five white citizens of Granville County as members of said Board of Directors, and the thirteen so named shall constitute the Board of Directors of said corporation. Said Board of Directors shall organize by the election of a president and secretary, shall make all necessary by-laws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2.)

§ 116-140. Board of trustees; appropriations; treasurer; board of audit.—The five members of said Board of Directors so appointed by the Governor shall also serve as a Board of Trustees of said "The Colored Orphanage of North Carolina." The said Board of Trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said "The Colored Orphanage of North Carolina" shall be under the control of the Board of Trustees, and said appropriations shall be expended under their supervision and direction. The Board of Trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars per year for his services and members of the Board of Audit a salary not to exceed one hundred and fifty dollars per year. The Treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the Board of Trustees may require, the annual premium to be paid out of the funds of the said orphanage. (1927, c. 162, s. 3.)

§ 116-141. Training of orphans.—The said corporation shall receive, train and care for such colored orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4.)

§ 116-142. Control over orphans.—The said corporation shall have power to secure the control of such orphans by the written consent of those nearest akin to them or of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been entered and received by it. The Board of Directors shall make all necessary rules and regulations for the reception and discharge of children from said orphanage. (1927, c. 162, s. 5.)

Art. 14. General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. State-supported institutions required to charge tuition fees.—The trustees of the University of North Carolina, including the University of North Carolina, the State College of Agriculture and Engineering and the Woman's College of the University of North Carolina, and the trustees of the East Carolina Teachers' College, the Western Carolina Teachers' College, the Appalachian State Teachers' College, the Negro Agricultural and Technical College, the Winston-Salem Teachers' College, the Fayetteville State Teachers' College, the Elizabeth City State Teachers' College, the North Carolina College for Negroes and the Pembroke State College for Indians, be and they are hereby authorized and directed to fix the tuition fees for their several state supported institutions, each board of trustees acting separately for their respective institutions, in such amount or amounts as they may deem best, taking into consideration the nature of each department and institution and the cost of equipment and maintaining the same; and are further instructed to charge and collect from each student, at the beginning of each semester, tuition fees and an amount sufficient to pay room rent, servants' hire and other expenses for the term. Indigent cripples are exempt from the provisions of this article.

In the event that said students are unable to pay the cost of tuition, as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in state institutions of higher learning shall be required to pay tuition, and that free tuition be and the same is hereby abolished, except such students as are physically disabled, and are so certified to be by the vocational rehabilitation division of the state board for vocational education, who shall be entitled to free tuition in any of the institutions named in this article. (1933, c. 320, s. 1; 1939, cc. 178, 253.)

§ 116-144. Higher fees from non-residents may be charged.—The provisions of this article shall not be construed to prohibit the several boards of trustees from charging non-resident students tuition in excess of that charged resident students. (1933, c. 320, s. 3.)

Art. 15. Educational Advantages for Children of World War Veterans.

§ 116-145. Free tuition, room rent and board; certificate of post commander; statement from veterans administration.—Any child who has been a resident of North Carolina for two years, and whose father was killed in action or died from wounds or other causes while a member of the armed forces of the United States between April sixth, one thousand nine hundred seventeen, the date of the declaration of war, and July second, one thousand nine hundred twenty-one, the legal termination thereof, or any child whose father was a member of the armed forces of the United States of America during the aforesaid period and who has died as a direct result of injuries, wounds or other illness contracted during said period of service, shall be entitled to and granted a scholarship of free tuition in any of the state's educational institutions. This scholarship shall not extend for a longer period than four academic years.

In addition to the scholarship of free tuition above provided, there shall also be granted to any child needing financial assistance who is embraced within the classification covered by this section, free room rent and board in any of the state's educational institutions which provide rooms and eating halls operated by the institution, and such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected. All applicants desiring to share the benefits of this paragraph and who are qualified to meet the entrance requirements shall submit to the educational institution they desire to enter a certificate of financial need duly executed by the commanding officer of American Legion Post located within same county as applicant and by the clerk of the superior court of said county. If no Legion Post is located in said county, then the certificate may be signed by the commanding officer of the nearest American Legion Post.

Said applicant shall also furnish statement from United States veterans administration showing that the applicant comes within the class designated as war orphans and as herein described: Provided, that all the benefits provided for in this section shall also apply to any child whose father was a member of the armed forces of the United States of America during the aforesaid period and who is now living but due to illness contracted since July second, one thousand nine hundred and twenty-one, has been certified by the United States veterans administration as totally and permanently disabled but who draws no compensation from the United States government other than his insurance and hospitalization benefits. (1937, c. 242, s. 1; 1939, cc. 54, 165, s. 1; 1941, cc. 154, 239.)

§ 116-146. Free tuition to child drawing federal compensation on account of death or disability of father. — Any child in North Carolina, who is drawing compensation from the United States Government, on account of the death or disability of its father, which death or disability was incurred while a member of the armed forces of the United States Government during the World War, and who has not attained the age of twenty-one years, may be entitled to and granted a scholarship of free tuition in any of the State's educational institutions. (1931, c. 370.)

§ 116-147. Extension of benefits of article to certain children.—The benefits of the provisions of this article shall be extended to and may be availed of by any child whose father was a resident of the state of North Carolina at the time said father entered the armed forces of the United States and whose father was, prior to his death, or is at the time the benefits of this article are sought to be availed of, suffering from a service-connected disability of thirty per cent or more as rated by the United States veterans administration; provided, that such educational benefits to such children of partially disabled veterans shall be limited to not more than five children in any one school year; and provided further, that if more than five children of such partially disabled veterans apply for the benefits of this article in any one school year the state superintendent of public instruction shall designate the five children who shall receive such benefits. (1941, c. 302.)

§ 116-148. Approval and payment of amounts charged by institution.—Any state educational institution furnishing room and board, and other items and services as aforesaid, to any child or children, as provided in this article, may submit a statement showing the amount of such room and board to the director of the state budget, and, after checking the correctness of the amounts charged, the director of the budget shall submit such statements to the governor and council of state for payment from the emergency and contingent fund of the state. (1937, c. 242, s. 2; 1939, c. 165, s. 2.)

Chapter 117. Electrification.

Sec. **Art. 1. Rural Electrification Authority.**

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117-12. Execution and filing of certificate of incorporation by residents of territory to be served.
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Art. 3. Miscellaneous Provisions.

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Art. 1. Rural Electrification Authority.

§ 117-1. Rural Electrification Authority created; appointment; terms of members. — An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such authority to consist of six members to be appointed by the governor of North Carolina; two appointed for the term of two years; two for a term of four years and two for a term of six years, and their successors shall be appointed for a term of four years. (1935, c. 288, s. 1.)

§ 117-2. Powers. — The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

(a) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.

(b) To employ such personnel as shall be necessary to conduct surveys, assist the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.

(c) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.

(d) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this chapter, to be known as "electric membership corporations."

(e) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.

(f) To have authority to call upon the utilities commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the utilities commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.

(g) To have the power of eminent domain for the purpose of condemning rights of way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law.

(h) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.

(i) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.

(j) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.

(k) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.

(l) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2.)

§ 117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.—The authority itself shall not be a rate making body, and shall have no power to fix the rates or service charges, or to order the extension of lines by the power companies. The function of making rates and service charges and orders for the extension of lines shall remain in the utilities commission of North Carolina, and the authority shall only have the right of suggestion and petition to the utilities commission of its opinion as to the proper rates and service charges and line extensions, and no rate recommended or suggested by the authority shall be effective until approved by the utilities commission: Provided,

that if the utilities commission of North Carolina does not have the right under the existing law to fix service charges in addition to the rates prescribed for electrical energy, and the power to order line extensions, such power and authority is hereby granted the utilities commission of North Carolina to fix and promulgate service charges in addition to rates in any community which avails itself of this article, and form a corporation authorized hereunder to be known as electric membership corporation, and to order line extensions when it shall determine that the same is proper and feasible. (1935, c. 288, s. 3.)

§ 117-4. Organization meeting of authority; chairman and secretary.—Promptly after their appointment the authority shall meet and organize at such meeting, and at the first meeting of each year thereafter, the members shall choose from their number a chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix his salary subject to the approval as provided in §§ 143-35 to 143-47. (1935, c. 288, s. 4.)

§ 117-5. Compensation and expenses. — All members of the authority, except the chairman and secretary, shall receive as compensation for their services the sum of seven dollars ($7.00) per day and actual expenses incurred while in the performance of their duties. Members of the authority shall not be allowed per diem and expenses for more than twelve meetings in any one year. (1935, c. 288, s. 5; 1939, c. 97.)

Art. 2. Electric Membership Corporations.

§ 117-6. Title of article. — This article, may be cited as the "Electric Membership Corporation Act." (1935, c. 291, s. 1.)

Local Modification.—Carteret, Craven, Greene, Hoke, Onslow, Pamlico and Pitt: 1941, c. 314.

§ 117-7. Definitions. — The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Corporation" shall mean a corporation formed under this article.

(b) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(c) "Acquire" shall mean acquire by purchase, lease, devise, gift or other mode of acquisition.

(d) "Law" shall mean any act or statute, general, special or local of this State.

(e) "Federal agency" shall mean and include the United States of America, the president of the United States of America, the federal emergency administrator of public works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(f) "Board" shall mean the board of directors of a corporation formed under this article. (1935, c. 291, s. 2.)

§ 117-8. Formation in unserved communities; filing application with rural electrification authority.—When any number of persons residing in the community not served, or inadequately served, with electrical energy desire to secure electrical energy for their community and desire to form corporations to be known as electric membership corporations for said purpose, they shall file application with the North Carolina Rural Electrification Authority for permission to form such corporation. (1935, c. 291, s. 3.)

§ 117-9. Issuance of privilege for formation of such corporation.—Whenever any such application is made by as many as five members of the community, the North Carolina Rural Electrification Authority shall cause a survey of said territory to be made and if, in its opinion, the proposal is feasible, shall issue to said community a privilege for the formation of a corporation as hereinafter set out. Whenever an application has been filed by any community with the North Carolina Rural Electrification Authority, and its application for formation of an electric membership corporation has been approved, the same may be formed as hereinafter provided. (1935, c. 291, s. 4.)

§ 117-10. Formation authorized. — Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations. (1935, c. 291, s. 5.)

§ 117-11. Contents of certificate of incorporation.—The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of .....Electric Membership Corporation" (the blank space being filled in with the name of the corporation), and shall state:

(a) The name of the corporation, which name shall be such as to distinguish it from any other corporation.

(b) A reasonable description of the territory in which its operations are principally to be conducted.

(c) The location of its principal office and the post office address thereof.

(d) The maximum number of directors, not less than three.

(e) The names and post-office addresses of the directors, not less than three, who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.

(f) The period, if any, limited for the duration of the corporation. If the duration of the corporation is to be perpetual, this fact should be stated.

(g) The terms and conditions upon which members of the corporation shall be admitted.

(h) The certificate of incorporation of a corporation may also contain any provision not contrary to law which the incorporators may choose to insert for the regulation of its business, and for the conduct of the affairs of the corporation; and any provisions, creating, defining, limiting or regulating the powers of the corporation, its directors and members. (1935, c. 291, s. 6.)

§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.—The natural persons executing the cer-

tificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the secretary of state, who shall forthwith prepare a certified copy or copies thereof and forward one to the clerk of the superior court in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7.)

§ 117-13. Board of directors; compensation; president and secretary. — Each corporation formed hereunder shall have a board of directors and the powers of a corporation shall be vested in and exercised by a majority of the directors in office. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote. The directors must be members and shall not be entitled to compensation for their services. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8.)

§ 117-14. Powers of board.—The board shall have power to do all things necessary or convenient in conducting the business of a corporation, including, but not limited to:

(a) The power to adopt and amend by-laws for the management and regulation of the affairs of the corporation: Provided however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the by-laws. The by-laws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof.

(b) To appoint agents and employees and to fix their compensation and the compensation of the officers of the corporation.

(c) To execute instruments.

(d) To delegate to one or more of the directors or to the agents and employees of a corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure. (1935, c. 291, s. 9; 1941, c. 260.)

§ 117-15. Certificates of membership.—A corporation may issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the corporation. (1935, c. 291, s. 10.)

§ 117-16. Corporate purpose. — The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the by-laws of such corporation. (1935, c. 291, s. 11.)

§ 117-17. General grant of powers.—Each corporation formed under this article is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

§ 117-18. Specific grant of powers. — Subject only to the Constitution of the State, a corporation created under the provisions of this article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems.

(e) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.

(f) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any state highway or over any lands which are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right of way, or the right of eminent domain, the rulings of the North Carolina Electrification Authority shall be final.

(g) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person or federal agency, for

the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation, of the rates, fees or charges for service rendered by the corporation.

(i) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.

(j) To contract debts, borrow money, and to issue or assume the payment of bonds.

(k) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.

(l) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.

(m) To extend, construct, operate and maintain power lines into adjacent states. (1935, c. 291, s. 13; 1941, c. 335.)

§ 117-19. Declared public agency of state; taxes and assessments. — Whenever an electric membership corporation is formed in the manner herein provided, the same shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said electric membership corporation and is used for the purposes for which the corporation was formed. (1935, c. 291, s. 14)

§ 117-20. Encumbrance, sale, etc., of property. —No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property, which in the judgment of the board, is not necessary or useful in operating the corporation) unless authorized so to do (a) by the votes of at least a majority of its members, and (b) the consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained. (1935, c. 291, s. 15.)

§ 117-21. Issuance of bonds. — A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum per annum, payable semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16.)

§ 117-22. Covenants or agreements for security of bonds.—In connection with the issuance of any bonds, a corporation may make covenants or agreements and do any and all acts or things that a business corporation can make or do under the laws of the State in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute limitations on the exercise of the powers herein granted. (1935, c. 291, s. 17.)

§ 117-23. Purchase and cancellation of bonds.— A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be cancelled. (1935, c. 291, s. 18.)

§ 117-24. Dissolution. — Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of....." (the blank space being filled in with the name of the corporation) and shall state:

(a) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(b) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(c) That the corporation elects to dissolve.

(d) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1935, c. 291, s. 19.)

§ 117-25. Amendment of certificate of incorporation.—A corporation created hereunder may amend its certificate of incorporation to change its

corporate name, to increase or reduce the number of its directors or change any other provision therein: Provided, however, that no corporation shall amend its certificate of incorporation to embody therein any purpose, power or provisions which would not be authorized if its original certificate, including such additional or changed purpose, power or provisions, were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished by filing a certificate which shall be entitled and endorsed "Certificate of Amendment of..... Electric Membership Corporation" and state:

(a) The name of the corporation, and if it has been changed, the name under which it was originally incorporated.

(b) The date of filing the certificate of incorporation in each public office where filed.

(c) The purposes, powers, or provisions, if any, to be amended or eliminated, and the purposes, powers or provisions, if any, to be added or substituted. Such certificate shall be subscribed in the same manner as an original certificate of incorporation hereunder by the president or a vice-president, by the secretary or the assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote. Such certificate shall be filed in the same places as an original certificate of incorporation and thereupon the amendment shall be deemed to have been effected. (1935, c. 291, s. 20.)

§ 117-26. Application for grant or loan from governmental agency.—Whenever any corporation organized hereunder desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, they shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make applications for grants or loans to any corporations created hereunder (1935, c. 291, s. 21.)

§ 117-27. Article complete in itself and controlling. — This article is complete in itself and shall be controlling. The provisions of any other law, general, special, or local, except as provided in this article, shall not apply to a corporation formed under this article. (1935, c. 291, s. 23.)

Art. 3. Miscellaneous Provisions.

§ 117-28. Foreign corporations; domestication; rights and privileges.—Any electric membership corporation created and existing under and by virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs or for the purpose of supplying electric service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12.)

Chapter 118. Firemen's Relief Fund.

Art. 1. Fund Derived from Fire Insurance Companies.

Sec.
118-1. Fire insurance companies to report premiums collected.
118-2. Tax on receipts for premiums.
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Art. 1. Fund Derived from Fire Insurance Companies.

§ 118-1. Fire insurance companies to report premiums collected.—Every fire insurance company, corporation, or association doing business in any town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars or more, and which enforces the fire laws to the satisfaction of the insurance commissioner, shall return to the insurance commissioner of the state of North Carolina a just and true account of all premiums collected and received from all

fire insurance business done within the limits of such towns and cities during the year ending December thirty-first, or such portion thereof as they may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within sixty days from and after the thirty-first day of December of each year. (1907, c. 831, s. 1; 1919, c. 180; 1929, c. 286; C. S. 6063.)

§ 118-2. Tax on receipts for premiums.—Every fire insurance company, corporation, or association as aforesaid shall, within seventy-five days from December thirty-first of each year, deliver and pay to the state insurance commissioner the sum of fifty cents out of and from every one hundred dollars, and at that rate, upon the amount of all premiums written on fire and lightning policies covering property situated within the limits of such towns and cities during the year ending December thirty-first in each year, or for such portion of each year as said company, corporation, or association shall have done business in said towns and cities. (1907, c. 831, s. 2; C. S. 6064.)

§ 118-3. Insurance commissioner to investigate returns and collect tax.—Every such company, corporation, or association shall make accurate returns of all business done, both on fire and lightning insurance, covering property situated within the limits of such towns and cities; and in case any fraud, misrepresentation, or mistake of any returns, as provided for in this article, be apparent, it shall be the duty of the insurance commissioner to investigate such returns and collect the amount which he shall find to be due. (1907, c. 831, s. 3; C. S. 6065.)

§ 118-4. Penalty for failure to report and pay tax.—Every fire insurance company, association, or corporation aforesaid which shall knowingly or wilfully fail or neglect to report or pay over any of the moneys due on premiums as aforesaid, at the times and in the manner specified in this article, or shall be found upon examination to have made a false return of business done by them, shall for each offense forfeit and pay the sum of three hundred dollars for the use and benefit of the fire department of such town or city, to be recovered in a civil action in the name of the town or city. (1907, c. 831, s. 4; C. S. 6066.)

§ 118-5. Insurance commissioner to pay fund to treasurer. — The insurance commissioner shall deduct the sum of five per cent from the money so collected from the insurance companies, corporations, or associations, as aforesaid, and pay the same over to the treasurer of the State Firemen's Association for general purposes, and the remainder of the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the several towns and cities in the State having or that may hereafter have organized fire departments as provided in this article, said insurance commissioner shall pay to the treasurer of each town or city to be held by him as a separate and distinct fund, and he shall immediately pay the same to the treasurer of the local board of trustees upon his election and qualification, for the use of the board of trustees of the firemen's local relief fund in each town or city, which board shall be composed of five members, residents of said city or town as hereinafter provided for, to be used by them for the purposes as named in § 118-7. (1907, c. 831, s. 5; 1925, c. 41; C. S. 6067.)

§ 118-6. Trustees appointed; organization. — In each town or city complying with and deriving benefits from the provisions of this article there shall be appointed annually, in January, a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be named by the members of the local fire department, two by the mayor and board of aldermen or other local governing body, and the remaining member by the state insurance commissioner, all to hold office for two years, or until their successors are appointed, and to serve without pay for their services. They shall immediately after appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond, in a sum equal to the amount of moneys in his hands to be approved by the insurance commissioner, for the faithful and proper discharge of the duties of his office. (1907, c. 831, s. 6; 1925, c. 41; C. S. 6068.)

§ 118-7. Disbursement of fund by trustees. — The board of trustees shall have entire control of the funds derived from the provisions of this article, and shall disburse the funds only for the following purposes:

1. To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.

2. To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or state, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.

3. To safeguard any fireman who has honorably served for a period of five years in the fire service of his city or town from ever becoming an inmate of any almshouse or actually dependent upon charity.

4. To provide for any fireman or person dependent on any fireman from becoming a subject of charity due to other sickness or accident or condition not specified in this law; and to provide for the payment of any fireman's assessment in the firemen's fraternal insurance fund of the State of North Carolina, if the board of trustees find as a fact that said fireman is unable to pay the said assessment by reason of disability. (1907, c. 831, s. 6; 1919, c. 180; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; C. S. 6069.)

Local Modification.—High Point: 1941, c. 138; New Hanover: 1929, c. 328.

§ 118-8. Trustees to keep account and file report; effect of failure.—The board of trustees shall keep a correct account of all moneys received and disbursed by them, and shall at the

annual meeting of the North Carolina state firemen's association render an itemized statement of the same, for publication in the annual report, a copy of which report shall be made annually to the state insurance commissioner; and in case any board of trustees in any of the towns and cities benefited by this article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted to their care, or shall neglect or fail to report at the annual meeting of the state association, then the insurance commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the state firemen's association, and adjusted to the satisfaction of the state insurance commissioner. Should such payments be unadjusted for a period of fifteen months from the time when such payment would otherwise have been made, then the insurance commissioner shall pay over the said amount to the treasurer of the North Carolina State Firemen's Association and it shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 7; 1925, c. 41; C. S. 6070.)

§ 118-9. Municipal clerk to certify list of fire companies; effect of failure.—The clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the insurance commissioner his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use for such departments, together with such other facts as the insurance commissioner may require, on a blank to be furnished by him. If the certificate required by this section is not filed with the insurance commissioner on or before October thirty-first in any year, the city, town or village so failing to file such certificate shall forfeit the payment next due to be paid to said board of trustees, and the insurance commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 8; 1925, cc. 41, 309, s. 1; C. S. 6071.)

§ 118-10. Fire departments to be members of state association and send delegate to meeting.—For the purpose of supervision and as a guaranty that provisions of this article shall be honestly administered in a business-like manner, it is provided that every department enjoying the benefits of this law shall be a member of the North Carolina State Firemen's Association, and send at least one accredited delegate to the annual meeting of said association and comply with its constitution and by-laws. If the fire department of any city, town or village shall fail to send at least one delegate to the annual meeting of the State Firemen's Association and otherwise fails to comply with the constitution and by-laws of said association, said city, town or village shall forfeit its right to the next annual payment due from the funds mentioned in this article, and the Insurance Commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund: Provided, however, that the failure of any department to have a delegate or representative present at the annual meeting of the association shall not have such effect if in the opinion of a majority of the executive committee of said association such delegate or representative had a valid excuse for his failure so to attend. (1907, c. 831, s. 9; 1919, c. 180; 1925, c. 41; 1925, c. 309, s. 2; C. S. 6072.)

§ 118-11. No discrimination on account of color.— Inasmuch as there are in a number of the towns and cities of this state fire companies composed exclusively of colored men, it is expressly provided that the local boards of trustees shall make no discrimination on account of color in the payment of benefits. (1905, c. 831, s. 10; C. S. 6073.)

Art. 2. State Appropriation.

§ 118-12. Application of fund.—The money paid into the hands of the treasurer of the North Carolina state firemen's association shall be known and remain as the "firemen's relief fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and by-laws of said association, and such provisions and determinations made pursuant to said constitution and by-laws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said association to enforce any claim or recover any benefit under this article or under the constitution and by-laws of said association; but if any officer or committee of said association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. (Rev., s. 4393; 1891, c. 468, s. 3; 1925, c. 41; C. S. 6058.)

§ 118-13. Treasurer to file report and give bond.—The treasurer of the North Carolina State Firemen's Association shall make a detailed report to the State Treasurer of the yearly expenditures of the appropriation under this chapter on or before the end of the fiscal year, showing the total amount of money in his hands at the time of the filing of the report, and shall give a bond to the State of North Carolina with good and sufficient sureties to the satisfaction of the treasurer of the State of North Carolina in a sum

not less than the amount of money on hand as shown by said report. (Rev., s. 4394; 1891, c. 468, s. 4; 1925, c. 41; C. S. 6059.)

§ 118-14. Who shall participate in the fund. — The line of duty entitling one to participate in the fund shall be so construed as to mean actual fire duty only, and any actual duty connected with the fire department when directed to perform the same by an officer in charge. (Rev., s. 4395; 1891, c. 468, s. 5; 1925, c. 41; C. S. 6060.)

§ 118-15. Who may become members.—Any organized fire company in North Carolina, holding itself ready for duty, may, upon compliance with the requirements of said constitution and by-laws, become a member of the North Carolina State Firemen's Association, and any firemen of good moral character in North Carolina, and belonging to an organized fire company, who will comply with the requirements of the constitution and by-laws of the North Carolina State Firemen's Association, may become a member of said association. (Rev., s. 4396; 1891, c. 468, s. 6; 1925, c. 41; C. S. 6061.)

§ 118-16. Applied to members of regular fire company.—The provisions of §§ 118-12 to 118-16 shall apply to any fireman who is a member of a regularly organized fire company, and is a member in good standing of the North Carolina State Firemen's Association. (Rev., s. 4397; 1891, c. 468, s. 7; 1925, c. 41; C. S. 6062.)

§ 118-17. Treasurer to pay fund to Volunteer Firemen's Association.—The treasurer of the North Carolina State Firemen's Association shall pay to the treasurer of the North Carolina State Volunteer Firemen's Association one-sixth of the funds arising from the five per cent paid him by the Insurance Commissioner each year, to be used by said North Carolina State Volunteer Firemen's Association for general purposes. (1925, c. 41.)

Chapter 119. Gasoline and Oil Inspection and Regulation.

Sec.

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Art. 1. Lubricating Oils.

§ 119-1. Unlawful substitution.—It shall be unlawful for any person, firm or corporation to fill any order for lubricating oil, designated by a trademark or distinctive trade name for an automobile or other internal combustion engine with a spurious or substitute oil unless and until it is explained to the person giving the order that the oil offered is not the oil that he has ordered, and the purchaser shall thereupon elect to take the substitute article that is being offered to him. (1927, c. 174, s. 1.)

§ 119-2. Brand or trade name of lubricating oil to be displayed.—It shall be unlawful for any person, firm or corporation to sell, offer for sale or delivery, or to cause or permit to be sold, offered for sale or delivery, any oil represented as lubricating oil for internal combustion engines unless there shall be firmly attached to or painted at or near the point or outlet from which said oil represented as lubricating oil for internal combustion engines is drawn or poured out for sale or delivery, a sign or label consisting of the word or words in at all times legible letters not less than one-half inch in height comprising the brand or trade name of said lubricating oil: Provided, that if any of said lubricating oil shall have no brand or trade name, the above required sign or label shall consist of the words in letters not less than three inches high, "Lubricating Oil no Brand." (1927, c. 174, s. 2.)

§ 119-3. Misrepresentation of brands for sale.—It shall be unlawful for any person, firm or corporation to display, at the place of sale, any sign, label or other designating mark which describes any lubricating oil for internal combustion engines not actually sold or offered for sale or delivered at the location at which the sign, label or other designating mark is displayed, or to display any label upon any container which label names or describes any lubricating oil for internal combustion engines not actually contained therein, but offered for sale or sold as such: Provided, this section shall not prevent the advertising of such products when no lubricating oils is offered for sale at such place of advertisement. (1927, c. 174, s. 3.)

§ 119-4. Misdemeanor. — Any person, firm or corporation violating any of the provisions of this article shall for each offense be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars ($50.00) or more than three hundred dollars ($300.00), or by imprisonment in the county jail for not less than twenty or more than ninety days, or both. (1927, c. 174, s. 4.)

§ 119-5. Person violating or allowing employee to violate article to forfeit $100. — Any person violating this article, or any person, firm or corporation whose servant, agent or other employee violates this article in the course of his employment shall forfeit to the manufacturer whose oil was ordered, or to the proprietor of the trade-mark or trade name by which the oil ordered was designated by the purchaser, as the case may be, one hundred dollars ($100.00) for each such offense, to be recovered by suit by the person, firm or corporation claiming the penalty against the person, firm or corporation from whom the penalty is claimed. (1927, c. 174, s. 5.)

§ 119-6. Inspection duties devolve upon revenue department.—The duties of inspection required by §§ 119-1 through 119-5 shall be performed by the commissioner of revenue. (1933, c. 214, s. 9.)

Art. 2. Liquid Fuels, Lubricating Oils, Greases, etc.

§ 119-7. Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.—It shall be unlawful for any person, firm, co-partnership, partnership or corporation to store, sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale. (1933, c. 108, s. 1.)

§ 119-8. Sale of fuels, etc., different from advertised name prohibited.—No person, firm, partnership, co-partnership, or corporation shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trade mark, symbol, sign or other distinguishing mark or device appearing upon said tank, container, pump or other distributing device in which said products were sold, offered for sale or distributed. (1933, c. 108, s. 2.)

§ 119-9. Imitation of standard equipment prohibited.—It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed. (1933, c. 108, s. 3.)

§ 119-10. Juggling trade names, etc., prohibited.—It shall be unlawful for any person, firm or corporation to expose or offer for sale or sell under any trade mark, trade name or name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trade mark or name or other distinguishing mark. (1933, c. 108, s. 4.)

§ 119-11. Mixing different brands for sale under standard trade name prohibited. — It shall be unlawful for any person or persons, firm or firms, corporation or corporations or any of their servants, agents or employees, to mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of the manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trade mark or name or other distinguishing mark of either of said manufacturers or distributors, or as the adulterated products of such manufacturer or distributor: Provided, however, that nothing herein shall prevent the lawful owner thereof from

applying its own trade mark, trade name or symbol to any product or material. (1933, c. 108, s. 5.)

§ 119-12. Aiding and assisting in violation of article prohibited.—It shall be unlawful, and upon conviction punishable as will hereinafter be stated, for any person or persons, firm or firms, partnership or co-partnership, corporation or corporations or any of their agents or employees, to aid or assist any other person in violating any of the provisions of this article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored, therein, as indicated by the name of the manufacturer or distributor, or the trade mark, the trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this article. (1933, c. 108, s. 6.)

§ 119-13. Violation made misdemeanor.—Every person, firm or firms, partnership or copartnership, corporation or corporations, or any of their agents, servants or employees, violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than one thousand ($1000.00) dollars and by imprisonment not to exceed twelve (12) months, or by either or both in the discretion of the trial judge. (1933, c. 108, s. 7.)

Art. 3. Gasoline and Oil Inspection.

§ 119-14. Title of article. — This article shall be known as the Gasoline and Oil Inspection Act. (1937, c. 425, s. 1.)

§ 119-15. "Gasoline" defined. — The term "gasoline" wherever used in this article shall be construed to mean a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines. (1937, c. 425, s. 2.)

§ 119-16. "Motor fuel" defined. — "Motor fuel" shall be construed to mean all products commonly or commercially known or sold as gasoline, including casing-head or absorption or natural gasoline, benzol, or naphtha, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines which, when subjected to distillation in accordance to the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials, Designation D-86), show not less than ten per centum recovered below three hundred forty-seven degrees Fahrenheit and not less than ninety-five per centum recovered below four hundred sixty-four degrees Fahrenheit. In addition to the above, any other volatile and inflammable liquid when sold or used to propel a motor vehicle on the highways shall be motor fuel. (1937, c. 425, s. 3.)

§ 119-17. Inspection of kerosene, gasoline and other petroleum products provided for.—All kerosene used for illuminating or heating purposes and all gasoline used or intended to be used for generating power in internal combustion engines or otherwise sold or offered for sale, and all kerosene, benzine, naphtha, petroleum solvents, distillates, gas oil, furnace or fuel oil and all other volatile and inflammable liquids by whatever name known or sold and produced, manufactured, refined, prepared, distilled, compounded or blended for the purpose of generating power in motor vehicles for the propulsion thereof by means of internal combustion engines or which are sold or used for such purposes, and any and all substances or liquids which in themselves or by reasonable combination with others might be used for or as substitutes for motor fuel shall be subject to inspection, to the end that the public may be protected in the quality of petroleum products it buys, that the state's revenue may be protected, and that frauds, substitutions, adulterations and other reprehensible practices may be prevented. (1937, c. 425, s. 4.)

§ 119-18. Inspection fee; allotments for administration expenses.—For the purpose of defraying the expenses of enforcing the provisions of this article there shall be paid to the commissioner of revenue a charge of one-fourth of one cent per gallon upon all kerosene, gasoline, and other products of petroleum used as motor fuel. The inspection tax shall be due and payable at the same time that the gasoline road tax is due and payable under the provisions of §§ 105-434 to 105-436, and payment shall be made concurrently with payment of said gasoline road tax, unless the Commissioner of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the budget bureau, from the inspection fees collected under authority of the inspection laws of this state, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene, gasoline and other products of petroleum used as motor fuel. (1917, c. 166, s. 4; 1933, c. 544, s. 5; 1937, c. 425, s. 5; C. S. 4856.)

§ 119-19. Failure to report or pay tax; cancellation of license. — If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Commissioner of Revenue may forthwith cancel the license of such person issued under § 105-433, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Commissioner of Revenue. In the event that the license of any person shall be cancelled by the Commissioner of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by him under this article, together with any and all penalties accruing under any of the provisions of this article, then the Commissioner of Revenue shall cancel and surrender the bond theretofore filed by said person under § 105-433. (1933, c. 544, s. 10.)

§ 119-20. Penalty for failure to report or to pay taxes promptly. — When any person shall fail to file reports with the Commissioner of Revenue, as required by this article, or shall fail to pay to the Commissioner of Revenue the amount of inspection tax due to the State of North Carolina when the same shall be payable, a penalty of one hundred per cent (100%) shall be added to the amount of the tax due, and said penalty of one hundred per cent (100%) shall immediately accrue, and thereafter said tax and penalty shall bear interest at the rate of one per cent (1%) per month until the same is paid. (1933, c. 544, s. 11.)

§ 119-21. On failure to Report, Commissioner may determine tax. — Whenever any person shall neglect or refuse to make and file any report as required by this article, or shall file an incorrect or fraudulent report, the Commissioner of Revenue shall determine after an investigation the number of gallons of kerosene oil and motor fuel with respect to which the person has incurred liability under the tax laws of the State of North Carolina, and shall fix the amount of the taxes and penalties payable by the person under this article accordingly. In any action or proceeding for the collection of the inspection tax for kerosene oil or motor fuel and/or any penalties or interest imposed in connection therewith, an assessment by the Commissioner of Revenue of the amount of tax due, and/or interest and/or penalties due to the State, shall constitute prima facie evidence of the claim of the State; and the burden of proof shall be upon the person to show that the assessment was incorrect and contrary to law; and the Commissioner of Revenue may institute action therefor in the Superior Court of Wake County, regardless of the residence of such person or the place where the default occurred. (1933, c. 544, s. 12.)

§ 119-22. "Person" defined. — The word "person" as used in §§ 119-19 to 119-21 is hereby defined and declared to include and embrace not only the person, firm or corporation liable for the inspection tax, but also all his or its agents, servants and employees. (1933, c. 544, s. 13.)

§ 119-23. Supervision of motor vehicle bureau; payment into state treasury; "gasoline and oil inspection fund".—Gasoline and oil inspection shall be one organization in activities, accounting and reporting under the department of revenue. All moneys received under the authority of the inspection laws of this state shall be paid into the state treasury and kept as a distinct fund, to be styled "The Gasoline and Oil Inspection Fund," and the amount remaining in such fund at June thirtieth and December thirty-first of each year shall be turned over to the general fund by the state treasurer. (1937, c. 425, s. 6; 1941, c. 36.)

§ 119-24. Report of operation and expenses to general assembly.—The commissioner of revenue shall include in his report to the general assembly an account of the operation and expenses under this article. (1937, c. 425, s. 7.)

§ 119-25. Inspectors, clerks and assistants. — The commissioner of revenue shall appoint and employ such number of gasoline and oil inspectors, clerks and assistants as may be necessary to administer and effectively enforce all the provisions of the inspection laws. All inspectors shall be bonded in the sum of one thousand dollars in the usual manner provided for the bonding of state employees, and the expense of such bonding shall be paid from the gasoline and oil inspection fund created by this article. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline or other motor fuels shall be guilty of a misdemeanor, and upon conviction shall be fined not less than three hundred dollars, or be imprisoned for not less than three months nor more than twelve months, or both in the discretion of the court. (1937, c. 425, s. 8.)

§ 119-26. Gasoline and oil inspection board created.—In order to more fully carry out the provisions of this article there is hereby created a gasoline and oil inspection board of five members, to be composed of the commissioner of revenue, the director of the gasoline and oil inspection division, and three members to be appointed by the governor, who shall serve at his will. The commissioner of revenue and the director of the gasoline and oil inspection division shall serve without additional compensation. Other members of the board shall each receive the sum of ten dollars for each day he attends a session of the board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents a mile for the distance to and from Raleigh by the usual direct route for each meeting of the board which he attends. These expenses shall be paid from the gasoline and oil inspection fund created by this article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and for one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided however that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this state any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220.)

§ 119-27. Display of grade rating on pumps, etc.; sales from pumps or devices not labeled; sale of gasoline not meeting standard indicated on label.—In the event that the gasoline and oil inspection board shall adopt standards for grades of gasoline, at all times there shall be firmly attached to or painted on each dispensing pump or other

dispensing device used in the retailing of gasoline a label stating that the gasoline contained therein is North Carolina ..... grade. Any person, firm, partnership, or corporation who shall offer or expose for sale gasoline from any dispensing pump or other dispensing device which has not been labeled as required by this section, and/or offer and expose for sale any gasoline which does not meet the required standard for the grade indicated on the label attached to the dispensing pump or other dispensing device, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars and be imprisoned for not more than six months, or either, in the discretion of the court, and the gasoline offered or exposed for sale shall be confiscated.

The gasoline and oil inspectors shall have the authority to immediately seize and seal, to prevent further sales, any dispensing pump or other dispensing device from which gasoline is offered or exposed for sale in violation of or without complying with the provisions of this article. Provided, however, that this section shall not be construed to permit the destruction of any gasoline which may be blended or re-refined or offered for sale as complying with the legal specifications of a lower grade except under order of the court in which an indictment is brought for violation of the provisions of this article. Provided, further, that gasoline that has been confiscated and sealed by the gasoline and oil inspectors for violation of the provisions of this article shall not be offered or exposed for sale until the director of the gasoline and oil inspection division has been fully satisfied that the gasoline offered or exposed for sale has been blended or re-refined or properly labelled to meet the requirements of this article and the owners of said gasoline have been notified in writing of this fact by said director and, provided, further, that the permitting of blending, re-refining or properly labelling of confiscated gasoline shall not be construed to in any manner affect any indictment which may be brought for violation of this section. (1937, c. 425, s. 11; 1939, c. 276, s. 1; 1941, c. 220.)

§ 119-28. Regulations for sale of substitutes. — All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the commissioner of revenue for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said commissioner of revenue in writing. (1937, c. 425, s. 12.)

§ 119-29. Rules and regulations of board available to interested parties.—It shall be the duty of the commissioner of revenue to make available for all interested parties the rules and regulations adopted by the gasoline and oil inspection board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13.)

§ 119-30. Establishment of laboratory for analysis of inspected products. — The commissioner of revenue is authorized to provide for the analysis of samples of inspected articles by establishing a laboratory under the gasoline and oil inspection division of the motor vehicle bureau for the analysis of inspected products. (1937, c. 425, s. 14.)

§ 119-31. Payment for samples taken for inspection.—The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the commissioner of revenue showing that payment has been made as requested. (1937, c. 425, s. 15.)

§ 119-32. Powers and authority of inspectors. —The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection, and/or drawing of samples, and said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the state, including the authority to arrest, with or without warrants, and take offenders before the several courts of the state for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this article or the rules, regulations or requirements of the commissioner of revenue and/or the gasoline and oil inspection board and also all motor fuels contained therein. Said inspectors shall have power and authority on the public highways or any other place to stop and detain for inspection and investigation any vehicle containing any motor fuel and/or other liquid petroleum products in excess of one hundred gallons or commonly used in the transportation of such fuels and the driver or person in charge thereof, and to require the production by such driver or person in charge of all records, documents and papers required by law to be carried and exhibited by persons in charge of vehicles engaged in transporting such fuels; and whenever said inspectors shall find or see any person engaged in handling, selling, using, or transporting any fuels in violation of any of the provisions of the motor fuel tax or inspection laws of this state, or whenever any such person shall fail or refuse to exhibit to said inspectors, upon demand therefor, any records, documents or papers required by law to be kept subject to inspection or to be exhibited by such person, said person shall be guilty of a misdemeanor, and it shall be the duty of said inspectors to immediately arrest such violator and take him before some proper peace officer of the county in which the offense was committed and institute proper prosecution. (1937, c. 425, s. 16.)

§ 119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.—The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products. Said inspectors shall be under the supervision of

the commissioner of revenue, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, in so far as the same may be necessary to effectuate the provisions of this article. The rules, regulations, specifications and tolerance limits as promulgated by the national conference of weights and measures, and recommended by the United States bureau of standards, shall be observed by said inspectors in so far as it applies to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and measures appointed and maintained by the various counties and cities of the state shall have the same power and authority given by this section to inspectors under the supervision of the commission of revenue. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the commissioner of revenue. After notice in writing the owners or users of such measuring devices which have been condemned for repairs shall have the same repaired and corrected within ten days, and the owners and/or users thereof shall neither use nor dispose of said measuring devices in any manner, but shall hold the same at the disposal of the gasoline and oil inspector. The inspector shall confiscate and destroy all measuring devices which have been condemned for repairs and have not been repaired as required by this article. The gasoline and oil inspectors shall officially seal all dispensing pumps or other dispensing devices found to be accurate on inspection, and if, upon inspection at a later date, any pump is found to be inaccurate and the seal broken, the same shall constitute prima facie evidence of intent to defraud by giving inaccurate measure, and the owner and/or user thereof shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned for not less than three months, or both, in the discretion of the court. Any person who shall remove or break any seal placed upon said measuring and/or dispensing devices by said inspectors until the provisions of this section have been complied with shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned for not less than thirty days nor more than ninety days, or both, in the discretion of the court. Any person, firm, or corporation who shall sell or have in his possession for the purpose of selling or using any measuring device to be used or calculated to be used to falsify any measure shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court. (1937, c. 425, s. 17.)

§ 119-34. Responsibility of retailers for quality of products. — The retail dealer shall be held responsible for the quality of the petroleum products he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the commissioner of revenue at the time of delivery, and in the presence of the distributor or his agent, shows that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18.)

§ 119-35. Adulteration of products offered for sale. — It shall be unlawful for any person, firm, or corporation who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid to in any wise adulterate the same by the addition thereto of kerosene or any other liquid substance and sell or offer for sale the same. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 19.)

§ 119-36. Certified copies of official tests admissible in evidence.—A certified copy of the official test of the analysis of any petroleum product, under the seal of the commissioner of revenue, shall be admissible as evidence of the fact therein stated in any of the courts of this state on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20.)

§ 119-37. Retail dealers required to keep copies of invoices and delivery tickets.—Every person, firm, or corporation engaged in the retail business of dispensing gasoline and/or other petroleum products to the public shall keep on the premises of said place of business, for a period of one year, duplicate original copies of invoices or delivery tickets of each delivery received, showing the name and address of the party to whom delivery is made, the date of delivery, the kind and amount of each delivery received, and the name and address of the distributor. Each delivery ticket or invoice shall be signed by the retailer or his agent and the distributor or his agent. Such records shall be subject to inspection at any time by the gasoline and oil inspectors. (1937, c. 425, s. 21.)

§ 119-38. Prosecution of offenders. — All prosecutions for fines and penalties under the provisions of this article shall be by indictment in a court of competent jurisdiction in the county in which the violation occurred. (1937, c. 425, s. 22.)

§ 119-39. Violation a misdemeanor. — Unless another penalty is provided in this article, any person violating any of the provisions of this article or any of the rules and regulations of the commissioner of revenue and/or the gasoline and oil inspection board shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 23.)

§ 119-40. Manufacturers to notify commissioner of shipments.—Where oil or gasoline is shipped in tanks, cars, or other large containers, the manufacturer or jobber shall give notice to the

Commissioner of Revenue of their shipment, with the name and address of the person, company, or corporation to whom it is sent and the number of gallons, on the day the shipment is made. (1917, c. 166, s. 4; 1933, c. 214, s. 8; C. S. 4856.)

§ 119-41. Persons engaged in transporting, are subject to inspection laws.—The owner or operator of any motor vehicle using the highways of this state or the owner or operator of any boat using the waters of this state transporting into, out of or between points in this state any gasoline or liquid motor fuel taxable in this state and/or any liquid petroleum product that is or may hereafter be made subject to inspection laws of this state shall make application to the commissioner of revenue on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the commissioner of revenue shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times. No person shall haul, transport, or convey any motor fuel over any of the public highways of this state except in vehicles plainly and visibly marked on the rear thereof with the word "Gasoline" in plain letters of not less than six inches high and of corresponding appropriate width, together with the name and address of the owner of the vehicle in letters of not less than four inches high: Provided, however, that this section shall not be construed to include the carrying of motor fuels in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle except when said fuel supply tank shall have a capacity of more than one hundred gallons. This section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars. (1937, c. 425, s. 24; 1939, c. 276, s. 2.)

§ 119-42. Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading.—Every person hauling, transporting or conveying into, out of, or between points in this state any motor fuel and/or any liquid petroleum product that is or may hereafter be made subject to the inspection laws of this state over either the public highways or waterways of this state, shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or bill of lading showing the true name and address of the person from whom he has received the motor fuel and/or other liquid petroleum products, the kind, and the number of gallons so originally received by him, and the true name and address of every person to whom he has made deliveries of said motor fuel and/or other liquid petroleum products or any part thereof and the number of gallons so delivered to each said person. Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the commissioner of revenue, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, they fail to clearly disclose said information, the agent of the commissioner of revenue shall hold for investigation the vehicle and contents thereof. If investigation shows that said motor fuels and/or other petroleum products are being transported in violation of or without compliance with the motor fuel tax and/or inspection laws of this state such fuels and/or other petroleum products and the vehicle used in the transportation thereof are hereby declared common nuisances and contraband, and shall be seized and sold and the proceeds shall go to the common school fund of the state: Provided, however, that this article shall not be construed to include the carrying of motor fuel in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle, except when said fuel supply tank shall have a capacity of more than one hundred gallons: And, provided further, that this section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. (1937, c. 425, s. 25; 1939, c. 276, s. 3.)

§ 119-43. Display required on containers used in making deliveries.—Every person delivering at wholesale or retail any gasoline in this state shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the commissioner of revenue and/or the gasoline and oil inspection board. Such dealers shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other containers stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor vehicle: Provided further, that in case gasoline or other inflammable liquid is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "Unsafe when exposed to heat or fire". (1937, c. 425, s. 26; 1939, c. 276, s. 4.)

§ 119-44. Registration of exclusive industrial users of naphthas and coal tar solvents.—All persons who are exclusive industrial users of naphtha

and coal tar solvents, and who are not engaged in the business of selling motor fuel, may register with the commissioner of revenue as an exclusive industrial user of naphthas and coal tar solvents upon the presentation of satisfactory evidence of such fact to said commissioner and the filing of a surety bond in approved form not to exceed the sum of one thousand dollars. Such registration, properly evidenced by the issuance of a certificate of registration as an exclusive industrial user of naphthas and coal tar solvents, will thereafter, and until such time as certificate of registration may be canceled by the commissioner of revenue, permit licensed distributors of motor fuel in this state to sell naphthas and coal tar solvents to the holder of such certificate of registration upon the proper execution of an official certificate of industrial use in lieu of the collection of the motor fuel tax: Provided, however, that no licensed distributor of motor fuel shall sell gasoline tax free under the conditions of this article: Provided further, that the rules and regulations adopted by the commissioner of revenue for the proper administration and enforcement of this article shall be strictly adhered to by the holder of the certificate of registration under penalty of cancellation of such certificate for violation of or non-observance of such rules. (1937, c. 425, s. 27.)

§ 119-45. Certain laws adopted as part of article. —Sections 119-1 through 119-5 and §§ 119-7 through 119-13 are hereby made a part of this article. (1937, c. 425, s. 28.)

§ 119-46. Charges for analysis of samples. — The commissioner of revenue is hereby authorized to fix and collect such charges as he may deem adequate and reasonable for any analysis made by the gasoline and oil inspection division of any sample submitted by any person, firm, association or corporation other than samples submitted by the gasoline and oil inspectors in the performance of the duties required of said inspectors under this article: Provided, however, that no charge shall be made for the analysis of any sample submitted by any municipal, county, state or federal official when the results of such analyses are necessary for the performance of his official duties. All moneys collected for such analyses shall be paid into the state treasury to the credit of the gasoline and oil inspection fund. (1937, c. 425, s. 29.)

§ 119-47. Inspection of fuels used by state.— The gasoline and oil inspection division is hereby authorized, upon request of the proper state authority, to inspect, analyze, and report the result of such analysis of all fuels purchased by the state of North Carolina for the use of all departments and institutions. (1937, c. 153.)

Chapter 120. General Assembly.

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Art. 1. Apportionment of Members.

§ 120-1. Senators. — Until another apportionment of the State shall be had in accordance with the terms of the Constitution and laws of North Carolina, the Senate shall be composed of fifty members, elected from districts constituted as follows:

First District—Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, and Perquimans Counties shall elect two senators.

Second District—Beaufort, Dare, Hyde, Martin, Pamlico, Tyrrell, and Washington shall elect two senators.

Third District—Northampton, Vance, and Warren shall elect one senator.

Fourth District—Edgecombe and Halifax shall elect two senators.

Fifth District—Pitt shall elect one senator.

Sixth District—Franklin, Nash, and Wilson shall elect two senators.

Seventh District — Carteret, Craven, Greene, Jones, Lenoir, and Onslow shall elect two senators.

Eighth District — Johnston and Wayne shall elect two senators.

Ninth District—Duplin, New Hanover, Pender, and Sampson shall elect two senators.

Tenth District—Bladen, Brunswick, Columbus, and Cumberland shall elect two senators.

Eleventh District—Robeson shall elect one senator.

Twelfth District—Harnett, Hoke, Moore, and Randolph shall elect two senators.

Thirteenth District—Chatham, Lee, and Wake shall elect two senators.

Fourteenth District — Durham, Granville, and Person shall elect two senators.

Fifteenth District — Caswell and Rockingham shall elect one senator.

Sixteenth District—Alamance and Orange shall elect one senator.

Seventeenth District — Guilford shall elect one senator.

Eighteenth District — Davidson, Montgomery, Richmond, and Scotland shall elect two senators.

Nineteenth District—Anson, Stanly, and Union shall elect two senators.

Twentieth District—Mecklenburg shall elect one senator.

Twenty-first District — Cabarrus and Rowan shall elect two senators: At the time of holding primary election for nomination of State officers, as provided in Chapter one hundred sixty-three, the candidates of the several political parties for one of the senators from said twenty-first district shall be nominated by the respective electors of the several political parties of Rowan County, and the candidates for the other senator from said twenty-first district shall be nominated by the respective electors of the several political parties of Cabarrus County.

Twenty-second District—Forsyth shall elect one senator.

Twenty-third District—Stokes and Surry shall elect one senator.

Twenty-fourth District — Davie, Wilkes and Yadkin shall elect one senator.

Twenty-fifth District—Catawba, Iredell, and Lincoln shall elect two senators.

Twenty-sixth District — Gaston shall elect one senator.

Twenty-seventh District—Cleveland, McDowell, and Rutherford shall elect two senators.

Twenty-eighth District—Alexander, Burke, and Caldwell shall elect one senator.

Twenty-ninth District — Alleghany, Ashe, and Watauga shall elect one senator.

Thirtieth District—Avery, Madison, Mitchell, and Yancey shall elect one senator.

Thirty-first District—Buncombe shall elect one senator.

Thirty-second District — Haywood, Henderson, Jackson, Polk, and Transylvania shall elect two senators.

Thirty-third District—Cherokee, Clay, Graham, Macon, and Swain shall elect one senator. (Rev., s. 4398; Code, s. 2844; 1911, c. 150; 1921, c. 161; 1941, c. 225; C. S. 6087.)

§ 120-2. House of Representatives.—Until the General Assembly of North Carolina shall make another apportionment as provided by the Constitution and laws of North Carolina, the House of Representatives shall be composed of members elected from the counties of the State in the following manner, to-wit:

The counties of Guilford and Mecklenburg shall elect four members each; the counties of Buncombe, Forsyth, and Wake shall elect three members each; the counties of Cabarrus, Cumberland, Durham, Gaston, Johnston, Pitt, Robeson, and Rowan shall elect two members each; the counties of Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson,

Yadkin, and Yancey shall elect one member each. (Rev., s. 4399; Code, s. 2845; 1911, c. 151; 1921, c. 144; 1941, c. 112; C. S. 6088.)

§ 120-3. Payment in installments or upon per diem basis; extra sessions.—The pay of the members and officers for a regular session of the General Assembly, as provided in section twenty-eight of article two of the Constitution of North Carolina, may be paid in installments, or upon a per diem basis as asked for by the several members and officers of the General Assembly; provided, that in no instance shall installments or per diem amount to more than ten dollars per day for the members and eleven dollars sixty-seven cents for the two presiding officers, for the number of days the General Assembly has been in session, and that the total pay of the officers and members of the General Assembly at a regular session shall in no case exceed six hundred dollars for the members, and seven hundred dollars for the presiding officers of the two houses. And, provided further, that the pay for an extra session of the General Assembly shall be eight dollars per day for members and ten dollars per day for the two presiding officers, for a period not to exceed twenty days. (1929, c. 2, s. 1.)

§ 120-4. Pay to remain same in session of less than 60 days.—Nothing in the provisions of § 120-3 shall prevent members and presiding officers of the General Assembly from receiving the full compensation of six hundred dollars for the members and seven hundred dollars for the presiding officers of the two houses, for the term of the regular session of the General Assembly, whether the term remains in session for sixty days or a shorter period. (1929, c. 2, s. 2.)

Art. 2. Duty and Privilege of Members.

§ 120-5. Presiding officers may administer oaths.—The president of the senate is authorized to administer oaths for the qualification of senators and officers of the senate, and the speaker of the house of representatives is authorized to administer oaths for the qualification of all officers of the house and all members who shall appear after the election of speaker. (Rev., s. 4400; Code, s. 2855; 1883, c. 19; C. S. 6089.)

§ 120-6. Members to convene at appointed time and place.—Every person elected to represent any county or district in the general assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require. (Rev., s. 4401; Code, s. 2847; R. C., c. 52, s. 27; 1787, c. 277, s. 1; C. S. 6090.)

§ 120-7. Penalty for failure to discharge duty.—If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars, and two dollars for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the general assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (Rev., s. 4402; Code, s. 2848; R. C., c. 52, s. 28; 1787, c. 277, s. 2; C. S. 6091.)

§ 120-8. Expulsion for corrupt practices in election.—If any person elected a member of the general assembly shall, by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the general assembly. (Rev., s. 4403; Code, s. 2846; R. C., c. 52, s. 24; 1801, c. 580, s. 2; C. S. 6092.)

§ 120-9. Freedom of speech; protection from arrest. — The members shall have freedom of speech and debate in the general assembly, and shall not be liable to impeachment or question, in any court or place out of the general assembly, for words therein spoken; and shall be protected, except in cases of crime, from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from, or attending the general assembly. (Rev., s. 4404; Code, s. 2849; R. C., c. 52, s. 29; 1787, c. 277, s. 3; C. S. 6093.)

Art. 3. Contests.

§ 120-10. Notice of contest. — No person shall be allowed to contest the seat of any member of the general assembly unless he shall have given to the member thirty days notice thereof in writing, prior to the meeting of the general assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation. (Rev., s. 4406; Code, s. 2850; 1893, c. 192; R. C., c. 52, s. 31; 1796, c. 466, s. 1; C. S. 6095.)

§ 120-11. Depositions taken; penalty and privilege of witnesses.—Any justice of the peace, or any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpœnas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpœna, he shall forfeit and pay to the party causing him to be summoned, forty dollars. And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted;

but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election. (Rev., s. 4407; Code, s. 2851; R. C., c. 52, s. 32; 1800, c. 557, s. 1; 1868-9, c. 270, s. 12; C. S. 6096.)

Art. 4. Reports of Officers to General Assembly.

§ 120-12. Reports from state institutions and departments.—It shall be the duty of the chief officer of each department of the state and of the boards of directors of all institutions supported in whole or in part by appropriations from the state, to submit to the general assembly, with their respective reports, bills providing for the support and management of their respective departments; these reports, with those of the other officers of the executive department, shall be submitted to the governor, to be transmitted by him with his message to the general assembly. (Rev., s. 4410; Code, s. 2865; 1800, c. 557, s. 2; C. S. 6099.)

§ 120-13. Reports of commissions.—The State Highway and Public Works Commission, the Superintendent of Public Instruction, the Department of Agriculture, the State Board of Health, and the State Board of Charities and Public Welfare, and such other Boards, Departments and Commissions as the Governor may direct shall each make a full report of the operation of their respective Departments or Commissions together with their recommendations for the future operation of their Departments or Commissions to the members of the General Assembly.

All such reports shall be distributed as heretofore provided for, not later than twenty days after the general election in November preceding the convening of the General Assembly.

Failure on the part of any of the above mentioned Commissions or Departments to distribute their reports to the members of the General Assembly within the time prescribed by this section shall be cause for impeachment and for removal from office. (1929, c. 248.)

Art. 5. Investigating Committees.

§ 120-14. Power of committees. — Any committee of investigation raised either by joint resolution or resolution of either house of the general assembly has full power to send for persons and papers, and, if necessary, to compel attendance and production of papers by attachment or otherwise. (Rev., s. 4412; Code, s. 2853; 1868-9, c. 50, s. 1; C. S. 6100.)

§ 120-15. Chairman may administer oaths.—The chairman of any committee or any person in his presence, and under his direction, shall have power and authority to administer oaths. (Rev., s. 4413; Code, s. 2856; 1869-70, c. 5, s. 3; C. S. 6101.)

§ 120-16. Pay of witnesses.—Any witness appearing and giving testimony shall be entitled to receive from the person at whose instance he was summoned ten cents for every mile traveling to and from his residence, and ferriage, to be recovered before any justice of the peace upon the certificate of the commissioner. (Rev., s. 4414, Code, s. 2860; R. C., c. 52, s. 33; 1800, c. 557, s. 2; C. S. 6102.)

§ 120-17. Appearance before committee.—Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either house of the general assembly, shall first make application to such committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary. (Rev., s. 4415; Code, s. 2858; 1868-9, c. 270, s. 10; C. S. 6103.)

§ 120-18. Appeal from denial of right to be heard.—If any committee shall refuse to grant the request of any citizen to be heard before it in a matter touching his interests, he may appeal to the house of which the committee is a part; and if he show good reason for his request the house shall order it to be granted. (Rev., s. 4416; Code, s. 2859; 1868-9, c. 270, s. 11; C. S. 6104.)

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees. — All officers, agents, agencies, and departments of the state are required to give to any committee of the general assembly, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the general assembly or any of its committees or chairmen thereof. (Resolution 19, 1937, p. 927.)

Art. 6. Acts and Journals.

§ 120-20. When acts take effect. — Acts of the general assembly shall be in force only from and after thirty days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (Rev., s. 4417; Code, s. 2862; R. C., c. 52, s. 35; 1799, c. 527; 1868-9, c. 270, s. 1; C. S. 6105.)

§ 120-21. Notice given of private acts. — Any person who may desire the passage of a private law shall give notice of his intention to make application by advertisement in some newspaper of the state which circulates in the county where the applicant resides, or in which such private law will operate, or by advertisement at the door of the courthouse and three other public places in such county for at least thirty days before the application; and when any private bill shall be introduced, a copy of such advertisement, with due proof of its having been so published, shall be produced before the second reading thereof. (Rev., s. 4418; Const., Art. II, s. 12; Code, s. 2861; R. C., c. 52, s. 34; 1796, c. 466, s. 2; 1835, c. 15; C. S. 6106.)

§ 120-22. Enrollment of acts. — All bills passed by the general assembly shall be enrolled for ratification under the supervision and direction of the secretary of state. All bills so enrolled shall be

typewritten and carefully proof-read. The secretary of state is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the general assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars ($6.00) per day for his services, and each of the others so employed shall receive not to exceed the sum of five dollars ($5.00) per day for his services: Provided, the rules committees of the house of representatives and senate in joint session may increase or decrease the number of persons so employed. (Rev., s. 4422; 1903, c. 5; 1933, c. 173; C. S. 6108.)

§ 120-23. Secretary of state to prepare index to acts.—The secretary of state shall biennially, at the beginning of each regular session of the general assembly, appoint an assistant, whose duties it shall be to prepare for publication the indexes, and side or marginal notes, to the acts and resolutions, both public and private, ratified by the general assembly. (Rev., s. 4423; 1903, c. 3; 1927, c. 217, s. 1; C. S. 6109.)

§ 120-24. Secretary of state to have laws printed. — The secretary of state, within thirty days after the termination of each session of the general assembly, shall cause to be published all the laws and joint resolutions passed at such session; and each volume shall contain his certificate that it was printed under his direction from enrolled copies on file in his office. In the printing he shall omit the certificate required to be indorsed upon the original bills; but he shall insert immediately after the title of each law the word "ratified," adding the day, month, and year. (Rev., s. 4425; Code, s. 2869; 1868-9, c. 270, s. 14; C. S. 6111.)

§ 120-25. Number to be printed. — There shall not be printed more than four thousand (4,000) volumes of Public Laws, twenty-five hundred (2500) to full bound and fifteen hundred (1500) to half bound; twelve hundred and fifty (1250) volumes of Public-Local and Private Laws; six hundred (600) volumes of House Journals and six hundred (600) volumes of Senate Journals of each session of the General Assembly. (1929, c. 85, s. 1; 1941, c. 379, s. 6.)

§ 120-26. Binding of laws regulated.—The public laws shall be bound separately. The public-local and private laws shall be bound together in one volume, or in two volumes, according to the size of such volumes, in the discretion of the secretary of state. Some of the volumes shall be bound in sheep or buckram and the residue in half-binding. The number to be bound in each shall be determined by the secretary of state. (Rev., s. 5096; Code, s. 3633; 1893, c. 146; 1919, c. 314, s. 4; C. S. 7292.)

§ 120-27. Journals; preparation and filing by clerks of houses.—It shall be the duty of the principal clerks of the two houses of the general assembly to hasten the preparation of their journals for the printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval, and such clerks shall, immediately after the preparation of any and every day's proceedings of their respective houses, send the same to the office of the secretary of state. (Rev., s. 5100; Code, ss. 3627, 3628; 1872-3, c. 45, ss. 2, 3; C. S. 7299.)

§ 120-28. Journals indexed by clerks. — The principal clerks of the two houses of the general assembly shall provide full and complete indexes for the journals of their respective houses. (Rev., s. 4421; Code, s. 2868; 1866-7, c. 71; 1881, c. 292; C. S. 6112.)

§ 120-29. Journals deposited with secretary of state. — The principal clerks of the senate and house of representatives, as soon as may be practicable after the close of each session, shall deposit in the office of the secretary of state the journals of the general assembly; and the secretary of state shall make and certify copies of any part or entry of the journals, and may take for the copy of each entry made and certified the same fee as for the copy of a grant. (Rev., s. 4420; Code, s. 2867; R. C., c. 52, s. 36; 1819, c. 1020; C. S. 6113.)

§ 120-30. Bills and legislative documents.—The bills and all other documents ordered to be printed by either branch of the general assembly shall be printed in octavo form without a title page. But the first page shall be printed as follows: At the head of the page there shall be four rules, one double, two single, and one parallel, extending across the page. Between said rules shall be printed, first, the name of the house where the bill originated, with the year and date of the session, the name of the introducer, and the name of the printer; after leaving a space the width of two-line pica, a synopsis, or caption of the bill, or report of the committee, or whatever it may be, shall be set up with pica capitals. After such heading, the said document shall follow immediately, commencing with a paragraph, allowing a space the width of small pica between the heading and commencement of the same. (Rev., s. 5102; Code, s. 3644; R. C., c. 93, s. 3; C. S. 7301.)

Art. 7. Employees.

§ 120-31. Legislative employees paid on certificate of presiding officers.—The auditor is authorized to audit the account of any employee of the senate or of the house of representatives, upon the certificate of the president of the senate and of the speaker of the house of representatives that such services have been rendered for which the account is presented, and that the amount as stated in said account is reasonable, just and proper. (Rev., s. 2735; Code, s. 2873; 1870-71, res., p. 508; C. S. 3848.)

§ 120-32. Principal clerk; term of office; duties. —The principal clerk of each house of the general assembly shall hold his office for the term of two years, or until another is appointed; shall be present at such time and place as may be fixed for the meeting of the general assembly, and on the first day thereof, and perform the

duties of his office. (Rev., s. 4426; Code, s. 2870; R. C., c. 52, s. 37; 1846, c. 63; C. S. 6114.)

§ 120-33. Compensation of employees of the general assembly; mileage.—The principal clerk of the general assembly and chief clerk appointed by secretary of state in the enrolling office and chief engrossing clerks of the house and senate shall be allowed the sum of seven dollars per day during the session of the general assembly, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The secretary to the speaker of the house of representatives, the secretary to the lieutenant-governor, the clerks to the finance and appropriation committees of both houses, the sergeant-at-arms, the assistants to the engrossing clerks, the assistant clerks to the principal clerks and the assistant sergeant-at-arms, of the general assembly, and the assistants appointed by the secretary of state to supervise the enrollment of bills and resolutions, the reading clerks of the general assembly, shall receive the sum of six dollars per day, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The clerks to all committees which by the rules of either house of the general assembly are entitled to clerks, except as hereinabove provided, shall each receive five dollars per day during the session of the general assembly, and mileage at the rate of ten cents per mile from their homes to Raleigh and return. The chief pages of the house of representatives and the senate shall receive four dollars per day during the session of the general assembly and mileage at the rate of five cents a mile from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive three dollars per day during the session of the general assembly and mileage at the rate of five cents a mile from their homes to Raleigh and return. All laborers of the first-class authorized by law or the rules of either the house of representatives or the senate shall receive three dollars and one-half per day during the session of the general assembly and all mileage at the rate of five cents per mile from their homes to Raleigh and return, and laborers of the second class the sum of three dollars per day and mileage at the rate of five cents per mile from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272.)

§ 120-34. Classification of laborers.—The chairman of the committee on rules of the House of Representatives and the chairman of the committee on rules of the Senate are hereby authorized, empowered and directed to classify the laborers of the General Assembly and certify to the chief clerk of the House of Representatives and the chief clerk of the Senate the names of all laborers of the first class and all laborers of the second class, to the end that proper warrants may be issued in payment of services rendered in accordance with § 120-33 and the list when certified shall be the classification of such laborers and they shall be paid accordingly. (1925, c. 116.)

§ 120-35. Principal clerks; extra compensation.—The principal clerks of the general assembly shall be allowed four hundred dollars as a compensation for indexing the journals of their respective houses, and five hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the general assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office of the secretary of state. (Rev., s. 2732; Code, s. 2868; 1866-7, c. 71; 1881, c. 292; 1911, c. 116; 1919, c. 170; 1921, c. 160; C. S. 3855.)

§ 120-36. Compensation of principal clerks for services in organizing senate and house.—The principal clerks of the senate and house of representatives, together with such assistants as may be necessary in arranging the halls of the senate and house and completing the organization of the two branches of the general assembly before the days for convening thereof, and such services as are rendered after adjournment in the completion of the records, shall receive the same per diem as shall be allowed by law to the said clerks and their assistants during the session. The state auditor is directed to issue his warrants for such clerks and for such time as is certified to by the president of the senate and the speaker of the house, upon vouchers signed by them. (1923, c. 130; C. S. 3855(a).)

Art. 8. Preservation and Protection of Furniture and Fixtures.

§ 120-37. Principal clerks to take and publish inventory.—At the end of each and every session of the general assembly, the principal clerks of each house shall take an inventory of the furniture, desks, fixtures, chairs, and other property belonging to their respective houses, and publish said inventory in the appendix of their respective journals. (1921, c. 219, s. 1; C. S. 6116(a).)

§ 120-38. Duty and responsibility of Board of Public Buildings and Grounds.—The Board of Public Buildings and Grounds shall have charge and care of the said furniture and fixtures during the vacations of the general assembly, and it shall be its duty to see that said furniture remains in the offices and halls of the two houses from session to session, and it shall be responsible for the safe-keeping of said furniture and fixtures. (1921, c. 219, s. 2; C. S. 6116(b).)

§ 120-39. Removal of furniture and fixtures a misdemeanor.—It shall be a misdemeanor for any person or persons to remove any of said furniture and fixtures from the halls of the general assembly between sessions of the legislature for any purpose whatever. (1921, c. 219, s. 3; C. S. 6116(c).)

Art. 9. Lobbying.

§ 120-40. Lobbying defined; registration of lobbyists.—Every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the general assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the state, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed, to be entered upon a legislative docket as hereafter provided. It shall also be the duty of the person so employed

to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee. (1933, c. 11, s. 1.)

§ 120-41. Legislative docket for registration. — The secretary of state shall prepare and keep the legislative docket for the uses provided in this article. In such docket shall be entered the name, occupation or business, and business address of the employer, the name, residence and occupation of the person employed, the date of employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the subject or subjects of legislation to which the employment relates. Such docket shall be a public record and open to the inspection of any citizen at any time during the regular business hours of the office of the secretary of state. (1933, c. 11, s. 2.)

§ 120-42. Contingent fees prohibited. — No person shall be employed as a legislative counsel or agent for a compensation dependent, in any manner, upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the general assembly, or of either branch thereof, or any committee thereof. (1933, c. 11, s. 3.)

§ 120-43. Written authority from employer to be filed.—Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the secretary of state within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them. (1933, c. 11, s. 4.)

§ 120-44. Detailed statement of expenses to be filed.—Within thirty days after the final adjournment of the general assembly every person, corporation or association, whose name appears upon the legislative docket of the session, shall file with the secretary of state a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with promoting or opposing in any manner the passage by the general assembly of any legislation coming within the terms of this article. Such statements shall be in such form as shall be prescribed by the secretary of state and shall be open to public inspection. (1933, c. 11, s. 5.)

§ 120-45. Going upon floor during session prohibited.—It shall be unlawful for any person, employed for a pecuniary consideration to act as legislative counsel or agent, as defined by this article, to go upon the floor of either house of the general assembly while the same is in session, except upon invitation of such house. (1933, c. 11, s. 6.)

§ 120-46. Application of article. — The provisions of this article shall not apply to any county, city, town or municipality, but shall apply to the executive officers of all other corporations who undertake, in such capacity, to perform services as legislative counsel or agent for such corporations, regardless of whether they receive additional compensation for such services. (1933, c. 11, s. 7.)

§ 120-47. Punishment for violation.—Any legislative counsel or agent, and any employer of such legislative counsel or agent, violating any provision of this article, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty nor more than one thousand dollars, or imprisoned not exceeding two years, or both. (1933, c. 11, s. 8.)

Chapter 121. Historical Commission.

Sec.
121-1. Appointment; term of office; compensation.
121-2. Duties of commission.
121-3. Powers of commission.
121-4. Preservation of documents; copies furnished.
121-5. Custody of E. R. A. records; use of E. R. A. funds.

§ 121-1. Appointment; term of office; compensation.—The historical commission shall consist of not more than seven persons, of whom four shall constitute a quorum. Five persons shall be appointed by the Governor on the first day of April, one thousand nine hundred and seven, who shall designate one member to serve for a term of two years, two members to serve for a term of four years, and two members to serve for a term of six years from the date of their appointments, and their successors shall be appointed by the Governor to serve for a term of six years and until their successors are appointed and qualified. The other two members shall be appointed by the Governor on the first day of April, one thousand nine hundred and forty-one, one to serve for a term of four years and the other for a term of six years, and until their successors are appointed and qualified; and thereafter the successors of these two shall be appointed by the Governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms the persons appointed to fill such vacancies shall be appointed only for the unexpired term. They shall serve without salary, but shall be allowed their actual expenses when attending to their official duties, to be paid out of any funds appropriated for the maintenance of the commission: Provided, that such expenses shall not be allowed for more than

four meetings annually nor for more than four days at each meeting. (Rev., s. 4539; 1903, c. 767, s. 2; 1907, c. 714, s. 1; 1941, c. 306; C. S. 6141.)

§ 121-2. Duties of commission. — It is the duty of the commission to have collected from the files of old newspapers, court records, church records, private collections, and elsewhere, historical data pertaining to the history of North Carolina and the territory included therein from the earliest times; to have such material properly edited, published as other state printing, and distributed under the direction of the commission; to care for the proper marking and preservation of battlefields, houses, and other places celebrated in the history of the state; to diffuse knowledge in reference to the history and resources of North Carolina; to encourage the study of North Carolina history in the schools of the state, and to stimulate and encourage historical investigation and research among the people of the state; to make a biennial report of its receipts and disbursements, its work and needs, to the governor, to be by him transmitted to the general assembly. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; 1925, c. 275, s. 11; C. S. 6142.)

§ 121-3. Powers of commission.—The commission shall have power to adopt a seal for use in official business; to adopt rules for its own government not inconsistent with the provisions of this chapter; to fix a reasonable price for its publications and to devote the revenue arising from such sales to extending the work of the commission; to employ a secretary; to control the expenditure of such funds as may be appropriated for its maintenance subject to the provisions of the Executive Budget Act: Provided, that at least one copy of its publications shall be furnished free of charge to any public school library or public library in North Carolina, state officers, and members of the general assembly making application for the same through its properly constituted authorities.

The historical commission shall have power to accept gifts, bequests, and endowments for purposes which fall within the general legal powers and duties of the commission. The funds, if given as an endowment, shall be invested in such securities as those in which the state sinking fund may be invested. All such gifts and bequests and all of the proceeds of such invested endowments shall be used by the commission for carrying out the purposes for which the gift, bequest, or endowment was made. (1907, c. 714, s. 3; 1935, c. 40; C. S. 6143.)

§ 121-4. Preservation of documents; copies furnished. — Any state, county, town, or other public official in custody of public documents is hereby authorized and empowered in his discretion to turn over to the commission for preservation any official books, records, documents, original papers, newspaper files, printed books or portraits, not in current use in his office, and the commission shall provide for their permanent preservation, and when so surrendered copies therefrom shall be made and certified under the seal of the commission upon application of any person, which certification shall have the same force and effect as if made by the officer originally in charge of them, and the commission shall charge for such copies the same fees as such officer is by law allowed to charge, to be collected in advance. Provided, that any state archives, records, books, documents, original papers, newspaper files, printed books, or manuscripts which have no significance, importance, or value, may, upon the advice and recommendation of the custodian in charge of said archives, records, books, documents, original papers, newspaper files, printed books, and manuscripts, and upon the further advice and recommendation of the North Carolina historical commission, be authorized by the council of state of the state of North Carolina to be destroyed or otherwise disposed of; and, provided also, that any county, city, town, or any other governmental agency which may have in its possession or custody any public archives, records, books, documents, original papers, newspaper files, printed books, or manuscripts which have no significance, importance, or value, may, upon the advice and recommendation of the custodian in charge of said public archives, records, books, documents, original papers, newspaper files, printed books, and manuscripts, and upon the further advice and recommendation of the North Carolina historical commission, be authorized by the governing bodies of said county, city, town, or other governmental agency to be destroyed or otherwise disposed of. The North Carolina historical commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry the provisions of this section into effect. (1907, c. 714, s. 5; 1939, c. 249; C. S. 6145.)

§ 121-5. Custody of E. R. A. records; use of E. R. A. funds.—The Emergency Relief Administration records of North Carolina shall be turned over to the North Carolina Historical Commission to be arranged, classified, catalogued, preserved, administered, and made available for public investigations under the rules and regulations of the said Historical Commission in accordance with §§ 121-3, 121-4 and 132-1 to 132-9.

For the purpose of carrying out the provisions of this section the Governor and Council of State shall allot the remaining funds granted to the State of North Carolina for the Emergency Relief Administration or any such funds hereafter accruing from claims, collections or otherwise, to the North Carolina Historical Commission, to be used in classifying, administering, preserving and making available to the public the said records in accordance with the purpose of the funds. The said funds to be disbursed in accordance with and under the terms of the Executive Budget Act.

Any balance remaining in the said funds after these records are arranged, classified, catalogued, and made available to the public by the North Carolina Historical Commission shall revert to the State Board of Charities and Public Welfare. (1941, c. 252.)

Chapter 122. Hospitals for the Insane.

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Art. 1. Organization and Management.

§ 122-1. Incorporation and names.—The hospital for the insane, located near Morganton, shall be and remain a corporation under this name: The State Hospital at Morganton. The hospital for the insane, located near Raleigh, shall be and remain a corporation under this name: The State Hospital at Raleigh. The hospital for the insane, located near Goldsboro, shall be and remain a corporation under this name: The State Hospital at Goldsboro. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Rev., s. 4542; Code, ss. 2227, 2240; 1899, c. 1, s. 1; C. S. 6151.)

§ 122-2. Power to acquire and hold property.—The state hospital at Morganton, and the state hospital at Raleigh, and the state hospital at Goldsboro, may each acquire and hold, for the purpose of its institution, real and personal property, by devise, bequest, or by any manner of gift, purchase, or conveyance whatsoever. (Rev., s. 4543; 1899, c. 1, s. 2; C. S. 6152.)

§ 122-3. Division of territory and patients between Raleigh, Morganton and Goldsboro institutions.—The state hospital at Raleigh and the state hospital at Morganton shall be exclusively for the accommodation, maintenance, care and treatment of the white insane of the state, and the state hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment of the colored insane, epileptics, feebleminded and inebriates of the state. The line heretofore agreed upon by the directors of the state hospital at Raleigh and the state hospital at Morganton shall be the line of division between the territories of said hospitals, and white insane persons settled in counties east of said line shall be admitted to the state hospital at Raleigh, and white insane persons settled in counties west of said line shall be admitted to the state hospital at Morganton; epileptics shall be admitted as now provided by law. White inebriates shall be admitted to the state hospital at Raleigh. (1929, c. 265, s. 1; 1933, c. 342, s. 1; C. S. 6153(a).)

§ 122-4. Same—Change of line.—A committee made up of two members, selected by the respective boards, from each Board of Directors of the State Hospital at Raleigh and the State Hospital at Morganton and the Governor may change said line from time to time whenever in their opinion such change may be desirable and proper. That portion of the state which is or may hereafter be west of said division line shall be known as the western hospital district, and that portion of the state which is or may hereafter be east of said line shall be known as the eastern hospital district. The committee, or the Governor, may have patients transferred from and/or to the State Hospital at Raleigh and the State Hospital at Morganton when such transfer may be deemed advantageous. (Rev., s. 4544; 1899, c. 1, ss. 3, 4; 1917, c. 150, s. 1; 1929, c. 265, s. 2; C. S. 6153(b).)

§ 122-5. Cherokee Indians of Robeson county and Croatan Indians of other counties.—All the insane and inebriate Cherokee Indians of Robeson county, and all the insane and inebriate Croatan Indians of the other counties of the state, shall be cared for in the hospital for the insane at Raleigh in wards separate and apart from the white patients in said hospital, and all such Cherokee Indians of Robeson county and Croatan Indians of the other counties of the state shall be cared for and receive the same treatment as other patients in said hospital receive. (1919, c. 211; C. S. 6154.)

§ 122-6. Epileptics cared for at Raleigh.—Whenever it becomes necessary for any white person of this state, afflicted with the disease known as epilepsy, to be confined or to receive hospital treatment, such person shall be accommodated, maintained, cared for, and treated at the state hospital at Raleigh. Such epileptics shall be committed by the clerks of the superior courts of the several counties to the state hospital at Raleigh in the manner now provided by law for the commitment of insane persons to the several hospitals for the insane; and when such persons shall be committed it shall be the duty of the superintendent of the state hospital at Raleigh, and he is required, to receive such persons and care for, maintain, and treat them at the hospital at Raleigh, if the superintendent shall find such persons to be afflicted to such extent as properly to become a public charge: Provided, that any person so committed who is able

to pay shall be charged actual cost of maintenance.

All epileptics confined, cared for, and maintained at the state hospital at Morganton shall be transferred to the state hospital at Raleigh. (1909, c. 910, ss. 1, 2; C. S. 6155.)

§ 122-7. Management of certain charitable institutions by boards of trustees; appointment; quorum; term of office.—Each of the following charitable institutions of the State, to wit: The State Hospital at Morganton; the State Hospital at Raleigh; the State Hospital at Goldsboro, and the Caswell Training School at Kinston shall be under the management of a board of nine (9) directors or trustees to be appointed by the Governor, no two (2) of whom shall be residents of the same county. Within thirty days from March 10, 1925, the Governor shall appoint five (5) directors and within six months from March 10, 1925, the Governor shall appoint four (4) directors. At the time of making the appointment, the Governor shall designate which members of the present board are to be succeeded by his appointees. The terms of office of said directors or trustees shall be four years from the date of appointment. All vacancies shall be filled by the Governor. The Governor shall transmit to the Senate at the next session of the General Assembly the names of the persons appointed by him for confirmation. Five directors shall constitute a quorum, except when three are by law empowered to act for special purposes. (1921, c. 183, s. 2; 1925, c. 306, s. 3; C. S. 6159(a).)

§ 122-8. Powers and duties; former boards.—Wherever in any of the sections of this chapter, and in the sections under article twelve, chapter 116, concerning the Caswell Training School, the said board of directors or board of trustees is referred to, it shall be construed that the board of trustees of each of said institutions herein in the preceding section mentioned shall have, and that all the powers and duties imposed upon the consolidated boards of directors of the several respective institutions herein in the preceding section mentioned shall be performed and discharged as to each of the institutions by the separate boards appointed for said institutions, and the said board shall be held responsible for the management of the said institution and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institution, and each of the said boards shall make annual reports to the governor of the state, and oftener if called for by him, of the condition of the said institution, and shall make biennial reports to the governor, to be transmitted by him to the general assembly of the state, of all moneys received and disbursed by said institution. Each of the boards of directors of the several institutions shall file with the governor, at least once every two months, a statement showing prices paid by the said institution for all classes of articles purchased by the said institution, and from whom purchased. (1921, c. 183, s. 3; C. S. 6159(b).)

§ 122-9. Building committee; selection; duties.—It shall be the duty of each of the boards of directors or trustees of the institutions in the two preceding sections mentioned to select and appoint from their number a building committee, who shall be specially charged with the duty of the supervision of the buildings to be built or repaired from appropriations made to said institutions by the general assembly of this state. (1921, c. 183, s. 4; C. S. 6159(c).)

§ 122-10. A garden provided for the executive mansion.—The board of directors is authorized and directed to set apart two acres of land belonging to the state hospital at Raleigh to be used as a garden for the executive mansion. They are further authorized to have such garden cultivated, the actual expense of cultivation to be paid by the governor. (1917, c. 171; C. S. 6160.)

§ 122-11. Meetings of directors.—The board of directors shall convene at each of the several hospitals herein named during the month of April in each year, at a time to be fixed by such board and at such other times as they shall appoint, and investigate the administration of its affairs, and report on the same to the general assembly, with such remarks and recommendations as to them shall seem expedient. (Rev., s. 4550; 1899, c. 1, s. 8; 1917, c. 150, s. 1; C. S. 6161.)

§ 122-12. By-laws and rules made by directors.—The board of directors shall make all such by-laws and regulations for the government of these institutions as shall be necessary, among which regulations shall be such as shall make the institutions as nearly self-supporting as is consistent with the purpose of their creation. (Rev., s. 4551; 1899, c. 1, s. 14; 1917, c. 150, s. 1; C. S. 6162.)

§ 122-13. Transfer of patients from one hospital to another; transfer of funds.—The board of directors are authorized to make such rules and regulations as in their discretion may seem best for the transfer of patients from one state hospital for the insane to another state hospital for the insane; and they are further authorized to transfer from one hospital for the insane to another hospital for the insane any funds appropriated for permanent improvement or maintenance if in their discretion and judgment it may become advisable or necessary. (1919, c. 330; C. S. 6163.)

§ 122-14. Delivery of inmates to Federal agencies.—The directors and superintendents of the State Hospital at Raleigh and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States Government or to the representatives or agents of such Veterans Bureau or other department or bureau of said government, all insane inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts of acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States Government for the

purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1.)

§ 122-15. Transfer of inmates to general wards.—The directors and superintendents of the State Hospital at Raleigh and the State Hospital at Goldsboro are hereby authorized, empowered and directed to transfer from the wards in said hospitals set apart for the dangerous insane to the general wards any of the inmates or prisoners therein who, in the judgment of said directors and superintendents, have reached such a state of improvement in their mental condition as to justify such transfer. (1925, c. 51, s. 2.)

§ 122-16. Board may make ordinances; penalties for violation.—Authority is hereby conferred upon the board of directors of the state hospitals for the insane and upon the board of directors and superintendent of the North Carolina school for the deaf to enact ordinances for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different places within the grounds, and when so adopted and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Such boards are empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the board of directors shall direct. Violation of any ordinances so made shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (Rev., ss. 3695, 4559; 1899, c. 1, s. 54; 1901, c. 627; 1915, c. 14, s. 2; 1917, c. 150, s. 1; C. S. 6164.)

§ 122-17. Executive committee appointed.—The board of directors shall, out of their number, appoint three members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the board of directors may delegate to them. (Rev., s. 4548; 1899, c. 1, s. 6; 1917, c. 150, s. 1; C. S. 6165.)

§ 122-18. State treasurer to act as treasurer; payment of funds.—The state treasurer shall be treasurer of said corporations. The state treasurer shall keep all accounts of the institutions, and shall pay out all moneys upon the warrant of the respective superintendents, counter-signed by two members of the board of directors, under such rules and regulations as the board of directors may establish. (Rev., s. 4553; 1899, c. 1, s. 11; 1917, c. 150, s. 1; C. S. 6166.)

§ 122-19. Application of funds belonging to hospitals.—All moneys and proceeds of property given to any hospitals, and all moneys arising from the sale of any real estate which may be owned by such hospital shall be paid into the state treasury, and all donations in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; and the same hospital shall be supported by appropriations from the state treasury. But the proceeds arising from the sale of personal property belonging to a hospital, the board paid by private patients, rentals from real estate, and money from any other sources, except the sale of real estate, shall remain with the hospital and be used as the board of directors may determine. An account of the proceeds of all such income and its expenditure shall be carefully kept and published in the report to the general assembly. (Rev., s. 4552; 1899, c. 1, s. 34; C. S. 6167.)

§ 122-20. Board of charities and general assembly, visitors; superintendent reports, to whom.—The state board of charities and public welfare and the members of the general assembly shall be ex officio visitors of all hospitals for the insane. It shall be the duty of the state board of charities to visit the hospitals from time to time, as they may deem expedient, to examine into their condition, and make report thereon to the general assembly, with such suggestions and remarks as they may think proper. (Rev., s. 4554; 1899, c. 1, s. 37; 1917, c. 150, s. 1; C. S. 6168.)

§ 122-21. Fiscal year.—The close of the fiscal year shall be the thirtieth day of November in each year, and all accounts and estimates shall be made with reference thereto. (Rev., s. 4558; 1899, c. 1, s. 38; C. S. 6169.)

§ 122-22. Court may remit penalties given under this chapter.—Whenever suit shall be brought against a sheriff or board of county commissioners for the recovery of a penalty prescribed for doing an act forbidden, or failure to do any act required by this chapter, the judge or justice of the peace before whom the action is tried may order so much of said penalty to be remitted as in his judgment should be remitted to meet the ends of justice, and he shall enter up judgment for the amount of the penalty, to be discharged by the payment of such a sum as he may think just, and the costs of the action. In fixing the amount to be remitted (if the judge or justice should think the remission of any part proper), he shall consider the costs and expenses that the plaintiff may have been put to, and he should also consider the conduct of the defendants; and there ought to be no remission when the act of the defendants is wanton or contumacious, or is grossly negligent. (Rev., s. 4557; 1899, c. 1, s. 57; C. S. 6170.)

§ 122-23. Assisting inmates to escape misdemeanor.—If any person shall assist any inmate of any state hospital to escape therefrom he shall be guilty of a misdemeanor. (Rev., s. 3694; 1899, c. 1, s. 53; C. S. 6171.)

Art. 2. Officers and Employees.

§ 122-24. Directors and superintendent not personally liable.—No director or superintendent of any state hospital shall be personally liable for any act or thing done under or in pursuance of

any of the provisions of this chapter. (Rev., s. 4560; 1899, c. 1, s. 31; C. S. 6172.)

§ 122-25. Superintendent; appointment, term of office, qualifications, and removal.—The board of directors shall appoint a superintendent of each of said institutions and prescribe his duties. He shall be a skilled physician, educated to his profession, of good moral character, of prompt business habits, and of kindly disposition. He shall hold office for six years from and after his appointment, unless sooner removed by said board, who may, for infidelity to his trust, gross immorality, or incompetency to discharge the duties of his office, fully proved and declared, and the proofs thereof recorded in the book of their proceedings, remove him and appoint another in his place. (Rev., s. 4561; 1899, c. 1, s. 69; 1917, c. 150, s. 1; C. S. 6173.)

§ 122-26. Powers of superintendent.—The superintendent of each hospital shall exercise exclusive direction and control over all the subordinate officers and employees engaged in the service and labors of his hospital, and he may discharge such as have been employed by himself or his predecessors, and shall report to the board of directors the misconduct of all subordinates. (Rev., s. 4562; 1899, c. 1, s. 13; 1917, c. 150, s. 1; C. S. 6174.)

§ 122-27. Superintendent to notify sheriff of escape.—Any superintendent may notify the sheriff within whose county any person sent from his hospital on probation, or escaped therefrom, may be found, and thereupon it shall be the duty of such sheriff forthwith to take such person and return him to such hospital at the expense of the county of the settlement of the patient. This section shall apply in cases of escape from Caswell training school. (Rev., s. 4563; 1899, c. 1, s. 27; 1927, c. 114; C. S. 6175.)

§ 122-28. Assistant physicians; appointment and removal.—Each superintendent shall appoint one or more assistant physicians, the number to be fixed by the board of directors. The superintendent shall have the power to prescribe the duties of each assistant physician, and may suspend him, or any employee, for thirty days, for insubordination, immorality, neglect of duty, or incompetence, and, by and with the advice of the executive committee of the board of directors, may remove such assistant physician, or employee, for like cause. Each assistant physician shall hold his office for two years, unless removed for cause, which shall be specified and the action of the superintendent and executive committee reported to the board of directors, which shall record the same on its minutes. (Rev., s. 4564; 1899, c. 1, s. 10; C. S. 6176.)

§ 122-29. Steward and matron; appointment and removal.—Each superintendent shall appoint a steward, and if he shall think proper to do so, a matron also, who shall hold their places for one year, unless sooner suspended or removed by the superintendent or board of directors for good cause, in which case their successors shall be appointed for the unexpired terms of those removed. The method of procedure for the suspension and removal of assistant physicians, contained in the preceding section, shall be followed in the suspension and removal of any steward or matron. (Rev., s. 4565; 1899, c. 1, s. 11; C. S. 6177.)

§ 122-30. Steward to give bond.—The steward, before entering upon the discharge of his duties, shall execute to the hospital a bond in the sum of two thousand five hundred dollars, with sureties, to be approved by the board of directors, conditioned for the faithful administration of his duties and the proper accounting for and disbursement of all money and property coming into his hands. (Rev., s. 4566; 1899, c. 1, s. 11; C. S. 6178.)

§ 122-31. Salaries of employees fixed by directors.—The board of directors shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said board. The salaries shall not be diminished during the term of the incumbents. The salary of the superintendent shall be a sum certain, without other compensation or allowance, except such rooms in the hospital for the use of his family, and such articles of food produced on the premises, as said board of directors may permit. (Rev., s. 4567; 1899, c. 1, s. 12; 1917, c. 150, s. 1; C. S. 6179.)

§ 122-32. Directors to keep record of proceedings; clerk.—The board of directors shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk, and pay him a reasonable compensation for his services. The books shall, at all times, be open to the inspection of the general assembly. (Rev., s. 4568; 1899, c. 1, s. 36; 1917, c. 150, s. 1; C. S. 6180.)

§ 122-33. Superintendent may appoint employees as policemen, who may arrest without warrant.—The superintendent of each hospital, the superintendent of the North Carolina School for the deaf and dumb, and the superintendent of the Caswell training school, are each hereby empowered to appoint such number of discreet employees of their respective hospitals or schools as they may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the state law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial. The justice of the peace shall issue a warrant and proceed as in other criminal cases before him. (Rev., s. 4569; 1899, c. 1, s. 55; 1901, c. 627; 1921, c. 207; C. S. 6181.)

§ 122-34. Oath of special policemen.—Before exercising the duties of a special policeman, the employees appointed, as in the preceding section, shall take an oath of office before some justice of the peace of the county, or other officer empowered to administer oaths, and the same shall be filed with the records of the board of directors. The oath of office shall be as follows:

State of North Carolina, ... County.

I, ..., do solemnly swear (or affirm) that I will well and truly execute the duties of

office of special policeman in and for the state hospital at ....., according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this ..... day of ....., A. D. ..... (Rev., s. 4570; 1899, c. 1, s. 56; 1901, c. 627; C. S. 6182.)

§ 122-35. Volunteer firemen among employees rewarded.—The board of directors shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the board may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share in the state firemen's relief fund. (Rev., s. 4571; 1899, c. 1, s. 59; 1917, c. 150, s. 1; C. S. 6183.)

Art. 3. Admission of Patients.

§ 122-36. Persons adjudged insane entitled to immediate admission. — Any resident of North Carolina who has been legally adjudged to be insane by the clerk of the court or other properly authorized person, in accordance with the provisions of this chapter shall be entitled to immediate admission into the state hospital at Morganton, the state hospital at Raleigh, or the state hospital at Goldsboro, in accordance with the principles of division as to race and residence prescribed in this chapter; and no resident of the state who has been legally adjudged insane and who has been presented to the superintendent of the proper state hospital for the insane as provided in this article shall be refused admission thereto; but nothing in this article shall be construed to affect the discharge or transfer of patients as now provided by law. (1919, c. 326, ss. 1, 6; C. S. 6184.)

§ 122-37. Idiots not admitted.—No idiot shall be admitted to any hospital, and for the purpose of this chapter an idiot is defined to be a person born deficient in mind, with the exception that the state hospital at Goldsboro shall admit feebleminded negroes, under such rules and regulations as the hospital board and the superintendent may prescribe, in such numbers as the capacity and the appropriations to the hospital will permit. (Rev., s. 4572; 1899, c. 1, s. 18; 1933, c. 342, s. 2; C. S. 6185.)

§ 122-38. Priority given to indigent patients; payment required from others.—In the admission of patients to any state hospital, priority of admission shall be given to the indigent insane; but the board of directors may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The board of directors may, if there be sufficient room, admit other than indigent patients upon the payment of proper compensation. If any inmate of any state hospital shall require private apartments, extras, or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by such patient. Upon the death of any nonindigent patient, the state hospital may maintain an action against his estate for his support and maintenance for a period of five years prior to his death. (Rev., s. 4573; 1899, c. 1, s. 44; 1915, c. 254; 1917, c. 150, s. 1; C. S. 6186.)

§ 122-39. Only bona fide residents admitted to hospitals.—No clerk of the court or justice of the peace shall commit to a hospital any person who is not a bona fide citizen and resident of this state; and no person who shall have removed into this state from another state while insane shall be deemed a resident or citizen of this state, and no length of residence in this state of a person who was insane at the time he moved into this state shall be sufficient to make that person or citizen or resident of North Carolina within the meaning of this chapter. If any clerk or justice of the peace shall knowingly commit to any hospital a person who is not a bona fide citizen and resident of the state, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.. (Rev., ss. 3591, 4587; 1899, c. 1, s. 18; C. S. 6187.)

§ 122-40. Findings as to residence in examination reported.—In every examination of an alleged insane person it shall be the duty of the clerk or justice of the peace to particularly inquire whether the alleged insane person is a resident of this state, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged insane person, and the clerk or justice of the peace shall be of the opinion that the insane person is a resident of this state, within the meaning of this chapter, he shall state that he was unable to ascertain the legal residence of the insane person, and shall commit him to the hospital of his district. (Rev., s. 4588; 1899, c. 1, s. 18; C. S. 6188.)

§ 122-41. Settlement of patient determined.—For the purposes of this chapter the settlement of every person admitted to a state hospital as insane shall be in the county where the actual place of his residence at his admission may be situated, when such settlement comes in question, but no person can have a settlement in any county in this state unless he is a bona fide citizen and resident of this state, and was so before mental disease became manifest. (Rev., s. 4574; 1899, c. 1, s. 28; C. S. 6189.)

§ 122-42. Affidavit of insanity to procure admission.—For admission into a state hospital the following proceedings shall be had: Some respectable citizen, residing in the county of the alleged insane person, shall make before and file with the clerk of the superior court of the county an affidavit in writing, which shall be substantially in the following form:

State of North Carolina, ...County.

The undersigned, residing in said county, makes oath that he has carefully examined ..... and believes him to be an insane person, and to be, in the opinion of the undersigned, a fit subject for admission into a hospital for the insane.

Dated .... day of ..... A. D. ....

....., Affiant.

Sworn and subscribed before me,

.....,

Clerk Superior Court.

(Rev., s. 4575; 1899, c. 1, s. 15; C. S. 6190.)

§ 122-43. Clerk to issue order for examination.—Whereupon, unless the person in whose care or custody the insane person is will agree to bring him before the clerk without a warrant, or unless the clerk shall be of the opinion that it will be injurious to the insane person to be brought before him, the clerk shall issue a precept, directed to the sheriff or other lawful officer, substantially in the following form:

State of North Carolina,

To the Sheriff or Other Lawful Officer of .... County—Greeting:

Whereas information, on oath, has been laid before me that ..... is insane, you are hereby commanded to bring him before me within the next ten days, that necessary proceedings may be had thereon.

Given under my hand, ... day of ....., A. D. .....

.....,

Clerk Superior Court.

(Rev., s. 4576; 1899, c. 1, s. 15; C. S. 6191.)

§ 122-44. Incarceration of persons believed insane, pending judicial determination.—If the affidavit, required to be filed by § 122-42, states that such insane person's condition is such as to endanger either himself or others, or if the sheriff, or other person serving the warrant, believes that said insane person's condition is such as to endanger either himself or others, the clerk shall order such insane person to be incarcerated in the county jail until such person is judicially declared insane or sane. (1941, c. 179.)

§ 122-45. Clerk and physician to make examination.—If the alleged insane person be confined in jail otherwise than for crime, the sheriff shall remove him from the jail upon the order from the clerk. Upon the bringing of the alleged insane person before the clerk by his friends, or upon the return of the precept with the body of the insane person, the clerk shall call to his assistance the county physician of the county, or some other licensed and reputable physician, resident of this state, and shall proceed to examine into the condition of mind of the alleged insane person. He shall take testimony of at least one licensed physician, resident of this state, and, if possible, a member of the family, or some friend or person acquainted with the alleged insane person, who has had opportunities to observe him after such insanity is said to have begun. (Rev., s. 4577; 1899, c. 1, s. 15; C. S. 6192.)

§ 122-46. Clerk may discharge person, require bond, or commit to hospital.—If the clerk, after his examination of the alleged insane person, and the hearing of the testimony as aforesaid, shall decide that such person is sane, he shall forthwith discharge him. If he shall decide that such person is insane, and some friend, as he may do, will not become bound with good security in an amount to be fixed by the clerk to restrain him from committing injuries, and to keep, support, and take care of him until the cause for confinement shall cease, he shall direct such insane person to be removed to the proper hospital as a patient, and to that end he shall transmit to the proper board of directors the examination of the witnesses, and the statement of such facts as he shall deem pertinent to the subject-matter. If the clerk (or justice under § 122-48) is satisfied, after the examination herein provided, that the person is insane or an inebriate within the definition of § 35-30, he shall make the following order and commitment to the proper state hospital in substantially the following form:

State of North Carolina .....County.

State of North Carolina,

To the State Hospital at ..... N. C.—Greeting:

Whereas it has been made satisfactorily to appear to me, ..., Clerk of the Superior Court of said county, after a proper examination of.... ....., a person having his legal settlement in this county, that he is insane, epileptic or addicted to the use of drugs or alcohol (draw a pen through terms not applying), that he is a bona fide citizen of the state, and that he has a legal settlement in said county and is a fit subject for care and treatment in the state hospital at ....., and that he, being at large, is injurious to himself and disadvantageous if not dangerous to the community:

These are, therefore, to command you to receive said ..... into the State Hospital at .. .... for care and treatment as provided for by the laws of this State.

Given under my hand and official seal, this.... day of ....., 19....

.....

Clerk Superior Court .... County.

If the proceedings are to be before a justice of the peace under § 122-48, the following certificate shall be appended to the commitment by said justice of the peace:

I have examined the testimony as herein set forth, and am satisfied that..... is a fit subject for treatment in the State Hospital, and I hereby approve the foregoing commitment to the State Hospital at....., N. C.

Given under my hand and official seal, this.... day of ....., 19.....

.....

Clerk Superior Court.

If the patient is a pauper, the following should be filled out and accompany the commitment:

State of North Carolina, ...County.

I, ..., Clerk of the Superior Court of the above county, do hereby certify that ..... is a poor person and has no estate or property except .... nor has any one such property who is liable for his maintenance under article 6 of chapter 35.

Given under my hand and official seal, this.... day of ....., 19 ....

Clerk Superior Court.

If the patient is not a pauper, the following

should be filled out and accompany the commitment of the patient:

State of North Carolina, ...County.

I, ..., Clerk of the Superior Court of said county, do hereby certify that ..... has property of his own and is financially able to pay for his maintenance, or has relatives who under §§ 35-30 to 35-36 are liable for his maintenance, who have adequate property to pay for the same in the State Hospital at ....., N. C.

Given under my hand and official seal, this.... day of...., 19.....

.....
Clerk Superior Court.

The application for admission and commitment to a particular hospital shall be forwarded to such hospital, and immediately upon receipt of said application, if there shall be room for said patient in said hospital, the superintendent shall immediately notify the clerk of the court that the patient will be admitted at once. The receipt of said notice by said clerk of the court shall constitute his authority to convey said patient to said hospital for immediate admission: Provided, however, nothing herein shall prevent the superintendent of said hospital from sending immediately a representative of said hospital to convey said patient thereto. (Rev., s. 4578; 1899, c. 1, s. 15; 1915, c. 204, s. 1; 1923, c. 144, s. 1; C. S. 6193.)

§ 122-47. Examination at home of patient.—If the clerk of the court shall be of the opinion that it will be injurious to the alleged insane person to be brought before him, the clerk shall proceed to the residence or habitation of said person and take the examination there. (Rev., s. 4579; 1899, c. 1, s. 15; C. S. 6194.)

§ 122-48. When justice of the peace may make examination.—In case of emergency, when for any reason the clerk of the court cannot go or is absent from the county, then any justice of the peace is authorized to proceed in like manner by taking the testimony of the physician and other witnesses, as is before provided for in this chapter, and report the same to the clerk. If the clerk is satisfied that the alleged insane person is a fit subject for a hospital for the insane, he shall issue an order for his commitment. In cases of great emergency or inconvenience, the said justice may commit a patient to a hospital, and the superintendent is authorized to receive him, but the justice shall procure an order from the clerk to be forwarded to the superintendent within thirty days. (Rev., s. 4580; 1899, c. 1, s. 15; C. S. 6195.)

§ 122-49. Questions to be answered and certified to superintendent.—The following questions, with their respective answers by at least one licensed physician, resident of this state, and such other competent witnesses as the clerk or justice shall determine, duly sworn and subscribed by them, and so certified by the clerk or justice, shall be transmitted with the other papers to the superintendent of the proper hospital, to be reported as soon as practicable to the board of directors. Pending the consideration of the application by the board of directors, the patient shall remain in the custody of the officer of such person as the clerk may designate until it can be ascertained if there is room for the patient at the hospital:

1. What is patient's name? A.....
2. When was patient born? A..... Present age .....
3. Where was patient born? A. .....
4. Is .... or .... married, single or divorced? A. .....
5. If married woman, give maiden name. A. .....
6. Name and birthplace of father. A.....
7. Maiden name and birthplace of mother. A. .....
8. Occupation of patient for past five years. A. .....
9. Present occupation. ..... If no occupation, how supported? A. .....
10. Education: Collegiate, common school, grammar, elementary, none. A. ..... Professional or technical .....
11. Were mother and father related? A.....
12. Was either parent or grandparent or any children of patient or other blood relation ever insane, epileptic, feeble-minded, inebriate, paralytic, physically deformed, tubercular, diabetic, etc.? Specify. A. .....
13. If any of them were ever in any institution, state where and when. A. .....
14. Was patient ever charged or convicted of any crime? If so, what and when? A.....
15. Is patient now charged with crime? If so, what? A. .....
16. Is patient now in jail? If so, how long? A. .....
17. Is patient now in county home? If so, how long? A. .....
18. When was the change first observed in the patient's appearance and conduct indicating insanity? A. .....
19. What were the principal mental changes and symptoms observed at that time? A.....
20. Did they develop rapidly or gradually? A. .....
21. What symptoms are present at the present time? A. .....
22. Has patient had previous attacks? If so, how many and was .... or .... treated in a hospital? If so, when and where? A. .....
23. What did the patient say or do in your presence indicating insanity? A.....
24. Has patient delusions or hallucinations? A. .....
25. Is patient destructive? If so, what has ... . or ..... destroyed? A. .....
26. Has patient ever attempted suicide? A....
27. Has patient ever threatened suicide? A...
28. Has patient ever attempted homicide? A. .....
29. Has patient ever threatened homicide? A. .....
30. Has patient injured or attempted to injure h....self or others? If so, whom, when and in what manner? A. .....
31. State any other facts relative to behavior of patient indicating insanity. A. .....
32. Is patient feeble-minded? A. .....
33. Is patient an idiot? A. .....
34. What is the present salary of the patient? A. .....

35. How many dependent on ..... or ..... for support? A. .....

36. What is the value of ..... or ..... property? A. .....

37. What is ..... or ..... annual income? A. .....

38. If a minor, state occupation of patient's father. A. .....

39. What is father's salary? A. .....

40. What is the value of his property? A.....

41. What is his annual income? A. .....

42. The following questions should be answered if patient is a drug addict, or inebriate:

(1) Is patient addicted to the use of alcohol, morphine, cocaine, heroin or any other drugs? If so, what drug? A. .....

(2) In what manner (hypodermically or mouth), and how much does patient take? A. .....

(3) How long has patient been an addict? A. .....

(4) Has patient ever been treated for inebriety? If so, where and when? A. .....

43. The following questions should be answered if patient is an epileptic:

(1) At what age did epilepsy first appear? A. .....

(2) How long since first attack? A. .....

(3) Do seizures occur day or night, or both times? A. .....

(4) How often do attacks occur? A. .....

(5) Are attacks accompanied by frothing at the mouth ..... involuntary passage of urine ..... of feces ..... or biting of tongue? A. .....

(6) Has patient been burned or otherwise injured during seizures? A. .....

(7) Are seizures grand or petit mal, or both? A. .....

(8) What mental changes have taken place in patient? A. .....

(9) Is the patient incapable of protecting..... self against ordinary dangers without an attendant? A. .....

44. Give the name of nearest relative or friend with whom superintendent can correspond relative to condition of patient. A. .....
Relationship and address .....

45. How could the above party be communicated with quickest in case of emergency? A. .. ..

46. In case the hospital can accept patient, at what point could patient be delivered to representative of hospital? A. .....
.....M. D.
.....
.....
Witnesses

State of North Carolina, ...County.

Before ....., officer, ... duly authorized to administer an oath, this .... day of....., A. D. ..... came ..... M. D., and.... persons known to be credible and reliable witnesses, and made oath that the foregoing answers are true to the best of their knowledge and belief.

.....
.....

(Rev., s. 4589; 1899, c. 1, s. 19; 1923, c. 144, s. 2; C. S. 6196.)

§ 122-50. Clerk to keep record of examinations and discharges.—The clerk will keep a record of all examinations of persons alleged to be insane, and he shall record in such record a brief summary of the proceedings and of his findings, and whenever a justice of the peace shall transmit to the clerk a report of his proceedings when he shall have examined a person under the powers granted under this chapter, the clerk shall make a record of his proceedings, and for recording the justice's proceedings he shall be entitled to a fee of twenty-five cents, to be paid by the county aforesaid, and he shall keep a record of all probations and discharges provided for in article four of this chapter. (Rev., s. 4586; 1899, c. 1, s. 17; C. S. 6197.)

§ 122-51. Fees for examination.—The following fees shall be allowed to the officers who make the examination, and they shall be paid by the county in which the alleged insane person is settled: To the clerk or justice who makes the examination, two dollars, and if the clerk goes to the home of the insane person he shall be entitled, in addition to this sum, to five cents a mile each way. This shall cover his entire costs in taking the examination and making out the necessary papers.

The physician called, in the absence of the county physician, shall be entitled to two dollars with mileage. The county physician, being a salaried officer, is not allowed any fee for his services in this examination. The sheriff shall be entitled to such fees as are now allowed by law for the service of process of similar character. (Rev., ss. 4580, 4581; 1899, c. 1, s. 15; C. S. 6198.)

§ 122-52. Superintendent of hospital notified; attendant to convey patient.—Whenever any insane person shall be entitled to admission in any one of the hospitals of the state as prescribed by law, and the clerk of the superior court or other officer authorized by law to find such person insane has so found, it shall be the duty of the clerk or other officer forthwith to notify the superintendent of the proper hospital, giving the name, race, sex and age of patient; and it shall be the duty of such superintendent, unless said patient has been exposed to a contagious disease as hereinafter mentioned in this article, to send an attendant to bring such insane person to the hospital. Such attendant shall have all such rights as the sheriff or other officer has heretofore, and shall convey such insane person to the hospital. (1919, c. 326, s. 2; C. S. 6199.)

§ 122-53. Bill of expense sent to county commissioners.—Upon the arrival of such insane person at the hospital, the superintendent shall send to the board of commissioners of the county in which such insane person had a settlement a bill covering the costs of conveying such insane person to the hospital, including any fees that would now be allowed an officer, and it shall be the duty of the board of commissioners forthwith to repay to such hospital the amount of such bill. (1915, c. 204, s. 2; 1919, c. 326, s. 3; C. S. 6200.)

§ 122-54. Failure of superintendent to send attendant; sheriff to act.—If the superintendent of any hospital for the insane in this state shall, for ten days after receiving a notice as prescribed

in § 122-52, fail and neglect to send an attendant, as is prescribed by § 122-52, to bring such insane person to the hospital, it shall be the duty of the sheriff of the county from which the notice was sent to bring at the expense of the county such insane person to the state hospital, whereupon it shall be the duty of the said superintendent to receive said insane person and relieve said sheriff of his care. (1919, c. 326, s. 4; C. S. 6201.)

§ 122-55. Costs of conveying patients to and from hospital; how paid.—The cost and expenses of conveying every insane person to any hospital from any county, or of removing him from the hospital to his county, or of the return to the county of his settlement, as sane, shall be paid by the treasurer of such county, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they shall bring an action and recover the amount paid from the said person, or from the other person liable for his support and maintenance. (Rev., s. 4555; 1899, c. 1, s. 32; C. S. 6202.)

§ 122-56. Preparation of patient for admission to hospital.—Every sheriff or other person bringing to a hospital a patient shall see that the patient is clean, free from contagious disease and vermin, and that he has clothing proper for the season of the year, and in all cases two full suits of underclothing. (Rev., s. 4556; 1899, c. 1, s. 24; C. S. 6203.)

§ 122-57. Commitment in case of sudden or violent insanity.—Whenever any citizen or resident of this state becomes suddenly or violently insane, in some county other than that of his settlement, the proper authorities, as hereinbefore provided, of any county in which he shall be, shall have authority to examine him, and if necessary commit him to the hospital to which he would be sent had he been committed from the county of his own settlement. (Rev., s. 4582; 1899, c. 1, s. 16; C. S. 6204.)

§ 122-58. Expense paid by county of settlement; penalty.—Immediately upon the commitment to a hospital of any such person, a transcript of the proceedings shall be sent to the clerk of the county in which he is settled, and that county shall pay over to that county from which he was committed all the cost of the examination and commitment, and if the board of commissioners of the county of the settlement shall fail to pay all proper expense of said proceedings within sixty days after the claim shall have been presented, they shall forfeit and pay to the county which committed the insane person the sum of two hundred and fifty dollars, to be recovered by the commissioners of that county in a civil action brought in the superior court of that county from which the patient was committed to the hospital, against the commissioners of the county. Rev., s. 4583; 1899, c. 1, s. 16; C. S. 6205.)

§ 122-59. Person conveying patient to hospital without authority.—No sheriff or other person shall convey a patient to any hospital without having ascertained that the patient will be admitted, and if any sheriff or other person shall carry a patient to a hospital without having ascertained that the patient will be admitted, and the patient is not admitted, he shall be required to convey the patient back to the county of his settlement, and he shall not be repaid by the county or hospital for the expenses incurred in carrying the patient to and from the hospital. (Rev., s. 4546; 1899, c. 1, s. 25; C. S. 6206.)

§ 122-60. How admission determined, when superintendent is in doubt.—Whenever any insane person shall be conveyed to any hospital, and the superintendent is in doubt as to the propriety of his admission, he may convene any three of the board of directors, who shall constitute a board for the purpose of examining and deciding if such person is a proper subject for admission; and if a majority of such board so decide, such person shall be received into said hospital; but a like board may at any time thereafter deliver such insane person to any friend who will become bound with good surety to restrain him from committing injuries, and to keep, maintain, and take care of him, in the same manner as he might have become bound under the authority of the clerk of the court. (Rev., s. 4590; 1899, c. 1, s. 21; 1917, c. 150, s. 1; C. S. 6207.)

§ 122-61. Admission refused, if patient exposed to contagious disease. — The superintendent of the hospital may refuse to receive into his institution a patient when he shall have reliable information that the patient has recently been exposed to infectious or contagious disease, and there is danger of contagion and infection being conveyed by the patient, or where the patient comes from a quarantined community. Whenever a patient is rejected because of any of these reasons the superintendent shall make a record of the application and as soon as, in his opinion, the danger shall have been removed, he shall notify the sheriff of the county, and admit the patient into his hospital. (Rev., s. 4591; 1899, c. 1, s. 26; C. S. 6208.)

§ 122-62. Commitment upon patient's own application.—Any person believing himself to be of unsound mind, or threatened with insanity, may voluntarily commit himself to the proper hospital. The application for commitment shall be in the form following:

State of North Carolina, County of .....

I, ..., a resident of ..... county, North Carolina, being of mind capable of signifying my wishes, do hereby solicit admission as a patient in the state hospital at ..... for such a period of time as the board of directors and the superintendent may deem necessary. And I agree in all respects to conform to the rules and regulations of said institution during the period which shall be prescribed by the superintendent and board of directors. .....

Attest: .....

This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician the applicant is a fit subject for admission into a hospital, and that he recommends his ad-

mission. The certificate of the clerk of the superior court need not accompany this application. The superintendent may, if he think it a proper application, receive the patient thus voluntarily committed, and treat him until the next meeting of the board of directors or of the executive committee, and shall report the application and admission to the first meeting of said board, and if said board approve such admission, the patient shall be considered as having been regularly committed, and shall in all respects be treated as such. But no report need be made to the clerk of the court of his county of settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily as they have over those committed under the regular proceedings hereinbefore provided and no voluntary patient shall be entitled to a discharge until he shall have given the superintendent ten days notice of his desire to be discharged. (Rev., s. 4593; 1899, c. 1, s. 49; 1917, c. 150, s. 1; C. S. 6209.)

§ 122-63. Proceedings in case of insanity of citizen of another state.—If any person not a citizen or resident of this state, but a citizen and resident of another state of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of the state of which the insane person is a citizen of the facts and circumstances by letter (or telegraphic message if he think proper), and for a reasonable length of time the insane person shall be kept confined or restrained in said county, but shall not be committed to any state hospital, and if the state of his citizenship shall not provide for the removal from this state to his proper state of the insane person within a reasonable time, the county commissioners of the county in which he shall have been ascertained to be an insane person shall cause him to be conveyed to the state of which he is a citizen and delivered there to the sheriff of his county or to the superintendent of any state hospital. The cost of such proceedings and conveyance away from this state shall be borne by the county in which the person shall have been adjudged to be insane. (Rev., s. 4584; 1899, c. 1, s. 16; C. S. 6210.)

§ 122-64. Proceedings in case of insanity of alien.—If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of this state of the name of the insane person, the country of which he is a citizen, and his place of residence in said country if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination taken; and the governor shall transmit such information and examination to the secretary of the state at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen. (Rev., s. 4585; 1899, c. 1, s. 16; C. S. 6211.)

§ 122-65. Insane person temporarily committed to jail.—When any person is found to be insane under any of the provisions of this chapter, and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threaten injury to himself and danger to the community, and he cannot otherwise be properly restrained, he may be temporarily committed to the county jail until a more suitable provision can be made for his case. (Rev., s. 4594; 1899, c. 1, s. 45; C. S. 6212.)

Art. 4. Discharge of Patients.

§ 122-66. County commissioners may discharge insane person in county.—It shall be the duty of the board of county commissioners, by proper order to that effect, to discharge any ascertained insane person in their county, not admitted to the appropriate hospital, and not committed for crime, when it shall appear upon the certificate of two respectable physicians, and the chairman of their board, that such insane person ought to be discharged if in a hospital. (Rev., s. 4595; 1899, c. 1, s. 20; C. S. 6213.)

§ 122-67. Discharge of patient from hospital; sheriff's duty; expense paid.—Any three of the board of directors, upon the superintendent certifying the facts (a copy of which certificate shall be sent to the clerk of the superior court of the county of settlement), shall be a board to discharge or remove from their hospital any person admitted as insane, when such person has become or is found to be of sane mind, or when such person is incurable, and in the opinion of the superintendent his being at large will not be injurious to himself or dangerous to the community, or the board may permit such person to go to the county of his settlement on probation, when in the opinion of the superintendent it will not be injurious to himself or dangerous to the community; and the board may discharge or remove such person, upon other sufficient causes appearing to them; and whenever any such person, admitted as indigent may be so discharged or removed, except as sane, it shall be the duty of the sheriff of the county of his settlement to convey such person to his county at its expense, and any such person discharged as restored or probated shall receive from such hospital a sum of money sufficient to pay his transportation to the county of his settlement, which sum shall be repaid by said county, and, if necessary, the hospital shall provide the patient with a decent suit of clothes. When notified by the superintendent to come for and remove any insane person from the hospital, it shall be the duty of the sheriff of the county in which the insane person has a settlement forthwith to convey the insane person from the hospital to the county of his settlement. The cost of such removal shall be advanced by the sheriff and repaid to him by the county of insane person's settlement; and if any sheriff, after having been notified by the superintendent to remove any insane person, as aforesaid, shall fail to do so within fifteen days from the time of the receipt of the letter of notice, he shall forfeit and pay to the hospital the sum of fifty dollars, to be collected in the manner provided for the collection of penalties given in this chapter; and if the commissioners of any county shall fail to repay to the hospital the money disbursed in paying for the necessary clothes and traveling expenses of any person discharged as cured from said hospital,

within sixty days after the presentation of a claim therefor, the commissioners shall forfeit and pay to the hospital the sum of fifty dollars, to be collected in the manner provided for the collection of penalties in this chapter. (Rev., s. 4596; 1899, c. 1, s. 22; 1917, c. 150, s. 1; C. S. 6214.)

§ 122-68. Superintendent may discharge patient temporarily.—Each superintendent may, for the space of thirty days, or until the next meeting of the board of three directors provided for in the preceding section, discharge upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. A report of all such probations shall be rendered to the said board of three directors at their first ensuing meeting. (Rev., s. 4597; 1899, c. 1, s. 23; C. S. 6215.)

§ 122-69. Bonds for safe-keeping of insane persons; enforcement. — All bonds executed for restraining insane persons from committing injuries, and for their safe-keeping, support and care, shall be payable to the state of North Carolina, in the sum of five hundred dollars at least, and shall be transmitted to the clerk of the superior court of the county wherein said insane person is settled, for safe-keeping, and may be put in suit by any person injured by said insane person by reason of his insane condition; and shall be put in suit by the solicitor for the judicial district in which the county of said insane person's residence is situated, for any other breach thereof, wherein the damage received shall be for the use of said insane person. (Rev., s. 4598; 1899, c. 1, s. 29; C. S. 6216.)

§ 122-70. Form of bond for safe-keeping of insane.—The form of bond mentioned in the preceding section shall be as follows:

State of North Carolina, County of .....

Know all men by these presents, that we, A.. .... B ....., principal, and C ..... D. ....., and E ..... F ....., sureties, are held and firmly bound unto the State of North Carolina in the sum of ..... dollars, for the payment whereof we bind ourselves and each of us.

Witness our hands and seals, this ..... day of ....., 19....

The condition of the above obligation is this: Whereas, the said A ..... B ....., with the view of hindering G ..... H ....., an insane person resident in the county aforesaid, from being sent to ..... insane hospital (or to effect his release from the said hospital, as the case may be), hath undertaken to restrain him from committing injuries and to keep, maintain, support, and take care of the said G ..... H ..... Now, if the said A ..... B ..... shall faithfully comply with the conditions of this obligation, then the same shall be void, otherwise it shall be in full force.

A ..... B ..... (Seal)
C ..... D ..... (Seal)
E ..... F ..... (Seal)

(Rev., s. 4599; 1899, c. 1, s. 30; C. S. 6217.)

§ 122-71. Patient returned, if condition of bond not complied with.—Whenever it shall be made to appear to the clerk of the superior court of the county of settlement of an insane person released on bond that the conditions of the bond are not faithfully complied with, said insane person shall be sent back to the proper hospital by him, unless some other responsible and discreet friend will undertake to fulfill the duties of said obligation; and whenever said insane person shall be sent back, he shall not be delivered on any new bond of the defaulting obligor. (Rev., s. 4592; 1899, c. 1, s. 33; C. S. 6218.)

Art. 5. Private Hospitals for the Insane.

§ 122-72. Established under license and subject to control of board of charities.—It shall be lawful for any person or corporation to establish private hospitals, homes, or schools for the cure and treatment of insane persons, idiots, and feeble-minded persons and inebriates; but license to establish such hospitals, homes, or schools must, before the same are opened for patronage, be obtained from the state board of charities and public welfare, and such hospitals, homes, or schools shall at all times be subject to the visitation of the said board or any member thereof, and each hospital, home, or school shall make to the board a semiannual report on the first days of January and July of each year. In said report shall be stated the number and residence of all patients admitted, the number discharged during the six months preceding, and the officers of the hospital, home, or school. Each hospital, home, or school shall file with the board a copy of its by-laws, rules, and regulations, and rates of charges. The books of each hospital, home, or school shall at all times be open to the inspection of the board or any member thereof. The state board of charities and public welfare is hereby given the authority to supervise and regulate all private hospitals, homes, and schools established hereafter in this state for the treatment of the above classes of people, and the board shall have power to prescribe all such rules and regulations as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of their board to visit and supervise any private hospital, home, or school hereafter established under this article. The state board of charities may bring an action in the superior court of Wake county to vacate and annul any license granted by the board, when it shall appear to the satisfaction of the board that the managers of any private hospital, home, or school have been guilty of gross neglect, cruelty, or immorality. (Rev., s. 4600; 1899, c. 1, s. 60; C. S. 6219.)

§ 122-73. Counties and towns may establish hospitals.—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such insane persons as cannot be admitted into a state hospital, and of idiots and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the state board of charities and public welfare is given the same authority over such hospitals as is given them by the preceding section for private hospitals. (Rev., s. 4601; 1899, c. 1, s. 61; C. S. 6220.)

§ 122-74. Private hospitals part of public charities.—All hospitals, homes, or schools for the care and treatment of insane persons, idiots, and

feeble-minded persons and inebriates, formed in compliance with the two preceding sections and duly licensed by the board of public charities as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the state of North Carolina. (Rev., s. 4602; 1903, c. 329, s. 1; C. S. 6221.)

§ 122-75. Insane persons placed in private hospital.—Whenever any person shall be found to be insane in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such insane person, and, moreover, to support and maintain such insane person in any named hospital without the state, or any private hospital within the state, and such insane person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a state hospital (or in case such insane person is incapable of declaring such preference, then the same may be declared by his guardian), and two respectable physicians who shall have examined such insane person, with the clerk of the court or justice of the peace who made the examination, shall deem it proper, then it may be lawful for the clerk or justice, together with said physicians, to recommend in writing that such insane person shall be placed in the hospital so chosen, as a patient thereof. (Rev., s. 4603; 1899, c. 1, s. 39; C. S. 6222.)

§ 122-76. Justice of the peace to report to clerk.—It shall be the duty of the justice, when he shall act, to report the proceedings in such cases to the clerk of the superior court of the county in which such insane person may reside or be domiciled. (Rev., s. 4604; 1899, c. 1, s. 41; C. S. 6223.)

§ 122-77. Clerk to report proceedings to judge.—The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such insane person may reside or be domiciled, and if he approve them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by the clerk. (Rev., s. 4605; 1899, c. 1, s. 42; C. S. 6224.)

§ 122-78. Certified copy and approval of judge sufficient authority.—A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such insane person appointed by the judge to remove him to the hospital designated. (Rev., s. 4606; 1899, c. 1, s. 43; C. S. 6225.)

§ 122-79. Examination and commitment to private hospital.—When it is deemed advisable that any person, a citizen of the state of North Carolina, or a citizen of another state or country temporarily sojourning in North Carolina, should be detained in any private hospital within the state, two persons, one of whom must be a physician, not connected with any private hospital, shall make affidavit before a justice of the peace or a clerk of the superior court of this state that they have carefully examined the alleged insane person; that they believe him to be a fit subject for commitment to a hospital for the insane, and that his detention and treatment will be for his advantage and benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding the insane person. The clerk of the court may, if he sees fit, issue warrants and have the alleged insane person before him in manner prescribed in article three of this chapter for the examination and admission to state hospitals, and he may, if he see fit, order any insane person brought before him to be taken to a private hospital within the state instead of one of the state hospitals, and his warrant shall be sufficient authority for holding such insane person in such private hospital. Idiots, feeble-minded persons, and inebriates may be committed to and held in private hospitals or homes in this state in the manner hereinbefore prescribed for insane persons: Provided, that a period of detention in a private hospital or home of not less than one month and not more than six months shall be prescribed for inebriates, at the discretion of the clerk of the superior court approving the commitment. (Rev., s. 4607; 1903, c. 329, s. 2; C. S. 6226.)

§ 122-80. Patients transferred from state hospital to private hospital.—When it is deemed desirable that any inmate of any state hospital be transferred to any licensed private hospital within the state, the executive committee may so order, and a certified copy of the commitment on file at the state hospital and the order of the executive committee shall be sufficient warrant for holding the insane person, idiot, or inebriate by the officers of the private hospital. (Rev., s. 4608; 1903, c. 329, s. 3; C. S. 6227.)

§ 122-81. Guardian of insane person to pay expenses out of estate.—It shall be the duty of any person having legal custody of the estate of an insane person, idiot, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate. (Rev., s. 4610; 1899, c. 1, s. 40; 1903, c. 329, s. 4; C. S. 6228.)

§ 122-82. Fees and charges for examinations.—The fees and charges for examination for admission to private hospitals shall be the same as for examinations for admission to the state hospitals. (Rev., s. 4611; 1903, c. 329, s. 5; C. S. 6229.)

Art. 6. Dangerous Insane.

§ 122-83. Insane persons charged with crime to be committed to hospital.—All persons who may hereafter commit crime while insane, and all persons who, being charged with crime, are adjudged to be insane at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is insane and cannot plead, to the state hospital at Raleigh, if the alleged criminal is white, or to the state

hospital at Goldsboro if the alleged criminal is colored, and if the alleged criminal is an Indian from Robeson county, to the state hospital at Raleigh, as provided for insane Indians from Robeson county, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said boards of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said boards of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (Rev., s. 4617; 1899, c. 1, s. 63; 1923, c. 165, ss. 2, 3; 1927, c. 228; C. S. 6236.)

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of insanity, committed to hospital. When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of insanity, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witness to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital designated in § 122-83. If upon such inquisition the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital designated in § 122-83, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent. (Rev., s. 4618; 1899, c. 1, s. 65; 1923, c. 165, s. 4; C. S. 6237.)

§ 122-85. Convicts becoming insane committed to hospital.—All convicts becoming insane after commitment to the state prison, and the fact being certified as now required by law in the case of other insane persons, shall be admitted to the hospital designated in § 122-83. In case of the expiration of the sentence of any convict, insane person, while such person is confined to the said hospital, such person shall be kept until restored to his right mind or such time as he may be considered harmless and incurable. (Rev., s. 4619; 1899, c. 1, s. 66; 1923, c. 165, s. 5; C. S. 6238.)

§ 122-86. Persons acquitted of crime on account of insanity; how discharged from hospital.—No person acquitted of a capital felony on the ground of insanity, and committed to the hospital designated in § 122-83 shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a less degree than a capital felony and committed to the hospital designated in § 122-83 shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of insanity, shall be discharged from said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals designated in § 122-83 from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public. (Rev., s. 4620; 1899, c. 1, s. 67; 1923, c. 165, s. 6; C. S. 6239.)

§ 122-87. Proceedings in case of recovery of patient charged with crime.—Whenever a person confined in any hospital for the insane, and against whom an indictment for crime is pending, has recovered or been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in said hospital shall have recovered his mind, the clerk of the court of the county from which he was committed shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of the county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital, and reported sane as aforesaid, shall give the bond fixed by the

clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was committed. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's settlement will repay the sheriff for his expenses and services. (Rev., s. 4621; 1899, c. 1, s. 64; 1923, c. 165, s. 7; C. S. 6240.)

§ 122-88. Ex-convicts with homicidal mania committed to hospital—Whenever any person who has been confined in the state prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal mania, and shall be duly adjudged insane, in accordance with the provisions of article three of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged insane may, in his discretion, commit such person to the state hospital designated in § 122-83, as authorized and provided in this chapter. (1911, c. 169, s. 1; 1923, c. 165, s. 8; C. S. 6241.)

§ 122-89. Hospital authorities to receive and treat such patients.—It shall be the duty of the duly constituted authorities of the state hospitals designated in this act for the insane to receive all such insane persons as shall be committed to said institutions in accordance with the provisions of this law, and to treat and care properly for the same until discharged in accordance with the provisions of the law. (1911, c. 169, s. 2; 1923, c. 165, s. 9; C. S. 6242.)

§ 122-90. Inferior courts without jurisdiction to commit.—No court inferior to the superior court of this state shall have authority to send or commit any insane person to any state hospital for the criminal insane, as provided in this article. (1939, c. 66.)

Chapter 123. Impeachment.

Sec.

Art. 1. The Court.

123-1. Senate is court of impeachment; quorum.
123-2. Chief justice presides in impeachment of governor.
123-3. Power of the senate as a court.
123-4. Power of presiding officer.
123-5. Causes for impeachment.

Art. 2. Procedure in Impeachment.

123-6. Articles of impeachment preferred.
123-7. When president of senate impeached, another officer chosen.
123-8. Notice given to the accused.
123-9. Accused entitled to counsel.
123-10. Time of hearing fixed.
123-11. Oath administered to members.

Art. 3. Effect of Impeachment.

123-12. Accused suspended during trial.
123-13. Manner of conviction; judgment; indictment.

Art. 1. The Court.

§ 123-1. Senate is court of impeachment; quorum.—The court for the trial of impeachments shall be the senate. A majority of the members shall be necessary to constitute a quorum. (Rev., s. 4623; Const., Art. IV, s. 3; Code, ss. 2923, 2924; 1868-9, c. 168, s. 1; C. S. 6244.)

§ 123-2. Chief justice presides in impeachment of governor.—When the governor of the state, or lieutenant-governor, upon whom the powers and duties of the office of governor have devolved, is impeached, the chief justice of the supreme court shall preside; and in a case requiring the chief justice to preside, notice shall be given him, by order of the senate, of the time and place fixed for the consideration of the articles of impeachment, with a request to attend; and the chief justice shall preside over the senate during the consideration of said articles upon the trial of the person impeached. But the chief justice shall not vote on any question during the trial, and shall pronounce decision only as the organ of the senate with its assent. (Rev., s. 4624; Const., Art. IV, s. 4; Code, s. 2927; 1868-9, c. 168, s. 6; C. S. 6245.)

§ 123-3. Power of the senate as a court.—The senate, as a court, shall have power to compel the attendance of parties and witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, to punish, in a summary way, contempts of its authority, orders, mandates, writs, precepts, or judgments, to adjourn from time to time, and to make all lawful rules and regulations which it may deem essential or conducive to the ends of justice. (Rev., s. 4626; Code, s. 2926; 1868-9, c. 168, s. 4; C. S. 6246.)

§ 123-4. Power of presiding officer.—The presiding officer of the senate shall have power—

1. To direct all necessary preparations in the senate chamber.

2. To make and issue by himself or by the clerk of the senate all orders, mandates, writs, and precepts authorized by law or by the senate.

3. To direct all the forms of procedure during the trial not otherwise specially provided for.

4. To decide in the first instance, without a division, all questions of evidence and incidental questions; but the same shall, on demand of one-fifth of the members present, be decided by yeas and nays. (Rev., s. 4627; Code, s. 2927; 1868-9, c. 168, s. 5; C. S. 6247.)

§ 123-5. Causes for impeachment.—Every offi-

cer in this state shall be liable to impeachment for—

1. Corruption or other misconduct in his official capacity.
2. Habitual drunkenness.
3. Intoxication while engaged in the exercise of his office.
4. Drunkenness in any public place.
5. Mental and physical incompetence to discharge the duties of his office.
6. Any criminal matter, the conviction whereof would tend to bring his office into public contempt. (Rev., s. 4628; Code, s. 2937; 1868-9, c. 168, s. 16; C. S. 6248.)

Art. 2. Procedure in Impeachment.

§ 123-6. Articles of impeachment preferred.—All impeachments must be delivered by the house of representatives to the presiding officer of the senate, who shall thereupon cause proclamation to be made in the following words:

"All persons are commanded to keep silence, on pain of imprisonment, while the house of representatives is exhibiting to the senate of North Carolina articles of impeachment against....."

After which the articles shall be exhibited, and then the presiding officer of the senate shall inform the house of representatives that the senate will take proper order on the subject of impeachment, of which due notice shall be given to the house of representatives. (Rev., s. 4630; Code, s. 2925; 1868-9, c. 168, ss. 2, 3; C. S. 6249.)

§ 123-7. When president of senate impeached, another officer chosen.—If the president of the senate be impeached, notice thereof shall immediately be given to the senate by the house of representatives, in order that another president may be chosen. (Rev., s. 4631; Code, s. 2935; 1868-9, c. 168, s. 14; C. S. 6250.)

§ 123-8. Notice given to the accused.—The senate, upon the presentation of articles of impeachment and its organization as a court, shall forthwith cause the person impeached to appear and answer the articles exhibited, either in person or by attorney. He shall be entitled to a copy of the impeachment and have a reasonable time to answer the same. (Rev., s. 4632; Code, s. 2928; 1868-9, c. 168, s. 7; C. S. 6251.)

§ 123-9. Accused entitled to counsel.—The person accused is entitled on the trial of impeachment to the aid of counsel. (Rev., s. 4629; Code, s. 2929; 1868-9, c. 168, s. 8; C. S. 6252.)

§ 123-10. Time of hearing fixed.—When issue is joined in the trial of an impeachment the court shall fix a time and place for the trial thereof. (Rev., s. 4633; Code, s. 2930; 1868-9, c. 168, s. 9; C. S. 6253.)

§ 123-11. Oath administered to members.—At the time and place appointed, and before the commencement of the trial, the presiding officer of the senate shall administer to each member of the court then present, and to other members as they appear, an oath or affirmation truly and impartially to try and determine the charge in question, under the constitution and laws, according to the evidence. No member of the court shall sit or give his vote upon the trial until he shall have taken such oath or affirmation. (Rev., s. 4625; Code, s. 2931; 1868-9, c. 168, s. 10; C. S. 6254.)

Art. 3. Effect of Impeachment.

§ 123-12. Accused suspended during trial.—Every officer impeached shall be suspended from the exercise of his office until his acquittal. (Rev., s. 4634; Code, s. 2934; 1868-9, c. 168, s. 13; C. S. 6255.)

§ 123-13. Manner of conviction; judgment; indictment.—No person shall be convicted on an impeachment without the concurrence of two-thirds of the senators present. Upon a conviction of the person impeached, judgment may be given that he be removed from office, or that he be disqualified to hold any office of honor, trust, or profit under this state, or both. Every person convicted on impeachment shall, nevertheless, be liable to indictment and punishment according to law. (Rev., s. 4635; Code, ss. 2932, 2933, 2936; 1868-9, c. 168, ss. 11, 12, 15; see Const., Art. IV, ss. 3, 4; C. S. 6256.)

Chapter 124. Internal Improvements.

Sec.
124-1. Governor and council to control internal improvements.
124-2. State deemed shareholder in corporation accepting appropriation.
124-3. Report of railroad, canal, etc.; contents.
124-4. Report to general assembly; contents.
124-5. Approval of encumbrance on state's interest in corporations.
124-6. Appointment of proxies, etc.
124-7. Power of investigation of corporations.

§ 124-1. Governor and council to control internal improvements.—The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. (1925, c. 157, s. 1.)

§ 124-2. State deemed shareholder in corporation accepting appropriation.—When an appropriation is made by the State to any work of internal improvement conducted by a corporation, the State shall be considered, unless otherwise directed, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed. (1925, c. 157, s. 2.)

§ 124-3. Report of railroad, canal, etc.; contents.—The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, when required to do so by the Governor, make or cause to be made to the Governor and Council of State a written report of its affairs. This report shall show:

1. Number of shares owned by the State.
2. Number of shares owned otherwise.

3. Face value of such shares.
4. Market value of each of such shares.
5. Amount of bonded debt, and for what purpose contracted.
6. Amount of other debt, and how incurred.
7. If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
8. Amount of gross receipts for past year, and from what sources derived.
9. An itemized account of expenditures for past year.
10. Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.
11. Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
12. Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.

Any person failing to report as required by this section shall be guilty of a misdemeanor and be fined or imprisoned at the discretion of the court. (1925, c. 157, s. 3.)

§ 124-4. Report to general assembly; contents.—The Governor and Council of State shall biennially report to the General Assembly:

1. The condition of all railroads, canals, or other works of internal improvement in which the State has an interest, and they shall at the same time suggest such improvement, enlargement, or extension of such work as they shall deem proper, and such new works of similar nature as shall seem to them to be demanded by the growth of trade or the general prosperity of the State.

2. The amount, condition, and character of the State's interest in other railroads, roads, canals, or other works of internal improvement in which the State has taken stock, to which she has loaned money, or whose bonds she holds as security.

3. The condition of such roads or other corporate bodies, in detail, as are referred to in the previous section, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report; the amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the State's interest in the same as may to them seem warranted by the status of the roads or corporations.

4. The names of all persons failing or refusing to report as is required by law. (1925, c. 157, s. 4.)

§ 124-5. Approval of encumbrance on state's interest in corporations. — No corporation or company in which the State has or owns any stock or any interest shall sell, lease, mortgage, or otherwise encumber its franchise, right of way, or other property, except by and with the approval and consent of the Governor and Council of State. (1925, c. 157, s. 5.)

§ 124-6. Appointment of proxies, etc. — The Governor shall appoint on behalf of the State all such officers or agents as, by any act, incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company; and such person or persons shall cast the vote to which the State may be entitled in all the meetings of the stockholders of such company under the direction of said Governor; and the said Governor may, if in his opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in his discretion. (1925, c. 157, s. 6.)

§ 124-7. Power of investigation of corporations.—The Governor and Council of State shall have the power to investigate the affairs of any corporation or association described in § 124-3 and may require the Attorney-General or the Utilities Commission to assist in making such investigation under the rules and regulations prescribed in chapter sixty-two. (1925, c. 157, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

Chapter 125. Libraries.

Art. 1. State Library.

Sec.
125-1. Location.
125-2. Trustees; duties and powers.
125-3. Librarian's seal; certified copies of documents as evidence.
125-4. Governor to designate documents to be preserved; books bound and labeled.
125-5. Penalty for injury to books.
125-6. Committee to purchase books.
125-7. Librarian; election and bond.
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125-9. Librarian to receipt for laws of other states.
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125-11. Open hours for library.
125-12. Members of state boards and commissions to use books.

Art. 2. Document Library.

125-13. Location.
125-14. Librarian.
125-15. Assistant librarian.
125-16. Librarian to procure books.
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Art. 3. Library Commission.

125-18. Commission established; members appointed.
125-19. Election of officers.
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125-21. Public libraries to report to commission.
125-22. Commission to report to governor.
125-23. Expenses of commission paid.
125-24. Offices provided.
125-25. Commission authorized to accept and administer funds from federal government and other agencies.
125-26. State policy as to public library service; annual appropriation therefor; library service; administration of fund.

Art. 1. State Library.

§ 125-1. Location. — The state library shall occupy the rooms set apart for it in the state administration building. (Rev., s. 5068; 1885, c. 121, s. 7; 1913, c. 99, s. 1; C. S. 6573.)

§ 125-2. Trustees; duties and powers. — The governor, superintendent of public instruction, and secretary of state, and their respective successors in office, are appointed trustees of the state and document libraries. The board of trustees shall make rules and regulations by which the librarian shall be governed for the protection and preservation of the books and library; and may make such distribution of the books, reports, and publications belonging to the state as in the judgment of the board is advisable and proper. (Rev., s. 5069; Code, s. 3612; 1871-2, c. 169, s. 3; 1903, cc. 104, 133; C. S. 5574.)

§ 125-3. Librarian's seal; certified copies of documents as evidence.—It shall be the duty of the secretary of state to furnish the state librarian with a seal of office. The state librarian is authorized to certify to the authenticity and genuineness of any document, paper, or extract from any document, paper, or book or other writing which may be on file in his office. When the certificate is made under his hand and attested by his official seal, it shall be received as prima facie evidence of the correctness of the matters therein contained, and as such shall receive full faith and credit. (Rev., s. 5070; 1905, c. 537; C. S. 6575.)

§ 125-4. Governor to designate documents to be preserved; books bound and labeled.—The governor shall designate such portions of the documents, journals, and acts of congress of the United States as he may deem proper to be preserved in the library; may designate which of them are to to be bound, of such pamphlets, acts, and journals of the general assembly, and works of periodical literature, laws of other states, and documents of the general assembly that may be added to the library; and the librarian shall have them bound. And all the books belonging to the library, or which may be added thereto, shall be labeled in gilt letters with the words "State Library." (Rev., s. 5074; Code, s. 3614; R. C., c. 92, s. 4; 1840, c. 46, s. 6; 1842, c. 68, s. 3; C. S. 6579.)

§ 125-5. Penalty for injury to books.—Any person who shall damage, deface, or mutilate any book which he may be allowed to withdraw from the library, or who shall return any book so damaged, defaced, or mutilated while in his possession, shall forfeit and pay the full amount of the damage, which amount shall be determined by the librarian, but in no case to exceed double the value of the book; and the penalties and forfeitures accruing under this section shall be sued for and recovered by the librarian in the name of the state, before any justice of the peace, and shall be added to the fund for the increase of the library. (Rev., s. 5075; Code, s. 3615; R. C., c. 92, s. 5; 1842, c. 68, s. 1; C. S. 6580.)

§ 125-6. Committee to purchase books.—The state librarian, superintendent of public instruction, together with three other persons to be selected by the trustees, shall constitute a committee to purchase books for the state library, and they are to serve without compensation in the matter of selecting and buying books. (Rev., s. 5076; 1901, c. 503, s. 3; C. S. 6581.)

§ 125-7. Librarian; election and bond.—A librarian shall be elected quadrennially by the trustees of the state library, and shall give bond with security in such sum as the trustees may determine, payable to the state of North Carolina, conditioned for the safe-keeping of the books and the faithful discharge of his duties, and he shall hold his place till his successor shall be appointed and qualified. (Rev., s. 5077; Code s. 3604; 1870-1, c. 70, s. 1; 1883, c. 216, s. 1; 1895 c. 351; 1903, c. 727; C. S. 6582.)

§ 125-8. Assistant librarian.—The state librarian is authorized to employ an assistant in his office. (Rev., s. 5078; 1901, c. 503, s. 1; C. S. 6583.)

§ 125-9. Librarian to receipt for laws of other states.—The state librarian is directed to keep a record of the published laws, reports, documents, etc., received from other states and territories by exchange for like documents from this state; to receipt for the same and to distribute them to the different departments to which they belong immediately on receipt. All states and territories exchanging such documents with this state are requested to forward all document direct to the state librarian. (Rev., s. 5079 1889, c. 535; C. S. 6584.)

§ 125-10. Separate reading-room for colored people.—The state librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to the library for the purpose of reading books or periodicals. (Rev., s. 5080; 1901, c. 503, s. 2; C. S. 6585.)

§ 125-11. Open hours for library.—The library shall be kept open during the day for such time as the trustees may prescribe; and from seven to nine o'clock each evening, if the necessary expense of keeping the same open be voluntarily paid by the citizens of the city of Raleigh. (Rev. s. 5082; Code, s. 3605; 1870-1, c. 70, s. 2; 188 c. 352; 1889, pub. res., p. 530; C. S. 6585.)

§ 125-12. Members of state boards and commissions to use books.—Any member of a State board or commission residing in Raleigh shall be allowed the privilege of borrowing from the State Library, material, books or other publications except reference books, and enjoy the same privileges in respect thereto as is allowed State officials. (1925, c. 115.)

Art. 2. Document Library.

§ 125-13. Location. — The document library shall occupy rooms in the state library. (Rev. s. 5087; 1887, c. 258, s. 1; C. S. 6592.)

§ 125-14. Librarian.—The librarian of the state library shall be the custodian of the document library. (Rev., s. 5088; 1887, c. 258, s. 3; C. S. 6593.)

§ 125-15. Assistant librarian.—The librarian

authorized to employ an assistant in the document library during the sessions of the general assembly at a cost not exceeding one dollar per day. (Rev., s. 5089; 1891, pub. res., p. 652; C. S. 6594.)

§ 125-16. Librarian to procure books.—It shall be the duty of the librarian to procure two copies each of the laws and journals of the general assembly, which shall be furnished to him by the secretary of the state, and to arrange them on shelves in chronological order for the use of the two houses of the general assembly respectively. (Rev., s. 5090; 1887, c. 258, s. 2; C. S. 6595.)

§ 125-17. Library open, when.—The librarian shall keep the document library open during the sessions of the general assembly, in order that members may have access to records, and for use of committees of either house. At all other times the doors shall be kept securely locked, but the librarian shall, upon application, admit persons who wish to examine any of the books and records therein. (Rev., s. 5091; 1891, pub. res., p. 652; C. S. 6596.)

Art. 3. Library Commission.

§ 125-18. Commission established; members appointed.—There is hereby created a library commission to be known as the Library Commission of North Carolina, which shall consist of the superintendent of public instruction, the state librarian, two other persons who shall be appointed by the North Carolina library association, and one other person who shall be appointed by the governor, all of whom shall serve without compensation. After the ninth day of March, one thousand nine hundred and nine, the governor shall appoint at once one person to serve one year and the North Carolina library association one person to serve two years and one person to serve three years; and as these terms expire, annually thereafter one person shall be appointed for three years by the governor and by the North Carolina library association, according to the vacancy to be filled. The library commission may accept resignations and fill vacancies for unexpired terms. The term of office of the members of the commission shall begin April first. (1909, c. 873, s. 1; C. S. 6597.)

§ 125-19. Election of officers.—The commission shall annually elect its own officers, who shall perform all the duties usually pertaining to such offices. (1909, c. 873, s. 2; C. S. 6598.)

§ 125-20. Duties of commission; secretary employed.—The commission shall give assistance, advice, and counsel to all libraries in the state, to all communities which may propose to establish libraries, and to all persons interested, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance, and other details of library management as may be practicable. The commission may aid in organizing new libraries or in improving those already organized, and may establish and maintain traveling or other libraries, as may be practicable. The commission shall employ a secretary, not a member of the commission, who shall be a person trained in modern library methods, and who shall receive such compensation as the commission may decide, and who shall perform the usual duties of a secretary and such other duties as may be assigned by the commission, and who shall serve at the will of the commission. (1909, c. 873, s. 3; C. S. 6599.)

§ 125-21. Public libraries to report to commission.—Every public library in the state shall make an annual report to the commission. in such form as may be prescribed by the commission. The term "public library" shall, for the purpose of this article, include free public libraries, subscription libraries, school, college, and university libraries, young men's christian association, legal association, medical association, supreme court, and state libraries. (1909, c. 873, s. 4; C. S. 6600.)

§ 125-22. Commission to report to governor.—The commission shall make a biennial report to the governor, covering its work up to January first preceding each session of the general assembly. Five hundred copies of this report shall be published as other state official reports are published. (1909, c. 873, s. 5; C. S. 6601.)

§ 125-23. Expenses of commission paid.—No member of the commission shall ever receive any compensation for service as a member, but the actual traveling expenses of members in attendance at meetings of the commission or in visiting or establishing libraries and other incidental and necessary expenses connected with the work of the commission may be paid. (1909, c. 873, s. 6; C. S. 6602.)

§ 125-24. Offices provided.—The board of public buildings and grounds may allow suitable offices and equipment in the capitol, the state library, or other state buildings, for the use of the library commission. (1909, c. 873, s. 8; C. S. 6604.)

§ 125-25. Commission authorized to accept and administer funds from federal government and other agencies.—The North Carolina library commission is hereby authorized and empowered to receive, accept and administer any money or moneys appropriated or granted to it, separate and apart from the general library commission fund, for providing and equalizing public library service in North Carolina:

(1) By federal government, and

(2) By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the governing board of the library commission of North Carolina, which body shall frame by-laws, rules and regulations for the allocation and administration of this fund.

This fund shall be used to increase, improve, stimulate and equalize library service to the people of the whole state, and shall be used for no other purpose whatsoever except as hereinafter provided, and shall be allocated among the counties of the state, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other factors as may affect the state program of library service.

Any gift or grant from the federal government

or other sources shall become a part of said fund, to be used as part of the state fund, or may be invested in such securities in which the state sinking fund may be invested as in the discretion of the governing board of the library commission of North Carolina may be deemed advisable, the income to be used for the promotion of libraries as aforesaid. (1937, c. 206.)

§ 125-26. State policy as to public library service; annual appropriation therefor; library service; administration of fund.—1. It is hereby declared the policy of the state to promote the establishment and development of public library service throughout all sections of the state.

2. For promoting, aiding and equalizing public library service in North Carolina the sum of one hundred thousand ($100,000.00) dollars, annually, shall be and is hereby appropriated out of the monies within the state treasury, not otherwise appropriated, which fund shall be known as the public library service fund.

3. The fund herein provided shall be administered by the governing board of the North Carolina library commission, which body shall frame by-laws, rules and regulations for the allocation and administration of said fund. The fund shall be used to improve, stimulate, increase and equalize public library service to the people of the whole state, and shall be used for no other purpose, except as herein provided, and shall be allocated among the counties of the state taking into consideration local needs, area and population to be served, local interest and such other factors as may affect the state program of public library service.

4. For the necessary expenses of administration, allocation and supervision a sum not to exceed five per cent (5%) of the annual appropriation may annually be used by the North Carolina library commission.

5. The fund appropriated under this section shall be separate and apart from the appropriation to the general library commission fund, which fund shall not be affected by this section or appropriation hereunder.

6. The powers herein granted shall be in addition to and not in subrogation of, or repeal of, any power or authority now or heretofore granted to the North Carolina library commission. (1941, c. 93.)

Chapter 126. Merit System Council.

Sec.
126-1. Appointment of members of merit system council; qualifications; terms; compensation.
126-2. Appointment of supervisor of merit examinations; rules and regulations; examinations.
126-3. Organization of council; meetings; representation of state agencies; duties and pay of supervisor.
126-4. Competitive examinations for all positions; moral character of applicants.
126-5. Present employees previously examined.
126-6. Persons previously examined and on eligible list.
126-7. Notice of time and place of examinations.
126-8. Register of applicants passing examinations; method of making appointments.
126-9. Admission to examinations without regard to minimum qualifications; probationary employee.
126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.
126-11. Filling vacancies; promotions.
126-12. Dismissal or suspension of employees; separations.
126-13. Appeal from dismissal, suspension, or demotion.
126-14. Authority of merit system council.
126-15. Application of chapter.
126-16. Effect on certain existing laws.
126-17. Purpose of chapter clarified.

§ 126-1. Appointment of members of merit system council; qualifications; terms; compensation.—The governor of North Carolina is hereby authorized to appoint a merit system council, which shall be composed of five members, all of whom shall be public spirited citizens of this state of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the unemployment compensation commission, the state board of health, the state board of charities and public welfare, and the state commission for the blind. No council member shall have held political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold such office during his term. No member of the council shall have been an employee of any of the agencies within one year prior to his appointment. One member appointed hereunder shall serve for a term of two years, two members shall serve for a term of four years and two members shall serve for a term of six years from the date of their appointments, and their successors shall be appointed by the governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms the person appointed to fill such vacancy shall be appointed only for the unexpired term. The members of the merit system council shall be paid seven dollars ($7.00) per diem and actual travel expense for each day when they are in attendance on a meeting of the council but shall receive no other salary. (1941, c. 378, s. 1.)

§ 126-2. Appointment of supervisor of merit examinations; rules and regulations; examinations.—The merit system council appointed under the provisions of this chapter is authorized to appoint a supervisor of merit examinations, who shall, in no instance, be a member of the council, and who

shall, after his appointment, in coöperation with the council, the director of the budget of the state of North Carolina, the state agencies affected by this chapter, and the Federal Social Security Board or other federal agency charged with the administration of the Federal Social Security Laws, prepare rules and regulations, job specifications, and prepare and give examinations for and to all employees and applicants for employment and/or promotions of the agencies or departments affected by this chapter. Such rules and regulations shall be printed and made available for public inspection and for the use of employees and applicants for employment in said agencies or departments. (1941, c. 378, s. 2.)

§ 126-3. Organization of council; meetings; representation of state agencies; duties and pay of supervisor.—The said council shall meet as soon as practicable and organize by electing one of its members as chairman and one who shall act as secretary. The secretary shall keep the minutes of the proceedings of the said council and shall be guardian of all papers pertaining to the business of said council. Meetings of the council shall be held as often as necessary and practicable upon the call of the chairman. The state agencies shall have the right to be represented at all meetings of the council but such representation shall be without voting power. The supervisor of merit examinations, above provided for, shall keep a record of all examinations held, and shall perform such other duties as the council shall prescribe, for which he shall be paid compensation to be fixed by the director of the budget. (1941, c. 378, s. 3.)

§ 126-4. Competitive examinations for all positions; moral character of applicants.—All applicants for positions in the agencies or departments affected by this chapter shall be subjected to an examination by the merit system council which shall be competitive and free to all persons meeting requirements prescribed by said council, subject to reasonable and proper limitations as to age, health, and moral character, which said examinations shall be practical in their character and shall relate to those matters tending fairly to test the capacity and qualifications of the applicants to discharge proficiently the duties of the position to which they seek appointment, and shall include examinations as to physical and mental qualifications as well as general fitness; but no such applicant shall be examined concerning his or her political or religious opinions or affiliations. The said council shall establish such necessary and proper regulations as it sees fit relating to the moral worth and character of all applicants for positions in the agencies and departments affected by this chapter, to the end that all persons certified by said council as eligible for employment in said agencies or departments shall be persons of good character as well as possessing necessary mental and physical qualifications. (1941, c. 378, s. 4.)

§ 126-5. Present employees previously examined.—All employees presently employed in the agencies or departments affected by this chapter and who have heretofore taken and passed merit examinations under the merit rating system now in effect, shall not be required to take further examinations as herein provided. (1941, c. 378, s. 5.)

§ 126-6. Persons previously examined and on eligible list.—All persons who have successfully passed merit examinations under the merit rating system now in effect and are shown on the register as eligible for employment shall not be required to take further examinations as provided herein and shall have their names placed on the new registers of those eligible for employment to be established under this chapter. (1941, c. 378, s. 5½.)

§ 126-7. Notice of time and place of examinations.—Notice of the time and place of every examination shall be given by the merit system council by publication once a week for two weeks immediately preceding such examination, in some newspaper having a general circulation in the state of North Carolina, and such notice shall be posted in a conspicuous place in the office of the supervisor of merit examinations, in the city of Raleigh for at least two weeks next preceding such examination. (1941, c. 378, s. 6.)

§ 126-8. Register of applicants passing examinations; method of making appointments.—Said council shall prepare and keep as a permanent record of the council a register of all persons successfully passing such examinations, accurately reflecting the grades made by such applicants. Whenever any appointment is to be made to any of said agencies or departments, the council shall certify from said registered list of successful applicants three names for each appointment so to be made, and the appointments shall be made only from among the names thus certified by the council, exclusive of the names of those persons who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing, which objection is sustained by the supervisor with the approval of the council. (1941, c. 378, s. 7.)

§ 126-9. Admission to examinations without regard to minimum qualifications; probationary employee.—An employee who is certified by the agency as having given satisfactory service continuously for six calendar months preceding January first, one thousand nine hundred and forty or any other date or dates as may be required by the federal agencies supervising the expenditures of federal funds through the state agencies affected by this chapter may be admitted to the examination for the position held by him on March 15, 1941, without regard to minimum qualifications of training and experience. Upon certification of the supervisor that he has attained a passing grade in the examination held in accordance with the provisions of this chapter he may be appointed as a probationary employee. The probationary period of such an employee shall date from the certification of the supervisor that he has attained a passing grade. (1941, c. 378, s. 8.)

§ 126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.—All original appointments to permanent positions shall be made from officially promulgated registers for a probationary period of six months. The probationary period shall be an essential part of the examination process, and shall be utilized for the most effective adjustment

of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. Permanent appointment of a probationary employee shall begin with the date ending the probationary period, provided that the personnel officer of the agency concerned has received from the employee's supervisor a statement in writing that the services of the employee during the probationary period have been satisfactory and that the employee is recommended to be continued in the service. The statement shall contain an appraisal of the value of the employee's services and shall include a service rating upon a form prescribed by the supervisor of merit examinations. It shall be the responsibility of the personnel officer to obtain such statement with recommendations four weeks prior to the end of the probationary period. The personnel officer, on the basis of such statement and recommendations, shall make recommendations to the appointing authority, and if it is determined that the services of the employee have been unsatisfactory, the personnel officer shall notify the employee in writing at least fifteen days in advance of the date his services are to be terminated. An employee whose appointment is to be made permanent shall also be notified. The personnel officer shall notify the merit system supervisor of the action taken regarding the services of the employee. (1941, c. 378, s. 9.)

§ 126-11. Filling vacancies; promotions. — As far as is practicable and feasible, a vacancy shall be filled by promotion of a qualified permanent employee based upon individual performance, as evidenced by recorded service ratings, with due consideration for length of service, and upon capacity for the new position. Preference in promotion may be given to employees within the agencies, and all inter-agency promotions must be approved by the appointing authorities concerned. A candidate for promotion must be certified by the supervisor to possess the qualifications for the position as set forth in the specifications for the class of position for which he is a candidate, and he shall be required by the supervisor to qualify for the new position by promotional competitive or noncompetitive examination administered by the supervisor. (1941, c. 378, s. 10.)

§ 126-12. Dismissal or suspension of employees; separations.—The appointing authority, fifteen days after notice in writing to an employee stating specific reasons therefor, may dismiss any employee who is negligent or inefficient in his duties, or unfit to perform his duties and/or who is found to be guilty of gross misconduct; or who is convicted of any crime involving moral turpitude. When such conviction is final the employee shall have no recourse to appeal to the council. The appointing authority may, after written notice, suspend any employee without pay for delinquency or misconduct, for a period not to exceed thirty calendar days in any one calendar year. The appointing authority may separate any employee, without prejudice, because of lack of funds or curtailment of work. No permanent employee, however, shall be separated while there are emergency, intermittent, temporary, provisional, or probationary employees serving in the same class of position in the same agency. The order of separations due to reduction of force shall be based upon service ratings and seniority, under a formula to be formally established by the supervisor and approved by the council, and all such separations shall be reported to the supervisor. (1941, c. 378, s. 11.)

§ 126-13. Appeal from dismissal, suspension, or demotion.—A permanent employee who is dismissed, suspended, or demoted shall have the right to appeal to the council not later than thirty days after the effective date of the dismissal, suspension, or demotion. Such appeal shall be in writing and shall be transmitted to the supervisor who shall arrange a formal hearing before the council within ten days after receipt of the appeal. The supervisor shall furnish the personnel officer of the agency concerned with a copy of the appeal in advance of the hearing. Both the employee and his immediate supervisor shall be notified reasonably in advance of the hearing and shall have the right to present witnesses and give evidence before the council. The council, within three days after the hearing, shall make its recommendations in writing to the appointing authority for consideration by the agency. After consideration of the council's recommendations, the agency shall make its decision which shall be final and which shall be duly recorded in the permanent records of the agency. The personnel officer shall, in writing, promptly notify the employee of the agency's decision. (1941, c. 378, s. 12.)

§ 126-14. Authority of merit system council.—The merit system council appointed under the provisions of this chapter shall have the authority to establish, maintain and provide rules and regulations, in coöperation with the state board of health and the state board of charities and public welfare, for the administration of a system of personnel standards on a merit rating system with a uniform schedule of compensation for all employees of the county welfare departments and the county, city, and district health departments. (1941, c. 378, s. 13.)

§ 126-15. Application of chapter.—Wherever the provisions of any law of the United State, or of any rule, order or regulation of any federal agency or authority, providing or administering federal funds for use in North Carolina, either directly or indirectly or as a grant-in-aid, or to be matched or otherwise, impose other or higher civil service or merit standards or different classifications than are required by the provisions of this chapter, then the provisions of such laws, classifications, rules or regulations of the United States or any federal agency may be adopted by the council as rules and regulations of the council and shall govern the class of employment and employees affected thereby, anything in this chapter to the contrary notwithstanding. (1941, c. 378, s. 14.)

§ 126-16. Effect on certain existing laws.—Nothing in this chapter shall be construed as repealing any of the provisions of §§ 143-35 to 143-47, 143-47, relating to the division of personnel under the budget bureau, nor as relieving the assistant director of the budget of the duties and responsibilities there prescribed for him. (1941, c. 378, s. 15.)

§ 126-17. Purpose of chapter clarified.—It is the intent and purpose of this chapter to permit and require the agencies and departments affected hereby to comply with the rules and regulations of the Federal Social Security Board and such other federal agencies as may be charged with the administration of the Social Security Act, and the rules governing the expenditure of federal and state social security funds in the administration of said laws. (1941, c. 378, s. 16.)

Chapter 127. Militia.

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Art. 1. Classification of Militia.

§ 127-1. Composition of militia.—The militia of the state shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and the militia shall be divided into three classes: the national guard, the naval militia, and the unorganized militia. (1917, c. 200, s. 1; C. S. 6701.)

§ 127-2. Composition of national guard.—The national guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years. (1917, c. 200, s. 2; C. S. 6792.)

§ 127-3. Composition of naval militia.—The naval militia shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and commissioned officers between the ages of twenty-one and sixty-two years (naval branch), and twenty-one and sixty-four years (marine corps branch); but enlisted men may continue in the service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (Marine corps branch), provided the service is continuous. (1917, c. 200, s. 3; C. S. 6793.)

§ 127-4. Composition of unorganized militia.—The unorganized militia shall consist of all other able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age, and, except as otherwise provided by law, not more than forty-five years of age. (1917, c. 200, s. 4; C. S. 6794.)

§ 127-5. Exemption from military duty. — The officers, judicial and executive, of the government of the United States and the State of North Carolina, persons in the military or naval service of the United States, custom-house clerks, persons employed by the United States in the transmission of the mail, artificers and workmen employed in the armories, arsenals, and navy yards of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from military duty without regard to age, and all persons who, because of religious belief, shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the president shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the president shall declare to be noncombatant. (1917, c. 200, s. 5; C. S. 6795.)

§ 127-6. White and colored enrolled separately.—The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available, and while pemitted to be organized, colored troops shall be under command of white officers. (1917, c. 200, s. 6; C. S. 6796.)

§ 127-7. Maintenance of other troops.—In time of peace the state shall maintain only such troops as may be authorized by the president of the United States; but nothing contained in this chapter shall be construed as limiting the right of the state in the use of the national guard within its borders in time of peace. Nothing contained in this chapter shall prevent the organization and maintenance of state police or constabulary. (1917, c. 200, s. 8; C. S. 6797.)

§ 127-8. Corps entitled to retain privileges.—Any corps of artillery, cavalry, or infantry existing in the state on the passage of the act of congress of May eighth, one thousand seven hundred and ninety-two, which by the laws, customs, or usages of the state has been in continuous existence since the passage of such act, under its provisions and under the provisions of section two hundred and thirty-two and sections one thousand six hundred and twenty-five to one thousand six hundred and sixty, both inclusive,

title sixteen of the revised statutes of one thousand eight hundred and seventy-three and the act of congress of January twenty-first, one thousand nine hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but such organizations may be a part of the national guard, and entitled to all the privileges of this chapter, and shall conform in all respects to the organization, discipline, and training of the national guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the president may direct, and shall be subject to the orders of officers under whom they shall be serving. (1917, c. 200, s. 87; C. S. 6798.)

Art. 2. General Administrative Officers.

§ 127-9. Governor as commander-in-chief.—The governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasions. (1917, c. 200, s. 11; C. S. 6799.)

§ 127-10. Commander-in-chief to prescribe regulations.—The commander-in-chief shall have the power and it shall be his duty from time to time to issue such orders and to prescribe such regulations relating to the organization of the national guard and naval militia as will cause the same at all times to conform to the federal requirements of the United States government relating thereto. (1917, c. 200, s. 36; C. S. 6800.)

§ 127-11. Division of military staff.—The military staff shall be divided into two kinds: the personal staff of the governor and the administrative staff. The governor may detail from the active list not more than ten national guard officers and two naval militia officers, who shall in addition to their regular duties perform the duties of aides-de-camp on the personal staff of the governor. There shall be an administrative staff which shall be as is now or may from time to time be authorized by the secretary of war for the national guard and the secretary of the navy for the naval militia. (1917, c. 200, s. 12; C. S. 6801.)

§ 127-12. Adjutant general.—The governor shall appoint an adjutant general, who shall have had not less than five years commissioned service in the national guard, naval militia, regular army, United States navy or marine corps, organized reserve corps of the United States; who while holding such office may be a member of the active national guard or naval militia, or organized reserve corps of the United States. (1917, c. 200, s. 14; 1925, c. 54; 1939, c. 14; C. S. 6802.)

§ 127-13. Salary of adjutant general.—The salary of the adjutant general shall be five thousand dollars per annum. The adjutant general shall reside at the state capital during his term of office. (Rev., s. 2750; Code, ss. 3275, 3730; 1899, c. 390, ss. 2, 3; 1879, c. 240, s. 10; 1883, c. 283, s. 2; 1907, c. 803, s. 1; 1911, c. 110, s. 1; 1915, c. 3; Ex. Sess. 1921, c. 53; 1933, c. 282, s. 6; 1935, c. 293; 1937, c. 415; C. S. 3877.)

§ 127-14. Adjutant general's department.—There shall be an adjutant general's department. The adjutant general shall be the head of the department and as such subordinate only to the governor in matters pertaining thereto. He shall make such returns and reports to the secretary of war and secretary of the navy or to such officers as the secretary of war and secretary of the navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make an annual report to the governor on or before the thirty-first day of December of each year, including a detailed statement of all expenditures made for military purposes during that year. He shall also make a biennial report to the general assembly. He shall cause to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the state. The adjutant general shall perform such other duties not herein specified as may be required by the military laws and regulations or by the governor. The adjutant general shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The adjutant general may have an assistant and such clerks and employees as may be prescribed by the governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. (1917, c. 200, s. 13; 1927, c. 217, s. 4; C. S. 6803.)

§ 127-15. Property and disbursing officer for the United States.—The governor of the state shall appoint, designate, or detail, subject to the approval of the secretary of war, an officer of the national guard of the state, who shall be regarded as property and disbursing officer for the United States. In consideration of his services, for the care, responsibility, and issue of federal property, the property and disbursing officer for the United States shall receive from the state such salary as the governor may authorize to be just and proper; the salary to constitute a charge upon the appropriations made to the adjutant general's department. When ordered into actual service and receiving the pay of his rank for such service, from either state or federal funds, he shall not be entitled to, or receive, any salary from the state for the period of time for which he shall receive the pay of his rank. (1917, c. 200, s. 24; C. S. 6804.)

§ 127-16. Property and disbursing officer for North Carolina.—The Disbursing Officer for the National Guard shall be an employee of the Adjutant General's Department and he shall be required to give a good and sufficient bond to the State, the amount thereof, to be determined by the Governor, for the faithful performance of his duties and for the safe keeping and proper disposition of such funds and property entrusted to his care. He shall receipt for and account for all funds and property allotted to his custody

from the appropriation for military purposes, by the State, and shall make such returns and reports through the Adjutant General concerning same as may be required by the Governor or state laws. All or any disbursement of such moneys will be made by the disbursing officer, only upon the approval of the Adjutant General, upon such forms and under such regulations as may be prescribed by proper authority. Blank forms, books, stationary, and other necessary equipment, for use of the disbursing officer will be furnished through or by the Adjutant General's Department. Funds from the appropriation for military purposes will be paid to the disbursing officer by the State Treasurer upon requisition of the Adjutant General on the State Treasurer in accordance with the state laws, or regulations thereunder as prescribed by the State for the expenditure of appropriations made to the State Departments. (1917, c. 200, s. 25; 1929, c. 317, s. 1; C. S. 6805.)

§ 127-17. Inspector General.—It is the duty of the inspector general to inspect organizations and departments pertaining to the National Guard; he shall also inspect and audit the accounts of officers accountable or responsible for public funds, and perform such other duties as the Governor shall from time to time direct. The inspector general shall make reports to the Governor at such times and in such a manner as the Governor shall specify. (1917, c. 200, s. 26; C. S. 6806.)

§ 127-18. Advisory board.—There shall be an advisory board composed of the brigade commander, the commanding officer of each regiment, and the commanding officer of each separate battalion, which shall meet once each year at such time as ordered by the Governor, and at such other times and places as may be ordered by the Governor. This board shall make such recommendations to the Governor as it may deem for the best interests of the National Guard. The adjutant general and the United States property and disbursing officer shall furnish such information as may be requested by the board. (1917, c. 200, s. 27; 1921, c. 120, s. 1; C. S. 6807.)

Art. 3. National Guard.

§ 127-19. Organization of national guard units.—Except as otherwise specifically provided by the laws of the United States, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular army, subject in time of peace to such general exceptions as may be authorized by the secretary of war. (1917, c. 200, s. 7; C. S. 6808.)

§ 127-20. Location of units.—The governor shall determine and fix the location of the units and headquarters of the national guard within the state; but no organization of the national guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of congress approved June third, one thousand nine hundred and sixteen, as amended, shall be disbanded without the consent of the president, nor without such consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the president. (1917, c. 200, s. 9; 1921, c. 120, s. 2; C. S. 6809.)

§ 127-21. Reserve battalions for recruit training.—Under such rules and regulations as may be prescribed by the president, reserve battalions for infantry, cavalry, field artillery, and coast artillery may be organized by the commander-in-chief when organizations of the national guard have been called into the service of the United States in time of war. The organization of such reserve battalions shall be effected in the manner prescribed in section seventy-nine of the act of congress approved June third, one thousand nine hundred and sixteen, or subsequent federal enactments. (1917, c. 200, s. 10; C. S. 6810.)

§ 127-22. Officers appointed and commissioned.—All officers of the national guard shall be appointed and commissioned by the governor as follows, viz:

1. The appointment and promotion of all officers shall be by seniority as far as the same is practicable and to the best interests of the service within the organization or department, and in accordance with the regulations of the war department.

2. Original appointments of second lieutenants in the line or staff shall be made from the enlisted men when practicable within the organization. Candidates for such appointment shall make written application, accompanied by their military record, to the commanding officer through intermediate commanders for comment by endorsements in accordance with federal laws and war department regulations pertaining thereto. The commanding officer shall forward the application of the three best qualified and most promising candidates with his endorsement to the adjutant general's office for consideration by the governor. (1917, c. 200, s. 15; 1921, c. 120, s. 3; C. S. 6811.)

§ 127-23. Commissions for commandants and student officers at educational institutions.—Whenever any university, college, academy or other educational institution, regularly incorporated under and by virtue of the laws of the State of North Carolina, wherein military science and instruction are made a part of the course of study and are regularly taught in said institution, and wherein there is detailed by the War Department at Washington, D. C., an officer from the United States army as professor of military science and tactics, which is designated as an Essentially Military School by the War Department of Washington, D. C., and which has been made a unit of the Senior or Junior Reserve Officers' Training Corps by the War Department at Washington, D. C., the Governor of North Carolina, on the application of the said university, college, academy or other educational institution, signed by the chancellor, president, superintendent or other presiding officer, under the seal of the said institution, is hereby authorized and directed to commission as staff officers of the North Carolina Reserve Militia, the officers of the said university, college, academy or other educational institution, as follows: The chancellor, president, superintendent or other presiding officer, as colonel; the vice-presi-

principal or other officer second in authority, as lieutenant-colonel; the commandant, or officer in charge of the discipline, as major; and the male professors, members of the faculty, as captains. The persons to whom commissions are issued under this section shall have no connection with the National Guard or other military forces of the State, nor shall they, or any of them, exercise any military authority other than in the discharge of their duties in their respective institutions. The Governor may annually appoint a committee of three members, one of whom shall be appointed on the recommendation of the Adjutant General, one on the recommendation of the State Superintendent of Public Instruction, and one on the recommendation of the Secretary of the State Board of Health, with a view to their proficiency in the several departments indicated, and the said committee shall during the school year, and while the said institutions are in session, visit all of the said educational institutions and make a thorough inspection of their military departments, their discipline, courses of study and educational departments, and their sanitary condition, and report to the Governor the result of said inspection. (1919, c. 265, ss. 1, 2, 3; 1929, c. 61, s. 1; C. S. 6812.)

§ 127-24. Appointment of staff officers.—No person shall be appointed a staff officer, including officers of the pay, inspection, subsistence, and medical departments, unless he shall have had previous military experience, nor who shall fail to qualify as to fitness for military service under such regulations as the secretary of war shall prescribe; such officers shall hold their positions until they have reached the age of sixty-four years, unless separated from the service prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for the purpose. Vacancies among such officers shall be filled by appointment from the officers of the militia. (1917, c. 200, s. 16; C. S. 6813.)

§ 127-25. Qualifications of national guard officers.—Persons hereinafter commissioned as officers of the national guard shall not be recognized as such under any of the provisions of this chapter unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in this article, for officers: Officers or enlisted men of the national guard, officers active or retired, reserve officers, and former officers of the army, navy, and marine corps, enlisted men and former enlisted men of the army, navy or marine corps, who have received an honorable discharge therefrom, graduates of the United States military and naval academies and graduates of schools, colleges, universities, and officers' training camps where they have received military instruction under the supervision of an officer of the regular army who certified their fitness for appointment as commissioned officers, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. (1917, c. 200, s. 17; 1921, c. 120, s. 4; C. S. 6814.)

§ 127-26. Test as to fitness for officers.—No person shall hereafter be appointed an officer of the national guard unless he first shall have successfully passed such test as to his physical, moral, and professional fitness as the president shall prescribe. The examination to determine such qualifications for commission shall be conducted by a board of three commissioned officers appointed by the secretary of war from the regular army or the national guard, or both. (1917, c. 200, s. 18; C. S. 6815.)

§ 127-27. Precedence of relative rank among officers of same grade in active national guard.—Between officers of the same grade in the active national guard, precedence, or relative rank, is determined in the following manner:

"(a) According to the date of rank, which is the date of rank stated in his commission.—

"(b) When dates of rank are the same, according to length of active commissioned service, continuous or otherwise, in the National Guard of the United States and in the Army of the United States, not counting as service time spent on any supernumerary or retired list, or in the national guard reserve or officers' reserve corps in an inactive status.

"(c) When dates of rank and length of active commissioned military service are the same, first, according to age, the older taking precedence; second, by lot." (1917, c. 200, s. 19; 1921, c. 120, s. 5; 1927, c. 227, s. 1; C. S. 6816.)

§ 127-28. Oath of national guard officers.—Commissioned officers of the national guard shall take and subscribe to the following oath of office: "I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of.... ..... in the national guard of the United States and of the state of North Carolina, upon which I am about to enter: so help me, God." (1917, c. 200, s. 20; C. S. 6817.)

§ 127-29. Elimination and disposition of officers.—At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board of three commissioned officers senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such officer, he shall be discharged. Commissions of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of such guard rendered surplus by disbandment of their organization may, upon their own request, be transferred to an inactive status. (1917, c. 200, s. 28; C. S. 6818.)

§ 127-30. Retirement of officers.—When an officer reaches the age of sixty-four years he shall be retired. (1917, c. 200, s. 29; C. S. 6819.)

§ 127-31. Enlistments in national guard.—Original enlistments in the national guard shall be for a period of three years and subsequent enlistments for a period of one year each, or for such periods as may be prescribed by the secretary of war: Provided, that persons who have served in the army for not less than six months, and have been honorably discharged therefrom, may, within two years after June four, one thousand nine hundred and twenty, enlist in the national guard for one year, and reënlist for like period: Provided, that qualifications for enlistment shall be the same as those prescribed for admission to the regular army. (1917, c. 200, s. 30; 1921, c. 120, s. 6; C. S. 6820.)

§ 127-32. Enlistment contract. — Enlisted men shall not be recognized as members of the national guard until they shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted, this ..... day of ....., 19...., as a soldier in the national guard of the United States and of the state of North Carolina, for the period of three, [or one] years in service, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and to the state of North Carolina, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the president of the United States and of the governor of the state of North Carolina, and of the officers appointed over me according to law and the rules and articles of war." (1917, c. 200, s. 31; 1921, c. 120, s. 7; C. S. 6821.)

§ 127-23. Discharge of enlisted men.—An enlisted man discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the regular army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by proper authority. (1917, c. 200, s. 32; C. S. 6822.)

§ 127-34. Membership continued in the national guard.—When drafted into federal service and discharged from the army, members shall resume their membership in the national guard, and shall continue to serve in the national guard until the dates upon which their enlistments entered into prior to their draft would have expired if uninterrupted. (1921, c. 120, s. 8; C. S. 6822 (a).)

§ 127-35. Discipline of national guard.—The discipline of the national guard shall conform to the system which is now or may hereafter be prescribed for the regular army. and the training shall be carried out so as to conform to the provisions of an act of congress approved June third, one thousand nine hundred and sixteen, and subsequent federal enactments. (1917, c. 200, s. 33; C. S. 6823.)

§ 127-36. Uniform and equipment of national guard.—The national guard shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipment as is or shall be provided for the regular army. (1917, c. 200, s. 37; C. S. 6824.)

§ 127-37. Authority to wear service medals. —The officers and enlisted men of the North Carolina national guard are hereby authorized to wear, as a part of the official uniform service medals to be selected as herein prescribed.

The adjutant general of the state of North Carolina is hereby authorized and directed to appoint a committee from the officer personnel of the North Carolina national guard to be composed of three regimental commanders, and two other officers of the national guard, to act as a committee to select suitable state service medals to be worn by the officers and enlisted men of the North Carolina national guard as a part of the regulation uniform. (1939, c. 344.)

§ 127-38. Courts-martial for national guard.— Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the law and regulations governing the army of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts. (1917, c. 200, s. 55; C. S. 6825.)

§ 127-39. General courts-martial. — General courts-martial of the national guard not in the service of the United States may be convened by orders of the president, or of the governor of the state, and such courts shall have the power to impose fines not exceeding two hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 56; C. S. 6826.)

§ 127-40. Special courts-martial.—In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States; and such special courts-martial shall have the same powers of punishment as the general courts-martial, except that fines imposed by such courts shall not exceed one hundred dollars. (1917, c. 200, s. 57; C. S. 6827.)

§ 127-41. Summary courts-martial.—In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the national guard, may appoint for such place

or command a summary court to consist of one officer, who shall have power to administer oaths and try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and the court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense; may sentence noncommissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the army of the United States. (1917, c. 200, s. 58; C. S. 6828.)

§ 127-42. Powers of courts-martial. — All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed, and shall have power to direct that upon the nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences of confinement shall not exceed one day for each dollar of fine authorized. (1917, c. 200, s. 59; C. S. 6829.)

§ 127-43. Procedure of courts-martial.—In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpœnas and subpœnas duces tecum, and to enforce by attachment attendance of witnesses and the producton of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court. (1917, c. 200, s. 60; C. S. 6830.)

§ 127-44. Manual of courts-martial.—Trials and proceedings by all courts and boards shall be in accordance with the plan and procedure laid down in the manual of courts-martial, courts of inquiry, and retiring boards, and other procedures under military law, as may from time to time be prescribed by the secretary of war. (1917, c. 200, s. 64; C. S. 6831.)

§ 127-45. Sentences, where executed.—All sentences to confinement imposed by any military court of this state shall be executed in such prisons as the court may designate. (1917, c. 200, s. 61; C. S. 6832.)

§ 127-46. Execution of process and sentences. —All processes and sentences of any of the military courts of this state shall be executed by any sheriff, deputy sheriff, constable, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated for military purposes. The actual necessary expenses of conveying a prisoner from one county in the state to another, when the same is authorized and directed by the adjutant general of the state, shall be paid from the military fund of the state upon a warrant approved by the adjutant general. (1917, c. 200, s. 62; C. S. 6833.)

§ 127-47. Commitments.—When any sentence to fine or imprisonment shall be imposed by any military court of this state, it shall be the duty of the president of said court, or summary court officer, upon the approval of the findings and sentence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine, or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, constable, or police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this state. (1917, c. 200, s. 63; C. S. 6834.)

§ 127-48. Sentence of dismissal.—No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia. (1917, c. 200, s. 65; C. S. 6835.)

Art. 4. Naval Militia.

§ 127-49. Organization and equipment. — The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted men shall be such as are prescribed by the secretary of the navy, who may also prescribe the number of officers and the number of petty officers and other enlisted men required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the secretary of the navy. (1917, c. 200, s. 66; C. S. 6836.)

§ 127-50. Officers appointed to naval militia.— Officers of the United States navy and marine corps may, with the approval of the secretary of the navy, be elected or appointed and commissioned as officers of the naval militia. (1917, c. 200, s. 67; C. S. 6837.)

§ 127-51. Officers assigned to duty.—Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only. (1917, c. 200, s. 68; C. S. 6838.)

§ 127-52. Discipline in naval militia.—The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval mi-

litia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the state, or on any vessel on which such forces are training, whether within or without the state, or wherever, either within or without the state, naval militia forces of the state shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose. (1917, c. 200, s. 69; C. S. 6839.)

§ 127-53. Disbursing and accounting officer.—The governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the secretary of the navy, to perform such duties as the secretary of the navy may prescribe. The governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units. (1917, c. 200, s. 70; C. S. 6840.)

§ 127-54. Rendition of accounts.—Accounting officers shall render accounts as prescribed by the governor or by the secretary of the navy, and shall be required to give good and sufficient bond to the state and to the United States, in such sums as the governor or the secretary of the navy may direct, and conditioned upon the faithful accounting for all public property and for the safekeeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted men of the naval militia under such rules and regulations as may be prescribed. (1917, c. 200, s. 71; C. S. 6841.)

§ 127-55. Disbandment of naval militia.—No part of the naval militia which is entitled to compensation under the provisions of an act of congress approved August twenty-ninth, one thousand nine hundred and sixteen, shall be disbanded without the consent of the president. (1917, c. 200, s. 86; C. S. 6842.)

§ 127-56. Courts-martial for naval militia.—Courts-martial in the naval militia shall consist of general courts-martial, summary courts-martial, and deck courts. (1917, c. 200, s. 72; C. S. 6843.)

§ 127-57. General courts-martial. — General courts-martial shall consist of not less than three nor more than thirteen officers, and may be convened by order of the governor. (1917, c. 200, s. 73; C. S. 6844.)

§ 127-58. Summary courts-martial.—Summary courts-martial may be ordered by the governor, or by the commanding officers of a naval militia battalion or brigade. (1917, c. 200, s. 74; C. S. 6845.)

§ 127-59. Deck courts.—Deck courts may be ordered by the commanding officer of a naval militia battalion or brigade, or by a naval militia officer in command of naval militia forces on shore or on any vessel loaned to the state or on any vessel on which said forces may be serving. (1917, c. 209, s. 75; C. S. 6846.)

§ 127-60. Jurisdiction and procedure of courts-martial and deck courts.—The above courts-martial and deck courts herein provided for shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts-martial provided for in the navy of the United States; and the proceedings of the courts-martial of the naval militia shall follow the forms and modes of procedure prescribed for such courts in the navy of the United States. (1917, c. 200, s. 76; C. S. 6847.)

§ 127-61. Place of holding courts.—Every precept or order for the convening of any such court may authorize the court to sit at any place or places within the territorial limits of the state as the convening authority may designate, and may further provide that any such court may be convened and sit on board any such naval or other vessel, wherever the same from time to time happens to be, or at such place or places ashore, outside the territorial limits referred to above, as in the judgment of the said convening authority may be convenient or desirable for the purposes of such courts-martial. (1917, c. 200, s. 77; C. S. 6848.)

§ 127-62. Powers of general courts-martial.—General courts-martial shall have power to impose fines not exceeding two hundred dollars, to sentence to forfeiture of pay and allowances, to a reprimand, to dismissal or dishonorable discharge from the service, to reduction in rank or rating; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 78; C. S. 6849.)

§ 127-63. Powers of summary courts-martial.—Summary courts-martial shall have the same powers of punishment as general courts-martial, except that fines imposed by summary courts-martial shall not exceed one hundred dollars. (1917, c. 200, s. 79; C. S. 6850.)

§ 127-64. Powers of deck courts.—Deck courts may impose fines not exceeding fifty dollars for any single offense; may sentence enlisted men to reduction in rank or rating, to forfeiture of pay and allowances, to a reprimand, to discharge with other than dishonorable discharge, or a fine in addition to any one of the other sentences specified. (1917, c. 200, s. 80; C. S. 6851.)

§ 127-65. Process of courts-martial.—Presidents of general courts-martial, senior members of summary courts-martial, and deck court officers of the naval militia shall have the power to issue warrants to arrest accused persons, and to bring them before the court for trial whenever such persons have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer, all as authorized for similar proceedings for courts-mar-

tial in the navy of the United States. He shall also have power to punish for contempt occurring in the presence of the court. All processes, warrants, and sentences of such courts shall be executed by any sheriff or deputy sheriff or any constable or police officer of any township, county, city, or town, who shall be authorized by law to execute or serve any civil or criminal process. (1917, c. 200, s. 83; C. S. 6852.)

§ 127-66. Sentence to confinement in lieu of fines.—All courts-martial of the naval militia, including deck courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed, and shall have the power to direct that upon nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences to confinement shall not exceed one day for each dollar of fine authorized. When naval militia forces are embarked on any vessel, the confinement in whole or in part may be had in prisons provided on said ship. (1917, c. 200, s. 81; C. S. 6853.)

§ 127-67. Dismissal or dishonorable discharge.—No sentence of dismissal or dishonorable discharge from the naval militia shall, except when the naval militia shall have been called into the service of the United States, be executed without the approval of the governor. (1917, c. 200, s. 82; C. S. 6854.)

§ 127-68. Collection of fines.—The amount of any fine imposed under sentence of the courts heretofore named on any member of the naval militia may be collected from him, or may be deducted from any amount due said member as accrued pay. (1917 c. 200, s. 84; C. S. 6855.)

§ 127-69. Courts of inquiry.—Courts of inquiry in the naval militia shall be instituted, constituted, and conducted in the same manner and shall have like powers and duties as similar courts in the navy of the United States, except that they shall be ordered by the governor. (1917, c. 200, s. 85; C. S. 6856.)

Art. 5. Regulations as to Active Service.

§ 127-70. National guard and naval militia first ordered out.—In all cases the national guard and naval militia as provided for in this chapter shall be first ordered into service. (1917, c. 200, s. 44; C. S. 6857.)

§ 127-71. Regulations enforced on actual service.—Whenever any portion of the militia shall be called into service to execute the law, suppress riot or insurrection, or to repel invasion, the articles of war, and articles for the government of the navy, governing the army and navy of the United States, and the regulations prescribed for the army and navy of the United States, and the regulations issued thereunder, shall be enforced and regarded as a part of this chapter until said forces shall be duly relieved from such duty. As to offenses committed when such articles of war and articles for the government of the navy are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war and articles for the government of the navy or regulations or laws governing the United States army and navy or the customs and usages thereof; but no punishment under such rules and articles which will extend to the taking of life shall in any case be inflicted except in time of war, invasion, or insurrection, declared by a proclamation of the governor to exist, and then only after approval by the governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in county jails or other prisons designated by the governor for that purpose. (1917, c. 200, s. 45; C. S. 6858.)

§ 127-72. Regulations governing unorganized militia.—Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the national guard or naval militia. (1917, c. 200, s. 35; C. S. 6859.)

Art. 6. Unorganized Militia.

§ 127-73. Unorganized militia ordered out for service.—The commander-in-chief may at any time, in order to execute the law, suppress riots or insurrections, or repel invasions, in addition to the national guard, the national guard reserve, and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this state or a part thereof is called forth under the constitution and laws of the United States, the governor shall first order out for service the national guard or naval militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall then order out such a part of the unorganized militia as he may deem necessary. During the absence of organizations of the national guard or naval militia in the service of the United States, their state designations shall not be given to new organizations. (1917, c. 200, s. 46; C. S. 6860.)

§ 127-74. Manner of ordering out unorganized militia.—The governor shall, when ordering out the unorganized militia, designate the number. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the national guard or naval militia, or organize them into separate brigades, regiments, battalions, companies, separate corps, batteries, troops, or divisions, as may be best for the service. (1917, c. 200, s. 47; C. S. 6861.)

§ 127-75. Draft of unorganized militia.—If the unorganized militia is ordered out by draft, the governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting the same. (1917, c. 200, s. 48; C. S. 6862.)

§ 127-76. Punishment for failure to appear.—Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such punishment as a court-martial may determine. (1917, c. 200, s. 49; C. S. 6863.)

§ 127-77. Promotion of marksmanship. — The adjutant general is authorized to detail a commissioned officer of the North Carolina national

guard or member of the unorganized militia to promote rifle marksmanship among the unorganized militia of the state. Such officer or member of the unorganized militia so detailed shall serve without pay and it shall be his duty to organize and supervise rifle clubs in schools, colleges, universities, clubs and other groups, under such rules and regulations as the adjutant general shall prescribe and in such manner to make them, when duly organized, acceptable for membership in the national Rifle Association. Provided, that such duties and efforts shall in no wise interfere or conflict with clubs of schools or in no wise interfere or conflict with clubs of schools or units operating in R. O. T. C. or similar schools under the supervision of army instructors.

The adjutant general may reimburse the officer, or member of the unorganized militia, so detailed to promote rifle marksmanship, as aforesaid, for such expenses actually incurred, not to exceed the amount appropriated for such purpose by the General Assembly. (1937, c. 449.)

Art. 7. Pay of Militia.

§ 127-78. Rations and pay on service.—The militia of the state, both officers and enlisted men, when called into the service of the state, shall be rationed and receive the same pay as when called into the service of the United States. When called in aid of the civil authorities, enlisted men shall receive in addition to such pay the sum of one ($1.00) dollar per day. (Rev., s. 4856; Code, s. 3248; R. C., c. 70, s. 84; 1813, c. 850, s. 5; 1907, c. 316; 1917, c. 200, s. 50; 1935, c. 452; C. S. 6864.)

§ 127-79. Rate of pay for service.—The governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted man shall be paid out of the appropriations made to the adjutant general's department. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular army or navy; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, and courts of inquiry shall be allowed actual expenses and four dollars per diem for such duty. Officers serving on general or special courts-martial shall receive the base pay of their rank. No staff officer who receives a salary from the state as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; 1935, c. 451; C. S. 6865.)

§ 127-80. Paid by the state.—When the militia or any portion thereof shall be called into service to execute the law, suppress riots or insurrections, and to repel invasions, the pay, subsistence, transportation, and other necessary expenses incident thereto shall be paid by the state treasurer, upon the approval of the governor and warrant of the auditor. (1917, c. 200, s. 52; C. S. 6866.)

§ 127-81. Pay of general and field officers.—General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C. S. 6867.)

§ 127-82. Pay and care of soldiers injured in service.—A member of the national guard and naval militia who shall, when on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, or invasion, or to repel invasion or in aid of the civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while in line of duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall during the period of such incapacity receive the actual necessary expenses for care and medicine and medical attendance, to be paid out of the contingency and emergency fund, or such other fund as may be designated by law. (1917, c. 200, s. 54; C. S. 6868.)

Art. 8. Privilege of Organized Militia.

§ 127-83. Leaves of absence for state officers and employees.—All officers and employees of the state who shall be members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, or the naval reserves shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter or as may be directed by the president of the United States. (1917, c. 200, s. 88; 1937, c. 224, s. 1; C. S. 6869.)

§ 127-84. Contributing members.—Each organization of the national guard and naval militia may, besides its regular and active members, enroll twenty-five contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars per annum, which money shall be paid into the company treasury. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership, which certificate shall exempt the holder from jury duty. (1917, c. 200, s. 90; C. S. 6871.)

§ 127-85. Organizations may own property; actions.—Organizations of the national guard and naval militia shall have the right to own and keep real and personal property, which shall belong to and be under the control of the members of the organization; and the commanding officer of any organization may recover for its use debts or effects belonging to it, or damages for injury to such property, action for such recovery to be brought in the name of the commanding officer thereof before any court of justice within the state having jurisdiction; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but upon motion of the commander succeeding him such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (1917, c. 200, s. 92; C. S. 6872.)

§ 127-86. When families of soldiers supported by county.—When any citizen of the state is absent on duty as a member of the national guard or naval militia, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1917, c. 200, s. 93; C. S. 6873.)

Art. 9. Care of Military Property.

§ 127-87. Custody of military property.—All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of said public property to allow the same out of his custody, except as above specified. (1917, c. 200, s. 38; C. S. 6874.)

§ 127-88. Property deposited in arsenal.—All the public arms of every description which may not be distributed among the militia according to law shall be deposited and kept in the public arsenal established at Raleigh. (1917, c. 200, s. 39; C. S. 6875.)

§ 127-89. Arsenal provided.—The board of public buildings and grounds shall provide a suitable building for an arsenal for the storage of military and other property. (1917, c. 200, s. 96; C. S. 6876.)

§ 127-90. Property kept in good order.—Every noncommissioned officer and private belonging to any company equipped with public arms shall keep and preserve his arms and accoutrements in good order and in a soldierly manner; and for every neglect to do so may be punished as a court-martial may direct. (1917, c. 200, s. 40; C. S. 6877.)

§ 127-91. Horses and vehicles used only for military purposes.—Horses, motor trucks, and other vehicles issued by the secretary of war to the national guard shall be used solely for military purposes. Necessary expense in maintaining such horses, trucks, or vehicles, not provided for by the federal government to include stables, storage, and other incidental expenses, shall be a proper charge against funds appropriated for the national guard: Provided, such expense shall be specifically authorized by the governor and certified to by the adjutant general. (1917, c. 200, s. 41; 1921, c. 120, s. 9; C. S. 6878.)

§ 127-92. Transfer of property.—All officers accountable or responsible for public funds, property, or books, before being relieved from the duty shall turn over the same according to the regulations prescribed by the governor. (1917, c. 200, s. 42; C. S. 6879.)

§ 127-93. Replacement of lost or damaged property.—Whenever any military property issued to the militia of the state shall have been lost, damaged, or destroyed, and upon report of a disinterested survey officer of the regular army, navy or the militia it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable and responsible officer or enlisted man, and the pay of such officers and enlisted men from both federal and state funds at any time accruing may be stopped and applied to the payment of any such indebtedness until the same is discharged. In addition thereto any officer accountable or responsible for military property shall be liable on his bond to the state and the property and disbursing officer or accounting officer for any lost, damaged, or destroyed property for which he is accountable or responsible. (1917, c. 200, s. 43; C. S. 6880.)

§ 127-94. Injuring military property.—If any person shall wantonly or wilfully injure or destroy any arms, equipment, or other military property of the state, and refuse to make good such injury or loss, or shall sell, dispose of, secrete, or remove the same with intent to sell or dispose thereof, he shall be fined not more than one hundred dollars or imprisoned not more than six months, or both. (Rev., s. 3536; Code, s. 3274; 1876-7, c. 272, s. 19; C. S. 6881.)

§ 127-95. Member of national guard failing to return property.—If any member of the North Carolina national guard shall wilfully fail to return any property of the state or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3537; C. S. 6882.)

§ 127-96. Selling accoutrements.—If any person shall sell, dispose of, pawn or pledge, destroy or injure, or wilfully retain after demand made, any public property issued for the purpose of arming or equipping the National Guard or militia of the state, he shall be guilty of a misdemeanor. (Rev., s. 3541; Code, s. 3274; 1893, c. 374, s. 30; C. S. 6883.)

§ 127-97. Selling public arms.—If any person to whom shall be confided public arms or accoutrements shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor. (Rev., s. 3542; Code, s. 3556; R. C., c. 89, s. 8; 1831, c. 45, s. 5; C. S. 6884.)

§ 127-98. Refusing to deliver public arms on demand.—Every commissioned officer of the militia, whenever and wherever he shall see or learn that any of the arms or accoutrements or other military property belonging to the state is in the possession of any person other than in whose hands they may be placed for safekeeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer he shall be guilty in like manner, and punished in like manner as for selling or embezzling public arms. (Rev., s. 3540; Code, s. 3558; R. C., c. 89, s. 10; 1831, c. 45, s. 7; C. S. 6885.)

§ 127-99. Expenses of shipping and handling military property.—The freight charges and expenses of packing and handling military property and equipment for shipping to and from the state arsenal shall be paid from funds appropriated to the Adjutant General's department. (1917, c. 200, s. 95; C. S. 6886.)

Art. 10. Support of Militia.

§ 127-100. Requisition for federal funds.—The governor shall make requisition upon the secretary of war for such state allotment from federal funds as may be necessary for the support of the militia. (1917, c. 200, s. 23; 1921, c. 120, s. 10; C. S. 6887.)

§ 127-101. County appropriations.—The county commissioners may appropriate such sums of money to the various organizations of the national guard or naval militia in their counties and at such times as the board may deem proper. (1917, c. 200, s. 91; C. S. 6888.)

§ 127-102. Allowances made to different organizations.—There shall be allowed each year actual expenses to the following Field Officers for the maintenance of their respective Headquarters, including rent, light, heat, postage, stationery, printing, and other necessary expenses and to the Commanding Officers of Companies, Batteries, Troops, and Detachments, and to Staff Officers, all in accordance with rules and regulations prescribed by the Adjutant General, as follows: To Brigade and Regimental Commanders, not to exceed two hundred and twenty-five dollars ($225); to Commanding Officers of separate Battalions, Squadrons, or similar organizations, not to exceed one hundred and twenty-five dollars ($125); to Commanding Officers of Battalions, Squadrons, or similar organizations being a part of the regiment, not to exceed one hundred dollars ($100); to the Commanding Officers of Companies, Batteries, Troops, Detachments and similar units, not to exceed two hundred dollars ($200); to Lieutenants serving with units, not to exceed one hundred dollars ($100); to Regimental Adjutants, Plans and Training Officers, and Adjutants of separate Battalions, Squadrons, and similar organizations, not to exceed one hundred dollars ($100).

There shall be allowed annually to each Company, Battery, Troop, and similar organizations federally recognized under regulations prescribed by the War Department in its Tables of Organization for the National Guard, not to exceed the sum of six hundred dollars ($600), to be applied to the payment of armory rent, heat, light, stationery, postage, printing and other necessary expenses of the organization, in accordance with rules and regulations prescribed by the Adjutant General.

There shall be allowed annually to the supply sergeant of each Company, Battery, and Troop, and to a petty officer of each division of Naval Militia, Aeronautic Section, and to supply sergeants of similar units, the sum of one hundred dollars. There shall be paid monthly to stable sergeants the sum of fifteen dollars, and to horseshoers ten dollars, of units entitled to and actually having animals to care for.

Each enlisted man belonging to an organization of the National Guard shall receive fifty cents as compensation for each armory drill, not exceeding sixty (60) drills per annum, ordered for his organization, where he is officially present and in which he participates, the said compensation to be paid in the same manner and under such laws and regulations as now or hereafter may be prescribed by the United States Government or by the War Department therefor for pay for National Guard enlisted men: And provided further, that the appropriation made by the State of North Carolina for the support of the National Guard is sufficient, after the payment of other necessary expenses of maintaining said guard, to make such payment.

All payments are to be made by the State disbursing officer in semi-annual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and has pursued such course of instruction as may from time to time be required.

The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations. (1917, c. 200, s. 97; 1919, c. 311; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; C. S. 6889.)

Art. 11. General Provisions.

§ 127-103. Reports of officers.—All officers of the national guard and the naval militia shall make such returns and reports to the governor, secretary of war, secretary of the navy, or to such officers as they may designate, at such times and in such forms as may from time to time be prescribed. (1917, c. 200, s. 21; C. S. 6890.)

§ 127-104. Officer to give notice of absence.—When any officer shall have occasion to be absent from his usual residence one week or more, he shall notify the officer next in command, and also his next superior officer in command, of his intended absence, and shall arrange for the officer next in command to handle and attend to all official communications. (1917, c. 200, s. 22; C. S. 6891.)

§ 127-105. Articles of war applicable in time of peace.—The national guard and naval militia, when not in the service of the United States, shall, except as to punishments, be governed respectively by the United States army regulations and articles of war, and the navy regulations and articles for the government of the navy. (1917, c. 200, s. 34; C. S. 6892.)

§ 127-106. Commanding officer may prevent trespass and disorder.—The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade

ground, armory, or other place devoted to such duty, or who shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade, or drill under his command, or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisance all such sales. (1917, c. 200, s. 94; C. S. 6893.)

§ 127-107. Organizing company without authority.—If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the state, or shall exercise or attempt to exercise the power or authority of a military officer in this state, without holding a commission from the governor, he shall be guilty of a misdemeanor. (Rev., s. 3538; 1893, c. 374, s. 38; C. S. 6894.)

§ 127-108. Placing name on muster roll wrongfully.—If any officer of the militia of the state shall knowingly or wilfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor. (Rev., s. 3539; 1893, c. 374, s. 33; C. S. 6895.)

§ 127-109. Protection of the uniform.—It shall be unlawful for any person not an officer or enlisted man in the United States army, navy, or marine corps to wear the duly prescribed uniform of the United States army, navy, or marine corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States army, navy, or marine corps: Provided, that the foregoing provisions shall not be construed so as to prevent officers or enlisted men of the national guard from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men of the national guard; nor to prevent members of the organization known as the Boy Scouts of America, or the naval militia, or such other organizations as the secretary of war may designate, from wearing their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers of the United States army, navy, or marine corps, regular or volunteer, and whose most recent service was terminated by an honorable discharge, mustered out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such regular or volunteer sevice; nor to prevent any person who has been honorably discharged from the United States army, navy, or marine corps, regular or volunteers, from wearing his uniform from the place of his discharge to his home within three months after his discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers and enlisted men, or both, of the United States army, navy or marine corps, regular or volunteers, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a state university, state college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of a duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the United States army, navy, or marine corps is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the United States army, navy, or marine corps, in any playhouse or theater, or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the United States army, navy, or marine corps: Provided further, that the uniform worn by officers or enlisted men of the national guard, or by the members of the military societies, or the instructors and members of the cadet corps referred to in the preceding proviso, shall include some distinctive mark or insignia to be prescribed by the secretary of war to distinguish such uniforms from the uniforms of the United States army, navy, or marine corps; and provided further, that the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by the officers of the United States army, navy, or marine corps, or any insignia of rank similar thereto. Any person who offends against the provisions of this section, shall on conviction, be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. (1921, c. 120, s. 12; C. S. 6895(a).)

§ 127-110. Upkeep of camps.—There shall be paid from the appropriations from the national guard such amounts as may be necessary for the maintenance, upkeep, and improvement of the state camp or camps: Provided, such expenditures shall be approved and authorized by the governor. (1921, c. 120, s. 13; C. S. 6895(b).)

Art. 12. State Guard.

§ 127-111. Authority to organize and maintain state guard of North Carolina.

1. Whenever the president of the United States

shall order or call all or any part of the national guard of the state into active federal service, the governor is authorized, subject to such regulations as the secretary of war may prescribe, to organize such part of the unorganized militia as a state force, for discipline and training, into companies, battalions, or regiments, as may be deemed necessary for the defense of the state; to maintain, uniform, and equip such military force within the appropriation available; to exercise discipline in the same manner as is now or may be hereafter provided by the state laws for the national guard; to train such force in accordance with training regulations issued by the war department. Such military force to be subject to the call or order of the governor to execute the law, suppress riots or insurrections, or to repel invasion, as is now or may hereafter be provided by law for the national guard and for the unorganized militia. Units of the state guard will be disbanded upon return of the national guard to state control, or as soon thereafter as practical.

2. Such military force shall be designated as the "North Carolina state guard" and shall be composed of men of the unorganized militia as shall volunteer for service therein, or as shall be drafted as provided by law. They shall be additional to and distinct from the national guard organized under existing law. They shall not be required to serve outside the boundaries of this state.

3. The governor is hereby authorized to prescribe the rules and regulations governing the appointment of officers, the enlistment of men, the organization, administration, equipment, discipline and discharge of the personnel of such military force; to requisition from the secretary of war such arms and equipment as may be in possession of and can be spared by the war department, and to extend thereto the facilities of available armories and their equipment and such state premises and property as may be available for the purpose of drill and instruction.

4. Such force shall not be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of his membership in any such unit or organization be exempted from military service under any federal law.

5. The governor is hereby authorized to appropriate to the benefit of the state guard any and all unexpended monies found by the governor to be unnecessary for use of the national guard in the appropriation made to the national guard by the general assembly, for the present or for subsequent fiscal years and, if necessary, to make allotment of monies from the contingent and emergency fund with the concurrence of the council of state. Upon the disbandment of the state guard any monies or balance to the credit of the units of this organization shall be paid into the state treasury for the benefit of the national guard, and all property, clothing, and equipment belonging to the state shall be transferred to the account of the national guard for disposition in accordance with the best interests of the state and as deemed advisable by the governor. Upon the disbandment of any one or more units of the state guard on a date prior to the disbandment of the entire organization, the governor is authorized to have transferred any state property or balance of funds of said disbanded units to any new unit or units organized to fill such vacancies, or otherwise as the governor may direct.

6. The North Carolina state guard shall be subject to the military laws of the state not inconsistent with or contrary to the provisions contained in this article with the following exceptions:

The provisions of §§ 9-19, 127-84, 127-85 and 127-102, as amended, shall not be applicable to the personnel and units of the state guard.

7. (a) There shall be allowed annually to each unit or company of the state guard such funds as may be necessary to be applied to the payment of armory rent, heat, light, stationery, printing, and other expenses. The allowance to each unit annually will not exceed $600.00.

(b) All payments are to be made by the adjutant general in accordance with state laws in semi-annual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named.

(c) The commanding officer of all organizations participating in the appropriation herein named shall render an itemized statement of all funds received from any source whatsoever for the support of their respective organizations in such manner and on such forms as may be prescribed by the adjutant general. Failure on the part of any officer to submit promptly, when due, the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations. (1941, c. 43.)

Chapter 128. Offices and Public Officers.

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Art. 1. General Provisions.

§ 128-1. No person shall hold more than one office.—No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly; Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes. (Rev., s. 2364; Const., Art. XIV, s. 7; C. S. 3200.)

§ 128-2. Holding office contrary to the constitution; penalty.—If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the general assembly, contrary to the seventh section of the fourteenth article of the constitution of the state, he shall forfeit and pay two hundred dollars to any person who will sue for the same. Provided, such action shall not be brought or maintained by any person who is not a bona fide resident of the same county in which the defendant resides. (Rev., s. 2365; Code, s. 1870; R. C. c. 77, s. 1; 1790, c. 319; 1792, c. 366; 1793, c. 393; 1796, c. 450; 1811, c. 811; Ex. Sess. 1924, c. 110; C. S. 3201.)

§ 128-3. Bargains for office void.—All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (Rev., s. 2366; Code, s. 1871; R. C., c. 77, s. 2; 5 and 6 Edw. VI, c. 16, s. 3; C. S. 3202.)

§ 128-4. Receiving compensation of subordinates for appointment or retention; removal.—Any official or employee of this state or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by §§ 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2.)

§ 128-5. Oath required before acting; penalty.—Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the state, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose. (Rev., s. 2367; Code, s. 1873; R. C., c. 77, s. 4; C. S. 3203.)

§ 128-6. Persons admitted to office deemed to hold lawfully.—Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void. (Rev., s. 2368; Code, s. 1872; R. C. c. 77, s. 3; 1844, c. 38, s. 2; 1848, c. 64, s. 1; Const., Art. IV, s. 25; C. S. 3204.)

§ 128-7. Officer to hold until successor qualified.—All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified. (Rev., s. 2368; Code, s. 1872; R. C., c. 77, s. 3; 1848, c. 64, s. 2; C. S. 3205.)

§ 128-8. Officers and employees responsible for cash or property to be surety bonded. — All officers, officials and employees of the State charged with responsibility for cash, securities and/or property shall be surety bonded in corporate sure-

ties admitted to do business in the State in such sums as may be fixed by the Governor and the Advisory Budget Commission. The premiums on such surety bonds will be paid by the State out of the appropriations to the respective departments and institutions and other agencies. (1929, c. 337, s. 5.)

§ 128-9. Peace officers employed by state to give bond.—The state of North Carolina shall require every peace officer employed by the state, elected or appointed, to give a bond with good surety payable to the state of North Carolina, in a sum not less than one thousand ($1,000.00) dollars and not more than two thousand five hundred ($2,500.00) dollars, conditioned as well for the faithful discharge of his or her duty as such peace officer as for his diligently endeavoring to faithfully collect and pay over all sums of money received. Said bond shall be duly approved and filed in the office of the insurance commissioner, and certified copies of the same by the insurance commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1937, c. 339, s. 1.)

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.—When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor; any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, setting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within sixty days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars, of the amount recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as idemnity shall in no case exceed five hundred dollars. (1913, c. 80; C. S. 3206.)

§ 128-11. Trust funds to be kept separate.—Any sheriff, treasurer or other officer of any county, city, town or other political subdivision of the State, receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own. (1931, c. 77, s. 1.)

§ 128-12. Violations to be reported; misdemeanors.— It shall be the duty of the director of the Local Government Commission to report to the solicitor of the district any violation of § 128-11 of which he may have knowledge, and any violation of such section shall be unlawful and shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 60, s. 3; 1931, c. 77, s. 2.)

§ 128-13. Local: Officers compensated from fees to render statement; penalty; proceeds to school fund.—Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation for services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year, a statement, verified under oath, showing: first, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars and ten dollars additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and apply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December twelfth, one thousand nine hundred and thirteen.

This section applies only to the counties of Anson, Bertie, Bladen, Cabarrus, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson. (1913, c. 97; Ex. Sess. 1913, c. 10; 1935, c. 390.)

§ 128-14. Identification cards for field agents or deputies of state departments.—Every field agent or deputy of the various state departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

§ 128-15. Preference for veterans in employment.—Hereafter in all examinations of applicants for positions with this state or any of its departments or institutions, a preference rating of ten per cent shall be awarded to all the citizens of the state who served the state or the United States honorably in either the army, navy, marine corps, or nurses' corps in time of war.

All departments and institutions of the state, or their agencies, shall give preference to such unemployed veterans as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways, or any other employment under

the supervision of the state or its departments, institutions, or agencies: Provided, that the provisions of this section shall apply to widows of such veterans and to the wife of any disabled veteran. (1939, c. 8.)

Art. 2. Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.—Any city prosecuting attorney, any sheriff, police officer, or constable, shall be removed from office by the judge of the superior court upon charges made in writing, and hearing thereunder, for the following cause:

First. For willful or habitual neglect or refusal to perform the duties of his office.

Second. For willful misconduct or maladministration in office.

Third. For corruption.

Fourth. For extortion.

Fifth. Upon conviction of a felony.

Sixth. For intoxication, or upon conviction of being intoxicated. (1919, c. 288; P. L. 1913, c. 761, s. 20; C. S. 3208.)

§ 128-17. Petition for removal; county attorney to prosecute.—The complaint or petition shall be entitled in the name of the state of North Carolina, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the solicitor of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or solicitor to appear and prosecute this proceeding. (1919, c. 288; P. L. 1913, c. 761, s. 21; C. S. 3209.)

§ 128-18. Petition filed with clerk; what it shall contain; answer.—The accused shall be named as defendant, and the petition shall be signed by some elector, or by such officer. The petition shall state the charges against the accused, and may be amended, and shall be filed in the office of the clerk of the superior court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the superior court his answer, which shall be verified. (1919, c. 288; P. L. 1913, c. 761, s. 22; C. S. 3210.)

§ 128-19. Suspension pending hearing; how vacancy filled.—Upon the filing of the petition in the office of the clerk of the superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling of the vacancies in such office. (1919, c. 288; P. L. 1913, c. 761, s. 23; C. S. 3211.)

§ 128-20. Precedence on calendar; costs. — In the trial of the cause in the superior court the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the petition is filed, provided the proceedings are filed in said court in time for said action to be heard. The superior court shall fix the time of hearing. If the final termination of such proceedings be favorable to any accused officer, said officer shall be allowed the reasonable and necessary expense, including a reasonable attorney fee, to be fixed by the judge, he has incurred in making his defense, by the county, if he be a county officer, or by the city or town in which he holds office, if he be a city officer. If the action is instituted upon the complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties. (1919, c. 288; P. L. 1913, c. 761, s. 24; C. S. 3212.)

Art. 3. Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions. — The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the North Carolina local governmental employees' retirement system as defined in this article.

(2) "Employer" shall mean any county or incorporated city or town participating in the retirement system. The North Carolina league of municipalities and the office of the retirement system shall be classed as employers eligible to participate in the retirement system.

(3) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subsection two of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. In all cases of doubt the board of trustees shall decide who is an employee.

(4) "Member" shall mean any person included in the membership of the retirement system as provided in § 128-24.

(5) "Service" shall mean service as an employee as described in subsection three of this section and paid for by the employer as described in subsection two of this section.

(6) "Prior service" shall mean the service of a member rendered before the first day of July, nineteen hundred and forty-one, certified on a prior service certificate and allowable as provided in § 128-26.

(7) "Membership service" shall mean service as an employee rendered while a member of the retirement system.

(8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 128-26.

(9) "Board of trustees" shall mean the board provided for in § 128-28 to administer the retirement system.

(10) "Medical board" shall mean the board of physicians provided for in § 128-28, subsection twelve.

(11) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with

regular interest thereon, as provided in § 128-30, subsection one.

(12) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the board of trustees in accordance with § 128-29, subsection two.

(13) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.

(14) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.

(15) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.

(16) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this article.

(17) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(18) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(19) "Earnable compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.

(20) "Average final compensation" shall mean the average annual earnable compensation of an employee during his last five years of service, or if he had less than five years of service, then his average earnable compensation for his total service.

(21) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this article.

(22) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(23) "Fiscal year" shall mean any year commencing July first and ending June thirtieth next following. (1939, c. 390, s. 1; 1941, c. 357, s. 1.)

§ 128-22. Name and date of establishment. — A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for employees of those counties, cities and towns or other eligible employers participating in the said retirement system. The retirement system so created shall become operative as of the first day of July, nineteen hundred and forty-one: Provided, that in the judgment of the board of trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the board of trustees may set.

It shall have the power and privileges of a corporation and shall be known as the "North Carolina Local Governmental Employees' Retirement System," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1939, c. 390, s. 2; 1941, c. 357, s. 2.)

§ 128-23. Acceptance by cities, towns and counties.—(1) The governing body of any incorporated city or town may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the retirement system, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(2) The board of commissioners of any county may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the retirement system, and the said county board of commissioners may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in § 153-9 and in addition to the rates allowed by the constitution.

(3) Any eligible employer desiring to participate in the retirement system shall file with the board of trustees an application for participation under the conditions included in this article on a form approved by the board of trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this article, and to transmit such contributions to the board of trustees. It shall also agree to make the employer's contributions for the participation in the retirement system of all employees entering the service of the employer, after its participation begins, who shall become members.

(4) Such contributions as are made by employers shall be regarded as additions to the compensation of such employees as are members of the retirement system and deducted therefrom for the purpose of making the employer's contribution, in addition to the deduction from the compensation of employees on account of member contributions.

(5) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its employees, but such contributions payable during the period of temporary default shall be paid at such later time as may be mutually agreed upon by the employer and the board of trustees together with interest thereon at the rate of six per centum (6%) per annum. At such time as such defaulted contributions together with interest thereon shall be fully paid, such employer shall no longer be deemed in temporary default and shall be restored to good standing in the retirement system.

Notwithstanding anything to the contrary, th

retirement system shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits. (1939, c. 390, s. 3.)

§ 128-24. Membership. — The membership of this Retirement System shall be composed as follows:

(1) All employees entering or reentering the service of a participating county, city, or town after the date of participation in the Retirement System of such county, city, or town.

(2) All persons who are employees of a participating county, city, or town except those who shall notify the Board of Trustees in writing, on or before ninety days following the date of participation in the retirement system by such county, city, or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of welfare or health departments whose compensation is derived from both state and local funds may be members of a North Carolina Local Government Employees' Retirement System to the extent of that part of their compensation derived from a county, city or town. (1939, c. 390, s. 4; 1941, c. 357, s. 3.)

§ 128-25. Membership in system.—Should sixty per centum (60%) of the members of any retirement, pension or annuity fund or system of any county, city or town of the state, hereafter referred to as a local pension system, elect to become members of the North Carolina governmental employees' retirement system, by a petition duly signed by such members, the participation of such members in the retirement system may be approved as provided in § 128-24 as though such local pension system were not in operation, and the provisions of this article shall also apply, except that the existing pensioners or annuitants of the local pension system who were being paid pensions on the date of the approval shall be continued and paid at their existing rates by the North Carolina governmental employees' retirement system, and the liability on this account shall be included in the computation of the accrued liability by the actuary as provided by § 128-30, subsection three. Any cash and securities to the credit of the local pension system shall be transferred to the North Carolina governmental employees' retirement system as of the date of the approval. The trustees or other administrative head of the local pension system as of the date of the approval shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the North Carolina governmental employees' retirement system. The balance of the funds transferred to the North Carolina governmental employees' retirement system shall be offset against the accrued liability before determining the special accrued liability contribution to be paid by the county, city or town as provided by § 128-30, subsection three. The operation of the local pension system shall be discontinued as of the date of the approval. (1939, c. 390, s. 5; 1941, c. 357, s. 4.)

§ 128-26. Allowance for service. — (1) Under such rules and regulations as the board of trustees shall adopt each member who was an employee at any time during the year immediately preceding July first, nineteen hundred and forty-one, and who becomes a member during the first year of operation of the retirement system, shall file a detailed statement of all service as an employee rendered by him to any county, city or town prior to July first, nineteen hundred and forty-one, for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the board of trustees may use for the purpose of this article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection fourteen of § 128-28 would have resulted in a same average salary of the member for the five years immediately preceding July first, nineteen hundred and forty-one, as the records show the member actually received.

(4) Upon verification of the statements of service the board of trustees shall issue prior service certificates certifying to each member the length of service rendered prior to July first, nineteen hundred and forty-one, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the employee again become a member, such employee shall enter the system as an employee not entitled to prior service credit except as provided in § 128-27, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the

service certified on his prior service certificate. (1939, c. 390, s. 6; 1941, c. 357, s. 5.)

§ 128-27. Benefits. — (1) Service Retirement Benefit.—(a) Any member in service may retire upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five shall be retired at the end of the fiscal year unless the employing board requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the fiscal year.

(c) Any member in service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the fiscal year following the date on which he attains the age of seventy years: Provided, further, that with the approval of the board of trustees and his employer, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) Allowance for Service Retirement.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at the age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years by twice the contributions which he would have made during such prior service had the system been in operation and he contributed thereunder.

(3) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance, if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement, and

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation.

(5) Reëxamination of Beneficiaries Retired on Account of Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the retirement system.

(b) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid prior to disability. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pensions which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new entrant.

(6) Return of Accumulated Contributions.—Should a member cease to be an employee except by death or retirement under the provisions of this article, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees.

(7) Optional Allowance.—With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option one. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate: Provided, such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and approved by the board of trustees. (1939, c. 390, s. 7.)

§ 128-28. Administration. — The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in the Board of Trustees of the Teachers' and State Employees' Retirement System of North Carolina, and all of the provisions of § 135-6, relating to the administration by said Board of Trustees shall apply to the administration of this article by said Board of Trustees: Provided, that all expenses in connection with the administration of this North Carolina Local Government Employees' Retirement System shall be charged against this retirement system and paid from the expense fund as provided in subsection five of § 128-30. (1939, c. 390, s. 8; 1941, c. 357, s. 6.)

§ 128-29. Management of funds. — (1) Vested in Board of Trustees.—The board of trustees shall be the trustee of the several funds created by this article as provided in § 128-30, and shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon domestic life insurance companies in the making and disposing of their investment; and subject to like terms, conditions, limitations and restrictions, said trustee shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any monies belonging to said funds.

(2) Annual Allowance of Regular Interest.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the monies of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) Custodian of Funds.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(4) Cash Deposits for Meeting Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the retirement system, on deposit in one or more banks or trust companies of the state of North Carolina, organized under the laws of the state of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of such bank or trust company.

(5) Selection of Depostories.—The board of trustees shall select a bank or banks for the deposits of the funds and securities of the retirement system in the same manner as such banks are selected by the treasurer of the state of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the state. The funds and properties of the North Carolina governmental employees' retire-

ment system held in any bank of the state shall be safeguarded by a fidelity and surety bond, the amount to be determined by the board of trustees.

(6) Immunity of Funds.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for monies loaned or borrowed from the board of trustees. (1939, c. 390, s. 9; 1941, c. 357, s. 7.)

§ 128-30. Method of financing. — All of the assets of the retirement system shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund and the expense fund.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(a) Each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty years and has completed thirty-five years of service. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. In determining the amount earnable by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer as to the amount of fees received by such member as compensation during the preceding year, and each month such member shall pay to his employer four per centum of one-twelfth of such compensation received from fees during the previous year, which shall be considered as deductions by the employer as provided in paragraphs (a) and (b) of Subsection one of this section.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one-half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this article. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each participating employer shall pay to the pension accumulation fund monthly, or at

such other intervals as may be agreed upon with the board of trustees, an amount equal to a certain percentage of the earnable compensation of each member, to be known as the "normal contribution," and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation. Until the first valuation the normal contribution for general employees shall be two and fourteen one hundredths per centum (2.14%) and the accrued liability contribution for general employees shall be one and seventy-eight one hundredths per centum (1.78%) of the payroll of the members who are general employees; and until the first valuation the normal contribution for firemen and policemen, including sheriffs and other law enforcing officers, shall be three and eighty one hundredths per centum (3.80%), and the accrued liability contribution for firemen and policemen, including sheriffs and other law enforcing officers, shall be three and nineteen one hundredths per centum (3.19%) of the payroll of the members who are firemen and policemen or other law enforcing officers.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the pro rata share of the cost of administration of the retirement system. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries which is not dischargable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate.

(d) The county, city or town participating in the system as provided in subsection four of § 128-23 shall make a special accrued liability contribution on account of its approval of the participation of its employees in the North Carolina local governmental employees' retirement system, which shall be determined by actuarial valuation of the accrued liability on account of the employees of such county, city or town who elected to become members in the same manner as the accrued liability rate was originally determined for employees who become members of the local governmental employees' retirement system prior to January first, nineteen hundred and forty-two. This special accrued liability contribution, subject to such adjustment as may be necessary on account of any additional prior service credits awarded to employees of such county, city or town, shall be payable in lieu of the accrued liability contribution payable on account of other employees in the system. The expense of making such initial valuation shall be assessed against and paid by the county, city or town on whose account it is necessary.

(e) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.

(f) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.

(g) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.

(h) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves of all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount

to the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Expense Fund.—The expense fund shall be the fund from which the expenses of the administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:

(a) The board of trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.

(b) For the purpose of organizing the retirement system and establishing an office, the board of trustees may provide as a prerequisite to participation in the retirement system that each participating employer or employee or both shall pay an additional contribution to the retirement system for the expense fund not to exceed two dollars for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the board of trustees shall determine, and/or the board of trustees may borrow such amounts as may be necessary to organize and establish the retirement system.

(6) Collection of Contributions.—(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the retirement system the contributions payable by such member as provided in this article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.

(b) The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this article and shall transmit monthly, or at such time as the board of trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the board of trustees. The secretary-treasurer of the board of trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said board of trustees for use according to the provisions of this article.

(2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection three of this section. (1939, c. 390, s. 10; 1941, c. 357, s. 8.)

§ 128-31. Exemptions from execution. — The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this article, and the monies in the various funds created by this article, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this article specifically otherwise provided. (1939, c. 390, s. 11.)

§ 128-32. Protection against fraud.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or imprisonment not exceeding twelve months, or both, such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had their records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1939, c. 390, s. 12.)

§ 128-33. Other laws not applicable to members. —No other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the retirement system established by this article. (1939, c. 390, s. 13.)

§ 128-34. Transfer of members. — Any member of the North Carolina governmental employees' retirement system who leaves the service of his employer and enters the service of another employer participating in the North Carolina governmental employees' retirement system shall maintain his status as a member of the retirement system and shall be credited with all of the amounts previously credited to his account in any of the funds under this article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of his transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer. (1939, c. 390, s. 14.)

§ 128-35. Obligations of pension accumulation fund. — The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in § 128-30, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this article, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this article shall be used for the payment of said obligations of the said fund. (1939, c. 390, s. 15.)

§ 128-36. Local laws unaffected; when benefits begin to accrue.—Nothing in this article shall have the effect of repealing any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town or prohibiting the enactment of any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of § 128-27, subsections one to four inclusive, shall become effective or begin to accrue until the end of one year following the date the system is established nor shall any compulsory retirement be made during that period. Notwithstanding anything else to the contrary in this article, the provisions of this article shall apply only to counties having a population of more than fifteen thousand inhabitants by the last preceding United States census and to municipalities. (1939, c. 390, s. 16; 1941, c. 357, ss. 9, B.)

§ 128-37. Levy of taxes; referendum; counties excepted.—No county, city, town, or other municipality, shall levy any tax, pledge its faith, or incur any indebtedness for the purposes herein mentioned until the same shall have been submitted to, and approved by, the qualified voters thereof at an election to be called by the governing body of said county, city, town, or other municipality: Provided, that the provisions of this section shall not apply to the following: The cities of Greensboro and Gibsonville; Mount Airy in Surry County; Rowan County or the municipalities therein; Pitt County, nor to any municipality therein; the Town of Aberdeen, in Moore County; Wake County and the municipalities located therein; Mecklenburg, Bladen, Durham and Alexander Counties and/or the municipalities therein; Pasquotank County or the municipalities therein, and such county and municipalities shall be entitled to participate in the retirement system in the manner provided by § 128-23; Lee County and the towns of Sanford and Jonesboro located therein; Randolph County and the Town of Asheboro located therein; and Davidson and Alexander Counties and the municipalities located therein. (1941, c. 357, s. 9A.)

§ 128-38. Withdrawal from System by participating units. — Any county, city or town participating in the Retirement System may by action of its governing body later withdraw from the system, and all contributions of employees and employers shall be returned to them or their representatives. (1941, c. 357, s. 9B.)

Art. 4. Leaves of Absence.

§ 128-39. Leaves of absence for state officials.—Any elective or appointive state official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the governor, for such period as the governor may designate. Such leave shall be obtained only upon application by the official and with the consent of the governor. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of cumulative sick leave to which he may be entitled under rules and regulations adopted pursuant to § 143-37 or to which he may otherwise be entitled by law. The period of leave may be extended upon application to and with the approval of the governor if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governor deems it necessary, the governor may appoint any citizen of the state, without regard to residence or district, as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 1.)

§ 128-40. Leaves of absence for county officials. — Any elective or appointive county official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. Such leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint any qualified citizen of the county as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 2.)

§ 128-41. Leaves of absence for municipal officers. — Any elective or appointive municipal official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. Such leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of

leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 3.)

Chapter 129. Public Buildings and Grounds.

Sec.
129-1. Definitions.
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§ 129-1. Definitions. — Public buildings and grounds referred to in this chapter include the executive mansion and all the public buildings and grounds owned or maintained by the state, now existing or hereafter acquired, in the city of Raleigh, and the state warehouse located on the state fair grounds, but do not include any buildings or grounds which any state institution or agency other than the board of public buildings and grounds is required by law to care for and maintain.

"Board" as used in this chapter means the board of public buildings and grounds.

"Superintendent" means the superintendent of public buildings and grounds. (1941, c. 224, s. 1.)

§ 129-2. Board of public buildings and grounds. —The governor, the secretary of state, the treasurer, the attorney general and the assistant director of the budget shall constitute the board of public buildings and grounds, and shall serve ex-officio as members of the board. (1941, c. 224, s. 2.)

§ 129-3. Powers and duties of board. — The board shall have the following powers and duties in addition to other powers and duties provided by law:

(1) To assume the custody and control of public buildings and grounds, and supervise the care, operation and maintenance of public buildings and grounds, and the establishment, location, care and maintenance of walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers and tablets on public grounds.

(2) To provide necessary and adequate quarters, office and working space for all state departments, agencies and legislative committees in the city of Raleigh when no other provision for space is made by law, and to this end the board is given full authority to allocate and reallocate space in public buildings and grounds and make such readjustments and provide such facilities as may be necessary to effectuate these powers.

(3) To employ, supervise and control such reliable and efficient assistants and laborers as may be necessary for the adequate care, operation and maintenance of the public buildings and grounds, and to fix their compensation with the approval of the budget bureau whenever such approval may be required by law.

(4) To provide necessary and adequate cleaning and janitor service, elevator operation service, and other operation or maintenance service.

(5) To provide necessary night watchmen.

(6) To procure and supervise the prompt repair of buildings, furniture and fixtures.

(7) To use at all times such means as may, in its opinion, be effectual to protect all public buildings and grounds from fire.

(8) To lease vacant lots of the state in the city of Raleigh not otherwise appropriated, upon such terms as may be reasonable and proper, for a period not to exceed twelve months under the terms of any one lease, and to collect the proceeds of such rentings and deposit them to the credit of the treasurer immediately upon collection: Provided, however, any lease entered into pursuant to this subsection may, in the discretion of the board, be extended or renewed from time to time, for a period not to exceed twelve months under the terms of any one extension or renewal.

(9) To supervise the work of janitors appointed by the general assembly to perform services in connection with the sessions of the general assembly until the legislature convenes.

(10) To keep in repair, out of funds appropriated for that purpose, all necessary furniture for the halls of the senate and house of representatives and the rooms of the capitol used by the officers, clerks and other employees of the general assembly.

(11) To make and enforce regulations with respect to the parking of automobiles on all public grounds.

(12) In its discretion, to store, destroy or otherwise dispose of obsolete papers, records and documents which have been discarded by any of the state departments or agencies and found by them to be of no value.

(13) In its discretion, to establish and maintain a central mailing system for all state departments and agencies, and in connection therewith and in the discretion of the board to make application for and procure a post office substation for such

purpose, and to do all other things needful in the discretion of the board in connection with the establishment of such central mailing system. In the event of the establishment of such central mailing system the board shall have the right to allocate and charge against the respective departments and agencies their proportionate part of the cost of maintenance of such central mailing system.

(14) In its discretion, to provide necessary and adequate messenger service for the state departments and agencies for whom the board is required to furnish office or working space: Provided, that this shall not be construed to prevent the employment and control of messengers by any state department or agency when such messengers are compensated out of funds of said department or agency.

(15) To take or otherwise control birds and animals, such as pigeons, dogs, cats and squirrels, on public buildings and grounds.

(16) To beautify the public grounds.

(17) To provide necessary information service for visitors to the capitol.

(18) To provide suitable space for an arsenal.

(19) To have direct control and supervision over the location, plan and construction of any public buildings unless it shall be otherwise provided in the act authorizing such construction.

(20) To direct and supervise the superintendent in the administration of this chapter, and in the performance of all other powers and duties imposed by law. (1941, c. 224, s. 3.)

§ 129-4. Appointment and salary of superintendent.—The board shall appoint and, with the approval of the budget bureau, fix the salary of the superintendent. He shall hold office until his successor is appointed and files his bond in accordance with the provisions of § 129-5. (1941, c. 224, s. 4.)

§ 129-5. Bond of superintendent. — Before entering upon the duties of his office, the superintendent shall execute a bond with good and sufficient surety or security, in a sum to be fixed by the board, payable to the state of North Carolina and conditioned on the faithful discharge of his duties. The board may, in its discretion, require that the penal sum of the bond be increased at any time. The bond shall be deposited in the office of the secretary of state, and shall be renewed every two years, with such surety or security and in such amount as the board may direct, and the same may be sued upon by the state upon the relation of the board whenever in the judgment of said board any condition thereof has been broken. The bond shall not be discharged until the whole penalty is exhausted in damages. (1941, c. 224, s. 5.)

§ 129-6. Duties of superintendent. — The superintendent shall perform all the duties and exercise all the powers delegated to him by the board with the approval and under the supervision of the board. (1941, c. 224, s. 6.)

§ 129-7. Board may make rules and regulations; violation a misdemeanor. — The board is empowered to promulgate reasonable and necessary rules and regulations to provide for the care, conservation and protection of buildings and grounds and all fixtures and adjuncts thereto. A violation of any rule or regulation duly promulgated by the board shall be a misdemeanor, and shall be punishable in the discretion of the court. (1941, c. 224, s. 7.)

§ 129-8. Accounts for labor.—No account for labor performed or materials furnished in connection with the care, maintenance and operation of public buildings and grounds shall be audited and paid until the same is certified by the superintendent to be accurate. (1941, c. 224, s. 8.)

§ 129-9. Disorderly conduct in and injury to public buildings and grounds.—If any person shall commit any nuisance, or conduct himself in a disorderly manner in or around any public buildings and grounds, or deface or injure any of the buildings and grounds or willfully trespass upon any of the buildings and grounds or commit waste thereon, or refuse to surrender possession after the expiration of a lease, or if there is no lease, after the expiration of ten days from demand made by the superintendent, such person shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1941, c. 224, s. 9.)

§ 129-10. Power of arrest. — The superintendent is hereby constituted a special peace officer, and shall have the right to arrest with warrant any person violating any law on or with respect to public buildings and grounds, and he shall have the right to arrest, or pursue and arrest, without warrant any person violating in his presence any law on or with respect to public buildings and grounds. The superintendent is authorized to designate as special peace officers such number of reliable and efficient employees as he may think proper who shall have the same power of arrest as the superintendent. Before the superintendent shall exercise any power of arrest under this section he shall take an oath to be administered by the attorney general; and before any officer designated by the superintendent shall exercise any power of arrest under this section, he shall take an oath to be administered by the superintendent. The oath shall be in the following form:

"I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of special peace officer for public buildings and grounds according to the best of my skill and ability, according to law; so help me, God." (1941, c. 224, s. 10.)

§ 129-11. Moore and Nash squares and other public lots.—The governing body of the city of Raleigh shall have power, at its own expense, to grade, lay out in walks, plant with trees, shrubbery and flowers, and otherwise adorn Moore and Nash squares, and to that end shall have the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots belonging to the state within the city limits and not otherwise appropriated. The governing body shall not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the board, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the said board shall call the matter to the attention of the governing body, and if the governing body then fails for a period of sixty days to begin to take proper care of the squares or lots, the board may repossess them and proceed to

manage and control them for the preservation of such property.

In the event that the use of these squares and lots shall be needed by the state, the license of the city of Raleigh to control and manage them shall terminate six months after notice given by the board to the governing body of the city, and thereupon possession shall be promptly surrendered to the state. (1941, c. 224, s. 11.)

§ 129-12. Construction of public buildings; use of contingency and emergency fund. — It shal be lawful to resort to the contingency and emer gency fund, provided in the Appropriations Act for financial aid in the construction, alteration renovation or repair of state public buildings when in the opinion of the governor and the coun cil of state a condition of emergency exists ren dering it necessary to construct, alter, renovate o repair one or more buildings for the purpose o housing state governmental bureaus, department and agencies. (1941, c. 224, s. 12.)

Chapter 130. Public Health.

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SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW.

Art. 1. State Board of Health.

§ 130-1. Membership of board. — The North Carolina board of health shall consist of nine members, four of which members shall be elected by the Medical Society of the State of North Carolina and five of which members shall be appointed by the Governor. (Rev., s. 4435; Code, s. 2875; 1879, c. 177, s. 1; 1885, c. 237, s. 1; 1893, c. 214, s. 1; 1911, c. 62, s. 1; 1931, c. 177, s. 1; C. S. 7048.)

§ 130-2. Term of office; removal; vacancies;

how filled. — The terms of all members of the present board of health shall expire on April first, one thousand nine hundred thirty-one, or as soon thereafter as their successors have been appointed and elected in the manner provided for herein and shall have duly qualified. The Medical Society of the State of North Carolina shall at its next annual meeting elect two members to serve for two years and two members to serve for four years, and the Governor on or before May first, one thousand nine hundred thirty-one, shall appoint five members, three of such members to serve for two years and two of such members to serve for four years. At the expiration of the terms of the members so elected and appointed their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified. The Medical Society of the State of North Carolina shall have the right to remove any member elected by it for cause, and the Governor shall have the right to remove any member appointed by him for cause. Vacancies on said board among the membership elected by the Medical Society of the State of North Carolina shall be filled by the executive committee of said Medical Society until the next meeting of the said Medical Society, when the said Medical Society shall fill the vacancy for the unexpired term. Vacancies on said board among the membership appointed by the Governor shall be filled by the Governor for the unexpired term. (Rev., s. 4436; Code, s. 2877; 1879, c. 117, s. 3; 1885, c. 237, s. 3; 1893, c. 214, s. 2; 1901, c. 245; 1911, c. 62, s. 2; 1931, c. 177, s. 2; C. S. 7049.)

§ 130-3. Duties of board.—The board of health shall take cognizance of the health interests of the people of the state; shall make sanitary investigations and inquiries in respect to the people, employing experts when necessary; shall investigate the causes of diseases dangerous to the public health, especially epidemics, the sources of mortality, the effect of location, employments, and conditions upon the public health. They shall gather such information upon these matters for distribution among the people, with the especial purpose of informing them about preventable diseases. They shall be the medical advisers of the state, and are herein specially provided, and shall advise the government in regard to the location, sanitary construction, and management of all state institutions, and shall direct the attention of the state to such sanitary matters as in their judgment affect the industries, prosperity, health, and lives of the people of the state. They shall make an inspection once in each year, and at such other times as they may be requested to do so by the state board of charities, of all public institutions, including all convict camps under the control of the state's prison, and make a report as to their sanitary conditions, with suggestions and recommendations, to their respective boards of directors or trustees; and it shall be the duty of the officials in immediate charge of said institutions to furnish all facilities necessary for a thorough inspection. The secretary of the board shall make biennially to the general assembly, through the governor, a report of their work. (Rev., s. 4437; Code, s. 2876; 1879, c. 117, s. 2; 1885, c. 237, s. 2; 1893, c. 214, s. 3; 1911, c. 62, s. 3; C. S. 7050.)

§ 130-4. May make regulations in epidemics. — In times of epidemics of smallpox, yellow fever, typhoid fever, scarlet fever, diphtheria, typhus fever, bubonic plague, and cholera, the state board of health shall have sanitary jurisdiction in all cities and towns not having regularly organized local boards of health, and are hereby empowered to make all such regulations as they may deem necessary to protect the public health, and to enforce them by suitable penalties. (Rev., s. 4438; 1893, c. 214, s. 17; 1911, c. 62, s. 4; C. S. 7051.)

§ 130-5. To issue bulletins; to check diseases; compensation. — Bulletins of the outbreak of disease dangerous to the public health shall be issued by the state board whenever necessary and such advice freely disseminated to prevent and check the invasion of disease into any part of the state. It shall also be the duty of the board to inquire into any outbreak of disease, by personal visits or by any method the board shall direct. The compensation of members on such duty shall be four dollars a day and all necessary traveling and hotel expenses. (Rev., s. 4439; 1893, c. 214, s. 26; 1911, c. 62, s. 5; C. S. 7052.)

§ 130-6. Supervision of jails and camps by board of health.—The State Board of Health shall have the same supervision of all jails, county camps or other places of confinement of county or city prisoners in regard to the method of construction, sanitary or hygienic care as they have over the State Prison Department, and no jail, county camp, or other place of confinement of county or city prisons shall be construed or used as such for a period of six months, unless the State Board of Health shall have approved the same, and the violation of this section shall constitute a misdemeanor or punishable by fine or imprisonment, or both in the discretion of the court. (1917, c. 286, s. 11½; 1925, c. 163; C. S. 7713.)

§ 130-7. Officers of; salary of secretary; pay of members.—The state board of health shall have a president, a secretary who shall also be treasurer, and an executive committee, said executive committee to have such powers and duties as may be assigned it by the board of health. The president shall be elected from the members of the board and shall serve six years. The secretary-treasurer shall be a registered physician of the State and he shall be elected by the board, subject to the approval of the Governor, and he shall serve for four years and until his successor has been elected and qualified. The board shall have the right to remove the secretary-treasurer from office for cause. The executive committee shall be composed of the president of the board ex officio, and two other members of the board to be elected from those composing it. The executive office of the board shall be in the city of Raleigh, and the secretary shall reside there. The secretary shall be the executive officer of the board and shall, under its direction, devote his entire time to public-health work, and shall be known as the "state health officer." He shall receive for his services such yearly compensation as shall be fixed by the board, not to exceed eight thousand dollars and his actual traveling and h

tel expenses when engaged in the work of the board. The said officer shall not receive any other compensation for the performance of his official duties than the salary herein stated. The board may in its discretion elect as a special assistant to the state health officer, for the antituberculosis work, the secretary of the state association for the prevention of tuberculosis, at an annual salary not to exceed six hundred dollars. The members of the board shall receive no pay, except that each member shall receive four dollars and necessary traveling and hotel expenses when on actual duty in attending the meetings of the board or of the executive committee or in pursuing special investigations in the state; but when attending important meetings beyond the limits of the state, the number of delegates thereto being limited to one in addition to the secretary, only actual traveling and hotel expenses shall be allowed. These sums shall be paid by the treasurer on authenticated requisition, approved and signed by the president. (Rev., s. 4440; Code, ss. 2878, 2881; 1879, c. 117, ss. 5, 7; 1885, c. 237, s. 4; 1893, c. 214, s. 4; 1911, c. 62, s. 6; 1913, c. 181, ss. 1, 2; 1921, c. 130; 1927, c. 143; 1931, c. 177, s. 3; C. S. 7053.)

§ 130-8. Meetings to elect officers.—The meeting of the state board of health for the election of officers shall be on the second day of the annual meeting of the medical society of the state of North Carolina in the year one thousand nine hundred and one and every six years thereafter. (Rev., s. 4441; 1901, c. 245, s. 4; 1911, c. 62, s. 7; C. S. 7054.)

§ 130-9. Annual and special meetings. — Special meetings of the state board of health may be called by the president through the secretary. The regular annual meeting shall be held at the same time and place as the state medical society, at which time the secretary shall submit his annual report. The executive committee shall meet at such times as the president of the board may deem necessary, and he shall call such meetings through the secretary. (Rev., s. 4442; 1893, c. 214, s. 27; 1911, c. 62, s. 8; C. S. 7055.)

Art. 2. State Laboratory of Hygiene.

§ 130-10. Laboratory established under control of state board of health.—For the better protection of the public health and to prevent the spread of communicable diseases there shall be established a state laboratory of hygiene, the same to be under the control and management of the state board of health. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S. 7056.)

§ 130-11. To analyze potable waters. — It shall be the duty of the state board of health to have made in such laboratory monthly examinations of samples from all the public water supplies of the state; of all waters sold in bottle or other package, and of all spring waters that are maintained and treated as an adjunct to any hotel, park, or resort for the accommodation or entertainment of the public. In the case of springs in connection with hotels, parks, or resorts intermittently operated, examinations of the water shall be made monthly during the period only that they are open for the accommodation or entertainment of the public; but if upon the examination of the water of any such spring it shall be found to be infected or contaminated with intestinal bacilli or other impurities dangerous to health, examinations shall be made weekly until its purity and safety are shown.

The board shall also cause examinations to be made of well and spring waters, when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S. 7057.)

§ 130-12. To make examination for communicable diseases. — The board shall likewise have made in this laboratory examinations of sputum in cases of suspected tuberculosis, of throat exudates in cases of suspected diphtheria, of blood in cases of suspected typhoid and malarial fever, of fæces in cases of suspected hookworm diseases, and such other examinations as the public health may require. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S. 7058.)

§ 130-13. Support of laboratory; tax on waters. —For the support of the state laboratory of hygiene in addition to the annual appropriation there is hereby appropriated an annual tax of sixty-four dollars, payable quarterly, by every water company, municipal, corporate, and private, selling water to the people. The annual tax for waters from springs or wells sold in bottles or otherwise shall be as follows: For springs or wells, the gross annual sales from which for the previous calendar year are less than two thousand dollars and more than one thousand five hundred dollars, fifty dollars; less than one thousand five hundred and more than one thousand dollars, forty dollars; less than one thousand and more than five hundred dollars, thirty dollars; less than five hundred and more than two hundred and fifty dollars, twenty dollars; less than two hundred and fifty dollars, fifteen dollars; for any spring maintained and treated as an adjunct to any hotel, park, or resort for the accommodation and entertainment of the public, fifteen dollars, and an additional tax for water sold in bottle or other package from such spring in accordance with the above schedule. The tax shall be collected quarterly by the sheriff, as other taxes, and shall be paid by the sheriff directly to the treasurer of the state board of health.

It shall be the duty of the secretary of the state board of health when any person, firm or corporation is delinquent in the payment of taxes and penalties due the state board of health for a period of six months to notify the attorney general of such delinquency, stating the amount then due by said person, firm or corporation for taxes and penalties. It shall be the duty of the attorney general to immediately institute an action in the superior court of the county in which such delinquent person, firm or corporation for the collection of said delinquent taxes and penalties resides or is situated, and upon the final determination of said suit, the judgment rendered in favor of the state board of health shall be certified by the clerk of the superior court of the county to the county in which the delinquent tax-

payer lives and/or conducts his business, and such judgment shall be a lien as like judgments and be enforced under the general law of the State: Provided, however, that when any delinquent taxpayer has entered into an agreement with the state board of health to pay up his delinquent taxes and penalties in installments and is paying them according to said agreement, that the secretary of the state board of health may or may not in his discretion notify the attorney general to bring an action as provided in this section. (Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36; 1935, c. 340; C. S. 7059.)

§ 130-14. Duty of seller to make reports and transmit samples; penalties.—Every corporation, firm, or person selling water in the manner set forth in the preceding section shall file with the treasurer of the state board of health, annually in the month of January, an affidavit as to the gross amount received from sales of water for the previous calendar year, and upon this affidavit the tax for the current year shall be based. Failure to file such affidavit within the time prescribed shall subject the corporation, firm, or person to double tax for the current year. Failure to transmit sample within five days after receipt of sterilized bottle or container from the laboratory of hygiene shall be a misdemeanor, and upon conviction shall subject the delinquent to a fine of twenty-five dollars. Transportation charges, by mail, shall be paid by the sender; by express, by the laboratory. When deemed advisable, the laboratory of hygiene shall analyze samples purchased by it in the open market in lieu of those sent direct from the spring. (1911, c. 62, s. 36; C. S. 7060.)

§ 130-15. Nonresidents selling water.—Any person, firm, or corporation not a citizen of the state who shall sell or offer for sale any water in bottle or other package for consumption by the people of the state shall obtain a license from the treasurer of the state board of health and shall pay for said license the sum of sixty-four dollars per annum, or a less amount, equal to the tax paid by springs of the same class within the state, upon compliance with the conditions applying to them, payable in advance: Provided, that satisfactory evidence of purity furnished by the state hygienic laboratories of other states agreeing to reciprocate in the matter with this state shall be accepted in lieu of the license tax. (1911, c. 62, s. 36; C. S. 7061.)

§ 130-16. Publication of dangerous waters. — If water sold by any person, firm, corporation, or municipality shall be discovered by three successive analyses made by the state laboratory of hygiene to be dangerous to the public health, publication of that fact shall be made in the monthly bulletin of the state board of health. The result of said analyses shall be immediately forwarded by mail to the person, firm, corporation, or municipality selling the water so analyzed. When upon subsequent analysis the water shall be found to be no longer dangerous to health, a certificate thereof shall be furnished the person, firm, corporation, or municipality offering the water for sale, and publication of the fact shall be made in the monthly bulletin: Provided, that this shall not apply to therapeutic waters so medicated as to render them sterile, the question of their sterility to be decided by the director of the state laboratory of hygiene. (1911, c. 62, s. 36; C. S. 7062.)

§ 130-17. Printing and stationery for laboratory.—The printing and stationery necessary for the laboratory shall be furnished and paid for out of the appropriation to the state board of health. (1911, c. 62, s. 36; 1913, c. 181, s. 14; 1917, c. 220, s. 1; 1919, c. 145, s. 25; C. S. 7063.)

Art. 3. County Organization.

§ 130-18. County board of health; organization; terms of members; chairman.—The chairman of the board of county commissioners, the mayor of the county town, and in county towns where there is no mayor the clerk of the superior court, and the county superintendent of schools shall meet together on the first Monday in April, one thousand nine hundred and thirty-one, and thereafter on the first Monday of January in the odd years of the calendar, and elect from the regularly registered physicians and dentists of the county two physicians and one dentist, who, with themselves, shall constitute the county board of health. The chairman of the board of county commissioners shall be the chairman of the county board of health, and the presence of three members at any regular or called meeting shall constitute a quorum. The term of office of members of the county board of health shall terminate on the first Monday in January in the odd years of the calendar, and while on duty the county may at its discretion pay them four ($4.00) dollars per diem, unless such board members are full time employees of the county or municipality located therein, in which event they shall receive no per diem compensation as member of the county board of health. (Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1931, c. 149; 1941, c. 185; C. S. 7064.)

Local Modification. — Cumberland: 1935, c. 159; Caldwell: 1939, c. 366; Nash: 1941, c. 6, s. 1.

§ 130-19. Duties of county board of health; meetings; expenses. — The county board of health shall have the immediate care and responsibility of the health interests of their county. They shall meet annually in the county town, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interest of the county requires it. They shall make such rules and regulations, pay such fees and salary, and impose such penalties as in their judgment may be necessary to protect and advance the public health. All expenditures shall be approved by the board of county commissioners before being paid. (Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; C. S. 7065.)

§ 130-20. Violation of rules of county board a misdemeanor.—If any person shall violate the rules and regulations made by the county board of health he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3453; 1901, c. 245, s. 3; 1911, c. 62, s. 10; C. S. 7066.)

§ 130-21. To elect county physician or health

officer.—The board of health shall meet on the first Monday of July, one thousand nine hundred and thirteen, and thereafter on the second Monday of January in the odd years of the calendar, and elect either a county physician or a county health officer, whose tenure of service shall be terminable at the pleasure of the county board of health, and who shall serve thereafter until the second Monday in January of the odd years of the calendar. If the county board of health of any county shall fail to elect a county physician or county health officer within two calendar months of the time set in this section, the secretary of the state board of health shall appoint a registered physician, of good standing in the said county, to the office of county physician, who shall serve the remainder of the two years, and shall fix his compensation, to be paid by the said county, in proportion to the compensation paid by other counties for like service, having in view the amount of taxes collected by said county. (Rev., ss. 4444, 4446; 1897, c. 201, s. 1; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233; C. S. 7067.)

Local Modification.—Nash: 1941, c. 6, s. 2; c. 193.

§ 130-22. Duties of county health officer; nonperformance a misdemeanor. — The duties of the county health officer shall be to devote his entire time to the county public-health work, and he shall perform the duties of county physician, the duties of quarantine officer, and the following additional duties: he shall make a sanitary examination during the summer months of every public school building and grounds in the county, and no school committee or teacher shall make use of any school building or grounds until the county superintendent of health shall certify in writing that said building and grounds have been inspected and found to be in a satisfactory sanitary condition within four months of the date of the certificate. He shall examine every school child that has previously been examined by the teacher according to methods furnished said teacher by the county superintendent of schools, and reported to said county superintendent of schools as probably defective in the condition of its eyes, ears, nose, or throat, and he shall further endeavor to have examined the feces of every child whom he suspects of having hookworm disease. He shall notify on blank forms and in accordance with instructions furnished by the state department of public instruction, every parent or guardian of a child having any defect of the aforesaid organs, or hookworm disease, and he shall suggest to said parent or guardian the proper course of treatment and urge that such treatment be procured. He shall coöperate fully with the county board of education, the county superintendent of schools, and the teachers in the public schools, to the end that children may be better informed in regard to the importance of health and the methods of preventing disease. He shall, through the county press, public addresses, and in every available way, endeavor to educate the people of his county to set a higher value on health, and to adopt such public and private measures as will tend to a greater conservation of life. Any violation of this section shall constitute a misdemeanor, and shall subject the defendant to a fine of not less than ten dollars nor more than fifty dollars. (1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S. 7068.)

§ 130-23. Duties of county physician; may employ another physician. — The duties of the county physician shall be to make the medico-legal post-mortem examinations for the coroners' inquests, to make examination of lunatics for commitment, to render professional service to sick inmates of the convict camp, jail, and county home, upon request of the superintendent or keeper of these institutions, and to determine the nature of any particular disease, upon the request of the quarantine or deputy quarantine officer. The county physician shall have the right to employ any other regularly registered physician of his county, to perform any or all of the duties pertaining to the jail, county home, or convict camp, when in his judgment it is desirable to do so; but the terms under which such physician is employed by the county physician shall be approved by the board of county commissioners. (Rev., s. 4445; 1901, c. 245, s. 3; 1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S. 7069.)

§ 130-24. County quarantine officer.—The election, term of office, and compensation of county quarantine officer are regulated as provided in article 14 of this chapter, entitled Infectious Diseases Generally. The county physician, county health officer, municipal physician, or municipal health officer shall be eligible to the position of quarantine officer. The county board of health shall arrange with the quarantine officer to accept and discharge the duties assigned in this chapter to him and any other duties relating to the control of infectious diseases which may be assigned to him by the county board of health.

The quarantine officer is charged with the enforcement of article 14 of this chapter, entitled Infectious Diseases Generally, and nothing herein contained shall interfere with the performance of his duties under that article. He shall faithfully enforce all laws pertaining to inland quarantine and disinfection and the rules and regulations governing these matters as prescribed by the local, county, or municipal boards of health, but any child or other person may remain in the custody and care of parents or family.

The quarantine of ports shall not be interfered with, but the officers of the local state boards shall render all aid in their power to quarantine officers in the discharge of their duties.

The failure of the quarantine officer to perform the duties imposed in this section shall be a misdemeanor, and he shall be punished for each offense, except as otherwise specifically provided, by a fine of not less than ten dollars nor more than fifty dollars. (1911, c. 62, ss. 16, 20; C. S. 7070.)

§ 130-25. Abatement of nuisances. — Whenever and wherever a nuisance shall exist which in the opinion of the county physician or county health officer is dangerous to the public health, it shall be his duty to notify in writing the parties responsible for its continuance, of the char-

acter of the nuisance and the means of abating it. Upon this notification, the parties shall proceed to abate the nuisance: Provided, however, that if the party notified shall make oath or affirmation before a justice of the peace of his or her inability to carry out the directions of the county physician or county health officer, it shall be done at the expense of the town, city, or county in which the offender lives. In the latter case the limit of the expense chargeable to the city, town, or county shall not be more than one thousand dollars in any case: Provided further, that nothing in this section shall be construed to give the county physician or county health officer the power to destroy or injure property without a due process of law as now exists for the abatement of nuisances. (Rev., s. 4450; 1893, c. 214, s. 22; 1911, c. 62, s. 12; 1913, c. 181, s. 3; C. S. 7071.)

§ 130-26. Failure to abate nuisance after notice misdemeanor.—If any person, firm, corporation, or municipality responsible for the existence and continuance of a nuisance, after being duly notified in writing by the county physician or county health officer to abate said nuisance, shall fail to abate the same for twenty-four hours after such notice prescribed, he shall be guilty of a misdemeanor, and shall be fined two dollars a day as long as said nuisance remains. (Rev., s. 3446; 1893, c. 214, s. 22; 1911, c. 62, s. 13; 1913, c. 181, s. 3; C. S. 7072.)

§ 130-27. Certain nuisances in seaport towns.—All ponds of stagnant water, all cellars and foundations of houses, whose bottoms contain stagnant and putrid water; all dead and putrefied animals lying about docks, streets, lanes, alleys, vacant lots, or yards; all privies that have no wells sunk under them; all slaughter-houses, all docks whose bottoms are alternately wet and dry by the ebbing and flowing of the tide, all accumulations of vegetable and animal substances undergoing putrefactive fermentation, in any of the seaport towns of the state, are declared common nuisances, productive of offensive vapors and noxious exhalations, the causes of disease, and ought to be restrained, regulated, and removed. (Rev., s. 4462; Code, s. 2907; R. C., c. 94, s. 15; 1815, c. 893, s. 1; C. S. 7073.)

§ 130-28. Duty of owners of sunken lots in seaport towns; penalty.—Every person possessed of a lot in any seaport town, which from its low or sunken situation is liable to retain tide or rain water, or on which cellars or foundations for buildings may be dug (whether a tenement be erected over the same or not), shall during the months of June, July, August, September, and October, preserve and keep the said lot, cellars, and foundations dry and free from stagnant or putrid water and other filth; and any person offending herein shall forfeit and pay five dollars for the use of the town for every week he shall suffer such stagnant or putrid water or other filth to remain therein. And if the said owner shall, notwithstanding the above provisions, neglect to remove such stagnant or putrid water or other filth, the commissioner of the town may employ any person, upon such terms as to them may seem reasonable and just, to remove such filth or stagnant or putrid waters; and the expense shall be considered as a further fine for not complying with this section, and shall be collected accordingly, and shall also be a lien upon the lot upon which the same has been expended. (Rev., s. 4461; Code, s. 2908; R. C., c. 94, s. 16; 1815, c. 893, s. 2; C. S. 7074.)

§ 130-29. County commissioners may levy special tax to protect health.—The board of county commissioners of each county is hereby authorized at any time to levy a special tax, to be expended under the direction of a committee composed of the chairman of the board of county commissioners and the county health officer or county physician for the preservation of the public health. (Rev., s. 4455; C. S. 7075.)

Art. 4. Joint Health Departments.

§ 130-30. Appropriations for joint city and county health departments.—The governing authorities of all cities, towns and counties of North Carolina shall have the power and authority to appropriate annually and from time to time public moneys for the maintenance and operation of boards of health which have heretofore been created and are existing as joint city and county boards of health, and to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter such joint county and city health department, and to levy special taxes therefor, for which the special approval of the general assembly is hereby given. (1941, c. 296.)

Art. 5. Municipal Organization.

§ 130-31. Municipal physician or health officer; municipal regulations.—The authorities of any city or town, not already authorized in its charter, are hereby authorized to elect a municipal physician or municipal health officer when in their judgment municipal health would be improved thereby, and to make such regulations, pay such fees and salaries, and impose such penalties as in their judgment may be necessary for the protection and the advancement of the public health. (Rev., s. 4454; 1893, c. 214, s. 25; 1911, c. 62, s. 14; 1913, c. 181, s. 4; C. S. 7076.)

§ 130-32. Duties of the municipal physician or health officer; enforcement.—The duties of the municipal physician within the jurisdiction of the town or city for which he is elected shall be identical with those of the county physician for the county, with the exception of the duties of the county physician pertaining to the jail, convict camp, and county home. The authorities of any city or town shall have the power to assign the duties of quarantine officers to the municipal physician or health officer, and in such cases the municipal health officer shall faithfully perform the duties of the quarantine officers as prescribed in this chapter, and shall be subject to the penalties provided for the refusal or nonperformance of such duties. If the physician is employed to devote his entire time to the public health interests of his town or city he shall be known as the municipal health officer and shall discharge all duties pertaining to the public schools of his town or city which were as

signed in this chapter to the county health officer, and such other duties as may be assigned him by the municipal board of health.

Any one violating any of the provisions of this section shall be guilty of a misdemeanor, and subject to a fine of not less than ten dollars nor more than fifty dollars. (Rev., s. 4509; 1893, c. 214, s. 9; 1911, c. 62, s. 15; 1913, c. 181, s. 5; C. S. 7077.)

Art. 6. Sanitary Districts in General.

§ 130-33. Creation by state board of health.— For the purpose of preserving and promoting the public health and welfare the State Board of Health may, as hereinafter provided, create sanitary districts without regard for county, township or municipal lines: Provided, however, that no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of such municipal corporation. (1927, c. 100, s. 1.)

Local Modification.—Caswell: 1939, c. 3, ss. 1, 2; 1941, c. 89; Moore: 1939, c. 3, s. 3.

§ 130-34. Incorporation; petition from freeholders. — Such sanitary district shall be incorporated as hereinafter set out. Fifty one per cent or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which all or the major portion of the proposed district is located setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, if the same is approved by them, shall, through its chairman, transmit the petition to the State Board of Health requesting that the proposed sanitary district be created. Provided, however, that the board of county commissioners before passing upon said petition shall hold a public hearing upon the same and shall give prior notice of such hearing by advertising to be made by posting a notice at the court-house door of their county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then in either of such events a like publication of notice shall be made and given in each of said counties. (1927, c. 100, ss. 2, 3.)

§ 130-35. State board of health to hold public hearing.—The State Board of Health shall name a time and place within the proposed district at which the State Board of Health, through a representative, shall hold a public hearing concerning the creation of the proposed sanitary district. The State Board of Health shall cause at least twenty days' notice to be given of the time and place of such hearing by publishing this information at least five times in a newspaper or newspapers published in or near the proposed district and having a general circulation therein. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued at a time and place named by the representative of the State Board of Health. (1927, c. 100, s. 4.)

§ 130-36. Declaration that district exists; status of industrial villages within boundaries of district. —If, after such hearing the State Board of Health shall deem it advisable to comply with the request of said petition and that a district for the purpose or purposes therein stated should be created and established, the State Board of Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a sanitary district; Provided, however, that any industrial plant and its contiguous village shall be included within or excluded from the area embraced within such sanitary district as expressed in the application of the person, persons or corporation owning or controlling such industrial plant and its contiguous village, said application to be filed with the State Board of Health on or before the date of the public hearing as hereinbefore provided. Each district when created shall be identified by a name or number assigned by the State Board of Health. (1927, c. 100, s. 5.)

§ 130-37. Election and terms of office of sanitary district boards.—The State Board of Health shall cause copies of the resolution adopted creating the sanitary district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, freeholders within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners candidates for said district board shall be elected in the primary and elected at said general election as are county officers except that the nomination and election shall be confined to said district. The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in December following their election. The term of office shall be two years and until their successors qualify. (1927, c. 100, s. 6.)

§ 130-38. Vacancy appointments to district boards.—Hereafter any vacancy that may exist in any sanitary district board of any sanitary district of the State for any cause shall be filled by the county commissioners of the county in which said sanitary district may be situate. (1935, c. 357, s. 2.)

§ 130-39. Corporate powers. — When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters re-

lating to such sanitary district. In addition, such board shall have the following powers:

1. Under the supervision of the state board of health to acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant or such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district.

2. To issue certificates of indebtedness against the district in the manner hereinafter provided.

3. To issue bonds of the district in the manner hereinafter provided.

4. To cause taxes to be levied and collected upon all the taxable property within the district sufficient to meet the obligations of the district evidenced by bonds, certificates of indebtedness and revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings.

5. To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within and/or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.

6. To employ such engineers, counsel and other such persons as may be necessary to carry into effect any projects undertaken and to fix compensation thereof.

7. To negotiate and enter into agreement with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this article.

8. To formulate rules and regulations necessary for proper functioning of the works of the district.

9. (a) To contract with any person, firm, corporation, city, town, village or political subdivision of the state both within and/or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the state in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district, when in the opinion of the sanitary district board it will be for the best interest of the district and subject to the approval of the state board of health.

(b) To contract with any person, firm, corporation, city, town, village or political subdivision of the state within and/or without the corporate limits of the district to supply raw and/or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the state where the service is available: Provided, however, that for service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.

10. After the final approval and adoption of the plan as set forth in § 130-45, and the election as provided in § 130-46, and subject to the approval of the state board of health, to adopt a plan different from that adopted by said board and heretofore or hereafter voted upon by the qualified voters of the district, where the newly-adopted plan would not in the opinion of said board and the state board of health constitute a material deviation from the original plan, which new plan may provide among other things for the construction of a water line for the supply of any person, firm, corporation, city, town, village or political subdivision of the state either within and/or without the corporate limits of the district instead of a sewage disposal line and other improvements, where the change in said plans would permit the disposal of sewage at a point nearer the district either within and/or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the state to whom the water is to be supplied and would effect a saving to the district, and to reappropriate for carrying out the new plan a sufficient amount of bond money theretofore appropriated by the vote of the qualified voters of the district to pay the costs of construction of the plan thereafter adopted.

11. Subject to the approval of the state board of health, to engage in and undertake the prevention and eradication of malaria within the district by the eradication of the mosquito and to that end the sanitary district board of said sanitary district is hereby empowered to employ sufficient employees suitable to the accomplishment of this work.

12. To collect and dispose of garbage, waste, and other refuse by contract or otherwise.

13. To establish a fire department for the protection of property within the district, or to contract with cities, counties or other governmental units to furnish fire fighting apparatus and personnel for use in the district.

14. The district, and in the event the district enters into a contract with any other governmental unit for the collection and disposal of garbage, waste or other refuse or for fire protection, as aforesaid, then, in that event, the district and such other governmental unit shall each have and enjoy all privileges and immunities that are now granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse, and furnishing fire protection.

15. To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection in said district, all as provided in this article.

The provisions of subsections twelve, thirteen, fourteen and fifteen shall apply only to sanitary districts which adjoin and are contiguous to cities having a population of fifty thousand or more. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116.)

§ 130-40. Organization of board. — Upon election a sanitary district board shall meet and elect one of its members as chairman, and an-

other member as secretary. Each member of the board may receive a per diem compensation of five dollars when actually engaged in the business of the district payable from the funds of the district. The board may employ a clerk, stenographer, or such other assistance as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8.)

§ 130-41. Power to condemn property.—When, in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and sale, or the amount of damage to be awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of chapter 40 entitled "eminent domain" shall apply. Section 40-10 shall not, however, be applicable to such condemnation proceedings. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the sanitary board to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action. (1927, c. 100, s. 9; 1933, c. 8, s. 3.)

§ 130-42. Construction of systems by corporations or individuals.—Whenever a corporation or the residents of any locality within the sanitary district shall desire a water supply, sewerage system or any part thereof and the sanitary district board shall deem it inadvisable or impracticable at that time, due to remoteness from its general system or other cause, for the sanitary district to build such system, such corporation or residents may nevertheless build and operate such system at its or their own expense but it shall be constructed and operated under plans, specifications and regulations approved by the district board. (1927, c. 100, s. 10.)

§ 130-43. Reports.—Upon the election of any sanitary district board it shall become the duty of the board to employ competent engineers to make a report or reports on the problems of the sanitary district, which report or reports shall be prepared and filed with the sanitary district board. Such report or reports shall embrace the following:

1. Suitable comprehensive maps showing the boundaries of the sanitary district and in a general way the location of the various parts of the work that is proposed to be done and such information as may be useful for a thorough understanding of the proposed undertaking.
2. A general description of existing facilities for carrying out the objects of the district.
3. A general description of the various plans which might be adopted for accomplishment of the objects of the district.
4. General plans and specifications for such work.
5. General descriptions of property it is proposed to be acquired or which may be damaged in carrying out the work.
6. Comparative detail estimates of cost for the various construction plans.
7. Recommendations. (1927, c. 100, s. 11.)

§ 130-44. Consideration of reports by sanitary district board.—The report or reports filed by the engineers shall be given careful consideration by the sanitary district board for adoption of a plan which they approve. If deemed advisable by the sanitary district board they may hold a public hearing, giving due and ample notice of the time and place thereof, for the purpose of considering objections to carrying out of the work according to the plan adopted by them. (1927, c. 100, s. 12.)

§ 130-45. Resolution after adoption of plan.—After final approval of the plan adopted the sanitary district board shall adopt a resolution setting forth:

1. A general outline of the work that is proposed to be done.
2. A reference to the engineer's report for details as to the plan adopted.
3. The amount of bonds that the board proposes to issue to cover the cost of doing the proposed work.
4. The form and term of the proposed bonds and the interest rate thereon.

The resolution shall, immediately after adoption, be published at least three times in one or more newspapers having a general circulation within the district. (1927, c. 100, s. 13.)

§ 130-46. Call for election. — Following the adoption of the resolution by the sanitary district board the said board shall call upon the board or boards of county commissioners in the county or counties in which the district or any portion thereof is located to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds to provide funds for doing the work as set forth in the resolution adopted by the sanitary board. If, at such election the majority of the registered voters vote in favor of incurring the indebtedness as proposed, the district board shall issue and sell bonds for the amount set forth in the resolution. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of votes, the sanitary district board may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes or for any other objects and purposes. The expenses of holding bond election shall be paid from the funds of the sanitary district.

The board of commissioners of the county in which said sanitary district is located, if wholly located in a single county, may in their discretion at any special election held under the provisions of this article make the whole sanitary district a voting precinct, or may create therein one or more voting precincts as to them seems best

to suit the convenience of voters, the said precinct not to be the general election precinct unless the boundaries of the sanitary district are co-terminal with one or more whole general election precincts. If said sanitary district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the sanitary district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the sanitary district, the cost of the same to be paid from the funds of the sanitary district. The notice of the election shall be given by publication at least three times in some newspaper published or circulated in the district. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the sanitary district, a new registration of the qualified voters within the same shall be ordered and notice of such new registration shall be deemed to be sufficiently given if given by publication once in some newspaper published or circulated in said district at least thirty days before the close of the registration books. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections as provided in § 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places on which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

The ballots to be used and the manner of voting shall conform to the provisions of Chapter 164, Public Laws of 1929. After the election and after the vote has been counted, canvassed and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the Clerk of the Superior Court as polling books for the particular sanitary district involved. At any subsequent election, whether upon the recall of an officer as provided in § 130-53 or for an additional bond issue in the particular district, a new registration may or may not be ordered as may be determined by the board of county commissioners interested in said election. (1927, c. 100, s. 14.)

§ 130-47. Bonds. — The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice prescribe by resolution the form of bonds and the interest coupons attached thereto, the denominations of the bonds and the date and place at which they shall become payable. These bonds shall not be sold at less than par nor bear an interest rate in excess of six per cent. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be affixed thereto. In the event coupon bonds are issued, the coupons thereof may be signed by the secretary alone, or he may have lithographed, engraved, or printed thereon a facsimile of his signature. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. Said bank, however, shall be required to execute the proper bonds, giving as surety thereto some surety company authorized to do business in North Carolina, conditioned to account for and pay out upon said vouchers all funds so deposited in said bank. The penalty of said bond shall not be less than the amount of money so deposited in said bank. (1927, c. 100, s. 15.)

§ 130-48. Additional bonds. — Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to have an election held for the issuance of such additional bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds from the sale of the bonds shall be in excess of the amount necessary to complete the costs of the completed works of the district and pay the interest and principal due on said bonds before the placing into service of the works of the district and the collection of taxes levied or to be levied for that purpose, then the sanitary district board shall be required to purchase with said surplus, at par and accrued interest, any part of the outstanding issue of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4.)

§ 130-49. Valuation of property; determining annual revenue needed. — Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in § 130-52 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per $100 necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per $100 so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county

taxes are collected and every ninety days the amount of tax so collected shall be remitted to the sanitary district board and deposited by said board in a bank in the State of North Carolina separately from other funds of the district. Said bank, however, before said funds are deposited in it is to execute a proper surety bond as described in § 130-47 for the proper care and disbursement of and accounting for said taxes.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district board, all the taxable property located within the district, and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in § 130-52 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred ($100.00) dollars necessary to raise said amount. The said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred ($100.00) dollars necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political sub-divisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect its taxes in the manner herein provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4.)

§ 130-50. Certificates of indebtedness in anticipation of taxes; loans under Local Government Act.—A sanitary district board may issue certificates of indebtedness in anticipation of the levying and collection of taxes to cover any or all expenses incurred by the board incident to the preparation of the engineers' report, holding of bond election or any other expenses incurred by the board. The amount of any certificates of indebtedness issued by the sanitary district board shall be included in the bond issue as hereinbefore provided. In the event that the election held within the district for the purpose of issuing bonds to provide funds for carrying out the objects of the district results in the defeat of said bonds the sanitary district board shall cause to be levied and collected a tax sufficient to pay such certificates of indebtedness or any other indebtedness incurred by the sanitary district board. Such tax shall be levied and collected in the same manner as provided in § 130-49.

A sanitary district board may borrow money under the provisions of the Local Government Act, for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loan shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed fifty per cent of the amount of uncollected taxes and other revenue for the fiscal year in which the loan is made, as estimated by the chief financial officer and certified in writing by him to the governing body. (1927, c. 100, s. 18; 1935, c. 250.)

§ 130-51. Engineers to provide plans and supervise work; bids.—The sanitary district board shall retain competent engineers to provide detail plans and specifications and to supervise the doing of the work undertaken by the district. As determined by the sanitary district board, such work or any portion thereof, may be done by the sanitary district board purchasing the material and letting a contract for the doing of the work or by letting a contract for furnishing all the material and the doing of the work.

Any contract shall be let to the lowest responsible bidder submitting a sealed bid in response to a notice calling for such bid and published at least five times over a period of at least fifteen days in a newspaper or newspapers having a general circulation within the county or counties in which the district is located.

Any material to be purchased by the sanitary district board, the cost of which is in excess of one thousand dollars, shall be purchased from the lowest responsible bidder in the same manner as above provided.

All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19.)

§ 130-52. Service charges and rates.—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not be unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds, to the retirement of bonds or both. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5.)

§ 130-53. Removal of member of board.—A

petition carrying the signatures of twenty-five per cent or more of the legal voters within a sanitary district requesting the removal from office of one or more members of a sanitary district board for malfeasance or misfeasance in office may be filed with the board of county commissioners of the county in which all or the greater portion of a sanitary district is located. Upon receipt of such petition the board of county commissioners, or in the event that the district is located in more than one county, a joint meeting of the boards of county commissioners shall be called, shall adopt a resolution calling an election, naming election officials, naming date, and giving due notice thereof for the purpose of removing from office the member or members of the sanitary district board named in the petition. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in such recall election, a majority of the legal votes within the sanitary district shall be cast for the removal of any member or members of the sanitary district board subject to recall, such member or members shall cease to be a member or members of the sanitary district board, and the vacancy or vacancies so caused shall be immediately filled as hereinbefore provided. The expense of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21.)

§ 130-54. Rights of way granted.—A right-of-way in, along, or across any county or State highway, street or property within a sanitary district is hereby granted to a sanitary district in case such right-of-way is found by the sanitary district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway shall be done in accordance with the rules and regulations of the State Highway and Public Works Commission. (1927, c. 100, s. 22; 1933, c. 172, s. 17.)

§ 130-55. Returns of elections.—In all elections provided for in this article the returns of such elections shall be made to the board or boards of county commissioners in which the sanitary district lies, and said board or boards of county commissioners shall canvass and declare the result of said election, and this determination of said board or boards of county commissioners upon the result of said election shall be by them certified to the sanitary district board for its action thereupon. (1927, c. 100, s. 23.)

§ 130-56. Procedure for extension of district.—The boundaries of any sanitary district may, with the approval of the sanitary district board, be extended under the same procedure as herein provided for the creation of a sanitary district: Provided, however, that twenty-five per cent or more of the resident freeholders within the territory proposed to be annexed institute by petition the proceedings for annexation, and that ten per cent of the freeholders resident in the district to be annexed are authorized to petition for an election upon the subject of annexation, and if such petition is filed with the sanitary district board, such election shall be held within the territory to be annexed under the rules and regulations hereinbefore provided. (1927, c. 100, s. 24.)

Local Modification.—Caswell, Moore: 1939, c. 3.

§ 130-57. Validation of creation of sanitary districts and of bond elections.—The action of the various boards of commissioners of the various counties of the State and the action of the state board of health heretofore had and taken in the formation and creation of sanitary districts in the State wheresoever situate and the formation and creation, or the attempted formation and creation, of all sanitary districts in the State by the acts of the various county commissioners of the State and the state board of health or other officers of the State, and all elections held in any sanitary district of the State or in any district purporting to be a legal sanitary district of the State by virtue of the purported acts and authority of any board of county commissioners and the state board of health, for the purpose of authorizing the issue and sale of bonds of the said sanitary districts in order to secure funds for the construction and maintenance of water and/or sewer systems and all of such bonds themselves, and all the acts and procedure in any wise had and taken by any and all officials and persons in relation to the formation and creation of such sanitary districts and the issue and sale of such bonds, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are declared to be legal and binding obligations of such sanitary districts, respectively, when issued and sold as such. (1935, c. 357, s. 1.)

Art. 7. Special-Tax Sanitary Districts.

§ 130-58. Question of special sanitary tax submitted; district formed.—Special-tax sanitary districts may be formed by the county board of health in any county, without regard to township lines, under the following conditions: Upon a petition of a majority of the freeholders within the proposed special sanitary district, in whose names real estate in such district is listed in the tax lists of the current fiscal year, endorsed by the county board of health, the board of county commissioners, after thirty days notice at the courthouse door and three public places in the proposed district, shall hold an election to ascertain the will of the people within the proposed special sanitary district, whether there shall be levied in such district a special annual tax of not more than the amount specified in the petition on the one hundred dollars valuation of property and on the poll to conduct the health work of the district as is hereinafter provided, in case such special tax is voted. The board of county commissioners shall appoint a registrar and two pollholders, and shall designate a polling place and order a new registration for such district, and the election shall be held in the district under the law governing general elections, as near as may be, and the registrar and pollholders shall canvass the vote cast and declare the result, and shall duly certify the returns to the board of county commissioners, and the same shall be recorded in the records of said board of commissioners. The expense of holding said election shall be paid out of the general funds of the county. The ballots to be used and the

method of voting shall conform to Chapter 164, Public Laws of 1929. In case a majority of the qualified voters at the election is in favor of the tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes. All moneys levied under the provisions of this section shall, upon collection, be placed to the credit of the health committee or board in such district, which committee shall be appointed by the county board of health, and such health committee shall have the authority to carry on the health work in the district as hereinafter provided. (1913, c. 154, s. 1; C. S. 7078.)

Local Modification.—Moore: 1933, c. 453.

§ 130-59. Election as to enlarging district.—Upon the written request of a majority of the health committee of any special-tax district, the county board of health may enlarge the boundaries of any special-tax district established under this article, so as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this article for elections in special-tax districts; and in case a majority of the qualified voters in such new territory shall vote at such election in favor of a special tax of the same rate as that voted and levied in the special-tax district to which said territory is contiguous, then the new territory shall be added to and become a part of the said special-tax district; and in case a majority of the qualified voters shall vote against said tax, the district shall not be enlarged. (1913, c. 154, s. 1; C. S. 7079.)

§ 130-60. Election to abolish or to restore district or increase tax.—Upon petition of two-thirds of the qualified voters residing in any special-tax sanitary district established under this article, endorsed and approved by the county board of health, the board of county commissioners shall order another election in said district, to be held under the provisions prescribed in this article for holding other elections. If at such election the majority of the qualified voters in said district shall vote "Against Special Tax," said tax shall be deemed revoked and shall not be levied, and said district shall be discontinued. No election for revoking a special tax in any special-tax district shall be ordered and held in such district within less than two years from the date of the election at which the tax was voted and the district established, nor at any time within less than two years after the date of the last election on said question in said district; and no petition revoking such tax shall be approved by the county board of health oftener than once in two years. These provisions for ordering a new election to revoke a special tax in any special-tax district shall not apply to elections in such districts for increasing or restoring the special-tax levy in such district, which elections may be ordered and held at any time in accordance with the provisions of this article for establishing new special-tax districts. (1913, c. 154, s. 1; C. S. 7080.)

§ 130-61. Sanitary committee; appointment; qualifications; pay.— The county board of health of each county shall immediately after the formation of a special-tax sanitary district, and on the first Monday in July of the odd years of the calendar thereafter, appoint in each sanitary district three intelligent men of good business qualifications, who are known to be in favor of public education, who shall serve for two years from the date of their appointment as health or sanitary committeemen in their respective district and until their successors are elected and qualified. If a vacancy shall occur at any time, by death, resignation, or otherwise, it shall be the duty of the county board of commissioners to fill such vacancy. Such board shall have the power to pay out of the special-tax fund to each member of the committee thus appointed one dollar per day for not more than six days per annum. (1913, c. 154, s. 2; 1935, c. 357, s. 2; C. S. 7081.)

§ 130-62. Election of chairman and secretary; records kept.—The sanitary committee, as soon as practicable after their election and qualification, not to exceed twenty days, shall meet and elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county health officer and to the state health officer. (1913, c. 154, s. 3; C. S. 7082.)

§ 130-63. Powers of committee; may make rules.—The authority and duties of the special-tax sanitary committee shall be the same as those given by the public laws of the state to the county board of health in so far as they are applicable to the special-tax sanitary district. The committee shall have the immediate care and responsibility of the health interest of this district. They shall make such rules and regulations, pay such fees and salary, purchase supplies, and impose such penalties as in their judgment may be necessary to protect and advance the public health, but no rules or regulations they may promulgate shall conflict with the rules and regulations of the boards of health of the state and county of which the district is a part. (1913, c. 154, ss. 4, 5; C. S. 7083.)

§ 130-64. Employment of health officer; disbursement of funds.— The committee shall have authority to employ a registered physician of the state as health officer, and if he should persistently neglect the performance of his full duties for a period of ninety days he may be dismissed by the committee and his successor employed to fill the unexpired term. If the committee is satisfied that the provisions of this article have been complied with, they shall give an order approved by the chairman and secretary of the committee on the treasurer of the county, payable to the health officer for the full monthly amounts due for services in accordance with the contract, but monthly statements of the work done by the health officer shall be made to the committee; and he shall supply reports promptly of such information as he can on blanks supplied by and returnable to the state board of health. Orders for all funds to the credit of the special-tax sanitary district before it shall be a valid voucher on the county treasurer must be first approved by the chairman and secretary of the committee for the sanitary district. (1913, c. 154, s. 4; C. S. 7084.)

§ 130-65. Powers and duties of health officer.— The duties and powers of the health officer elected

for the special-tax sanitary district shall be the same as those prescribed by the public laws of the state for the county health officer, in so far as they are applicable to the sanitary district, and such additional duties as may be imposed on him by the special-tax sanitary committee. (1913, c. 154, s. 6; C. S. 7085.)

Art. 8. Local and District Health Departments.

§ 130-66. Local and district health departments authorized.—The state board of health is hereby authorized to use any available funds at its command, not otherwise appropriated, to establish full time local and district health department service for any town, city and county, or group of such units in the state where the local governing powers desire the formation of such a department and are willing to assist financially in the enterprise, to an amount at least equal to the amount of state financial assistance. (1935, c. 142, s. 1.)

§ 130-67. Authority of district health officer; election of county physician unaffected. — Where there is a district health department, the district health officer shall have the authority now delegated to town, city and county health officers and town, city and county quarantine officers in each of the several counties or units comprising the district, by §§ 130-22 and 130-24: Provided, that nothing in this article shall affect in any way the election of a county physician in counties comprising a district health department. (1935, c. 142, s. 2.)

§ 130-68. Article not obligatory upon counties. —Nothing in this article shall be so construed as to require any county to enter into this agreement unless it so desires. (1935, c. 142, s. 3.)

Local Modification.—Martin: 1935, c. 142, s. 4; 1937, c. 17; Rockingham: 1935, c. 142, s. 4.

SUBCHAPTER II. VITAL STATISTICS.

Art. 9. Registration of Births and Deaths.

§ 130-69. State board of health to enforce regulations.—The state board of health shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms, and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration district as constituted in the succeeding section, and in the central bureau of vital statistics at the capital of the state. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time recommend to the general assembly any additional legislation that may be necessary for this purpose. (1913, c. 109, s. 1; C. S. 7086.)

§ 130-70. State registrar.—The secretary of the state board of health shall be state registrar of vital statistics, and shall have general supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board. Adequate fireproof space in one of the state buildings for filing cases for the death and birth certificates made and returned under this article shall be provided by the board on public buildings and grounds. (1913, c. 109, s. 2; 1941, c. 224; C. S. 7087.)

§ 130-71. Registration districts. — For the purposes of this article the state shall be divided into registration districts as follows: Each city, each incorporated town, and each township shall constitute a local registration district. (1913, c. 109, s. 3; C. S. 7088.)

§ 130-72. Control of board over districts.—The state board of health shall have authority to abolish or consolidate existing registration districts, and/or create new districts when, in the judgment of the board, economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3.)

§ 130-73. Appointment of local registrar. — The chairman of every board of county commissioners in the state shall appoint a local registrar of vital statistics for each township in his county, and the mayor of every incorporated town or city in the state shall appoint a local registrar of vital statistics for his town or city, and the chairman of the boards of county commissioners and the mayors of the cities or towns shall notify the state registrar, in writing, of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year in which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. In cities where health officers or other officials are, in the judgment of the state board of health, conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officials may be appointed as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all the provisions of this article. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by a local registrar appointed by the same official who appointed the local registrar whose retirement creates the vacancy. Any chairman of a board of county commissioners or mayor of a city or town who appoints a local registrar to fill a vacancy in the office of local registrar shall notify the state registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the chairman of the board of county commissioners for the township local registration office, and by the mayor of the city or town for the town or city registration office. Each local registrar shall be a bona fide resident of the township, city, or precinct for which he is appointed, and removal from the township, city, or precinct shall terminate the office. (1913, c. 109, s. 4; 1915, c. 20; C. S. 7089.)

§ 130-74. County health officer may act as registrar. — The state board of health shall have authority and power to designate and appoint the whole-time health officer of the county as registrar for that county, or fractional part or part-

thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by the county health officer under such appointment, shall be used by the local board of health in its discretion for health service. (1933, c. 9, s. 3.)

§ 130-75. Removal of local registrar.—Any local registrar who, in the judgment of the secretary of the state board of health, fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of all births and deaths, as required thereby, shall be forthwith removed from his office by the secretary of the state board of health, and such other penalties may be imposed as are provided under § 130-105. (1913, c. 109, s. 4; C. S. 7090.)

§ 130-76. Appointment of deputy and sub-registrars.—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it may appear necessary for the convenience of the people in any rural district, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the state registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S. 7091.)

§ 130-77. Permit for burial or other disposition of body.—The body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: Provided, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit. He shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this article other than the compensation provided in § 130-102. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S. 7092.)

§ 130-78. Stillborn children to be registered.—A stillborn child shall be registered as a birth and also as a death, but only one certificate shall be required of such birth and death, which shall be filed with the local registrar, the certificate to contain, in place of the name of the child, the word "stillbirth"; but no certificate of birth nor certificate of death shall be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in this article. (1913, c. 109, s. 6; 1933, c. 9, s. 2; C. S. 7093.)

§ 130-79. Contents of death certificates. — The certificate of death shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

1. Place of death, including state, county, township, or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.
2. Full name of decedent. If an unnamed child, the surname preceded by "Unnamed."
3. Sex.
4. Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.
5. Conjugal condition—as single, married, widowed, or divorced.
6. Educational attainments—as illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent. If the deceased is less than fifteen years of age the educational attainments of the mother, if living, or of the father, if living, or of the guardian, in the order named, shall be given.
7. Date of birth, including the year, month, and day.
8. Age, in years, months, and days. If less than one day, the hours or minutes. If exact information is unobtainable, give approximate age.

9. Occupation. The occupation to be reported of any person who had any remunerative employment, stating (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

10. Birthplace; at least state or foreign country, if known.

11. Name of father.

12. Birthplace of father; at least state or foreign country, if known.

13. Maiden name of mother.

14. Birthplace of mother; at least state or foreign country, if known.

15. Signature and address of informant.

16. Official signature of registrar, with the date when certificate was filed, and registered number.

17. Date of death—year, month, and day.

18. Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory secondary cause or complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature, date of signature, and address of physician or official making the medical certificate.

19. Length of residence (for inmates of hospitals and other institutions; transients or recent residents) at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

20. Place of burial or removal; date of burial.

21. Signature and address of undertaker or person acting as such.

The personal and statistical particulars (items one to thirteen) shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause), and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the state registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required under subsection 18 above, if he is able to do so, and may state where, in his opinion, the disease was contracted. (1913, c. 109, s. 7; C. S. 7094.)

§ 130-80. Death without medical attendance; duty of undertaker and officials.—In case of death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification. When the local health officer is not a qualified physician, or when the death takes place in a township registration district, or where there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts. If the registrar has reason to believe that the death had been due to unlawful act or neglect, he shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial permit, stating therein the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the state registrar in order properly to classify the death. (1913, c. 109, s. 8; C. S. 7095.)

§ 130-81. Undertaker to file death certificate and obtain permit.—The undertaker or person acting as undertaker shall file the certificate of death with the local registrar of the district in which the death occurred, and obtain a burial or removal permit, prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in §§ 130-79 and 130-80. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal, or other disposition of the body. He shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company, this permit to accompany the corpse to its destination, where, if within the state, it shall be delivered to the person in charge of the place of burial. (1913, c. 109, s. 9; C. S. 7096.)

§ 130-82. Sales of caskets regulated. — Every person, firm, or corporation selling a casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of

deceased, date of death, and place of death of deceased, which record shall be open to inspection of the state registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling caskets shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the state registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the state board of health concerning the burial or other disposition of a dead body. (1913, c. 109, s. 9; C. S. 7097.)

§ 130-83. Permit for burial in state.—If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. (1913, c. 109, s. 10; C. S. 7098.)

§ 130-84. Interment without permit forbidden.—No person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal, or transit permit, as herein provided. Such person shall endorse upon the permit the date of interment, over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the undertaker, or person acting as such, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S. 7099.)

§ 130-85. Registration of births.—The birth of every child born in this state shall be registered as hereinafter provided. (1913, c. 109, s. 12; C. S. 7100.)

§ 130-86. Birth certificate to be filed within five days.—Within five days after the date of each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the state board of health with a view of procuring a full and accurate report with respect to each item of information enumerated in § 130-89. Where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such person to file the required certificate. Where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of the birth, to report the fact to the local registrar. In such case and in case the physician, midwife, or person acting as midwife, in attendance is unable, by diligent inquiry, to obtain any of the items specified in the following section, it is the duty of the local registrar to secure from the person reporting the birth, or from any other person who knows the facts, information to enable him to prepare the required certificate of birth, and it is the duty of the person questioned to answer correctly to the best of his knowledge all such questions, and to verify his statement by his signature, when requested to do so by the local registrar. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S. 7101.)

§ 130-87. Registration of birth certificate more than five days and less than four years after birth.—Any birth may be registered more than five days and less than four years after birth in the same manner as births are registered under this article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required under § 130-86. (1941, c. 126.)

§ 130-88. Registration of birth certificate four years or more after birth.—The state board of health is authorized to promulgate rules and regulations under which any birth which has not been registered with the bureau of vital statistics within four years after birth, as provided in § 130-86 or 130-87, may be registered with the register of deeds of the county in which the birth occurred: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required under § 130-86. Each such birth must be registered in duplicate on forms approved by the state board of health and furnished by the state registrar. The register of deeds shall forward the original and duplicate certificate to the bureau of vital statistics for final approval. If the certificate complies with the rules and regulations of the state board of health and has not been previously registered, the state registrar shall file the original and return the duplicate to the register of deeds for recording.

Certificates registered with the register of deeds under this section shall contain the date of the delayed filing and be distinctly marked "Delayed "; and those altered after being filed shall contain the date of alteration and be distinctly marked "Altered".

All copies of birth certificates registered under the provisions of this section, properly certified by the state registrar, shall have the same evidentiary value as those registered within five days after birth.

The register of deeds shall receive a fee of fifty cents for each registration, to be paid by the registrant. (1941, c. 126.)

§ 130-89. Contents of birth certificate. — The certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

1. Place of birth, including state, county, township or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

2. Full name of child. If the child dies without a name before the certificate is filed, enter the surname preceded by "Unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

3. Sex of child.

4. Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

5. For plural births, number of each child in order of birth.

6. Legitimate or illegitimate: Provided, that in illegitimate births the word "illegitimate" shall be written across the face of the certificate and all items on the certificate which would in any way reveal the identity of the father, mother, or illegitimate child itself shall be omitted.

7. Date of birth, including the year, month, and day.

8. Full name of father: Provided, that if the child is illegitimate, the name of the putative father shall not be entered without his consent, but the other particulars relating to the putative father (items nine to thirteen) may be entered if known, otherwise as "Unknown."

9. Residence of father.

10. Color or race of father.

11. Educational attainments—illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent.

12. Age of father at last birthday, in years.

13. Birthplace of father; at least state or foreign country, if known.

14. Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

15. Maiden name of mother.

16. Residence of mother.

17. Color or race of mother.

18. Educational attainments—illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent.

19. Age of mother at last birthday, in years.

20. Birthplace of mother; at least state or foreign country, if known.

21. Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

22. Number of children born to this mother, including present birth.

23. Number of children of this mother living.

24. The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in item seven), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife, with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, each in the order named, whose duty it shall be to notify the local registrar of such birth, as required by § 130-86.

25. Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided. (1913, c. 109, s. 14; C. S. 7102.)

§ 130-90. Validation of irregular registration of birth certificates.—The registration and filing with the bureau of vital statistics of the birth certificate of any person whose birth has not been registered within five days of birth under § 130-86 is hereby validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the state registrar, shall have the same evidentiary value as if the birth had been registered within five days of such birth as provided by § 130-86. (1941, c. 126.)

§ 130-91. Blank furnished for report of name.—When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. (1913, c. 109, s. 15; C. S. 7103.)

§ 130-92. Institutions to keep records of inmates.—All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this article, which are required in the forms of the certificates provided for by this article, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their

admittance. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. (1913, c. 109, s. 16; C. S. 7104.)

§ 130-93. Certificate of identification in lieu of birth certificate where parentage cannot be established.—A certificate of identification for a foundling child whose parentage cannot be established shall be filed with the local registrar of vital statistics of the district in which the child was found by the juvenile court which determines that the child is a foundling. This certificate of identification shall contain such information and be in such form as the state board of health may prescribe and shall serve in lieu of a birth certificate. (1941, c. 297, s. 3.)

§ 130-94. State registrar to supply blanks; to perfect and preserve birth certificates.—The state registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the state registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state registrar, in person, by mail, or through the local registrar. No certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed, and witnessed: Provided, that a new certificate of birth shall be made by the state registrar whenever:

(a) Proof is submitted to the state registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;

(b) When notification is received by the state registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;

(c) Satisfactory proof is submitted to the state registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

When a new certificate of birth is made the state registrar shall substitute such new certificate for the certificate of birth then on file, if any, and shall notify the local registrar, or the registrar of deeds, providing the copy has been filed with him, that a new certificate of birth has been made and such facts shall be noted on the copy of the certificate of birth on file, if any. The state registrar shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth.

The state registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered, such index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. (1913, c. 109, s. 17; 1941, c. 297, s. 2; C. S. 7105.)

§ 130-95. To inform registrars as to dangerous diseases.—He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. (1913, c. 109, s. 17; C. S. 7106.)

§ 130-96. Birth certificate as evidence. — At the expiration of five years after the ratification of this article, certified copies of birth registration certificates shall be accepted by public school authorities in this state as prima facie evidence of age of children registering for school attendance, and no other proof shall be required. At the expiration of fourteen years from the passage of this article certified copies of birth registration certificates shall be required by all factory inspectors, and employers of youthful labor, as prima facie proof of age, and no other proof shall be required from children born in this state or states which for fourteen years previous to the date of such certificate have had registration laws essentially identical with this article. When, however, it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S. 7107.)

§ 130-97. Church and other records filed and indexed; fees for transcript.—If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the

state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the state registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of (fifty cents per hour or fraction of an hour necessarily consumed in making such transcript) and to a fee of fifty cents for the certificate, which fees shall be paid by the applicant. (1913, c. 109, s. 17; C. S. 7108.)

§ 130-98. Clerk of court to furnish state registrar with facts as to paternity of illegitimate children judicially determined.—Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of the court in which such judgment is entered shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the record as may assist in identifying the record of the birth of the child as the same may appear in the office of the said registrar. If such judgment shall thereafter be modified or vacated, that fact shall be reported by the clerk to the state registrar in the same manner. (1941, c. 297, s. 1.)

§ 130-99. Duties of local registrar as to birth and death certificates; reports.—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state registrar, which record book the local registrar shall deposit with the register of deeds of the county not later than the fifteenth of February each year. And the register of deeds shall make and keep an index, the form of which shall be of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. And he shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month the local registrar shall, on the fifth day of the following month, report that fact to the state registrar, on a card provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; C. S. 7109.)

§ 130-100. Delivery of data to health officer. — Each local registrar of vital statistics serving in any county or municipality of North Carolina in which there is employed a wholetime county or municipal health officer shall, on or before the fifth day of each month, deliver by mail or in person to the health officer of his respective county or municipality such data from birth and death certificates filed with such local registrar during the preceding calendar month as may be needed in the proper execution of the duties of the said whole-time county or municipal health officer, and as authorized by the State Registrar of Vital Statistics.

All forms necessary for the use of local registrars in complying with this section shall be supplied, without charge, by the State Registrar of Vital Statistics.

Any local registrar who shall fail, neglect, or refuse to perform the duties required by this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00). (1925, c. 53.)

§ 130-101. Pay of local registrars. — Each local registrar shall be paid the sum of fifty cents for each birth certificate and each death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the state registrar, as required by this article. And in case no births or deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers for registration work outside of incorporated municipalities, and by the town or city treasurer for registration work in incorporated municipalities. The state registrar shall certify every six months to the treasurers of the several counties and incorporated municipalities the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at

the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; Ex. Sess. 1920, c. 58, s. 2; C. S. 7110.)

§ 130-102. Certified copy of records; fee. — The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. The United States census bureau may, however, obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed, and for transcripts so furnished the state registrar may receive from the census bureau such compensation for this service, as the state board of health may approve. Any copy of the record of a birth or death, properly certified by the state registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the treasurer of the state board of health. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; 1941, c. 297, s. 4; C. S. 7111.)

§ 130-103. Information furnished to officers of American Legion.—Upon application to the Bureau of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, it shall be the duty of the Bureau of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to ex-soldiers of the World War and members of their families and/or beneficiaries under Government insurance or adjusted compensation certificate issued to such ex-soldier. Provided, that the state registrar shall furnish to any American Legion Post in this state, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this section. (1931, c. 318; 1939, c. 353.)

§ 130-104. Violations of article; penalty. — Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

1. Inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found;

2. Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;

3. Wilfully alter, otherwise than as provided by § 130-94, or shall falsify any certificate of birth or death, or any record established by this article;

4. Being required by this article to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required;

5. Being a state registrar, a chairman of a board of county commissioners, a mayor of a city or town, a local registrar, a deputy registrar, or sub-registrar, shall fail, neglect, or refuse to perform his duty as required by this article and by the instructions and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars, and for each subsequent offense not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail not more than thirty days. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S. 7112.)

§ 130-105. Duties of registrars and others in enforcing this article.—Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the state registrar. He shall make an immediate report to the state registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of the provisions of this article to the prosecuting attorney of the county, or the solicitor of the district, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state registrar, the attorney-general shall likewise assist in the enforcement of the provisions of this article. (1913, c. 109, s. 22; C. S. 7113.)

§ 130-106. Local systems abrogated. — No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this state other than the one provided for and established by this article. (1913, c. 109, s. 24; C. S. 7115.)

§ 130-107. Establishing fact of birth by persons without certificate.—1. Any person born in the state of North Carolina not having a duly recorded

certificate of his or her birth, may file a duly verified petition with the clerk of the superior court in the county of his or her legal residence or place of birth, setting forth the date, place, and parentage of his or her birth, and petitioning the said clerk to hear evidence, and find, and adjudge the date, place and parentage of the birth of said petitioner. Upon filing said petition, the clerk shall set a date for hearing evidence upon the same, and shall conduct said proceeding in the same manner as other special proceedings. At the time set for said hearing the petitioner shall present such evidence as may be required by the court to establish the fact of such birth to the satisfaction of said court. At said hearing, if the evidence offered shall satisfy said court of the date, place, and parentage of said petitioner's birth, the court shall thereupon find the facts and enter a judgment duly establishing the date and place of birth and parentage of said petitioner, and record the same in the record of special proceedings in his office. The said clerk shall certify the same to the state bureau of vital statistics and the same shall thereupon be recorded in the state bureau of vital statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was born. The fees charged hereunder by the clerk shall not exceed two dollars ($2.00).

2. The record of birth established by such person under this section when so recorded shall become a public record, and shall be accepted as such by the courts and other agencies of this state in the same manner as other public records.

3. The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1941, c. 122.)

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC.

Art. 10. Water Protection.

§ 130-108. Persons supplying water to protect its purity.—In the interest of the public health, every person, company, or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this article are hereby repealed. (Rev., s. 3058; 1899, c. 670, s. 1; 1903, c. 159, s. 1; 1911, c. 62, s. 24; C. S. 7116.)

§ 130-109. Board of health to control and examine waters; rules; penalties.—The state board of health shall have the general oversight and care of all inland waters, and shall from time to time, as it may deem advisable, cause examinations of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using the same, or to imperil the public health. For the purpose aforesaid, it may employ such expert assistants as may be necessary. The said board shall make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health. Any individual, firm, corporation, or municipality, or person responsible for the management of water supply, failing to comply with said rules and regulations, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. (1911, c. 62, s. 24; C. S. 7117.)

§ 130-110. Systems of water supply and sewerage; plans submitted; penalties.—The state board of health shall from time to time consult with and advise the boards of all state institutions, the authorities of cities and towns, corporations, or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, or firms which may be affected thereby. All such boards of directors, authorities, corporations, and firms are hereby required to give notice to said board of their intentions in the premises and to submit for its advice outlines of their proposed plans or schemes in relation to water supplies and disposal of sewage, and no contract shall be entered into by any state institution or town for the introduction of a system of water supply or sewage disposal until said advice shall have been received, considered, and approved by the said board. For the purpose of carrying out the general provisions of this and the preceding sections, every municipal or private corporation, company, or individual supplying or authorized to supply water for drinking or other domestic purposes to the public shall file with the secretary of the state board of health, within ninety days after the receipt of notice from said secretary, certified plans and surveys, in duplicate, pertaining to the source from which the water is derived, the possible source of infections thereof, and the means in use for the purification thereof, in accordance with the directions to be furnished by the said secretary. Failure on the part of any individual, firm, corporation, or municipality to comply with this section shall be a misdemeanor, and upon conviction those responsible therefor shall be fined not less than fifty dollars nor more than one hundred dollars, at the discretion of the court. (1911, c. 62, s. 24; C. S. 7118.)

§ 130-111. Condemnation of lands for water supply.—All municipalities operating water systems and sewer systems, and all water companies operating under charter from the state or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants, said proceedings to be the same as prescribed by law under the chapter Eminent Domain. (Rev., s. 3060; 1903, c. 159, s. 16; 1905, c. 287, s. 2; 1905, c. 544; 1911, c. 62, s. 25; C. S. 7119.)

§ 130-112. Compensation for land.—If damages shall be claimed for the use of such lands, and the parties cannot agree as to the amount of compensation to be paid, they may proceed in the manner now provided by law under the chapter Eminent Domain. (1911, c. 62, s. 27; C. S. 7120.)

§ 130-113. Inspection of watersheds.—The municipality or water company shall have quarterly sanitary inspections made of the entire watershed of any waterworks that derives its water from a surface supply, except in those cases where the supply is taken from large creeks or rivers that have a minimum daily flow of ten million gallons, in which case the inspection shall apply to the fifteen miles of watershed above the waterworks intake. Whenever in the opinion of the board of health of the city or town to which the water is supplied, or, where there is no such local board of health, in the opinion of the county board of health, or county physician or county health officer, or in the opinion of the state board of health, there is special reason to apprehend the infection of the water from any particular locality by the germs of typhoid fever or cholera, then the municipality or water company shall cause to be made at least once in every week a sanitary inspection of that particular locality. The inspection of the entire watershed as herein provided for shall include a particular examination of the premises of every inhabited house on the watershed, and, in passing from house to house, a general inspection for dead bodies of animals or accumulations of filth. It is not intended that the term "entire watershed" shall include uninhabited fields and wooded tracts that are free from suspicion. The sanitary inspector shall give in person to the head of each household on the watershed, or, in his absence, to some member of the household, the necessary directions for the proper sanitary care of his premises, and shall deliver to each family residing on the watershed such literature on pertinent sanitary subjects as may be supplied him by the municipal health officer or by the secretary of the state board of health. Full report in duplicate of all such inspections shall be made promptly by the sanitary inspector to the secretary of the state board of health, and their accuracy certified to by the affidavit of the inspector.

The authorities of any town or city that makes use of a public surface water supply or the officers of a public surface water supply company may make such additional inspections as such officials may deem necessary. (Rev., ss. 3045, 3046; 1899, c. 670; 1903, c. 159, s. 2; 1911, c. 62, s. 28; 1919, c. 71, s. 14; Ex. Sess. 1921, c. 49, s. 1; C. S. 7121.)

§ 130-114. Inspectors may enter premises.—Each sanitary inspector is authorized and empowered to enter upon any premises and into any building upon his respective watershed for the purpose of making the inspections required. (Rev., s. 3050; 1899, c. 670, s. 8; 1903, c. 159, s. 10; 1911, c. 62, s. 30; C. S. 7122.)

§ 130-115. Control of residents on watersheds.—Every person residing or owning property on the watershed of a lake, pond, or stream from which a drinking supply is obtained shall carry out such reasonable instructions as may be furnished him in the matter hereinbefore set forth directly by the municipal health officer or by the state board of health. Any one refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days. (Rev., ss. 3049, 3859; 1903, c. 159, s. 7; 1911, c. 62, s. 31; C. S. 7123.)

§ 130-116. Defiling water supply misdemeanor.—If any person shall defile, corrupt, or make impure any well, spring, drain, branch, brook, creek, or other source of public water supply by collecting and depositing human excreta on the watershed, or depositing or allowing to remain the body of a dead animal on the watershed, or in any other manner, and if any person shall destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor. (Rev., ss. 3457, 3857; Code, s. 1114; R. C., c. 34, s. 97; 1893, c. 214; 1850, c. 104; 1903, c. 159, s. 12; 1911, c. 62, s. 32; C. S. 7124.)

§ 130-117. Discharge of sewage into water supply prohibited.—No person, firm, corporation, or municipality shall flow or discharge sewage above the intake into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same shall have been passed through some well-known system of sewage purification approved by the state board of health; and the continued flow and discharge of such sewage may be enjoined upon application of any person.

If any person, firm, or corporation, or officer of any municipality having a sewerage system in charge shall violate the provisions of this section he shall be guilty of a misdemeanor. (Rev., ss. 3051, 3858; 1903, c. 159, s. 13; 1911, c. 62, ss. 33, 34; C. S. 7125.)

§ 130-118. Cemeteries on watersheds forbidden.—No burying ground or cemetery shall be established on the watershed of any public water supply nearer than five hundred yards of the source of supply, nor in violation of the rules and regulations of the state board of health as authorized by this article. (Rev., s. 3053; 1903, c. 159, s. 15; C. S. 7126.)

§ 130-119. Water supply of communities without sewerage systems.—All schools, hamlets, villages, towns, or industrial settlements which are now located or may be hereafter located on the shed of any public water supply not provided with a sewerage system shall provide and maintain a reasonable system approved by the state board of health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. Any one refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days. (Rev., ss. 3052, 3860; 1903, c. 159, s. 14; 1907, c. 585; 1911, c. 62, s. 35; C. S. 7127.)

§ 130-120. Damage to private water supply misdemeanor.—If any person shall wilfully put into the well, spring, or cistern of water of any other person any substance or thing whereby such well, spring, or cistern may be endamaged, or the water thereof be made less wholesome or fit for use, he shall be guilty of a misdemeanor. (Rev., s. 3456; Code, c. 1114; R. C., c. 34, s. 97; 1850, c. 104; C. S. 7128.)

Art. 11. State Housing Law.

§ 130-121. Title. — This article shall be known as the "state housing law." (1933, c. 384, s. 1.)

§ 130-122. Public interest demands housing for families of low income. — It is hereby declared that it is necessary in the public interest to make provision for housing for families of low income, and that, the providing of such housing being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit their rental or sale at prices which families of low income can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination. (1933, c. 384, s. 2.)

§ 130-123. State board of housing created. — There is hereby created a state board of housing of the state of North Carolina, which will consist of five (5) members, to be appointed by the governor. Two of the five members shall be appointed for two years, and three for four years, and at the expiration of these terms their successors shall be appointed for a term of four years. All vacancies which may occur for any unexpired term shall be filled by the governor. The members of the board shall receive no salary, but shall be entitled to the necessary traveling and other expenses incurred in the discharge of their duties. (1933, c. 384, s. 3.)

§ 130-124. Choosing officers and employees. — The members of the board shall choose from among their number a chairman and vice-chairman, and the board may appoint such other officers and employees, including a secretary, as it may require, for the performance of its duties, and shall fix and determine their qualifications, duties and salaries. (1933, c. 384, s. 4.)

§ 130-125. Approval of housing projects. — No housing project proposed by a limited dividend housing corporation incorporated under this article shall be undertaken, and no building or other construction shall be placed under contract or started without the approval of the board. No housing project shall be approved by the board unless:

(a) It shall appear practicable to rent or sell the housing accommodations to be created at prices not exceeding those prescribed by the board. No such project shall be approved i contravention of any zoning or building ordinanc in effect in the locality in which designated area are located.

(b) There shall be submitted to the board financial plan in such form and with such assur ances as the board may prescribe to raise the ac tual cost of the lands and projected improvement by subscriptions to or the sale of the stock, in come debentures and mortgage bonds of suc corporation. Whenever reference is made in thi article to cost of projects or of buildings and im provements in projects, such cost shall includ charges for financing and supervision approvec by the board and carrying charges during con struction required in the project including inter est on borrowed and, where approved by the board, on invested capital.

(c) There shall be such plans of site development and buildings as show conformity to reasonable standards of health, sanitation, safety and provisions for light and air, accompanied by proper specifications and estimates of cost. Such plans and specifications shall not in any case fall below the requirements of the health, sanitation, safety and housing laws of the state and shall meet superior requirements if prescribed by local laws and ordinances.

(d) The corporation agrees to accept a designee of the board of housing as a member of the board of directors of said corporation.

(e) If required by the board, the corporation shall deposit all monies received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the state of North Carolina and to perform trust functions, and such trustee shall receive such monies and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements upon presentation of draft, check or order signed by a proper officer of the corporation, and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation. (1933, c. 384, s. 5.)

§ 130-126. Investigation into limited dividend housing corporations.—The board shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this article, and into the dealings, transactions, or relationships of such companies with other persons. Any of the investigations provided for in this article may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in

this article, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the board or excused from attendance. (1933, c. 384, s. 6.)

§ 130-127. Powers of board as to study of housing conditions and approval of housing projects.—The board is hereby empowered to (a) study housing conditions and needs throughout the state to determine in what areas congested and insanitary housing conditions constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state, (b) prepare programs for correcting such conditions, (c) collect and distribute information relating to housing, (d) investigate all matters affecting the cost of construction or production of dwellings, (e) study means of securing economy in the construction and arrangement of buildings, (f) recommend and approve the areas within which or adjacent to which the construction of housing projects by limited dividend housing companies may be undertaken, and (g) cooperate with local housing officials and planning commissions or similar bodies in cities and other localities in developments of projects they at any time may have under consideration. (1933, c. 384, s. 7.)

§ 130-128. Consolidation of projects. — The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project or the consolidation of any approved project with a proposed project. In any of these events, the consolidation project shall be treated as an original project and an application shall be submitted as in the case of an original project and rents may be averaged throughout the consolidated or extended project. The board may likewise permit or decline to permit any limited dividend corporation to organize and operate more than one project or to take over any project heretofore approved by the board and to operate it independently of other projects of the corporation. (1933, c. 384, s. 8.)

§ 130-129. Powers of board over housing corporations.—In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this article the board may:

(a) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations.

(b) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board or by the terms of any project approved by the board, or to refrain from doing any acts in violation thereof.

(c) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed.

(d) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof.

(e) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited.

(f) Require every such corporation to file with the board an annual report setting forth such information as the board may require verified by the oath of the president and general manager or receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the board. The board may further require specific answers to questions upon which the board may desire information and may also require such corporation to file periodic reports in the form covering the period and at the time prescribed by the board.

(g) From time to time make, amend and repeal rules and regulations for carrying into effect the provisions of this article. (1933, c. 384, s. 9.)

§ 130-130. Fixing of rental and purchase prices.—The board shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be (a) all fixed charges, and all operating and maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the board; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the board. (b) A dividend not exceeding the maximum fixed by this article upon the stock of the corporation allotted to the project by the board. (c) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock, and income debentures of the corporation to the extent permitted by this article.

Letting, subletting or assignment of leases of apartments in such buildings or structures at greater rentals than prescribed by the order of the board are prohibited and all such leases will be void for all purposes. (1933, c. 384, s. 10.)

§ 130-131. Reorganization of limited dividend corporations.—(1) Reorganization of limited dividend housing companies shall be subject to the supervision and control of the board and no such

reorganization shall be had without the authorization of such board.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by the board which in making its determination, shall not exceed the fair value of the property involved. (1933, c. 384, s. 11.)

§ 130-132. Injunction against corporations violating law.—Whenever the board shall be of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the board and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the superior court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said superior court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding thirty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 384, s. 12.)

§ 130-133. Acquisition of housing property after approval of project. — When the board shall have approved a project for the construction of housing accommodations presented to it by a limited dividend housing company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest, or purchase. (1933, c. 384, s. 13.)

§ 130-134. Articles of incorporation. — Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing in the office of the secretary of state, articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the state, except as herein modified or changed.

(a) The purposes for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the board of housing.

(b) The shares of which the capital shall consist shall have a par value.

(c) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the state housing law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at the rate of six per centum per annum, and that any surplus in excess of such amount if said company shall be dissolved shall revert to the state of North Carolina.

(d) The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend housing companies, except where such provisions are in conflict therewith. (1933, c. 384, s. 14.)

§ 130-135. Further limitation on dividends. — No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six per centum per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years. (1933, c. 384, s. 15.)

§ 130-136. Limit on stocks and bonds.—No limited dividend housing company incorporated under this article shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the board of housing and such valuation shall be used in computing actual or estimated cost. (1933, c. 384, s. 16.)

§ 130-137. Income debenture certificates.—The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than six per centum per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of housing for such income debenture certificates, whose

face value shall not exceed the par value of the stock exchanges therefor. (1933, c. 384, s. 17.)

§ 130-138. Powers of corporations limited.—No limited dividend housing company incorporated shall under this article:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purpose defined in this article.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the board: Provided, however, that leases conforming to the regulations and rules of the board and for actual occupancy by the lessees may be made without the consent of the board. Any conveyance, incumbrance, lease or sub-lease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six per centum per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the board.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, coöperative or community purposes, and when permitted by law the roof may be used for coöperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the board.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the board.

(11) Make any guaranty without the approval of the board. (1933, c. 384, s. 18.)

§ 130-139. Loans and security therefor regulated.—Any company formed under this article may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgage or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the board under this article. Provisions for the amortization of the bonded indebtedness of companies formed under this article shall be subject to the approval of the board. (1933, c. 384, s. 19.)

§ 130-140. Earnings transferred to surplus. — The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b) and (c) of § 130-130 shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen per centum of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends of interest, less any payment or distributions theretofore made other than by dividends provided in § 130-135, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the state of North Carolina, or shall be disposed of in such other manner as the board may direct and the then governor may approve. (1933, c. 384, s. 20.)

§ 130-141. Annual surpluses applied to rent reductions.—If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in § 130-130, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the board of housing shall deem such balance too small for the purposes, be applied to the reduction of rentals. (1933, c. 384, s. 21.)

§ 130-142. Board as defendant in foreclosure actions.—(1) In any foreclosure action the board shall be made a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lien-holder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court shall be authorized to make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend housing corporation organized under this article: Provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this article.

(2) Notwithstanding the foregoing provisions

of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage which is a lien upon any such property such corporation shall have all the remedies available to a mortgagee under the laws of the state of North Carolina, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public and no costs shall be awarded against it. (1933, c. 384, s. 22.)

§ 130-143. Application to, and approval of board as to transfer of housing property.—Before any limited dividend housing corporation incorporated under this article shall purchase the property of any other limited dividend housing corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this article, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this article. (1933, c. 384, s. 23.)

§ 130-144. Notice to board before execution on judgments. — In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties. (1933, c. 384, s. 24.)

§ 130-145. Fees of board for examination chargeable against housing corporation. — The board may charge and collect for a limited dividend housing corporation, incorporated under this article, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of one per cent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the board, or any of its employees, in performance of their duties under this article an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in § 130-130 pursuant to rules to be established by the board. (1933, c. 384, s. 25.)

§ 130-146. Limit of existence of housing corporations.—The corporate existence of any corporation authorized hereunder shall not extend beyond twenty-five years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the incorporation board, by approval of the state board of housing, should grant an extension for an additional period of time. (1933, c. 384, s. 27.)

Art. 12. Privies.

§ 130-147. Privy defined.—The term "privy" as used in this article shall be understood to include any and all buildings which are not connected with a system of sewerage, or with septic tanks of such construction and maintenance as approved by the state board of health and which are used for affording privacy in acts of urination or defecation. (1919, c. 71, s. 1; C. S. 7129.)

§ 130-148. Sewerage, septic tank or approved privy required, when.—No person shall maintain or use a residence, located within three hundred yards of another residence, that is not provided with sewerage, or with septic tanks approved by the state board of health, or with a sanitary privy which complies in construction and maintenance with the requirements of this article: Provided, however, that nothing in this section shall curtail the right of a municipality to require and enforce immediate sewer connection. Provided, that plans and specifications for construction of privy buildings prescribed by the state board of health by authority of this article shall be construed as recommendatory but not mandatory as to exact size, architecture and dimensions of same: Provided, further, that privy buildings as used in the above last proviso shall not be construed to include any item pertaining to the exclusion of flies from excreta. (1919, c. 71, s. 2; Ex. Sess. 1921, c. 49, s. 2; 1927, c. 244; C. S. 7130.)

§ 130-149. License form to be fastened on certain privies.—The state board of health, through its officers and inspectors, shall fasten a license form on all privies within three hundred yards of the residence of any person other than that of the owner or tenant thereof during the last three calendar months of every year, when, on inspection, the said privy is approved by the officer making the inspection as constructed in a sanitary manner and to be in good repair, in accordance with reasonable rules and regulations to be prescribed by the state board of health for the sanitary construction and maintenance of privies. The license shall apply to the calendar year following its issuance, except as hereinafter provided. (1919, c. 71, s. 3; C. S. 7131.)

§ 130-150. Certain privies to be maintained in accordance with regulations.—Every privy located within three hundred yards of the residence of any person other than that of the owner or tenant thereof shall be maintained in a sanitary manner and in accordance with reasonable rules and regulations to be prescribed by the state board of health and posted in suitable form inside of the privy by an officer of the said board. (1919, c. 71, s. 4; C. S. 7132.)

§ 130-151. Responsibility for sanitary maintenance of privy.—The head of a family or household, the proprietor of a boarding-house, hotel, restaurant, or store, the principal or superintendent of a school, the agent or station-master of a railroad station or depot, or the person in charge of an office building, establishment, or institution, shall be responsible for the sanitary maintenance, as prescribed in § 130-150, of such privy or privies as may be used by his or her household, guests, customers, pupils, passengers, occupants, employees, workers or other persons. (1919, c. 71, s. 5; C. S. 7133.)

§ 130-152. Supervision of privies by board of health.—The state board of health, through its officers and inspectors, shall exercise such supervision over the sanitary construction and maintenance of privies as may be necessary to enforce the provisions of this article. (1919, c. 71, s. 6; C. S. 7134.)

§ 130-153. Use of insanitary privies prohibited.—If an officer or an inspector of the state board of health shall find a privy located within three hundred yards of the residence of a person other than that of the owner or tenant thereof which is not constructed in accordance with the provisions of § 130-149 of this article, he shall securely fasten on the said privy a notice reading, "Insanitary; unlawful to use"; and if the inspector or officer of the board shall find, in the course of his inspection, a privy not being maintained in a sanitary manner and in accordance with the reasonable rules and regulations of the state board of health for the maintenance of privies, he shall remove the license from the privy and securely fasten on the privy a notice, reading, "Insanitary; unlawful to use." (1919, c. 71, s. 7; C. S. 7135.)

§ 130-154. Privy license not to be removed or defaced.—No person shall remove or deface a privy license or other official notice fastened on or in a privy by an officer of the state board of health. (1919, c. 71, s. 8; C. S. 7136.)

§ 130-155. Violation of this article.—Any person who violates any of the provisions of this article, and any person who is responsible for the sanitary maintenance of a privy, and who permits such privy after an official notice reading, "Insanitary; unlawful to use," has been fastened on it, to be used, shall be guilty of a misdemeanor and fined not less than five dollars nor more than fifty dollars or imprisoned not exceeding thirty days. (1919, c. 71, s. 9; C. S. 7137.)

§ 130-156. Bureau of sanitary engineering and inspection; duties.—For the faithful execution of this article, the state board of health shall organize and maintain a bureau of sanitary engineering and inspection which shall (1) study, ascertain, and recommend for installation suitable types of privies for the variety of geologic, sociologic, and economic conditions found in the state of North Carolina; (2) exercise such oversight over the construction and maintenance of privies coming within the meaning of this article as may be necessary for the protection of public health; (3) organize, supervise, and direct a force of sanitary inspectors who shall (a) inspect, license, and close privies in accordance with the provisions of this article and the rules and regulations of the state board of health, as provided for in this article; (b) make such other sanitary inspections as are required of the state board of health by law; (c) assist in the enforcement of the public health laws of the state, more especially the vital statistics law and the quarantine law; (d) collect samples of water from public water supplies for analyses by the state laboratory of hygiene when such analyses are deemed necessary by the state board of health. (1919, c. 71, s. 11; C. S. 7139.)

§ 130-157. Powers of board of health and inspectors; penalty for interference.—The members of the executive staff of the state board of health, and such additional state sanitary inspectors as shall be appointed for the enforcement of this article, are hereby authorized and are empowered to enter upon any premises and into any buildings or institutions for the purposes of inspection as provided for or required by state laws or regulations of the state board of health pursuant to such laws, but the privacy of no person shall be violated. Any person or persons who wilfully interfere with or obstruct the officers of the state board of health in the discharge of any of the aforementioned duties shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment at the discretion of the court. (1919, c. 71, s. 12; C. S. 7140.)

§ 130-158. Provisions of this article applicable to all privies on watersheds.—The provisions of this article shall apply to all residences, institutions, and establishments, and all privies without regard to their distance from the homes of persons other than that of the owners or tenants thereof, which are located on the watershed of a public surface water supply. For the purpose of this article, the term "watershed" shall include the entire watershed of all streams, creeks, and rivers that have a daily average flow of less than ten million gallons, but for watersheds of streams, creeks or rivers that have a daily average flow of more than ten million gallons, the watershed shall include only such drainage areas as lie within fifteen miles of the waterworks intake. (1919, c. 71, s. 13; C. S. 7141.)

§ 130-159. Exceptions to provisions of this article.—This article shall not apply to any city the population of which shall be in excess of twenty thousand according to the latest official estimates of the bureau of the census, if the authorities of such city, before October first, one thousand nine hundred and nineteen, shall officially request the state board of health to exempt it from its provisions. This article shall not apply to the residences of farmers and the homes of their tenants that are located more than one mile from the corporate limits of a town or city or the geographic center of a village. (1919, c. 71, s. 16; Ex. Sess. 1920, c. 71; C. S. 7144.)

Art. 13. Used Plumbing Fixtures.

§ 130-160. Regulations for installation or sale of fixtures.—In order to prevent the spread of

disease through the sale of unsanitary, inefficient or defective plumbing fixtures, and in order to promote the general health, it is hereby declared to be unlawful for any person, firm or corporation to sell or offer to sell, or install, or cause to be sold or installed, any second-hand or used bathroom fixtures, toilet fixtures or other plumbing fixtures until the same have been inspected and labeled in the manner hereinafter set forth, and unless at the time of such sale or installation it shall bear the label indicating that it has been inspected and approved by the state board of health. (1939, c. 324, s. 1.)

§ 130-161. Application for inspection of fixtures.—Any person, firm or corporation desiring to sell or install any second-hand or used bathroom fixtures, toilet fixtures or other plumbing fixtures, shall file with the state board of health, or some agent or representative thereof, on the form prescribed by the state board of health, an application for the inspection of the fixtures to be sold. Such application (among other things) shall contain a description and identification marks of each fixture and the sworn statement of the applicant as to the person, firm or corporation from whom said fixture was purchased, and as to the approximate date when the same was manufactured, and as to where and for how long the said fixture had been used prior to the date of such application. (1939, c. 324, s. 2.)

§ 130-162. Preparation of labels by state board of health.—The state board of health shall cause to be prepared labels in the form prescribed by the state board of health, stating (among other things) that the fixture is a second-hand or used fixture, and stating further that said fixture has been inspected and approved, and providing a blank for the date of such approval and a blank for the approximate date of the manufacture of the fixture. Such labels shall be assembled in books of one hundred; and such books shall be sold by the state board of health for the sum of twenty-five dollars ($25.00) per book. When a book has been so sold, the name of the person, firm or corporation buying the same shall be entered on the back thereof and the book shall be retained by the state board of health for use in labeling the fixtures or accessories of the purchaser. No application shall be received from any person, firm or corporation for a greater number of fixtures than the number of labels of the applicant held by the state board of health at the time of such application. (1939, c. 324, s. 3.)

§ 130-163. Inspection of fixtures by state board; labeling of fixtures for resale.—Upon receiving an application for inspection, it shall be the duty of the state board of health, through such agents or representatives as shall be employed under the terms of this article, to inspect the fixtures referred to in the application, for the purpose of determining whether they can be resold and reused without danger to public health. If the state board of health shall determine that any fixture can be used without danger to public health, it shall affix to each complete fixture a label of the applicant in the form prescribed in § 130-162 and shall insert in said label the date of approval and the approximate date of the manufacture of the fixture. (1939, c. 324, s. 4.)

§ 130-164. Proceeds from sale of labels to be used in administration of article.—All proceeds received by the state board of health from the sale of the labels provided for in this article shall be used by the state board of health in the administration of this article; and the state board of health shall be under no duty to use any of its other funds for the administration of this article. (1939, c. 324, s. 5.)

§ 130-165. Construction of article.—This article shall not be construed to prevent any person, firm or corporation from using or installing on his own premises fixtures which have theretofore been used on other premises of such person, firm or corporation. This article shall not apply to any person, firm or corporation not regularly engaged in the sale or installation of plumbing fixtures as a part of his or its business. (1939, c. 324, s. 6.)

§ 130-166. Violations made misdemeanor.—Any person, firm or corporation who shall sell, offer for sale, install or cause to be sold or installed any used or second-hand bathroom fixtures, toilet fixtures or other plumbing fixtures except as provided in this article, or who shall violate any provision or requirement of this article, shall be guilty of a misdemeanor and upon conviction shall be fined the sum of one hundred dollars ($100.00) or imprisoned for not less than one nor more than three months. The sale of each separate fixture in violation of this article shall constitute a separate offense. (1939, c. 324, s. 7.)

§ 130-167. Counties exempt. — Nothing contained in this article shall apply to the counties of Anson, Alexander, Alleghany, Ashe, Avery, Bertie, Bladen, Buncombe, Burke, Cabarrus, Carteret, Caswell, Chatham, Cherokee, Clay, Cleveland, Columbus, Cumberland, Dare, Davidson, Davie, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Henderson, Hyde, Jackson, Johnston, Jones, Macon, Madison, Martin, McDowell, Onslow, Pender, Perquimans, Polk, Randolph, Robeson, Rockingham, Sampson, Stanly, Stokes, Swain, Transylvania, Tyrrell, Union, Warren, Washington, Watauga and Wilkes. (1939, c. 324, s. 7½.)

Art. 14. Infectious Diseases Generally.

§ 130-168. Quarantine officers; election; term; vacancies.—The county board of health in each county shall designate some person in each county to be county quarantine officer. The official term of service of a county quarantine officer, including those in office and serving on June first, one thousand nine hundred and seventeen, except in those counties where there is a county health officer, shall expire on the first Monday in January of the fourth year from the year of their appointment or election. In those counties having a county health officer who makes official oath or affirmation to enforce this article, the office of county quarantine officer shall be coterminous with the office of the said county health officer. The county board of health shall elect a successor to the county quarantine officer, or the county health officer acting as county quarantine officer, on or before the expiration of the term of service of said officer as herein defined. If the county quarantine officer, or the county

health officer acting as such, is disqualified to continue in office by resignation, death, or otherwise, the county board of health shall, within five days thereafter, elect a county health officer or county quarantine officer to fill out the unexpired term. If the county board of health fails so to elect a successor to complete the unexpired term, the secretary of the North Carolina state board of health shall immediately appoint a county quarantine officer who shall make official oath or affirmation to enforce this article. (1917, c. 263, s. 2; C. S. 7146.)

§ 130-169. Election notified to state board of health; officer to qualify.—The county board of health on electing a county quarantine officer shall promptly notify, in writing, the secretary of the North Carolina state board of health of such action, and failure to do so shall nullify the election. The officer-elect shall promptly notify the secretary of the North Carolina state board of health, in writing, of his having taken the oath or affirmation of office, inclosing a certified copy thereof, and failure to do so shall be construed as failure to have taken such official oath or affirmation. (1917, c. 263, s. 3; C. S. 7147.)

§ 130-170. Failure of officer to enforce article; penalty. — Any county quarantine officer, or county health officer acting as county quarantine officer, who fails or refuses to enforce this article in his county shall be guilty of a misdemeanor, and, on conviction, fined not exceeding fifty dollars, and may, if the secretary of the North Carolina state board of health so decide, be disqualified for continuance in office. (1917, c. 263, s. 4; C. S. 7148.)

§ 130-171. Municipalities; how far included.—This article shall not apply to incorporated towns and cities of the state having a population, according to the last decennial census, of ten thousand or over; nor shall it apply to those counties the sanitary administration of which is directed by a joint board of health presiding over both the county and a town or city having a population, according to the last federal decennial census, of ten thousand or more; but the system of quarantine in force in such cities and counties shall be approved by the North Carolina state board of health, and reports of the occurrence of contagious diseases therein shall be made to the North Carolina state board of health as from all other cities and counties in the state. (1917, c. 263, s. 5; C. S. 7149.)

§ 130-172. Compensation of quarantine officers.—For his services the county quarantine officer shall be paid monthly, on certification from the secretary of the North Carolina state board of health that he has performed the duties of his office in a satisfactory manner, out of the county funds by the county treasurer, or in those counties that have no county treasurer by that official who performs the usual duties of the treasurer's office. The said certification and the sum paid the quarantine officer by the county authority shall be in accordance with a system of fees determined by the North Carolina state board of health for each item of work involved in the duties of the quarantine officer: Provided, however, that the total annual payment for any county shall not be in excess of the sum stated for such county classified according to population as follows:

	Per month.
Counties with a population less than 10,000	$15.00
Counties with a population of from 10,000 to 15,000	17.50
Counties with a population of from 15,000 to 25,000	25.00
Counties with a population of from 25,000 to 40,000	35.00
Counties with a population of from 40,000 to 50,000	45.00
Counties with a population over 50,000	50.00

In addition to such monthly salary, the county treasurer, or the person acting as county treasurer, shall pay to the quarantine officer all financial statements with receipted bills attached for sums paid out for postage registration of letters, and disinfectants, the total sum not to exceed ten dollars in any month nor one hundred dollars in any one year. The secretary of the North Carolina state board of health shall supply the county quarantine officer, without cost to the county, with all forms, placards, and literature necessary for carrying out the provisions of this article. County authorities may revise their understandings with those county physicians who are acting as both physicians to county charges and as quarantine officers, and whose terms of office as quarantine officer shall expire in January, one thousand nine hundred and twenty-one, unless discontinued by death, resignation, or other disqualification, on a basis of compensation adequate to the new duties herein required; but in no case shall the compensation allowed for the services required of quarantine officers be less than that herein named. (1917, c. 263, s. 6; 1921, c. 53; C. S. 7150.)

§ 130-173. Physicians to report infectious diseases.—It shall be the duty of every physician to notify the county quarantine office of the name, address, including the name of the school district, of any person living or residing, permanently or temporarily, in the county about whom such physician is consulted professionally and whom he has reason to suspect of being afflicted with whooping-cough, measels, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, typhus fever, Asiatic cholera, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be preventable, within twenty-four hours after obtaining reasonable evidence for believing that such person is so afflicted. If the afflicted person is a minor, the physician consulted professionally about him shall notify the county quarantine officer of the name and address of the parent or guardian of the minor in addition to the name, address, and school district of the minor himself. (Rev., s. 3448; 1893, c. 214, s. 11; 1917, c. 263, s. 7; 1921, c. 223, s. 1; C. S. 7151.)

§ 130-174. Parents and householders to report.—It shall be the duty of every parent, guardian, or householder in the order named to notify the county quarantine office of the name, address, including the name of the school district, of any person in their family or household about whom no physician has been consulted but whom they have reason to suspect of being afflicted with whooping-cough, measles, diphtheria, scarlet fe-

ver, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be preventable. (1917, c. 263, s. 8; 1921, c. 223, s. 2; C. S. 7152.)

§ 130-175. Quarantine officers to report cases to state board of health.—It shall be the duty of the county quarantine officer to report all cases of whooping-cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be preventable, reported to him by physicians and parents, guardians, or householders, within twenty-four hours of the receipt of such report to the secretary of the North Carolina state board of health at Raleigh, and to make this report on forms supplied him by the secretary and in accordance with the rules and regulations adopted by the North Carolina state board of health. (1917, c. 263, s. 9; 1921, c. 223, s. 3; C. S. 7153.)

§ 130-176. Rules of state board of health; rules of local authorities.—The North Carolina state board of health shall adopt what in their judgment seems to be the necessary rules and regulations governing the management, supervision, or control of the diseases coming within the meaning of this article, and shall cause the rules and regulations adopted to be published in the North Carolina state board of health bulletin and to be supplied in suitable quantities to all concerned with the execution of this article, and the North Carolina state board of health shall revise such rules and regulations from time to time to adjust their requirements to new discoveries and improved methods for dealing with the sources and modes of infection of the diseases specified. The rules and regulations so adopted shall be regarded as the minimum requirements, and the authorities of any county, town, or city may adopt such additional rules and regulations for the control of the diseases mentioned in this article, and pay such additional fees and salaries as in their judgment seem necessary. (1917, c. 263, s. 10; C. S. 7154.)

§ 130-177. Violation of article or rules misdemeanor.—Any person wilfully violating any of the provisions of this article and any person violating any of the rules and regulations adopted by the North Carolina state board of health, as provided in the preceding section, shall, in the absence of specific provisions in other sections of this article, be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not more than thirty days, at the discretion of the court. In case the offender be stricken with the disease for which he is quarantinable, he shall be subject to the penalty on recovery, unless in the opinion of the secretary of the North Carolina state board of health the penalty should be omitted. (Rev., s. 3448; 1893, c. 214, s. 11; 1917, c. 263, s. 11; C. S. 7155.)

§ 130-178. Bureau of epidemiology; state epidemiologist.—For the purpose of seeing that this article and the rules and regulations adopted by the North Carolina state board of health, as provided in this article, are faithfully executed, a bureau of epidemiology and the office of state epidemiologist is hereby created. The aforesaid bureau and the state epidemiologist shall be under the control and supervision of the North Carolina state board of health. (1917, c. 263, s. 12; C. S. 7156.)

§ 130-179. Disposal of bowel discharges in typhoid and cholera; penalties.—Any householder in whose family there is to his knowledge a person sick of cholera or typhoid fever, who shall permit the bowel discharges of such sick person to be emptied without first having disinfected them according to instructions to be obtained from the attending physician or county superintendent of health, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two nor more than twenty-five dollars, or imprisoned not less than ten nor more than thirty days. In cases where such undisinfected discharges are emptied on the watershed of any stream or pond furnishing the source of water supply for any public institution, city, or town, the penalty shall be a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment for not more than thirty days. And any physician attending a case of cholera or typhoid fever who refuses or neglects to give the proper instructions for such disinfection as soon as the diagnosis is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less then ten dollars nor more than fifty dollars.

During an epidemic of cholera all common carriers shall so arrange their water-closets as to catch in water-tight receptacles the dejections of all persons using the same, and shall disinfect the said dejections in a manner satisfactory to the state board of health before emptying them. (Rev., s. 4459; 1893, c. 214, s. 16; 1909, c. 793, s. 8; C. S. 7158.)

§ 130-180. Travel of infected persons regulated; inspectors; penalty.—The county or municipal boards of health in counties, cities, or towns near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travelers may pass from infected places in other states, who may examine such travelers as may be suspected of bringing any infection dangerous to the public health, and, if need be, may restrain them from traveling until licensed thereto by the quarantine officer or by the proper municipal health authorities of the city or town to which they may come. A traveler coming from such infected place who, without such license, travels within this state, except to return by the most direct route to the state whence he came, after he has been cautioned to depart by the persons so appointed, shall be isolated or ejected, at the discretion of the quarantine officer or of the municipal health authorities last mentioned. And all common carriers bringing into this state any such persons as named above are hereby required to return them to some point without this state, if required by the quarantine officer or municipal health authorities above specified; and upon refusal to comply with the regulations of such boards of health or municipal health authorities upon this subject, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than fifty dollars, or imprisoned not more

than thirty days. Nothing in this section shall prevent the state board of health in time of epidemics from appointing such additional examiners as they may deem necessary to the preservation of the public health. (Rev., ss. 3454, 4506; 1893, c. 214, s. 15; 1901, c. 245, s. 6; C. S. 7159.)

§ 130-181. Quarantine of infected travelers.—When a person comes to a city or town from abroad or from some other place in this state which is infected or has lately been infected with either of the diseases specified in this article or other disease declared by the North Carolina state board of health to be infectious or contagious, the quarantine officer or lawful municipal authority specified in this article shall make effective provision in the manner deemed best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself or his parents, where able, otherwise at the charge of the city, town, or county to which he belongs. (Rev., s. 4507; 1893, c. 214, s. 14; 1901, c. 245, s. 5; C. S. 7160.)

§ 130-182. Transportation of bodies of persons dying of infectious diseases.—No railroad corporation or other common carrier or persons shall convey or cause to be conveyed through or from any city, town, or county in this state the remains of any person who has died of smallpox, measles, scarlet fever, diphtheria, typhus fever, yellow fever, or cholera until such body has been disinfected and encased in such manner as shall be directed by the state board of health, so as to preclude any danger of communicating the disease to others by its transportation; and no local registrar, clerk, or health officer or any other person shall give a permit for the removal of such body until he has received from the local board of health or other proper health authorities of the city, town, or county where the death occurred a certificate stating the cause of death and that the said body has been prepared in the manner set forth in this section; which certificate shall be delivered in duplicate to the agent or person who receives the body, and one copy shall be pasted on the box containing the corpse; said certificate shall be furnished in blank by the transportation company when no local board of health exists. (Rev., s. 4459; 1893, c. 214, s. 16; C. S. 7161.)

Art. 15. Smallpox.

§ 130-183. Notification of occurrence required; vaccination of school children.—On the appearance of a case of smallpox in any neighborhood, town, or city, the quarantine officer shall use all due diligence to warn the public of its existence and to notify the public of the proper means for preventing its spread; the said warning and notification to be according to the instructions of the state health officer. The board of health of any town, city, or county shall have authority to require children attending the public schools to present certificate of immunity from smallpox either through recent vaccination or previous attack of the disease. If any parent, guardian, school committee, principal, or teacher shall permit a child to violate such a requirement of the aforesaid authorities, he or she shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars. (1911, c. 62, s. 23; 1913, c. 181, s. 11; C. S. 7162.)

§ 130-184. Free vaccination.—On the appearance of a case of smallpox in any neighborhood due warning of the existence of the disease shall be given, and all persons not able to pay shall be vaccinated free of charge by the county physician or health officer or by the municipal physician or health officer, and the county physician or health officer shall vaccinate every person admitted into a public institution, jail, or county home as soon as practicable, unless he is satisfied, upon examination, that the person is already successfully vaccinated; the money for vaccine to be furnished by the county commissioners. (Rev., s. 4451; 1913, c. 181, s. 12; C. S. 7163.)

§ 130-185. Rules as to vaccination; violations punished.—The board of health of any city, town, or county may make such regulations and provisions for the vaccination of the inhabitants of their city, town, or county, and impose such penalties as they may deem necessary to protect the public health, and the violations of such rules shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (Rev., s. 3455; 1913, c. 181, s. 12; C. S. 7164.)

Art. 16. Diphtheria.

§ 130-186. Antitoxin furnished to indigents.—The state board of health is hereby authorized and directed to arrange for a sufficient supply of diphtheria antitoxin for the treatment therewith, free of charge, of indigent persons sick of diphtheria, and for immunizing against infection such indigent persons as may be exposed to the disease, and to extend the facilities for making the diagnosis of the disease. (1909, c. 389, s. 1; C. S. 7165.)

§ 130-187. Laboratory of hygiene to furnish antitoxin to counties. — The board of health shall keep on hand in the state laboratory of hygiene a supply of reliable diphtheria antitoxin, and shall distribute it, through the said laboratory, to the several counties of the state, whenever the boards of county commissioners thereof shall request it, and shall notify the secretary of the state board of health that they will pay for the same upon presentation of a bill, and shall designate the person or persons with whom it shall be deposited. The antitoxin shall be furnished at the lowest figure obtainable for a reliable preparation. (1909, c. 389, s. 2; C. S. 7166.)

§ 130-188. Physician's requisitions for antitoxin.—Whenever a physician is called to a case of diphtheria in an indigent person or one in immediate need and unable to pay for antitoxin, he may obtain the same from one of the depositories or diphtheria stations by filling out and signing in duplicate the blank requisition form to be supplied with the antitoxin by the said board of health, and presenting the same to the county health officer or county physician or any member of the county board of health, or to such person as the said county board of health may

appoint, who, after satisfying himself as to the indigency of the person or persons for whom the antitoxin is intended, shall approve and countersign in duplicate the requisition. The person dispensing the antitoxin shall retain one copy of the requisition and shall mail the duplicate promptly to director of the laboratory of hygiene. He shall also return to the said director all packages of antitoxin in his possession as soon as they become out of date. (1909, c. 389, s. 3; C. S. 7167.)

§ 130-189. Article applicable to cities and towns.—The provisions of §§ 130-186 to 130-189 shall apply to cities and towns upon the same conditions as it does to counties. (1909, c. 389, s. 4; C. S. 7168.)

§ 130-190. Immunization of children.—The parent or parents or guardian of any child in North Carolina shall have administered to such child between the ages of six months and twelve months an immunizing dose of a prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products.

The parent or parents or guardian of any child in North Carolina between the ages of twelve months and five years who has not been previously immunized against diphtheria, shall have administered to such child an immunizing dose of prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products.

It shall be incumbent upon the parent or parents or guardian of such child to present said child to a regularly licensed physician in the state of North Carolina, of his or her or their own choice, and request said physician to render this profesional service. If the said parent or parents or guardian of such child are unable to pay for the services of a private physician of his or her or their own choice, they shall then present such child to the county health officer in the county in which such child resides and ask that an immunizing dose of prophylactic diphtheria agent which meets the standard approved by the United States public health service for such biologic products, be administered, and such county health officer shall administer such treatment.

If there is no regularly employed health officer in the given county in which the indigent parent or parents or guardian referred to in the third paragraph of this section resides, the parent or parents or guardian of the indigent child shall present such child to the county physician, who shall then administer the prophylactic diphtheria agent or secure the services of another regularly licensed physician in such county and pay such physician for such services to the said indigent child out of such funds of said county as are provided for such purposes.

A certificate giving the name and address of the parent, parents or guardian, the name and age of the child and the date of the administration of the prophylactic agent, shall be submitted by the physician rendering this professional service to the local health officer, and in instances where there is no health officer, said certificate shall be submitted to the county physician. Such certificate shall be kept on file as a permanent record by the local county registrar for births. Furthermore, such certificate of immunization shall be presented to school authorities upon admission to any public, private or parochial school in North Carolina.

Any wilful violation of this section, or any part thereof, shall constitute a misdemeanor and shall be punishable at law by a fine of not more than fifty dollars ($50.00) or by imprisonment for not more than thirty (30) days, in the discretion of the court. Provided this section shall not apply to children whose parent or parents or guardians are bona fide members of a religious organization whose teachings are contrary to the practices herein required, and no certificates for admission to any public, private or parochial school shall be required as to them. (1939, c. 126.)

Art. 17. Hydrophobia.

§ 130-191. Board of health to provide treatment.—The state board of health is hereby authorized and empowered to provide for and have conducted under its direction the preventive treatment of hydrophobia or rabies, whenever in its judgment circumstances, financial and other, will justify it. To meet the expenses of this treatment the said board is hereby given authority to supplement the revenue derived from the fees for the treatment by such sums from the treasury of the state laboratory of hygiene as may be necessary: Provided, that the usefulness and efficiency of the said laboratory is not thereby impaired. (1907, c. 891, s. 1; C. S. 7170.)

§ 130-192. Treatment to be without charge.—The benefits of said treatment shall be given free of charge to all residents of the state who shall present to the secretary of the state board of health or its representative having in charge the management of this special work, an affidavit of inability to pay, duly sworn to and subscribed before a justice of the peace, or, if the case be a minor, such an affidavit by the parent or guardian. To meet as far as may be the expenses of this special work the said state board of health is hereby authorized and directed to demand from those able to do so the payment in advance of a reasonable fee, not to exceed in any case the usual charge made by the reputable Pasteur institutes of this country. (1907, c. 891, s. 2; C. S. 7171.)

Art. 18. Inflammation of Eyes of Newborn.

§ 130-193. Ophthalmia neonatorum described.—Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring any time within two weeks after the birth of such infant, shall be known as "inflammation of the eyes of the newborn" (ophthalmia neonatorum). (1917, c. 257, s. 1; C. S. 7180.)

§ 130-194. Inflammation of eyes of newborn to be reported.—It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature, parent, relative, and any persons attendant on or assisting in any way whatsoever any infant, or the mother of any infant at childbirth or any time within two weeks after childbirth, knowing the condition,

hereinabove defined, to exist, immediately to report such fact, as the state board of health shall direct, to the local health officer of the county, city, town, village, or whatever other political division there may be within which the infant or the mother of any such infant may reside. For such services the attending physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital shall receive from the state treasurer a fee of fifty cents. In the event of there being no health officer in the city, village, or town in which the infant resides, midwives shall immediately report the condition to some qualified practitioner of medicine, and thereupon withdraw from the case, except as she may act under a physician's instructions. On receipt of such receipt, the health officer, or the physician notified by a midwife where no health officer exists, shall immediately give to the parents or persons having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of the said county, city, village, or town. (1917, c. 257, s. 2; C. S. 7181.)

§ 130-195. Eyes of newborn to be treated; penalty for omission.—It shall be unlawful for any physician or midwife practicing midwifery in the state of North Carolina to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, two drops of a solution prescribed or furnished by the state board of health. (1917, c. 257, s. 3; C. S. 7182.)

§ 130-196. Duties of local health officer.—It shall be the duty of the local health officer:

1. To investigate or to have investigated each case as filed with him in pursuance with the law, and any other such cases as may come to his attention.

2. To report all cases of inflammation of the eyes of the newborn and the result of all such investigations as the state board of health shall direct.

3. To conform to such other rules and regulations as the state board of health shall promulgate for his further guidance. (1917, c. 257, s. 4; C. S. 7183.)

§ 130-197. Duties of state board of health.—It shall be the duty of the North Carolina state board of health:

1. To enforce the provisions of this article.

2. To promulgate such rules and regulations as shall, under this article, be necessary for the purposes of this article, and such as the state board of health may deem necessary for the further and proper guidance of local health officers.

3. To provide for the gratuitous distribution of the scientific prophylactic for inflammation of the eyes of the newborn, as designated in § 130-195, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.

4. To publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the newborn, and the necessity for prompt and effective treatment.

5. To furnish copies of this law to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.

6. To keep a proper record of any and all cases of inflammation of the eyes of the newborn as shall be filed in the office of the state board of health in pursuance with this law and as may come to their attention in any way, and to constitute such records a part of the biennial report to the governor and the legislature. (1917, c. 257, s. 5; C. S. 7184.)

§ 130-198. Treatment in hospitals and institutions.—It shall be the duty of physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant's eyes, within two hours after birth, to use the prophylactic against inflammation of the eyes of the newborn specified in this article, and to make record of the prophylactic used. It shall also be the duty of such institution to maintain such records of cases of inflammation of the eyes of the newborn as the state board of health shall direct. (1917, c. 257, s. 6; C. S. 7185.)

§ 130-199. Violations of article; penalties. — Whoever being a physician, surgeon, midwife, obstetrician, nurse, manager, or person in charge of a maternity home or hospital, parent, relative, or person attendant upon or assisting at the birth of any infant, violates any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in a sum not less than ten dollars nor more than fifty dollars, and, if possessed of the required amount of property, subject to suit by the parent or guardian of the child for damages resulting to the child; and if such a suit shall be brought the establishment of the fact that the physician or midwife did not place the drops in the child's eyes within two hours of its birth shall be accepted as prima facie evidence of the physician's or midwife's responsibility for the injury of the disease to the eye or eyes of the child. It shall be the duty of the prosecuting attorney to prosecute all violations of this article. (1917, c. 257, s. 7; C. S. 7186.)

§ 130-200. Registration of midwives.—All midwives who now practice midwifery in North Carolina, other than regularly registered physicians, shall register, without fee, their names and addresses with the secretary of the North Carolina state board of health on or before the first day of July, one thousand nine hundred and seventeen, in order that the prophylactic solution and necessary instructions may be furnished them. After the aforesaid date no person, physician, or midwife shall practice midwifery in North Carolina until at least ten days have elapsed following the registration of the name and address of the person who intends to engage in the practice of midwifery, and in this period of ten days elapsing between the registration and beginning of the practice of midwifery by the registered person the state board of health shall furnish the necessary directions and solution to the physician or midwife for compliance with this article. (1917, c. 257, s. 8; C. S. 7187.)

§ 130-201. Failure to register; penalty.—Any physician or midwife failing to register their

names and addresses with the North Carolina state board of health as required in the preceding section shall be guilty of a misdemeanor and subject to a fine of from ten dollars to fifty dollars. (1917, c. 257, s. 9; C. S. 7188.)

§ 130-202. Expenses of prosecution.—Any and all necessary and legitimate expenses that may be incurred in prosecuting a case under this article shall, on proper showing, be met by the state board of health. (1917, c. 257, s. 10; C. S. 7189.)

§ 130-203. Copies of article to be distributed.—Every health officer shall furnish a copy of this article to each person who is known to him to act as midwife or nurse in the county, city, or town for which such health officer is appointed, and the secretary of state shall cause a sufficient number of copies of this article to be printed and supply the same to the health officer of the county, city, or town, and the state board of health, on application. (1917, c. 257, s. 11; C. S. 7190.)

Art. 19. Venereal Diseases.

Part 1. Control and Treatment.

§ 130-204. Venereal infection.—Syphilis, gonorrhea, and chancroid, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for any one infected with these diseases or any of them to expose another person to infection. (1919, c. 206, s. 1; C. S. 7191.)

§ 130-205. Physicians and superintendents of institutions to report cases.—Any physician or other person who makes a diagnosis in or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a case of venereal disease, shall make a report of such case to the health authorities according to such form and manner as the North Carolina state board of health shall direct. (1919, c. 206, s. 2; C. S. 7192.)

§ 130-206. Sources of infection investigated; suspected persons examined.—State, county, and municipal health officers, or their authorized deputies, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known; to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. It shall be the duty of all local and state health officers to investigate sources of infection of venereal disease, to coöperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution. Provided, that no examination of any person for venereal diseases under this section shall be made by any one except a licensed physician. (1919, c. 206, s. 3; 1925, c. 217, s. 1; C. S. 7193.)

§ 130-207. Prisoners examined and treated; isolation of patients.—All persons who shall be confined or imprisoned in any state, county, or city prison in the state shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be so isolated or quarantined under the provisions of the first preceding section, shall be isolated and treated at public expense until cured; or, in lieu of such isolation, any of such persons may, in the direction of the North Carolina state board of health, be required to report for treatment to a licensed physician or submit to treatment provided at public expense as provided in § 130-206. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. Provided, that no examination of any person for venereal disease under this section shall be made by any one except a licensed physician. (1919, c. 206, s. 4; 1925, c. 217, s. 2; C. S. 7194.)

§ 130-208. Treatment of prisoners infected with communicable venereal disease required before release.—Whenever any person shall be confined or imprisoned in any state, county, or city prison in this state and, upon examination provided in § 130-207, such person has been found to be infected by a communicable venereal disease by the county health officer or other licensed physician authorized by law to make the said examination, the said person shall not be set at liberty until treated for the said disease in accordance with the provisions of the said section, unless such person shall give a bond with surety satisfactory to the clerk of the superior court of the county where he is imprisoned, conditioned upon his making his personal appearance at a stated time and place before the county health officer, and to submit to such examinations as may be proper in the case, and to satisfy said officer that he is undergoing, or has undergone, satisfactory treatment for his said disease.

Upon the giving of the said bond, such person shall, from time to time, as required by the county health officer, personally appear before him for examination, and when, in the judgment of the said health officer, the disease is no longer communicable, he shall be permitted to go without further appearance, and his bond shall be discharged.

The order discharging the said person from further attendance and examination shall be made

by the clerk of superior court, upon certificate of the aforesaid health officer or other physician authorized to make the examination. (1937, c. 230.)

§ 130-209. Board of health may make rules and regulations to enforce this article.—The North Carolina state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this article, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of § 130-206, and such other rules and regulations, not in conflict with provisions of this article, concerning the control of venereal diseases, and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this article, and shall have the force and effect of law. (1919, c. 206, s. 5; C. S. 7195.)

§ 130-210. Expenses authorized. — The North Carolina state board of health, through its officers, are hereby empowered and authorized to incur such expenses in the examination, detention, quarantine, and treatment of persons suspected of having, or having, venereal diseases as in their judgment is necessary. (1919, c. 206, s. 6; C. S. 7196.)

§ 130-211. Statements of expenses to county commissioners; payment of expenses.—The North Carolina state board of health shall submit to the county commissioners of the county in which persons suspected of having, or having, venereal diseases are suspected of having spread the disease, an itemized statement of expenses incurred in the examination, detention, quarantine, or treatment of such persons, and the county commissioners shall, within thirty days after the receipt of such statement of expenses, pay to the treasurer of the North Carolina state board of health a sum equal to that expended. (1919, c. 206, s. 7; C. S. 7197.)

§ 130-212. Violation of this article or authority pursuant thereto a misdemeanor.—Any person who shall violate any of the provisions of part one of this article or any lawful rule or regulation made by the North Carolina state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county, or municipal health officer, pursuant to the authority granted in this article, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars, nor more than fifty dollars, or by imprisonment for not more than thirty days. (1919, c. 206, s. 8; C. S. 7198.)

Part 2. Prescriptions and Reports.

§ 130-213. Treatment except by physician unlawful.—It shall be unlawful for any person except a regularly licensed physician to prescribe or give away any medicine for the treatment of any person afflicted with venereal disease. (1919, c. 214, s. 1; C. S. 7199.)

§ 130-214. Patented and proprietary remedies; druggists to report sales of.—Any druggist or other person who sells at retail any patented, proprietary, or trade-mark remedy or alleged remedy advertised or recommended or sold for or used in the treatment of venereal diseases (gonorrhea, syphilis, or chancroid) or lost manhood, impotency, or sterility, or medicinal preparations containing the oils of cubebs, copaiba, sandalwood, or the oils themselves, iodides of mercury, or preparations compounded for urethral injections, shall report weekly on forms and in accordance with instructions supplied by the North Carolina state board of health the sale of such remedies or alleged remedies to the bureau of venereal diseases of the North Carolina state board of health. (1919, c. 214, s. 2; C. S. 7200.)

§ 130-215. Obtaining prescription or remedy under false name a misdemeanor.—Any person who, in obtaining a prescription from a physician under § 130-213, or in obtaining drugs or remedies mentioned in § 130-214, gives a false or assumed name or address, shall be guilty of a misdemeanor and subject to the penalties imposed in § 130-220. (1919, c. 214, s. 3; C. S. 7201.)

§ 130-216. Quarantine officer may appoint physicians as agents to issue prescriptions.—For the convenience of the public, a quarantine officer, either municipal or county, shall appoint, on the official request of the North Carolina state board of health, from the regularly registered physicians of the county one or more agents to issue prescriptions for drugs or remedies, necessary for treatment of such diseases. (1919, c. 214, s. 4; C. S. 7202.)

§ 130-217. Fees of quarantine officer and agents.—A quarantine officer or agent of a quarantine officer who issues a prescription for any such drug, remedy, or alleged remedy, and who instructs a person infected with venereal disease as required by the state laws and reports by number but without identification as now prescribed for reports by physicians for such diseases to the North Carolina state board of health, shall be entitled to a fee of fifty cents, twenty-five cents of which shall be paid by the bureau of venereal diseases of the North Carolina state board of health, and twenty-five cents of which shall be paid by the county commissioners of the county in which the quarantine officer has jurisdiction, on a certification of the bureau of venereal diseases of the North Carolina state board of health of the number of prescriptions issued by the quarantine officer or the quarantine officer's agent: Provided, that the municipal authorities shall pay the above amount for prescriptions issued by a municipal quarantine officer or his agent. No quarantine officer shall be entitled to any pay from either county or city for issuing prescriptions to persons who pay the quarantine officer in part or in full for the issuance of prescriptions. Several prescriptions issued on a single visit of the infected person to the quarantine officer shall entitle the said officer to not more than the fee for a single prescription. (1919, c. 214, s. 5; C. S. 7203.)

§ 130-218. Druggists to keep record of prescriptions; subject to inspection.—Any and all pre-

scriptions for venereal diseases (gonorrhea, syphilis, or chancroid), or impotency, sterility, or lost manhood, or prescriptions containing the drugs, remedies, or alleged remedies mentioned in § 130-214, shall be kept by a druggist on a separate file, and shall be subject at any reasonable hour to inspection by an officer of the North Carolina state board of health. (1919, c. 214, s. 6; C. S. 7204.)

§ 130-219. Purchaser of remedies may be examined.—The state health officer or his deputy or agent may require any purchaser of remedies or alleged remedies designated in § 130-214, and who may be reasonably supposed to be infected with a venereal disease, to appear before a regularly licensed physician, quarantine officer or agent, for an examination for such disease. (1919, c. 214, s. 7; C. S. 7205.)

§ 130-220. Violation of this article a misdemeanor.—Any person violating any of the provisions of part two of this article shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned for not exceeding thirty days. (1919, c. 214, s. 8; C. S. 7206.)

Part 3. Prospective Mothers.

§ 130-221. Wassermann test required of prospective mothers.—Every woman who becomes pregnant shall have a blood sample taken and submitted to a laboratory approved by the North Carolina state board of health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 1.)

§ 130-222. Services of duly licensed physician upon request; reference of cases thereto.—Any duly licensed physician shall, upon the request of said woman, secure or cause to be secured a sample of blood and submit said sample to a laboratory approved by the state board of health for performing the Wassermann test or other approved tests for syphilis.

Such persons as are permitted by law to attend a woman during the period of her gestation and at childbirth but not permitted by law to take such blood samples shall, upon the request of said patient, refer such patient to a duly licensed physician who, in turn, shall take or cause to be taken such blood sample and submit same to a laboratory approved by the state board of health for performing the Wassermann test or other approved test for syphilis. (1939, c. 313, s. 2.)

§ 130-223. Services of health officer or county physician available.—Any woman who is pregnant and who is unable to pay a duly licensed physician to take a blood sample for testing, as is required in part three of this article, may have such blood sample secured by the local county health officer or county physician and submitted to a laboratory approved by the state board of health for performing the Wassermann test or other approved tests for syphilis. (1939, c. 313, s. 3.)

§ 130-224. Birth certificates to contain information as to tests.—In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths shall state on the birth certificate or stillbirth certificate, as the case may be, whether a blood test for syphilis has been made durir such pregnancy upon a specimen of blood take from the woman who bore the child for which birth or stillbirth certificate is filed. If such te has been made during pregnancy, those require to report births and stillbirths shall state the da on which the test was made. In addition to th usual information asked for on each certificate birth, the supplementary confidential medical ta shall be filled out on each birth certificate. Ever certificate of birth shall state whether a sere logical test for syphilis was made during pre nancy or at delivery. (1939, c. 313, s. 4.)

§ 130-225. Penalty for violation.—Any knowin and wilful violation of part three of this articl or any part thereof, by any physician, attendin mid-wife, county health officer or county physicia charged herein with the responsibility of its er forcement, shall be declared a misdemeanor an shall be punishable by a fine of twenty-five do lars ($25.00) or imprisonment for thirty days, c both, in the discretion of the court. (1939, c. 31 s. 6.)

Art. 20. Tubercular Prisoners.

Part 1. Segregation of Tubercular Prisoners.

§ 130-226. Tuberculous county prisoners to b segregated.—The board of county commissior ers of the respective counties of North Carolir shall provide in the jail-house or in any camp c place where prisoners are committed for keepin or sentenced to a term of imprisonment in an county in the state of North Carolina, separat cells or rooms or a place in which shall be cor fined any prisoner or prisoners who may be con mitted for keeping or sentenced to said prison c place of confinement for a term of imprisonmen who has been examined by the county physicia or county health officer and pronounced to b affected with tuberculosis. (1907, c. 567, s. 1; C S. 7207.)

§ 130-227. Sheriff to have prisoners suspecte to be tuberculous examined and separated.—Whe a prisoner is placed in the custody of a sheri for the purpose of being committed to jail or t any place where prisoners are kept, and the she iff has reason to believe or suspect that the pri oner is suffering with tuberculosis, it shall be th duty of the sheriff to have such prisoner exan ined by the county physician or county healt officer, and if upon examination the prisoner pronounced tubercular, then he shall be separate from other prisoners and confined in a separat cell or other place of confinement. (1907, c. 56 s. 2; C. S. 7208.)

§ 130-228. Tuberculous state prisoners to be seg regated.—It shall be the duty of the board of d rectors of the state's prison to provide separat cells or apartments for the confinement of pri oners sentenced to that institution for a term c imprisonment, who have been examined and pr nounced by the physician in charge to be a fected with tuberculosis. (1907, c. 567, s. 3; C. S 7209.)

§ 130-229. Separate cells for tuberculous prisor ers; fumigation.—Cells or places of confinemer provided for prisoners affected with tuberculos must be kept exclusively for such prisoners, an

when they have been occupied by tuberculous prisoners they shall not be used for other prisoners until the county physician or county health officer, or the physician in charge and the health authorities of the state's prison, have been notified, and until such cells or places of confinement have been thoroughly fumigated and disinfected under the supervision of such officials in the manner required by the state board of health. (1907, c. 567, s. 4; C. S. 7210.)

§ 130-230. Prison authorities to have prisoners suspected to be tuberculous examined.—When a prisoner is committed to any prison or place of confinement designated in this article, and the sheriff of the county, the warden of the state's prison or other authorities of the prison know or suspect the prisoner to be suffering with tuberculosis, it shall be the duty of such authorities to cause the prisoners to be examined by the county physician, the county health officer, or the physician in charge within five days after the prisoner has been committed or sentenced to the prison. (1907, c. 567, s. 5; C. S. 7211.)

Part 2. Prevention of Tuberculosis Among Prisoners.

§ 130-231. Tuberculous prisoners to be sent to state farm; prisoner's consent.—No prisoner suffering with tuberculosis shall be kept in any county convict camp, or on any public or private works, or in any jail (except, in the latter case, when said prisoner is awaiting trial), but such prisoner suffering with tuberculosis shall be sent to the state farm within forty-eight hours after the physician in charge shall have made a diagnosis of tuberculosis, the county in which said prisoner is confined bearing the expense of transfer, and it shall be the duty of the sheriff to make such transfer. But no such prisoner shall be sent to the state farm unless he has first consented thereto in writing in the presence of the sheriff of the county where the prisoner may be under sentence. The sheriff shall subscribe his name as a witness thereto and shall take and file the same with the clerk of the superior court of the county, who shall enter the same in a book to be kept for that purpose: Provided, that no such prisoner shall be kept at the state farm or central prison for a longer term than the length of his original sentence. (1917, c. 262, s. 1; C. S. 7213.)

§ 130-232. Provision for care and cure of prisoners.—The board of directors of the central prison and state farm and the superintendent of the said central prison and state farm shall without delay make such provision for the care of such prisoners suffering with tuberculosis as will prevent their communicating the disease to the other prisoners, and to the end that such prisoners suffering with tuberculosis may be restored to health, if it be possible. (1917, c. 262, s. 2; C. S. 7214.)

§ 130-233. Board of health must approve plans for prisoners.—It shall be the duty of the prison management to submit the plans for carrying into effect the two preceding sections to the state board of health for its approval, and they are required to make their plans, both for buildings and care of patients, conform to the recommendations of the state board of health. (1917, c. 262, s. 3; C. S. 7215.)

§ 130-234. Health authorities to examine all prisoners.—It shall be the duty of every county physician or city physician, or county health officer, or city health officer, or other physician having in charge the medical care of prisoners in any city or county in this state, or on any public or private works where prisoners or convicts are employed, to make a thorough physical examination of every prisoner committed to the county or city jail or to the county or city chain-gang or road force, or any public or private works within forty-eight hours after the admission of such prisoner; and when he finds a prisoner suffering with tuberculosis, he shall make a written report of same to the state board of health, stating in detail the conditions found and the stage of the disease, within twenty-four hours after making such diagnosis, and he shall also report same to the superintendent of the chain-gang or the jailer or the superintendent of the public or private works, and to the sheriff of the county, in writing, within twenty-four hours after having made such diagnosis of tuberculosis. (1917, c. 262, s. 4; C. S. 7216.)

§ 130-235. Officials in charge of prisoners to report on health.—Every superintendent of convicts, or superintendent of public or private works where convicts are employed, and the superintendent of the central prison and state farm, and every jailer, shall make such reports as to the existence of cases of tuberculosis or suspected cases of tuberculosis, or other disease or diseases, and loss of time on account of sickness, and the disease or diseases causing such loss of time and such other things that may have a bearing on the health of the prisoners and the sanitation of the camp, prison, or jail, to the state board of health at such stated periods and on such stated forms as may be requested by the state board of health. And every health officer or other physician having charge of prisoners in county convict camps, on county or city roads or streets or public or private works, or in jails or prisons, state, city, or county, shall likewise make such reports to the state board of health as to the physical condition and transfer of prisoners and as to the sanitary condition of camps, jails, or prisons, as may be requested by the state board of health. (1917, c. 262, s. 5; C. S. 7217.)

§ 130-236. Reports to include transference and particulars as to tuberculous. — The superintendent of the central prison or state farm, convict camp, or of any public or private works where convicts are used, and the jailers of the county jails and the sheriff of the county, and the medical officer connected with any of the above mentioned places where convicts are kept or worked, shall make such reports to the state board of health as to transference of prisoners suffering with tuberculosis, giving name of prisoner, length of time said prisoner had been under his jurisdiction, the stage of the disease, point or place to which he was transferred,

name and address and official title of the person to whom he was transferred, and such other information as may be requested by the state board of health. (1917, c. 262, s. 6; C. S. 7218.)

§ 130-237. Food and work of tuberculous prisoners.—In order more effectively to promote the recovery of tuberculous prisoners, it shall be the duty of the superintendent of the central prison and state farm and such other officers as may have jurisdiction under him to provide such additional food for prisoners suffering with tuberculosis as may be prescribed or requested by the physician in charge. And such prisoners suffering with tuberculosis shall only do such work as may be prescribed by the prison physician. (1917, c. 262, s. 7; C. S. 7219.)

§ 130-238. Violation of article misdemeanor.—Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court. (1907, c. 567, s. 7; 1917, c. 262, s. 8; C. S. 7220.)

Art. 21. Health of Domestic Servants.

§ 130-239. Domestic servants required to furnish health certificate.—Hereafter all domestic servants who shall present themselves for employment shall furnish their employer with a certificate from a practicing physician or the public health officer of the county in which they reside, certifying that they have been examined within two weeks prior to the time of said presentation of said certificate, that they are free from all contagious, infectious or communicable diseases and showing the non-existence of any venereal disease which might be transmitted. Such certificate shall be accompanied by the original report from a laboratory approved by the state board of health for making such tests, showing that the Wasserman or any other approved tests of this nature are negative. Such tests shall have been made within two weeks of the time of the presentation of such certificates; and such certificate shall also affirmatively state the non-existence of tuberculosis in the infectious state. (1937, c. 337, s. 1.)

§ 130-240. Annual examinations.—All domestic servants employed shall be examined at least once each year and as often as the employer may require, and upon examination shall furnish to the employer all of the evidence of the condition of their health, as is set out in § 130-239. (1937, c. 337, s. 2.)

§ 130-241. Punishment for failure of servants to comply; publication of law by county health officer.—Any domestic servant who shall fail or refuse to comply with the terms of §§ 130-239 and 130-240, upon conviction shall be fined not more than $50.00 or imprisoned not more than thirty days. (1941, c. 223.)

Art. 22. Surgical Operations on Inmates of State Institutions.

§ 130-242. Operations for improvement of mental, moral, or physical condition.—The medical staff of any penal or charitable hospital or institution of the state of North Carolina is hereby permitted and instructed to have any surgical operation performed by competent and skillful surgeons upon any inmate of any such penal or charitable hospital or institution when, in the judgment of the board hereinafter created in the next succeeding section, such operation would be for the improvement of the mental, moral, or physical condition of such inmate of any such institution: Provided, such operation shall not be performed until same shall have been affirmed by the governor and the secretary of the state board of health. (1919, c. 281, s. 1; C. S. 7221.)

§ 130-243. Board of consultation for carrying out provisions of this article.—At least one representative of the medical staff of the several charitable and penal institutions of the state, and one from the state board of health, such representatives to be designated by the governing bodies of the several institutions, shall constitute a board of consultation for the carrying out of the provisions of this article. Such board shall cause a permanent record to be kept by one of its members, designated as secretary, of all its actions and judgments, taken at a meeting held only after due notice has been issued to all its members. (1919, c. 281, s. 2; C. S. 7222.)

Art. 23. Maritime Quarantine.

§ 130-244. Fees charged on vessels.—Every vessel subject to visit and inspection shall pay a fee of five dollars, if of less than two hundred and fifty tons burden; if of more than two hundred and fifty and less than five hundred tons burden, eight dollars; if of more than five hundred and less than one thousand tons burden, ten dollars; if over one thousand tons, fifteen dollars, which shall be collected and accounted for by the quarantine officer, as provided for in this article, and every person taken to the hospital shall pay a fee not exceeding three dollars per day, until discharged by the quarantine officer, for the payment of which the vessel shall be responsible, and only such vessel shall be subject to visit and inspection as may be from ports designated, from time to time, by the medical officer, except that all vessels having sickness on board shall be brought to the visiting station for examination. (Rev., s. 4522; Code, s. 2916; 1868, c. 33, s. 5; 1891, c. 533; C. S. 7231.)

§ 130-245. Pilots to bring vessels to station; penalty.—It shall be the duty of all pilots to bring vessels to the visiting station, as they may be required from time to time by the quarantine officer, and they shall not take any vessel subject to quarantine or visitation, past the station, until released by the quarantine officer; and any pilot who shall wilfully violate any quarantine regulation shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port in the state. (Rev., s. 4512; Code, s. 2917; 1868, c. 33, s. 6; C. S. 7232.)

§ 130-246. Master refusing to obey regulations; penalty.—Any master of a vessel who shall refuse to obey the quarantine regulations shall forfeit and pay a fine of two hundred dollars for each day he shall refuse to obey the same, for which forfeiture the property of the captain, together with the vessel and cargo, shall be held responsible. (Rev., s. 4523; Code, s. 2918; 1868, c. 33, s. 7; C. S. 7233.)

§ 130-247. Violating quarantine regulations; penalty.—Any person who shall violate the quarantine regulations, as prescribed from time to time by the quarantine officers, shall forfeit and pay the sum of two hundred dollars for each offense; and all penalties and forfeitures imposed by this chapter may be recovered before any court having jurisdiction, one-half to the informer, the other half to the payment of the expenses of the quarantine establishment. Any person who shall violate any of the rules and regulations made by the quarantine board for the control, government, and maintenance of the quarantine station on Cape Fear river, as provided for in this part of this article, shall be guilty of a misdemeanor. (Rev., ss. 3450, 4524; Code, s. 2919; 1868, c. 33, s. 8; C. S. 7234.)

§ 130-248. Quarantine officer may issue warrants.—The quarantine medical officer may issue a warrant to any sheriff or other officer, commanding him to arrest the body of any person violating the quarantine, and have him without delay before some competent jurisdiction for trial. (Rev., s. 4525; Code, s. 2920; 1868, c. 33, s. 9; C. S. 7235.)

§ 130-249. Site may be sold and new site purchased.—If the quarantine board, on investigation, shall consider a site further removed from inhabited places as essential to the public safety, and shall so recommend, it shall be the duty of the governor to sell the present hospital site at Price's Creek in such manner as he may deem best, and make title to the purchaser thereof, and the moneys received for said site to turn over to the quarantine board, to be used by them for quarantine purposes at some other point as convenient as possible to the quarantine anchorage off Deepwater Point. (Rev., s. 4534; 1889, c. 521, s. 5; C. S. 7236.)

§ 130-250. Control of maritime quarantine; rules.—Except as otherwise provided in this chapter, the commissioners of navigation in the respective ports and inlets of the state, or where there are no commissioners of navigation, the governing authorities of any seaport town, may appoint such place or places as they may think proper for vessels to perform quarantine; and when a vessel shall arrive at any port or inlet of this state, having an infectious distemper on board, or shall come from any place or port which at the time of her sailing, or shortly before, was infected with any malignant disorder, the master and pilot of such vessel shall anchor her at the place so appointed, and give immediate information thereof to the county physician or health officer of the county in which such port is situated or to the municipal physician or health officer of such town, who shall thereupon cause such vessel and her crew to be examined by the county or municipal health authorities, who shall have power to order and command the master of the vessel, crew, and passengers to perform such quarantine as shall be deemed most proper and reasonable to check or prevent any infectious distemper from spreading in this state, and to require every person on board such vessel strictly to perform quarantine, and to obey the orders given by the health authorities aforesaid respecting the victualing, purifying, and cleansing of such vessel and all articles on board, and to regulate and control the intercourse of such persons with the inhabitants of the state, the receiving any person on board or the putting them on shore; and if any pilot or master neglect to give such information as above required, the pilot for such neglect shall forfeit and pay one hundred dollars, and the master for a like neglect shall forfeit and pay two hundred dollars. In case the master of any vessel ordered to perform quarantine should refuse to comply with or fail to fulfill the orders for performing quarantine with his vessel, he shall forfeit and pay two hundred dollars for each day he shall fail to perform the quarantine. The property of the captain, together with the vessel and cargo, whether owned by the captain or not, shall be liable for the penalty herein imposed. If there be at the port where the vessel enters a port physician, as provided for in this article, he shall perform the duties and have all the power by this section conferred upon the health authorities aforesaid. The state authorities shall coöperate in all matters of quarantine with the federal authorities. (Rev., s. 4510; Code, s. 2893; R. C., c. 94, s. 1; 1783, c. 194, s. 12; 1793, c. 379, s. 1; 1802, c. 624; C. S. 7237.)

§ 130-251. Commissioners of navigation authorized to appoint harbor master and health officer.—The commissioners of navigation of the several seaport towns in the state shall have power to appoint a harbor and health officer, to prescribe their duties and authority, to make rules and regulations for their government, allow them a reasonable compensation for their services, and determine how such compensation is to be paid. And they shall have power to pass such by-laws (not inconsistent with the laws of the land) for the better regulation of the quarantine to be performed by vessels arriving from ports infected or suspected to be infected with any infectious disease, and for preventing all intercourse between such vessels and persons on shore, as to them may seem meet and proper, and to enforce obedience to such by-laws by imposing such penalties as they may think proper. (Rev., s. 4537; Code, s. 2905; R. C., c. 94, s. 13; C. S. 7238.)

§ 130-252. Governing authorities of seaport towns; powers.—The governing authorities of the several seaport towns and towns having a port of entry, where there are no commissioners of navigation, shall have the same power and authority and be subject to the same duties as are prescribed for the commissioners of navigation in relation to the quarantine of vessels in the ports of their respective towns; and all persons offending against the regulations of such governing authorities shall be subject to the same fines, penalties, and forfeitures as though the said regulations had been made by the commissioners of navigation. (Rev., s. 4536; Code, s. 2906; R. C., c. 94, s. 14; C. S. 7239.)

§ 130-253. Port physician; appointment.—The commissioners of navigation in the several ports of the state, and, where there are no such commissioners, the governing authorities of the several

seaport towns, may appoint port physicians, and regulate and prescribe the fees to which they shall be respectively entitled, according to the different quarantine stations, which they shall be bound to attend for the purpose of inspecting vessels, as required by this article, and giving certificates of their situation and condition, in regard to the health of their respective crews and passengers. (Rev., s. 4517; Code, s. 2896; R. C., c. 94, s. 3; 1817, c. 946, s. 2; C. S. 7240.)

§ 130-254. Vessels from infected ports to anchor at quarantine; punishment for failure.—If any vessel shall be brought into the state from a place which at the time of her departure was infected with the yellow fever, smallpox, or other infectious disorder, or if any vessel, arriving in the state, shall have the smallpox or yellow fever or other infectious disorder on board, or shall have had such disorder on board during her passage to the state, such vessel shall be anchored at the place appointed for quarantine, and there remain until permitted to remove by the commissioners of navigation, or by the municipal authorities of the town to which the vessel is bound, or by the county physician or health officer. If such vessel shall come to any town or harbor without permission obtained as herein required, the pilot or master conducting the vessel or permitting her to be so conducted shall be guilty of a misdemeanor, and fined not less than one thousand dollars and imprisoned not exceeding one year. (Rev., ss. 3451, 4511; Code, s. 2894; R. C., c. 94, s. 2; 1817, c. 946, s. 1; C. S. 7241.)

§ 130-255. Pilots bringing in vessels without certificate; penalty.—If any pilot shall bring any vessel beyond the place fixed and limited by the commissioners of navigation without a certificate of the health officer declaring that there is no danger to be apprehended from any infectious disease on board said vessel, such pilot shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port of the state. (Rev., s. 4513; Code, s. 2904; R. C., c. 94, s. 12; 1797, c. 486, s. 2; C. S. 7242.)

§ 130-256. Master must declare health of crew.—The commissioners of navigation or the county physician or health officer may, whenever they think proper, require the master of a vessel, on his arrival in the state, to declare on oath the state of the health of himself, crew, and passengers, and the place whence he came. And if any master shall give a false declaration, or any physician shall wilfully give a false certificate of the health of the persons on board any such vessel, he shall forfeit and pay two thousand dollars. (Rev., s. 4514; Code, s. 2901; R. C., c. 94, s. 9; 1793, c. 379, s. 6; C. S. 7243.)

§ 130-257. Vessel removed to quarantine.—The commissioners of navigation or (where there are no such commissioners) the governing authorities of the town in the harbor of which any vessel has arrived in violation of this article, or the county physician or county health officer as aforesaid, may use such force as shall be necessary to remove said vessel to the place of quarantine; their reasonable charge for which service shall be paid by the master or owner of the vessel, and may be recovered of either of them before any court having jurisdiction. (Rev., s. 4515; Code, s. 2895; R. C., c. 94, s. 3; 1817, c. 946, s. 2; C. S. 7244.)

§ 130-258. Vessel furnished with provisions.—The commissioners of navigation or (where there are no such commissioners) the governing authorities of the seaport town are empowered and directed to furnish any vessel, ordered to ride quarantine, with a sufficient quantity of good wholesome provisions, for the expense of which the master, vessel, and cargo shall be liable. (Rev., s. 4516; Code, s. 2902; R. C., c. 94, s. 10; 1793, c. 379, s. 7; C. S. 7245.)

§ 130-259. Going on quarantined vessel; penalty.—When any vessel shall be directed to perform quarantine, and any person knowing of such order, by the information of the master or otherwise, shall go on board of such vessel without permission of the commissioners of navigation or the county physician or county health officer aforesaid, such person shall forfeit and pay one hundred dollars. If any person shall be permitted by the master to come on board without informing him of the orders as to quarantine and intercourse given as provided in § 130-250 of this article, the master shall forfeit and pay two hundred dollars for every person so offending, and four hundred dollars for suffering any person so on board to depart his vessel without permission as provided in this article, and the commissioners of navigation or the county physician or county health officer are empowered to order every person who shall go on board any such vessel to remain there for such length of time as they may think proper; and if he disobey such order, he shall pay one hundred dollars. (Rev., s. 4518; Code, s. 2898; R. C., c. 94, s. 6; 1793, c. 397, s. 3; C. S. 7246.)

§ 130-260. Landing goods from quarantined vessels; penalty.—If any master of a vessel ordered to ride quarantine shall convey, or cause or permit to be conveyed, any article of goods, wares, and merchandise from his vessel on any other lands or into any other boat or vessel than the commissioners of navigation or the county physician or county health officer shall authorize, he shall forfeit and pay two hundred dollars for every such offense. And any other person so conveying, or causing to be conveyed, any article as above mentioned, shall be liable to the like penalty. (Rev., s. 4519; Code, s. 2900; R. C., c. 94, s. 8; 1793, c. 379, s. 5; C. S. 7247.)

§ 130-261. Person breaking quarantine to be returned.—The commissioners of navigation or the county physician or county health officer, respectively, may issue their warrant to any sheriff or other officer, commanding him to take the body of any person that may have left any vessel ordered to ride quarantine, and carry him on board of said vessel; and the officer may summon such persons to assist him in the execution of the warrant as he may see fit. (Rev., s. 4520; Code, s. 2899; R. C., c. 94, s. 7; 1793, c. 379, s. 4; C. S. 7248.)

§ 130-262. Penalty for breaking quarantine.—When a vessel shall be directed to perform quarantine, and any seaman or passenger shall, con-

trary to the order and direction of the commissioners of navigation or the county physician or county health officer, leave the vessel and land on any other place than they shall allow, the seaman or passenger offending shall forfeit and pay two hundred dollars for each offense; and when he has left the vessel with the master's consent, the master shall pay a like penalty of two hundred dollars for every such offense of any of his passengers or seamen. (Rev., s. 4521; Code, s. 2897; R. C., c. 94, s. 5; 1793, c. 379, s. 2; C. S. 7249.)

§ 130-263. Disposition of penalties and forfeitures.—All penalties and forfeitures imposed by this article may be recovered and applied, one-half to the use of the informer, the other half by the commissioners of navigation for the use and benefit of the navigation of the port within whose jurisdiction the penalty or forfeiture may have been incurred. (Rev., s. 4538; Code, s. 2903; R. C., c. 94, s. 11; 1793, c. 379, s. 8; C. S. 7250.)

Art. 24. Meat Markets and Abattoirs.

§ 130-264. Sanitation and rating of places selling fresh meats.—For the better protection of the public health, the state board of health is hereby authorized, directed and empowered to prepare and enforce rules and regulations governing the sanitation of meat markets, abattoirs, and other places where meat or meat products are prepared, handled, stored, or sold, and to provide a system of scoring and grading such places. No such meat market or abattoir shall operate which receives a sanitary rating of less than seventy per cent (70%): Provided, that this article shall not apply to farmers and others who raise, butcher and market their own meat or meat products. (1937, c. 244, s. 1.)

§ 130-265. When inspectors required to file reports with local health officer.—Where municipalities or counties have a system of meat inspection as already provided by law the person or persons responsible for such meat inspection work shall file a copy of all inspection work, reports and other official data with the city or the county health officer, as the case may be, and in municipalities and counties having no organized health department, such person or persons shall file a copy of all inspection work, reports and other official data with the state health officer. The state board of health shall provide or approve the report forms referred to in this section. (1937, c. 244, s. 2.)

§ 130-266. Violation a misdemeanor.—Any person, firm, or corporation found guilty of violating any of the provisions of this article, or any of the rules and regulations that may be provided under this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned in jail for not less than thirty days at the discretion of the court. (1937, c. 244, s. 3.)

§ 130-267. Effect of article.—Nothing in this article shall in any way repeal or affect §§ 106-159 to 106-166, or the rules and regulations promulgated thereunder. (1937, c. 244, s. 4.)

Art. 25. Regulation of the Manufacture of Bedding.

§ 130-268. Definitions; possession prima facie evidence of intent to sell.—As used in this article:

The word "mattress" means: Any mattress, upholstered spring, comforter, pad, cushion, or pillow to be used in sleeping.

The word "person" means: Any individual, corporation, partnership, or association.

The term "new material" means: Any material which has not been used in the manufacture of another article or used for any other purpose: Provided, this shall not exclude by-products of industry that have not been in human use, unless included in the following paragraph.

The term "previously used material" means: (a) Any material which has been used in the manufacture of another article or used for any other purpose: (b) any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including juts and shearings.

The word "renovate" means: The reworking of a used mattress and returning it to the owner for his own personal use or the use of his immediate family.

The word "manufacture" means: Any making or re-making of a mattress out of new or previously used material, other than renovating.

The word "sell" or "sold" shall, in the corresponding tense, include: Sell, offer to sell, deliver or consign in sale, or possess with intent to sell, deliver, or consign in sale.

Possession of one or more articles covered by this article when found in any store, warehouse, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the article or articles so possessed are possessed with intent to sell, or sterilize and sell.

All words shall include plural and singular, masculine and feminine, as the case demands. (1937, c. 298, s. 1.)

§ 130-269. Sterilization; tagging mattresses received for renovation, etc.—No person shall renovate a mattress without first sterilizing it by a process approved by the state health officer.

No person shall manufacture a mattress containing previously used material without first sterilizing such material by a process approved by the state health officer.

No person shall sell or give away in connection with a sale a used mattress or a mattress containing any previously used material unless sterilized, since last used, by a process approved by the state health officer: Provided, this article shall not apply to a mattress sold by the owner from his home direct to the purchaser, unless such mattress has been exposed to an infectious or contagious disease.

Any person desiring to operate a sterilizer shall first secure license from the state health officer, the fee for which shall be twenty-five dollars ($25.00) for each calendar year or part thereof. Such license shall be kept conspicuously posted in the place of business: Provided, however, that blind persons operating under the direction of the state commission for the blind shall be exempt from said license fee.

Any sterilizing apparatus used under this article shall be inspected and approved by a representative of the state health officer. If, in the opinion of such representative, the apparatus does not effectively sterilize, or if at any time it is not maintained in a satisfactory condition, it may be condemned by any representative of the state health officer, in which event it shall not be used for sterilizing any mattress or material required to be sterilized under this article until the defects have been remedied and the apparatus approved by a representative of the state health officer.

Any person sterilizing material or mattresses for another person shall keep in a well-bound book a complete record of the kind of material and mattresses so sterilized, such record to be open to inspection by any representative of the state board of health.

Any person who receives a mattress for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2.)

§ 130-270. Manufacture regulated; required information to be stamped on tags; use of "sweeps" or "oily sweeps" material.—No person shall manufacture or sell a mattress to which is not securely sewed a cloth or cloth-backed tag at least two (2) inches by three (3) inches in size, to which is affixed the adhesive stamp provided in § 130-272. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English (a) the name of the material or materials used to fill such mattress; (b) the name and address of the maker or vendor of the mattress; (c) in letters at least one-eighth inch high the words "made of new material," if such mattress contains no previously used material; or the words "made of previously used materials," if such mattress contains any previously used material; or the words "second-hand" on any mattress which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or second-hand mattresses. Such tag shall be approved by the state health officer.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the stamp required by this article, and shall be sewed to the outside covering of every mattress being manufactured, before the filling material has been inserted.

When the word "cotton" is used, the kind of cotton shall be clearly stated on said tag.

Material known in the cotton waste trade as "sweeps" or "oily sweeps" shall not be used unless washed in accordance with rules to be promulgated by the state board of health.

The name "felt" shall not be used unless the material has been carded in layers by a garnett machine and is inserted into the mattress in layers. (1937, c. 298, s. 3.)

§ 130-271. Altering, etc., tags prohibited.—No person, other than a purchaser for his own use or a representative of the state board of health, shall remove from a mattress, or deface or alter, the tag required by this article. (1937, c. 298, s. 4.)

§ 130-272. Enforcement funds.—The state health officer is hereby charged with the administration and enforcement of this article, and he shall provide specially designated adhesive stamps for use under § 130-270. Upon request he shall furnish no less than five hundred said stamps to any person paying in advance ten dollars ($10.00) per five hundred stamps. State institutions engaged in the manufacture of mattresses for their own use or that of another state institution shall not be required to use such stamps.

All money colleced under this article shall be paid to the state health officer, who shall place all such money in a special "bedding law fund," which is hereby created and specifically appropriated to the state board of health, solely for expenses in furtherance of the enforcement of this article. The state health officer shall semiannually render to the state auditor a true statement of all receipts and disbursements under said fund, and the state auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for (a) salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or (b) expenses directly connected with the enforcement of this article, including attorney's fees, which are expressly authorized to be incurred by the state health officer without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the state board of health. (1937, c. 298, s. 5.)

§ 130-273. Enforcement by state board of health.—The state board of health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this article. Any person who shall hinder or prevent any representative of the state board of health in the performance of his duty hereunder shall be guilty of a violation of this article.

Every place where mattresses are made, remade, renovated or sold, or where material, which is to be used in the manufacture of mattresses, is mixed, worked, or stored, shall be inspected by duly authorized representatives of the state board of health.

Any representative of the state board of health may order off sale, and so tag, any mattress which is not made and tagged as required by this article, or which is tagged with a tag containing a statement false or misleading, and such mattress shall not be sold until such defect is remedied and a representative of the state board of health has reinspected same and removed the "off sale" tag.

Any person supplying material to a mattress manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The mattress manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the state board of health.

When an authorized representative of the state board of health has reason to believe that a mattress is not tagged or filled as required by this

article, he shall have authority to open a seam of such mattress to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such mattress, and he shall have power to seize and hold for evidence any such records and any mattress or mattress material which in his opinion is made, possessed, or offered for sale contrary to this article, and shall have power to take a sample of any mattress or mattress material for the purpose of examination or for evidence. (1937, c. 298, s. 6.)

§ 130-274. Licenses.—No person, except for his own personal use or the use of his immediate family, and blind persons operating under the direction of the state commission for the blind, shall manufacture mattresses until he has secured a license therefor from the state board of health upon payment of an annual inspection fee of twenty-five dollars ($25.00), and in case such mattresses are manufactured from previously used material he shall also secure and pay for the additional license required under § 130-269. The licenses so issued shall be valid until the end of the calendar year in which issued, or until voided for violation of this article, and shall at all times be kept conspicuously posted in the place of business.

The state health officer may revoke and void the aforesaid license and the sterilizing license issued under § 130-269 of any person convicted a second time for violating this article; and such person shall not thereafter make, remake, renovate, or sell a mattress for a period of six months after such revocation, and then only after he has paid the required fees for new licenses. (1937, c. 298, s. 7.)

§ 130-275. Violation of article. — Any person who fails to comply with any provision of this article, or who counterfeits the stamp provided in § 130-272, shall be guilty of a violation of this article. Each stamp so counterfeited and each mattress made, renovated, or sold contrary to this article shall be a separate violation. (1937, c. 298, s. 8.)

§ 130-276. Issue of warrants.—If any person submits reasonable proof of any violation of this article to any law enforcement officer, or to a representative of the state board of health, it shall be the duty of said officer or representative of the state board of health to swear out a warrant against the offender. (1937, c. 298, s. 9.)

§ 130-277. Penalty.—A person who violates this article shall, upon conviction thereof, be fined not more than fifty dollars ($50.00), or imprisoned in the county jail not to exceed thirty days. (1937, c. 298, s. 10.)

§ 130-278. Blind persons exempt.—In the cases where mattresses are manufactured or renovated in a plant or place of business owned solely by blind persons in which place of business not more than one sewing assistant is employed in the manufacture or renovation of mattresses, neither the payment of the license fees nor the use of stamps shall be required, and mattresses made by such blind persons may be sold by any dealer without the stamps being affixed. (1937, c. 298, s. 11.)

Art. 26. Transportation of Foodstuffs.

§ 130-279. Sanitation of cars.—It shall be unlawful for any carrier transporting food intended for human consumption to transport the same knowingly in cars or other vehicles which have been defiled by livestock or by human beings without having first put said car or vehicle in a sanitary condition.

It shall be unlawful for any person to defile any railroad car by urinating therein or by passing therein excreta.

Any person, firm, or corporation who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. (1925, cc. 114, 213.)

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Art. 1. Orthopedic Hospital.

§ 131-1. Board of trustees; term of office; organization and powers.—The governor shall appoint a board of trustees, consisting of nine members, for the North Carolina Orthopedic Hospital, and they shall be divided into three classes of three members each. The first class shall be appointed for two years, the second for four years, and the third class for six years. They shall hold their offices until their successors have been appointed, and the term of office of each shall begin from the date of the selection of the site. The governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. The board

of trustees shall organize by electing from its members a president, a secretary, and a treasurer, and three of its members as an executive committee. The board shall have power to erect any buildings necessary, make improvements, or in general do all matters and things that may be beneficial to the good government of the institution, and to this end they may make by-laws for the government of the same. (1917, c. 199, s. 4; C. S. 7254.)

§ 131-2. Authorized to accept donations.—The board of trustees of the North Carolina Orthopedic Hospital are hereby authorized and empowered to accept gifts, grants, donations, devises, and bequests of money, lands, goods and other property for and on behalf of said institution. (1927, c. 188, s. 1.)

§ 131-3. Establishment of school for patients.—There is hereby created and established in the North Carolina Orthopedic Hospital at Gastonia a school for patients who are between the ages of six and twenty-one years which shall be operated for the period of twelve months in each year, or such period during each year as such board of trustees may deem advisable, under the direction and supervision of the county board of education of Gaston county.

A principal and the necessary number of teachers in said school shall be allotted to said school by the state school commission and shall be elected by the trustees of the North Carolina Orthopedic Hospital, upon the recommendation of the county superintendent of public instruction of Gaston county, which teachers shall hold certificates according to standards prescribed by the state board of education for teachers in the public schools of the state.

The state school commission is hereby authorized to purchase such equipment and supplies as it deems necessary to carry out the purposes of this section. (1939, c. 186.)

Art. 2. Hospitals in Counties, Townships, and Towns.

§ 131-4. Establishment of public hospitals; election, tax, and bond issue.—Any county, township, or town may establish a public hospital in the following manner:

1. Petition presented.—A petition may be presented to the governing body of any county, township, or town, signed by two hundred resident freeholders of such county, township, or town, one hundred and fifty of whom, in the case of a county, shall not be residents of the city, town, or village where it is proposed to locate such hospital, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county, township, or town named therein, or to be thereafter selected by the governing body of such county, township or town, and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital.

2. Election ordered.—Upon the filing of such petition the governing body of the county, township, or town shall order a new registration and shall submit the question to the qualified electors at the next general election to be held in the county, township, or town, or at a special election called for that purpose, first giving ninety days' notice thereof by publication once a week for four successive weeks beginning ninety days before the day of said election in one or more newspapers published in the county, township, or town, if any be published therein, and by posting such notice, written or printed, in each township of the county, in case of a county hospital, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the county, township, or town. The election shall be held at the usual places in such county, township or town for electing officers, the election officers shall be appointed by the Board of county commissioners and the vote shall be canvassed in the same manner as in elections for officers for such county, township, or town.

No action to question the validity of any such election shall be brought or maintained after the expiration of sixty days from the canvassing of said vote, and after the expiration of said period it shall be conclusively presumed that said election has been held in accordance with the requirements of this section, unless within said period such action is instituted.

3. Tax to be levied.—The tax to be levied under such election shall not exceed one-fifteenth of one cent on the dollar for a period of time not exceeding thirty years, and shall be for the issue of county, township, or town bonds to provide funds for the purchase of a site and the erection thereon of a public hospital and hospital buildings. (1913, c. 42, s. 1; 1917, cc. 98, 268; 1919, c. 332, s. 1; 1923, c. 244, s. 1; 1929, c. 247, ss. 1, 2, 4; C. S. 7255.)

§ 131-5. Election on tax levy; collection and application of funds.—The governing body of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one-fifteenth of one cent on the dollar for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a ..... cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this article, and for no other purposes whatever. (1913, c. 42, s. 2; 1917, c. 268; 1919, c. 332, s. 2; C. S. 7256.)

§ 131-6. Curative statute.—All elections heretofore called or held under the provisions of this article, as amended, where notice has been given in accordance with § 131-4, and the election officers have been appointed either in compliance with § 131-4 or by the County Board of Elections, are hereby validated and declared to be in accordance with the requirements of the statute on said subject. (1929, c. 247, s. 3.)

§ 131-7. Trustees; term of office; qualification and election.—Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, three of whom may be women, all residents of the county, township, or town, not more than four of said trustees to be residents of the city, town, or village in which said hospital is to be located, in case of a county hospital, who shall constitute a board of trustees for such public hospital. The trustees shall hold their offices until the next following general election, when seven hospital trustees shall be elected and hold their offices, two for two years, two for four years, three for six years, and who shall by lot determine their respective terms. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the nomination and election of hospital trustees in the same manner as other officers are elected, none of whom shall be practicing physicians. (1913, c. 42, s. 3; 1917, c. 98, s. 2; 1917, c. 268; C. S. 7257.)

Local Modification.—Yancey: 1929, c. 117.

§ 131-8. Officers elected by trustees; compensation. — The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them. The treasurer of the county, township, or town in which such hospital is located shall be treasurer of the board of trustees. The treasurer shall receive and pay out all moneys under the control of said board, as directed by it, but shall receive no compensation from such board. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary, and allowed only by the affirmative vote of all the trustees present at a meeting of the board. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7258.)

§ 131-9. Trustees to have control, and to make regulations.—The board of hospital trustees shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this article and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all money collected to the credit of the hospital fund, and the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose. (1913, c. 42, s. 4; C. S. 7259.)

§ 131-10. Power of board to appoint superintendent and assistants.—The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation, and shall also have power to remove such appointees; and they shall in general carry out the spirit and intent of this article in establishing and maintaining a county, township, or town public hospital with equal rights to all and special privileges to none. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7260.)

§ 131-11. Meetings of board; reports required. —The board of hospital trustees shall hold meetings at least once each month, and shall keep a complete record of all its proceedings. Four members of the board shall constitute a quorum for the transaction of business. One of the trustees shall visit and examine the hospital at least twice each month, and the board shall, during the first week in January of each year, file with the governing body of the county, township, or town a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the year; and they shall at such time certify the amount necessary to maintain and improve the hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for such hospital, unless the same are purchased by competitive bidding. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7261.)

§ 131-12. Vacancies filled. — Vacancies in the board of trustees occasioned by removals, resignations, or otherwise shall be reported to the governing body of the county, township, or town and be filled in like manner as original appointments, appointees to hold office until the next following general election, when such vacancies shall be filled by election in the usual manner. (1913, c. 42, s. 5; 1917, c. 268; C. S. 7262.)

§ 131-13. Deposit and payment of funds.—All money received for such hospital shall be deposited in the treasury of the county, township, or town to the credit of the hospital fund, and paid out only upon warrants drawn by the auditor, or other proper officer, of such county, township, or town upon the properly authenticated vouchers of the hospital board. (1913, c. 42, s. 4; 1917, c. 268; C. S. 7263.)

§ 131-14. Regulations as to bond issue.—Whenever any county, township, or town in this state shall have provided for the appointment and election of hospital trustees, and voted a tax for a term not exceeding thirty years for hospital purposes, as authorized by law, the county,

township, or town may issue bonds in anticipation of the collection of such tax in such sums and amounts as the board of hospital trustees shall certify to the governing body of such county, township, or town to be necessary for the purposes contemplated by such tax, but such bonds in the aggregate shall not exceed the amount which might be realized by said tax, based on the amount which may be yielded on the property valuation of the year in which the tax is voted. Such bonds shall mature in thirty years from date and shall be in sums not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not exceeding five per cent per annum, payable annually or semiannually; the bonds shall be payable at pleasure of county, township, or town after five years, and each of said bonds shall provide that it is subject to this condition, and shall not be sold for less than par, and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this article, and be numbered consecutively and redeemable in the order of their issuance. The governing body shall have the power and option of issuing, instead of long-term bonds, as above provided for, serial bonds in such forms and denominations as said governing body may determine, subject to the restrictions of this section. Said serial bonds may be issued as one issue or divided into two or more separate issues, and in either case may be issued all at one time or in blocks from time to time, and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No installments shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. Said bonds, if said governing body shall elect to issue serial bonds instead of long-term bonds, may be either coupon bonds or registered bonds, and if issued in coupon form may be registerable as to principal, or as to both principal and interest, and shall be substantially in the form provided for county bonds as aforesaid, and likewise subject to changes that will conform them to the provisions of this article. (1913, c. 42, s. 6; 1917, c. 268; 1923, c. 244, ss. 3, 4; C. S. 7264.)

§ 131-15. Condemnation of land.—If the board of hospital trustees and the owners of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the fact to the governing body of the county, township, or town, and condemnation proceedings shall be instituted by such governing body and prosecuted in the name of the county, township, or town wherein such public hospital is to be located, by the attorney for such county, township, or town, under the provisions of law for the condemnation of land for railroads. (1913, c. 42, s. 7; 1917, c. 268; C. S. 7265.)

§ 131-16. Plans to be approved; advertisement for bids.—No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1913, c. 42, s. 8; C. S. 7266.)

§ 131-17. Additional appropriation. — In the counties, townships, or towns exercising the rights conferred by this article, the governing body may appropriate each year, in addition to tax for hospital fund hereinbefore provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established. (1913, c. 42, s. 10; 1917, c. 268; C. S. 7267.)

§ 131-18. Power to accept donations.—Any person, firm, corporation, or society desiring to make donations of money, personal property, or real estate for the benefit of such hospital shall have the right to vest title of the property so donated in said county, township, or town, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise, or bequest of such property. (1913, c. 42, s. 13; 1917, c. 268; C. S. 7268.)

§ 131-19. Persons entitled to benefit of hospital. — Every hospital established under this article shall be for the benefit of the inhabitants of such county, township, or town, and of any person falling sick or being injured or maimed within its limits; but every person who is not a pauper shall pay to such board of hospital trustees, or such officers as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board, such hospital always being subject to such reasonable rules and regulations as the board may adopt, in order to render the use of the hospital of the greatest benefit to the greatest number. The board may exclude from the use of such hospital all persons who shall wilfully violate such rules and regulations; the board may extend the privileges and use of such hospital to persons residing outside of such county, township, or town, upon such terms and conditions as may be prescribed from time to time by its rules and regulations. (1913, c. 42, s. 11; 1917, c. 268; C. S. 7269.)

§ 131-20. All persons subject to hospital regulations.—When such hospital is established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said board may prescribe. (1913, c. 42, s. 12; C. S. 7270.)

§ 131-21. Municipal jurisdiction extended.—The jurisdiction of the city, town, or village in or near which a public hospital is located shall extend over all lands used for hospital purposes outside the corporate limits, if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such public hospital. (1913, c. 42, s. 9; C. S. 7271.)

§ 131-22. Conditions and privileges of physi-

cians to practice in public hospitals to be determined by the trustees.—The board of trustees of such hospitals shall determine the conditions under which the privileges of practice within the hospital may be available to physicians, and shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital. (1913, c. 42, s. 14; 1925, c. 177; C. S. 7272.)

§ 131-23. Training school for nurses. — The board of trustees of such county, township, or town public hospital may establish and maintain, in connection therewith and as a part of said public hospital, a training school for nurses. (1913, c. 42, s. 15; 1917, c. 268; C. S. 7273.)

§ 131-24. Room for examination of insane persons.—The board of trustees shall at all times provide a suitable room for the detention and examination of all persons who are brought before the commissioners of insanity for such county, provided that such public hospital is located at the county-seat. (1913, c. 42, s. 16; C. S. 7274.)

§ 131-25. Charity patients determined. — The board of hospital trustees shall have the power to determine whether or not patients presented at the public hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves. (1913, c. 42, s. 18; C. S. 7275.)

§ 131-26. Department for tuberculous patients. —The board of trustees are authorized to provide as a department of the public hospital, but not necessarily attached thereto, suitable accommodations and means for the care and treatment of persons suffering from tuberculosis, and to formulate such rules and regulations for the government of such persons, and for the protection from infection of other patients and of nurses and attendants in such public hospital, as they may deem necessary; and it shall be the duty of all persons in charge of or employed at such hospitals, or residents thereof, to faithfully obey and comply with all such rules and regulations. The board of hospital trustees shall, if practicable, employ as head nurse to be placed in charge of the public tuberculosis sanatorium one who has had experience in the management and care of tuberculous person. (1913, c. 42, s. 17; C. S. 7276.)

§ 131-27. Plans for county and municipal tubercular sanatoria.—Any county or town desiring to erect a sanatorium or hospital, shack, tent, or other structure in which it is intended to keep persons suffering with tuberculosis shall first submit to the state board of health for its approval or rejection the plans of said sanatorium, hospital, shack, tent, or other structure, and it shall be unlawful for any county or town to begin the erection of any structure referred to above without the consent or approval of the state board of health.

Any person, firm, or corporation failing, neglecting, or refusing to comply with the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1917, c. 216, ss. 1, 2; C. S. 7277.)

§ 131-28. Nonresident tuberculous patients. — The governing body of any county, township, or town where no suitable provision has been made for the care of indigent tuberculous residents may contract with the board of hospital trustees of any public hospital for the care of such persons in the sanatorium department of such hospital, upon such reasonable terms as may be agreed upon. (1913, c. 42, s. 19; 1917, c. 268; C. S. 7278.)

Art. 3. County Tuberculosis Hospitals.

§ 131-29. Power to establish.—Any county within the state shall have power and authority at any time to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1917, c. 99, s. 1; C. S. 7279.)

§ 131-30. Election for bond issue; special tax.— The board of county commissioners of any county in the state may, by majority vote of the board, or upon petition of one-fourth of the freeholders of the county shall, after thirty days notice at the courthouse door and publication in one or more newspapers published in the county, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people of the county whether there shall be issued and sold bonds to an amount not to exceed two hundred and fifty thousand dollars, to bear interest at such rate as the board may fix and to be payable, both principal and interest, when and where they may decide, the proceeds of the bonds to be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. If the majority of the qualified voters at said election shall vote in favor of the issuing of such bonds, then the bonds shall be issued and sold by the board and a special tax shall be levied to pay the interest and to provide a sinking fund to pay the bonds at maturity. The board of commissioners are also authorized to levy a special annual tax not to exceed ten cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for the hospital for tuberculosis. The question of levying such special tax shall be submitted to the qualified voters of such county at an election to be held as hereinbefore provided. In the event the board of commissioners shall order a special election to determine the will of the people of the county upon the question of the issuance of the bonds or the levy of the special maintenance tax as herein provided, they may order a new registration of the qualified voters of the county for said election, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published in said county at least thirty days before the close of the registration books. If both questions are submitted at the same election, only one registration need be ordered. The published notice of registration shall state the days on which the books will be open for registration of voters and the places at

which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before election. The Saturday before the election shall be challenge day. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. (1917, c. 99, s. 2; 1919, c. 159, s. 2; Ex. Sess. 1924, c. 47; 1925, c. 75; 1927, c. 34, s. 2; 1929, c. 164; 1937, c. 197; 1939, c. 290; C. S. 7280.)

§ 131-31. Board of managers; term of office; compensation. — For each hospital so established, the board of county commissioners shall, by a majority vote, elect a board of managers to consist of five members, of whom one shall be a member of said board of commissioners and shall be chairman of said board of managers. None of the remaining four members of said board of managers shall be a member of the board of commissioners. The chairman of said board of managers shall be elected for a term of two years, and the other members of said board of managers shall be elected for terms of four years each: Provided, that at the first election of said board of managers the chairman shall be elected for a term equal to the unexpired portion of his term as a member of the board of commissioners, and of the remaining members of said board of managers one member shall be elected for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years: Provided, also, that any vacancy in said board, occurring at any time, shall be filled by the board of commissioners for the unexpired term. In all counties having a health officer, such health officer, in addition to the five elected members, shall be ex officio a member of such board of managers. Women shall be eligible to said board of managers. The compensation of the members of said board of managers shall be the same as that of the members of the board of commissioners: Provided, that in counties in which the chairman of the board of commissioners receives a fixed salary, and the remaining members of said board are compensated upon the basis of per diem and mileage, the compensation of the members of the board of managers shall be equal to that of the members of the board of commissioners, paid upon a per diem and mileage basis. The chairman of the board of managers shall be entitled to the same compensation as other members of said board, in addition to his compensation as a member of the board of commissioners. The county health officer, however, shall not receive compensation as a member of said board of managers: Provided, that this section shall not affect the present term of office of any member of a board of managers elected prior to the passage of this section, but as to such members this section shall become effective as their present terms of office, respectively, shall expire. (1917, c. 99, s. 4; 1925, c. 313, s. 1; C. S. 7282.)

§ 131-32. Powers of board; title to property.— Authority in regard to the purchase of lands, election and maintenance of buildings, selection of officers, employees, and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers. No one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers. All property, both real and personal, pertaining to such hospital, shall be vested in the county: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the county in trust according to the terms of such donation, devise, or bequest. Provided, that the board of commissioners, in their discretion, either may appoint the board of managers following the official determination of the election, in which event said board of managers shall have the sole authority as to the selection of a site for such hospital, the purchase of lands therefor, and the erecting and equipping of the buildings for such hospital; or the said board of commissioners may defer the appointment of said board of managers until such hospital is constructed, in which event said board of commissioners shall, themselves, select the site for such hospital, purchase lands therefor, erect and equip, or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained in accordance with this article. (1917, c. 99, s. 5; 1925, c. 313, s. 2; C. S. 7283.)

§ 131-33. Contract power; regulations for admission.—The board of county commissioners, or the board of managers, according to the authority vested in them by the board of county commissioners or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the county maintaining such hospital shall be kept for less than actual cost. The county commissioners of any county may, instead of erecting the institution in the county where the vote is taken, use a part or all of the funds in erecting and maintaining a building or buildings at the state sanatorium at Montrose, or the county commissioners may in their discretion erect and maintain a tuberculosis hospital in the county where the bonds are issued, and may also use part of the funds to erect and maintain a building or buildings at Montrose, as they may deem best. Before erecting any building or buildings at Montrose the county commissioners shall make due arrangements and enter into the necessary contract or contracts with the board having charge of the state sanatorium at Montrose. And the board having in charge the state sanatorium at Montrose is hereby authorized and empowered to make contracts with any county in the state, specifying the terms upon which such building or buildings may be erected and making such arrangements as it may deem wise for the

maintenance of such buildings and the care and support of such county patients. In case the board of commissioners of any county, or the people of any county, do not decide to issue bonds for the erection of such hospital, but do decide to levy the special tax provided for in § 131-30, they may make arrangements with the board having in charge the State Sanatorium at Montrose for the maintenance and care of tubercular patients of such county. (1917, c. 99, s. 6; 1919, c. 159, s. 3; 1921, c. 178; 1925, c. 313, s. 3; C. S. 7284.)

Art. 4. Joint County Tuberculosis Hospitals.

§ 131-34. Authorization.—Any group of counties within the State of North Carolina shall have power and authority at any time hereafter to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1925, c. 154, s. 1.)

Local Modification.—Edgecombe, Halifax and Martin: 1927, c. 58.

§ 131-35. Vote on bond issue.—The boards of commissioners of each such group of counties in North Carolina may, by majority vote of said boards, or upon petition of five per cent (5%) of the freeholders of said counties, shall, after thirty days notice at the courthouse door of each of the counties and publication in one or more newspapers published in each of said counties, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people in each of the counties in the group whether there shall be issued and sold bonds to an amount not to exceed two hundred thousand dollars ($200,000) for each county in the group, to bear interest at such rate as said boards may fix and to be payable, both principal and interest, when and where they may decide. The proceeds of said bonds shall be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. If the majority of the qualified voters in each county of the group at said election shall vote in favor of the issuing of said bonds, then said bonds shall be issued and sold by said boards and a special tax shall be levied to pay the interest on said bonds and provide a sinking fund to pay said bonds at maturity. Said boards of commissioners are hereby also authorized to levy a special annual tax not to exceed five cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for said hospital for tuberculosis. (1925, c. 154, s. 2; 1929, c. 164.)

Local Modification.—Edgecombe, Halifax and Martin: 1927, c. 58.

§ 131-36. Board of managers.—For each hospital so established there shall be elected a board of managers, consisting of two members from each county in the group and of one member at large. The two members from each county shall be elected by a majority vote of their respective board of county commissioners, and the one member at large shall be elected from any one of the counties in the group at a meeting of and by a majority vote of the combined boards of commissioners of the several counties in the group. The member at large shall hold office for two years and the other members shall hold office for four years where there are only two counties in the group, and for six years where there are more than two counties in the group, unless sooner removed for cause by the combined boards of commissioners of the several counties in the group: Provided, that the commissioners of all the counties of the group at a joint meeting shall determine the length of the term of office of the various members of the board of managers first elected; one member to serve one, two, three and four years, respectively, if there are only two counties in the group; one member to serve one, two, three, four, five and six years, respectively, if there are three counties in the group; one member to serve for one, two, three and four years, respectively, and two members to serve for five and six years, respectively, where there are four counties in the group; one member to serve for one year, and one for two years, and two members for three, four, five and six years, respectively, where there are five counties in the group: Provided, also, that any vacancies in such board may be filled by the boards of county commissioners for the unexpired term, unless the vacancy is for the office of member at large, in which case the vacancy shall be filled for the unexpired term by the commissioners of all the counties of the group at a joint meeting. In all counties having health officers, such health officers shall, in addition to the other members, be ex officio members of such board of managers. Women shall be eligible for election to such board of managers. The compensation for such board shall be the same as that of the county commissioners. (1925, c. 154, s. 4.)

§ 131-37. Authority of board.—Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers; no one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers; all property, both real and personal, pertaining to such hospital shall be vested jointly in the counties of the group: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the counties in the group in trust according to the terms of such donation, devise, or bequest. (1925, c. 154, s. 5.)

§ 131-38. Purchasing property; charges.—The boards of county commissioners of the group, or the board of managers, according to the authority vested in them by the boards of county commissioners of the group or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and pur-

pose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the counties maintaining such hospital shall be kept for less than actual cost. (1925, c. 154, s. 6.)

Art. 5. County Tuberculosis Hospitals; Additional Method of Establishment.

§ 131-39. Additional method of establishing; election.—The board of commissioners for each county in the State shall have power to cause to be held in their county an election wherein this article shall be submitted to the qualified voters of said county for their approval or disapproval. Said election shall be in all respects as nearly as may be, held and conducted conformably to the rules for the election of members of the General Assembly. The said board of commissioners shall provide registration and polling books, and shall publish due notice of said election. They shall cause a new registration of voters to be made for said election, and shall publish due notice of the time and place for such registration to be made, and of the time when challenges of such registered voters may be made, all of which shall conform as near as may be, to the general laws regulating the election of members of the General Assembly. The form of the ballot shall be as prescribed in § 163-155, subsec. (e). If in said election a majority of the voters of said county registered for said election vote for said county tubercular hospital, then this article and the following provisions thereof shall thenceforth be in full force and effect in said county; but if in said election a majority of the said registered voters shall not vote for said county tubercular hospital, then the provisions of this article shall be in no further force and effect in said county. (1927, c. 208, s. 1; 1929, c. 164.)

§ 131-40. Appointment of trustees; vacancies; terms of office.—In the event said election shall have been carried in favor of said county tubercular hospital, the board of commissioners for the county in which election shall have been held shall within thirty days after a declaration of such result of such election, appoint a board of trustees for said county tubercular hospital, consisting of twelve residents of said county, three of whom shall be physicians regularly practicing in said county, and three others of said trustees shall be women. Said trustees shall be appointed in four classes, one class to serve for one year, another for two years, another for three years, and the other for four years; thereafter as their successors are appointed or elected, the term of office of such successors, except unexpired vacancies, shall be for four years. The successors of such trustees shall be appointed by the chairman of the board of commissioners for said county, the county superintendent of health, the Clerk of the Superior Court of said county, and the mayor of the municipality constituting the county seat of said county acting jointly, and by a majority vote. Vacancies in the offices of such trustees shall be filled by the same body of public officers last mentioned. (1927, c. 208, s. 2.)

§ 131-41. Meeting for qualification and organization; expenditures; care of property.—These said trustees shall within ten days after their appointment meet and qualify by taking the oath of civil officers, and organize their board by the election of one of their members as chairman, and one as secretary, and by the election of such other officers as may be necessary. The treasurer of the county for which said trustees are appointed shall be treasurer of the said board of trustees, and such treasurer shall receive and pay out all moneys under the control of said board as directed by it, but shall receive no compensation from said board, and no trustee shall receive any compensation whatsoever for services performed as such trustee. Said board of trustees shall make and adopt such by-laws, rules and regulations for their own guidance and the government of the said hospital, as it may deem proper, not inconsistent with this article. It shall have the control of the expenditure of all moneys collected to the credit of the hospital, including the proceeds from the sale of such bonds, hereinafter mentioned, and said board of trustees shall have the supervision, care and custody of the grounds, buildings and rooms purchased, constructed, leased or set apart for the purposes of such hospital, and they may employ such assistants, including a superintendent and matron and such other employees as they may deem necessary for the operation of said hospital, insofar as funds available for such purposes will permit. (1927, c. 208, s. 3.)

§ 131-42. Counties to issue bonds.—The board of commissioners for any county in which this article shall have been approved as aforesaid shall issue bonds of said county in an amount not to exceed the principal sum of two hundred fifty thousand ($250,000.00) dollars, for the purpose of purchasing a site, constructing the necessary buildings, and equipping said hospital with the necessary equipment. Such bonds shall be payable at such time or times not to exceed forty years from the date thereof, and at such place or places and bear such rate of interest not to exceed six per cent per annum and be of such denominations as the board of commissioners for said county may in its discretion determine. Said bonds shall be sold by the said board of commissioners at public or private sale at not less than par, as said board may determine. Said bonds shall be signed by the chairman of the said board of commissioners, and bear the impressed seal of the said board, attested by the clerk of the said board; the interest coupons shall bear the lithographed or engraved facsimile of the signature of the said clerk of said board. The proceeds of the sale of said bonds as received shall be at once deposited by the said board of commissioners with the treasurer of said county, to the credit of said board of trustees for said county tubercular hospital; the official name of said board of trustees shall be "Board of Trustees for the .....County Tubercular Hospital," the name of the county for which said board is appointed to be inserted in the blank space. (1927, c. 208, s. 4.)

§ 131-43. Special tax for bonds.—The board of commissioners for any county issuing bonds

under this article shall annually levy an ad valorem tax on the taxable property in such county sufficient to pay the interest on said bonds so issued, and provide a sinking fund for the payment of principal thereof, as the same may become due. Said board of commissioners shall further levy annually an additional tax not exceeding five cents on the dollar on taxable property in said county, for the purpose of providing funds sufficient when supplementing other income of said hospital, for the necessary maintenance and operation of said hospital. Said board of commissioners for such county shall also annually levy a sufficient tax to provide a sum equivalent to that expended out of moneys raised by taxes for the maintenance of said hospital, which funds so to be provided shall be disbursed by the board of commissioners for such county in the care of indigent residents of said county ill with diseases other than tuberculosis in other hospitals in such county. (1927, c. 208, s. 5.)

§ 131-44. Hospital erected for benefit of residents.—The hospital established under this article shall be for the benefit of the residents of the county in which it is situated who are or become sick with tuberculosis, but every such resident admitted to said hospital who is not a pauper, shall pay to such board of trustees of said hospital, or such other officers as it may designate, reasonable compensation for occupancy and attendance within said hospital, the amount thereof to be fixed by said board of trustees, and in the event a patient in said hospital is not able to pay in full, charges for treatment, but can pay some part thereof, arrangement may be made accordingly by said board of trustees in its discretion and as it deems right and just. (1927, c. 208, s. 6.)

§ 131-45. This article cumulative of existing powers.—The powers conferred by this article are conferred in addition to and not in substitution for the existing powers of counties. Any county may at its option proceed either under this article or under any other act conferring similar powers upon such county. (1927, c. 208, s. 7.)

Art. 6. Joint County and Municipal Tuberculosis Hospitals.

§ 131-46. Appropriations from revenue producing enterprises for construction and equipment.—(a) The board of commissioners of any county and/or the board of commissioners or aldermen of any municipality in such county are hereby authorized and empowered to appropriate in their discretion out of funds not derived from taxes, but from revenue producing enterprises owned by said counties and/or towns or municipalities therein, not to exceed fifty thousand dollars ($50,000.00) of said funds so derived, for the purpose of building and equipping tuberculosis hospitals for the treatment of tuberculosis patients in said counties, towns or municipalities.

(b) The board of commissioners of any county and/or the board of commissioners or aldermen of any town or municipality are hereby authorized and empowered to appropriate in their discretion, from funds not derived from taxation, such sums as may be deemed necessary by said board or boards for the maintenance of tuberculosis hospitals. (1939, c. 293, s. 1.)

§ 131-47. Determination of name of hospital.—The name of any hospital established under the provisions of this article shall be determined by the board of managers to be hereinafter provided for. (1939, c. 293, s. 2.)

§ 131-48. Boards of managers for hospitals.—(a) For the governing and management of such hospitals, there shall be created a board of five managers. One of such board shall be elected by the county commissioners from its membership. One member of such board shall be elected by the town commissioners from its membership. The remaining three members of the board of managers shall be elected by joint vote of the boards of county and town commissioners: Provided, however, two of such remaining three members shall be licensed physicians elected by said boards of commissioners from a list of at least five nominations made by the county medical society, if there be one: Provided, further, if any such hospital be a sole enterprise of a county, or city or town, then the entire membership of the board of managers shall be elected by the board of commissioners of the governmental unit conducting such enterprise.

(b) The board of managers shall make a monthly report to the board of county and/or town commissioners and shall, on or before the first day of June of each year, file a budget with the county and/or town accountant. (1939, c. 293, s. 3.)

§ 131-49. Officers, etc.—(a) The said board of managers shall, after their appointment, meet and elect their chairman, together with a secretary and treasurer, and such other officers, employees and attendants as it may deem necessary for the administration and government of patients. The chairman of the board, as chairman, shall hold office for two years. The said secretary and treasurer, before entering upon his duties, shall give bond to the board of commissioners of the county and/or the board of commissioners of the town in an amount fixed by the said board of managers, conditioned for the faithful discharge of his official duties. The said secretary and treasurer, in the discretion of the said managers, shall be allowed and paid an amount as the said managers shall deem adequate compensation for his services as secretary and treasurer. The said board of managers, subject to the approval of governing bodies of the governmental unit maintaining such hospital, shall adopt such by-laws, rules and regulations for the governing of said tuberculosis hospital as may be expedient and in conformity with law. The said board of managers shall have control of all monies and expenditures collected by and placed to the credit of said managers of said tuberculosis hospital. All monies shall be paid out by the secretary and treasurer upon authenticated requisition of the board of managers through its president. With the consent of the said board of commissioners of the county and/or the board of commissioners of the town the said board of managers may establish, erect and maintain a tuberculosis hospital upon real estate secured or obtained by gift or purchase. The said board of managers may fix the compensation for

all officers, employees and assistants and shall have power to remove such officers, employees or assistants whenever it is deemed advisable by said board of managers. The title to all property, both real and personal, given, conveyed or devised, shall be held by the county and/or town building the said hospital: Provided, however, that any donations, bequests or devises made for the use of such hospital shall be held by the county and/or town in trust according to the terms of such donations, devises or bequests. The board of managers shall have power to make contracts, to formulate, change and alter rules and regulations and government of patients and to do all things reasonable, incidental and necessary in the operation of a tuberculosis hospital.

(b) The board of commissioners of the county and/or the board of commissioners of the town or municipality may defer the appointment of said board of managers until such hospital is constructed, in which event the said board of commissioners of the county and/or the board of commissioners of the town or municipality shall itself select the site for such hospital, purchase lands therefor, erect and equip or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained. (1939, c. 293, s. 4.)

§ 131-50. Terms of office of members elected from local boards; county health officer to be ex-officio member of board.—Membership on the board of managers of members of the board elected from boards of town or county commissioners shall coincide with their term of office as such commissioners; but shall not exceed two years. The remaining three members of the board of managers shall be elected for a term of four years each. In all counties having a health officer, such health officer, in addition to the five elective members, shall be ex-officio member of such board of managers, but shall have no vote except in case of a tie. Women shall be eligible to the board of managers. The members of the board of managers shall receive no compensation. Any vacancy in said board occurring at any time shall be filled by the board or boards of commissioners making the original appointment. (1939, c. 293, s. 5.)

§ 131-51. Contracts between local units as to prorating expenses.—Counties and towns or municipalities may contract and bargain with each other with respect to prorating between said counties, towns or municipalities the expense of the erection of tuberculosis hospitals or the maintaining thereof. (1939, c. 293, s. 6.)

Art. 7. State Sanatorium for Tuberculosis.

§ 131-52. Directors of state sanatorium for tuberculosis.—The body politic and corporate existing under the name and style of the "North Carolina Sanatorium for the Treatment of Tuberculosis" shall be controlled and managed by a board of directors appointed as provided for in §§ 131-62, 131-63, and 131-64, who shall serve until their successors are appointed and qualified according to law. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 1; 1925, c. 306, ss. 12, 13, 14; 1935, c. 91, ss. 2, 3, 4, c. 138, ss. 1, 2; C. S. 7172.)

§ 131-53. Powers of directors; election of officers.—The North Carolina sanatorium for the treatment of tuberculosis is hereby empowered and authorized to elect and employ such officials and to pay such fees and salaries (provided the appropriation is not exceeded) as the directors shall find necessary for the proper management and maintenance of the institution; the directors shall determine the qualifications for admission of those applying as patients to the institution; the directors shall make all such by-laws and regulations for the government of the said institution as shall be necessary, among which shall be such as shall make the institution as nearly self-supporting as shall be consistent with the purpose of its creation; and the directors shall do such other things as seem reasonably necessary and incident to the proper management and maintenance of the institution. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 2; C. S. 7173.)

§ 131-54. Indigent patients; recovery of charges from those able to pay.—The said directors in determining the qualifications for admission for those applying as patients to the institution and in making by-laws and regulations for the governing therein shall not provide or make any by-law, regulation, or qualification for admission therein which shall exclude any patient, otherwise properly qualified for admission, on account of inability to pay for examination and treatment, or either, at said institution. All indigent patients, who otherwise are proper patients for admission in said institution when there is space and accommodation for such patient, shall be received without regard to their indigent condition; but the directors of said institution shall require of all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care of said institution and they shall make such by-laws and regulations as shall most equitably carry out the directions contained in § 131-53. In case those persons upon whom patients are legally dependent or patients not indigent shall refuse to pay such charges for treatment and care, then said directors are authorized and empowered to institute an action in the name of the said Sanatorium in the Superior Court of Hoke County for the collection thereof, and if the amount so charged is less than two hundred dollars ($200), then said action shall be instituted in the county where the defendant resides in a court having jurisdiction thereof; and upon said trial the charges so made shall be collectible, as upon express promise to pay the same. Provided, that nothing in this section shall be interpreted to conflict with or interfere with the provisions contained in § 131-60. Provided, that nothing herein contained shall permit the admission of indigent patients to the North Carolina sanatorium for the treatment of tuberculosis, established under §§ 131-52 et seq., nor to the North Carolina sanatorium for the treatment of tuberculosis, established under §§ 131-61 to 131-75, un-

less and until the person applying for admission to either of said institutions shall have acquired a settlement in this state, and no settlement shall be deemed to have been acquired by such applicant until he or she has resided continuously within this state for a period of three years prior to the application for admission thereto. (1924, c. 86, s. 1; 1925, c. 291; 1939, c. 332.)

§ 131-55. Bureau for tuberculosis; register of tuberculous persons.—The directors shall equip, operate, and maintain a bureau for tuberculosis, located in their office in Raleigh, to which bureau the reports of cases of tuberculosis, as hereinafter provided, shall be made; and the bureau of tuberculosis shall keep a register of all persons in this state known to be afflicted with tuberculosis. The bureau shall have exclusive control of such register and shall not permit the inspection thereof, nor disclose any of its personal particulars, except to representatives of municipal or county governments, the state government, or organizations, orders, churches, or corporations interested in and contemplating making financial provision in the institution for the care and treatment of afflicted citizens or members of their respective organizations, orders, churches, or corporations. (Ex. Sess. 1913, c. 40, s. 3; C. S. 7174.)

§ 131-56. Bureau to maintain correspondence school.—The bureau of tuberculosis shall develop and maintain a correspondence school with those of the state's tuberculous population, to the end that the tuberculous population of this state shall be properly advised and directed both as to methods for obtaining cures and as to methods for preventing the spread of the disease to other persons. (Ex. Sess. 1913, c. 40, s. 4; C. S. 7175.)

§ 131-57. Cases of tuberculosis reported to bureau.—All physicians and the executive officers of every private or public hospital, institution for the treatment of disease, or dispensary shall report, on blank forms and in accordance with the instructions of the bureau of tuberculosis, the names and other particulars of all persons afflicted with tuberculosis whom they are called upon to examine or treat or who are to be examined or treated in the hospital, institution, or dispensary of which he or she is the executive head, within seven days after the disease is recognized by such physician or executive officer. Any violation of this section shall be a misdemeanor and subject to a fine of not less than ten dollars nor more than one hundred dollars, and the judge, in addition to imposing the said fine, may, upon the evidence produced in the trial or upon such further evidence as may be produced before him, find and cause to be entered upon the records of the court that the physician deliberately and falsely diagnosed the disease, tuberculosis, as some other disease in order to avoid the requirements of this section, and the North Carolina board of medical examiners upon such record shall revoke the license of such physician. Nothing in this section shall abrogate the rights and powers of municipalities and counties to require the reporting of cases of tuberculosis by physicians to the local authorities; but municipalities and counties may, when desired, in lieu of such reports by physicians, call upon the bureau of tuberculosis for notification of cases of tuberculosis reported to the bureau from the municipality or county. (Ex. Sess. 1913, c. 40, s. 5; C. S. 7176.)

§ 131-58. Directors may receive gifts for sanatorium.—The directors shall be empowered to receive or accept the gifts or donations for the benefit of the state sanatorium, and the directors shall, in their discretion, use the same for carrying out the purpose for which the sanatorium is established. (1907, c. 964, s. 14; Ex. Sess. 1913, c. 40, s. 6; C. S. 7177.)

§ 131-59. Pay of directors.—Each director shall be entitled to receive, as compensation and expenses, the sums authorized in the biennial appropriations acts. (1907, c. 964, s. 15; Ex. Sess. 1913, c. 40, s. 7; C. S. 7178.)

§ 131-60. Indigent tuberculous to be treated at state sanatorium.—Any city or town in the state of North Carolina, through its board of aldermen, town council, or other governing body, and any county in the state, through its board of commissioners, is hereby authorized and empowered to provide for the treatment of any tubercular person or persons resident in, and who is a bona fide citizen of, said city, town, or county, at the North Carolina sanatorium for the treatment of tuberculosis, and pay therefor to the North Carolina sanatorium for the treatment of tuberculosis an amount which shall not be more than one dollar per day per patient. (1915, c. 181, s. 1; C. S. 7179.)

Art. 8. Western North Carolina Sanatorium.

§ 131-61. Tubercular sanatorium established in western North Carolina.—There shall be established in western North Carolina in the manner hereinafter set out a sanatorium for the treatment of persons afflicted with tuberculosis. (1935, c. 91, s. 1.)

§ 131-62. Control of both tubercular sanatoriums vested in one board.—Control of said sanatorium and the control of the "North Carolina Sanatorium for the Treatment of Tuberculosis" established under the provisions of §§ 131-52 et seq., shall be vested in a board of directors composed of twelve members to be appointed by the governor of North Carolina and approved by the state senate of the session of the general assembly of one thousand nine hundred and thirty-five. (1935, c. 91, s. 2, c. 138, s. 1.)

§ 131-63. Terms of directors; ex-officio director.—The said board of directors shall be divided into three classes of four directors each, the first class to serve for a period of two years, the second class for a period of four years and the third class for a period of six years, and at the expiration of the terms of the several classes, shall be appointed for a period of six years. The secretary of the North Carolina state board of health shall be ex-officio a member of the board of directors. (1935, c. 91, s. 3, c. 138, s. 2.)

§ 131-64. Vacancy appointments. — In case of a vacancy or vacancies in the board of directors for any cause, their successor or successors shall be appointed by the governor, and their appointment will be reported to the next succeeding

session of the senate of the general assembly of North Carolina for confirmation. (1935, c. 91, s. 4.)

§ 131-65. Directors incorporated. — The said board of directors shall be, and they are hereby constituted a body politic and corporate, under the name and style of the "western North Carolina sanatorium for the treatment of tuberculosis," and upon them, as such, are hereby conferred all the duties, powers, privileges and obligations incident to bodies corporate. (1935, c. 91, s. 5.)

§ 131-66. Organization of directors; acquisition of site; appropriation.—Said board of directors are hereby given full power and authority to meet and organize and from their number select a chairman to purchase a site or sites in western North Carolina, to purchase, renovate, remodel or erect buildings and provide such apparatus and equipment as may be necessary to establish said sanatorium and prepare it for the reception of patients. (1935, c. 91, s. 6.)

§ 131-67. Superintendent. — The board of directors shall have the power to elect a superintendent and prescribe his duties. The said superintendent shall be a skilled physician, trained and experienced in the treatment of tuberculosis, of good moral character, and good business habits, and otherwise qualified to discharge the duties of his office. He shall hold office for a period of two years from and after the date of his election, unless sooner removed therefrom by the board for incompetence or misconduct in office, and shall keep a record of his transactions and duly enter the same in a book or books for that purpose. (1935, c. 91, s. 7.)

§ 131-68. Subordinate officers and employees. —Said superintendent shall employ such subordinate officers and employees of said sanatorium as may be necessary, and fix their compensation, subject to the approval of said board, and within the appropriation made to said institution; the said superintendent shall have the power to discharge any of the employees for incompetence or misconduct in office, and his proceedings in regard to any act of this character shall be reported to the said board of directors. (1935, c. 91, s. 8.)

§ 131-69. Reports of superintendent; board meetings; reports to legislature. — The superintendent shall make monthly reports to the chairman of the board of directors, clearly setting forth the conditions and workings of the institution, and upon receipt of said report, said chairman shall have the authority to convene said board if, in his discretion, he deems it necessary to do so. Said superintendent shall make a detailed report of the conditions and workings of the institution every three months to the board of directors, and he shall annually make a detailed report to the governor of North Carolina. The board of directors shall be required to hold meetings of their board every three months or oftener if the chairman of said board shall call them together, and the said board shall be required to make biennial reports of the conditions and workings of the hospital to the governor and general assembly. (1935, c. 91, s. 9.)

§ 131-70. Executive committee.—The board of directors shall at their first meeting select from their number an executive committee composed of the chairman of said board and two other members, who, in the absence of the board of directors, shall have the direction of the affairs of said hospital. The successors to the members of the executive committee and the manner and time of their election shall be provided by the by-laws and regulations made for the said institution. (1935, c. 91, s. 10.)

§ 131-71. By-laws and regulations.—The board of directors shall make all by-laws and regulations for the government of said institution as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purpose of its creation. (1935, c. 91, s. 11.)

§ 131-72. Gifts and grants from governments or agencies; bond issues.—In addition to the powers generally granted to bodies corporate in North Carolina, the "western North Carolina sanatorium for the treatment of tuberculosis" shall have and is hereby granted authority to receive gift or grant from the United States government or any other agency or government, and shall have the right by vote of the board of directors, approved by the treasurer of the state of North Carolina, to issue bonds of said institution payable solely out of the receipts or revenues of any undertaking engaged in or undertaken by said board for which said bonds were issued, but shall not have the right to pledge any property of the institution or to make said bonds an obligation of said institution further than the revenue derived from the projects for which the bonds were issued, and said bonds so issued shall not be a charge upon the general property of the western North Carolina sanatorium for the treatment of tuberculosis, nor any obligation of the State of North Carolina. (1935, c. 91, s. 12.)

§ 131-73. State treasurer as treasurer of sanatorium.—The treasurer of the State of North Carolina shall be ex-officio treasurer of said corporation and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1935, c. 91, s. 13.)

§ 131-74. Gifts and donations for benefit of sanatorium.—The said board of directors shall be empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1935, c. 91, s. 16.)

§ 131-75. Pay of directors.—Each member of the board of directors shall be entitled to receive as compensation and expenses the sums fixed by the biennial appropriations acts. (1935, c. 91, s. 17.)

Art. 9. Eastern North Carolina Sanatorium.

§ 131-76. Establishment of Eastern North Carolina sanatorium for treatment of tuberculosis.

—There shall be established in eastern North Carolina, in the manner hereinafter set out, a sanatorium for the treatment of persons afflicted with tuberculosis, to be known as the "Eastern North Carolina Sanatorium for the Treatment of Tuberculosis." (1939, c. 325, s. 1.)

§ 131-77. Control of sanatorium by board of directors.—The control of said sanatorium authorized by the provisions of this article shall be vested in the board of directors appointed by the governor of North Carolina under the provisions of § 131-62 and their successors in office. (1939, c. 325, s. 2.)

§ 131-78. Powers of directors as to erection, organization and operation, etc., of sanatorium.—The said board of directors are hereby given full power and authority, subject to the provisions of this article, to erect, organize, operate, supervise, manage and maintain the said Eastern North Carolina sanatorium for the treatment of tuberculosis, and there is hereby conferred upon the said board with respect to such sanatorium the same duties, powers, privileges, authority and obligations which the said board now has in connection with the operation and management of the North Carolina sanatorium for the treatment of tuberculosis and the Western North Carolina sanatorium for the treatment of tuberculosis, including the power to elect a superintendent and prescribe his duties, and to do all things needful in connection with the erection, operation, management and control of such sanatorium. (1939, c. 325, s. 3.)

§ 131-79. By-laws and regulations.—The said board of directors shall make all by-laws and regulations for the government of said sanatorium as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purposes of its creation. (1939, c. 325, s. 5.)

§ 131-80. State treasurer to act as ex-officio treasurer of sanatorium.—The treasurer of the State of North Carolina shall be ex-officio treasurer of said sanatorium and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1939, c. 325, s. 6.)

§ 131-81. Gifts and donations.—The said board of directors are empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1939, c. 325, s. 12.)

§ 131-82. Compensation of directors. — Each member of the board of directors while engaged in attending to the affairs of said sanatorium shall be entitled to receive as compensation the sums fixed by the biennial appropriations acts. (1939, c. 325, s. 13.)

Art. 10. Funds of Deceased Inmates.

§ 131-83. Applied to debts due by such inmates to such hospitals or institutions.—Whenever any funds shall be placed or deposited with the officials of any state hospital or other charitable institution by or for any patient or inmate thereof, and the person by or for whom such deposit is made dies while a patient or inmate of such state hospital or other charitable institution or leaves such institution and at the time of such death, or departure, such patient or inmate is indebted to said hospital or other charitable institution for care and maintenance while such patient or inmate, the board of directors or trustees of such state hospital or other charitable institution are hereby authorized, empowered and directed to apply such deposit, or so much thereof as may be necessary, and which may remain in their hands unclaimed for the space of three years after such death or departure on and in satisfaction of the indebtedness of such patient or inmate, to said state hospital or other charitable institution for said care and maintenance. If the whole of such amount so on deposit shall not be required or necessary for the payment in full of such indebtedness for such care and maintenance, the remainder shall continue to be held by said officials, and paid out and applied as may be by law required. (1933, c. 352, s. 1.)

Art. 11. Sanatorium for Tubercular Prisoners.

§ 131-84. Establishment of sanatorium; power and authority of directors.—There shall be established at, or as near to as feasible, the North Carolina sanatorium for the treatment of tuberculosis, a sanatorium for the treatment of tubercular prisoners or convicts. The board of directors of the North Carolina Sanatorium for the treatment of tuberculosis shall have the same authority and power over said sanatorium as they have over the North Carolina sanatorium for the treatment of tuberculosis. (1923, c. 96; 1923, c. 127, s. 2; C. S. 7220(a).)

§ 131-85. Reports from county physicians or health officers; history of case, etc.—The county physician or county health officer of the various counties of the state who has examined any prisoner, or convict upon the public roads, and has pronounced him to be affected with tuberculosis, is required to report such case to the board of directors of the North Carolina sanatorium for the treatment of tuberculosis, giving a history of the same and such other facts as the board of directors of the North Carolina sanatorium for the treatment of tuberculosis may determine in its rules and regulations. (1923, c. 127, s. 3; C. S. 7220(b).)

§ 131-86. Physician at state prison and convict camp.—The physician in charge of the state prison or any particular convict camp of state prisoners shall make similar reports under similar rules and regulations to the board of directors of the North Carolina sanatorium for the treatment of tuberculosis of all state prisoners who upon examination by him have been determined to be affected with tuberculosis. (1923, c. 127, s. 4; C. S. 7220(c).)

§ 131-87. Examination by directors of sanatorium; transfer to sanatorium.—The board of directors of the North Carolina sanatorium for the treatment of tuberculosis, upon receiving such reports, shall examine into the condition of these prisoners or convicts, and, if it is determined that such condition justifies it, shall direct their trans-

fer from either county authorities, if a county prisoner, or the state prison, if a state prisoner, to the sanatorium herein provided. The cost of such transfer, if it is a county prisoner, shall be paid by the county from which he is transferred; if a state prisoner, the cost shall be paid by the state prison. If a tuberculous prisoner is thus transferred to the sanatorium, the county from which he is sent shall, upon notice from the sanatorium that the prisoner has recovered or is in such condition that it would be safe to return him to the county, within five days after such notice, send for such prisoner and return him to the county from which he was committed. Any failure on the part of the county to send for such prisoner as herein provided after such notice shall render the county liable for the expenses of maintaining the prisoner. (1923, c. 127, s. 5; 1927, c. 127; C. S. 7220(d).)

§ 131-88. Care and safekeeping of convicts. —In addition to the authority to make rules and regulations hereinbefore conferred upon the board of directors of the North Carolina sanatorium for the treatment of tuberculosis, it is further authorized to make such rules and regulations as in its judgment may seem wise in relation to the care and safe-keeping of the prisoners and convicts so transferred to the state sanatorium for tubercular prisoners. (1923, c. 127, s. 6; C. S. 7220(e).)

§ 131-89. Administration of article; rules and regulations.—The administration of this article is given exclusively to the board of directors of the North Carolina sanatorium for the treatment of tuberculosis, which board is expressly authorized and empowered to make such rules and regulations not inconsistent with this article as it may deem wise: first, as to the determination of whether a particular convict is suffering with tuberculosis, and second, whether or not the disease is in such a stage as to require special treatment. (1923, c. 127, s. 1; C. S. 7220(f).)

Chapter 132. Public Records.

Sec.
132-1. Public records defined.
132-2. Custodian designated.
132-3. Destruction of records regulated.
132-4. Disposition of records at end of official's term.
132-5. Demanding custody.
132-6. Inspection and examination of records.
132-7. Keeping records in safe places; copying or repairing; certified copies.
132-8. Assistance of historical commission.
132-9. Violation of chapter a misdemeanor.

§ 132-1. Public records defined. — Public records comprise all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business. (1935, c. 265, s. 1.)

§ 132-2. Custodian designated. — The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

§ 132-3. Destruction of records regulated.—No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with § 121-4, without the consent of the North Carolina historical commission. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars nor more than five hundred dollars. (1935, c. 265, s. 3.)

§ 132-4. Disposition of records at end of official's term. — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the North Carolina historical commission, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of ten days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 4.)

§ 132-5. Demanding custody.—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for ten days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 5.)

§ 132-6. Inspection and examination of records.—Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. (1935, c. 265, s. 6.)

§ 132-7. Keeping records in safe places; copying or repairing; certified copies.—In so far as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with non-combustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Any public official who causes a record book to be copied shall attest it and

shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7.)

§ 132-8. Assistance of historical commission.—The North Carolina historical commission shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. (1935, c. 265, s. 8.)

§ 132-9. Violation of chapter a misdemeanor.—Any public official who refuses or neglects to perform any duty required of him by this chapter shall be guilty of a misdemeanor and upon conviction fined not more than twenty dollars for each month of such refusal or neglect. (1935, c. 265, s. 9.)

Chapter 133. Public Works.

Sec.
133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.
133-2. Drawing of plans by material furnisher prohibited.
133-3. Specifications to carry competitive items.
133-4. Violation of chapter made misdemeanor.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.—It shall be unlawful for any person, firm or corporation to employ on any city, county or state work, supported wholly or in part with public funds, any architect, engineer, designer or draftsman, who is in any way connected with the sale or promotion of or in the manufacture of any material or items used in the construction of such works, or who is a stockholder, officer, partner, or owner of any manufacturing concern, or of any sales organization, engaged in the manufacture or sale of such material, or items, which may be used in the construction of such works. (1933, c. 66, s. 1.)

§ 133-2. Drawing of plans by material furnisher prohibited.—It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, state, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items.—All architects, engineers, designers, or draftsmen, when designing, or writing specifications for materials to be used in any city, county or state work, shall specify in their plans at least three items of equal design or their equivalent design, which would be acceptable upon such works. Where it is impossible to specify three items due to the fact that there are not that many items in competition, then as many items as are available shall be specified. (1933, c. 66, s. 3.)

§ 133-4. Violation of chapter made misdemeanor.—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction, license to practice his profession in this state shall be withdrawn for a period of one year and he shall be subject to a fine of not more than five hundred dollars. (1933, c. 66, s. 4.)

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Art. 1. Stonewall Jackson Manual Training and Industrial School.

§ 134-1. Incorporation.—The board of trustees of the Stonewall Jackson Manual Training and Industrial School is hereby declared a body corporate, by which name they may sue and be sued, plead and be impleaded, hold, use, sell and convey real estate, receive donations, gifts and appropriations and do all other things necessary and requisite for the purpose of carrying out the intent and purposes for which it is organized. (1907, c. 509, s. 1; 1907, c. 955; 1925, c. 306, s. 1; C. S. 7313.)

§ 134-2. Purpose of the school.—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent children of the state; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal children

under the age of sixteen years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1907, c. 509, s. 2; 1907, c. 955, s. 1; C. S. 7314.)

§ 134-3. Power to purchase land and locate school.—The board of trustees shall select a suitable place outside of and away from any city, town, or village, for the location of such school, and they are empowered to purchase, at some suitable and convenient place in this state, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1907, c. 509, ss. 2, 15; C. S. 7315.)

§ 134-4. Appointment of trustees; vacancies.—The board of trustees of the Stonewall Jackson Manual Training and Industrial School shall consist of eleven (11) persons, whose terms of office shall be four years from the date of their appointment as herein provided for and until their successors have been appointed and qualified according to law. Within thirty days after March 10, 1925 the Governor shall name and appoint six (6) members of the board of trustees, and within six months from March 10, 1925 the Governor shall name five (5) other members of the said board. At the time of naming and appointing the members as herein provided the Governor shall designate which of the present board are to be succeeded by his nominees and appointees. Should any vacancy occur in the said board, the Governor shall fill the same by appointment. The superintendent of the school shall from time to time notify the Governor as to any vacancies which shall occur and the expiration of the term of office of the members of the board. The Governor shall transmit to the Senate at the next session of the General Assembly following his appointment the names of the persons appointed by him for confirmation. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1907, c. 509, s. 6; 1907, c. 955, s. 2; 1925, c. 306, ss. 2, 13, 14; C. S. 7316.)

§ 134-5. Application of funds; account required.—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation, and maintenance of the school for the training and the moral and industrial development of such delinquent children, and in securing homes for them; and in case the trustees receive or are allowed any state aid for said school, it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1907, c. 509, s. 3; C. S. 7317.)

§ 134-6. Trustees to employ superintendent and assistants, and make regulations.—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such reformatory under the provisions of this article, and not inconsistent therewith. (1907, c. 509, s. 8; C. S. 7318.)

§ 134-7. Treasurer and superintendent to give bond.—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the state of North Carolina, in such sums as may be named by the governor and approved by the state treasurer. (1907, c. 509, s. 7; C. S. 7319.)

§ 134-8. Powers of superintendent.—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is intrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child, and the trustees shall have the right at any time to discharge the superintendent for cause. (1907, c. 509, s. 9; C. S. 7320.)

§ 134-9. Governor to visit reformatory.—It shall be the duty of the governor of the state to visit the reformatory at least once in each year, and oftener if he deem it necessary, and to make such suggestions to the board of trustees as he may deem wise and for the best interests of the school or reformatory. (1907, c. 509, s. 10; C. S. 7321.)

§ 134-10. Courts may commit offenders to reformatory.—The judges of the superior courts recorders, or other presiding officers of the city or criminal courts of this state, shall have authority, and it shall be their duty, to sentence to the school all persons under the age of sixteen years convicted in any court of this state of any violation of the criminal laws: Provided, that such judge or other of said officers shall be of the opinion that it would be best for such person and the community in which he may be convicted, that he should be so sentenced. Any commitment under this article, whether by judge or court, as hereinbefore provided, shall be full, sufficient, and competent authority to the officers and agents of the school for the detention and keeping therein of the child so committed. (1907, c. 509, ss. 11, 17; 1907, c. 955, s. 1; C. S. 7322.)

§ 134-11. Governor may transfer prisoners to reformatory.—The governor of the state may by order transfer any person under the age of sixteen years from any jail, chain-gang, or penitentiary in this state to such reformatory. (1907, c. 509, s. 12; C. S. 7323.)

§ 134-12. Department first established; sexes separated.—The board of trustees shall first establish and maintain such departments of the manual training school as shall be adapted to the use of such class of boys as in the discretion of

the board may be most in need of such care and training and will probably be most benefited thereby. When both sexes are admitted, the males and females shall be kept in separate apartments or buildings. (1907, c. 509, ss. 17, 18; C. S. 7324.)

§ 134-13. Industrial training provided. — There shall be established and conducted on such lands as may be owned in connection with the school such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1907, c. 509, s. 4; C. S. 7325.)

§ 134-14. General instruction and training given. —The officers of the school shall receive and take into it all children committed thereto by competent authority, or received therein as aforesaid, and shall cause all such children in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The children shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1907, c. 509, ss. 5, 14; C. S. 7326.)

§ 134-15. Ungovernable inmates removed.—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the governor of the state, and he may order such inmate to the state's prison or to the jail or chain-gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1907, c. 509, s. 13; C. S. 7327.)

§ 134-16. Trustees to receive gifts for cottages.—The board of trustees of the Stonewall Jackson training school are hereby empowered to receive specific gifts from individuals or other sources for the exclusive purpose of erecting and equipping cottages on the grounds of the institution under such rules and regulations as may be fixed by the said board of trustees. (Ex. Sess. 1920, c. 48, s. 1; C. S. 7328(a).)

§ 134-17. Boys from counties making gifts; designation of cottage. — When such gifts, sufficient to erect or to erect and equip a cottage sufficient to accommodate thirty boys, are received from individuals or other sources from any given county of the state, the trustees of the Stonewall Jackson training school may enter into an obligation to receive and maintain in the institution only according to their fixed rules and regulations for entrance, maintenance and discharge, a number of boys from the said county equal to the number which may be accommodated in such building. Such cottage may be designated..... county cottage. (Ex. Sess. 1920, c. 48, s. 2; C. S. 7328(b).)

§ 134-18. Cottages erected by two or more counties.—Should two or more counties desire to combine for the purpose of erecting such buildings, the same may be done under like conditions as stated in § 134-17, and such cottage may be known by the names of the counties so combining. (Ex. Sess. 1920, c. 48, s. 3; C. S. 7328(c).)

§ 134-19. Approval of state building commission; plans.—All buildings erected under §§ 134-16 to 134-20 shall receive the approval of the state building commission from plans prepared by the state architect. (Ex. Sess. 1920, c. 48, s. 3½; C. S. 7328(d).)

§ 134-20. Contributions from public funds; bond issues.—It shall be lawful for county commissioners or the governing bodies of cities and towns to contribute from the public funds such amounts as they may deem proper for the purpose stated in §§ 134-17 and 134-18, and such funds may be lawfully devoted from any public funds of said bodies or secured by bond issue under such rules of issue as may be ordained by said boards of county commissioners or governing bodies of towns and cities. (Ex. Sess. 1920, c. 48, s. 4; C. S. 7328(e).)

§ 134-21. Cherokee Indians admitted. — The governing authorities of the Stonewall Jackson Training School at Concord and the state home and industrial school for girls at Samarcand are hereby authorized and directed to make proper provisions for admitting delinquent boys and girls respectively of the Cherokee Indian Race of Robeson county to these institutions under the same rules and regulations as are now provided for admitting delinquent boys and girls of the white race: Provided, however, that the boys and girls so admitted shall be separated from the white inmates of the said institutions. (1933, c. 490, s. 1.)

Art. 2. State Home and Industrial School for Girls.

§ 134-22. Incorporation and name.—A corporation to be known and designated as the State Home and Industrial School for Girls is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organizations and existence as hereinafter set forth. (1917, c. 255, s. 1; 1937, c. 147, s. 1; C. S. 7329.)

§ 134-23. Board of managers; term of office.— The State Home and Industrial School for Girls shall be under the control and Management of a board of ten managers, at least five of whom shall be women, all managers shall be appointed by the Governor and the term of each manager shall be four years from and after the date of his or her appointment and until their successors have been appointed and qualified according to law. Within thirty days after March 15, 1929, the Governor shall appoint six managers and within six months he shall appoint the remaining four. All vacancies occurring shall be filled by the Governor. The Governor shall transmit the names of his appointees to the Senate at the next session of the General Assembly for confirmation. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such

person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 4, 13, 14; 1927, c. 255, s. 2; 1929, c. 279.)

§ 134-24. Power to purchase land and erect buildings.—The board of managers is authorized to secure by gift or purchase suitable real estate within the state, not less than fifty acres, at such place as the board may deem best, and with the money or other property which the corporation may have received for that purpose, either by donations from individuals or by appropriation from the state, the board shall proceed to erect on such real estate buildings suitable for carrying out the purposes for which the corporation is created. (1917, c. 255, s. 3; C. S. 7331.)

§ 134-25. Power of control.—The board of managers shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of managers shall constitute a board of parole of the institution and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1917, c. 255, s. 4; C. S. 7332.)

§ 134-26. Appointment of officers; compensation; by-laws.—The board of managers shall appoint from among its members a president, a secretary, and a treasurer, who shall hold office for one year from the date of appointment; and if the board deem it proper to do so, the office of secretary and treasurer may be combined in one. The board shall also appoint a superintendent, who shall be a woman of experience and training. The board shall fix the compensation of the superintendent and all officers and employees of the institution, and shall prescribe the duties of each. The board shall further adopt such by-laws as, in the judgment of the board, may be necessary, fixing the time and place of the meetings of the board and making such other provisions as may be necessary for the proper management of the institution. (1917, c. 255, s. 5; C. S. 7333.)

§ 134-27. Persons committed to the reformatory; time of detention.—Any girl who may come or be brought before any court of the state, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid: Provided, such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of such institution: and provided further, that before sentencing such person to confinement in the institution the court shall ascertain whether the institution is in position to care for such person; and it shall be at all times within the discretion of the board of directors as to whether the board will receive any person in the institution. No commitment shall be for any definite term, but any person so committed may be paroled or discharged at any time after her commitment by the board of managers, but no inmate shall in any case be detained longer than three years: Provided, that when any girl under twenty-one years of age shall have been committed to the institution the trustees shall have the sole right and authority to keep, restrain and control her until she is twenty-one years old, or until such time as they shall deem proper for her discharge, under such proper and humane rules and regulations as may be adopted by the trustees. When any such person shall come before any court for the purpose of confessing guilt or for trial, the court shall, as far as feasible and as far as consistent with public policy, give a private hearing, and in all respects avoid unnecessary publicity in connection with the proceedings before the court. (1917, c. 255, ss. 6, 12; Ex. Sess. 1921, c. 69; 1937, c. 147, s. 2; C. S. 7334.)

§ 134-28. Delivery of inmates to institution; expenses. — It shall be the duty of the county authorities of the county from which any girl or woman is sent to the home, or the city authorities, if any girl or woman is ordered to be sent to the home by any city court, to see that such girl or woman is safely and duly delivered to the home, and to pay all the expenses incident to her conveyance and delivery to the home. (1919, c. 122; C. S. 7335.)

§ 134-29. Voluntary application for admission; care of children.—In addition to caring for such persons as may be committed to the institution by order of court, the board of managers may, in their discretion, receive into the institution any such person who may have in writing confessed herself guilty of any offense or any wayward conduct and may in writing express her desire to become an inmate of the institution; but the board shall not admit any such person unless upon examination of such person, freely and voluntarily held under the direction of the board, the board shall conclude that confinement in the institution will probably aid in the reformation of such person. Any person becoming an inmate of the institution under the provisions of this section shall be subject to the same rules and regulations as those who have been committed by order of court, and shall be detained for such time as the board, in its judgment, may deem best, not exceeding, however, the term of three years. And it shall further be the duty of the board of managers to make suitable provision for the care and maintenance of children born in the institution, and also of the infant children that any woman may have when she is committed to the institution. (1917, c. 255, s. 7; C. S. 7336.)

§ 134-30. Law as to juvenile delinquents applied.—The provisions of the chapter pertaining to

the reclamation and training of juvenile delinquents shall apply to young girls, and any court before whom a young girl is brought pursuant to the provisions of said chapter may be by order of court placed in the institution herein established, and shall be subject to all the provisions of law relating thereto: Provided, however, that no girl shall be admitted to the institution under this provision without the previous consent of the board of managers. (1917, c. 255, s. 8; C. S. 7337.)

§ 134-31. Discharge on parole; arrest for escape or violation of parole.—The board of managers may conditionally discharge any person at any time, and if any such person shall violate any condition of her parole or shall violate any condition upon which she has been discharged, or if any inmate escape from the institution, the board of managers may cause any such person to be rearrested and returned to the institution and be detained therein for the unexpired portion of her term, dating from the time of her parole, conditional discharge, or escape. The board of managers is empowered to issue to any person designated by the board a commitment signed by the president and attested by the secretary, and having attached thereto the common seal of the corporation, by the terms of which commitment such person may be authorized and empowered to apprehend any such person who may have violated her parole or any condition of her discharge or that may have escaped, and carry such person back to the institution. Such commitment shall briefly state the reason for the issuance of the same, and the person designated to execute the same may execute it in any county in the state. (1917, c. 255, s. 9; C. S. 7338.)

§ 134-32. Industrial training; compensation; power to punish.—The board of managers is authorized and empowered to establish and maintain within the institution an industrial school, and shall provide for the safe-keeping and employment of the inmates for the purpose of teaching each of them a useful trade or profession and improving her mental and moral condition. If the board of managers sees fit, they may pay each inmate reasonable compensation for labor performed, after deducting such sum as they may deem reasonable for necessary expenses of her maintenance and discipline. To secure the safe-keeping, obedience, and good order of the inmates, the superintendent shall have the same power as to such inmates as keepers of jails and other penal institutions possess as to persons committed to their custody. (1917, c. 255, s. 10; C. S. 7339.)

§ 134-33. Unlawful acts of inmates and others; escape; prostitution, etc.—It shall be unlawful:

(a) For any inmate of the state home and industrial school for girls and women to escape from said school, or for any person to aid and abet any inmate to escape therefrom;

(b) For any person to advise, or solicit, or to offer to advise, or solicit, any inmate of said school to escape therefrom;

(c) For any person to transport, or to offer to transport, in automobile or other vehicle or conveyance, any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees acting under the superintendent and teachers thereof;

(d) For any person to engage in, or to offer to engage in prostitution with any inmate of said school;

(e) For any person to receive, or to offer to receive any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;

(f) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable her to conceal her identity. (Ex. Sess. 1920, c. 40, s. 1; C. S. 7343(a).)

§ 134-34. "Inmate" and "prostitution" defined.—The term "inmate" as used in § 134-33 shall be construed to include any and all girls committed to, or received into said state home and industrial school for girls under the provisions of this article; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse. (Ex. Sess. 1920, c. 40, s. 2; C. S. 7343(b).)

§ 134-35. Punishment for violation of section 134-33.—Any person who shall knowingly and willfully violate any one of the provisions of § 134-33 shall be guilty of a misdemeanor, shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (Ex. Sess. 1920, c. 40, s. 3; C. S. 7343(c).)

Art. 3. The Industrial Farm Colony for Women.

§ 134-36. Name and establishment.—A State institution for women, to be known as the Industrial Farm Colony for Women, is hereby established. (1927, c. 219, s. 1.)

§ 134-37. Management; directors to be appointed by governor.—The State Industrial Farm for Women shall be under the management of a board of five directors, who shall be appointed by the Governor. At least two members of the board shall be women. Immediately upon the passage of this article the Governor shall appoint five directors for four years each, and their successors shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the person whom he shall succeed. The directors shall receive no compensation for their services, but shall be paid their necessary expenses incurred while engaged in the performance of their official duties.

The board shall hold an organization meeting within thirty days after appointment and shall elect from among its members a president, secretary and treasurer. The treasurer shall before receiving any funds, make a good and sufficient bond payable to the State of North Carolina in such sum as may be named by the Governor and approved by the State Treasurer. (1927, c. 219, s. 2.)

§ 134-38. Located in healthful section. — The board of directors is authorized to use for the purpose of said institution, any site already owned by the State, when approved by the Governor and Council of State. Such land shall be located in

a healthful section of the State and shall have natural drainage and adequate natural water supply. It shall also include woodland and arable land to the end that, as far as practicable, the food for the inmates may be produced on such land. The farm must also be accessible by rail or road to all sections of the State. (1927, c. 219, s. 3.)

§ 134-39. Plans for buildings.—The directors shall cause to be prepared plans and specifications for remodeling or erecting on such site necessary buildings for a suitable plant for the institution. The directors shall furnish and equip the same ready for use. Contracts shall be made by the directors and those calling for an expenditure of over five hundred dollars shall be duly advertised and competitive bids received thereon, but whenever possible convict labor shall be used, the compensation for such to be agreed upon by the directors and State Highway and Public Works Commission. When such buildings have been prepared and equipped, and the necessary staff of officers has been organized, the directors shall make announcement that the institution is ready for the reception of inmates. (1927, c. 219, s. 4.)

§ 134-40. Authority of directors.—The directors shall have control of the institution; determine the policy of the same and make necessary rules for the discipline, instruction, mental and physical examination and treatment of the inmates and for the labor of the inmates; cause to be kept proper records, including those of inmates; hold regular meetings, at least quarterly, at said institution and audit the accounts of the superintendent quarterly. They shall report biennially to the Governor the general and financial condition of said institution, with such recommendations as they desire to make. (1927, c. 219, s. 5.)

§ 134-41. Power to appoint and remove.—The directors shall appoint and remove at their discretion, a superintendent of said institution who shall be a woman of liberal education and special training and who has had experience in institutional management or social work, not of their number, and who, before entering upon the duties of her office, shall be sworn to a faithful performance of her duties. The superintendent shall receive such compensation as shall be fixed by the directors and shall reside at said institution. (1927, c. 219, s. 6.)

§ 134-42. Management of institution. — The superintendent shall manage such institution and have control over the inmates thereof, and shall make rules and regulations for the administration of said institution, subject to the approval of the board of directors. The superintendent shall, also, subject to the approval of the board of directors, determine the number, select, appoint and assign duties of all subordinate officers of said institution, who shall be women, as far as practicable, and shall be sworn to a faithful performance of their duties. As soon as the size of the institution demands it, a resident woman physician shall be employed. The superintendent may remove any officer appointed by her. (1927, c. 219, s. 7.)

§ 134-43. Women subject to committal. — Women sixteen years of age and older belonging to the following classes and who are not eligible for admission to Samarcand may be committed by any court of competent jurisdiction to said institution, and not otherwise; persons convicted of, or who plead guilty to the commission of misdemeanors, including prostitution, habitual drunkenness, drug-using, disorderly conduct. The board of directors may in its discretion receive and detain as an inmate of the institution any woman or girl, not otherwise provided for, who may be sentenced by any court of the United States within this state: Provided, that no woman who has been adjudged epileptic or insane by a competent authority, or is of such low mentality or is so markedly psychopathic as to prevent her from profiting by the training program of the institution, shall be admitted. Immediately upon commitment, a careful physical and mental examination by a competent physician and a psychologist shall be made of each person committed. The court imposing sentence upon offenders of either class shall not fix the term of such commitment except as hereinafter provided. Commitment to said institution shall be made within one week after sentence is imposed, by the sheriff when sentenced by the Superior Court, and by a police officer when sentence is imposed by any city, town or inferior court, but no offender shall be committed to such institution without being accompanied by a woman in addition to the officer. The expenses of such commitment shall be paid the same as commitments to other penal institutions in the State. The trial court shall cause a record of the case to be set with the commitment papers on blanks furnished by the institution. The duration of such commitment, including the time spent on parole, shall not exceed three years, except where the maximum term specified by law for the crime for which the offender was sentenced shall exceed that period, in which event such maximum term shall be the limit of detention under the provisions of this article, and in such cases it shall be the duty of the trial court to specify the maximum term for which the offender may be held under such commitment. (1927, c. 219, s. 8; 1937, c. 277.)

§ 134-44. Parole.—Any inmate of the institution may, upon recommendation of the board of directors to the Governor, be allowed to go on parole under the following conditions: That she is in good physicial condition, has ability to earn an honest living, has a satisfactory institutional record, based on the merit system, and a proper home to which she may go, or that suitable employment has been secured in advance. Each person paroled or discharged from said institution shall be given, if the superintendent deems it best, suitable clothing, transportation expenses and a sum of money not exceeding thirty dollars. Authority is conferred on said board of directors to establish such rules and regulations as it may deem necessary, setting forth the conditions upon which inmates may be discharged or recom-

mended for parole, and to enforce such rules and regulations. (1927, c. 219, s. 9.)

§ 134-45. Effect of parole.—While upon parole, each inmate of said institution shall remain in the legal custody and under the control of the board of directors, and subject at any time to be taken to said institution for any reason that shall seem sufficient to said board. Whenever any paroled inmate of said institution shall violate her parole and be returned to the institution, she may be required to serve the unexpired term of her maximum sentence, including the time she was out on parole or any part thereof, in the discretion of the board of directors, or she may be paroled again if said board of directors shall so recommend. The request of said board of directors or of any person authorized by the rules of said board, shall be sufficient warrant to authorize any officer of said institution or any officer authorized by law to serve criminal process within the State, to return any inmate on parole into actual custody; and it shall be the duty of police officers, constables and sheriffs to arrest and hold any paroled inmate when so requested, without any written warrant, and for the performance of such duty, the officer performing the same, except officers of said institution, shall be paid by the board of directors of said institution out of the institution funds such reasonable compensation as is provided by law for similar services in other cases. (1927, c. 219, s. 10.)

§ 134-46. Escape of inmate.—If any inmate shall escape from said institution or from any keeper or officer having her in charge or from her place of work while engaged in working outside the walls of said institution, she shall be returned to said institution when arrested, and may be disciplined in such manner as the board of directors may determine. Any person who shall advise, induce, aid or abet any woman committed to the State Industrial Farm or to the charge or guardianship of the directors of said institution to escape from said farm, or from the custody of any person to whom such women shall have been entrusted by said directors or by their authority, shall be fined not more than five hundred dollars or imprisoned not more than one year, and any woman who shall have so escaped may, whether the limit of her original sentence shall have expired or not, be arrested and detained without warrant, by any officer authorized to serve criminal process, for a reasonable time to enable the superintendent or a director of said farm, or a person authorized in writing by the superintendent of said farm or said directors and provided with the mittimus by which such woman was committed, or with a certified copy thereof, to take such woman for the purpose of returning her to said institution, and the officer arresting her shall be paid by the State a reasonable compensation for her arrest and keeping. Any woman lawfully committed to said institution who shall escape therefrom may be imprisoned in said institution for not more than one year from the expiration of the term for which she was originally committed. Prosecutions under this article may be instituted in any county in which such woman may be arrested. (1927, c. 219, s. 11.)

§ 134-47. Recommendation for discharge. — If it shall appear to said board of directors, that any inmate on parole, although not having completed her maximum term, has maintained a satisfactory parole record, and will continue to lead an orderly life if discharged, said board may recommend to the Governor that such inmate be discharged from said institution. (1927, c. 219, s. 12.)

§ 134-48. General and industrial training.—The board of directors, in making rules and regulations for the government of said institution, shall make provision for a system of general and industrial training, including useful trades and home economics, and for proper recreation facilities. (1927, c. 219, s. 13.)

Art. 4. Reformatories or Homes for Fallen Women.

§ 134-49. Counties and cities authorized to establish reformatories.—In all cities that have a population of over twenty thousand people the governing body of such city and the board of county commissioners of the county in which the city is situated are authorized and empowered to establish jointly a reformatory or home for fallen women. (1917, c. 264, s. 1; C. S. 7344.)

§ 134-50. Power to purchase land, erect buildings, and maintain the institution. — The said city and county are authorized jointly to purchase a tract of land, not exceeding one hundred acres, for the use of such reformatory or home, the title to which shall be vested jointly in the city and county, and the reformatory shall be managed jointly by such city and county. The city and county are authorized to build such buildings and improvements on the land so purchased, to keep and maintain such reformatory or home for fallen women, and to make all necessary appropriations for buildings and keeping and caring for the inmates thereof: Provided, however, the cost of said buildings shall not exceed the sum of forty thousand dollars, and the maintenance and upkeep and operating expenses per annum shall not exceed the sum of twenty thousand dollars. (1917, c. 264 s. 1; 1919, c. 33; 1925, c. 176; C. S. 7345.)

§ 134-51. Board of directors elected; officers; regulations. — The governing body of the city, at its annual election of officers for the city in May, shall elect for the term of two years two men as directors for such institution, and the board of county commissioners shall, in the same year, at their meeting in May, elect two men as directors for such institution to serve for two years. The mayor of the city and the chairman of the board of county commissioners shall be ex officio members of such board with equal right to vote, and the six directors shall have entire management and control of such reformatory for fallen women. The board shall elect one of their number president, and also elect a secretary and treasurer, and they shall have and exercise the usual powers incident to such officers. They shall make such rules and regulations as they see fit for the govern-

ment and management of such institution. The directors shall take an oath to perform their service faithfully, and they shall continue as directors until their successors are duly elected and qualified. (1917, c. 264, s. 1; C. S. 7346.)

Local Modification.—Mecklenburg: 1931, c. 253.

§ 134-52. Advisory board of women.—The directors are authorized to appoint as an advisory board not more than twenty-five nor less than twelve discreet women to supervise and attend to the actual running of such institution. The advisory board of women shall be appointed for such term, not exceeding four years, as the directors may in their discretion think best. (1917, c. 264, s. 1; C. S. 7347.)

§ 134-53. Special tax authorized.—To assist in carrying out the provisions of this article the county commissioners and governing body of the city shall each levy annually a tax not exceeding two cents on each one hundred dollars valuation of real and personal property in such city and county respectively. The tax shall be levied and collected in the same manner as the other county and city taxes are collected. This fund shall be used exclusively for the purposes contemplated and set forth in this article, and shall be kept separate from all other funds. (1917, c. 264, s. 2; C. S. 7348.)

§ 134-54. Employment of superintendent and assistants; rules and regulations.—The board of directors shall have the management and control of the institution and shall have authority to employ superintendents and such other assistants as they may deem necessary; to fix their salaries, to define their duties, and to discharge any employee; and to make any and all rules and regulations as they may deem necessary for the management and conducting of the institution under the provisions of this article and not inconsistent therewith. (1917, c. 264, s. 5; C. S. 7349.)

§ 134-55. Power of superintendent.—The superintendent of the institution employed by the board of directors shall have the right to require obedience from all the inmates of the institution, and to use such lawful measures as may be necessary to enforce the same to the same extent as the superintendent of any other penal institution in this state is empowered in like case. (1917, c. 264, s. 6; C. S. 7350.)

§ 134-56. Physician employed.—For the purpose of treating the inmates of the institution for the whiskey, drug, or other habit or disease, the directors shall employ a competent physician or physicians to attend and treat said inmates. (1917, c. 264, s. 14; C. S. 7351.)

§ 134-57. Purpose of home; persons to be admitted.—The reformatory or home shall be conducted for the correction of fallen women, and for the moral and industrial training of criminally delinquent women and girls, by teaching them useful trades and domestic science, etc.; and the directors may, in their discretion, receive into the institution such women or girls as shall be committed thereto by the judge or other presiding officer of any superior or recorder's court held anywhere in the state of North Carolina within that judicial district in which county the reformatory is now or may hereafter be situated, as hereinafter provided: Provided, that the reasonable cost of maintaining any woman or girl committed to such institution from any county other than that in which such reformatory shall be located shall be borne by the county from which such person shall have been committed. (1917, c. 264, s. 3; C. S. 7352.)

§ 134-58. Right of directors to control inmates.—The board of directors shall have the sole right to keep, restrain, and control the persons committed or otherwise received into the institution as hereinafter provided, during the term of their commitment thereto, under such proper and humane rules and regulations as may be adopted by the directors. (1917, c. 264, s. 4; C. S. 7353.)

§ 134-59. Power of courts to commit persons to reformatory. — When the institution is ready to receive and care for inmates, the board of directors shall notify the clerks of the courts hereinbefore specified; and the judges or other presiding officers of the superior, recorders', county, or other courts having like criminal jurisdiction, in that judicial district in which the reformatory is now or may hereafter be situated and established, shall have authority to sentence to the reformatory for fallen women for a term of not less than thirty days nor more than one year all those women who are convicted in their several courts of drunkenness or the drug habit, where it appears that they are habitual drunkards or drug fiends; and the judges or other presiding officers of such courts shall have authority to sentence to the "Reformatory for Women" for a term of not less than thirty days nor more than three years all female persons convicted in the said courts of any violation of the criminal laws of this state prohibiting and punishing fornication and adultery, keeping a house of ill-fame, or a bawdy-house, or disorderly house, or violating the criminal laws of this state as to chastity or vagrancy: Provided, that such judge or other presiding officer as aforesaid shall be of the opinion that it would be best for such persons and the community in which such persons may be convicted hereunder. The order of commitment of such judge or other presiding officer as hereinbefore provided shall be full, sufficient, and competent authority to the officers and agents of the institution for the detention and keeping therein of the persons so committed: Provided, that nothing herein shall authorize a justice of the peace to impose a sentence of longer than thirty days: Provided further, that judges and recorders holding courts in counties other than that in which the reformatory is located shall have power to commit such persons to the institution on the conditions heretofore set forth in this article. (1917, c. 264, s. 7; 1919, c. 302; C. S. 7354.)

§ 134-60. Clerk of superior court may commit in certain cases.—The clerk of the superior court shall have power and authority to commit to the institution for treatment any female person found by such clerk to be a habitual drunkard or habitually addicted to the drug habit, as such clerk is now authorized by law to commit to the

hospital for the insane or to a private hospital, persons adjudged to be of unsound mind, and to that end such clerk of the court shall have all the power and authority conferred upon him by law with reference to insane persons. (1917, c. 264, s. 15; C. S. 7355.)

§ 134-61. Voluntary application for admission.—Any person fulfilling the requirements as to sex and age as hereinbefore provided may, upon written application to the directors, setting forth that the applicant wishes to reform and the term for which such applicant wishes to be detained, be admitted to such institution, in the discretion of the board of directors; and any inmate so admitted shall be subject to the same restraint, control, and treatment as persons committed thereto, and such applications signed by the applicants shall be full and sufficient authority for the detention and control of the applicants in the institution for and during the full term as set out in the application: Provided, that the directors may, in their discretion, discharge any inmate so admitted at any time. (1917, c. 264, s. 8; C. S. 7356.)

§ 134-62. Instruction and training to be given.—The officers of the institution shall take into the reformatory or home all persons committed thereto by competent authority, and shall cause all such persons to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities, and to be taught such useful trades and occupations as the board may direct; and such persons shall perform such labor as the principal and other superintending officers may order, subject to the discretion of the board of directors. All inmates of the institution shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and be industrious. (1917, c. 264, s. 11; C. S. 7357.)

§ 134-63. Industrial training; assistance to discharged inmates.—There shall be established and conducted on such lands as may be owned in connection with the institution such useful pursuits as the board of directors may deem expedient, so as to keep regularly at work all able-bodied inmates thereof, and as far as may be practicable the board of directors shall assist the inmates, when paroled or discharged, in procuring suitable homes and honorable and respectable employment. (1917, c. 264, s. 12; C. S. 7358.)

§ 134-64. Discharge on parole; rearrest for escape or violation of parole.—The board of directors of the institution may detain therein, under the rules and regulations adopted by them, any person legally committed thereto, according to the terms of sentence and commitment; and with the approval and concurrence of the governor of the state first had and obtained, may conditionally parole or discharge such person at any time prior to the expiration of the term of commitment. If, however, any inmate shall escape or be conditionally paroled, or be conditionally discharged from the institution as aforesaid, and violate and break the condition of her parole or conditional discharge, the board of directors may, by and through their superintendent, cause her to be arrested and returned to the institution, to be detained therein for the unexpired portion of the commitment, dating from the time of escape or parole or conditional discharge. The superintendent of the institution, or any employee thereof under his control and direction, may rearrest, without a warrant, any inmate of the institution who may have escaped therefrom, in any county of this state, and shall forthwith convey her back to the institution from which she escaped; and a justice of the peace or any judicial officer may cause an escaped inmate from the institution to be rearrested and held in custody until she can be returned to the institution as in case of the first commitment thereto. Any person conditionally paroled or conditionally discharged from the institution may be also rearrested and returned thereto upon a warrant issued by the chairman of the board of directors, the warrant specifying briefly the reason for such rearrest and return, and such warrant of rearrest shall be directed and delivered to a person employed by the board of directors, and may be executed by such person in any county of this state where the paroled or conditionally discharged inmate may be found. (1917, c. 264, s. 13; C. S. 7359.)

§ 134-65. Ungovernable inmates removed.—If it shall appear to the board of directors that any inmate of the institution is or becomes ungovernable, or is exerting an unwholesome influence over any other inmate of the institution, it shall be their duty to certify the same to the governor of the state, and he thereupon may order such inmate to the state's prison or to the county jail or to the workhouse in the county in which the inmate was convicted and sentenced, where such person shall serve out her unexpired term of imprisonment. (1917, c. 264, s. 10; C. S. 7360.)

§ 134-66. Reports to be made by directors; inspection by grand jury.—The board of directors shall at least once a year file with the city and the board of county commissioners of the county in which the institution is situated a full detailed report of the institution, together with the superintendent's reports thereon. It shall be the duty of the grand jury to personally visit and inspect such institutions once every six months, and report to the court the conditions prevailing therein. (1917, c. 264, s. 9; C. S. 7361.)

Art. 5. Eastern Carolina Industrial Training School for Boys.

§ 134-67. Corporation created; name; powers.—A corporation to be known and designated as the eastern Carolina industrial training school for boys is hereby created, and as such corporation and under said name it may sue and be sued, plead and be impleaded, hold, use, and sell and convey real estate, receive gifts and donations and appropriations, and do all other things necessary and requisite for the purposes of its organization as hereinafter specified. (1923, c. 254, s. 1; C. S. 7362(a).)

§ 134-68. Trustees; appointments; terms; expenses.—The Eastern Carolina Industrial School for Boys shall be under the control and management of a board of eight trustees. The said trustees shall be appointed by the Governor of the

State and the term of each trustee shall be four years from and after the date of his or her appointment. Within thirty days after March 10, 1925 the Governor shall appoint three of the trustees and within six months after March 10, 1925 the Governor shall appoint the remaining two. At the time of making the appointment the Governor shall designate which of the present trustees are to be succeeded by his appointees. All vacancies occurring in the board shall be filled by the Governor. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. Each member of the board shall be entitled to receive necessary expenses for each and every day engaged in the business of the institution. (1923, c. 254, s. 2; 1925, c. 306, s. 5; 1927, c. 144; C. S. 7862(b).)

§ 134-69. Establishment and operation of school; boys subject to committal; control; term of detention.—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent white boys of the state; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal boys under the age of twenty years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders, or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1923, c. 254, s. 3; 1937, c. 116; C. S. 7362(c).)

§ 134-70. Selection of location; power and size of purchase.—The board of trustees shall select a suitable place outside of and away from any city, town or village for the erection of such school, such location to be in the eastern part of North Carolina not farther west than twenty miles west of the main line of the Atlantic Coast Line Railroad, and said board of trustees is empowered to purchase, at some suitable and convenient place, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1923, c. 254, s. 4; C. S. 7362(d).)

§ 134-71. Receipts expended for school; accounting and reports.—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation and maintenance of the school for the training and the moral and industrial development of such delinquent boys, and in securing homes for them; and it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1923, c. 254, s. 6; C. S. 7362(f).)

§ 134-72. Bonds of superintendent and treasurer.—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the state of North Carolina, in such sums as may be named by the governor and approved by the state treasurer. (1923, c. 254, s. 7; C. S. 7362(g).)

§ 134-73. Enforcement of discipline; discharge of superintendent.—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is entrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child; and the trustees shall have the right at any time to discharge the superintendent for cause. (1923, c. 254, s. 8; C. S. 7362(h).)

§ 134-74. Transfer by order of governor.—The governor of the state may by order transfer any boy under the age of eighteen years from any jail, chain-gang or penitentiary in this state to such school. (1923, c. 254, s. 10; C. S. 7362(j).)

§ 134-75. Work to be conducted.—There shall be established and conducted on such lands as may be owned in connection with the school, such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1923, c. 254, s. 11; C. S. 7362(k).)

§ 134-76. Boys to be received; subjects of instruction.—The officers of the school shall receive and take into it all boys committed thereto by competent authority, or received therein as aforesaid, and shall cause all such boys in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The boys shall be taught such useful trades and given such manual training as the board may direct and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1923, c. 254, s. 12; C. S. 7362(l).)

§ 134-77. Management and control of school; rules and regulations.—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such school under the provisions of this article and not inconsistent therewith. (1923, c. 254, s. 13; C. S. 7362(m).)

§ 134-78. Certificate for removal from school order of removal.—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the governor of the state, and he may order such inmate to the state prison or to the jail or chain gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1923, c. 254, s. 14; C. S. 7362(n).)

Art. 6. Morrison Training School.

§ 134-79. Creation of corporation; name; powers.—A corporation, to be known and designated "The Morrison Training School," is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations, hold real estate by purchase or gift, and do all other things necessary and requisite to be done for the care, discipline and training of negro boys which may be received by said corporation. (1921, c. 190, s. 1; 1937, c. 146; C. S. 5912(a).)

§ 134-80. Control and management; trustees.—The Morrison Training School shall be under the control and management of a board of ten trustees. All of the trustees shall be appointed by the Governor. Within thirty days from March 10, 1925, the Governor shall appoint three trustees, who shall serve for a term of four years from and after the date of their appointment and until their successors have been appointed and qualified according to law; within six months from March 10, 1925, he shall appoint two trustees, who shall serve for a term of four years from and after the date of their appointment; after March 2, 1927, he shall appoint three additional trustees, who shall serve for a term of three years; and after March 15, 1941, he shall appoint two additional trustees, who shall serve for a term of three years. At the time of making the appointments, the Governor shall designate which of the present trustees are to be succeeded by his appointees. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. The terms of the said trustees shall be four years from and after the date of their appointment. The Governor shall transmit the names of his appointees to the Senate at the next session of the General Assembly for confirmation. All vacancies shall be filled by the Governor. Each member of the board of trustees shall be entitled to receive actual expenses while engaged in the business of the institution. (1921, c. 190, s. 2; 1925, c. 306, s. 6; 1927, c. 63; 1941, c. 241; C. S. 5912(b).)

§ 134-81. Trustees to meet and organize; location of school; powers of trustees; board of parole. — Immediately upon receiving notice of their appointment as trustees, the persons so designated shall meet and organize by electing from their number a chairman, and one as secretary, or the latter two offices may be combined. They shall thereupon undertake as expeditiously as possible the business of selecting a location and preparing for the opening and maintenance of the Morrison Training School. The board shall have power to appoint and dismiss at will a superintendent and other employees, to make such rules for its own meetings and guidance as it deems necessary; have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein, and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board of managers shall constitute a board of parole of the institution, and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe, and to retake them upon failure to comply with any requirement of parole. (1921, c. 190, s. 3; C. S. 5912(c).)

§ 134-82. Delinquents committed to institution; cost; age limit.—Delinquent negro boys, under the age of sixteen years, may be committed to the institution by any juvenile, state, or other court having jurisdiction over such boy, but no boy shall be sent to the institution until the committing agency has received notice from the superintendent that such person can be received. The cost of sending inmates shall be paid by the county or municipality sending the same, as the case may be. In special cases where the public good would seem to be subserved thereby the board shall have the right, upon the request of any court of proper jurisdiction, to receive an inmate above the age of sixteen, but this shall be a matter wholly within the discretion of the board. When any commitment to the institution is made, it shall not be for any specified time, but may continue or terminate at the discretion of the board, not to exceed the age of majority of the inmate. (1921, c. 190, s. 4; C. S. 5912(d).)

§ 134-83. Selection of location of institution; title.—The location of the institution shall be recommended by the board of trustees and approved by the governor. In the event the location selected is upon property now owned by the state or any other state institution, then the governing body in whom the title is vested is hereby directed and authorized to transfer title to the board of trustees of the Morrison Training School, and turn over to them all or such portions of the said property as the governor may direct, without compensation, as the governor may deem proper for the best interests of the state. (1921, c. 190, s. 5; C. S. 5912(e).)

§ 134-84. Apportionment of admissions; private or municipal contributions.—In receiving inmates of the institution, the trustees shall distribute such admissions as near as may be in relation to the negro population of the several counties until all the maintenance appropriation from the state is exhausted. If after such maintenance fund is exhausted it be found possible to provide housing space and control for additional inmates, then the trustees may receive such additional number of inmates as can be cared for upon the payment by private persons or municipal or county authorities of the actual cost of the maintenance of such inmates. County and municipal authorities are hereby given authority to pay such sums in their discretion. (1921, c. 190, s. 6; C. S. 5912(f).)

Art. 7. Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.

§ 134-85. Conditional release. — The superin-

tendent of the State Home and Industrial School for Girls, of the Stonewall Jackson Manual Training and Industrial School, of the Eastern Carolina Industrial Training School for Boys, and of the Morrison Training School for Negro Boys, shall have power to grant a conditional release to any inmate of the institution over which such superintendent presides, under rules adopted by the board of trustees or managers of such institution, and such conditional release may be terminated at any time by the written revocation of such superintendent, which written revocation shall be sufficient authority for any officer of the school or any peace officer to apprehend any inmate named in such written revocation, in any county of the state, and to return such inmate to the institution from which he or she was conditionally released. Such conditional release shall in no way affect any suspended sentence, a condition of which is that the inmate be admitted to and remain at such institution. (1937, c. 145, s. 1.)

§ 134-86. Final discharge.—Final discharge of any inmate of any institution enumerated in § 134-85 may be granted by the superintendent of such institution, under rules adopted by the board of directors or managers, at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate arrives at his or her twenty-first birthday. (1937, c. 145, s. 2.)

Art. 8. Care of Persons under Federal Jurisdiction.

§ 134-87. Certain correctional institutions to make contracts with federal agencies for the care of persons under federal jurisdiction.—The governing boards of the Stonewall Jackson Manual Training and Industrial School, Morrison Training School for Negro Boys, Eastern Carolina Training School, the State Home and Industrial School for Girls, and the State Industrial Farm Colony for Women may contract with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary Federal agency for the care, keeping, correction, training, education, and supervision of delinquent children or other persons under the jurisdiction, custody, or care of the Federal courts or of the said office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary Federal agency, as authorized by the terms of the Federal Juvenile Delinquency Act of one thousand nine hundred thirty-eight, and may receive, accept, hold, train, and supervise such persons as may be received from said courts or department under the rules and regulations of the several and respective institutions as prescribed or as may hereafter be established by the said governing boards, provided, however that such contracts or subsequently established rules of care, procedure, and training, of those committed to said institutions, first shall have been approved by the State Board of Charities and Public Welfare. (1939, c. 166, s. 1.)

§ 134-88. Term of contract. — Any contract made under the authority and provision of this article shall be for a period of not more than two years, and shall be renewable from time to time for a period of not to exceed two years. (1939, c. 166, s. 2.)

§ 134-89. Approval by N. C. Budget Bureau; payments received under contracts.—Any contracts entered into under the provisions of this article by the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary Federal agency with any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract shall, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contracts authorized by this article shall be deposited in the State Treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1939, c. 166, s. 3.)

Chapter 135. Retirement System for Teachers and State Employees.

Sec.
135-1. Definitions.
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135-13. Certain laws not repealed; suspension of payments and compulsory retirement.

§ 135-1. Definitions.—The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the teachers' and state employees' retirement system of North Carolina as defined in § 135-2.

(2) "Public school" shall mean any day school

conducted within the state under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the state.

(3) "Teacher" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of department of public instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the state. In all cases of doubt, the board of trustees, hereinafter defined, shall determine whether any person is a teacher as defined in this chapter.

(4) "Employee" shall mean all full-time employees, agents or officers of the state of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided, that the term "employee" shall not include any justice of the supreme court or any judge of the superior court.

(5) "Employer" shall mean the state of North Carolina, the county board of education, the city board of education, the state board of education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the state, or any other agency of and within the state by which a teacher or other employee is paid.

(6) "Member" shall mean any teacher or state employee included in the membership of the system as provided in §§ 135-3 and 135-4: Provided, that no member shall be entitled to participate under the provisions of this chapter as to that part of the compensation in excess of three thousand dollars ($3,000.00) received by such member during any year.

(7) "Board of trustees" shall mean the board provided for in § 135-6 to administer the retirement system.

(8) "Medical board" shall mean the board of physicians provided for in § 135-6.

(9) "Service" shall mean service as a teacher or state employee as described in subsections three or four of this section.

(10) "Prior service" shall mean service rendered prior to the date of establishment of the retirement system for which credit is allowable under § 135-4; provided, persons now employed by the state highway and public works commission shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to one thousand nine hundred and thirty-one and subsequent to one thousand nine hundred and twenty-one, where such employment has been continuous.

(11) "Membership service" shall mean service as a teacher or state employee rendered while a member of the retirement system.

(12) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 135-4.

(13) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

(14) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the board of trustees in accordance with § 135-7, subsection two.

(15) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in § 135-8.

(16) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in money.

(17) "Average final compensation" shall mean the average annual earnable compensation of a teacher or employee during his last five years of service, or if he had less than ten years of service, then his average earnable compensation for his total service.

(18) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.

(19) "Pensions" shall mean payments for life derived from money provided by the state of North Carolina, and by county or city board of education. All pensions shall be payable in equal monthly installments.

(20) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.

(21) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(22) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(23) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(24) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest. (1941, c. 25, s. 1.)

§ 135-2. Name and date of establishment.— A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this chapter for teachers and state employees of the state of North Carolina. The retirement system so created shall be established as of the first day of July, one thousand nine hundred and forty-one.

It shall have the power and privileges of a corporation and shall be known as the "Teachers' and State Employees' Retirement System of North Carolina," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1941 c. 25, s. 2.)

§ 135-3. Membership.—The membership of this retirement system shall be composed as follows:

(1) All persons who shall become teachers or state employees after the date as of which the retirement system is established.

(2) All persons who are teachers or state employees on February 17, 1941, or who may become teachers or state employees on or before July first, one thousand nine hundred and forty-one, except those who shall notify the board of trustees, in writing, on or before January first, one thousand nine hundred and forty-two, that they do not choose to become members of this retirement system, shall become members of the retirement system.

(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member. (1941, c. 25, s. 3.)

§ 135-4. Creditable service. — (1) Under such rules and regulations as the board of trustees shall adopt each member who was a teacher or state employee at any time during the year immediately preceding the establishment of the system and who becomes a member during the first year of operation of the retirement system, shall file a detailed statement of all North Carolina service as a teacher or state employee rendered by him prior to the date of establishment for which he claims credit.

(2) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service.

(3) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the board of trustees may use for the purpose of this chapter the compensation rates which will be determined by the average salary of the members for five years immediately preceding the date this system became operative as the records show the member actually received.

(4) Upon verification of the statements of service, the board of trustees shall issue prior service certificates certifying to each member the period of service prior to the establishment of the retirement system, with which the member is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the teacher or state employee again become a member, such teacher or state employee shall enter the system as a teacher or state employee not entitled to prior service credit except as provided in § 135-5, subsection five, paragraph (b).

(5) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate. (1941, c. 25, s. 4.)

§ 135-5. Benefits. — (1) Service Retirement Benefit.—(a) Any member in service may retire upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(b) Any member in service who has attained the age of sixty-five years shall be retired at the end of the year unless the employer requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the year.

(c) Any member in the service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the year following the date on which he attains the age of seventy years: Provided, that with the approval of his employer and the board of trustees, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(2) Service Retirement Allowances.—Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at the age of sixty years by twice the contributions which he would have made during such prior service had the system been in operation and he contributed thereunder.

(3) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty,

that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty years had the member continued in service to the age of sixty years without further change in compensation.

(5) Re-Examination of Beneficiaries Retired for Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal. and should his refusal continue for one year all his rights in and to his pension may be revoked by the board of trustees.

(a) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the retirement system.

(b) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid prior to disability. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(6) Return of Accumulated Contributions.—Should a member cease to be a teacher or state employee except by death or retirement under the provisions of this chapter, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such persons as he shall have nominated by written designation, duly executed and filed with the board of trustees.

(7) Election of Optional Allowance.—With the provision that no optional selection shall be effective in case the beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his retirement allowance in a reduced retirement allowance payable throughout life with the provisions that:

Option 1. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement. (1941, c. 25, s. 5.)

§ 135-6. Administration.—(1) Administration by Board of Trustees; Corporate Name; Rights and Powers; Tax Exemption. — The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of the chapter are hereby vested in a board of trustees which shall be organized immediately after a majority of the trustees provided for in this section shall have qualified and taken the oath of office.

The board of trustees shall be a body politic and corporate under the name "board of trustees teachers' and state employees' retirement system"; and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper

for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the state or any political subdivision thereof, and shall not be subject to income taxes.

(2) Membership of Board; Terms.—The board shall consist of seven members, as follows:

(a) The state treasurer, ex-officio;

(b) The superintendent of public instruction, ex-officio;

(c) Five members to be appointed by the governor and confirmed by the senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the state; one to be a general state employee, and three who are not members of the teaching profession or state employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years.

(3) Compensation of Trustees.—The trustees shall be paid seven dollars ($7.00) per day during session of the board and shall be reimbursed from the expense appropriation for all necessary expenses that they may incur through service on the board.

(4) Oath.—Each trustee other than the ex-officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the retirement system. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the secretary of state.

(5) Voting Rights.—Each trustee shall be entitled to one vote in the board. Four affirmative votes shall be necessary for a decision by the trustees at any meeting of said board.

(6) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business.

(7) Officers and Other Employees, Salaries and Expenses.—The state treasurer shall be ex-officio chairman of the board of trustees. The board of trustees shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as the board of trustees shall approve, subject to the approval of the director of the budget.

(8) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system, and for checking the experience of the system.

(9) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

(10) Legal Adviser.—The attorney general shall be the legal adviser of the board of trustees.

(11) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(12) Duties of Actuary.—The board of trustees shall designate an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(13) Immediately after the establishment of the retirement system the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection fourteen, paragraphs (a) and (b) of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(14) In the year one thousand nine hundred and forty-three, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation, the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary; and

(b) Certify the rates of contributions payable by the state of North Carolina on account of new entrants at various ages.

(15) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter. (1941, c. 25, s. 6.)

§ 135-7. Management of funds.—(1) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in § 135-8, and shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations and restrictions imposed by the laws of North Carolina upon the investment of state sinking funds, and subject to like terms, conditions, limitations and restrictions, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(2) Regular Interest Allowance.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future, such rate to be limited to a minimum of three per centum and a maximum of four per centum, with the latter rate applicable during the first year of operation of the retirement system.

(3) Custodian of Funds; Disbursements; Bond of Secretary.—The state treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(4) Deposits to Meet Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the retirement system, on deposit with the state treasurer of North Carolina.

(5) Personal Profit or Acting as Surety Prohibited.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for his service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1941, c. 25, s. 7.)

§ 135-8. Method of financing.—All of the assets of the retirement system shall be credited according to the purpose for which they are held to one of four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund.

(1) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(a) Each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum of his earnable compensation. The employer also shall deduct four per centum of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the state from salaries other than the appropriations from the state of North Carolina. In determining the amount earnable by a member in a payroll period, the board of trustees may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deduction from compensation for any period less than a full payroll period if a teacher or state employee was not a member on the first day of the payroll period.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

(c) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the state, in which any teacher receives compensation from sources other than appropriations of the state of North Carolina shall deduct from the salaries of these teachers paid from sources other than state appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from state funds, and remit this amount to the state retirement system. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the state appropriation shall pay to the state retirement system the same per centum of the

salaries that the state of North Carolina pays: Provided, that for the purpose of enabling the county boards of education and the board of trustees of city administrative units to make such payment, the tax levying authorities in each such city or county administrative unit are hereby authorized, empowered and directed to provide the necessary funds therefor: Provided, that it shall be within the discretion of the county board of education in a county administrative unit and the board of trustees in a city administrative unit, with the approval of the tax levying authorities of such unit, to provide for the payment from local tax funds of any amount specified in subsection (c) of this section in excess of the amount to be paid to the retirement system on the basis of the state salary schedule and term. In case the salary is paid in part from state funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from state funds. In case the entire salary of any teacher, as defined in this chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the retirement system the same per centum that would be required if the salary were provided by the state of North Carolina.

(d) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom as provided in this chapter. Such amounts so deposited shall become a part of his accumulated contributions in the same manner as if said contributions had not been withdrawn.

(2) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension Accumulation Fund shall be made as follows:

(a) On account of each member there shall be paid annually in the pension accumulation fund by employers for the preceding fiscal year an amount equal to a certain percentage of the earnable compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his earnable compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one hundredths per centum (2.57%) for teachers, and one and fifty-seven one-hundredths per centum (1.57%) for state employees, and the accrued liability contribution shall be two and ninety-four one-hundredths per centum (2.94%) for teachers and one and fifty-nine one-hundredths per centum (1.59%) of the salary of other state employees.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

(c) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate.

(d) The total amount payable in each year to the pension accumulation fund shall be not less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total compensation earnable by all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the year then current.

(e) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.

(f) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employer shall be paid from the pension accumulation fund.

(g) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(5) Collection of Contributions.—(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the retirement system the contributions payable by such member as provided in this chapter, and the employer shall draw his warrant for the amount so deducted, payable to the teachers' and state employees' retirement system of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

(2) The collections of employers' contributions shall be made as follows:

(a) Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to the budget bureau a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation and expense funds, as provided under subsections (three) and (five) of this section, and these funds shall be handled and disbursed in accordance with chapter one hundred, Public Laws of one thousand nine hundred and twenty-nine, and amendments thereto [§ 143-1 et seq.], known as The Executive Budget Act.

(b) Until the first valuation has been made and the rates computed as provided in subsection (three) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths per centum (5.51%) of the payroll of all teachers and three and sixteen one-hundredths per centum (3.16%) for other state employees.

(c) The auditor shall issue his warrant to the state treasurer directing the state treasurer to pay this sum to the board of trustees, from the appropriations for the teachers' and state employees' retirement system.

(d) Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the state of North Carolina shall pay the board of trustees of the state retirement system such rate of their respective salaries as are paid those of other employees. (1941, c. 25, s. 8, c. 143.)

§ 135-9. Exemption from taxes, garnishment, attachment, etc.—The right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created by this chapter, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided. (1941, c. 25, s. 9.)

§ 135-10. Protection against fraud.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars ($500.00), or imprisonment in the county jail not exceeding twelve months, or both such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1941, c. 25, s. 10.)

§ 135-11. Application of other pension laws.—No other provision of law in any other statute which provides wholly or partly at the expense of the state of North Carolina for pensions or retirement benefits for teachers or state employees of the said state, their widows, or other dependents shall apply to members or beneficiaries of the retirement system established by this chapter, their widows or other dependents. (1941, c. 25, s. 11.)

§ 135-12. Obligation of maintaining reserves and paying benefits.—The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in § 135-8, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this chapter, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said fund. (1941, c. 25, s. 12.)

§ 135-13. Certain laws not repealed; suspension of payments and compulsory retirement.—Nothing in this chapter shall be construed to re-

peal or invalidate any of the provisions of chapter four hundred and eighty-three of the Public Local Laws of one thousand nine hundred and nineteen, or chapter three hundred and eighty-five of the Public-Local Laws of one thousand nine hundred and twenty-one, as amended, relating to pensions for school teachers in New Hanover county. No payment on account of any benefit granted under the provisions of § 135-5, subsections (1)-(4) inclusive, shall become effective or begin to accrue until the end of one year following the date the system is established nor shall any compulsory retirement be made during such period. (1941, c. 25, s. 13.)

Chapter 136. Roads and Highways.

Art. 1. Organization of State Highway and Public Works Commission.

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Art. 1. Organization of State Highway and Public Works Commission.

§ 136-1. State highway and public works commission created.—A highway and public works commission is hereby created to be and continue an agency of the state government and to be known as the "State Highway and Public Works Commission." The said commission shall consist of a chairman and ten commissioners; the chairman and each of said commissioners shall be appointed by the Governor for a term of four years, the said terms to commence May first, one thousand nine hundred and forty-one, and continue until their successors are appointed and qualify: Provided, that the chairman or any commissioner appointed pursuant to this section may be removed by the Governor for cause. In case of the death, resignation, or removal from office of said chairman or any commissioner prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term. At the expiration of the term for which said chairman and commissioners are appointed, their successors shall be appointed for the term of four years each. The chairman shall devote his entire time and attention to the work of the commission, and shall receive as compen-

sation not exceeding seven thousand five hundred dollars ($7,500.00) per annum, to be fixed by the Governor and the Advisory Budget Commission, payable monthly, and his actual traveling expenses when engaged in the discharge of his duties. The said chairman shall be vested with all authority of the commission when the commission is not in session, and shall be the executive officer of the said commission and shall execute all orders, rules, and regulations established by said commission. The commissioners, except the chairman, shall each receive ten dollars ($10.00) per day while engaged in the discharge of the duties of their office and their actual traveling expenses. The commissioners shall be so selected that it will be physically possible to divide the state into ten divisions of substantially equal size on the joint bases of area, population and mileage; and said commissioners shall, on or before the first day of July, one thousand nine hundred and thirty-seven, designate the boundary lines of said divisions in such manner that each of said commissioners will be a resident of a separate division: Provided, however, that said division lines may be changed from time to time by a two-thirds vote of the commission and with the consent and approval of the board of county commissioners of the county or counties immediately affected thereby. Notwithstanding the provisions contained herein for the selection of commissioners in such manner as to make it physically possible to divide the State into ten divisions, it is the intent and purpose of this section that all of said commission and the chairman shall represent the State at large and not be representative of any particular division. It shall be the duty of the commission as a whole to select the road projects to be constructed or reconstructed which now or shall constitute a part of the primary highway system of the State. The intent and purpose of this section is that there shall be maintained and developed a state-wide highway system commensurate with the needs of the State as a whole and not to sacrifice the general state-wide interest to the purely local desires of any division.

It shall be the duty of each commissioner to inform himself of the road needs of the particular division from which said commissioner is chosen and to report his findings from time to time to the commission. The commission shall formulate general policies and make such rules and regulations as it may deem necessary, governing the construction, repair and maintenance of the highway system of the State, with due regard to farm-to-market roads and school bus routes.

Each member of the commission shall designate some time and place during each calendar month where he will be for the purpose of hearing such matters and things as may be presented to him by the governing bodies of the several counties of his district; and shall advise the chairmen of said governing bodies accordingly. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1.)

§ 136-2. Headquarters; meetings; minutes.—The headquarters and main office of the said commission shall be located in Raleigh, and the commission shall meet in its main office at least once in each sixty days, or at such regular time as the commission may by rule provide, and may hold special meetings at any time and place within the state at the call of the chairman or the Governor or any three members of the commission.

The Governor and the State Treasurer shall be privileged to attend any and all meetings of said commission in an advisory capacity, but they shall not have the authority to vote upon any question before said commission. The commission shall keep minutes of all its meetings, which shall at all times be open to public inspection. (1933, c. 172, s. 2; 1937, c. 297, s. 1.)

§ 136-3. When acting chairman may be designated.—The commission may, with the approval of the Governor, designate a member of the comsion or some other suitable person as acting chairman and confer upon the said acting chairman all authority of the chairman, or such restricted authority as the commission may by resolution determine to be exercised, in the event the chairman, on account of absence from the state, illness, or other cause, may be unable temporarily to discharge the duties of his office. (1935 c. 257, s. 1.)

§ 136-4. State highway engineer and other employees.—The State Highway and Public Works Commission shall employ a state highway engineer, who shall be a competent civil engineer, qualified by technical training as well as practical construction experience in highway work. The engineer shall hold office during the pleasure of the commission, but not to exceed a period of four years without reappointment. He shall receive an annual salary to be fixed by the commission, with the approval of the Governor and the Budget Bureau, payable in monthly installments, together with such actual and other necessary expenses as may be incurred in the official discharge of his duties. The engineer, before entering upon the discharge of the duties of his office, shall take an oath that he will faithfully and honestly execute the duties of his office. Said commission shall prescribe and fix the duties of the engineer, and shall provide the engineer with offices and sufficient equipment to discharge his duties as prescribed by the commission and this chapter. The commission shall employ such other engineers, clerks, and assistants as may be needed, and at such salaries and for such terms as appear necessary, and prescribe and fix their duties. In the discretion of the commission, such offices may be established in the construction districts as may be necessary to carry out the provisions of this chapter. (1921, c. 2, ss. 5, 6; 1933, c. 172, s. 17; C. S. 3846(g).)

§ 136-5. Oath of office of commissioners.—Before entering upon the performance of their duties, the chairman and each member of the State Highway and Public Works Commission shall take and subscribe to an oath of office before some person authorized to administer oaths that they will faithfully support the Constitution of the State of North Carolina and all laws enacted pursuant thereto and not inconsistent therewith, and that they will faithfully perform the duties of their respective offices. Said oaths shall be filed and preserved by the commission as a part of its permanent records. (1921, c. 2, s. 6; 1933, c. 172, s. 10; C. S. 3846(h).)

§ 136-6. Bonds of commissioners and engineer. —Before entering upon the performance of their duties, the chairman and each member of the State Highway and Public Works Commission and the State Highway Engineer shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of their respective offices and the full and proper accounting for all public funds and property coming into their possession or under their control. The premiums on said bonds shall be paid out of the state highway fund. (1921, c. 2, s. 6; 1933, c. 172, s. 17; C. S. 3846(h).)

§ 136-7. Employees of commission governed by classification filed with Budget Bureau; exceptions. — All employments by the State Highway and Public Works Commission and all changes in existing employment shall be in accordance with the classifications established in the report authorized by and adopted in conformance with Chapter three hundred fifty-five of the Public Laws of 1941, as said report is approved by the Governor and Advisory Budget Commission. The Assistant Director of the Budget shall certify the salary or wages of the particular employee within the range of the minimum and maximum established in the said report for such employment. The hourly maintenance and construction employees now or hereafter exempted from the Personnel Act shall not be placed under the Personnel Act, even if they are placed on a monthly basis of salary payment to facilitate operation under the State Employees and Teachers' Retirement Act, but they shall be paid according to the said salary schedule or classification as established. (1941, c. 355.)

§ 136-8. Limit of compensation paid by commission.—It shall be unlawful for the state highway and public works commission to pay or authorize the payment of an annual salary or compensation to any employee of that department, except the chairman, in excess of the sum of six thousand dollars ($6,000.00). (1929, c. 182, s. 1; 1933, c. 172, ss. 16, 17.)

§ 136-9. Employment of counsel. — The state highway and public works commission may in its discretion employ any attorney or attorneys to advise them for the purpose of condemning land acquired by this chapter, making any contracts, and to do other legal work that the commission may believe necessary for carrying out this chapter, and compensation for all such services shall be paid out of the state highway fund. (1921, c. 2, s. 21; 1933, c. 172, s. 17; C. S. 3846(k).)

§ 136-10. Annual audits; report of audit to general assembly.—The books and accounts of the highway and public works commission shall be audited at least once a year by a certified public accountant to be designated by the auditor of the state, and the report of certified accountant shall be made a part of the report of the commission to the general assembly as herein provided. (1921, c. 2, s. 24; 1933, c. 172, s. 17; C. S. 3846(m).)

§ 136-11. Annual reports to governor. — The state highway and public works commission shall make to the budget bureau, or to the governor, a full report of its finances and the physical condition of the state's prison, prison camps, and other buildings, depots and properties under its supervision and control, on the first day of July of each year, and at such other times as the governor or directors of the budget may call for the same. (1933, c. 172, s. 11.)

§ 136-12. Reports to general assembly. — The highway and public works commission shall, on or before the tenth day after the convening of each regular session of the general assembly of North Carolina, make full printed, detailed report to the general assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the commission, and such other data as may be of interest in connection with the work of the commission. A full account of each road project shall be kept by and under the direction of the commission or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request. (1921, c. 2, s. 23; 1933, c. 172, s. 17; C. S. 3846(l).)

§ 136-13. Malfeasance of commissioners, employees, or contractors.—It shall be unlawful for any member or employee of the highway and public works commission to knowingly or fraudulently perform any act with intent to injure the state; or for any contractor or agent or employee of a contractor to conspire with a member or employee of the commission or with a state official to permit a violation of a contract with intent to injure the state; or for any contractor or agent or employee of any contractor to do any work on any state highway in violation of contract with intent to defraud the state. Any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the state prison not less than one year nor more than five years, and be liable to the state in a civil action instituted by the state on relation of the highway and public works commission, for double the amount the state may have lost by reason of the violation of this section. (1921, c. 2, s. 49; 1933, c. 172, s. 17; C. S. 3846(cc).)

§ 136-14. Members not eligible to other employment with commission; no sales to commission by employees.—No member of the Highway and Public Works Commission shall be eligible to any other employment in connection with said commission, and no member of said commission, or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to said commission. (1933, c. 172, s. 10.)

§ 136-15. Establishment of administrative districts.—The State Highway and Public Works Commission may establish such administrative districts as in their opinion shall be necessary for the proper and efficient performance of the duties of the commission. Such districts as may be established shall be without regard to the places of residence of the members of the Commission. The commission may from time to time change the number of such districts, or they may change

the territory embraced within the several districts, when in their opinion it is in the interest of efficiency and economy to make such change. (1931, c. 145, s. 5; 1933, c. 172, s. 17.)

§ 136-16. Funds and property converted to State Highway Fund.—Except as otherwise provided, all funds and property collected by the State Highway and Public Works Commission shall be paid or converted into the State Highway Fund. (1919, c. 189, s. 8; 1933, c. 172, s. 17; C. S. 3595.)

Art. 2. Powers and Duties of Commission.

§ 136-17. Seal; rules and regulations. — The State Highway and Public Works Commission shall adopt a common seal and shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the commission, and to make all necessary rules and regulations for carrying out the intent and purposes of this chapter. The commission shall succeed to all the rights, powers and duties heretofore vested in the State Highway Commission and the State Prison Department, and it is hereby empowered to make all necessary rules and regulations for carrying out such duties. (1933, c. 172, s. 2.)

§ 136-18. Powers of commission. — The said state highway and public works commission shall be vested with the following powers:

(a) The general supervision over all matters relating to the construction of the state highways, letting of contracts therefor, and the selection of materials to be used in the construction of state highways under the authority of this chapter.

(b) To take over and assume exclusive control for the benefit of the state of any existing county or township roads, and to locate and acquire rights of way for any new roads that may be necessary for a state highway system, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the commission may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a state highway system: Provided, all changes or alterations authorized by this subsection shall be subject to the provisions of §§ 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this chapter shall be construed to authorize or permit the commission to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless contract has already been entered into with the commission.

(c) To provide for such road materials as may be necessary to carry on the work of the state highway and public works commission, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owns a deposit of sand, gravel or other material, necessary for the construction of the system of state highways provided herein, has entered into a contract to furnish the commission any of such material, at a price to be fixed by said commission, thereafter the commission shall have the right to condemn the necessary right of way under the provisions of chapter forty, to connect said deposit with any part of the system of state highways or public carrier.

(d) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the state highway and public works commission with other public bodies, corporations, or persons.

(e) To make rules, regulations and ordinances for the use of, and to police traffic on, the state highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the commission shall constitute a misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns.

(f) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the state highway system, which information shall be a part of the public records of the state, and upon which information the state highway and public works commission shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.

(g) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the state highway system from date of acquiring said roads: Provided, the commission may enter into contracts with counties as to the maintenance of highways which shall form a part of the state highway system. The state highway and public works commission shall have authority to maintain all streets constructed by the commission in towns of less than three thousand population by the last census, and such other streets as may be constructed in towns and cities at the expense of the commission, whenever in the opinion of the commission it is necessary and proper so to do.

(h) To give suitable names to state highways and change the names of any highways that shall become a part of the state system of highways.

(i) To coöperate with municipal or county authorities, civic bodies and individuals in the proper selection, planting and protection of roadside trees, shrubs and vines for the beautification and protection of said highways.

(j) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, and other similar obstructions that may, in the opinion of the highway and public works commission, contribute to the hazard upon any of the said highways or in anywise interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said commission shall require the removal of, or changes in, the location of telephone, telegraph, or other

poles, sign-boards, fences, gas, water, sewerage, oil, or other pipe lines, or other similar obstructions, the owners thereof shall at their own expense move or change the same to conform to the order of the said commission. Any violation of such rules and regulations or non-compliance with such orders shall constitute a misdemeanor.

(k) To regulate, abandon and close to use, grade crossings on any road designated as part of the state highway system, and whenever a public highway has been designated as part of the state highway system and the state highway and public works commission, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the commission shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the commission shall have power to close to use and abandon such grade crossing and any other crossings adjacent thereto.

(l) The said state highway and public works commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, construction, improvement and maintenance of roads under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the secretary of agriculture or otherwise provided by federal acts, and to do all other things necessary to carry out fully the coöperation contemplated and provided for by present or future acts of congress, for the construction or improvement and maintenance of rural post roads. The good faith and credit of the state are further hereby pledged to make available funds necessary to meet the requirements of the acts of congress, present or future, appropriating money to construct and improve rural post roads and apportioned to this state during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the state are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the commission and in order to enable it to meet the requirements of acts of congress with respect to federal aid funds apportioned to the state of North Carolina, the state treasurer is hereby authorized, with the approval of the governor and council of state, to issue short term notes from time to time, and in anticipation of state highway revenue, and to be payable out of state highway revenue for such sums as may be necessary to enable the commission to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars ($2,000,000.00).

(m) The state highway and public works commission is authorized and empowered to construct and maintain all walkways and driveways within the Mansion Square in the city of Raleigh including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.

(n) The state highway and public works commission shall have authority to provide roads for the connection of air ports in the state with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.

(o) The state highway and public works commission shall have authority to provide facilities for the use of water-borne traffic by establishing connections between the highway system and the navigable waters of the state by means of connecting roads and piers.

(p) The state highway and public works commission shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the commission, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the commission has agreed in writing to accept the property so acquired in exchange for that to be used by the commission, and when, in the opinion of the commission, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

(q) The State Highway and Public Works Commission is hereby authorized and required to maintain and keep in repair roads sufficient to accommodate school busses leading from the State maintained public road to all schools and school buildings to which children are transported on school busses to and from their homes during the regular organized school year.

(r) To administer, through the Division of Prisons, the State Prison System. (1921, c. 2, s. 10; 1923, c. 160, s. 1; 1923, c. 247; 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; 1933, c. 517, s. 1; 1935, c. 213, s. 1, c. 301; 1937, c. 407, s. 80; 1941, c. 47; 1941, c. 217, s. 6; C. S. 3846(j).)

§ 136-19. Acquirement of land and deposits of materials; condemnation proceedings; federal parkways.—The State Highway and Public Works Commission is vested with the power to acquire such rights of way and title to such land, gravel, gravel beds, or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. The commission is also vested with the power to acquire such additional land alongside of the rights of way or

roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes.

Whenever the commission and the owner or owners of the lands, materials, and timber required by the commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the commission is hereby vested with the power to condemn the lands, materials, and timber, and in so doing the ways, means, methods, and procedure of chapter 40, entitled "Eminent Domain," shall be used by it as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as offsets against damages: Provided, that all actions for damages for rights of way or other causes shall be commenced within six months from the completion of each particular project.

In case condemnation shall become necessary the commission is authorized to enter the lands and take possession of the same, and also take possession of such materials and timber as is required by it prior to bringing the proceedings for condemnation, and prior to the payment of the money for the said property.

In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the commission to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action.

The state highway and public works commission shall have the same authority, under the same provisions of law hereinbefore provided for construction of state highways, for the acquirement of all rights of way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways in the state of North Carolina. The acquirement of a total of one hundred and twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right of way acquired or appropriated may, at the option of the commission, be a fee simple title, and the nature and extent of the right of way and easements so acquired or appropriated shall be designated upon a map showing the location across each county, and, when adopted by the commission, shall be filed with the register of deeds in each county, and, upon the filing of said map, such title shall vest in the state highway and public works commission. The said commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the state highway and public works commission, payable out of the construction fund of said commission.

The action of the State Highway and Public Works Commission heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States Government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Commission and in furtherance of the public interest.

When areas have been tentatively designated by the United States Government to be included within a Parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the State Highway and Public Works Commission that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the State Highway and Public Works Commission for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights of way on other property by the State Highway and Public Works Commission. (1921, c. 2, s. 22; 1923, c. 160, s. 6; 1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; C. S. 3846(bb).)

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the chairman of the State Highway and Public Works Commission such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Commission shall issue notice requiring the person or company operating such railroad to appear before the Commission, at its office in Raleigh, upon a day named, which shall not be less than ten days or more than twenty days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Commission shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If it shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Commission shall thereupon order the construction of an adequate underpass or overpass at said crossing or it may

in its discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said commission upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that one-half of the cost of the construction of such underpass or overpass or the installation of such safety device shall be borne by the Commission and one-half thereof by the railroad company operating such railroad, as provided in section (c) hereof, but in no instance shall the Commission bear any part of the cost of the maintenance of any structure or safety device so constructed or installed except in the maintenance of an overpass.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Commission, as may be agreed upon, and, in case of an underpass, the railroad company shall be responsible for one-half of the expense of all excavations through the existing railroad fill as well as one-half of the complete cost of the structure, including both the foundation and superstructure; and in case of an overpass, the railroad company shall be responsible for one-half of the entire cost of the bridge which will span the opening over the tracks of the railroad from abutment to abutment and including such abutments. And if a grade crossing or unsafe or inadequate underpass or overpass is not eliminated by an adequate overpass or underpass, the raidroad company shall be responsible for one-half of the cost of installing gates, alarm signals or other approved safety devices. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Commission, and the commission shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Commission, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Commission such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Commission may provide.

(d) Within sixty days after the issuance of the order for construction of an underpass or overpass or the installation of other safety device as herein provided for, the railroad company against which such order is issued shall submit to the Commission plans for such construction or installation, and within ten days thereafter said Commission, through its chairman, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Commission by said railroad company within sixty days as aforesaid, the chairman of the Commission shall have plans prepared and submit them to the railroad company. The railroad company shall within ten days notify the chairman of its approval of the said plans or shall have the right within such ten days to suggest such changes and amendments in the plans so submitted by the chairman of the Commission as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Commission shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Commission, said commission is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said roadroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Commission shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Commission and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the commission shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Commission shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Commission may provide. If the Commission shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Commission, one-half of the cost of such construction shall upon the completion of said work be paid to such railroad company by the Commission. The Commission may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the commission by the railroad company. If the Commission shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Commission in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Commission to construct an underpass or over-

pass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Commission requiring such construction or installation, said railroad company shall be guilty of a misdemeanor and shall be fined not less than fifty nor more than one hundred dollars in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Commission shall be exclusive.

(g) From any order or decision so made by the Commission the railroad company may appeal to the Superior Court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the commission, but the railroad company shall proceed to comply with such order in accordance with its terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the rights or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the commission for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Commission shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In event the decision on appeal should be that the construction or installation was necessary but the cost thereof unreasonable, then the railroad company shall bear its proportion (not to exceed fifty per cent) of such cost as may be determined on appeal would have been reasonable to meet the necessity in the instant case. Upon said appeal from an order of the Commission, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section. (1921, c. 2, s. 19; 1923, c. 160, s. 5; 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; C. S. 3846(y).)

§ 136-21. Drainage of highway; application to court; summons; commissioners.—Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right-of-way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the State Highway and Public Works Commission, if said highway be a part of the State highway system, or the county commissioners, if said road is not under state supervision, may, by petition, apply to the Superior Court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Conservation and Development, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; c. 122, s. 4; 1933, c. 172, s. 17.)

§ 136-22. View by commissioners; report; judgment.—The commissioners, or a majority of them, one of whom must be the engineer aforesaid, shall, on a day of which each party is to be notified at least five days in advance, meet on the premises, and view the highway, or proposed highway, and also the lands which may be drained by the proposed canal, and shall determine and report what lands will be drained and benefited by the construction, enlargement or improvement of such canal, and whether said drainage ought to be done exclusively by said highway authorities, and if they are of opinion that the same ought not to be drained exclusively at their expense, then they shall decide and determine the route of the canal, the dimensions and character thereof, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, the extent, area and identity of lands which shall be permitted to drain therein, and providing as far as possible for the effectual drainage of said highway, and the protection and benefit of the lands of all the parties; and they shall apportion the cost of the construction, repair and maintenance of said canal among said highway authorities and said landowners, and report the same to the court, which when confirmed by the clerk shall stand as a judgment of the court against each of the parties, his or its executors, administrators, heirs, assigns or successors. (1925, c. 85, s. 4.)

§ 136-23. Appeal.—Upon the entry of the judgment or decree aforesaid the parties to said action, or any of them, shall have the right to appeal to the Superior Court in term time under the same rules and regulations as apply to other special proceedings. (1925, c. 85, s. 5.)

§ 136-24. Rights of parties.—The parties to such special proceeding shall have all the rights which are secured to similar parties by article

gone of chapter one hundred fifty-six of this Code and shall be regulated by the provisions thereof and amendments thereto, in so far as the same are not inconsistent herewith. (1925, c. 85, s. 6.)

§ 136-25. Repair of road detour.—It shall be mandatory upon the state highway and public works commission, its officers and employees, or any contractor or subcontractor employed by the said commission, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route while said highways or roads are being improved or constructed, and it shall be mandatory upon the said commission and its employees or contractors to place or cause to be placed explicit directions to the traveling public during repair of said highway or road under the process of construction. All expense of laying out and maintaining said detours shall be paid out of state highway fund. (1921, c. 2, s. 11; 1933, c. 172, s. 17; C. S. 3846(s).)

§ 136-26. Closing of state highways during construction; injury to barriers, warning signs, etc. — If it shall appear necessary to the state highway and public works commission, its officers, or appropriate employees, to close any road or highway coming under its jurisdiction so as to permit of proper completion of work which is being performed, such commission, its officers or employees, may close, or cause to be closed, the whole or any portion of such road or highway deemed necessary to be excluded from public travel. While any such road or highway, or portion thereof, is so closed, or while any such road or highway, or portion thereof, is in process of construction or maintenance, such commission, its officers or appropriate employees, or its contractor, under authority from such commission, may erect, or cause to be erected, suitable barriers or obstructions thereon; may post, or cause to be posted, conspicuous notices to the effect that the road or highway, or portion thereof, is closed; and may place warning signs, lights and lanterns on such road or highway, or portions thereof. When such road or highway is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a misdemeanor. (1921, c. 2, s. 12; 1933, c. 172, s. 17; C. S. 3846(t).)

§ 136-27. Connection of highways with improved streets; pipe lines and conduits; cost. — When any portion of the state highway system shall run through any city or town and it shall be found necessary to connect the state highway system with improved streets of such city or town as may be designated as part of such system, the state highway and public works commission shall build such connecting links, the same to be uniform in dimensions and materials with such state highways: Provided, however, that whenever any city or town may desire to widen its streets which may be traversed by the state highway, the commission may make such arrangements with said city or town in connection with the construction of said road as, in its discretion, may seem wise and just under all the facts and circumstances in connection therewith: Provided further, that such city or town shall save the commission harmless from any claims for damage arising from the construction of said road through such city or town and including claims for rights of way, change of grade line, and interference with public-service structures. And the commission may require such city or town to cause to be laid all water, sewer, gas or other pipe lines or conduits, together with all necessary house or lot connections or services, to the curb line of such road or street to be constructed: Provided further, that whenever by agreement with the road governing body of any city or town any street designated as a part of the state highway system shall be surfaced by order of the commission at the expense, in whole or in part, of a city or town it shall be lawful for the governing body of such city or town to declare an assessment district as to the street to be improved, without petition by the owners of property abutting thereon, and the costs thereof, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways whose tracks are laid in said street, which shall be assessed under their franchise, shall be specially assessed upon the lots or parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon by an equal rate per foot of such frontage. (1921, c. 2, s. 16; 1923, c. 160, s. 4; 1933, c. 172, s. 17; C. S. 3846(ff).)

Local Modification.—Durham: 1925, c. 312; Town of Siler City: 1935 Pr. c. 143.

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over one thousand dollars that the commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the state highway and public works commission, to a responsible bidder, the right to reject any and all bids being reserved to the commission.

No action shall be brought upon any bond given by any contractor of the commission, by any laborer, materialman or other person until and after the completion of the work contracted to be done by the said contractor. Any laborer, materialman or other person having a claim against the said contractor and the bond given by such contractor, shall file a statement of the said claim with the contractor and with the surety upon his bond, and, in the event the surety is a corporation, with the general agent of such corporation, within the State of North Carolina, within six (6) months from the completion of the contract, and a failure to file such claim within said time shall be a complete bar against any recovery on the bond of the contractor and the surety thereon. Only one suit or action may be brought upon the said bond and against the said surety, which suit or action shall be brought in one of the counties in which the work and labor was done and per-

formed and not elsewhere. The procedure pointed out in § 44-14 shall be followed. No surety shall be liable for more than the penalty of the bond. Any person entitled to bring an action shall have the right to require the Commission to furnish information as to when the contract is completed, and it shall be the duty of the Commission to give to any such person proper notice. If the full amount of the liability of the surety on said bond is insufficient to pay the said amount of all claims and demands, then, after paying the full amount due the Commission, the remainder shall be distributed pro rata among the claimants. Any claim of the Commission against the said bond and the surety thereon shall be preferred as against any cause of action in favor of any laborer, materialman or other persons and shall constitute a first lien or claim against the said bond and the surety thereon. (1921, c. 2, s. 15; 1923, c. 160, s. 3; 1925, cc. 260, 269; 1933, c. 172, s. 17; C. S. 3846(v).)

Note.—Public Laws 1941, c. 4 amended this section but its provisions are not codified because by express provision in § 3, the Act expires Jan. 31, 1943.

§ 136-29. Settlement of controversies between commission and awardees of contracts.—Upon the completion of any contract awarded by the state highway and public works commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty days from the time of receiving his final estimate, file with the state highway engineer a claim for such amount as he deems himself entitled to under the said contract; and the state highway engineer shall, within thirty days from the receipt of the said claim, pass upon the same and notify the contractor in writing of his decision. If the contractor desires to do so, he may, within thirty days from the receipt of the said decision of the state highway engineer, appeal in writing to the state highway and public works commission. Upon receipt of the said appeal, the chairman of the state highway and public works commission shall immediately appoint a committee of three members of the said commission, no one of whom shall be the commissioner from the division in which the said work was done; and the committee so appointed shall promptly set a time and place for the hearing of the said appeal. The committee or the claimant shall have power and authority to summon persons and papers and the committee shall make a complete investigation of all matters relating to the said appeal and the contract and the work out of which it grows, and determine all matters at issue in a fair and equitable manner according to their best judgment. The decision of the said committee shall be final and any amount which they may award the said contractor will be a valid claim against the state highway and public works commission; provided, however, an appeal may be had from the decision of the said committee to the superior court of Wake county under the same terms, conditions and procedure as appeals from the industrial commission, as provided in § 97-61. The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the state highway and public works commission and any contractor, and no provision in said contracts shall be valid that are in conflict herewith. (1939, c. 318.)

§ 136-30. Uniform guide and warning signs on highways. — The state highway and public works commission is hereby authorized to classify, designate and mark both intrastate and interstate highways, including connecting streets in incorporated towns and cities, lying within this state and to provide a system of marking and signing such highways. Highways shall be distinctly marked with some standard, uniform design and the numbers thereon shall correspond with the numbers given the various routes by the commission and shown on official maps issued by the commission. Other guide signs and warning signs shall also be of uniform design. The system of marking and signing highways shall correlate with and so far as possible conform to the system adopted in other states.

The commission shall have the power to control all signs within the right-of-way of state highways.

The commission may erect proper and uniform signs directing persons to roads and places of importance. (1921, c. 2, ss. 9(a), 9(b); 1927, c. 148, s. 54; 1933, c. 172, s. 17; C. S. 3846(q), 3846(r).)

§ 136-31. Local traffic signs.—Local authorities in their respective jurisdictions shall cause appropriate signs to be erected and maintained, designating residence and business districts, highway and steam or interurban railway grade crossings and such other signs as may be deemed necessary to carry out the provisions of §§ 136-30 to 136-33. Local authorities shall erect appropriate signs giving notice of special local parking and other regulations. (1927, c. 148, s. 55.)

§ 136-32. Other than official signs prohibited.—No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of §§ 136-30 and 136-31, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the State Highway and Public Works Commission or by any local authority referred to in § 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and punished in the discretion of the court. The commission may remove any signs erected without authority. (1921, c. 2, s. 9(b); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; C. S. 3846(r).)

§ 136-33. Injuring or removing signs. — Any person who shall deface, injure, knock down or remove any sign posted as provided in §§ 136-30 and 136-31 shall be guilty of a misdemeanor. (1927, c. 148, s. 57.)

§ 136-34. State Highway and Public Works Commission authorized to furnish road equipment to municipalities.—The State Highway and Public Works Commission is hereby authorized to furnish municipalities road maintenance equip-

ment to aid such municipalities in the maintenance of streets for which no State highway funds are provided, upon such rental agreement as may be agreed upon by the State Highway and Public Works Commission and the said municipality. Such rental, however, is to be at least equal to the cost of operation, plus wear and tear on such equipment; and the State Highway and Public Works Commission shall not be required to furnish equipment when to do so would interfere with the maintenance of the streets and highways under the control of said commission. (1941, c. 299.)

§ 136-35. Cooperation with other states and federal government.—It shall also be the duty of the State Highway and Public Works Commission, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of intercounty, interstate, and national highways. (1915, c. 113, s. 12; 1933, c. 172, s. 17; C. S. 3584.)

§ 136-36. Appropriations to cities and towns for maintenance, construction, and improvement of streets.—The money appropriated and provided for in the Appropriations Bill for the fiscal years one thousand nine hundred and forty-one and one thousand nine hundred and forty-two and one thousand nine hundred and forty-three from funds collected from the tax on gasoline and license fees on motor vehicles and such further sums as may be appropriated from time to time and allocated to cities and towns shall be spent for the maintenance, repair, improvement, construction, reconstruction, or widening of highways and streets in cities and towns, as provided in §§ 136-36 to 136-41. (1941, c. 217, s. 1.)

§ 136-37. Basis of apportionment between municipalities; annual certification of allocations. — Of such funds as may be appropriated from time to time for the maintenance, repair, improvement, construction, reconstruction or widening of highways and streets in cities and towns, one third shall be apportioned or allocated as between the several cities and towns by the state highway and public works commission upon the basis that the population of each city or town bears to the total population of all the cities and towns at the last preceding United States census and one third upon the basis that the mileage of streets which form a part of the state highway system in all the cities and towns and one third on the basis of relative need as between the various cities and towns as determined by the state highway and public works commission. Each year before the first day of June the state highway and public works commission shall certify an accurate account of such allocations to each city or town. (1941, c. 217, s. 2.)

§ 136-38. Use of funds recommended by local governing body; primary use; balance of funds.—Each year before the first day of July the governing body of each city and town shall recommend for the approval of the state highway and public works commission the use of such funds as are allocated to such city or town: Provided, that all of such funds so allocated to cities and towns shall be used first for the maintenance, repair, improvement, construction, reconstruction, or widening of the streets within said cities and towns which form a part of the state highway system until such streets shall be in a condition satisfactory to the state highway and public works commission and to the governing body of such city or town, after which, if there is any balance of funds remaining in the allotment to any city or town, such balance shall be used for the maintenance, repair, improvement, construction, reconstruction or widening of streets which form important connecting links to the state highway system or the county highway system or farm to market roads. Should any balance remain in the allotment to any city or town at the end of a fiscal year, such balance shall accrue to the credit of such city or town to be added to its allotment for the ensuing fiscal year. (1941, c. 217, s. 3.)

§ 136-39. Performance of work on streets; specifications.—The work of maintaining, repairing, improving, constructing, reconstructing, or widening such streets shall be performed by the state highway and public works commission, except that in the discretion of the commission it may contract with any city or town having adequate facilities that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such streets. In the event the work is performed by the city or town, it shall account quarterly to the state highway and public works commission for the use of the funds in such work; and in the event the work is performed by the state highway and public works commission, it shall account annually to the city or town for the use of the funds in such work. All work for which the funds herein provided for are spent shall be in accordance with the specifications of the state highway and public works commission. (1941, c. 217, s. 4.)

§ 136-40. Right of municipalities to construct, improve, etc., additional streets.—Neither the undertaking nor doing of any work upon streets in cities and towns by the state highway and public works commission shall deprive the cities or towns of the right to construct streets or to improve or maintain them as they may deem necessary, in addition to the work done by the state highway and public works commission. (1941, c. 217, s. 4.)

§ 136-41. Enforcement of contracts between commission and municipalities.—All contracts entered into between the state highway and public works commission and the municipalities of the state under §§ 136-36 to 136-41 or other provision of the state highway law may be enforced by proper actions either in the superior court of the county in which said municipality exists or in Wake county. (1941, c. 217, s. 5.)

§ 136-42. Markers on highway; coöperation of commission.—The State Highway and Public Works Commission is hereby authorized to cooperate with the North Carolina Historical Commission in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17.)

§ 136-43. Expenditure of highway funds for erection of historical markers.—Whereas, the State of North Carolina is rich in points of historic interest, such as the first attempt at colonization on this continent, the efforts of the thirteen

colonies to gain independence, Revolutionary and Civil War history, numerous birthplaces and graves of foremost North Carolinians who have played important roles in the history of the nation, as well as other historic shrines; and

Whereas, such facts are not generally known save to a few historians, and in many instances only to residents of the immediate territory; and

Whereas, no effective method has yet been adopted or provided for imparting knowledge of all these important facts to citizens of this and other states; and

Whereas, at the request and pursuant to a resolution of the Department of Conservation and Development, and the State Historical Commission, a group of five historians, one from each of the following named institutions of learning: Duke University, University of North Carolina, North Carolina State College, Wake Forest College and Davidson College, together with the State Historian, have agreed to serve as an advisory committee without expense to the state, and to designate such points of historic interest in the order of their importance, and to provide appropriate wording for their proper marking;

Now, therefore, in order to enable the Department of Conservation and Development to carry out this plan, in cooperation with the State Historical Commission, and the State Highway Commission; the General Assembly of North Carolina do enact:

That expenditures by the State Highway and Public Works Commission in cooperation with the Department of Conservation and Development and the State Historical Commission for the purposes of carrying out the program outlined in the preamble hereof is hereby declared to be a valid expenditure of State Highway maintenance funds: Provided, that not more than five thousand dollars in any one year shall be expended for this purpose, but this limitation shall not be construed to prevent the expenditure of any Federal Highway Funds that may be available for this purpose. (1935, c. 197.)

§ 136-44. Maintenance of grounds at home of Nathaniel Macon and grave of Anne Carter Lee.—The Highway and Public Works Commission is hereby authorized and directed through the Highway Supervisor of the Warren County District, to clean off and keep clean the premises and grounds at the old home of Nathaniel Macon, known as "Buck Springs," which are owned by the County of Warren, and also to look after the care and keeping the grounds surrounding the grave of Miss Anne Carter Lee, daughter of General Robert E. Lee, in Warren County. (1939, c. 38.)

Art. 3. State Highways.

Part I. Highway System of 1921.

§ 136-45. General purpose of law; control, repair and maintenance of highways.—The general purposes of chapter two of the Public Laws of 1921 are for the state to lay out, take over, establish and construct, and assume control of approximately 5,500 miles of hard-surfaced and other dependable highways running to all county-seats, and to all principal towns, state parks, and principal state institutions, and linking up with state highways of adjoining states and with national highways into national forest reserves by the most practical routes, with special view of development of agriculture, commercial and natural resources of the state, and for the further purpose of permitting the state to assume control of the state highways, repair, construct, and reconstruct and maintain said highways at the expense of the entire state, and to relieve the counties and cities and towns of the state of this burden. (1921, c. 2, s. 2; C. S. 3846(a).)

Note.—The statutes in Parts I, II, and III of this article reflect the growth and culmination of general state control of the public roads, and must be read in this light. Sections 136-45 to 136-47 are codified from the act which authorized the state highway system of 1921—the first important step. Sections 136-48 to 136-50, enacted in 1927, authorized an extension of this system. Sections 136-51 to 136-53 authorized the assumption of control by the state of the county public roads.

§ 136-46. Establishment of system of state highways; work leading to hard-surfaced construction.—The purpose and intent of chapter two of the Public Laws of 1921 is to establish a system of state highways for the state, hard-surfacing said highways as rapidly as possible, and maintaining the entire system of said highways in the most approved manner as outlined in that act. Work on the various links in the state highway system shall be of such a character as will lead to ultimate hard-surfaced construction as rapidly as money, labor, and materials will permit, and to a state system of durable hard-surfaced, all-weather roads, connecting the various county-seats, principal towns, and cities. (1921, c. 2, s. 3; C. S. 3846(b).)

§ 136-47. Maximum mileage; routes and maps; objections; changes. — Fifty-five hundred (5500) miles shall be the approximate maximum limit of mileage of the state highway system. The designation of all roads comprising the state highway system as proposed by the state highway and public works commission shall be mapped, and there shall be publicly posted at the courthouse door in every county in the state a map of all the roads in such county in the state system, and the board of county commissioners or county road-governing body of each county, or street governing body of each city or town in the state shall be notified of the routes that are to be selected and made a part of the state system of highways; and if no objection or protest is made by the Board of County Commissioners of the county, road-governing body of any county, or street-governing body of any city or town in the state within sixty days after the notification before mentioned, then and in that case the said roads or streets, to which no objections are made, shall be and constitute links or parts of the state highway system. If any objections are made by the board of county commissioners or county road-governing body of any county or street-governing body of the city or town, the whole matter shall be heard and determined by the state highway and public works commission in session, under such rules and regulations as may be laid down by the commission, notice of the time and place of hearing to be given by the commission at the courthouse door in the county, and in some newspaper published in the county, at least ten days prior to the hearing, and the decision of the commission shall be final. A map showing the proposed roads to

constitute the state highway system is attached to chapter two of the Public Laws of one thousand nine hundred and twenty-one and made a part hereof. The roads so shown can be changed, altered, added to or discontinued by the commission: Provided, no roads shall be changed, altered or discontinued so as to disconnect county-seats, principal towns, state or national parks or forest reserves, principal state institutions, and highway systems of other states. The rights of way to all roads taken over under this section shall be not less than thirty (30) feet: Provided, that no toll road shall be taken over under this section unless by agreement or condemnation as herein provided. (1921, c. 2, s. 7; 1933, c. 172, s. 17; C. S. 3846(c).)

Part II. Expansion of Highway System in 1927.

§ 136-48. Additional roads for state maintenance.—The State Highway and Public Works Commission is authorized and empowered, and it shall be their duty to take over for State maintenance additional roads heretofore maintained by the several counties. The amount of additional roads so taken over for State maintenance shall not exceed twenty per cent of the present mileage as is now designated and maintained as State Highways. (1927, c. 200, s. 2; 1933, c. 172, s. 17.)

§ 136-49. Laying out and designation of roads discretional.—The laying out, and designation of new roads placed on the State Highway System as State maintained road, shall be left entirely in the discretion of the said Highway and Public Works Commission in the respective districts, dividing the mileage of new roads taken on in counties which have heretofore not received as much State Highway mileage as to make said county or counties share equally as nearly as practicable with other counties of the State, or in the discretion of the Commission in said District to place said additional roads on State maintenance that will best serve that section of the State. (1927, c. 200, s. 2; 1933, c. 172, s. 17.)

§ 136-50. Coöperation with county road authorities.—The State Highway and Public Works Commission shall work in coöperation with the road governing body of the counties in their respective and several districts in the laying out of these roads, always looking after the interest of both county and State in so doing. (1927, c. 200, s. 3; 1933, c. 172, s. 17.)

Part III. County Public Roads Incorporated into State Highway System.

§ 136-51. Maintenance of county public roads vested in State Highway and Public Works Commission.—From and after July first, one thousand nine hundred and thirty-one, the exclusive control and management and responsibility for all public roads in the several counties shall be vested in the State Highway and Public Works Commission as hereinafter provided, and all county, district, and township highway or road commissioners, by whatever name designated, and whether created under public, public-local, or private acts, shall be abolished:

Provided, that for the purpose of providing for the payment of any bonded or other indebtedness, and for the interest thereon, that may be outstanding as an obligation of any county, district, or township commission herein abolished, the board of county commissioners of the respective counties are hereby constituted fiscal agents, and are vested with authority and it shall be their duty to levy such taxes on the taxable property or persons within the respective county, district, or township by or for which said bonds or other indebtedness were issued or incurred and as are now authorized by law to the extent that the same may be necessary to provide for the payment of such obligations; and the respective commissions herein abolished shall on or before July first, one thousand nine hundred and thirty-one, turn over to said board of county commissioners any moneys on hand or evidences of indebtedness properly applicable to the discharge of any such indebtedness (except such moneys as are mentioned in paragraph (a) above); and all uncollected special road taxes shall be payable to said board of county commissioners, and the portion of said taxes applicable to indebtedness shall be applied by said commissioners to said indebtedness, or invested in a sinking fund according to law. All that portion of said taxes or other funds coming into the hands of said county commissioners and properly applicable to the maintenance or improvement of the public roads of the county shall be held by them as a special road fund and disbursed upon proper orders of the Commission.

Provided, further, that in order to fully carry out the provisions of this section the respective boards of county commissioners are vested with full authority to prosecute all suitable legal actions. (1931, c. 145, s. 7; 1933, c. 172, s. 17.)

§ 136-52. Eminent domain with respect to county roads.—To the end that the State Highway and Public Works Commission may the better take over the maintenance and improvement, reconstruction and construction of the public roads in the various counties, together with the bridges and railroad grade crossings thereon, and may the better carry out the intent and purposes of § 136-51, the Commission is vested, in respect of and to the public roads in the various counties, with the same powers of and responsibility of eminent domain as are conferred and imposed upon the Commission in §§ 136-18 and 136-19 in respect of and to the State Highway System, and the Commission is authorized and empowered to adopt rules and regulations governing the use of the various county road systems and to promulgate the same. (1931, c. 145, s. 10; 1933, c. 172, s. 17.)

§ 136-53. Map of county road systems posted; objections.—On or before May first, one thousand and nine hundred and thirty-one, the designation of all roads comprising the several county road systems as are proposed to be taken over for maintenance and improvement by the State Highway and Public Works Commission shall be mapped, and there shall be publicly posted at the courthouse door in each county a map of all the roads in such county to be contained in the county road system of such county, and the board of county commissioners of such county and the street-governing body of each city or town in such county shall be notified of the

roads that are to be selected and to be made a part of the county road system of such county. If no objection is made by the board of county commissioners or the street-governing body of any city or town in such county within thirty (30) days after the notification herein provided for, then and in that event the roads to which no objections are made shall be and constitute the county road system for such county. If objections are made by the board of county commissioners of the county or the street-governing body of any city or town in the county, the Commission shall as soon as practicable send an agent to such county who shall take the matter up with the view of adjusting the objections and agreeing with the county commissioners or the street-governing body of any city or town. If such agent and the board of county commissioners or the street-governing body of any city or town cannot agree, then the whole matter shall be heard and determined by the Commission in session under such rules and regulations as may be made by the Commission. Notice of the time and place of the hearing shall be given by the Commission at the courthouse door and in some newspaper, if any, published in the county, at least ten days prior to the hearing, and the decision of the Commission shall be final. It is the intent and purpose of this section that all roads legally established and used as public roads in the various counties on March 20, 1931, are to and shall be included in the county road systems of the various counties. Maps showing the proposed roads to constitute the county road systems in the several counties have been printed and bound and are now on file in the office of the Commission, and are the maps which shall be posted. If it shall appear to the Commission prior to the posting of the maps under this section that any road or roads which should be included in the county road systems of any county have been omitted from the map of any county as printed, the commission may change such maps so as to include such road or roads before posting. (1931, c. 145, s. 11; 1933, c. 172, s. 17.)

Part IV. Power to Make Changes in Highway System.

§ 136-54. Power to make changes.—Subject to the provisions of §§ 136-56, 136-57 and 136-60 the State Highway and Public Works Commission shall be authorized, when in its judgment the public good requires it, to change, alter, add to, or abandon and substitute new sections for, any portion of the State highway system, as now or hereafter, taken over, maintained and established: Provided, no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns. (1927, c. 46, s. 1; 1933, c. 172, s. 17.)

Note.—The relation between §§ 136-54, 136-55, 136-56, 136-57 and 136-60 should be noted. Section 136-55 prescribes a procedure for the change or abandonment of portions of the state highway system, under which the decision of the Commission is final. However, §§ 136-54 and 136-55 are subject to the provisions of § 136-56 (requiring the consent of the street governing body of a town before the number of state highways entering certain towns may be reduced); § 136-57 (requiring the consent of the road governing body of the county if the road in question has been located and constructed in accordance with plans and specifications prepared by and on file with the Commission); and § 136-60 (requiring the consent of the county commissioners if the road in question was a portion of the county road system taken over by the State by virtue of §§ 136-51 to 136-53). Thus, §§ 136-54 and 136-55 must be read with these limitations in mind.

§ 136-55. Notice to local road authorities.—Before any road, which is being maintained by the State Highway and Public Works Commission as a part of the State Highway System, can be changed, altered, or abandoned, the chairman or his duly authorized agent shall notify the road governing authorities of the county or counties in which said change, alteration, or abandonment is proposed, of the extent, nature and character of the proposed change, alteration or abandonment, and a map showing the old location and the new proposed location shall be posted at the courthouse door. If within thirty days after the giving of such notice and the posting of such map the road governing body of such county or the street governing body of any county seat or principal town immediately affected thereby, shall protest the proposed change, alteration or abandonment by filing a written notice of such protest with the Commission at Raleigh; the Commission shall thereupon designate three members of the Commission, one of whom may be the chairman, to hear such protest. The place, which shall be within the county, and the time of such hearings shall be fixed by the chairman and notice given to the protesting parties. Such hearings shall be held publicly and all persons desiring to be heard shall be heard. At the close of such hearing the committee shall publicly state their decision. The protesting parties may appeal from such decision to the whole Commission and such appeal shall be heard at a regular or duly called meeting for this purpose in the city of Raleigh and notice given to the appellants. The decision of the whole commission shall be determined by roll call vote duly recorded upon the minutes of the commission.

Any county seat or principal town shall be deemed "immediately affected" if the proposed change or alteration shall enter or leave said town by streets other than those used for such purposes prior to the proposed change. (1927, c. 46, s. 2; 1931, c. 145; 1933, c. 172, s. 17.)

§ 136-56. Number of highways entering town not reduced without consent.—The number of State highways entering the corporate limits of a county seat, principal town, or town in which is located any of the principal State institutions, now served by the State Highway system, shall not be reduced without the consent of the street governing body of said town. (1927, c. 46, s. 3.)

§ 136-57. Consent of local road authorities.—No portion of the State Highway system which has heretofore, or which shall hereafter be located and constructed in accordance with plans and specifications prepared by and on file with the State Highway and Public Works Commission, shall be changed or abandoned without the consent of the road governing body of the county in which said road is situated. (1927, c. 46, s. 4; 1933, c. 172, s. 17.)

§ 136-58. Confirmation.—All changes in, alterations of, and/or abandonments of any portion of the State Highway system heretofore made by the State Highway and Public Works Commis-

sion which are not now the subject of litigation, are hereby ratified, approved and confirmed and the newly-established routes are hereby made a part of the State Highway system as fully and to the same extent as if they had appeared upon the map and surveys made and posted by the Commission as required in § 136-47 and no action shall hereafter be maintained in any court of this State against the Commission on account of such change, alteration and/or abandonment. (1927, c. 46, s. 6; 1933, c. 172, s. 17.)

§ 136-59. No court action but by local road authorities.—No action shall be maintained in any of the courts of this State against the State Highway and Public Works Commission to determine the location of any State highways or portion thereof, by any person, corporation, or municipal corporation, other than the road governing body of the county in which said road is situated, or the county seat or principal town affected, as defined in § 136-55 by any change, alteration or abandonment. (1927, c. 46, s. 7; 1933, c. 172, s. 17.)

§ 136-60. Road taken over not to be abandoned without consent of county commissioners.—No road, which shall be a part of any county road system as the same shall be finally adopted in pursuance of § 136-53 shall be abandoned or materially changed without the consent of the board of county commissioners of the county in which said road is located. (1931, c. 145, s. 12.)

§ 136-61. Petition by county commissioners to change or abandon roads or build new roads.—The board of county commissioners of any county may, when in the opinion of said board the best interests of the people of said county or of any particular community thereof will be subserved thereby, petition the State Highway and Public Works Commission to change or abandon any road in the county road system or to add thereto any new road. Said petition shall be filed with the chairman of the Commission, who shall personally or by his duly constituted deputy, after conference with the board of county commissioners of said county, make diligent inquiry into and study of the proposed change, abandonment, or addition, and if in his opinion the public interest demands the same, such change, abandonment, or addition shall be made. Provided, however, that if any such change or abandonment of a road shall affect a road connecting with any street of any city or town in such county, no such change or abandonment shall be made until the street-governing body of such town shall have been duly notified thereof and given opportunity to be heard upon the question. If the chairman of the Commission shall be of the opinion that the public interest does not demand the change, abandonment, or addition petitioned for, the board of county commissioners filing such petition may appeal from his decision to the whole commission, who shall, at such time and place as shall be designated, due notice of which shall be given the parties interested, give public hearing on the matter. The action of the Commission upon all such matters shall be final. Provided, however, any petition which has been declined by the Commission may be again presented under the provisions hereof after the expiration of twelve (12) months. (1931, c. 145, s. 13; 1933, c. 172, s. 17.)

§ 136-62. Petition of citizens to county commissioners to ask Commission to make road changes.—When any number of citizens of any county or any community thereof, not less than twenty-five (25), shall sign and file with the board of county commissioners of such county a petition asking that any road in the county road system of the county be changed or abandoned or that any new road be added to said system, it shall be the duty of said board of county commissioners to make full and thorough investigation, and if in their opinion the best interests of the people of said county or of the particular community thereof to be affected require such change, abandonment, or addition, the said board of county commissioners shall file and prosecute before the State Highway and Public Works Commission the petition provided for in § 136-61. (1931, c. 145, s. 14; 1933, c. 172, s. 17.)

§ 136-63. Public hearings on road changes.—All public hearings provided for in §§ 136-61 and 136-62 shall, when practicable, be held in the county in which the road or roads under consideration and the subject of said hearing, shall be located. (1931, c. 145, s. 15.)

§ 136-64. Filing of complaints with Commission; hearing and appeal.—In the event of failure to maintain the roads of the State Highway System or any county road system in good condition, the board of county commissioners of such county may file complaint with the State Highway and Public Works Commission. When any such complaint is filed, the Commission shall at once investigate the same, and if the same be well founded, the said commission shall at once order the repair and maintenance of the roads complained of and investigate the negligence of the persons in charge of the roads so complained of, and if upon investigation the person in charge of the road complained of be at fault, he may be discharged from the service of the commission. The board of commissioners of any county, who shall feel aggrieved at the action of the Commission upon complaint filed, may appeal from the decision of the Commission to the Governor, and it shall be the duty of the Governor to adjust the differences between the board of county commissioners and the Commission. (1921, c. 2, s. 20; 1931, c. 145, s. 17; 1933, c. 172, s. 17; C. S. 3846(11).)

§ 136-65. District road commissions. — When any road district comprised of territory in two or more counties with a population in excess of twenty thousand inhabitants, as shown by the census of one thousand nine hundred and thirty, has heretofore been established, the Governor shall appoint a road commission for the said district, consisting of three members, which shall, with respect to the roads in said districts, have and exercise the same rights and duties as the board of county commissioners of said county have and exercise with respect to the county road systems under §§ 136-53, 136-60, 136-61, 136-62, 136-64 and this section. Members of the commission shall be appointed for a term of two years. Vacancies in the commission shall be filled by the Governor. (1931, c. 145, s. 18.)

§ 136-66. Definitions. — Wherever the word "County" or the words "County Commissioners" appear in §§ 136-51 to 136-53, 136-60 to 136-64, and 136-99, or in any other section of chapter 145 of the Public Laws of 1931 that may appear in this Code, they shall be construed to include any commission or commissioners provided for in § 136-65. (1931, c. 145, s. 36.)

Art. 4. Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.—All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the State Highway and Public Works Commission, but which remain open and in general use by the public, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Public Welfare, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use regardless of whether the same have ever been a portion of any state or county road systems, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of §§ 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested citizen is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use. Upon request of the Board of County Commissioners of any county, the State Highway and Public Works Commission is permitted, but is not required, to place such roads in a passable condition without incorporating the same into the State or County Systems, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the State Highway and Public Works Commission in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183.)

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal. — The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the Clerk of the Superior Court in the county where the property affected is situate. Such special proceeding shall be commenced by a petition filed with said Clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the Superior Court for trial de novo and the procedure established under chapter 40, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (Rev., s. 2683; Code, s. 2023, 1879, c. 82, s. 9; 1931, c. 448; C. S. 3835.)

Local Modification.—Burke, Caldwell, Catawba, Lincoln: 1931 Pub. Loc. c. 313; Graham: 1935 Pub. Loc. c. 224.

§ 136-69. Cartways, tramways, etc., laid out; procedure. — If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section, and if it shall be made to appear to the Court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the Court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than fourteen feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the Clerk of the Superior Court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the Clerk of the Superior Court. The Clerk of the Superior Court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the Clerk, together with the cost of the proceeding, shall be paid in to the Clerk's office before the petitioners shall acquire any rights under said proceeding. (Rev., s. 2686; Code, s. 2056; 1917, c. 282, s. 1; 1917, c. 187, s. 1; 1909, c. 364, s. 1; 1903, c. 102; 1887, c. 46; R. C., c. 101, s. 37; 1798, c. 508, s. 1; 1822, c. 1139, s. 1; 1879, c. 258; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; C. S. 3836.)

§ 136-70. Alteration or abandonment of cartways, etc., in same manner. — Cartways or other ways established under this article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same. (Rev., s. 2694; Code, s. 2057; 1887, c. 46, s. 2; R. C., c. 101, s. 38; 1798, c. 508, ss. 1, 2, 3; 1834, c. 16, s. 1; 1887, c. 266; 1931, c. 448; C. S. 3837.)

See "Local Modifications" under § 136-68.

§ 136-71. Church roads laid out on petition; procedure.—Necessary roads leading to any church

or other place of public worship may be established in the same manner as set forth in the preceding sections of this article upon petition of the duly constituted officials of such church. (Rev., ss. 2687, 2689; Code, ss. 2062, 2064; 1872-3, c. 189, ss. 1-3, 5; 1931, c. 448; C. S. 3838.)

Art. 5. Bridges.

§ 136-72. Load limits for bridges; liability for violations. — The State Highway and Public Works Commission shall have authority to determine the maximum load limit for any and all bridges on the State Highway System or on any county road systems, to be taken over under §§ 136-51 to 136-53, and post warning signs thereon, and it shall be unlawful for any person, firm, or corporation to transport any vehicle over and across any such bridge with a load exceeding the maximum load limit established by the Commission and posted upon said bridge, and any person, firm, or corporation violating the provisions of this section shall, in addition to being guilty of a misdemeanor, be liable for any or all damages resulting to such bridge because of such violation, to be recovered in a civil action, in the nature of a penalty, to be brought by the Commission in the Superior Court in the county in which such bridge is located or in the county in which the person, firm, or corporation is domiciled; if such person, firm, or corporation causing the damage shall be a nonresident or a foreign corporation, such action may be brought in the Superior Court of Wake County. (1931, c. 145, s. 16; 1933, c. 172, s. 17.)

§ 136-73. Duty as to bridges of millowners on, or persons ditching or enlarging ditches across, highways.—It shall be the duty of every owner of a water-mill which is situate on any public road, and also of every person who, for the purpose of draining his lands, or for any other purpose, shall construct any ditch, drain or canal across a public road, respectively, to keep at his own expense in good and sufficient repair all bridges that are or may be erected or attached to his milldam, immediately over which a public road may run; and also to erect and keep in repair all necessary bridges over such ditch, drain or canal on the highway, so long as they may be needed by reason of the continuance of said mill, or milldam, ditch, drain or canal. Nothing herein shall be construed to extend to any mill which was erected before the laying off of such road, unless the road was laid off by the request of the owner of the mill. The duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners of the mill, or other property, for the benefit of which the said ditch, drain or canal was cut. When any ditch or drain originally constructed across any public road, and bridged for the convenience and safety of the traveling public, has been or may hereafter be enlarged by the owner of adjacent lands to drain his lands, it shall be the duty of such owner to keep up and in repair all bridges crossing such ditch, drain or canal, and such charge shall be imposed upon all subsequent owners of the lands so drained. (Rev., s. 2697; Code, s. 2036; 1887, c. 261; R. C., c. 101, s. 24; 1817, c. 941, s. 1; 1846, c. 35, s. 1; 1881, c. 290; C. S. 3795.)

§ 136-74. Liability for failure to maintain bridges; penalty and damages.—If any owner of a watermill situated on any public road, or any other person whose duty it is under this chapter to keep up and repair bridges built across any public road or across any ditch, drain, or canal, shall refuse or neglect to keep up and repair, or shall suffer to remain out of repair for the space of ten days, unless repair was prevented by unavoidable circumstances, any bridges which by law he may be required to keep up and repair, he shall be guilty of a misdemeanor and shall be liable for such damages as may be sustained. (Rev., ss. 2703, 3772, 3773; Code, ss. 1086, 2037; R. C., c. 34, s. 40; c. 101, s. 25; 1817, c. 941, ss. 2, 3; 1876-7, cc. 90, 211; C. S. 3796.)

§ 136-75. Railroad companies to maintain bridges which they make necessary.—All railroad companies shall keep up, at their own expense, any bridge on or over public roads, when the building of such bridge was made necessary in establishing the railroad; and on failure to do so, shall forfeit and pay twenty-five dollars to any person who may sue for the same, and in addition shall be guilty of a misdemeanor. (Rev., ss. 2700, 3775; Code, s. 2054; R. C., c. 101, s. 35; 1838, c. 5, ss. 1-4; C. S. 3797.)

§ 136-76. Counties to provide draws for vessels.—The county or counties which may erect bridges shall, by their boards of commissioners, provide and keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels. When any such draw shall be necessary to be erected for the passage of timber-rafts, said draw may not exceed twenty feet in width. (Rev., s. 2698; Code, s. 2053; 1891, c. 168; R. C., c. 101, s. 34; C. S. 3798.)

§ 136-77. Owner of bridge to provide draws on notice.—Owners of steamboats or other craft, who may intend to navigate any river or creek over which any person may have a bridge, may give three months notice of such intention in one of the public journals of the state, published nearest the river or creek intended to be navigated, and to the owner of the bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of the bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months default thereafter. (Rev., s. 2699; Code, s. 2052; R. C., c. 101, s. 32; 1846, c. 51, ss. 1, 2; 1838-9, c. 5; C. S. 3799.)

§ 136-78. Railroad companies to provide draws.—Railroad companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass. (Rev., s. 2701; Code, s. 2051; R. C., c. 101, s. 32; 1846, c. 51, ss. 1, 2; C. S. 3800.)

§ 136-79. Solicitor to prosecute for injury to county bridges.—The solicitors of the superior court are authorized and directed to institute suits in the name of the state, in the counties wherein the injuries may be done, for the recovery of dam-

ages, against all persons who shall willfully or negligently injure any public bridge belonging to any county or counties, by forcibly running any decked vessel, boat or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered shall be for the use of the county or counties injured; and if the plaintiff fail, the costs shall be paid by the county or counties for whose use the suit is brought, and in the same proportion in which the recovery would be divided. (Rev., s. 2705; Code, s. 2055; R. C., c. 101, s. 36; 1846, c. 11, ss. 1, 2; C. S. 3801.)

§ 136-80. Fastening vessels to bridges misdemeanor. — If any person shall fasten any decked vessel or steamer to any bridge that crosses a navigable stream, he shall be guilty of a misdemeanor, and in the case of a bridge that crosses a county line, may be prosecuted in either county. (Rev., s. 3774; Code, s. 2050; 1887, c. 93, s. 3; R. C., c. 101, s. 31; R. S., c. 104; 1858-9, c. 58, s. 1; C. S. 3804.)

§ 136-81. Commission may maintain footways. —The state highway and public works commission shall have the power to erect and maintain adequate footways over swamps, waters, chasms, gorges, gaps, or in any other places whatsoever, whenever said commission shall find that such footways are necessary, in connection with the use of the highways, for the safety and convenience of the public. (Rev., s. 2695; Code, s. 2029; R. C., c. 101, s. 17; 1817, c. 940, ss. 1, 2; 1921, c. 2; 1931, c. 145; 1933, c. 172, s. 17; C. S. 3785.)

Art. 6. Ferries and Toll Bridges.

§ 136-82. State highway and public works commission to establish and maintain ferries.—The State Highway and Public Works Commission is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State Highway System, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Commission, be expedient.

To accomplish the purpose of this section said Commission is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Commission represent the fair value of the public service rendered. (1927, c. 223; 1933, c. 172, s. 17.)

§ 136-83. Control of county public ferrries and toll bridges transferred to State.—The State Highway and Public Works Commission shall succeed to all the rights and duties vested in the county commissioners or county highway commissions on the thirty-first day of March, one thousand nine hundred and thirty-one, with respect to the maintenance and operation of any public ferries or toll bridges forming links in the county highway systems: Provided, that where there is an outstanding indebtedness against any such ferries or bridges, all tolls collected shall be turned over to the County Treasurer to be applied to debt service until all indebtedness against such ferry or bridge has been discharged. (1931, c. 145, s. 38; 1933, c. 172, s. 17.)

§ 136-84. State highway and public works commission to fix charges. — The state highway and public works commission is directed, authorized, and empowered to fix and determine the charges to be made by all ferries and toll bridges connecting any state highway within the state of North Carolina, which said charges shall be uniform for the same service rendered. (Ex. Sess. 1921, c. 86, s. 1; 1933, c. 172, s. 17; C. S. 3821(a).)

§ 136-85. Extent of power to fix rates.—The state highway and public works commission is vested with all the rights, powers and authorities granted the utilities commission in the hearing and fixing of rates for any purposes now vested in it by law. (Ex. Sess. 1921, c. 86, s. 2; 1933, c. 134, s. 8; 1933, c. 172, s. 17; 1941, c. 97; C. S. 3821(b).)

§ 136-86. Existing rights of appeal conferred.—All rights given any firm, person or corporation in any hearing before the utilities commission in the fixing of rates by way of appeal shall exist in all cases of charges fixed by the state highway and public works commission under and by virtue of §§ 136-84 to 136-87. (Ex. Sess. 1921, c. 86, s. 3; 1933, c. 134, s. 8; 1933, c. 172, s. 17; 1941, c. 97; C. S. 3821(c).)

§ 136-87. Making of excessive charges a misdemeanor; punishment.—Any person, firm or corporation who shall charge any sum greater than the amount fixed by the state highway and public works commission for crossing any ferry or toll bridge connecting any state highway within the state of North Carolina, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding the sum of one hundred dollars or imprisoned not exceeding six months, or both in the discretion of the court. (Ex. Sess. 1921, c. 86, s. 4; 1933, c. 172, s. 17; C. S. 3821(d).)

§ 136-88. Authority of County Commissioners with regard to ferries and toll bridges; rights and liabilities of owners of ferries or toll bridges not under supervision of Commission.—Subject to the provisions of §§ 136-67, 136-99, and 153-198, the boards of commissioners of the several counties are vested, in regard to the establishment, operation, maintenance, and supervision of ferries and toll bridges on public roads not under the supervision and control of the State Highway and Public Works Commission, with all the power and authority regarding ferries and toll bridges vested by law in county commissioners on the thirty-first day of March, one thousand nine hundred and thirty-one. And the owners or operators of ferries or toll bridges not under the supervision and control of the State Highway and Public Works Commission shall be entitled to the same rights, powers, and privileges, and subject to the same duties, responsibilities and liabilities, to which owners or operators of ferries or toll bridges were entitled or were subject on the thirty-first day of March, one thousand nine hundred and thirty-one

§ 136-89. Safeguarding transportation of life; guard chains or gates.—Each and every person, firm or corporation, owning or operating a public ferry upon any sound, bay, river, creek or other stream, shall have securely affixed and attached thereto, at each end of the same, a detachable steel or iron chain, or in lieu thereof a steel or iron gate, and so affixed and arranged that the same shall be closed or fastened across the opposite end from the approach, whenever any motor vehicle, buggy, cart, wagon, or other conveyance shall be driven upon or shall enter upon the same; and shall be securely fastened or closed at each end of the ferry after such motor vehicle, buggy, cart, wagon, or other conveyance shall have been driven or shall have entered upon the same. And the said gates or chains shall remain closed or fastened, at each end, until the voyage across the stream upon which said ferry is operated shall have been completed. The State Highway and Public Works Commission, as to ferries under its supervision, and the respective Boards of County Commissioners, as to other ferries, shall fix and determine a standard weight or size of chain, and a standard size, type, or character of gate, for use by said ferries, leaving optional with the said owner or operator the use of chains or gates.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 133; 1927, c. 223; 1931, c. 145, s. 38; 1933, c. 172, s. 17; C. S. 3825(a).)

Art. 7. Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.—If any person shall willfully alter, change or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right of way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a misdemeanor, and fined or imprisoned, or both. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court. (Rev., s. 3784; Code, s. 2065; 1872-3, c. 189, s. 6; 1883, c. 383; C. S. 3789.)

§ 136-91. Placing glass, etc., or injurious obstructions in road.—No person shall throw, place or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any of the public highways of this state. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1917, c. 140, ss. 18, 21; C. S. 2619.)

§ 136-92. Obstructing highway drains, misdemeanor. — Any person who shall obstruct any drains along or leading from any public road in the state shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than one hundred dollars. (1917, c. 253; C. S. 3791.)

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.—No opening or other interference whatsoever shall be made in any state road or highway other than streets in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the state highway and public works commission or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No state road or state highway, other than streets in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or shrub in or on any state road or state highway shall be planted, trimmed, or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said commission or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the commission or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done: the commission, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the state of North Carolina, in such an amount as may be deemed sufficient by the commission or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a state road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law. (1921, c. 2, s. 13; 1923, c. 160, s. 2; 1933, c. 172, s. 17; C. S. 3846(u).)

§ 136-94. Gates projecting over rights-of-way forbidden. — It shall be unlawful for any person, firm or corporation to erect, maintain or operate upon his own land, or the land of another, any farm gate or other gate which, when opened, will project over the right-of-way of any state highway.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days, in the discretion of the court. (1927, c. 130.)

§ 136-95. Water must be diverted from public road by ditch or drain.—When any ditch or drain is cut in such a way as to turn water into any public road, the person cutting the ditch or drain shall be compelled to cut another ditch or drain as may be necessary to take the water from said road. (Rev., s. 2697; Code, s. 2036; C. S. 3790.)

§ 136-96. Road or street not used within 20 years after dedication deemed abandoned; declaration of withdrawal recorded; defunct corporations. —Every strip, piece, or parcel of land which shall

have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by any deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within twenty years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, unless such right shall have been asserted within two years from and after March 8, 1921: Provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece, or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid. Provided further, that where any corporation has dedicated any strip, piece, or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title, or interest in said strip, piece, or parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest to said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms, or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out hereinbefore in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway prior to March 8, 1921. This section shall be in force from and after March 8, 1921, and shall apply to dedications made after as well as before that date. (1921, c. 174; 1939, c. 406; C. S. 3846(rr).)

§ 136-97. Responsibility of counties for upkeep, etc., terminated; liability of commission for damage on state highway system. — The board of county commissioners or other road-governing bodies of the various counties in the state are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the state highway system, after the same shall have been taken over, and the control thereof assumed by the state highway and public works commission. The state highway and public works commission as a commission and the individual members thereof, shall not be liable for any damage sustained by any person, firm, or corporation on the state highway system, except for wanton and corrupt negligence. (1921, c. 2, s. 50; 1933, c. 172, s. 17; C. S. 3846(dd).)

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.—From and after the first day of July, one thousand nine hundred and thirty-one, no county or road district by authority of any public, public-local, or private act, shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the Highway Commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July first, one thousand nine hundred and thirty-one. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July first, one thousand nine hundred and thirty-one, shall be taken over by the State Highway and Public Works Commission and completed by the Commission by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto. (1931, c. 145, s. 35.)

§ 136-99. Sale of camp sites and other real estate and application of proceeds.—Any county, road and/or highway district which owns a camp site or other real estate built or purchased with road or highway funds, may sell and convey such camp site or real estate, and the money so received therefrom shall be used to retire any bonds issued for road or highway purposes, or interest due thereon. If there are no outstanding bonds, the money received shall be turned over to the general county fund. (1931, c. 232, s. 2.)

§ 136-100. Application of insurance funds collected on burned buildings. — In event any building or buildings erected or constructed with road or highway funds shall be damaged or destroyed by fire and the same were insured, the insurance when collected shall be used to retire any

outstanding bonds issued for road purposes and interest thereon, and if there are no outstanding bonds the money shall be turned over to the general county fund: Provided, that said fund received from insurance may be used to rebuild, repair and equip any jail or other building used to house prisoners. (1931, c. 232, s. 4.)

§ 136-101. Use of funds to retire current liabilities and deficits.—In lieu of paying the moneys received as herein set out on bonds and interest, if there are any current liabilities or current deficits, the money may be used for discharging such current liabilities and deficits. (1931, c. 232, s. 5.)

Art. 8. Citation to Highway Bond Acts.

I. State of North Carolina Highway Serial Bonds, Public Laws 1921, c. 2, s. 39; Public Laws Ex. Sess. 1921, c. 74; Public Laws 1923, c. 263, s. 3; Public Laws 1925, c. 45, s. 4; Public Laws 1925, c. 133.

II. State of North Carolina Highway Serial Bonds. Public Laws 1925, c. 35.

III. Chowan Bridge Bonds. Public Laws 1925, c. 74; Public Laws 1927, cc. 176 and 183; Public Laws 1929, cc. 128 and 144; Public Laws 1935, c. 15, s. 1.

IV. The Highway Bond Act of 1927. Public Laws 1927, c. 95; 1929, c. 312.

V. Cape Fear River Bridge Bonds. Public Laws 1927, c. 41; Public Laws 1929, cc. 127, 144; Public Laws 1931, c. 90; 1935, c. 17.

VI. For acts which authorized the issuance of county, township, and district road bonds, and bonds for state-line bridges, having no prospective operation after 1931 in view of Public Laws 1931, c. 145, s. 35, see Chapter 70 of the Consolidated Statutes, as amended.

Chapter 137. Rural Rehabilitation.

Sec.

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Art. 1. State Rural Rehabilitation Law.

§ 137-1. Title of article. — This article shall be known as the "State Rural Rehabilitation Law." (1935, c. 459, s. 1.)

§ 137-2. Declaration of necessity for subsistence homesteads; agencies established to effect purpose.—It is hereby declared that it is necessary in the public interest to make provision for the establishment of small individual farms or subsistence homesteads with the necessary dwellings and other structures in planned rural communities, together with livestock, farm implements, equipment and initial materials and supplies to enable success of the applicant and his family, and that the providing of such subsistence homesteads or farm homes and operating facilities in community settlements, being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land (not classed as sub-marginal lands) the construction of new agricultural facilities, the clearing, grading, draining of lands, and building of planned rural communities under public supervision in accord with proper standards of sanitation and safety at a cost which will permit their use or sale at prices which families of low income and/or families of agricultural experience or ability can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the State of North Carolina and/or the agencies and instrumentalities of the United States government when and if designated by it as such, for the purpose of attaining the ends herein recited and their necessity in the public interest. (1935, c. 459, s. 2.)

§ 137-3. State board of rural rehabilitation created; appointment and terms of members; vacancies; compensation. — There is hereby created a state board of rural rehabilitation of the State of North Carolina, which will consist of three (3) members, to be appointed by the governor. Two of the three members shall be appointed for two years, and one for four years, and at the expiration of these terms their successors shall be appointed for a term of four years. All vacancies which may occur for any unexpired term shall be filled by the governor. The members of the board shall receive no salary, but shall be entitled to a per diem of not in excess of $10.00 when attending meetings of the corporation and the necessary traveling and other expenses incurred in the discharge of their duties, which shall be paid by the corporation. (1935, c. 459, s. 3.)

§ 137-4. Officers and employees. — The members of the board shall choose from among their number a chairman, and the board may appoint such other officers and employees, including a secretary, as it may require, for the performance of its duties, and shall fix and determine their qualifications, duties and salaries. (1935, c. 459, s. 4.)

§ 137-5. Submission to board of projects; community corporations; supervision of board over monies of such corporations; naming of trustee; duties; disbursement of funds.—No rural community project proposed by a corporation incorporated under this article shall be undertaken without the approval of the board.

(a) There shall be submitted to the board a community plan and financial plan in such forms and with such assurances as the board may prescribe to raise the actual cost of the lands and projected improvements and operating facilities by subscriptions to or the sale of the stock, income debentures, and/or mortgage bonds of such corporation. Whenever reference is made in this article to cost of projects or of buildings and improvements in projects, such cost shall include the necessary personal property in farm units and community buildings, charges for financing and supervision approved by the board, and carrying charges during construction required in the project, including interest on borrowed and, where approved by the board, on invested capital.

(b) The corporation agrees to accept a designee of the board of rural rehabilitation as a member of the board of directors of said corporation, which designee may be a representative of the United States or of the principal creditor of said corporation.

(c) If required by the board, the corporation shall deposit all monies received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the State of North Carolina and to perform trust functions, and such trustee shall receive such monies and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements and the personal property and supervision necessary for successful independent farm units and rural community centers, upon presentation of draft, check, or order signed by a proper officer of the corporation and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation. (1935, c. 459, s. 5.)

§ 137-6. Investigation into affairs of corporations; judicial powers. — The board shall have power to investigate into the affairs of limited dividend and/or non-dividend companies incorporated under this article, and into the dealings, transactions, or relationships of such companies with other persons. Any of the investigations provided for in this article may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits, and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this article, and to ex-

amine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the board or excused from attendance. (1935, c. 459, s. 6.)

§ 137-7. Study of rural conditions; programs for betterment; dissemination of information; approval of community projects; coöperation with local officials. — The board is hereby empowered to (a) study rural conditions and farm tenancy throughout the State, to determine in what areas unhealthful and insanitary conditions constitute a menace to health, and reasonable comfort of the citizens of the State; (b) prepare programs for correcting such conditions as may be relieved by the purposes of this article; (c) collect and distribute information relating to rural development; (d) recommend and approve the areas within which or adjacent to which the construction of rural community projects by limited dividend and/or non-dividend companies may be undertaken, and (e) co-operate with local officials and planning commissions or similar bodies in the development of projects they may have under consideration. (1935, c. 459, s. 7.)

§ 137-8. Consolidation of projects. — The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project, or the consolidation of any approved project with a proposed project. In any of these events the consolidation project shall be treated as an original project and an application shall be submitted as in the case of an original project, and sale prices may be averaged throughout the consolidated or extended project. The board may by approval of its charter likewise permit any limited dividend and/or non-dividend corporation to organize and operate one or more rural community projects which may be organized and operated independently of each other under such by-laws, rules and regulations authorized by the board, not inconsistent with the provisions of this article, as may be necessary for the proper conduct of the affairs of the corporation. (1935, c. 459, s. 8.)

§ 137-9. Other powers of board. — In pursuance of its power and authority to supervise and regulate the operations of limited dividend and/or non-dividend companies incorporated under this article the board may in its discretion:

(a) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board, or by the terms of any project approved by the board for protection of its security holders or creditors, or to refrain from doing any acts in violation thereof.

(b) Examine all such corporations and keep informed as to their general condition, their capitalization, and the manner in which their property is constructed, operated, or managed and sold.

(c) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus, and devices of any such corporation, examine all books, contracts, records, documents, and papers of any such corporation, and by subpoena duces tecum compel the production thereof.

(d) In its discretion prescribe uniform methods and forms of keeping accounts, records, and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged, or credited.

(e) Require every such corporation to file with the board an annual report setting forth such information as the board may require, verified by the oath of the president and general manager or receiver, if any, thereof, or by the person required to file the same. Such report shall be in the form, cover the period, and be filed at the time prescribed by the board.

(f) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this article. (1935, c. 459, s. 9.)

§ 137-10. Price fixing for farms sold; determination of payments made by corporations; dividends; sinking funds.—The board shall fix the maximum and minimum purchase price to be charged for the farms sold by such corporation. Such minimum purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as herein prescribed, and such purchase prices shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be (a) all fixed charges and all operating and maintenance charges and expenses, which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charge, if, when, and to the extent deemed necessary by the board; reserves, sinking funds, and corporate expenses essential to operation and management of the project in amounts approved by the board. (b) A dividend, if any, not exceeding all the maximum fixed by this article upon the stock of the corporation allotted to the project by the board. (c) Where feasible, in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock and income debentures of the corporation to the extent permitted by this article, or specified in the issues outstanding. (1935, c. 459, s. 10.)

§ 137-11. Reorganization of corporations. — (1) Reorganization of limited dividend and/or non-dividend companies incorporated under this article shall be subject to the supervision and control of the board and no such reorganization shall be had without its authorization.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness, shall be such as is authorized by the board, which, in making its determination, shall not exceed the fair value of the property involved. (1935, c. 459, s. 11.)

§ 137-12. Power of board to enjoin illegal acts of corporations.—Whenever the board shall

be of opinion that any such limited dividend and/or non-dividend company is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the board, and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lien holders or the stockholders, it may commence an action or proceeding in the superior court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said superior court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding thirty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint, or in such modified or other form as the court may determine will afford appropriate relief. (1935, c. 459, s. 12.)

§ 137-13. Acquisition by corporations of property for projects; power of eminent domain.— When the board shall have approved a project for the construction or establishment of a rural community or communities presented it by a limited dividend and/or non-dividend company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest, or purchase, or, in the case of limited dividend and/or non-dividend companies engaged in the construction and development of rural communities, by the exercise of the power of eminent domain under and pursuant to the law providing for the appropriation or condemnation of private property by corporations with specific authorization by the board to be in the public interest and necessary for the public use. (1935, c. 459, s. 13.)

§ 137-14. Application for charter. — Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging, and filing in the office of the secretary of state articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the State, except as herein modified or changed. (1935, c. 459, s. 14.)

§ 137-15. Purposes of incorporation enumerated.—The purposes for which a limited dividend and/or non-dividend rural development company is to be formed shall be as follows: To acquire, construct, maintain, and operate housing projects, subsistence homesteads and organized rural rehabilitation or community projects, and to establish, loan, make loans for, and to assist in the establishment of small individual farms and farm homes, together with the necessary buildings and other structures, livestock, equipment, implements and machinery, materials, supplies, facilities, medical, social and educational centers, cooperative enterprises and commercial establishments essential to the growth and development of said rural rehabilitation or community projects, when authorized by and subject to the supervision of the board of rural rehabilitation. (1935, c. 459, s. 14.)

§ 137-16. Preference to applicants possessing certain qualifications. — Preference shall be given to applicants who are married or who have dependent families, have good moral character, and are experienced in farming and familiar with farm operations, or who are or recently were farmers, farm tenants, share croppers, or farm laborers, or to good families of small incomes who will contribute to social advantages of the community, and each of whom may be approved by designated representatives of the federal and state agricultural extension service. (1935, c. 459, s. 14.)

§ 137-17. Capital stock. — The capital stock may consist of one or more classes, the shares of which shall have a par value. (1935, c. 459, s. 14.)

§ 137-18. Declaration as to serving a public purpose; restriction on income from stock; disposition of surplus.—Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose, and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it shall be deemed to be acquired for the purpose of promoting the public health and safety and satisfactory social and agricultural conditions subject to the provision of the State Rural Rehabilitation Law; and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at a rate not in excess of six per centum per annum, and that any surplus in excess of such amount, if said company shall be dissolved shall revert to the State of North Carolina, or to such federal department or agency that may have provided the funds for establishing a rural community as herein contemplated. (1935, c. 459, s. 14.)

§ 137-19. Power to borrow money and issue bonds secured by mortgage; amortization.—Any company formed under this article may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgages, or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto may create a first or senior lien and a second

or junior lien upon the real property embraced in any project or projects. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the rural community projects in the event of such entry by mortgagee or receiver shall be subject to the regulation of the board under this article. Provisions for the amortization of the bonded indebtedness of companies formed under this article shall be subject to the approval of the board, and the amortization period shall begin three years after the farm family or families are established on the land and continue semi-annually up to a limit of forty years. (1935, c. 459, s. 14.)

§ 137-20. Application of general corporation laws.—The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend and/or non-dividend rural rehabilitation companies, except where such provisions are in conflict therewith. (1935, c. 459, s. 14.)

§ 137-21. Dividends on stock restricted. — No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six per centum per annum, except that when in any preceding year, dividends of the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years. (1935, c. 459, s. 15.)

§ 137-22. Issuance of stock and bonds regulated.—No limited dividend and/or non-dividend company incorporated under this article shall issue stock, bonds, or income debentures except for money, services, or property actually received for the use and lawful purpose of the corporation. No stock, bonds, or income debentures shall be issued for property or services except upon a valuation approved by the board of rural rehabilitation and such valuation shall be used in computing actual or estimated cost. (1935, c. 459, s. 16.)

§ 137-23. Exchange of stock and bonds for income debenture certificates. — The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than five per centum per annum. After the incorporation of a limited dividend rural rehabilitation company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of rural rehabilitation for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor. (1935, c. 459, s. 17.)

§ 137-24. Restrictions on corporations. — No limited dividend nor non-dividend company incorporated under this article shall:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purposes defined in this article.

(2) Sell, transfer, assign, or lease any real or personal property without first having obtained the consent of the board: Provided, however, that leases and/or sales conforming to the regulations and rules of the board and for actual occupancy by the lessees and/or purchasers may be made without the further consent of the board. Any conveyance, incumbrance, lease or sub-lease made in violation of the provisions of this section, and any transfer or assignment thereof, shall be void.

(3) Charge or accept any rental, purchase price, or other charge in excess of the amounts prescribed by the board, except for the insurance of mortgage loans as provided under the Federal Housing Act.

(4) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six per centum per annum.

(5) Issue its stock, debentures and bonds covering any project or projects undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction and the necessary supervision of the project or projects thereafter.

(6) Mortgage any real property or issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Enter into contracts for the construction of rural community projects or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(8) Voluntarily dissolve without first having obtained the consent of the board.

(9) Make any guaranty without the approval of the board. (1935, c. 459, s. 18.)

§ 137-25. Earnings transferable to surplus; distribution upon dissolution; surplus paid into general fund of state.—The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b), and (c) of section 137-10 shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen per centum of the outstanding capital stock and/or income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend and/or non-dividend company the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued, and unpaid dividends or interest thereon less any payment or distributions theretofore made other than by dividends provided in § 137-21, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the State of North Carolina, or shall be disposed of in such other manner as the board

may direct and the governor may approve. (1935, c. 459, s. 19.)

§ 137-26. Foreclosure actions; foreclosure or other judicial sale; unrestricted rights of mortgagees.—(1) In any foreclosure action the board shall be a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding the court shall be authorized to make an order increasing the sale price to be charged for the farms, etc., in the project involved in such foreclosure, or appoint a receiver of the property, or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend and/or non-dividend corporation organized under this article, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this article.

(2) Notwithstanding the foregoing provisions of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage, which is a lien upon any such property, such corporation shall have all the remedies available to a mortgagee under the laws of the State of North Carolina, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public, and no costs shall be awarded against it. (1935, c. 459, s. 20.)

§ 137-27. Application to board for one corporation to purchase property of another. — Before any limited dividend or non-dividend corporation incorporated under this article shall purchase the property of any other limited dividend or non-dividend corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project, and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this article, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this article. (1935, c. 459, s. 21.)

§ 137-28. Notice to board required before execution of judgment against corporation.—In the event of a judgment against a limited dividend or non-dividend corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties. (1935, c. 459, s. 22.)

§ 137-29. Fees for examination of plans and supervision of construction and for other purposes; state not liable for board expenses. — The board may charge and collect from a limited dividend or non-dividend corporation, incorporated under this article, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-quarter of one per cent of the cost of the project; for the holding of a public hearing upon application of a limited dividend or non-dividend corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a limited dividend or non-dividend corporation and for any act done by the board, or any of its employees, in performance of their duties under this article an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a limited dividend or non-dividend corporation to include such fees as part of the cost of a project, or as part of the charges specified in § 137-10, pursuant to rules to be established by the board. (1935, c. 459, s. 23.)

§ 137-30. Corporate existence limited; extension.—The corporate existence of any corporation authorized hereunder shall not extend beyond sixty years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless general corporation laws, by approval of the state board of rural rehabilitation should grant an extension for an additional period of time. (1935, c. 459, s. 25.)

Art. 2. North Carolina Rural Rehabilitation Corporation.

§ 137-31. Designated a state agency. — The North Carolina rural rehabilitation corporation, a non-profit corporation, organized by the members of the commission of the North Carolina emergency relief administration, and chartered by the State to serve as a social and financial instrumentality in assisting to rehabilitate individuals and families by enabling them to secure subsistence and gainful employment from the soil and co-ordinated and other enterprises in order to restore them as self sustaining citizens and thereby reduce the burden of public relief for the needy and unemployed, is hereby recognized and designated as an agency of the State of North Carolina and of the North Carolina emergency relief administration and its successor within the powers and limitations of its charter for the carrying out of said objects and purposes. (1935, c. 314, s. 1.)

§ 137-32. Powers of corporation. — The corporation is hereby authorized to accept and re-

ceive loans, grants and other assistance from the United States government, departments and/or agencies thereof for its use or for relief and rehabilitation purposes as well as to receive like financial and other aid when extended by the State of North Carolina or any of its departments, political subdivisions or agencies or any municipality, or from other sources, either public or private, and to employ the same in carrying out its rehabilitation purposes and activities; to utilize such means and agencies as shall be found useful or necessary to carry out the purposes of this article and which will facilitate the securing of co-operation and financial assistance from the government of the United States, its departments or agencies, in aid thereof. (1935, c. 314, s. 2.)

§ 137-33. Coöperation by state officers, boards, etc. — The various officers, boards, courts and governing bodies of the State engaged in any way in the relief of destitution and unemployment are hereby authorized to co-operate with the North Carolina rural rehabilitation corporation for the purposes specified in § 137-31. (1935, c. 314, s. 3.)

§ 137-34. Fund for loans to county boards of education for erecting or equipping vocational buildings, etc.—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina rural rehabilitation corporation is hereby authorized to create a fund of three hundred twenty-five thousand dollars ($325,000.00) to be used, together with any net income accruing thereon, for loans, to be made in the manner hereinafter set forth, to county boards of education for the purpose of erecting or equipping vocational buildings for teaching agriculture and home economics. (1939, c. 241, s. 1; 1941, c. 307, s. 1.)

§ 137-35. Loans to be made through state board of education.—The said loans shall be made through and with the assistance of the state board of education in the following manner:

(a) As applications for loans are made, the director of schoolhouse planning and the director of vocational education, state department of public instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(b) The local government commission will then determine whether the county or school district can, under the constitution, borrow funds necessary for the construction or equipment of such buildings.

(c) The state board of education will then pass upon, and approve or disapprove, the project from the standpoint of the state educational system.

(d) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina rural rehabilitation corporation for final approval.

(e) Upon such final approval the North Carolina rural rehabilitation corporation will deliver to the state board of education the funds which are to be advanced.

(f) Said funds will be loaned by the state board of education according to the same rules and regulations and legal requirements as those under which the state literary fund is now administered.

(g) Said loans will be repayable in ten (10) equal annual installments and will bear interest at four per cent per annum, payable annually, semi-annually, or quarterly, as the state board of education shall determine.

(h) All loans made by the state board of education from such funds so advanced by the rural rehabilitation corporation shall be evidenced by notes payable to the order of the rural rehabilitation corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the state board of education, to the rural rehabilitation corporation and a proper receipt taken therefor. (1939, c. 241, s. 2.)

§ 137-36. Approval of applications from county boards by state board of education.—The state board of education is hereby empowered to receive and approve applications from county boards of education for such vocational agricultural and home economics buildings or equipment loans in the same manner and on the same forms as it now receives applications for loans from the state literary fund, and in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 3.)

§ 137-37. Loans from state literary fund.—As an alternative method of making loans to county boards of education for the purpose of erecting or equipping such vocational agricultural and home economics buildings, the state board of education is hereby empowered to make loans for said purposes from the state literary fund and to sell or transfer, without recourse, the notes received for said loans (together with the security therefor) to North Carolina rural rehabilitation corporation. Loans so made from the state literary fund for such vocational agricultural and home economics buildings shall be made in accordance with §§ 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 4.)

§ 137-38. County boards of education authorized to borrow funds. — County boards of education are hereby empowered to borrow through or from the state board of education amounts necessary for constructing or equipping vocational agricultural and home economics buildings to the same extent and in the same manner as they are now authorized by law to borrow from the state literary fund by the provisions of §§ 115-220 to 115-224, and by other applicable provisions of law. (1939, c. 241, s. 5.)

§ 137-39. Creation of fund for loans to students of rural social science authorized.—As of the twenty-sixth day of July, one thousand nine hundred and thirty-eight, the North Carolina rural rehabilitation corporation is hereby authorized to create a fund of twenty-five thousand dollars ($25,000.00) to be used, together with any net income accruing thereon, for loans to students engaged in the study of rural social science; and the directors of North Carolina rural rehabilitation corporation are hereby authorized to make such regulations relative to said loans as to the said board of directors may seem advisable. (1939, c. 241, s. 6; 1941, c. 307, s. 2.)

§ 137-40. Creation of fund for administrative expenses of corporation.—As of the nine-

teenth day of May, one thousand nine hundred and thirty-eight, the North Carolina rural rehabilitation corporation is hereby authorized to create a fund of ten thousand dollars ($10,000.00) to be used for administrative expenses of said corporation, and after said administrative expense fund has been exhausted the expenses of the corporation shall be paid out of income from the vocational building loan fund and the social work student loan fund herein provided. (1939, c. 241, s. 7; 1941, c. 307, s. 3.)

§ 137-41. Transfers of real and personal assets to farm security administration in trust, etc., ratified.—There is hereby ratified the act of North Carolina rural rehabilitation corporation and its board of directors in transferring to the farm security administration of the United States department of agriculture all of its real and personal assets of every kind and description (except the funds hereinabove referred to and except sums necessary for or incident to making the transfer to farm security administration), in trust until the twentieth day of May, one thousand nine hundred and fifty, to use said property for certain purposes of the North Carolina rural rehabilitation corporation selected and designated by the board of directors of said corporation, and in trust thereafter to repay or redeliver to North Carolina rural rehabilitation corporation any unused or unexpended portions of said property. (1939, c. 241, s. 8.)

Chapter 138. Salaries and Fees.

Sec.
138-1. Annual salaries payable monthly.
138-2. Payment of fees; when to be paid in advance.
138-3. Compensation limited to that fixed by law.

§ 138-1. Annual salaries payable monthly.—All annual salaries shall be paid monthly. (Rev., s. 2772; Code, s. 3731; 1893, c. 54; 1925, c. 230; 1929, c. 100; C. S. 3847.)

§ 138-2. Payment of fees; when to be paid in advance.—All public officers shall receive the fees prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers, and no officer shall be compelled to perform any service, unless his fee be paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the state, or of a county, for the benefit of the state or county, the fees need not be paid in advance; but if for the state, shall be paid by the state, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance. (Rev., s. 2804; Code, ss. 3758, 1173; C. S. 3849.)

§ 138-3. Compensation limited to that fixed by law.—No officer or employee of the state shall receive any compensation other than the salaries fixed by law, except as provided by way of fees or by special appropriation or from any departmental fund. (1907, c. 830, s. 1; 1907, c. 994, s. 1; 1925, c. 128, s. 1; C. S. 3850.)

Chapter 139. Soil Conservation Districts.

Sec.
139-1. Title of chapter.
139-2. Legislative determinations, and declaration of policy.
139-3. Definitions.
139-4. State soil conservation committee.
139-5. Creation of soil conservation districts.
139-6. Election of three supervisors for each district.
139 7. Appointment, qualifications and tenure of supervisors.
139 8. Powers of districts and supervisors.
139-9. Adoption of land-use regulations.
139-10. Enforcement of land-use regulations.
139-11. Nonobservance of prescribed regulations; performance of work under the regulations by the supervisors.
139-12. Co-operation between districts.
139-13. Discontinuance of districts.

§ 139-1. Title of chapter.—This chapter may be known and cited as the Soil Conservation Districts Law. (1937, c. 393, s. 1.)

§ 139-2. Legislative determinations, and declaration of policy.—It is hereby declared, as a matter of legislative determination—

A. The Condition.—The farm, forest and grazing lands of the state of North Carolina are among the basic assets of the state and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the topsoil is being blown and

washed out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The Consequences.—The consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-electric power, municipal water supply, drainage developments, farming, and grazing.

C. The Appropriate Corrective Methods.—To conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments; manurial materials, and fertilizers for the correction of soil deficiencies and/or to promote increased growth of soil-protecting crops; retardation of run-off by increasing the absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of Policy.—It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. (1937, c. 393, s. 2.)

§ 139-3. Definitions. — Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

(3) "Committee" or "state soil conservation committee" means the agency created in § 139-4.

(4) "Petition" means a petition filed under the provisions of subsection A of § 139-5 for the creation of a district.

(5) "Nominating petition" means a petition filed under the provisions of § 139-6 to nominate candidates for the office of supervisor of a soil conservation district.

(6) "State" means the state of North Carolina.

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state.

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall have contracted to purchase any lands lying within a district organized under the provisions of this chapter.

(11) "A qualified voter" includes any person qualified to vote in elections by the people under the constitution of this state.

(12) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. (1937, c. 393, s. 3.)

§ 139-4. State soil conservation committee. —A. There is hereby established to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the state soil conservation committee. The following shall serve, ex-officio, as members of the committee: The director of the state agricultural extension service, the director of the state agricultural experiment station, and the state forester. The committee may invite the secretary of agriculture of the United States of America to appoint one person who is a resident of North Carolina to serve with the above-mentioned members as a member of the committee. The committee in cooperation with the North Carolina State College of Agriculture and Engineering in the state shall develop a program for soil conservation and for other purposes as provided for in this chapter, and shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

B. The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require; it shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the state government, and shall be furnished with the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. The committee shall designate its chairman, and may, from time to time, change such designation. A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority of the committee in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable. (1937, c. 393, s. 4.)

§ 139-5. Creation of soil conservation districts. —A. Any twenty-five occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the state soil conservation committee duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any such petitions.

B. Within thirty days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All occupiers of land within the

limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion of the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in § 139-2. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of ....., ... and ....." and "Against creation of a soil conservation district of the lands below described and lying in the county (ies) of ..... and ....." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of land lying within the boundaries of the territory, as determined by the state soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in § 139-2: Provided, however, that the committee shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to

act, with the three supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this chapter; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointment evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

G. After six months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

H. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by two-thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5.)

§ 139-6. Election of three supervisors for each district. — Within thirty days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petitions shall be accepted by the committee unless it shall be subscribed by twenty-five or more qualified voters of such district. Qualified voters may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall

give due notice of an election to be held for the election of three supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference. All qualified voters residing within the district shall be eligible to vote in such election. The three candidates who shall receive the largest number, respectively, of the votes cast in such election shall be elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof. (1937, c. 393, s. 6.)

§ 139-7. Appointment, qualifications and tenure of supervisors.—The governing body of the district shall consist of five supervisors, elected or appointed as provided hereinabove. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the services which will be required of them in the performance of their duties hereunder.

The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be three years, except that the supervisors who are first appointed shall be designated to serve for terms of one and two years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed and has qualified. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, shall be made in the manner in which the retiring supervisors shall, respectively, have been selected. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the state committee, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. (1937, c. 393, s. 7.)

§ 139-8. Powers of districts and supervisors.—A soil conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this chapter:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing vegetation, changes in use of land, and the measures listed in subsection C of § 139-2, on lands owned or controlled by this state or any of its agencies, with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interest in such lands.

(2) To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter.

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.

(4) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion.

(5) To construct, improve, and maintain such structures as may be necessary or convenient for

the performance of any of the operations authorized in this chapter.

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(7) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

(9) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(10) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state. (1937, c. 393, s. 8; 1939, c. 341.)

§ 139-9. Adoption of land-use regulations.— The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving the soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance number ....., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance number ....., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations, governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such ferendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least two-thirds of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a two-thirds of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions, requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.

2. Provisions requiring observance of particular methods of cultivation including contour cultivat-

ing, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation.

3. Specifications of cropping programs and tillage practices to be observed.

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in § 139-2.

The regulations shall be uniform, throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. (1937, c. 393, s. 9.)

§ 139-10. Enforcement of land-use regulations.—The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of § 139-9 are being observed. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation. (1937, c. 393, s. 10.)

§ 139-11. Nonobservance of prescribed regulations; performance of work under the regulations by the supervisors.—Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of § 139-9 are not being observed on particular lands, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention of control of erosion on other lands within the district, the supervisors may present to the superior court for the county or counties within which the lands of the defendant lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such non-observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. This judgment, when filed in accordance with the provisions of § 1-234, shall constitute a lien upon such lands. (1937, c. 393, s. 11.)

§ 139-12. Co-operation between districts.—The supervisors of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. (1937, c. 393, s. 12.)

§ 139-13. Discontinuance of districts.—At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five occupiers of land lying within the boundaries of such districts may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence

of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in § 139-2: Provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificates of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of § 139-11, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this chapter, more often than once in five years. (1937, c. 393, s. 13.)

Chapter 140. State Art Society.

Sec.
140-1. Directors for North Carolina Art Society.
140-2. Adoption of by-laws; amendments.
140-3. Board of Public Buildings and Grounds authorized to provide space for art exhibits.
140-4. Annual audit by State Auditor.

§ 140-1. Directors for North Carolina Art Society.—The governing body of the North Carolina State Art Society, Incorporated, shall be a board of directors consisting of sixteen members, of whom the Governor of the State, the Superintendent of Public Instruction, the Attorney General, and the chairman of the art committee of the North Carolina Federation of Women's Clubs shall be ex-officio members, and four others shall be named by the Governor of the State. The remaining eight directors shall be chosen by the members of the North Carolina State Art Society,

Incorporated, in such manner and for such terms as that body shall determine. Of the four directors first named by the Governor, two shall be appointed for terms of two years each and two for terms of four years each, and subsequent appointments shall be made for terms of four years each. (1929, c. 314, ss. 1, 2.)

§ 140-2. Adoption of by-laws; amendments.— The said board of directors, when organized under the terms of this article, shall have authority to adopt the by-laws for the society, and said by-laws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of directors at two consecutive regular meetings. (1929, c. 314, s. 3.)

§ 140-3. Board of Public Buildings and Grounds authorized to provide space for art exhibits.—The Board of Public Buildings and Grounds is authorized and empowered to set apart, for the exhibition of works of art owned, donated or loaned to the North Carolina State Art Society, Incorporated, any space in any of the public buildings in the City of Raleigh which may be so used without interference with the conduct of the business of the State, and it shall be the duty of the custodians of such buildings to care for, safeguard and protect such exhibits and works of art. (1929, c. 314, s. 4.)

§ 140-4. Annual audit by State Auditor. — It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina State Art Society, Incorporated, and to make report thereof to the General Assembly at each of its regular sessions. (1929, c. 314, s. 5.)

Chapter 141. State Boundaries.

Sec.
141-1. Governor to cause boundaries to be established and protected.
141-2. Payment of expenses of establishing boundaries.
141-3. Appointment of arbitrators.
141-4. Disagreement of arbitrators reported to general assembly.
141-5. Approval of survey.

§ 141-1. Governor to cause boundaries to be established and protected. — The governor of North Carolina is hereby authorized to appoint two competent commissioners and a surveyor and a sufficient number of chainbearers, on the part of the state of North Carolina, to act with the commissioners or surveyors appointed or to be appointed by any of the contiguous states of Virginia, Tennessee, South Carolina, and Georgia, to rerun and remark, by some permanent monuments at convenient intervals, not greater than five miles, the boundary lines between this state and any of the said states.

The governor is also authorized, whenever in his judgment it shall be deemed necessary to protect or establish the boundary lines between this state and any other state, to institute and prosecute in the name of the state of North Carolina any and all such actions, suits, or proceedings at law or in equity, and to direct the attorney-general or such other person as he may designate to conduct and prosecute such actions, suits, or proceedings. (Rev., s. 5315; Code, s. 2289; 1889, c. 475, s. 1; 1881, c. 347, s. 1; 1909, c. 51, s. 1; C. S. 7396.)

§ 141-2. Payment of expenses of establishing boundaries.—When the line has been rerun and remarked as above provided between this state and any of the contiguous states, or such portion of said lines as shall be mutually agreed by the commissioners, the governor is authorized to issue his warrant upon the state treasurer for such portion of the expenses as shall fall to the share of this state. (Rev., s. 5316; Code, s. 2290; 1889, c. 475, s. 2; 1881, c. 347, s. 2; C. S. 7397.)

§ 141-3. Appointment of arbitrators. — If any disagreement shall arise between the commissioners, the governor of this state is hereby authorized to appoint arbitrators to act with similar officers to be appointed by the other states in the settlement of the exact boundary. (Rev., s. 5317; Code, s. 2291; 1889, c. 475, s. 3; 1881, c. 347, s. 3; C. S. 7398.)

§ 141-4. Disagreement of arbitrators reported to general assembly.—In case of any serious disagreement and inability on the part of the said arbitrators to agree upon said boundary, such fact shall be reported by the governor to the next general assembly for their action. (Rev., s. 5318; Code, s. 2292; 1889, c. 475, s. 4; 1881, c. 347, s. 4; C. S. 7399.)

§ 141-5. Approval of survey.—When the commissioners shall have completed the survey, or so much as shall be necessary, they shall report the same to the governor, who shall lay the same before the council of state; and when the governor and the council of state shall have approved the same the governor shall issue his proclamation, declaring said lines to be the true boundary line or lines, and the same shall be the true boundary line or lines between this and the states above referred to. (Rev., s. 5319; Code, s. 2293; 1889, c. 475, s. 5; 1881, c. 347, s. 5; C. S. 7400.)

Chapter 142. State Debt.

Art. 1. General Provisions.

Sec.
142-1. How bonds executed; interest coupons attached; where payable; minimum amount.
142-2. Title of act and year of enactment recited in bonds.
142-3. Record of bonds kept by state treasurer.
142-4. Books for registration and transfer.
142-5. Registration as to principal.
142-6. Registration as to principal and interest.
142-7. No charge for registration.
142-8. Application of sections 142-1 to 142-9.
142-9. Duties performed by other officers.
142-10. Chief clerk may issue when Treasurer unable to act.
142-11. When bonds deemed duly executed.
142-12. State bonds exempt from taxation.
142-13. List of surrendered bonds kept; bonds and coupons destroyed.
142-14. Issuance of temporary bonds.
142-15. Reimbursement of treasurer for interest.

Art. 2. Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

142-16. Governor and Council of State may borrow on note.
142-17. Recital of facts entered on minutes; directions to treasurer; limit of amount.
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Art. 3. Refunding Bonds.

142-20. Title of article.
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Art. 5. Sinking Funds for Highway Bonds.

142-44. Highway bonds; annual payments.
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142-46. Source of funds.

Art. 6. Citations to Bond and Note Acts.

Art. 1. General Provisions.

§ 142-1. How bonds executed; interest coupons attached; where payable; minimum amount.—All bonds or certificates of debt of the state, hereafter to be issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the governor, and countersigned by the state treasurer, and sealed with the great seal of the state, and shall be made payable to bearer unless registered as hereinafter provided; and the principal shall be made payable by the state at a day named in the bond or certificate. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable either at a bank in the city of New York to be designated by the state treasurer, or at the office of the state treasurer in Raleigh, as may be designated by the treasurer, or shall be made payable at the option of the holder, either at such bank in New York or at the office of the state treasurer: Provided, that no original bond or certificate of debt of the state shall be sold for a sum less than par value; nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the state treasury. (Rev., s. 5020; Code, s. 3563; R. C., c. 90, s. 3; 1848, c. 89, s. 22; 1852, c. 9; 1852, c. 10, s. 10; Ex. Sess. 1921, c. 66, ss. 1, 2; C. S. 7401.)

§ 142-2. Title of act and year of enactment recited in bonds.—In every bond or certificate of debt issued by the state, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the chapter, and the year of the legislative session. (Rev., s. 5023; Code, s. 3566; R. C., c. 90, s. 6; 1850, c. 90, s. 6; C. S. 7402.)

§ 142-3. Record of bonds kept by state treasurer.—The state treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the state, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued. (Rev., s. 5021; Code, s. 3564; R. C., c. 90, s. 4; 1852, c. 10, s. 2; C. S. 7403.)

§ 142-4. Books for registration and transfer.—The state treasurer shall keep in his office a register or registers for the registration and transfer of all bonds and certificates of the state heretofore or hereafter issued, in which he may register any bond or certificate at the time of its issue or at the request of the holder. When any bond or certificate shall have been registered as hereinafter provided, the state treasurer shall enter in a manner to be of easy and ready reference, a description of said bond, or certificates giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person in whose name the same is then to be registered and whether in his individual capacity or in a fiduciary relation, and if the latter, for whose benefit the same is to be registered. (Rev., s. 5019; Code, s. 3562; R. C., c. 90, s. 2; 1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11; Ex. Sess. 1921, c. 66, s. 3; C. S. 7404.)

§ 142-5. Registration as to principal.—Upon the presentation at the office of the state treasurer of any bond or certificate that has heretofore been or may hereafter be issued by the state, or upon the first issuance of any bond or certificate, the same may be registered as to principal in the name of the holder upon such register, such registration to be noted on the reverse of the bond or certificate by the state treasurer. The principal of any bond or certificate so registered shall be payable only to the registered payee or his legal representative, and such bond or certificate shall be transferable to another holder or back to bearer only upon presentation to the state treasurer with a written assignment acknowledged or approved in a form satisfactory to the treasurer. The name of the registered assignee shall be written in said register and upon any bond or certificate so transferred. A bond or certificate so transferred to bearer shall be subject to future registration and transfer as before. (Rev., s. 5025; Code, s. 3568; 1883, c. 25; 1887, c. 287; Ex. Sess., 1921, c. 66, s. 4; C. S. 7405.)

§ 142-6. Registration as to principal and interest.—If, upon the registration of any such bond or certificate, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by the treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond has been converted into a fully registered bond, and shall make like entry in the said register. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the state treasurer to pay such interest in funds current at the state capital, which request shall be entered in the said register. (Rev., s. 5026; Code, s. 3569; 1856, c. 16; 1883, c. 25, s. 2; 1887, c. 287, s. 2; Ex. Sess. 1921, c. 66, s. 5; C. S. 7406.)

§ 142-7. No charge for registration. — There shall be no charge for the registration of any bond or certificate whether registered at the time of issuance thereof or subsequently registered, and no charge for the transfer of registered bonds and certificates shall be made. (Rev., s. 5027; 1887, c. 287, ss. 4, 5; Ex. Sess. 1921, c. 66, s. 6; 1925, c. 49; C. S. 7407.)

§ 142-8. Application of sections 142-1 to 142-9.—Sections 142-1 to 142-9, both inclusive, as amended by chapter 66 of the public laws of the extra session of 1921, shall be applicable to all bonds or certificates of the state heretofore issued and now outstanding, and to all bonds or certificates of the state that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. (Rev., s. 5028; Code, s. 3570; 1887, c. 287, s. 3; Ex. Sess. 1921, c. 66, s. 7; C. S. 7408.)

§ 142-9. Duties performed by other officers.—If the council of state shall at any time find that either the governor or the state treasurer is unable by reason of absence, disability, or otherwise, to sign any bonds or certificates, the lieutenant-governor may sign the same in lieu of the governor, and they may be signed in lieu of the treasurer by any member of the council of state designated by it. (Rev., s. 5024; Code, s. 3567; 1864-5, c. 24; Ex. Sess. 1921, c. 66, s. 8; C. S. 7409.)

§ 142-10. Chief clerk may issue when Treasurer unable to act.—Whenever it shall appear by formal finding of the Governor and Council of State, within seven days before any bonds or notes of the State or any interest thereon shall fall due, that it is advisable to issue notes of the State to provide for the renewal or payment of such bonds, notes or interest and that the State Treasurer is unable for any reason to negotiate or to issue such notes, it shall be the duty of the chief clerk of the State treasury, if the issuance of such notes shall have been authorized by law, upon certification to him of such finding, and in the name of the State Treasurer, to make all necessary negotiations and to sign and deliver such notes for value and to attach thereto the seal of the State Treasurer. (1927, c. 12.)

§ 142-11. When bonds deemed duly executed.—State bonds duly authorized by law and approved by the Governor and Council of State shall be regarded as duly executed by proper officers if signed and sealed while in office by the officer or officers then authorized to sign and seal the same, notwithstanding one or more of such officers shall not be in office at the time of actual delivery of such bonds. (1925, c. 2.)

§ 142-12. State bonds exempt from taxation.—The original bonds or certificates of debt of the state, which have been issued since the first day of January, one thousand eight hundred and fifty-three, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation. (Rev., s. 5022; Code, s. 3565; R. C., c. 90, s. 5; 1852, c. 10, s. 4; C. S. 7410.)

§ 142-13. List of surrendered bonds kept; bonds and coupons destroyed.—The treasurer shall pro-

vide a substantially bound book for the purpose, in which he shall make a correct descriptive list of all bonds of the state surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds, being ascertained to be present, shall be consumed by fire in the presence of the governor, the treasurer, the auditor, the attorney general, the secretary of state and superintendent of public instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed. The treasurer shall also provide a certificate setting forth the amount and kind of coupons which have been paid in the past year or biennium, which said coupons shall be consumed by fire in the same way and manner as is provided for the cremation of bonds referred to herein. (Rev., s. 5035; Code, s. 3578; 1879, c. 98, s. 8; 1941, c. 28; C. S. 7415.)

§ 142-14. Issuance of temporary bonds.—Whenever the State Treasurer shall be authorized by law to issue bonds or notes of the State, and all acts, conditions and things required by law to happen, exist and be performed, before the delivery thereof for value, shall have happened, shall exist and shall have been performed, except the printing, lithographing or engraving of the definitive bonds or notes authorized and the execution thereof, the State Treasurer is authorized, by and with the consent of the Governor and Council of State, to issue and deliver for value temporary bonds or notes, with or without coupons, which may be printed or lithographed in any denomination or denominations which may be a multiple of one thousand dollars, and shall be signed and sealed as shall be provided for the signing and sealing of such definitive bonds or notes, and shall be substantially of the tenor of such definitive bonds or notes except as herein otherwise provided and except that such temporary bonds or notes shall contain such provisions as the treasurer may elect as to the conditions of payment of the semiannual interest thereon. Every such temporary bond or note shall bear upon its face the words "Temporary Bond (or Note) Exchangeable for Definitive Bond." Upon the completion and execution of the definitive bonds or notes, such temporary bonds or notes shall be exchangeable without charge therefor to the holder of such temporary bonds or notes for definitive bonds or notes of an equal amount of principal. Such exchange shall be made by the treasurer or by a bank or trust company in North Carolina or elsewhere appointed by him as agent which shall have a capital and surplus of not less than the amount of the definitive bonds or notes to be so exchanged, and in making such exchange the treasurer shall detach from the definitive bonds or notes all coupons which represent interest theretofore paid upon the temporary bonds or notes to be exchanged therefor, and shall cancel all such coupons; and upon such exchange such temporary bonds or notes and the coupons attached thereto, if any, shall be forthwith canceled by the treasurer or such agent. Until so exchanged, temporary bonds and notes issued under the authority hereof shall in all respects be entitled to all the rights and privileges of the definitive securities. (1925, c. 43.)

§ 142-15. Reimbursement of treasurer for interest. — Whenever it shall become necessary for the state treasurer to borrow money to provide the maintenance fund for any state institution, the said treasurer is authorized to deduct from the sum appropriated for maintenance of said institution the amount of interest the treasurer shall have to pay for the use of said fund. This section shall apply to all future laws creating a maintenance fund for any state institution, unless said laws shall specifically state otherwise. (1923, c. 210; C. S. 7466(a).)

Art. 2. Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

§ 142-16. Governor and Council of State may borrow on note.—The Governor and Council of the State may authorize and empower the State Treasurer in the intervals between sessions of the General Assembly, to borrow money on short term notes to meet any emergency arising from the destruction of the State's property, whether used by department or institution, or from some unforeseen calamity not amounting to its destruction. (1927, c. 49, s. 1.)

§ 142-17. Recital of facts entered on minutes; directions to treasurer; limit of amount.—The Council of State, when such emergency arises during such interval, shall recite upon its minutes the facts out of which it does arise, and thereupon direct the State Treasurer to borrow from time to time money needed to meet such emergency or calamity, not exceeding, however in the whole, five hundred thousand ($500,000) dollars in the aggregate in the period between the adjournment of the present session of the General Assembly and the convening of the General Assembly in regular session in one thousand nine hundred and twenty-nine and not exceeding five hundred thousand ($500,000) dollars in the aggregate in any succeeding interval between regular sessions of the General Assembly, and to execute in behalf of the State of North Carolina notes for said money so borrowed to run not exceeding two years, and to bear interest not exceeding five per cent per annum, payable semiannually. Said notes shall be in such forms as the State Treasurer may determine, and the obligations for the interest thereupon after maturity shall be receivable in payment of taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. The said notes shall be exempt from all State, County and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1927, c. 49, s. 2.)

§ 142-18. Report to General Assembly. — At each, the next regular or extra session of the General Assembly, the Governor and Council of State shall report to it the proceedings of the

Governor and Council of State in borrowing money under this article, setting out fully the facts upon which they held that the emergency existed which authorized such borrowing. (1927, c. 49, s. 3.)

§ 142-19. Power given to director of budget to authorize State treasurer to borrow money.— The director of the budget by and with the consent of the Governor and Council of State shall have authority to authorize and direct the State Treasurer to borrow, in the name of the State and pledge the credit of the State for the payment thereof, in anticipation of the collection of taxes, such sums as may be necessary to make the payment on appropriations to the various institutions, departments and agencies of the State as even as possible so as to preserve the best interest of the State in the conduct of the various institutions, departments and agencies of the State during each fiscal year. (1927, c. 195.)

Art. 3. Refunding Bonds.

§ 142-20. Title of article. — This article shall be known and may be cited as the "State Refunding Bond Act." (1935, c. 445, s. 1.)

§ 142-21. Refunding bonds authorized for state.—The state treasurer is hereby authorized, by and with the consent of the governor and council of State, to issue at one time or from time to time bonds of the State for the purpose of refunding any or all bonds of the State then outstanding, but no such refunding bonds shall be issued except when such refunding may be accomplished at a saving to the State of North Carolina by securing a lower rate of interest than the interest rate on the bonds to be refunded. (1935, c. 445, s. 2.)

§ 142-22. Date and rate of interest; maturity.— Such refunding bonds shall bear such date or dates and such rate or rates of interest, not exceeding six per cent per annum, payable semi-annually, and shall mature at such time or times, not more than forty years from date, as may be fixed by the governor and council of state. (1935, c. 445, s. 3.)

§ 142-23. Execution; interest coupons; registration; form and denomination.—Such refunding bonds shall be signed by the governor and the state treasurer, and sealed with the great seal of the State, and shall carry interest coupons which shall bear the signature of the state treasurer, or a facsimile thereof, and such bonds shall be subject to registration as is now or may hereafter be provided by law for state bonds, and the form and denomination thereof shall be such as the state treasurer may determine in conformity with this article. (1935, c. 445, s. 4.)

§ 142-24. Sale of bonds.—Subject to determination by the governor and council of state as to the manner in which such bonds shall be offered for sale, whether by publishing notices in certain newspapers and financial journals or by mailing notices or by inviting bids by correspondence or otherwise, the state treasurer is authorized to sell such bonds at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest. (1935, c. 445, s. 5.)

§ 142-25. Proceeds directed to separate fund; use limited.—The proceeds of such bonds shall be placed by the state treasurer in a separate fund and used solely for the purpose specified in § 142-21. (1935, c. 445, s. 6.)

§ 142-26. State's credit and taxing power pledged.—The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds herein authorized. (1935, c. 445, s. 7.)

§ 142-27. Coupons receivable for debts due state.—The coupons of said bonds after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1935, c. 445, s. 8.)

§ 142-28. Exemption from taxation. — All of such bonds and coupons shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on such bonds shall not be subject to taxation as for income, nor shall such bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1935, c. 445, s. 9.)

§ 142-29. Investment in bonds made lawful for fiduciaries.—It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any moneys in their hands in such bonds. (1935, c. 445, s. 10.)

Art. 4. Sinking Fund Commission.

§ 142-30. Title of article.—This article shall be known as "The Sinking Fund Commission Act." (1925, c. 62, s. 1.)

§ 142-31. Creation; duties. — A State Sinking Fund Commission is hereby created, the members of which shall be the Governor, State Treasurer and Auditor, who shall serve without additional compensation. It shall be the duty of the commission to see that the provisions of all sinking fund laws are complied with and to provide for the custody, investment and application of all sinking funds. The commission and its members may call upon the Attorney-General for legal advice as to their duties, powers and responsibilities hereunder. (1925, c. 62, s. 2.)

§ 142-32. To adopt rules; organization. — The commission shall adopt rules for its organization and government and the conduct of its affairs. Its chairman shall be the Governor and its secretary the Auditor. All clerks and employees in the office of the Governor, Auditor and Treasurer may be called upon to assist the commission. (1925, c. 62, s. 3.)

§ 142-33. Treasurer of commission; liability.— The State Treasurer shall be ex officio treasurer of the commission and the custodian of the sinking fund and the investments thereof. He and the sureties upon his official bond as State Treasurer shall be liable for any breach of faithful performance of his duties under this article as well as his duties as State Treasurer, and his official bond shall be made to comply with this requirement. (1925, c. 62, s. 4.)

§ 142-34. Investment of sinking funds. — Moneys in the sinking funds herein shall not be loaned to any department of the State, but shall be invested by the commission in:

(a) Bonds of the United States or bonds or securities fully guaranteed both as to principal and interest by the United States.

(b) Bonds or notes of the State of North Carolina, and in the obligations of any quasi-public corporation in which the State of North Carolina owns not less than fifty-one per cent of its capital stock.

(c) Bonds of any other state whose full faith and credit are pledged to the payment of the principal and interest thereof.

(d) Bonds of any county in North Carolina, any city or town in North Carolina and any school district in North Carolina, provided such bonds are general obligations of the subdivision or municipality issuing the same and provided that there is no limitation of the rate of taxation for the payment of principal and interest of the bonds. (1925, c. 62, s. 5; 1931, c. 415; 1935, c. 146; 1937, c. 82; 1941, c. 17, s. 1.)

§ 142-35. Purchase of securities.—No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. No securities shall be purchased except bonds of the United States, or bonds or securities fully guaranteed both as to principal and interest by the United States, or bonds or notes of the state of North Carolina, unless the vendor shall deliver with the securities an opinion of an attorney at law, believed by the commission to be competent and to be recognized by investment dealers as an authority upon the law of public securities, to the effect that the securities purchased are valid and binding obligations of the issuing governmental agency or unit, unless the commission shall be satisfied that such opinion can be readily obtained when required, it being the intention of this requirement to assure the commission that such securities are valid and that they will not be unsalable by the commission because of doubts as to the validity thereof. The commission is empowered to appoint one or more of its members for the purpose of making purchases and sales of securities. (1925, c. 62, s. 6; 1941, c. 17.)

§ 142-36. Interest of securities held as part of sinking fund.—The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. Bonds and notes of the State of North Carolina purchased for any sinking fund shall not be canceled before maturity, but shall be kept alive, and the interest and principal thereof shall be paid into the sinking fund for which the same are held. (1925, c. 62, s. 7.)

§ 142-37. Registration of securities; custody thereof.—Where practicable, securities purchased for sinking funds shall be registered as to the principal thereof in the name of "The State of North Carolina for the sinking fund for" (here briefly identify the sinking fund) and may be released from such registration by the signature of the State Treasurer, but the treasurer shall not make such release unless and until the securities to be so released shall have been sold by the commission or until the commission shall have ordered such release. The treasurer shall rent a safety deposit box or boxes in some responsible bank in Raleigh in which he may keep all securities purchased for sinking funds and in which it shall be his duty to keep all such securities not registered as to the principal thereof. (1925, c. 62, s. 8.)

§ 142-38. Expenses of commission.—The necessary expense of the commission for the rental of a safety deposit box, publication of advertisements, postage, insurance upon securities in transit, etc., not exceeding one-twentieth of one per cent of the amount in all sinking funds at the end of any fiscal year, shall be a charge upon the general fund. (1925, c. 62, s. 9.)

§ 142-39. Report of commission. — The commission shall make a report in writing to the General Assembly not later than the tenth day of each regular and extraordinary session thereof, stating the nature and amount of all receipts and disbursements of each sinking fund since the last preceding report, and the amount contained in each fund, and giving an itemized statement of all investments of each fund as to name of security, purpose of issuance, date of maturity and interest rate, which report shall be spread upon the journals of the Senate and House of Representatives. (1925, c. 62, s. 10.)

§ 142-40. Embezzlement by member of commission. — If any member of the commission shall embezzle or otherwise willfully and corruptly use or misapply any funds or securities in any sinking fund for any purpose other than that for which the same are held, such member shall be guilty of a felony, and shall be fined not more than ten thousand dollars, or imprisoned in the State's Prison not more than twenty years, or both, at the discretion of the court. (1925, c. 62, s. 11.)

§ 142-41. False entry by secretary or treasurer.—If the secretary or treasurer of the commission shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as such officer, or shall wittingly or falsely form, or cause to be formed, any statement of the condition of any sinking fund, or any statement required by this article to be made, with intent in any of said instances to defraud the State, or any person or persons, such secretary or treasurer, as the case may be, shall be guilty of a misdemeanor and fined at the discretion of the court not exceeding three thousand dollars, and imprisoned for not exceeding three years. (1925, c. 62, s. 12.)

§ 142-42. Interest of member in securities; removal.—If any member of the commission shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in any securities purchased or sold by the commission, or shall act as agent for any investor or dealer for any securities to be purchased or sold by the commission, or shall receive directly or indirectly any gift, emolument, reward, or promise of reward for his influence in recommending or procuring any such purchase or sale, he shall forthwith be

removed from his position, and shall upon conviction be guilty of a misdemeanor, and fined not less than fifty dollars nor more than five hundred dollars, and be imprisoned, in the discretion of the court. (1925, c. 62, s. 13.)

§ 142-43. Report of sufficiency of sinking fund.—When the funds or securities in any sinking fund shall be found by the sinking fund commission to be sufficient with interest accretions reasonably to be expected for the retirement at maturity of all bonds for which such sinking fund is held, and when the commission shall file a statement of such finding in the office of the Auditor and in the office of the State Treasurer, further payments into such sinking fund shall be suspended and shall not again be made unless such fund should thereafter become insufficient for any reason. (1925, c. 62, s. 18.)

Art. 5. Sinking Funds for Highway Bonds.

§ 142-44. Highway bonds; annual payments.—For the retirement of the principal of nineteen million five hundred thousand dollars highway serial bonds heretofore issued under chapter two, Public Laws of one thousand nine hundred and twenty-one, Regular Session, a sinking fund is created, into which fund the state treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of one hundred thousand dollars. (1923, c. 188, s. 2; 1925, c. 62, s. 15; C. S. 7472(s).)

§ 142-45. Highway bonds not issued; annual payments.—For the retirement of the principal of bonds issued for highway purposes, chapter two, Public Laws of one thousand nine hundred and twenty-one, Regular Session, over and above the nineteen million five hundred thousand dollars heretofore issued, a sinking fund is hereby created into which fund the state treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of four hundred thousand dollars. (1923, c. 188, s. 3; 1925, c. 62, s. 16; C. S. 7472(t).)

§ 142-46. Source of funds.—All of the highway bond sinking fund payments to be made under §§ 142-44 and 142-45, aggregating five hundred thousand dollars ($500,000) annually, shall be made from the revenues collected under the provisions of said chapter two (2) public laws of 1921, if such revenues are sufficient therefor after setting aside therefrom the moneys provided by said chapter two (2) for the maintenance of the State Highway and Public Works Commission and the expenses of collecting highway revenues, and after setting aside moneys necessary for the payment of maturing principal of and interest upon highway bonds of the State: Provided, however, that no holder of any highway bonds of the State shall be prejudiced by this amendment or by any act amendatory of this section passed subsequent to the issuance of such bonds, and any such bondholder shall be entitled to all rights to which he would be entitled if no such amendment had been made. (1923, c. 188, s. 4; 1925, c. 45, s. 4; 1925, c. 133, s. 4; C. S. 7472(u).)

Art. 6. Citations to Bond and Note Acts.

1. Bonds to fund bonds issued pursuant to any act of the General Assembly passed prior to May 20, 1861, exclusive of bonds issued for the construction of the North Carolina Railroad; bonds issued pursuant to 1865, c. 3; bonds issued pursuant to 1867, c. 56; bonds issued pursuant to an act ratified March 10, 1866, entitled "An Act to Provide for the Payment of the State Debt Contracted Before the War"; bonds issued pursuant to an act ratified August 10, 1868, entitled "An Act to Provide for Funding the Matured Interest on the Public Debt"; or any registered certificates belonging to the Board of Education pursuant to an act of the General Assembly of 1867. Consolidated Statutes, ss. 7411-7414, 7416-7432; 1879, c. 98, s. 1; 1901, c. 126; 1909, c. 399; 1913, c. 131; 1919, c. 314.

2. Bonds for the care of the insane, and to pay the deficit in the account of the State Hospital at Morganton. Consolidated Statutes, ss. 7433-7436; 1909, c. 510.

3. Bonds for payment of state bonds issued pursuant to 1903, c. 750 and 1905, c. 543, and to pay the holders of bonds of the issue upon which the South Dakota judgment was rendered. Consolidated Statutes, ss. 7440-7444; 1909, c. 718; 1911, c. 73.

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7. Bonds for construction and improvement of Caswell Training School at Kinston. Consolidated Statutes, ss. 5905-5912; 1911, c. 89, ss. 9, 10, 11; 1917, c. 269.

8. Bonds for permanently enlarging the state's educational and charitable institutions. Consolidated Statutes, ss. 7459-7463; 1917, c. 154; Joint Resolution No. 40, 1917; 1919, c. 44; 1919, c. 314.

9. Bonds for payment of North Carolina railroad bonds. Consolidated Statutes, ss. 7453-7458; 1919, c. 1; 1919, c. 11.

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13. Special Building Fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1921, c. 147.

14. Special Building Fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. Consolidated Statutes, ss. 5688-5694; 1923, c. 136, ss. 278-284.

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20. Bonds to acquire and develop state prison farm. 1927, c. 152; 1931, c. 110.

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143-166. Law Enforcement Officers' Benefit and Retirement Fund.

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Art. 1. Executive Budget Act.

§ 143-1. Scope and definitions. — This article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Budget Bureau and to be performed by it, but it shall mean when used otherwise any state agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any state funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the state, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1.)

§ 143-2. Purposes.—It is the purpose of this article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be Ex-officio Director of the Budget and shall be the responsible head of the Budget Bureau, which Bureau is a part of the Governor's office. The Governor shall on or before the first day of July next after his inauguration appoint a budget officer, who shall be known as the "Assistant to the Director," and such officer shall serve for a term of four years beginning on the first day of July next after the inauguration of each Governor, at a salary to be fixed by the Director, who makes the appointment. The purpose of this article is to include within the powers of the Budget Bureau all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Budget Bureau in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Budget Bureau shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise. (1925, c. 89, s. 2; 1929, c. 100, s. 2.)

§ 143-3. Examination of officers and agencies; disbursements.—The Director shall have power to examine under oath any officer or any head, any clerk or employee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring

such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited; to supervise generally the accounting and auditing systems thereof now in force, and to inaugurate such changes in respect thereto which may be necessary, in his opinion, to exhibit and to furnish complete and correct information as to its financial condition, including the budget accounts of such departments, bureaus or associations within the terms of this article. The cost of making all audits and effecting all necessary changes in the system of accounting shall be paid from the regular maintenance appropriation made by the General Assembly for such bureaus, departments, divisions, institutions, commissions, persons or agencies that may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor and the State Treasurer, shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3; c. 337, s. 4.)

§ 143-4. Advisory Budget Commission. — The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, and two other persons to be appointed by the Governor, shall constitute the Advisory Budget Commission, whose duties shall be such as are hereinafter defined.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars per day for each day which they shall serve and their expenses. The Advisory Budget Commission shall be called in conference in January and July of each year, upon ten days' notice by the Director or Assistant to the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

Vacancies on the Commission shall be filled by the Governor: Provided, any vacancy caused by the death, resignation, or other removal from office of any member of the Commission by virtue of his office as a member of the General Assembly shall be filled by the Governor upon the recommendation of the presiding officer of that branch of the General Assembly in which such member holds office. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295.)

§ 143-5. Appropriation Rules.—All moneys heretofore and hereafter appropriated shall be deemed and held to be within the terms of this article and subject to its provisions unless it shall be otherwise provided in the act appropriating the same; and no money shall be disbursed from the State Treasury except as herein provided. (1925, c. 89, s. 5; 1929, c. 100, s. 5.)

§ 143-6. Information from departments and agencies asking state aid.—On or before the first day of September biennially, in the even numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Since it is not practicable to require the members of the Judicial system who preside over courts to attend and furnish such information, upon request of the Director, the Attorney-General shall furnish such information, data and estimates and expenditures as may be desired in reference to the Judicial Department of this State. (1925, c. 89, s. 6; 1929, c. 100, s. 6.)

§ 143-7. Itemized statements and forms.—The statements and estimates required under § 143-6 shall be itemized in accordance with the Budget Classification adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Budget Bureau. (1925, c. 89, s. 7; 1929, c. 100, s. 7.)

§ 143-8. Statements of Auditor as to legislative expenditures.—On or before the first day of September, biennially, in the even numbered years, the State Auditor shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the Budget Classification adopted by the Director and approved and certified by the presiding officer of each House for each year of the ensuing biennium, beginning with the first day of July thereafter; and a detailed statement of expenditures of the Judiciary and any other institution or commission that may be requested by the Director for each year of the current fiscal biennium, and upon such request by the Director an estimate of its financial needs as provided by law, itemized in accordance with the Budget Classification adopted by the Director for each year of the ensuing biennium, beginning with the first day of July thereafter. The State Auditor shall transmit to the Director with these estimates an ex-

planation of all increases or decreases. These estimates and accompanying explanations shall be included in the Budget by the Director with such recommendations as the Director may desire to make in reference thereto. (1925, c. 89, s. 8; 1929, c. 100, s. 8.)

§ 143-9. Information to be furnished upon request.—The departments, bureaus, divisions, officers, commissions, institutions, or other State agencies or undertakings of the State, upon request, shall furnish the Director, in such form and at such time as he may direct, any information desired by him in relation to their respective activities or fiscal affairs. The State Auditor shall also furnish the Director any special, periodic, or other financial statements as the Director may request. (1925, c. 89, s. 10; 1929, c. 100, s. 9.)

§ 143-10. Preparation of budget and public hearing. — The members of the Commission shall, at the request of the Director, attend such public hearing and other meeting as may be held in the preparation of the Budget. Said Commission shall act at all times in an advisory capacity to the Director on matters relating to the plan of proposed expenditures of the State Government and the means of financing the same.

The Director, together with the Commission, shall provide for public hearings on any and all estimates to be included in the Budget, which shall be held during the months of October and/or November and/or such other times as the Director may fix in the even numbered years, and may require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or undertakings, and such other persons, corporations and associations, using or receiving or asking for any State funds. (1925, c. 89, s. 11; 1929, c. 100, s. 10.)

§ 143-11. Survey of departments.—On or before the fifteenth day of December, biennially in the even numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbefore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the Budget for the next biennial period, he shall prepare their report in the form of a proposed Budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed Budget based on his own conclusions and judgment and shall cause to be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views. The Budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the Classification adopted by the Director, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the Budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The Budget shall clearly differentiate between General Fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the Budget with:

(1) A Budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June thirtieth.

(3) A statement of special funds.

(4) A statement showing the itemized estimates of the condition of the State Treasury as of the beginning and end of each of the next two appropriation years.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the Budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix. (1925, c. 89, s. 12; 1929, c. 100, s. 11.)

§ 143-12. Bills containing proposed appropriations. — The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

(a) A bill containing all proposed appropriations of the Budget for each year in the ensuing biennium, which shall be known as the "Budget Appropriation Bill."

(b) A bill containing the views of the Budget Bureau with respect to revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill," which will in the opinion of the Director and the Commission provide an amount of revenue for the ensuing biennium, sufficient to meet the appropriations contained in the Budget Appropriation Bill.

(c) A bill containing proposed methods and machinery for the collection of taxes and the listing of property for taxation, in the several counties of the State, and municipalities, which shall be known as the "Budget Machinery Bill," and such bill shall contain the judgment and the result of all the latest, most improved methods of listing and collection of taxes, for counties and municipalities, according to the best information obtainable by the Commission and the Director, with a view to the ease and simplification of the methods of the listing of property for such taxation and for the collection of the same, having in view the necessity of counties and municipalities to collect the highest percentage possible of taxes levied at the minimum cost.

To the end that all expenses of the State may be brought and kept within the Budget, the Budget Appropriation Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Budget Bureau, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the director and the commission shall not agree as to the appropriation, revenue and machinery bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and shall cause to be submitted therewith such statements of disagreement, and the particulars thereof, as the Commission, or any of its members, shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14.)

§ 143-13. Printing copies of budget report and bills and rules for the introduction of the same. —The Director shall cause to be printed one thousand copies each of the Budget report, the Budget Appropriation Bill, the Budget Revenue Bill, and the Budget Machinery Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Budget Appropriation Bill shall be introduced by the Chairman of the Committee on Appropriations in each House of the General Assembly, and the Budget Revenue Bill and the Budget Machinery Bill shall be introduced by the Chairmen of the Finance Committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, the Director shall deliver the Budget report and the Budget Appropriation Bill and the Budget Revenue Bill and the Budget Machinery Bill to the Governor-elect, on or before the fifteenth day of December, and the said Budget report, Appropriation, Revenue and Machinery Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15.)

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill. —The Appropriations Committees of the House of Representatives and the Senate and sub-committees thereof shall sit jointly in open sessions while considering the Budget and such consideration shall embrace the entire Budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the Budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, boards, commission, and agencies of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or sub-committees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or sub-committees thereof. The said joint committee or any sub-committee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be such as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. In so far as this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a change has been made by an express rule of such branch thereof. (1925, c. 89, s. 15; 1929, c. 100, s. 16.)

§ 143-15. Reduction and increase of items by general assembly.—The provisions of this article shall continue to be the legislative policy with reference to the making of appropriations and shall be treated as rules of both branches of the General Assembly until and unless the same may be changed by the General Assembly either by express enactment or by rule adopted by either branch of the General Assembly.

The General Assembly may reduce or strike out such item in the Budget Appropriation Bill as it may deem to be the interest of the public service, but neither House shall consider further or special appropriations until the Budget Appropriation Bill shall have been enacted in whole or in part or rejected, unless the Governor shall submit and recommend an Emergency Appropriation Bill or Emergency Appropriation Bills, which may be amended in the manner set out herein, and such Emergency Appropriation Bill, or Bills, when enacted, shall continue in force only until the Budget Appropriation Bill shall become effective, unless otherwise provided by the General Assembly.

The General Assembly may also increase any appropriation set out in the Budget Appropriation Bill and may provide additional appropriations for other purposes if additional revenue or revenues, equal to the amount of such additional appropriations and increases, are provided for by corresponding amendment to the Budget Revenue Bill. No bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described and shall provide an adequate source of revenue for defraying such appropriation, or unless it appears from the Budget Report or the Budget Revenue Bill that there is sufficient revenue available therefor. The appropriation, or appropriations, in such bills shall be in accordance with the classification used in the Budget. (1925, c. 89, s. 16; 1929, c. 100, s. 17.)

§ 143-16. Article governs all departmental, agency, etc., appropriations.—Every State department, bureau, division, officer, board, commission, institution, State agency, or undertaking, shall operate under an appropriation made in accordance with the provisions of this article; and no State department, bureau, division, officer, board, commission, institution or other State agency or undertaking shall expend any money, except in pursuance of such appropriation and the rules, requirements and regulations made pursuant to this article. (1925, c. 89, s. 17; 1929, c. 100, s. 18.)

§ 143-17. Requisition for allotment. — Before an appropriation to any spending agency shall become available, such agency shall submit to the Director, not less than twenty days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who shall be governed in his control of expenditures by said allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director in writing. (1925, c. 89, s. 18; 1929, c. 100, s. 19.)

§ 143-18. Unincumbered balances to revert to Treasury; capital appropriations excepted.—All unincumbered balances of maintenance appropriations shall revert to the State Treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of the biennial fiscal period; except that capital expenditures for the purchase of land or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made. (1925, c. 18, s. 19; 1929, c. 100, s. 20.)

§ 143-19. Help to director.—The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this article; and shall fix the compensation of all persons employed under this article; which shall be paid by the State Treasurer upon the warrant of the State Auditor. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this article, shall be reported to the General Assembly by the Director, and all payments made under this article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Budget Bureau. (1925, c. 89, s. 20; 1929, c. 100, s. 21.)

§ 143-20. Examination accounts state departments.—The Director shall examine or cause to be examined annually before and/or after the close of each fiscal year, the accounts of the State Treasurer and the Auditor and shall examine or cause to be examined, the accounts and vouchers relating to all money received into and paid out of the State Treasury during the preceding fiscal year, and shall cause a complete audit to be made annually of the condition of the State Treasury and shall certify and report to the Budget Bureau such audits and the Budget Bureau, through the Governor, shall transmit such reports to the General Assembly at its next session. (1925, c. 89, s. 22; 1929, c. 100, s. 22.)

§ 143-21. Issuance of subpoenas.—The Director shall have and is hereby given full power and authority to issue the writ of subpœna for any and all persons who may be desired as witnesses concerning any matters being inquired into by the Director of the Commission, and such writs when signed by the Director shall run anywhere in this State and be served by any civil process officer without fees or compensation. Any failure to serve writs promptly and with due diligence, shall subject such officer to the usual penalties and liabilities and punishment as are now provided in the cases of like kind applying to sheriffs, and any persons who shall fail to obey said writ shall be subject to punishment for contempt in the discretion of the court and to be

fined as witnesses summoned to attend the Superior Court, and such remedies shall be enforced against such offending witnesses upon motion and notice filed in the Superior Court of Wake County by the Attorney-General under the direction of the Director. Any and all persons who shall be subpœnæd and required to appear before the Director or the Commission as witnesses concerning any matters being inquired into shall be compellable and required to testify, but such persons shall be immune from prosecution and shall be forever pardoned for violation of law about which such person is so required to testify. (1925, c. 89, s. 25; 1929, c. 100, s. 23.)

§ 143-22. Surveys, studies and examinations of departments and institutions.—The Director is hereby given full power and authority to make such surveys, studies, examinations of departments, institutions and agencies of this State, as well as its problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments and institutions and agencies of the State, and for the purpose of determining whether the proper system of modern accounting is had in such departments, institutions, commissions and agencies and to require and direct the installation of the same whenever, in his opinion, it is necessary and proper in order to acquire and to secure a perfect correlated and control system in the accounting of all departments, institutions, commissions, divisions, and State agencies including every department or agency handling or expending State funds, and to make surveys, examinations and inquiries into the matter of the various activities of the State, and to survey, appraise, examine and inspect and determine the true condition of all property of the State, and what may be necessary to protect it against fire hazard, deterioration, and to conserve its use for State purposes, and to make and issue and to enforce all necessary, needful or convenient rules and regulations for the enforcement of this article. All auditing systems or uses prescribed, or to be prescribed hereunder, shall be administered by the Auditor. (1925, c. 89, s. 26; 1929, c. 100, s. 23.)

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.—All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the Budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget. (1929, c. 100, s. 24.)

§ 143-24. Borrowing of money by State Treasurer.—The Director of the Budget, by and with the consent of the Governor and Council of State, shall have authority to authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum or sums as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State institutions, departments, bureaus, and agencies during each fiscal year. (1929, c. 100, s. 25.)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.—All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Commissioner of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this act are to provide and insure that there shall be no overdraft or deficit in the General Fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this act as to prevent any such overdraft or deficit. (1929, c. 100, s. 26.)

§ 143-26. Director to have discretion as to manner of paying annual appropriations.—Unless otherwise provided, it shall be discretionary with the Director of the Budget whether any annual appropriation shall be paid in monthly, quarterly or semiannual installments or in a single payment. (Rev., s. 5372; 1897, c. 368; 1925, c 275, s. 9; 1929, c. 100, s. 27; C. S. 7683.)

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.—All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them, are declared to be in addition to such

receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs of maintenance of such institutions, departments, and agencies. (1929, c. 100, s. 28.)

§ 143-28. All State agencies under provisions of this article.—It is the intent and purpose of this article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this article. Any power expressed in this article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this article shall be liberally construed. (1925, c. 89, s. 28; 1929, c. 100, s. 29.)

§ 143-29. Delegation of power by director.—Any power or duty herein conferred on the Governor as Director may be exercised and performed by such person or persons as may be designated or appointed by him from time to time in writing. (1925, c. 89, s. 29; 1929, c. 100, s. 30.)

§ 143-30. Budget of state institutions.—The several institutions of the State, boards, departments, commissions, agencies, persons or corporations, included with the terms hereof to which appropriations are made now or hereafter for permanent improvements or for maintenance, shall, before any of such appropriations, whether for permanent improvements or for maintenance, are available or paid to them or any one of them, budget their requirements and present the same to the Director of the Budget on or before the first day of June of each odd numbered year hereafter. There shall be a separate Budget presented for permanent improvements and for maintenance. Each of said Budgets shall contain the requirements of said institutions, boards, commissions, and agencies, persons and corporations, and undertakings, as hereinbefore defined, for the succeeding two years. Each institution, board, department, commission, agency, person or corporation, in the preparation of such Budget, shall follow as nearly as may be the itemized recommendations of the Director of the Budget and Advisory Budget Commission and/or as amended by the General Assembly. The forms, except when modified and changed by authority of the Director of the Budget, shall be the forms used in presenting the requests. (1925, c. 230, s. 2; 1929, c. 100, s. 32.)

§ 143-31. Building and permanent improvement funds spent in accordance with budget.—All buildings and other permanent improvements, which shall be erected and/or constructed, shall be erected and/or constructed, and carried on and the money spent therefor in strict accordance with the Budget requests of such institution, board, commission, agency, person, or corporation filed with the Director of the Budget. The expenditure of appropriations for maintenance shall be in strict accordance with the Budget recommendations for such institution, board, commission, agency, person or corporation and/or as amended or changed by the General Assembly. It shall be the duty of the Director of the Budget to see that all money appropriated for either permanent improvements or maintenance shall be expended in strict accordance with the Budget recommendations and/or as amended by the General Assembly for each department, institution, board, commission, agency, person or corporation. If the Director of the Budget shall ascertain that any department, institution, board, commission, agency, person or corporation has used any of the moneys appropriated to it for any purpose other than that for which it was appropriated and budgeted, as herein required, and not in strict accordance with the terms of this article, the Director of the Budget shall have the power and he is hereby authorized to notify such institution, board, commission, agency, person or corporation that no further sums from any appropriation made to it will be available to such department, institution, board, commission, agency, person or corporation until and after the persons responsible for the diversion of the said funds shall have replaced the same, and the Director of the Budget shall have the power and he is hereby authorized to notify the Auditor of the State not to approve or issue any further warrants for such department, institution, board, commission, agency, person or corporation for any unexpended appropriation and the Auditor is hereby prohibited from approving or issuing any further warrants for such department, institution, board, commission, agency, person or corporation until he shall have been otherwise directed by the Director of the Budget. (1925, c. 230, s. 3; 1929, c. 100, s. 33.)

§ 143-32. Person expending an appropriation wrongfully. — Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney-General for the use of the State of North Carolina, which action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in § 1-83, subsection 2. (1925, c. 230, s. 4; 1929, c. 100, s. 34.)

§ 143-33. Intent.—It is an intent and purpose of this article that all departments, institutions, boards, commissions, agencies, persons or corporations to which appropriations for permanent improvements and/or maintenance

are made, shall submit to the Director of the Budget their requests for the payment of such appropriations in the form of a budget, following the recommendations made by the Director of the Budget and the Advisory Budget Commission and/or as amended by the General Assembly. (1925, c. 230, s. 5; 1929, c. 100, s. 35.)

§ 143-34. Penalties and punishment for violations. — A refusal to perform any of the requirements of this article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred and fifty ($250.00) dollars, to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney-General for the use of the State of North Carolina, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon thirty days' notice in writing to such offender. (1929, c. 100, s. 36.)

Art. 2. Division of Personnel under the Budget Bureau.

§ 143-35. Division established.—There is hereby established in the governor's office under the budget bureau a division of personnel, to be under the supervision of the assistant director of the budget, who shall, subject to the provisions of this article, be vested with the powers and authorities and charged with duties and obligations herein described: Provided, that no additional compensation shall be allowed said assistant director of the budget on account of the duties performed hereunder. (1931, c. 277, s. 1; 1933, c. 46, s. 1.)

§ 143-36. Survey of needs for personal service in all branches of state government.—The assistant director of the budget, together with the head of each and every department, bureau and/or commission of the state, shall make a survey and investigation of the needs for personal service in all state departments and bureaus and of the cost in value of the services rendered by all subordinates and employees of such departments and bureaus, and from time to time publish the information so assembled. (1931, c. 277, s. 3; 1933, c. 46, s. 3.)

§ 143-37. Classification of number of employees needed; nature of work; standard of salaries and wages; hours of labor, etc.—The assistant director of the budget shall, after making such survey and investigation and upon the information so assembled, together with the head of each and every department, bureau and/or commission, fix, determine and classify the necessary number of subordinates and employees in any and all departments and bureaus, the type and nature of work to be performed by such subordinates and employees, and/or positions to be filled by subordinates and employees in said departments and bureaus, and together with the head of each and every department, bureau and/or commission, and with the approval of the advisory budget commission fix, establish and classify a standard of salaries and wages with a minimum salary rate and a maximum salary rate and/or such intermediate salary rate or rates as may be deemed necessary and equitable, to be paid for all such services and positions and to all such subordinates and employees of said departments and bureaus. The assistant director of the budget, together with the head of each and every department, bureau and commission shall also fix, determine and establish the hours of labor in such department and/or bureau and make all such rules and regulations with respect to holidays, vacations or sick leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor as shall be approved as herein provided: Provided that the provisions of this article shall not apply to the maintenance or construction forces of the state highway and public works commission employed on an hourly basis of wages: Provided further, the provisions of this article shall not apply to the supreme court. (1931, c. 277, s. 4; 1933, c. 46, s. 3.)

§ 143-38. Report of survey to governor and agency heads.—As such survey and investigation proceeds and is completed with respect to a particular department or bureau, the assistant director of the budget shall file a report with the governor and with the head of such department or bureau, setting out in such report the number of allowable subordinates and employees, the services to be performed, and/or the positions to be filled and the salaries or wages to be paid to each of the subordinates and employees in said department or bureau. (1931, c. 277, s. 5; 1933, c. 46, s. 3.)

§ 143-39. Findings in such report standard as to personal service.—When said report with respect to any such department or bureau has been so completed and filed with the Governor and the head of such department or bureau, the findings in such report shall then become the fixed standard for the number of, the services to be performed, and/or the positions to be filled by, and the salaries or wages to be paid to, any and all subordinates and employees in the department or bureau to which said report relates, and it shall thereupon be the duty of the head of such department or bureau on the first day of the next month, beginning not less than thirty days subsequent to the reception of said report by him, to put the same into effect, and thereupon, with respect to such department or bureau, the number of employees, the services to be performed, and/or the positions to be filled, and the salaries and wages specified in said report, shall become the only allowable standard for, and with respect to such department or bureau. (1931, c. 277, s. 6.)

§ 143-40. Changes in need for personal service made by assistant director of the budget. — It shall be the duty of the assistant director of the budget to keep informed from time to time of changes in the needs for personal services in the several state departments and bureaus and to reconsider the report hereinbefore provided for and with the approval of the advisory budge

commission to make changes therein in accordance with his findings; and upon report by him to the head of any department or bureau, setting out such findings and changes, it shall be the duty of the head thereof to put such findings and changes into effect on the first day of the next month, beginning not less than thirty days after the receipt by him of such report. (1931, c. 277, s. 7; 1933, c. 46, s. 3.)

§ 143-41. Employment of persons by certification of name to assistant director of the budget and by his investigation.—All persons employed in any bureau, department or commission on the first day of July, one thousand nine hundred and thirty-one, shall be deemed qualified. From and after the first day of July, one thousand nine hundred and thirty-one, if the head of any department or bureau shall desire to fill any vacancy or to employ other and further subordinates or employees, such head may certify the name or names of any applicant or applicants to the assistant director of the budget, who shall immediately inquire into the qualifications of such person and if such person is found duly qualified and the assistant director of the budget shall deem it necessary that the employment be made, the said assistant director of the budget shall fix the salary and approve of the employment. (1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4.)

§ 143-42. Applications for employment to be filed with assistant director of the budget; list of qualified applicants.—The assistant director of the budget may adopt rules and regulations to the end that applicants for positions in the various departments, bureaus, and/or commissions may file with the assistant director of the budget such application for employment and the assistant director of the budget shall examine into the qualifications of such person and may certify for and keep a list of such persons so qualified, which said list shall be open to the inspection of the heads of the various departments, bureaus and commissions and such heads may from time to time fill the positions from such list. (1931, c. 277, s. 9; 1933, c. 46, ss. 3, 5.)

§ 143-43. Copies of personnel reports to state auditor. — The assistant director of the budget shall transmit to the state auditor copies of his report or reports with respect to the various departments and bureaus, and the salaries and wages for such subordinates and employees in the several departments and bureaus shall be paid out of the appropriations for such purpose and in accordance with the schedule set out in said report or reports. (1931, c. 277, s. 10; 1933; c. 46, s. 3.)

§ 143-44. Disputes between assistant director of the budget and agency heads settled by advisory budget commission. — In the event there shall be disagreement between the assistant director of the budget and the head of any department or bureau over the ruling of the assistant director of the budget upon any question involving such department or bureau or any of its subordinates or employees, the matters in dispute shall be heard by the advisory budget commission and the action of said commission thereon shall be final. (1931, c. 277, s. 11; 1933, c. 46, s. 3.)

§ 143-45. Payrolls submitted to assistant director of the budget; approval of payment of vouchers.—All payrolls of all departments, institutions, and agencies of the state government shall prior to the issuance of vouchers in payment therefor be submitted in triplicate to the assistant director of the budget, who shall check the same against the budget allotments to such departments, institutions and agencies for such purposes, and if found to be within said budget allotments, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the state auditor, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the assistant director of the budget. (1931, c. 277, s. 12; 1933, c. 46, s. 3.)

§ 143-46. Salaries derived exclusively from donations.—The Director of the Budget or the Assistant Director of the Budget is hereby prohibited from reducing by any amount or sum whatsoever salaries or travel expenses of those employees of the State of North Carolina whose salaries and travel expenses are entirely derived from donations to the State of North Carolina and which can not be used by the State for any other purpose. (1933, c. 292.)

§ 143-47. Quorum of Advisory Budget Commission.—In all matters where action on the part of the Advisory Budget Commission is required by this article, three members of said Commission shall constitute a quorum for performing the duties or acts required of said Commission. (1931, c. 277, s. 14.)

Art. 3. Division of Purchase and Contract.

§ 143-48. Creation of Division of Purchase and Contract; Director. — There is hereby created in the Governor's office a division to be known as the Division of Purchase and Contract, which division shall be under the supervision and control, subject to provisions of this article, of a Director of Purchase and Contract. (1931, c. 261, s. 1; c. 396.)

§ 143-49. Powers and duties of Director.—The Director of Purchase and Contract provided for in this article shall have power and authority, and it shall be his duty, subject to the provisions of this article:

(a) To canvass all sources of supply, and to contract for the purchase of all supplies, materials and equipment required by the State Government, or any of its departments, institutions or agencies under competitive bidding in the manner hereinafter provided for.

(b) To establish and enforce standard specifications which shall apply to all supplies, materials and equipment, purchased or to be purchased for the use of the State Government for any of its departments, institutions or agencies.

(c) To purchase or contract for all telephones, telegraph, electric light power, postal and any and all other contractual services and needs of the State Government, or any of its departments, institutions, or agencies; or in lieu of such pur-

chase or contract to authorize any department, institution or agency to purchase or contract for any or all such services.

(d) To rent or lease all grounds, buildings, offices, or other space required by any department, institution, or agency of the State Government: Provided, this shall not include temporary quarters for State Highway field forces or convict camps, or temporary places of storage for road materials.

(e) To have general supervision of all storerooms and stores operated by the State Government, or any of its departments, institutions or agencies; to provide for transfer and/or exchange to or between all State Departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to maintain inventories of all fixed property and of all moveable equipment, supplies and materials belonging to the State Government, or any of its departments, institutions or agencies.

(f) To make provision for and to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same. (1931, c. 261, s. 2.)

§ 143-50. Certain contractual powers exercised by other departments transferred to Director.—All rights, powers, duties and authority relating to State printing, or to the purchase of supplies, materials and equipment now imposed upon and exercised by any State department, institution, or agency under the several statutes relating thereto, are hereby transferred to the Director of Purchase and Contract and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Director of Purchase and Contract under the provisions of this article. (1931, c. 261, s. 3.)

§ 143-51. Reports to Director required of all agencies as to needs.—It shall be the duty of all departments, institutions, or agencies of the State Government to furnish to the Director of Purchase and Contract when requested, and on blanks to be approved by him, tabulated estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Director of Purchase and Contract. (1931, c. 261, s. 4.)

§ 143-52. Consolidation of estimates by director; bids; awarding of contract.—The director of purchase and contract shall compile and consolidate all such estimates of supplies, materials and equipment needed and required by all state departments, institutions and agencies to determine the total requirements for any given commodity. If the total requirements of any given commodity will involve an expenditure in excess of two thousand dollars, sealed bids shall be solicited by advertisement in a newspaper of state-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the division of purchase and contract, with the approval of the advisory budget commission, when such other method is deemed more advantageous for the particular item to be purchased. Regardless of the amount of the expenditure, it shall be the duty of the director of purchase and contract to solicit bids direct by mail from reputable sources of supply. Except as otherwise provided for in this article, all contracts for the purchase of supplies, materials or equipment made under the provisions of this article shall wherever possible be based on competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied, their conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the director of purchase and contract with the approval of the advisory budget commission, which rules and regulations shall prescribe among other things the manner, time and place for proper advertisement for such bids, indicating the time and place when such bids will be received, the articles for which such bids are to be submitted and the standard specifications prescribed for such articles, the amount or number of the articles desired and for which the bids are to be made and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids received may be rejected. Each and every bid conforming to the terms of the advertisement herein provided for, together with the name of the bidder, shall be entered on the records, and all such records with the name of the successful bidder indicated thereon shall, after the award or letting of the contract, be open to public inspection. Bids shall be opened in public. A bond for the faithful performance of any contract may be required of the successful bidder in the discretion of the director of purchase and contract. After the contracts have been awarded, the director of purchase and contract shall certify to the several departments institutions and agencies of the state government the sources of supply and the contract price of the various supplies, materials and equipment so contracted for.

The advisory budget commission shall have the necessary authority to adopt rules and regulations governing the following:

(a) Designating a board of award, composed of members of the budget commission, or other regular employees of the state or its institutions (who shall serve without added compensation), to act with the director in canvassing bids and awarding contracts.

(b) Fixing a quorum of the board of award and prescribing the routine and conditions to be followed in canvassing bids and awarding contracts.

(c) Prescribing routine for securing bids and awarding contracts on items that do not exceed $2,000 in value.

(d) Prescribing items and quantities to be purchased locally.

(e) Providing that where bids are unsatisfactory the division, with the approval and consent of the budget commission, may reject all bids and purchase the article in the open market, but only at a lower price.

(f) Prescribing procedure to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(g) Adopting any other rules and regulations necessary to carry out the purpose of this article. (1931, c. 261, s. 5; 1933, c. 441, s. 1.)

§ 143-53. Requisitioning for supplies by agencies; must purchase through sources certified.—After sources of supply have been established by contract under competitive bidding and certified by the Director of Purchase and Contracts to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition on blanks to be approved by the Director of Purchase and Contract, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Director of of Purchase and Contract. One copy of such requisition shall be sent to the Director of Purchase and Contract when the requisition is issued. (1931, c. 261, s. 6.)

§ 143-54. Certain purchases excepted from provisions of article.—Unless otherwise ordered by the Director of Purchase and Contract, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Director of Purchase and Contract shall not be mandatory in the following cases:

(a) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets and periodicals for the use of the State Library or any other library in the State supported in whole or in part by State funds.

(b) Perishable articles and such as fresh vegetables, fresh fish, fresh meat, eggs and milk: Provided, that no other article shall be considered perishable within the meaning of this clause, unless so classified by the Director of Purchase and Contract with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State Government shall wherever possible be based on at least three competitive bids. Whenever an order or contract for such articles is awarded by any of the departments, institutions and agencies of the State Government a copy of such order or contract, together with a record of the competitive bids upon which it was based, shall be forwarded to the Director of Purchase and Contract. (1931, c. 261, s. 7.)

§ 143-55. Purchase of articles in certain emergencies.—In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Director of Purchase and Contract shall have power to purchase in the open market any necessary supplies, materials or equipment for immediate delivery to any department, institution or agency of the State Government. A report on the circumstances of such emergency and his transactions thereunder shall be transmitted in writing by the Director of Purchase and Contract to the Advisory Budget Commission at its next meeting and shall be entered in the minutes of the Commission. (1931, c. 261, s. 8.)

§ 143-56. Contracts contrary to provisions of article made void. — Whenever any department, institution or agency of the State Government, required by this article and the rules and regulations adopted pursuant thereto applying to the purchase of supplies, materials, or equipment through the Director of Purchase and Contract shall contract for the purchase of such supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such department, institution or agency purchases any supplies, materials, or equipment contrary to the provisions of this article or the rules and regulations made hereunder, the executive officer of such department, institution or agency shall be personally liable for the costs thereof, and if such supplies, materials, or equipment are so unlawfully purchased and paid for out of State moneys, the amount thereof may be recovered in the name of the State in an appropriate action instituted therefor. (1931, c. 261, s. 9.)

§ 143-57. Preference given to North Carolina products and articles manufactured by state agencies; sales tax considered.—The director of purchase and contract shall in the purchase of and/or in the contracting for supplies, materials, equipment, and/or printing give preference as far as may be practicable to materials, supplies, equipment and/or printing manufactured or produced in North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and, Provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other state departments, institutions, or agencies which are available for distribution:

Provided further, that in canvassing and comparing bids there shall be taken into consideration any sales tax or excise tax that will accrue to the state of North Carolina which is levied now or hereafter may be levied and in no case shall a bidder subject to such tax suffer in comparison with bids from those to whom such tax would not apply. (1931, c. 261, s. 10; 1933, c. 441, s. 2.)

§ 143-58. Division of purchase and contract directed to give preference to home products.—The division of purchase and contract or any other constituted department who is authorized to purchase food stuff and other supplies for state institutions, is hereby directed in all cases where the prices, product, or other supplies are available and equal, the said purchasing department shall in all such cases, contract with and purchase from the citizens of North Carolina and as far as is reasonable and practical, taking into consideration price and quality, shall purchase and use and give preference to all of such products and supplies as are grown or produced within the state of North Carolina. (1933, c. 168.)

§ 143-59. Rules and regulations covering certain purposes.—The Director of Purchase and Contract, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this article:

(a) Requiring monthly reports by State departments, institutions or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(b) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(c) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemical and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions or agencies in compliance with specifications.

(d) Prescribing the manner in which purchases shall be made by the Director of Purchase and Contract in all emergencies as defined in § 143-55.

(e) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article. (1931, c. 261, s. 11.)

§ 143-60. Standardization Committee. — It shall be the duty of the Governor to appoint a standardization committee to consist of seven members as follows: The Director of Purchase and Contract, who shall be Chairman of said Committee; an engineer from the State Highway and Public Works Commission to be appointed by the Governor upon the recommendation of the Chairman of the State Highway and Public Works Commission; a representative of the State educational institutions to be appointed by the Governor, a representative of the State Departments to be appointed by the Governor, a representative of the State Charitable and Correctional Institutions to be appointed by the Governor, and two members of the Advisory Budget Commission to be designated by the Governor. Four members of said committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the committee by this article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the Chairman. The Committee shall keep official minutes and such minutes shall be open to public inspection. It shall be the duty of the Standardization Committee to formulate, adopt, establish and/or modify standard specifications applying to State contracts. In the formulation, adoption and/or modification of any standard specifications, the Standardization Committee shall seek the advice, assistance and coöperation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall in so far as possible satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption each standard specification shall until revised or rescinded apply alike in terms and effect, to every State purchase of the commodity described in such specifications. In the preparation of any standard specifications the Standardization Committee shall have power to make use of any State laboratory for chemical and physical tests in the determination of quality. (1931, c. 261, s. 12.)

§ 143-61. Public printer failing to perform contract; course pursued.—If any person who has contracted to do the public printing for the state shall fail to perform his contract according to the terms thereof, the division of purchase and contract shall procure the public printing to be done by other parties, and the attorney-general shall institute suit in the superior court of Wake county in the name of the state to recover of the public printer and his bond any damages for failure to perform the contract. (Rev., s. 5094; 1899, c. 724; 1901, cc. 280, 401, 667; 1931, c. 261, s. 2; C. S. 7289.)

§ 143-62. Law applicable to printing Supreme Court Reports not affected.—Nothing in this article shall be construed as amending or repealing § 7-34, relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13.)

§ 143-63. Appointment of Director and compensation; qualifications; assistants; bond.—The Director of Purchase and Contract shall be appointed by the Governor, who shall fix his compensation subject to the approval of the Advisory Budget Commission. The Director shall have had at least two years experience in buying supplies, materials and equipment for governmental agencies, or for a private concern or corporation. He shall serve at the pleasure of the Governor and he shall have authority to employ such assistants as he shall deem necessary and fix their compensation, subject to the approval of the Assistant Director of the Budget. The Director shall give such bond for the faithful performance of his duties as shall be fixed by the Governor. (1931, c. 261, s. 14; c. 277, s. 15; 1933, c. 46, s. 1.)

§ 143-64. Financial interest of officers in sources of supply; acceptance of bribes.—Neither the Director of Purchase and Contract, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials, or equipment to the State Government, or any of its departments, institutions or agencies, nor shall such Director, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a

felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Director, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15.)

Art. 4. World War Veterans Loan Administration.

Title I. "World War Veterans Loan Act of 1925."

§ 143-65. Name of Title.—This Title shall be known and may be cited as the "World War Veterans Loan Act." (1925, c. 155, s. 1.)

§ 143-66. Purpose of Title.—The purpose of this Title is, in recognition of military service, for the encouragement of patriotism, and to promote the ownership of homes, to provide a means by which soldiers, sailors, marines and others who served with the armed forces of the United States in the recent world war against the central powers may acquire urban homes or farms upon favorable terms. (1925, c. 155, s. 2.)

§ 143-67. Enlisted men entitled to borrow money.—Every person who has been enlisted, inducted, warranted or commissioned and who served honorably in active duty in the military or naval service of the United States at any time between the sixth day of April, one thousand nine hundred and seventeen, and the eleventh day of November, one thousand nine hundred and eighteen, and who, at the time of entering such service, was a resident of the State of North Carolina, and who is honorably separated or discharged from such service, or who is still in active service, or has been retired, or who has been furloughed to a reserve, and who was in such service for a period longer than sixty days, shall be entitled to borrow money from the fund provided by this Title upon filing application and otherwise complying with the terms hereof so long as and to the extent that the funds herein provided for are available for that purpose. (1925, c. 155, s. 3.)

§ 143-68. Classes of persons benefits not extended to.—The benefits of this Title shall not be extended to the following classes of persons:

(a) Those who were dishonorably discharged or discharged without honor; or

(b) Those who, being in the military or naval service, refused on conscientious, political, or other grounds to subject themselves to discipline or to render unqualified service; or

(c) Those who, though in the service, did civilian work at civilian pay; or

(d) Those whose military service was confined to taking training in any students army or navy training corps. (1925, c. 155, s. 4.)

§ 143-69. Registration.—Before any such person can become a beneficiary under this title, such person must have complied with chapter one hundred and ninety-eight of the Public Laws, regular session of one thousand nine hundred and twenty-one, relating to the registration of honorable discharges in the office of register of deeds as provided in said act, and such person, at the time of making application for loan as hereinafter provided, shall attach said application to a copy of such person's honorable discharge, which said copy shall show the book and page in which such discharge is recorded, and same shall be certified by such register of deeds and attested by the official seal of his office. (1925, c. 155, s. 5.)

§ 143-70. Fraudulent conspiracy.—If any person shall fraudulently conspire to or shall obtain the benefits of this Title merely for the purpose of procuring, or assisting in, the sale of any real estate, such person shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1925, c. 155, s. 6.)

§ 143-71. Administration; Commissioner; salary; office.—The administration of this Title shall be under the direction and control of a board of advisers consisting of the Secretary of State, who shall be chairman, ex officio, of said board; the Commissioner of Agriculture, the Attorney-General, the Commissioner of Labor and the Treasurer of the State of North Carolina, of which board the Treasurer of the State shall be, ex officio, the treasurer. Said board, as soon as possible after March 6, 1925, as hereinafter provided, shall appoint a competent person to be known as "Commissioner of the Veterans Loan Fund," who shall hold his said office at the will of said board, and who shall receive an annual salary, payable monthly, to be fixed by the board, said amount not to exceed the present salary. Said commissioner shall maintain his office in the city of Raleigh, space for which shall be provided in the same manner as space for other State offices is provided. (1925, c. 155, s. 7; 1937, c. 321; 1941, c. 349.)

§ 143-72. Assistants; application for loan; compensation.—The commissioner, with the approval of the board of advisers, is authorized to appoint such assistants as may be necessary to aid in the administration of this Title and to appoint competent appraisers to pass upon the security offered for loans hereunder. The commissioner shall cause each application for a loan to be carefully considered and the property offered as security to be appraised. The report of the appraiser shall be made in writing to the commissioner, who shall bring the same before the board of advisers for its consideration. No loan shall be made unless it shall be approved by the commissioner and two members of the board of advisers. The board of advisers shall fix the compensation to be paid to the assistants and appraisers and the commissioner shall conduct the affairs of his office and administer this Title in as efficient and economical manner as possible. The commissioner shall prescribe rules and regulations for the management of this office and the administration of this Title and shall specify the nature and extent of the information to be submitted in all applications for loans and shall require abstracts and approval of the title of property offered as security for loans in such manner as he may determine and as may be approved by the board of advisers. (1925, c. 155, s. 8.)

§ 143-73. Rules concerning loans. — No loan shall be made in excess of three thousand dollars to any one person hereunder, nor for a longer period than twenty years, and only one loan shall ever be made to any one person. No loan shall exceed seventy-five per cent of the appraised

value of the real property offered as security. No loan for twenty years shall be granted hereunder except upon application filed on or before January first, one thousand nine hundred and thirty-one. The applicant shall forward with his application and deposit with the commissioner such fund as the commissioner may require out of which shall be paid the cost and expense of appraising the property offered as security. The applicant shall pay the cost of the determination of title, registration fees, and such other actual expense as may be incurred in the investigation of the applicant's property. The commissioner, subject to the approval of the board of advisers, is authorized to prescribe such rules and regulations for the administration of this Title and to do such acts or things in connection therewith as may be necessary to fully effectuate and carry out the intent and purpose of this Title, whether or not such act or thing is specifically referred to herein. (1925, c. 155, s. 9.)

§ 143-74. Payment of loans.—All loans made under this Title shall be repayable in not more than twenty equal annual payments or not more than forty equal semi-annual payments. All loans made under this Title shall bear six per cent interest, payable semiannually. The principal or any part thereof in multiples of fifty dollars, may be repaid upon any interest payment date after the expiration of five years from the date of said loan or within five years by consent of the commissioner: Provided, in case of a loan made on city or town property, the commissioner in his discretion may require monthly payments to be made thereon. (1925, c. 155, s. 10.)

§ 143-75. Bond issue authorized; sale of bonds.—For the purpose of carrying out the provisions of this Title and of creating a fund from which the loans herein provided for shall be made, the board of advisers is hereby authorized, empowered and directed to issue and sell bonds of the State of the amount of two million dollars, the proceeds from the sale of which shall be applied to the purposes herein set forth. Said bonds shall be known, styled and designated: "State of North Carolina World War Veterans Loan Bonds." Said bonds shall bear interest at a rate to be fixed by the board of advisers but not exceeding five percent per annum, payable semiannually, and to be paid at a time to be fixed by the board of advisers. Said bonds shall be dated, issued and sold from time to time in such amounts as the board of advisers may find necessary to provide sufficient funds to meet applications made to and approved by it. All bonds authorized and issued under this Title shall be coupon or registered bonds of the denomination of one hundred dollars or some multiple thereof and shall be payable twenty years from the date of issue and shall be signed by the Governor and the State Treasurer and sealed with the Great Seal of the State. The coupons thereon may be signed by the State Treasurer alone, or he may have lithographed, engraved or printed thereon a facsimile of his signature. The said bonds shall be in all other respects in such form as the board of advisers may direct. The bonds until sold shall be deposited with the State Treasurer, and when sold the proceeds of the bonds shall be paid to the State Treasurer and kept in a separate fund to be designated as the "World War Veterans Loan Fund." The Treasurer upon issuance of said bonds may, if necessary, pledge said bonds as collateral for temporary loans pending a sale thereof. All expenses necessarily incurred in the preparation and sale of said bonds shall be paid from the proceeds of such sale. (1925, c. 155, s. 11.)

§ 143-76. Payments to State Treasurer; audits.—All payments on loans, whether principal or interest, shall be made to the State Treasurer, and shall be deposited and held in a separate fund as above designated and applied to the payment of said bonds when and as they become due: Provided, however, that said board of advisers may in its discretion authorize and direct the commissioner to make loans out of the fund so created to such persons as are authorized hereunder to receive loans, same to be repaid in equal, annual, semiannual, or monthly installments, maturing at such time as may be required to pay off the bonds authorized by this Title at and when they mature: Provided further, that a sum sufficient to cover the semiannual interest on said bonds shall be provided out of said payments. The accounts of the treasurer of the board of advisers shall be audited annually by the State Auditor. (1925, c. 155, s. 12.)

§ 143-77. Cost of administering fund; disposition of surplus.—The cost of administering this Title, including salaries and other expenses provided for herein, shall be paid from the difference between the interest received from the loans made hereunder and the interest on the bonds of the State to be issued, when the same shall be sufficient therefor. Provided, however, during such time as receipts are not sufficient to pay the operating expenses, as above set out, the same shall be paid out of the principal of the World War Veterans' Loan Fund. Provided, further, that any surplus over and above the expense of the administration of this Title when accumulated shall be paid into the General Fund until such amount as the General Fund may have advanced toward the administration of this Title shall have been fully repaid. (1925, c. 155, s. 13; 1935, c. 438, s. 1.)

§ 143-78. Question of bonded indebtedness submitted to voters.—The question of contracting a bonded indebtedness of the State of North Carolina to the amount of two million dollars for the purpose of this Title shall be submitted to the voters of the State at the general election to be held in one thousand nine hundred and twenty-six for the election of members of the General Assembly. A separate ballot shall be printed and distributed by the State Board of Elections to the poll holders in said election to be voted in said election upon which shall be printed or written the words "For World War Veterans Loan Bonds" and an equal number of ballots upon which shall be printed or written the words "Against World War Veterans Loan Bonds" shall be likewise distributed. If a majority of the votes cast on this proposition in said election are "For World War Veterans Loan Bonds," the board of advisers created by this Title shall proceed immediately to carry into effect the provisions hereof. If a majority of the votes cast on this

proposition in said election are "Against World War Veterans Loan Bonds," then this Title shall be thereby annulled. Notice of the submission of the proposition shall be given by the Secretary of State, the ballot canvassed and returned, abstracts of the vote made and submitted, the votes canvassed, and a declaration of the results made by the State Board of Elections, and if a majority of the votes cast on the proposition shall be "For World War Veterans Loan Bonds," the State Board of Election shall certify the vote to the Secretary of State and, upon receipt by him of such certificate, this Title shall be in full force and effect. (1925, c. 155, s. 14.)

Title II. "World War Veterans Loan Supplemental Act of 1927."

§ 143-79. Name of Title.—This Title shall be known and may be cited as the "World War Veterans Loan Supplemental Act." (1927, c. 97, s. 1.)

§ 143-80. Issue and sale of bonds.—The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the two million ($2,000,000) dollars State of North Carolina World War Veterans Loan Bonds, authorized by Title I of this article, and for the payment of the principal and interest of any notes issued in accordance with Title II in anticipation of the sale of said bonds or any of them. When the Board of Advisers shall direct the State Treasurer to issue any of said bonds, he shall sell the same at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest, and when the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina. The manner in which said bonds shall be offered for sale shall be determined by the Governor and Council of State, either by publishing notices in certain newspapers and financial journals, or by mailing notices, or by inviting bids by correspondence or otherwise. All expenses necessarily incurred in the preparation and sale of the bonds shall be paid from the proceeds of such sale. (1927, c. 97, s. 2.)

§ 143-81. Disbursement of fund; prerequisites.—The Veterans Loan Fund shall be disbursed by the State Treasurer either for loans or the cost of administration as provided in Title I of this Article, but only upon warrants drawn by the State Auditor upon requisition therefor signed by the Chairman of the Board of Advisers. The State Auditor shall draw no warrant for a disbursement of the Veterans Loan Fund for the purposes of a loan unless the requisition shall be accompanied by (a) the borrower's note for the sum to be loaned and (b) the mortgage securing the same and (c) either the certificate of an attorney approved by the Board of Advisers and bonded to cover damages suffered through an erroneous certificate made by him, to the effect that the mortgage is a first lien, or a policy of insurance issued by a responsible title guaranty or title insurance company (or certificate certifying that such policy will be issued) insuring the Veterans Loan Fund in the amount of the loan that the mortgage is a first lien. The Treasurer shall not pay any warrant for the purpose of a loan unless such note and mortgage and such certificate or policy are delivered to him, and the same shall remain in his custody. Permanent structures upon the property mortgaged or thereafter placed thereon shall be insured by a reputable insurance company for not less than sixty (60%) per cent of the appraised value thereof and the policies of insurance shall be payable to the State Treasurer as his interest may appear. (1927, c. 97, s. 8.)

§ 143-82. Liability of treasurer and appraisers on bonds; punishment.—The State Treasurer and the sureties upon his official bond as State Treasurer, shall be liable for any breach of faithful performance of his duties under Titles I and II of this Article and his official bond shall be made to comply with this requirement. If any appraiser shall knowingly appraise any property as security for any loan in excess of its value, or if the State Treasurer or the Commissioner or any member of the Board of Advisers shall pay or vote to pay, or shall provide for paying, any moneys in the Veterans Loan Fund except in accordance with the provisions of Titles I and II of this Article, he shall be liable to any aggrieved person and to the State for all damages suffered thereby and shall be guilty of a misdemeanor punishable for each offense by a fine of not less than fifty ($50.00) dollars, or by imprisonment of not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court. (1927, c. 97, s. 9.)

§ 143-83. Conditions to be set forth in mortgages; enforcement of collections. — Mortgages securing loans shall provide that after the lapse of a certain period after any default in the payment when due of any principal or interest of the loan, the principal of the entire loan shall become due and payable. Such period shall be determined by the Board of Advisers but shall not be longer than ninety days. It may be provided in any mortgage that any default and the consequences thereof may be waived upon payment of the amount delinquent, with interest, expenses and costs, if such payment is made before any sale on foreclosure. Notes and mortgages given to secure loans shall be enforced as provided by law for the enforcement of debts and mortgages, and it shall be the duty of the Board of Advisers to enforce the same. Provided, the Commissioner of the Veterans' Loan Fund, with the approval of a majority of the Board of Advisers thereof, may extend the time of payments required by the deeds of trust securing said loan, upon such terms and conditions as may appear to them for the best interest of the State of North Carolina and such mortgagor. (1927, c. 97, s. 10; 1933, c. 55.)

§ 143-84. Allocations of loans.—For the six months period following March first, nineteen hundred and twenty-seven, allocations of loans under Title I shall be made by the Board of Advisers to the several counties of the State in proportion to the number of soldiers, sailors, marines and others entering the military or naval service of the United States, from such counties, respectively, as ascertained from the records in the office of the Adjutant-General of the State of North Carolina, provided, that allocations to the several counties shall not be mandatory on and

after September first, nineteen hundred and twenty-seven. (1927, c. 97, s. 11.)

Title III. "World War Veterans Loan Act of 1929."

§ 143-85. Name of title.—This Title shall be known and may be cited as the "World War Veterans Loan Act of one thousand nine hundred and twenty-nine." (1929, c. 298, s. 1.)

§ 143-86. Bond issue authorized; interest.—For the purpose of further carrying out the provisions of Title I of this article and of creating an additional fund from which the loans therein provided for shall be made, the State Treasurer is hereby authorized, by and with the consent of the Governor and Council of State, to issue and sell not exceeding two million dollars ($2,000,000) bonds of the State to be designated "State of North Carolina World War Veterans Loan Bonds of one thousand nine hundred twenty-nine." Said bonds shall be dated, issued and sold from time to time in such amounts as the Board of Advisors may find necessary to provide sufficient funds to meet applications made to and approved by it, and shall be payable twenty years from the date of issue. The said bonds shall bear interest at a rate to be fixed by the Governor and Council of State, but not exceeding five per cent per annum, to be paid semiannually on the first day of January and July. (1929, c. 298, s. 2.)

§ 143-87. Interest coupons; registration.—Said bonds shall carry interest coupons which shall bear the signature of the State Treasurer, or a facsimile thereof, and said bonds shall be subject to registration and be signed and sealed as is now, or may hereafter be provided by law for State bonds, and the form and denomination thereof shall be such as the State Treasurer may determine in conformity with this Title. (1929, c. 298, s. 3.)

§ 143-88. Sale of bonds.—When the Board of Advisors shall direct the State Treasurer to issue any of said bonds, he shall sell the same at one time, or from time to time, at the best price obtainable, but in no case for less than par and accrued interest, and when the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina. The manner in which said bonds shall be offered for sale shall be determined by the Governor and Council of State, either by publishing notices in certain newspapers and financial journals, or by mailing notices, or by inviting bids by correspondence or otherwise. All expenses necessarily incurred in the preparation and sale of the bonds shall be paid from the proceeds of such sale. (1929, c. 298, s. 4.)

§ 143-89. Separate fund for proceeds.—The proceeds of said bonds, including any premium received thereon and of the bond anticipation notes, herein authorized, shall be placed by the Treasurer in a separate fund, as provided by section 143-75. (1929, c. 298, s. 5.)

§ 143-90. Pledge of State for payment of bonds.—The full faith, credit, and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds and notes herein authorized. (1929, c. 298, s. 8.)

§ 143-91. Loan of proceeds of bonds to veterans.—The proceeds of the bonds authorized by this Title shall be loaned for the same purposes and under the same conditions, provisions and limitations as the bonds authorized by Title I of this article, and said proceeds shall be disbursed in the same manner and subject to the same penalties and to the same provisions as provided in §§ 143-105, 143-81, and 143-82. (1929, c. 298, s. 12.)

§ 143-92. Commissioner may bid at foreclosure sales; disposition of property.—In all cases where mortgages and deeds of trust have been or will be foreclosed upon any property taken in security for the repayment of a loan made under the provisions of this article, relating to the said subject, the Commissioner as such or his agent shall have the right and authority to bid at the foreclosure sale and should the Commissioner be the highest and successful bidder, the title to the said property shall be conveyed, by the trustee named in the said deed of trust or mortgage deed, or the proper person or commissioner executing the power of trust contained therein, or selling the same by order of court or otherwise, to the Commissioner of the World War Veterans' Loan Fund, who shall take the title thereto and hold it in behalf of the State of North Carolina; and in case of any sale of property, the title to which has come into, or may come into the State by virtue of such foreclosure, or by reason of the said loans, the title thereto shall be made by the said Commissioner of the World War Veterans' Loan Fund in his official capacity in behalf of the said State, in accordance with § 143-93.

All lands now belonging to the State of North Carolina to which title has been acquired by virtue of loans made under this article shall be conveyed by the Governor of the State, in the manner now provided by law for convevance of State property, to the said Commissioner of the World War Veterans' Loan Fund, to be held by him as aforesaid. (1935, c. 438, s. 1.)

§ 143-93. Powers over property acquired or mortgaged.—With the advice and approval of the Board of Advisers, and under regulations prescribed by it, the Commissioner shall have authority to rent, lease, sell, convey title, repair, improve, rebuild, pay taxes and insurance on property for the purpose of preserving the value thereof, and protecting the loan involved, and so as to facilitate the rental or sale thereof. All leases and/or sale contracts and/or conveyances of title shall be approved by the Board of Advisers and shall be executed by the Commissioner as may be required by law. (1935, c. 438, s. 1.)

§ 143-94. Refinancing delinquent loans authorized.—The Commissioner, with the advice and approval of the Board of Advisers, and under such rules and regulations as it may prescribe, shall have the power of refinancing delinquent loans the terms and conditions of such refinancing shall be reported to the Board of Advisers and shall be subject to its approval. In such refinancing, when the interest of the State may be conserved thereby, installment payments on loans may be reduced or increased as requested by the mortgagor and recommended by the Commissioner, provided reductions or extensions shall not be made which

will prevent or interfere with the full payment of loans on or prior to the date of maturity of the bonds from which the loans were made. (1935, c. 438, s. 1.)

§ 143-95. Question of bond issued submitted to voters.—The question of contracting a bonded indebtedness of the State of North Carolina to the amount of two million dollars ($2,000,000) for the purposes herein provided, shall be submitted to the voters of the State at the general election to be held in one thousand nine hundred thirty, for the election of members of the General Assembly. A special ballot shall be printed and distributed by the State Board of Elections to the poll holders in said election, to be voted in said election, upon which shall be printed or written, the words "For World War Veterans Loan Bonds," and an equal number of ballots upon which shall be printed or written the words "Against World War Veterans Loan Bonds," shall be likewise distributed. If a majority of the votes cast on this proposition, in said election, are "For World War Veterans Loan Bonds," the Board of Advisors of the World War Veterans Loan Fund, created by Title I of this article shall immediately proceed to loan the funds herein provided, for the purposes and under the conditions set out in Title I of this article. If a majority of the votes cast on this proposition in said election are "Against World War Veterans Loan Bonds," then the provisions of this Title authorizing the issuance and sale of the bonds herein provided, shall be null and void. Notice of the submission of the proposition shall be given by the Secretary of State, the ballots canvassed and returned, abstracts of the vote made and submitted, the votes canvassed, and a declaration of the results made by the State Board of Elections; and if a majority of the votes cast on the proposition shall be "For World War Veterans Loan Bonds," the State Board of Elections shall certify the vote to the Secretary of State, and upon receipt by him of such certificate, the provisions of this Title with respect to the bonds authorized hereunder, shall be in full force and effect. (1929, c. 298, s. 13.)

§ 143-96. Deposit of payments on loans.—All payments on loans, whether principal or interest, shall be made, deposited and applied, as directed in § 143-76, and subject to the provisos contained in said section, and all interest which the State Treasurer has received, or may in the future receive, on the daily balances of funds belonging to the "World War Veterans Loan Fund," which has been, or may be paid to him by banks in which such deposits have been or are made, shall be deposited to the credit of the "World War Veterans Loan Fund" and the State Treasurer is hereby directed to deposit to the credit of the "World War Veterans Loan Fund" such interest as he may have received on the daily balances belonging to this fund and which may have been deposited to the credit of any other fund. (1929, c. 298, s. 14.)

§ 143-97. Acceptance of certificates of title from approved attorneys.—The Commissioner of the Veterans Loan Fund, subject to the approval of the Board of Advisors, is authorized to accept certificates of title to the property offered as security for loans, in cases where such certificates are furnished by attorneys who are on the approved certificate list of the title insurance company insuring the titles to property upon which loans are made for the benefit of the State Treasurer, in lieu of requiring abstracts of title to such property. (1929, c. 298, s. 15.)

§ 143-98. Other Veterans entitled to share benefits.—Every person who was enlisted, warranted, or commissioned and who served in active duty in the military or naval service of the United States at any time during the Spanish-American war and/or the Philippine Insurrection and/or the China Relief Expedition and who at the time of entering such service was a resident of the State of North Carolina and who was honorably separated or discharged from such service or who has been retired and who was in such service for a period longer than sixty days shall be entitled to borrow money from the fund provided by this Title upon compliance with the provisions of Titles I and II of this article. (1929, c. 298, s. 15½.)

Title IV. "General Provisions"

§ 143-99. Trustee in lieu of defunct bank; purchase at sale.—In all cases where any bank not now in existence as a going concern was named as trustee in any mortgage trust deed securing any loan made under the provisions of this article or succeeded to such trusteeship by corporate merger, consolidation, substitution or otherwise, the powers of sale contained in such mortgage trust deeds may be exercised by the Commissioner of Banks and his successors in office, in the same manner, to the same extent, and with like effect as if he had been originally named as trustee therein. The Commissioner of the World War Veterans Loan Fund and his successors in office may purchase the property sold at any such sale and may hold, manage, and sell the same as provided in § 143-92. (1939, c. 87.)

§ 143-100. Investment of Loan Fund; authorized securities.—The Board of Advisers of the World War Veterans Loan Fund, created by Title I of this article by and with the advice and approval of the Governor and Council of State, is hereby authorized and empowered to invest any funds which are now held by the State Treasurer for the World War Veterans Loan Funds or which may be collected for said funds prior to the maturities of the State bonds issued under authority of Titles I and II of this article, in any securities in which the State Sinking Fund Commission is authorized to invest sinking funds of the State of North Carolina as now provided by law, and loan or invest said money in such other securities or investments which in the opinion of the said board of advisors and the Governor and Council of State are considered safe investments for the said funds, reasonably calculated to produce income to aid in meeting the debt service requirements of the outstanding Veterans Loan bonds. (1941, c. 247.)

§ 143-101. Treasurer to borrow money on notes.—By and with the consent of the Governor and Council of State, who shall determine the rate or maximum rate of interest and the date or approximate date of payment, the State Treasurer is hereby authorized to borrow money at the lowest rate

of interest obtainable, and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(a) For anticipating the sale of any of said bonds directed to be issued by the Board of Advisers created under Title I of this Article, if the State Treasurer shall deem it advisable to postpone the issuance of such bonds.

(b) For the payment of interest upon or any installments of principal of any of said bonds then outstanding if there shall not be sufficient funds in the State Treasury with which to pay such interest or installments as they respectively fall due.

(c) For the renewal of any loan evidenced by notes authorized by this article. (1927, c. 97, s. 3; 1929, c. 298, s. 6.)

§ 143-102. Funds used in payment of notes.— Funds derived from the sale of bonds shall be used in the payment of any bond anticipation notes that may have been issued in anticipation of the sale of such bonds and any renewals of such notes and funds provided by Title I and Title III of this Article and other funds provided by the General Assembly for the payment of interest and/or principal of such bonds shall be used in paying the interest and/or principal of any notes or renewals thereof the proceeds of which shall have been used in paying interest and/or principal of such bonds. Interest payments upon said notes may be evidenced by interest coupons in the State Treasurer's discretion. (1927, c. 97, s. 4; 1929, c. 298, s. 7.)

§ 143-103. Coupons receivable in payment of any demands due to State. — The coupons of the bonds and notes authorized under this article, after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1927, c. 97, s. 5; 1929, c. 298, s. 9.)

§ 143-104. Bonds, notes and coupons and interest exempt from taxation.—All of the bonds and notes and coupons issued under this article shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenues or otherwise, and the interest on said bonds and notes shall not be subject to taxation as for income, nor shall said bonds or notes or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company or other corporation. (1927, c. 97, s. 6; 1929, c. 298, s. 10.)

§ 143-105. Lawful investment for trust funds.— It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any money in their hands in bonds and notes issued under this article. (1927, c. 97, s. 7; 1929, c. 298, s. 11.)

Art. 5. Check on License Forms, Tags and Certificate Used or Issued.

§ 143-106. Blank forms of licenses, etc., to be delivered to State Auditor; monthly report to Auditor; spoiled and damaged forms.—In all cases where blank forms of licenses, tags or certificates are prepared and delivered to any State department or agency for the use of any State department or agency in issuing such license, tag or certificate upon the payment of any fees prescribed by law, a sample of the same, together with a list of the numbers of all such license forms, tags or certificates, and the type of business or privilege to which they relate, shall be delivered to the State Auditor. On or before the tenth day of each calendar month each State department or agency issuing and delivering licenses, tags or certificates shall make report to the State Auditor of all such licenses, tags or certificates delivered during the preceding calendar month, showing the numbers thereof, the business or privilege for which issued, and the person or persons or corporations to whom such licenses, tags or certificates have been so issued. If there be any of such blank license forms, tags or certificates spoiled or in any way damaged so as to be incapable of being used, all such spoiled license forms, tags, or certificates shall be transmitted to the State Auditor and by him securely kept. (1931, c. 398, s. 1.)

§ 143-107. Auditor to check forms monthly; report of discrepancies. — It shall be the duty of the State Auditor, as soon as practicable after the tenth day of each calendar month and not later than the thirtieth of such month, to thoroughly examine and check the reports so received, together with all such spoiled forms, tags or certificates, and the remaining such blank license forms, tags or certificates then in the hands of the department or agency to which they have theretofore been delivered. If any discrepancy be found by the State Auditor upon such checking and examination, he shall at once report the same to the Director of the Budget. (1931, c. 398, ss. 2, 3.)

Art. 6. Officers of State Institutions.

§ 143-108. Secretary to be elected from directors.—The board of directors of the various state institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards. (1907, c. 883, s. 1; C. S. 7517.)

§ 143-109. Directors to elect officers and employees.—All officers and employees of the various state institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions. (1907, c. 883, s. 3; C. S. 7518.)

§ 143-110. Places vacated for failure to attend meetings.—Unless otherwise specially provided by law, whenever a trustee or director of any institution supported in whole or in part by State appropriation shall fail to be present for two successive years at the regular meetings of the board, his place as trustee or director shall be deemed vacant and shall be filled as provided by law for other vacancies on such boards.

This section shall not apply to any trustee or director who holds office as such by virtue of another public office held by him and shall not apply to any trustee or director chosen by any agency or authority other than the State of North Carolina. (1927, c. 225.)

§ 143-111. Director not to be elected to position under board.—It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various state institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body. (1909, c. 831; C. S. 7519.)

§ 143-112. Superintendents to be within call of board meetings.—The superintendent of each of the various state institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C. S. 7520.)

§ 143-113. Trading by interested officials forbidden.—The directors, stewards, and superintendents of the state institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C. S. 7521.)

§ 143-114. Diversion of appropriations to state institutions.—It shall be unlawful for the board of trustees, board of directors, or other body controlling any state institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any state institution to which money is appropriated for its maintenance by the state to divert, use, or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C. S. 7521(a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.—Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the state, or any officer, employee of, or person holding any position with any of the institutions of the state, violating any of the provisions of § 143-114, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position, and shall be fined or imprisoned, in the discretion of the court. (1921, c. 232, s. 2; C. S. 7521(b).)

§ 143-116. Venue for trial of offenses.—All offenses against §§ 143-114 and 143-115 shall be held to have been committed in the county of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C. S. 7521(c).)

Art. 7. Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included. — All persons admitted to the State Hospital at Raleigh, State Hospital at Morganton, State Hospital at Goldsboro, Caswell Training School at Kinston, Stonewall Jackson Training School for Boys at Concord, the State Home and Industrial School for Girls at Samarcand, the East Carolina Training School at Rocky Mount, the Morrison Training School for Negro Boys in Richmond County, the School for the Deaf at Morganton, the School for the Blind and Deaf at Raleigh, and the North Carolina Sanatorium for the Treatment of Tuberculosis at Sanatorium, be and they are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions, (1925, c. 120, s. 1.)

§ 143-118. Governing board to fix cost and charges.—The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, are hereby empowered with the final authority to determine and fix the actual cost of such training, treatment, care and maintenance, to be paid for by or for each inmate or patient, and the said boards of trustees or directors shall, to the best of their ability, fix such cost so as to include all the cost of such care, maintenance, treatment and training at such institutions, for each respective inmate, pupil or patient thereof, and the said sum, when so fixed, shall be the actual cost thereof: Provided, that the respective boards of directors of each of said institutions above named, in determining and fixing the actual cost of such care, maintenance and treatment to be paid for by non-indigent inmates thereof, are hereby given full and final authority to fix a general rate of charge, to be paid on a monthly basis by inmates able to pay same, or in cases where indigent inmates later are found to be non-indigent, then such cost for past care and maintenance of such inmates shall be paid in one or more payments based on the monthly rates of cost in effect for the period or periods of time during which such inmates have been confined in said institutions. The past acts of the boards of directors in fixing a monthly rate to be paid by non-indigent inmates for their care and maintenance in such institutions are hereby in every respect ratified and validated, and on all claims and causes of actions for such purpose now pending and are unsettled, or which hereafter may be made or begun for the payment of said past indebtedness for care, maintenance and treatment, the rates so fixed by said board of directors shall prevail and said collections shall be made in accordance therewith. In any action by any of said state's charitable institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, now pending or which may hereafter be instituted, a verified and itemized statement of the account, showing the period of time during which the said non-indigent inmate was confined to the institution, the monthly rate of charge as fixed by said board of directors of such institution for the period of time that the inmate was confined therein, the total amount claimed to be due thereon as pred-

icated upon said rate of charge, and the proper credits for any payments which may have been made on said account, shall be filed with the complaint and shall constitute a prima facie case, and such state institution shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the inmate's guardian, trustee, administrator, executor, or other fiduciary, that said verified and itemized statement of the superintendent or bookkeeper of said institution is not correct because of—

(a) an error in the calculation of the amount due as predicated upon said monthly rate or charge fixed by the board of directors, or

(b) an error as to the period of time during which the inmate was confined in said state institution, or

(c) an error in not properly crediting the account with any cash payment, or payments, which may have been made thereon. (1925, c. 120, s. 2; 1935, c. 186, s. 1.)

§ 143-119. Payments.—Such cost, when so fixed and determined by the respective boards of trustees or directors of each institution, shall be paid by the patient, pupil or inmate thereof, or by his parent, guardian, trustee or other person legally responsible therefor, and the payment thereof shall constitute a valid expenditure of the funds of any such pupil, patient or inmate by any fiduciary who may be in the control of such fund, and a receipt for the payment of such cost in the hands of such fiduciary shall be a valid voucher to the extent thereof in the settlement of his accounts of his trust. Immediately upon the determination of the cost, as herein provided for, the superintendent of the institution shall notify the patient, pupil, inmate, parent, guardian, trustee, or such other person who shall be legally responsible for the payment thereof, of the monthly amount thereof, and such statement shall be rendered from month to month. The respective boards of trustees or directors of the various institutions are vested with full and complete authority to arrange with the patient, pupil, inmate, parent, guardian, trustee, or other person legally responsible for the cost, for the payment of any portion of such cost monthly or otherwise, in the event such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall not be able to pay the total cost. The head of the various institutions shall annually file with the Auditor of the State a list of all unpaid accounts. The provisions of this article directing the boards of directors of the various institutions of this State above named to ascertain which of the inmates are non-indigent and able to pay for their care, maintenance and treatment, and also directing said boards of directors to make certain periodical demands upon the guardians or other persons responsible for said inmates for the payment of said charges, and which further directs them to remove all of those inmates found able to pay but who refuse to pay, and all of the other provisions of this article relating to the manner in which said board shall collect said costs, shall be construed to be directory provisions on the part of the authorities of said institutions and not mandatory, and the failure on the part of said authorities of such institutions to perform any or all of said provisions shall not affect the right of the state institutions so named to recover in any action brought for that purpose, either during the life-time of said inmates or after their death, in an action against their guardian if alive, or other fiduciary, or against the inmate himself, and if dead, against their personal representatives for the cost of their care, maintenance and treatment in said institutions. (1925, c. 120, s. 3; 1935, c. 186, s. 2.)

§ 143-120. Determining who is able to pay.—From and after March 4, 1925, the respective boards of trustees or directors of each institution shall ascertain which of the various patients, pupils or inmates thereof, or which of the parents, guardians, trustees, or other persons legally responsible therefor, are financially able to pay the cost, to be fixed and determined by this article, and so soon as it shall be ascertained such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall be notified of such cost, and in general of the provisions of this article and such patient, pupil, inmate or the parent, guardian, trustee, or other person legally responsible therefor shall have the option to pay the same or to remove the patient, pupil or inmate from such institution, unless such person was committed by an order of a court of competent jurisdiction, in which event the liability for the cost as fixed by this article shall be fixed or determined and payment shall be made in accordance with the terms of this article. (1925, c. 120, s. 4.)

§ 143-121. Action to recover costs.—Immediately upon the fixing of the amount of such actual cost, as herein provided, a cause of action shall accrue therefor in favor of the State for the use of the institution in which such patient, pupil or inmate is receiving training, treatment, maintenance or care, and the State for the use of such institution may sue upon such cause of action in the courts of Wake County, or in the courts of the county in which such institution is located, against said patient, pupil or inmate, or his parents, or either of them, or guardian, trustee, committee, or other person legally responsible therefor, or in whose possession and control there may be any funds or property belonging to either the said pupil, patient or inmate, or to any person upon whom the said patient, pupil, or inmate may be legally dependent, including both parents. (1925, c. 120, s. 5.)

§ 143-122. No limitation of such action.—No statute of limitation shall apply to or constitute a defense to any cause of action asserted by any of the above-named institutions for the collection of the cost of care, treatment, training or maintenance, or any or all of these against any person liable therefor, as herein provided, and all statutes containing limitations which might apply to the same are hereby pro tanto repealed, as to all such causes of action or claims, and this section shall apply to all claims, and causes of action for like cost heretofore incurred with such institutions and now remaining unpaid. (1925, c. 120, s. 6.)

§ 143-123. Power of trustees to admit indigent persons.—This article shall not be held or construed to interfere with or to limit the authority and power of the management of the boards of trustees, or directors of any of the institutions named herein, to make provision for the care, custody, treatment and maintenance of all indigent persons who may be otherwise entitled to admission in any of the said institutions, and as to indigent pupils, inmates and patients, the same provisions now contained in the several statutes relating thereto shall continue in force, but if at any time any of the said indigent patients, pupils or inmates shall succeed to or inherit, or acquire, in any manner, property, or any of the persons named above as legally responsible for the cost of care, treatment and maintenance of the pupil, inmate and patient at the above named institutions, shall acquire property, or shall otherwise be reputed to be solvent, then each of said institutions shall have the full right and authority to collect and sue for the entire cost and maintenance of such inmate, pupil or patient, without let or hindrance on account of any statute of limitation whatsoever. (1925, c. 120, s. 7.)

§ 143-124. Suit by attorney general; venue.—At the request of such institution, all actions and suits shall be sued upon and prosecuted by the Attorney General, and such institution shall have the right to elect as to whether it will institute such action in the courts of Wake County or in the courts of the county in which such institution is located. (1925, c. 120, s. 8.)

§ 143-125. Judgment; never barred.—Any judgment obtained by the State for the use of any of the above named institutions shall never be barred by any statute of limitation, but shall continue in force, and, at the request of the Attorney General or the superintendent of any of said institutions, an execution shall issue therefor at any time without requiring such institution to revive the said judgment, as is now provided by statute, but in case any judgment debtor, or any fiduciary responsible for the payment thereof, shall make affidavit and file the same with the clerk of the Superior Court from which such execution is issued, that payments have been made upon the said judgments, then the clerk shall recall said execution and proceed to hear and determine what is the true amount due thereon, if anything, in the same manner as is now required in motions to revive dormant judgments with the right of appeal to the judge of the Superior Court, as now provided in such motions, and the clerk of the Superior Court and the judge thereof shall have authority, in their discretion, to require security for the payment of the amount of said judgment pending such appeal. (1925, c. 120, s. 9.)

§ 143-126. Death of inmate; lien on estate.—In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina. (1925, c. 120, s. 10.)

§ 143-127. Money paid into state treasury.—All money collected by any institution pursuant to this article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn by the Auditor as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11.)

Art. 8. Public Building Contracts.

§ 143-128. Separate specifications for building contracts. — Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the State, when the entire cost of such work shall exceed ten thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating. 2. Plumbing and gas fitting. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the State or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46.)

§ 143-129. Procedure for letting of public contracts.—No construction or repair work, or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than one thousand dollars ($1000.00), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the state, or of any institution of the state government, or of any county, city, town, or other subdivision of the state, unless the provisions of this section are complied with.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the state government, or of a state institution, as distinguished from a board or governing body of a subdivision of the state, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the state of North Carolina.

Where the contract is to be let by a county, city, town or other subdivision of the state, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other

subdivision. Provided, if there is no newspaper published in the county and the estimated cost of the contract is less than two thousand dollars ($2000.00), such advertisement may be either published in some newspaper as required herein or posted at the court house door not later than one week before the opening of the proposals in answer thereto, and in the case of a city, town or other sub-division wherein there is no newspaper published and the estimated cost of the contract is less than two thousand dollars ($2000.00), such advertisement may be either published in some newspaper as required herein or posted at the court house door of the county in which such city, town or other subdivision is situated and at least one public place in such city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this article and no board or governing body of the state or subdivision thereof shall assume responsibility for construction or purchase contracts or guarantee the payments of labor or materials therefor.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration quality and the time specified in the proposals for the performance of the contract. No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash or a certified check on some bank or trust company authorized to do business in this state, in an amount equal to not less than two per cent (2%) of the proposal. This deposit shall be retained if the successful bidder fails to execute the contract within ten days after the award or fails to give satisfactory surety as required herein.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond in some surety company authorized to do business in the state, or require a deposit of money, certified check or government securities for the full amount of said contract for the faithful performance of the terms of said contract; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or securities required herein shall be deposited with the treasurer of the branch of the government for which the work is to be performed until the contract has been carried out in all respects.

Nothing in this section shall operate so as to require any public agency to enter into a contract that will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the state or federal government. (1931, c. 338; 1933, cc. 50, 400, s. 1; 1937, c. 355.)

§ 143-130. Allowance for convict labor must be specified.—In cases where the board or governing body may furnish convict or other labor to the contractor, manufacturer or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.—All contracts for construction or repair work or for the purchase of apparatus, supplies, materials or equipment, involving the expenditure of public money in the amount of two hundred dollars ($200.00) or more but less than one thousand dollars ($1,000.00), made by any officer, department, board or commission of any county, city, town or other subdivision of this State, when practical, shall be awarded to the lowest responsible bidder after informal bids have been secured, and it shall be the duty of such officer, department, board or commission to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2.)

§ 143-132. Minimum number of bids for contracts for state institutions. — No contracts to which § 143-129 applies for construction or repair work on any permanent improvement of any institution of the State shall be awarded by any board or governing body of such institution unless proposals shall have been made by at least three reputable contractors where the estimated cost thereof shall not exceed five thousand dollars ($5,000.00) and by at least five reputable contractors where the estimated cost thereof shall exceed five thousand dollars ($5,000.00). (1931, c. 291, s. 3.)

§ 143-133. No evasion permitted.—No bill or contract shall be divided for the purpose of evading the provisions of this article. (1933, c. 400, s. 3.)

§ 143-134. Highway and prison departments excepted.—This article shall not apply to the state highway and prison department of the state of North Carolina. (1933, c. 400 s. 3-A.)

§ 143-135. Limitation of application of article.—This article shall not apply to governmental agencies of sub-divisions of the state of North Carolina doing or performing by or through its or their duly elected officers or agents work for such agency up to and including an amount not to exceed five thousand ($5.000.00) dollars. (1933, c. 552, ss. 1, 2.)

Art. 9. Building Code.

§ 143-136. N. C. building code.—This article shall be known and may be cited as the North Carolina building code. (1933, c. 392, s. 1.)

§ 143-137. Purpose of article.—It is the purpose of this article to protect life, health, and property and all its provisions shall be construed liberally to that end. (1933, c. 392, s. 2.)

§ 143-138. Administration by insurance commissioner; duties of state board of health.—It shall be the duty of the insurance commissioner or his deputy or deputies in coöperation with local officials in accordance with §§ 160-115 to 160-123, inclusive, to enforce the building code hereinafter ratified and adopted, and all rules and regulations which the building code council is authorized to promulgate in modification or addition to said building code under the authority of this article, and further, in coöperation with local authorities, to enforce ordinances of municipal corporations relating to a building code or building rules and regulations: Provided, however, it shall be the duty of the state board of health, instead of the duty of the insurance commissioner, to enforce all provisions of the building code hereinafter designated and all other rules and regulations duly promulgated by the building code council relating to plumbing where such plumbing regulations are not otherwise prescribed by local ordinance or rules and regulations of county health boards. (1933, c. 392, s. 3; 1941, c. 280, s. 1.)

§ 143-139. Building code council created; powers and duties; application of building code.—There is hereby created a building code council which shall consist of the following members registered in accordance with the laws of North Carolina where registration laws apply: One architect, one general contractor, one structural engineer, one plumbing and heating contractor, and one representative of organized labor. Members of the building code council shall be appointed or removed by the governor. The terms of office shall be as follows: One architect five years, one general contractor four years, one structural engineer three years, one plumbing and heating contractor two years and one representative of organized labor one year. Vacancies caused by expiration of term of office shall be filled by the governor and appointments made for a period of five years. Vacancies caused by resignation or otherwise shall be filled by the governor for the unexpired term of the person leaving office.

Within thirty days after the passage and publication of this article, the building code council shall meet and organize and shall have power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties and it shall keep an accurate record of all its proceedings. Subject to the limitations hereinafter set forth, the said building code council is authorized and empowered to establish reasonable and suitable classifications of buildings, both as to use and occupancy; to determine general building restrictions as to location, height and floor areas; to promulgate rules for the lighting and ventilation of buildings; means of egress therefrom; construction thereof and precautions to be taken during such construction; materials, loads and stresses of construction; chimneys and heating appliances and elevators; plumbing, heating, electrical control and protection; and to adopt such other rules and regulations as may be reasonably necessary to effectuate the purposes of this article: Provided, however, the said building code council shall not establish any standard or adopt or promulgate any rule, regulation, classification, limitation or restriction more rigid, exacting or stringent in its requirements than is authorized in the "North Carolina Building Code" adopted and promulgated by said council in the year one thousand nine hundred and thirty-six and published in full in August of that year in a printed volume as an official publication of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the said volume being known and designated as the "North Carolina Building Code, prepared by the North Carolina Building Code Council" and also known and identified as "Bulletin number ten, Engineering Experiment Station, State College Station, Raleigh." The provisions of said "North Carolina Building Code" so published are hereby in all respects ratified and adopted and shall continue in full force and effect unless and until they may be modified as hereinafter authorized: Provided, further, the said building code council may, subject to the approval of the insurance commissioner, promulgate rules and regulations which shall have the effect of establishing requirements less rigid and less stringent than those set forth in said "North Carolina Building Code"; Provided, further, any municipal corporation may adopt a building code or building rules and regulations which are more rigid, stringent and exacting than the "North Carolina Building Code" referred to above as the same is now adopted or as it may be hereafter modified pursuant to the provisions of this article. (1933, c. 392, s. 4; 1941, c. 280, s. 2.)

§ 143-140. Appeals to council.—An appeal from the decision of the insurance commissioner upon any matter affecting the building code may be taken to the building code council as hereinafter provided. (1933, c. 392, s. 5.)

§ 143-141. Compensation; appeals to council and to courts; buildings to meet code standards.—The members of the building code council may each receive five dollars per day as compensation for the time given in the performance of his duty and may be reimbursed for compensation and actual traveling expenses from funds of the organization which he represents.

When the insurance commissioner shall reject or refuse to approve the mode or manner of construction proposed to be followed, or materials to be used in the erection or alteration of any building or structure, or when it is claimed that the provisions of this code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, the owner of such building or structure, or his duly authorized agent, may demand that the decision of the insurance commissioner be reviewed by the chairman and two or more members of the building code council who are qualified to render a fair and impartial decision where the amount in question shall exceed the sum of $1,000.00. The members best qualified in the opinion of the chairman shall be selected to review the decision of the insurance commissioner.

After a review of the decision of the insurance commissioner the chairman shall forward the findings and recommendations to the insurance com-

missioner immediately. It is understood that the building code council shall serve in an advisory capacity only and that the final decision and responsibility for such decision shall rest upon the insurance commissioner: Provided, nothing in this article shall prohibit the owner his right of appeal to the superior courts.

It shall be the duty of the council not only to make recommendations to the insurance commissioner relative to the proper construction of the pertinent provisions of the building code but it shall also recommend that he shall allow materials and methods of construction other than those required by the building code to be used, when in its opinion such other material and methods of construction are as good as those required by the code, and for this purpose the requirements of the building code as to such matters shall be considered simply as a standard to which construction shall conform. (1933, c. 392, s. 6.)

§ 143-142. Hearings before insurance commissioner as to questions under law or building code, etc.—Any person desiring to raise any question under this article or under the "North Carolina Building Code" or any rule or regulation promulgated by the building code council shall be entitled to a full hearing before the insurance commissioner, and upon request in writing by any such person, the insurance commissioner shall appoint a time for the hearing, giving such person reasonable notice thereof. The insurance commissioner shall conduct a full and complete hearing of the matters in controversy and make a determination thereof. Any person affected by any decision of the insurance commissioner upon such matters may, either before or after appeal to the building council as provided for in § 143-141, proceed against the insurance commissioner in the superior court of Wake county, to enjoin the enforcement of the ruling or decision. In any such injunction proceeding the trial of all matters which may have been involved in the hearing before the insurance commissioner shall be de novo but the decision and ruling of the commissioner shall be prima facie correct and valid and the burden of proof shall be on the party attacking such decision. The provisions of this section shall not deprive any person of any other right of action or appeal which he may have and shall not limit any party to the assertion of said right by injunction as herein permitted: Provided, however, that where the question raised relates to any provision, regulation, ruling or decision regarding plumbing, the hearing shall be held before the state board of health instead of the insurance commissioner; but otherwise the procedure, rights and remedies in such cases shall be as outlined in this section. (1941, c. 280, s. 3.)

§ 143-143. Violation of act subjects offender to fine.—If any employer, owner or other person shall violate any of the provisions of this article, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined within the time prescribed by the insurance commissioner or his deputy or shall fail, neglect, or refuse, to obey any lawful order given or made by the insurance commissioner, for each such violation, failure, or refusal, such employer, owner or other person upon conviction thereof shall be fined in any sum not less than ten dollars ($10.00), nor more than fifty dollars ($50.00) for each offense. Each seven days neglect shall constitute a separate and distinct offense. (1933, c. 392, s. 7.)

Art. 10. Various Powers and Regulations.

§ 143-144. State institutions may exercise eminent domain.—Whenever the directors or managers of any state institution find it necessary to acquire lands in order to carry out the purposes of the institution, or to acquire lands, rights of way, or easements for the purposes of obtaining and protecting water supplies, or for constructing and maintaining dams, reservoirs, standpipes, pipe lines, flumes, or conduits for water-supply purposes, and are unable to purchase the same from the owners at a reasonable price, or are unable to obtain a good and sufficient title therefor by purchase from the owners, then such state institution may exercise the right of eminent domain and acquire any such lands, rights of way, or easements necessary for the aforesaid purposes by condemnation in the manner prescribed by law under the chapter on Eminent Domain. (Rev., s. 3062; 1917, cc. 51, 132; C. S. 7522.)

§ 143-145. Entry on land to lay water pipes.—For the purpose of providing water supplies, the directors or other lawful managers of any public institution of the state may enter upon the lands through which they may desire to conduct their pipes for such purpose, and lay them under ground, and they, at all times, shall have the right to enter upon such lands for the purpose of keeping the water line in repair and do all things necessary to that end. (Rev., s. 3061; 1893, c. 63, s. 1; 1911, c. 62, s. 26; C. S. 7523.)

§ 143-146. Governor to execute deeds of state lands held for institutions.—The governor of the state is hereby authorized and empowered to execute a deed under the great seal of the state to any lands the title to which is now vested in the state, for the use of any state institution, upon application of the trustees or directors of such institution. The application shall show such conveyance is for the best interests of the institution, and shall be approved by the council of state. (1917, c. 129; C. S. 7524.)

§ 143-147. Method of alienation of real property held by any State agency.—Wherever the power and authority to convey real property held or owned by any State institution, agency, board, commission, person, or corporation that exercises State functions, have been or may be hereafter given by the General Assembly, then the method and manner of conveying the same shall be as herein provided. (1929, c. 143, s. 1.)

§ 143-148. Execution; signature; attestation; seal.—Such conveyance shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, and signed in the name of the State of North Carolina by the Governor and attested by the Secretary of State, and the Great Seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2.)

§ 143-149. Admission to registration in counties.—Such conveyances shall be admitted to

registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3.)

§ 143-150. Exclusive method of conveying such property.—The manner and method of conveying real property in the State of North Carolina herein set out shall be the exclusive and only method of conveying same. Any conveyance thereof by any other person and/or executed in any other manner or method shall not be effectual to convey the State's interest or estate in such real property. (1929, c. 143, s. 4.)

§ 143-151. Grant of easements to public-service corporations.—The directors of the various state institutions are authorized and empowered to grant privileges and easements to individuals or companies to run telegraph, telephone, or power transmission lines over lands belonging to such institutions, when in their judgment it is right and proper to do so, and subject to such terms and conditions as they may impose, and subject in each case to the approval of the attorney-general of the state. (1909, c. 484; C. S. 7525.)

§ 143-152. Injury to water supply misdemeanor.—If any person shall in any way intentionally or maliciously damage or obstruct any water line of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (Rev., s. 3458; 1893, c. 63, s. 3; C. S. 7526.)

§ 143-153. Keeping swine near state institutions; penalty.—On the petition of a majority of the legal voters living within a radius of one-quarter of a mile of the administrative building of any state educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one-quarter of a mile. Any person violating this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten nor more than fifty dollars. (1909, c. 706; C. S. 7527.)

§ 143-154. Expenditures for departments and institutions; accounting and warrants.—All expenditures of any character allowed by the general assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the state auditor's warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C. S. 7528.)

§ 143-155. Institutions to file monthly statements with auditor.—On the fifteenth of each month it shall be the duty of the head of each state institution to prepare an itemized statement of all the disbursements of such institution for the preceding month, and file the same with the state auditor on blanks to be prepared and furnished to him by the auditor. (1911, c. 99; C. S. 7529.)

§ 143-156. Certain institutions to report to governor and general assembly.—It shall be the duty of the boards of directors, managers, or trustees of the several state institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the state prison to submit their respective reports to the governor, to be transmitted by him with his message to the general assembly. (Rev., s. 5373; 1883, c. 60, ss. 2, 4; C. S. 7530.)

§ 143-157. Reports of departments and institutions; investigations and audits. — All state departments and state institutions shall make reports to the governor from time to time as may be required by him, and the governor is empowered to have all departments of the state government and state institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary. (1917, c. 58, s. 7; C. S. 7531.)

§ 143-158. Special investigations.—At any time, upon complaint made to him or upon his own motion, the governor may appoint a special commission to investigate any state department or state institution, which commission shall have power to subpœna witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars. (1917, c. 58, s. 8; C. S. 7532.)

§ 143-159. Governor given authority to direct investigation.—The Governor is hereby authorized and empowered to call upon and direct the Attorney-General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary. (1927, c. 234, s. 1.)

§ 143-160. Conduct of investigation. — Whenever called upon and requested by the Governor as set out in § 143-159, the Attorney-General shall conduct such investigation at such reasonable time and place as may be determined by him. He shall have power to issue subpœnas, administer oaths, compel the attendance of witnesses and the production of papers necessary and material in such investigation. All subpœnas issued by him shall be served by the sheriff or other officer of any county to which they may be directed. Parties interested in such investigation may appear at the hearing and be represented by counsel, who shall have the right to examine or cross-examine witnesses.

All persons subpœnaed to attend any hearing before the Attorney-General shall, for a failure so to attend and testify, be subject to the same penalties as prescribed by law for such failure in the Superior Court. (1927, c. 234, s. 2.)

§ 143-161. Stenographic record of proceedings.—A stenographic record of the proceedings had in such investigation shall be taken and copy

thereof forwarded by the Attorney General to the Governor with his report. (1927, c. 234, s. 3.)

§ 143-162. State institutions to mail copies of reports.—Each state institution required by law to file biennial reports with the governor and general assembly shall prepare, print and mail copies thereof to each of the members of the general assembly elect on or before the twentieth day of November preceding the meeting of the general assembly. Said biennial reports shall embrace all receipts and disbursements up to the thirtieth of June preceding the election of said general assembly. Any officer of a state institution whose duty it is to make these reports, failing to file said biennial report, unless an extension of time is given by the governor, shall be subject to dismissal from office. (1923, c. 297, ss. 1, 3; C. S. 7534(a).)

Art. 11. Revenue Bonds and Governmental Aid.

§ 143-163. State agencies may issue bonds to finance certain public undertakings.—The several departments, institutions, agencies and commissions of the State of North Carolina, acting at the suggestion of the governor of North Carolina, with the approval of the council of state, are hereby authorized to issue bonds of the several departments, agencies or commissions of the state, in such sum or sums, not to exceed in the aggregate two million dollars, at such time or times, in such denominations as may be determined, and at such rate of interest as may be most advantageous to the several departments, institutions, agencies and commissions of the State, the said bonds to run for a period not exceeding thirty years from date, which bonds may be sold and delivered as other like bonds of the State of North Carolina: Provided, however, that the credit of the State of North Carolina, or any of its departments, institutions, agencies or commissions, shall not be pledged further in the payment of such bonds, except with respect to the rentals, profits and proceeds received in connection with the undertaking, for which said bonds are issued, and said bonds and interest so issued shall be payable solely out of the receipts from the undertaking for which they were issued, without further obligation on the part of the State of North Carolina, or any of its departments, institutions, agencies or commissions, provided that no state department or institution issuing any of said bonds shall be allowed to pledge any of its appropriations received from the State as security for these bonds; Provided, further, that no state department, institution, agency or commission of the State shall make application for or issue any bonds, as provided in this section, after June first, one thousand nine hundred forty-one. (1935, c. 479, s. 1; Ex. Sess., 1936, c. 2, s. 1; 1937, c. 323; 1939, c. 391.)

§ 143-164. Acceptance of federal loans and grants permitted.—The said State of North Carolina, and its several departments, institutions, agencies and commissions, are hereby authorized to accept and receive loans, grants, and other assistance from the United States government, departments and/or agencies thereof, for its use, and to receive like financial and other aid from other agencies in carrying out any undertaking which has been authorized by the governor of North Carolina, with the approval of the council of state. (1935, c. 479, s. 2.)

§ 143-165. Approval by governor and council of state necessary; covenants in resolutions authorizing bonds.—The several departments, institutions, agencies and commissions of the State of North Carolina, before issuing any revenue bonds as herein provided for any undertaking, shall first receive the approval of the undertaking from the governor of North Carolina, which action shall be approved by the council of state before such undertaking shall be entered into and revenue bonds issued in payment therefor in whole or in part.

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this article may contain covenants which shall have the force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to (a) the use and disposition of revenue of the undertaking for which the said bonds are to be issued, (b) the pledging of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor, (c) the operation and maintenance of such undertaking, (d) the insurance to be carried thereon and the use and disposition of the insurance moneys, (e) the fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor, (f) provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid: Provided, however, that the credit of the state of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the state shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess., 1936, c. 2, s. 2.)

Art. 12. Law Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law Enforcement Officers' Benefit and Retirement Fund.—In every criminal case finally disposed of in the criminal courts of this state, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, one dollar ($1.00) additional cost to be collected and paid over to the treasurer of North Carolina and held in a special fund for the purposes of this article. The local custodian of such costs shall monthly transmit such moneys to the state treasurer, with a statement of the case in which the same has been collected.

(a) One hundred thousand dollars ($100,000.00) of the moneys so received shall annually be set

up in a special fund to be known as "The Law Enforcement Officers' Benefit and Retirement Fund," or so much of the said sum of one hundred thousand dollars ($100,000.00) as shall be required to pay benefit payments as provided in this article, and to match the contributions which shall be made to the law enforcement officers' benefit and retirement fund by eligible law enforcement officers, and the balance of the moneys so collected shall be paid into the general fund of the state.

(b) For the purpose of determining the recipients of benefits under this section and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund," which shall consist of the state auditor, who shall be chairman ex-officio of said board, the state treasurer, the state insurance commissioner, and four members to be appointed by the governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one from the group of law enforcement officers as hereinafter defined, employed by the state, and one representing the public at large. No member of said board of commissioners shall receive any salary, compensation or expenses other than a per diem of not exceeding seven dollars ($7.00) for each day's attendance at duly and regularly called and held meetings of the commission, the total of which meetings for which per diem may be allowable as herein provided not to exceed eight meetings in any one year. Four members of said board shall constitute a quorum at any of said meetings, and no business shall be transacted unless a quorum be present. Ex-officio members shall not receive any per diem.

(c) As soon as is practicable after March 13, 1941, and after the appointment of the four members herein authorized to be appointed by the governor, the organization of said board shall be perfected by the selection from its members of a vice-chairman, and secretary, to serve for a term of one year and until their successors shall have been elected and qualified, and by the selection by the board, by a majority vote, of such employees as in the opinion of the board, with the approval of the governor, may be necessary for the proper handling of the business of the board of commissioners, such employee or such employees to hold office at the will of the board of commissioners. No employee of the board of commissioners shall during the period of such employment or during any leave of absence therefrom hold any public office, be a candidate for any public office, or engage in any political activity whatsoever for or on behalf of any candidate for public office, either in the primary or election. The violation of the restriction herein contained against political activity shall subject such employee to immediate discharge; and any such employee who shall use any funds of the commission for political purposes or shall incur any expense whatsoever in connection with any political activity, paid or payable out of the funds of said commission, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as provided by law in the case of misdemeanors. Nothing herein contained shall prevent any employee from exercising his individual right of franchise in any primary or election. Nothing in this section shall affect the right of any employee of said commission who is at present a member of the general assembly from continuing as such member for the duration of such present term.

(d) The said board of commissioners shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law.

(e) There shall be kept in the office of the said board of commissioners by the secretary, records which shall give a complete history and record of all actions of the board of commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or board members.

(f) On or before the first day of January of each year the said board of commissioners shall make to the governor of the state of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such fund. There shall be annually made by the state auditor's department a complete audit and examination of the receipts and the disbursements of the board of commissioners herein created.

(g) The board of commissioners of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said fund in accordance with the purposes of this article. And the board shall have the authority to invest any funds not immediately needed in any securities which the state sinking fund commission may be authorized to invest in, or in certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the federal deposit insurance corporation not to exceed the sum of five thousand ($5,000.00) dollars in any one bank or trust company, or in the shares of federal savings and loan associations and state chartered building and loan associations not to exceed five thousand ($5,000.00) dollars in any one of such associations; provided that no such funds may be so invested in a state chartered building and loan association unless and until authorized by the insurance commissioner.

(h) In case the amount derived from the different sources mentioned and included in this article shall not be sufficient at any time to enable the said board of commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said fund shall be replenished sufficiently to warrant the presumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(i) The board of commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform their duty, as well as the amount to be paid such officers' dependents in case such officer is killed while in the discharge of his duty. The said board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this article, he shall voluntarily pay into the fund herein created a percentage of his monthly salary, which percentage shall be determined by the said board: Provided, that any officer so voluntarily contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall voluntarily pay into the fund a monthly amount to be determined by the said board, based upon such officer's average monthly income.

(j) All officers who have contributed to the retirement fund herein provided for, and who have had twenty years continuous service as such peace officer in this state, shall be eligible for retirement benefits and the board of commissioners is authorized, in their discretion under rules and regulations promulgated by it, to determine when an officer has completed twenty years of continuous service.

(k) The board of commissioners is authorized and empowered in its discretion, upon a finding that any officer who has contributed to the retirement fund herein provided for has been discharged from the service through no fault of his own, to reimburse from the fund herein created an amount not to exceed that which such officer has contributed to the fund under the provisions of subsection (i) of this section.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this article.

(m) Law enforcement officers in the meaning of this article shall include sheriffs, deputy sheriffs, constables, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, prison foremen and guards, highway patrolmen, and any citizen duly deputized as a deputy by a sheriff or other law enforcement officer in an emergency, and all other officers of this state, or of any political subdivision thereof, who are clothed with the power of arrest and whose duties are primarily in enforcing the criminal laws of the state.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the treasurer of the state of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge of the judicial district in which such action was tried.

(o) No state employees participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, chapter 25, known as "The Teachers and State Employees Retirement System Act."

(p) No state employee participating in the retirement benefits of this article shall be eligible to participate in the retirement benefits provided by "The Teachers and State Employees Retirement System Act," § 135-1 et seq. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3, c. 233; 1941, cc. 56, 157.)

Art. 13. Publications.

§ 143-167. Division of Publication; duties.—The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the assistant to the Secretary of State. This division shall collect, tabulate, annotate, and digest information for the use of members and committees of the General Assembly, and other officials of the State and of the various counties and cities, upon all questions of state, county, and municipal legislation; make references and analytical comparisons of legislation upon similar questions in other states and nations; and have at hand for the use of the members of the General Assembly the laws of other states and nations as well as those of North Carolina, and such other books, papers, and articles as may throw light upon questions under consideration.

It shall also be the duty of the Division of Publication to classify and arrange by proper indexes, so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced in the General Assembly. Upon request by members of the General Assembly, the Division shall secure all available information on any particular subject.

The Division shall also perform all such other duties as may be assigned by the Secretary of State.

The several departments of the state government shall, upon request of the Division of Publications, supply said Division with such copies of

their reports and other publications as may be necessary to effect exchanges with other states for their publications of a similar character for the use of the said Division. (1915, c. 202, ss. 1, 2; 1939, c. 316; C. S., ss. 6147, 6148.)

§ 143-168. Reports and publications; conciseness; governor and attorney general to prescribe scope of reports.—The reports and publications of every kind now authorized or required to be printed by the several state departments and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of the department. The details of the work of the departments shall not be printed when not necessary to an intelligent understanding of the work of the departments, but totals and results shall be tabulated and printed in said reports. The governor and the attorney general shall confer with the various departments and prescribe the scope of the matter to be published in any report now prescribed, required, or permitted, to the end that unnecessary matter may be eliminated. (1911, c. 211, s. 2; 1917, c. 202, s. 2; 1931, c. 261, s. 3; C. S. 7294.)

§ 143-169. Departmental reports to legislature; number printed.—Not to exceed eight hundred copies each of the annual or biennial reports of the several departments of the state government shall be printed, a copy of each of these to be furnished to each of the members and officers of the general assembly, one copy to each state officer, and five copies to the state librarian for filing, the remaining copies to be distributed in the discretion of the officer making such report: Provided, that the Division of Purchase and Contract may permit the publication of a greater number of reports if in its judgment the same are necessary. (1911, c. 211, s. 2; 1931, c. 261, s. 3; 1931, c. 312, ss. 14, 15; C. S. 7302.)

§ 143-170. Reports of departments to be printed biennially.—All laws requiring reports to be made, published, and printed by any department oftener than once in two years are hereby amended to the extent that the report of any department is required or permitted to be printed only once in any biennial period: Provided, that this section shall not apply to the report of the state auditor and of the state treasurer. (1917, c. 202, s. 1; C. S. 7534.)

Art. 14. State Planning Board.

§ 143-171. Board established as an advisory agency of state.—The state planning board, as provided for by chapter four hundred eighty-eight of the Public Laws of one thousand nine hundred thirty-five is hereby established as an advisory agency of the state, under the direction of the governor and as more fully set forth hereinafter. (1937, c. 345, s. 1.)

§ 143-172. Membership; terms of office; expenses.—The state planning board shall consist of nine members, appointed by the governor, as follows: Five members to be chosen from state officers or heads of departments or boards, one of whom shall be the director of the department of conservation and development; at least one representative from the University of North Carolina, and the remaining members to be chosen from among the other citizens of the state. The members of the board shall hold office during the pleasure of the governor, and all vacancies shall be filled by the governor, when and as they may occur. The members of the said board shall serve without pay, but they shall be allowed such reasonable expenses as are authorized by the board and incurred in the immediate discharge of their duties, to be paid out of such funds as may be available. (1937, c. 345, s. 2.)

§ 143-173. Chairman and secretary; rules and regulations; employees; expenditures; office space and equipment; special surveys and studies.—The governor shall appoint one member of the board to serve as chairman. The board shall elect one member to serve as secretary of the board. The board shall adopt such rules as it may deem proper for the transaction of its business, and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. The board may appoint such employees as it may deem necessary for its work and fix their compensations. The board may also contract with individuals or corporations for such special services as the board may require. The expenditures of the board from funds of the state shall be limited to the amounts appropriated by the general assembly for the specific purpose, or amounts appropriated from the emergency fund. The board shall be supplied with necessary office space and necessary equipment. Upon request of the board, the governor may, from time to time, for the purpose of special surveys or studies under the direction of the board, assign or detail to the board any member of any state department or bureau or agency, or may direct any such department, bureau or agency to make special surveys and studies as requested by the state planning board. (1937, c. 345, s. 3.)

§ 143-174. Functions of board. — It shall be the function and duty of the state planning board to make studies of any matters relating to the general development of state or regions within the state or areas of which the state is a part, with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and efficient development of the state. Upon the basis of such studies, and in accordance with the present and future needs and resources, the board shall present, from time to time, reports, plans, maps, charts, descriptive matter and recommendations relating to such conservation, wise use and planned development of the material and human resources of North Carolina as will best promote the health, safety, morals, order, convenience, prosperity and welfare of the people of the state. (1937, c. 345, s. 4.)

§ 143-175. Adoption of plans and recommendations; publicity program; co-operation with other agencies; advice and information relative to state planning; proposed legislation.—The state planning board may, from time to time, adopt, in whole or in part, such plans and recommendations as, in its judgment, may be deemed wise and proper; and may, from time to time, alter, amend and add to such plans; may, in the interest of promoting understanding of and compliance with their recommendations, publish and distribute such plans and recommendations and may employ

such means of publicity and education as it may determine; may confer and co-operate with other agencies, federal, state, regional, county or municipal in the accomplishment of common purposes; may, upon request or at its own initiative, furnish advice or information to the governor, the general assembly, state, county, and municipal officers or departments on matters relating to state planning; and may prepare and submit drafts of legislation for the carrying out of any plans they may adopt. (1937, c. 345, s. 5.)

§ 143-176. Public boards and officials directed to supply information; general powers.—All public boards and officials shall, upon request, furnish to the state planning board such available information as it may require for its work. In general, the board shall have such powers as may be appropriate, to enable it to fulfill its functions and duties, to promote state planning and to carry out the purposes of this article. (1937, c. 345, s. 6.)

§ 143-177. Acceptance and disbursements of contributions. — The state planning board is authorized, in the name of the state, to accept and disburse, under the approval of the director of the budget, any contributions that may be available for the work in which it is engaged, by any state or federal agency or private or public endowment. (1937, c. 345, s. 7.)

Art. 15. Commission on Interstate Co-Operation.

§ 143-178. Senate committee on interstate co-operation.—There is hereby established a standing committee of the senate of this state, to be officially known as the senate committee on interstate co-operation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate. In addition to the regular members, the president of the senate shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 1.)

§ 143-179. House committee on interstate co-operation.—There is hereby established a similar standing committee of the house of representatives of this state, to be officially known as the house committee on interstate co-operation, and to consist of five members of the house of representatives. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of representatives. In addition to the regular members, the speaker of the house of representatives shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 2.)

§ 143-180. Governor's committee on interstate co-operation. — There is hereby established a committee of administrative officials and employees of this state, to be officially known as the governor's committee on interstate co-operation, and to consist of five members. Its members shall be: the budget director or the corresponding official of this state, ex officio; the attorney general, ex officio; the chief of the staff of the state planning board or the corresponding official of this state, ex officio, and two other administrative officials or employees to be designated by the governor. If there is uncertainty as to the identity of any of the ex officio members of this committee, the governor shall determine the question, and his determination and designation shall be conclusive. The governor shall appoint one of the five members of this committee as its chairman. In addition to the regular members, the governor shall be ex officio an honorary non-voting member of this committee. (1937, c. 374, s. 3.)

§ 143-181. North Carolina commission on interstate co-operation.—There is hereby established the North Carolina commission on interstate co-operation. This commission shall be composed of fifteen regular members, namely:

The five members of the senate committee on interstate co-operation.

The five members of the house committee on interstate co-operation, and

The five members of the governor's committee on interstate co-operation.

The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary non-voting members of this commission. The chairman of the governor's committee on interstate co-operation shall be ex officio chairman of this commission. (1937, c. 374, s. 4.)

§ 143-182. Legislative committees constitute senate and house council of American Legislators' Association.—The said standing committee of the senate and the said standing committee of the house of representatives shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American Legislators' Association. The incumbency of each administrative member of this commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. (1937, c. 374, s. 5.)

§ 143-183. Functions and purpose of commission.—It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the council of state governments.

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other state, of the federal government, and of local units of government.

(3) To endeavor to advance co-operation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts,

(b) The enactment of uniform or reciprocal statutes,

(c) The adoption of uniform or reciprocal administrative rules and regulations,

(d) The informal co-operation of governmental offices with one another,

(e) The personal co-operation of governmental

officials and employees with one another, individually,

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this commission, enable this state to do its part—or more than its part—in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose. (1937, c. 374, s. 6.)

§ 143-184. Appointment of delegations and committees; persons eligible for membership; advisory boards.—The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure inter-governmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on interstate co-operation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. (1937, c. 374, s. 7.)

§ 143-185. Reports to the governor and general assembly; expenses; employment of secretary, etc.—The commission shall report to the governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this article. The commission may employ a secretary and a stenographer, it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the council of state governments, participate with other states in maintaining the said council's district and central secretariats, and its other governmental services. (1937, c. 374, s. 8.)

§ 143-186. Names of committees designated.—The committees and the commission established by this article shall be informally known, respectively, as the senate co-operation committee, the house co-operation committee, the governor's co-operation committee and the North Carolina co-operation commission. (1937, c. 374, s. 9.)

§ 143-187. Council of state governments a joint governmental agency. — The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which co-operate through it. (1937, c. 374, s. 10.)

§ 143-188. Secretary of state to communicate text of measure to officials and governing bodies of other states. — The secretary of state shall forthwith communicate the text of this article to the governor, to the senate, and to the house of representatives of each of the other states of the Union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this article, thus establishing a similar commission, and thus joining with this state in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict. (1937, c. 374, s. 11.)

Art. 16. Spanish-American War Relief Fund.

§ 143-189. Governor to be trustee of fund.—Whereas, of a fund known as the "Interim Pay Fund," and as the "Spanish American War Relief Fund," appropriated by the United States Government, for pay of veterans for time served between date of their call for duty and their muster into service of the United States, during the Spanish-American War in 1898, there remains in possession of the State of North Carolina, and unclaimed by Veterans of said War, a balance amounting to seventeen thousand six hundred thirty-seven dollars and forty-six cents, as of January 4, 1933, and Whereas, for many years there have been few claimants for any part of this fund, with the probability that the number of claims against same will become less and less, and more remote;

The Governor of the State shall be the trustee of said Interim Pay Fund, and shall, on the 30th of June, 1933, pay over to the Quartermaster of the Department of North Carolina United Spanish War Veterans the interest accruing on said sum at the rate of interest earned per annum, during the period from January 1st, 1933, to June 30th, 1933. Thereafter, the Governor, as such Trustee, shall pay over to said Department Quartermaster, semiannually each year (namely, as of 31st of December and 30th of June), interest on such portion of this fund as shall remain in the State Treasury as unexpended for legal claims against the same. Said interest, when so paid to such Department Quartermaster, shall be expended by him only on the written approval of the Department Commander, United Spanish War Veterans of North Carolina, and solely for welfare work among its needy comrades, their widows and their children, and current use of said organization. (1933, c. 554, s. 1.)

§ 143-190. Bond of department quartermaster.—Said Department Quartermaster, as the financial agent and Disbursing Officer of the United Spanish War Veterans of North Carolina, shall furnish a surety bond in the amount of five hundred dollars ($500.00) in a surety company authorized to do business in the State of North Carolina, conditioned upon the faithful performance of his duties as specified herein, and such bond to be approved by the said Department Commander. Said Trustee of the above fund shall have authority to invest same, or any part thereof, in securities as are legal for trust funds in this State. (1933, c. 554, ss. 2, 3.)

Chapter 144. State Flag and Motto.

Sec.
144-1. State flag.
144-2. State Motto.
144-3. Flags to be displayed on public buildings and institutions.
144-4. Flags to be displayed at county courthouses.
144-5. Flags to conform to law.

§ 144-1. State flag.—The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one-third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one-third more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th, 1775," and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th, 1776." (Rev., s. 5321; 1885, c. 291; C. S. 7535.)

§ 144-2. State Motto. — The words "esse quam videri" are hereby adopted as the motto of this state, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat-of-arms of the state as a part thereof. On the coat-of-arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775." (Rev., s. 5320; 1893, c. 145; C. S. 7536.)

§ 144-3. Flags to be displayed on public buildings and institutions.—The board of trustees or managers of the several state institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any state officer or any prominent citizen the flag shall be put at half-mast until the burial of such person has taken place. (1907, c. 838, s. 2; C. S. 7537.)

§ 144-4. Flags to be displayed at county courthouses.—The boards of county commissioners of the several counties in this state shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the state, and the state flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. (1907, c. 838, s. 3; C. S. 7538.)

§ 144-5. Flags to conform to law.—No state flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the state flag contained in this chapter. (1907, c. 938, s. 4; C. S. 7539.)

Chapter 145. State Flower.

Sec.
145-1. Dogwood adopted as official flower.

§ 145-1. Dogwood adopted as official flower.—The Dogwood is hereby adopted as the official flower of the state of North Carolina. (1941, c. 289.)

Chapter 146. State Lands.

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SUBCHAPTER I. ENTRIES AND GRANTS.

Art. 1. Lands Subject to Grant.

§ 146-1. Vacant lands; exceptions. — All vacant and unappropriated lands belonging to the state shall be subject to entry by any citizen thereof, in the manner hereinafter provided, except—

1. Lands covered by navigable waters.

2. Lands covered by the waters of any lake, or which, though now covered, may hereafter be gained therefrom by the recession, draining, or

diminution of such waters, or have been so gained heretofore and not lawfully entered.

3. Marsh or swamp land, where the quantity of land in any one marsh or swamp exceeds two thousand acres, or where, if of less quantity, the same has been surveyed by the state, or by the state board of education, with a view to draining and reclaiming the same. (Rev., s. 1693; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; C. S. 7540.)

§ 146-2. What swamp lands subject to grant.— Marsh or swamp lands, lying in a swamp where the quantity of land does not in the whole swamp or marsh exceed two thousand acres, and which has not been surveyed by the state or state board of education, and marsh or swamp lands, unsurveyed as aforesaid, not exceeding fifty acres in one body, though lying within a marsh or swamp of a greater number of acres than two thousand, may be entered, when the same shall be situated altogether between the lines of tracts heretofore granted. (Rev., s. 1694; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; C. S. 7541.)

§ 146-3. Department of conservation and development to locate land subject to entry. — The State Department of Conservation and Development is hereby directed to investigate and locate all vacant and unappropriated lands now subject to entry and grant as described in §§ 146-1 and 146-2, and determine what parcels of land among them seem suitable for State parks, State forests, State game refuges or shooting grounds, and report at once the result of their investigation to the Governor of the State, together with their findings thereupon, and such recommendations as to the disposition of the particular parcels of land within the meaning of this section as they may determine best. If upon such report the Governor should determine that it is to the interest of the State that any particular parcel of such land should be devoted to such purposes, he shall recommend to the next succeeding session of the General Assembly the withdrawal of such parcel or parcels of land from entry, and immediately upon the publication of such proclamation, such parcel or parcels of land shall be devoted to the public purpose designed and specified. Upon such withdrawal from entry such parcel or parcels of land shall be administered for the purposes to which it is devoted by the said State Department of Conservation and Development. (1927, c. 83, s. 1.)

§ 146-4. Swamp lands defined. — The words "marsh and swamp land" wherever employed in this chapter, and the words "swamp lands" employed in the statutes creating the literary fund and literary board of North Carolina and the state board of education of North Carolina, or in any act in relation thereto, shall be construed to include all those lands which have been or may now be known and called "swamp" or "marsh" lands, "pocosin bay," "briary bay," and "savanna," and all lands which may be covered by the waters of any lake or pond. (Rev., s. 1695; 1891, c. 302; C. S. 7542.)

§ 146-5. Investigating and locating marsh or swamp lands. — The State Department of Conservation and Development is hereby directed to investigate and locate the body or bodies, or parcel or parcels of marsh or swamp land, the title to which is now vested in the State Board of Education under §§ 146-1 and 146-4, and determine what parcels of land among them seem suitable for State parks, State forests, State game refuges or shooting grounds, and report at once the result of their investigation to the Governor of the State, together with their findings thereupon and such recommendations as to the disposition of the particular parcels of land within the meaning of this section as they may determine best. Upon such report to the Governor, he shall bring the matter to the attention of the next succeeding session of the General Assembly and if his recommendation thereupon is approved by the General Assembly, said parcel or parcels of marsh or swamp lands shall be withdrawn from sale and shall be administered for the benefit of the people of the State for the purposes set out in this act by said Department of Conservation and Development. (1927, c. 83.)

§ 146-6. Land covered by water, for wharves. —Persons owning lands on any navigable sound, river, creek or arm of the sea, for the purpose of erecting wharves on the side of the deep waters thereof, next to their lands, may make entries of the lands covered by water, adjacent to their own, as far as the deep water of such sound, river, creek, or arm of the sea, and obtain title as in other cases. But persons making such entries shall be confined to straight lines, including only the fronts of their own tracts, and shall in no respect obstruct or impair navigation. When any such entry shall be made in front of the lands in any incorporated town, the town corporation shall regulate the line on deep water to which wharves may be built. This shall not affect existing rights. For all lands thus entered there shall be paid into the treasury not less than one dollar per acre. When any person has erected a wharf on public lands of the description aforesaid, before the first of January, one thousand nine hundred and three, such person shall have liberty to enter such land, including his wharf, under the restrictions and upon the terms above set forth: Provided, no land covered by water shall be subject to entry within thirty feet of any wharf, pier or stand used as a wharf in existence, or which may hereafter be erected by any person on his own land or land under his control, or on an extended line thereof; but land covered by water as aforesaid for the space of thirty feet from the landing place or line of any wharf, pier or stand used as a wharf, as aforesaid, shall remain open for the free ingress and egress of the owner and other persons to and from such wharf, pier, or stand: Provided further, no person shall be allowed to enter and obtain a grant for any land in the waters of Onslow county, in which the tide ebbs and flows, within thirty feet of the shore at low-water mark, unless the enterer shall be the owner of the adjacent shore. (Rev., s. 1696; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; 1889, c. 555; 1891, c. 532; 1893, c. 4; 1893, c. 17; 1893, c. 349; 1901, c. 364; C. S. 7543.)

§ 146-7. Certain lakes not to be sold. — White lake, Black lake, Waccamaw lake, and any other lake in Bladen, Columbus, or Cumberland coun-

ties, containing five hundred acres or more, shall never be sold nor conveyed to any person, firm, or corporation, but shall always be and remain the property of the state of North Carolina for the use and benefit of all the people of the state. (1911, c. 8; C. S. 7544.)

§ 146-8. Recreational use of State lakes regulated. — All recreation, including hunting, fishing, etc., in, upon or above, any or all of the State lakes, referred to in § 146-7 and subsequent laws, may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-9. Fish breeding protected.—For the purpose of protecting the breeding grounds of the fish inhabiting these State lakes, the administrative authority in control of said lakes may extend to the waters of all streams running into said lakes, so that such regulations relating to fishing, as in the opinion of such authority will help to accomplish such purpose, may be put into effect. (1933, c. 516, s. 2.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-10. Erection of piers, etc.; permits.—No person, firm or corporation shall erect upon the floor of, or in or upon, the waters of any State lake which is State property, any dock, pier, pavillion, boat house, bath house, or other structure without first having secured a permit to do so from the State agency in charge of such State property. Said permit must set forth in required detail the size, cost and nature of such structure, and any person, firm or corporation erecting any such structure, without a proper permit or not in accordance with the specifications of said permit shall be guilty of a misdemeanor and upon conviction shall be fined not more than $50 or imprisoned not exceeding thirty days. The State being the owner of the property may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-11. Fishing license fees for non-residents of counties in which State lakes are situated.—The Department of Conservation and Development, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Department relating to said lake, as follows: A one-day permit, 35 cents; a two-day permit, 50 cents; a weekly permit, $1. With the exception of the features of this section, the laws and regulations dealing with the issuance of fishing permits by said Department must be complied with. (1933, c. 516, s. 4.)

Local Modification.—Craven: 1933, c. 516, s. 5.

§ 146-12. State lakes of 50 acres or more prohibited from ever being sold.—All lakes now belonging to the State, having an area of fifty acres or more, shall never be sold nor conveyed to any person, firm or corporation, but shall always be and remain the property of the State of North Carolina for the use and benefit of all the people of the State to be administered as provided for other recreational areas now owned or to be acquired by the State. (1929, c. 165.)

§ 146-13. Void grants; not color of title.—Every entry made, and every grant issued, for any lands not authorized by this subchapter to be entered or granted, shall be void; and every grant of land made since the sixth day of March, one thousand eight hundred and ninety-three, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this state, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (Rev., s. 1699; Code, s. 2755; R. C., c. 42, s. 2; 1893, c. 490; C. S. 7545.)

Art. 2. Entry-Taker.

§ 146-14. Election and term of office.—The board of commissioners of the several counties shall elect one person to receive entries of claims for lands within each county; and such entry-taker shall hold his office for four years. (Rev., s. 1700; Code, s. 2756; C. S. 7546.)

§ 146-15. Oath of office.—The entry-taker shall take the oath of office prescribed in the chapter entitled Oaths. (Rev., s. 1703; Code, s. 2760; 1868-9, c. 173, s. 5; C. S. 7547.)

§ 146-16. Fees of entry-taker. — Entry-takers shall receive the following fees, and no other, namely: For an entry, including all services, forty cents; issuing each duplicate warrant, when thereto required, twenty-five cents; for posting and advertising, the applicant shall pay the entry-taker one dollar, and the costs of the newspaper advertisement. (Rev., s. 2801; Code, ss. 2765, 3744; R. C., c. 102, s. 32; 1870-1, c. 139, s. 3; 1903, c. 272, s. 3; C. S. 3920.)

§ 146-17. Bond required. — Every entry-taker shall enter into bond in the sum of five hundred dollars, payable to the state, with sufficient surety, approved by the county commissioners, for the faithful discharge of the duties of his office. (Rev., s. 304; Code, s. 2758; 1868-9, c. 173, s. 3; C. S. 7548.)

§ 146-18. Office of entry-taker at courthouse.—The entry-taker shall keep his office at the courthouse of his county, or within one mile thereof, on pain of forfeiting one hundred dollars to the county, to be sued for by the county treasurer. (Rev., s. 1704; Code, s. 2759; 1868-9, c. 173, s. 4; C. S. 7549.)

§ 146-19. Annual returns. — Every entry-taker shall make return to the secretary of state annually, on the first day of January, of all lands entered with him, under a penalty of two hundred dollars. (Rev., s. 1705; Code, s. 2775; R. C., c. 42, s. 18; 1796, c. 455, s. 9; 1881, c. 265; C. S. 7550.)

§ 146-20. Penalty for failure to make returns; how recovered.—The secretary of state shall furnish the attorney-general, at every spring term

of the superior court of Wake county, with a certificate of failure in every case where an entry-taker shall fail to make return according to law; and the attorney-general shall move for judgment against such entry-taker and his sureties, and the courts shall give judgment accordingly. (Rev., s. 1706; Code, s. 2776; R. C., c. 42, s. 19; 1833, c. 15; C. S. 7551.)

§ 146-21. Warrants issued by successor in office.—In all cases where an entry is made, and the entry-taker dies or resigns before a warrant is issued thereupon, his successor shall issue a warrant. (Rev., s. 1702; Code, s. 2772; R. C., c. 42, s. 15; 1835, c. 19; C. S. 7552.)

§ 146-22. Register of deeds acts in case of vacancy.—When a vacancy exists in the office of entry-taker, the register of deeds shall act as entry-taker until such vacancy is filled by an election by the commissioners. The register of deeds, in such case, shall take charge of the books belonging to the office, shall discharge all the duties and receive the emoluments, and shall be subject to the rules, regulations, and penalties prescribed for entry-takers. (Rev., s. 1701; Code, s. 2757; 1868-9, c. 100, s. 2; 1868-9, c. 173, s. 2; C. S. 7553.)

Art. 3. Entries.

§ 146-23. Who entitled to make entries. — Any citizen of this state, and all persons who come into the state with the bona fide intent of becoming residents and citizens thereof, have the right and privilege of making entries of, and obtaining grants for, vacant and unappropriated lands. (Rev., s. 1692; Code, s. 2754; 1869-70, c. 19, s. 1; C. S. 7554.)

§ 146-24. Entries in writing, with description of land. — The claimant of land shall produce to the entry-taker a writing, signed by such claimant, setting forth where the land is situated, the nearest water-courses and remarkable places, and such water-courses and remarkable places as may be therein, the natural boundaries and the lines of any other person, if any, which divide it from other lands; and every such writing shall be one-quarter sheet of paper at least. (Rev., s. 1707; Code, s. 2765; R. C., c. 42, s. 11; 1777, c. 114, s. 5; 1783, c. 185, s. 11; 1885, c. 132; 1891, c. 70; 1893, cc. 120, 270; 1903, c. 272, s. 3; C. S. 7555.)

§ 146-25. Duty of entry-taker.—The entry-taker shall immediately endorse the same with the name of the claimant, the number of acres claimed, and date of the entry; and shall copy the same in a book well bound, and ruled with a large margin into spaces of equal distance, each space to contain one entry only, and every entry to be made in the order of time in which it shall be received, and numbered in the margin. The entry-taker shall thereupon cause a copy of the entry to be posted for thirty days at three public places in the township or townships in which the land covered by the entry is located. A copy of the entry shall also be posted for thirty days at the courthouse door of the county in which such land lies, and advertised for thirty days in a newspaper published at the county-seat of such county. If there be no newspaper published in such county, then the advertisement provided for shall be made in the nearest newspaper. (Rev., s. 1708; Code, s. 2765; 1903, c. 272, s. 3; C. S. 7556.)

§ 146-26. Protest filed; bonds required.—If any person shall claim title to or an interest in the land covered by the entry, or any part thereof, he shall, within the time of the advertisement as above provided, file his protest in writing with the entry-taker against the issuing of a warrant thereon; and upon the filing of such protest, the entry-taker shall certify copies of the entry and protest to the superior court; thereupon a notice shall be issued by the clerk of the superior court to both parties, commanding them to appear before the clerk in twenty days and file their respective bonds for costs as in other cases where the title to real estate is in controversy, and to the claimant to appear at the next term of the court and show cause why the entry shall not be declared inoperative and void. This section shall not deprive either party of the advantage of prosecuting or defending without giving bond, as provided in other cases. (Rev., s. 1709; Code, s. 2765; 1903, c. 272, s. 3; 1907, c. 66, s. 1; C. S. 7557.)

§ 146-27. Payment of price; lapse of entry.—All entries of land shall, in every event, be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event they shall be paid for within twelve months after final judgment on the protest; and all entries of land not thus paid for shall become null and void, and may be entered by any other person. (Rev., s. 1731; Code, s. 2766; R. C., c. 42, s. 8; 1854-5, c. 49; C. S. 7558.)

§ 146-28. When entry lapses, subsequent entry valid.—Whenever an entry of land shall be made in any entry-taker's office, and the enterer shall fail to have the land surveyed and pay the price for the same within the time limited by law, any person who may have made a subsequent entry for the same land may have the same surveyed and pay the price and have a grant. (Rev., s. 1710; Code, s. 2767; R. C., c. 42, s. 9; 1809, c. 771; C. S. 7559.)

§ 146-29. Lapsed entries not renewed within one year.—No lands entered on the books of the entry-taker, the entry of which shall be suffered to lapse by nonpayment of the price thereof, shall be reëntered within one year after the time at which such entry shall lapse, by the person in whose name such entry was made, but such reëntry shall be void. (Rev., s. 1712; Code, s. 2768; R. C., c. 42, s. 10; C. S. 7560.)

§ 146-30. Entry for benefit of entry-taker. — If any entry-taker shall desire to make an entry in his own name, the same shall be made in its proper place, before a justice of the peace of the county, not being a surveyor or assistant; which entry the justice shall return to the next meeting of the board of county commissioners, who shall insert it; and every entry made by or for such entry-taker, in any other manner, shall be void. (Rev., s. 1711; Code, s. 2773; R. C., c. 42, s. 16; 1777, c. 114, s. 17; C. S. 7561.)

Art. 4. Surveys.

§ 146-31. Warrant for survey issued.—If no protest be filed, or where the protest is filed and the right of the claimant to make the entry is sustained, the entry-taker shall deliver to the party a copy of the entry with its proper number and a warrant to the surveyor to survey the same, which warrant shall contain a copy of the entry with its number and date, and a certificate that notice has been given as above provided, and that no protest has been filed, or that protest has been filed and that the court has decided in favor of the claimant. Each warrant shall be delivered to the surveyor in the order of time in which the entry was made. (Rev., s. 1713; Code, s. 2765; 1903, c. 272, s. 3; C. S. 7562.)

§ 146-32. Duplicate warrants. — When any person duly makes an entry of lands which has not become void by lapse of time, and upon which the entry-taker has issued his warrant of survey, and the same be lost by accident, the entry-taker, on due proof being made to his satisfaction, by affidavit of the claimant or the surveyor or deputy surveyor, may issue a duplicate warrant of survey, of the same tenor and date, taking care to set forth, on the face of such warrant, that the same is a duplicate; in which case such warrant shall be made as valid as the original. (Rev., s. 1714; Code, s. 2771; R. C., c. 42, s. 14; 1814, c. 878, s. 1; C. S. 7563.)

§ 146-33. Surveys according to priority of entry.—The surveyor shall survey all entries of land according to the priority of entry, paying due respect to the number of each warrant; and every grant obtained by any subsequent entry otherwise than is by this chapter directed, shall be void: Provided, nothing herein shall be construed to prevent any person who shall make a subsequent entry from surveying and obtaining a grant, as the law directs, for all such surplus land as shall remain, after the enterer of such land has surveyed his entry as aforesaid. (Rev., s. 1715; Code, s. 2770; R. C., c. 42, s. 13; 1787, c. 279; C. S. 7564.)

§ 146-34. Chainbearers sworn. — No survey for the purpose of obtaining a grant shall be made until the chainbearers shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor. The chainbearers shall actually measure the land surveyed. The surveyor is empowered to administer the oath. (Rev., s. 1717; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; C. S. 7565.)

§ 146-35. Survey made and plots prepared.—Every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall, within ninety days, lay off and survey the same agreeably to this chapter; and make thereof two fair plots, the scale whereof and the number of the entry shall be mentioned on such plots; and shall set down in words the beginning, angles, distances, marks, and watercourses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and land lying on any navigable water shall be surveyed in such manner that the water shall form one side of the survey, and the land be laid off back from the water. (Rev., s. 1716; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; 1903, c. 272, s. 4; C. S. 7566.)

§ 146-36. Plots and warrants sent to secretary of state.—The surveyor shall, within one year, transmit the plots, together with the warrant or order of survey, to the office of the secretary of state, or deliver them to the claimant. The secretary of state shall, on receipt of the plots, file one in his office, and attach the other to the grant. (Rev., ss. 1718, 1734; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114; C. S. 7567.)

§ 146-37. Special surveyor appointed, if no county surveyor.—When the office of county surveyor is vacant, the county commissioners may appoint a special surveyor to survey any lands that may be entered; and the plots and certificates of such special surveyor, accompanied by a copy of the order of the county commissioners appointing him, shall be held valid, as if done by a county surveyor duly elected. (Rev., s. 1719; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; C. S. 7568.)

§ 146-38. Special surveyor, when county surveyor interested.—When a county surveyor wishes to have lands surveyed in a county where he acts as principal surveyor, for the purpose of obtaining a grant, the board of county commissioners of the county shall appoint some person to make the survey, and the entry-taker shall direct his warrant of survey to such person; and all certificates, surveys, and plots of the same shall be made under the same regulations as prescribe the duty of the county surveyor in similar cases. (Rev., s. 1721; Code, s. 2774; R. C., c. 42, s. 17; 1828, c. 23; C. S. 7569.)

§ 146-39. Record of surveys to be kept.—The county commissioners of the several counties of the state shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. And such record shall have an alphabetical and numerical index, the numerical index to run consecutively. And it shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the day such survey was made. (Rev., s. 1722; 1905, c. 242; C. S. 7570.)

§ 146-40. Former surveys recorded.—Where any ex-county surveyor is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in such record of surveys, and the county commissioners shall pay for such services ten cents for each survey so recorded and indexed. (Rev., s. 1725; 1905, c. 242, s. 2; C. S. 7571.)

§ 146-41. What record must show; received as evidence.—All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee, and shall be

duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry, and the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided, that if such record differs from the original certificates of survey heretofore made or on file in office of secretary of state, such original or certified copy of the certificate in secretary of state's office shall control. (Rev., s. 1723; 1905, c. 242, ss. 2, 3, 6; C. S. 7572.)

§ 146-42. Fees for recording. — For recording and indexing such surveys the surveyor may charge twenty-five cents, which shall be paid by the party for whom the survey is made; and any surveyor shall not be required to make any survey until his fees provided by law are paid, including the twenty-five cents for recording and indexing. (Rev., s. 1724; 1905, c. 242, s. 4; C. S. 7573.)

§ 146-43. Penalty for failure to make record.— Any county surveyor or deputy surveyor failing to make such record of any survey within sixty days after he makes a survey shall forfeit and pay to any party who may sue for the same two hundred dollars, and be subject to be removed from office by the board of county commissioners, and if any surveyor is removed the county commissioners shall appoint his successor, and all papers and records of a public nature in the possession of such surveyor so removed, or who may die, shall be turned over to his successor in office. (Rev., s. 1726; 1905, c. 242, s. 5; 1907, c. 579, s. 1; C. S. 7574.)

Art. 5. Grants.

§ 146-44. Price to be paid for land.—Whenever an entry and survey of any vacant and unappropriated land belonging to the state shall be filed in the office of the secretary of state, he shall immediately investigate the character of the land and determine its market value from its character and location, and thereupon fix the price per acre for said lands. Said price so fixed by the secretary of state shall be paid by the enterer to the treasurer of the state before any grant of the same is made by the secretary of state. (Rev., s. 1733; 1909, c. 447; 1927, cc. 8, 83, s. 3; 1929, cc. 78, 210; 1931, c. 119; C. S. 7575.)

Local Modification.—Cherokee, Clay, Graham, Macon and Swain: Fees for entering land fixed at one and one-half dollars per acre. 1933, c. 72.

Moore and Avery: Fees for entering land fixed at not less than one and one-half dollars per acre. 1939, c. 125.

§ 146-45. Price paid state treasurer.—The state treasurer shall receive the money for vacant and unappropriated lands upon the presentation to him of the certificate of the secretary of state, setting forth the number and date of the entry, and the quantity of acres found by the surveyor to be vacant, as the same may appear by the returns made to him from the surveyor or entry-taker, or from the entry-taker's warrant, or the plots of survey. (Rev., s. 1732; Code, s. 2777; R. C., c. 42, s. 20; 1827, c. 23; 1829, c. 30; C. S. 7576.)

§ 146-46. Grant issued on auditor's certificate.— No grant shall issue on the treasurer's receipt for the money; but the auditor shall make out and deliver to the secretary of state a certificate, conformable to each receipt by him countersigned, on which the secretary shall issue the grant. (Rev., s. 1728; Code, s. 2778; R. C., c. 42, s. 21; 1799, c. 525, s. 4; C. S. 7577.)

§ 146-47. Manner of issuing grant.—The secretary of state, on application of claimants, shall make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, countersigned by the secretary, and recorded in his office. The date of the entry, and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every grant, and a copy of the plot shall be attached to the grant; and no grant shall issue upon any survey unless the same be signed by the surveyor of the county. Upon certificate from the entry-taker that the claimant has assigned his interest under the entry, a grant shall be issued in the name of the assignee: Provided, that the assignee is a citizen and resident of this state, or has come into the state with the bona fide intent of becoming a resident and citizen thereof. (Rev., ss. 1729, 1734, 1735; Code, ss. 2769, 2779; R. C. c. 42, ss. 12, 22; 1777, c. 114, s. 10; 1783, c. 185, s. 14; 1796, c. 455; 1799, c. 525, s. 2; 1889, c. 522; C. S. 7578.)

§ 146-48. Registration of grants.—Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the secretary of state, which shall have the same effect as if the original had been registered. (Rev., s. 1729; Code, s. 2779; R. C., c. 42, s. 22; R. S., c. 42, s. 24; 1783, c. 185, s. 14; 1796, c. 455; 1799, c. 525, s. 2; C. S. 7579.)

§ 146-49. Grant issued in case of claimant's death.—In case of the death of any person having made an entry of lands, pending the same or before making out the grant, the secretary shall issue the grant in the name of the decedent; and those interested, as heirs at law, devisees, tenants in dower, by the curtesy, or otherwise, shall have the same estate as if the land had been granted during the life of the decedent. (Rev., s. 1730; Code, s. 2780; R. C., c. 42, s. 23; 1715, c. 44, s. 6; 1798, c. 439, s. 6; C. S. 7580.)

§ 146-50. When secretary of state may withhold grant.—When application is made for a grant, if the secretary of state has reason to believe that the land covered by any entry and the surveys made in pursuance of the same is the property of the state board of education, he may, in his discretion, withhold the issuance of a grant for same until the engineer of the state board of education or surveyor appointed by the board shall have examined into the matter and made his report. And if the engineer or surveyor shall report that the lands in question are the property of the state board of education and not subject to entry, the secretary of state shall not issue a grant on such entry and surveys. If the secretary of state has reason to believe that the land for which a grant is sought has already been granted and does not belong to the state, he shall not issue grant for

the same until it appears to his satisfaction that the land does belong to the state and is subject to entry.

The secretary of state shall withhold a grant to any and all vacant and unappropriated lands lying within or immediately adjacent to the boundaries of any and all national forest purchase areas; also to lands within or near state forests and parks, and such other areas as the department of conservation and development may request to be withheld for dedication to public use as state forests, state parks, game refuges or other recreational areas. The secretary of state is further authorized to furnish to the department of conservation and development all available information on such tracts or parcels of vacant land. The department of conservation and development, after proper investigation, may then request the permanent dedication of these lands to the State as state forests and parks, game and wild life refuges or other type of economic or recreational areas. If the department of conservation and development should decide that the lands in question are too small or in other ways unsuitable for administration as such state forests and parks but are more suitable for the consolidation of publicly owned forests, parks, game refuges or other recreational areas, it may upon approval by the governor request the secretary of state and the said secretary is hereby directed, payment of the usual official and service fees therefor to be made in such manner as the said secretary may direct, to issue a grant for said land to such agency as may have the direction and supervision over such publicly owned forests, parks, game refuges or other recreational areas, or it may enter into agreement with federal or other public and private agencies for exchange of lands in order to bring about the consolidation of publicly owned forests, parks, game refuges or other recreational areas; and on approval of such agreements for exchange by the governor, the secretary of state, on request of the department of conservation and development, shall issue grants in accordance with such agreements. (Rev., s. 1727; 1903, c. 272, s. 3; 1935, c. 173; C. S. 7581.)

§ 146-51. Cutting timber on land before obtaining a grant.—If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. Any person found guilty under the provisions of this section shall further pay to the state double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (Rev., s. 3741; 1903, c. 272, s. 4; C. S. 7582.)

§ 146-52. Lands conveyed to United States for inland waterway.—For the purpose of aiding in the construction of a proposed inland waterway by the United States from the city of Norfolk, in the state of Virginia, to Beaufort inlet, in the state of North Carolina, the secretary of state is hereby authorized to issue to the United States of America a grant to the land located within a distance of one thousand feet on either side of the center of the said inland waterway, in so far as such land is subject to grant by the state of North Carolina, the said grant to issue upon a certificate furnished to the secretary of state by the secretary of war, or by any authorized officer of the corps of engineers of the United States army, or by any other authorized official, exercising control of the construction of the said waterway.

Wherever, in the construction of the said inland waterway, lands theretofore submerged shall be raised above the water by deposit of excavated material, the lands so formed shall become the property of the United States for a distance of one thousand feet on either side of the center of such canal or channel, and the secretary of state is hereby authorized to issue to the United States a grant to the land so formed within the distance above mentioned, the grant to issue upon a certificate furnished to the secretary of state by some authorized official of the United States as above provided. (1913, c. 197; 1937, c. 445; C. S. 7583.)

§ 146-53. Card index system for grants.—The secretary of state shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

..... County. ..... Acres.
Name .....
Grant No. ..... Issued .....
Grant Book ..... Page .....
Entry No. ..... Entered .....
File No. .....
Location .....
Remarks: .....

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the secretary of state shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C. S. 7584.)

§ 146-54. Grant of Moore's Creek battlefield authorized.—In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684, U. S. Code, Title 16, ss. 422-422(d), the Governor of the State of North Carolina is hereby authorized to execute to the United States Government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States Government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided, that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56.)

Art. 6. Correction of Grants.

§ 146-55. Change of county line before grant issued or registered.—All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor, or the registration of the grants, by the change of former county lines, or the establishment of new lines, the lands so entered were placed in a county, or in counties different from that in which they were situated, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grants shall have the same force and effect as if they had been registered in the county where the lands were situated; and all persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the secretary of state, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (Rev., s. 1736; 1897, c. 37; C. S. 7585.)

§ 146-56. Entries in wrong county.—Whereas many citizens of the state, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the state or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (Rev., s. 1737; Code, s. 2784; R. C., c. 42, s. 27; 1805, c. 675; 1834, c. 17; C. S. 7586.)

§ 146-57. Errors in surveys of plots corrected.—Whenever there may be an error by the surveyor in plotting or making out the certificate for the secretary's office, or the secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so as such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto; and the court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the secretary of state, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided, no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (Rev., s. 1738; Code, s. 2785; R. C., c. 42, s. 28; 1790, c. 326; 1798, c. 504; 1804, c. 655; 1814, c. 876; C. S. 7587.)

§ 146-58. Resurvey of lands to correct grants.—Persons who have heretofore entered or may hereafter enter vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors, but in every case where the purchase money has been paid into the state treasury within the time prescribed by law after entry and survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the entry-taker of the county where the land lies, and have his entry surveyed as is directed by existing laws, and on presenting a certificate of survey and two fair plots thereof to the secretary of state within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the secretary of state to issue to him, the proper grant for the lands so entered. (Rev., s. 1739; 1901, c. 734; C. S. 7588.)

§ 146-59. Lost seal replaced.—In all cases where the seal annexed to a grant is lost or destroyed the governor may, on the certificate of the secretary of state that the grant was fairly obtained, cause the seal of the state to be affixed thereto. (Rev., s. 1740; Code, s. 2781; R. C., c. 42, s. 24; 1807, c. 727; C. S. 7589.)

§ 146-60. Errors in grants corrected.—If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the secretary of state has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded,

the secretary of state shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, he shall make the former correspond with the latter as the true facts may require. In case the party interested prefer it, the secretary of state shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the state as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (Rev., s. 1741; 1889, c. 460; C. S. 7590.)

§ 146-61. Irregular entries validated.—Wherever persons have prior to January first, one thousand eight hundred and eighty-three, irregularly entered lands and have paid the fees required by law to the secretary of state, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (Rev., s. 1743; Code, s. 2761; 1868-9, c. 100, s. 4; 1868-9, c. 173, s. 6; 1874-5, c. 48; C. S. 7591.)

§ 146-62. Grant signed by deputy secretary of state validated.—Where state grants have heretofore been issued and the name of the secretary of state has been affixed thereto by his deputy or chief clerk, or by any one purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (Rev., s. 1744; 1905, c. 512; C. S. 7592.)

§ 146-63. Time for registering grants extended.—All grants from the state of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from the first day of January, nineteen hundred and eighteen, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the state of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (Rev., s. 1747; 1893, c. 40; 1901, c. 175; 1905, c. 6; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, c. 27; Ex. Sess. 1913, c. 45; 1915, c. 170; 1917, c. 84; Ex. Sess. 1920, c. 78; 1921, c. 153; C. S. 7593.)

§ 146-64. Time for registering grants extended.—The time is hereby extended until September first, one thousand nine hundred and twenty-six, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided, that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and Provided further, that this section shall not affect pending litigation: Provided further, that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20.)

§ 146-65. Time for registering grants extended.—The time for the registration of grants issued by the State of North Carolina be and the same is hereby extended for a period of two years from January first, nineteen hundred and twenty-five: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97.)

§ 146-66. Further extension. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from the first day of January, nineteen hundred twenty-seven, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140.)

Art. 7. Grants Vacated.

§ 146-67. Civil action to vacate grant. — When any person claiming title to lands under a grant or patent from the king of Great Britain, any of the lords proprietors of North Carolina, or from the state of North Carolina, shall consider him-

self aggrieved by any grant or patent issued or made since the fourth day of July, one thousand seven hundred and seventy-six, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (Rev., s. 1748; Code, s. 2786; R. C., c. 42, s. 29; C. S. 7594.)

§ 146-68. Judgment recorded in secretary of state's office.—If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, they may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the secretary of state's office, where it shall be recorded in a book kept for that purpose; and the secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (Rev., s. 1749; Code, s. 2787; R. C., c. 42, s. 30; C. S. 7595.)

§ 146-69. Action by state to vacate grants.—An action may be brought by the attorney-general, in the name of the state, for the purpose of vacating or annulling letters patent granted by the state, in the following cases:

1. When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or
2. When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or
3. When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (Rev., s. 1750; Code, s. 2788; C. C. P., s. 367; C. S. 7596.)

Art. 8. Phosphate Beds.

§ 146-70. Phosphate beds in navigable waters entered.—Any resident of this state who shall make affidavit before the clerk of the superior court of any county through which such navigable stream may flow, that he has discovered in any navigable stream or waters of this state any phosphate rock or phosphate deposit therein shall have authority and power to enter under the entry laws of this state so much of the bed of any such navigable stream or waters as shall not exceed in any one entry two miles in length up the middle of any such stream or water for the purpose of digging, mining, or removing any such deposit or rock. (Rev., s. 1751; 1891, c. 476; C. S. 7597.)

§ 146-71. Grant obtained; term; royalty.—Upon such affidavit being filed with the entry-taker, and upon a survey and plot being made of such entry by the county surveyor as is now required by law in cases of entry of land, being made and certified to the secretary of state with a copy of such affidavit and entry so made, the secretary of state shall issue a patent or grant to such person, his heirs or assigns, for a term of twenty-five years for the land, with the proviso and condition inserted therein that the grantee therein shall pay to the treasurer of the state at the end of every three months a royalty of one dollar per ton for every ton of the crude phosphate rock or deposit mined, dug, or removed. (Rev., s. 1752; 1891, c. 476, s. 2; C. S. 7598.)

§ 146-72. Exclusive right to mine; bond for royalty.—Such grantee, his heirs or assigns, shall have the exclusive right to mine, dig, or remove any such phosphate rock or deposit for the term of twenty-five years from the date of the patent upon paying the royalty of one dollar specified in the patent: Provided, however, that as a condition precedent to the granting of any such patent each company or person making any such entry shall enter into bond with sufficient surety in the penal sum of five thousand dollars, conditioned for the making of faithful and true returns to the treasurer of the state of the number of tons of phosphate rock and phosphate deposit so dug, mined, or removed, at the end of every month, and the punctual payment to the treasurer of the royalty of one dollar per ton upon every ton of the crude rock, without being steamed or dried, at the end of every three months, and the bond and sureties shall be subject to the approval now required by law for the bonds of state officers. (Rev., s. 1753; 1891, c. 476, s. 3; C. S. 7599.)

§ 146-73. Navigation not obstructed by grantee.—No grant issued under the provisions of this article shall confer upon the person receiving the same the right to obstruct the navigation of any such stream or water, nor confer upon such person or his assigns any other right than that granted to take, mine, or dig phosphate rock or deposit therefrom. (Rev., s. 1754; 1891, c. 476, s. 4; C. S. 7600.)

§ 146-74. Fees for issuing grant for phosphate beds.—No fee or cost shall be charged or collected by the secretary of state of any person or corporation receiving any patent or grant under this article, except the fee allowed by law to the secretary of state for issuing a patent under the entry laws of the state. (Rev., s. 1755; 1891, c. 476, s. 5; C. S. 7601.)

§ 146-75. Failure to operate for two years vacates grant.—Any person or corporation who shall fail to dig, mine or remove phosphate rock or deposit from any such stream or water to which he or it may be entitled under any patent or grant issued under the provisions of this article for the period of two years from the date of the patent, or after beginning digging, mining, or removing the same, shall fail to continue to so dig, mine, or remove the same for the period of two years, shall forfeit all rights therein granted, and the territory shall immediately

thereupon become subject to entry under the provisions of this article without making the affidavit of the discovery of any such deposits or rocks. (Rev., s. 1756; 1891, c. 476, s. 6; C. S. 7602.)

§ 146-76. Mining phosphate without grant. — Any person or corporation resident of this state shall have the right to mine, dig, or remove phosphate rock or deposits from any of the navigable streams or waters in this state to which no exclusive patent or grant may have been issued, upon such person or corporation first entering into bond in the penal sum of five thousand dollars, payable to the treasurer of the state, for the payment of the same royalty, in the same manner and under the same regulations as are prescribed in this article for persons operating under a grant; but nothing in this section shall be construed to give to any such person or corporation any exclusive franchise or privilege to dig, mine, or remove any such phosphate rock or deposit from any stream or water of this state. (Rev., s. 1757; 1891, c. 476, s. 7; C. S. 7603.)

§ 146-77. Mining phosphate rock in rivers. — If any person shall dig, mine, or remove any phosphate rock or deposit from any of the navigable waters of this state, except for the purpose of prospecting and discovering as allowed by law, he shall be guilty of a misdemeanor, and shall also forfeit and pay ten dollars per ton for every ton of phosphate rock or deposit so mined, dug, or removed, one-half to the use of the state and the other one-half to go to the informer. (Rev., s. 3744; 1891, c. 476, s. 8; C. S. 7604.)

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION.

Art. 9. Swamp Lands Reclaimed.

§ 146-78. Power in state board of education. — The state board of education is invested with full power to adopt all necessary ways and means for causing so much of the swamp lands to be surveyed as it may deem capable of being reclaimed, and shall cause to be constructed such canals, ditches, roads, and other necessary works of improvement as it may deem proper and necessary. (Rev., s. 4036; Code, s. 2508; R. C., c. 66, s. 5; R. S., c. 67, s. 5; 1885, c. 70, ss. 1, 2, 4; 1899, c. 253, s. 5; C. S. 7605.)

§ 146-79. Expenditures limited. — The state board of education shall not lend or expend any part of the public moneys, stocks, funds, or property vested in it by law, or under its control, for the purpose of reclaiming lands, or for any other purpose whatsoever, except by the direction of the general assembly. (Rev., s. 4037; Code, ss. 2515, 2530; R. C., c. 66, s. 12; 1870-1, c. 279; C. S. 7606.)

§ 146-80. Purchase and exchange of land.— Whenever, in the process of draining, it may be necessary, in order to prevent a sacrifice of the interests of the state, to purchase small tracts owned by individuals, the corporation may buy them, or exchange for them some other portions of the swamp lands; and the lands thus acquired by the corporation shall be held by it as other swamp lands. (Rev., s. 4038; Code, s. 2517; R. C., c. 66, s. 14; C. S. 7607.)

§ 146-81. Title vested in board by written consent.—Whenever it is necessary to construct any such works on the lands of any individual proprietor, his written consent, without any formal deed of conveyance of the lands necessary to the work and its future enjoyment, shall vest the title thereof in the corporation forever; and when any infant or person non compos mentis is owner thereof, his guardian is authorized to give such consent; and a feme covert and her husband may do so without any private examination; and the consent so given shall be valid for all purposes. (Rev., s. 4039; Code, s. 2509; R. C., c. 66, s. 6; R. S., c. 67, s. 6; C. S. 7608.)

§ 146-82. Condemnation of lands. — Whenever the consent of the proprietor shall be withheld, the corporation's agents may enter on the lands and lay off so much as may be necessary to be used in such work, the value of which shall be assessed to the proprietor according to law; and, upon the payment thereof, the title shall be vested in the corporation forever. In the assessment of valuation, the benefit that will accrue to the proprietor by reason of the improvement may be likewise reckoned and set off against the damages. The proceedings for such condemnation shall be the same as are provided for condemnation of lands by railroad corporations. And the corporation's officers and agents shall have a right to enter upon the lands of all persons whomsoever, for the purpose of surveying. (Rev., s. 4040; Code, ss. 2510, 2513; R. C., c. 66, s. 7; R. S., c. 67, s. 7; C. S. 7609.)

§ 146-83. Private lands assessed for benefits. — When there are lands owned by individuals which can be reclaimed by reason of the canals, ditches, or other works of the corporation, the same shall be assessed to contribute an equitable proportion of the cost of such works; which assessment shall be made by the board or a board of commissioners appointed by them, and the same shall be charged on the lands; but the corporation, by contract with individual proprietors, may agree upon the assessment, and accept payment thereof in labor or money. (Rev., s. 4041; Code, s. 2511; R. C., c. 66, s. 8; R. S., c. 67, s. 8; C. S. 7610.)

§ 146-84. Regulations for surveying, reclaiming, and assessing.—The state board of education may enact all necessary rules and regulations for surveying and reclaiming the swamp lands; for assessing the lands of individuals which may be improved by the works, and for collecting assessments; and the assessments shall be published weekly for five weeks in one of the newspapers published in Raleigh, and also filed in the office of the clerk of the superior court of the county wherein the lands assessed are situate. If no objections are filed at the court next after such advertisement, the assessments shall be confirmed by the court and the lands adjudged liable for the amount, and execution may be issued for the sale thereof to satisfy the same, on motion to the court for that purpose; and if any reasons be shown against the assessments, they shall be heard and determined by the court, and the assessments shall be increased or diminished, as the court shall adjudge. (Rev., s. 4042; Code, s. 2512;

R. C., c. 66, s. 9; R. S., c. 67, s. 9; 1899, c. 253, 1901, c. 529; C. S. 7611.)

§ 146-85. Engineer, surveyor, and other servants employed.—The state board of education may appoint an engineer and surveyor and other servants to plan the works directed by this subchapter, and such board may annually appoint an agent to superintend and supervise all the swamp lands belonging to the state board of education. (Rev., s. 4043; Code, ss. 2512, 2523; R. C., c. 66, ss. 9, 20; R. S., c. 67, s. 9; 1854, c. 48; 1899, s. 253, s. 1, 2, 5; 1901, c. 529; C. S. 7612.)

§ 146-86. Agent's duties.—Such agent shall devote his entire attention to the business; abandon all prior engagements that may conflict with the interest of the state board of education; aid and assist counsel in the preparation and trial of all suits that may be directed by the corporation; collect information as to the location and value of all such lands; survey or have surveyed such tracts of such lands, or such other lands necessary to ascertain the location of lands belonging to the corporation as he may deem necessary, under the direction of the corporation. He shall make reports from time to time to the corporation of all the information he obtains, with such suggestions as he may deem proper; and shall prepare a statement of each tract of land owned by the corporation and its location, quantity, as well as ascertained and probable value, distinguishing between those tracts the title to which is doubtful or good; and this statement shall be recorded by him in a book to be kept by the corporation and in a manner, by index or otherwise, easy for reference. (Rev., s. 4044; Code, s. 2524; R. C., c. 66, s. 21; 1899, c. 253, s. 3; C. S. 7613.)

§ 146-87. Agent may be removed. — The agent may be removed by the state board of education at any time and another appointed to supply the vacancy, the agent removed being paid a pro rata compensation. The agency may be continued in the discretion of the board. (Rev., s. 4045; Code, s. 2525; R. C., c. 66, s. 22; 1899, c. 253, s. 4; 1901, c. 529; C. S. 7614.)

Art. 10. Lands Sold for Taxes.

§ 146-88. Title vested in state board of education.—The title of all lands acquired by the state by virtue of being sold for taxes is hereby vested in the state board of education. (1917, c. 209; C. S. 7615.)

§ 146-89. Protection of interest in lands sold for taxes.—Whenever any lands in which the state board of education has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes, special assessment, or under any lien, the state board of education is authorized, if in its judgment it is necessary to protect the interest of the board, to appear at any sale of such lands and to buy the same as any other person would, and for the purpose of paying therefor use any funds which the state board of education may have on hand, or, if necessary, borrow the money with which to make such purchase and to execute its notes therefor, and may use any funds coming to the state board of education from the sale of any property or otherwise to pay such notes. (1917, c. 246; C. S. 7616.)

Art. 11. Controversies Concerning Lands.

§ 146-90. Title presumed in the board; tax titles. —In all controversies and suits for any of the swamp lands to which the state board of education or its assigns shall be a party, the title to such lands shall be taken and deemed to be in that corporation or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title to or the right of possession to any lands claimed by the state, the state board of education or the university of North Carolina, under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (Rev., s. 4047; Code, s. 2527; R. C., c. 66, s. 24; 1842-3, c. 36, s. 3; 1889, c. 243; C. S. 7617.)

§ 146-91. Statute of limitations.—No statute of limitation shall affect the title or bar the action of the state board of education or its assigns, unless the same would protect the person holding and claiming adversely against the state; and no statute of limitation shall be a bar to the state board

of education or of its assigns in the trial of any action in any court of competent jurisdiction against any person, firm, or corporation for damages for timber heretofore or hereafter cut and removed from lands owned by the board of education or for any other acts of trespass committed on such lands. (Rev., s. 4048; Code, s. 2528; R. C., c. 66, s. 25; 1842, c. 36, s. 5; 1917, c. 287; C. S. 7618.)

§ 146-92. Actions by board; counsel; compromise. — The state board of education may employ counsel learned in the law to aid and assist it in the investigation and prosecution of its title to any of the swamp lands; and may compromise upon such terms as to it shall seem reasonable and just, for the title, so as to secure the corporation an indefeasible right in such lands. (Rev., s. 4051; Code, s. 2516; R. C., c. 66, s. 13; C. S. 7619.)

§ 146-93. Agreement with others to prosecute or survey.—The state board of education has full power and authority to agree with any person to prosecute its claim to any swamp lands in any county or counties, or to survey and indentify its lands in such counties, and allow to such person a share of any such land as a compensation for his services. (Rev., s. 4052; Code, s. 2526; R. C., c. 66, s. 23; 1854, s. 48; C. S. 7620.)

Art. 12. Sale of Lands.

§ 146-94. Sale of swamp lands. — The state board of education is authorized and directed to sell and convey the swamp lands at public or private sale at such times, for such prices, in such portions, and on such terms as to it may seem proper; but it shall not sell at a price less than twelve and one-half cents per acre. It shall report each sale to the next session of the general assembly. The proceeds, as also money received on entries of vacant land, shall become a part of the state literary fund. The corporation shall not sell any canal by it constructed under this subchapter. (Rev., s. 4049; Code, ss. 2514, 2515, 2529; R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; 1889, c. 243, s. 4; C. S. 7621.)

§ 146-95. Reservation to the state.—In any sale which shall be made by the state board of education the following powers shall be expressly reserved to the state, to be exercised under such laws as are now or may be enacted by the general assembly: 1. To make any expedient regulations respecting the repair of the canals which have been cut by the state, or enlargement of such canals. 2. To impose taxes on the lands benefited by those canals for their repair, and which shall not be closed. 3. That the navigation of the canal shall be free to all persons, subject to a right in the state to impose tolls. 4. That all landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by the general assembly in such cases. 5. That the roads along the banks of the canal shall be public roads. (Rev., s. 4050; Code, s. 2534; 1872-3, c. 118; C. S. 7622.)

§ 146-96. Forfeiture for failure to register deeds. —All the grants and deeds for swamp lands, heretofore made, must have been proved and registered in the county where the lands are situate, within twelve months from November first, one thousand eight hundred and eighty-three, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the state; but the provisions of this section shall be applicable to the swamp lands only which have been surveyed or taken possession of by, or are vested in, the state board of education or its agents. (Rev., s. 4046; Code, ss. 2513, 3866; R. C., c. 66, s. 10; R. S., c. 67, s. 10; C. S. 7623.)

§ 146-97. Withdrawal of swamp lands from sale under certain conditions; lease or sale to department of conservation and development. — When it shall be reported to the state board of education, after investigation by the department of conservation and development, that any part of the lands now known as "swamp lands" should be retained and reserved from sale in the public interest because of the suitability of the waters thereupon for oyster culture, or for game refuge, or other purposes consistent with public use, the board of education shall, if upon examination it is found that the reservation of the said lands for such purpose is proper and to the public interest, reserve the same and make such disposition as will best conserve the public interest by lease or sale to the department of conservation and development as may be thought proper. Such lease or sale to the department of conservation and development may be upon such terms as may be determined upon by the board of education; Provided, that no lands now belonging to the state board of education upon which there is any natural oyster bed, or which is suitable for oyster culture, shall be subject to sale by the said board of education without first giving to the department of conservation and development an opportunity to investigate and to report to the board of education as to whether it is desirable to make a reservation thereof under this section. (1935, c. 342.)

§ 146-98. State Board of Education authorized to transfer lands, Pender and Onslow Counties, for development as game refuge. — The State Board of Education is authorized and empowered in its discretion to transfer or lease to the Department of Conservation and Development that certain swamp land now owned by the State Board of Education in Pender and Onslow Counties, known as Holly Shelter Pocosin, for the purpose of development, supervision and administration as a game refuge, or game preserve, and as a public hunting ground, in accordance with the provisions of the laws of North Carolina relating to game refuges, game preserves and public hunting grounds.

In the event the above described swamp lands, known as Holly Shelter Pocosin, should hereafter cease to be used as a game refuge, or game preserve, and public hunting ground, the Department of Conservation and Development shall lose all of the rights conferred by this section and the said swamp lands shall revert to the State Board of Education. (1939, c. 232.)

Chapter 147. State Officers

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Art. 1. Classification and General Provisions.

§ 147-1. Public state officials classified. — The public officers of the state are legislative, executive, and judicial. But this classification shall not be construed as defining the legal powers of either class. (Rev., s. 5323; Code, s. 3317; 1868-9, c. 270, ss. 1, 2; C. S. 7624.)

§ 147-2. Legislative officers. — The legislative officers are:

1. Fifty senators; 2. One hundred and twenty members of the house of representatives. 3. A speaker of the house of representatives; 4. A clerk and assistants in each house; 5. A doorkeeper and assistants in each house; 6. As many subordinates in each house as may be deemed necessary. (Rev., s. 5324; Code, s. 3318; 1868-9, c. 270, s. 3; C. S. 7625.)

§ 147-3. Executive officers. — Executive officers are either: 1. Civil. 2. Military. Civil executive officers are: 1. General, or for the whole state. 2. Special, or for special duties in different parts of the state. 3. Local, or for a particular part of the state.

The general civil executive officers of this state are as follows: 1. A governor. 2. A lieutenant governor. 3. Private secretary for the governor. 4. A secretary of state. 5. An auditor. 6. A treasurer. 7. An attorney-general. 8. A superintendent of public instruction. 9. The members of the governor's council. 10. A commissioner of agriculture. 11. A commissioner of labor. 12. An insurance commissioner. (Rev., s. 5325; Code, s. 3319; 1868-9, c. 270, ss. 24, 25, 26; 1899, c. 373, c. 54, ss. 3, 4; 1901, c. 479, s. 4; 1931, c. 312, s. 5; C. S. 7626.)

§ 147-4. Executive officers; election; term; induction into office.—The executive department shall consist of a governor, a lieutenant governor, a secretary of state, an auditor, a treasurer, a superintendent of public instruction, and an attorney-general, who shall be elected for a term of four years by the qualified electors of the state, at the same time and places and in the same manner as members of the general assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes respectively shall be declared duly elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint ballot of both houses of the general assembly in such manner as shall be prescribed by law. On the first Tuesday after the convening of the general assembly, the person duly elected governor shall, in the presence of a joint session of the two houses of the general assembly, take the oath of office prescribed by law and be immediately inducted into the office of governor. Should the governor-elect not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some justice of the supreme or judge of the superior court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in article three, section one, of the constitution, and as to the commissioner of agriculture, the commissioner of insurance, and the commissioner of labor shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Rev., s. 5326; Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; 1931, c. 312, s. 5; C. S. 7627.)

§ 147-5. Executive officers and certain boards report to governor; reports transmitted to general assembly.—It shall be the duty of the officers of the executive department to submit their respective reports to the governor to be transmitted by him with his message to the general assembly. (Rev., s. 5373; 1813, c. 60, s. 2; C. S. 7628.)

Art. 2. Expenses of State Officers and State Departments.

§ 147-6. Expenses paid by warrants of state auditor; statements filed. — All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn by the state auditor on the state treasurer. The officer of state or the head of any department thereof shall file with the state auditor an itemized statement of the salaries, bills for purchases of equipment and other expenses of his department, and the state auditor shall draw warrants on the state treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of state or head of any department thereof, as evidenced by statements so approved and filed. The state treasurer is hereby authorized and directed to pay said warrants. (1919 c. 117, s. 2; C. S. 7630.)

§ 147-7. Traveling expenses on state's business. —When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any stat-

ute of this state, and provide for the expenses thereof, it is required that any officer of the state or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses. (1919, c. 117, s. 3; C. S. 7631.)

§ 147-8. Mileage allowance to officers or employees using public or private automobiles. — Where it is provided by any law affecting the State of North Carolina, or any sub-division thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any sub-division thereof or by any such employee or officer of the State or any sub-division thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed six cents per mile. (1931, c. 382, s. 1.)

§ 147-9. Unlawful to pay more than allowance.—It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any sub-division thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any sub-division thereof or by any person and used in the pursuit of his employment or office in excess of six cents per mile as set out in § 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2.)

Art. 3. The Governor.

§ 147-10. Governor to reside in Raleigh; mansion and accessories.—The governor shall reside in the city of Raleigh during his continuance in office. A convenient and commodious furnished dwelling-house, supplied with necessary lights, fuel, and water, shall be provided for his accommodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion. (Rev., s. 5327; Code, ss. 3325, 3326; 1868-69, c. 270, ss. 32, 33; 1885, c. 244; 1919, c. 307; C. S. 7635.)

§ 147-11. Salary of governor.—The salary of the governor shall be ten thousand five hundred dollars per annum. He shall be allowed annually the sum of six hundred dollars as traveling expenses in attending to the business for the state and for expenses out of the state and in the state in representing the interest of the state and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the governor while traveling outside the state on business incident to his office shall be paid by the state treasurer on a warrant issued by the auditor. (Rev., s. 2736; Code, s. 3720; 1879, c. 240; 1901, c. 8; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; 1929, c. 276, s. 1; C. S. 3858.)

§ 147-12. Powers and duties of governor.—In addition to the powers and duties prescribed by the constitution, the governor has the powers and duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all state institutions for the purpose of inquiring into the management and needs of the same, and for the purpose of paying the expenses of such visitation the auditor is hereby directed to draw an order on the treasurer in favor of the governor to pay his expenses for each visitation.

2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the general assembly therewith.

3. He is to make the appointments and supply the vacancies not otherwise provided for in all departments.

4. He is the sole official organ between the government of this state and other states, or the government of the United States.

5. He has the custody of the great seal of the state.

6. If he be apprised by the affidavits of two responsible citizens of the state that there is imminent danger that the statute of this state forbidding prize fighting is about to be violated, he shall use, as far as necessary, the civil and military power of the state to prevent it, and to have the offenders arrested and bound to keep the peace. (Rev., s. 5328; Code, s. 3320; 1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; 1895, c. 28, s. 5; 1905, c. 446; C. S. 7636.)

§ 147-13. May convene council of state. — The governor may convene his council for consultation whenever he may deem it proper. (Rev., s. 5329; Code, s. 3335; 1868-9, c. 270, s. 40; C. S. 7637.)

§ 147-14. Private secretary; official correspondence preserved; books produced before general assembly.—The governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the governor, as are official and important, and such other letters as the governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the governor shall produce the same before the general assembly whenever requested. (Rev., s. 5330; Code, ss. 3326, 3327; 1868-9, c. 270, ss. 33, 34; C. S. 7638.)

§ 147-15. Private secretary to governor; salary; fees.—The salary of the Private Secretary to the Governor is hereby fixed at forty-five hundred dollars ($4500) per annum, payable monthly, commencing February 1, 1929. This salary shall be full compensation for all services performed by the secretary. The secretary shall charge and collect the following fees, to be paid by the persons for whom the services are rendered, namely: For the commission of a judge, solicitor, senator in congress, representative in congress, notary public, or a place of profit, two dollars and fifty cents each; for a testimonial, one dollar; for affixing the

seal to a grant, twenty-five cents; for affixing the great seal of the state to state bonds, ten cents. He shall cover the whole of the fees collected into the state treasury. He shall be ex officio secretary of the board of internal improvements, but shall receive no compensation for such service. (Rev., s. 2737; Code, ss. 1689, 3721; R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Pr. 1901, c. 405; 1903, c. 729; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; 1921, c. 227; 1929, c. 322, ss. 1, 2; C. S. 3859.)

§ 147-16. Records kept; certain original applications preserved.—The governor shall cause to be kept the following records:

1. A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals, which shall be paid upon the warrant of the auditor.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application. (Rev., s. 5331; Code, ss. 3322, 3323; 1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; C. S. 7639.)

§ 147-17. May employ counsel in cases wherein state is interested.—No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except by and with the consent and approval of the Governor. In any case, civil or criminal, in any court in the State or in any other state or territory or in any United States court, or in any other matter, thing, or controversy, of whatever nature or kind, in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation as he may fix for their services. The Attorney-General, with his assistants, shall be counsel for all such departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State, and whenever the Attorney-General shall advise the Governor that it is impracticable for him and his assistants to render legal services to any State agency, institution, commission, bureau or other organized activity, the Governor may employ such counsel as, in his judgment, should be employed to render such services, and he may direct the Auditor to draw his warrant upon the Treasurer for such compensation for their services as he may fix, and he may direct that such warrant be paid out of the appropriations to such department, agency, institution, commission, bureau or other organized activity of the State, or out of the contingent fund. (Rev., s. 5332; Code, ss. 3320, 3324; 1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; 1901, c. 744; 1925, c. 207, s. 3; C. S. 7640.)

§ 147-18. To designate "Indian Day." — The governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on which Indian lore shall receive emphasis in the public schools of the state and among the citizens of North Carolina. (Resolution 54, 1937, p. 957.)

§ 147-19. To appoint a day of thanksgiving. — The governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a state and a nation. (Rev., s. 5333; Code, s. 3334; 1868-9, c. 270, s. 39; C. S. 7641.)

§ 147-20. Governor granted exclusive parole power over inmates of state's institutions. — To the end that greater efficiency and uniformity may be observed in the matter of paroling persons imprisoned or detained under authority of law, exclusive authority is hereby given to the governor with respect to parole of all persons confined, held, or detained in any prison, reformatory, penal or corrective institution, in the State of North Carolina, by whatsoever name called, where such person is held in such institution by virtue of any final order or judgment of any court in this State, including juvenile courts. (1935, c. 273.)

§ 147-21. Form and contents of applications for pardon.—Every application for pardon must be made to the governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon. (Rev., s. 5334; Code, s. 3336; 1869-70, c. 171; 1870-1, c. 61; C. S. 7642.)

§ 147-22. Application for pardon to include record.—Any application for the pardon of a prisoner committed to the discharge of the State Highway and Public Works Commission shall include a record of such prisoner since he was committed to the charge of the commission; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application. (1917, c. 286, s. 20; 1925, c. 163; C. S. 7739.)

§ 147-23. Conditional pardons may be granted. —In any case in which the governor is authorized by the constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper, (Rev., s. 5335; 1905, c. 356; C. S. 7643.)

§ 147-24. Governor's duties when conditions of pardon violated.—If a prisoner who has been

pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the governor may require that he has violated the condition of his pardon, the governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force. (Rev., s. 5336; 1905, c. 356, ss. 2, 3; C. S. 7644.)

§ 147-25. Duty of sheriff and clerk on pardon granted.—If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court. (Rev., s. 5337; 1905, c. 356, s. 4; C. S. 7645.)

§ 147-26. To procure great seal of state; its description.—The governor shall procure for the state a seal, which shall be called the great seal of the state of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of wheat in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out; there shall also be inserted thereon the words "esse quam videri." It shall be the duty of the governor to file in the office of secretary of state an impression of the great seal, certified to under his hand and attested by the secretary of state, which impression so certified the secretary of state shall carefully preserve among the records of his office. (Rev., s. 5339; Code, ss. 3328, 3329; 1868-9, c. 270, s. 35; 1883, c. 392; 1893, c. 145; C. S. 7646.)

§ 147-27. Affixing great seal a second time to public papers.—In all cases where any person may find it necessary to have the great seal of the state put again to any public paper, other than a grant for lands, he may prefer his petition to the governor and council, who shall, if they deem the same proper, direct the seal to be put thereto. (Rev., s. 5338; Code, s. 3333; 1868-9, c. 270, s. 38; C. S. 7647.)

§ 147-28. To procure seals for departments and courts.—The governor shall also procure a seal for each department of the state government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the state, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safe-keeping. (Rev., s. 5340; Code, ss. 3328, 3332; 1868-9, c. 270, ss. 35, 37; 1883, c. 71; C. S. 7648.)

§ 147-29. Seal of department of state described.—The seal of the department of state shall be two inches in diameter and shall be of the same design as the great seal of the state, with the words "State of North Carolina, Department of State," surrounding the figures. (Rev., s. 5341; Code, s. 3330; 1883, c. 238; C. S. 7649.)

§ 147-30. To provide new seals when necessary.—Whenever the great seal of the state, the seal of any department, or any seal of a court of record shall be lost, or so worn or defaced as to render it unfit for use, the governor shall provide a new one, and when new seals are provided the former ones shall not be used. (Rev., s. 5342; Code, s. 3331; 1868-9, c. 270, s. 36; C. S. 7650.)

§ 147-31. Payment for seals. — The treasurer shall pay the expense of procuring all seals provided for in this chapter, upon the warrant of the auditor. (Rev., s. 5343; Code, s. 3332; 1868-9, c. 270, s. 37; 1883, c. 71; C. S. 7651.)

§ 147-32. Compensation for widows of governors.—All widows of the governors of the state of North Carolina who were married to said governors before or during their term of office as governor of the state of North Carolina and who have attained, or shall hereafter attain, the age of sixty-five years, shall be paid the sum of twelve hundred ($1,200.00) dollars per annum during the term of their natural lives, the same to be paid in equal monthly installments of one hundred ($100.00) dollars per month out of the state treasury upon warrant duly drawn thereon: Provided, that no payment shall be made under this section unless and until the council of state shall find that the beneficiary does not have an income adequate for her support. (1937, c. 416.)

§ 147-33. Compensation when attending meetings.—Whenever the lieutenant-governor shall attend any meeting of state officials or otherwise, which he is required by law to attend, he shall be entitled to receive as compensation the per diem allowed him under the constitution as president of the senate for the time required in attending said meeting, together with his necessary traveling ex-

penses in going to and from said meeting. The amount to which he shall be entitled shall be certified to by him, and shall be paid to him by the state treasurer upon the proper warrant. (1911, c. 103; C. S. 3862.)

Art. 4. Secretary of State.

§ 147-34. Office and office hours.—The secretary of state shall attend at his office, in the city of Raleigh, between the hours of ten o'clock a. m. and three o'clock p. m., on every day of the year, Sundays and legal holidays excepted. (Rev., s. 5344; Code, s. 3339; 1868-9, c. 270, s. 44; 1870-1, c. 111; C. S. 7652.)

§ 147-35. Salary of secretary of state. — The salary of the secretary of state shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2741; Code, s. 3724; 1879, c. 240, s. 6; 1881, p. 632, res.; 1907, c. 994; 1919, c. 247, s. 2; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; C. S. 3863.)

§ 147-36. Duties of secretary of state.—It is the duty of the secretary of state:

1. To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two houses, or either of them. 2. To attend the governor, whenever required by him, for the purpose of receiving documents which have passed the great seal. 3. To receive and keep all conveyances and mortgages belonging to the state. 4. To distribute annually the statutes, the legislative journals and the reports of the supreme court. 5. To distribute the acts of congress received at his office in the manner prescribed for the statutes of the state. 6. To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book. (Rev., s. 5345; Code, s. 3340; 1868-9, c. 270, s. 45; 1881, c. 63; 1941, c. 379, s. 6; C. S. 7654.)

§ 147-37. Secretary of state; fees to be collected. —The secretary of state shall collect the following fees, namely: copying and certifying a will, grant or patent not exceeding two copy-sheets, fifty cents, and for every additional copy-sheet, ten cents; correcting an error not made by himself in a patent, fifty cents; copying and certifying a plot and survey, fifty cents for each warrant or for each six hundred and forty acres contained in the plot or survey, not to exceed five dollars for one copy; receiving surveyor's return, making out, recording and endorsing grants, sixty cents; each certificate, ten cents; filing and recording a copy of a judgment vacating a grant and all other services thereon, fifty cents; copying an entry from the journals of the assembly, forty cents; copying and certifying the laws of other states, twenty cents for each copy-sheet; and in all cases not otherwise provided for, the secretary of state shall receive for copies of records from his office, one dollar for the first three copy-sheets and ten cents a copy-sheet thereafter. (Rev., s. 2742; Code, s. 3725; R. C. c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; C. S. 3864.)

§ 147-38. Copy-sheet defined. — A copy-sheet shall consist of one hundred words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1855," "$250.90," shall be estimated and charged as one word. (Rev., s. 2805; Code, s. 3757; R. C., c. 102, s. 42; 1868-9, c. 279, s. 556; C. S. 3851.)

§ 147-39. Custodian of statutes, records, deeds, etc.—The secretary of state is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. (Rev., s. 5347; Code, s. 3337; R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; C. S. 7656.)

§ 147-40. Compensation of indexer of laws. — The assistant to the secretary of state who indexes the laws and prepares the laws and captions for publication shall receive a compensation to be fixed by the budget bureau. (Rev., s. 2733; 1903, c. 3; 1931, c. 277; 1933, c. 46; C. S. 3866.)

§ 147-41. To keep records of oyster grants.— The secretary of state shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of chapter 119 of the laws of 1887, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds. (Rev., s. 2381; 1887, c. 119, s. 14; C. S. 7657.)

§ 147-42. Binding original statutes, resolutions, and documents.—The original statutes and joint resolutions passed at each session of the general assembly the secretary of state shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session. (Rev., s. 5348; Code, s. 3343; 1866-7, c. 71; 1868-9, c. 270, s. 46; C. S. 7658.)

§ 147-43. Reports of state officers.—The secretary of state shall file and keep in his office one copy of each of the reports of state officers in the best binding in which any such report is issued, and the state librarian shall likewise keep five similarly bound copies of each such report. (Rev., s. 5101; 1911, c. 211, s. 7; C. S. 7300.)

§ 147-44. Public, public-local, and private laws. —The secretary of state shall divide the laws into three classes—public, public-local, and private laws; and it shall be his duty, at the time of making the marginal notes, to mark on the upper right-hand corner of each act the words "public" or "public-local" or "private," and acts thus marked shall be kept separate by the state printer. The public laws and resolutions shall be published in one volume to themselves. The public-local and private laws shall be kept separate, but may, in the discretion of the secretary of state, be indexed and bound together in one or more volume or volumes, which volume or volumes shall be pub-

lished and distributed as are now the private laws. (Rev., s. 5349; 1909, c. 473; 1941, c. 379, s. 6; C. S. 7659.)

§ 147-45. Distribution of copies of public laws, and other state publications by secretary of state. —The secretary of state shall, at the state's expense, as soon as possible after publication, distribute such number of copies of the public laws, public-local and private laws, senate and house journals, and supreme court reports to federal, state and local governmental officials, departments and agencies, and to educational institutions for instructional and exchange use, as is set out in the table below:

	Public Laws	Public-Local and Private Laws	House and Senate Journals	Supreme Court Reports
State Departments and Officials:				
Governor	3	3	1	1
Lieutenant Governor	1	1	1	1
Auditor	3	3	1	1
Treasurer	3	3	1	1
Secretary of State	3	3	1	1
Superintendent of Public Instruction	3	3	1	1
Attorney General	7	7	1	5
Commissioner of Agriculture	3	3	1	1
Commissioner of Labor	3	3	1	1
Commissioner of Insurance	3	3	1	1
State Board of Health	3	3	1	0
State Highway and Public Works Commission	3	3	1	1
State Board of Charity and Public Welfare	3	3	1	0
Adjutant General	2	2	0	0
Commissioner of Banks	2	2	0	0
Commissioner of Revenue	5	1	0	1
Commissioner of Motor Vehicles	1	1	0	0
Utilities Commission	3	3	1	3
State School Commission	2	2	0	0
State Board of Elections	2	2	0	0
Local Government Commission	2	2	0	1
Budget Bureau	2	0	1	1
State Bureau of Investigation	1	0	0	1
Director of Probation	2	0	0	1
Commissioner of Paroles	2	2	0	1
Department of Conservation and Development	3	3	1	0
North Carolina Library Commission	2	2	0	0
Veterans' Loan Commission	1	1	0	0
Industrial Commission	3	3	0	3
State Board of Alcoholic Beverage Control	2	2	0	0
Division of Purchase and Contract	2	2	0	0
Justices of the Supreme Court	1 each	1 each	1 each	1 each
Clerk of the Supreme Court	1	1	1	0
Judges of the Superior Court	1 each	1 each	0	1 each
Emergency Judges of the Superior Court	1 each	1 each	0	1 each
Special Judges of the Superior Court	1 each	1 each	0	1 each
Solicitors of the Superior Courts	1 each	1 each	0	1 each
Unemployment Compensation Commission	1	1	1	1
State Employment Service	1	0	0	0
State Commission for the Blind	1	0	0	1
State Prison	1	1	0	0
Western North Carolina Sanatorium	1	0	0	0
Eastern North Carolina Sanatorium	1	0	0	0
North Carolina Historical Commission	1	1	0	0
State Library	20	20	20	2
Supreme Court Library	as many as requested			
Supreme Court Reporter	0	0	0	1
General Assembly Members and Officials:				
Representatives of General Assembly	1 each	1 each	1 each	0
State Senators	1 each	1 each	1 each	0
Principal Clerk—Senate	1	1	1	0
Reading Clerk—Senate	1	1	1	0
Sergeant-at-Arms—Senate	1	1	1	0
Principal Clerk—House	1	1	1	0
Reading Clerk—House	1	1	1	0
Sergeant-at-Arms—House	1	1	1	0
Enrolling Clerk	1	1	0	0
Engrossing Clerk—House	1	1	1	0
Indexer of the Laws	1	1	0	0
Schools and Hospitals:				
University of North Carolina at Chapel Hill	59	59	54	65
North Carolina State College of Agriculture and Engineering of the University of North Carolina	5	1	1	1
Woman's College of the University of North Carolina	3	1	1	1
Duke University	25	25	25	25
Davidson College	1	1	1	1
Wake Forest College	5	5	5	7
Lenoir Rhyne College	1	1	1	1
Elon College	1	1	1	1
Guilford College	1	1	1	1
East Carolina Teachers College	1	1	1	1
Catawba College	0	0	0	1
North Carolina School for the Deaf	1	1	0	0
State Hospital at Raleigh	1	1	0	0
State Hospital at Morganton	1	1	0	0
State Hospital at Goldsboro	1	1	0	0
Caswell Training School	1	1	0	0
School for the Blind and Deaf	1	1	0	0
State Normal School at Fayetteville	1	0	0	1
North Carolina College for Negroes	5	5	5	5

	Public Laws	Public-Local and Private Laws	House and Senate Journals	Supreme Court Reports
Local Officials:				
Clerks of the Superior Courts	1 each	1 each	1 each	1 each
Sheriffs of the Counties	1 each	1 each	0	0
Registers of Deeds of the Counties	1 each	1 each	1 each	0
Chairmen of the Boards of County Commissioners	1 each	1 each	0	0
Federal, Out-of-State, and Foreign Officials and Agencies:				
Secretary to President	1	1	0	1
Secretary of State	1	1	1	1
Secretary of War	1	1	0	1
Secretary of Navy	1	1	0	1
Secretary of Agriculture	1	1	0	1
Attorney General	1	1	0	1
Postmaster General	1	1	0	1
Marshal of United States Supreme Court	1	1	0	1
Department of Justice	1	1	0	1
Bureau of Census	1	1	0	1
Treasury Department	1	1	0	1
Department of Internal Revenue	1	1	0	1
Department of Labor	1	1	1	1
Bureau of Public Roads	1	1	0	1
Department of Commerce	1	1	1	1
Department of Interior	1	1	0	1
Veterans' Administration	1	1	0	1
Securities and Exchange Commission	1	1	0	1
Social Security Board	1	1	0	1
Work Projects Administration	1	1	0	1
Farm Credit Administration	1	1	0	1
Library of Congress	8	8	2	5
Federal Judges resident in North Carolina	1 each	1 each	0	1 each
Federal District Attorneys resident in North Carolina	1 each	1 each	0	1 each
Clerks of Federal Court resident in North Carolina	1 each	1 each	0	1 each
Chief executives or designated libraries of governments of other states, territories and countries, including Canada, Canal Zone, Porto Rico, Alaska and Philippine Islands, provided such governments exchange publications with the Supreme Court Library	1 each	0	0	1 each

Upon his appointment or election each justice of the supreme court shall receive for his private use one complete and up-to-date set of the reports of the supreme court. The copies of reports furnished each justice as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of reports.

One copy each of the public laws, the public-local laws and the supreme court reports shall be furnished the head of any department of state government created in the future.

Five complete sets of the public laws, the public-local and private laws, the senate and house journals and the supreme court reports heretofore published, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 1.)

§ 147-46. Publications furnished institutions of learning.—The secretary of state, upon application made by any chartered institution of learning in this state, for which provision is not elsewhere made in § 147-45, having a library of not less than five thousand volumes, shall furnish and transmit to each of such institutions, to be kept in its library, a copy of all future current supreme court reports, public-local and private laws of the general assembly and journals of both houses, whenever the same shall be ready for distribution. He shall furnish to each of such institutions, if he have them on hand, or when reprinted or otherwise obtained, one volume each of such of the supreme court reports, public laws, public-local and private laws, and journals as have not been theretofore furnished. (1941, c. 379, s. 2.)

§ 147-47. Apportionment of half bound volumes of public laws among justices of the peace.—The secretary of state shall apportion the fifteen hundred copies of half bound public laws among the justices of the peace of the state on a county population basis and distribute them to the justices. The secretary of state shall notify all the clerks of the superior court of the number of copies of public laws available for distribution for justices of the peace in their respective counties, and the clerk shall thereupon certify to the secretary of state the names and post office addresses of a like number of qualified and active justices of the peace thus entitled to receive said laws. (1941, c. 379, s. 3.)

§ 147-48. Sale of laws and journals and supreme court reports.—Such laws and journals as may be printed in excess of the number directed to be distributed the secretary of state may sell at such price as he deems reasonable, not exceeding two dollars for full bound copies of the public laws; and not exceeding ten per centum in advance of the cost for copies of the journals.

The secretary of state shall sell any and all of the supreme court reports, both the current reports and the reprints, at such price as he deems reasonable, not less than one dollar and fifty cents per volume. The secretary of state may allow to regular licensed booksellers in this state a discount on laws, journals and supreme court reports not exceeding twelve and one-half per centum. All proceeds received from sales made pursuant to this section shall be paid into the state treasury. (1941, c. 379, s. 4.)

§ 147-49. Disposition of damaged and unsaleable publications.—The Secretary of State is hereby authorized and empowered to dispose of such damaged and unsaleable North Carolina Supreme

Court Reports, House and Senate Journals and Public Laws of various years at a price to be determined by the Secretary of State, the Supreme Court Reporter and the Marshall-Librarian of the Supreme Court. (1939, c. 345.)

§ 147-50. Publications of state officials and department heads furnished to certain institutions, agencies, etc.—Every state official and every head of a state department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina College for Negroes	5 copies;
Library of Congress	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina College for Negroes. (1941, c. 379, s. 5.)

§ 147-51. Clerks of superior courts to furnish inventory of reports; lending prohibited.—On or before the first Monday in June of each and every year after March 9, 1927, the clerks of the Superior Courts of the State are required to furnish to the Secretary of State an inventory of the volumes of the reports of the Supreme Court of North Carolina which they have on hand.

From and after March 9, 1927, the clerks of the Superior Courts of the State of North Carolina are held officially responsible for the volumes of the North Carolina Supreme Court reports furnished and to be furnished them by the said State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259.)

§ 147-52. Reprints of Supreme Court reports.—The Supreme Court is authorized to have such of the reports of the Supreme Court of the State of North Carolina as are not on hand for sale, republished and numbered consecutively, retaining the present numbers and names of the reporters and by means of star pages in the margin retaining the original numbering of the pages. The Supreme Court is authorized and directed to have such reports reprinted without any alteration from the original edition thereof, except as may be directed by the Supreme Court. The contract for such reprinting and republishing shall be made by the Supreme Court in the manner prescribed in § 7-34. Such republication shall thus continue until the State shall have for sale all of such reports; and hereafter when the editions of any number or volume of the Supreme Court reports shall be exhausted, it shall be the duty of the Supreme Court to have the same reprinted under the provisions of this section and § 7-34. In reprinting the reports that have already been annotated, the annotations and the additional indexes therein shall be retained and such reports shall be further annotated so as to make the annotations in all reprints complete up to the date of the reprinting thereof. In reprinting reports the Supreme Court is authorized to provide for, and to secure, such further annotations for reports that have been heretofore annotated and for the annotating of the reports that have not been heretofore annotated and the costs thereof as provided in the contract made by the Supreme Court with the annotator selected by it, shall be paid as a part of the cost of reprinting the said reports. (Rev., s. 5361; Code, s. 3634; 1885, c. 309; 1889, c. 473, ss. 1-4, 6; 1907, c. 503; 1917, cc. 201, 292; 1923, c. 176; 1929, c. 39, s. 2; C. S. 7671.)

§ 147-53. Sale of Consolidated Statutes at reduced price.—The secretary of state is hereby authorized to offer for sale and sell copies of the Consolidated Statutes of North Carolina, consisting of volumes one, two and three, at five dollars a set, and individual volumes at two and one-half dollars each, and to sell to book dealers at a discount of twenty-five per cent, when purchased in quantities of ten sets or more. (1933, c. 115, s. 1.)

§ 147-54. Payment of proceeds of sales to Treasurer.—The secretary of state, as often as now provided by law, shall pay over to the treasurer of the state the proceeds of any and all sales which may be made by him under authorization of § 147-53. (1933, c. 115, s. 2.)

Art. 5. Auditor.

§ 147-55. Salary of auditor.—The salary of the state auditor shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2744; Code, s. 3726; 1879, c. 240, s. 7; 1881, c. 213; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; 1907, c. 830, s. 5; 1907, c. 994, s. 2; 1911, c. 108, s. 1; 1911, c. 136, s. 1; 1913, c. 172; 1919, c. 149; 1919, c. 247, s. 7; Ex. Sess. 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; C. S. 3867.)

§ 147-56. Office and office hours.—The auditor shall keep his office at the city of Raleigh, and shall attend thereat between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. (Rev., s. 5364; Code, s. 3353; 1868-9, c. 270, ss. 69, 70; C. S. 7674.)

§ 147-57. Bond.—The State Auditor shall be placed under an official bond in a penal sum to be fixed by the Governor and Council of State at not less than fifty thousand ($50,000) dollars. Such official bond shall be corporate surety and furnished by a company admitted to do business in the State. The premiums will be paid by the State out of the appropriations to the State Auditor's Office. (1929, c. 337, s. 1.)

§ 147-58. Duties of auditor.—It is the duty of the auditor:

1. To superintend the fiscal concerns of the state.

2. To report to the governor, annually, and to the general assembly at the beginning of each

biennial session thereof, a complete statement of the funds of the state, of its revenues and of the public expenditures during the preceding fiscal year, and, as far as practicable, an account of the same down to the termination of the current calendar year, together with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing fiscal year, specifying therein each object of expenditure and distinguishing between such as are provided for by permanent or temporary appropriations, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.

3. To suggest plans for the improvement and management of the public revenue.

4. To keep and state all accounts in which the state is interested.

5. To examine and settle the accounts of all persons indebted to the state, and to certify the amount of balance to the treasurer.

6. To direct and superintend the collection of all moneys due to the state.

7. To examine and liquidate the claims of all persons against the state, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereon, to the general assembly.

8. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

9. To have the exclusive power and authority to issue all warrants for the payment of money upon the state treasurer; and it shall be the auditor's duty, before issuing the same, to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of persons applying for warrants; and to this end he shall have the power to administer oaths, and he shall also file in his office the voucher upon which the warrant is drawn and cite the law upon said warrant.

10. To procure from the books of the banks in which the treasurer makes his deposits, monthly statements of the moneys received and paid on account of the treasurer.

11. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.

12. To examine carefully on the first Tuesday of every month, or oftener if he deems it necessary, the accounts of the debts and credits in the bank book kept by the treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, to report the same forthwith, in writing, to the governor.

13. To require, from time to time, all persons who have received moneys or securities, or have had the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

14. To require any person presenting an account for settlement to be sworn before him and to answer orally as to any facts relating to its correctness. (Rev., s. 5365; Code, s. 3350; 1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; 1919, c. 153; 1929, c. 268; C. S. 7675.)

§ 147-59. Warrants to bear limitations; presented within sixty days.—All warrants drawn by the State Auditor on the Treasurer shall bear, and there shall be printed upon the face thereof in plain type so as to be easily read, the following words, to-wit: "This warrant will not be paid if presented to the Treasurer after the expiration of sixty (60) days from the date hereof;" and the State Treasurer shall not pay, and he is hereby prohibited from paying any warrant drawn by the Auditor unless the same shall be presented within sixty (60) days from the date of such warrant. (1925, c. 246, s. 1.)

§ 147-60. Surrender of barred warrant; issue of new warrant.—Any person, firm or corporation holding a warrant drawn by the State Auditor which cannot be paid because of the provisions of §§ 147-59, 147-60 and 147-61 may present the same to the State Auditor, and upon satisfactory proof that such person, firm or corporation is the owner thereof and is entitled to have and receive the proceeds of such warrant and that the obligations for which the warrant is drawn is a subsisting obligation against the State of North Carolina, may surrender said warrant to the Auditor and cancel the same, whereupon the Auditor is authorized and empowered to issue another warrant for like amount in lieu thereof. (1925, c. 246, s. 2.)

§ 147-61. Warrants issued before March 10, 1925.—Every person, firm or corporation holding a warrant, drawn and issued by the State Auditor prior to March 10, 1925, shall present the same for payment on or before May 1, 1925. If such warrant is not presented to the State Treasurer for payment prior to May 1, 1925, the same shall not be paid, but the holder thereof shall be notified of the provisions of §§ 147-59, 147-60 and 147-61, and upon satisfactory proof that the holder thereof is the proper owner and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, the warrant may be surrendered to the Auditor and cancelled and the Auditor is authorized and empowered to issue another and new warrant for like amount in lieu thereof. (1925, c. 246, s. 3.)

§ 147-62. Assignments of claims against state.—All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof, shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment

thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, and life insurance companies: Provided, further, that employees of the state or of any of its institutions, departments, bureaus or commissions who are members of the state employees credit union may in writing authorize any periodical payment or obligation to such credit union to be deducted from their salaries or wages as such employee, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, Motor Vehicle Inspectors of the Revenue Department, and State Prison Guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128.)

§ 147-63. Warrants for money paid into treasury by mistake.—Whenever the governor and council of state are satisfied that moneys have been paid into the treasury through mistake, they may direct the auditor to draw his warrant therefor on the treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages. (Rev., s. 5366; Code, s. 3351; 1868-9, c. 270, s. 66; C. S. 7676.)

§ 147-64. Warrants for surplus proceeds of sale of property mortgaged to state.—Whenever any real property mortgaged to the state, or bought in for the benefit of the state, of which a certificate shall have been given to a former purchaser, is sold by the attorney-general on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the state, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. The auditor shall not draw his warrant for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person. (Rev., s. 5368; Code, s. 3352; 1868-9, c. 270, s. 68; C. S. 7678.)

Art. 6. Treasurer.

§ 147-65. Salary of state treasurer.—The salary of the state treasurer shall be six thousand six hundred dollars a year, payable monthly. (Rev., s. 2739; Code, s. 3723; 1891, c. 505; 1907, c. 830, s. 3; 1907, c. 994, s. 2; 1917, c. 161; 1919, c. 233; 1919, c. 247, s. 3; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; C. S. 3868.)

§ 147-66. Office and office hours.—The treasurer shall keep his office at the city of Raleigh, and shall attend there between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary. (Rev., s. 5369; Code, s. 3362; 1868-9, c. 270, ss. 80, 81; C. S. 7679.)

§ 147-67. Bonds of treasurer's clerks. — The clerks in the treasurer's office shall enter into good and sufficient bonds, payable to the state of North Carolina, as provided in § 128-8. These several bonds shall be in addition and cumulative to the official bond of the state treasurer, and shall not be construed to affect in any way the liability of the state treasurer upon his official bond. (Rev., s. 289; 1919, c. 8; 1921, c. 175; C. S. 7681.)

§ 147-68. To receive and disburse moneys; to make reports.—It is the duty of the treasurer to receive all moneys which shall from time to time be paid into the treasury of this state; to pay all warrants legally drawn on the treasurer by the auditor; and no moneys shall be paid out of the treasury except on the warrant of the auditor; to report to the governor annually and to the general assembly at the beginning of each biennial session thereof the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year. (Rev., s. 5370; Code, s. 3356; 1868-9, c. 270, s. 71; C. S. 7682.)

§ 147-69. Deposits of state funds in banks regulated.—Banks having state deposits shall furnish to the auditor of the state, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the auditor. The treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No depository bank shall make any charge for exchange or for the collection of the treasurer's checks or for the transmission of any funds which may come into his hands as state treasurer. The commissioner of banks and the bank examiners, when so required by the state treasurer, shall keep the state treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the state from loss. The state treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

The payment of interest on deposits of state money in any bank or banks shall be controlled by the governor and council of state, who shall have full power and authority to determine for what periods of time payment of interest on such deposits shall or shall not be required, and to fix the rate of interest to be paid thereon. The interest collected on the bank balances from time to time shall be paid into the state's general fund; but the treasurer shall credit to the funds of the agricultural department all money which is received as interest on the funds of the department, and he shall notify the commissioner of agriculture when such amounts are paid.

(Rev., s. 5371; 1905, c. 520; 1915, c. 168; 1917, c. 159; 1931, c. 127, s. 1; 1931, c. 243, s. 5; 1933, c. 175, s. 1; C. S. 7684.)

§ 147-70. To make short-term notes in emergencies.—Subject to the approval of the governor and council of state, the state treasurer is authorized to make short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the general assembly. (1915, c. 168, s. 3; C. S. 7685.)

§ 147-71. May demand and sue for money and property of state.—The treasurer is authorized to demand, sue for, collect and receive all money and property of the state not held by some person under authority of law. (Rev., s. 5375; Code, s. 3359; 1866, c. 46; C. S. 7688.)

§ 147-72. Ex officio treasurer of state institutions; duties as such.—The treasurer shall be ex-officio the treasurer of the department of agriculture, of the North Carolina state college of agriculture and engineering, of the North Carolina school for the deaf and dumb at Morganton, of the North Carolina institution for the deaf and dumb and the blind at Raleigh, for the state hospitals (for the insane) at Raleigh, Morganton, and Goldsboro, for the state's prison and soldiers home. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees, or directors, with the approval of the governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (Rev., s. 5376; Code, ss. 2235, 2251, 3723; 1879, c. 240, s. 2; 1881, c. 211, s. 9, c. 128; 1883, c. 156, s. 12, c. 405; 1895, c. 434; 1899, c. 1, s. 11; 1919, c. 314, s. 6; C. S. 7689.)

§ 147-73. Office of treasurer of each State Institution abolished.—The office of Treasurer of each of the several State institutions of which the State Treasurer is ex-officio Treasurer is hereby abolished. (1929, c. 337, s. 3.)

§ 147-74. Office of State Treasurer declared office of deposit and disbursement.—The office of the State Treasurer is declared to be an office of deposit and disbursement and only such records and accounts as may be necessary to disclose the accountability of the State Treasurer shall be kept. The purpose of this section is to prevent duplication in account and record keeping and such accounts as may be necessary shall be prescribed by the Director of the Budget under the terms of the Executive Budget Act. (1929, c. 337, s. 2.)

§ 147-75. May authorize chief clerk to act for him; treasurer liable. — The treasurer may authorize his chief clerk to perform any duties pertaining to the office, except signing checks; but the treasurer is responsible for the conduct of all his clerks. (Rev., s. 5377; Code, s. 3358; 1868-9, c. 270, s. 76; C. S. 7690.)

§ 147-76. Liability for false entries in his books.—If the treasurer of the state shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the governor, the general assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the auditor, with intent, in any of said instances, to defraud the state or any person, such treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years. (Rev., s. 3606; Code, s. 1119; R. C., c. 34, s. 68; C. S. 7691.)

§ 147-77. Daily deposit of funds to credit of treasurer.—All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State, or any agency, department, division or commission thereof, except officers and the clerk of the Supreme Court, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, or other designated depository, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after thirty days trial. (1925, c. 128, s. 1.)

§ 147-78. Treasurer to select depositories; bond.—The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State, and the said Treasurer shall require of such depository a bond, or in lieu thereof of collateral security for such deposit, consisting of such bonds as are approved for investment by the State sinking fund, as provided for in §§ 142-31 to 142-43, payable to the State of North Carolina, in a sufficient amount to protect the State on account of any deposit of State funds made therein. (1925, c. 128, s. 2.)

§ 147-79. Deposits of state funds in banks that have provided for safety of deposits without requiring depository bonds.—Where any bank or trust company, state or national, has come within the provisions of the national banking laws,

providing guarantee or insurance on security, in full, for the deposits in such bank or trust company, and for payment thereof upon demand of the depositor, and when thereby such protection is afforded depositors of such bank or trust company, and where any such bank or trust company may be properly designated as a depository for the deposits of moneys of the state of North Carolina, or of any county, city, town, or other political subdivision of the state of North Carolina, it shall be permissible and lawful to deposit the moneys of the state, or of such county, city, town, or other political subdivision therein, without requiring of the said bank or trust company to furnish any additional security for the protection of such deposits, or the payment thereof upon demand, as now required by law: Provided, however, that the council of state shall have previously passed upon the character and extent of the guarantee afforded by the United States banking laws, and shall have approved the same as satisfactory: Provided further, that the approval of such bank or trust company as a depository for moneys of the state of North Carolina must be given by the council of state, and approval by the local government commission must be secured for such bank or trust company to act as a depository for any county, city, town, or other political subdivision of the state: Provided further, that any action in regard to these matters shall be discretionary with the council of state as far as this section applies to them, and with the local government commission as far as this section applies to it.

Where the deposits are guaranteed or insured only in part, the bank or trust company receiving such deposits shall be required to deposit bonds or security only to the extent of the unguaranteed portion of said deposits. (1933, c. 461, ss. 1, 1½.)

§ 147-80. Deposit in other banks unlawful; liability.—It shall be unlawful for any funds of the State to be deposited by any person, institution, or department or agency in any place or bank or trust company, other than those so selected and designated as official depositories of the State of North Carolina by the State Treasurer, and any person so offending or aiding and abetting in such offense shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court, and any person so offending or aiding and abetting in such offense shall also immediately become civilly liable to the State of North Carolina in the amount of the money or funds unlawfully deposited, and, at the instance of the State Treasurer, or at the instance of the Governor, the Attorney-General shall forthwith institute the civil action in the name of the State of North Carolina against such person or persons, either in the courts of Wake County, according to their respective jurisdiction, or in the county in which said unlawful deposit has been made, according to the selection made by the officer requesting the institution of such action, for the purpose of recovering the amount of the money so unlawfully deposited, with interest thereon at six per cent per annum, and for the cost of said action, and the court in which said action is tried may also tax, as a part of the cost in said action, to the use of the State of North Carolina, a sum sufficient to reimburse the State of North Carolina for all expense incidental to or connected with the preparation and prosecution of such action. (1925, c. 128, s. 3.)

§ 147-81. Number of depositories; contract. — The State Treasurer is authorized and empowered to select as many depositories in one place and in the State as may appear to him to be necessary and convenient for the various officers, representatives and employees of the State, to comply with the purposes of §§ 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and may make such contracts with said depositories for the payment of interest on average daily or monthly balances as may appear advantageous to the State in the opinion of such treasurer and the Governor. (1925, c. 128, s. 4.)

§ 147-82. Accounts of funds kept separate.—In order to preserve and keep them separate, all funds that are now required by law to be kept separate or to be separately administered, both by state departments, institutions, commissions, and other agencies or divisions of the state which collect or receive funds belonging to the state, or funds handled or maintained as trust funds in any form by such department, division or institution, shall be evidenced in daily reports by distribution sheets, which shall reflect and show an exact copy of the accounts, showing the distribution of said money kept by such collecting departments, institutions and agencies, and the same shall be entered in the records of the office of the State Treasurer, so as to keep and maintain in the office where the same is first collected or received the same account thereof, and of the distribution thereof, the same records and accounts as are kept in the office of the State Treasurer relating thereto. (1925, c. 128, s. 5.)

§ 147-83. Receipts from Federal government and gifts not affected.—Sections 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84 shall not be held or construed to affect or interfere with the receipts and disbursements of any funds received by any institution or department of this State from the Federal government or any gift or donation to any institution or department of the State or commission or agency thereof when either in the act of Congress, relating to such funds received from the Federal government, or in the instrument evidencing the said private donation or gift, a contrary disposition or handling is prescribed or required, and the said sections shall not apply to any moneys paid to any department, institution or agency, or undertaking of the State of North Carolina, as a part of any legislative appropriation, or allotment from any contingent fund, as provided by law, after the same has been paid out of the State treasury. (1925, c. 128, s. 6.)

§ 147-84. Auditor to furnish forms; reports; refund of excess payments. — The State Auditor, by and with the advice, consent and approval of the Governor, shall prescribe and furnish all forms necessary for full compliance with §§ 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and the cost of printing and furnishing the same shall be charged in the printing account of the several departments, institutions and agencies

receiving and using such forms; and such daily reports shall be made by mail by those departments, institutions and collecting agencies and officers and employees who are not in the city of Raleigh, when required to make such daily deposits and reports; and, in addition to such daily reports, the treasurer may require a report, as to the amount deposited, by wire, and all such departments, institutions, agencies, officers and employees, who are at or in the city of Raleigh, when required to make such deposits and reports, shall deliver the same, in person or by messenger, to the State Treasurer; whenever taxes of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount found to be legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate from the head of the department through which said tax was collected, or his successor in the performance of the functions of that department, and the Treasurer shall pay said warrant. (1925, c. 128, s. 7.)

§ 147-85. Fiscal year.—The fiscal year of the state government shall annually close on the thirtieth day of June. The accounts of the treasurer, the auditor and the charitable and penal institutions of the state shall be annually closed on that date. (Rev., s. 5378; Code, s. 3360; 1868-9, c. 270, s. 77; 1883, c. 60; 1885, c. 334; 1905, c. 430; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21; C. S. 7692.)

§ 147-86. Additional clerical assistance authorized; compensation and duties.—The state treasurer, by and with the consent and advice of the governor and council of state, is authorized to employ an additional clerk in the treasury department, whose compensation and duties shall be fixed by the state treasurer, by and with the consent and advice of the governor and council of state. The compensation of such additional clerk as may be employed pursuant to this section shall be paid as other officers and clerks are paid. (1923, c. 172; C. S. 7693(a).)

Art. 7. Commissioner of Revenue.

§ 147-87. Commissioner of Revenue; appointment; salary. — A commissioner of revenue shall be appointed by the governor on January 1, 1933, and quadrennially thereafter. The term of office of the commissioner shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the Governor, with the approval of the Advisory Budget Commission. (1921, c. 40, ss. 2, 6; 1929, c. 232.)

§ 147-88. Duties as to revenue laws. — In addition to the other duties of the Commissioner of Revenue, it shall be his duty to prepare for the legislative committees of the General Assembly such revision of the revenue laws of the state as he may find by experience and investigation expedient to recommend, so that the same may be introduced in the General Assembly and available in printed form for consideration of its members within the first ten days of the session. (1921, c. 40, s. 5.)

Art. 8. Solicitors.

§ 147-89. To prosecute cases removed to federal courts. — It shall be the duty of the solicitors of this state, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this state, and have moved their cases from the state to the federal courts under the provisions of the various acts of congress on such subjects. (Rev., s. 5381; Code, s. 1239; 1874-5, c. 164, s. 1; C. S. 7696.)

Chapter 148. State Prison System.

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Art. 1. Government by Highway and Public Works Commission.

§ 148-1. Commission to employ servants and agents. — The state highway and public works commission may employ such managers, superintendents, wardens, physicians, supervisors, overseers and other servants and agents as they may deem necessary for the management of the affairs of the state prison, and the safekeeping and employment of the convicts therein confined. The compensation and duties of these employees shall be fixed under the provisions of the budget act and the personnel act. The commission may discharge any manager, superintendent or warden with the consent and approval of the governor, and may discharge all physicians, supervisors, overseers and other servants and agents at will. (Rev., s. 5388; 1901, c. 472, s. 3; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7703.)

§ 148-2. Employees' bonds; money paid to state treasurer. — The state highway and public works commission shall require its officers, employees, or agents, who may be authorized by law, or hereafter authorized by the commission, to collect or

receive the moneys and earnings of the state prison, to enter into bonds payable to the State of North Carolina in such penal sums and with such security as may be approved by the commission, conditioned upon the faithful performance of their duties in collecting and receiving, and paying over the moneys and earnings of the prison. Only such corporate security shall be accepted as is with sureties licensed to do business in North Carolina. (Rev., s. 5389; 1901, c. 472, s. 7; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7704.)

§ 148-3. Acquisition and alienation of property.—Whenever it may be necessary or convenient in the operation of the state prison, or whenever expressly authorized by law, such property, both real and personal, as it may be desired by the state highway and public works commission, by and with the advice, consent and approval of the Budget Bureau, the Governor, and the Council of State, may be acquired by gift, devise, purchase or lease; all such gifts, devises, purchases or leases shall be made to the State of North Carolina. Whenever it may be necessary or convenient, in the opinion of the state highway and public works commission, to dispose of any such property, either real or personal, or any interest or estate therein by lease, subletting, sale or conveyance, such disposal may be effected upon the adoption, by majority vote of the Commission, of a resolution to that effect, and with the approval of the Budget Bureau and the Governor and Council of State. All leases, bills of sale, and conveyances necessary to execute such powers of lease, subletting, sale and conveyance shall be executed in the name of the State of North Carolina by the Governor, attested by the Secretary of State, with the Great Seal of the State of North Carolina affixed thereto; and such conveyance shall be admitted to registration in the several counties of the State upon such probate as is now required by law for other corporate conveyances. (Rev., s. 5392; 1901, c. 472, ss. 2, 6; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7705.)

§ 148-4. Management of convicts and prison property; recapture of escaped convicts. — The Commission shall have control and custody of all prisoners serving sentence in the state prison or in state prison camps, and such prisoners shall be subject to all the rules and regulations legally adopted by the commission. The authorized agents of the commission shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. The commission shall manage and have charge of all the property and effects of the state prison, and conduct all its affairs subject to the provisions of this chapter. It may adopt and enforce such rules and regulations for the government of the state prison, its agents and employees and the convicts therein confined as to them may seem just and proper. (Rev., s. 5390; 1901, c. 472, s. 4; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; C. S. 7706.)

§ 148-5. Commission to have control over prison property.—The state highway and public works commission shall have control and custody of all state highway prison camps, together with all property of every kind assigned thereto, the central prison at Raleigh, and all state prison farms, camps and other places for detention and employment of prisoners, together with all property of every kind and description, and all books, accounts, and records of such establishments. (1933, c. 172, s. 4.)

§ 148-6. Custody, employment and hiring out of convicts.—The state highway and public works commission shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The commission shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the commission: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (Rev., s. 5391; 1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7707.)

§ 148-7. Inspection of mines.—The state highway and public works commission is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which state convicts are or may be employed and to employ for this purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2.)

§ 148-8. Automobile license tags to be manufactured by Commission.—The state highway and public works commission is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags and for such other purposes as the commission may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the state highway and public works commission for the state automobile license tag requirements from year to year.

The price to be paid to the state highway and public works commission for such tags shall be fixed and agreed upon by the Governor, the state highway and public works commission, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1941, c. 36.)

§ 148-9. State board of charities and public welfare to supervise prison.—The state board of charities and public welfare shall exercise a supervision over the state prison as contemplated by the Constitution, under proper rules and regulations,

to be prescribed by the Governor. (1925, c. 163; 1933, c. 172.)

§ 148-10. Board of health to supervise sanitary and health conditions of prisoners.—The state board of health shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the division of prisons, and shall make periodic examinations of the same and report to the State Highway and Public Works Commission the conditions found there with respect to the sanitary and hygienic care of such prisoners. The Commission shall do such things as may be necessary to carry out the recommendations of the board of health. (1917, c. 286, s. 8; 1919, c. 80, s. 4; 1925, c. 163; 1933, c. 172, s. 22; C. S. 7714.)

Art. 2. Prison Regulations.

§ 148-11. State highway and public works commission to make regulations.—The state highway and public works commission may adopt such rules and regulations for enforcing discipline as their judgment may indicate, not inconsistent with the constitution and laws of the state. They shall print and post these regulations in the cells of the convicts, and the same shall be read to every convict in the state prison when received. (Rev., s. 5401; Code, s. 3444; 1873-4, c. 158, s. 15; 1925, c 163; 1933, c. 172, s. 18; C. S. 7721.)

§ 148-12. Record of conduct of prisoners.—The director of the state prison system and the superintendents of county chain gangs or road forces, under rules and regulations of the state highway and public works commission, shall keep a record of the conduct and demeanor of all prisoners held in the state prison system and on county chain gangs. (1917, c. 278, s. 2; 1919, c. 191, s. 2; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7750.)

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc. — The state highway and public works commission may, with the approval of the Governor, make rules and regulations relating to grades of prisoners, rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct, allowances of time for good behavior, the amount of cash, clothing, etc., to be awarded prisoners after their discharge or parole; and until such rules are so made by the commission, the regulations set out in §§ 148-14 to 148-16 and 148-18 shall govern these matters.

Uniforms of stripes to designate felons may be used by the prison authorities of the commission as a matter of discipline only; and prisoners, even though convicted of felony, need not be clothed in such stripes except as a form of discipline for violation of prison rules. No person not convicted of a felony shall be required to wear a uniform of stripes such as is usually used to designate felons. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1.)

§ 148-14. Three grades for prisoners established; good-time allowances.—All prisoners shall be divided into three grades, "A," "B," and "C"; "A" grade shall be the highest grade. No prisoner shall be placed in this grade until after he has demonstrated by his conduct that he is obedient to prison rules and regulations, respectful to prison officers and employees, considerate of fellow prisoners, trustworthy, and will assist in preserving prison morale and discipline.

"B" grade shall be the second highest grade. No prisoner shall be placed in this grade until after he has demonstrated by his conduct that he is seeking to make a good prisoner and has proved obedient to all prison rules and regulations.

"C" grade is the third grade, and shall be the lowest grade. All prisoners shall be placed in this grade when they are first admitted to prison, and all prisoners under discipline shall be placed in this grade.

The good-time allowances shall be nine days per month for prisoners in "A" grade, and seven days per month for prisoners in "B" grade. Prisoners in "C" grade shall receive no good-time allowance.

Prisoners who have not been subject to discipline may have their good time computed in their highest grade from the date of their admission into prison. (1935, c. 414, s. 16.)

§ 148-15. Double time allowances.—Every prisoner who works on Sunday or any of the legal holidays in the State of North Carolina shall earn double time allowance. (1935, c. 414, s. 17.)

§ 148-16. "Governor's good time."—A grant of good time, to be known as the "governor's good time," shall be given to each prisoner at the end of each and every year of prison servitude as follows: To each and every prisoner in "A" grade forty-five days; to each and every prisoner in "B" grade thirty-five days: Provided, that no prisoner who has been disciplined during that year of prison servitude may receive the "governor's good time" grant. (1935, c. 414, s. 18.)

§ 148-17. Correspondence of prisoners regulated. — The prisoners confined at any State Prison, State Farm, or State Camp who are in the first class or grade authorized by this article shall be allowed general correspondence privileges in so far as such correspondence does not interfere with the work and discipline of the prison, farm, or camp; prisoners who are in the second class or grade shall be allowed similar correspondence privileges, but somewhat more restricted than those in the first class or grade; and prisoners who are in the third class or grade shall only be allowed such correspondence privileges as may be deemed best by the superintendent. Any prisoner shall be permitted to write a letter to the Governor of the State at any time he desires, and such letter shall be mailed for him as other letters are mailed. (1917, c. 286, s. 17; 1925, c. 163; C. S. 7734.)

§ 148-18. Money and other allowances for prisoners discharged; certificates of competency.—All prisoners upon being discharged, except short-term prisoners convicted of misdemeanors, paroled or pardoned from prison, shall be given a small sum of money, transportation to the place in North Carolina designated in parole or discharge papers, and sufficient clothing for neat and comfortable appearance. If any prisoner demonstrated during his prison service that he is competent or proficient in any gainful trade, he shall also be given upon his discharge, parole,

or pardon a certificate of competency in such trade signed by the proper prison authorities. (1935, c. 414, s. 19.)

§ 148-19. Prisoners examined for assignment to work.—Each prisoner committed to the charge of the state highway and public works commission shall be carefully examined by a competent physician in order to determine his physical and mental condition, and his assignment to labor and the work he is required to do shall be dependent upon the report of said physician as to his physical and mental capacity. (1917, c. 286, s. 22; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7727.)

§ 148-20. Whipping or flogging prisoners. — It is unlawful for the state highway and public works commission to whip or flog, or have whipped or flogged, any prisoner committed to their charge until twenty-four hours after the report of the offense or disobedience, and only then in the presence of the prison physician or prison chaplain; and no prisoner other than those of the third class as defined in this article shall be whipped or flogged at any time. (1917, c. 286, s. 7; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7728.)

§ 148-21. Prisoner's supplies and clothes to be marked.—The prisoner's number shall be used for marking all clothes, bedclothing, beds, and other supplies used by prisoners, so that when such clothes, bedclothing, and supplies are washed and cleaned they shall be always returned for the use of the same prisoner. (1917, c. 286, s. 9; 1925, c. 163; C. S. 7729.)

§ 148-22. Recreation and instruction of prisoners.—The state highway and public works commission shall arrange certain forms of recreation for the prisoners, and arrange so that the prisoners during their leisure hours between work and time to retire shall have an opportunity to take part in games, to attend lectures, and to take part in other forms of amusement that may be provided by the commission. The commission shall organize classes among the prisoners so that those who desire may receive instruction in various lines of educational pursuits. They shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes; such services, however, shall be voluntary on the part of the prisoner. This section shall apply to the state prison and to the state farms and state camps. (1917, c. 286, s. 15; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7732.)

§ 148-23. Prison employees not to use intoxicants or profanity.—No one addicted to the use of intoxicating liquors shall be employed as superintendent, warden, guard, or in any other position connected with the state highway and public works commission, where such position requires the incumbent to have any charge or direction of the prisoners; and any one holding such position, or any one who may be employed in any other capacity in the state prison system, who shall come under the influence of intoxicating liquors, shall at once cease to be an employee of any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the state highway and public works commission who curses a prisoner under his charge shall at once cease to be an employee and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7733.)

§ 148-24. Religious services; Sunday school. — The state highway and public works commission shall make such arrangements as are necessary to hold religious services for the prisoners in the state prison and in the state farms and camps, on Sunday and at such other times as may be deemed wise. Attendance of the prisoners at such religious services shall be voluntary. The commission shall if possible secure the visits of some minister at the hospital to administer to the spiritual wants of the sick. In order to provide religious worship for the prisoners confined in the state prison, known as the Caledonia farm, the commission shall employ a resident minister of the gospel and provide for his residence and support. (Rev., s. 5405; Code, s. 3446; 1873-4, c. 158, s. 18; 1883, c. 349; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; 1925, c. 163; 1925, c. 275, s. 6; 1933, c. 172, s. 18; C. S. 7735.)

§ 148-25. Commission to investigate death of convicts.—The state highway and public works commission, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the commission may administer oaths and send for persons and papers. (Rev., s. 5409; 1885, c. 379, s. 2; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7746.)

Art. 3. Labor of Prisoners.

§ 148-26. Intent of State to maintain public roads with prison labor.—It is hereby declared to be the public policy of this state to build and maintain a state system of dependable highways and to maintain and improve the public roads in the several counties at the state's expense; and to that end to make the most economical use of the prison labor of the state in the construction, improvement and maintenance of said highways and roads.

It is further declared to be the intent and purpose of this chapter to provide for the gainful employment of all able-bodied prisoners of the state; and to this end the highway and public works commission is directed to provide for the employment in the maintenance and construction of the public roads of the state of as many of the male prisoners as, under the terms of their sentences, may be thus employed and are physically fit for such work, and as the commission can arrange economically to use for such purpose, and the remainder of the inmates of such prison division shall be employed as far as practicable, with due regard to their physical condition, in agriculture, prison industries, and forestry work, giving preference to the production of food supplies and necessary articles of use in the state highway department and other state supported institutions or activities, and the development and improvement of state owned properties. (1933, c. 172, ss. 1, 14.)

§ 148-27. Women prisoners; limitations on labor of prisoners.—The state highway and public works commission may provide suitable quarters

for women prisoners and arrange for work suitable to their capacity; and the several courts of the state may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the state highway and public works commission whose term of imprisonment is less than six months, or who is under eighteen years of age. No male person shall be so assigned whose term of imprisonment is less than thirty days. Provided, that in criminal actions in which a justice of the peace has final jurisdiction, no county shall be liable for or taxed with any costs. (1931, c. 145, s. 32; 1933, c. 39; 1933, c. 172, s. 18; 1935, c. 257, s. 3.)

§ 148-28. Sentencing of prisoners to central prison.—The several judges of the superior courts of this state are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offence or the character or condition of the defendant makes it advisable to do so, to sentence such person to the central prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the central prison. (1933, c. 172, s. 7.)

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; state not liable for maintenance expenses until convict received.—The sheriff having in charge any prisoner sentenced to the central prison at Raleigh shall send him to the central prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the auditor as true copies of those on file in his office. The state is not liable for the expenses of maintaining convicts until they have been received by the state highway and public works commission authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (Rev., ss. 5398, 5399, 5400; Code, ss. 3432, 3437, 3438; 1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7718.)

§ 148-30. Sentencing to public roads.—In all cases not provided for in §§ 148-28 and 148-32, the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the state highway and public works commission, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the commission as he may be advised by them is the proper person to receive such notice. Whereupon, the commission shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the commission shall designate: Provided, however, the commission shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. (1933, c. 172, s. 8.)

§ 148-31. Maintenance of central prison; warden; powers and duties. — The central prison shall be maintained in such a manner as to conform to all the requirements of Article 11 of the State Constitution, relating to a state's prison. A suitable person shall be appointed warden of the central prison, and he shall succeed to and be vested with all the rights, duties, and powers heretofore vested by law in the superintendent of the state's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of the prison not otherwise provided for in this article. (1933, c. 172, s. 14.)

§ 148-32. Prisoners may be sentenced to work on city and county properties; commission may provide prisoners for county.—Any county, city or town that operates farms, parks, or other public grounds by convict labor may retain a sufficient number of prisoners for the operation of such properties, and the judges in the courts of such counties, cities, or towns, in lieu of sentencing prisoners to jail to be assigned to work under the state highway and public works commission, shall sentence a sufficient number to the county jail to be assigned to work on such county, city or town properties for the necessary operation thereof; and courts may also sentence prisoners to the county jail to be assigned to work at the county home or other county-supported institution.

The commission may in its discretion provide prison labor upon terms and conditions agreed upon from time to time for doing specific tasks of work for the several county homes, county farms, or other county owned properties, but prisoners assigned to such work shall be at all times under the control and custody of a duly authorized agent of the division of prisons. (1931, c. 145, s. 30; 1933, c. 172, s. 31; 1939, c. 243.)

§ 148-33. Prison labor furnished other state agencies.—The state highway and public works commission may furnish to any of the other state departments, state institutions, or agencies, upon such conditions as may be agreed upon from time to time between the commission and the governing authorities of such department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any state department, institution or agency, and such other employment as is now provided by law for inmates of the state's prison under the provisions of § 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such commission. (1933, c. 172, s. 30.)

§ 148-34. Establishment of prison districts and camps. — There shall be established in this State by the state highway and public works commission, with the approval of the Governor, such number of prison districts, not less than five, as they shall determine advisable. The state highway and public works commission shall, as soon

thereafter as practicable, with the approval of the Governor, locate the prison camp or camps in each of said districts. Until such time as it shall be feasible for the commission to build and construct prison camps in accordance with the provisions of this article, it shall be the duty of the commission to take over and acquire by contract, under terms to be approved by the Governor, such county or road district prison camps as in their opinion shall be necessary for the use of the county prisoners on the public roads of the several county road systems as hereafter provided. The state highway and public works commission, with the approval of the Governor, in lieu of locating and constructing prison camps in any of the districts, may acquire by contract and take over prison camps in any county or road district and may make such alterations and additions thereto as shall be necessary to render the same suitable for a district prison camp. (1931, c. 145, s. 26; 1933, c. 172, s. 17.)

§ 148-35. Plans and specifications for original prison camps. — All district prison camps authorized by § 148-34, and all additions made to county camps taken over by the state highway and public works commission as authorized by § 148-34, shall be constructed, altered or changed, under plans and specifications prepared by the commission with the approval of the Governor, the State Board of Health, and the State Board of Charities and Public Welfare. The construction, alterations or changes shall be done by the highway and public works commission and, as far as shall be practicable, prisoners shall be used to do the work. (1931, c. 145, s. 27; 1933, c. 172, s. 17.)

§ 148-36. Highway and public works commission to control camps.—The district prison camps and all county prison camps acquired by the state highway and public works commission in lieu of district prison camps shall be under the control and direction of the commission, and operated under rules and regulations to be made by the commission, and approved by the Governor and the State Board of Charities and Public Welfare, and subject to such rules and regulations so adopted and approved, the commission shall establish grades for prisoners according to conduct, and so far as possible introduce the honor system, and may transfer honor prisoners to honor camps. Prisoners may be transferred from one district camp to another, and the state highway and public works commission may where it is deemed practical to do so establish separate camps for white prisoners and colored prisoners. In each district camp quarters shall be provided for the care and maintenance of such prisoners as may be sick, and a physician may be employed for such portion of his time as may be necessary and assigned to each of the several camps, and such of the prisoners as may be chosen may be used as attendants or nurses notwithstanding that such prisoners may not have qualified for such work as may be required by law; and any such prisoners as may have special qualifications to perform labor other than labor upon the public roads may be assigned to such special duties as the commission may determine. All necessary directors, physicians, guards or supervisors, or any other necessary employees for the proper care, keep and handling of such prisoners, shall be employed by the commission by and with the consent and approval of the Governor and the Division of Personnel of the Budget Bureau, and serve at the pleasure of the Commission. (1931, c. 145, s. 28; 1931, c. 277, s. 8; 1933, c. 46, ss. 3, 4; 1933, c. 172, ss. 4, 17.)

§ 148-37. Additional prison camps authorized.— The commission may establish such additional camps as are necessary for use by the division of prisons, such camps to be either of a permanent type of construction, or of temporary or movable type as the commission may find most advantageous to the particular needs, to the end that work to be done by the prisoners under its supervision may be so distributed throughout the state as to render their employment most economical and profitable, the commission to be the sole judges of the type and character of such buildings without the control of any other department. For this purpose, the commission may purchase or lease camp sites and suitable lands adjacent thereto and erect necessary buildings thereon, all within the limits of allotments as approved from time to time by the budget bureau for this purpose. (1933, c. 172, s. 19.)

§ 148-38. Employment of prisoners assigned to camps. — All able-bodied prisoners committed or assigned to the district prison camps shall be employed in the maintenance and construction of roads in the public road system of the several counties, or upon the state highway system, or assigned to such special duty in connection with the prison camps, or the preparation and repair of all road equipment and supplies as the state highway and public works commission may determine. (1931, c. 145, s. 29; 1933, c. 172, s. 17.)

§ 148-39. Cost of keeping prisoners borne by state highway and public works commission. — The cost and expense of construction of the various prison camps, the care, transportation and maintenance of prisoners and their guarding and supervision shall be paid by the state highway and public works commission from the county road maintenance funds provided in the Budget Appropriations Act: Provided, however, when prisoners are used upon the state highway systems in construction or maintenance, the cost and expense of transportation and maintenance of such prisoners, their guarding and supervision, shall be paid from the funds appropriated for the maintenance of state highways. (1931, c. 145, s. 33; 1933, c. 172, s. 17.)

§ 148-40. Recapture of escaped prisoners. — State highway and public works commission may, in the rules and regulations to be adopted by it, provide for the recapture of convicts that may escape, or any convicts that may have escaped from the state's prison or highway prison camps, or county road camps of this state, and may pay such reward or expense of recapture as the commission may by regulation provide to any person making the same. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody

and deliver him to the division of prisons. (1933, c. 172, s. 21.)

§ 148-41. Recapture of escaping prisoners; reward; punishment for escape.—The state highway and public works commission shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the state prisons, camps, or farms. When any person who has been confined or placed to work escapes from the state prison system, the commission shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem advisable and necessary for the recapture and return to the state prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by the treasurer of the state on the warrant of the Governor and charged to the state highway and public works commission, and by the commission shall be repaid to the state treasurer, and accounted for as a part of the expense of maintaining the state's prisoners.

If a prisoner of Class A or Class B attempts to escape or leaves the state prison or any state farm or state camp without permission, he shall, upon being recaptured, be reduced to Class C and shall permanently lose all his accumulated time and money. (Rev., s. 5407; Code, s. 3442; 1873-4, c. 158, s. 13; 1917, c. 236; 1917, c. 286, s. 13; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; C. S. 7742.)

§ 148-42. Indeterminate sentences. — The several judges of the superior court are authorized in their discretion in sentencing prisoners for a term in excess of twelve months to provide for a minimum and maximum sentence, and the commission is authorized to consider at least once in every six (6) months the cases of such prisoners that have thus been committed with indeterminate sentences, and to take into consideration the prisoners' conduct, and to authorize his discharge at any time after the service of the minimum term subject to his earned allowance for good behavior which his conduct may justify. (1933, c. 172, s. 24.)

§ 148-43. Prisoners of different races kept separate.—White and colored prisoners shall not be confined or shackled together in the same room of any building or tent, either in the State Prison or at any State or county convict camp, during the eating or sleeping hours, and at all other times the separation of the two races shall be as complete as practicable. Any officer or employee of either the State or any county in the State having charge of convicts or prisoners who shall violate or permit the violation of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1909, c. 832, ss. 1, 2; 1917, c. 286, s. 24; 1925, c. 163; C. S. 7740.)

§ 148-44. Segregation as to race, sex and age.—The commission shall provide separate sleeping quarters and separate eating space for the different races and the different sexes; and, in so far as it is practical to do so, shall provide for youthful convicts to segregate to themselves. (1933, c. 172, s. 25.)

§ 148-45. Penalty for escaping or assisting in.—Any prisoner who escapes or attempts to escape, or in any manner connives, aids or assists in helping other prisoners to escape or attempt to escape shall be guilty of a misdemeanor, and upon conviction shall be imprisoned at the discretion of the court, such term of imprisonment to commence at the termination of the sentence being served at the time of the offense, and such offending prisoner shall likewise forfeit all gained time that he has earned by previous good conduct. (1933, c. 172, s. 26.)

§ 148-46. Degree of protection against violence allowed.—When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape. (1933, c. 172, s. 27.)

§ 148-47. Disposition of child born of female prisoner.—Any child born of a female convict while she is in custody shall upon the arrival of a suitable age be surrendered to the clerk of the superior court of Wake county for disposition as the law provides in the case of children whose parents are dead or unable to provide for them. (1933, c. 172, s. 28.)

§ 148-48. Parole powers of governor unaffected.—Nothing in this chapter shall be construed to limit or restrict the power of the governor to parole prisoners under such conditions as he may himself impose or prevent the reimprisonment of such prisoners upon the violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29.)

§ 148-49. Prison indebtedness not assumed by commission. — The state highway and public works commission shall not assume or pay off any part of the deficit of the state prison existing on March 22, 1933. (1933, c. 172, s. 33.)

Art. 4. Paroles.

§ 148-50. Advisory board of paroles created; term of office; vacancy appointments. — The governor of North Carolina is hereby authorized and empowered to name an advisory board of paroles of six members, consisting of the attorney general, the chairman of the state highway and public works commission, the superintendent of public welfare, and three others, who are not state office holders and who are not connected officially with the state highway and public works commission, to be selected by the governor and to serve for the term of his appointment, and to perform such duties in the state prison program as may be assigned to them by the governor. The members of the board, other than ex-officio members, shall be appointed as follows: One for a term of one year, one for a term of two years and one for a term of three years. Appoint-

ments to fill any and all vacancies shall be made by the governor. (1935, c. 414, s. 1.)

§ 148-51. Board meetings; quorum; chairman and secretary; pay of members.—The board shall meet at the call of the governor at times and places designated by him. At said meetings three members shall constitute a quorum. The governor shall be chairman and the commissioner of paroles shall be secretary of the board. The governor and other ex-officio members may designate some other person to act for them at the meetings of the board. The members of the board, other than the ex-officio members, shall receive as compensation the sum of seven dollars per day and actual expenses while attending the meetings of the board, or while performing such other duties as may be assigned to them by the governor: Provided, however, the compensation may be raised to the sum of ten dollars per day by the governor at his discretion. (1935, c. 414, s. 1.)

§ 148-52. Commissioner of paroles; assistants.—The governor of North Carolina is authorized and empowered to appoint a commissioner of paroles and one or more assistants to said commissioner as he may deem wise and expedient, who shall, under the governor's direction, aid the governor in more fully performing all of the duties required of him in the exercise of the powers contemplated herein, and to perform such other services as may be assigned by the governor. The parole commissioner shall be provided with reasonable clerical assistance, whose compensation shall be fixed in accordance with the provisions of § 148-55. The salary of the parole commissioner shall be fixed by the governor. (1935, c. 414, s. 2; 1939, c. 335.)

§ 148-53. Investigators and investigations of cases of prisoners, prisons and prison camps. — For the purpose of investigating the cases of all prisoners serving both determinate and indeterminate sentences in the state prison, in prison camps, and on prison farms, the governor is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the governor's direction, investigate all cases designated by him, and otherwise aid the governor in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair and just consideration. The governor may cause an investigation to be made by the said investigators of any prison, prison camp, prison farm, and/or any penal and correctional institution in the State when, in his judgment, the situation warrants an investigation. Each and every investigator provided for herein shall perform his duties under the sole direction of the governor. (1935, c. 414, s. 3.)

§ 148-54. Parole supervisors provided for; duties. — The governor is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted to the work required of them, and who shall, under the direction of the governor and under regulations prescribed by him exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law abiding citizens. The supervisors shall also, under the direction of the governor, maintain frequent contacts with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions of their paroles, and they shall perform such other duties in connection with paroled prisoners as the governor may require. The number of supervisors may be increased by the governor as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4.)

§ 148-55. Pay and expenses of assistants, investigators and supervisors.—The salaries and expense allowances of all personnel appointed under §§ 148-52 to 148-54 shall be fixed by the governor with the approval of the advisory budget commission, and all such salaries and expenses, other than that of the parole commissioner, shall be paid by the state highway and public works commission upon vouchers approved by the commissioner of paroles. (1935, c. 414, s. 5.)

§ 148-56. Preparation of case histories for commissioner of paroles.—The governor is authorized and empowered to direct any employees of the state department of public welfare, and of the state highway and public works commission, and any county superintendent of public welfare, and any member of the staff investigators provided for in this article to prepare and submit to the commissioner of paroles case histories or other information in connection with any case under consideration for parole, such work to be done without extra compensation, and such work shall be considered as a part of the regular duties of such employees or superintendents of welfare. (1935, c. 414, s. 6.)

§ 148-57. Rules and regulations for parole applications. — The governor of North Carolina is hereby authorized and empowered to set up and establish rules and regulations, in accordance with which applications for paroles may be heard and by which such proceedings may be initiated and heard. (1935, c. 414, s. 7.)

§ 148-58. Time of eligibility of prisoners for hearing on applications.—All prisoners shall be eligible for a hearing on application for parole when they have served a fourth of their sentence, if their sentence is determinate, and a fourth of their minimum sentence, if their sentence is indeterminate: Provided, that any prisoner serving a sentence for life shall be eligible for such hearing when he has served ten years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner, but shall be construed only as guaranteeing to every prisoner a hearing of his case upon its merits. (1935, c. 414, s. 8.)

§ 148-59. Duties of clerks of all courts as to commitments; statements filed with commis-

sioner of paroles.—The several clerks of the superior courts and the clerks of all inferior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the governor shall by regulations prescribe, which information shall contain, among other things, the following: (1) The court in which the prisoner was tried; (2) the name of the prisoner and of all co-defendants; (3) the date or term when the prisoner was tried; (4) the offense with which the prisoner was charged and the offense for which convicted; (5) the judgment of the court and the date of the beginning of the sentence; (6) the name and address of the presiding judge; (7) the name and address of the prosecuting solicitor; (8) the name and address of private prosecuting attorney, if any; (9) the name and address of the arresting officer; and (10) all available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the commissioner of paroles, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the state highway and public works commission without charge. (1935, c. 414, s. 9.)

§ 148-60. Time for release of prisoners discretionary.—The time of releasing each prisoner eligible for consideration for parole as provided for herein shall be discretionary, and due consideration shall be given to the reasonable probability that the prisoner will live and remain in liberty without violating the law; that the release of the prisoner is not incompatible with the welfare of society, and that the record of the prisoner during his confinement established that the prisoner is obedient to prison rules and regulations, and has shown the proper respect for prison officials, and due regard and consideration for his fellow prisoners; and that the prisoner harbors no resentment against society or the judge, prosecuting attorneys, or jury that convicted the prisoner. (1935, c. 414, s. 10.)

§ 148-61. Contents of release order. — When a prisoner is released on parole, the parole instrument shall specify in writing the conditions of the parole, the place of residence of the parolee, within or without the State, the name and address of the party to whom the parolee is to report, and times and places when and where the said parolee shall report to the said party during the entire period of the parole. (1935, c. 414, s. 11.)

§ 148-62. Automatic revocation of parole upon conviction of crime. — Upon the parolee's conviction and sentence to a term of imprisonment in any court of record in the State of North Carolina and/or in any other State, and/or in any federal court, the parole of the parolee shall become automatically revoked and the parolee, if without the State of North Carolina, shall become forthwith a fugitive from justice. (1935, c. 414, s. 12.)

§ 148-63. Arrest powers of police officers. — Any officer who is authorized to make arrests of fugitives from justice shall have full authority and power to arrest any parolee whose parole has been revoked. (1935 c. 414, s. 13.)

§ 148-64. Coöperation of prison officials; information to be furnished. — The warden of each prison and the superintendent of each camp and farm and all officers and employees thereof and all other public officials shall at all times coöperate with the governer and parole commissioner and shall furnish to them all information that may be requested from time to time that will assist them in performing their functions, and all such wardens and other employees shall at all times give to the governor and parole commissioner and his staff free access to all prisoners. (1935, c. 414, s. 14.)

§ 148-65. Time of appointments by governor; board meetings. — The appointments provided herein to be made by the governor shall be made by the governor as soon as he conveniently can after this article takes effect. The board shall meet at the call of the governor at times and places designated by him. (1935, c. 414, s. 21.)

Art. 5. Farming Out Convicts.

§ 148-66. Cities and towns may contract for prison labor.—The corporate authorities of any city or town may contract in writing with the state highway and public works commission for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the attorney-general may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement. (Rev., s. 5410; Code, s. 3449; 1881, c. 127, s. 1; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; C. S. 7758.)

§ 148-67. Hiring to cities and towns.—The state highway and public works commission shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in § 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the commission; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the commission. (Rev., s. 5411; Code, s. 3450; 1881, c. 127, s. 2; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; C. S. 7759.)

§ 148-68. Payment of contract price; interest; enforcement of contracts.—The corporate authorities of any city or town so hiring convicts shall pay into the treasury of the state for the labor of any convict so hired such sum or sums of money at such time or times as may be agreed upon in the contract of hire; and if any such city or town fails to pay the state money due for such hiring, the same shall bear interest from the time it is due until paid at the rate of six per cent per annum;

and an action to recover the same may be instituted by the attorney-general in the name of the state in the courts of Wake County. (Rev., s. 5412; Code, s. 3451; 1881, c. 127, s. 3; 1925, c. 163; 1931, c. 145, s. 35; C. S. 7760.)

§ 148-69. Agents; levy of taxes; payment of costs and expenses.—The corporate authorities of any city or town so hiring convicts may appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, or to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects. (Rev., s. 5413; Code, s. 3452; 1881, c. 127, s. 4; 1925, c. 163; 1931, c. 145, s. 35; C. S. 7761.)

§ 148-70. Management and care of convicts; prison industries; disposition of products of convict labor.—The state highway and public works commission in all contracts for labor shall provide for feeding and clothing the convicts and shall maintain, control and guard the quarters in which the convicts live during the time of the contracts; and the commission shall provide for the guarding and working of such convicts under its sole supervision and control. The commission may make such contracts for the hire of the convicts confined in the state prison as may in its discretion be proper and will promote the purpose and duty to make the state prison as nearly self-supporting as is consistent with the purposes of its creation, as set forth in section eleven, article eleven of the Constitution. The commission may use the labor of convicts confined in the state prison in such work on farms, in manufacturing, either within or without the state prison, as the commission may find proper and profitable to be carried on by the state prison; and the commission may dispose of the products of the labor of the convicts, either in farming or in manufacturing or in other industry at the state prison, to or for any public institution owned, managed, or controlled by the state, or to or for any county, city or town in the state; and the commission may sell or dispose of the same elsewhere and in the open markets or otherwise, as in its discretion may seem profitable. (1917, c. 286, s. 2; 1919, c. 80, s. 1; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; C. S. 7762.)

Art. 6. Reformatory.

§ 148-71. Directors may establish reformatory.—There may be established in connection with the North Carolina State Prison Department, under the control and direction of the state highway and public works commission, a reformatory either within the enclosure of the penitentiary or elsewhere as the commission shall deem most practicable and economical, in which reformatory convicts under the age of eighteen years sentenced to the penitentiary shall be confined separate and apart from other convicts. (Rev., s. 5414; 1887, c. 356, s. 1; 1913, c. 72; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7764.)

§ 148-72. May exempt from convict garb.—It shall be in the discretion of the commission to exempt the convicts confined in the reformatory from the requirement of wearing the usual convict garb. (Rev., s. 5415; 1887, c. 356, s. 2; 1925, c. 163; 1933, c. 172, s. 18; C. S. 7765.)

§ 148-73. Not to apply to certain crimes.—Nothing in §§ 148-71 and 148-72 shall apply to convicts sentenced for crimes of murder, arson, rape, or burglary. (Rev., s. 5416; 1887, c. 356, s. 3; 1925, c. 163; C. S. 7766.)

Art. 7. Bureau of Identification.

§ 148-74. Bureau established. — The State bureau to be entitled a Bureau of Identification be and the same is hereby established. (1925, c. 228, s. 1.)

§ 148-75. Director.—A deputy warden of the State Prison is hereby designated as director of said bureau, who shall be a finger-print expert and familiar with other means of identifying criminals and who shall have complete control of said bureau within the limits hereinafter prescribed, said director to devote a sufficient portion of his time to the purposes of said bureau and shall maintain the principal offices of the same at the State Prison, and the said bureau with full equipment as herein provided for shall be established and maintained by the board of trustees of the penitentiary out of the general appropriation to the State Prison. (1925, c. 228, s. 2.)

§ 148-76. Duty of bureau.—It shall be the duty of the said bureau of identification to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or coöperative action on the part of the criminals, reporting such conditions, and to coöperate with all officials in detecting and preventing. (1925, c. 228, s. 3.)

§ 148-77. Henry system maintained. — The director is required to use and maintain the Henry system. (1925, c. 228, s. 4.)

§ 148-78. Annual report.—The director of the bureau is directed to submit in his annual report as a part of the report of the State Prison, a full account of all funds received and expenses to the Governor, and an estimate of what is necessary to carry out the provisions of this article. (1925, c. 228, s. 5.)

§ 148-79. Finger prints taken. — Every chief of police and sheriff in the State of North Carolina is hereby required to take or cause to be taken on forms furnished by this bureau the finger prints of every person convicted of a felony, and to forward the same immediately by mail to the said bureau of identification. That the said officers are hereby required to take the finger prints of any other person when arrested for a

crime when the same is deemed advisable by any chief of police or sheriff, and forward the same for record to the said bureau. (1925, c. 228, s. 6.)

§ 148-80. Seal of bureau; certification of records.—The director shall provide a seal to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of said bureau of identification and when so certified under seal such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7.)

§ 148-81. Report of disposition of persons finger printed.—Every chief of police and sheriff shall advise said bureau of final disposition of all persons finger printed. (1925, c. 228, s. 8.)

Chapter 149. State Song.

Sec.
149-1. "The Old North State."

§ 149-1. "The Old North State."—The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
Hurrah! Hurrah! The Old North State forever!
Hurrah! Hurrah! the good Old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region as on this side of Heaven),
Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1.)

Chapter 150. Uniform Revocation of Licenses.

Sec.
150-1. Procedure for hearings on suspension or revocation of licenses by certain state boards and commissions.
150-2. Venue of hearings.
150-3. Authority of boards to issue subpoenas, etc.
150-4. Notice of appeal.
150-5. Right of appeal to supreme court.
150-6. Power of board to restore licenses.
150-7. Additional powers of boards.
150-8. Construction of chapter.

§ 150-1. Procedure for hearings on suspension or revocation of licenses by certain state boards and commissions.—No license issued by the state board of examiners of electrical contractors, state licensing board for contractors, state board of accountancy, state board of embalmers, board of chiropody examiners, North Carolina board of veterinary medical examiners, board of barber examiners, state board of registration for engineers and land surveyors, cosmetologists board, tile contractors board, plumbing and heating board, board of boiler rules, and board of photographic examiners shall be revoked or suspended except according to a procedure which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references and shall include (1) a notice in writing to the person whose license is involved, stating the charge or charges against the said licensee and fixing a date and place for a hearing which shall not be less than thirty days from the issuance of said notice upon the person to whom it is issued, and shall be served upon the person named therein by an officer authorized by law to serve process, or by mailing by registered mail to the person named therein at the address given in the license or the last known address; (2) a hearing before the board, or a member thereof specifically designated by the board for the purpose of hearing the matters involved, at which hearing the accused shall have the right to be present to enter his defense, if any, and be represented by counsel and produce evi-

dence by witnesses or records; (3) notice of action by the board which shall be a written report containing findings of fact and conclusions of law thereon; (4) appeal from the action of the board to the superior court of the county in which the hearing was held or to the superior court of Wake county upon filing of an appeal bond in the sum of fifty dollars which shall act as a supersedeas. (1939, c. 218, s. 1.)

§ 150-2. Venue of hearings.—All hearings shall be in the county of the residence of the person whose license is involved; provided that after notice such person and the board may agree that the hearing may be held in some other county. (1939, c. 218, c. 2.)

§ 150-3. Authority of boards to issue subpoenas, etc.—For all hearings the board shall have authority to issue subpoenas to witnesses to appear in person and to produce books, records, papers and other evidence as may be necessary or requested. (1939, c. 218, s. 3.)

§ 150-4. Notice of appeal. — When appeal is taken from the decision of the board, the person whose license is involved shall give notice in writing of appeal and shall state therein the exceptions to the decision of the board. Within thirty days the board shall cause to be filed in the office of the clerk of the court in the proper county a complete transcript, including the notice of charges, evidence taken at the hearing, the order or decision of the board and the exceptions filed thereto. The person whose license is involved shall upon his appeal have the right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the trial committee or counsel.

If after the action of the board new evidence shall be discovered by the person whose license is involved or by the board, motion may be made that the matter be remanded to the board for the taking of further evidence, and order thereon may be entered in the discretion of the judge of the superior court in which the matter is pending. (1939, c. 218, s. 4.)

§ 150-5. Right of appeal to supreme court.— From any decision of the superior court either the board or the person whose license is involved shall have the right of appeal to the supreme court. Whenever any notice of appeal is given and the bond required herein is filed, the order of the board shall be superseded until the appeal is finally determined, whereupon, unless reversed, modified or changed, the order shall become binding. (1939, c. 218, s. 5.)

§ 150-6. Power of board to restore licenses. — Whenever any license has been suspended or revoked by any of the boards named in § 150-1, the board shall have the right to restore the license upon satisfactory evidence that the person whose license has been suspended or revoked intends to comply with the law and the rules and regulations of the board. (1939, c. 218, s. 6.)

§ 150-7. Additional powers of boards. — The board is empowered and authorized to sue or be sued in its own name and to apply for such writs as may be desired to prevent the violations of the provisions of the act establishing said board and the amendments thereto. (1939, c. 218, s. 7.)

§ 150-8. Construction of chapter.—Nothing in this chapter shall be construed to remove any additional procedural requirement which may be provided in the laws creating any of the boards named in § 150-1, nor as preventing any of such boards from providing additional rules and regulations concerning the procedure for the suspension or revocation of license. (1939, c. 218, s. 8.)

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Chapter 151. Constables.

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§ 151-1. Election and term.—In each township there shall be a constable, elected by the voters thereof, who shall hold his office for two years. (Rev., s. 933; Const., Art. 4, s. 24; C. S. 971.)

§ 151-2. Oaths to be taken.—All constables, before they shall be qualified to act, shall take before the board of county commissioners the oaths prescribed for public officers, and also an oath of office. (Rev., s. 934; Code, s. 642; R. C., c. 24, s. 8; C. S. 972.)

§ 151-3. Bond; where registered; how fees paid.—The board of commissioners of each county shall require of each constable, elected or appointed for a township, on entering upon the duties of his office, to give a bond with good surety, payable to the state of North Carolina, in a sum not exceeding one thousand dollars, conditioned as well for the faithful discharge of his duty as constable as for his diligently endeavoring to collect all claims put into his hands for collection, and faithfully paying over all sums thereon received, either with or without suit, unto the persons to whom the same may be due. Said bond shall be duly proved and registered and, after registration, filed in the office of the register of deeds; and certified copies of the same from the register's office shall be received and read in evidence in all actions and proceedings where the original might be. The fees for proving and registering the bond of constable shall be paid by the constable. (Rev., s. 302; Code, s. 647; R. C., c. 24, s. 7; 1818, c. 980; 1820, c. 1045, s. 2; 1833, c. 17; 1869-70, c. 185; 1899, c. 54, s. 52; 1891, c. 229; C. S. 973.)

Local Modification.—Stanly: C. S. 973.

§ 151-4. Fees of constables. — Constables shall be allowed the same fees as sheriffs. (Rev., s. 2787; Code, s. 3742; 1883, c. 108; C. S. 3922.)

§ 151-5. Special constables.—For the better executing of any precept or mandate in extraordinary cases, any justice of the peace may direct the same, in the absence of or for want of a constable, to any person not being a party, who shall be obliged to execute the same under like penalty that any constable would be liable to. (Rev., s. 935; Code, s. 645; C. S. 974.)

§ 151-6. Vacancies in office.—Upon the death, failure to qualify or removal of any constable out of the township in which he was elected or appointed constable, or upon the failure of the voters of a township to elect a constable as required in § 151-1, the board of commissioners may appoint another person to fill the vacancy, who shall be qualified and act until the next election of constables. (Rev., s. 936; Code, s. 646; R. C., c. 24, s. 6; 1925, c. 206; C. S. 975.)

§ 151-7. Powers and duties. — Constables are hereby invested with and may execute the same power and authority as they have been by law heretofore vested with, and have executed; and, in discharge of their duties, they shall execute all precepts and processes of whatever nature to them directed by any justice of the peace or other competent authority within their county or upon any bay, river, or creek adjoining thereto; and the said precepts and processes shall be returned to the magistrate, or other proper authority. (Rev., s. 937; Code, s. 643; R. C., c. 24, s. 9; C. S. 976.)

Local Modification.—Henderson, Rutherford: 1941, c. 364.

§ 151-8. To execute notices within justice's jurisdiction. — Constables shall likewise execute, within the places aforesaid, all notices tendered to them which are required by law to be given for the commencement or in the prosecution of any cause before a justice of the peace; and the service thereof shall be made by delivering a copy to the person to be notified or by leaving a copy at his usual place of abode, if in the jurisdiction of the constable, which service, with the time thereof, he shall return on the notice, and such return shall be evidence of its service. On demand they shall deliver the notice to the party at whose instance it was issued. (Rev., s. 938; Code, s. 644; R. C., c. 24, s. 10; C. S. 977.)

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§ 152-1. Election; Vacancies in office: Appointment by clerk in special cases.—In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the County Commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Rev., ss. 1047, 1049; Const. Art. IV, s. 24; 1903, c. 661; Ex. Sess. 1924, c. 65; 1935, c. 376; C. S. 1014.)

§ 152-2. Oaths to be taken. — Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office. (Rev., s. 1048, Code, s. 661; Ex. Sess. 1924, c. 65; C. S. 1015.)

§ 152-3. Coroner's bond. — Every coroner shall execute an undertaking conditioned upon the faithful discharge of the duties of his office with good and sufficient surety in the penal sum of two thousand dollars ($2,000), payable to the State of North Carolina, and approved by the board of county commissioners. (Rev., s. 299; Code, s. 661; R. C., c. 25, s. 2; 1791, c. 342, ss. 1, 2; 1820, c. 1047, ss. 1, 2; 1899, c. 54, s. 52; Ex. Sess. 1924, c. 65; C. S. 1016.)

§ 152-4. Coroners' bonds registered; certified copies evidence.—All official bonds of coroners shall be duly approved, certified, registered, and filed as sheriffs' bonds are required to be; and certified copies of the same duly certified by the register of deeds, with official seal attached, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence. (Rev., s. 300; Code, s. 662; 1860-1, c. 18; Ex. Sess. 1924, c. 65; C. S. 1017.)

§ 152-5. Fees of coroners.—Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars; if necessarily engaged more than one day, for each additional day, five dollars.

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. It is the duty of every coroner, where he or any juryman deems it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon, who shall be paid for his attendance and services ten dollars, and such further sum as the commissioners of the county may deem reasonable. (Rev., s. 2775; Code, s. 3743; 1903, c. 781; C. S. 3905.)

Local Modification.—Caldwell: Pub. Loc. 1939, c. 191; Cumberland: 1941, c. 73; Davidson: Pub. Loc. 1923, c. 402; Johnston: Pub. Loc. 1927, c. 113; Pub. Loc. 1933, c. 365; Lenoir: 1941, c. 84; Pasquotank: Pub. Loc. 1939, c. 102; Cleveland, Union: Pub. Loc. 1921, c. 75, s. 1; Wake: Pub. Loc. 1923, c. 573; 1931, c. 137.

§ 152-6. Powers, penalties, and liabilities of special coroner.—The special coroner appointed under the provisions of § 152-1 shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners. (Rev., s. 1050; 1903, c. 661, s. 2; Ex. Sess. 1924, c. 65; C. S. 1019.)

§ 152-7. The duties of coroners with respect to inquests and preliminary hearings. — The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

1. Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased.

2. To summon forthwith a jury of six good and lawful men, freeholders, who are otherwise qualified to act as jurors, who shall not be related to the deceased by blood or marriage, or to any person suspected of guilt in connection with such death, and the coroner, upon the oath of the jury at the said place, which oath may be taken by him or any other person authorized to administer oaths, shall make further inquiry as to when, how and by what means such deceased person came to his death, and shall cause to come before himself and the said jury all such persons as may be necessary in order to complete said inquiry.

3. If it appears that the deceased was slain, or came to his death in such manner as to indicate any person or persons guilty of the crime in connection with the said death, then the said inquiry shall ascertain who was guilty, either as principal or accessory, or otherwise, if known; and the cause and manner of his death.

4. Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such person and cause the same to be brought before him and the inquiry

shall proceed as in the case of preliminary hearings before justices of the peace, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such person to jail, if it appears that such person is probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

5. As many persons as are found to be material witnesses in the matters involved in such inquiry and hearings, and are not culpable themselves shall be bound in recognizance with sufficient surety to appear at the next Superior Court to give evidence, and such as may default in giving such recognizance may be by such coroner committed to jail as is provided for State witnesses in other cases.

6. To summon a physician or surgeon and to cause him to make such examination as may be necessary whenever it appears to such coroner as proper to have such examination made, or, upon request of his jury, or upon the request of the solicitor of his district or counsel for any accused or any member of the family of the deceased: Provided, however, that when the coroner shall himself be a physician or surgeon, he may make such examination himself.

7. Immediately upon information of the death of a person within his county under such circumstances as, in the opinion of the coroner, may make it necessary for him to investigate the same, to notify the solicitor of his district, and to make such additional investigation as he may be directed to do by such solicitor.

8. To permit counsel for the family of the deceased, the solicitor of his district, or any one designated by him, and counsel for any accused person to be present and participate in such hearing and examine and cross-examine witnesses and, whenever a warrant shall have been issued for any accused person, such accused person shall be entitled to counsel and to a full and complete hearing.

9. To begin his inquiry with his jury where the body of the deceased shall be, but said hearing may be adjourned to other times and places, and the body of the deceased need not be present at such further hearing.

10. To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the solicitor of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the solicitor of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. (Rev., s. 1051; Code, s. 657; 1899, c. 478; 1905, c. 628; 1909, c. 707, s. 1; Ex. Sess. 1924, c. 65; C. S. 1020.)

§ 152-8. Acts as sheriff in certain cases; special coroner.—If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations, and penalties as hereinabove provided for. (Rev., s. 1052; Code, s. 658; 1891, c. 173; Ex. Sess. 1924, c. 65; C. S. 1021.)

§ 152-9. Compensation of jurors at inquest.—All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the Superior Courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so acting, and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the Superior Courts. (Rev., s. 1053; Code, ss. 659, 660; Ex. Sess. 1924, c. 65; C. S. 1022.)

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus. — All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing before a justice of the peace or a recorder, and such cases shall be immediately sent to the clerk of the Superior Court of such county and docketed by him in the same manner as warrants from justices of the peace. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the Superior Court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65.)

§ 152-11. Service of process issued by coroner.

—All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

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Art. 1. Corporate Existence and Powers of Counties.

§ 153-1. County as corporation; acts through commissioners.—Every county is a body politic and corporate, and has the powers prescribed by statute, and those necessarily implied by law, and no others; which powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them. (Rev., s. 1309; Code, ss. 702, 703, 1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1; C. S. 1290.)

§ 153-2. Corporate powers of counties. — A county is authorized—

1. To sue and be sued in the name of the county.

2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the supervision of the general assembly.

3. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its powers.

4. To make such orders for the disposition or use of its property as the interests of its inhabitants require. (Rev., s. 1310; Code, s. 704; 1868, c. 20, s. 3; C. S. 1291.)

§ 153-3. Reconveyance of property donated to county, etc., for specific purpose. — Any county, city or town to which any real property has been conveyed, without consideration, to be used for a specific purpose set out in the deed, shall have authority to reconvey the same without consideration to the grantor, his heirs, assigns or nominees whenever the governing body of such municipality shall officially determine that the said property will not be used for the purpose for which it was given: Provided, that due notice of such proposed conveyance shall be given by advertisement for two successive weeks in some newspaper of general circulation in the county. (1937, c. 441.)

Art. 2. County Commissioners.

§ 153-4. Election and number of commissioners.—There shall be elected in each county of the state, at the general election to be held in the year one thousand eight hundred and ninety-six, and every two years thereafter, by the duly qualified voters thereof, three persons to be chosen from the body of the county, who shall be styled "the board of commissioners for the county of ....." and shall hold their office for two years from date of their qualification and until their successors are elected and qualified. (Rev., s. 1311; C. S. 1292.)

§ 153-5. Local modifications as to term and number. — The number of commissioners shall be five instead of three in the counties of Alamance, Beaufort, Bertie, Brunswick, Buncombe, Cabarrus, Carteret, Catawba, Chowan, Columbus, Craven, Cumberland, Durham, Edgecombe, Franklin, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Iredell, Johnston, Jones, Lenoir, Lincoln, Martin, Mecklenberg, Nash, New Hanover, Pasquotank, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rowan, Tyrrell, Vance, Warren, Wayne and Wilson.

Only one member of the board of commissioners of Brunswick County shall be from any one township of said county.

In Gaston county six persons shall be elected, one of whom must be a resident of Gastonia township, one a resident of River Bend township, one a resident of South Point township, one a resident of Crowders Mountain township, one a resident of Cherryville township, and one a resident of Dallas township. If at any time the board of commissioners of Gaston county are equally divided upon any question pending before them and there is a tie vote, then the clerk of said board is authorized and empowered to cast the deciding vote and to determine such question.

In Wake county five persons shall be elected, three of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and ten, and two of whom shall compose a class whose terms of office shall be for four years on and after the first Monday in December, one thousand nine hundred and twelve.

In Person County one member of the Board of Commissioners of that county shall every two years be elected or chosen from among the residents of Roxboro Township, one member from among the residents of a district composed of Bushy Fork Township, Olive Hill Township, Cunningham Township and Woodsdale Township, and one member from among the residents of a district composed of Holloway Township, Allensville Township, Mt. Tirzah Township and Flat River Township, it being the intention of this paragraph to provide that the membership of the Board of Commissioners shall be composed of three members, one from each district, as defined and fixed hereinbefore. Such members shall be elected by a county wide and not a district vote in accord with the laws regulating primary and general elections. (Rev., ss. 1311, 1312; Code, s. 716; 1876-7, c. 141, s. 5; 1887, c. 307; 1895, c. 135; 1899, cc. 103, 147, 153, 187, 297, 301, 346, 450, 467, 488, 609; 1901, cc. 14, 60, 328, 330, 581; 1903, cc. 4, 7, 14, 36, 46, 59, 137, 191, 203, 206, 207, 228, 265, 446, 515, 790; 1905, cc. 37, 44, 58, 73, 148, 338, 340, 346, 397, 422, 553; 1907, cc. 2, 16, 55, 61, 125, 178, 291, 350; 1909, cc. 12, 53, 213, 302, 625, 729; 1917, cc. 32, 175, 381; 1931, c. 68; 1941, c. 34; C. S. 1293.)

§ 153-6. Vacancies in board; how filled.—In case of a vacancy occurring in the board of commissioners of a county, the clerk of the superior court for the county shall appoint to said office some person for the unexpired term. (Rev., s. 1314; Code, s. 719; 1895, c. 135, s. 7; 1909, c. 490, s. 1; C. S. 1294.)

§ 153-7. When to qualify; oath to be filed.—The board of commissioners shall qualify and enter upon the duties of their office on the first Monday of December next succeeding their election, and they may take the oaths of office before the clerk of the superior court, or some judge, or justice of the peace or other person qualified by law to administer oaths. The oaths of office severally taken and subscribed by them shall be deposited with the clerk of the superior court. (Rev., s. 1316; Code, s. 708; 1895, c. 135, s. 4; C. S. 1295.)

§ 153-8. Meetings of the board of commissioners.—The board of commissioners in each county shall hold a regular meeting at the courthouse, on the first Mondays in December and June. Special meetings may be held on the first Monday in every month, but shall not continue longer in session than two days. Meetings may be held at other times for the more convenient dispatch of business at the call of the chairman, on the written request of one member of the board, but public notice of the time and place of all such called meetings shall be posted at the courthouse door for not less than six days, and published one time in a county newspaper, if there is one. The board shall receive no compensation for attending such called meetings. The board may adjourn its regular meetings in December and June from day to day until the business before it is disposed of. Every meeting shall be open to all persons. A majority of the board constitute a quorum. At each regular December meeting the board shall choose one of its members as chairman for the ensuing year; in his absence the members present shall choose a temporary chairman. (Rev., s. 1317; Code, s. 706; C. S. 1296.)

Local Modification.—Randolph: 1939, c. 172; Richmond: 1939, c. 88.

§ 153-9. Powers of board.—The boards of commissioners of the several counties have power—

Taxation and Finance

1. To Exempt from Capitation Tax.—To exempt from capitation tax in special cases, on account of poverty and infirmity. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

2. To Levy County Taxes.—To levy, in like manner with the state taxes, the necessary taxes for county purposes within the limits prescribed in the Constitution. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

3. To Provide for Payment of Existing Debts by Taxation or Otherwise.—To provide by taxation or otherwise for the prompt and regular payment, with interest, of any existing debt owing by the county. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

4. To Purchase County Indebtedness.—To purchase if they desire, at any price, not exceeding their par value and accumulated interest, any of the outstanding bonds or other indebtedness of the county. (Rev., s. 1320; Code, s. 718; 1868-9, c. 269, s. 2; C. S. 1297.)

5. To Levy Taxes for Interest and Sinking Funds for Outstanding Bonds Not Provided for.—(a) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of bonds issued and sold for the purpose of meeting necessary expenses of the county, where no other provision for such levy has been specially provided for. Such levy shall not exceed any constitutional limitation.

(b) To levy, in like manner with the county taxes, the necessary taxes to pay the interest and create a sinking fund for the retirement of township road improvement bonds, issued either by vote of the people or by act of the general assembly, where the amount of levy provided by the act under which the vote is held or tax levied is inadequate to pay the interest on bonds heretofore issued or authorized by acts now in force, but the levy shall not exceed any constitutional limitation. (1917, c. 121, ss. 1, 2; C. S. 1297.)

6. Special Tax Authorized for Certain Purposes; Limit of Rate.—The boards of commissioners of the various counties in the state, for the purpose of the unkeep of county buildings, county homes for the aged and infirm and other similar institutions, and to supplement the general county fund, are hereby authorized to levy annually a tax upon all taxable property not to exceed five cents on the one hundred dollars of valuation, in addition to any tax allowed by any special statute for the above enumerated purposes and in addition to the rate allowed by the Constitution. (1923, c. 7; C. S. 1297.)

Local Modification.—Madison: 1931, c. 436.

7. Same—In Certain Counties.—Subject to the approval of the director of local government, the boards of county commissioners of Alamance, Alleghany, Anson, Avery, Buncombe, Burke, Cherokee, Clay, Dare, Duplin, Durham, Edgecombe, Graham, Granville, Halifax, Henderson, Iredell, Jackson, McDowell, Macon, Mitchell, Montgomery, Orange, Pender, Perquimans, Person, Polk, Randolph, Rutherford, Scotland, Stokes, Swain, Tyrrell, Watauga and Wilson counties are hereby authorized to levy such special property taxes as may be necessary not to exceed five cents on the one hundred dollars valuation for the following special purposes respectively, in addition to any tax now allowed by law for such purposes and in addition to the rate allowed by the constitution: (1) For the expense of the quadrennial valuation or assessment of taxable property, (2) for the expense of holding courts in the county levying the tax and the expense of maintenance of jails and jail prisoners. (1931, c. 441; 1933, c. 54; 1935, c. 330; 1937, c. 41; 1939, cc. 190, 336.)

County Buildings

8. To Erect and Repair County Buildings.—To erect and repair the necessary county buildings, and to raise, by taxation, the moneys therefor. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

9. To Designate Site for County Buildings.—To remove or designate a new site for any county building; but the site of any county building already located shall not be changed, unless by a

unanimous vote of all the members of the board at any regular monthly meeting, and unless upon notice of the proposed change, specifying the new site. Such notice shall be published in a newspaper printed in the county, if there is one, and posted in one or more public places in every township in the county for three months, next immediately preceding the monthly meeting at which the final vote on the proposed change is to be taken. Such new site shall not be more than one mile distant from the old, except upon the special approval of the general assembly. (Rev., s. 1318; Code, 707; 1868, c. 20, s. 8; 1925, c. 229; C. S. 1297.)

County Officers

10. To Require Officers to Report.—To require from any county officer, or other person employed and paid by the county, a report under oath at any time on any matters connected with his duties (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

11. To Approve Bonds of County Officers and Induct into Office.—To qualify and induct into office at the meeting of the board, on the first Monday in the month next succeeding their election or appointment, the following named county officers, to wit: clerk of the superior court, sheriff, coroner, treasurer, register of deeds, surveyor, and constable; and to take and approve the official bonds of such officers, which the board shall cause to be registered in the office of the register of deeds. The original bonds shall be deposited with the clerk of the superior court, except the bond of the said clerk, which shall be deposited with the register of deeds, for safe keeping.

If the board declares the official bonds of any of said county officers to be insufficient, or declines to receive the same, the officer may appeal to the superior court judge riding the district in which the county is, or to the resident judge of said district, as he may elect, who shall hear said appeal in chambers, at any place in said district he designates, within ten days after notice by him of the same, and if, upon the hearing of the appeal, the judge is of the opinion that the bond is sufficient, he shall issue an order to the board of commissioners to induct the officer into office, or that he shall be retained in office, as the case may be. If, upon the hearing of the appeal, the judge is of the opinion that the bond is insufficient, he shall give the appellant ten days in which to file before him an additional bond, and if the appellant within the ten days files before the judge a good and sufficient bond, in the opinion of the judge, he shall so declare and issue his order to said board directing and requiring them to induct the appellant into office, or retain him, as the case may be. If, in the opinion of the judge, both the original and the additional bonds are insufficient, he shall declare the said office vacant and notify the commissioners, who shall appoint to fill the vacancy and notify the clerk of the superior court. In case of a vacancy in the office of the clerk of the superior court said vacancy shall be filled by the resident judge. The judgment of the superior court judge shall be final. The appeal and the finding and judgment of the superior court judge shall be recorded on the minutes of the board of commissioners. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1874-5, c. 237, s. 3; 1895, c. 135, s. 3; C. S. 1297.)

12. To Fill Vacancies.—To fill by appointment a vacancy in the offices of sheriff, constable, coroner, register of deeds, county treasurer, or county surveyor. (Rev., s. 1321; Code, s. 720; 1868, c. 4; C. S. 1297.)

County Property

13. To Make Orders Respecting County Property.—To make such orders respecting the corporate property of the county as may be deemed expedient. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

14. To Sell or Lease Real Property.—To sell or lease any real property of the county and to make deeds or leases for the same to any purchaser or lessee. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

County Purchases

15. To Purchase for Public Buildings, and at Execution Sale.—To purchase real property necessary for any public county building, and for the support of the poor, and to determine the site thereof, where it has not already been located; and to purchase land at any execution sale, when it is deemed expedient to do so, to secure a debt due the county. The deed shall be made to the county, and the board may, in its discretion, sell any lands so purchased. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1879, c. 144, s. 1; C. S. 1297.)

16. To Purchase or Lease a County Farm, and Work Convicts Thereon.—To lease or purchase a county farm, and where proper provisions are made for securing and caring for convicts, such of them as are subject to road duty may be worked on said farm, and, in the discretion of the board, such farms may be made experimental farms. The court, in its discretion, may sentence convicted prisoners either to said farm or to the roads. Where a farm is purchased or leased in those counties having a road system, the board may work the convicts on such farms. (1915, c. 140; C. S. 1297.)

Highways and Bridges

17. Roads and Bridges.—To supervise the maintenance of neighborhood public roads or roads not under the supervision and control of the State Highway and Public Works Commission and bridges thereon: Provided, however, county funds may not be expended for such maintenance except to the extent such expenditures are otherwise authorized by law; to exercise such authority with regard to ferries and toll bridges on public roads not under the supervision of the State Highway and Public Works Commission as is granted in § 136-88 of the Chapter on Roads and Highways or by other Statutes; to provide draws on all bridges not on roads under supervision of the State Highway and Public Works Commission where the same may be necessary for the convenient passage of vessels; to allow and contract for the building of toll bridges on all roads not under the supervision of the State Highway and Public Works Commission and to take bond from the builders thereof. It is the intent of this subsection that the powers and authorities herein granted shall be exercised in accordance with the provisions of the Chapter on Roads and Highways.

18. To Appoint Commissioners to Open Rivers and Creeks.—To appoint a commissioner to open and clear the rivers and creeks, in the manner prescribed by law within the county, or where such river or creek forms a county line or a part thereof. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

19. To Grant Right to Bridge Navigable Streams.—To grant, subject to the approval and permission of the war department, to any person, firm or corporation owning or occupying lands on both sides of any navigable stream or creek lying wholly within the limits of the county, the right to construct and maintain a bridge across the said navigable water between the lands owned or occupied by them upon such terms and conditions and for such time as the said board shall deem advisable and proper. Before any order allowing the construction of the same shall be made, it shall be made to appear to the board that four weeks notice of the application for such right has been given by posting a notice at the courthouse door and four other public places in the county, and also (if there be a newspaper published in the county) by publishing once a week for four consecutive weeks in some newspaper in the county. Any party aggrieved may appeal from the order of the commissioners to the superior court of the county in term time. (Pub. Loc. 1911, c. 227; C. S. 1297.)

Inspection and Licenses

20. To License Peddlers.—To license peddlers and retailers of spirituous and other liquors as prescribed by law. No license shall be good for more than one year, nor granted to two or more persons to peddle as partners in trade. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

21. To License Auctioneers.—To license for the term of one year any number of persons to exercise the trade and business of auctioneers in each county, and to take their bonds as prescribed by law. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

22. To Establish Public Landings, Places of Inspection and Inspectors.—To establish such public landings and places of inspection as the board may think proper; and to appoint such inspectors in any town or city as may be authorized by law. Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

Poor and Hospitals

23. To Provide for the Maintenance of the Poor.—To provide by tax for the maintenance, comfort and well-ordering of the poor; to employ, biennially, some competent person as overseer of the poor; to institute proceedings by the warrant of the chairman against any person coming into the county who is likely to become chargeable thereto, and cause the removal of such poor person to the county where he was last legally settled; and to recover by action in the superior court from the said county all the charges and expenses incurred for the maintenance or removal of such poor person. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

24. To Establish Public Hospitals and Tuberculosis Dispensaries.—To establish public hospitals, establish and maintain homes for indigent orphan children, for the county in cases of necessity, and to establish and maintain wholly or in part one or more tuberculosis dispensaries or sanatoria, and to make rules, regulations and by-laws for preventing the spread of contagious and infectious diseases, and for taking care of those afflicted thereby, the same not being inconsistent with the laws of the state; and to raise by taxation the necessary moneys to defray the charges and expenses so incurred. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1923, c. 81; C. S. 1297.)

Prisons and Prisoners

25. To Provide for a House of Correction.—To make provision for the erection in each county of a house of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed; to regulate the employment of labor therein; to appoint a superintendent thereof, and such assistants as are deemed necessary, and to fix their compensation. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

26. To Provide for Employment of Prisoners.—To provide for the employment on public works in the county of all persons condemned to imprisonment with hard labor, under § 148-32 and not sent to the penitentiary. All prisoners sentenced to jail for any term less than thirty days may, as a part of such sentence, by the court in which such prisoners are tried and convicted, be sentenced to work at hard labor on the public streets of any city or town, the county farm, or any other public works of the county wherein such prisoners are tried and convicted. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1931, c. 302; C. S. 1297.)

Townships

27. To Divide County into Townships.—To divide each county into convenient districts, called townships, and to determine the boundaries and prescribe the names of said townships. A map and survey of said townships shall be filed in the office of the clerk of the board of commissioners, and also in the office of the secretary of state. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

28. To Erect, Divide and Alter Townships.—To erect, divide, change the names of, or alter townships in the manner following: In any county, any three freeholders of each township to be affected may, after the notice presently to be mentioned, apply by petition to the board of commissioners to erect a new township, or divide an existing township, or change the name of or alter the boundaries thereof. Notice of the application shall be posted in one or more public places in each of such townships and published in a newspaper printed in the county, if there is one, for at least four weeks preceding the meeting at which the application is made to the board. No township shall have or exercise any corporate powers whatsoever, unless authorized by an act of the general assembly, to be exercised under the supervision of the board of commissioners. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; 1876-7, c. 141, ss. 3, 5; C. S. 1297.)

29. To Apportion Funds between Altered Townships.—When a township has been altered, erected, or divided, to apportion, in its discretion, the public funds of such township between the new township divisions or subdivisions, and the warrant of the board upon the treasurer for the ap-

portionment shall constitute a valid voucher for the payment thereof. (Ex. Sess. 1913, c. 44; C. S. 1297.)

Miscellaneous

30. To Authorize Chairman to Issue Subpoenas.—To authorize the chairman to issue subpoenas to compel the attendance before the board of persons, and the production of books and papers relating to the affairs of the county, for the purpose of examination on any matter within the jurisdiction of the board. The subpoena shall be served by the sheriff or any constable to whom it is delivered; and upon return of personal service thereof, whoever neglects to comply with the subpoena or refuses to answer any proper question shall be guilty of contempt and punishable therefor by the board. A witness is bound in such cases to answer all the questions which he would be bound to answer in like case in a court of justice; but his testimony given before the board shall not be used against the witness on the trial of any criminal prosecution other than for perjury committed on the examination. The chairman of the board of county commissioners for each county is authorized in his official capacity to administer oaths in any matter coming before either of such boards. Any member of such board while temporarily acting as such chairman has and may exercise like authority. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

31. To Audit Accounts.—To audit accounts against the county, and direct the raising of the moneys necessary to defray them. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

32. To Appoint Proxies.—To appoint proxies to represent in any annual or other meetings the shares or other interest held by any county in a railroad company, or other corporation, under the charter of such corporation, or under any special acts of the general assembly, authorizing county subscriptions in such cases. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

33. To Procure Weights and Measures.—To procure for each county sealed weights and measures, according to the standard prescribed by Congress; and to elect a standard keeper, who shall qualify before the board and give bond approved by the board, as prescribed by law. (Rev., s. 1318; Code, s. 707; R. C., c. 117, s. 4; 1868, c. 20, s. 26; C. S. 1297.)

34. To Adopt a County Seal.—To adopt a seal for the county, a description and impression of which shall be filed in the office of superior court clerk and of the secretary of state. (Rev., s. 1318; Code, s. 707; 1868, c. 20, s. 8; C. S. 1297.)

35. To Promote Farmers Cooperative Demonstration Work.—To cooperate with the state and national departments of agriculture to promote the farmers cooperative demonstration work, and to appropriate such sum as they may agree upon for the purpose. (1911, c. 1; C. S. 1297.)

36. To Appropriate for the National Guard.—To appropriate such sums of money to the various organizations of the national guard, and at such times, as the board may deem proper. (1915, c. 259; C. S. 1297.)

37. To Make Appropriations for Libraries.—Together with the county board of education of any county in which there is a public city or town library, in their discretion, to cooperate with the trustees of said library in extending the service of such library to the rural communities of the county, and to appropriate out of the funds under their control an amount sufficient to pay the expense of such library extension service. (1917, c. 149; C. S. 1297.)

38. Homes for Indigent and Delinquent Children.—To provide for the establishment and maintenance, with the approval of the State Board of Charities and Public Welfare, of such home or homes for indigent and delinquent children in said county, as to them may seem proper or necessary, or to co-operate with the board of county commissioners or other governing authority in any other county or counties in the establishment and maintenance, at some mutually agreeable point, of a district home for such purposes, said district to be established by agreement and said home to be established and maintained upon such terms as may be agreed upon by the boards of county commissioners of the several counties concerned. (1927, c. 248.)

Local Modification.—Anson: 1939, c. 343.

§ 153-10. Local: authority to interdict certain shows.—The boards of commissioners of the several counties shall have power to direct the sheriff or tax collector of the county to refuse to issue any license to any carnival company and shows of like character, moving picture and vaudeville shows, museums and menageries, merry-go-rounds and ferris-wheels, and other like amusement enterprises conducted for profit under the same management and filling week-stand engagements or in giving week-stand exhibitions, whether under canvas or not, whenever in the opinion of the board of county commissioners the public welfare will be endangered by the licensing of such companies. This section shall apply only to the counties of Anson, Bladen, Burke, Cabarrus, Carteret, Catawba, Duplin, Forsyth, Greene, Haywood, Iredell, Lee, Madison, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson, Scotland, Tyrrell, Washington, Wilson, Yadkin. (1919, c. 164; C. S. 1298.)

§ 153-11. To settle disputed county lines.—When there is any dispute concerning the dividing line between counties, the board of commissioners of each county interested in the adjustment of said line, a majority of the board consenting thereto, may appoint one or more commissioners, on the part of each county, to settle and fix the line in dispute; and their report, when ratified by a majority of the commissioners in each county, is conclusive of the location of the true line, and shall be recorded in the register's office of each county, and in the office of the secretary of state. If the board of commissioners of any county refuses upon request of the other county or counties to appoint one or more commissioners pursuant to this section to settle and fix the line or lines in dispute, then, and in such event, the county or counties making such request may file a verified petition before the resident judge of the district in which the said county or counties lie, or the judge holding the courts thereof for the time being, and in the event that said counties shall lie in more than one judicial dis-

trict, to the resident judge or the judge holding the courts of either district, setting forth briefly the line or lines which are in dispute; the refusal of the other county or counties to settle and fix the line in dispute, pursuant to this section; whereupon, such judge before whom such petition is filed shall issue a notice to the other county or counties, returnable before him within not less than ten nor more than twenty days, and if it appear to such judge upon hearing said notice, and he shall find as a fact that there is bona fide dispute as to the true location of the boundary line or lines referred to in the petition and that the county or counties have refused to settle and fix the line in dispute as provided in this section, such judge shall thereupon appoint three (3) persons, one person from each of the counties and some disinterested person from some adjoining county, who shall go upon the ground, hear such evidence and testimony as shall be offered and make report to the said judge as to the true location of the boundary line or lines in dispute. The judge shall thereupon ratify the report and a copy thereof shall be recorded in the office of the register of deeds of each of the counties and shall be indexed and cross indexed and shall also be recorded in the office of the Secretary of State and the location so fixed shall be conclusive. If it shall appear to the judge that the services of a surveyor are necessary he shall appoint such surveyor and fix his compensation. The cost thereof shall be defrayed by the two counties in proportion to the number of taxable polls in each. (Rev., s. 1322; Code, s. 721; R. C., c. 27; 1836, c. 3; 1925, c. 251; C. S. 1299.)

§ 153-12. How commissioners sworn and paid.—Such commissioners, before entering on the duties assigned them, shall be sworn before a justice of the peace; and they, with all others employed, shall be allowed reasonable pay for their labors. (Rev., s. 1323; Code, s. 722; C. S. 1300.)

§ 153-13. Compensation of county commissioners.—Except where otherwise provided by law, each county commissioner shall receive for his services and expenses in attending the meetings of the board not exceeding two dollars per day, as a majority of the board may fix upon, and they may be allowed mileage to and from their respective places of meeting, not to exceed five cents per mile. (Rev., s. 2785; Code, s. 709; 1907, c. 500; C. S. 3918.)

§ 153-14. Approving insufficient bond misdemeanor.—If any county commissioner shall approve any official bond which he knows or believes to be insufficient in the penal sum, or in the security thereof, he shall be guilty of a misdemeanor, and on conviction shall be removed from office and forever disqualified from holding or enjoying any office of honor, trust or profit under the state. (Rev., s. 3573; Code, s. 1880; 1869-70, c. 169, s. 70; C. S. 1301.)

§ 153-15. Neglect of duty misdemeanor.—If any county commissioner shall neglect to perform any duty required of him by law as a member of the board, he shall be guilty of a misdemeanor, and shall also be liable to a penalty of two hundred dollars for each offense, to be paid to any person who shall sue for the same. (Rev. s. 3590; Code, s. 711; C. S. 1302.)

Art. 3. Forms of County Government.

§ 153-16. Forms of government.—Two forms of county government are recognized, to be designated as the County Commissioners Form and the Manager Form. (1927, c. 91, s. 1.)

I. County Commissioners Form.

§ 153-17. County Commissioners Form defined.—The County Commissioners Form of county government shall be that form in which the government is administered by a board of county commissioners, without a county manager. (1927, c. 91, s. 2.)

§ 153-18. Modifications of regular forms.—There may be modifications of the County Commissioners Form, adopted as hereinafter provided, as follows:

(1) The number of commissioners may be increased from three to five or decreased from five to three.

(2) All commissioners may be elected for two years.

(3) At the first election, if the board is to have three members, one may be elected for two years, one for four years, and one for six years, but if the board is to have five members, two may be elected for two years, two for four years, and one for six years. (1927, c. 91, s. 3.)

§ 153-19. How change may be made.—Upon a petition filed with the board of county commissioners, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of either of the modifications above set forth, the board of commissioners shall order an election, but may order such election without petition, which election shall be held under the general law governing elections for members of the General Assembly in the county, presenting the question of making the change asked for in the petition. If a majority of the votes cast at such election shall be in favor of the change designated, it shall go into effect at the expiration of the term of office of the then existing board of commissioners. At the general election for county commissioners next preceding the date when the said change goes into effect, the members of the board shall be elected in accordance with the plan adopted. If the members of the board are to be elected for different terms, the term for which each member is to serve shall be indicated in the election; and the members so elected shall hold office for the terms designated, and at the expiration of the term of each member, his successor shall be elected for a term of six years. (1927, c. 91, s. 4.)

II. Manager Form.

§ 153-20. Manager appointed or designated.—The board of county commissioners may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all the departments of the county government which the

board of county commissioners has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a whole-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties. (1927, c. 91, s. 5.)

§ 153-21. Duties of the manager.—It shall be the duty of the county manager (1) to be the administrative head of the county government for the board of commissioners; (2) to see that all the orders, resolutions, and regulations of the board of commissioners are faithfully executed; (3) to attend all the meetings of the board, and recommend such measures for adoption as he may deem expedient; (4) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs; (5) to appoint, with the approval of the county commissioners, such subordinate officers, agents, and employees for the general administration of county affairs as the board may consider necessary, except such officers as are required to be elected by popular vote, or whose appointment is otherwise provided by law; (6) to perform such other duties as may be required of him by the board of commissioners. (1927, c. 91, s. 6.)

§ 153-22. Removal of officers and agents.—The county manager may remove such officers, agents, and employees as he may appoint, and upon any appointment or removal he shall report the same to the next meeting of the board of commissioners. (1927, c. 91, s. 7.)

§ 153-23. Compensation.—The county manager shall hold his office at the will of the board of commissioners, and shall be entitled to such reasonable compensation for his services as the board of commissioners may determine. The board shall also fix the compensation of such subordinate officers, agents and employees as may be appointed by the county manager. (1927, c. 91, s. 8.)

§ 153-24. Manager plan adopted by popular vote.—If the board of county commissioners does not exercise its discretion to appoint or designate a county manager, as above provided, a petition may be filed with the board, signed by voters not less in number than ten per cent of the whole number of voters who voted in the last election at which votes were cast for Governor, asking for the adoption of the manager form of county government. Upon the filing of such petition, the board of commissioners shall order an election to be held under the general laws governing elections for members of the General Assembly in the county, presenting the question of the adoption of the manager form of county government. If a majority of the votes cast at such election shall be in favor of such manager form, the board of commissioners shall proceed to appoint a county manager as provided in this article. (1927, c. 91, s. 9.)

§ 153-25. How often elections may be held.—Not more than one election may be held within any period of twenty-three months upon the question of modifying the county commissioners plan, nor more than one election in any period of twenty-three months upon the question of adopting the manager plan, whether or not any such election resulted in favor of the question submitted or against the same. (1927, c. 91, s. 10.)

III. Certain Powers and Duties of the Board.

§ 153-26. Powers and duties of the board.—The powers and duties of the board of commissioners under the manager form, or the county commissioners form, whether modified as herein provided or not modified, shall be the same as now provided by general or local laws for the administration of the county government, and such additional powers and duties as may be given in this article. But whatever form is adopted, or shall be in use in a county, it shall be the duty of the board of county commissioners to provide, so far as possible, consistent with law, for unifying fiscal management of county affairs, for preserving the sources of revenue, for safeguarding the collection of all revenue, for guarding adequately all expenditures, for securing proper accounting of all funds, and for preserving the physical property of the county. (1927, c. 91, s. 11.)

§ 153-27. Purchasing agent.—It shall be the duty of the board of commissioners to provide for the purchasing of supplies for the different departments of the county government in such manner as may prevent waste and duplication in purchasing, and may obtain the advantage of purchasing in larger quantities. To that end the board may designate some competent person, either a member of the board or some other officer or agent of the county, as purchasing agent, whose duty it shall be to superintend the purchasing of all material and supplies for the county, and the board may prescribe the duties of such purchasing agent. (1927, c. 91, s. 12.)

§ 153-28. Care of county property.—It shall be the duty of the board of commissioners to provide for the regular inspection of and care for all the property of the county, including buildings, machinery, and other property used for county purposes, and the board may designate some member of the board or some other officer or agent of the county, whose duties it shall be to make a regular inspection of the county property and report the condition of the same at such times as the board may direct. (1927, c. 91, s. 13.)

IV. Director of Local Government.

§ 153-29. Director of local government to visit local units and offer aid in establishing competent

administration.—The terms, 'unit,' or 'local unit,' as the same are used in this article, shall be construed to mean 'unit' as defined in § 159-2. It shall be the duty of the Director of Local Government to visit the local units of government in the State, and to advise and assist the governing bodies and other officers of said units in providing a competent, economical and efficient administration; to suggest approved methods for levying and collecting taxes and other revenues; to suggest such changes in the organization of local units of government as will best promote the public interests, and to render assistance in carrying the same into effect. (1931, c. 100, s. 1.)

§ 153-30. Director to devise uniform accounting and recording systems; regular statements from units to director.—The Director of Local Government shall have the power to devise and prepare for use in the local units uniform accounting and recording systems, together with blanks, books, and necessary methods; uniform classifications of revenue and expenditures, and uniform budget blanks and forms; to revise or prescribe, in his discretion, the records of any department or office of the local unit in order to conform to orderly accounting procedure; to transfer all or any part of the financial records of any department or office of the unit, including school records, to the office of the county accountant, municipal accountant, or other similar officer, and to require said county accountant, municipal accountant, or other similar officer to furnish, at any time, monthly or annual statements to the office of the Director of Local Government in Raleigh or to any department, office, or board of the unit, showing financial conditions or budget position at any date, and financial operations covering any period on forms prescribed by said Director of Local Government. The Director shall have the power to require the use of such systems, books, forms, classifications and budgets as provided herein by officers or employees of local units, and to enforce the use of the same. Where the accounting system of any unit shall in part or in whole substantially meet the requirements of uniformity as prescribed by the Director of Local Government, the Director may, in his discretion, approve or modify such system as he may deem necessary. As soon as practicable after March 12, 1931, it shall be the duty of the Director of Local Government to proceed, as rapidly as possible, with the installation of uniform records and systems of accounting in each and every local unit of the State. (1931, c. 100, ss. 1, 3.)

§ 153-31. Director to inspect and supervise the keeping of records; unlawful not to furnish director with requested information.—The Director of Local Government shall have the power to inspect or supervise the keeping of the records of any department or office of any local unit for the purpose of determining that such records are being properly kept and that public money is being properly accounted for, and it shall be unlawful for any officer or employee to fail or refuse to turn over such records or give access to same and give such other information which may be requested of him and relating to the records of his office to the Director or his representative upon request of said Director or representative. (1931, c. 100, s. 1.)

§ 153-32. Violation of two preceding sections misdemeanor. — Any officer or employee of any local unit who shall fail or refuse to observe the provisions of §§ 153-30 and 153-31 shall be guilty of a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 100, s. 1.)

V. Miscellaneous.

§ 153-33. All counties affected by this article.—The powers and privileges conferred by this article, and the duties imposed thereby, are conferred and imposed upon every county within the State, whether governed wholly by general laws or governed wholly or in part by local acts. (1927, c. 91, s. 21.)

Art 4. State Association of County Commissioners.

§ 153-34. Membership of association. — The State Association of County Commissioners consists of the boards of county commissioners of the several counties, and any member of the board of any county may be a member of the association, but it is not mandatory for any county to become a member. (1909, c. 870, ss. 1, 2; C. S. 1303.)

§ 153-35. Purposes of association.—The purpose of the association is to promote and cultivate more intimate association and more friendly relations among the county commissioners of the state; to secure as far as possible a uniform valuation of property for taxation; to promote the cause of good roads; to propose laws for the best interests of county governments; to secure uniformity in the handling of county affairs; to propose laws for the protection of county finances, and preservation of resources and assets; and to promote the general welfare of the state. (1909, c. 870, s. 1; C. S. 1304.)

§ 153-36. Powers of association.—The association has power to adopt by-laws, rules and regulations for the government of its members, for the collection of fees and dues, for the number and election of its officers and the duties thereof, for the safe keeping of its property, and the general management of its affairs, and has power to alter, modify or amend such by-laws, rules and regulations, from time to time, as it deems best. (1909, c. 870, s. 3; C. S. 1305.)

§ 153-37. Officers of association.—The officers shall be a president, a vice president at large and ten other vice presidents, or one from each congressional district, a secretary and treasurer, and an executive committee. The duties of the officers shall be prescribed by the by-laws, rules and regulations. (1909, c. 870, s. 4; C. S. 1306.)

§ 153-38. Dues and expenses of members.—There shall be assessed against each county an annual membership fee of five dollars, which shall be paid by the county treasurer upon the order of the board of county commissioners, but the executive committee of the association may increase the annual membership fee to a sum not to exceed ten dollars. The various boards of

commissioners are authorized to pay out of the county treasury the expenses of one of its members attending the meetings of the association. (1909, c. 870, ss. 5, 7; C. S. 1307.)

§ 153-39. Meetings of association.—The annual meeting of the association shall be held on Wednesday after the second Monday in August of each year, and the place of meeting shall be designated by the executive committee. Upon ten days notice, the president or a majority of the executive committee may call a called meeting, and the time and place shall be designated, together with a short statement of the object of the meeting. (1909, c. 870, s. 6; C. S. 1308.)

Art. 5. Clerk to Board of Commissioners.

§ 153-40. Register clerk ex officio to board; compensation.—The register of deeds is ex officio clerk of, and his compensation shall be fixed by, the board of commissioners. (Rev., s. 1324; Code, s. 710; 1895, c. 135, s. 4; C. S. 1309.)

§ 153-41. Duties of clerk.—It is the clerk's duty—

1. To record in a book to be provided for the purpose all the proceedings of the board.
2. To enter every resolution or decision concerning the payment of money.
3. To record the vote of each commissioner on any question submitted to the board, if required by any member present.
4. To preserve and file in alphabetical or other due order all accounts presented or acted on by the board, and to designate upon every account audited the amount allowed and the charges for which it was allowed.
5. To keep the books and papers of the board free for the examination of all persons.
6. To administer oaths to all persons presenting claims against the county, but he shall receive no fee therefor. (Rev., s. 1325; Code, s. 712; 1905, c. 530; C. S. 1310.)

§ 153-42. Clerk to publish annual statement.—The clerk shall annually, on or within five days next before the first Monday of December, make out and certify, and cause to be posted at the courthouse, and published in a newspaper printed in the county, if there is one, for at least four weeks, a statement for the preceding year, showing—

1. The amount, items and nature of all compensation audited by the board to the members thereof severally.
2. The number of days the board was in session, and the distance traveled by the members respectively in attending the same.
3. Whether any unverified accounts were audited, and if any, how much and for what. (Rev., s. 1326; Code, s. 713; C. S. 1311.)

Art. 6. Finance Committee.

§ 153-43. Election and duties of finance committee.—The board of commissioners may elect by ballot three discreet, intelligent tax-paying citizens, to be known as the "finance committee," whose duty it is to inquire into, investigate and report by public advertisement, at the courthouse and one public place in each township of the county, or in a newspaper, at their option, if one is published in the county, a detailed and itemized account of the condition of the county finances, together with any other information appertaining to any funds, misappropriation of county funds, or any malfeasance in office by any county officers. (Rev., s. 1389; Code, s. 758; R. C., c. 28, s. 17; 1838, c. 31, s. 1; 1871-2, c. 71, s. 1; 1897, c. 513; C. S. 1312.)

§ 153-44. Compensation of finance committee.—The members of the finance committee shall each receive such compensation for the performance of his duties as the board of commissioners may allow, not exceeding three dollars per day; but they shall not be paid for more than ten days in any one year. (Rev., s. 2781; Code, s. 763; 1871-2, c. 71, s. 5; 1873-4, c. 107; C. S. 3915.)

§ 153-45. Oath of members.—The members of the finance committee before entering upon their duties shall, before the clerk of the superior court, subscribe to the following oath or affirmation: I, A. B., do solemnly swear (or affirm) that I will diligently inquire into all matters relating to the receipts and disbursements of county funds and a true report make, without partiality. So help me, God. (Rev., s. 1390; Code, s. 762; 1871-2, c. 71, s. 4; C. S. 1313.)

§ 153-46. Powers of finance committee.—The finance committee has power and authority to send for persons and papers, and to administer oaths; and any person failing to obey their summons, or to produce promptly any paper relating or supposed to relate to any matter appertaining to the duties of the finance committee, is guilty of a misdemeanor, and on conviction in the superior court, shall be fined and imprisoned at the discretion of the court. (Rev., s. 1391; Code, s. 759; R. C., c. 28, s. 17; 1831, c. 31; 1871-2, c. 71, s. 2; 1883, c. 252; C. S. 1314.)

§ 153-47. Penalty on officer failing to settle.—If any clerk, sheriff, constable, county treasurer, register of deeds, justice of the peace, or other officer or commissioner, who holds any county money, fails duly to account for the same, the finance committee shall give such person ten days previous notice, in writing, of the time and place at which they will attend to make a settlement; and every officer receiving notice and failing to make settlement as required by this chapter shall forfeit the sum of five hundred dollars, to be sued for in the name of the state and prosecuted for the use and at the expense of the county, unless the court releases the officers from the forfeiture. (Rev., s. 1392; Code, s. 760; R. C., c. 28, s. 19; 1831, c. 31, s. 3; C. S. 1315.)

§ 153-48. Annual report of finance committee.—It is the duty of the finance committee to make and publish their reports as hereinbefore directed on or before the first Monday of December in each year. (Rev., s. 1393; Code, s. 761; 1871-2, c. 71, s. 3; C. S. 1316.)

Art. 7. Courthouse and Jail Buildings.

§ 153-49. Built and repaired by commissioners.—There shall be kept and maintained in good and sufficient repair in every county a courthouse and common jail, at the expense of the county wherein the same are situated. The boards of commissioners of the several counties

respectively shall lay and collect taxes, from year to year, as long as may be necessary, for the purpose of building, repairing and furnishing their several courthouses and jails, in such manner as they think proper; and from time to time shall order and establish such rules and regulations for the preservation of the courthouse, and for the government and management of the prisons, as may be conducive to the interests of the public and the security and comfort of the persons confined. (Rev., s. 1335; Code, s. 782; R. C., c. 30, s. 1; 1741, c. 33, ss. 1, 2; 1795, c. 433, s. 1; 1816, c. 911, s. 1; C. S. 1317.)

§ 153-50. Formation of district jail by contiguous counties.—Any two or more counties contiguous to one another or which lie in a continuous group may enter into an agreement for the construction and maintenance of a district jail. Such agreement shall specify the amount of the construction and maintenance cost to be borne by each county and shall fix the terms upon which such jail may thereafter be used by the counties becoming parties to the agreement.

Such counties may also by agreement establish a jail already built, as a district jail, and provide for the improvement, enlargement, maintenance cost and use thereof.

When and if such district jail has been established, all the counties in such district may then sell or dispose of their separate jails upon such terms as the board of county commissioners may decide. (1933, c. 201.)

§ 153-51. Jail to have five apartments.—The common jails of the several counties shall be provided with at least five separate and suitable apartments, one for the confinement of white male criminals; one for white female criminals; one for the colored male criminals; one for colored female criminals; and one for other prisoners. (Rev., s. 1336; Code, s. 783; R. C., c. 30, s. 2; 1795, c. 433, s. 4; 1816, c. 911; C. S. 1318.)

§ 153-52. To be heated.—It is the duty of the board of commissioners in every county to have the common jails so heated by furnaces, stoves, or otherwise, as to render them warm and comfortable. A failure to discharge the duty herein specified shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (Rev., s. 1337; Code, s. 784; 1879, c. 25; C. S. 1319.)

§ 153-53. Bedding to be furnished.—The board of county commissioners, from time to time, as may be necessary, shall order the sheriff of the county to purchase, for the use of their jail, a certain number of good, warm blankets or other suitable bedclothing, which shall be securely preserved by the jailer, and furnished to the prisoners for their use and comfort, as the season or other circumstances may require; and the sheriff, at least once in every year, shall report to the board of commissioners the condition and number of such blankets and bedclothing. (Rev., s. 1338; Code, s. 3465; R. C., c. 87, s. 10; 1822, c. 1136; C. S. 1320.)

§ 153-54. Prison bounds.—For the preservation of the health of persons committed to jail, the board of commissioners of each county shall mark out such a parcel of the land as they think fit, not exceeding six acres, adjoining the prison, for the rules thereof; and every prisoner not committed for treason or felony, giving bond with good security to the sheriff of the county to keep within the rules, shall have liberty to walk therein, out of the prison, for the preservation of his health; and on keeping continually within the said rules, shall be deemed to be in law a true prisoner. In order that every person may know the true bounds of said rules, they shall be recorded in the county records, and the marks thereof shall be renewed as occasion may require. (Rev., s. 1339; Code, s. 3466; R. C., c. 87, s. 11; 1741, c. 33, s. 3; C. S. 1321.)

Art. 8. County Revenue.

§ 153-55. Unlawful for counties not to reduce ad valorem taxes; exceptions; other levies void.—As it was intended by the State Highway Commission Act and the Six Months School Term Act and other acts tending to this result to effect a reduction of ad valorem taxes in the several counties of the State, it is hereby declared to be unlawful for any board of county commissioners, for the fiscal year one thousand nine hundred and thirty-one—one thousand nine hundred and thirty-two and other fiscal years succeeding to make any tax levy, which in the gross does not reflect within three per cent (3%) a reduction in the ad valorem taxes accomplished by these acts. The tax rate for one thousand nine hundred and thirty—one thousand nine hundred and thirty-one shall be the standard from which the reduction shall be made. To this prohibition there shall be the following exceptions:

A. If there should be a new assessment of the value of property for taxation and that assessment should show a reduction in the value of such taxable property, then said board of county commissioners, or any one of them, if the reduction is local, shall levy, in addition to the rate fixed hereinbefore, a rate increased sufficiently to take care of this decrease in the valuation of property in the particular county involved.

B. To prevent a current deficit and, if an emergency should arise, requiring the levy of an additional rate of taxation in a particular county greater than that herein provided and there should be existing authority for such levy, then the board of commissioners of any county or counties in which such emergency should arise shall be permitted to increase the rate of taxation sufficiently to meet such emergency, when it is declared and the facts upon which the declaration is made are entered at large upon the minutes of the board and the whole matter is referred to the Local Government Commission of the State of North Carolina, which shall have authority to pass upon the application and if, in the opinion of that Commission, a levy of the additional rate is reasonably necessary, then upon certifying this fact to any board of county commissioners, the board shall have authority to increase the levy to the extent necessary to meet the contingency. Standard form of application shall be prescribed by the Local Government Commission.

C. Levies for debt service on outstanding valid indebtedness heretofore incurred, or hereafter permitted by the Local Government Commission.

Except as herein permitted, any levy made by any board of county commissioners, in excess of the limit herein fixed, shall be absolutely void, for whatever purposes such excess shall be levied. (1931, c. 134.)

§ 153-56. Taxes collected by sheriff or tax collector.—The county taxes shall be collected by the sheriff of the county or the tax collector if one is provided by law. (Rev., s. 1376; Code, s. 723; R. C., c. 28, s. 2; 1798, c. 509, s. 2; 1811, c. 823; C. S. 1322.)

§ 153-57. Statement of fines kept by clerk.—It is the duty of the clerks of the several courts, and of the several justices of the peace, to enter in a book, to be supplied by the county, an itemized and detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public. (Rev., s. 1377; Code, s. 725; 1873-4, c. 116, s. 4; 1879, c. 96, s. 1; C. S. 1323.)

§ 153-58. Fines paid to treasurer for schools; annual report.—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within sixty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the superintendent of public instruction on or before the first Monday in January, by the board of commissioners. (Rev., s. 1378; Const., Art IX, s. 5; Code, ss. 724, 726; R. C., c. 28, s. 3; 1879, c. 96, ss. 2, 5; C. S. 1324.)

§ 153-59. Expenditures of county funds directed by commissioners.—The board of commissioners is invested with full power to direct the application of all moneys arising by virtue of this chapter for the purposes herein mentioned, and to any other good and necessary purpose for the use of the county. (Rev., s. 1379; Code, s. 753; R. C., c. 28, s. 16; 1777, c. 129, s. 4; C. S. 1325.)

§ 153-60. County officers receiving funds to report annually.—Sheriffs, treasurers, clerks of any court, registers of deeds and all other officers of the several counties, into whose hands any public funds may come by virtue or under color of their office, shall make an annual account and report of the amount and management of the same, on the first Monday of December, or oftener if required, in each year, to the board of commissioners. Such report shall give an itemized and detailed account of the public funds received and disbursed, the amount, date and source from which it was received, and the amount, date and person to whom paid. It shall be addressed to the chairman of the board of commissioners for the county, and shall be subscribed and verified by the oath of the party making the same, before any person authorized to administer oaths. (Rev., s. 1380; Code, s. 728; 1874-5, c. 151, s. 1; 1876-7, c. 276, s. 1; C. S. 1326.)

§ 153-61. Board to enforce duty to report.—If any person required to make any of the reports herein provided for fails to do so, or if, after a report has been made, the board of commissioners disapprove the same, such board may take such legal steps to compel a proper report to be made, either by suit on the bond of such officer failing to comply or otherwise, as said board may deem best. (Rev., s. 1381; Code, s. 730; 1874-5, c. 151, s. 3; 1876-7, c. 276, s. 3; C. S. 1327.)

§ 153-62. Reports to be recorded in register's office.—If the board of commissioners approves of any of the said reports, it shall cause the same to be registered in the office of the register of deeds in a book to be furnished to the register of deeds by the county, which book shall be marked and styled Record of Official Reports, with a proper index of all reports recorded therein, and each official report shall, if approved, be indorsed by the chairman of the board with the word "approved," with the date of approval, and when recorded by the register of deeds he shall indorse thereon the date of registration, the page of the Record of Official Reports upon which the same is registered, sign the same and file it in his office. (Rev., s. 1382; Code, s. 729; 1874-5, c. 151, s. 2; 1876-7, c. 276, s. 2; C. S. 1328.)

§ 153-63. Penalty for failure to report.—If any clerk, sheriff, justice of the peace, or other officer, fails or neglects to account for and pay over as required by law any taxes on suits, or any fines, forfeitures and amercements, as required by this chapter, or fails to make the returns herein specified, he shall forfeit and pay five hundred dollars, to be recovered in the name of the board of commissioners for the use of the public schools of the county. (Rev., s. 1383; Code, s. 764; R. C., c. 28, s. 7; 1808, c. 756; 1809, c. 769; 1813, c. 864; 1830, c. 1, ss. 11-13; C. S. 1329.)

§ 153-64. Demand before suit against municipality; complaint.—No person shall sue any city, county, town or other municipal corporation for any debt or demand arising out of contract when the damages are liquidated unless the claimant has made a demand upon the proper municipal authorities. And every such action shall be dismissed unless the complaint is verified and contains the following allegations: (1) That the claimant presented his claim to the lawful municipal authorities to be audited and allowed, and that they had neglected to act upon it, or had disallowed it; or (2) that he had presented to the treasurer of said municipal corporation the claim sued on, which had been so allowed and audited, and that such treasurer had notwithstanding neglected to pay it. (Rev., s. 1384; Code, s. 757; C. S. 1330.)

§ 153-65. Accounts to be itemized, verified, and audited.—No account shall be audited by the board for any services or disbursements unless it is first made out in items and has attached to and filed with it the affidavit of the claimant that the services therein charged have been in fact made and rendered, and that no part thereof has been paid or satisfied. Each account shall state the nature of the services, and where no specific compensation is provided by law, it shall also state the time necessarily devoted to the performance thereof. The board may disallow or require further evidence of the account, notwithstanding the verifica-

tion. (Rev., s. 1385; Code, s. 754; 1905, c. 55; 1868, c. 20, s. 10; 1931, c. 445; C. S. 1331.)

§ 153-66. Accounts to be numbered as presented.—All accounts presented in any year, beginning at each regular meeting in December, shall be numbered from one upwards, in the order in which they are presented, and the time of presentation, the names of the persons in whose favor they are made out, and by whom presented, shall be carefully entered on the minutes of the board; and no such account shall be withdrawn from the custody of the board or its clerk, except to be used as evidence in a judicial proceeding, and after being so used it shall be promptly returned. (Rev., s. 1386; Code, s. 755; 1868, c. 20, s. 12; C. S. 1332.)

§ 153-67. Claims to be numbered as allowed; copy to board annually.—The clerk of the board of commissioners, if so ordered by the board, shall number all claims, orders and certificates that may be allowed by the board in a book kept for that purpose, and he shall annually, the day before the board proceeds to lay a county tax for the ensuing year, furnish the chairman of the board with a copy of the same. (Rev., s. 1387; Code, s. 751; R. C., c. 28, s. 12; 1793, c. 387; C. S. 1333.)

§ 153-68. Annual statement of claims and revenues to be published.—The board shall cause to be posted at the courthouse within five days after each regular December meeting and for at least four successive weeks, or after each regular monthly meeting, if they deem it advisable, and for one week, the name of every individual whose account has been audited, the amount claimed and the amount allowed; and also at the same time and in the same manner post a full statement of county revenue and charges, showing by items the income from every source and the disbursements on every account for the past year, together with the permanent debt of the county, if any, when contracted, and the interest paid or remaining unpaid thereon. The board shall also publish the said statement in some newspaper in the county. (Rev., s. 1388; Code, s. 752; 1901, c. 196; 1905, c. 227; 1933, c. 525, s. 1; C. S. 1334.)

Local Modification.—Hertford: 1933, c. 525; Union: 1929, c. 154.

Art. 9. County Finance Act.

§ 153-69. Short title. — This article shall be known and may be cited as "The County Finance Act." (1927, c. 81, s. 1.)

§ 153-70. Meaning of terms.—In this article, unless the context otherwise requires, the words—

"Governing body" means the board of county commissioners, or the board or body in which the general legislative powers of the entire county are vested.

"Clerk" means the officer acting as clerk of the governing body.

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina.

"Published" means printed in a newspaper published in the county, if there be such a newspaper, but otherwise means posted at the court-house door and in at least three other public places in the county.

"Chief financial officer" means the county accountant, auditor, or other officer designated or appointed by the governing body to supervise the fiscal affairs of the county, unless such officer shall be designated by law. (1927, c. 81, s. 2.)

§ 153-71. Application and construction of article.—This article shall apply to all counties in the State, except as otherwise provided herein. Every provision of this article shall be construed as being qualified by constitutional provisions whenever such construction shall be necessary in order to sustain the constitutionalty of any portion of this article. (1927, c. 81, s. 3.)

§ 153-72. Revenue anticipation loans for ordinary expenses.—Counties may borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loan shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed 50 per cent of the amount of uncollected taxes for the fiscal year in which the loan is made, as determined by the chief financial officer and certified in writing by him to the governing body. (1927, c. 81, s. 4.)

§ 153-73. Revenue anticipation loans for debt service.—For the purpose of paying the principal or interest of bonds or notes due or to become due within four months, and not otherwise adequately provided for, any county may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the loan is made, or the revenues of the next succeeding fiscal year, and such loan shall be payable not later than the end of such next succeeding fiscal year.

In addition to the foregoing powers, a county may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within four months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the county sufficient to pay the principal and interest thereof. (1927, c. 81, s. 5; 1931, c. 60, s. 63; 1931, c. 294; 1933, c. 259, s. 2; 1939, c. 231, s. 2.)

§ 153-74. Notes evidencing revenue anticipation loans.—Negotiable notes shall be issued for all moneys borrowed under the two preceding sections, which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby; but all such notes and loans shall mature within the time limited by said two sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. All notes herein provided for shall be authorized by a resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest

to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix such face amount and rate of interest within the limitations prescribed by such resolution, and the power to dispose of such notes, which shall be executed under the seal of the county by the chairman and clerk of the board, or by any two officers designated by the board for that purpose, and any interest coupons thereto attached shall be signed with the manual or facsimile signature of said clerk or of any other officer designated by the board for that purpose. The resolution authorizing issuance of notes for money borrowed under § 153-73 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1927, c. 81, s. 6; 1931, c. 60, s. 59; 1939, c. 231, s. 2(b).)

§ 153-75. Certification of revenue anticipation notes.—No revenue anticipation notes shall be valid unless there shall be written or printed on the face or the reverse thereof a statement signed by the chief financial officer of the county in the words: "This note and all other revenue anticipation notes of the county amount to less than 50 per cent of the amount of uncollected taxes for the current year": Provided, however, that if such notes are issued under the authority given by § 153-73, said statement may be either in said words or in the words, "This note is issued under § 153-73 of the county finance act for the payment of principal or interest of bonds or notes." (1927, c. 81, s. 7.)

§ 153-76. Certain notes of counties validated; proceeds lost in insolvent banks.—All notes heretofore issued by counties pursuant to the provisions of the County Finance Act applicable to notes issued for money borrowed under § 153-73 are hereby validated, notwithstanding that said notes were issued for the purpose of paying the principal or interest of notes evidencing indebtedness incurred under § 153-72: Provided, that this section shall not be construed to validate securities issued to refund or renew notes, the proceeds from which originally were deposited in banks that have failed, causing the loss of such deposits or making them unavailable to the unit of government. (1931, c. 332.)

§ 153-77. Purposes for which bonds may be issued and taxes levied.—The special approval of the general assembly is hereby given to the issuance by counties of bonds and notes for the special purposes named in this section, and to the levy of property taxes for the payment of such bonds and notes and interest thereon. Accordingly, authority is hereby given to all counties in the state, under the terms and conditions herein described, to issue bonds and notes, and to levy property taxes for the payment of the same, with interest thereon, for the following purposes, including therein purchase of the necessary land and, in the case of buildings, the necessary equipment:

(a) Erection and purchase of schoolhouses.

(b) Erection and purchase of court-house and jails, including a public auditorium within and as a part of a court-house.

(c) Erection and purchase of county homes for the indigent and infirm.

(d) Erection and purchase of hospitals.

(e) Erection and purchase of public auditoriums.

(f) Elimination of grade crossings over railroads and interurban railways, including approaches and damages, when not less than one-half of the cost shall be payable to the county at one time, or from time to time under contract made with a railroad or interurban railway company, the bonds herein authorized to be for the entire cost or any portion thereof.

(g) Acquisition and improvement of lands for public parks and playgrounds.

(h) Funding or refunding of valid indebtedness if such indebtedness be payable at the time of the passage of the order authorizing the bonds or be payable within one year thereafter, or, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the funding or refunding bonds, and all debt not evidenced by bonds which was created for necessary expenses of any county and which remains outstanding on March 7, 1927, is hereby validated. The term 'indebtedness' as used in this clause (h) includes all valid or enforceable indebtedness of a county, whether incurred for current expenses or for any other purpose, except indebtedness incurred in the name of a county on behalf of a school district or township and not payable by means of taxes authorized to be levied on all taxable property in the county. It also includes indebtedness incurred in the name of a county board of education for the maintenance of schools for the six months' term required by the State Constitution. It includes indebtedness evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said indebtedness accrued to the date of the bonds issued. It also includes indebtedness assumed by a county as well as indebtedness created by a county. Bond anticipation notes evidencing indebtedness may, at the option of the governing body, be retired either by means of funding bonds issued under this subsection or by means of bonds in anticipation of the sale of which the notes were issued. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall not be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred forty shall be funded or refunded.

(i) A portion to be determined by the governing body of the cost of construction of bridges at county boundaries, when an adjoining county or municipality, within or without the state, shall have agreed to pay the remaining cost of construction.

(j) A portion to be determined by the governing body of the cost of public buildings constructed or acquired in order that a part of such buildings may be used for a purpose hereinabove expressed when a municipality within the county shall agree to pay the remaining cost.

(k) Acquiring, constructing and improving airports or landing fields for the use of airplanes or other aircraft. (1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, s. 54; 1933, c. 259, s. 2; 1935, c. 302, s. 2; 1939, c. 231, s. 2(c).)

Local Modification.—Guilford: 1933, c. 566.

§ 153-78. Order of governing body required.—Bonds of a county shall be authorized by an order of the governing body, the term "order" being here used to indicate the order, resolution, or measure which declares that bonds shall be issued, in order to differentiate the same from such subsequent resolution as may be passed in respect of details which such order is not required to contain. Such order shall state:

(a) In brief and general terms, the purpose for which the bonds are to be issued, but not more than one purpose of issue shall be stated, the purposes set forth in any one subsection of § 153-77 to be deemed as one purpose, but, in the case of funding or refunding bonds, a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;

(b) The maximum aggregate principal amount of the bonds;

(c) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

(d) That a statement of the county debt has been filed with the clerk, and is open to public inspection;

(e) A clause stating the conditions upon which the order will become effective, and the same shall become effective in accordance with such clause, which clause shall be as follows:

1. If the bonds are funding or refunding bonds, that the order shall take effect upon its passage, and shall not be submitted to the voters; or

2. If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not required to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the order shall take effect when approved by the voters of the county at an election as provided in this article; or

3. In any other case, that the order shall take effect thirty days after the first publication thereof after final passage, unless in the meantime a petition for its submission to the voters is filed under this article, and that in such event it shall take effect when approved by the voters of the county at an election as provided in this article.

4. No restriction, limitation, or provision contained in any other law, except a law of statewide application relating to the issuance of bonds, notes or other obligations of a county, shall apply to bonds or notes issued under this article for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purposes, unless required by the constitution of this state. The other laws here referred to include all laws enacted prior to the expiration of the regular session of the general assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a county from issuing bonds or notes under any special or public-local law applicable to such county, it being intended that this article shall be cumulative and additional authority for the issuance of bonds and notes. (1927, c. 81, s. 9; 1931, c. 60, s. 55; 1933, c. 259, s. 2; 1935, c. 302, s. 2.)

Local Modification.—Guilford: 1933, c. 566.

§ 153-79. Order need not specify details of purpose.—In stating the purpose of a bond issue, an order need not specify the location of any improvement or property, or the material of construction. (1927, c. 81, s. 10.)

§ 153-80. Maturities of bonds.—All bonds shall mature as hereinafter provided, and no funding or refunding bonds shall mature after the expiration of the period herein fixed for such bonds, respectively; and no other bonds shall mature after the expiration of the period estimated by the governing body as the life of the improvement for which the bonds are issued, each such period to be computed from a day not later than one year after the passage of the order. Such periods shall not exceed the following for the respective classes of bonds:

(a), (b) Funding or refunding bonds, fifty years.

(c) Elimination of grade crossings, thirty years.

(d) Lands for public parks and playgrounds, including improvements, buildings, and equipment, forty years.

(e) Public buildings, if they are—

1. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, flooring, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is wooden flooring supported by wooden sleepers on top of the fireproof floor, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years;

2. Of non-fireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years;

3. Of other construction, twenty years.

(f) Land for airports or landing fields, including grading and drainage, forty years.

(g) Buildings, equipment and other improvements for airports or landing fields, other than grading and drainage, ten years. (1927, c. 81, s. 11, 1929, c. 171, s. 2; 1931, c. 60, s. 56; 1933, c. 259, s 2.)

§ 153-81. Accelerating maturity of bonds and notes of counties and municipalities. — Any municipality or county may provide that its bonds or notes shall become due and payable before maturity at the election of the holders or a majority in amount of the holders or a representative of the holders, upon the happening of such events and upon such conditions and subject to such limitation (which may include a provision for rescission of action taken in the exercise of said election) as may be set forth in a resolution or ordinance passed before the issuance of the bonds or notes: Provided, however, that such a provision, in order to become effective, must either be set forth in the bonds or notes or incorporated therein by reference to such resolution or ordinance. The negotiability of such bonds or notes shall not be affected by the adoption of such provision or by the recital thereof in the bonds or notes. (1931, c. 418; 1933, c. 258, s. 3.)

§ 153-82. Consolidated bond issues. — It shall be lawful to consolidate into one issue bonds authorized by two or more orders for different purposes, in which event the bonds of such consolidated issue shall mature within the average of the periods estimated as the life of the several improvements, taking into consideration the amount of bonds to be issued on account of each item for which a period shall be estimated. (1927, c. 81, s. 12.)

§ 153-83. Sworn statement of debt, before authorization of bonds for school purposes.— After the introduction, and at least ten days before the final passage of an order for the issuance of bonds for school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt or by assumption of debt, including debt incurred by the county board of education, and including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for school purpose, nor including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(a) The assessed valuation of property as last fixed for county taxation.

(b) Outstanding school debt.

(c) Bonded school debt to be incurred under orders either passed or introduced.

(d) The sum of items "b" and "c".

(e) School sinking funds, being money or investments thereof pledged and held for the payment of principal of outstanding school debt.

(f) School credits, being principal sums owing to the county from school districts which are pledged to and when collected will be used in the retirement of outstanding school debt.

(g) Amount of unissued funding and refunding school bonds included in gross debt.

(h) The sum of items "e" and "f" and "g".

(i) Net school debt, being the sum by which item "d" exceeds item "h".

(j) The percentage that the net school debt bears to said assessed valuation. (1927, c. 81, s. 13.)

§ 153-84. Sworn statement of debt before authorization of bonds for other than school purposes.— After the introduction and at least ten days before the final passage of an order for the issuance of bonds for other than school purposes, an officer designated by the governing body for that purpose shall file with the clerk a statement of debt incurred and to be incurred for other than school purposes under orders either introduced or passed, whether evidenced by bonds, notes, or otherwise, and whether incurred by original creation of the debt, or by assumption of the debt, including debt to the State or any department thereof, but not including obligations incurred to meet appropriations in anticipation of revenues to an amount not exceeding the amount of the last preceding tax levy for other than school purposes, or including debt incurred in anticipation of the sale of any kind of bonds except funding and refunding bonds, which statement shall show the following:

(a) The assessed valuation of property as last fixed for county taxation.

(b) Outstanding debt for other than school purposes.

(c) Bonded debt to be incurred for other than school purposes under orders either passed or introduced.

(d) The sum of items "b" and "c".

(e) Sinking funds (except school sinking funds), being money or investments thereof pledged and held for the payment of principal of debt outstanding for other than school purposes.

(f) Moneys payable to the county by a railroad or interurban railway company, under contract, as all or part of the cost of grade crossing elimination, if such moneys are pledged to and when collected will be used in the retirement of outstanding debt for other than school purposes.

(g) Amount of unissued funding and refunding bonds not for school purposes included in gross debt.

(h) The sum of items "e", "f" and "g".

(i) Net debt for other than school purposes, being the sum by which item "d", exceeds item "h".

(j) The percentage that the net debt for other than school purposes bears to said assessed valuation. (1927, c. 81, s. 14.)

§ 153-85. Financial statement filed for inspection.—The sworn statement of debt shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this article, unless it appears, in an action or proceeding commenced within the time limited by this article for actions to set aside bond orders, first, that the representations contained therein could not by any reasonable method of computation be true; or, second, that a true statement would show that the order authorizing the bonds could not be passed. (1927, c. 81, s. 15.)

§ 153-86. Publication of bond order.—As soon

as possible after the introduction of the order and the filing of the financial statement hereinabove required, the clerk shall publish the order as introduced. Before publishing the same he shall fix an hour and day for a public hearing upon the order unless the governing body shall itself have fixed such hour and day. The hour and day, if fixed by the clerk, shall be ten o'clock A. M. of the first Monday of the following month, if ten days shall elapse between such publication and the day so fixed, but otherwise shall be ten o'clock A. M. of the first Monday of the next succeeding month. In connection with the publication of the order, and immediately below the same, the clerk shall publish a statement signed by him with blanks properly filled in substantially the following form:

"The foregoing order has been introduced and a sworn statement has been filed under the county finance act showing the assessed valuation of the county to be $.....and the net debt for school purposes (substitute net debt for other than school purposes if the proposed bonds are for other than school purposes) including the proposed bonds, to be $..... A tax will be levied for the payment of the proposed bonds and interest, if the same shall be issued. Any citizen or taxpayer may protest against the issuance of such bonds at a meeting of the board of county commissioners to be held at..... o'clock .....M. ....., 19.... or an adjournment thereof.

.....

"Clerk of Board of Commissioners."

(1927, c. 81, s. 16.)

§ 153-87. Hearing; passage of order; debt limitations.—On the day so fixed for the public hearing, but not earlier than ten days after the first publication of the order, the governing body shall hear any and all citizens and taxpayers who may desire to protest against the issuance of the bonds, but such hearing may be adjourned from time to time. After such hearing, the governing body may pass the order in the form of its introduction, or in an amended form but the amount of bonds to be issued shall not be increased by such amendment, nor the purpose of issuance substantially changed, without due notice and hearing as above required. Provided, however, that no order for the issuance of school bonds shall be passed unless it appears from said sworn statements that the net school indebtedness does not exceed five per cent of said assessed valuation, unless the bonds to be issued are funding or refunding bonds; and no order shall be passed for the issuance of bonds other than school bonds unless it appears from said sworn statement that the net indebtedness for other than school purposes does not exceed five per cent as said assessed valuation, unless the bonds to be issued are funding or refunding bonds: Provided, however, that if the net school debt of any county shall, on March 7, 1927, be in excess of four-fifths of the limitation above fixed therefor, such order for the issuance of school bonds may be passed, if the net debt shall not be increased thereby more than two per cent of such assessed valuation; and that if the net debt of any county for other than school purposes shall, on March 7, 1927, be in excess of four-fifths of the limitations above fixed therefor, such order may be passed if the net debt for other than school purposes shall not be increased thereby more than two per cent of such assessed valuation: Provided, further, that if any county shall assume all outstanding indebtedness for school purposes of every city, town school district, school taxing district, township or other political subdivision therein, the limit of the net debt of such county for school purposes, including the debt so assumed, shall be eight per cent (8%) and the privilege of creating or assuming an additional gross debt of two per cent (2%) under certain circumstances shall not be allowed such county. (1927, c. 81, s. 17.)

§ 153-88. Material of construction and other details.—The statements as to kind and material of construction, so far as the same constitute conditions upon which maturities of bonds are to be determined under this article, as well as all details of bonds not required to be set forth in the order, may be set forth in resolution or resolutions to be passed on or after the passage of the order, and before the issuance of the bonds. (1927, c. 81, s. 18.)

§ 153-89. Publication of bond order.—A bond order after final passage thereof shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in) with the printed or written signature of the clerk appended thereto, shall be published with the order:

"The foregoing order was finally passed on the ..... day of ....., 19..... and was first published on the ..... day of ..... 19 ..... Any action or proceeding questioning the validity of said order must be commenced within thirty days after its first publication.

.....

Clerk."

(1927, c. 81, s. 19.)

§ 153-90. Limitation of action to set aside order.—Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the order or supposed order referred to in the notice. After the expiration of such period of limitations, no right of action or defense upon the validity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1927, c. 81, s. 20.)

§ 153-91. Petition for referendum of bond order.—A petition demanding that a bond order be submitted to the voters may be filed with the clerk within thirty days after the first publication of the order. The petition shall be in writing and signed by voters of the county equal in number to at least fifteen per centum of the total number of votes cast at the last preceding election for the office of Governor. The residence address of each signer shall be written after his signature. The

petition need not contain the text of the order to which it refers. The petition need not be all on one sheet and if on more than one sheet, it shall be verified as to each sheet. The clerk shall investigate the sufficiency of the petition and present it to the governing body, with a certificate stating the result of his investigation. The governing body, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and the determination of the governing body shall be conclusive. (1927, c. 81, s. 21.)

§ 153-92. What majority required.—If a bond order provides for the issuance of bonds for a purpose other than the payment of necessary expenses of the county, the approval of the qualified voters of the county, as required by the Constitution of North Carolina, shall be necessary in order to make the order operative. If, however, the bonds are to be issued for necessary expenses, the affirmative vote of the majority of the voters voting on the bond order shall be sufficient to make it operative, in all cases where the order is required by this article to be submitted to the voters. (1927, c. 81, s. 22.)

§ 153-93. When election held.—Whenever the taking effect of an order authorizing the issuance of bonds is dependent upon the approval of the order by the voters of a county, the governing body may submit the order to the voters at an election to be held not more than one year after the passage of the order. The governing body may call a special election for that purpose, or may submit the order to the voters at the regular election for county officers next succeeding the passage of the order, but no such special election shall be held within one month before or after a regular election for county officers. Several orders or other matters may be voted upon at the same election. (1927, c. 81, s. 23.)

§ 153-94. New registration. — The governing body of the county in which such election is held may in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from 9 A. M. to 6 P. M. on each day, except Sundays and holidays, for three weeks, beginning on a Saturday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case any registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary. (1927, c. 81, s. 24.)

§ 153-95. Notice of election.—A notice of the election shall be deemed sufficiently published if published once not later than thirty (30) days before the election, and thereafter twice before the election, at intervals of at least one week between publications. Such notice shall state the date of the election, the maximum amount of the proposed bonds, and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The notice shall state the places at which the election will be held, but without enumeration thereof may state that the election will be held at the same places at which the last preceding election was held for members of the General Assembly, with such changes as may have been ordered by the governing body. (1927, c. 81, s. 25.)

§ 153-96. Ballots.—The form of the question as stated on the ballot shall be in substantially the words: "For the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor" and "Against the order authorizing $..... bonds (briefly stating the purpose) and a tax therefor." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (x). (1927, c. 81, s. 26.)

§ 153-97. Returns canvassed. — The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each order submitted but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall determine and declare the result of the election. (1927, c. 81, s. 27.)

§ 153-98. Application of other laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for members of the General Assembly in said county, and governing the registration of electors for such elections. (1927, c. 81, s. 28.)

§ 153-99. Statement of result.—The governing body shall prepare a statement showing the number of votes cast for and against each order submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the governing body and delivered to the clerk, who shall record it in the minutes of the governing body, and file the original in his office and publish it once. (1927, c. 81, s. 29.)

§ 153-100. Limitation as to actions upon elections.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result as provided in § 153-99. (1927, c. 81, s. 30.)

§ 153-101. Preparation for issuing bonds.—At any time after the final passage of a bond order, all steps preliminary to the actual issuance of bonds under the order may be taken, but the bonds shall not be actually issued unless and until the order takes effect. (1927, c. 81, s. 31.)

§ 153-102. Within what time bonds issued.—After a bond order takes effect, bonds may be issued in conformity with its provisions at any time within three years after the order takes effect, unless the order shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of repeal), unless notes issued in anticipation of the proceeds of the bonds shall be outstanding: Provided, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the order takes effect. (1927, c. 81, s. 32; 1939, c. 231, s. 2(d).)

§ 153-103. Bonded debt payable in installments.—Each bond issue made under this article shall mature in annual installments or series the first of which, if funding bonds, shall be made payable not more than two years, and if not funding bonds, not more than three years, after the date of the first issued bonds of such issue and the last within the period prescribed by § 153-80 for bonds of the class issued. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. This section shall not apply to funding or refunding bonds. (1927, c. 81, s. 33; 1931, c. 60, s. 57; 1933, c. 259, s. 2.)

§ 153-104. Medium and place of payment.—The bonds may be made payable in such kind of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1927, c. 81, s. 34.)

§ 153-105. Formal execution of bonds. — The bonds shall be issued in such forms as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or if the governing body makes no such designation, then by the chairman of the governing body and by the clerk, and the corporate seal of county or of the governing body shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, not withstanding any change in officers or in the seal of the county occurring after the signing and sealing of the bonds. (1927, c. 81, s. 35.)

§ 153-106. Registration and transfer of bonds.—(a) Bonds payable to bearer. Bonds issued under this article shall be payable to the bearer, unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

(b) Registration and effect. A county may keep in the office of a county officer to be designated by the governing body, or in the office of a bank or trust company appointed by the governing body as bond registrar a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

(c) Registration and transfer noted on bond. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond, as to both principal and interest, he shall also cut off and cancel the coupons, and endorse upon the back of the bond a statement that such coupons have been cancelled.

(d) Agreement for registration. A county may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only, or as to both principal and interest, at the option of the bondholder. (1927, c. 81, s. 36.)

§ 153-107. Application of funds.—The proceeds of the sale of bonds and bond anticipation notes under this article shall be used only for the purposes specified in the order authorizing said bonds, and for the payment of the principal and interest of such notes issued in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. If any notes issued in anticipation of the sale of bonds shall be outstanding and unpaid when the proceeds of the sale of bonds are received, such proceeds, or an amount thereof sufficient to retire such notes, shall be immediately, upon the receipt thereof, placed in a separate fund, which shall be held and used solely for the payment of such notes. If any member of the governing body or any county officer shall vote to apply or shall apply, or shall participate in applying any proceeds of bonds or bond anticipation notes in violation of this section, such member or such officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the State's prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who

sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby. (1927, c. 81, s. 38.)

§ 153-108. Bond anticipation loans. — At any time after a bond order has taken effect, as provided in § 153-78, a county may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipts of the proceeds of the sale of bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than three years after the time of taking effect of the order authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, at or before the actual retirement of any such loans by any means other than the issuance of bonds under the bond order upon which such loans are predicated, shall amend or repeal such order so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing order shall take effect upon its passage, and need not be published. Negotiable notes shall be issued for all moneys so borrowed. Such notes may be renewed from time to time, and money may be borrowed upon notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. No money shall be borrowed under this section at a rate of interest exceeding the maximum rate permitted by law. The said notes, if maturing not more than six months from their date, may be disposed of by public or private negotiations, after five days notice published in some newspaper having a general circulation in the county, but if maturing more than six months from date, they shall be sold after advertisement as provided in this article for advertisement and sale of bonds. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest with the limitations prescribed by said resolution, and the power to dispose of said notes. All such notes shall be executed in the manner provided in § 153-105 for the execution of bonds. They shall be submitted to and approved by the attorney for the county before they are issued, and his written approval endorsed on the notes. (1927, c. 81, s. 39.)

§ 153-109. Bonds and notes shall recite the authority for issuance.—All bonds and notes authorized by this article shall recite that they are issued under and pursuant to this article. (1927, c. 81, s. 40.)

§ 153-110. Taxes levied for payment of bonds. —The full faith and credit of the county shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this article, including bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the county sufficient to pay the principal and interest of all bonds issued under this article as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose. The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a county may levy; the General Assembly does here give its special approval to the levy of taxes in the manner and to the extent provided by this article for the payment of obligations incurred pursuant to this article for the special purposes for which such obligations are in this article authorized. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the county. If any member of the governing body or any county officer shall vote to apply or shall apply or participate in applying any taxes in violation of this section, such member or officer shall be guilty of a felony, and shall be prosecuted by the solicitor of the district in which the county lies, and shall be fined not more than ten thousand dollars ($10,000) or imprisoned in the state prison not more than twenty years, or both, at the discretion of the court, and shall forfeit and pay to any taxpayer or any holder of such bonds or notes who sues for the same the sum of two hundred dollars for each such act, and also all damages caused thereby.

Nothing in this section shall be construed as authorizing an unlimited tax for the payment of bonds not issued for a special purpose within the meaning of section six of article five of the constitution of North Carolina. It is the intention of this article, however, to authorize the issuance of funding and refunding bonds and notes as herein provided in cases where taxation for their payment is limited by the constitution, as well as in other cases. The general assembly hereby declares that an emergency exists by reason of the present extraordinary financial condition of the counties of this state, and hereby gives it special approval to the levying of taxes to the fullest extent permitted by the constitution for the purpose of paying bonds and notes issued hereunder to fund or refund or renew indebtedness outstanding on March 3, 1931, or incurred before July first, nineteen hundred and thirty-three, and hereby declares that the payment of such bonds and notes constitutes a special purpose: Provided, in case of funding or refunding bonds which do not mature in installments as provided in § 153-103, a tax for the payment of the principal of the said bonds need not be levied prior to the fiscal year or years said bonds mature, unless it is so provided for in an order or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such order or resolution. (1927, c. 81, s. 41; 1931, c. 60, s. 60; 1933, c. 259, s. 2.)

§ 153-111. Destruction of surrendered bonds. —All surrendered county bonds may, in the discretion of the board of county commissioners, be destroyed. Before such bonds are destroyed, the

county treasurer shall make a correct descriptive list of all bonds of the county surrendered, in a substantially bound book to be kept by him for that purpose, which list shall include the number, date and amount of each bond and the purpose for which it was issued, when this can be ascertained; and after such list shall be made, the surrendered bonds shall be destroyed by burning in the presence of the chairman of the board of county commissioners, the county accountant or treasurer or auditor, the county attorney, the secretary of the board of county commissioners and the county superintendent of public instruction, who shall each certify under his hand in such book that he saw such described bonds so burned and destroyed. (1941, c. 293.)

§ 153-112. Enforcement of article. — If any boards or officer of a county shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this article to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers and other persons to carry out such order and remove such board or officer who has thus refused to carry out such order. (1927, c. 81, s. 42.)

§ 153-113. Repeals.—All acts and parts of acts, whether general, special, private or local, authorizing or limiting or prohibiting the issuance of bonds or other obligations of a county or counties, are hereby repealed: Provided, further, that the repeal shall not affect the validity of any bonds or obligations issued or incurred prior to March 7, 1927, nor shall such repeal affect the powers, duties or obligations for providing for the payment of such bonds or obligations or interest thereon. Provided, further, that this article shall not affect any local or private act enacted at the 1927 session of the General Assembly, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the 1927 session of the General Assembly; and any county may at its option proceed under any such local or private act applicable to it enacted at the 1927 session of the General Assembly, without regard to the restrictions imposed by this article, or may proceed under this article without regard to the restrictions imposed by such local or private act: Provided, further, that any county which prior to March 7, 1927, has entered into a valid contract for permanent improvements for which, prior to March 7, 1927, such county was empowered by law to issue bonds in sufficient amount, is hereby authorized to issue such an amount of bonds as may be necessary to comply with said contract, either in the manner provided by this article or in the manner provided by law at the time such contract for permanent improvements was made: Provided, further, that nothing herein contained shall be applicable to or shall govern the method by which any county board of education may borrow money from the special building fund created by Chapter 201, Public Laws of 1925, or from any special building fund of the State created by any law enacted at the regular session of the General Assembly of 1927, or from the State Literary Fund as provided in §§ 115-220 to 115-224, as amended, but the limitations of this article upon the amount of net school debt shall apply to such borrowing.

Provided, further, that except as provided in § 153-78 nothing herein contained shall have the effect of repealing any act in force on March 7, 1927, or enacted by the session of the General Assembly of one thousand nine hundred twenty-seven, requiring the question of issuing bonds by any county to be submitted to a vote of the people. (1927, c. 81, s. 43; 1929, c. 110; 1931, c. 60, s. 61; 1941, c. 266.)

Art. 10. County Fiscal Control.

§ 153-114. Title; definitions.—This article shall be known and may be cited as "The County Fiscal Control Act."

In this article, unless the context otherwise requires, certain words and expressions have the following meanings:

(a) "Sub-division" means a township, school district, school taxing district, or other political corporation or subdivision within a county, including drainage and other districts, the taxes for which (taxes as here and elsewhere used in this article include special assessments) are under the law levied by the board of county commissioners of the county.

(b) "Debt service" means the payment of principal and interest of bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.

(c) "Constitutional school maintenance" means the maintenance of schools for the six months term required by the State Constitution.

(d) "Department" means any division of county functions or activities.

(e) "Department head" means the principal officer of any office, board, commission, institution, or branch of the county government in charge of a department.

(f) The "Fiscal year" is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the thirtieth day of June.

(g) "Surplus revenues" means revenues in excess of the estimated revenues against which an appropriation is made, and arises when actual revenues exceed estimated revenues at the end of a fiscal year.

(h) "Unencumbered balance" means the balance of an appropriation after charging thereto all obligations for goods and services and all contracts or agreements payable from the appropriation, and all payments made from the appropriation except payments of such obligations, contracts, or agreements already charged against the appropriation.

(i) "Fund" means the separate fund or account provided for a distinct function of government, as such functions are shown in (j) below.

(j) The funds required by this article are funds for each of the following functions of government.

(1) Current operating expense of the county.

(2) Constitutional school maintenance.

(3) County-wide school expenses over and above constitutional school maintenance.

(4) County debt service.

(5) Each special purpose to which the General Assembly has given its special approval, separately stated.

(6) Debt service of each subdivision, separately stated.

(7) Maintenance of each subdivision, separately stated.

(8) Permanent improvements in each subdivision separately stated. (1927, c. 146, ss. 1, 2.)

§ 153-115. County accountant.—It shall be the duty of the board of county commissioners in each county in the State, on or before the first Monday in April one thousand nine hundred and twenty-seven, and biennially thereafter, to appoint some person of honesty and ability, who is experienced in modern methods of accounting, as county accountant, to hold such office at the will of the board, or until the appointment of his successor; but, in lieu of appointing a county accountant in counties in which there is an auditor, the board shall impose and confer upon the county auditor all the powers and duties herein imposed and conferred upon county accountants, and in any county of the State in which there is no auditor, the board may impose and confer such powers and duties upon any county officer, except the sheriff or the tax collector or the county treasurer, or any person or bank acting as county financial agent or performing the duties ordinarily performed by a county treasurer or county financial agent. If such duties and powers are imposed or conferred upon any officer of the county, the board may revise and adjust the salary or compensation of such officer in order that adequate compensation may be paid to him for the duties of his office. Wherever in this article reference is made to the county accountant, such reference shall be deemed to include either the person appointed as county accountant or the officer upon which the duties thereof are imposed. (1927, c. 146, s. 3.)

Local Modification.—Brunswick: 1931, c. 34; 1941, c. 71; Harnett: 1933, c. 295.

§ 153-116. Additional duties of county accountant.—In addition to the duties imposed and powers conferred upon the county accountant by this article, he shall have the following duties and powers:

(a) He shall act as accountant for the county and subdivisions in settling with all county officers.

(b) He shall keep a record of the date, source, and amount of each item of receipts, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made.

(c) He shall require every officer and department receiving or disbursing money of the county or its subdivisions to keep a record of the date, source, and amount of each item of receipts, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made, and shall require the officer or department to keep a copy of such contract.

(d) He shall examine once a month, and at such other times as the board may direct, all books, accounts, receipts, vouchers, and other records of all county officers and employees and departments of the county administration receiving or expending public money, including the road commission, if there is such commission in the county, the county board of education and other subdivisions.

(e) He shall require all officers and employees in the county whose duty it is to collect fines, penalties, and other money to be applied to public purposes, to file with him each month, or oftener if the board so directs, a report showing amounts collected by such officers, including a report of all fees collected for the performance of their duties, whether they are entitled to such fees as the whole or a part of their compensation or are not entitled to the same.

(f) He shall once a year, or as often as he may be directed by the board of county commissioners, file with the board a complete statement of the financial condition of the county and subdivisions, showing the receipts and expenditures of the different departments of the county and its subdivisions, including the department of public schools.

(g) He shall advise with the different officers and departments of the county and with State officers as to the best and most convenient method of keeping accounts, and he shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the county and subdivisions. He shall not allow any bill or claim unless the same be itemized and verified as now required by law.

(h) He shall perform such other duties having relation to the purposes of this article as may be imposed upon him by the board of county commissioners. (1927, c. 146, s. 4.)

§ 153-117. Heads of departments and officers to file statement before 1st June.—It shall be the duty of all heads of departments and officers in charge of the functions for which county money or money of subdivision is to be expended, to file with the county accountant, before the first day of June of each year (a) a complete statement of the amounts expended and estimated to be expended for each object in his department in the current fiscal year, and (b) beginning in the year one thousand nine hundred and twenty-eight, a statement of the amounts expended for each object in his department in the fiscal year preceding the then current fiscal year, and (c) an estimate of the requirements of his department for each object in the ensuing fiscal year. Such statements and estimates shall list each object of disbursement under the appropriate class of functions as defined in § 153-114. (1927, c. 146, s. 5.)

Local Modification.—Mecklenburg: 1941, c. 38.

§ 153-118. Estimates necessary for ensuing fiscal year itemized.—Upon receipt of such statements and estimates, the county accountant shall prepare (a) his estimate of the amounts necessary to be appropriated for the next ensuing fiscal year for the different objects of the county and subdivisions, listing each object of disbursement under the appropriate class of functions as defined

in § 153-114, which estimate shall include the full amount of any deficit in any fund, and may include an emergency estimate for each fund not greater than five per cent in excess of other estimates for such fund, and (b) an itemized estimate of the revenue to be available during the ensuing fiscal year, separating revenue from taxation from revenue from other sources, classifying the same under proper funds as defined in § 153-114, and (c) an estimate of the amount of unencumbered and surplus revenues of the current fiscal year in each fund. Such estimates and statements of the county accountant shall be termed the "Budget Estimate," and shall be submitted to the board not later than the first Monday of July of each year. (1927, c. 146, s. 6.)

Local Modification.—Mecklenburg: 1941, c. 38.

§ 153-119. Time for filing budget estimate.—Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the appropriation resolution, the board shall: (a) file the budget estimate in the office of the clerk of the board, where it shall remain for public inspection, and (b) furnish a copy of the budget estimate to each newspaper published in the county, and (c) cause to be published in at least one newspaper published in the county a summary of the budget estimate showing at least the total appropriation recommended for each separate fund or function as defined in § 153-114: Provided, however, that if no newspaper be published in the county, such summary shall be posted at the court-house door and at least three other public places in the county at least twenty days before the passage of the appropriation resolution. (1927, c. 146, s. 7.)

Local Modification.—Mecklenburg: 1941, c. 38.

§ 153-120. Time for adoption of appropriation resolution.—It shall be the duty of the board of county commissioners, not later than the fourth Monday in July in each year, to adopt and record on its minutes an appropriation resolution, the form of which shall be prescribed by the county accountant, which resolution shall make appropriations for the several purposes of the county and subdivisions thereof, upon the basis of the estimates and statements submitted by the county accountant, such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimates: Provided, however, that (a) no appropriation recommended by the county accountant for debt service shall be reduced, and (b) the powers given by the general law to the county board of education and county commissioners jointly, in respect to the funds to be expended for school purposes shall be observed by the county accountant and by the board of county commissioners, and (c) the board shall appropriate the full amount of all lawful deficits reported in the budget estimate not funded as provided by law, and (d) no appropriation shall be made in excess of the amount which may be raised under any constitutional or statutory limits of taxation. (1927, c. 146, s. 8.)

Local Modification.—Mecklenburg: 1941, c. 38.

§ 153-121. Copies of resolution filed with county treasurer and county accountant.—A copy of the appropriation resolution shall be filed with the county treasurer or other officer or agent performing the functions ordinarily assigned to the county treasurer, and another copy thereof shall be filed with the county accountant, both copies as so filed to be kept on file for their direction in the disbursement of county funds. (1927, c. 146, s. 9.)

§ 153-122. Supplemental budget showing.—As soon as practicable after the first Monday in July, and before any levy of taxes is made, the county accountant shall submit to the board a supplemental budget showing: (a) the amount of any increase or decrease in each item of (1) deficits and (2) unencumbered balances and (3) surplus revenues as reported by him in the budget estimate, and (b) the amount of miscellaneous revenues collected in the preceding year from sources other than taxation, this amount to be separately classified as to funds and functions, and (c) an estimate of the amount of taxes for the current fiscal year which will not be collected in the same year. Upon the submission of the figures showing increase or decrease in deficits, the appropriation resolution shall be deemed automatically amended by adding such increase to or subtracting such decrease from the amount appropriated for the fund or function to which such deficit pertains, and it shall be the duty of the clerk to record the amount of increase or decrease on the margin of the recorded appropriation resolution. The figures of the supplemental budget showing increases or decreases in unencumbered balances and surplus revenues, and showing the amount of miscellaneous revenues collected in the preceding fiscal year from sources other than taxes, and showing the estimate of taxes uncollectible in the current fiscal year, shall not affect the appropriation resolutions, but shall be taken into consideration in the levy of taxes as hereinafter provided. (1927, c. 146, s. 10; 1933, c. 191.)

Local Modification.—Mecklenburg: 1941, c. 38.

§ 153-123. Publication of statement of financial condition of county.—Simultaneously with the submission of the supplemental budget, the county accountant shall prepare and cause to be published in a newspaper published in the county, or if no newspaper be published in the county, then by posting at the court-house door and at least three other public places in the county, a statement of the financial condition of the county, containing such figures and information as the county accountant may consider it advisable to publish, which statement as so published or posted shall contain the figures showing at least the following items:

(a) The assessed valuation for the current year, unless the same shall not have been finally ascertained, in which case the assessed valuation of the preceding year shall be given.

(b) An itemized statement of the debt of the county and its subdivisions.

(c) The amount and rate of the taxation levied for the preceding fiscal year, whether collected or not.

(d) Amount of taxes, including land sales, for each of the three preceding fiscal years which remained uncollected at the end of such years, re-

spectively, and the average thereof, and the amount of such uncollected taxes which were collected by the close of the preceding fiscal year.

(e) Miscellaneous revenue other than taxation for the preceding fiscal year.

(f) Deficits, if any, in all county funds in the aggregate for the preceding fiscal year.

(g) Such deficits for each subdivision of the county.

(h) Surplus revenues of the county, and separately stated, of each of the subdivisions of the county for the preceding year.

(i) Unencumbered balances of the county and, separately stated, of each of the subdivisions of the county for the preceding year.

(j) The rate of taxation for county purposes and the rate for each subdivision which he estimates it will be necessary to levy in the current fiscal year, these rates to be computed as is provided in § 153-124 for computation of rates by the board of county commissioners. (1927, c. 146, s. 11.)

§ 153-124. Levy of taxes.—As soon as may be practicable after the passage of the appropriation resolution and the automatic amendment thereof, which is hereinabove provided, and after the ascertainment of the assessed valuation of property for taxation, but not later than Wednesday after the third Monday in August of each year, the board of county commissioners, by resolution to be recorded in its minutes, shall levy upon all the taxable property of the county, in the case of county appropriations, and upon all the taxable property of each subdivision in the case of appropriations for subdivisions, such rate of tax as may be necessary to produce (a) the sum appropriated, and (b) the amount of the supplemental budget estimate of taxes which will not be collectible in the current fiscal year, after taking into consideration the figures contained in the budget estimate and supplemental budget showing surplus revenues and unencumbered balances carried over from the preceding fiscal year and the estimated miscellaneous revenues from other sources than taxation; but for the purpose of this computation the board shall not estimate miscellaneous revenues at a figure greater than ten per cent (10%) more than the actual receipts from miscellaneous revenues in the preceding fiscal year, as reported by the county accountant in the supplemental budget. (1927, c. 146, s. 12.)

Local Modification.—Mecklenburg: 1941, c. 38.

§ 153-125. Failure to raise revenue a misdemeanor; emergencies. — Any county commissioner of any county who shall fail to vote to raise sufficient revenue for the operating expenses of the county as provided for in § 153-124, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. Provided: that in case of emergency upon application to the Local Government Commission such Local Government Commission may permit the Board of Commissioners for any county to anticipate the taxes of the next fiscal year by not more than five per cent of the tax levy for the current year; provided, further, that where a contingent fund has been provided for in the county budget the Local Government Commission shall not authorize such anticipation in excess of the difference between five per centum and the amount theretofore levied as a contingent fund. (1929, c. 321, s. 1.)

§ 153-126. Execution of notes in anticipation of taxes.—In the event of the approval of such anticipation of the taxes of the next fiscal year by the Local Government Commission, the County Commissioners of any such county are authorized to execute a note or notes in an amount not in excess of the amount authorized by such Local Government Commission, and such note or notes shall be payable not later than June thirtieth of the next fiscal year and shall be paid by a tax levied for such purpose. (1929, c. 321, s. 2.)

§ 153-127. Appropriations not transferable. — No appropriation made by the appropriation resolution, except an appropriation for general county expenses, shall be transferred from one fund to another fund, and no appropriation for general county expenses shall be transferred to any fund of any subdivision of the county, or vice versa. No appropriation for general county expenses shall be transferred, except upon the passage and recording of a resolution of the board of county commissioners ordering such transfer, and copies of such resolution shall be furnished to the county accountant and to the head of each department to which or from which such transfer shall be made. (1927, c. 146, s. 13.)

§ 153-128. Appropriations bridging interval.— In the interval between the beginning of the fiscal year and the adoption of the annual appropriation resolution, the board may make appropriations for the purpose of paying fixed salaries, the principal and interest of indebtedness, the stated compensation of officers and employees, and for the usual ordinary expenses of the county and its subdivisions, which appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual appropriation resolution for that year. (1927, c. 146, s. 14.)

§ 153-129. County may create special revolving fund to supplant borrowing on anticipations; withdrawals.—In order to avoid the necessity of borrowing money in anticipation of the receipts of taxes and revenues or the proceeds of the sale of bonds, a county may by resolution create a special revolving fund and with the consent of the Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 153-72 and 153-73 in respect to the borrowing of money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No resolutions creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 62.)

§ 153-130. Provisions for payment. — No contract or agreement requiring the payment of money, or requisition for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the county, or a subdivision, unless provision for the payment thereof has been made by (a) an appropriation resolution as provided by this article, or (b) through the means of bonds or notes duly authorized by the General Assembly and by the board of county commissioners, and further authorized, in all cases required by law or by the Constitution, by a vote of qualified voters or taxpayers, or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment. No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the county accountant, as follows: "Provision for the payment of the moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized, as required by the 'County Fiscal Control Act.'" Such certificate shall not, however, make valid any agreement or contract made in violation of this section. Before making such certificate, the county accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed unencumbered by the amount to be paid on such contract or agreement until the county is discharged therefrom. (1927, c. 146, s. 15.)

§ 153-131. False certificate. — If any county auditor or county accountant of any county of the State shall make any certificate as required by § 153-130, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be guilty of a misdemeanor and punishable by fine or imprisonment, or both, in the discretion of the court except as herein provided. (1929, c. 321, s. 3.)

§ 153-132. Warrants for payment. — No claim against the county or any subdivision shall be paid except by means of a warrant or order on the county treasurer or county depository, signed by the head of the department for which the expense was incurred, nor unless the bill or claim for which the warrant or order is given shall have been presented to and approved by the county accountant, or in case of his disapproval of such claim or bill, by the board of county commissioners. The board shall not approve any claim or bill which has been disallowed by the county accountant without entering upon the minutes of the board its reason for approving the same in such detail as may show the board's reason for reversing the county accountant's disallowance. No warrant or order, except a warrant or order for payment of maturing bonds, notes, or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the board of county commissioners over the disallowance of the county accountant, as above provided, shall be valid unless the same shall bear the signature of the county accountant below a statement which he shall cause to be written, printed or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'County Fiscal Control Act.'" (1927, c. 146, s. 16; 1935, c. 382.)

§ 153-133. Accounts to be kept by county accountant.—Accounts shall be kept by the county accountant for each object of appropriation, which objects shall be classified under the various funds as defined in § 153-114, and every warrant or order upon the county treasury shall state specifically against which of such funds the warrant or order is drawn; such account shall show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. (1927, c. 146, s. 17.)

§ 153-134. Bond of county accountant. — The county accountant shall furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the board of commissioners in a sum not less than five thousand dollars ($5,000), which bond shall be approved by the board of county commissioners, and shall be conditioned for the faithful performance of his duties under this article. (1927, c. 146, s. 18.)

§ 153-135. Daily deposits by collecting or receiving officers.—Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any county or subdivision thereof shall daily deposit the same with the county treasurer or in some bank, banks, or trust company, designated by the board of commissioners, in the name of the county and of the fund to which it is applied, and shall report the same daily to the county accountant by means of duplicate deposit ticket signed by the depository. If there is no treasurer or designated depository in the county, then the board of commissioners may allow such deposits to be made every three days in some depository outside of the county. If such officer or employee collects or receives such public moneys for a taxing district of which he is not an officer or employee, he shall, during Saturday of each week, pay to the proper officer of such district the amount so collected or received during the current week, and take receipt therefor.

The board of commissioners is hereby authorized and empowered to select and designate annually, by recorded resolution, some bank or banks or trust company in this State as an official depository or depositories of the funds of the county, which funds shall be secured in accordance with § 159-28.

It shall be the duty of the board of commissioners to provide by recorded resolution for interest to be paid on public deposits at a rate to be determined by the board of commissioners. It shall be unlawful for any public moneys to be

deposited by any officer, employee, or department, in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting in such violation shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. (1927, c. 146, s. 19; 1929, c. 37; 1939, c. 134.)

§ 153-136. Conduct by county accountant constituting misdemeanor.—If a county accountant shall knowingly certify any contract, agreement, or warrant in violation of the requirements of this article, or approve any fraudulent, erroneous, or otherwise invalid claim or bill, or make any statement required by this article, knowing the same to be false, or shall wilfully fail to perform any duties imposed upon him by this article, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court, and shall be liable on his bond for all damages caused by such violation or failure. (1927, c. 146, s. 20.)

§ 153-137. Liability for damages for violation by officer or person.—If any county officer or head of a department or other official or person of whom duties are required by this article shall wilfully violate any part of this article, or shall wilfully fail to perform any of such duties, he shall be liable for all damages caused thereby. (1927, c. 146, s. 21.)

§ 153-138. Recovery of damages.—The recovery of all damages allowed by the article may be made in the court having jurisdiction of the suit of the county, any subdivision thereof, or any taxpayer or other person aggrieved. (1927, c. 146, s. 22.)

§ 153-139. Chairman of county commissioners to report to solicitor.—It shall be the duty of the chairman of the board of county commissioners to report to the solicitor of the district within which the county lies all facts and circumstances showing the commission of any offense as defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the board of county commissioners is authorized, within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct or violation of a public trust within said county, and pay the cost of same out of the general fund of the county. (1927, c. 146, s. 23; 1939, c. 112, s. 1.)

§ 153-140. Purpose of article.—It is the purpose of this article to provide a uniform system for all counties of the State by which the fiscal affairs of counties and subdivisions thereof may be regulated, to the end that accumulated deficits may be made up, and future deficits prevented, either under the provisions of this article or under the provisions of other laws authorizing the funding of debts and deficits, and to the end that every county in the State may balance its budget and carry out its functions without incurring deficits. (1927, c. 146, s. 24.)

§ 153-141. Construction and application of article.—All laws and parts of laws, whether general, local or special, which are in conflict with this article, are hereby repealed. Nothing herein contained, however, shall require any county now operating under a budget system provided by any local or special act in force on March 7, 1927, or which may be passed at the regular session of the General Assembly of 1927, to abandon any such operation or to comply with this article, but any such county may, in the discretion of its board of commissioners, elect to conduct its procedure under any one or more sections of this article as the board may deem best. All such counties shall nevertheless be subject to the requirements of certain provisions of this article, which are (a) the annual publication of financial information substantially as required by § 153-123, (b) the adoption of an appropriation resolution which shall appropriate the full amount of all deficits not funded and the full amount required for debt service as required by § 153-120, (c) the annual levy of taxes sufficient to meet all appropriations and the probable amount of uncollectible taxes computed as required by § 153-124, (d) endorsement by some one county officer, who shall either be the county accountant or an officer designated for that purpose by the board, of all contracts, agreements, requisitions, warrants and orders, substantially as provided by §§ 153-130 and 153-132, (e) compliance with all the provisions of § 153-135, and (f) all the provisions of §§ 153-136 to 153-139, as to penalties, liability for damages and requirements for reporting offenses to the district solicitor shall apply in all such counties so far as such counties are herein required to comply with this article. (1927, c. 146, s. 25.)

§ 153-142. Local units authorized to accept their bonds in payment of certain judgments and claims.—The governing bodies of the various counties, cities, towns, and other units in the state are hereby authorized in their discretion to accept their own bonds, at par, in settlement of any and all claims which they may have against any person, firm, or corporation, on account of any money of said unit held in any failed bank or on account of any judgment secured against any person, firm, or corporation on account of the funds in said bank.

Upon an order issued by the governing authorities of the county, city, town, or other unit, the treasurer of the county, city, town, or other unit is hereby authorized and empowered to accept the bonds of said unit in settlement of said claim, as set out in the preceding paragraph, and to mark said claim satisfied in full, whether the same has been reduced to judgment or not. (1933, c. 376.)

Art. 11. Requiring County, Municipal, etc., Officials to Make Contracts for Auditing and Standardizing Bookkeeping Systems.

§ 153-143. Director of local government. — At such time as any board of county commissioners, board of education or other county officials, or the governing body or officials of any city, town, special charter district or other subdivision in the state of North Carolina proposes to employ any certified public accountants or auditors other than

the official county auditor, county accountant, municipal accountant or other similar officer for making any statement or for the auditing of any books of the county, city, town, special charter district or other subdivision the director of local government shall be notified of such purpose and it shall be the duty of a representative of the director of local government to advise with the officials with respect to the scope of such audit and the nature of same and to furnish such officials all information available for their guidance in the making and entering into contracts or engagements for said audit or examination. (1929, c. 201, s. 1; 1931, c. 99, s. 1.)

§ 153-144. Contracts must be in writing; approval. — All contracts or engagements made shall be reduced to writing and shall include all of the terms and conditions of the contract before the same shall become legal and binding upon the county, city, town, special charter district or other subdivision officials and shall be endorsed and approved as to the terms and provisions thereof by the director of local government and such contracts shall be null and void and no payments shall be made on such contracts until the same shall have been reduced to writing and approved as aforesaid by the director of local government. Said contracts when so executed shall be recorded on the minutes of the board of county commissioners, board of education or such governing body of a city, town, special charter district or other sub-division and the original filed in their records. The terms and provisions of said contracts shall not in any way be varied or changed by either party unless and until such changes shall be reduced to writing and approved by the director of local government in the same manner as the original contract and no verbal agreements made between the officials of the county and the auditors aforesaid shall affect in any way to vary the terms and conditions thereof. (1929, c. 201, s. 2; 1931, c. 99, s. 2.)

§ 153-145. Approval of systems of accounting.—With a view of standardization and simplification of the methods of accounting in the various counties, cities, towns, special charter districts and other sub-divisions of the state, the director of local government is hereby authorized and empowered to advise with said boards as to the proper methods of accounting for such counties, cities, towns, special charter districts and other sub-divisions and no system or books shall be installed until same shall have been submitted to the director of local government. (1929, c. 201, s. 3; 1931, c. 99, s. 3.)

§ 153-146. Copy of report filed with Director of Local Government.—Any certified public accountant or auditor other than the official county auditor, county accountant, municipal accountant or other similar officer employed by any board of county commissioners, board of education, the governing body of any city, town, special charter district or other sub-division, or the officials thereof shall upon completion of all work performed in accordance with the terms of a contract, prepare a report embodying all statements and comments relating to his findings and shall file a copy of said report with the director of local government, said report to be either printed or typewritten. The director of local government shall have the power to prescribe or approve the form of said report. (1929, c. 201, s. 4; 1931, c. 99, s. 4.)

§ 153-147. Approval of all claims for auditing to be approved by Director of Local Government. —All bills or claims presented to the governing body of any county, city, town or special charter district for the payment of any public or certified public accountant or auditor for the performance of any service as may be agreed upon in accordance with the provisions of this article shall be approved by the Director of Local Government, and it shall be unlawful for any of such governing bodies to pay or permit the payment of such bill or claim out of any public funds without first securing the said approval of said Director of Local Government. (1931, c. 99, s. 5.)

Art. 12. Sinking Funds.

§ 153-148. Counties and municipalities authorized to apply sinking funds to purchase of own bonds.—The county commissioners of the several counties of the State, and all persons or officers having charge of sinking funds and the commissioners and aldermen and governing bodies of all incorporated cities and towns are authorized and directed to apply the sinking funds on hand to the purchase and retirement of the specific bonds, issued by such municipality, for the payment whereof, at maturity, such fund has been provided, notwithstanding any contrary provisions in any act, special or general, under which the said bonds have been issued: Provided, however, that where bonds have been issued and sold to run for a stated term without option of prior payment, nothing herein shall be construed to compel the owners or holders thereof to accept payment or surrender said bonds except at their option. Municipalities shall not be required to purchase such bonds for a greater sum than the face thereof with accrued interest at the time of purchase. (1931, c. 413, s. 1.)

§ 153-149. Investment of sinking funds. — County commissioners of the several counties and all persons or officers having charge of sinking funds and the governing bodies of all incorporated towns and cities shall keep such sinking funds as may not be applied to the purchase and retirement of bonds as required in the preceding section safely invested in such bonds or securities as are approved for such investment by the Local Government Act of nineteen hundred and thirty-one, (§§ 159-1 et seq.) where such investment will promote the public interest or provide a greater rate of interest therefor. (1931, c. 413, s. 2.)

§ 153-150. Petition of tax-payers to have sinking funds applied to purchase of bonds or invested. —Any citizen and taxpayer of a county or municipality, on behalf of himself and other citizens and taxpayers interested, who may or may not join therein, may petition the board of county commissioners or any governing board of a city or town, setting forth in said petition that said county, city or town has an amount of sinking fund provided for the payment of a certain issue or issues of bonds, that the bonds, or a portion of them, may be purchased and retired, and fully setting forth any benefit which would accrue to the

county, city or town from purchase and retirement of said bonds, and demanding the application of the sinking fund thereto.

A like petition may be made to require the investment of sinking funds as provided in this article. Such petition shall fully set out the facts regarding the fund in question and the benefit to be derived from its investment. Upon receiving such petition the board of county commissioners or governing body of the city or town to which the same may be addressed, shall ascertain the facts with reference to the matters alleged, and act thereon without delay; and the petition shall be sustained and the relief granted if the facts are such that the provisions of this article are applicable; and such sinking fund shall be applied to the purchase and retirement of such bonds as may be obtainable, of the class or issue to the payment whereof at maturity such fund might be applied, or shall be invested without delay, in the event such bonds are not obtainable, and such investment will be advantageous to the taxpayers interested. (1931, c. 413, s. 3.)

§ 153-151. Appeal to Local Government Commission.—An appeal shall lie from the action of the board of county commissioners or governing body of any town or city to the Local Government Commission, who shall hear the matter de novo and determine the same. The Local Government Commission shall make such order as they may deem best in the premises, and fix therein such time as they may deem reasonable for compliance therewith.

Upon failure or delay to act upon any petition for a period of thirty days after it has been received by any board of county commissioners or governing body of any city or town, direct application may be made to the Local Government Commission, which shall, on such failure or refusal to act, have original jurisdiction in the premises and shall proceed to act, after five days' notice to such board of commissioners or governing body of a town or city to whom the petition was addressed.

The orders of the Local Government Commission may be enforced by writ of mandamus in a proceeding in the Superior Court of Wake County or of the county affected, or in which the town or city concerned, or any part thereof may be located, and such proceeding may be brought by the Local Government Commission or any petitioning taxpayer, in behalf of himself and others like interested. (1931, c. 413, s. 4.)

Art. 13. County Poor.

§ 153-152. Support of poor; superintendent of county home; paupers removing to county; hospital treatment.—The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well-ordering. They may employ biennially some competent person as superintendent of the county home for the aged and infirm, and may remove him for cause. They may institute proceedings against any person coming into the county who is likely to become chargeable thereto, and cause his removal to the county where he was last legally settled; and they may recover from such county by action all charges and expenses incurred for the maintenance or removal of such poor person.

The board of commissioners of each county, when deemed for the best interest of the county, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions located within or without the county to provide for the medical treatment and hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed, provided the annual payments required under such contract shall not be in excess of ten thousand ($10,000.00) dollars. The full faith and credit of each county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the general assembly is hereby given to the execution thereof and to the levy of a special ad valorem tax in addition to other taxes authorized by law for the special purpose of the payment of the amounts to become due thereunder. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses and for a special purpose within the meaning of the constitution of North Carolina and for which the special approval of the general assembly is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the county fiscal control act and acts amendatory thereof: Provided, that the county commissioners of Lincoln County shall not enter into any such contract except after a public hearing at the county court house, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The commissioners of Catawba County shall not act under this paragraph until a majority of the people of the county have voted favorably. This paragraph shall not apply to the counties of Ashe, Avery, Buncombe, Clay, Cumberland, Durham, Gates, Haywood, Henderson, Jackson, Lee, Macon, Moore, Nash, Pasquotank, Robeson, Sampson, Transylvania, Wilkes, Yadkin, Rowan, Gaston, Iredell, Surry, New Hanover, Washington, Bertie, Brunswick, Union, Stanley, Yancey, Warren, Vance, Chowan, Currituck, Forsythe, McDowell, Johnston, Halifax, Edgecombe, Pitt, Richmond, Rockingham, Columbus, Guilford and Mecklenburg. (Rev., s. 1327; Code, s. 3540; 1891, c. 138; 1935, c. 65; C. S. 1335.)

§ 153-153. County home for aged and infirm.—All persons who become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the board of commissioners select or agree upon. (Rev., s. 1328; Code, s. 3541; 1891, c. 138; C. S. 1336.)

§ 153-154. Records for county, how to be kept.—The keeper or superintendent in charge of each county home in North Carolina, or the board of county commissioners in each county where there is no county home, shall keep a record book showing the following: Name, age, sex, and race of each inmate; date of entrance or discharge; mental and physical condition; cause of admission; family relation and condition; date of death if in

the home; cost of supplies and per capita expense of home per month; amount of crops and value, and such other information as may be required by the board of county commissioners or the state board of charities and public welfare; and give a full and accurate report to the county commissioners and to the state board of charities and public welfare. Such report to be filed annually on or before the first Monday of December of each year. (1919, c. 72; C. S. 1337.)

§ 153-155. Support of county home.—The board of commissioners may provide for the support of the persons admitted by them to the home for the aged and infirm by employing a superintendent at a certain sum, or by paying a specified sum for the support of such persons to any one who will take charge of the county home for the aged and infirm, as said board may deem for the best interest of the county and the cause of humanity. (Rev., s. 1329; Code, s. 3543; 1876-7, c. 277, s. 3; C. S. 1338.)

§ 153-156. Property of indigent to be sold or rented.—When any indigent person who becomes chargeable to a county for maintenance and support in accordance with the provisions of this article, owns any estate, it is the duty of the board of commissioners of any county liable to pay the expenses of such indigent person to cause the same to be sold for its indemnity or reimbursement in the manner provided under article 3 of the chapter entitled Insane Persons and Incompetents, or they may take possession thereof and rent the same out and apply the rent toward the support of such indigent person. When such indigent person has no guardian, or said guardian refuses or neglects to act, then the county maintaining and supporting said indigent person in its county home, or otherwise, may bring an action in its own name against the owner and the parties having an interest in the property sought to be sold, to sell, mortgage or rent the personal property or real estate of such indigent person, which action shall be a special proceeding and conducted as other special proceedings before the Clerk of the Superior Court and said Clerk of Court shall have power to make all necessary and proper orders therein. (Rev., s. 1330; Code, s. 3547; 1866, c. 49; 1941, c. 24; C. S. 1339.)

§ 153-157. Families of indigent militiamen to be supported.—When any citizen of the state is absent on service as a militiaman or member of the state guard, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (Rev., s. 1331; Code, s. 3546; R. C., c. 86, s. 14; 1779, c. 152; C. S. 1340.)

§ 153-158. Paupers not to be hired out at auction.—No pauper shall be let out at public auction, but the board of commissioners may make such arrangements for the support of paupers with their friends or other persons, when not maintained at the county home for the aged and infirm, as may be deemed best. (Rev., s. 1332; Code, s. 3542; 1876-7, c. 277, s. 2; C. S. 1341.)

§ 153-159. Legal settlements; how acquired. — Legal settlements may be acquired in any county, so as to entitle the party to be supported by such county, in the manner following, and not otherwise:

1. By one Year's Residence.—Every person who has resided continuously in any county for one year shall be deemed legally settled in that county.

2. Married Women to have Settlement of their Husbands.—A married woman shall always follow and have the settlement of her husband, if he have any in the state; otherwise, her own at the time of her marriage, if she then had any, shall not be lost or suspended by the marriage, but shall be that of her husband, till another is acquired by him, which shall then be the settlement of both.

3. Legitimate Children to Have Settlement of Father.—Legitimate children shall follow and have the settlement of their father, if he has any in the state, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

4. Illegitimate Children to Have Settlement of Mother.—Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any in the state. But neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein.

5. Settlement to Continue until New One Acquired.—Every legal settlement shall continue till it is lost or defeated by acquiring a new one, within or without the state; and upon acquiring such new settlement, all former settlements shall be defeated and lost.

6. No person coming into the State of North Carolina from another State shall be deemed to have a settlement in this State for the purposes of this section, until he or she has resided continuously three years within the State, unless at the time of so migrating he or she was able to maintain himself in such sense as that he or she would not be deemed a pauper within the meaning of this article. (Rev., s. 1333; Code, s. 3544; R. C., c. 86, s. 12; 1777, c. 117, s. 16; 1931, c. 120; C. S. 1342.)

§ 153-160. Removal of indigent to county of settlement; maintenance; penalties.—Upon complaint made by the chairman of the board of county commissioners, before a justice of the peace, that any person has come into the county who is likely to become chargeable thereto, the justice by his warrant shall cause such poor person to be removed to the county where he was last legally settled; but if such poor person is sick or disabled, and cannot be removed without danger of life, the board of commissioners shall provide for his maintenance and cure at the charge of the county; and after his recovery shall cause him to be removed, and pay the charges of his removal. The county wherein he was last legally settled shall repay all charges occasioned by his sickness, maintenance, cure and removal, and all charges and expenses whatever, if such person die before removal. If the board of commissioners of the county to which such poor person belongs refuses to receive and provide for him when removed as aforesaid, every commissioner so refusing shall forfeit and pay forty dollars, for the use of the county whence the removal was made; moreover, if the board of

commissioners of the county where such person was legally settled refuses to pay the charges and expenses aforesaid, they shall be liable for the same. If any housekeeper entertains such poor person without giving notice thereof to the board of commissioners of his county, or one of them, within one month, the person so offending shall forfeit and pay ten dollars. (Rev., s. 1334; Code, s. 3545; R. C., c. 86, s. 13; 1777, c. 117, s. 17; 1834, c. 21; C. S. 1343.)

§ 153-161. Burial of indigent veterans of the world war.—The county commissioners of any county in North Carolina are authorized, empowered, and directed to appropriate out of the general fund of the county a sum of not more than twenty-five dollars ($25.00) to provide for the burial of any former member of the army, navy, or marine corps, who served in the recent world war, who shall die within the boundaries of the said county and whose estate or relatives are unable to provide for the burial of said veteran, and whose burial has not otherwise been provided for. (1923, c. 119; C. S. 1343(a).)

Art. 14. District Hospital Home.

§ 153-162. Two or more adjacent counties may establish; trustees.—Any two or more adjacent counties may by action of the county commissioners in said counties, as hereafter provided, establish a district hospital-home for the aged and infirm, to be located at some suitable place within the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said hospital-home, each county to have one representative. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 129, s. 1.)

§ 153-163. Present properties to be sold; application of proceeds.—The county commissioners of the aforesaid counties are hereby authorized and empowered to sell and convey by deed all properties held by the aforesaid counties for the care and maintenance of their county's poor, and from the proceeds of such sale appropriate so much as may be required to meet said county's proportionate part of the funds necessary to perfect the completion of said community home for the aged and infirm as provided herein. (1931, c. 129, s. 2.)

§ 153-164. Funds raised by taxation.—Should it be deemed wisest not to sell said properties, or should any county not have said properties in its possession, or should any counties have said properties which would not be for sale, the necessary funds shall then be raised by direct taxation within the county or counties preferring this method of raising their pro rata part. (1931, c. 129, s. 3.)

§ 153-165. Appointment of trustees. — The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district hospital-home for the aged and infirm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district hospital-home for the district comprising ..... counties; the members of said board of trustees shall be appointed every two years by the boards of county commissioners, the term of office for said trustees shall be two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 129, s. 4.)

§ 153-166. Organization meeting; site and buildings.—This board of trustees shall, as soon as possible after appointment, assemble and organize by the election of a chairman, a secretary and a treasurer, which last officer shall be bonded. They shall proceed promptly with the purchase of a site for such hospital-home, including, if they deem it desirable, a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities, and shall then cause to be erected suitable plain, substantial, comfortable and permanent buildings for the accommodation of those for whom this article is intended, giving due regard to the separation of the sexes and races, and such other plans for segregation as their judgment and existing conditions may suggest. Said buildings are to be furnished with plain, substantial furniture, and such other equipment as conditions demand. Necessary hospital facilities may be included, but provisions for such facilities and equipment shall have the approval of the State Board of Charities and Public Welfare and the State Board of Health. (1931, c. 129, s. 5.)

§ 153-167. Apportionment of cost. — The several counties constructing, equipping, and operating a district hospital-home shall pay for the site and for the construction and equipment of the plant in proportion to the population of the individual county to the total population of the several counties comprising the district, but each county shall pay for the number of persons maintained at the hospital-home at the actual per capita cost of such maintenance. (1931, c. 129, s. 6.)

§ 153-168. Plans and specifications for hospital-home.—The State Board of Charities and Public Welfare shall have prepared plans for such district hospital-home and shall furnish such plans on request to any board of trustees of any district hospital-home at cost; and all such hospital-homes shall be built in accordance with plans furnished or approved by the State Board of Charities and Public Welfare. (1931, c. 129, s. 7.)

§ 153-169. Closing of county homes. — As soon as the district hospital-home is ready for occupancy the several county homes or poorhouses, heretofore owned by the several counties, shall be closed and occupants shall be transferred and located in the district hospital-home for the aged and infirm herein provided for. (1931, c. 129, s. 8.)

§ 153-170. Superintendent and employees.—The board of trustees of the said district hospital-home shall elect a capable superintendent or matron, preferably a woman who is a trained nurse, and such other employees as it may deem necessary to the efficient management of said district hospital-home, and shall fix their salaries with due regard to number and condition of inmates occupying said district hospital-home. (1931, c. 129, s. 9.)

§ 153-171. Meetings of trustees.—The board of trustees shall meet at least twice a year for the transaction of such business as the provisions of this article may require. They shall have the general conduct and management of the district hospital-home's affairs. They shall meet at the call of the chairman whenever he shall deem it necessary, or upon call issued by a majority of the board. (1931, c. 129, s. 10.)

§ 153-172. Purpose of special meetings set out in call.—The matter to be considered at any special meeting shall be set out in the call for the special meeting, but any business may be transacted at special meetings which received a two-thirds' vote of the entire board of trustees, although not mentioned in the call. (1931, c. 129, s. 11.)

§ 153-173. Powers of trustees.—The board is vested with all powers not already mentioned which are possessed by boards supervising State institutions. (1931, c. 129, s. 12.)

§ 153-174. Sending of inmates to institution. — The counties constructing, operating and maintaining a district hospital-home for the aged and infirm shall, as required by law now in force for the care and maintenance of those not able to care for themselves, send such person or persons to the district hospital-home for the aged and infirm in lieu of the county home if it appears to the commissioners and the superintendent of public welfare that such persons need institutional care. (1931, c. 129, s. 13.)

§ 153-175. Annual report on affairs of institution.—As soon after the first day of January of each year as may be practicable the board of trustees shall cause a report to be made of the hospital-home, which report shall show the number of inmates, the county admitting them, date of admission, age, condition of health, sex, color, educational acquirements, diagnosis of disease if diseased, total number of inmates received during the year, average number cared for per month, names and disposition of those dismissed, pro rata cost of maintenance, the total amount of money expended, the total amount of money received from each county, and such information as the State Board of Charities and Public Welfare and the board of trustees of the district hospital-home may request. It shall also show an inventory and appraisement of property, real and personal, and give a strict account of receipts from farm and expenditure thereon, and such other information as may be required to check up the institution from all viewpoints. (1931, c. 129, s. 14.)

§ 153-176. Copies of report to county commissioners.—A copy of the said report of the said board of trustees shall be furnished the county commissioners of the respective counties interested in and providing said district hospital-home. (1931, c. 129, s. 15.)

Art. 15. County Prisoners.

§ 153-177. Bonds of prisoner in criminal case returned to court.—Every bond taken of any person confined for an offense, or otherwise than on process issuing in a civil case, shall be returned to the court by whose order or process such person is confined, or which may be entitled to cognizance of the matter, and shall be of the force and effect of a recognizance. On breach thereof it shall be forfeited and collected as a forfeiture in the name and for the use of the state, and applied as other forfeited recognizances. (Rev., s. 1340; Code, s. 3467; R. C., c. 87, s. 12; C. S. 1344.)

§ 153-178. Bond of prisoner committed on capias in civil action. — Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment. If any person who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment; and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea. (Rev., s. 1341; Code, s. 3469; R. C., c. 87, s. 14; 1759, c. 65, ss. 2, 3; C. S. 1345.)

§ 153-179. Jailer to cleanse jail, furnish food and water.—The sheriff or keeper of any jail shall, every day, cleanse the room of the prison in which any prisoner is confined, and cause all filth to be removed therefrom; and shall also furnish the prisoner plenty of good and wholesome water, three times in every day; and shall furnish each prisoner fuel, not less than one pound of wholesome bread, one pound of good roasted or boiled flesh, and every necessary attendance. (Rev., s. 1343; Code, s. 3464; R. C., c. 87, s. 9; 1816, c. 911, s. 2; C. S. 1346.)

§ 153-180. Fees of jailers.—Jailers shall receive, for furnishing prisoner with fuel, one pound of wholesome bread, one pound of good roasted or boiled flesh, and a sufficient quantity of water, with every necessary attendance, a sum not exceeding fifty cents per day, unless the board of commissioners of the county shall deem it expedient to increase the fees, which it may do provided such increase shall not exceed fifty per cent on the above sum. (Rev., s. 2799; Code, s. 3746; R. C., c. 102, s. 38; 1878, c. 87; 1919, c. 118; C. S. 3919.)

§ 153-181. Prisoner to pay charges and prison fees.—Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county. (Rev., s. 1346; Code, s. 3461; R. C., c. 87, s. 6; 1795, c. 433, s. 7; C. S. 1347.)

§ 153-182. Prisoner may furnish necessaries.—Prisoners shall be allowed to purchase and procure such necessaries, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence. (Rev., s. 1344; Code, s. 3463; R. C., c. 87, s. 8; 1795, c. 433, s. 6; C. S. 1348.)

§ 153-183. United States prisoners to be kept.—When a prisoner is delivered to the keeper of any jail by the authority of the United States, such keeper shall receive the prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the state. The allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the state. (Rev., s. 1342; Code, s. 3456; R. C., c. 37, s. 1; 1790, c. 322, ss. 1, 2; C. S. 1349.)

§ 153-184. Arrest of escaped persons from penal institutions.—Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the state, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the state, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1.)

§ 153-185. Guard when escape apprehended; compensation.—When the sheriff of the county, or keeper of the jail, apprehends that there is danger of a prisoner escaping, through the insufficiency of the jail or other cause, it is his duty, without delay, to make information thereof to a judge of the superior court, the attorney-general, or a solicitor, if any of those officers is in the county, and if not, then to three justices of the peace, and they are authorized, if they deem it advisable, to furnish the sheriff or keeper of the jail with an order in writing, addressed to the commanding officer of the militia of the county, setting forth the danger, and requiring him forthwith to furnish such guard as to him may appear to be suitable for the occasion. For which service the persons ordered on guard shall receive such compensation as militiamen in actual service for defense of the state; and on application for pay, the letter to the commanding officer, on which the guard was ordered, and the certificate of such officer, countersigned by the sheriff or jailer, together with the deposition of the officer of the guard, stating the time of service, and that it was faithfully performed, shall be sufficient to authorize the payment of the same. (Rev., s. 1345; Code, s. 3460; R. C., c. 87, s. 5; 1795, c. 433, s. 8; C. S. 1350.)

§ 153-186. What counties liable for guarding and removing prisoners.—The expense for guarding prisons shall be paid by the county where the prison is situated; and for conveying prisoners, as also the expense attending such prisoners while in jail, when the same may be chargeable on the county, shall be paid by the county from which the prisoner is removed. (Rev., s. 1347; Code, s. 3462; R. C., c. 87, s. 7; 1808, c. 757, s. 2; C. S. 1351.)

§ 153-187. Transfer of prisoners to succeeding sheriff.—The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen. (Rev., s. 1348; Code, s. 3470; R. C., c. 87, s. 15; 1777, c. 118, s. 12; C. S. 1352.)

§ 153-188. Where no jail, sheriff may imprison in jail of adjoining county.—The sheriffs, constables, and other ministerial officers of any county in which there is no jail have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this article, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county. (Rev., s. 1349; Code, s. 3459; R. C., c. 87, s. 4; 1835, c. 2, s. 3; C. S. 1353.)

§ 153-189. Where no jail, courts may commit to jail of adjoining county.—Whenever there happens to be no jail, or when there is an unfit or insecure jail, in any county, the superior court judges, justices of the peace, and all judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs, constables, and other officers of such county in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor. (Rev., s. 1350; Code, s. 3458; R. C., c. 87, s. 3; 1835, c. 2, s. 2; C. S. 1354.)

§ 153-190. When jail destroyed, transfer of prisoners provided for.—When the jail of any county is destroyed by fire or other accident, any justice of the peace of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process under which any prisoner was confined shall order his commitment to the jail of any adjacent county; and the sheriff, constable, or other officer of the county deputed for that purpose, shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners upon the order aforesaid. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor. (Rev., s. 1351; Code, s. 3457; R. C., c. 87, s. 2; 1835, c. 2, s. 1; C. S. 1355.)

§ 153-191. Counties and towns may hire out certain prisoners.—The board of commissioners of

the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendant of the several cities and towns of the state, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the fine and bill of costs in all cases of conviction. It is unlawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had shall in its judgment so authorize. (Rev., s. 1352; Code, s. 3448; 1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218; C. S. 1356.)

§ 153-192. Person hiring may prevent escape.—The party in whose service said convicts may be may use the necessary means to hold and keep them in custody and to prevent their escape. (Rev., s. 1353; Code, s. 3454; 1876-7, c. 196, s. 3; C. S. 1357.)

§ 153-193. Sheriff to have control of prisoners hired out.—All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a state officer for the purpose of this section. (Rev., s. 1354; Code, s. 3453; 1876-7, c. 196, s. 2; C. S. 1358.)

§ 153-194. Convicts who may be sentenced to or worked on roads and public works.—It is lawful for and the duty of the judge holding court to sentence to imprisonment at hard labor on the public roads, in accordance with §§ 148-28, 148-30 and 148-32 for such terms of thirty days or more as are now prescribed by law for their imprisonment in the county jail or in the state's prison, the following classes of convicts: First, all persons convicted of offenses the punishment whereof would otherwise be wholly, or in part, imprisonment in the common jail; second, all persons convicted of crimes the punishment whereof would otherwise, wholly or in part, be imprisonment in the state's prison.

There may also be worked on the public works, in like manner, all persons sentenced to imprisonment in jail for less than 30 days by any magistrate; and also, all insolvents imprisoned by any court in said counties for nonpayment of costs in criminal causes may be retained in imprisonment and worked on the public works until they repay the county to the extent of the half fees charged up against the county for each person taking the insolvent oath. The rate of compensation to be allowed each insolvent for work on the public works shall be fixed by the county commissioners at a just and fair compensation, regard being had to the amount of work of which each insolvent is capable. (Rev., s. 1355; 1887, c. 355; 1889, c. 419; C. S. 1359.)

§ 153-195. Deductions from sentence allowed for good behavior.—When a convict has been sentenced to work upon the public works of a county, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged from the county works when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape he shall forfeit and lose any deduction he may have been entitled to prior to that time. This section shall apply also to women sentenced to a county farm or county home. (1913, c. 167, s. 1; C. S. 1360.)

§ 153-196. Convicts sentenced to public works to be under county control.—The convicts sentenced to hard labor upon the public works, under the second paragraph of § 153-194, shall be under the control of the county authorities, and the county authorities have power to enact all needful rules and regulations for the successful working of convicts upon the public works. The county commissioners may work such convicts in canaling the main drains and swamps or on other public work of the county. (Rev., s. 1356; 1887, c. 355, s. 2; 1891, c. 164; C. S. 1361.)

§ 153-197. Taxes may be levied for expenses of convicts.—The board of county commissioners of the several counties in the state taking advantage of this article shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties. (Rev., s. 1359; 1887, c. 355, s. 6; C. S. 1364.)

§ 153-198. Use of county prisoners in maintaining roads, not within state system.—The state highway and public works commission may, on official request from a board of county commissioners authorize such board of county commissioners to use any county prisoners, upon such terms as may be agreed upon, to maintain and grade any neighborhood road within the county not at such time within the system of the state highway commission, but this authorization shall not authorize the levying of any tax for support of local roads; and like authority is extended to the boards of drainage commissioners for public drainage districts for the maintenance and upkeep of such districts. (1937, c. 297, s. 3½.)

Local Modification.—New Hanover: 1941, c. 75.

Art. 16. District Prison Farm.

§ 153-199. Two or more adjacent counties may establish; trustees.—Any two or more adjacent counties may, by action of said commissioners in said counties, as hereinafter provided, establish a

district prison farm, to be located at some suitable place in the counties composing the district, location and purchase to be controlled by a board of trustees appointed by the county commissioners of the respective counties owning and controlling said district prison farm, each county to have one trustee. Where only two counties enter the district, the commissioners of the counties concerned shall jointly elect one additional trustee. (1931, c. 142, s. 1.)

§ 153-200. Appointment of trustees; vacancies, expenses and compensation.—The several boards of county commissioners shall, as soon as they shall have agreed among themselves to establish a district prison farm for their counties, appoint the members of the board of trustees, which board shall be known as the board of trustees of the district prison farm for the district comprising ....., ..., ... counties; the members of said boards of trustees shall be appointed every two years, and until their successors are chosen and qualified; all vacancies shall be filled by the several boards of county commissioners and said commissioners shall provide for the expense and compensation of said board of trustees. (1931, c. 142, s. 2.)

§ 153-201. Organization meeting; purchase of site; equipment; separation of races and sexes.—The board of trustees shall, as soon as possible, and not later than sixty days after appointment, meet and organize by electing a chairman and secretary. They shall proceed promptly with the purchase of a farm of suitable size, location and fertility, giving due consideration to sanitary surroundings and transportation facilities. They shall provide for the necessary stock, tools, and farm equipment, and shall cause to be erected suitable buildings for the housing, detention and keeping the prisoners assigned to said district farm, due regard being given to the separation of the sexes and races and such other plans for segregation as their judgment and existing conditions may suggest. (1931, c. 142, s. 3.)

§ 153-202. Proportion of payment among counties.—The several counties shall pay for the site and for the construction and equipment of the prison farm in proportion to the taxable property of the several counties, and shall own the same in the same proportion, but the operating expense shall be borne by the said counties in proportion to the population of the several counties. (1931, c. 142, s. 4.)

§ 153-203. Election of superintendent and employees; regulations for working prisoners. — The said board of trustees of said district prison farm shall elect a capable superintendent and such other employees as it may deem necessary for the efficient management of said farm and shall make rules and regulations for the working of all prisoners sentenced to said farm to the end that the said district prison farm shall be as near self-supporting as practicable. (1931, c. 142, s. 5.)

§ 153-204. Meetings of trustees.—The board of trustees of said district prison farm shall meet at said farm at least twice each year for the transaction of such business as may come before them. They shall meet at other times on the call of the chairman or on a call by a majority of the board of trustees. (1931, c. 142, s. 6.)

§ 153-205. Notification to boards of commissioners and courts of readiness of farm.—As soon as said prison farm is purchased and the necessary building erected thereon and the farm equipped with stock, tools, etc., the board of trustees of said district prison farm shall notify the boards of commissioners of the several counties, and the said boards of commissioners, upon receipt of said notice, shall promptly notify each and every court in the several counties, including superior courts, recorders' courts and all other courts which are now operating or may hereafter be established in said counties that the prison farm is ready. (1931, c. 142, s. 7.)

§ 153-206. Assignment of prisoners to work on farm.—From and after receipt of the information set out above, it shall be the duty of the judges, recorders and other presiding officers of the several courts in said counties, to assign all prisoners sentenced by them to the county jails to the said district prison farm. (1931, c. 142, s. 8.)

§ 153-207. Bonds and notes for payment for farm; maximum levy.—The several counties of said district are hereby authorized to provide for the payment of their proportionate part of said farm and equipment by the sale of notes or bonds as provided in the County Finance Act and to provide for payment of said bonds and notes by the levy of such tax as may be necessary for said purpose: Provided, not more than a levy of ten cents on the one hundred dollars valuation shall be levied any one year in any county. (1931, c. 142, s. 9.)

§ 153-208. Yearly report of operations. — The said board of trustees shall cause to be made a detailed report of the operations of said district prison farm each year not later than January tenth each year and shall send a copy of said report to the several boards of county commissioners. (1931, c. 142, s. 10.)

Art. 17. Houses of Correction.

§ 153-209. Commissioners may establish houses of correction.—The board of commissioners may, when they deem it necessary, establish within their respective counties one or more convenient institutions to be known as houses of correction, or, in the discretion of the board of commissioners, as training schools, municipal farms, or juvenile farms, with workshops and other suitable buildings for the safekeeping, correcting, governing, and employing of offenders legally committed thereto. They may also, to that end, procure machinery and material suitable for such employment in said institutions, or on the premises; and moreover attach thereto a farm or farms; and all lands purchased for the purposes aforesaid shall vest in the directors hereinafter provided for, and their successors in office. The said board also has power to make, from time to time, such rules and regulations as it may deem proper for the kind and mode of labor and the general management of the said institutions. (Rev., s. 1360; Code, s. 786; 1866, c. 35, s. 1; 1919, c. 273, s. 1; C. S. 1365.)

§ 153-210. Who must or may be committed to such institutions.—It shall be the duty of the judges of the criminal courts and other committing magistrates of such county or counties to sentence or commit thereto all youthful offenders of the age of sixteen years and under, convicted of any crime or misdemeanor whereof the punishment by statute prescribes a fine or sentence of imprisonment or working the roads. Said judges and committing magistrates may also sentence thereto any female prisoners and such other offenders convicted of misdemeanors who by reason of physical infirmities or mental deficiencies ought not to be imprisoned in the county jail or worked on the public roads. Nothing herein shall be construed to prevent the working at light labor of any partially disabled or infirm convict, or female prisoner, on or about any of the public works, buildings, or grounds in any such county, at and upon the request of the board of county commissioners, with the approval of the court or committing magistrate. (1919, c. 273, s. 1; C. S. 1366.)

§ 153-211. Levy of taxes authorized; to be paid to manager.—The board of commissioners, in addition to the ordinary county taxes, shall also, at the time said taxes are laid, lay such tax as may be necessary to carry into effect this article, which shall be collected and paid to the manager at the same time as other county taxes are to be paid; for which, and such other funds as may come into his hands as manager, he shall be accountable; and he shall disburse the same under the authority of the directors. (Rev., s. 1361; Code, s. 790; 1866, c. 35, s. 5; C. S. 1367.)

§ 153-212. Bonds may be issued.—The board of commissioners may, if deemed advisable by them, issue county bonds to raise money to establish the institutions herein provided for. (Rev., s. 1362; Code, s. 796; 1866, c. 35, s. 11; C. S. 1368.)

§ 153-213. Governor to be notified of establishment.—When any institution is established in pursuance of this article, it is the duty of the chairman of the board of commissioners of the county wherein the same is established to certify the fact to the governor, who shall cause it to be noted in a book kept for that purpose. (Rev., s. 1363; Code, s. 797; 1866, c. 35, s. 12; C. S. 1369.)

§ 153-214. Directors to be appointed; duties. — The board of commissioners shall annually appoint not less than five nor more than nine directors for each such institution hereunder established, whose duty it is to superintend and direct the manager hereinafter named in the discharge of his duties; to visit said houses at least once in every three months; to see that the laws, rules and regulations relating thereto are duly executed and enforced, and that the persons committed to his charge are properly cared for, and not abused or oppressed. The directors shall keep a journal of their proceedings, and publish annually an account of the receipts and expenditures. They shall further make a quarterly report to their respective county commissioners of the general condition of their charge, and of the receipts and expenditures of the institution. They shall also make such by-laws and regulations for the government thereof as shall be necessary, which shall be reported to, and approved by, the said commissioners. The directors shall be paid for the services rendered, by the county treasurer, each director first making it appear to the satisfaction of the board of county commissioners, by his oath, the character and extent of the services rendered for which he claims compensation; and such payment shall be made by the county treasurer out of any funds in his hands not otherwise appropriated. (Rev., s. 1364; Code, s. 787; 1866, c. 35, s. 2; C. S. 1370.)

§ 153-215. Term of office of directors.—The directors shall continue in office until others are appointed; and if any vacancy happens among them, it shall be filled by the residue of the directors. (Rev., s. 1365; Code, s. 795; 1866, c. 35, s. 10; C. S. 1371.)

§ 153-216. Manager to be appointed; bond; duties.—The board of commissioners shall appoint a manager for each house or establishment, who shall give a bond, with two or more solvent sureties, in such sum as may be required, payable to the state of North Carolina, conditioned for the faithful discharge of his duties. He shall hold his office during the pleasure of the board, and be at all times under the supervision of the directors; and in case of his misconduct, of which they shall be the sole judges, he may be forthwith removed by them and a successor appointed, who shall discharge the duties of the office until another manager is appointed by the board of commissioners. It is the duty of the manager to receive all persons sent to the house of correction, to keep them during the time of their sentence, and to employ and control them according to the rules and regulations established therefor. He shall have the direction and control over the subordinate officers, assistants and servants, who may be appointed by the directors. He shall make monthly reports to the directors of his management of the institution and his receipts and expenditures. (Rev., s. 1366; Code, s. 788; 1866, c. 35, s. 3; C. S. 1372.)

§ 153-217. Manager to assign employment to inmates.—The manager shall assign to each person sent to such institution the kind of work in which such person is to be employed. (Rev., s. 1367; Code, s. 794; 1866, c. 35, s. 9; C. S. 1373.)

§ 153-218. Compensation of officers. — The said board of commissioners shall direct what compensation the manager and such subordinate officers, assistants and servants, as shall be appointed, shall receive, and shall provide for the payment thereof. (Rev., s. 1368; Code, s. 789; 1866, c. 35, s. 4; C. S. 1374.)

§ 153-219. Sheriff to convey persons committed.—When a person is sentenced to such institution he shall forthwith be committed by the court to the custody of the sheriff, to whom the clerk shall immediately furnish a certified copy of the sentence, in which it shall be stated (if the fact be so) that the offender is committed as a vagrant. The sheriff shall convey the offender to the institution, and deliver him to the manager with the certified copy aforesaid, and take

the manager's receipt for the body; which receipt the sheriff shall return to the clerk of the board of commissioners, with his indorsement of the time when the offender was committed to him and delivered to the manager, and the clerk shall record the same in a book kept for that purpose, and file the original with the papers in the case. (Rev., s. 1369; Code, s. 793; 1866, c. 35, s. 8; C. S. 1375.)

§ 153-220. Absconding offenders punished. — If any offender absconds, escapes, or departs from any such institution without license, the manager has power to pursue, retake and bring him back, and to require all necessary aid for that purpose; and when brought back, the manager may confine him to his work in such manner as he may judge necessary, or may put him in close confinement in the county jail or elsewhere, until he submits to the regulations of such institution; and for every escape each offender shall be held to labor in such institution for the term of one month in addition to the time for which he was first committed. (Rev., s. 1370; Code, s. 791; 1866, c. 35, s. 6; 1919, c. 273, s. 2; C. S. 1376.)

§ 153-221. Release of vagrants. — If a person committed as a vagrant behaves well and reforms, he may, on the certificate of the manager, be released by the directors. But if otherwise committed, he may be released by the committing authority, upon the certificate of the manager and directors, upon such conditions as they may deem proper. (Rev., s. 1371; Code, s. 792; 1866, c. 35, s. 7; C. S. 1377.)

§ 153-222. Suits in name of county. — All suits brought on behalf of the institution shall, unless it be otherwise prescribed, be brought in the name of the county, to the use of the directors of the institution, without designating such directors by name. (Rev., s. 1372; Code, s. 798; 1866, c. 35, s. 13; C. S. 1378.)

§ 153-223. Counties may establish joint house of correction.—Any two or more counties, acting through their respective boards of commissioners, may jointly establish one or more convenient houses of correction, as is provided in the preceding sections, for the joint use of the counties so agreeing together; and the same may be established at such place or places, and be in all respects managed under such by-laws, rules and regulations as a majority of the general board of directors, to be appointed as hereinafter directed, shall determine. (Rev., s. 1373; Code, s. 799; 1866-7, c. 130, s. 1; C. S. 1379.)

§ 153-224. Directors of joint house of correction.—The board of commissioners of each of the respective counties agreeing as aforesaid to the establishment of one or more houses of correction for use jointly with any other county or counties shall annually appoint not less than three nor more than five directors in behalf of their several counties, and the directors so appointed by each of such counties shall together constitute the general board of directors of any such joint establishment. (Rev., s. 1374; Code, s. 800; 1866-7, c. 130, s. 2; 1919, c. 273, s. 3; C. S. 1380.)

§ 153-225. Directors to appoint manager; bond; term; duties.—Said general board of directors shall appoint a manager or superintendent for every such joint establishment, and such assistants and servants as they may deem necessary. The manager shall give bond with two or more able sureties, to be approved by said board, in such sum as may be required, payable to the state of North Carolina, and conditioned for the faithful performance of his duties. He shall hold his office during the pleasure of the general board of directors, and be, at all times, under their supervision; and of his misconduct they shall be the sole judges, and they may at any time remove him. He shall perform all such duties as may be prescribed by such general board of directors, and all such as may be incident to the office of manager by virtue of this chapter. (Rev., s. 1375; Code, s. 801; 1866-7, c. 130, s. 3; C. S. 1381.)

§ 153-226. Compensation of manager and other officers.—The compensation of the manager and such subordinate officers, assistants and servants as may be appointed by the general board shall be fixed by said general board. (Rev., s. 1375; Code, s. 801; 1866-7, c. 130, s. 3; C. S. 1382.)

Art. 18. Consolidation, Annexation and Joint Administration of Counties.

§ 153-227. Contiguous counties may consolidate into one.—Any two or more counties which are contiguous, or which lie in a continuous boundary may, in the manner herein prescribed, consolidate so as to form a single county. Where any group of counties so situated desires to effect such consolidation, a uniform resolution to this effect, setting forth the name of the proposed new county, shall be adopted by the governing bodies thereof, which resolution shall call a special election to be held on a specified date which shall be the same in all of said counties but not less than sixty nor more than ninety days from the last date of the adoption of such resolution in any of said counties. Said resolution shall also specify what group of counties it is proposed to consolidate, the name of the new county thus to be formed, and the count seat thereof. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein, once a week for a period of six weeks prior to the date of said election. (1933, c. 193, s. 1.)

§ 153-228. Election laws applicable. — The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the general assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed in the manner now prescribed by law governing elections for members of the general assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed consolidation be effected. For use in said election the county board of elec-

tions in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Consolidation
☐ Against Consolidation

Place a cross (x) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the result of said election to the governing bodies of all of the counties in said group, and each governing body shall cause the complete results of said election to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed consolidation, then said consolidation shall be declared to be in effect, and thereupon, the several counties shall stand abolished except as hereinafter provided, and the new county thus created shall for all purposes be constituted one of the counties of this state with all the rights, powers, and functions incident thereto under the general laws. If it appear that a majority in any one of said counties voted against the proposed consolidation, then said consolidation shall be declared to have failed for all purposes. (1933, c. 193, s. 2.)

§ 153-229. New county board of elections. — In case such consolidation be effected, the county boards of elections of the counties thus consolidated, acting together as one board, shall for the time being serve as a temporary county board of elections for the new county thus created, until the expiration of the terms for which they were appointed by the state board of elections. Thereafter the state board of elections shall appoint for such new county a county board of elections consisting of three members, in the manner and for the term now prescribed by law. (1933, c. 193, s. 3.)

§ 153-230. Special election for new county officers.—In case such consolidation be effected, then said temporary county board of elections shall immediately call and shall hold a special election in such new county, on a date not less than forty-five nor more than sixty days after the date on which said consolidation was voted into effect, for the purpose of electing for said new county all constitutional and other county and township officers, except justices of the peace, as now provided by law for counties throughout the state, including a board of county commissioners consisting of five members. No elections shall be held to fill any office theretofore existing in one or more of the group of counties thus consolidated if such office did not exist in each of said counties, but all of such offices peculiar to only a part of the counties brought into said consolidation shall be deemed abolished in respect to the new county. All constitutional county and township offices, all offices created for counties and townships by general laws, and all other offices in the group of counties thus consolidated, provided they existed in each of said counties, are hereby created for the new county effected by such consolidation, with the same rights, powers, duties and functions pertaining to such offices under the existing law. In order that elections by townships may be conducted, the various township lines and names as they existed before consolidation shall continue in effect, and townships of the several counties shall be deemed townships of the new county until thereafter altered in the manner prescribed by law. (1933, c. 193, s. 4.)

§ 153-231. Term of new officers; salaries. — All officers elected for the new county at said special election shall hold office until the next general election at which time their successors shall be elected for the regular term prescribed by law. The salaries of all officers elected for the new county at said special election shall be the same as those now fixed by law for such offices. In case the salaries of any officers in the counties thus consolidated were not uniform, then any officer elected for the new county at such special election shall be entitled to a salary equal to the highest salary paid for that particular office in any of said counties before such consolidation was effected. (1933, c. 193, s. 5.)

§ 153-232. Retention of old officers till qualification of new.—Notwithstanding such consolidation is voted upon favorably, all the existing officers in each of said counties shall continue to function as theretofore and shall have full authority to carry on the regular business of their respective counties, receiving their regular compensation therefor, until the officers for said new county shall have been elected and are qualified, as provided in § 153-230; and pending said election and the organization of the government of the new county, the several counties thus consolidated shall, for the purpose of carrying on their regular business, continue to exist and to function as separate county governments as fully as if said consolidation had never been voted upon. As soon as the officers for said new county are elected and qualified, then all public offices in the separate counties thus consolidated shall stand abolished and said separate counties shall stand dissolved and shall cease to exist for any and all purposes. (1933, c. 193, s. 6.)

§ 153-233. Powers and duties of new officers.— All officers elected for the new county shall become vested with all the rights, powers, duties, and functions which pertained to their respective offices in any one of the counties thus consolidated. It shall be the duty of all public officers theretofore serving in each of said counties forthwith to surrender and turn over to the corresponding officers of the new county all books, records, funds, and other property held by them in their respective offices. Said new county shall become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to each of said counties and shall have full power to collect and disburse any and all taxes, penalties, and other charges which had been assessed by or had become due to said counties prior to such consolidation. (1933, c. 193, s. 7.)

§ 153-234. Transfer of books, records, etc.—All records, papers, files, funds, and the like held by the clerks of courts in any of said counties shall forthwith be turned over to corresponding officials in the new county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. Wherever counties thus consolidated lie in different judicial districts, the new county thus established shall become a part of that judicial district in which the larger portion of its territory lies. (1933, c. 193, s. 8.)

§ 153-235. Liability for bonded indebtedness. — Any such new county thus established shall be liable for all of the bonded and other indebtedness of the separate counties so consolidated, and any and all rights which might have been enforced against any of said counties may be enforced against said new county as fully as though the proceeding were against the county originally liable. (1933, c. 193, s. 9.)

§ 153-236. Justices of the peace and constables. —All justices of the peace and constables holding office at the time of such consolidation shall continue to serve as such in and for the new county thus established until the expiration of the terms for which they were elected or appointed, at which time, justices of the peace and constables may be elected and appointed for said new county in the manner now provided by law. Such consolidation shall in no wise effect the validity of any proceeding pending in the court of any justice of the peace in said counties. (1933, c. 193, s. 10.)

§ 153-237. Representation in general assembly. —In the event such consolidation be thus effected, the consolidated county thereafter shall be entitled to the same representation in the house of representatives theretofore had by the several counties so consolidated until the next re-apportionment of the membership of the house of representatives by the general assembly. Nor shall such consolidation affect the existing lines of state senatorial or congressional districts or the representation therein. (1933, c. 193, s. 10½.)

§ 153-238. Merging of one contiguous county with another authorized.—Wherever two counties are contiguous, and it is their mutual desire that one of said counties shall be annexed to and merged in the other, such annexation may be effected in the manner herein prescribed. The governing body of each of said counties shall adopt a uniform resolution setting forth the willingness of one of said counties to become annexed to and merged in the other pursuant to the authority of §§ 153-238 to 153-246. Said resolution shall also call for a special election to be held on a specified date which shall be the same in both counties but not less than sixty nor more than ninety days from the last date on which said resolution was adopted in either of said counties. The governing body of each of said counties shall cause said resolution to be printed in some newspaper published therein once a week for a period of six weeks prior to the date of said election. (1933, c. 194, s. 1.)

§ 153-239. Election laws applicable. — The election thus called shall be held in each of said counties and shall be conducted pursuant to the general election laws governing elections for members of the general assembly. The registration books shall be kept open in each of said counties for a period of twenty consecutive days prior to said election, and notice of such registration shall be advertised and registrars appointed, in the manner now prescribed by law governing elections for members of the general assembly. Citizens of said counties who are registered and are otherwise qualified to vote shall be entitled to vote in said election in their respective counties for the purpose of determining whether it is the will of such voters that the proposed annexation be effected. For use in said election the county board of elections in each of said counties shall cause to be printed and provided at each polling place a sufficient number of ballots on which shall be printed the following:

☐ For Annexation
☐ Against Annexation

Place a cross (x) mark in the square preceding the proposition for which you desire to vote.

All such ballots shall have printed on the back thereof the facsimile of the signatures of the members of the county board of elections of the county in which they are being used, and none other than such official ballots shall be valid for use in said election. As soon as practicable the county board of elections in each of said counties shall certify the results of said election to the governing body of both counties, and thereupon, the governing body of each county shall cause the results of the said election in both counties to be spread of record upon their respective minutes. If it appear that a majority of those voting in each of said counties voted in favor of the proposed annexation, then said annexation shall be declared to be in effect. If it appear that a majority of those voting in either of said counties voted against the proposed annexation, then said annexation shall be declared to have failed for all purposes. (1933, c. 194, s. 2.)

§ 153-240. Dissolution of county merged. — In the event such annexation shall be voted upon favorably in each of said counties, then the county which was voted to be annexed to the other shall thereupon stand dissolved and abolished, and its territory thereby shall be transferred to and for all purposes shall become a part of the annexing county, and townships of the annexed county shall be deemed townships of the annexing county until thereafter altered in the manner prescribed by law. (1933, c. 194, s. 3.)

§ 153-241. Abolition of offices in merged county; transfer of books, records, etc. — In the event such annexation be thus effected, all public offices except those of justice of the peace and constable, in the county so annexed, shall stand abolished, and it shall be the duty of those who held such offices before annexation to turn over to the corresponding officers of the annexing county all books, records, funds, and other property theretofore held by them in their official capacity, and said corresponding officers of the annexing county shall be vested with all the rights of said offices thus abolished, and shall be en-

titled to the custody and control of all books, records, funds, and other property formerly held by the incumbents of such abolished offices. (1933, c. 194, s. 4.)

§ 153-242. Court records transferred; justices of the peace and constables hold over.—In the event such annexation be thus effected, all records, papers, files, funds, and the like held by clerks of courts in the annexed county shall forthwith be turned over to corresponding clerks in the annexing county, who shall docket all suits and proceedings in order that the same may be carried on under the regular legal procedure. All justices of the peace and constables holding office in the annexed county at the time of such annexation shall continue to serve as justices of the peace and constables of the annexing county in and for the new township, until the expiration of the terms for which they were elected or appointed, in as full a measure as if such annexation had not occurred, and the validity of proceedings pending before such justices of the peace at the time of annexation shall in no wise be affected thereby. Upon the expiration of their terms, justices of the peace and constables shall be elected or appointed in such annexed territory in the manner prescribed by law. Any other officers provided by the general law for a township shall be elected in the new territory at the next general election following such annexation. (1933, c. 194, s. 5.)

§ 153-243. Rights of annexing county. — In the event such annexation be thus effected, the annexing county shall forthwith:

(a) Become vested with title to all property of every kind and character, real, personal and mixed, theretofore belonging to the annexed county, and shall have full power to collect and disburse any and all taxes, penalties and other charges which had been assessed by or had become due to the annexed county prior to such annexation. Said annexing county shall also be liable for all bonded and other indebtedness of the annexed county, and any and all rights which might have been enforced against said annexed county may be enforced against the annexing county as fully as though the proceeding had been against the county thus annexed;

(b) Said annexing county shall treat said annexed county as a township or division of said annexing county, and said annexing county shall forthwith be vested with title to all property of every kind and character, real, personal and mixed, belonging to said annexed county, and have full power to collect any and all taxes, penalties and other charges which have been assessed by or become due to the annexed county prior to the annexation, and shall disburse the same for the payment of obligations of said annexed county; and the bonded indebtedness of said annexed county shall be a charge only on the property of the township or division of said annexing county which was comprised in the annexed county, and taxes for the payment of same shall be levied only on property within said township or division. And the property in said township or division constituting the property in the annexed county shall not be liable for any of the bonded or other indebtedness of the county annexing it, existing prior to said annexation, and no taxes shall be levied on the property of said township for the payment of same. (1933, c. 194, s. 6.)

§ 153-244. Plan of government.—At the time of entering the resolutions as set out in § 153-238, the counties in said resolution shall specifically provide whether plan A or plan B, as set out in § 153-243, shall govern the two counties as to the bonded indebtedness. (1933, c. 194, s. 7.)

§ 153-245. Membership in general assembly. — In the event such annexation be thus effected, the annexing county thereafter shall be entitled to the same representation in the house of representatives theretofore had by the annexed and annexing counties until the next reapportionment of the membership of the house of representatives by the general assembly. Nor shall such annexation affect the existing lines of state senatorial or congressional districts or the representation therein. (1933, c. 194, s. 7½.)

§ 153-246. Joint administrative functions of contiguous counties.—Any two or more counties which are contiguous or which lie in a continuous boundary are authorized, whenever it is deemed for their best interests, to enter into written agreements for the joint performance of any and all similar administrative functions and activities of their local governments through consolidated agencies, or by means of institutions or buildings jointly constructed, owned and operated.

Such written agreement shall set forth what functions or activities of local government shall thus be jointly carried on, and shall specify definitely the manner in which the expenses thereof shall be apportioned and how any fees or revenue derived therefrom shall be apportioned. Upon such agreement being ratified by the governing bodies of the counties subscribing thereto, it shall be spread upon their respective minutes.

Whenever any such agreement has been entered into, then the consolidated agency or institution set up to function jointly for the counties which are parties thereto, shall be vested with all the powers, rights, duties and functions theretofore existing by law in the separate agencies so consolidated.

No such agreement shall be entered into for a period of more than two years from the date thereof, but such agreements may be renewed for a period not exceeding two years at any one time.

In the same manner and subject to the same provisions as herein set out, any municipality may enter into such an agreement with the county in which it is situated, or may join with other municipalities in the same county in making such an agreement with said county, to the end that the functions of local government may, as far as practicable, be consolidated.

It is the purpose of this section to bring about efficiency and economy in local government through a consolidation of administrative agencies thereof, and to effectuate this purpose this section shall be liberally construed. (1933, c. 195.)

Local Modification.—Guilford: 1933, c. 195, s. 5.

Chapter 154. County Surveyor.

Sec.
154-1. Election and term of office.
154-2. Bond required.
154-3. May appoint deputies.
154-4. Power to administer oaths.

§ 154-1. Election and term of office. — There shall be elected in each county, by the qualified voters thereof, as provided for the election of members of the general assembly, a county surveyor, who shall hold office for the term of two years. (Const., Art. 7, s. 1; Rev., s. 4296; C. S. 1383.)

§ 154-2. Bond required. — The county surveyor of each county shall enter into bond in the sum of one thousand dollars, payable to the state of North Carolina, with sufficient surety, for the faithful discharge of the duties of his office. (Rev., s. 303; Code, s. 2762; R. C., c. 42, s. 5; 1777, c. 114, s. 13; C. S. 1384.)

§ 154-3. May appoint deputies.—Every surveyor may appoint deputies, who shall, previous to entering on the duties of their office, be qualified in a similar manner with the surveyor; and the surveyor making such appointment shall be liable for the conduct of such deputies, as for his own conduct in office. (Rev., s. 1720; Code, s. 2763; R. C., c. 42, s. 6; 1779, c. 140, s. 5; C. S. 1385.)

§ 154-4. Power to administer oaths. — The county surveyors of the several counties are empowered to administer oaths to all such persons as are required by law to be sworn in making partition of real estate, in laying off widows' dower, in establishing boundaries and in surveying vacant lands under warrants. (Rev., s. 2361; Code, s. 3314; 1881, c. 144; C. S. 1386.)

Chapter 155. County Treasurer.

Sec.
155-1. Election of county treasurer.
155-2. Bond; penalty; when renewed.
155-3. Local: Commissioners may abolish office and appoint bank.
155-4. Office includes person acting as treasurer.
155-5. Is treasurer of county board of education.
155-6. Sheriff acting as treasurer, bond liable.
155-7. Duties of county treasurer.
155-8. Compensation of county treasurer.
155-9. Committee to examine treasurer's books; compensation.
155-10. Treasurer not to speculate in county claims; penalty.
155-11. Treasurer administers property held in trust for county.
155-12. Treasurer to take charge of county trust funds; additional bonds.
155-13. Commissioners to keep record of trust funds.
155-14. Treasurer to exhibit separate statement as to trust funds.
155-15. Treasurer to pay no claim unless audited.
155-16. Treasurer to deliver books, etc., to successor.
155-17. Action on treasurer's bond to be by commissioners.
155-18. Officers failing to account to treasurer sued by commissioners.

§ 155-1. Election of county treasurer. — In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, a treasurer. (Rev., s. 1394; Const., Art. VII, s. 1; C. S. 1387.)

Local Modification.—Buncombe: 1937, c. 103; Caswell: Pub. Loc. 1941, c. 157; Chowan: 1941, c. 35(a); Mitchell: 1931, c. 53; 1941, c. 168.

§ 155-2. Bond; penalty; when renewed. — The county treasurer, before entering upon the duties of his office, shall give bond with three or more sufficient sureties, to be approved by the board of commissioners, payable to the state, conditioned that he will faithfully execute the duties of his office, and pay according to law, and on the warrant of the chairman of the board of commissioners, all moneys which shall come into his hands as treasurer, and render a just and true account thereof to the board when required by law or by the board of commissioners. The penalty of his bond shall be a sum not exceeding the amount of the county and local taxes assessed during the previous year, and the board of commissioners at any time, by an order, may require him to renew, increase or strengthen his bond. A failure to do so within ten days after the service of such an order shall vacate his office, and the board shall appoint a successor. (Rev., s. 297; Code, s. 766; 1868-9, c. 157, s. 4; 1895, c. 270, s. 2; 1899, c. 132; 1899, c. 207, s. 4; 1899, c. 54, s. 52; 1901, c. 536; 1903, c. 12, s. 2; C. S. 1388.)

Local Modification.—Craven, Forsyth: C. S. 1388.

§ 155-3. Local: Commissioners may abolish office and appoint bank.—In the counties of Bladen, Carteret, Chatham, Cherokee, Chowan, Craven, Edgecombe, Granville, Hyde, Madison, Mitchell, Montgomery, Martin, Moore, Onslow, Perquimans, Polk, Rowan, Stanly, Tyrrell, Transylvania, and Union, the board of county commissioners is hereby authorized and empowered, in its discretion, to abolish the office of county treasurer in the county; but the board shall, before abolishing the office of treasurer, pass a resolution to that effect at least sixty days before any primary or convention is held for the purpose of nominating county treasurer. When the office is so abolished, the board is authorized, in lieu of a county treas-

urer, to appoint one or more solvent banks or trust companies located in its county as financial agent for the county, which bank or trust company shall perform the duties now performed by the treasurer or the sheriff as ex officio treasurer of the county. Such bank or trust company shall not charge nor receive any compensation for its services, other than such advantages and benefit as may accrue from the deposit of the county funds in the regular course of banking, or such sum as may be agreed upon as compensation between said board of county commissioners of Transylvania county and Chatham county and such bank or banks as may be designated by said board of county commissioners. This alternative shall apply only to Chatham and Transylvania counties: Provided, in said county of Chatham the county commissioners of said county shall fix the compensation to be allowed said bank designated as said financial agent of said county which compensation shall not exceed the sum of five hundred dollars per annum and said bank is to furnish, without cost to the county, a good and sufficient bond as such financial agent.

The bank or trust company, appointed and acting as the financial agent of its county, shall be appointed for a term of two years, and shall be required to execute the same bonds for the safe keeping and proper accounting of such funds as may come into its possession and belonging to such county and for the faithful discharge of its duties, as are now required by law of county treasurers. (1913, c. 142; Ex. Sess. 1913, c. 35; 1915, cc. 67, 268, 458, 481; 1919, c. 48; 1925, c. 46; 1933, c. 63; C. S. 1389.)

§ 155-4. Office includes person acting as treasurer.—The office of county treasurer shall always be construed to refer to, and include, the person authorized by law to perform the duties of that office in any county, if there is no county treasurer therein. (Rev., s. 1396; Code, s. 770; C. S. 1390.)

§ 155-5. Is treasurer of county board of education.—The county treasurer is ex officio treasurer of the county board of education. (Rev., s. 1396; Code, s. 770; C. S. 1391.)

§ 155-6. Sheriff acting as treasurer, bond liable.—In counties where the office of county treasurer is abolished, and where the sheriff is authorized to perform the duties of county treasurer, the bond he gives as sheriff shall be construed to include his liabilities and duties as such county treasurer, and may be increased to such amount by the board of commissioners as may be deemed necessary to cover the trust funds coming to his hands. (Rev., s. 1397; Code, s. 769; 1879, c. 202; C. S. 1392.)

§ 155-7. Duties of county treasurer. — It is the duty of the treasurer—

1. To keep county moneys. To receive all moneys belonging to the county, and all other moneys by law directed to be paid to him; to keep them separate and apart from his own affairs, and to apply them and render account of them as required by law.

2. To keep true accounts. To keep a true account of the receipts and expenditures of all such moneys, taking proper vouchers in every case in books provided for that purpose at the expense of the county; which said books shall at all times show the date, amount, and from whom he has received such moneys; the date, amount, and to whom he has paid out any of the said moneys; the total amount received and the total amount paid out during the current fiscal year for school purposes, for general county purposes, for jury fund, and for each special purpose, all separately kept, so that at all times his said books shall correctly and accurately show the condition of the said several accounts. His account of expenditures for general county purposes shall also show separately the amounts expended each year on account of the county home, indigent persons, jails, workhouses, courthouse, bridges, insolvent fees, courts, and such other special accounts as the board of commissioners of the county require, the total of said accounts being the aggregate amount expended during the fiscal year for general county purposes. He shall post at the courthouse door on the first Monday in each month a correct statement of such receipts and expenditures, showing the amount received, and from what source, and the amounts paid out, and to whom, and for what purpose, and the balance in his hands belonging to the county.

3. To call on county officers for funds in their hands. To call on the sheriff, or the clerk of the superior court, or other officer having county moneys in his hands, at least once in each month, or oftener if necessary, to pay over to him, and to account for all such moneys.

4. To keep accounts of fines, etc. To enter in a book to be kept by him the exact amount of any fine, penalty or forfeiture paid over to him, giving the date of payment, the name of the clerk or other person so paying the same, the name of the party from whom such fine, penalty or forfeiture was collected, and in what case.

5. To exhibit to the board of commissioners his books and accounts as treasurer for examination. To exhibit his books and accounts and moneys once every three months, or oftener, if the board of commissioners of his county deem it necessary, to a committee to be composed of the chairman of the board of commissioners and one other person to be selected by the board of commissioners, who shall be an expert accountant. It is the duty of this committee to examine the books and accounts of his office, and to see that the accounts are correctly and properly kept, and to count the money in the hands of the treasurer and to see that it corresponds with the amount shown by the books to be in his hands. At every such examination of the books and accounts of his office the county treasurer shall exhibit a full perfect and itemized statement to said committee of the use he has made of every dollar of public funds in his hands since the last exhibition of his books to said committee; and if any part of said funds has been loaned out, this statement shall state to whom loaned and on what security and the amount of interest paid on said loan, and such interest shall be covered into the county treasury by the treasurer. This statement shall be sworn to and published in a county newspaper or at the courthouse door. Nothing herein contained shall

be construed to authorize the county treasurer to lend any public funds.

If at any time there is a deficit in the amount of money in the hands of the treasurer, the committee shall so report to the board of commissioners, whose duty it is to institute proceedings in the superior court against said treasurer for violation of his official duties. (Rev., s. 1398; Code, ss. 96, 773; 1889, c. 242; C. S. 1393.)

§ 155-8. Compensation of county treasurer. — The county treasurer shall receive as compensation in full for all services required of him such a sum, not exceeding one-half of one per cent on moneys received and not exceeding two and a half per cent on moneys disbursed by him, as the board of commissioners of the county may allow. As treasurer of the county school fund he shall receive such sum as the board of education may allow him not exceeding two per cent on disbursements; and the said commissions shall be paid only upon the order of the county board of education, signed by the chairman and secretary, and the county board of education is hereby forbidden to sign any such order until the treasurer shall have made all reports and kept all such accounts required by law in the form and manner prescribed: Provided, that said treasurer shall be allowed no commission or compensation for receipts and disbursements of any loan or loans made to the county by the state board of education out of the state literary fund, the special building fund, nor from funds derived from county or district bond issues for the building of school-houses: Provided, that in counties where the treasurer's total compensation cannot exceed two hundred and fifty dollars per annum the treasurer may be allowed, in the discretion of the board of county commissioners and of the board of education, as to the school fund, a sum not exceeding two and one-half per cent on his receipts and not exceeding two and one-half per cent on his disbursements of all funds handled by him; but the compensation allowed by virtue of the provisions of this last proviso shall not be operative to give a total compensation in excess of two hundred and fifty dollars per annum to such treasurers. (Rev., s. 2778; Code, s. 770; 1899, c. 233; 1909, c. 577; 1913, c. 144; 1919, c. 254, s. 9; 1924, c. 121, s. 6; C. S. 3910.)

§ 155-9. Committee to examine treasurer's books; compensation.—The board of commissioners shall allow to the committee who examine the books and moneys of the treasurer the same pay per diem that is received by a member of the board, not to exceed pay for one day's service for each examination. (Rev., s. 2779; Code, s. 774; 1879, c. 33; C. S. 3916.)

§ 155-10. Treasurer not to speculate in county claims; penalty.—No county treasurer purchasing a claim against the county at less than its face value is entitled to charge the county a greater sum than what he actually paid for the same; and the board of commissioners may examine him as well as any other person on oath concerning the matter. Any county treasurer who is concerned or interested in any such speculation shall forfeit his office. (Rev., s. 1399; Code, s. 772; 1868-9, c. 157, s. 8; C. S. 1394.)

§ 155-11. Treasurer administers property held in trust for county.—All real and personal property held by deed, will or otherwise by any person or officer in trust for any county, or for any charitable use to be administered in and for the benefit of such county or the citizens thereof, shall be transferred to and vest in the county treasurer, to be administered and applied by him under the direction of the board of commissioners, upon the same uses, purposes and trusts as declared by the grantor, testator or other person in the original deed, devise or other instrument of donation. (Rev., s. 1400; Code, s. 778; 1869-70, c. 85; C. S. 1395.)

§ 155-12. Treasurer to take charge of county trust funds; additional bonds.—It is the duty of the county treasurer to take charge of all such trust funds and property; but he shall not do so without giving a bond payable to the state, in a penalty double the estimated value of said property or funds, with three or more sureties, each of whom is worth at least the amount of the penalty of the bond over and above all his liabilities and property exempt from execution, which bond shall be taken by the board of commissioners, and recorded and otherwise treated and dealt with as the official bond of the treasurer. (Rev., s. 1401; Code, s. 779; 1869-70, c. 85, s. 2; C. S. 1396.)

§ 155-13. Commissioners to keep record of trust funds.—The board of commissioners shall keep a proper record of all such trust property or charitable funds, and when necessary shall institute proceedings to recover for the treasurer all such as may be unjustly withheld. (Rev., s. 1402; Code, s. 780; 1869-70, c. 85, s. 3; C. S. 1397.)

§ 155-14. Treasurer to exhibit separate statement as to trust funds.—The county treasurer, whenever he is required to exhibit to the board of commissioners the financial condition of the county, shall exhibit also distinctly and separately the amount and condition of all such trust funds and property, how invested, secured, used, and other particulars concerning the same. (Rev., s. 1403; Code, s. 781; 1869-70, c. 85, s. 4; C. S. 1398.)

§ 155-15. Treasurer to pay no claim unless audited.—It is unlawful for the county treasurer to pay a claim against the county, unless the same has been audited and allowed by the board of commissioners. (Rev., s. 1404; Code, s. 777; 1868, c. 19; C. S. 1399.)

§ 155-16. Treasurer to deliver books, etc., to successor.—When the right of any county treasurer to his office expires, the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall, upon his oath, or, in case of his death, upon the oath of his personal representative, be delivered to his successor. (Rev., s. 1405; Code, s. 767; 1868-9, c. 157; C. S. 1400.)

§ 155-17. Action on treasurer's bond to be by commissioners.—The board of commissioners shall bring an action on the treasurer's bond whenever they have knowledge or a reasonable belief of any breach of the bond. (Rev., s. 1406; Code, s. 771; 1868-9, c. 157; C. S. 1401.)

§ 155-18. Officers failing to account to treasurer sued by commissioners.—In case of the failure or

refusal of a sheriff, clerk, or other officer to account and pay over, when called on as directed in this article, the treasurer shall report the facts to the board of commissioners, who may forthwith bring suit on the official bond of such delinquent officer, and the said board is also allowed to bring suit on the official bond of the clerk of the superior court of any adjoining county. (Rev., s. 1407; Code, s. 775; 1868-9, c. 157, s. 10; C. S. 1402.)

Chapter 156. Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

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SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Art. 1. Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding. — The proceeding under this subchapter shall be the same as prescribed in the chapter Eminent Domain, article 2, Condemnation Proceedings. (Rev., s. 4028; Code, s. 1324; C. S. 5260.)

Local Modification.—Alexander, Little River Drainage District: Pub. Loc. 1927, c. 484; Iredell: Pub. Loc. 1937, c. 591; Pasquotank: Pub. Loc. 1923, c. 181; Pub. Loc. 1927, c. 264; Pub. Loc. 1929, c. 471; Robeson: Pub. Loc. 1927, c. 197; Rowan: Pub. Loc. 1937, cc. 591, 592; Tyrrell: Pub. Loc. 1927, c. 336; City of Washington: Pr. 1921, c. 149.

§ 156-2. Petition filed; commissioners appointed. —Any person owning pocosin, swamp, or flat lands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular

circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties. (Rev., s. 3983; Code, s. 1297; R. C., c. 40, s. 1; 1795, c. 436; 1852, c. 57, ss. 1, 2; C. S. 5261.)

§ 156-3. Duty of Commissioners.—The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed; but in assessing such damages, benefits shall be deducted. (Rev., s. 3984; Code, s. 1298; R. C., c. 40, s. 2; 1795, c. 436; 1852, c. 57, ss. 1, 2; C. S. 5262.)

§ 156-4. Report and confirmation; easement acquired; exceptions.—The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and cost of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet. (Rev., s. 3985; Code, s. 1299; R. C., c. 40, s. 3; 1795, c. 436, s. 2; 1835, c. 7; 1852, c. 57, ss. 1, 2; C. S. 5263.)

§ 156-5. Width of right of way for repairs.—The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam. (Rev., s. 3985a; Code, s. 1302; R. C., c. 40, s. 6; C. S. 5264.)

§ 156-6. Right of owner to fence; entry for repairs.—Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors. (Rev., s. 3986; Code, s. 1300; R. C., c. 40, s. 4; 1795, c. 436, s. 2; 1835, c. 7; 1852, c. 57, ss. 1, 2; C. S. 5265.)

§ 156-7. Earth for construction of dam; removal of dam.—The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered. (Rev., s. 3987; Code, s. 1301; R. C., c. 40, s. 5; C. S. 5266.)

§ 156-8. Earth from canal removed or leveled.—The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow. (Rev., s. 3988; Code, s. 1303; R. C., c. 40, s. 7; C. S. 5267.)

§ 156-9. No drain opened within thirty feet. — The proprietor of any swamp or flat lands through which a canal or ditch passes shall not have a right to open or cut any drain within thirty feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided. (Rev., s. 3989; Code, s. 1304; R. C., c. 40, s. 8; C. S. 5268.)

§ 156-10. Right to drain into canal.—Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Pro-

vided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county at term-time, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (Rev., s. 3990; Code, s. 1305; 1887, c. 222; R. C., c. 40, s. 9; C. S. 5269.)

§ 156-11. Expense of repairs apportioned.—Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns. (Rev., s. 3991; Code, s. 1306; R. C., c. 40, s. 10; C. S. 5270.)

§ 156-12. Notice of making repairs.—Whenever the canals or ditches for the reparation of which more than one person shall be bound under the provisions of § 156-11 shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent. (Rev., s. 3992; Code, s. 1307; R. C., c. 40, s. 11; C. S. 5271.)

§ 156-13. Judgment against owner in default; lien.—In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work. (Rev., s. 3993; Code, s. 1308; 1899, c. 396; R. C., c. 40, s. 12; C. S. 5272.)

§ 156-14. Subsequent owners bound. — All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land. (Rev., s. 3994; Code, s. 1309; R. C., c. 40, s. 13; C. S. 5273.)

§ 156-15. Amount of contribution for repair ascertained.—Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a justice of the peace, who shall give all parties at least three days notice, and shall summons two disinterested free-holders who, together with the justice, shall meet on the premises and assess the damages sustained by the applicant, whereupon the justice shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. The costs of this proceeding shall be in the discretion of the justice. (Rev., s. 3995; Code, s. 1310; 1889, c. 101; R. C., c. 40, s. 14; C. S. 5274.)

§ 156-16. Petition by servient owners against dominant owners.—Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three persons as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (Rev., s. 4016; 1889, c. 253; C. S. 5275.)

Local Modification.—Lenoir: Rev., s. 4016; 1891, c. 73.

§ 156-17. Commissioners to examine lands and make report.—The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage of the petitioner's land, and the protection and benefit of the defendant's lands; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the

lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns. (Rev., s. 4017; 1889, c. 253, s. 2; C. S. 5276.)

Local Modification.—Beaufort, Lenoir: Rev., s. 4017; 1891, c. 73, s. 2; Pub. Loc. 1911, c. 545.

§ 156-18. Cost of repairs enforced by judgment. —Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches. (Rev., s. 4018; 1889, c. 253, s. 3; C. S. 5277.)

§ 156-19. Obstructing canal or ditch dug under agreement. — Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not more than thirty days. (Rev., s. 3375; 1899, c. 255; C. S. 5278.)

§ 156-20. Right of dominant owner to repair.— In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days' notice to the servient owner, to enter along such canal and not more than twelve feet therefrom and clean out or remove obstructions or accumulated debris therefrom at his own personal expense or without cost to the servient owner. (Rev., s. 4025; 1899, c. 255, s. 2; C. S. 5279.)

§ 156-21. Canal for seven years necessity presumed; drainage assessments declared liens. — After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk and the said report or reports shall, when filed in the office of the clerk of the superior court, be a lien upon each tract of land embraced in said report or reports to the extent of the proportionate part of the costs stipulated in said report or reports as a charge against same, and shall have the effect and force of a judgment thereon, and that such judgments shall be subject to execution and collection as in cases of other judgments. (Rev., s. 4026; 1899. c. 255, s. 3; 1917, c. 248, s. 1; 1931, c. 227, s. 1; C. S. 5280.)

§ 156-22. Supplemental assessments to make up deficiency; vacancy appointments of assessment jurors.—The freeholders, commissioners or jurors, appointed in any application or proceeding filed or instituted under § 156-21 or any other section of article 1 of this chapter, are authorized and empowered during the establishment of and providing for the construction, maintenance and payment therefor, of such ditch, canal or drain, to make other and further assessments for the costs of establishment, construction and expense, when it shall be determined by the clerk of the Court that the provisions in the former report for the payment thereof are insufficient, and that such supplementary reports shall be made on the same basis of an equitable and just proportion, as made in the former report, which report or reports shall be filed with the clerk of the superior court and have the same force and effect as the former or original report.

In case of death, resignation, removal or for any other cause there becomes a vacancy as to the freeholders, commissioners or jurors, appointed to carry out the provisions of the sections contained in this chapter, the clerk of the superior court is authorized to fill such vacancy by the appointment of some disinterested freeholder in the county, and that the said person so appointed to fill such vacancy shall qualify before the clerk of the superior court before entering upon his duties. (1931, c. 227, s. 2.)

Local Modification.—Duplin: 1931, c. 227, s. 2.

§ 156-23. Easement of drainage surrendered. — If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceedings: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition twenty days

before the hearing thereof. (Rev., s. 4027; 1887, c. 222, s. 3; C. S. 5281.)

§ 156-24. Obstructing drain cut by consent.—If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., s. 3376; 1891, c. 434; C. S. 5282.)

§ 156-25. Protection of canals, ditches, and natural drains.—If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days. (Rev., s. 3382; 1901, c. 478; C. S. 5283.)

Local Modification.—Tyrrell: 1907, c. 438.

Part 2. Petition under Agreement for Construction.

§ 156-26. Procedure upon agreement.—1. Agreement; Names Filed.—Whenever a majority of the landowners or the persons owning three-fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the land owners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

2. Notice.—Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than ten and not more than twenty days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than thirty days and not more than forty days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

3. Hearing; Views.—Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm, or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within fifteen days from the date of their appointment.

4. Report; Bond.—Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the State of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

5. Construction Authorized.—Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right of way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands. (1917, c. 273, s. 1; C. S. 5284.)

§ 156-27. Recovery for benefits; payment of damages.—After the drainway herein provided for shall be completed the person, firm, or corpora-

tion cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits which may be done to the land to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and provided further, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cuttng the drainway shall be determined. (1917, c. 273, s. 2; C. S. 5285.)

§ 156-28. Notice to landowners; assessments made by viewers.—After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than twenty days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway. In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified. (1917, c. 273, s. 3; C. S. 5286.)

§ 156-29. Report filed; appeal and jury trial.—A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the viewers, and from the report any landowner affected thereby and the person, firm, or corporation digging or cutting such drainway shall have the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within twenty days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial be demanded, the clerk shall transfer the proceedings to the civil-issue docket and it shall be heard as other civil actions. If no jury trial be demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for. (1917, c. 273, s. 4; C. S. 5287.)

§ 156-30. Confirmation of report. — Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within twenty days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within twenty days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided. (1917, c. 273, s. 5; C. S. 5288.)

§ 156-31. Payment in installments. — The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court. (1917, c. 273, s. 6; C. S. 5289.)

Art. 2. Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor.—Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interests of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within ten days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such

creek, swamp, or branch drained three days notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars for the payment of current expenses not otherwise provided for in this article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Rev., ss. 3379, 4011; 1887, c. 267; C. S. 5290.)

Local Modification.—Hyde: 1901, c. 166.

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor.—The board provided for in § 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such water-course, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars, or imprisoned not exceeding two years. (Rev., ss. 3377, 4012; 1887, c. 267, ss. 2, 7; C. S. 5291.)

§ 156-34. Report filed.—The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited with the county treasurer by the petitioners. (Rev., s. 4013; 1887, c. 267, s. 3; C. S. 5292.)

§ 156-35. Owners to keep ditch open.—All persons whose lands shall be drained under the provisions of this article shall keep the ditch on their lands clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch. (Rev., s. 4014; 1887, c. 267, s. 4; C. S. 5293.)

§ 156-36. Compensation of board. — The compensation of the board shall be as follows: The county surveyor shall receive three dollars per day and the other members shall receive one dollar and fifty cents per day while engaged in the duties imposed in this chapter. (Rev., s. 4015; 1887, c. 267, s. 5; C. S. 5294.)

SUBCHAPTER II. DRAINAGE BY CORPORATION.

Art. 3. Manner of Organization.

§ 156-37. Petition filed in superior court.—Any proprietor in fee of swamp lands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie. (Rev., s. 3996; Code, s. 1311; 1868-9, c. 164, s. 2; C. S. 5295.)

§ 156-38. Commissioners appointed; report required.—On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report—

1. Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

2. Through the lands of what other persons a canal to drain the lands of the petitioner should properly pass, considering the interests of all concerned.

3. A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

4. The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

5. The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

6. The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary, and in which each ought, in equity and justice, to pay toward their construction and permanent support.

7. With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report. (Rev., s. 3997; Code, s. 1312; 1868-9, c. 164, s. 3; C. S. 5296.)

§ 156-39. Surveyor employed. — The commissioners may employ a surveyor to prepare the map required to accompany their report. (Rev., s. 3998; Code, s. 1313; 1868-9, c. 164, s. 4; C. S. 5297.)

§ 156-40. Confirmation of report.—If it appear that the lands on the lower level will be increased

in value twenty-five per cent or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three-fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable. (Rev., s. 3999; Code, s. 1314; 1868-9, c. 164, s. 5; C. S. 5298.)

§ 156-41. Proprietors become a corporation. — Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the expense of making and keeping up the improvement. (Rev., s. 4000; Code, s. 1315; 1868-9, c. 164, s. 6; C. S. 5299.)

§ 156-42. Organization; corporate name, officers and powers.—The clerk of the court of the county in which the proceeding is pending or any corporator, who is a petitioner, may call a meeting of the corporators, at which meeting the corporators shall choose a name for the corporation, unless the commissioners selected the name, elect a president, vice president, secretary and treasurer, but said officers shall be chosen or elected from the corporators who are petitioners in the proceeding; and they shall also choose or elect a board of directors and they shall be chosen or elected from the corporators who are petitioners in the proceeding. The corporators shall also make all by-laws and regulations, not contrary to law, which may be necessary and proper for effecting the purpose of the corporation, but said duty may be delegated to the board of directors. They shall fix the number of shares of stock, and assign to each proprietor or corporator his proper number, but this duty and right may be delegated to and done by the board of directors. The board of directors shall have such powers as are generally given to directors under the Corporation Law of the state; and they shall assess the sums or amount which shall be paid by each proprietor or corporator in conformity with and in compliance with the report of the commissioners on which the corporation is based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which such proceeding was instituted, the same shall be passed upon by the clerk of court and when approved by the clerk, said assessments shall become judgments against the several proprietors, corporators and owners so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also have power, if they deem it proper, to fix and prescribe the time, mode and manner of payment; and do such other things as are necessary for the construction, enlargement and keeping up or maintaining said canal and improvement. In every meeting of the corporators or stockholders, each proprietor or corporator shall have one vote for each share of stock owned by him. (Rev., s. 4001; Code, s. 1316; 1868-9, c. 164, s. 7; 1939, c. 180, s. 1; C. S. 5300.)

§ 156-43. Incorporation of canal already constructed; commissioners; reports.—Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one-third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the name of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such by-laws and regulations as such corporation, shall make and declare. But those who fail to avail themselves of the benefit of this subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on ten days notice to each owner of the land, under such rules and regulations as the by-laws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

1. The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all other particulars necessary for calculating the cost of enlarging and improving said canal.

2. The probable cost of the improvement and enlargement of said canal.

3. The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.

4. With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.

5. The said report shall be heard and deter-

mined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.

6. A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.

7. The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (Rev., s. 4008; 1889, c. 380; 1901, c. 670; 1939, c. 180, s. 2; C. S. 5301.)

Art. 4. Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land.—The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except a tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void. (Rev., s. 4002; Code, s. 1317; 1868-9, c. 164, s. 8; C. S. 5302.)

§ 156-45. Shareholders to pay assessments. — Every corporator shall be bound to obey the lawful by-laws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing. (Rev., s. 4003; Code, s. 1318; 1868-9, c. 164, s. 9; C. S. 5303.)

§ 156-46. Payment of dues entitles to use of canal.—Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. By-laws may be made to regulate these rights, but not so as to produce an inequality. (Rev., s. 4004; Code, s. 1319; 1868-9, c. 164, s. 10; C. S. 5304.)

§ 156-47. Rights of infant owners protected. — If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within twelve months thereafter, to enforce payment of any assessment, and he may, at any time within such twelve months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the twelve months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of a corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment. (Rev., s. 4005; Code, s. 1320, 1868-9, c. 164, s. 11; C. S. 5305.)

§ 156-48. Compensation for damage to lands.— If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damages the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporator as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment. (Rev., s. 4006; Code, s. 1321; 1868-9, c. 164, s. 12; C. S. 5306.)

§ 156-49. Dissolution of corporation. — If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it. (Rev., s. 4007; Code, s. 1322; 1868-9, c. 164, s. 13; C. S. 5307.)

§ 156-50. Laborer's lien for work on canal.— Whenever work or repair shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their lands, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against

the same by the corporation, and such lien may be enforced in the same manner as provided by the laws of this state for the enforcement of laborers' liens. (Rev., s. 4009; 1899, c. 600, s. 2; C. S. 5308.)

§ 156-51. Penalty for nonpayment of assessments.—Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for thirty days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for thirty days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining into the canal. (Rev., s. 4010; 1899, c. 600, s. 3; C. S. 5309.)

§ 156-52. Corporation authorized to issue bonds.—The corporations organized under this subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners. (1908, c. 75, s. 1; C. S. 5310.)

§ 156-53. Payment of bonds enforced.—Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations oganized under this subchapter shall have a right to enforce the lien created by § 156-52 by civil actions in the superior courts of the state. (1908, c. 75, s. 2; C. S. 5311.)

SUBCHAPTER III. DRAINAGE DISTRICTS.

Art. 5. Establishment of Districts.

§ 156-54. Jurisdiction to establish districts. — The clerk of the superior court of any county in the State of North Carolina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the state, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamp lands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the state, with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; 1921, c. 7; C. S. 5312.)

§ 156-55. Venue; special proceeding. — When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable in this proceeding, so far as may be practicable; and the proceedings hereunder may be ex parte or adversary. (1909, c. 442, ss. 2, 38; C. S. 5313.)

§ 156-56. Petition filed.—A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three-fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98; C. S. 5314.)

Local Modification.—Edgecombe: 1937, c. 278; 1939, c. 7; Halifax: 1939, c. 227; Hertford: 1939, c. 371; Iredell: 1925, c. 144; Nash: 1939, c. 376; Northampton: 1939, c. 227; Pitt: 1925, c. 205; Robeson: 1925, c. 144; Rowan: 1925, c. 144.

§ 156-57. Bond filed and summons issued.—Upon filing with the petition a bond for the amount of fifty dollars per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk shall issue a summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendants who cannot be personally served as provided by law. (1909, c. 442, s. 2; C. S. 5315.)

See Local Modification under § 156-56.

§ 156-58. Publication in case of unknown owners.—If at the time of the filing of the petition, or at any time subsequent thereto, it shall be

made to appear to the court by affidavit or otherwise that the owners of the whole or any share of any tracts of land, whose names are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C. S. 5316.)

§ 156-59. Board of viewers appointed by clerk.—Upon the return day the clerk shall appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the board of conservation and development; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S. 5317.)

See Local Modification under § 156-56.

§ 156-60. Attorney for petitioners.—The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C. S. 5318.)

§ 156-61. Estimate of expense and manner of payment.—The clerk shall make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After

the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement. (1917, c. 152, s. 1; 1941, c. 342; C. S. 5319.)

§ 156-62. Examination of lands, and preliminary report.—The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within thirty days, unless the time shall be extended by the court, a written report, which shall set forth:

1. Whether the proposed drainage is practicable or not.

2. Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.

3. Whether the improvement proposed will benefit the lands sought to be benefited.

4. Whether or not all the lands that are benefited are included in the proposed drainage district.

5. Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; 1927, c. 98, s. 2; C. S. 5320.)

§ 156-63. First hearing of preliminary report.—The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; 1927, c. 98, s. 3; C. S. 5321.)

§ 156-64. Notice of further hearing.—If the petition is entertained by the court, notice shall be given by publication for two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least fifteen days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C. S. 5322.)

§ 156-65. Further hearing, and district established.—At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional land owners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right of way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; 1927, c. 98, s. 4; C. S. 5323.)

§ 156-66. Right of appeal.—Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in term-time, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars, signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C. S. 5324.)

§ 156-67. Condemnation of land.—If it shall be necessary to acquire a right of way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be substantially as provided by law for the condemnation of rights of way for railroads so far as the same may be applicable, and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C. S. 5325.)

§ 156-68. Complete survey ordered. — After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding sixty days. (1909, c. 442, s. 9; C. S. 5326.)

§ 156-69. Nature of the survey. — The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established along the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned, so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done. (1909, c. 442, s. 10; C. S. 5327.)

§ 156-70. Assessment of damages. — It shall be the further duty of the engineer and viewers to assess the damages claimed by any one that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C. S. 5328.)

§ 156-71. Classification of lands.—It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or water-course or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one land owner need not be all in one class, but the number of acres in each class shall be ascertained, though its

boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands. Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separate parcel of land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law. (1909, c. 442, s. 12; 1923, c. 217, s. 1; C. S. 5329.)

§ 156-72. Extension of time for report.—In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C. S. 5330.)

§ 156-73. Final report filed; notice of hearing.—When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than twenty days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made for at least two weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other person interested within the district. (1909, c. 442, s. 15; C. S. 5331.)

§ 156-74. Adjudication upon final report. — At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs: Provided, that the board of conservation and development may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; 1925, c. 122, s. 4; C. S. 5332.)

§ 156-75. Appeal from final hearing.—Any party aggrieved may, within ten days after the confirmation of the assessor's report, appeal to the superior court in term-time. Such appeal shall be taken and prosecuted as now provided in special proceedings. Such appeal shall be based and heard only upon the exceptions theretofore filed by the complaining party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in term time or in chambers taken under this section or any other section or provision of the drainage laws of the state, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; 1923, c. 217, s. 2; C. S. 5333.)

§ 156-76. Compensation of board of viewers. —The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation particularly of the drainage engineer, the clerk shall confer fully with the board of conservation

and development and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall not exceed four dollars per day for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; 1925, c. 122, s. 4; C. S. 5334.)

§ 156-77. Account of expenses filed.—The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C. S. 5335.)

§ 156-78. Drainage record.—The clerk of the superior court shall provide a suitable book, to be known as the "drainage record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C. S. 5336.)

Art. 6. Drainage Commissioners.

§ 156-79. Election and organization under original act.—After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election. Any vacancy thereafter occurring shall be filled in like manner. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of ..... District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. The treasurer of the county in which the proceeding was instituted shall be ex officio treasurer of such drainage commissioners. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S. 5337.)

Local Modification. — Columbus, Chadburn Drainage District: 1939, c. 70; Hyde, Mattamuskeet Lake District: 1909, c. 509; Pub. Loc. 1927, c. 407; Iredell, Davidson Creek Drainage District: 1933, c. 466.

See also, Local Modification under § 156-56.

§ 156-80. Name of districts.—The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and such district shall also be designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; the name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, one thousand nine hundred and seventeen. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S. 5338.)

§ 156-81. Election and organization under amended act.—

1. Method of Election.—In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one-half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

2. Organization.—Immediately after the election of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk, the clerk of the court shall notify each of them in writing to appear at a certain time and place within the county and organize. The clerk of the superior court shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he shall consider carefully and impartially the respective qualifications of each of the members for the position.

3. Term of Office.—The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization. One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two,

and three years, respectively, shall be designated by the clerk of the court or designated by lot among the members, in the discretion of the clerk. Thereafter each member shall be elected for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September. The clerk of the court shall record in the drainage record the date of election, the members elected, and the beginning and expiration of their term of office.

4. Vacancies Filled.—If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk shall keep a similar record of any election to fill vacancies, and the member or members shall be elected in like manner as the original members, and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the clerk of the superior court of any vacancy in the board.

5. Failure to Elect.—If for any reason the clerk of the court shall fail to provide for an election of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold their office as commissioners until their successors are elected and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, nineteen hundred and seventeen, and their successors shall be elected on the second Monday in August, nineteen hundred and seventeen, in the manner provided by law.

6. Meetings.—The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner of a majority in area of the land in the district.

7. Compensation.—The chairman of the board of drainage commissioners shall receive compensation based on an annual payment of fifty dollars per annum in districts containing less than five thousand acres in the aggregate, but the clerk of the superior court shall be authorized to increase this annual compensation to one hundred dollars if the duties required of the chairman shall appear to justify such increase. In addition, the chairman shall receive his actual and necessary expenses of travel and subsistence, for which he shall file an itemized statement of the amounts actually paid. The remaining two members of the board shall receive a compensation of not exceeding five dollars per day while necessarily engaged in attendance upon meetings of the board, or in the discharge of other necessary duties imposed by the board, and, in addition, shall receive their actual and necessary expenses in attending meetings of the board. The secretary of the board, if other than a member of the board, shall receive such compensation for work actually performed as may be determined by the board. In drainage districts of unusually large area and requiring greater time and attention, the chairman of the board may be paid a greater compensation than one hundred dollars per annum, to be allowed by the clerk of the superior court, based on a petition filed by the board with the clerk, setting forth all the facts necessary for a determination of the matter. All such payments allowed to the chairman and members of the board shall be paid by vouchers upon the treasurer of the district issued in proper form.

8. Application of Section.—The provisions of subsection one of this section with respect to the right to vote for and the manner of election of commissioners shall not apply to districts organized prior to the fifth day of March, one thousand nine hundred and seventeen, but in those districts the landowners shall be entitled to vote as provided by the law prior to that date. The term of office of boards of drainage commissioners in districts organized prior to the date last mentioned, and in which no election of drainage commissioners has been held under this section, shall expire on the thirtieth day of September, nineteen hundred and nineteen, and their successors shall be elected on the second Monday in August, nineteen hundred and nineteen, in the manner provided by this section. If for any reason the clerk of the court shall fail to provide for such election he shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold office as commissioners until their successors are elected and qualified. The length of the term of service of commissioners elected hereunder shall be as provided in subsection three of this section. (1917, c. 152, s. 5; 1919, cc. 109, 217; C. S. 5339.)

Local Modification.—Hyde, Mattamuskeet Drainage District: C. S. 5339; Pitt: 1935, c. 469, s. (4a); 1939, c. 350.

§ 156-82. Validation of election of members of drainage commission. — All irregularities caused by failure of any officer whose duty it was to provide for the election of a member or members of board of drainage commissioners of any drainage district, or the failure of any candidate to make a deposit as may be required by law, shall not invalidate such election where the following facts appear affirmatively:

(a) That said election was held at the time and place prescribed by law.

(b) That a ballot box was provided for the ballots cast for drainage commissioner.

(c) That the ballots were canvassed and the results declared by the judge of the general election.

(d) That the candidate receiving the greatest number of votes was declared elected.

(e) That no candidate for election as a member

of board of drainage commissioners made any deposit as prescribed by law.

(f) That the candidate receiving the majority votes at said election has already qualified and is acting as such drainage commissioner.

This section shall not apply to any election contested before March 9, 1921. (1921, c. 210; C. S. 5339(a).)

Art. 7. Construction of Improvement.

§ 156-83. Superintendent of construction. — The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction, by and with the approval and recommendation of the board of conservation and development. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the board of conservation and development, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner. (1909, c. 442, s. 20; 1923, c. 217, s. 3; 1925, c. 122, s. 4; C. S. 5340.)

§ 156-84. Letting contracts. — The board of drainage commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C. S. 5341.)

§ 156-85. Monthly estimates for work, and payments thereon; final payment.—The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C. S. 5342.)

§ 156-86. Failure of contractors; reletting. — If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C. S. 5343.)

§ 156-87. Right to enter upon lands; removal of timber.—In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C. S. 5344.)

§ 156-88. Drainage across public or private ways.—Where any public ditch, drain, or watercourse established under the provisions of this subchapter crosses a public highway, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the fund of the drainage district. Wherever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the

land to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the State Highway and Public Works Commission as to roads under its supervision, and, as to other roads, to the commissioners of the county where the road is located, of the amount of such assessment, and the commission or county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a highway by reason of enlarging any water-course, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the State Highway and Public Works Commission, or by such other official board or authority as by law shall be required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private road: Provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the State Highway and Public Works Commission or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S. 5345.)

§ 156-89. Drainage across railroads; procedure. —Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural water-course, and the same would cross the right of way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or water-course crosses the right of way of such company, the notice fixing the time of such meeting, which shall not be less than ten days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right of way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right of way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right of way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right of way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C. S. 5346.)

§ 156-90. Notice to railroad. — The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C. S. 5347.)

§ 156-91. Manner of construction across railroad.—

1. Duty of Railroad.—After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right of way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

2. Utilities Commission to Settle.—If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the utilities commission of the state, and thereupon the utilities commission shall cause an investigation to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the utilities commission thereon shall be binding upon the superintendent of construction representing the

district and the railroad company, and the work shall be done in such time as may be fixed by the utilities commission.

3. Penalty for Delay.—In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right of way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

4. Payment of Expense.—Within thirty days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right of way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1; C. S. 5348.)

§ 156-92. Control and repairs by drainage commissioners. — Whenever any improvement constructed under this subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or water-course in good repair, and for this purpose they may levy an assessment on the lands benefited by the construction of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or water-course in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or water-course constructed or improved under the provisions of this sub-chapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C. S. 5349.)

§ 156-93. Construction of lateral drains.—The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or water-course, as herein provided, shall have the right to use the ditch, drain, or water-course as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or water-course by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C. S. 5350.)

Art. 8. Assessments and Bond Issue.

§ 156-94. Total cost for three years ascertained. —After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, not exceeding ten per centum of the estimated actual cost of constructing the drainage works or the contract price thereof if such contract has not been awarded, and after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district. (1909, c. 442, s. 31; 1911, c. 67, s. 8; 1923, c. 217, s. 4; C. S. 5351.)

§ 156-95. Assessment and payment; notice of bond issue.—If the total cost of the improvement is less than an average of twenty-five cents per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as state and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may,

within fifteen days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law. (1909, c. 442, s. 32; 1911, c. 67, s. 9; C. S. 5352.)

§ 156-96. Failure to pay deemed consent to bond issue.—Every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this subchapter includes any firm, company, or corporation. (1909, c. 442, s. 33; 1911, c. 67, s. 10; C. S. 5353.)

§ 156-97. Bonds issued.—At the expiration of fifteen days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the county treasurer. It shall be optional with the board of drainage commissioners in the issuing of bonds to issue serial bonds in denominations of not less than one hundred dollars nor more than one thousand dollars, bearing not more than six per cent interest from date of issue, payable semiannually. The first annual installment of principal shall fall due not less than three years nor more than six years after date thereof, and each annual installment of principal shall not be less than five per cent nor more than ten per cent of the total bonds authorized and issued. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; 1923, c. 217, s. 5; C. S. 5354.)

§ 156-98. Form of bonds; excess assessment.—All bonds authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

All bonds of reclamation districts shall have that fact noted upon the face of the bond, either by stamping or printing the same thereon. All bonds of improvement districts shall also have that fact noted upon their face.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments or any deficit arising out of unforeseen contingencies there shall be levied, assessed and collected during each year when either the interest or principal or both interest and principal on the outstanding bonds shall be due, an assessment as will yield ten per cent more than the total of interest and principal due in such years; that is to say, for every one hundred dollars of principal and interest, or either, due in any one year, there shall be levied, assessed and collected a sufficient drainage assessment to yield one hundred and ten dollars for such year. When this excess of drainage tax so levied, assessed and collected shall accumulate so that the aggregate surplus in the hands of the treasurer of the district shall amount to more than fifteen per cent of the total principal of the bonds of the district outstanding and unpaid, then such surplus above fifteen per cent thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage work in such district in the manner provided by law: After all the drainage assessments have been collected except the last assessment, if the surplus which has accumulated amounts to more than five per cent of the total issue of bonds of the district, then and in such event the board of drainage commissioners may in their discretion apply such excess above five per cent toward the reduction of the total amount embraced in the last assessment, reducing the same pro rata as to each tract of land embraced in the district, and having regard to the classification, to the end that such reduction shall be fairly and justly made. As to such surplus as shall accumulate in the hands of the treasurer of the district over and above all obligations of the district which may be due, the treasurer is hereby directed to deposit same in some solvent bank or banks at the highest rate of interest obtainable therefor, and the said treasurer shall be authorized, if he deems it necessary, to demand satisfactory security for such deposits; but the said treasurer shall reserve the right to demand a repayment at any time upon giving not exceeding thirty days notice thereof. Whereas the proceeds of the first drainage assessment may not be collected and in the hands of the treasurer of the district prior to the maturity of the first and second semi-annual installments of interest upon the issue of bonds, the treasurer of the district is hereby directed to pay the interest coupons first maturing and also the interest coupons next maturing, if necessary, out of funds in his hands for the purpose of maintaining the improvement for the period of three years after the completion of the work or construction. As a surplus fund with the treasurer arising out of the annual additional assessment of ten per centum shall accumulate in any one year in excess of fifteen per centum of the total principal of the bonds of the district outstanding and unpaid, as herein provided, the treasurer shall transfer in each of such years such surplus fund to the fund for maintaining the improvement after completion, as a reimbursement of the fund formerly withdrawn therefrom for the payment of the first and second installments of interest coupons until such reimbursement shall be

fully made. The treasurer shall thereafter keep separate accounts of the proceeds of such additional ten per cent assessment remaining each year after the payment of all maturing obligations, and also a separate account of the funds provided for maintaining the improvement for the period of three years after completion of improvement and all payments therefrom and reimbursements thereto. (1917, c. 152, s. 13; 1923, c. 217, s. 6; 1927, c. 98, s. 5; C. S. 5355.)

§ 156-99. Application of funds; holder's remedy.—The commissioners may sell these bonds at not less than par and devote the proceeds to the payment for the work as it progresses and to the payment of the other expenses of the district provided for in this subchapter. The proceeds from such bonds shall be for the exclusive use of the levee or drainage district specified on their face, and shall be numbered by the board of drainage commissioners and recorded in the drainage record, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinafter provided. If any installment of principal or interest represented by the bonds shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six months, the holders of such bonds upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, wherein the court may issue a writ of mandamus against the drainage district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and cost of action; and such other remedies are hereby vested in the holders of such bonds in default as may be authorized by law; and the right of action is hereby vested in the holders of such bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this subchapter. The official bonds of the tax collector and county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bonds may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1911, c. 205; 1923, c. 217, s. 7; C. S. 5356.)

Local Modification.—Brunswick, Columbus: 1929, c. 299.

§ 156-100. Sale of bonds. — In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the state and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the purchaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest. Bonds of any drainage district heretofore sold or contracted to be sold by the local government commission in the manner provided by the local Government Act, either alone or in conjunction with the board of drainage commissioners, shall be deemed to have been lawfully sold or contracted to be sold. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15; 1941, c. 142; C. S. 5357.)

§ 156-101. Refunding bonds issued.—In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six per cent, payable semiannually, and shall be divided into such annual installments not exceeding ten per cent and not less than five per cent of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest. (1917, c. 152, s. 14; C. S. 5358.)

§ 156-102. Drainage bonds received as deposits. —The state treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina as deposits from banks, insurance companies, and other corporations required by law to make deposits with the state treasurer: Provided, that the attorney general shall have approved the form of such bonds. (1917, c. 152, s. 7; C. S. 5359.)

Local Modification.—Edgecombe, Pitt: 1937, c. 334.

§ 156-103. Assessment rolls prepared. — The board of drainage commissioners shall immediately prepare the assessment rolls or drainage tax lists, giving thereon the names of the owners of land in the district and a brief description of the several tracts of land assessed and the amount of assessment against each tract of land. The first of these assessment rolls shall be due and payable on the first Monday in September following the date of such bonds, and shall provide funds sufficient for the payment of interest on such bonds for one year. The second assessment roll shall make like provision for the payment of the interest for one year. Annual assessment rolls shall thereafter provide funds sufficient to meet the interest for one year on the issue of bonds outstanding. During the year previous to maturity of any annual installment due upon the principal of said bonds there shall be an assessment roll sufficient to provide funds for the payment of both the interest for one year and for the payment of the annual installment due upon the principal of the bonds. Such annual assessments shall be made from year to year to provide funds to meet the interest for one year and the annual installment of the principal due upon the bonds outstanding, until the whole principal due upon the outstanding bonds and the interest thereon shall be fully paid. In making up such assessment rolls there shall be included ten per cent additional as provided in § 156-98. Each of the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments, shall thereupon have the force and effect of a judgment as in the case of state and county taxes. If the drainage commission which has assessed the lands of a drainage district prior to March 11th, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1st, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the preparation of such assessment rolls. The state having authorized the creation of drainage districts and having delegated thereto the power to levy a valid tax in furtherance of the public purposes thereof, it is hereby declared that drainage districts heretofore or hereafter organized under existing law or any subsequent amendments thereto are created for a public use and are political subdivisions of the state. (1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1; 1921, c. 7; 1923, c. 217, s. 8; C. S. 5360.)

§ 156-104. Application of amendatory provisions of certain sections; amendment or reformation of proceedings.—All the provisions of chapter 217 of the Public Laws of 1923 amendatory of §§ 156-71, 156-75, 156-83, 156-94, 156-97, 156-98, 156-99 and 156-103 shall apply to all drainage districts which shall hereafter be organized, and also to all districts where proceedings for the organization thereof have been instituted and are now pending and where the bonds have not been actually issued, sold, and delivered to the purchaser thereof. If it shall be necessary to amend or reform any of the pleadings or orders made by the court or any action taken by the board of drainage commissioners in any drainage proceedings instituted and pending before March 6, 1923, full authority is granted to make any such amendments, to the end that the said drainage proceedings shall conform with the provisions hereof. (1923, c. 217, s. 9; C. S. 5360(a).)

Local Modification.—Hyde: C. S. 5360(a); 1923, c. 217, s. 10.

§ 156-105. Assessment lien; collection; sale of land.—The assessments shall constitute a first and paramount lien, second only to state and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the state and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal holiday, which may be designated by the Board of Drainage Commissioners. After any such sale date has been designated by the Board of Drainage Commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be re-advertised and sold on any day which the Board of Drainage Commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other re-

spects, except as herein or otherwise modified or amended, the existing law as to the collection of state and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in any drainage districts due in one thousand nine hundred and seventeen, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The one thousand nine hundred and thirty-one amendment to this section shall have the same force and effect from and after April thirteenth, one thousand nine hundred and thirty-one, as if it had been ratified and enacted prior to the first day of January, one thousand nine hundred and twenty-nine, and no sale of drainage lands held under the provisions of section five thousand three hundred sixty-one shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section five thousand three hundred sixty-one of the Consolidated Statutes prior to this amendment. (1911, c. 67, s. 12; 1917, c. 152, s. 9; Pub. Loc. 1923, c. 88, ss. 3, 4, 5; 1931, c. 273; C. S. 5361.)

Local Modification.—Franklin, Hyde, Nash, Wilson: Pub. Loc. 1923, c. 88.

§ 156-106. Assessment not collectible out of other property of delinquent. — Only the land assessed in the drainage proceeding shall be liable for the drainage tax or assessment, and no other property of the landowner shall or may be sold for said drainage tax or assessment: Provided, that this section shall not apply to any drainage bond sold and delivered prior to March 7, 1927, or to any litigation pending at that time. (1919, c. 282, s. 2; 1927, c. 139; C. S. 5362.)

Local Modification.—Cumberland, Robeson: 1927, c. 139, s. 1½.

§ 156-107. Sheriff in good faith selling property for assessment not liable for irregularity.—The sheriff who executes upon property for the collection of drainage assessments under the provisions of this article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal. (1919, c. 282, s. 4; C. S. 5363.)

§ 156-108. Receipt books prepared. — The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of....., delivered to the sheriff or tax collector as of the first Monday in September, 19.., for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners (1917, c. 152, s. 9; 1919, c. 208, s. 2; C. S. 5364.)

§ 156-109. Receipt books where lands in two or

more counties.—Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form: State of North Carolina—County of ..... The Sheriff or Tax Collector of ..... County: This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of ....., which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of .... These assessments are due on the first Monday of September, 19.., and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of ..... county, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law. In witness whereof, I have hereunto set my hand and official seal, this .... day of ....., 19.....

.....,

Clerk Superior Court .....County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of state and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the county treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this subchapter shall perform the duties required by this section for the county treasurer. (1917, c. 152, s. 11; C. S. 5365.)

§ 156-110. Authority to collect arrears.—If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year one thousand nine hundred and seventeen, one thousand nine hundred and eighteen, or one thousand nine hundred and nineteen. (1917, c. 152, s. 9; C. S. 5366.)

§ 156-111. Sheriff to make monthly settlements; penalty.—The sheriff or tax collector shall be required to make settlements with the county treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine and imprisonment, in the discretion of the court, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S. 5367.)

§ 156-112. Duty of treasurer to make payment; penalty.—It shall be the duty of the county treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The county treasurer shall be guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court, if he shall wilfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C. S. 5368.)

§ 156-113. Fees for collection.—The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed shall be two per cent of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one per cent of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or county treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised for paying off such bonds. (1911, c. 67, s. 13; 1925, c. 271, s. 1; C. S. 5369.)

Local Modification.—Pitt: 1925, c. 271, s. 2.

§ 156-114. Conveyance of land; change in assessment roll; procedure.—1. Status of Land Fixed.—The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

2. Conveyance before Final Report.—If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

3. Conveyance after district established.—After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall effect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

4. Duty of chairman of drainage commissioners and clerk.—The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

5. Failure of chairman of board to act.—If the chairman of the board of drainage commissioners shall fail to act when any petition shall be

submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be wilful, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

6. When owner may file petition with clerk.—If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

7. Effect of change in assessment roll.—No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

8. Clerk to prepare new assessment rolls.—It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

9. Number of copies.—In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safe keeping and reference by him.

10. Costs determined.—As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

11. Chairman represents board.—As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

12. Application of section.—The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C. S. 5370.)

§ 156-115. Warranty in deed runs to purchaser who pays assessment.—Where the land assessed by drainage commissioners under the provisions of this article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid. (1919, c. 282, s. 3; C. S. 5371.)

§ 156-116. Modification of assessments.

1. Relevy.—Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

2. Upon sale of land for assessments.—If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the county treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the county treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institutue an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created, and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

3. Surplus funds.—If the funds in the hands of the county treasurer at any time, arising under this section or in any other manner, shall be greater than is necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the county treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

4. Insufficient funds.—If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there

shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed accordingly to law, and shall be certified to the tax collector as herein provided.

5. Additional bonds issued.—If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

6. Manner of issue.—The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than twenty days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the interest and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five per cent of the total amount originally issued. The additional issue of bonds shall bear six per cent interest per annum and may be made payable in ten annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court. (1909, c. 442, s. 35; 1911, c. 67, s. 15; C. S. 5372.)

§ 156-117. Subdistricts formed. — Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district. (1917, c. 152, s. 8; C. S. 5373.)

§ 156-118. Bonds for improvement and maintenance; petition.—The board of drainage commissioners for any drainage district heretofore or that may hereafter be formed shall have the right to issue and sell bonds for the maintenance or improvement of their district, if, in the opinion of said board of drainage commissioners, it would be an unreasonable burden on any of the landowners of said district to levy an assessment as provided in § 156-92 and amendments thereto, sufficient to do the necessary maintenance or improvement: Provided, that the board of drainage commissioners shall first petition to the clerk of superior court of the county in which their drainage district was formed, setting forth the facts that the canals in their districts are not sufficient to afford proper drainage, and that, in the opinion of the board, the said canals need to be recleaned, widened, deepened, or lengthened, or that additional ca-

nals should be cut in certain places, and that the said work will cost more than an average of one dollar ($1.00) per acre for all of the lands in the district, and to raise such an amount by levying one assessment would be an unreasonable burden on a part of the landowners of their district, and they ask the court to allow them to issue and sell bonds for a sufficient amount to do the work which is needed to be done. (1923, c. 231, s. 1; C. S. 5373(a).)

§ 156-119. Viewers; appointment and report.—Immediately after the presentment of such a petition, the clerk shall appoint a board of viewers (of the same qualifications as is required when a drainage district is first formed) to view the said district over, and report to him (not later than twenty days from date appointed) whether or not any or all of the work asked for in the petition should be done, and whether or not the cost of the work which should be done would be an unreasonable burden on any of the landowners if collected by one assessment, or would it be better to allow a bond issue to cover the work. (1923, c. 231, s. 2; C. S. 5373(b).)

§ 156-120. Disallowance of petition; order; reclassification of lands; map and profile.—If the board of viewers do not favor the bond issue it will be the duty of the clerk to not allow same, but the petition may be presented again any time after six months. If the board of viewers report that a bond issue is preferable, the clerk shall order the board of viewers to make a profile, the same as is required when a district is first formed, and if it is the opinion of the board of drainage commissioners that, on account of subdivisions, a new map of the district should accompany the profile, then the clerk shall order the board of viewers to make a new map of the district, showing the present landowners, and to reclassify all land which has been subdivided since the original map was made, which has not heretofore been reclassified. Said map and profile shall show the total acres in each class for each tract, whether it has been subdivided or not, to be the same as was shown on the original map before the lands were subdivided. It shall also be the duty of the board of viewers to change any line between two or more land-owners which can be proven to their satisfaction was not correctly shown on the original map, but the total acres of each class for the two or more tracts combined must be the same as when shown by the original classification. Said map and profile shall be filed with the clerk, together with an estimated cost of the work to be done; they shall be filed with the clerk in the same time and same manner as is required when a district is first formed. (1923, c. 231, s. 3; C. S. 5373(c).)

§ 156-121. Redress to dissatisfied landowners.—Any one owning land which has been reclassified by the board of viewers who is dissatisfied with their classification shall have the same redress as has heretofore been provided where divisions of classification have been made by a petition to the clerk or otherwise. (1923, c. 231, s. 4; C. S. 5373(d).)

§ 156-122. Increase to extinguish debt.—If in the opinion of the board of drainage commissioners it would help the sale of the maintenance or improvement bonds, or they would deem it necessary under the provision of § 156-101, they may, with the approval of the clerk of the superior court, add to the amount estimated by the board of viewers a sufficient amount to pay off all outstanding obligations of the district, leaving this their only bond issue. (1923, c. 231, s. 5; C. S. 5373(e).)

§ 156-123. Proceedings as for original bond issue.—The compensation of the board of viewers and their assistants, together with all other expenses in connection with this bond issue, shall be paid in the same manner, the duties and power of the clerk, and the duties and power of the board of drainage commissioners, the bonds shall be advertised and sold, divided into such annual installments, bear such a rate of interest, the landowners shall be given the same notices and the same rights to pay cash, the contract shall be let and supervised, and contractor paid the same, as if this was the original bond issue. (1923, c. 231, s. 6; C. S. 5373(f).)

§ 156-124. No drainage assessments for original object may be levied on property when once paid in full.—Whenever any assessment has been made or may be made by any drainage district formed under the laws of the state of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. (1933, c. 504; 1935, c. 469, s. 5.)

Local Modification.—Mecklenburg: 1933, c. 504; 1935, c. 469, s. 5.

Art. 9. Adjustment of Delinquent Assessments.

§ 156-125. Adjustment by board of commissioners authorized.—The board of commissioners of any drainage district may, in connection with the issuance of bonds for the purpose of refunding outstanding bonds of the district, and in addition to preparing a new assessment roll, for the payment of principal and interest of such refunding bonds, and when the bonds so refunded constitute all of the bonds of the district for which an assessment has been made against property therein, adjust the uncollected delinquent installments of the assessment made upon property in the district, for the payment of principal and interest of the bonds so refunded and for other purposes authorized by law before said bonds were refunded. The adjustment of such delinquent assessments may include reduction of the principal amount of the delinquent installments, not exceeding fifty per centum thereof, to which reduced installments shall be added interest computed thereon, at a rate not less than the rate of interest of the refunding bonds, from the date of delinquency of said installments to the date of the refunding bonds, and shall include any costs legally incurred for the collection of the same; the date of delinquency shall be deemed

to be the first day of December following the date upon which each of said installments became due: Provided, however, all delinquent installments of such assessment shall be adjusted on the same basis and by the same method. (1935, c. 469, s. 1.)

§ 156-126. Extension of adjusted installments.—Upon adjustment of delinquent installments of any assessment as provided herein, the payment of all delinquent installments so adjusted may be extended over a period not exceeding the life of the issue of refunding bonds, but in no event over a period exceeding twenty years. Such extension shall be made by the preparation of assessment rolls, which shall provide for the payment of installments so adjusted in equal annual installments which shall become due annually on September first, in accordance with the original assessment, and shall bear interest at the rate of four per centum per annum from December first following their due date until paid. Such assessment rolls shall be prepared and filed with the sheriff and the clerk of superior court and receipts shall be prepared and the same shall be collected in the same manner as other assessments of the district. (1935, c. 469, s. 2.)

§ 156-127. Special fund set up; distribution of collections. — The collection of assessments adjusted under this article and of interest accrued under § 156-126 shall be set aside in a fund and shall be applied as follows: one-third of such collections may be used solely for operating and administrative expenses of the district, but the remaining two-thirds thereof shall be reserved as additional security for the payment of the refunding bonds, or for the purchase and retirement of such refunding bonds, at prices not exceeding par and accrued interest. (1935, c. 469, s. 3.)

§ 156-128. Approval of adjustments by local government commission.—Any adjustments of delinquent assessments under the provisions of this article shall be effective only upon approval of the local government commission. (1935, c. 469, s. 4.)

§ 156-129. Amount of assessments limited; reassessments regulated. — The assessments made under this article shall in no instance, and against no piece of property, be greater in amount than that per cent which the per cent assessment authorized by this article bears to the unpaid original assessment upon each piece or tract of property within the district. In no instance, either under this article or any other law, shall any reassessment be made upon any piece of property for the purpose of providing money for the same purpose for which the original assessment was made, when the original assessment upon said property has been paid, or shall be paid prior to such general reassessment, nor to the extent that the original assessment has been paid. (1935, c. 469, s. 4(b).)

Art. 10. Report of Officers.

§ 156-130. Drainage commissioners to make statements.—It shall be the duty of the commissioners of all drainage districts in the state of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. After the construction of the canals has been concluded and the drainage commissioners have only to maintain the canals, said drainage commissioners shall only be required to file and post the annual statement required in § 156-131. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district. (1917, c. 72, s. 1; 1927, c. 98, s. 6; C. S. 5374.)

§ 156-131. Annual report.—At the end of each fiscal year the board of commissioners of all drainage districts in the state of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed, and shall post a copy of same at the courthouse door in the county where the district is organized, and, if there be a newspaper published in the county, shall publish such account therein. (1917, c. 72, s. 2; C. S. 5375.)

§ 156-132. Penalty for failure.—Any board of commissioners of any drainage district in the state, and each of the members thereof, which shall fail or refuse to file the statements or accounts, and shall fail to post or publish the same as provided in §§ 156-130 and 156-131, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1917, c. 72, s. 3; C. S. 5376.)

§ 156-133. Auditor appointed. — The board of county commissioners of each county in which one or more drainage districts have been established shall, annually, on the first Monday in May, appoint one of the members of the finance committee of the county, if the county has such finance committee, who shall be designated "Auditor for Drainage District;" but if the county has no finance committee, then the board of county commissioners shall appoint an intelligent and competent person of sufficient experience who shall be designated as the "Auditor for Drainage District." Such auditor shall receive such compensation as shall be agreed upon by the board of county commissioners, to be paid out of the general fund of said district, but not to exceed fifty dollars annually. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C. S. 5377.)

§ 156-134. Duties of the auditor. — The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer of the county for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the county treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a term of superior court in the county following the first Monday in July, and a copy to the solicitor of the judicial district in which the county is located, and it shall be the duty of such solicitor to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C. S. 5378.)

Art. 11. General Provisions.

§ 156-135. Construction of drainage law.—The provisions of this subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this subchapter shall exclude all other remedies. (1909, c. 442, s. 37; C. S. 5379.)

§ 156-136. Removal of officers. — Any engineer, viewer, superintendent of construction or other person appointed under this chapter may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown. (1909, c. 442, s. 38; C. S. 5380.)

§ 156-137. Local drainage laws not affected.—This subchapter shall not repeal or change any local drainage laws already enacted. (1909, c. 442, s. 38½; C. S. 5381.)

§ 156-138. Punishment for violating law as to drainage districts.—If any person shall violate any of the provisions of law in reference to drainage districts as provided in this chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars or imprisoned not more than thirty days. (Rev., s. 3378; 1905, c. 541, ss. 7, 9; C. S. 5382.)

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Art. 1. Housing Authorities Law.

§ 157-1. Title of article.—This article may be referred to as the housing authorities law. (1935, c. 456, s. 1.)

§ 157-2. Finding and declaration of necessity.—It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the state and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the state and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

§ 157-3. Definitions. — The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than five thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Municipality" shall mean any city, town or incorporated village, other than the city as defined above, which is located within the territorial boundaries of an authority.

(6) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(7) "Government" shall include the state and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "State" shall mean the State of North Carolina.

(9) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(10) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or (b) to provide safe and sanitary dwelling accommodations for persons of low income. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(11) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodation.

(12) "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this article.

(13) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

(15) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(18) "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority: (1) live under unsafe or unsanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount that shall be determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding. (1935, c. 456, s. 3; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

§ 157-4. Notice, hearing and creation of authority.—Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of over-crowding, the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the Mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall

be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners; (2) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1935, c. 456, s. 4.)

§ 157-5. Appointment, qualifications and tenure of commissioners.—An authority shall consist of five commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official.

The commissioners who are first appointed shall be designated by the mayor to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. Three commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5.)

§ 157-6. Duty of authority and commissioners.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1935, c. 456, s. 6.)

§ 157-7. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for

materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1935, c. 456, s. 7.)

§ 157-8. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating wilfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such wilful violation.

A commissioner shall be deemed to have acquiesced in a wilful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1935, c. 456, s. 8.)

§ 157-9. Powers of authority. — An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to coöperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this arti-

cle; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150.)

§ 157-10. Cooperation between authorities.—Any two or more authorities may cooperate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, constructing or operating a housing project or projects located partly within the boundaries of each of said authorities. Any housing authority may construct and operate a housing project within the boundaries of any other housing authority provided that (1) such other housing authority consents thereto, and (2) said housing project is located within ten miles of the city which is included in the boundaries of the housing authority desiring to construct and operate such project. (1935, c. 456, s. 10.)

§ 157-11. Eminent domain.—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Sections 40-11 to 40-29, both inclusive;

(b) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1935, c. 456, s. 11.)

§ 157-12. Acquisition of land for government.—The authority may acquire by purchase or by the exercise of its power of eminent domain, as aforesaid, any property real or personal for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project. (1935, c. 456, s. 12.)

§ 157-13. Zoning and building laws.—All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. (1935, c. 456, s. 13.)

§ 157-14. Types of bonds authority may issue.—An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes. An authority shall also have power to issue or exchange refunding bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may

determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be: (a) exclusively the income and revenues of the housing project financed in whole or in part with the proceeds of such bonds; (b) exclusively the income and revenues of certain designated housing projects, whether or not they are financed in whole or in part with the proceeds of such bonds; or (c) the income and revenues of the authority generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state in their face) shall not be a debt of any city or municipality and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the state. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute.

This article without reference to other statutes of the state shall constitute full and complete authority for the authorization, issuance, delivery and sale of bonds hereunder and such authorization, issuance, delivery and sale shall not be subject to any conditions, restrictions or limitations imposed by any other law whether general, special or local. (1935, c. 456, s. 14; 1939, c. 150, s. 2.)

§ 157-15. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable semi-annually, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York or in the city of Chicago, Illinois, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1935, c. 456, s. 15.)

§ 157-16. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant that the authority warrants the title to the premises.

(11) To covenant as to the rents and fees to be charged, the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues and as to the use and disposition to be made thereof.

(12) To covenant as to the use of any or all of its property, real or personal.

(13) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan and/or grant; (b) all of the rents, fees and revenues of any housing project or projects or parts thereof; (c) any monies held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any monies held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and (e) any monies held for any other reserves or contingencies; and to covenant as to the use and disposal of the monies held in such funds.

(14) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(15) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(16) To prescribe the procedure, if any, by which the terms of any contract with bond holders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(17) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(18) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(19) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(20) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(21) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right without judicial proceedings to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the monies collected in accordance with the agreement of the authority with such obligee.

(22) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(23) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(24) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of the State and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in § 157-17. (1935, c. 456, s. 16.)

§ 157-17. Power to mortgage when project financed with governmental aid. — In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(a) To vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government shall be the holder of any of the bonds secured by such mortgage.

(b) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved.

(c) To vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved.

(d) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee (in its absolute discretion) shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid. (1935, c. 456, s. 17.)

§ 157-18. Remedies of an obligee of authority.—An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(c) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority. (1935, c. 456, s. 18.)

§ 157-19. Additional remedies conferrable by mortgage or trust indenture.—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1935, c. 456, s. 19.)

§ 157-20. Remedies cumulative.—All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1935, c. 456, s. 20.)

§ 157-21. Limitations on remedies of obligee.—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in § 157-17. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in § 157-17, and in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority, which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree. (1935, c. 456, s. 21.)

§ 157-22. Title obtained at foreclosure sale subject to agreement with government.—Notwithstanding anything in this article to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority whether pursuant to any forclosure of a mortgage, pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon. (1935, c. 456, s. 22.)

§ 157-23. Contracts with federal government.—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

§ 157-24. Security for funds deposited by authorities. — The authority may by resolution provide that (1) all moneys deposited by it shall be secured by obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or (2) by any securities in which savings banks may legally invest funds within their control or (3) by an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1935, c. 456, s. 24.)

§ 157-25. Housing bonds, legal investments and security.—The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of this article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this state: Provided, however, that nothing contained in this article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3.)

§ 157-26. Tax exemptions.—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes when same are held by the federal government or by any purchaser from the federal government or anyone acquiring title from or through such purchaser. (1935, c. 456, s. 26.)

§ 157-27. Reports.—The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1935, c. 456, s. 27.)

§ 157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by utilities commission. — Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 456, s. 28.)

§ 157-29. Rentals and tenant selection.—It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (c) to create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve. In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection: (a) it may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(b) it may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons; (c) it may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (d) it shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150.)

§ 157-30. Creation and establishment validated.—The creation and establishment of housing authorities under the provisions of chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended by chapter two, Public Laws of one thousand nine hundred and thirty-eight, Extra Session, and as further amended by chapter one hundred and fifty, Public Laws of one thousand nine hundred and thirty-nine, and any additional amendments thereto, known as the Housing Authorities Law [§ 157-1 et seq.], together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 1; 1941, c. 62, s. 1.)

§ 157-31. Contracts, agreements, etc., validated.—All contracts, agreements, obligations and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States housing authority, including (without limiting the generality of the foregoing) loan and annual contributions contracts and leases with the United States housing authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to coöperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 2; 1941, c. 62, s. 2.)

§ 157-32. Proceedings for issuance, etc., of bonds and notes validated.—All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 3; 1941, c. 62, s. 3.)

§ 157-33. Notice, hearing and creation of authority for a county.—Any twenty-five (25) residents of a county having a population of more than sixty thousand (60,000) may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such a petition such clerk shall give notice of the time, place and purposes of a public hearing at which the board of county commissioners will determine the need for an authority in the county. Such notice shall be given at the county's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing to be held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board of county commissioners shall determine (1) whether unsanitary or unsafe inhabited dwelling accommodations exist in the county and/or (2) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of the land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners

to act as an authority. Said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of state an appplication signed by them, which shall set forth (without any detail other than the mere recital) (1) that a notice has been given and public hearing has been held as aforesaid, that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners; (2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

The area of operation of such authority shall include said county but in no event shall it include any city as defined in this article.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4.)

§ 157-34. Commissioners and powers of authority for a county.—The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a housing authority created for a county shall not be subject to the limitations provided in clause (d) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4.)

§ 157-35. Creation of regional housing authority.—If the board of county commissioners of each of two or more contiguous counties having an aggregate population of more than sixty thousand (60,000) by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties shall thereupon exist for and exercise its powers and other functions in such counties, and thereupon any housing authority created for any of such counties shall cease to exist: Provided, that the board of county commissioners of a county shall not adopt a resolution as aforesaid if there is a housing authority created for such county which has any obligations outstanding.

The board of county commissioners of each of two or more said contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such board of county commissioners finds (and only if it finds) (a) unsanitary or unsafe dwelling accommodations exist in the area of its respective county and/or there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof and (b) that a regional housing authority for the purposed region would be a more efficient or economical administrative unit than a housing authority for an area having a smaller population to carry out the purposes of the housing authorities law and any amendments thereto, in such county. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings;

the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that both (a) and (b) of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding). After the appointment, as hereinater provided, of the commissioners to act as the regional housing authority, said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the secretary of the state an application signed by them, which shall set forth (without any detail other than the mere recital) (1) that the boards of county commissioners made the aforesaid determination and that they have been appointed as commissioners; (2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act; (3) the term of office of each of the commissioners; (4) the name which is proposed for the corporation; and (5) the location of the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The secretary of state shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the secretary of state shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the state, and shall record the same with the application.

The area of operation of such regional housing authority shall include all of the counties for which such regional housing authority is created and established but in no event shall it include any city which has heretofore established a housing authority pursuant to this article nor a city or town having a population in excess of five thousand (5,000).

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4.)

§ 157-36. Commissioners of regional housing authority.—When the board of county commissioners of each of two or more contiguous counties has adopted a resolution as provided above, such board of county commissioners shall thereupon appoint one person as a commissioner of the regional housing authority. The board of county commissioners of each such county shall thereafter appoint each person to succeed such commissioner. A certificate of the appointment of any such commissioner signed by the chairman of the board of county commissioners shall be conclusive evidence of the due and proper appointment of such commissioner. If the board of county commissioners of an even number of counties adopt resolutions as aforesaid, the governor of North Carolina shall appoint one additional commissioner to such regional housing authority. The governor shall likewise appoint each person to succeed such additional commissioner. A certificate of the appointment of any such additional commissioner shall be signed by the governor and filed with the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be conclusive evidence of the due and proper appointment of such additional commissioner. The commissioners of a regional housing authority shall be appointed for terms of five years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified.

For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the board of county commissioners appointing him, or in the case of the commissioner appointed by the governor, by the governor: Provided, that such commissioner shall have been given a copy of the charges against him at least ten days prior to the hearing thereon and: Provided, that such commissioner shall have had an opportunity to be heard in person or by counsel.

The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. (1941, c. 78, s. 4.)

§ 157-37. Powers of regional housing authority.—Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such

regional housing authority, have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a regional housing authority shall not be subject to the limitations provided in clause (d) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4.)

§ 157-38. Rural housing projects. — Housing authorities created for counties and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such lease or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this article. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. (1941, c. 78, s. 4.)

§ 157-39. Housing applications by farmers.— The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. (1941, c. 78, s. 4.)

Art. 2. Municipal Coöperation and Aid.

§ 157-40. Finding and declaration of necessity. — It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State, and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 408, s. 1.)

§ 157-41. Definitions. — The following terms, whenever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority organized pursuant to the housing authorities law of this State.

(2) "City" shall mean any city of the State having a population of more than fifteen thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of a housing authority.

(3) "Municipality" shall mean any city, town or incorporated village of the State.

(4) "Housing project" shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or insanitary housing, and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations. (1935, c. 408, s. 2.)

§ 157-42. Conveyance, lease or agreement in aid of housing project.—For the purpose of aiding and coöperating in the planning, construction and operation of housing projects located within their respective territorial boundaries, the state, its subdivisions and agencies, and any county, city or municipality of the state may, upon such terms, with or without considerations as it may determine:

(a) Dedicate, release, sell, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the United States of America or any agency thereof;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, which it is otherwise empowered to undertake;

(d) Plan or replan, zone, or rezone; make exceptions from building regulations and ordinances; any city or town also may change its map;

(e) Cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by it of its powers relating to the repair, closing or demolition of unsafe, insanitary or unfit dwellings;

(g) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with a housing authority respecting action to be taken pursuant to any of the powers granted by this article. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by the state, a city, county, municipality, subdivision or agency of the state without appraisal, public notice, advertisement or public bidding.

(h) With respect to any housing project which a housing authority has acquired or taken over from the United States of America or any agency thereof and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no city or county shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. (1935, c. 408, s. 3; 1939, c. 137.)

§ 157-43. Advances and donations by the city and municipality.—The council or other governing body of the city included within the territorial boundaries of such authority is authorized to make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of such housing authority, and to appropriate such amount to the authority out of any moneys in the city treasury not appropriated to some other purposes, and to cause the moneys so appropriated to be paid the authority as a donation, and moneys so appropriated and paid to a housing authority by a city shall be deemed to be a necessary expense of such city. In addition thereto, the city and any municipality located in whole or in part within the boundaries of a housing authority shall have the power annually and from time to time to make donations or advances to the authority of such sums as the city or municipality in its discretion may determine. The authority, when it has money available therefor, shall reimburse the city or municipality for all advances by way of loan made to it. (1935, c. 408, s. 5.)

§ 157-44. Action of city or municipality by resolution.—Except as otherwise provided in this article or by the constitution of the State, all action authorized to be taken under this article by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted. (1935, c. 408, s. 5.)

§ 157-45. Restrictions on exercise of right of eminent domain; duties of utilities commission; investigation of projects. — Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. That in addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of public convenience and necessity for said project. (1935, c. 408, s. 6.)

§ 157-46. Purpose of article.—It is the purpose and intent of this article that the State, its subdivisions and agencies, and any county, city or municipality of the State shall be authorized, and are hereby authorized, to do any and all things necessary to aid and coöperate in the planning, construction and operation of housing projects by the United States of America and by housing authorities. (1935, c. 408, s. 7.)

§ 157-47. Supplemental nature of article.—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1935, c. 408, s. 8.)

Art. 3. Eminent Domain.

§ 157-48. Finding and declaration of necessity.—It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 409, s. 1.)

§ 157-49. Housing project.—The term "housing project" whenever used in this article shall mean any undertaking (a) to demolish, clear, remove, alter or repair unsafe or insanitary housing and/or (b) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the occupants of such dwelling accommodations. (1935, c. 409, s. 2.)

§ 157-50. Eminent domain for housing projects.—Any corporation, which is an agency of the

United States of America, shall have the right to acquire by eminent domain any real property, including improvements and fixtures thereon, which it may deem necessary for a housing project being constructed, operated or aided by it or the United States of America. Any corporation borrowing money or receiving other financial assistance from the United States of America or any agency thereof for the purpose of financing the construction or operation of any housing project or projects, the operation of which will be subject to public supervision or regulation, shall have the right to acquire by eminent domain any real property, including fixtures and improvements thereon, which it may deem necessary for such project. A housing project shall be deemed to be subject to public supervision or regulation within the meaning of this article if the rents to be charged by it are in any way subject to the supervision, regulation or approval of the United States of America, the State or any of their subdivisions or agencies, or by a housing authority, city, municipality or county, whether such right to supervise, regulate or approve be by virtue of any law, statute, contract or otherwise.

Any such corporate agency of the United States of America or any such corporation, upon the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, may exercise the power of eminent domain pursuant to the provisions of either: (a) Sections 40-11 to 40-29, both inclusive; (b) Any other applicable statutory provisions, now in force or hereafter enacted for the exercise of the power of eminent domain. (1935, c. 409, s. 3.)

§ 157-51. Certificate of convenience and necessity required; right of appeal; investigation of projects.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the utilities commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the utilities commission of North Carolina, the said utilities commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 409, s. 4.)

Art. 4. National Defense Housing Projects.

§ 157-52. Purpose of article.—It is hereby found and declared that the National Defense Program involves large increases in the military forces and personnel in this State, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the State; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this State which impedes the National Defense Program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of National Defense activities in this State and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities which otherwise would not be provided at this time, and that such provisions are for the public use and purpose of facilitating the National Defense Program in this State. It is further declared to be the purpose of this article to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the Federal Government, or to cooperate with or act as agent of the Federal Government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in National Defense activities. (1941, c. 63, s. 1.)

§ 157-53. Definitions.—(a) "Persons engaged in National Defense activities," as used in this article shall include: Enlisted men in the military and naval services of the United States and employees of the War and Navy Departments assigned to duty at military or naval reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them.

(b) "Persons of low income," as used in this article, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(c) "Development" as used in this article, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the Federal Government.

(d) "Administration," as used in this article, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the Federal Government.

(e) "Federal Government," as used in this article, shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) The development of a project shall be deemed to be "Initiated," within the meaning of this article, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the Federal Government with respect to the exercise of powers hereunder in the development of such project of

the Federal Government for which an allocation of funds has been made prior to December thirty-first, one thousand nine hundred and forty-three.

(g) "State public body," as used in this article, shall include the State, its subdivisions and agencies, and any county, city, town or incorporated village of the State.

(h) "Housing authority," as used in this article, shall mean any housing authority established or hereafter established pursuant to article one of this chapter. (1941, c. 63, s. 8.)

§ 157-54. Rights, powers, etc., of housing authorities relative to National Defense Projects.—Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing authority shall initiate the development of any such project pursuant to this article after December thirty-first, one thousand nine hundred and forty-three.

In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities as provided in this article, and housing projects developed or administered hereunder shall constitute "housing projects" under article one of this chapter, as that term is used therein: Provided, that during the period (herein called the "National Defense Period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its authorized area of operation, or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the National Defense Program in this State and that the necessary safe and sanitary dwellings would not otherwise be provided when needed for persons engaged in National Defense activities, any project developed or administered by such housing authority (or by any housing authority cooperating with it) in such area pursuant to this article, with the financial aid of the Federal Government (or as agent for the Federal Government as hereinafter provided), shall not be subject to the limitations provided in § 157-29; and provided further, that, during the National Defense Period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvemeets furnished for or in connection with any such projects. After the National Defense Period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of article one of this chapter. (1941, c. 63, s. 2.)

§ 157-55. Cooperation with Federal Government; sale to same.—A housing authority may exercise any or all of its powers for the purpose of cooperating with, or acting as agent for, the Federal Government in the development or administration of projects by the Federal Government to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities and may undertake the development or administration of any such project for the Federal Government. In order to assure the availability of safe and sanitary housing for persons engaged in National Defense activities, a housing authority may sell (in whole or in part) to the Federal Government any housing projects developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project. (1941, c. 63, s. 3.)

§ 157-56. Coöperation of state public bodies in developing projects.—Any state public body shall have the same rights and powers to cooperate with housing authorities, or with the Federal Government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities that such state public body has pursuant to article two of this chapter, for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income. (1941, c. 63, s. 4.)

§ 157-57. Obligations issued for projects made legal investments; security for public deposits.—Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this article shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to article one of this chapter for the development of a slum clearance or housing project for persons of low income. (1941, c. 63, s. 5.)

§ 157-58. Bonds, notes, etc., issued heretofore, validated.—All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including cooperating with or acting as agent of the Federal Government in) the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority. (1941, c. 63, s. 6.)

§ 157-59. Further declaration of powers granted housing authorities.—This article shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities as provided in this article and for a housing authority to cooperate

with, or act as agent for, the Federal Government in the development or administration of similar projects by the Federal Government. A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the Federal Government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities and to effectuate the purposes of this article. (1941, c. 63, s. 7.)

§ 157-60. Powers conferred by article supplemental.—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority. (1941, c. 63, s. 9.)

Chapter 158. Local Development.

Sec.
158-1. Purposes of chapter.
158-2. Ratification or petition of voters required.
158-3. Election to adopt chapter.
158-4. Action to invalidate election; limitation.
158-5. Petition to adopt chapter in certain towns.
158-6. Effect of adoption of chapter.

§ 158-1. Purposes of chapter.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may annually set apart and appropriate from the funds derived annually from the general taxes levied and collected in such city, incorporated town, or county, an amount not less than one-fortieth of one per cent, nor more than one-tenth of one per cent, upon the assessed valuation of all real and personal property taxable in any such city, incorporated town, or county, which funds shall be used and expended under the direction and control of the mayor and board of aldermen, or other governing body of such city, or the governing body of any incorporated town, or the county commissioners of any county, under such rules and regulations or through such agencies as they shall prescribe, for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city, or incorporated town or in such county; encouraging the building of railroads thereto, and for such other purposes as will, in the discretion of the mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, increase the population, taxable property, agricultural industries and business prospects of any city, incorporated town, or any county. (1925, c. 33, s. 1.)

§ 158-2. Ratification or petition of voters required.—No city, incorporated town, or county, shall raise or appropriate money under this chapter unless and until this chapter shall have been approved by a majority of the qualified voters of such city, incorporated town, or county, at an election as provided in this chapter; or by a petition of the registered voters in any town of less than three thousand inhabitants, as provided in this chapter. (1925, c. 33, s. 2.)

§ 158-3. Election to adopt chapter.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may at any time by ordinance call a special election for the purpose of submitting the question of the approval of this chapter to the voters of such city, incorporated town, or county. In said ordinance said board of aldermen, or other governing body of any city, or town, or said county commissioners, shall specify the time of holding the election and determine and set forth whether or not there shall be a new registration of the voters for such election. Notice of the registration of the voters and of the election shall be given, the voters shall be registered, the election shall be held, the returns shall be canvassed, and the results shall be determined, declared and published under and pursuant to the provisions of § 160-387, known as the Municipal Finance Act, and as therein provided for an election upon a bond ordinance providing for the issuance of bonds for a purpose other than the payment of necessary expenses of a municipality. A ballot or ballots shall be furnished to each qualified voter at said election. The ballots for those who vote in favor of this chapter shall contain the words "for the act to aid in the development of any city, incorporated town, or county," and the ballots for those who vote against this chapter shall contain the words "against the act to aid in the development of any city, incorporated town, or county." Except as otherwise provided in said § 160-387, the registration and election shall be conducted in accordance with the laws then governing elections for municipal or county officers in such municipality or county, and governing the registration of the electors for such election of officers. (1925, c. 33, s. 3.)

§ 158-4. Action to invalidate election; limitation.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of the statement showing the result of the election. (1925, c. 33, s. 4.)

§ 158-5. Petition to adopt chapter in certain towns.—In any incorporated town of less than three thousand inhabitants, in lieu of an election as herein provided, the will of the voters may be determined by a petition in writing giving approval of this chapter, which petition shall be signed by at least three-fourths of all the registered voters of said municipality whose names

appeared upon the registration books of the municipality for the election of municipal officers next preceding the time of the filing of said petition: Provided, that such three-fourths of the voters shall be the owners of at least seventy-five per cent of the total taxable property of said town, as shown by the assessed valuation, and the tax lists of such town as last fixed for municipal taxation. The residence address of each signer shall be written after his signature; each signature to the petition shall be verified by a statement (which may relate to a number of signatures) made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths to the effect that the signature was made in his presence, and is the genuine signature of the person whose name it purports to be. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet. The board of aldermen or other governing body of said town shall canvass said petition and shall include in their canvass the voters signing the petition, and the number of voters upon the registration books and qualified to sign the petition, and the assessed valuation at last fixed for municipal taxation of the property owned by the voters signing the petition, and the entire assessed valuation of property within the town, and shall judiciously determine and declare the result of the canvass of said petition, and shall prepare and publish a statement of the result, and publish the same as required in the case of an election by ballot under this chapter. The same limitation upon the right of action or defense founded upon the invalidity of the petition shall apply in the case of an election by ballot under this chapter. (1925, c. 33, s. 5.)

§ 158-6. Effect of adoption of chapter.—If and when this chapter shall have been approved by the voters of any city, incorporated town, or county, at an election or by petition as provided by this chapter, then and thereafter the governing body of such city, or incorporated town, or the county commissioners of such county, may raise by taxation and appropriate money within the limits and for the purposes specified in this chapter. (1925, c. 33, s. 6.)

Local Modification.—Pamlico: 1925, c. 33, s. 7.

Chapter 159. Local Government Acts.

Art. 1. Local Government Commission and Director of Local Government.

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Art. 1. Local Government Commission and Director of Local Government.

§ 159-1. Official title. — This article shall be known and may be cited as the Local Government Act. (1931, c. 60, s. 1.)

§ 159-2. Definitions. — The word commission will herein be used to refer to the Local Government Commission created by this article; the word Director will refer to the Director of Local Government; the word unit will be used to refer to a county, city, town, incorporated village, township, school district, school taxing district or other district or political sub-division of government of the State; and where bonds or notes are mentioned reference shall be deemed made to any obligations to pay money issued by or in behalf of any unit unless otherwise indicated or specified. (1931, c. 60, s. 2.)

§ 159-3. Creation of local government commission.—There is hereby created a commission to be known as the local government commission, consisting of nine members of whom the state auditor and the state treasurer and the secretary of state and the commissioner of revenue shall be members ex-officio and of whom five members shall be appointed by the governor to hold office during his pleasure. One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the commission, both ex-officio members and appointed members, shall be required to give such bond, if any, as the governor may require. The state treasurer shall be ex-officio director of local government and shall also be the treasurer and chairman of the commission. The board shall elect a vice-chairman from its members who shall hold office at the will of the commission. The appointed members of the commission shall be entitled to ten dollars for each day actually spent in the service of the commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The director shall appoint some competent person as secretary of the commission and assistant to the director and may appoint such assistants as may be necessary, who shall be responsible to the director, and may fix their compensation subject to the approval of the governor. The commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this article. The commission shall hold quarterly regular meetings in the city of Raleigh at such place and times as may be designated by the commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the attorney general or any assistant thereof for legal advice in relation to its powers and duties. The functions of the local government commission and of the director of local government shall be maintained and operated as a separate and distinct division of the department of the state treasury. (1931, c. 60, s. 7; 1931, c. 296, s. 8; 1933, c. 31, s. 1.)

§ 159-4. Executive committee; powers; quorum. —The state auditor and state treasurer, the commissioner of revenue and secretary of state shall constitute the executive committee of the commission and shall be vested with all the powers of the commission except when the commission is in session and except as otherwise provided in this article. Action of the commission as a whole and of the executive committee shall be taken by resolution which shall be in effect upon

passage by a majority of the members of the commission or the committee present at the meeting at which such resolution is passed. A majority of the commission shall be a quorum. (1931, c. 60, s. 8; 1933, c. 31, s. 2.)

§ 159-5. Executive Committee may act for Commission; bond for expenses for attending special meetings.—All action herein required or permitted to be taken by the Commission may be taken by the Executive Committee and shall be regarded as action by the Commission unless otherwise herein expressly provided, but the Committee shall not overrule or reverse any action of the Commission as a whole. The Commission shall not be required to meet as a whole except at the times fixed for quarterly sessions, and may demand that any application for a special meeting may be accompanied by a bond or other security for the costs and expenses of such special meeting to be given by the unit or person at whose request the special meeting is called. (1931, c. 60, s. 9.)

§ 159-6. Review by Commission of actions of Executive Committee. — Action of the Commission taken by the Executive Committee, except approval of notes maturing not more than six months from their date, shall be subject to review by the Commission as a whole upon the application of any aggrieved party, including any taxpayer or citizen, and including any member of the Executive Committee, if the aggrieved party shall within five days after such action by the Executive Committee file with the Commission a request for such review. (1931, c. 60, s. 10.)

§ 159-7. Application to Commission for issuance of bonds or notes.—Before any bonds or notes are issued by or in behalf of any unit and before the question of such issuance shall be submitted at an election, except bonds or notes whose issuance has heretofore been approved by the State Sinking Fund Commission under the provisions of Public Laws 1929, c. 277, the board authorized by law to issue the same or an officer thereof shall make application to the Commission (either before or after such authorization) for its approval of the proposed bonds or notes and shall state such facts in such application or by exhibits annexed thereto in regard to such bonds or notes and such unit and its financial condition as may be required by the Commission. The Commission shall consider such application and shall determine whether the issuance of such bonds or notes is necessary or expedient. (1931, c. 60, s. 11.)

§ 159-8. Determining advisability of proposed issues.—In determining whether a proposed issue of bonds or notes shall be approved, the Commission may consider the necessity for any improvement to be made from the proceeds of any such bonds or notes, the amount of indebtedness of the unit then outstanding, the fact that sinking funds for existing debts have been adequately maintained or have not been adequately maintained, the percentage of collections of taxes for the preceding fiscal year, the fact of compliance or non-compliance with the law in the matter of budgetary control, the question of whether the unit is in default in the payment of any of its indebtedness or interest thereon, the existing tax rates, the increase of tax rate, if any, necessary to maintain such sinking funds adequately, the assessed value of taxable property, and the reasonable ability of the unit to sustain the additional tax levy, if any, necessary, to pay the interest and principal of the proposed obligations, as the same become payable. If the proposed issue is for a public improvement in the nature of establishing or enlarging a revenue producing enterprise, the Commission shall take into consideration the probable earnings of the improvement and the extent to which such earnings will be sufficient to pay the interest and principal when due of the proposed obligations or that part thereof to be devoted to such improvement. The Commission shall also consider the adequacy or inadequacy of the amount of the proposed issue for the accomplishment of the purpose for which the obligations are to be issued, and whether such amount is excessive. The Commission shall have authority to inquire into and to give consideration to any other matters which it may believe to have a bearing on the question presented. (1931, c. 60, s. 12.)

§ 159-9. Commission to order issue if satisfied of certain points enumerated; public hearing on refusal. — If, upon the information and evidence received the Commission is of the opinion (a) that issuance of the proposed obligations is necessary or expedient and (b) that the amount proposed is adequate and not excessive and, except as to funding and refunding bonds, (c) either that adequate sinking funds have been maintained or that reasonable assurance has been given that thenceforth they will be maintained to the extent required by or under the authority of law, and (d) that the increase in tax rate, if any, that will be necessitated for the proper maintenance of sinking funds as so required will not be unduly burdensome and (e) that the unit is not in default in the payment of the principal or interest of any of its indebtedness and (f) that the requirements of law for budgetary control have been substantially complied with and (g) that at least eighty (80%) per cent of the general taxes of the unit for the preceding fiscal year have been collected, then and in such event the Commission shall make its order approving such issuance. If upon the information presented the Commission is not of such opinion or is in doubt as to any facts or as to any conclusions to be drawn therefrom, it shall so notify the officer or board making the application, and if such officer or board so request, shall give notice that the Commission will hold a public hearing on the application at a time and place to be specified in such notice, at which public hearing the officers and citizens and tax-payers of the unit may be heard. The Commission may designate its Secretary or any other suitable person to conduct any such hearing and to prepare a digest of testimony and submit the same and his recommendations for the consideration of the Commission. (1931, c. 60, s. 13.)

§ 159-10. Order of refusal after hearing; vote of unit to veto action of Commission. — If after any such hearing the Commission should not be of such opinion, it shall enter an order giv-

ing its reasons for not holding such opinion and in that event the proposed obligations shall not be issued except in such amount and in such manner, if any, as the Commission may approve, or unless, and until, the proposed indebtedness shall have been submitted to and approved by a vote of the voters of the local unit for which such indebtedness is proposed, such election to be held in the manner, if any, provided by law for the holding of elections on the question of issuing such bonds, and otherwise in such manner as may be required by the Commission (1931, c. 60, s. 14.)

§ 159-11. Review by Commission of approval or refusal of Executive Committee. — An order of the Commission made by the Executive committee approving such issuance shall not be reviewable by the Commission as a whole unless request for such review shall be filed with the Commission within five days, Sundays excepted, after such order shall be given (except an order passed by unanimous vote of members present approving notes running not more than six months, which shall not be reviewable) but orders of the Commission by the Executive Committee declining to approve issuance may be reviewed by the Commission as a whole if application therefor shall be filed with the Commission within thirty days after such order. New evidence and information may be considered upon any such review, and the Commission as a whole shall not be bound by the evidence or information considered by the Executive Committee. (1931, c. 60, s. 15.)

§ 159-12. Legality of bonds and notes not involved.—The approval by the Commission of bonds or notes shall not extend to or be regarded as an approval of the legality of the bonds or notes in any respect. (1931, c. 60, s. 16.)

§ 159-13. Sale of bonds and notes.—All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the commission at its office in the city of Raleigh, but the commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the commission shall cause a notice of the proposed sale to be published at least once at least ten days before the date fixed for the receipt of bids (a) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the court house, and (b) such notice, in the discretion of the commission, may be published also in some other newspaper of greater general circulation published in the state. The commission may in its discretion cause such notice to be published in a journal approved by the commission and published in New York City, devoted primarily to the subject of state, county and municipal bonds; provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days notice has been given in the manner specified in clause (a) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the commission through the state treasurer may exchange any such bonds or notes for a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids a certified check upon an incorporated bank or trust company payable unconditionally to the order of the state treasurer for two per cent of the face value of the bonds and one-half of one per cent on notes bid for, drawn on some bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation thereto to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17; 1931, c. 296, s. 1; 1933, c. 258, s. 1.)

§ 159-14. Proposals opened in public; award; rejection of bids.—All proposals shall be opened in public and the bonds or notes shall be awarded to the highest legal bidder, if a fixed rate of interest is named in the notice, or shall be awarded to the highest bidder for the lowest interest rate upon which a legal offer is made if the notice states that bidders may specify the rate of interest, or, if a notice of sale of bonds states that bidders may name one rate for part of the bonds of an issue and another rate or rates for the balance, to the bidder offering to purchase the bonds at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon all of the bonds until their respective maturities, or, if a notice of sale of notes so provides, to the bidder offering to purchase the notes at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon the notes until their maturity. No legal bids may be rejected unless all bids are rejected. If the bids rejected contain any legal bid which is legally acceptable under the advertisement, the bonds or notes shall not be sold until after further advertisement and under the conditions herein prescribed for the first advertisement. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3.)

§ 159-15. Minimum price; private sale in event of no bids.—No bonds or notes shall be sold at less than par and accrued interest, nor except as herein otherwise provided or permitted shall any bonds or notes be sold except upon sealed proposals, after publication of notice as hereinabove provided, unless no bid is received upon such notice which is a legal bid and legally acceptable under such notice, in which event the bonds or notes may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice. (1931, c. 60, s. 19.)

§ 159-16. Rejection in event of objection by unit. — If after the receipt of bids and before an award of the bonds or notes an authorized representative of the unit shall object to any award which the Commission may be about to make pursuant to the foregoing provisions and shall not withdraw such objection, the Commission shall reject all bids and shall make no award until after further advertisement as herein provided. (1931, c. 60, s. 20.)

§ 159-17. Make-up of bonds or notes. — No such bond or note shall be engraved, lithographed, printed, typewritten or written upon more than one sheet of paper (but a separate sheet or sheets may be used for interest coupons), and the Commission may in its discretion require the use of a protectograph or other means to prevent the raising of the amount thereof or imitation of such bonds or notes. (1931, c. 60, s. 21.)

§ 159-18. Obligations of units must be certified by Commission.—No bonds or notes or other obligations of any unit hereafter issued shall be valid unless on the face or reverse thereof there be a certificate signed by the Secretary of the Commission or an assistant designated by him either (a) that the issuance of the same has been approved, under the provisions of the Local Government Act, or (b) that the bond or note is not required by law to be approved by the Commission. Such certificate shall be conclusive evidence that the requirements of this article as to approval by the Commission, advertisement and sale have been observed, and shall also be conclusive evidence that the requirements of §§ 159-19 and 159-20 have been complied with. (1931, c. 60, s. 22; 1931, c. 296, s. 2.)

§ 159-19. Detailed record of all issues to be kept by Commission.—Prior to the execution of such certificate the Commission shall cause to be entered of record in its office a description of such bonds or notes, giving their amount, date, the times fixed for payment of principal and interest, the rate of interest, the place or places at which the principal and interest will be payable, the denomination or denominations and the purpose of issuance, together with the name of the board in which is vested the authority and power to levy taxes for the payment of the principal and interest of such bonds or notes and a reference to the law under which it is claimed such bonds or notes are issued, and shall require to be filed with the Commission a statement of the recording officer of the unit that all proceedings of the board in authorizing the bonds or notes have theretofore been and remain correctly recorded in a bound book of the minutes and proceedings of the board, giving in such statement the designation of the book and the pages or other identification of the exact portion of the book in which such record was made. (1931, c. 60, s. 23.)

§ 159-20. Contract for services must be approved by Commission.—All contracts and agreements made by any unit with any person, firm or corporation for services to be rendered in the drafting of forms of proceedings for a proposed bond or note issue, except contracts and agreements with attorneys at law licensed to practice before the courts of the State within which they have their residence or regular place of business, which involve no agreement, express or implied, except for legal services, shall be void unless approved by the Commission, whose duty it shall be before causing the certificate of its approval to be endorsed or placed on any such bonds or notes to satisfy itself, by such evidence as it may deem sufficient, that no such contract not so approved by the Commission is in effect in relation to such bonds or notes. (1931, c. 60, s. 24.)

§ 159-21. State Treasurer to deliver bonds or notes to purchaser; application of proceeds. — When the bonds or notes are executed by the proper officers they shall be turned over to the State Treasurer and after the certificate of the Commission hereinabove required shall be placed thereon, he shall deliver them to the purchaser or order, collect the purchase price or proceeds and before the close of the following day remit the same to the lawful custodian of funds of the unit or, in his discretion, to the properly designated depositary or depositaries of the unit, after assurance that the safe-guarding of such proceeds has been provided as required by law and after deducting all necessary expense including the expense of advertising, selling, shipping and delivering the bonds or notes; nevertheless in the case of bonds or notes sold for refunding or funding purposes the Treasurer may provide that such proceeds shall be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness or under the conditions hereinabove provided he may provide for the exchange of such bonds or notes for the evidences of indebtedness to be refunded or funded thereby, or, if such indebtedness is not evidenced by bonds, notes, coupons or similar instruments, he may provide for the delivery of said new bonds or notes against a receipt or release from the creditor to whom or to which the indebtedness to be funded or refunded is owing. Coupons or notes issued in exchange for outstanding coupons shall be deemed to be notes issued for refunding or funding purposes, within the meaning of this section. (1931, c. 60, s. 25; 1935, c. 356, s. 2.)

§ 159-22. Suit on behalf of unit for fulfillment of contracts of sale. — The Commission shall have power to enforce by action or suit in Superior Court of the county or unit affected or in the Federal Court of the District, for and in behalf of the State or the unit affected, any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26.)

§ 159-23. Unit must remit interest and principal as they fall due; cancellation of obligations paid. — It shall be the duty of every officer of a unit upon whom is imposed by law the duty of remitting funds for the payment of bonds, notes and interest coupons of the unit to remit to the place at which the same are payable sufficient funds for the payment of such bonds, notes and coupons in sufficient time for the payment thereof as the same fall due, and at the same time to remit to such place of payment the necessary fiscal agency fees of the disbursing bank or trust company at which such bonds, notes or coupons are payable. Upon surrender of the bonds, notes or coupons so paid the same shall be cancelled. It shall be the duties of the officers remitting said funds to report to the Director, simultaneously with making the remittance, upon forms to be provided by the Director. (1931, c. 60, s. 27.)

§ 159-24. Records of unit sinking funds. — It shall be the duty of the Director to ascertain by reports which he is hereby authorized to require made to him by any financial officer of any unit and by such other means as he may determine upon, the amounts of sinking funds collected for the payment of bonds of each unit not maturing in annual series and the investments of such sinking funds and the rate of taxation levied to provide for such sinking funds. It shall be his further duty to determine from such information whether the provisions of law for the raising and maintenance and preservation of such sinking funds have been observed and if he shall find that in any respect such provisions of law have not been observed he shall issue an order to the officers and/or board members of such unit in charge of such matters who have failed to observe such provisions, requiring them to comply therewith and stating the amount or amounts to be raised annually by taxation for such purpose, and in other respects requiring such officers and/or board members fully to comply with such laws. Within five days after the issuance of any such order, unless the Commission in its discretion shall extend such time, any officer or board member receiving the same shall be entitled to apply to the Commission for a modification of such order, and unless modified by the Commission, and if so modified, to the extent of the order as so modified, it shall be the duty of all officers and board members to whom such order is directed to comply with the same. (1931, c. 60, s. 28.)

§ 159-25. Investment of unit sinking funds. — It shall be the duty of all officers having charge of the investment of sinking funds of each unit either to deposit such funds under security therefor as provided by this article, or to invest the same (or deposit in part and invest in part) in bonds or notes of the United States or of the state of North Carolina, or in bonds or notes of such unit, or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States, with its principal office in this state; provided, that no such funds may be so invested in a building and loan association unless and until authorized by the insurance commissioner, or in shares of a federal savings and loan association unless and until authorized by an officer of the Federal Home Loan Bank at Winston-Salem, or in such bonds or notes of North Carolina municipalities, counties and school districts as are eligible for investment of the sinking funds of the state under any law in force at the time of investment of such local sinking funds, provided, however, that no investment shall be made in any bonds or notes of any city, county or school district except with the approval of the commission, which is hereby directed to scrutinize with great care any applications for any such investment and to refrain from approving the same unless such investment is prudent and is safe in the opinion of the commission and unless the legality thereof has been approved by an attorney believed by the commission to be competent as an authority upon the law of public securities. No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146.)

§ 159-26. Notification to unit officers of unfavorable state of sinking funds; sale of unsafe investments. — If it shall appear to the Director at any time that the sinking funds of any unit are not deposited under security or invested in securities as required by this article, it shall be his duty to notify the officer or officers in charge of such sinking funds of such failure to comply with law, and thereupon it shall be the duty of such officer or officers to comply therewith within thirty days, except as to the sale of investments held by any such sinking fund which are not eligible for the investment thereof, and as to such investments it shall be the duty of such officer or officers to sell the same within nine months after such notification of the Director is received, at a price approved by the Director, provided, however, that the Commission in its discretion may extend from time to time the time for sale of any such investments, but no one extension shall be made to cover a period of more than one year from the time the extension is made: Provided further, that the Director in his discretion may extend for a period not exceeding ninety days the time for securing funds deposited in banks prior to March eighteenth, one thousand nine hundred and thirty-one, and the Commission may, in its discretion, further extend said time, but no such extension or extensions of the time for securing such funds shall be made for a period ending later than October first, one thousand nine hundred and thirty-one, without the approval of the Commissioner of Banks. (1931, c. 60, s. 30, c. 296, s. 6.)

§ 159-27. Reports to Director as to sinking funds.—It shall be the duty of all officers in charge of the sinking funds of units to report on forms to be furnished by the Director to the Director on the first day of July, one thousand nine hundred thirty-one, and on the first day of each January and July thereafter, a statement of the amounts of the sinking funds of such unit, and whether the same are on deposit, and if so,

how the same are secured, or whether the same are invested, and if so, a description of the investments with the respective amounts thereof, in order that the Commission and the Director may be kept informed in regard to such sinking funds; but the Commission or the Director may at any other times require such reports to be made and it shall be the duty of the officers in charge of the sinking funds of any unit to make such reports as herein provided. (1931, c. 60, s. 31.)

§ 159-28. Funds of unit on deposit must be secured by corporate surety bonds.—It shall be the duty of each officer having charge or custody of funds of a unit, of whatever kind or nature or for whatever purpose the same has been raised or shall be held, to keep them safely and to deposit the same in the depository or depositories designated in the manner provided by law; but before making such deposit, if the amount then on deposit shall exceed the amount insured by the Federal Deposit Insurance Corporation, he shall require of said depository or depositories that the excess of such deposit over and above the amount so insured shall be secured by a surety bond or bonds, issued by a surety company or companies authorized to transact business in the state of North Carolina, the form of such surety bonds to be approved by the commission in an amount sufficient to protect such excess deposits; but the commission may, at any time, in its discretion, require an additional bond: Provided, however, that in lieu of a surety bond both as to all or any part of such excess deposits it shall be lawful to secure the same by lodging with the proper custodian hereinafter provided for such securities as are by this article made eligible for investment of sinking funds of local units, such securities to be selected under the terms and conditions of investments of such sinking funds, including approval of certain classes of securities by the commission. Any bank or trust company furnishing United States government bonds, North Carolina state bonds, county or municipal bonds, as security for such excess deposits, shall deposit said bonds with another bank which has been approved by the commission as a depository bank for such purposes, the state treasurer, or the federal reserve bank, and said bonds when so deposited shall be held for the benefit of the unit and subject to the order of the governing body or board of such unit, and subject to the inspection at any time by a representative of the governing body or board of such unit and by a representative of the commission. Each such officer having charge or custody of the funds of a unit and the surety or sureties on his official bond, after a deposit of said funds has been secured by him in the manner hereinabove required, shall not be liable for any losses sustained by the unit by reason of the default or the insolvency of the said depository or depositories. No security shall be required for the protection of funds of a unit remitted to and received by any bank or trust company within or without the state of North Carolina for the sole and exclusive purpose of paying the maturing principal of or interest on bonds or notes of the unit, when such bank or trust company is the agreed place of payment of such principal or interest and when such funds are remitted within sixty days prior to the maturity of such principal or interest. (1931, c. 60, s. 32; 1931, c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1.)

Local Modification.—Alleghany, Ashe, Rockingham: 1935, c. 375, s. 2.

§ 159-29. Semi-annual reports to Director on status of unit funds.—It shall be the duty of all officers having the charge or custody of any funds of any unit to report to the Director on the first days of January and July of each year (or such other semi-annual dates as may be fixed by the Director) and at other times upon direction of the Commission or the Director the amounts of funds of the unit then in their charge or custody, and the amounts of deposits of such funds in any depositary or depositaries, and a description of the surety bonds or collateral securities deposited to secure the same. It shall be the duty of the Director to require such reports to be made and to see that the provisions of this section are complied with. (1931, c. 60, s. 33.)

§ 159-30. Officers of local units relieved of personal liability when bank deposits are insured.—If it shall be impossible or impracticable to safeguard any funds of the unit in the manner required by this article, if deposited in any depository within the unit, the officer having charge or custody of such funds may deposit the same without personal responsibility in any bank or trust company organized under the laws of the United States of America, or of any state within said country, either within or without the boundaries of said unit in which deposits are insured by the federal deposit insurance corporation, in accordance with the acts of Congress: Provided, that without the approval of the local government commission, the sum on deposit in any such bank, at any time, shall not exceed the amount insured by the said federal deposit insurance corporation. (1931, c. 60, s. 34; 1935, c. 424.)

Local Modification.—Ashe: 1935, c. 424, s. 2.

§ 159-31. Appointment of unit administrator of finance in event of default.—If funds sufficient for the payment of the principal and interest due at any time upon any valid indebtedness of any unit shall not be remitted for the payment thereof in sufficient time to pay the same when due the director may appoint a qualified person of good repute and ability as administrator of finance of such unit, at such compensation as may be determined by the director, but not in excess of three hundred dollars monthly nor for a period of more than one year except with the approval of the governor. It shall be the duty of such administrator of finance to take full charge of the collection of taxes in such unit and the charge and custody of all funds of the unit and the safeguarding thereof and of the disbursement of moneys for all purposes, or to take charge of such part of any or all such duties as the director may determine. The administrator may retain under his supervision and control any city or county officers or employees for the performance of any part of such duties falling within the lines of their customary office or employment or may remove any tax collector or accountant or other officer having connection with the collection and disbursement of funds of the unit in his discretion. The administrator shall

comply, on behalf of such units, with all the requirements of law applicable to such unit, officers and employees. Any questions or disputes arising out of the appointment of such administrator or his assumption of duties hereunder or as to his powers, may be presented to the commission on the application of any officer, taxpayer or citizen of the unit or on the application of the director, and the commission shall be empowered to determine the same. The compensation and expenses of the administrator, and the expenses of the director and the commission, arising out of the provisions of this section, shall be a charge against the unit and shall be paid by it and shall be deemed a special purpose for the payment of which this special provision of law is made, and the amount thereof shall be included in the budget of the unit for the following fiscal year.

One year after any unit shall have failed to remit the principal and/or interest due upon any valid indebtedness then outstanding, upon petition of the holders of fifty-one per centum of the indebtedness of the unit, the director shall appoint an administrator of finance, by and with the consent of the resident judge of the district in which the unit is located, who, upon his appointment, shall have the authority hereinbefore in this section conferred upon the administrator of finance.

The petition shall disclose all facts and circumstances available in connection with the issue in default, including the names and addresses of all known holders of such issue, and, insofar as the petitioning holders, shall contain a consent to the filing of the petition.

The order shall be in such form as the director and judge may determine, to include, however, such facts as may appear from the petition to be the facts with respect to the issue in default. It shall show the consent of the resident judge to the appointment of the administrator of finance named in the order.

Immediately upon the filing of the petition and the entry of the order, which shall be done within ten days after the date the petition is filed with the director, the director shall certify, over his hand and the seal of the treasurer, the petition and order to the superior court of the county where the unit is located, if it be a unit other than the county, and to the superior court of the county, if the unit be a county. Upon receipt of the certified petition and order, it shall be the duty of the clerk of the superior court to which certified to issue such notice as may be prescribed by the director, and cause the same to be published in a newspaper of general circulation published in the state and in a journal approved by the commission for "notice of sale" of evidences of indebtedness, once a week for four weeks, and issue a copy of such notice to all holders of the issue in default named in the petition. Such notice shall contain a provision requiring all holders of such issue to appear in person or through attorney, and disclose their name, address and amount of the issue held.

Upon the expiration of the period of publication hereinbefore prescribed, the cause shall be transferred by the clerk of the superior court to the civil issue docket of the court, and the same shall thereafter stand upon such docket to be proceeded with as in other civil actions, but shall be placed upon the trial calendar at each term of the court thereafter for the trial of civil actions until final action is entered by the court at term.

Any action taken in the cause shall be after notice issued and published as hereinbefore provided, but from any order entered, unless the holders of all of the issue in default shall have responded, shall remain open for a period of thirty days after the publication of the order as hereinbefore prescribed for publication of notice. If the holder of any amount of such issue in default shall, during said thirty-day period, file a petition for a modification or revocation of the order, said order shall not become effective until the petitioning holder or holders shall have been heard by the court. If the order shall be, on such petition, modified or revoked, the order modifying or revoking the order shall become the order of the court in the cause.

Upon the notice hereinbefore prescribed and in the manner herein provided, the court shall have authority to enter any order which shall be for the interest of the unit and the holders of the issue in default, but no order entered shall become finally operative until the expiration of the time hereinbefore provided for the filing of petitions for modification or revocation. Any order which is agreed to by the unit and the holders of the issue in default may be entered at any time, but such order shall be likewise published, and unless agreed to by the holders of the entire issue in default, shall become operative only after the expiration of the period hereinbefore provided for the filing of petitions for modification or revocation, and the court shall have authority, upon the filing of such a petition, to modify or revoke the order entered by agreement, which order then entered, shall thereupon become effective and operative.

The costs of all publications and of the issuance of all notices shall be paid by the administrator of finance: Provided, however, that the holders of the issue in default filing the original petition shall advance the necessary cost, but shall be reimbursed by the administrator of finance upon the docketing of the cause upon the civil issue docket of the superior court to which certified.

The court, with the consent of the director, for good cause shown, shall have the right to remove the administrator of finance appointed, and, with the consent of the director, appoint another administrator of finance in his place. The administrator of finance appointed upon the institution of the cause or thereafter by the court shall give such bond as shall be prescribed by the director and the resident judge of the district. The compensation shall be fixed for the administrator of finance by the director and the resident judge of the district and all costs shall be paid as provided in the first paragraph of this section. Until the final determination of the cause and the entry of an order finally discharging an administrator of finance, the administrator of finance shall have such powers and perform such duties as prescribed in the first paragraph of this section. (1931, c. 60, s. 36; 1933, c. 374.)

§ 159-32. Director to inform unit of amount of taxes to be levied.—At least thirty days before the time for the levy of taxes in each unit of the

State for the payment of the principal or interest of its obligations, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of each board having power to levy such taxes, a statement of the amount to be provided by taxation or otherwise for the payment of the interest and sinking fund requirements upon such obligations within the fiscal year and for the payment of the obligations maturing in such year. (1931, c. 60, s. 36.)

§ 159-33. Director to notify due dates of obligation.—At least thirty days before the date upon which the principal or interest of any obligation of any unit shall be payable, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of such unit a statement of the amount of principal and interest so payable and a statement of the requirement of this article that such amount shall be remitted to the place at which the same are payable. (1931, c. 60, s. 37.)

§ 159-34. Unit must levy sufficient taxes to provide for maturing obligations.—Any board whose duty it shall be to provide for the payment by taxation or otherwise of the principal or interest of any valid obligations of the unit shall make provision for such payment by the levy of such taxes as are authorized to be levied therefor at or before the time provided for such tax levy, or make other legal provision for such payment, and every member thereof who shall be present at the time for such levy or provision shall vote in favor thereof and shall cause his request that such tax levy or provision be made to be recorded in the minutes of the meeting: Provided, in making such levy any such board may determine and make allowance for moneys due to it and receipt of which may be reasonably anticipated by such unit. (1931, c. 60, s. 36; 1933, c. 332.)

§ 159-35. Failure to meet obligations when due if funds are in hand a misdemeanor.—If the officer of any unit whose duty it shall be to pay any of the principal or interest of valid obligations of the unit or to remit the same to the place of payment as provided in this article, shall have funds for such payment at his disposal but shall fail or refuse so to do within the time required hereby and in sufficient amount for such payment, whether or not such payment or remission for payment shall have been ordered or forbidden by any board or officer of the unit, the officer so failing or refusing shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 39.)

§ 159-36. Voting for appropriation for other purposes than obligations or application of funds otherwise a misdemeanor. — Every member of any board of a local unit who shall knowingly vote for any appropriation to any purpose other than the payment of the interest or principal or sinking fund of any bonds or notes of the unit any money raised by taxation or otherwise for such purpose, until all of such principal and interest shall have been paid, and any disbursing officer who shall knowingly pay out any of such money for any other purpose than the payment of such interest or principal or sinking fund until all of such principal and interest shall have been paid, whether or not such payment shall have been ordered or forbidden by any board or officer of the unit, shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 40.)

§ 159-37. False statement a misdemeanor. — If any officer or any member of any board upon whom duties are imposed by this article shall knowingly make or certify any false statement in any certificate or statement required or permitted by this article, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any one aggrieved thereby. (1931, c. 60, s. 41.)

§ 159-38. Wilful failure to perform duty a misdemeanor.—If any officer or any member of any board of any local unit upon whom duties are imposed by this article or of whom duties are required pursuant to the provisions of this article shall knowingly and wilfully fail or refuse to perform any such duty, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any aggrieved person. (1931, c. 60, s. 42.)

§ 159-39. Other violations misdemeanor.—Notwithstanding the declarations of this article that certain specific offenses shall constitute misdemeanors and be punishable, the wilful violation by the Director or by any member of the Commission or any officer or member of a board of a unit of any duty whatsoever imposed upon him by or under the provisions of this article, or his wilful failure, neglect or refusal to perform any such duty, shall be, and is hereby declared to be a misdemeanor, and shall be punishable by fine and/or imprisonment in the discretion of the court, and shall render the offender liable for damages at the suit of any aggrieved party. (1931, c. 60, s. 43.)

§ 159-40. Prosecution by Attorney General; investigation of charges. — In case of the violation of any criminal provisions of this article, the Attorney General of the State of North Carolina upon complaint of the Director, whose duty it shall be to make such complaint in case of any such violation, shall investigate the charges preferred and if in his judgment the law has been violated he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending person or persons. Upon request of the Governor, the Attorney General shall take charge of such prosecution and, at the request of the Governor, special counsel may be employed to assist the Attorney General or the Solicitor. (1931, c. 60, s. 44.)

§ 159-41. Removal by Governor of offending persons.—Without abating any of the provisions of this article for criminal and civil actions, and for penalties and damages, it shall be the duty of the Director in the case of any breach of the provisions of this article or any failure or refusal to comply with any requirement made herein or permitted to be imposed hereby, by any member of the Commission or by any officer or member of a board of any unit (but in case of any such non-compliance, failure or refusal by the Director himself, it shall be the duty of the Attorney General through the Solicitor of the proper district) to bring the offense to the attention of the Governor, who shall consider the same and may in his judgment remove from office the offending officer or member and appoint a successor, subject to other provisions of law as to the appointment or election of successors of officers or members so removed. Such order of removal, however, shall not be effective until after a hearing before the Commission, which shall set a time therefor and shall give due notice thereof to the offending officer or member, and the order of the Commission after such hearing, whether such order shall confirm or refuse to confirm the removal, shall be final. In the event the Commission shall refuse to confirm the order of removal such officer or member shall continue his duties as such officer or member, but otherwise shall be removed from office pursuant to the order of removal issued by the Governor. (1931, c. 60, s. 45.)

§ 159-42. Law applicable to all counties, cities and towns.—The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any special or local Act enacted before the adjournment of the Regular Session of the General Assembly in one thousand nine hundred and forty-one. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191.)

§ 159-43. Temporary loans and notes for.—In the issuance of notes for temporary loans as provided by the County Finance Act, the Municipal Finance Act and this article, the governing body may delegate to any officer of the unit the power to fix the face amount, the rate of interest, the time of maturity and the place of payment of principal and interest within and under the limitations, if any, established by the resolution authorizing the issue of such notes and the limitations fixed by this article and other laws. (1931, c. 60, s. 75, c. 296, s. 4.)

§ 159-44. Notes and bonds of units redeemable before maturity.—Any notes or bonds of a unit may (but need not) be made subject to call for redemption before maturity at the option of the unit issuing them, but no such bond or note shall be redeemed before maturity without the consent of the holder thereof, unless such bond or note states on its face that the unit reserves the right to redeem the same before maturity. There may also be incorporated in or endorsed upon notes, bonds or coupons of a unit provisions reserving to the unit the right to extend the time for payment thereof to a fixed or determinable future time, specified in such provisions. The word "determinable" is here used in the same sense that it is used in the Negotiable Instruments Law of North Carolina (chapter twenty-five). The negotiability of bonds, notes and coupons of a unit shall not be affected by the reservation therein of a right of redemption or extension pursuant to this section. (1931, c. 296, s. 3; 1933, c. 258, s. 2; 1935, c. 356, s. 4.)

§ 159-45. Plans or agreements for funding or refunding; exchange for outstanding coupons or interest notes.—The board or body authorized to issue funding and refunding bonds of a unit is hereby invested with all powers necessary for the execution and fulfillment of any plan or agreement for the settlement, adjustment, funding, or refunding of the indebtedness of the unit, not inconsistent with general laws relating to the issuance of funding and refunding bonds. Such plan or agreement may provide among other things for the issuance of funding bonds and refunding bonds; for the issuance of new coupons or notes in exchange for outstanding coupons, for the purpose of enabling the unit to reserve the right to extend the time for payment of the whole or a part of the interest represented by such outstanding coupons; for the endorsement or stamping of bonds, notes or coupons, for the purpose of extending the time for payment of the principal thereof or interest thereon or for the purpose of reserving the right to extend said time; and for the doing of any other thing authorized by law with respect to outstanding indebtedness of the unit. All such plans or agreements made or entered into prior to May 9, 1935, and approved by the local government commission are hereby ratified and validated. New coupons or interest notes issued in exchange for outstanding coupons as aforesaid shall be executed in such manner as may be determined by said board or body, and approval thereof by the local government commission need not be noted thereon. A certificate signed by the secretary of the local government commission or by an assistant designated by him, stating that such new coupons or interest notes have been approved by the local government commission or under the provisions of the local government Act, shall be conclusive evidence that the requirements of this article with respect to approval by said commission have been complied with. All provisions of law relating to the means of payment of coupons surrendered in exchange for new coupons or interest notes as aforesaid shall apply to the payment of such new coupons or interest notes. The powers conferred by this section with respect to the issuance of new coupons or interest notes in exchange for outstanding coupons, and with respect to the endorsement or stamping of bonds, notes or coupons, may be exercised by resolution of the board or body authorized by law to issue funding bonds or refunding bonds of a unit, and any such resolution shall be in force and effect from and after its passage, and need not be submitted to the voters of the unit.

The State of North Carolina hereby gives its assent to the act of Congress approved May twenty-fourth, one thousand nine hundred and thirty-four, entitled "An Act to amend an act entitled 'an act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," and hereby authorizes all units, after approval has

been given thereto by the local government commission, to proceed under the provisions of said act for the readjustment of their debts. (1933, c. 258, s. 4; 1935, c. 356, s. 5.)

§ 159-46. Provisions in bond resolutions set out.—In any ordinance, order or resolution authorizing or providing for the issuance of bonds or notes of a unit for the purposes of refunding, funding or renewing indebtedness, it shall be lawful to incorporate any or all of the following provisions, which shall have the force of contract between the unit and the holders of said bonds or notes, and every board or body authorized to issue such bonds or notes or to levy taxes for their payment shall have power to do all things necessary or convenient for the purpose of carrying out such provisions, viz.:

(a) Provisions for the creation of a special fund or funds to be used for the purchase of said bonds or notes at market prices less than par and accrued interest, or for the payment of the bonds or notes at par and accrued interest at or before maturity. All bonds or notes so purchased or paid shall be cancelled and shall not be reissued.

(b) Provisions for levying a tax annually or otherwise for the payment of the principal of the bonds or notes or for the said retirement fund.

(c) Provisions pledging any taxes, special assessments, or other revenues or moneys of the unit to the payment of said bonds or notes or to said retirement fund.

(d) Provisions whereby, so long as any of said bonds or notes are outstanding, the unit will not pledge any particular revenues or moneys, except special property taxes, without securing such bonds or notes equally and ratably with the other obligations to be secured by such pledge.

(e) Provisions whereby any special fund aforesaid may be a revolving fund, and used temporarily for other purposes, and thereafter replenished, upon such terms and conditions as may be set forth in said ordinance, resolution or order.

(f) Provisions for the custody of any such special fund by a bank or trust company in this or any other state or by the state treasurer.

(g) Provisions for the allocation and payment daily or periodically of moneys payable to any of said special funds.

(h) Provisions for the determination by arbitration of any question arising under any of the foregoing provisions.

(i) Provisions whereby the holders of said bonds or notes, whether such bonds or notes shall have been delivered in exchange for the indebtedness refunded or funded thereby or shall have been sold and the proceeds thereof applied to the retirement of such indebtedness, shall be subrogated to all the rights and powers of the holders of such indebtedness.

(j) Provisions whereby bonds and notes, together with the matured and unmatured interest thereon, may be deposited with the state treasurer as trustee, or some bank or trust company designated as trustee by the governing body of the unit with the approval of the local government commission, and bonds issued from time to time or at specified intervals of time for the funding or refunding of all or any part of the indebtedness so deposited; the indebtedness of any depositor to be cancelled and extinguished at such time or times as the plan or agreement for the settlement, adjustment, funding or refunding of the indebtedness of the unit may specify, and need not be cancelled and extinguished simultaneously with the issuance of bonds for funding or refunding a part of such indebtedness: Provided, that the ordinance, order, or resolution authorizing the issuance of funding or refunding bonds referred to in this clause (j) may be adopted, or passed at such times as the plan or agreement may designate.

No such provisions shall become effective without the approval of the local government commission. (1933, c. 258, s. 4; 1935, c. 356, s. 6; 1939, c. 231, s. 3.)

§ 159-47. Issuance by local units of new bonds to replace mutilated bonds and bonds registered as to both principal and interest.—In case any bond heretofore or hereafter issued by any unit has heretofore or shall hereafter become mutilated or has heretofore or shall hereafter be registered as to both principal and interest, the governing body of the unit may by resolution provide for the issuance of a new bond in exchange and substitution for and upon the cancellation of the mutilated bond and its interest coupons, if any, or the bond registered as to both principal and interest. The provisions of such resolution must be approved by the local government commission before any exchange shall be made thereunder. In all such cases the holder shall pay the reasonable expenses and charges of the unit and of the commission in connection with such exchange. Such new bond shall mature at the same time and bear interest at the same rate as the bond in exchange for which it shall be issued, and shall be executed in such manner as may be provided in the resolution providing for the issuance of the new bond. Each such new bond shall be signed by the officers who are in office at the time of such signing, and shall contain a recital to the effect that it is issued in exchange for a certain bond (describing such bond sufficiently to identify it) and is to be deemed a part of the same issue as the original bond. (1939, c. 259.)

§ 159-48. Cancellation of own bonds, etc., acquired by unit.—Any bonds or other evidences of indebtedness issued by a unit which have heretofore been or may hereafter be acquired by said unit, unless so acquired for investment of sinking funds of said unit, shall be immediately cancelled and extinguished as obligations of said unit. It shall be the duty of any officer or employee of said unit in whose possession or custody said bonds or other evidences of indebtedness are placed to cancel the same as herein provided and to promptly report such cancellation to the local government commission and furnish in said report a full description of the bonds or other evidences of indebtedness so cancelled. (1939, c. 356.)

§ 159-49. State not liable for debts of units nor units for obligation of each other.—Nothing herein contained shall be construed to bind the State of North Carolina to pay any part of any debt due by any county, municipality or other unit of government, nor shall it be construed that

any county or other unit shall be liable for the debts of any other county or unit. (1931, c. 60, s. 77.)

Art. 2. Validation of Bonds, Notes and Indebtedness of Unit.

§ 159-50. "Unit" defined. — In this article the word "unit" means a county, city, town, township, school district, school taxing district, or other district or political subdivision of government of the State. (1931, c. 186, s. 1.)

§ 159-51. Validation of bond and note issues by units.—In all cases where a unit has issued its bonds or notes prior to March 26, 1931, and has received for the bonds or notes an amount of money not less than the face amount of the bonds or notes, and has expended said money for public purposes, said bonds or notes are hereby validated, and all bonds or notes subsequently issued to pay or renew said bonds or notes are also hereby validated, notwithstanding any lack of statutory authority or failure to observe any statutory provision concerning the issuance of such bonds or notes. This section shall not be construed as validating any bonds or notes, the proceeds of which have been lost by reason of the failure of any bank. (1931, c. 186, s. 2.)

§ 159-52. Test cases testing validity of funding bonds.—At any time after the adoption of an ordinance, resolution, or order for the issuance of refunding or funding bonds of a unit by the board authorized by law to issue the same, and following the approval of the issuance of such bonds by the local government commission, and prior to the issuance of any such bonds, such board may cause to be instituted in the name of the unit an action in the superior court of any county in which all or any part of the unit lies, to determine the validity of such bonds and the validity of the means of payment provided therefor. Such action shall be in the nature of a proceeding in rem, and shall be against each and all the owners of taxable property within the unit and each and all the citizens residing in the unit, but without any requirement that the name of any such owner or citizen be stated in the complaint or in the summons. Jurisdiction of all parties defendant may be had by publication of a summons once a week for three successive weeks in some newspaper of general circulation published in each county in which any part of the unit lies, and jurisdiction shall be complete within twenty days after the date of the last publication of such summons in the manner herein provided. Any interested person may become a party to such action, and the defendants and all others interested may at any time before the expiration of such twenty days appear and by proper proceedings contest the validity of the indebtedness to be refunded or funded or the validity of such refunding or funding bonds or the validity of the means of payment provided therefor. The complaint shall set forth briefly by allegations, references, or exhibits the proceedings taken by such board in relation to such bonds and the means of payment provided therefor, and, if an election was held to authorize such issuance, a statement of that fact, together with a copy of the election notice and of the official canvass of votes and declaration of the result. There shall similarly be set forth in the complaint a statement of the amount, purpose, and character of the indebtedness to be refunded or funded, and such other allegations as may be relevant. The prayer of the complaint shall be that the court find and determine as against the defendants the validity of such bonds and the validity of the means of payment so provided. (1931, c. 186, s. 4; 1935, c. 290, s. 1; 1937, c. 80.)

§ 159-53. Rules of pleading and practice. — The trial of such action shall be in accordance with the Constitution and laws of the State; and the rules of pleading and practice provided by this Code and court rules for civil actions, including the procedure for appeals, which are not inconsistent with the provisions of this article, are hereby declared applicable to all actions herein provided for: Provided, however, that an appeal from a decree in such action must be taken within thirty days from the date of rendition of such decree. The court shall render a decree either validating such bonds and the means of payment provided therefor, or adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal. (1931, c. 186, s. 5; 1935, c. 290, s. 2.)

§ 159-54. Judgment establishing validity of issue.—If (a) the superior court shall render a decree validating such bonds and the means of payment provided therefor and no appeal shall be taken within the time prescribed herein, or (b) if taken, the decree validating such bonds and the means of payment provided therefor shall be affirmed by the supreme court, or (c) if the superior court shall render a decree adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal, and on appeal the supreme court shall reverse such decree and sustain the validity of such bonds and the means of payment provided therefor (in which case the supreme court shall issue its mandate to the superior court requiring it to render a decree validating such bonds and the means of payment provided therefor), the decree of the superior court validating such bonds and the means of payment provided therefor shall be forever conclusive as to the validity of such bonds and the validity of the means of payment provided therefor as against the unit and as against all taxpayers and citizens thereof, to the extent of matters and things pleaded or which might have been pleaded, and to such extent the validity of said bonds and means of payment thereof shall never be called in question in any court in this State. (1931, c. 186, s. 6; 1935, c. 290, s. 3.)

§ 159-55. Taxing costs.—The costs in any action brought under this article may be allowed and apportioned between the parties or taxed to the losing party, in the discretion of the court. (1931, c. 186, s. 7.)

§ 159-56. Levying special tax for proposed issues.—If the complaint in any action brought under this article, or an exhibit attached to such complaint shows that an ordinance or resolution has been adopted by the unit providing that a tax sufficient to pay the principal and interest of the bonds or notes involved in such action is to be levied and collected, such ordinance or resolution

shall be construed as meaning that such tax is to be levied without regard to any constitutional or statutory limitation of the rate or amount of taxes, unless such ordinance or resolution declares that such limitation is to be observed in levying of such tax. (1931, c. 186, s. 8.)

§ 159-57. Notice of proposed issue to be published by unit.—Any unit may by resolution of the official board of such unit, authorized by law to issue bonds or notes, cause to be published a notice of the intention of said board to issue bonds or notes of the unit for the purpose of funding, refunding or renewing outstanding obligations or alleged obligations issued prior to passage of such resolution. Such notice shall describe said obligations or alleged obligations in a manner sufficient to identify them. It shall also state, either in general or specific terms, the purpose or purposes for which said outstanding obligations were incurred or issued, as determined by said official board of said unit prior to the publication of said notice. Said notice shall further state that a tax is to be levied on all taxable property in the unit sufficient to pay the bonds or notes proposed to be issued, or any bonds or notes that may be subsequently issued for the purpose of refunding, funding, renewing or paying said bonds or notes. Said notice shall be published once in each of three successive weeks in a newspaper published in the unit having the largest or next largest circulation in the unit, or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the court house or building where said official board usually holds its meetings, and published in some newspaper published in the State of North Carolina and circulating in said unit. Such notice shall contain a statement that it is being published under the provisions of this section. After the issuance of any bonds or notes in accordance with the intention expressed in said notice, the validity of said bonds or notes and/or of any subsequently issued instruments evidencing the same indebtedness, shall not be open to question in any court upon the ground that any of the obligations or alleged obligations for the funding or renewal of which such bonds or notes were issued, were or are invalid, nor shall the power of the unit to levy a sufficient tax on all taxable property in the unit for the payment of the principal and interest of said bonds or notes, or of any subsequently issued instruments evidencing the same indebtedness, be open to question in any court upon the ground that the obligations or alleged obligations for the funding or renewal of which said bonds or notes were issued were invalid, or upon the ground that said original obligations or alleged obligations were not issued for a purpose for which such tax can be levied, except in an action or proceeding commenced within thirty days after the first publication of said notice of intention. The date of such first publication shall be stated in said notice. (1931, c. 186, s. 9; 1935, c. 290, s. 4.)

§ 159-58. Invalidated issues unaffected. — This article shall not apply to any bonds or notes that have been held invalid by any court of competent jurisdiction. (1931, c. 186, s. 11.)

Art. 3. Funding and Refunding of Debts of Local Units Other than Counties, Cities and Towns.

§ 159-59. Local units, other than counties, cities and towns, authorized to fund outstanding debts.—Any unit other than a county, city or town may issue bonds as provided in this article for the purpose of funding or refunding any or all of its matured or unmatured notes or bonds, or the interest accrued thereon. The word unit as here used means a township, school district, school taxing district, road district, drainage district, sanitary district, water district, or other district, political sub-division or local governmental agency. The notes and bonds hereby authorized to be funded or refunded include notes and bonds issued in the name of a county, but payable from taxes levied in a township, school district or other unit embracing only a part of the territory of the county. (1933, c. 257, s. 1; 1939, c. 231, s. 4.)

§ 159-60. General law applicable.—Bonds issued pursuant to this article shall be issued in accordance with the provisions of the county finance act, as amended, relating to the issuance of funding and refunding bonds under that act, except in the following respects, viz.:

(a) They shall be issued in the name of the obligor named in the obligations to be funded or refunded, or in the name of the successor to the obligor named in the obligation to be refunded or funded.

(b) They shall be issued by or on behalf of the unit by the same board or body which issued the obligations to be funded or refunded, or its successor, or, if said board or body is no longer in existence, by the board of county commissioners or other governing body of the county in which the unit, or the major portion of the unit, is situated;

(c) It shall not be necessary to include in the order or resolution authorizing the bonds, or in the notice required to be published prior to final passage of the order or resolution, any statement concerning the filing of a debt statement, or the contents thereof; and, as applied to said bonds, §§ 153-78, 153-83, 153-84, 153-85, 153-86 and 153-87 of the County Finance Act, shall be read and understood as if they contained no requirements in respect to such matters;

(d) The bonds shall mature at such time or times, not later than forty years after their date, as may be fixed or provided for in the resolutions under which they are issued;

(e) The bonds shall also be issued in accordance with the provisions of the Local Government Act, as amended. (1933, c. 257, s. 2; 1935, c. 484; 1941, c. 147.)

§ 159-61. Taxes to pay new obligations authorized.—Taxes for the payment of the principal and interest of bonds issued pursuant to this article shall be levied by the board or body authorized by existing law to levy taxes for the payment of the obligations funded or refunded by said bonds, and shall be levied only in the territory subject to taxation for the payment of the obligations so funded or refunded. (1933, c. 257, s. 3.)

§ 159-62. County finance act applicable. — Except where they are inconsistent with the provisions of this article, all of the provisions of

the county finance act, as amended, applicable to bonds issued under that act for the funding or refunding of indebtedness, shall be applicable to bonds issued under this article. For the purpose of applying the provisions of said act to bonds issued under this article, the following words and phrases in said act shall be deemed to have the following meanings when applied to said bonds, viz.: "Governing body" means the board or body authorized by this article to issue bonds, except the words "governing body" in § 153-110 of the county finance act, where said words mean the board or body authorized by this article to levy taxes; "county" means the unit by or on behalf of which the bonds are to be issued under this article; "published" means published in a newspaper published in a county in which such unit is situated, if there be such a newspaper, but otherwise means posted at the courthouse door of said county and at least three other public places; "clerk of board of commissioners" means the clerk or secretary of the board or body authorized by this article to issue bonds; "this act" means this article. (1933, c. 257, s. 4; 1939, c. 231, s. 4(b).)

Art. 4. Assistance for Defaulting Local Government Units in the Preparation of Workable Refinancing Plans.

§ 159-63. Aid of director of local government to defaulting local units.—Whenever it shall appear that any county, city, town, or other local government unit of this State has defaulted for a period of six months in the payment of the principal or interest of any of its outstanding notes or bonds, the director of local government is hereby given the authority to prepare and certify to the governing body of such local government unit a plan for refinancing, readjustment, or compromising said debt in order to remove the default and prevent its recurrence. (1935, c. 124, s. 1.)

§ 159-64. Investigating fiscal affairs of units; negotiations with creditors; plans for refinancing or readjustment.—For the purpose of determining the financial position, the director of local government may make or cause to be made an investigation of the fiscal affairs of such units which are in default in the payment of principal or interest for a period of six months, and advise with the governing body of such unit regarding the refinancing and/or readjustment of its debts, and is authorized to negotiate with the creditors of such units for the purpose of reaching an agreement with them. Whenever a plan of refinancing and/or readjustment, whether prepared by the director, by a private refunding agency, or by the officials of the unit, appears to the director of local government as being fair and equitable and reasonably within the ability of such unit to meet, it shall be submitted by him to the local government commission for its approval, and upon such approval, the governing body of such local government unit shall adopt same and pass the necessary orders or ordinances for the purpose of carrying said plan into effect. (1935, c. 124, s. 2.)

§ 159-65. Power of director to accept or reject budget of local units.—In order to conserve the financial resources of any local government unit of this State and to provide a means of constant advisory services, the director of local government is hereby given authority to approve or disapprove the budget of any unit which has accepted the plan and put same into effect, and the governing body of such unit shall first obtain the approval of the said director before passing any order or ordinance adopting said budget. (1935, c. 124, s. 3.)

§ 159-66. Annual statements from units.—The director of local government shall have authority to require of the local units in which he functions under this article annual statements showing the collection of revenues and the disbursements for expenses, both divided as between general operating fund, debt service fund, and special funds, if any, and it shall be his duty to require the proper allocation of all collected revenues to the funds for which said revenues were levied, in accordance with the budget, and to require that disbursements shall be made only from appropriations duly made. (1935, c. 124, s. 4.)

§ 159-67. Extent and time limit of director's authority.—The authority hereby granted to the director of local government shall continue in force in such local government units until, in the discretion of the director of local government, said local government unit has performed the duties required of it or has satisfied the director that it will do so, until the agreements made with the creditors have been discharged in accordance with the plan of refinancing and/or readjustment of its debt. (1935, c. 124, s. 5.)

§ 159-68. Certain local laws reserved.—Nothing in this article shall be construed to repeal any Public-Local or Private Act passed by the General Assembly of one thousand nine hundred and thirty-five, relative to the readjustment or refunding of the bonded indebtedness of any local governmental unit in North Carolina, except and until an agreement has been reached between the bondholders and the governing body of said unit, and when said agreement has been reached and certified to the Director of the Local Government Commission by both contracting parties, then and in that event the provisions of said article shall apply to such defaulting local governmental units. (1935, c. 124, s. 6.)

Chapter 160. Municipal Corporations.

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SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Art. 1. General Powers.

§ 160-1. Body politic.—Every incorporated city or town is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no other. (Rev., s. 2915; Code, s. 702; C. S. 2622.)

§ 160-2. Corporate powers.—A city or town is authorized:

1. To sue and be sued in its corporate name.

2. Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.

3. To purchase and hold land, within or without its limits, not exceeding fifty acres (in cities or towns having a population of more than twenty

thousand the number of acres shall be in the discretion of the governing body of said city), for the purpose of a cemetery, and to prohibit burial of persons at any other place in town, and to regulate the manner of burial in such cemetery. All municipal corporations purchasing real property at any trustee's, mortgagee's, or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as conveyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers herein mentioned.

4. To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

5. To make such orders for the disposition or use of its property as the interest of the town requires.

6. To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease, upon such conditions and with such terms of payment as the city or town may prescribe, any waterworks, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period not exceeding thirty years, for the supply of light, water or other public commodity.

7. To provide for the municipal government of its inhabitants in the manner required by law.

8. To levy and collect such taxes as are authorized by law.

9. To do and perform all other duties and powers authorized by law. (Rev., s. 2916; Code, ss. 704, 3817; 1901, c. 283; 1905, c. 526; 1907, c. 978; P. L. 1917, c. 223; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; C. S. 2623.)

§ 160-3. How corporate powers exercised.—The corporate powers can be exercised only by the board of commissioners, or in pursuance of resolutions adopted by them, unless otherwise specially provided by law. (Rev., s. 2917; Code, s. 703; C. S. 2624.)

§ 160-4. Application and meaning of terms.—This subchapter shall apply to all incorporated cities and towns where the same shall not be inconsistent with special acts of incorporation, or special laws in reference thereto, and the word "commissioners" shall also be construed to mean "aldermen," or other governing municipal authorities. The sections relating to municipal or town elections shall apply to all cities and towns not expressly excepted by law. (Rev., s. 2918; Code, s. 3827; R. C., c. 111, s. 23; C. S. 2625.)

Art. 2. Municipal Officers.

Part 1. Commissioners.

§ 160-5. Number and election.—The board of commissioners of each town shall consist of not less than three nor more than seven commissioners, who shall be biennially elected by the qualified voters of the town, at the time and in the manner prescribed by law. (Rev., ss. 2917, 2919; Code, s. 3787; R. C., c. 111, s. 1; C. S. 2626.)

§ 160-6. Number may be changed.—After the first election the voters of any town may, whenever and as often as they choose, at the time of electing commissioners, and after due notice given thereof by the commissioners then in authority, by a majority of all the votes cast, alter the number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen. (Rev., s. 2922; Code, s. 3791; R. C., c. 111, s. 7; C. S. 2627.)

§ 160-7. Oath of office. — The commissioners shall take and subscribe an oath before some person authorized by law to administer oaths that they will faithfully and impartially discharge the duties of their office, and such oaths shall be filed with the mayor of such town and entered in a book kept for that purpose. (Rev., s. 2920; Code, s. 3799; R. C., c. 111, s. 12; C. S. 2628.)

§ 160-8. Vacancies filled.—In case of a vacancy after election in the office of commissioner the others may fill it until the next election. (Rev., s. 2921; Code, s. 3793; R. C., c. 111, s. 9; C. S. 2629.)

§ 160-9. Commissioners appoint other officers and fix salaries.—The board of commissioners may appoint a town constable, and such other officers and agents as may be necessary to enforce their ordinances and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensation; and also the compensation or salary of the mayor; may impose oaths of office upon them, and require bonds from them payable to the state, in proper penalties for the faithful discharge of their duties. (Rev., s. 2925; Code, s. 3800; R. C., c. 111, s. 13; 1862, c. 51; C. S. 2630.)

Part 2. Mayor.

§ 160-10. How elected; vacancy.—At the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the person having the highest number of votes shall be declared elected. In case of vacancy in the office, the commissioners may fill the same. (Rev., s. 2931; Code, s. 3794; R. C., c. 111, s. 10; C. S. 2631.)

§ 160-11. Oath of office.—The mayor, before some justice of the peace, or other person authorized by law to administer oaths, shall take and subscribe the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law, which said oath shall be filed with the records of the town and be entered on the same book with the oaths of the commissioners. (Rev., s. 2932; Code, s. 3798; R. C., c. 111, s. 11; C. S. 2632.)

§ 160-12. Presides at commissioners' meeting; mayor pro tem.—The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number pro

tempore, to exercise his duties. (Rev., s. 2933; Code, s. 3794; R. C., c. 111, s. 10; C. S. 2633.)

§ 160-13. Mayor's jurisdiction as a court.—The mayor of every city or incorporated town is hereby constituted an inferior court, and as such court such mayor shall be a magistrate and conservator of the peace, and within the corporate limits of his city or town shall have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the state, or under the ordinances of such city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor, and he shall be entitled to the same fees which are allowed to justices of the peace. (Rev., s. 2934; Code, s. 3818; 1871-2, c. 195; 1876-7, c. 243; C. S. 2634.)

§ 160-14. Enforce ordinances and penalties.—As such court the mayor shall have authority to hear and determine all cases that may arise upon the ordinances of the city or town; to enforce penalties by issuing execution upon any adjudged violation thereof, and to execute the laws and rules that may be made and provided by the board of commissioners of the city or town for the government and regulation of the city or town; but in all cases any person dissatisfied with the judgment of the mayor may appeal to the superior court as in case of a judgment rendered by a justice of the peace. (Rev., s. 2935; Code, s. 3819; 1876-7, c. 243, s. 2; C. S. 2635.)

§ 160-15. May sentence to work on streets.—In all cases where judgments may be entered up against any person for fines, according to the laws and ordinances of any incorporated town, and the person against whom the same is so adjudged refuses or is unable to pay such judgment, the mayor before whom such judgment is entered may order and require such person, so convicted, to work on the streets or other public works until, at fair rates of wages, such person shall have worked out the full amount of the judgment and costs of the prosecution; and all sums received for such fines shall be paid into the treasury. No woman shall be worked on the streets. (Rev., s. 2937; Code, s. 3806; 1897, c. 270; 1899, c. 128; 1866-7, c. 13; C. S. 2636.)

§ 160-16. Mayor certifies ordinances on appeal.—In all cases of appeal from a mayor's court to the superior or other court of appeal, when the offense charged is the violation of a town ordinance the mayor shall send with the papers in the case a true copy of the ordinance alleged to have been violated, and shall certify under his hand and seal that said ordinance was in force at the time of the alleged violation of the same. (Rev., s. 2936; 1899, c. 277; C. S. 2637.)

Part 3. Constable and Policemen.

§ 160-17. Constable to take oath of office.—The town constable shall, before some person authorized to administer oaths, take and subscribe to the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law, which said oath shall be filed with the mayor and entered in a book with the oaths of the commissioners. (Rev., s. 2938; Code, s. 3808; R. C., c. 111, s. 20; C. S. 2638.)

§ 160-18. Power and duties of constable.—As a peace officer, the constable shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have power to serve all civil and criminal process that may be directed to him by any court within his county, under the same regulations and penalties as prescribed by law in the case of other constables, and to enforce the ordinances and regulations of the board of commissioners as the board may direct. Whenever any process or other notice is so directed as to authorize a township constable to execute the same a town constable in that county may execute the same without any more specific direction: Provided, such town constable shall be required to give bond for performance of his duties such as is required of township constables who execute civil process. (Rev., s. 2939; Code, ss. 3808, 3810; R. C., c. 111, s. 20; 1879, c. 266; 1897, c. 519; 1899, c. 168; 1907, c. 52, s. 1; C. S. 2639.)

§ 160-19. Constable as tax collector.—The constable shall have the same power to collect the taxes imposed by the commissioners as sheriffs have to collect the taxes imposed by the county commissioners, and he may be required by the commissioners to give bond, with sufficient surety, payable to the state of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which suit may be brought by the commissioners as upon the bonds of other officers. The bond of the constable shall be duly proved, before the mayor and commissioners, and registered in the office of the register of deeds. (Rev., s. 2940; Code, s. 3809; R. C., c. 111, s. 21; C. S. 2640.)

§ 160-20. Policemen appointed.—The board of commissioners may appoint town watch or police, to be regulated by such rules as the board may prescribe. (Rev., s. 2926; Code, s. 3803; R. C., c. 111, s. 16; C. S. 2641.)

§ 160-21. Policemen execute criminal process.—A policeman shall have the same authority to make arrests and to execute criminal process, within the town limits, as is vested by law in a sheriff. (Rev., s. 2927; Code, s. 3811; C. S. 2642.)

Part 4. Planning Boards.

§ 160-22. Creation and duties.—Every city and town in the state is authorized to create a board to be known as the Planning Board, whose duty it shall be to make careful study of the resources, possibilities and needs of the city or town, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the municipality. The governing body of such city or town desiring to establish such local planning board shall appoint not less than three nor more than five on said board. (1919, c. 23, s. 1; C. S. 2643.)

§ 160-23. Board to make reports.—The board shall make a report at least annually to the governing body of the city or town, giving information regarding the condition of the city or town,

and any plans or proposals for the development of the city or town and estimates of the cost thereof. (1919, c. 23, s. 2; C. S. 2644.)

§ 160-24. Expenses provided for.—The governing body of such city or town may appropriate to such local planning board such amount as they may deem necessary to carry out the purposes of its creation, and for the improvement of the municipality, and shall provide what sums, if any, shall be paid to said board as compensation. (1919, c. 23, s. 3; C. S. 2645.)

Part 5. General Qualification of Officers.

§ 160-25. Must be voters in town or city.—No person shall be mayor, commissioner, intendant of police, alderman or other chief officer of any city or town unless he shall be a qualified voter therein. (Rev., s. 2941; Code, s. 3796; 1870-1, c. 24, s. 3; C. S. 2646.)

§ 160-26. Refusal to qualify and act.—Every person elected or appointed commissioner, mayor, or town constable, who, after being duly notified, shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one-half to the use of the town and the other half to the use of any person who will sue for the same. (Rev., s. 2942; Code, s. 3812; R. C., c. 111, s. 22; C. S. 2647.)

§ 160-27. Hold office until successor qualified.—Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day shall hold their places till the day of election, and until other officers shall be elected or appointed and qualified. And they shall hold their offices in like manner when there is any failure to make the annual election. (Rev., s. 2943; Code, s. 3792; R. C., c. 111, s. 8; C. S. 2648.)

Part 6. Reduction of Salaries.

§ 160-28. Of officers and employees notwithstanding legislative enactment. — Whenever the salary of any officer or employee of any county, city, town, or other municipality has been fixed by legislative enactment, the governing body of such county, city, town, or other municipality may reduce such salary by an amount not to exceed ten per cent of the salary as so fixed: Provided, this section shall not apply to salaries of teachers or other officers in the public schools. (1931, c. 429, s. 21.)

Art. 3. Elections Regulated.

§ 160-29. Application of law, and exceptions.—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the town of Graham, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Chowan, Davidson, Edgecombe, Gaston, Lenoir, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson. (Rev., s. 2944; 1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; 1907, c. 165; Ex. Sess. 1908, c. 63; 1909, c. 365; 1931, c. 369; 1933, c. 102; 1935, c. 215, s. 1, c. 353; C. S. 2649.)

Local Modification.—Gaston, Town of Belmont: 1935, c. 161.

§ 160-30. When election held. — In all cities and towns an election shall be held on Tuesday after the first Monday of May, one thousand nine hundred and five, and biennially thereafter. (Rev., s. 2945; 1901, c. 750, s. 19; 1907, c. 165; C. S. 2650.)

Local Modification.—Harnett: C. S. 2650; Harnett, Town of Dunn: 1925, c. 67; Mitchell, Town of Spruce Pine: 1935, c. 215.

§ 160-31. Polling places. — There shall be at least one polling place in each ward in the town or city, if the said town or city is divided into wards; and if not divided into wards, then there shall be as many polling places as may be established by the governing body of said town or city. (Rev., s. 2946; 1901, c. 750, s. 2; C. S. 2651.)

§ 160-32. Registrars appointed.—The board of commissioners shall select, at least thirty days before any city or town election, one person for each election precinct, who shall act as registrar of voters for such precinct; and shall make publication of the names of the persons so selected, and of the time of the election, at the town or city hall, or at the usual place of holding the mayor's court, immediately after such appointment, and shall cause a notice to be served upon the registrars by the sheriff of the county or the township constable. If any registrar shall die or neglect to perform his duties, said governing body may appoint another in his place. (Rev., s. 2947; 1901, c. 750, s. 5; 1903, c. 613; C. S. 2652.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

§ 160-33. Registrars take oath of office.—Before entering upon the duties of his office each registrar shall take an oath before some person authorized by law to administer oaths to faithfully perform the duties of his office as registrar. (Rev., s. 2948; 1901, c. 750, s. 6; C. S. 2653.)

§ 160-34. Registration of voters.—It shall be the duty of the board of commissioners of every city and town to cause a registration to be made of all the qualified voters residing therein, under the rules and regulations prescribed for the registration of voters for general elections. And where there has been a registration of voters, the board of commissioners may, in its discretion, order a new registration of voters; and unless such new registration shall be ordered, the election shall be held under the existing registration, with such revision as is herein provided. (Rev., c. 2949; Code, s. 3795; 1901, c. 750, s. 3; C. S. 2654.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

§ 160-35. Notice of new registration.—In the event a new registration is ordered the board of commissioners shall give thirty days notice thereof by advertisement in some newspaper, if there be one published in the town or city, and if there be none so published, then in three public places in the city or town. (Rev., s. 2950; 1901, c. 750, s. 4; C. S. 2655.)

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

§ 160-36. Registration books revised. — Each registrar shall be furnished with registration books, and it shall be his duty to revise the registration book of his precinct in such manner that said books shall show an accurate list of the electors previously registered in such ward or

precinct and still residing therein, without requiring such electors to be registered anew. (Rev., s. 2951; 1901, c. 750, s. 6; C. S. 2656.)

§ 160-37. Time for registration.—Each registrar shall, between the hours of nine o'clock a. m. and five o'clock p. m. on each day (Sunday excepted) for seven days preceding the day for closing the registration books, as hereinafter provided, keep open said books for the registration of any new electors residing in the precinct, and entitled to register, whose names have never before been registered in such precinct, or do not appear in the revised list. Such books shall be open until nine o'clock p. m. of each Saturday during such registration period and shall be closed for registration on the second Saturday before each election. (Rev., s. 2952; 1901, c. 750, s. 6; C. S. 2657.)

§ 160-38. Registration on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become of the age of twenty-one years or otherwise has become qualified to register and vote since the registration books were closed for registration, he shall be allowed to register and vote. (Rev., s. 2953; 1901, c. 750, s. 8; C. S. 2658.)

§ 160-39. Books open for challenge.—On the second Saturday before the election the registration books shall be kept open at the polling place in the precinct for the inspection of the electors of the precinct, and any of such electors shall be allowed to object to the name of any person appearing on said books. (Rev., s. 2955; 1901, c. 750, s. 7; C. S. 2659.)

§ 160-40. Practice in challenges.—When a person is challenged the registrar shall enter upon his books opposite the name of the person objected to the word "Challenged," and the registrar shall appoint a time and place, on or before the Monday immediately preceding election day, when he, together with the judges of election, shall hear and decide the objection, giving personal notice to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient to leave a copy thereof at his residence. If any person challenged shall be found not duly qualified, the registrar shall erase his name from the books. They shall hear and determine the cause of challenge under the rules and regulations prescribed by the general law regulating elections for members of the general assembly. (Rev., s. 2956; 1901, c. 750, ss. 7, 9; C. S. 2660.)

§ 160-41. Judges of election.—The board of commissioners shall appoint, at least thirty days before any city or town election, two judges of election, who shall be of different political parties where possible, and shall be men of good character, able to read and write, at each place of holding election in said city or town, who, before entering upon the discharge of their duties, shall take an oath, before some person authorized by law to administer oaths, to conduct the election fairly and impartially, according to the constitution and laws of the state. (Rev., s. 2958; 1901, c. 750, s. 7; C. S. 2661.))

Local Modification.—Alamance, Town of Graham: 1935, c. 353.

§ 160-42. Vacancies on election day.—If any vacancy shall occur on the day of election in the office of registrar, the same shall be filled by the judges of election, and if any vacancy shall occur on that day in the office of judge the same shall be filled by the registrar; vacancies occurring at any other time shall be filled by the board of commissioners. (Rev., s. 2954; 1901, c. 750, s. 20; C. S. 2662.)

§ 160-43. Judges superintend election. — The judges of election shall open the polls and superintend the same until the close of election; they shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the election they shall certify the same over their proper signatures and deposit them with the board of commissioners. (Rev., s. 2959; 1901, c. 750, s. 7; C. S. 2663.)

§ 160-44. When polls open and close.—The polls shall be open on the day of election from six-thirty o'clock A. M. until six-thirty o'clock P. M. Eastern Standard Time, and no longer; and each person whose name may be registered shall be entitled to vote. (Rev., s. 2960; 1901, c. 750, s. 10; 1941, c. 222; C. S. 2664.)

§ 160-45. Who may vote.—All qualified electors, who shall have resided for four months immediately preceding an election within the limits of any voting precinct of a city or town, and not otherwise, shall have the right to vote in such precinct for mayor and other city or town officers. (Rev., s. 2961; 1901, c. 750, s. 9; C. S. 2665.)

§ 160-46. Ballots counted.—When the election shall be finished the registrar and judges of election shall open the boxes and count the ballots, reading aloud the names of the persons which shall appear on each ballot; and if there shall be two or more ballots rolled up together, or any ballot shall contain the names of more persons than the elector has the right to vote for, or shall have a device or ornament upon it, in either of these cases such ballots shall not be numbered in taking the ballots, but shall be void; and the counting of votes shall be continued without adjournment until completed, and the result thereof declared. (Rev., s. 2963; 1901, c. 750, s. 13; C. S. 2667.)

§ 160-47. Registration books, where deposited.—Immediately after any election the registrars shall deposit the registration books for the respective precincts with the board of commissioners. (Rev., s. 2957; 1901, c. 750, s. 11; C. S. 2668.)

§ 160-48. Board of canvassers.—The registrar and judges of election in each voting precinct shall appoint one of their number to attend the meeting of the board of canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns of the result of the election in such precinct; and the members of the board of canvassers who shall have been so appointed shall attend the meeting of the board of canvassers, and shall constitute the board of town canvassers for such election, and a majority of them shall constitute a quorum. In towns where there is only one voting precinct, the registrar and judges of election shall, at the

close of the election, declare the result thereof. (Rev., s. 2964; 1901, c. 750, ss. 13, 14; C. S. 2669.)

§ 160-49. Meeting of board of canvassers.—The board of canvassers shall meet on the next day after the election at twelve o'clock m., at the mayor's office, and they shall each take the oath prescribed in the general law governing elections for members of the county board of elections. (Rev., s. 2965; 1901, c. 750, s. 15; C. S. 2670.)

§ 160-50. Board determines result; tie vote.—The board of canvassers shall, at their meeting, in the presence of such electors as choose to attend, open, canvass and judicially determine the result, and shall make abstracts, stating the number of legal ballots cast in each precinct for each office, the name of each person voted for and the number of votes given to each person for each different office, and shall sign the same. It shall have power and authority to pass upon judicially all the votes relative to the election and judicially determine and declare the result of the same, and shall have power and authority to send for papers and persons and examine the latter upon oath; and in case of a tie between two opposing candidates, the result shall be determined by lot. In all other respects all elections held in any town or city shall be conducted as prescribed for the election of members of the general assembly. (Rev., s. 2966; 1901, c. 750, ss. 16, 17; C. S. 2671.)

§ 160-51. Notice of special election.—No special election shall be held for any purpose in any county, township, city or town unless at least thirty days notice shall have been given of the same by advertisement in some newspaper published in said county, city or town, or by advertisement posted at the courthouse of the county and four other public places in such county, city or town. (Rev., s. 2967; 1901, c. 750, s. 24; C. S. 2672.)

Art. 4. Ordinances and Regulations.

§ 160-52. General power to make ordinances.—The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary; and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalties. (Rev., s. 2923; Code, ss. 3799, 3804; R. C., c. 111, ss. 12, 17; C. S. 2673.)

§ 160-53. Power to establish and regulate markets.—The board of commissioners may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold grain, meal or flour (if flour be not packed in barrels), fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid. But it shall not be lawful for the commissioners or other authorities of any town to impose any tax whatever on wagons or carts selling farm products, garden truck, fish and oysters on the public streets thereof. (Rev., s. 2928; Code, s. 3801; R. C., c. 111, s. 14; 1879, c. 176; C. S. 2674.)

§ 160-54. Repair streets and bridges.—The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary. (Rev., s. 2930; Code, s. 3803; R. C., c. 111, s. 16; C. S. 2675.)

§ 160-55. May abate nuisances.—The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens. (Rev., s. 2929; Code, s. 3802; R. C., c. 111, s. 15; C. S. 2676.)

Art. 5. Municipal Taxation.

§ 160-56. Commissioners may levy taxes.—The board of commissioners may annually levy and cause to be collected for municipal purposes an ad valorem tax not exceeding the limitation expressed in § 160-402, and one dollar on each poll, on all persons and property within the corporation, which may be liable to taxation for state and county purposes; and may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the general assembly; and on all dogs, and on swine, horses and cattle, running at large within the town. (Rev., s. 2924; Code, s. 3800; R. C., c. 111, s. 13; 1862, c. 51; C. S. 2677.)

§ 160-57. Uniformity of taxes.—All taxes levied by any county, city, town, or township shall be uniform as to each class of property taxed in the same, except property exempted by the constitution. (Rev., s. 2968; Const. art. VII, s. 9; C. S. 2678.)

§ 160-58. Dog tax.—If any person residing in a town shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may collect from the person so failing double the tax, or may treat such dog as a nuisance, and order its destruction. (Rev., s. 2971; Code, s. 3815; R. C., c. 111, s. 24; C. S. 2683.)

Art. 6. Sale of Municipal Property.

§ 160-59. Public sale by mayor and commissioners.—The mayor and commissioners of any town shall have power at all times to sell at public outcry, after thirty days notice, to the highest bidder, any property, real or personal, belonging to any such town, and apply the proceeds as they may think best. (Rev., s. 2978; Code, s. 3824; 1872-3, c. 112; C. S. 2688.)

Local Modification.—Alexander, Washington: 1941, c. 292.

§ 160-60. Sale by county commissioners.—In any town where there is no mayor or commissioners, the board of county commissioners shall have the power given in the preceding section. (Rev., s. 2979; Code, s. 3825; 1872-3, c. 112, s. 2; C. S. 2689.)

§ 160-61. Title made by mayor.—The mayor of any town, or the chairman of any board of commissioners of any town or county, is fully authorized to make title to the purchaser of any

property sold under this chapter. (Rev., s. 2980; Code, s. 3826; 1872-3, c. 112, s. 3; C. S. 2690.)

Art. 7. General Municipal Debts.

§ 160-62. Popular vote required, except for necessary expense.—No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officer of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein. (Rev., s. 2974; Const. Art. VII, s. 7; C. S. 2691.)

§ 160-63. Debts paid out of tax funds.—Debts contracted by a municipal corporation in pursuance of authority vested in it shall not be levied out of any property belonging to such corporation and used by it in the discharge and execution of its corporate duties and trusts, nor out of the property or estate of any individual who may be a member of such corporation or may have property within the limits thereof. But all such debts shall be paid alone by taxation upon subjects properly taxable by such corporation: Provided, that whenever any individual, by his contract, shall become bound for such debt, or any person may become liable therefor by reason of fraud, such person may be subjected to pay said debt. (Rev., s. 2975; Code, s. 3821; 1870-1, c. 90; C. S. 2692.)

§ 160-64. Debts limited to ten per cent of assessed values.—It shall be unlawful for any city or town to contract any debt, pledge its faith or loan its credit for the construction of railroads, the support or maintenance of internal improvements or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent of the assessed valuation of the real and personal property situated in such city or town. And the levy of any tax to pay any such indebtedness in excess of this limitation shall be void and of no effect. (Rev., s. 2977; 1889, c. 486; C. S. 2693.)

Art. 8. Public Libraries.

§ 160-65. Libraries established upon petition and popular vote.—The governing body of any incorporated city or county, upon the petition of ten per cent of the registered voters thereof, shall submit the question of the establishment and/or support of a free public library to the voters at the next municipal election, the next general election, or at a special election. If a majority of the qualified voters within the municipality vote in the affirmative, the board of aldermen or town commissioners or board of county commissioners shall establish the library or reading room and levy and cause to be collected as other general taxes are collected a special tax of not more than ten cents or not less than three cents on the hundred dollars of the assessed value of the taxable property of such city, town or county. The fund so derived shall constitute the library fund, and shall be kept separate from the other funds of the city, town or county to be expended exclusively upon such library. When such library has been established as above provided, it may be abolished only by a vote of the people. (1911, c. 83, s. 1; 1927, c. 31, s. 1; 1933, c. 365, s. 1; C. S. 2694.)

§ 160-66. Library trustees appointed.—For the government of such library there shall be a board of six trustees appointed by the governing body of the city or town or county, chosen from the citizens at large with reference to their fitness for such office; and not more than one member of the board of aldermen or town commissioners shall be at any one time a member of said board. Such trustees shall hold their office for six years from their appointment, and until their successors are appointed and qualified: Provided, that upon their first appointment under this article two members shall be appointed for two years, two for four years, and two for six years, and at all subsequent appointments, made every two years, two members shall be appointed for six years. All vacancies shall be immediately reported by the trustees to the governing body and be filled by appointment in like manner, and, if in an unexpired term, for the residue of the term only. The governing body may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. No compensation shall be allowed any trustee. (1911, c. 83, s. 2; 1927, c. 31, s. 2; 1927, c. 172; C. S. 2695.)

§ 160-67. Powers and duties of trustees.—Immediately after appointment, such board of trustees shall organize by electing one of its members as president and one as secretary-treasurer, and such other officers as it may deem necessary. The secretary-treasurer before entering upon his duties shall give bond to the municipality in an amount fixed by the board of trustees, conditioned for the faithful discharge of his official duties. The board shall adopt such by-laws, rules and regulations for its own guidance and for the government of the library as may be expedient and conformable to law. It shall have exclusive control of the expenditure of all moneys collected for or placed to the credit of the library fund, and of the supervision, care, and custody of the rooms or buildings constructed, leased, or set apart for library purposes. But all money received for such library shall be paid into the city treasury or county treasury, be credited to the library fund, be kept separate from other moneys, and be paid out to the secretary-treasurer upon the authenticated requisition of the board of trustees through its proper officers. With the consent of the governing body of the city or town or county, it may lease and occupy, or purchase, or erect upon ground secured through gift or purchase, an appropriate building: Provided, that of the income for any one year not more than one-half may be employed for the purpose of making such lease or purchase or for erecting such building. It may appoint a librarian, assistants, and other employees, and prescribe rules for their conduct, and fix their compensation, and shall also have power to remove such appointees. Provided, that after May 4, 1933, no vacancies existing or occurring in the position of head librarian in such libraries shall be filled by appointment or designation of any person who is not in possession of a library certificate issued under the authority of this article. It may also extend the privileges and use of such library to nonresidents upon such terms and conditions as it may prescribe. (1911, c. 83, s. 3; 1927, c. 31, s. 3; 1933, c. 365, s. 2; C. S. 2696.)

§ 160-68. Library certification board.—The secretary of the North Carolina library commission, the librarian of the University of North Carolina, the president of the North Carolina library association and one librarian appointed by the executive board of the North Carolina library association shall constitute a library certification board who shall serve without pay and who shall issue librarian's certificates under reasonable rules and regulations to be promulgated by the board and a complete record of the transactions of said board shall be kept at all times. (1933, c. 365, s. 3.)

§ 160-69. Librarians now acting—temporary certificates.—The provisions of this article shall not be construed to affect any librarian in his or her position on May 4, 1933. Such librarians as were then acting shall be entitled to receive a certificate in accordance with positions then held.

Upon the submission of satisfactory evidence that no qualified librarian is available for appointment, a temporary certificate, valid for one year, may be issued upon written application of the library board. Such certificate shall not be renewed or extended and shall not be valid beyond the date for which it is issued. (1933, c. 365, s. 3.)

§ 160-70. Annual report of trustees.—The board of trustees shall make an annual report to the governing body of the city, town or county, stating the condition of their trust, the various sums of money received from the library fund and all other sources, and how much money has been expended; the number of books and periodicals on hand, the number added during the year, the number lost or missing, the number of books loaned out, and the general character of such books, the number of registered users of such library, with such other statistics, information and suggestions as it may deem of general interest. (1911, c. 83, s. 7; 1927, c. 31, s. 4; 1933, c. 365, s. 4; C. S. 2697.)

§ 160-71. Power to take property by gift or devise.—With the consent of the governing body of the city or town or county, expressed by ordinance or resolution, and within the limitations of this article as to the rate of taxation, the library board may accept any gift, grant, devise, or bequest made or offered by any person for library purposes, and may carry out the conditions of such donations. And the city or town or county in all such cases is authorized to acquire a site, levy a tax, and pledge itself by ordinance or resolution to a perpetual compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted. (1911, c. 83, s. 5; 1927, c. 31, s. 5; C. S. 2698.)

§ 160-72. Title to property vested in the city, town or county.—All property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any city, town or county for a library shall vest in and be held in the name of such city, town or county and any conveyance, grant, donation, devise, bequest or gift to or in the name of any public library board shall be deemed to have been made directly to such city, town or county. (1911, c. 83, s. 4; 1927, c. 31, s. 6; 1933, c. 365, s. 5; C. S. 2699.)

§ 160-73. Library free.—Every library established under this article shall be forever free to the use of the inhabitants of the city or town, subject to such reasonable regulations as the board of trustees may adopt. (1911, c. 83, s. 6; C. S. 2700.)

§ 160-74. Ordinances for protection of library.—The governing body of such city or town or county shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon such library or the grounds or other property thereof, or for any injury to or for failure to return any book, plate, picture, engraving, map, magazine, pamphlet, or manuscript belonging to such library. (1911, c. 83, s. 8; 1927, c. 31, s. 7; C. S. 2701.)

§ 160-75. Contract with existing libraries.—The governing body of any city, town or county, when deemed best for the interest of the city, town or county, may in lieu of supporting and maintaining a public library, enter into a contract with and make annual appropriations of money to such library, associations or corporations as shall maintain a library or libraries, whose books shall be available without charge to the residents of such city, town or county, under such rules and regulations of said library, associations or corporations, as shall be approved by the governing body of such city, town or county. All money paid to such society or corporation under such contract shall be expended solely for the maintenance of such library, and for no other purpose. For the governing body of such library when contract has been made between city and county, the trustees shall be appointed proportionately to the funds provided for its support.

Nothing in this section shall be construed to abolish or abridge any power or duty conferred upon any public library established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries. (1911, c. 83, ss. 9, 10; 1917, c. 215; 1927, c. 31, s. 8; 1933, c. 365, s. 6; C. S. 2702.)

§ 160-76. Detention of library property after notice.—Whoever willfully or maliciously fails to return any book, newspaper, magazine, pamphlet or manuscript belonging to any public library to such library for fifteen days after mailing or delivery in person of notice in writing from the librarian of such library, given after the expiration of the time, which by regulation of such library such book, newspaper, magazine, pamphlet or manuscript may be kept, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars or imprisonment for not more than thirty days: Provided, that the notice required by this section shall bear upon its face a copy of this section. (1921, c. 118; 1925, c. 39, s. 1; C. S. 2702(a).)

§ 160-77. Combined counties.—Where found to be more practicable, two or more adjacent counties may join for the purpose of establishing and maintaining a free public library under the terms and provisions herein above set forth for the establishment and maintenance of a free county library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county under the

provisions of this article. The board of county commissioners of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as herein provided for the commissioners of a single county. Should any county at any time desire to withdraw from such combination, the said county shall be entitled to such proportion of the property as may have been agreed upon in the terms of combination at the time such joint action was taken. (1933, c. 365, s. 7.)

Art. 9. Local Improvements.

§ 160-78. Explanation of terms.—In this article the term "municipality" means any city or town in the state of North Carolina now or hereafter incorporated.

"Governing body" includes the board of aldermen, board of commissioners, council, or other chief legislative body of a municipality.

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing and remacadamizing of public streets and alleys, and the construction, reconstruction and altering of curbs, gutters and drains in public streets and alleys.

"Sidewalk improvement" includes the grading, construction, reconstruction and altering of sidewalks in public streets or alleys, and may include curbing and gutters.

"Local improvement" means any work undertaken under the provisions of this article, the cost of which is to be specially assessed, in whole or in part, upon property abutting directly on the work.

"Frontage" when used in reference to a lot or parcel of land abutting directly on a local improvement, means that side or limit of the lot or parcel of land which abuts directly on the improvement. (1915, c. 56, s. 1; C. S. 2703.)

§ 160-79. Application and effect.—This article shall apply to all municipalities. It shall not, however, repeal any special or local law or affect any proceedings under any special or local law for the making of street, sidewalk or other improvements hereby authorized, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and to be a complete act, not subject to any limitation or restriction contained in any other public or private law or laws, except as herein otherwise provided. (1915, c. 56, s. 2; C. S. 2704.)

§ 160-80. Publication of resolution or notice.—Every resolution passed pursuant to this article shall be passed in the manner prescribed by other laws for the passage of resolutions. Whenever a resolution or notice is required by this article to be published, it shall be published at least once in a newspaper published in the municipality concerned, or, if there be no such newspaper, such resolution or notice shall be posted in three public places in the municipality for at least five days. (1915, c. 56, s. 3; C. S. 2705.)

§ 160-81. When petition required.—Every municipality shall have power, by resolution of its governing body, upon petition made as provided in § 160-82, to cause local improvements to be made and to defray the expense of such improvements by local assessment, by general taxation, and by borrowing, as herein provided. No petition shall be necessary, however, for the ordering or making of private water, sewer and gas connections as hereinafter provided. Nor shall a petition be necessary for the making of sidewalk improvements in those municipalities in which by other law or laws sidewalk improvements are authorized to be made without petition. (1915, c. 56, s. 4; C. S. 2706.)

§ 160-82. What petition shall contain.—The petition for a local improvement shall be signed by at least a majority in number of the owners, who must represent at least a majority of all the lineal feet of frontage of the lands (a majority in interest of owners of undivided interests in any piece of property to be deemed and treated as one person for the purpose of the petition) abutting upon the street or streets or part of a street or streets proposed to be improved. The petition shall cite this article and shall designate by a general description the local improvement to be undertaken and the street or streets or part thereof whereon the work is to be effected. The petition shall be lodged with the clerk of the municipality, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1915, c. 56, s. 5; C. S. 2707.)

§ 160-83. What resolution shall contain:

1. Designate improvements. The preliminary resolution determining to make a local improvement shall, after its passage, be published. Such resolution shall designate by a general description the improvement to be made, and the street or streets or part or parts thereof whereon the work is to be effected, and the proportion of the cost thereof to be assessed upon abutting property and the terms and manner of the payment.

2. Sidewalk improvements. If such resolution shall provide for a sidewalk improvement, it may, in those municipalities in which the owners of the abutting property are required to make payment of the entire cost thereof, without petition direct that the owners of the property abutting on the improvement shall make such sidewalk improvement, and that unless the same shall be made by such owners on or before a day specified in the resolution, the governing body may cause such sidewalk improvement to be made.

3. Affecting railroads. If the resolution shall provide for a street improvement, it shall direct that any street railway company or other railroad company having tracks on the street or streets or part thereof to be improved shall make such street improvement, with such material and of such a character as may be approved by the governing body, in that part of such street or streets or part thereof which the governing body may prescribe, not to exceed, however, the space between the tracks, the rails of the tracks, and eighteen inches in width outside of the tracks of such company, and that unless such improve-

ment shall be made on or before a day specified in such resolution, the governing body will cause such improvement to be made: Provided, however, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provided, such franchise or contract shall not be affected by this section, except in so far as may be consistent with the provisions of such franchise or contract.

4. Water, gas, and sewer connections. If the resolution shall provide for a street or sidewalk improvement, it may, but need not, direct that the owners of all property abutting on the improvement shall connect their several premises with water mains, gas and sewer pipes located in the street adjacent to their several premises in the manner prescribed in such resolution, and that unless such owners shall cause connection to be made on or before a day specified in such resolution, the governing body will cause the same to be made. (1915, c. 56, s. 6; C. S. 2708.)

§ 160-84. Character of work and material.—The governing body shall have power to determine character and type of construction and of material to be used in making a local improvement, and whether the work, where not done by owners of abutting property or by a street or other railroad company, shall be done by the forces of the municipality or by contract: Provided, that for the purposes of securing uniformity in the work the governing body shall always have the power to have all street paving done by the forces of the municipality or by contract under the provisions of this article. (1915, c. 56, s. 7; C. S. 2709.)

§ 160-85. Assessments levied:

1. One-half on abutting property. One-half of the total cost of a street or sidewalk improvement made by a municipality, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways, shall be specially assessed upon the lots and parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage, unless the petition for such street or sidewalk improvement shall request that a larger proportion of such cost, specified in the petition, be so assessed, in which case such larger proportion shall be so assessed, and the remainder of such cost shall be borne by the municipality at large; but no assessment for streets and sidewalks shall be made against abutting property on any such street or sidewalk until said street or sidewalk has been definitely laid out and the boundaries of the same definitely fixed.

2. Upon railroads. The cost of that part of a street improvement required to be borne by a railroad or street railway company, and made by the municipality after default by a railroad or street railway company in making the same as hereinbefore provided, shall be assessed against such company, and shall be collected in the same manner as assessments are collected from abutting property owners, and such assessment shall be a lien on all of the franchises and property of such railroad or street railway company.

3. For sidewalks. The entire cost of a sidewalk improvement required to be made by owners of property abutting thereon, and made by the municipality after default by such property owners in making the same, as hereinbefore provided, shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made and directly on the improvement, according to their respective frontages thereon, by an equal rate per foot of such frontage.

4. Water, gas and sewer connections. The entire cost of each water, gas and sewer connection, required to be made by the owner of the property for or in connection with which such connection was made, but made by the municipality after default by such property owner in making the same, as hereinbefore provided, shall be specially assessed against the particular lot or parcel of land for or in connection with which it was made. No lands in the municipality shall be exempt from local assessment. (1915, c. 56, s. 8; 1919, c. 86; C. S. 2710.)

§ 160-86. Amount of assessment ascertained.—Upon the completion of any local improvement the governing body shall compute and ascertain the total cost thereof. In the total cost shall be included the interest paid or to be paid on notes or certificates of indebtedness issued by the municipality to pay the expense of such improvement pursuant to the provisions of this article and incident to the improvement and assessment therefor. The governing body must thereupon make an assessment of such total cost pursuant to the provisions of the preceding section, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed. (1915, c. 56, s. 9; C. S. 2711.)

§ 160-87. Assessment roll filed; notice of hearing.—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. Any number of assessment rolls may be included in one notice. (1915, c. 56, s. 9; C. S. 2712.)

§ 160-88. Hearing and confirmation; assessment lien.—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and may make proof in relation thereto. The governing body may thereupon correct such assessment roll, and either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for

a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes. (1915, c. 56, s. 9; C. S. 2713.)

§ 160-89. Appeal to the superior court.—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal, but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1915, c. 56, s. 9; C. S. 2714.

§ 160-90. Power to adjust assessments.—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the costs of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or assessment bonds issued by the municipality to pay the expenses of such improvement. The proceeding shall be in all respects as in case of local assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C. S. 2715.

§ 160-91. Payment of assessment in cash or by installments.—The property owner or railroad or street railway company hereinbefore mentioned shall have the option and privilege of paying for the improvements hereinbefore provided for in cash, or if they should so elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in next succeeding section, they shall have the option and privilege of paying the assessments in not less than five nor more than ten equal annual installments as may have been determined by the governing body in the original resolution authorizing such improvement. Such installments shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner or railroad or street railway company to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property and franchises shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date. (1915, c. 56, s. 10; C. S. 2716.)

§ 160-92. Payment of assessment enforced.—After the expiration of twenty days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent per annum from the date of the computation and ascertainment by the governing body of the total cost of the local improvement after its completion: Provided, that this shall not apply to improvements made under an ordinance prior to February 26, 1923. The assessment shall be due and payable on the date on which taxes are payable. Provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose. (1915, c. 56, s. 11; 1923, c. 87; 1929, c. 331, s. 1; C. S. 2717.)

§ 160-93. Sale or foreclosure for unpaid assessments barred in ten years; no penalties.—No statute of limitation, whether fixed by law especially referred to in this chapter or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, whether for paving or other benefits, and whether such assessment is made under this chapter or under other general or specific acts, save from and after ten years from default in the payment thereof, or if payable in installments, ten years from the default in the payment of any installments. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff. This section shall apply to all special assessments heretofore or

hereafter levied, but shall not apply to any special assessment for the collection of which an action or proceeding has been instituted prior to March 19, 1929. (1929, c. 331, s. 1.)

Local Modification.—Durham: 1935, c. 224; Sampson, Town of Clinton: 1939, c. 148.

§ 160-94. Extension of time for payment of special assessments.—At any time or times prior to July the first, one thousand nine hundred and forty-two, the governing body of any city or town may adopt a resolution granting an extension of the time for the payment of any instalment or instalments of any special assessment, including accrued interest thereon and costs accrued in any action to foreclose under the lien thereon, by arranging such instalment or instalments, interest and costs into a new series of ten equal instalments so that one of said instalments shall fall due on the first Monday in October after the expiration of one year after adoption of the aforesaid resolution and one of said instalments on the first Monday in October of each year thereafter. Accrued interest on any instalment or instalments of any special assessment extended under the provisions of this section shall be computed to the first Monday in October following the adoption of the aforesaid resolution: Provided, however, that such extension shall not prevent the payment of any assessment or interest at any time: Provided further, no such extension shall in any way discriminate in favor of or against any property assessed by virtue of said assessment roll: Provided further, that any instalment or instalments, together with accrued interest and costs extended in accordance with the provisions of this section shall bear interest at the rate of six per centum per annum from the first Monday in October following the adoption of the aforesaid resolution. (1931, c. 249; 1933, cc. 252, 410; 1935, c. 126; 1937, c. 172; 1939, c. 198; 1941, c. 160.)

Local Modification.—Orange, Town of Carrboro: 1937, c. 195.

§ 160-95. Assessments in case of tenant for life or years.—Whenever any real estate is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property by any city, town, county, township, municipal district, or the state, to cover the cost of permanent improvements ordered put thereon by the law or the ordinances of such city or town, township, or municipal district, such as paving streets and sidewalks, laying sewer and water lines, draining lowlands, and permanent improvements of a like character, which constitute a lien upon such property, the amount so assessed for such purposes shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate. (1911, c. 7, s. 1; C. S. 2718.)

§ 160-96. Interests of parties ascertained.—The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13. (1911, c. 7, s. 2; C. S. 2719.)

§ 160-97. Lien of party making payment.—If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the city, town, township, municipal district, county, or the state, to a lien on such property for the same. (1911, c. 7, s. 3; C. S. 2720.)

§ 160-98. Lien in favor of co-tenant or joint owner paying special assessments.—Any one of several tenants in common, or joint tenants, or co-partners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his co-tenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office. (1935, c. 174.)

§ 160-99. Money borrowed to be paid out of assessment.—At any time before the cost of any local improvement shall be computed and ascertained as provided in this article, the municipality may from time to time by resolution authorize the treasurer to borrow money to the extent required to pay the cost of any such improvement or to repay any money borrowed under this section with interest thereon in accordance with the provisions of the Local Government Act. The resolution authorizing any such loan or loans may provide for the issue of notes or certificates of indebtedness of the municipality, or both, payable either on demand or at a fixed time, not more than six months from the date thereof, and bearing interest not exceeding six per centum per annum. Any temporary indebtedness incurred under the authority of this section, with the interest thereon, may be paid out of moneys raised by the issue and sale of "local improvement bonds" or "assessment bonds," or both, to be issued and sold as hereinafter provided, or may be included in the annual tax levy. (1915, c. 56, s. 12; C. S. 2721.)

§ 160-100. Assessment books prepared.—After the governing body of the municipality has levied the assessment against the property abutting upon the street or streets, the city clerk or person designated shall prepare from such assessment roll and deliver to the tax collector or person designated a well bound book styled Special Assessment Book, which shall be so ruled as to conveniently show:

1. Name of owner of such property.

2. The number of lot or part of lot and the plan thereof if there be a plan.
3. The frontage of said lot.
4. The amount that has been assessed against such lot.
5. The amount of such installments and the day on which installments shall become due.

Such book shall be indexed according to the names of the owners of the property, and entries of all payments or partial payments shall be immediately entered upon said book when made, and said book shall be open to the inspection of any citizen of the municipality. (1915, c. 56, s. 13; C. S. 2722.)

§ 160-101. Apportionment of assessments.—In any case where one or more special assessments shall have been made against any property for any improvement or improvements authorized by this chapter, and said property has been or is about to be subdivided and it is therefore desirable that said assessment or assessments be apportioned among the subdivisions of such property, the governing body may, with the consent of the owner or owners of said property, apportion said assessment or assessments, or the total thereof, fairly among said subdivisions, as same are benefited by the improvement and release such subdivisions, if any, as in the opinion of the governing body are not benefited by the improvement. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment or assessments except the part thereof apportioned to said subdivision, and the part of said original assessment or assessments apportioned to any such subdivision shall be of the same force and effect as the original assessment or assessments. At the time of making such apportionments, the governing body shall cause to be entered upon its minutes an entry to the effect that such apportionment is made with the consent of the owner or owners of the property affected, and such entry shall be conclusive of the truth thereof in the absence of fraud. Such re-assessments may include past due installments of principal, interest and penalty, if any, as well as assessments not then due, and the remaining installments shall fall due at the same dates as they did under the original assessment. (1929, c. 331, s. 1; 1935, c. 125.)

§ 160-102. Local improvement bonds issued.—Whenever an assessment for any local improvement has been confirmed, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which shall be borne by the municipality at large shall be raised by the issuance of bonds of the municipality to be known as "local improvement bonds." Such bonds shall be issued as provided in the Municipal Finance Act. (1915, c. 56, s. 14; C. S. 2723.)

§ 160-103. Assessment bonds issued.—Whenever an assessment for any local improvement has been confirmed, and twenty days have elapsed since the first publication of notice of such confirmation, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which has been assessed upon the abutting property, or any part of such expense, shall be raised by the municipality by the issuance of its bonds, to be known as "assessment bonds." All moneys derived from the collection of assessments upon which assessment bonds are predicated, collected after the passage of the resolution authorizing such bonds, shall be placed in a special fund, to be used only for the payment of the principal and interest of assessment bonds issued under this section, and if at the time of the annual tax levy for any year in such municipality it shall appear that such fund will be for any cause insufficient to meet the principal and interest of such bonds maturing in such year, the amount of the deficiency shall be included in such tax levy. The amount of the assessments for two or more improvements may be included in a single issue of assessment bonds. (1915, c. 56, s. 15; C. S. 2724.)

§ 160-104. Improvements on streets abutting railroads.—Municipalities desiring to make street and sidewalk improvements on property owned and/or leased by railroad companies, are hereby authorized to make such improvements on any such street used as a public street, subject to the rights of any such railroad company to use and occupy the same for railroad purposes: Provided, however, that the petition or petitions contemplated and required by the provisions of this article, need not be signed by such railroad company or companies, nor shall any part of the railroad right of way be considered as abutting property, but the said petition shall be signed by at least a majority in number of the owners of property other than the railroad right of way, who must represent at least a majority of all the lineal feet frontage of the lands, other than said railroad right of way (a majority in interest of owners of undivided interest in any piece of property to be deemed and treated as one person for the purpose of the petition), abutting upon such street or streets proposed to be improved: Provided, further, that not more than one-half of the total cost of the street or sidewalk improvement made by such municipality, exclusive of so much of the cost as is incurred at street intersections, shall be specially assessed upon the lots or parcels of land abutting directly on the improvement, other than the property included in the railroad right of way, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage. (1931, c. 222, s. 1.)

§ 160-105. Railroad rights of way and contracts as to streets unaffected.—Nothing contained in § 160-104 shall be construed so as to deprive any railroad company of any right which it may now or hereafter possess by reason of its ownership of any right of way.

Any additional expense which the railroad may incur in removing or altering any pavement or other improvements made under and by virtue of the provisions of § 160-104, which interfere with the railroad's use of its right of way, shall be borne by the municipality affected: Provided, such section shall not affect in any way existing contracts between municipalities and railroads for rights of way through streets, and

shall not affect existing contracts between municipalities and railroads for upkeep and improvements of streets. (1931, c. 222, s. 1½.)

Art. 10. Inspection of Meters.

§ 160-106. Inspectors appointed.—In every city or town in the state of North Carolina where is furnished, for pay, electricity, gas or water by meter measure, the governing body of the city or town may appoint some competent person to act as inspector of meters, whose duty it shall be to inspect and test such meters and to carry out the provisions of this article as herein provided. (1909, c. 150, s. 1; C. S. 2729.)

§ 160-107. Time of appointment; oath, bond, and compensation. — Such appointment, if made, shall be made at the first meeting in May of each year of such governing body, subject to the power of such city or town authorities to remove such appointee in the manner provided for the removal of its other appointees and to fill the vacancy caused by such removal. The compensation of such inspector shall be fixed and shall be paid by the city or town so appointing him, and such inspector shall upon his appointment take oath before the mayor of said city or town that he will faithfully perform the duties herein imposed upon him, and the governing body of the city or town may require the inspector to give bond in such sum as they may fix for the faithful discharge of his duties. (1909, c. 150, s. 2; C. S. 2730.)

§ 160-108. Apparatus for testing meters provided.—Every person, firm, corporation or municipality furnishing for pay electricity, gas or water by meter measure in any city or town having appointed an inspector of meters, as aforesaid, shall provide and keep a suitable and proper apparatus for testing and proving the accuracy of the meters to be so furnished for use, by which apparatus all such meters shall be tested at their rated capacity. (1909, c. 150, s. 3; C. S. 2731.)

§ 160-109. Meters tested before installed.—No person, firm, or corporation or municipality furnishing for pay electricity, gas or water by meter measure shall hereafter furnish, install and put in use any such meter in any city or town having appointed an inspector of meters, as aforesaid, until such meter shall first have been inspected and found correct by such inspector, and it shall be the duty of such inspector to test the same upon the written request of such proposed furnisher. No meter now in service shall be required to be taken out for test, except where there is doubt as to its accuracy and upon the written request of the consumer, as herein provided. (1909, c. 150, s. 4; C. S. 2732.)

§ 160-110. Inspection made upon complaint.—When any consumer, by meter, of electricity, gas or water in any city or town having appointed an inspector of meters, as aforesaid, doubts the accuracy of such meter and desires to have the same tested, such consumer may file with the inspector of meters a written complaint of the meter and request that the same be tested, and shall at the same time deposit with the furnisher the sum of one dollar to cover the expense of taking out and replacing such meter, and thereupon it shall be the duty of such inspector as soon as practicable to accurately test said meter in the presence of and jointly with the authorized agent of the furnisher, and also in the presence of the complainant, if he so desires, and shall give to both the complainant and to the furnisher a written report of such test and the result thereof. (1909, c. 150, s. 5; C. S. 2733.)

§ 160-111. Repayment of deposit.—If upon such test the meter is found to be incorrect, in that it registers more than two and one-half per cent too fast—that is, more than two and one-half per cent more electricity, gas or water than it should, then and in that event the furnisher shall return to the complainant the one dollar deposit and shall promptly properly adjust and repair the meter or furnish a correctly adjusted meter; but if upon such test the meter shall not register more than two and one-half per cent too fast—that is, more than two and one-half per cent more than it ought to—the one dollar deposit shall be retained by the furnisher to cover the expense of taking out and replacing the meter. (1909, c. 150, s. 6; C. S. 2734.)

§ 160-112. Adjustment of charges. — If upon such test the meter shall register more than two and one-half per cent too fast, as above defined, the furnisher shall reimburse the complainant at the rate at which the meter registers too fast for a period of one month back; but if upon such test the meter shall be found to be incorrect, in that it registers more than two and one-half per cent too slow—that is, more than two and one-half per cent less electricity, gas or water than it should—then and in that event the complainant shall, in addition to the amount already charged him, pay at once to the furnisher at the rate at which the meter is too slow for a period of one month back, and the furnisher shall have the same rights for collecting such additional sum as is provided for the collecting of the past due and unpaid bills for electricity, gas or water, as the case may be. (1909, c. 150, s. 7; C. S. 2735.)

§ 160-113. Standard of accuracy.—Any such meter having been tested and found to be not more than two and one-half per cent too slow nor more than two and one-half per cent too fast, as above defined, shall be considered correct, and such inspector shall so mark or stamp such meter and report the same to the governing body of the city or town. (1909, c. 150, s. 8; C. S. 2736.)

§ 160-114. Free access to meters.—Nothing in this article shall be so construed as to prevent any furnisher of electricity, gas or water from having free access to the meters. (1909, c. 150, s. 9; C. S. 2737.)

Art. 11. Regulation of Buildings.

§ 160-115. Chief of fire department.—There is hereby created in the incorporated cities and towns of the state, where not already established by their charters, the office of chief of fire department. (Rev., s. 4815; 1901, c. 677, s. 1; C. S. 2738.)

§ 160-116. Election and compensation.—The governing body of every incorporated city and town, when no provision is made in their

charters for such office, shall elect a chief of fire department, fix his term of office, prescribe his duties and obligations, and see that he is reasonably remunerated by the city or town for the services required of him by law. They may change his duties and compensation from time to time, not inconsistent with the duties prescribed in this article. Where the governing body fails or neglects to perform such duty, the insurance commissioner shall call it to their attention and if necessary bring the matter before the proper court. Nothing herein may prevent any person elected hereunder from holding some other position in the government of the city or town. (Rev., ss. 2981, 4816; 1901, c. 677, s. 2; 1905, c. 506, s. 4; 1915, c. 192, s. 1; C. S. 2739.)

§ 160-117. Duties of chief of fire department.—The chief of the fire department shall perform the duties required of him by this article; where such duties are not prescribed by the charters or governing body of incorporated cities and towns, it shall be his duty to preserve and care for the fire apparatus, have charge of the fighting and putting out of all fires, make annual reports to the city municipal governments, seek out and have corrected all places and conditions dangerous to the safety of the municipality from fire, look after buildings being erected with a view to their safety from fires, and do and perform the other duties prescribed by the governing boards of the several municipalities. (Rev., ss. 4815, 4817; 1901, c. 677, ss. 1, 3; C. S. 2740.)

§ 160-118. Local inspector of buildings.—The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and shall make all reports required by the insurance commissioner, and shall make all inspections and perform such duties as may be required by the state law or city or town ordinance or by the said insurance commissioner: Provided, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed. (Rev., s. 2982; 1905, c. 506, s. 6; 1915, c. 192, s. 2; C. S. 2741.)

§ 160-119. Town aldermen failing to appoint inspectors. — If the aldermen or commissioners of any city or town shall fail or refuse to appoint a chief of the fire department, or shall fail or refuse to reasonably remunerate him, they shall be guilty of a misdemeanor. This section shall not apply to the aldermen or commissioners of any city or town, where such city or town is by law exempt from the law regulating and controlling the erection and inspection of buildings. (Rev., s. 3607; 1905, c. 506, s. 4; C. S. 2742.)

§ 160-120. Town officers; inspection of buildings.—If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor. (Rev., s. 3610; 1905, c. 506, s. 5; 1915, c. 192, s. 17; C. S. 2743.)

§ 160-121. Electrical inspectors.—The governing body of any incorporated city or town may in their discretion appoint an electrical inspector in addition to the building inspector, and when said electrical inspector is so appointed he shall do and perform all things herein set out for the building inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the building inspector shall be relieved of such duties. (Rev., s. 2983; 1905, c. 506, s. 33; C. S. 2744.)

§ 160-122. County electrical inspectors.—The county commissioners of each county may in their discretion designate and appoint one or more electrical inspectors whose duty it shall be to inspect the installation of all wiring and other electrical installations in buildings located in any town of one thousand population or less and/or those buildings located outside of the corporate limits of all cities and towns and not otherwise included in this article, and to issue a certificate of inspection where such installations fully meet the requirements for such installations as set forth in this article, or such additional requirements as the board of county commissioners may prescribe. Nothing contained in this article shall be construed as prohibiting said board of county commissioners designating as county inspector any person who also has or may be designated as electrical inspector in any city or town located within said county, or from prohibiting two or more counties from designating the same inspector to perform the duties herein mentioned for such two or more counties. The county commissioners shall also fix the fees to be charged by such county inspector, which fees shall be paid by the owner of the properties so inspected. (1937, c. 57; 1941, c. 105.)

§ 160-123. Deputy inspectors.—All duties imposed by this article upon the building inspector may be performed by a deputy appointed by such inspector. (Rev., s. 2984; 1905, c. 506, s. 32; C. S. 2745.)

§ 160-124. Fire limits established.—The governing body of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns. (Rev., s. 2985; 1905, c. 506, s. 7; C. S. 2746.)

§ 160-125. Punishment for failing to establish fire limits. — If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the fire limits for such town according to law, they shall be guilty of a misdemeanor. This section shall not apply to aldermen or commissioners of those towns which are exempt from the law governing the inspection of buildings. (Rev., s. 3608; 1905, c. 506, s. 7; C. S. 2747.)

§ 160-126. Building permits.—Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. As the building progresses the inspector shall make

as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building, giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the insurance commissioner every person neglecting to secure such permit and certificate, and also bring the matter before the mayor, recorder or municipal court for their attention and action. (Rev., s. 2986; 1905, c. 506, s. 26; 1915, c. 192, s. 3; C. S. 2748.)

§ 160-127. Material used in construction of walls.—The walls of all buildings in cities or towns where this article applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material. All rules, regulations and requirements contained in the building law, or set out in this article in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated. (Rev., s. 2987; 1905, c. 506, s. 9; 1915, c. 192, s. 4; C. S. 2749.)

§ 160-128. Frame buildings within fire limits.—Within the fire limits of cities and towns where this article applies, as established and defined, no frame or wooden building shall be hereafter erected, altered, repaired, or moved except upon the permit of the building inspector, approved by the insurance commissioner. (Rev., s. 2988; 1905, c. 506, s. 8; 1915, c. 192, s. 5; C. S. 2750.)

§ 160-129. Thickness of walls.—The walls of warehouses, stores, factories, liverystables, hotels or other brick or stone buildings for business purposes in cities or towns where this article applies, except fireproof buildings where the framework is of steel, shall conform to the following schedules:

Height of Building	Minimum Thickness in Inches of Wall				
	1st	2d	3d	4th	5th
One-story building	13	..	..	..	..
Two-story building	17	13	..	..	..
Three-story building	17	17	13	..	..
Four-story building	22	17	17	13	..
Five-story building	26	22	17	17	13

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra-cotta, stone, cast-iron or cement. Upon written application approved by the building inspector the insurance commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in brick walls where such thickness is compensated for by pilasters. The roofs of all buildings named in this section shall be of metal, slate or tile or gravel or other standard fireproof roofing. (Rev., s. 2989; 1905, c. 506, s. 10; 1915, c. 192, s. 6; C. S. 2751.)

Local Modification.—Durham: 1933, c. 254.

§ 160-130. Foundation of walls; openings and doors protected.—In all buildings mentioned in the preceding section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that as near as practicable the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness. No opening or doorway shall be cut through a party or fire wall of a brick or stone building without a permit from the inspector, and every such door or opening shall have top, bottom and sides of stone, brick or iron, shall be closed by two sets of standard metal-covered doors (separated by the thickness of the wall) hung to rabbeted iron frames or to iron hinges in brick or stone rabbets, shall not exceed ten feet in height by eight feet in width, and every opening other than a doorway shall be protected in a manner satisfactory to the inspector. (Rev., s. 2990; 1905, c. 506, s. 11; C. S. 2752.)

§ 160-131. Metallic stand-pipes required.—All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic stand-pipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half inch hose coupling on each floor. The building inspector may, with the approval of the insurance commissioner, allow two or more stand-pipes of smaller size and proper hose coupling, provided they are of such sizes and number as to be at least equivalent in service to the large stand-pipes required. All hose coupling shall conform to the size and pattern adopted by the fire department. (Rev., s. 2991; 1905, c. 506, s. 12; 1915, c. 192, s. 7; C. S. 2753.)

§ 160-132. Construction of joists.—The ends of joists or beams entering a brick wall shall be cut not less than three-inch bevel so as not to disturb the brickwork by any deflection or breaking of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists. (Rev., s. 2992; 1905, c. 506, s. 13; C. S. 2754.)

§ 160-133. Chimneys and flues.—All fireplaces and

chimneys in stone or brick walls in any building hereafter erected and any chimneys or flues hereafter altered or repaired shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast. (Rev., s. 2993; 1905, c. 506, s. 14; C. S. 2755.)

§ 160-134. Chimneys not built on wood.—No chimney shall be started or built upon a beam of wood or floor, the brickwork in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue. (Rev., s. 2994; 1905, c. 506, s. 16; C. S. 2756.)

§ 160-135. Construction of flues.—All flues shall extend at least three feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra-cotta, stone, cast-iron or cement. In all buildings hereafter erected the stone or brickwork of all flues and the chimney shafts of all furnaces, boilers, bakers' ovens, large cooking ranges, and laundry stoves, and all flues used for similar purposes shall be at least eight inches in thickness, with the exception of smoke flues, which are lined with fire-clay lining or cast iron. These may be four inches in thickness, but this shall not apply to metal stacks of boiler-houses where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed either in walls of eight inches thickness or with smoke flues lined with cast-iron or fire-clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and be carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue of flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe or taken down. (Rev., s. 2995; 1905, c. 506, s. 17; C. S. 2757.)

§ 160-136. Hanging flues.—Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast-iron or fire-clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings, or roofs. Flues not lined as above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside. (Rev., s. 2996; 1905, c. 506, s. 18; 1915, c. 192, s. 8; C. S. 2758.)

§ 160-137. Flues cleaned on completion of building.—The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building. (Rev., s. 2997; 1905, c. 506, s. 19; C. S. 2759.)

§ 160-138. Construction of stovepipes.—No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at lease twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other woodwork they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soapstone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agent of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected. (Rev., s. 2998; 1905, c. 506, s. 20; 1915, c. 192, s. 9; C. S. 2760.)

§ 160-139. Height of foundry chimneys.—Iron cupola or other chimneys of foundries shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola or chimney. (Rev., s. 2999; 1905, c. 506, s. 22; C. S. 2761.)

§ 160-140. Steam pipes, how placed.—No steam pipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then the distance shall not be less than one inch. All steam pipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incombustible material. (Rev., s. 3000; 1905, c. 506, s. 21; C. S. 2762.)

§ 160-141. Electric wiring of houses.—The electric wiring of houses or buildings for lighting or for other purposes shall conform to the regulations prescribed by the organization known

as National Board of Fire Underwriters. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for the purpose of illuminating any building belonging to any person, firm or corporation to be turned on without first having had an inspection made of the wiring by the building inspector and having received from the inspector a certificate approving the wiring of such building. It shall be unlawful for any person, firm or corporation engaged in the business of selling electricity to furnish any electric current for use for illuminating purposes in any building or buildings of any person, firm or corporation, unless the said building or buildings have been first inspected by the inspector of buildings and a certificate given as above provided. The fee that shall be allowed said inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for each building inspected, to be paid by the person applying for the inspection. (Rev., s. 3001; 1905, c. 506, s. 23; C. S. 2763.)

Local Modification.—Alamance, City of Burlington: 1931, c. 133; Moore: 1931, c. 49.

§ 160-142. Quarterly inspection of buildings.—Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the insurance commissioner and shall report to the insurance commissioner all defects found by him in any building upon a blank furnished him by the insurance commissioner. The building inspector shall notify the owner or occupant of buildings of any defects, and notify them to correct the same within a reasonable time. (Rev., s. 3002; 1905, c. 506, s. 25; 1915, c. 192, s. 10; C. S. 2764.)

§ 160-143. Annual inspection of buildings.—At least once in each year the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this article are complied with, and the local inspector alone or with the insurance commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from any one. It shall be the duty of the local building inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected. (Rev., s. 3003; 1905, c. 506, s. 29; 1915, c. 192, s. 11; C. S. 2765.)

§ 160-144. Record of inspections.—The local inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name and residence of owner, location of building, how it is to be occupied, date of inspection, what defects found and when remedied and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued. (Rev., s. 3004; 1905, c. 506, s. 30; C. S. 2766.)

§ 160-145. Reports of local inspectors.—The local inspector shall report before the fifteenth of February of each year the number and dates of general and quarterly inspections during the year ending the thirty-first day of December upon blanks furnished by the insurance commissioner, and furnish such other information and make such other reports as shall be called for by the insurance commissioner. (Rev., s. 3005; 1905, c. 506, s. 31; 1915, c. 192, s. 12; C. S. 2767.)

§ 160-146. Fees of inspector.—For the inspection of every new building, or old building repaired or altered, the local inspector shall charge and collect an inspection fee before issuing the building certificate, as follows: Two dollars for each one-story mercantile store-room, livery-stable or building for manufacturing, and fifty cents for each additional story, and for other buildings twenty-five cents per room; but the inspection fee shall in no case exceed five dollars. The building inspector shall be paid an adequate salary by the city or town for the quarterly and annual inspection of buildings as provided for in this article, and also for the duties under this section where the fees are collected and paid into the treasury of the municipality. (Rev., s. 3006; 1905, c. 506, s. 27; 1915, c. 192, s. 13; C. S. 2768.)

Local Modification.—Alamance, City of Burlington: 1931, c. 133; Lenoir: 1933, c. 294; Moore: 1931, c. 49.

§ 160-147. Care of ashes, waste, etc.—Ashes shall be removed in metal vessels and unless moved by city drays shall be stowed in brick, stone or metal receptacles or removed by owner to a place not less than fifteen feet from any wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslaked lime shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet and the floors under them shall be protected by metal or sand box. (Rev., s. 3007; 1905, c. 506, s. 24; C. S. 2769.)

§ 160-148. Ordinances to enforce the law.—No provision of this article shall be held to repeal the power of any incorporated city or town to make and enforce any further rules and regulations under the powers granted in their several charters, and said cities and towns may pass ordinances for the enforcement of any provision of this article. (Rev., s. 3008; 1905, c. 506, s. 34; C. S. 2770.)

§ 160-149. Defects in buildings corrected.—Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed or has not been constructed in accordance with the provisions of this law, or that an old building because of its condition is dangerous and likely to cause a fire, it shall be his duty to notify the owner of the building of the defects or the failure to comply with this law, and the owner or builder shall immediately remedy the defect and make the

building comply with the law. The owner or builder may appeal from the decision of the local inspector to the insurance commissioner. (Rev., s. 3009; 1905, c. 506, s. 28; 1915, c. 192, s. 14; C. S. 2771.)

§ 160-150. Owner of building failing to comply with law.—If the owner or builder erecting any new building, upon notice from the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is willfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense. (Rev., s. 3798; 1905, c. 506, s. 28; 1915, c. 192, s. 18; C. S. 2772.)

§ 160-151. Unsafe buildings condemned.—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered, repaired or moved, until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law. (Rev., s. 3010; 1905, c. 506, s. 15; 1915, c. 192, s. 15; 1929, c. 199, s. 1; C. S. 2773.)

§ 160-152. Punishment for allowing unsafe building to stand.—If the owner of any building which has been condemned as unsafe and dangerous to life by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall be guilty of a misdemeanor and shall pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice. (Rev., s. 3802; 1905, c. 506, s. 15; 1915, c. 192, s. 19; 1929, c. 199, s. 2; C. S. 2774.)

§ 160-153. Removing notice from condemned buildings.—If any person shall remove any notice which has been affixed to any building by the local inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars for each offense. (Rev., s. 3799; 1905, c. 506, s. 15; C. S. 2775.)

§ 160-154. To what towns applied.—This article shall apply only to incorporated cities and towns of over one thousand inhabitants according to the last United States census, and such other cities and towns in the state as shall by a vote of their board of aldermen or governing body adopt this article. (Rev., s. 3011; 1905, c. 506, s. 35; 1915, c. 192, s. 16; C. S. 2776.)

Art. 12. Recreation Systems and Playgrounds.

§ 160-155. Application of article; "municipality" defined.—This article shall apply to cities, to towns, to townships, to school districts and to counties. The term "municipality" as used in this article includes any city, town, township, school district, and any county. (1923, c. 83, s. 1; C. S. 2776(a).)

§ 160-156. Power to dedicate property already owned; power to acquire property.—The city council or governing body of any city or town, or the county commissioners or governing body of any county, or the board of trustees or governing body of any school district may dedicate and set apart for use as playgrounds, recreation centers and for other recreational purposes, any lands or buildings, or both, owned or leased by such municipality and not dedicated or devoted to another and inconsistent public use; and such municipality may, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes, acquire or lease lands or buildings, or both, for said recreational purposes; or if there be no law authorizing such acquisition or leasing of such lands or buildings, the governing body of any such municipality is empowered to acquire lands or buildings, or both, for such purposes by gift, purchase, condemnation or lease. (1923, c. 83, s. 2; C. S. 2776(b).)

§ 160-157. System of supervised recreation; appropriation; delegation of powers.—The governing body of any municipality as defined in § 160-155 shall have the power to provide, establish, maintain and conduct a system of supervised recreation, including playgrounds, recreation centers, and other recreational activities and facilities, and may appropriate funds for the same; and the authority to provide, establish, maintain and conduct such supervised recreation system and facilities may be vested by the said governing body in the school board, park board or recreation commission, as the governing body of such municipality may determine. Any such board, body or commission in which shall be vested by appropriate action of the said governing body the authority aforesaid may for the purpose of carrying out the provisions of this article employ play leaders, playground directors, supervisors, recreation superintendents, or such other officers or employees as they deem proper. (1923, c. 83, s. 3; C. S. 2776(c).)

Local Modification.—Scotland: 1939, c. 359, s. 2.

§ 160-158. Powers; components of recreation board; terms of office; compensation; vacancies.—If the governing body of any municipality shall determine that the power to provide, establish, conduct and maintain a supervised recreation system and facilities, and to acquire by gift, purchase, eminent domain or lease, lands and buildings for such purposes, shall be exercised by a recreation board or commission or the school board, or park board, such governing body shall by resolution or ordinance vest such powers in such body, and the body to which such powers and duties shall be thus delegated shall have the same powers which the said governing body would have had to effectually carry out the purposes of

this article: Provided, however, that if there is not a recreation board or commission in existence and it is the desire of the governing body to vest the said powers, duties and responsibilities in a recreation board or commission, then the said governing body shall have the power to create such board or commission, which shall consist of five persons, at least two of whom may be members of the school board, to be appointed by the mayor or presiding officer of such governing body, to serve for terms of five years or until their successors are appointed, except that the members of such board or commission first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. The members of such board or commission shall serve without pay. Vacancies in such board or commission occuring otherwise than by expiration of term shall be filled only for the unexpired term and such appointment shall be filled by the mayor or presiding officer of the governing body. (1923, c. 83, s. 4; C. S. 2776(d).)

§ 160-159. Co-operation.—Any two or more municipalities may jointly provide, establish, maintain and conduct a supervised recreation system and acquire property for and establish and maintain playgrounds, recreation centers, and other recreational facilities and activities. (1923, c. 83, s. 5; C. S. 2776(e).)

§ 160-160. Gifts; deposits of funds; payments from funds.—A recreation board or commission or other authority in which this article vests the power to provide, establish, maintain and conduct such supervised recreation system may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use, for playgrounds or recreation purposes, but if the acceptance thereof for such purpose will subject the municipality to additional expense for improvement, maintenance, or renewal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of such municipality. Money received for such purpose, unless otherwise provided by the terms of the gift or bequest, shall be deposited with the treasurer of the municipality to the account of the recreation board or commission or other body having charge of such work, and the same may be withdrawn and paid out in the same manner as money appropriated for recreation purposes. (1923, c. 83, s. 6; C. S. 2776(f).)

§ 160-161. Bond issues.—The governing body of any municipality may, pursuant to law, provide that the bonds of such municipality may be issued in the manner provided by law for the issuance of bonds for other purposes, for the purpose of acquiring lands or buildings for playgrounds, recreation centers and other recreational purposes, and for the equipment thereof. (1923, c. 83, s. 7; C. S. 2776(g).)

§ 160-162. Petition for establishment of system and levy of tax; election.—Whenever a petition signed by at least twenty-five per cent of the qualified and registered voters in any municipality shall be filed in the office of the clerk of such municipality, requesting the governing body of such municipality to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax for the conduct and maintenance thereof of not less than.....mills nor more than.....mills on each dollar of assessed valuation of all taxable property within the corporate limits of such municipality, said petition setting forth definitely the maximum and minimum rate of said proposed tax, it shall be the duty of the governing body of such municipality to cause the question of the establishment, maintenance and conduct of such supervised recreation system as in the judgment of the governing body it may be advisable and practicable to provide, conduct and maintain out of the tax funds thus provided, to be submitted to the voters at a special election to be held as now provided by law for special elections for municipal corporations. Except the board ordering said election may fix the date thereof: Provided, the petition shall have been filed at least thirty days prior to the date of such election: Provided further, there shall be no new registration under this article. (1923, c. 83, s. 8; C. S. 2776(h).)

§ 160-163. Resolution for establishment, maintenance, and conduct of system; appointment of recreation commission.—Upon the adoption of the proposition provided for in the preceding section at the election therein provided for the governing body of the municipality shall by appropriate resolution provide for the establishment, maintenance and conduct of such supervised recreation system as they may deem advisable and practicable to provide and maintain out of the tax money thus voted. And the said governing body may designate, by appropriate resolution or ordinance, the body or commission to be vested with the powers, duties and obligations necessary for the establishment, maintenance and conduct of such recreation system as provided in this article. (1923, c. 83, s. 9; C. S. 2776(i).)

§ 160-164. Playground and recreation tax.—The governing body of any municipality adopting the provisions of this article at an election shall thereafter annually levy and collect a tax of not less than the minimum nor more than the maximum amount set out in the said petition for such election, which tax shall be designated as the "playground and recreation tax" and shall be levied and collected in like manner as the general tax of the municipality, but the same shall be in addition to and exclusive of all other taxes such municipality may levy or collect, nor shall such tax be scaled down under any existing law. (1923, c. 83, s. 10; C. S. 2776(j).)

§ 160-165. Advice and counsel of state director of physical education.—The state board of education may, upon request of such municipality, give to any municipality adopting or considering the adoption of, the provisions of this article the benefit of the expert advice and counsel of the state director of physical education provided for in § 115-25 and may from time to time make and issue for the benefit of municipalities general suggestions furthering the purposes of this article. (1923, c. 83, s. 11; C. S. 2776(k).)

§ 160-166. Laws not repealed or impaired.—This article does not repeal nor impair any power

now vested by law in any municipality or park or recreation board or commission. (1923, c. 83, s. 12; C. S. 2776(l).)

Art. 13. Market Houses.

§ 160-167. Municipalities and counties authorized to act jointly; location of house, etc.—The governing body of any city or town of over five thousand inhabitants and the county commissioners of the county in which such city or town is situated shall have the right, and they are fully authorized and empowered to jointly establish, own, maintain and operate a market house or market houses within the corporate limits of such city or town. For the purposes aforesaid such city or town and county may lease, purchase or otherwise acquire, and own and hold as tenants in common of equal interest, land necessary as a site for such market house or houses, and build and erect thereon such market house or houses, the cost thereof to be borne and paid equally by such city or town and county: Provided, however, that the cost of any such building or buildings shall not be less than two thousand five hundred dollars ($2,500.00) nor more than one hundred thousand dollars ($100,000.00). In connection with and as a part of such market house or houses, the governing body of such city or town and the commissioners of such county may also provide, establish, maintain and operate open-air market places, slaughter places or abattoirs, a cold storage plant and a canning plant for the purpose of preserving and canning such fruits, vegetables and other produce as may be left unsold from day to day or may be in excess of present market requirements, or which may be bought, and they are authorized to establish, maintain and operate places, scales, and equipment for the weighing, measuring and grading of corn, grain, fodder, vegetables, fruits and other like farm products, and for such purposes to appoint an official weigher, fix his fees and make reasonable rules, regulations and charges covering such services. (1923, c. 158, s. 1; C. S. 2776(m).)

§ 160-168. Control and management; regulations; leasing space; inspection; keeper.—Such market house or houses and appurtenances shall be under the joint control and management of such city or town and such county, and they shall make all necessary rules and regulations covering the maintenance and operation thereof not inconsistent with this article; they may provide for the leasing or letting of stalls or space therein to persons, firms or corporations, and fix the rental thereof, and may prescribe the time, place and manner of sale of fish, meats, fruits, vegetables and other produce therein, and provide for the inspection of all foodstuffs offered for sale therein and the condemnation of such as may be unfit for sale and consumption; they may elect or employ a keeper of such market house or houses and fix his compensation: Provided, the term of office of such keeper shall not exceed two years. (1923, c. 158, s. 2; C. S. 2776(n).)

§ 160-169. Directors; organization of board; powers; accounts.—The entire direct management and operation of such market house or houses established under this article shall be vested in a board of directors to consist of six members, and the mayor of the city and the chairman of the commissioners of the county in which such market house or houses are located shall be ex officio members of said board; of the other four members of said board, two, one of whom shall be a man and one a woman, shall be elected and appointed by the governing body of the city immediately following the time of the regular biennial May election of city officials, by said governing body, and the other two members, one of whom shall be a man and one a woman, shall be elected and appointed by the county commissioners at their regular meeting in May of the same year, and the four members so elected shall serve for terms of two years, and until their successors shall have been elected and qualified: Provided, that the first board of directors may be elected at any time after establishment of such market house or houses, to serve until the time of the next regular municipal election. The said board shall organize and elect a chairman, secretary and treasurer from among its membership, may adopt by-laws for its own government and exercise the usual powers inherent in such bodies; they shall keep accurate minutes of their transactions and meetings, and keep or have kept accurate accounts of all moneys and property coming into their hands. Said board shall make and promulgate such rules and regulations for the operation, management and use of such market house or houses as it may deem advisable, not inconsistent with this article and not inconsistent with such rules and regulations as may be adopted from time to time by the governing bodies of such city or town and county, and employ such help as may be necessary in the operation thereof. (1923, c. 158, s. 3; C. S. 2776(o).)

§ 160-170. Special tax; specific appropriation.—To assist in and provide funds for the carrying out of the provisions and purposes of this article, the county commissioners of the county and the governing body of the city in which any market house or houses may be established under this article may each levy annually, as a part of their general levy for general purposes and not as a specially authorized tax, a tax of not exceeding two cents on each one hundred dollars ($100.00) value of real and personal property within their respective jurisdictions, which shall be collected as other taxes, kept in a separate fund and be used exclusively for the purposes contemplated and set forth in this article: Provided, however, that nothing in this section contained shall be held or construed to authorize or allow any city, town or county to levy any tax in excess of the amount now or hereafter limited by any general law or special charter. (1923, c. 158, s. 4; C. S. 2776(p).)

§ 160-171. Repeal of inconsistent laws; effect.—This article shall in no way affect any laws now in force in reference to market house or houses now in existence or the establishment or maintenance of market house or houses in towns of less than five thousand inhabitants under the laws now in force. (1923, c. 158, s. 5; C. S. 2776(q).)

Art. 14. Zoning Regulations.

§ 160-172. Grant of power.—For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. (1923, c. 250, s. 1; C. S. 2776(r).)

§ 160-173. Districts.—For any or all said purposes it may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. Provided, however, that when at any intersection of streets in the corporate limits of any city or town the said legislative body of the said city or town promulgates any certain regulations and/or restrictions for the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land on two or more of said corners at said intersection, it shall be the duty of such legislative body upon written application from the owner of the other corners of said intersection to redistrict, restrict and regulate the remaining said corners of said intersecting streets in the same manner as is prescribed for the erection, construction, reconstruction, alteration, repair or use of buildings, structure or land of the other said corners for a distance not to exceed one hundred and fifty feet from the property line of said intersecting additional corners. (1923, c. 250, s. 2; 1931, c. 176, s. 1; 1933, c. 7; C. S. 2776(s).)

Local Modification.—Cleveland, Durham, Forsyth, Guilford, Perquimans, Rockingham, Rowan, Wayne: 1931, c. 176, s. 1; Pasquotank: 1933, c. 263.

§ 160-174. Purposes in view.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. (1923, c. 250, s. 3; C. S. 2776(t).)

§ 160-175. Method of procedure.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in such municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. (1923, c. 250, s. 4; 1927, c. 90; C. S. 2776(u).)

§ 160-176. Changes.—Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. (1923, c. 250, s. 5; C. S. 2776(v).)

§ 160-177. Zoning commission.—In order to avail itself of the powers conferred by this article, such legislative body shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission. (1923, c. 250, s. 6; C. S. 2776(w).)

§ 160-178. Board of adjustment.—Such legislative body may provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that such legislative body in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision or determination

made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. (1923, c. 250, s. 7; 1929, c. 94, s. 1; C. S. 2776(x).)

§ 160-179. Remedies.—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. (1923, c. 250, s. 8; C. S. 2776(y).)

§ 160-180. Conflict with other laws.—Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern. (1923, c. 250, s. 9; C. S. 2776(z).)

§ 160-181. Other statutes not repealed.—This article shall not have the effect of repealing any zoning act or city planning act, local or general, now in force, except as to such provisions thereof as are repugnant to or inconsistent herewith; but it shall be construed to be in enlargement of the duties, powers and authority contained in such statutes and all other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the state of North Carolina. (1923, c. 250, s. 11; C. S. 2776(aa).)

Art. 15. Repair, Closing and Demolition of Unfit Dwellings.

§ 160-182. Exercise of police power authorized.—It is hereby found and declared that the existence and occupation of dwellings in municipalities of this state which are unfit for human habitation are inimical to the welfare, and dangerous and injurious to the health, safety and morals of the people of this state, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any municipality of this State finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality, power is hereby conferred upon such municipality to exercise its police powers to repair, close or demolish the aforesaid dwellings in the manner herein provided. (1939, c. 287, s. 1.)

§ 160-183. Definitions.—The following terms whenever used or referred to in this article shall

have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

(a) "Municipality" shall mean any city or town having a population of five thousand or more, according to the federal census of the year one thousand nine hundred and forty.

(b) "Governing body" shall mean the council, board of commissioners, board of aldermen, or other legislative body, charged with governing a municipality.

(c) "Public officer" shall mean the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinance and by this article.

(d) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or state relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(e) "Owner" shall mean the holder of the title in fee simple and every mortgagee of record.

(f) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(g) "Dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. (1939, c. 287, s. 2; 1941, c. 140.)

§ 160-184. Ordinance authorized as to repair, closing and demolition; order of public officer. — Upon the adoption of an ordinance finding that dwelling conditions of the character described in section 160-182 exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances shall include the following provisions:

(a) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(b) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located therein fixed not less than ten days nor more than thirty days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(c) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order, (1) if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or (2) if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(d) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

(e) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished: Provided, however, that the duties of the public officer set forth in subsections (d) and (e) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance.

(f) That, the amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of such dwellings and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court: Provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1939, c. 287, s. 3.)

§ 160-185. Standards.—An ordinance adopted by a municipality under this article shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that

conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality; such conditions may include the following (without limiting the generality of the foregoing): Defects therein increasing the hazards of fire, accident, or other calamities, lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. Such ordinance may provide additional standards to guide the public officer, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4.)

§ 160-186. Service of complaints and orders.—Complaints or orders issued by a public officer pursuant to an ordinance adopted under this article shall be served upon persons either personally or by registered mail; but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the dwelling is located and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law. (1939, c. 287, s. 5.)

§ 160-187. Remedies.—Any person affected by an order issued by the public officer may petition to the superior court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause: Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall present such petition to the court. Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. Provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this section. (1939, c. 287, s. 6; 1939, c. 386.)

§ 160-188. Compensation to owners of condemned property.—Nothing in this article shall be construed as preventing the owner or owners of any property affected by the provisions of said article from receiving just compensation for any property as may be condemned or destroyed under the provisions of said article. (1939, c. 386.)

§ 160-189. Additional powers of public officer.—An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted: (a) To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitations; (b) to administer oaths, affirmations, examine witnesses and receive evidence; (c) to enter upon premises for the purpose of making examinations: Provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession; (d) to appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and (e) to delegate any of his functions and powers under the ordinance to such officers and agents as he may designate. (1939, c. 287, s. 7.)

§ 160-190. Administration of ordinance.—The governing body of any municipality adopting an ordinance under this article shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwelling in such municipality for the purpose of determining the fitness of such dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this article; and any such municipality is authorized to make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances. (1939, c. 287, s. 8.)

§ 160-191. Supplemental nature of article.—Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9.)

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

Art. 16. Operation of Subchapter.

§ 160-192. Explanation of terms.—The following words and phrases as used in this subchapter shall, unless a contrary intention clearly appears, have the following meanings, respectively: The phrase "regular municipal election" shall mean the biennial election of municipal officers for which provision is made in this subchapter. The phrase "qualified voter" shall mean any registered qualified voter. The words "officer" and "officers," when used without further qualification or description, shall mean any person or persons holding any office in the city or in charge of any department or division of the city. The said words when used in contrast with a board or members of a board, or with division heads, shall mean any of the persons in sole charge of a department of the city. The word "ordinance"

shall mean an order of the governing body entitled "ordinance," and designed for the regulation of any matter within the jurisdiction of the governing body as laid down in this subchapter. The word "city" shall mean any city, town, or incorporated village. (1917, c. 136, sub-ch. 15, s. 1; C. S. 2777.)

§ 160-193. Effect upon prior laws.—Nothing in this subchapter shall operate to repeal any local or special act of the general assembly of North Carolina relating to cities, towns, and incorporated villages, but all such acts shall continue in full force and effect and in concurrence herewith, unless hereafter repealed or amended in manner provided for in this subchapter. The provisions of this subchapter shall not be construed to repeal the provisions as to cities and towns contained in Subchapter I of this chapter, except in case they are inconsistent with this subchapter. The provisions of this subchapter, so far as they are the same as those of existing general laws, are intended as a continuation of said laws and not as new enactments, and so far as they give general powers to cities are supplementary to and additional to the special charters of cities which have not such powers, unless inconsistent with or repugnant thereto, and a repetition of such powers if already possessed by cities by virtue of special charters. The provisions of this subchapter shall not affect any act heretofore done, liability incurred, or right accrued or vested, or affect any suit or prosecution now pending or to be instituted to enforce any right or penalty or punish any offense. Subject to the foregoing provisions hereof, all laws or parts of laws in conflict with this subchapter are hereby to the extent of such conflict repealed. (1917, c. 136, sub-ch. 1, s. 1; C. S. 2778.)

§ 160-194. Not to repeal Municipal Finance Act.—Nothing in this subchapter contained shall be construed to amend or repeal any provisions of the "Municipal Finance Act," and wherever this subchapter and the "Municipal Finance Act" conflict, the "Municipal Finance Act" shall control. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S. 2916.)

Art. 17. Organization under the Subchapter.

§ 160-195. Municipal board of control; changing name of municipality.—The municipal board of control shall be composed of the secretary of state, the attorney general, and the chairman of the utilities commission. The attorney general shall be chairman and the secretary of state shall be secretary of such board. The said municipal board of control shall have the power and privilege of changing the name of any said town or municipal corporation within the bounds of the State of North Carolina; and the procedure for changing the name of any municipal corporation shall be the same as prescribed by §§ 160-197 and 160-198. (1917, c. 136, sub-ch. 2, s. 4; 1935, c. 440; 1941, c. 97; C. S. 2779.)

§ 160-196. Number of persons and area included.—Any number of persons, not less than fifty, at least twenty-five of whom shall be freeholders or homesteaders, and twenty-five qualified voters living in the area proposed to be incorporated, which area shall have an assessed valuation of real property of at least twenty-five thousand dollars according to the last preceding assessment for taxes, and shall not be a part of the area included in the limits of any city, town, or incorporated village already or hereafter existing, may be organized into a town upon compliance with the method herein set forth. (1917, c. 136, sub-ch. 2, s. 1; C. S. 2780.)

§ 160-197. Petition filed.—1. What petition must show. A petition signed by a majority of the resident qualified electors and a majority of the resident freeholders or homesteaders of the territory proposed to be so organized shall be presented to the secretary of state of North Carolina, accurately describing such territory, with map attached, containing the names of all qualified voters therein, the assessed valuation of such territory, and the proposed name of the new town. The petition shall further be signed by at least twenty-five resident freeholders or homesteaders of the age of twenty-one years or over, at least twenty of whom are qualified voters; and further, the petition shall show the valuation of the real property of the proposed town to be at least twenty-five thousand dollars, according to the last preceding tax assessment; and the petition shall be verified by at least three of the signers who are qualified voters.

2. Order and notice for hearing. The secretary of state shall thereupon make an order prescribing the time and place for the hearing of said petition before the municipal board of control. At least thirty days before the hearing, notice of such hearing shall be published once a week for four weeks in a newspaper published in the county where such territory is situate, designated as most likely to give notice to the people of the territory proposed to be so organized or incorporated into a town; or, if no newspaper is so published, then in some newspaper of general circulation in such proposed city, town, or incorporated village; and such notice shall also be posted at the county courthouse door of such county for a like period. Such notice shall be signed by at least three of the freeholders signing the petition for the organization of the town. (1917, c. 136, sub-ch. 2, s. 2; C. S. 2781.)

§ 160-198. Hearing of petition and order made:

1. Manner of hearing. Any qualified voter or taxpayer of such territory proposed to be incorporated into a town may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the municipal board of control, and no formal answer to the petition need be filed. The board may adjourn the hearing from time to time, in its discretion.

2. Order creating corporation. The municipal board of control shall file its findings of fact at the close of such hearing, and if it shall appear that the allegations of the petition are true, and that all the requirements in this article have been substantially complied with, and that the organization of such city, town, or incorporated village will better subserve the interests of said persons and the public, the board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

3. Election of officers provided for. The board of control shall provide for the place of holding

the first election for mayor and commissioners; and shall designate how many commissioners shall serve, as set forth in subchapter I of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in subchapter I of this chapter.

4. Filing papers; fees. All the papers in reference to the organization of any town under this article shall be filed and recorded in the office of the secretary of state, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which the town organized is situated. The fees shall be the same as are now provided for the organization of private corporations and shall be paid out of the treasury of the city, town, or incorporated village.

5. When organization complete. Upon the approval of the board of control and the recording of the papers in the offices above mentioned, the said town shall become a municipal corporation with all the powers and subject to all the laws governing towns as set forth in subchapter I of this chapter and as in this subchapter set forth. (1917, c. 136, sub-ch. 2, s. 3; C. S. 2782.)

Art. 18. Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ 160-199. Powers applicable to all cities and towns.—All the provisions of this article, conferring powers upon cities and towns, shall apply to all cities and towns, whether they have adopted a plan of government under this subchapter or not. And the powers herein granted are in addition to and not in substitution for existing powers of cities and towns. (1919, c. 296; C. S. 2786.)

§ 160-200. Corporate powers.—In addition to and coördinate with the power granted to cities in subchapter I of this chapter, and any acts affecting such cities, all cities shall have the following powers:

1. To acquire property in fee simple or a lesser interest or estate therein by purchase, gift, devise, bequest, appropriation, lease, or lease with privilege to purchase.

2. To sell, lease, hold, manage, and control such property and make all rules and regulations by ordinance or resolution which may be required to carry out fully the provisions of any conveyance, deed, or will in relation to any gift or bequest, or the provisions of any lease by which the city may acquire property.

3. To purchase, conduct, own, lease, and acquire public utilities.

4. To appropriate the money of the city for all lawful purposes.

5. To create, provide for, construct, regulate, and maintain all things in the nature of public works, buildings, and improvements.

6. To supervise, regulate, or suppress, in the interest of public morals, public recreations, amusements and entertainments, and to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the people, and all nuisances and causes thereof.

7. To pass such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.

8. To provide for the destruction of noxious weeds, and for payment of the expense thereof by assessment or otherwise.

9. To regulate the erection of fences, billboards, signs, and other structures, and provide for the removal or repair of insecure billboards, signs, and other structures.

10. To make and enforce local police, sanitary, and other regulations.

11. To open new streets, change, widen, extend, and close any street or alley that is now or may hereafter be opened, to purchase any land that may be necessary for the closing of such street or alley, and adopt such ordinances for the regulation and use of the streets, squares, and parks, and other public property belonging to the city, as it may deem best for the public welfare of the citizens of the city.

12. To acquire, lay out, establish, and regulate parks within or without the corporate limits of the city for the use of the inhabitants of the same.

13. To erect, repair, and alter all public buildings.

14. To regulate, restrain, and prohibit the running or going at large of horses, mules, cattle, sheep, swine, goats, chickens, and all other animals and fowl of whatsoever description, and to authorize the distraining and impounding and sale of the same for the costs of the proceedings and the penalty incurred and to order their destruction when they cannot be sold, and to impose penalties on the owners or keepers thereof for the violation of any ordinance or regulation of said governing body, and to prevent, regulate, and control the driving of cattle, horses, and all other animals into or through the streets of the city.

15. To regulate and control plumbers and plumbing work, and to enforce efficiency in the same by examination of such plumbers and inspection of such plumbing work.

16. To regulate, control, and prohibit the keeping and management of houses or any building for the storage of gunpowder and other combustible, explosive, or dangerous materials within the city, and to regulate the keeping and conveying of the same, and to authorize and regulate the laying of pipes and the location and construction of houses, tanks, reservoirs, and pumping stations for the storage of oil and gas.

17. To regulate, control, restrict, and prohibit the use and explosion of dynamite, firecrackers, or other explosives or fireworks of any and every kind, whether included in the above enumeration or not, and the sale of same, and all noises, amusements, or other practices or performances tending to annoy or frighten persons or teams, and the collection of persons on the streets or sidewalks or other public places in the city, whether for purposes of amusement, business, curiosity, or otherwise.

18. To direct, control, and prohibit the laying

of railroad and street railway tracks, turnouts, and switches in the streets, avenues, and alleys of the city unless the same shall have been authorized by ordinance, and to require that all railroads, street railways, turnouts and switches shall be so constructed as not to interfere with the drainage of the city and with the ordinary travel and use of the streets, avenues, and alleys in the city, and to construct and keep in repair suitable crossings at the intersection of streets, avenues, and alleys and ditches, sewer and culverts, where the governing body shall deem it necessary, and to direct the use and regulate the speed of locomotive engines, trains, and cars within the city.

19. To make all suitable and proper regulations in regard to the use of the streets for street cars, and to regulate the speed, running, and operation of the same so as to prevent injury or inconvenience to the public.

20. To make such rules and regulations in relation to butchers as may be necessary and proper; to establish and erect market houses, and designate, control, and regulate market places and privileges.

21. To prohibit and punish the abuse of animals.

22. To acquire, establish, and maintain cemeteries and to regulate the burial of the dead and the registration of deaths, marriages, and births.

23. To prohibit prize-fighting, cock and dog fighting.

24. To regulate, restrict, and prohibit theaters, carnivals, circuses, shows, parades, exhibitions of showmen, and shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, musical and hypnotic exhibitions and performances.

25. To create and administer a special fund for the relief of indigent and helpless members of the police and fire departments who have become superannuated, disabled, or injured in such service, and receive donations and bequests in aid of such fund and provide for its permanence and increase, and to prescribe and regulate the conditions under which, and the extent to which, the same shall be used for the purpose of such relief. Also, to insure policemen, firemen, or any class of city employees against death or disability, or both, during the term of their employment under forms of insurance known as group insurance; the amount of benefit on the life of any one person not to exceed the sum of two thousand dollars, and the premiums on such insurance to be payable out of the current funds of the municipality.

26. To prevent and abate nuisances, whether on public or private property.

27. To regulate and prohibit the carrying on of any business which may be dangerous or detrimental to health.

28. To condemn and remove any and all buildings in the city limits, or cause them to be removed, at the expense of the owner or owners, when dangerous to life, health, or other property, under such just rules and regulations as it may by ordinance establish; and likewise to suppress any and all other nuisances maintained in the city.

29. To provide for all inspections which may be expedient, proper, or necessary for the welfare, safety, and health of the city and its citizens, and regulate the fees for such inspection.

30. To require any or all articles of commerce or traffic to be gauged, inspected, measured, weighed, or metered, and to require every merchant, retail trader or dealer in merchandise of property of any description which is sold by weight or measure to have such weights and measures sealed and to be subject to inspection.

31. To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city and to regulate and limit vehicular parking on streets and highways in congested areas.

In the regulation and limitation of vehicular traffic and parking in cities and towns the governing bodies may, in their discretion, enact ordinances providing for a system of parking meters designed to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents per hour) from those who park vehicles for stipulated periods of time in certain areas in which the congestion of vehicular traffic is such that public convenience and safety demand such regulation. The proceeds derived from the use of such parking meters shall be used exclusively for the purpose of making such regulation effective and for the expenses incurred by the city or town in the regulation and limitation of vehicular parking, and traffic relating to such parking, on the streets and highways of said cities and towns; provided this paragraph shall not apply to cities or towns in North Carolina having populations of twenty thousand or less as determined by the last Federal census. Nothing contained in Chapter two, Section twenty-nine, of the Public Laws of one thousand nine hundred and twenty-one, or in section sixty-one of Chapter four hundred and seven of the Public Laws of one thousand nine hundred and thirty-seven shall be construed as in any way affecting the validity of these parking meters or the fees required in the use thereof.

The governing authorities of all cities and towns of North Carolina shall have the power to own, establish, regulate, operate and control municipal parking lots for parking of motor vehicles within the corporate limits of cities and towns. Cities and towns are likewise hereby authorized, in their discretion, to make a charge for the use of such parking lots.

32. To regulate the emission of smoke within the city.

33. To license, prohibit, and regulate pool and billiard rooms and dance halls, and in the interest of public morals provide for the revocation of such licenses.

34. To regulate and control electricians and electrical work and to enforce efficiency in the same by examination of such electricians and inspection of such electrical work.

35. To license and regulate all vehicles operated for hire in the city. To require that the operator of every jitney bus or taxicab and of every other motor vehicle, (other than jitney buses and taxicabs, operated under the jurisdiction of the utilities commission of North Carolina), engaged in the business of transporting passengers for hire

over the public streets of such city or town shall furnish and keep in effect for each such jitney bus, taxicab or other such motor vehicle so operated a policy of insurance or surety bond with sureties whose solvency shall at all times be subject to the approval of the governing body of such city or town, said policy of insurance or surety bond to be in such amount as may be fixed by the governing body of such city or town, not to exceed the sum of ten thousand dollars ($10,000.00), and to be conditioned on such operator responding in damages for any liability incurred on account of any injury to persons or damage to property resulting from the operation of any such jitney bus, taxicab or other such motor vehicle, and to be filed with the governing body of such city or town as a condition precedent to the operation of any such jitney bus, taxicab or other such motor vehicle over the streets of such city or town.

36. To acquire property in fee simple and to use the lands now owned in fee simple or otherwise for the purpose of establishing and maintaining new cemeteries. To abandon any cemetery which has not been used for interment purposes within ten years, and to remove or consolidate such cemetery, so abandoned, and the monuments, tombstones, fences, walls and enclosures, and the contents of any graves therein, or any part of either, at its own expense, to or with any established cemetery maintained for interment purposes; to take possession of, convey or utilize the lands in such abandoned cemetery, or any part thereof, as may best subserve the interests of the city or town.

37. In cities or towns having a population of not less than twenty thousand inhabitants, the governing bodies may, in their discretion, create and establish a civil service with reference to any and all of the employees of such municipalities, and prescribe rules and regulations for the conduct and government of such civil service.

38. Every incorporated city or town in the state, in addition to the other powers granted unto it by this chapter, shall have the following enumerated powers:

Whenever there shall be in any incorporated city or town a lot or lots owned by one or more persons, upon which water shall collect, either by falling upon the said lot or lots or collected thereon by drainage or otherwise from adjacent lots, no adequate drainage from which is provided by natural means, the governing body of any such city or town, upon being advised by the health officer of the said city or town, or the health officer of the county in which the town is located, that the conditions so existing are, or are liable to become, a nuisance and a menace to health in such city or town, is authorized to abate the nuisance, and to that end may proceed to abate it in the following manner:

Such city or town shall cause a survey to be made by a competent engineer to ascertain the means and methods and costs of providing an adequate drainage from such lot or lots and such engineer shall prepare plans and specifications to provide such drainage, with the estimated cost thereof and in making such survey he shall include therein the area of adjoining and adjacent lots which will be drained by such system of drainage. He shall also include in such survey the area of all adjoining and adjacent lots from which water flows and is gathered upon the lot or lots which are to be drained. The city or town shall thereupon cause notice to be published once in a newspaper published in the municipality, or if no newspaper is published in the municipality, then in a newspaper published in the county and of general circulation in the municipality, or if no newspaper is published in the county, said notice shall be posted in three public places in the municipality, which notice shall state in general and briefly the fact that a nuisance has been created and so declared, and that it is the purpose of the city or town to abate the same by causing a system of drainage to be put in, and that the cost thereof is to be paid or assessed in one of the ways hereinafter provided, that the report of the engineer is on file and subject to inspection, and that on a date to be named in the notice a hearing will be had before the board as to whether the plan shall be adopted and the assessment made, at which hearing the persons affected may be present and present such objections as they may have to the adoption of the report of the engineer and the doing of the work. Said notice shall also contain the names of the owners of the property affected in so far as the same can be ascertained on reasonable inquiry. Said notice shall be published or posted at least ten days before the hearing.

At the hearing provided for, if the governing body of the city or town shall determine that the work shall be done, and that the plans and specifications of the engineer are proper, it may adopt the said plans and specifications, and have the work done, either by letting a contract therefor or otherwise, and in the event a contract is let, it shall be advertised as is provided for in other cases of municipal work.

At the hearing above provided for, the governing body shall also determine the manner in which the cost of said work shall be paid or assessed, which shall be in either of the following ways: (a) Each and every lot affected by the plan or system shall be assessed with the cost thereof upon the following basis: that is to say, such proportion of the total cost of the survey and construction as the area of said lot bears to the total area as shown by the plans of the engineer when adopted by the governing body, which sum shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest; (b) The cost of the survey and the construction of the main drains shall be borne by the municipality, and the cost of the construction of tributary drains assessed against the lots on which such tributary drains are constructed so that each lot shall bear the expense of tributary drains constructed on it. Said assessments shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest.

The area which shall be included within and drained by the plans and specifications as herein provided for is hereby declared to be a "special improvement district."

The full faith and credit of such city or town

shall be pledged for the payment of the said notes and interest when due.

The powers herein contained and hereby conferred are additional to any other powers conferred by any other law or laws, and are not affected by any limitations imposed by any other law.

The assessments, when made, shall be a lien upon the property benefited, and shall be collectible by the same means and methods as are other assessments for local or special improvements as is provided for in article nine of this chapter.

All acts or proceedings done or taken under this subdivision of this section prior to February 17, 1923, shall be valid.

39. The governing authorities of all cities and towns of North Carolina shall have the power to pass, alter, amend and repeal ordinances regulating the opening and closing hours of barber shops. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; Ex. Sess. 1920, c. 3, s. 10; 1921, c. 8, s. 3; Ex. Sess. 1921, c. 21; 1923, cc. 20, 102; 1925, c. 200; 1935, c. 279, s. 1; 1939, c. 164; 1941, c. 153, ss. 1, 2; 1941, c. 272; C. S. 2787.)

Local Modification. — Buncombe: 1939, c. 302; Cumberland and Guilford and cities therein: 1941, c. 153, s. 2(a); Orange and cities therein: 1941, c. 319.

§ 160-201. Salary of mayor and other officers.— The governing body of any city may by ordinance fix the salary of the mayor of such city or heads of departments or other officers. (1917, c. 136, sub-ch. 5, s. 6; C. S. 2788.)

§ 160-202. Enumeration of powers not exclusive. —The enumeration of particular powers by this subchapter shall not be held or deemed to be exclusive; but in addition to the powers enumerated or implied therein, or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the constitution and laws of North Carolina now are or hereafter may be granted to cities. Powers proper to be exercised, and not specially enumerated herein, shall be exercised and enforced in the manner prescribed by this subchapter; or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the governing body. (1917, c. 136, sub-ch. 5, s. 3; C. S. 2789.)

§ 160-203. Police power extended to outside territory.—All ordinances, rules, and regulations of the city now in force, or that may hereafter be enacted by the governing body in the exercise of the police powers given to it for sanitary purposes, or for the protection of the property of the city, unless otherwise provided by the governing body, shall, in addition to applying to the territory within the city limits, apply with equal force to the territory outside of the city limits within one mile in all directions of same, and to the rights of way of all water, sewer, and electric light lines of the city without the corporate limits, and to the rights of way without the city limits, of any street railway company, or extension thereof, operating under a franchise granted by the city, and upon all property and rights of way of the city outside the corporate limits and the above mentioned territorial limits, wheresoever the same may be located. (1917, c. 136, sub-ch. 5, s. 2; C. S. 2790.)

Part 2. Power to Acquire Property.

§ 160-204. Acquisition by purchase.—When in the opinion of the governing body of any city, or other board, commission, or department of the government of such city having and exercising or desiring to have and exercise the management and control of the streets, water, electric light, power, gas, sewerage or drainage systems, or other public utilities, parks, playgrounds, cemeteries, wharves, or markets, open-air or enclosed, which are or may by law be owned and operated or hereafter acquired by such city or by a separate association, corporation, or other organization on behalf and for the benefit of such city, any land, right of way, water right, privilege, or easement, either within or outside the city, shall be necessary for the purpose of opening, establishing, building, widening, extending, enlarging, maintaining, or operating any such streets, parks, playgrounds, cemetery, water, electric light, power, gas, sewerage or drainage systems, wharves, or other public utility so owned, operated, and maintained by or on behalf of any such city, such governing body, board, commission, or department of government of such city may purchase such land, right of way, water right, privilege, or easement from the owner or owners thereof and pay such compensation therefor as may be agreed upon. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S. 2791.)

§ 160-205. By condemnation.—If such governing body, board, commission or department of the government of such city are unable to agree with the owners thereof for the purchase of such land, right of way, privilege, or easement, for the purposes mentioned in the preceding section, or for a site for city hall purposes, condemnation of the same for such public use may be made in the same manner and under the same procedure as is provided in chapter Eminent Domain, article 2; and the determination of the governing body, board, commission, or department of government of such city of the land necessary for such purposes shall be conclusive. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; 1923, c. 181; C. S. 2792.)

§ 160-206. Powers in addition and supplementary to powers in charters.—It is the intention of §§ 160-206 to 160-221 that the powers herein granted to cities for the purpose of improving their streets and improving their drainage and sewer conditions shall be in addition and supplementary to those powers granted in their charters, and in any case in which the provisions of these sections are in conflict with the provisions of any local statute or charter, then the governing body of any such municipality may in its discretion proceed in accordance with the provisions of such local statute or charter, or, as an alternative method of procedure, in accordance with the provisions of these sections. (1923, c. 220, s. 1; C. S. 2792(a).)

§ 160-207. Order for condemnation of land; assessment districts; maps and surveys; hearing.—When it is proposed by any municipal corporation to condemn any land, rights, privileges or easements for the purpose of opening, extending, widening, altering or improving any street

or alley, or changing or improving the channel of any branch or watercourse, for the purpose of improving the drainage conditions, or the laying and construction of sanitary, storm or trunk sewer lines in such municipality, an order or resolution of the governing body of the municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement for which the land is required, and shall lay out, constitute and create an assessment district extending in every direction to the limits of the area or zone of damage or special benefits to property resulting from said improvement, in the best judgment of said governing body. Said governing body shall cause such maps and surveys to be made showing the area of such assessment district and improvements proposed to be made, and of all the lands located in said assessment district, as it may deem necessary. The governing body shall appoint a time and place for its final determination thereof, and cause notice of such time and a brief description of such proposed improvement to be published in some newspaper published in said municipality for not less than ten days prior to said meeting. At said time and place said governing body shall hear such reasons as shall be given for or against the making of such proposed improvement, and it may adjourn such hearing to a subsequent time: Provided, however, that no district shall be declared as an assessment district by the governing body of any municipality, where the purpose of the proposed improvements contemplates the opening of a new or the widening of an existing street and the destruction or removal of buildings abutting thereon and where as much or more than fifty per cent of the costs of such proposed improvement is to be charged against the property within such district, unless and until a petition therefor signed by the owners of a majority of the street frontage to be assessed within said district shall be filed with the governing body of the municipality: Provided, further, that for the purpose of this section the word "owners" shall be considered to mean the owners of a life estate or estate by the entirety or the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lienholders, or persons having inchoate rights of curtesy or dower, and that the owners of undivided interests in any land shall be deemed and treated as one person, and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interest: Provided, further, that the owner of a leasehold estate of ninety-nine years or longer shall be deemed to be the owner within the meaning of this section: Provided, further, that the governing bodies of municipality and the officers, trustees, or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign such petition. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1923, c. 220, s. 2; Ex. Sess. 1924, c. 107; 1927, c. 115; C. S. 2792(b).)

§ 160-208. Final order; petition for appointment of commissioners.—Whenever a final order shall be made by such governing body creating such assessment district and directing the laying out, opening, extending, altering, straightening or widening any street or alley, or the changing or otherwise improving any channel or watercourse for the purpose of improving the drainage conditions, or the building and construction of any sanitary, storm or trunk sewer lines in any such municipality, also its determination to condemn land, rights, privileges or easements for the purpose of making such proposed improvement, it shall determine what proportion of the estimated cost thereof, if any, shall be assessed against the city at large. After the adoption of such final order, as aforesaid, the governing body of such municipality shall file with the clerk of the superior court its petition, praying for the appointment of three commissioners to estimate and assess the expenses of the proposed improvement and to appraise and value the real property, rights, privileges or easements proposed to be taken or condemned for public use, also to appraise the value of the benefits accruing from such improvement to all property as shown and described on the maps or surveys of such assessment district. The petition shall set forth and describe the particular property, rights, privileges or easements proposed to be taken or condemned for the purposes, as aforesaid, also all other property situated and located in said assessment district, as shown on the maps or surveys of same, a copy or copies of which maps or surveys shall be filed with such petition, and such petition shall state the names and addresses of the owner or owners who have any interest in the lands therein which may be affected by the said condemnation or the said assessment of benefits, and whether any of the said owners are minors or without guardians. (1923, c. 220, s. 3; C. S. 2792(c).)

§ 160-209. Summons; return day; conduct of proceedings.—Upon the filing of said petition the clerk of the superior court shall issue a summons to the parties interested in the lands, rights, privileges or easements sought to be taken for public use and benefits proposed to be assessed, described in such petition, requiring them to appear at his office in the courthouse of said county on a day at least ten and not more than twenty days after the service of said summons, and answer or otherwise plead to the petition, or show cause why such condemnation, improvement and assessment of benefits should not be made. The said proceeding shall be conducted in all respects as are other special proceedings, and the clerk may issue process and make publication for parties and appoint guardians in like manner as is provided by law in the case of special proceedings. (1923, c. 220, s. 4; C. S. 2792(d).)

§ 160-210. Hearing; appointment of commissioners; damages and benefits.— The clerk of the superior court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, he shall make an order appointing three disinterested competent freeholders of the county as such commissioners. The clerk shall issue a

notice of their appointment to the said freeholders, to be served upon them by the sheriff of the county, and when so notified, they shall, within five days after being sworn to perform the duties which shall devolve upon them, go upon the premises and ascertain the value of the land, rights, privileges or easements to be taken for public use, determine by a majority vote the amount of damages, if any, to be paid for the same. Said commissioners shall also go upon the lots or lands described in the petition and shown on such map or survey of such assessment district, including the land condemned or any remainder thereof, and ascertain and determine by a majority vote the value of the benefits or advantages to such lots or lands accruing from the opening, extending, widening or improving said street or alley, or the changing or improving the channel of any branch or watercourse, or the building and construction of such sanitary, storm or trunk line sewers, both such benefits or advantages as are special to such lots and the benefits or advantages in common with other lots located in said assessment district: Provided, that if, in the judgment of the commissioners, any portion of the benefits accrue to the city at large, then a part of the estimated cost of such improvement, not exceeding the proportion fixed by said governing body in its final order or resolution, shall be assessed upon the city at large. Before making the reports hereinafter referred to the commissioners may take the evidence of witnesses as to the estimated cost of such improvement, the damage to such land or lands so condemned for public use, and the amount that should be paid therefor, and the benefits accruing to all other lands within such assessment district, either special or in common with others, as shown on such map or survey. In making the valuation and assessments aforesaid, the commissioners shall consider the loss or damage that may accrue to the owner or owners of the land condemned by reason of the surrender of the land or easement, and also any benefit or advantage such owner or owners may receive by reason of the making of such improvements, special to his land or in common with other lots located in said assessment district. (1923, c. 220, s. 5; C. S. 2792(e).)

§ 160-211. Written reports; land acquired on deposit of award. — The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the land, rights, privileges or easements so condemned, together with the amount to be paid each owner thereof, and upon deposit with the said clerk of the amount determined by said commissioners to be due said owners by such municipality, such land, rights, privileges or easements shall be deemed to be acquired for public use. (1923, c. 220, s. 6; C. S. 2792(f).)

§ 160-212. Report of benefits or advantages; assessment; hearing; confirmation; lien.—The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the benefits or advantages so appraised against said lands located in said assessment district, if any, giving the names of the owners thereof and the amount so appraised against each, with a brief description of the lots or parcels of land so appraised. The clerk shall thereupon deliver to the said governing body of such municipality a certified copy of such appraisal of benefits, which certified copy of appraisal of benefits, upon such receipt by said governing body, shall thereupon become an assessment roll, which the governing body shall cause to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of such assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections relative to the adoption of such assessment roll, such meeting not to be earlier than ten days from the first publication of such notice, which publication shall be made in a newspaper published in such municipality. At the time appointed for the purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll and either confirm the same or may set it aside and provide for a new appraisal of benefits in such proceeding pending before the clerk of the superior court. Whenever the governing body may confirm an assessment for such improvement the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumberances. Such governing body shall have the power and authority to provide, either in proceedings already completed or in those instituted after March 9, 1927, that such assessment shall be paid in cash of not less than five nor more than ten equal annual installments. (1923, c. 220, s. 7; 1927, c. 241; C. S. 2792(g).)

§ 160-213. Appeal; correction, etc., of assessment; interest; collection.— If a person assessed is dissatisfied with the amount of the charge, he may give notice of appeal in said proceeding pending before the clerk of superior court as hereinafter provided for. The governing body may correct, cancel or remit any assessment in connection with such improvement. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes, and such assessments shall be due and payable on the date on which taxes are payable and shall be collected like other taxes. In the event the governing body authorizes the payment of any assessment by installment, such installments shall bear interest at the rate of six per centum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any person to pay any such installments when the same shall become due and pay-

able, then and in that event all of the installments remaining unpaid shall at once become due and payable. (1923, c. 220, s. 8; C. S. 2792(h).)

§ 160-214. Limit of assessments; exceptions; transfer to court for trial; appeal to supreme court.—The total value of the benefits assessed against the lots or land situated and located in said assessment district shall not exceed the total net amount of damages to be paid by the municipality to the owner or owners of the land or right condemned, together with the cost of such improvement as estimated by said commissioners. If any party to the proceedings shall be dissatisfied with the report of the commissioners, or the assessment levied by the said governing body [on either benefits or damages], he may file exceptions thereto with the clerk of the superior court within ten days after the filing of said report with said clerk, or in the event the appeal be from the levying of the assessment by said governing body, within ten days after the confirmation of such assessment roll by such governing body, and the issues of fact and law raised before the clerk in the said proceedings and upon the said exceptions shall be transferred to the superior court for trial [before a jury on issues of fact relating either to damages or to benefits] in like manner as provided in the case of other special proceedings pending before the clerk; and the said issues shall be tried at the first term after they are transferred, unless for a good cause shown a trial or hearing of the matter may be continued by the court. Provided, however, that the words in brackets in the preceding sentence shall not apply to the City of Greensboro, or to any city, town or municipality in any of the following counties: Alexander, Buncombe, Cabarrus, Cleveland, Davidson, Forsyth, Halifax, Harnett, Haywood, Hertford, Lincoln, Madison, Mitchell, Moore, Nash, Pender, Pitt, Rockingham, Rutherford, Stanly, Transylvania, Wake and Watauga. From the judgment of the superior court rendered in said proceeding any of the parties may appeal to the supreme court, as in other cases pending in the superior court: Provided, that if such municipality, at the time of the appraisal, shall pay into the court the sum appraised by the commissioners as being due any person for land so condemned and taken for public use, then and in that event such municipality may enter, take possession of and hold said lands notwithstanding the pendency of any appeal, and no appeal either to the superior court or to the supreme court shall hinder or delay such municipality in proceeding with such proposed improvement. (1923, c. 220, s. 9; 1931, c. 258; C. S. 2792(i).)

§ 160-215. Power of courts; practice and procedure.—In all cases of appraisal under §§ 160-206 to 160-221, where the mode or manner of procedure is not expressly or sufficiently provided for herein, the court before which such proceedings may be pending shall have the power to make all necessary orders and give proper directions to carry into effect the object and intent of said sections, and the practice and procedure in such cases shall conform as nearly as may be to the ordinary practice and procedure in such court. (1923, c. 220, s. 10; C. S. 2792(j).)

§ 160-216. Change of ownership or transfer of property, effect.—When any proceedings for appraisal of property or rights under §§ 160-206 to 160-221 shall have been instituted, no change of ownership or transfer of the real estate, or any interest therein, or of the subject-matter of the appraisal, or any part thereof, shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made, or attempted to be made. (1923, c. 220, s. 11; C. S. 2792(k).)

§ 160-217. Proceedings to perfect title; possession by municipality; parties.—If at any time after proceedings under §§ 160-206 to 160-221 shall have been instituted it shall be found that the title to any property or right proposed to be condemned, or which has been acquired or condemned, is defective, said municipality may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made, and at any stage of the new proceeding the court may authorize the municipality, if in possession of said property or rights, to continue in possession of the same, and if not in possession, to take possession and use such property or rights during the pendency and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the municipality on account thereof, and in every case any party interested may conduct the proceedings to a conclusion if the municipality delays or omits to prosecute the same. (1923, c. 220, s. 12; C. S. 2792(l).)

§ 160-218. Recovery by municipality if title defective; limit of recovery.—If the title to any property, rights, privileges or easements condemned in any proceedings instituted under §§ 160-206 to 160-221 shall prove to be defective, such municipality may by action recover of the person or persons who have received compensation for the property or rights so condemned any loss or damage the city may have sustained by reason of said defect of title, not exceeding the amount paid as compensation for the taking of said property or rights. (1923, c. 220, s. 13; C. S. 2792(m).)

§ 160-219. Notice served on nonresidents. — Where any notice is required to be given in said proceeding before the court and the person to be notified is a nonresident of the county in which said proceedings are pending, the notice may be served by the sheriff or other lawful officer of any county in which the said person may be, and if the said person is a nonresident of the state, the notice may be served by the publication thereof once a week for four weeks in a newspaper published in such municipality, and the affidavit of the publisher, proprietor or foreman of said newspaper that said notice was so published shall be sufficient prima facie evidence or proof of such publication, and the time of notice shall be counted from the last day on which the notice was inserted in said newspaper. (1923, c. 220, s. 14; C. S. 2792(n).)

§ 160-220. Registration of final judgment; evidence; certificate under seal.—A copy of the final judgment of the court, duly certified by its clerk, may be registered in the office of the register of deeds for said county, and said copy so certified, or a copy of the registry of such judg-

ment duly certified by the register of deeds, shall be received as evidence in all courts of the state, and where the said copy is offered in evidence in any court not held in the county in which the judgment is rendered, the certificate shall have affixed the official seal of the certifying officer. (1923, c. 220, s. 15; C. S. 2792(o).)

§ 160-221. Pay of appraisal commissioners; taxation as costs.—The commissioners appointed by the clerk of the superior court to make the appraisals provided for herein shall receive compensation at the rate of five dollars ($5.00) per day each, which compensation shall be taxed in the court costs of such proceedings. (1923, c. 220, s. 16; C. S. 2792(p).)

Part 3. Streets and Sidewalks.

§ 160-222. Power to make, improve and control.—The governing body of the city shall have power to control, grade, macadamize, cleanse, and pave and repair the streets and sidewalks of the city and make such improvements thereon as it may deem best for the public good, and may provide for and regulate the lighting of the public parks, and regulate, control, license, prohibit, and prevent digging in said streets and sidewalks, or placing therein of pipes, poles, wires, fixtures, and appliances of every kind, whether on, above, or below the surface thereof, and regulate and control the use thereof by persons, animals and vehicles; to prevent, abate, and remove obstructions, encroachments, pollution or litter therein; and shall have under its government, management, and control all parks and squares within or without the city limits established by the governing body for the use of the city except as otherwise provided. (1917, c. 136, sub-ch. 10, s. 1; C. S. 2793.)

§ 160-223. Increasing width of streets.—Any incorporated city or town in North Carolina where the State Highway and Public Works Commission or governing body of any city, town or county has constructed a road or street, or any part of any road or street through such city or town in North Carolina, and the governing body of said city or town desires to increase the width of said road or street or either, or both sides of same, so as to make such road or street conform to such width as the said governing body of said city or town may determine, the governing body of such city or town may increase the width of such road or street, on either side of same, such number of feet as may be necessary and may be determined by the governing body of such city or town: Provided, however, that the expense and cost of such increase in width to such road or street shall be borne by the city or town through which such road or street may run and without any expense or obligation, in any way, to the State Highway and Public Works Commission. (1925, c. 71, s. 1.)

§ 160-224. Right of eminent domain.—Whenever the governing body of any city or town in North Carolina deems it necessary to extend the width of any road or street in such city or town, and it becomes necessary for such governing body of such city or town to exercise the right of eminent domain, such governing body of such city or town shall have the power to exercise the right of eminent domain to the extent that the same is given such city or town, or governing body of such city or town, in the charter and amendments to the charter of such city or town or under the general law pertaining to such matters. (1925, c. 71, s. 2.)

§ 160-225. Interference with highway commission.—Nothing in §§ 160-223 and 160-224 shall authorize the governing body of any city or town to interfere with the rights and privileges of the State Highway and Public Works Commission when such city or town undertakes to exercise any of the privileges by such sections granted. (1925, c. 71, s. 3.)

§ 160-226. Maps of streets and sidewalks in subdivisions within one mile of city or town limits to be approved by such city or town.—No lands, lying within a distance of one mile of the corporate limits of any town or city in North Carolina, shall be subdivided and proposed streets and sidewalks laid out, until a map of said sub-division, showing the location of the lots and the proposed streets and sidewalks, shall have been submitted to the governing body of such town or city, and approved by it as to the location of the streets and sidewalks. After approval of the map as provided in this section, the map shall be placed on the records of the county in which the land is situated. (1929, c. 186, s. 1.)

§ 160-227. Effect of laying out of streets and sidewalks without approval.—Should any lands, lying within a distance of one mile of the corporate limits of any town or city in North Carolina, be subdivided and streets and sidewalks laid out, without the approval of the governing body of the town and city as provided in § 160-226, upon the incorporation of such sub-division into the limits of such town and city, the said town or city shall have the right to extend its streets and sidewalks into and through said sub-division in conformity with the general plan of the town or city; and there shall be no damage recovered against the said town or city for so extending its streets and sidewalks except for purchase or condemnation value of lands so taken without regard to improvements or betterments placed thereon in contravention of this section and § 160-226: Provided, that this section and § 160-226 shall not apply to any sub-divisions which have been laid out or are on March 16, 1929, in the process of being laid out. (1929, c. 186, s. 2.)

Part 4. Markets.

§ 160-228. Establish and control markets.—The governing body of the city shall have power to provide for the establishment, maintenance, and regulation of open-air or enclosed markets and slaughter places; may prescribe the time and place of sale of fresh meats, fish, and other marketable products therein; may rent the stalls in such manner and at such prices as it may deem best; may appoint a keeper of the market or other persons, who may summarily condemn all unsound products offered for sale in the city for food, and cause the same to be removed at the expense of the person offering it for sale. (1917, c. 136, sub-ch. 12, s. 1; C. S. 2794.)

Part 5. Protection of Public Health.

§ 160-229. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.—The governing body of cities is hereby given, within the city limits, all the power and authority that is now or may hereafter be given by law to the county health officer or county physician, and such further powers and authority as will best preserve the health of the citizens. The governing body is hereby given power to make such rules and regulations, not inconsistent with the constitution and laws of the state, for the preservation of the health of the inhabitants of the city, as to them may seem right and proper.

The governing body of any city or town, when deemed for the best interest of the city or town, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions within or without the city or town for the medical treatment and hospitalization of the sick and afflicted poor of the city or town upon such terms and conditions as may be agreed, provided that the annual payments required under such contract shall not be in excess of ten thousand dollars ($10,000.00). The full faith and credit of each city or town shall be deemed to be pledged for the payment of the amounts due under said contracts. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses within the meaning of the Constitution of North Carolina and shall be valid and binding without a vote of the majority of the qualified voters of each city and town and are hereby expressly exempted from any limitation, restriction or provisions contained in the County Fiscal Control Act and acts amendatory thereof as it may be applicable to cities or towns by virtue of § 160-409. No limitation, restriction or provision contained in any general, special, private or public-local law or charter of any city or town relating to the execution of contracts and the appropriation of money and levying of taxes therefor shall apply to the contracts authorized and executed under this paragraph: Provided, that the town of Lincolnton shall not enter into any such contract except after a public hearing at the county court house in Lincoln county, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The provisions of this paragraph shall not apply to the municipalities of Salisbury, Spencer, East Spencer, Rocky Mount, Reidsville, Leaksville, Madison, Asheville, Charlotte, Edenton, Gibsonville, Greensboro, Hamlet, High Point, Jamestown, Rockingham, Tarboro and Wilmington. This paragraph shall not apply to the city of High Point in Guilford county; to the city of Elizabeth City in Pasquotank county; nor to the counties of Beaufort, Camden and Lee or any city or town therein; nor to any city or town in the counties of Ashe, Avery, Columbus, Davidson, Durham, Gates, Jackson, Martin and Rockingham; nor to the counties of Ashe, Alexander, Brunswick, Clay, Cumberland, Forsyth, Haywood, Henderson, Jones, Macon, Montgomery, Moore, Pasquotank, Robeson, Sampson, Transylvania, Wilkes, Catawba, Lincoln, Surry, Washington, Rowan, Warren, Vance, Johnson, Edgecombe, Halifax, Davie, Gaston, Harnett, Iredell, Pitt, Stanly, Union and Yadkin. Before this paragraph shall apply to any city or town in Catawba county it must be submitted to a vote of the people of said Catawba county. (1917, c. 136, sub-ch. 5, s. 4; 1935, c. 64; C. S. 2795.)

§ 160-230. Establish hospitals, pesthouses, quarantine, etc.—The governing body may acquire, establish, and maintain a hospital or hospitals, or pesthouses, slaughter-houses, rendering plants, incinerators and crematories in the city limits or within three miles thereof; may stop, detain, examine, or keep in a pesthouse or house of detention persons having or suspected of having any infectious, contagious, or other communicable disease; may quarantine the city or any part thereof; may cause all persons in the city limits to be vaccinated; may, without incurring liabilities to the owner, remove, fumigate, or destroy furniture, bedding, clothing, or other property which may be found to be tainted or infected with any contagious or infectious disease, and may do all other proper and reasonable things to prevent or stamp out any contagious or infectious disease, and to preserve better the health of the citizens. All expenses incurred by the city in disinfecting or caring for any person or persons, by authority of this section, may be recovered by it from the person, persons, or property cared for; and when expense is incurred in caring for property, the same shall become a lien on such property. Any person who shall attempt by force, or by threat of violence, to prevent his removal or that of any other persons to the pesthouse, house of detention, or hospital, or who shall in any way interfere with any officer while performing any of the duties allowed by this article, shall be guilty of a misdemeanor. The governing body of any municipality, in order to provide for the management of a municipally owned hospital may lease such a hospital to a local, non-stock, non-profit corporation or association chartered to maintain and operate a community-type hospital upon such terms as the governing bodies of the municipality and of the hospital, corporation or association may agree, for a term of years, with or without consideration, and in the sound discretion of the governing body of said municipality. (1917, c. 136, sub-ch. 5, s. 4; Ex. Sess. 1938, c. 2, s. 13; C. S. 2796.)

§ 160-231. Elect health officer.—The governing body of any city may elect a health officer and create such other offices and employments as to them may seem right and proper, and fill the same and fix their compensation. (1917, c. 136, sub-ch. 5, s. 4; C. S. 2797.)

§ 160-232. Regulate the management of hospitals.—The governing body is hereby empowered to make rules and regulations for the management and conduct of all hospitals and sanatoriums which may have for treatment any patient afflicted with any infectious, contagious, or other communicable disease, and prescribe penalties for any violation of same. Any person violating any rule or regulation of the governing body shall be guilty of a misdemeanor, and upon conviction, except as herein otherwise provided,

shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1917, c. 136, sub-ch. 5, s. 5; C. S. 2798.)

§ 160-233. Provide for removal of garbage.—The governing body may by ordinance provide for the removal, by wagon or carts, of all garbage, slops, and trash from the city; and when the same is not removed by the private individual in obedience to such ordinance, may require the wagons or carts to visit the houses used as residences, stores, and other places of habitation in the city, and also may require all owners or occupants of such houses who fail to remove such garbage or trash from their premises to have the garbage, slops, and trash ready and in convenient places and receptacles, and may charge for such removal the actual expense thereof. (1917, c. 136, sub-ch. 7, s. 3; C. S. 2799.)

§ 160-234. Abate or remedy menaces to health.—The governing body, or officer or officers who may be designated for this purpose by the governing body, shall have power summarily to remove, abate, or remedy, or cause to be removed, abated, or remedied, everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expense of such action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes. (1917, c. 136, sub-ch. 7, s. 4; C. S. 2800.)

Part 6. Fire Protection.

§ 160-235. Establish and maintain fire department.—The governing body shall have power to provide for the organization, equipment, maintenance and government of fire companies and a fire department; and, in its discretion, may provide for a paid fire department, and for this purpose may create any offices and employments and fix their compensation as to the governing body may seem right and proper. (1917, c. 136, sub-ch. 8, s. 1; C. S. 2801.)

§ 160-236. Establish fire limits.—The governing body may establish and maintain fire limits in the city, in which it shall be unlawful to erect, alter, and repair wooden buildings or structures or additions thereto; it may also prohibit the removal of wooden buildings or structures of any kind into such limits, or from one place to another within the limits, and make such other regulations as may be deemed best for the prevention and extinguishment of fires. (1917, c. 136, sub-ch. 8, s. 2; C. S. 2802.)

§ 160-237. Regulate buildings.—The governing body may make rules and regulations governing the erection and construction of buildings in the city so as to make them as safe as possible from fire. (1917, c. 136, sub-ch. 8, s. 3; C. S. 2803.)

§ 160-238. Fire protection for property outside city limits.—The governing body may provide, install, and maintain water mains, pipes, hydrants, and buildings and equipment, either inside or outside of the city limits, for protection against fire of property outside of the city limits, and within such area as the governing body may determine, not exceeding a boundary of two miles from the city limits, under such terms and conditions as the governing body may prescribe. Such governing body is hereby authorized to agree to furnish and to furnish protection against fire of property within an area of not more than twelve miles from the city limits upon such terms as such governing body may determine. (1919, c. 244; 1941, c. 188; C. S. 2804.)

Part 7. Sewerage.

§ 160-239. Establish and maintain sewerage system.—The governing body shall have power to acquire, provide, construct, establish, maintain and operate a system of sewerage for the city, and protect and regulate the same by adequate rules and regulations; and if it shall be necessary in obtaining proper outlets to such system to extend the same beyond the corporate limits, the governing body may condemn a right of way or rights of way to and for such outlets, and the proceedings for such condemnation shall be as herein provided for opening new streets and other purposes. It is the intention of this subchapter that the powers herein granted to municipalities shall not repeal any special or local law or affect any proceedings under any special or local law relative to providing, constructing, establishing, maintaining or operating any system of sewerage in any municipality, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and supplementary to those powers granted municipalities in their charters. In any case in which the provisions of this subchapter are in conflict with the provision of any local statute or charter, then the governing body of any such municipality may, in its discretion, proceed in accordance with the provisions of such local statute or charter, or as an alternative method of procedure in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 7, s. 1; 1923, c. 166, s. 1; C. S. 2805.)

§ 160-240. Require connections to be made.—The governing body may require all owners of improved property which may be located upon or near any line of such system of sewerage to connect with such sewerage all water-closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and fix charges for such connections. (1917, c. 136, sub-ch. 7, s. 2; C. S. 2806.)

§ 160-241. Order for construction or extension of system; assessment of cost; payment of assessment.—When it is proposed by any municipality to provide, construct and establish a system of sewerage, or to provide for the extension of any such system, an order or resolution of the governing body of such municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement. In such order or resolution such governing body may provide that the actual cost of the establishment and construction of such sewerage system, or any extension thereof, shall be assessed upon the lots and parcels of land abutting directly on the lateral mains of such sewerage system, or extension thereof, according to the extent of the respective frontage thereon, by an equal rate per foot of such front-

age. Such governing body may provide in such order or resolution that the assessments to be levied in connection with such work may be paid in equal installments covering a period of not exceeding five years. Such order or resolutions shall designate by a general description the improvement to be made, and the street or streets, or part or parts thereof, whereon the work is to be affected and the cost thereof to be assessed upon all abutting property and the terms and manner of payment. Such order or resolution after its passage shall be published in a newspaper published in such municipality, or if there be no such newspaper, such order or resolution shall be posted in three public places in such municipality for at least five days. (1923, c. 166, s. 2; C. S. 2806(a).)

§ 160-242. Ascertainment of cost; assessment.—Upon the completion of the construction and establishment of any such sewerage system, or of any such extension, the governing body shall compute and ascertain the total cost thereof. The governing body shall thereupon make an assessment of such total cost, and for that purpose shall make out an assessment roll, in which must be entered the names of the persons assessed as far as can be ascertained, and the amount assessed against them respectively, with a brief description of the lots or parcels of land assessed. (1923, c. 166, s. 3; C. S. 2806(b).)

§ 160-243. Deposit for inspection; publication of completion; time for hearing objections.—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published in the same manner as the order or resolution authorizing such work, a notice of the completion of the assessment roll, setting forth a description in general terms of the improvement, and the time fixed for the meeting of the governing body for a hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. (1923, c. 166, s. 4; C. S. 2806(c).)

§ 160-244. Hearing on objections; action; entry of confirmation; lien of assessment; copy of roll to tax collector.—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll, either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for such a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector, or other officer charged with the duty of collecting taxes. (1923, c. 166, s. 5; C. S. 2806(d).)

§ 160-245. Notice of appeal; service of statement; stay of work; trial of appeal.—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal; but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1923, c. 166, s. 6; C. S. 2806(e).)

§ 160-246. Correction, etc., of assessment; interest and penalties; power to set aside assessment.—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. (1923, c. 166, s. 7; C. S. 2806(f).)

§ 160-247. Cash payment; installment payments; rate of interest; sale of property.—In the event such governing body of such municipality shall provide that said assessment may be paid in equal annual installments, then and in that event the property owner shall have the option and privilege of paying for the improvement as hereinbefore provided for, in cash, or if they should elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in the next succeeding section, they shall have the option and privilege of paying the assessment in not less than the number of equal annual installments as may have been determined by the governing body in the original order or resolution authorizing the improvement. Such installments shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable, and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by the payment of the principal and the interest accrued to that date. (1923, c. 166, s. 8; C. S. 2806(g).)

§ 160-248. Notice for payment of assessment; interest for nonpayment; maturity of installments; penalties.—After the expiration of twenty days from the confirmation of an assessment roll the tax collector, or such other officer of the municipality as the governing body may direct so to do, shall cause to be published in a news-

paper, or, if there is no such newspaper, shall cause to be posted in at least three public places therein a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice, without any addition. In the event the assessment be not paid within such time the same shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll and shall become due and payable on the date on which taxes are payable: Provided, that when an assessment is divided into installments, one installment shall become due and payable each year on the date on which taxes are due and payable. If any assessment or installment thereof is not paid when due, it shall be subject to the same penalties as are now prescribed for unpaid taxes, in addition to the interest herein provided for. (1923, c. 166, s. 9; C. S. 2806(h).)

§ 160-249. Authority to fix sewerage charges; lien thereof.—The governing body of any municipality, maintaining and operating a system of sewerage, including sewerage treatment works, if any, is hereby authorized to charge for sewerage service, to determine and fix a schedule of charges to be made for such service, to fix the time and manner in which such sewerage service charges shall be due and payable and to fix a penalty for the non-payment of the same when due. In no cases shall the charges, rents or penalties be a lien upon the property served and in cases where the service is rendered to a tenant and the tenant removes from the premises, the municipality shall not charge against the owner thereof the service charges or penalties for said service: Provided, however, that for sewerage service supplied outside of the corporate limits of the city, the governing body, board or body having such sewerage system in charge may fix a different schedule of rates from that fixed for such service rendered within the corporate limits, with the same exemption from liability by city or town as is contained in § 160-255. (1933, c. 322, s. 1; 1941, c. 106.)

Local Modification.—Mecklenburg, Transylvania: 1933, c. 322, s. 1.

§ 160-250. Joint construction, operation, etc., of sewerage works by adjacent municipal corporations.—Two or more adjoining or adjacent municipal corporations shall have authority as hereinafter provided and set forth, by the adoption of resolutions to be passed by the governing body of each of said municipal corporations, to acquire, construct, improve, maintain and operate jointly, either within or without their corporate limits, sewerage works, including sewage treatment facilities, or any integral part of such works. In order to render more effectual the exercise of the authority herein granted, such municipal corporations may enter into any and all contracts which may be appropriate to that end, among or between themselves, or with other parties. (1939, c. 205, s. 1.)

§ 160-251. Power of corporations to issue bonds.—Municipal corporations so determining upon such sewerage works are hereby granted the same authority to issue bonds for the acquisition, construction and improvement of such works as is now given to any municipal corporation under the general laws of North Carolina, and particularly under the Municipal Finance Act, as amended. (1939, c. 205, s. 2.)

§ 160-252. Apportionment of cost; establishment of charges.—The cost of any such joint acquisition, construction, improvement, maintenance and operation shall be apportioned between or among the participating municipal corporations in a manner to be by them agreed upon and determined. In order to pay such cost, such adjoining or adjacent municipal corporations may, by agreement between or among themselves, fix and establish reasonable charges for the use of such sewerage works. Any person, firm or corporation or other municipal corporation not participating in such joint construction and operation, who or which are living or are located outside of the corporate limits of such municipal corporations and desire to use such sewerage works, may be charged a reasonably higher rate for the use of such said works than that charged the users of the same who are living or located within the corporate limits of said participating municipal corporations. (1939, c. 205, s. 3.)

§ 160-253. Charges declared lien upon property.—The charges made for the use of said works shall be a lien upon the property served, and if any such charge shall not be paid within fifteen days after the same becomes payable, suit may be brought therefor in the name of the municipal corporation in which the property served is located, or the property, subject to the lien thereof, may be sold by the municipal corporation under the same rules and regulations, rights of redemption and savings, as are now or may hereafter be prescribed by law for the sale of land for unpaid taxes. Such municipal corporations shall have the right to establish reasonable rules and regulations for the use of said sewerage works and the collection of charges therefor, and said municipal corporations, through their officers or agents, are hereby authorized and empowered, in accordance with such reasonable regulations, to enter upon the premises of any person, firm or corporation using said sewerage works and failing to pay the charges therefor, and to disconnect the sewer line of such person, firm, or corporation from the public sewer line or disposal plant; and any person, firm or corporation who shall connect with such public sewer line or disposal plant, or reconnect his or their property therewith, without a permit from the officer authorized to give the same, shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of any court of competent jurisdiction. (1939, c. 205, s. 4.)

§ 160-254. Law applicable to joint works initiated or completed prior to effective date.—The authority to issue bonds for the purpose of financing in whole or in part works of the type herein made provision for, and the authority to perform any other acts authorized hereunder, may be exercised in connection with sewerage works the construction of which may have been jointly initiated or completed by two or more adjoining or adjacent municipal corporations prior to March 28, 1939; and all acts done and proceedings had in relation to such joint construction of such

works, and all acts, resolutions or ordinances performed prior to March 28, 1939, adopted or enacted in connection with the authorization or issuance of bonds to finance such joint construction, if such bonds are otherwise authorized or issued under and in substantial compliance with any applicable general law of North Carolina, are hereby ratified, validated and confirmed. (1939, c. 205, s. 5.)

Part 8. Water and Lights.

§ 160-255. Establish and maintain water and light plants.—The city may own and maintain its own light and waterworks system to furnish water for fire and other purposes, and light to the city and its citizens and to any person, firm or corporation desiring the same outside the corporate limits, where the service is available, but shall in no case be liable for damages for a failure to furnish a sufficient supply of either water or light. And the governing body shall have power to acquire and hold rights of way, water rights, and other property, within and without the city limits. (1917, c. 136, sub-ch. 11, ss. 1, 2; 1929, c. 285, s. 1.)

§ 160-256. Fix and enforce rates.—The governing body, or such board or body which has the management and control of the waterworks system in charge, may fix such uniform rents or rates for water or water service as will provide for the payment of the annual interest on existing bonded debt for such waterworks system, for the payment of the annual installment necessary to be raised for the amortization of the debt, and the necessary allowance for repairs, maintenance, and operation, and when the city shall own and maintain both waterworks and sewerage systems, including sewerage disposal plants, if any, the governing body shall have the right to operate such system as a combined and consolidated system, and when so operated to include in the rates adopted for the waterworks a sufficient amount to provide for the payment of the annual interest on the existing bonded debt for such sewerage system or systems, for the payment of the annual installment necessary to be raised for the amortization of such debt, and the necessary allowance for repairs, maintenance and operation. Such body shall fix the times when the water rents shall become due and payable, and in case such rent is not paid within ten days after it becomes due and payable, the same may at any time thereafter be collected either by suit in the name of the city or by the collector of taxes for the city. Upon the failure of the owner of property for which water is furnished under the rules and regulations of such body to pay the water rents when due, then the body, or its agents or employees, may cut off the water from such property; and when so cut off it shall be unlawful for any person, firm, or corporation, other than the body or its agents or employees, to turn on the water to such property, or to use the same in connection with the property, without first having paid the water rent and obtained permission to turn on the water: Provided, however, that for service supplied outside the corporate limits of the city, the governing body, board or body having such waterworks or lighting system in charge, may fix a different rate from that charged within the corporate limits, with the same exemption from liability by the city or town as is contained in § 160-255: Provided further, that where the water may be cut off under the provision of this section for the failure of the occupant of the premises to pay his water bill, and such occupant is not the owner of the premises but occupies said premises as a tenant, it shall not be lawful for the board in charge or management of the waterworks to require the payment of such delinquent bill before turning on the water at the instance of a new and different tenant or occupant of said premises. This proviso shall not apply in cases where the premises are occupied by two or more tenants serviced by the same water meter. (1917, c. 136, sub-ch. 11, s. 3; 1929, c. 285, s. 2; 1933, cc. 140, 353; C. S. 2808.)

Local Modification.—Ashe, Haywood, Mecklenburg, Transylvania: 1933, c. 353; Caldwell: 1933, c. 368.

§ 160-257. Separate accounts for water system.—It shall be the duty of the governing body to keep a separate statement and account of the money received by the city from the waterworks system, and it shall be the duty of the said body to give preference to the waterworks system over the other departments of the city in such funds, and to provide for the proper upkeep of the waterworks system and an amount necessary for the enlargement of the waterworks system before turning over to the other departments the money so received. (1917, c. 136, sub-ch. 11, s. 4; C. S. 2809.)

Part 9. Care of Cemeteries.

§ 160-258. Care fund established.—The governing body is authorized to create a fund to be known as the perpetual care fund for the cemeteries, for the purpose of perpetually caring for and beautifying the cemeteries, and such fund shall be kept by the city as is provided for bequests and gifts for cemetery purposes; and the governing body may make contracts with lot or space owners in the cemeteries, obligating the city to keep up and maintain said lots or spaces in perpetuity upon payment of such sum as may be fixed by the governing body; and the governing body is further authorized and empowered to accept gifts and bequests for such purposes, or upon such other trusts as the donors may prescribe; and the governing body is authorized to set aside for such perpetual care fund such portion of the proceeds of sale of cemetery lots as the governing body may deem advisable. (1917, c. 136, sub-ch. 9, s. 1; 1927, c. 254; C. S. 2810.)

§ 160-259. Application of fund.—The principal of the funds appropriated by the governing body for caring for the cemeteries shall be held by the governing body for caring for and beautifying the cemeteries and improving the same. The income from the fund heretofore or hereafter made shall be used for the purpose of carrying out contracts with the individual or space owners for the perpetual care of individual plats and spaces. Any gifts heretofore or hereafter made to and received by the city or any of its officers shall be held and used as a sacred trust fund for the purposes and upon the conditions named in such gifts or bequests, and all such funds shall be kept and invested separately and shall not be used for any other purpose, or by the city in its affairs. (1917, c. 136, sub-ch. 9, s. 1; C. S. 2811.)

§ 160-260. Separate accounts kept. — The city treasurer shall keep a separate account of the cemetery funds, and a still further separate account of all special gifts or bequests made by persons for and in connection with the cemeteries and particular lots therein. The governing body has the power to make rules and regulations and adopt ordinances for the carrying out of the duties imposed by this and the two preceding sections in regard to the care of cemeteries. (1917, c. 136, sub-ch. 9, s. 1; C. S. 2812.)

Part 10. Municipal Taxes.

§ 160-261. Provide for listing and collecting taxes.—The governing body shall provide by an ordinance or otherwise means for the collection of taxes in the city and shall cause property to be listed for taxation which has not otherwise been listed as required by law. The governing body of cities and towns are in all respects vested with the same powers and authority as is now, or may hereafter be, vested in the board of county commissioners of the county in which such city or town is located, with respect to the allowance of discounts and charging penalties in the collection of taxes. (1917, c. 136, sub-ch. 6, s. 2; 1925, c. 183; C. S. 2813.)

§ 160-262. Unlisted taxables entered.—The officer who has charge of the collection of taxes in any city shall, after the most diligent inquiry, and by comparing his book with the county tax books, make out a list of all persons liable for poll tax, or for taxes on property, who have failed to return a list in the manner and in the time prescribed, together with the estimated value of all the property not listed, and shall enter such persons in a separate part of his book. (1917, c. 136, sub-ch. 6, s. 4; C. S. 2814.)

§ 160-263. Power and duties of tax collector.—The officer who has charge of the collection of taxes in any city shall, in the collection of taxes, be vested with the same power and authority as is given by the state to sheriffs for like purpose, and shall be subject to the same fines and penalties on failure or neglect of duty. It shall be his duty to collect all taxes levied by the governing body, and he shall be charged with the sums appearing on the tax list as due for city taxes. He shall at no time retain in his hands over three hundred dollars for a longer time than seven days, under a penalty of ten per cent per month to be paid to the city upon all sums so unlawfully retained. (1917, c. 136, sub-ch. 6, s. 1; C. S. 2816.)

§ 160-264. Settlement with tax collector.—In settlement with the city the tax collector shall be credited with all poll taxes and taxes on personal property which the governing body shall declare to be insolvent and uncollectible, and with such amounts as may be involved in suit by appeal from the ruling of the board, and he shall be charged with and shall pay over all other sums appearing on the tax list. After the accounts of the tax collector shall be audited and settled, the same shall be reported to the governing body, and when approved by it the same shall be recorded in the minute book of such body, and shall be prima facie evidence of correctness, and impeachable only for fraud or specified error. (1917, c. 136, sub-ch. 6, s. 1; C. S. 2817.)

§ 160-265. Bond of tax collector and other officers.—The governing body of the city shall require of the tax collector of the city, and any and all officers and employees, such bonds as it may deem necessary, and may pay the expenses of providing such bonds, including the bond of the mayor. (1917, c. 136, sub-ch. 6, s. 3; C. S. 2818.)

§ 160-266. License to plumbers and electricians.—The governing body may regulate and license plumbers and those engaged in the electrical wiring of buildings for light, power, or heat, and before issuing a license may require the applicant to be examined and to give bond in such sum and upon such conditions as the governing body may determine, and with such sureties as it may approve; and such body may, for incompetency on the part of such licensees or for refusal to comply with the ordinances relating to such business, or for any other good cause, revoke any license issued hereunder. No person, firm, or corporation shall do any kind of plumbing or electrical wiring of buildings without first having obtained a license from the governing body. No license issued hereunder by the governing body shall be for more than one year, and same shall not be transferable or assignable except by the permission of the governing body. And no license shall be issued, as herein provided, before the license tax shall have been paid. (1917, c. 136, sub-ch. 6, ss. 6, 7, 8, 9; C. S. 2819.)

Art. 19. Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

§ 160-267. Legislative powers, how exercised.—Except as otherwise specially provided, the legislative powers of the governing body may be exercised as provided by ordinance or rule adopted by it. (1917, c. 136, sub-ch. 13, s. 1; C. S. 2820.)

§ 160-268. Quorum and vote required.—Every member of the governing body shall have the right to vote on any question coming before it. A majority shall constitute a quorum, and a majority vote of all members present shall be necessary to adopt any motion, resolution or ordinance. (1917, c. 136, sub-ch. 13, s. 1; C. S. 2821.)

§ 160-269. Meetings regulated, and journal kept.—The city governing body shall from time to time establish rules for its proceedings. Regular and special meetings shall be held at a time and place fixed by ordinance. All legislative sessions shall be open to the public, and every matter shall be put to a vote, the result of which shall be duly recorded. The governing body shall not by executive session or otherwise consider or vote on any question in private session. A full and accurate journal of the proceedings shall be kept, and shall be open to the inspection of any qualified registered voter of the city. (1917, c. 136, sub-ch. 13, s. 1; C. S. 2822.)

Part 2. Ordinances.

§ 160-270. How adopted.—No ordinance shall be passed finally on the date on which it is introduced, unless by two-thirds vote of those present. No ordinance making a grant, renewal, or extension, whatever its kind or nature, of any franchise or special privilege shall be passed until voted on at two regular meetings, and no such

grant, renewal, or extension shall be made otherwise than by ordinance. (1917, c. 136, sub-ch. 13, s. 3; C. S. 2823.)

§ 160-271. Ordinances amended or repealed.—No ordinance or part thereof shall be amended or annulled except by an ordinance adopted in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 4; C. S. 2824.)

§ 160-272. How ordinance pleaded and proved.—In all judicial proceedings it shall be sufficient to plead any ordinance of any city by caption, or by number of the section thereof and the caption, and it shall not be necessary to plead the entire ordinance or section. All printed ordinances or codes or ordinances published in book form by authority of the governing body of any city shall be admitted in evidence in all courts, and shall have the same force and effect as would the original ordinance. (1917, c. 136, sub-ch. 13, s. 14; C. S. 2825.)

Part 3. Officers.

§ 160-273. City clerk elected; powers and duties.—The governing body shall, by a majority vote, elect a city clerk to hold office for the term of two years and until his successor is elected and qualified. He shall have such powers and perform such duties as the governing body may from time to time prescribe in addition to such duties as may be prescribed by law. He shall keep the records of the meetings. The person holding the office of city clerk at the time when any of the plans set forth in this subchapter shall be adopted by such city shall continue to hold office for the term for which he was elected, and until his successor is elected and qualified.

The governing body may also provide that the city clerk shall have the powers and perform the duties of city treasurer, such powers and duties to be prescribed from time to time by the governing body and to be in addition to all powers and duties as may be prescribed by law, and in such event the city clerk shall be known as the "city clerk and treasurer." The powers conferred by the next preceding sentence are in addition to and not in substitution for those conferred by any other act, whether general, special, private or local, and every municipality may proceed under the provisions of said next preceding sentence, notwithstanding any conditions, restrictions or limitations contained in any other act, whether general, special, private or local. (1917, c. 136, sub-ch. 13, s. 1; 1941, c. 103; C. S. 2826.)

§ 160-274. Vacancies filled; mayor pro tem.—If a vacancy occurs in the office of the mayor or governing body, the vacancy shall be filled by the governing body of the city. If the mayor is absent or unable from any cause temporarily to perform his duties, they shall be performed by one elected by the governing body of the city for that purpose, who shall be called "mayor pro tem.," and he shall possess the powers of mayor only in matters not admitting delay, but shall have no power to make permanent appointments. (1917, c. 136, sub-ch. 13, s. 6; C. S. 2827.)

§ 160-275. Accountant for each city and town required.—It shall be the duty of the governing body of every city and town in this State on or before the first day of June, one thousand nine hundred thirty-one, and biennially thereafter before the first day of June in each odd year, to appoint some person of honesty and ability whose experience, training and qualifications have been approved by the Commission, as accountant for the municipality (or city accountant or town accountant or municipality accountant), to hold such office, or position at the will of the governing body or until such approval has been revoked by the Commission or until the appointment of his successor. The governing body in lieu of appointing an accountant as hereinabove required may impose and confer upon any municipal officer all the powers and duties herein imposed and conferred upon the municipal accountant and may revise and adjust the salary or compensation of any such officer upon whom such duties and powers are imposed or conferred: Provided, however, that if such officer upon whom such duties and powers are imposed or conferred should be a tax collecting officer of the unit, it shall be the duty of the governing body to require all his books and accounts to be audited semi-annually by a certified public accountant or a public accountant, registered under §§ 93-1 to 93-13, and amendments thereto: Provided further, that in towns of less than one thousand inhabitants, according to the census of one thousand nine hundred thirty, such books and accounts shall not be required to be audited more often than once each year. (1931, c. 60, s. 70; 1931, c. 269; 1931, c. 296, s. 9.)

§ 160-276. Bond of accountant.—The municipal accountant may be required to furnish bond in some surety company authorized to do business in North Carolina, the amount to be fixed by the governing body, which bond shall be approved by the governing body and by the Commission and shall be conditioned for the faithful performance of his duties imposed by law. (1931, c. 60, s. 71.)

§ 160-277. Bonds required.—Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody, or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city. (1917, c. 136, sub-ch. 13, s. 15; C. S. 2828.)

§ 160-278. Information requested from mayor.—The governing body at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request him to be present to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt by the mayor of such questions. (1917, c. 136, sub-ch. 13, s. 2; C. S. 2829.)

Part 4. Contracts Regulated.

§ 160-279. Certain contracts in writing and secured.—All contracts made by any department,

board, or commission in which the amount involved is two hundred dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until signed by the officer authorized by law to sign such contract, approved by the governing body. Any contract made as aforesaid may be required to be accompanied by a bond with sureties, or by a deposit of money, certified check, or other security for the faithful performance thereof, satisfactory to the board or official having the matter in charge, and such bonds or other securities shall be deposited with the city treasurer until the contract has been carried out in all respects; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department, or board making the contract, with the approval of the governing body. (1917, c. 136, sub-ch. 13, s. 8; C. S. 2831.)

§ 160-280. Separate specifications for contracts; responsible contractors.—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or alteration of buildings in any county or city, when the entire cost of such work shall exceed ten thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed: 1. Heating and ventilating. 2. Plumbing and gas fitting. All such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by any county, or city, or a department, board, commission, or commissioner, or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award respective work specified in the above subdivisions separately to responsible persons, firms or corporations regularly engaged in their respective line of work. (1925, c. 141, s. 1; 1929, c. 339, s. 1; 1931, c. 46.)

§ 160-281. Validating certain conveyances.—All deeds made, executed, and delivered prior to August 23, 1924, for a good and valuable consideration, by incorporated cities and towns conveying lands used for park purposes, without authority to make and deliver such deed having been first granted by the General Assembly, are hereby in all respects validated, ratified, and confirmed as fully and completely as if said cities and towns had been granted authority of the General Assembly to make and deliver said deeds, and said deeds are hereby declared to be valid conveyances of the land and premises therein described. (Ex. Sess. 1924, c. 95.)

Part 5. Control of Public Utilities, Institutions, and Charities.

§ 160-282. Power to establish and control public utilities, institutions, and charities. — Any city shall have the right to acquire, establish, and operate waterworks, electric lighting systems, gas systems, schools, libraries, cemeteries, market houses, wharves, play or recreation grounds, athletic grounds, parks, abattoirs, slaughter-houses, sewer systems, garbage and sewage disposal plants, auditoriums or places of amusement or entertainment, and armories. The city shall have the further right to make a civic survey of the city, establish hospitals, clinics, or dispensaries for the poor, and dispense milk for babies; shall have the power to establish a system of public charities and benevolence for the aid of the poor and destitute of the city; for the welfare of visitors from the country and elsewhere, to establish rest rooms, public water-closets and urinals, open sales places for the sale of produce, places for hitching and caring for animals and parking automobiles; and all reasonable appropriations made for the purposes above mentioned shall be binding obligations upon the city, subject to the provisions of the constitution of the state. (1917, c. 136, sub-ch. 13, s. 11; C. S. 2832.)

§ 160-283. How control exercised:

1. Control over departments. The waterworks department, electric or gas light system, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by any city under separate organization or as a separate corporation under the control of any city in the state, which has been heretofore under the separate management and control of separate boards or corporations, may henceforth be under the management and control of the governing body of such city in the state.

2. Departments may be abolished. In all cities except those which have adopted Plan C or Plan D, hereafter set forth, before the governing body shall have control or management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, the governing body of the city, by two-thirds vote taken at two separate regular meetings of such governing body, shall pass an ordinance to the effect that the waterworks, electric or gas light system, sewerage system, library, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, or either of them, shall be abolished and the control and management shall be under the governing body of the city.

3. Property vested in the city. Upon the passage by the governing body of any city of such ordinance, the waterworks, electric or gas light system, sewerage system, the library system, and the park or park and tree commission system, and any other public service owned, operated, or conducted by such city under separate organization or corporation then in existence either under separate organization or under separate management or control or under separate corporation, shall immediately become the property of the city, and all land, real estate, rights, easements, franchises, choses, and property of every kind, whether real or personal, tangible or intangible, the title of which is vested in such separate corporation or board, shall be and become vested in such city, and the boards of water commissioners, electric light commissioners, sewerage commissioners, library boards, park boards, or park and tree commission boards, or the board or

commission of any other public service owned, operated, or conducted by or on behalf of such city under separate organization or corporation shall cease to exist as a corporation; and all indebtedness, bonds, or other contracts and obligations of any nature incurred by, for, or on account of the waterworks, electric or gas light system, sewerage system, library system, park or park and tree commission system, or other public utility in the name of or by such corporation, or by such city in its behalf, or by the corporation and such city jointly, shall be and become the sole obligations of such city.

4. Same procedure in other cases. There shall be the same procedure with reference to the library system, park or park and tree commission system, or playground system by the governing body of all cities which shall have adopted Plan C or Plan D before such control and title shall become vested as hereinbefore stated.

5. Popular vote required. In all cities, except those which have adopted Plan C or Plan D, hereafter set forth, before the foregoing provisions of this section shall become effective, such changes in the control and management of the waterworks, electric light, sewerage, etc., shall first be approved by a majority of the qualified voters of such municipality at any regular or special election held under the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 9; C. S. 2833.)

§ 160-284. Ordinances to regulate management.—The governing body of any city in the exercise of its control and management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or any other public service owned, operated, or conducted by such city, shall have power to make rules, regulations, and ordinances in connection with the management thereof as they may deem necessary, and shall have power to enforce such rules, regulations, and ordinances. (1917, c. 136, sub-ch. 13, s. 10; C. S. 2834.)

§ 160-285. Additional property acquired.—The governing body of any city shall have power to acquire such additional property as it may deem necessary for a better system of waterworks, electric light, sewerage, library, park or parks, or other public service owned, operated, or conducted by such city. Upon the adoption by the governing body of any city of any one of the plans of government provided for in this subchapter, the laws now in force in reference to the waterworks, electric light, sewerage, parks, libraries, or other public service owned, operated, or conducted by such city, shall not be repealed by this subchapter, but shall be construed with this subchapter and only repealed in so far as they are inconsistent with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 10; C. S. 2835.)

Part 6. Effect Upon Existing Regulations.

§ 160-286. Existing rights and obligations not affected. — All official bonds, recognizances, obligations, contracts, and all other instruments entered into or executed by or to the city before this subchapter takes effect in any city, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the city, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as is herein otherwise provided, shall continue without abatement and remain unaffected by this subchapter; and no legal act done by or in favor of the city shall be rendered invalid by its adoption of any plan of government provided for by this subchapter. (1917, c. 136, sub-ch. 13, s. 5; C. S. 2836.)

§ 160-287. Existing ordinances remain in force.—All valid ordinances and resolutions of any city in force on March 6, 1917, and not inconsistent with the provisions of this subchapter, and all rules of procedure adopted by the governing body of any city, shall be and remain in full force and effect until repealed, annulled, or amended under the provisions of this subchapter, or under the provisions of the charter of such city, and all laws relative to any city, not in conflict with the provisions of this subchapter shall be and remain in full force and effect. (1917, c. 136, sub-ch. 13, s. 5; C. S. 2837.)

§ 160-288. Existing election laws remain in force.—This subchapter shall not repeal or impair any general, special, or local election laws now in force in any city, but such general, special, or local laws shall be and continue in full force and effect except where clearly inconsistent with and repugnant to the provisions of this subchapter; and the municipal elections of such city shall continue to be held under and subject to the provisions of such special election laws except as herein otherwise provided: Provided, however, that in every case the governing body of any city shall have the right and power in its discretion and by an ordinance adopted by a two-thirds vote of the members of the entire governing body, to order a new registration of the voters of such city for any general, regular, or special municipal election held in such city for any purpose, unless excepted in this subchapter. (1917, c. 136, sub-ch. 13, s. 12; C. S. 2838.)

§ 160-289. General laws apply.—All questions arising in the administration of the government of any city, and not provided for in this subchapter, shall be governed by the laws of the state in such cases made and provided. (1917, c. 136, sub-ch. 13, s. 13; C. S. 2839.)

Art. 20. Accounting System.

§ 160-290. Nature of accounting system.—Accounting systems shall be devised and maintained which shall exhibit the condition of the city's assets and liabilities, the value of its several properties, and state of its several funds. Such systems shall be adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules as shall be necessary to show the full effect of such transactions for each fiscal year upon the finances of the city and in relation to each department of the city government; and there shall be included distinct summaries and schedules for each public utility owned and operated by the city. In all respects, as far as the nature of the city's business permits, the accounting systems maintained shall conform to those employed by progressive busi-

ness concerns and approved by the best usage. The governing body shall have power to employ accountants to assist in devising such accounting systems. (1917, c. 136, sub-ch. 14, s. 1; C. S. 2840.)

Art. 21. Adoption of New Plan of Government.

Part 1. Effect of Adoption.

§ 160-291. Continues corporation with powers according to plan.—Any city which shall adopt, in the manner hereinafter prescribed, one of the plans of government provided in this subchapter shall thereafter be governed by the provisions thereof; and the inhabitants of such city shall continue to be a municipal corporation under the name existing at the time of such adoption, and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties, liabilities, and obligations provided for herein or otherwise pertaining to or incumbent upon such city as a municipal corporation. (1917, c. 136, sub-ch. 16, s. 1; C. S. 2842.)

§ 160-292. Legislative powers not restricted.—None of the legislative powers of a city shall be abridged or impaired by the provisions of this subchapter, but all such legislative powers shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions of this subchapter. (1917, c. 136, sub-ch. 16, s. 2; C. S. 2843.)

§ 160-293. Ordinances remain in force. — All ordinances, resolutions, orders, or other regulations of a city or of any authorized body or official thereof existing at the time when such city adopts a plan of government set forth in this subchapter shall continue in full force and effect until annulled, repealed, modified, or superseded. (1917, c. 136, sub-ch. 16, s. 3; C. S. 2844.)

§ 160-294. Mayor and aldermen to hold no other offices.—The mayor or any member of the board of aldermen shall not hold any other office or position of profit, trust, or honor, or perform any other duties or functions than mayor or aldermen under the city government unless it shall be submitted to and approved by a majority of the qualified voters of the city at a regular or special election. (1917, c. 136, sub-ch. 16, s. 4; C. S. 2845.)

§ 160-295. Wards regulated.—The territory of any city adopting any one of the plans of government provided for in this subchapter shall continue to be divided into the same number of wards existing at the time of such adoption, which wards shall retain their boundaries until same shall be changed under the provisions of this subchapter: Provided, that if the plan so adopted provides for a different number and arrangement of wards from that existing at the time of such adoption, then in such event the wards of such city shall be so changed and arranged as to conform to the provisions of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 5; C. S. 2846.)

Part 2. Manner of Adoption.

§ 160-296. Petition filed.—A petition addressed to the board of elections of the county in which the city is situated, in the form and signed and certified as provided in the next section, may be filed with the county board of elections. The petition shall be signed by qualified voters of the city to a number equal to at least twenty-five per cent of the qualified voters at the last election next preceding the filing of the petition. In cities having a population of eighty thousand (80,000), as shown by the last census, in which it is proposed to adopt plan "B," the petition shall be signed by ten per cent of the qualified voters of said city. (1917, c. 136, sub-ch. 16, s. 6; 1933, c. 80, s. 5; C. S. 2847.)

§ 160-297. Form of petition.—The petition shall be in substantially the following form:

To the County Board of Elections of .....
.....County:

We, the undersigned qualified voters of the city, respectfully petition your honorable body to cause to be submitted to a vote of the voters of the city of ..... the following question: "Shall the city of ..... adopt the form of government defined as Plan (A, B, C, or D), as it is desired by petitioners and consisting of (describe plan briefly, as government by a mayor and councilors elected at large, or government by a mayor and councilors elected partly at large and partly from wards or districts, or government by three commissioners, one of whom shall be the mayor, or government by a mayor and four councilors with a city manager), according to the provisions of the chapter, Municipal Corporations, articles 22 to 25 inclusive."

Or, in case it shall be desired by such petitioners that two of such plans shall be submitted, then the question may be stated as follows:

"Shall the city of ..... adopt the form of government defined as Plan ..... or ..... (naming two of such plans as stated above), or remain under the present form of government?"

The petition may be in the form of separate sheets, each sheet containing at the top thereof the heading above set forth, and when attached together and offered for filing the several papers shall be deemed to constitute one petition, and there shall be endorsed thereon the name and address of the person presenting the same for filing. (1917, c. 136, sub-ch. 16, s. 7; C. S. 2848.)

§ 160-298. Election held. — Within five days after the petition has been filed with the county board of elections, if the petition shall contain twenty-five per cent of the qualified voters as before set forth, the board of elections shall call an election in accordance with such petition. The board of elections shall cause notice of such election to be given at least once a week for four weeks in some newspaper of general circulation in the county in which the election is to be held, or at the courthouse door of the county in which the city is situated or at the door of the city or town hall, and the date of such election shall be fixed by the board not later than forty days from the receipt of such petition. The notice shall be signed by the chairman of the county board of elections, and the cost of publication thereof paid by the city. The election shall be held under, and governed and controlled by, the laws in force at the time of such election govern-

ing regular elections of such city. (1917, c. 136, sub-ch. 16, s. 8; C. S. 2849.)

§ 160-299. Petitions for more than one plan.—Separate petitions for the submission of more than one of such plans may be filed in the form and manner hereinbefore provided, but if petitions for the submission of more than two of such plans shall be submitted at such election, those two plans shall be submitted at the election, petitions for which shall be first filed with the county board of elections. (1917, c. 136, sub-ch. 16, s. 9; C. S. 2850.)

§ 160-300. What the ballots shall contain.—All ballots used in elections held upon the adoption of the plans of government herein set forth shall contain the name of the plan submitted, as Plan A, B, C, or D, or any two of such plans submitted, as the case may be, with a brief description of each plan submitted, as described in the petition, and shall also contain the existing form of government under the name "present form of government." The names of the plans and forms shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of government for which he casts his vote; if there shall be only one plan submitted, the letter and description of such plan and the "present form of government" only shall appear, and the voter shall express his preference between such plan and the "present form of government." If there shall be two plans submitted, then each of the plans shall be denominated and described on the ballot as herein set forth, and the "present form of government" shall also appear upon the ballot, and the ballot shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of his first choice and the plan and form of his second choice. (1917, c. 136, sub-ch. 16, s. 10; C. S. 2851.)

§ 160-301. Form of ballots.—Except that the crosses here shown shall be omitted, the ballots shall be printed substantially as follows:

(Form of ballot when only one plan is submitted:)

Special Municipal Election

Plan ..... (with brief description). ☒
Present Form of Government. ☐

(Form of ballot when two plans are submitted:)

Special Municipal Election

To vote for any plan or form of government, make a cross in the appropriate square to the right of the name of such plan or form.

Note your first choice in the first column.

Note your second choice in the second column.

Names of plans or forms	First Choice.	Second Choice.
Plan—(with brief description).	X	
Plan—(with brief description).		X
Present Form of Government.		

(1917, c. 136, sub-ch. 16, s. 11; C. S. 2852.)

§ 160-302. Series of ballots. — The plans and forms on all ballots shall be printed in rotation as follows: The ballots shall be printed in as many series as there are plans or forms. The whole number of ballots to be printed shall be divided by number of series and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots the names of each plan or form shall be arranged in the alphabetical order of the letters of the plans submitted, followed by the "present form of government." After printing the first series, the first plan or form shall be placed last and the next series printed, and the process shall be so repeated until each plan shall have been printed first an equal number of times. The ballots so printed shall be then combined in tablets or packages so as to have the fewest possible ballots having the same order of plans or forms printed thereon together in the same tablet or package. (1917, c. 136, sub-ch. 16, s. 12; C. S. 2853.)

§ 160-303. How choice determined:

1. One plan submitted. If only one of the plans herein set forth and the "present form of government" are submitted, the plan or form of government receiving a majority of the votes cast shall be declared the plan or form selected.

2. More than one plan submitted. If two of the plans herein set forth and the "present form of government" are submitted, the plan or form receiving a majority of first choice votes equal to a majority of all the ballots cast shall be declared the plan or form selected. If no plan or form shall receive such a majority, then the second choice votes received for each plan or form shall be added to its first choice votes, and the plan or form receiving the highest total of first and second choice votes equal to a majority of all ballots cast shall be declared the plan or form selected.

3. How ballots are counted. In counting the ballots, if two plans and the "present form of government" are submitted, the precinct officers shall enter the total number of ballots on a tally-sheet printed therefor. They shall also carefully enter on such sheet the number of first choice and second choice votes for each plan or form of government. Only one vote shall be counted for any one plan or form on any one ballot. If two votes are cast for the same plan or form, the higher choice only shall be counted. If but one choice is voted on a ballot, it shall be counted as a first choice. If more than one cross appears in the same choice column on any ballot, they shall be counted as choices with priority as between each other in the order in which they appear in the choice column. Ballots marked with more than two crosses shall be declared void. A tie between two or more plans or forms shall be decided in favor of the one having the largest number of first choice votes. (1917, c. 136, sub-ch. 16, ss. 13, 14; C. S. 2854.)

Part 3. Result of Adoption.

§ 160-304. Plan to continue for two years.—Should any one of the plans of government provided for in this subchapter be adopted, the plan shall continue in force for the period of at least two years after beginning of the term of office of

the officials elected thereunder; and no petition proposing a different plan shall be filed during the period of one year and six months after such adoption. (1917, c. 136, sub-ch. 16, s. 15; C. S. 2855.)

§ 160-305. City officers to carry out plan.—It shall be the duty of the mayor, the governing body, and the city clerk and other city officials in office, and all boards of election and all election officials, when any plan of government set forth in this subchapter has been adopted by the qualified voters of any city or is proposed for adoption, to comply with all requirements of this subchapter relating to such proposed adoption and to the election of the officers specified in such plan, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the provisions of this subchapter and of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 16; C. S. 2856.)

§ 160-306. First election of officers.—The first election next succeeding the adoption of any of the plans provided for by this subchapter shall take place on Tuesday after the first Monday in May next succeeding such adoption, and thereafter the city election shall take place biennially on the Tuesday next following the first Monday in May, and the municipal year shall begin and end at ten o'clock in the morning following the day of election. (1917, c. 136, sub-ch. 16, s. 17; C. S. 2857.)

§ 160-307. Time for officers to qualify.—On Wednesday after the first Monday in May following the adoption of any of the plans herein provided for, and biennially thereafter, the mayor-elect and the councilors-elect or commissioners shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that such oath has been taken shall be entered on the journal of the city council. At any meeting thereafter the oath may be administered in the presence of the city council to the mayor, or to any councilor or commissioner absent from the meeting on the first Wednesday after the first Monday in May. (1917, c. 136, sub-ch. 16, s. 18; C. S. 2858.)

Art. 22. Different Forms of Municipal Government.

Part 1. Plan "A." Mayor and City Council Elected at Large.

§ 160-308. How it becomes operative. — The method of city government herein provided for shall be known as Plan A. Upon the adoption of Plan A by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part II, Plan A, ss. 1, 2; C. S. 2859.)

§ 160-309. Mayor's election and term of office.—There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after the first Monday in May following his election and until his successor is elected and qualified. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 3; C. S. 2860.)

§ 160-310. Number and election of city council.—The legislative powers of the city shall be vested in a city council. In cities of five thousand inhabitants and under the city council shall consist of three; in cities of five thousand to ten thousand the city council shall consist of five; in cities of ten thousand to twenty thousand inhabitants, the city council shall consist of seven; and in all over twenty thousand inhabitants the city council shall consist of nine. The councilmen shall be elected at large and from the qualified voters of the city. One of its members shall be elected by the council biennially as mayor pro tem. At the first election held in a city after its adoption of Plan A, the councilors shall be elected to serve for two years from Wednesday after the Monday in May following their election and until their successors are elected and qualified, and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. The number of inhabitants shall be determined by the last United States government census or estimate. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 4; C. S. 2861.)

§ 160-311. Salaries of mayor and councilmen.—The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred dollars nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than thirty-five hundred dollars. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder and shall six months prior to the time of the expiration of its term fix by ordinance the salary within the above limits of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of succeeding mayors, but such ordinance shall not be binding in case another plan shall be adopted during the term of office of such council. The council may by a two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding two hundred dollars each a year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is

voted. (1917, c. 136; sub-ch. 16, Part II, Plan A, s. 5; C. S. 2862.)

§ 160-312. Officers elected by city council.—All heads of departments and members of municipal boards, as their present terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 5; C. S. 2863.)

§ 160-313. Power of removal in mayor.—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board, other than governing board, before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 7; C. S. 2864.)

§ 160-314. Veto power of mayor.—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a two-thirds vote of all the members of the city council, it shall then be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, and vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 8; C. S. 2865.)

Part 2. Plan "B." Mayor and Council Elected by Districts and at Large.

§ 160-315. How it becomes operative. — The method of city government herein provided for shall be known as Plan B. Upon the adoption of Plan B by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part III, Plan B, ss. 1, 2; C. S. 2866.)

§ 160-316. Mayor's election and term of office.—There shall be a mayor elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after first Monday in May following his election and until his successor is elected and qualified, and at each biennial city election thereafter the mayor shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 3; C. S. 2867.)

§ 160-317. City council, election and term of office.—The legislative powers of the city shall be vested in a city council. One of its members shall be elected biennially as its mayor pro tem. In cities of over eighty thousand (80,000) population, as shown by the last census, the city council or aldermen shall consist of twelve members, one shall be elected from each ward by and from the qualified voters of that ward. On or before March 1, 1933, the governing body of each city of over eighty thousand (80,000) inhabitants shall, and it is made mandatory on them to divide the said city into twelve wards as nearly equal as possible as to population. In cities having more than seven wards the city council shall be composed of twelve members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. At the first election held in a city after its adoption of Plan B, the councilors elected from each ward shall be elected to serve for two years from Wednesday after first Monday in May following their election and until their successors are elected and qualified; and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 4; 1933, c. 80, s. 1; C. S. 2868.)

§ 160-318. Officers elected by city council.—All heads of departments and members of municipal boards, as their terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 5; C. S. 2869.)

§ 160-319. Power of removal in mayor.—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 6; C. S. 2870.)

§ 160-320. Salaries of mayor and council.—The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred dollars nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less

than two thousand nor more than five thousand dollars, and it shall be mandatory that the mayor shall give his entire time and attention to the affairs of the city. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder, and shall six months prior to the time of the expiration of its term fix by ordinance the salary, within the above limits, of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of the succeeding mayors; but such ordinance shall not be binding as to succeeding mayors in case another plan shall be adopted during the term of office of such council. The council may by two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding one hundred dollars each per year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 7; 1933, c. 80, s. 2; C. S. 2871.)

§ 160-321. Supervisory power of mayor.—All heads of departments after their election by the city council or aldermen, as provided for by § 160-318, shall be under the direction, control and supervision of the mayor during their tenure of office and until discharged by law. (1933, c. 80, s. 3.)

§ 160-322. Approval of contracts.—No contract or obligation of whatever nature shall be binding upon the city until first approved by the majority of the city council or aldermen, and approved and counter-signed by the mayor. (1933, c. 80, s. 4.)

§ 160-323. Veto power in mayor.—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a majority vote of all the members of the city council, it shall be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, or vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 8; C. S. 2872.)

Part 3. Plan "C." Commission Form of Government.

§ 160-324. How it becomes operative. — The method of city government herein provided for shall be known as Plan C. Upon the adoption of Plan C by any city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, ss. 1, 2; C. S. 2873.)

§ 160-325. Board of commissioners governing body.—The government of the city and the general management and control of all of its affairs shall be vested in a board of commissioners, which shall be elected and shall exercise its powers in the manner hereinafter set forth; and such board shall have full power and authority to enact laws and ordinances for the government and management of the city and all its departments. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, s. 3; C. S. 2874.)

§ 160-326. Number, power and duties of commissioners.—The board of commissioners shall consist of three members, one of whom shall be mayor, and all of whom shall be elected by a vote of the people as hereinafter provided. One of the commissioners shall be elected and known as commissioner of public works; one of the commissioners shall be elected and known as commissioner of public safety; and the mayor shall be known as commissioner of administration and finance. And the commissioners are hereby empowered to appoint, elect, employ, suspend, and discharge all other officers and employees necessary for the operation and management of the city government and its various departments and activities, and to make all necessary rules and regulations for their government; and full power and authority is hereby granted the board of commissioners to enact all laws and ordinances for the proper government of the city. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 4; C. S. 2875.)

§ 160-327. Power and duties of mayor.—The mayor shall be the chief executive officer of the city, and, subject to the supervision of the board of commissioners, shall perform all duties pertaining to such office. He shall do and perform all duties provided or prescribed by law or by the ordinances of the city not expressly delegated to any other person. He shall have general supervision and oversight over the departments and offices of the city government, and shall be the chief representative of the city, and shall report to the board any failure on the part of any of the officers of his or any other department to perform their duties, and shall preside at all meetings of the board of commissioners. He shall sign all contracts on behalf of the city unless otherwise provided by law, ordinance or resolution of the board of commissioners; he shall have charge of and cause to be prepared and published all statements and reports required by law or ordinance or by resolution of the board of commissioners. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 5; C. S. 2876.)

§ 160-328. Commissioner of administration and finance:

1. Purchasing Agent.—The commissioner of administration and finance (who is also mayor) shall be the purchasing agent of the board of commissioners of the city, and all property, supplies, and material of every kind whatsoever shall, upon the order of the board of commissioners, be purchased by him; and when so pur-

chased by him, the bills therefor shall be submitted to and approved by the board of commissioners before warrants are issued therefor. When such warrants are issued, they shall be signed by the commissioners and countersigned by some other person designated by the board of commissioners.

2. Collector of Taxes and Other Dues.—He shall collect all taxes, water rents, license fees, franchise taxes, rentals, and all other moneys which may be due or become due to the city; he shall issue license or permits as provided by law, ordinance, or resolution adopted by the board of commissioners; he shall report the failure on the part of any person, firm or corporation to pay money due the city; and he shall report to the board of commissioners any failure on the part of any person, firm, or corporation to make such reports as are required by law, ordinance, or order of the board of commissioners to be made, and he shall make such recommendations with reference thereto as he may deem proper.

3. Supervision of Accounts.—He shall have charge of and supervision over all accounts and records of the city, and accounts of all officers, agents, and departments required by law or by the board of commissioners to be kept or made. He shall regularly, at least once in three months, inspect or superintend inspection of all records or accounts required to be kept in any of the offices or departments of the city, and shall cause proper accounts and records to be kept, and proper reports to be made. He shall recommend to the board methods of modern bookkeeping for all departments, employees, and agents of the city, and shall, acting for the board of commissioners, audit or cause to be audited by an expert accountant, quarterly, the accounts of every officer or employee who does or may receive or disburse money, and shall publish or cause to be published quarterly statements showing the financial condition of the city. He shall examine or cause to be examined all accounts, payrolls, and claims before they are acted on or allowed, unless otherwise provided by law or by order of the board of commissioners.

4. Control of Employees.—He shall have control of all employees of his department, and of all other officers and employees not by law, ordinance, or resolution of the board of commissioners apportioned or assigned to some other department. The assessor, auditor, city clerk, city attorney, and their respective offices or departments, and all employees therein, and all bookkeepers and accountants are apportioned and assigned to the department of administration and finance, and shall be under the direction and supervision of the commissioner thereof.

5. General Duties.—In the absence or inability of any commissioner to act, he shall exercise temporary supervision over the department assigned to such commissioner, subject, however, to the power of the board to substitute some one else temporarily to perform any of such duties. He shall do and perform any and all other services ordered by the board and not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S. 2877.)

§ 160-329. Commissioner of public works:

1. Construction of Public Works.—The commissioner of public works shall have authority and charge over all the public works not herein expressly given to some other department; the construction, cleansing, sprinkling, and repair of the streets and public places, the erection of buildings for the city, the making and construction of all other improvements, paving, curbing, sidewalks, bridges, viaducts, and the repair thereof. He shall approve all estimates of the city engineer of the cost of public works, and recommend to the board of commissioners the acceptance of the work done or improvement made, when completed according to contract, and perform such other duties with reference to such other matters as may be required by law, ordinance, or order of the board of commissioners.

2. Control of Streets and Public Places.—The commissioner shall have supervision and control, and it shall be his duty to keep in good condition the streets, cemeteries, and public parks in the city or belonging to the city, subject to the supervision and control of the board of commissioners; he shall have control, management and direction of all public grounds, bridges, viaducts, subways, and buildings not otherwise assigned herein to some other department; he shall have supervision of the enforcement of the provisions of law and the ordinances relating to streets, public squares and places, cemeteries, and the control of the placing of billboards and street waste-paper receptacles.

3. Control over Public Utilities.—He shall have supervision over the public-service utilities not otherwise assigned to some other department, and all persons, firms, or corporations rendering service in the city under any franchise, contracts, or grant made by the city or state, not otherwise assigned to some other department. He shall have control of the location of street-car tracks, telephone and telegraph wires, and other things placed by public-service corporations in, along, under, or over the streets, and shall report to the board of commissioners or city officers, as may be appointed by them to receive his reports, any failure of such person or corporation to render proper service under a franchise granted by the city or state, and shall report any failure on the part of such person, firm, or corporation to observe the requirements or conditions of such franchise, contract, or grant.

4. Control of Water System.—He shall have charge of the watersheds from which the city takes its supply of water, pumping stations, pipe lines, filtering apparatus, and all other things connected with or incident to the proper supply of water for the city; it shall be his duty to act for the city, subject to the control of the board of commissioners, in securing all rights of way and easements connected with and necessary to the supply of water for the city; he shall have supervision and control of all buildings, grounds, and apparatus connected therewith and incident to the furnishing of water for the city; he shall superintend the erection of water tanks and laying of water lines and the operation thereof.

5. Control of Departments.—The department of the city engineer, and all employees therein,

the departments of streets, parks, cemeteries, buildings, and all employees in said departments, shall be under the supervision and control of the commissioner of public works; and he shall do and perform all other services ordered by the board, or that may be ordered by the board, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 7; C. S. 2878.)

§ 160-330. Commissioner of public safety:

1. Charge of Police Force.—The commissioner of public safety shall have charge of the police force, subject to the supervision and control of the board of commissioners, and shall have power temporarily to supplant the chief of police and take charge of the department, and shall at all times have power to give directions to the officers and all employees in the police department, and his directions shall be binding upon all such officers and employees, subject only to the control of the board of commissioners. He shall have charge of the police stations, jails, and property and apparatus connected therewith, including city ambulance and patrol wagons used in connection with his department.

2. Control of Fire Department.—He shall have the supervision and control, subject to the control of the board of commissioners, of the fire department, of all firemen, officers, and employees therein or connected therewith, and of all fire stations, property and apparatus connected therewith; he shall have power to supersede temporarily the chief of the fire department, and his orders to such department and all employees therein shall be binding upon the department.

3. Traffic Regulations.—He shall be charged with the duty of enforcing all ordinances and resolutions relating to traffic on the public streets, alleys, and public ways, on and across railway lines and through and over the cemeteryways, public parks, and other public places.

4. Health Regulations.—He shall, subject to the supervision of the board of commissioners, have control of the laws, ordinances, and orders relating to the public health and sanitation, and all health officers, employees of the city, connected with and under his department; and it shall be the duty of the board of commissioners to pass such ordinances and prescribe such rules and regulations and employ such persons as will be necessary to protect and preserve public health. He shall have control and supervision, through the health officer under his department, over public dumping grounds and dumps and city scavengers; he shall be charged, through his department, with the enforcement of all quarantine regulations, of keeping clean all streets, alleys, and public places, and with suppressing and removing conditions on private property within the city that are a menace to health or public safety. He shall be authorized to enter upon private premises for the purpose of discharging the duties imposed upon him, and he shall cause to be abated all nuisances which may endanger or affect the health of the city, and generally do all things, subject to the control of the board of commissioners, that may be necessary and expedient for the promotion of health and suppression of disease.

5. Sewer and Light Systems.—He shall have control and supervision over the sewer system, and shall have charge and control over the sewer inspector and all other officers and employees connected with the department of lights and sewers. He shall have supervision and control over the lighting system of the city, and the management and direction of the lighting of the streets, alleys, and all other public places and grounds and all other places where city lights are placed; he shall be charged with the duty of seeing that all persons, firms, and corporations charged with the duty of supplying lights or waterpower perform the obligation imposed upon them by law, ordinance, or order of the board of commissioners.

6. Control over Officers.—He shall have charge of the electrical inspector, plumbing inspector, building inspector, market house and the employees connected therewith and of all apparatus and property used therein; he shall have charge, supervision and direction of all officers and employees of the city connected with and under his department. He shall perform all other services ordered by the board of commissioners, or that may be ordered by the board of commissioners, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S. 2879.)

§ 160-331. Recommendations as to purchases.—It shall be the duty of each commissioner to recommend to the city purchasing agent the purchase of goods and the contract for all things necessary to be contracted for in his department, and these recommendations shall be submitted to the board of commissioners for its orders with respect thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 9; C. S. 2880.)

§ 160-332. General powers of board of commissioners.—The board of commissioners shall exercise all legislative powers, functions, and duties conferred upon the city or its officers. It shall make all orders for the doing of work or the making or construction of any improvements, bridges, or buildings. It shall levy all taxes, apportion and appropriate all funds, audit and allow all bills and accounts, payrolls, and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers, and other work, improvements, or repairs which may be specially assessed. It shall make or authorize the making of all contracts, and no contracts shall bind or be obligatory upon the city unless either made by ordinance or resolution adopted by the board of commissioners or reduced to writing and approved by the board or expressly authorized by ordinance or resolution adopted by the board. All contracts and all ordinances and resolutions making contracts or authorizing the making of contracts shall be drawn by the city attorney, or submitted to such officer before the same are made or passed. All heads of departments, agents, and employees are the agents of the board of commissioners only, and all their acts shall be subject to review and to approval or revocation by the board of commissioners. Every head of department, superintendent, agent, employee, or officer shall from time to time, as re-

quired by law or ordinance, or when requested by the board of commissioners, or whenever he shall deem necessary for the good of the public service, report to the board of commissioners in writing respecting the business of his department, office, or employment, all matters connected therewith. The board of commissioners may by ordinance or resolution assign to a head of a department, a superintendent, officer, agent, or employee, duties in respect to the business of any other department, office, or employment, and such service shall be rendered without additional compensation. The board of commissioners shall elect and have authority over the city clerk, who shall be the clerk of the board of commissioners. The board of commissioners shall have charge of all matters pertaining to public health, and shall perform all duties belonging thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, ss. 10, 11; C. S. 2881.)

§ 160-333. Commissioners' service exclusive. — Each member of the board of commissioners shall devote his time and attention to the performance of the public duties to the exclusion of all other occupations, professions, or callings. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 12; C. S. 2882.)

§ 160-334. The initative and referendum:

1. Ordinances Submitted by Petition.—Any proposed ordinance may be submitted to the board of commissioners by petition signed by electors of the city equal to the number provided herein for recall of any official. The signatures, verifications, authentications, inspections, certification, amendments, and submission of such petition shall be the same as provided for the removal of officials.

2. Duty of the Board.—If the petition accompanying the proposed ordinance be signed by the requisite number of electors, and contains a request that the ordinance be passed, or submitted to a vote of the people if not passed by the board of commissioners, such board shall either:

a. Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition, or

b. After the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of commissioners shall forthwith submit the question to the qualified voters at a special election called for that purpose, or to a general election occurring within ninety days after the date of the clerk's certificate. If the petition is signed by not less than ten and less than twenty-five per cent of the electors as above defined, then the board of commissioners shall within twenty days pass such ordinance without change or submit the same at the next general city election.

3. Popular Vote Taken.—The ballots used when voting upon such ordinance shall contain these words: "For the Ordinance" (stating the nature of the proposed ordinance) and "Against the Ordinance" (stating the nature of the proposed ordinance). If the majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

4. Proposition for Repeal.— The board of commissioners may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general election; and should any such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly.

5. Publication.—Whenever any ordinance or proposition is required by this subchapter to be submitted to the voters of the city at any election, the city shall cause such ordinance or proposition to be published once in a newspaper of general circulation in the city, such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

6. When Ordinance Takes Effect.— No ordinance passed by the board of commissioners, unless otherwise expressly provided, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency and is passed by a two-thirds vote of the board of commissioners, shall go into effect before twenty days from the time of its final passage and publication, as herein provided.

7. Action upon Protest Filed.— If during the twenty days a petition, signed by electors of the city equal to the number prescribed herein to be signed to a petition for the recall of any official, protesting against the passage of such ordinance, be presented to the board of commissioners, the operation of such ordinance shall thereupon be suspended, and it shall be the duty of the board of commissioners to consider such ordinance, and if the same is not entirely repealed, the board of commissioners shall submit to the qualified voters the question of the repeal of such ordinance at an election to be held for that purpose in the manner and under the conditions herein provided for reference to voters of the question of recall of an official. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 3, s. 1; C. S. 2883.)

§ 160-335. Nomination of candidates:

1. Nomination by Primaries.—All candidates to be voted for at all general municipal elections, at which time a mayor, commissioners, or any other elective officers are to be elected under the provisions of this subchapter, shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in such primary in the manner hereinafter prescribed.

2. How Primaries Held.—The primary election for such nominations shall be held on the second Monday preceding all general municipal elections. The judges and other officers of election appointed for the general municipal election shall, whenever practicable, be the

judges of the primary election, and it shall be held at the same place and in the same manner and under the same rules and regulations and subject to the same conditions, and the polls to be opened and closed at the same hours, as are required for the general election.

3. Notice of Candidacy.—Any person desiring to become a candidate for nomination by the primary for the office of mayor or commissioner of either of the other two departments or any other elective office shall, at least ten days prior to the primary election, file with the clerk a statement of such candidacy in substantially the following form:

State of North Carolina—County of .....

I, ..., hereby give notice that I reside at ..... street, city of ..... county of ....., State of North Carolina; that I am a candidate for nomination to the office of (mayor, or commissioner of a particular department, or other office) to be voted upon at the primary election to be held on the ..... Monday of ....., 19.., and I hereby request that my name be printed upon the official ballot for the nomination by such primary election for such office.

(Signed) .....

And he shall at the same time pay to the clerk, to be turned over to the city treasurer, the sum of five dollars.

4. Publication of Names.—Immediately upon the expiration of the time for filing the petition of candidates, the city clerk shall cause to be published for three successive days in a daily newspaper of general circulation in the city, in proper form, the names of the persons as they are to appear upon the primary ballots.

5. Ballots Prepared.—The clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the ballot the names of the candidates for mayor, arranged alphabetically, shall be placed, with a square at the left of each name, and immediately below the words, "vote for one." Following the names, likewise arranged in alphabetical order, shall appear the names of the candidates for the commissioners of the two other departments, respectively, with a square at the left of each name, and below the names of such candidates for each of the departments shall appear the words, "vote for one." Like provision shall be made for the names of candidates for each other elective office provided by law. The ballots shall be printed upon plain, substantial white paper, and shall be headed: "Candidates for nomination for mayor and commissioners of two other offices (naming them), of the city of ....., North Carolina, at the primary election," but shall have no party designation or mark whatever.

6. Form of Ballots.—The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of parties you favor as candidates for the respective positions.)

Official primary ballot. Candidates for nomination for mayor and commissioners and other offices (naming them) of the city of ....., North Carolina, at the primary election.

For Mayor (naming candidates). (Vote for one.)

For Commissioner of the Department of Public Safety (names of candidates). (Vote for one.)

For Commissioner of the Department of Public Works (names of candidates). (Vote for one.)

Official ballot. Attest:

(Signature) ..... City Clerk.

7. Distribution of Ballots. — Having caused ballots to be printed, the city clerk shall cause to be delivered at each polling place a number of ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor.

8. Who Entitled to Vote.—The persons who are qualified to vote at the succeeding municipal election shall be qualified to vote at such primary election, and shall be subject to challenge made by any resident of the city, under such rules as may be prescribed by the board of commissioners, and such challenge shall be passed upon by the judges of election and registrars: Provided, however, that the law applicable to challenge at a general municipal election shall be applicable to challenge made at such primary election.

9. Ballots Counted.—Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precincts for each of the candidates, and make return thereof to the city clerk, upon blanks to be furnished by the clerk, within six hours of the closing of the polls.

10. Returns Canvassed.—On the day following the primary election the city clerk, under the supervision and direction of the mayor, shall canvass such returns so received from all the polling precincts, and shall make and publish in some newspaper of general circulation in the city, at least once, the result thereof. The canvass by the city clerk chall be publicly made.

11. Who to Be Candidates. — The two candidates receiving the highest number of votes for mayor, and the two candidates receiving the highest number of votes for commissioners for each of the respective departments, and the two candidates receiving the highest number of votes for any other elective office, shall be the candidates, and the only candidates whose names shall be placed upon the ballot for mayor, commissioners, and other elective offices at the next succeeding general municipal election. Provided, however, if any candidate for Mayor receives a majority of all the votes cast for the office of Mayor, or if any candidate for Commissioner receives a majority of all the votes cast for the office of Commissioner of the Department for which such person is a candidate, then only the name of the candidate receiving a majority of all the votes cast for such position shall be placed upon the ballot for Mayor or Commissioner of such Department at the next succeeding general municipal election. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 4; 1929, c. 32, s. 1; C. S. 2884.)

§ 160-336. Recall of officials by the people:

1. Who may be Removed.—The holder of any

elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent.

2. Petition Filed and Verified.—The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the clerk, which petition shall contain a general statement of the ground for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true, as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

3. Clerk to Examine and Certify Sufficiency.—Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not the petition is signed by the requisite number of qualified electors, and he shall attach to the petition his certificate, showing the result of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of the certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the board of commissioners without delay.

4. Board to Order Primary.—If the petition shall be found to be sufficient, the board of commissioners shall order and fix a date for holding a primary, as provided in cases preceding regular elections, the primary to be held not less than ten days or more than twenty days from the date of the clerk's certificate to the board of commissioners that a sufficient petition is filed. If in the primary election any candidate receives a majority of all the votes cast, he shall be declared to be elected to fill out the remainder of the term of the officer who is sought to be recalled. If there be more than two candidates in such primary and no one received a majority of all the votes cast therein, then there shall be an election held within twenty days from the date of the primary, at which election the two candidates receiving the highest vote in the primary shall be voted for. Candidates' names shall be placed on the ticket in the primary and election held, and the results canvassed, under the same rules, conditions, and regulations as are prescribed for the primaries preceding regular elections. The board of commissioners shall make or cause to be made publication for ten days of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the results thereof declared in all respects as other city elections.

5. Candidate Elected Succeeds to Office. — The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. At such election, if some other person than the incumbent is elected, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor.

6. Vacancy Filled.—In case the party elected should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant, and in that event the unexpired term shall be filled by election by the board, but the commissioner removed shall not be eligible to election by the board, and the person so elected by the board shall be subject to recall as other commissioners. If the incumbent receives a majority of votes in the primary election he shall continue his office.

7. Application of Method of Removal.—Such method of removal shall be cumulative and additional to any other method provided by law. In the event any officer is recalled and any person is elected as his successor, the right of recall of such successor so elected shall be as in case of an officer originally elected. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 5; C. S. 2885.)

§ 160-337. Salaries of officers.—The mayor and commissioners shall have offices at the city hall. The compensation of the mayor and commissioners shall be as follows: In cities of five thousand inhabitants and under, the mayor shall receive one thousand dollars and the commissioners each seven hundred and fifty dollars. In cities of five to ten thousand inhabitants the mayor shall receive fifteen hundred dollars and the commissioners each one thousand dollars. In cities of ten to fifteen thousand inhabitants the mayor shall receive two thousand dollars and the commissioners each fifteen hundred dollars. In cities of fifteen to twenty-five thousand inhabitants the mayor shall receive twenty-six hundred dollars and the commissioners each twenty-four hundred dollars. In cities of twenty-five to forty thousand inhabitants the mayor shall receive three thousand five hundred dollars ($3,500.00), and the commissioners each three thousand two hundred and fifty dollars ($3,250.00). In cities over forty thousand inhabitants the mayor shall receive six thousand dollars ($6,000.00) and the commissioners each five thousand five hundred dollars ($5,500.00). The number of inhabitants shall be determined by the last United States government census or estimate. Every other officer, agent, employee, and assistant of the city government shall receive such salary or compensation as the board of commissioners shall by ordinance provide, payable in equal monthly installments, unless the board shall order payments to be made at other intervals. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 6; 1923, c. 203; 1927, c. 243; C. S. 2886.)

Part 4. Plan "D." Mayor, City Council, and City Manager.

§ 160-338. How it becomes operative. — The method of city government herein provided for shall be known as Plan D. Upon the adoption of Plan D by a city in the manner prescribed by article 21 of this subchapter, such plan shall become operative, and the powers of government of such city shall be exercised, as provided herein and in article 21. (1917, c. 136, sub-ch. 16, Part V, Plan D, ss. 1, 2; C. S. 2887.)

§ 160-339. Governing body.—The government of the city and the general management and control of all its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner herein and in article 21 set forth, except that the city manager shall have the authority hereinafter specified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 3; C. S. 2888.)

§ 160-340. Number and election of city councils. —The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 4; C. S. 2889.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, cc. 94, 187.

§ 160-341. Power and organization of city council.—All the legislative powers of the city shall be vested in the city council. The city council elected as aforesaid shall meet at ten o'clock in the forenoon on Wednesday after the first Monday of May in each year, and the members of the city council whose terms of office then begin shall severally make oath before the city clerk or justice of the peace to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice from its members of a mayor, who shall hold his office during the term for which he was elected a member of the city council, and a mayor pro tem., who shall hold his office during the pleasure of the city council. The organization of the city council shall take place as aforesaid, notwithstanding the absence, death, refusal to serve, or nonelection of one or more of the members: Provided, that at least three of the persons entitled to be members of the city council are present and make oath as aforesaid. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefor, may make oath at any time thereafter. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 5; 1919, c. 270, s. 1; C. S. 2890.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-342. Meetings regulated.—The city council shall fix suitable times for its regular meetings. The mayor, the mayor pro tem. of the city council, or any two members thereof, may at any time call a special meeting by causing a written notice, stating the time of holding such meeting and signed by a person or persons calling the same, to be delivered in hand to each member or left at his usual dwelling place at least six hours before the time of such meeting. Meetings of the city council may also be held at any time when all the members of the council are present and consent thereto. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 6; C. S. 2891.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-343. Quorum and conduct of business.— A majority of the members of the city council shall constitute a quorum. Its meetings shall be public, and the mayor, who shall be the official head of the city, shall, if present, preside and shall have the same power as the other members of the council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the mayor, the mayor pro tem. of the city council shall preside, and in the absence of both, a chairman pro tempore shall be chosen. The city clerk shall be ex officio clerk of the city council, and shall keep records of its proceedings; but in case of his temporary absence, or in case of a vacancy in the office, the city council may elect by ballot a temporary clerk, who shall be sworn to the faithful discharge of his duties, and may act as clerk of the city council until a city clerk is chosen and qualified. All final votes of the city council involving the expenditure of fifty dollars or over shall be by yeas and nays and shall be entered on the records. On request of one member, the vote shall be by yeas and nays, and shall be entered upon the records. Three affirmative votes at least shall be necessary for the passage of any order, ordinance, resolution, or vote. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 7; C. S. 2892.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-344. Vacancies in council.—Vacancies in the city council shall be filled by the council for the remainder of the unexpired terms. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 8; C. S. 2893.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-345. Election of mayor.—The mayor shall be elected by the city council from among its own members, and shall hold office during the term for which he has been elected to the council. In case of a vacancy in the office of mayor, the remaining members of the council shall choose from their own number his successor for the unexpired term. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 9; 1919, c. 60, s. 1; 1919, c. 270, s. 2; C. S. 2894.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-346. Salaries of mayor and council.—The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding seven hundred dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members not exceeding two hundred dollars a year for each. Such salary may be reduced, but no increase therein shall be made to take effect during the

year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 10; C. S. 2895.)

Local Modification.—Mecklenburg, City of Charlotte: 1935, c. 94.

§ 160-347. Election of treasurer; salary.—The mayor and council may elect from their membership a treasurer by the method outlined above, and in addition to the salary allowed as a member of the council, such treasurer may be paid for his services as treasurer not exceeding three hundred dollars per annum. (1935, c. 180.)

§ 160-348. City manager appointed.—The city council shall appoint a city manager, who shall be the administrative head of the city government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council, and shall receive such compensation as it shall fix by ordinance. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 11; C. S. 2896.)

§ 160-349. Power and duties of manager.—The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions, and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition and its future financial needs; (5) appoint and remove all heads of departments, superintendents, and other employees of the city. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 12; C. S. 2897.)

§ 160-350. Appointment and removal of officers.—Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him; but the city manager shall report every such appointment and removal to the council at the next meeting thereof following any such appointment or removal. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 13; C. S. 2898.)

§ 160-351. Control of officers and employees.—The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 14; C. S. 2899.)

Part 5. Plans "A" and "D," with Initiative, Referendum and Recall.

§ 160-352. How submitted, and effect of adoption.—There may be submitted as an addition to Plans A or D "The Initiative and Referendum" and "Recall of Officials by the People," as set forth in Plan C, in which case all references to the board of commissioners shall apply to the mayor and council, and the petition for election and the ballots shall contain the name of the plan as "Plan A, with Initiative, Referendum, and Recall"; "Plan D, with Initiative, Referendum and Recall," and such plans shall be submitted with such additions as provided in this subchapter for the submission of such plans. (1917, c. 136, sub-ch. 16, Part VI; C. S. 2901.)

Art. 23. Amendment and Repeal of Charter.

§ 160-353. "Home rule" or "Local self-government."—Within the limitations prescribed by the constitution and now existing or hereafter enacted general laws, any municipality may amend or repeal its charter or any part thereof or adopt a new charter. The proposal to amend, repeal, or adopt may be initiated: (a) By the governing body of such municipality; (b) By any number of the qualified electors of such municipality not less than twenty-five per centum of qualified electors entitled to vote at the next preceding regular municipal election in such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 1; C. S. 2902.)

§ 160-354. Ordinances to amend or repeal charter:

1. How Adopted. If any amendment, repeal, or adoption be initiated by the governing body of any municipality, the governing body shall at one of its regular meetings, and not less than six days after the introduction thereof, adopt by not less than a two-thirds vote of all its members an ordinance in which shall be recited in full the amendment, repeal, or adoption proposed; such ordinance shall also recite that such amendment, repeal, or adoption is, in the opinion of the governing body, for the best interest of the municipality.

2. Publication Made. It shall direct publication over the name of the mayor or other chief officer of the municipality of a notice in substantially the following form (the blank spaces to be properly filled in):

Notice of Amendment to Charter of

.....

(here insert name of municipality.)

The governing body of (here insert name of municipality) at a regular meeting held on the .... day of ....., 19.., adopted a resolution as follows (here copy verbatim the resolution).

Dated this .... day of ....., 19....

....., Mayor.

3. Submitted to Vote. The governing body shall in its resolution provide that the amendment, repeal, or adoption therein proposed shall not become effective until submitted to and approved by a majority of the votes cast at a regular municipal election or a special election called for that purpose, and such amendment, repeal or adoption shall be submitted to the qualified voters of the city at an election called and held for such purpose, or at a regular municipal election. Thereupon, if such amendment, repeal, or adoption shall have been approved by a majority of the votes cast as hereinbefore provided, such amendment, repeal, or adoption shall become effective.

4. Manner of Publication. The notice required shall be published once a week for four successive weeks in a newspaper of general circulation in the municipality. (1917, c. 136, sub-ch. 16, Part VII, ss. 2, 8; C. S. 2903.)

§ 160-355. Officers to be voted for.—The governing body of the town, if it submits the question of amending the charter of the town at a regular election so as to provide for a different number of members constituting the governing body of the town from that number provided for in the old charter, may also order an election to be held at said regular municipal election for the commissioners or members of the governing body provided for in the proposed amended charter, and at said election commissioners shall also be voted for as provided for under the old charter. If the proposed amendment is adopted, then the commissioners or members of the governing body elected under the proposed amendment shall constitute the governing body of the town for the ensuing term. If the proposed amendment is not adopted, the commissioners or the members of the governing body of said town elected under the provisions of the old charter shall constitute the governing body of the town for the ensuing term. (1919, c. 334; C. S. 2904.)

§ 160-356. Petition for amendment or repeal of charter:

1. Nature of Petition.—If any amendment, repeal, or adoption be initiated by the qualified electors of such municipality the same shall be by a petition signed by not less than twenty-five per centum of the qualified electors entitled to vote at the next preceding regular election in such municipality. The petition shall be appropriately entitled and shall be addressed to the governing board of such municipality, and shall state in exact language the amendment, repeal, or adoption proposed; the petition need not be all on one sheet, and if on one or more than one sheet shall be verified by a freeholder in such municipality who is also a signer of such petition. The petition shall contain a request to the governing body of the municipality to submit to the qualified electors thereof the amendment, repeal, or adoption as therein stated, either at a regular election or at a special election to be called for that purpose. It shall thereupon be the duty of the clerk of such municipality to examine the petition for the purpose of ascertaining whether the same has been signed by the required number of qualified electors of the municipality, and the clerk shall certify to the governing body the result of his investigation.

2. Submitted to Vote.—Upon such certificate, it shall be the duty of the governing body to provide for submission to a vote of the amendment, repeal, or adoption proposed in the petition, either at a regular election or at a special election to be called for that purpose, and if the amendment, repeal, or adoption shall be approved by a majority of the votes cast, as hereinbefore provided, such amendment, repeal, or adoption shall become effective. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S. 2905.)

§ 160-357. Nature of verification.—Whenever verification of any petition is provided or required to be made by this article, such verification shall consist of a written oath signed by the person making the same, which shall state in substance that the persons whose names appear signed to such petition were so signed by such persons respectively in the presence of the person making oath, and that, to the best of the knowledge and belief of the person making the oath, each of such persons is a qualified elector entitled to vote at the next preceding regular election in the municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S. 2906.)

§ 160-358. Laws controlling elections.—Whenever any election, either regular or special, is provided or required to be held under this article, such election shall be held under such laws, either general or special, as are at the time of the holding of such election in force and effect with reference to such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 5; C. S. 2907.)

§ 160-359. Several propositions voted on.—Any number of amendments or repeals may be initiated by one and the same resolution or petition, and whenever under this article an election is provided or required to be held, any number of such amendments or repeals may be submitted and voted upon at one and the same election. (1917, c. 136, sub-ch. 16, Part VII, s. 6; C. S. 2908.)

§ 160-360. Limitations as to holding special elections.—No special election provided or required by this article shall, except as otherwise provided in this subchapter, be held within two months of the time of holding any regular municipal election in any municipality; not more than two special elections may be held under this article in any municipality within any one year. The elections, subject to the other provisions of this section, shall be held within three months from the date of the filing of the petition. Any election heretofore called within three months from the date of filing any petition under this section and related sections is hereby validated. (1917, c. 136, sub-ch. 16, Part VII, s. 7; 1921, c. 56; C. S. 2909.)

§ 160-361. Adoption or change certified and recorded.—Upon the amendment, repeal, or adoption of a charter of any municipality as provided in this article, the governing body shall cause to be certified to the secretary of the municipal board of control a copy of such amendment, repeal, or adoption duly certified by its clerk and under the seal of such municipality; the copy so certified shall be recorded in the office of the secretary of state, and a copy shall be so certified by the secretary of state to the clerk of the superior court of the county in which such municipality is situated and recorded in the office of the clerk; the record therein provided for, either in the office of the secretary of state or in the office of the clerk of the superior court, shall be evidence in all the courts of this state. (1917, c. 136, sub-ch. 16, Part VII, s. 9; C. S. 2910.)

§ 160-362. Adoption or change ratified by vote.—Whenever any amendment, repeal, or adoption of a charter of any municipality is submitted under the provisions of this article to the qualified electors of such municipality, such amendment, repeal, or adoption shall not become effective unless and until the same shall have been approved by a majority of the votes cast at the election and the result of the election thereon

canvassed, determined, and declared as provided by law. (1917, c. 136, sub-ch. 16, Part VII, s. 10; C. S. 2911.)

§ 160-363. Plan not changed for two years.—When any municipality shall, as provided in this subchapter, adopt any one of the plans as set forth in this subchapter, no amendment, repeal, or adoption of such plans shall be made until and after the expiration of two years from the date of the adoption of such plan. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S. 2912.)

Art. 24. Elections Regulated.

§ 160-364. Laws governing elections.—All elections called and held by any city for any purpose under the provisions of this subchapter shall be held under, governed and controlled by the laws in force at the time of such election governing and controlling regular and special municipal elections of such city in so far as they are applicable and not inconsistent with the provisions of this subchapter, and where not otherwise provided by law. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S. 2913.)

§ 160-365. Publication of notice.—Except as otherwise provided in this subchapter, notice of every special election held in any city shall be published in a newspaper of general circulation in such city at least once a week for four weeks preceding the date of such election, and posted for thirty days at the door of the building in which the governing body holds its meetings and three other public places in the city. Such notice shall set forth the date and hours of such elections, the proposition to be voted on thereat, the location of the polling places, and, in the event a new registration is ordered for such election, shall so state and set forth the dates of opening and closing the registration books and the names and addresses of the several registrars in charge thereof. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S. 2914.)

§ 160-366. Time for holding elections.—If any city shall adopt any one of the plans of government provided for in this subchapter during the year nineteen hundred and seventeen, the election of city officers under such plan shall be held on Tuesday after the first Monday in May following the adoption of such plan, and the regular municipal elections of such city shall take place biennially thereafter. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S. 2915.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT

Art. 25. General Provisions.

§ 160-367. Short title.—This subchapter may be cited as "The Municipal Finance Act, 1921." (1917, c. 138, s. 1; 1919, c. 178, s. 3(1); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2918.)

§ 160-368. Meaning of terms.—In this subchapter, unless the context otherwise requires the expressions:

"Bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality;

"Clerk" means the person occupying the position of clerk or secretary of a municipality;

"Financial officer" means the chief financial officer of a municipality;

"Funding bonds" means bonds issued to pay or extend the time of payment of debts not evidenced by bonds.

"Governing body" means the board or body in which the general legislative powers of a municipality are vested;

"Local improvement" means any improvements on property the cost of which has been or is to be specially assessed in whole or in part;

"Municipality" means and includes any city, town, or incorporated village in this state, now or hereafter incorporated;

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the constitution of North Carolina;

"Publication" includes posting in cases where posting is authorized by this subchapter as a substitute for publication in a newspaper;

"Refunding bonds" means bonds issued to pay or extend the time of payment of debts evidenced by bonds.

"Special assessments" means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and "specially assessed" has a corresponding meaning. (1917, c. 138, s. 2; 1919, c. 178, s. 3(2); 1919, c. 285, s. 1; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 46; 1933, c. 259, s. 1; C. S. 2919.)

§ 160-369. Publication of ordinance and notices.—An ordinance or notice required by this subchapter to be published by a municipality shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, in a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality. (1917, c. 138, s. 3; 1919, c. 178, s. 3 (3); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2920.)

§ 160-370. Application and construction of subchapter.—This subchapter shall apply to all municipalities. Every provision of this subchapter shall be construed as being qualified by constitutional provisions, whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this subchapter. If any portion of this subchapter shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be exscinded. (1917, c. 138, ss. 4, 5; 1919, c. 178, s. 3 (4), (5); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2921.)

Art. 26. Budget and Appropriations.

§ 160-371. The fiscal year.—The fiscal year of every municipality shall begin on the first day of July, one thousand nine hundred thirty-one, and on the first day of July in each year thereafter. (1917, c. 138, s. 6; 1919, c. 178, s. 3 (6); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 66; C. S. 2922.)

§ 160-372. Special revolving fund for municipalities to supplant borrowing money on anticipations.—In order to avoid the necessity of borrowing money in anticipation of the receipt of taxes and revenues or the proceeds of the sale of bonds, a municipality may by ordinance create a special revolving fund and with the consent of the Local Government Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 160-373, 160-374 and/or 160-375, in respect to the borrowing of the money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No ordinance creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund, without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 47.)

Art. 27. Temporary Loans.

§ 160-373. Money borrowed to meet appropriations.—A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual budget and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

§ 160-374. Money borrowed to pay judgments or interest.—For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next succeeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made. For the purpose of paying or renewing notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, and authorized by this subchapter as amended, to be funded, any municipality may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made payable at any time or times not later than five years after the first day of July, one thousand nine hundred thirty-three, notwithstanding anything to the contrary in this section.

In addition to the foregoing powers, a municipality may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the municipality sufficient to pay the principal and interest thereof. (1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 64; 1933, c. 259, s. 1; 1939, c. 231, s. 1; C. S. 2933.)

§ 160-375. Money borrowed in anticipation of bond sales.—At any time after a bond ordinance has taken effect as provided in article 28 herein, a municipality may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than three years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues, special assessments, or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, before the actual retirement of any such loan by any means other than the issuance of bonds, under the bond ordinance upon which such loan is predicated, shall amend or repeal such ordinance so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing ordinance shall take effect upon its passage and need not be published. (1917, c. 138, s. 13; 1919, c. 178, s. 3 (13); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2934.)

§ 160-376. Notes issued for temporary loans.—Negotiable notes shall be issued for all moneys borrowed under the last three sections. Such notes may be renewed from time to time and money may be borrowed upon notes from time to time for the payment for any indebtedness evidenced thereby, but all such notes shall mature within the time limited by said sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount, and rate of interest within the limitations prescribed by said resolution. All such notes shall be exe-

cuted in the manner provided in § 160-393 of this subchapter in relation to bonds. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval indorsed on the notes. The resolution authorizing issuance of notes for money borrowed under § 160-374 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1917, c. 138, s. 14; 1919, c. 178, s. 3, (14); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 293; 1939, c. 231, s. 1; C. S. 2935.)

Art. 28. Permanent Financing.

§ 160-377. Not applied to temporary loans.—The provisions of this article shall not apply to temporary loans made under article 27, unless otherwise provided in said article. (1917, c. 138, s. 15; 1919, c. 178, s. 3 (15); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2936.)

§ 160-378. For what purpose bonds may be issued.—A municipality may issue its negotiable bonds for any one or more of the following purposes:

1. For any purpose or purposes for which it may raise or appropriate money, except for current expenses.

2. To fund or refund a debt of the municipality if such debt be payable at the time of the passage of the ordinance authorizing bonds to fund or refund such debt or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "debt" as used in this subsection two includes all valid or enforceable debts of a municipality, whether incurred for current expenses or for any purpose. It includes debts evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said debts accrued to the date of the bonds issued. Bond anticipation notes evidencing debts incurred before July first, one thousand nine hundred thirty-three, may, at the option of the governing body, be retired either by means of funding bonds issued under this section or by means of bonds in anticipation of the sale of which the notes were issued. It also includes debts assumed by a municipality as well as debts created by a municipality. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall not be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred forty shall be funded or refunded. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 48; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1939, c. 231, s. 1; C. S. 2937.)

§ 160-379. Ordinance for bond issue:

1. Ordinance Required.—All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

2. What Ordinance Must Show.—The ordinance shall state:

a. In brief and general terms the purpose for which the bonds are to be issued, including, in the case of funding or refunding bonds a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness.

b. The maximum aggregate principal amount of the bonds;

c. That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

d. That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection.

e. One of the following provisions:

(1) If the bonds are funding or refunding bonds or for local improvements of which at least one-fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or

(2) If the bonds are for a purpose other than the payment of necessary expenses, or if the governing body, although not required to obtain the assent of the voters before issuing the bonds, deems it advisable to obtain such assent, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this subchapter; or

(3) In any other case, that the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this subchapter, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this subchapter.

3. When the Ordinance Takes Effect.— A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

4. Need not Specify Location of Improvement. —In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement substantially in the language employed in § 160-382 of this subchapter to describe such a property or improvement, shall be a sufficiently definite

statement of the purpose for which the bonds authorized by the ordinance are to be issued.

5. Application of Other Laws.—No restriction, limitation or provision contained in any special, private or public-local law relating to the issuance of bonds, notes or other obligations of a municipality shall apply to bonds or notes issued under this subchapter for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purpose, unless required by the constitution of this state. The special, private and public-local laws here referred to include all such laws enacted prior to the expiration of the regular session of the general assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a municipality from issuing bonds or notes under any special private or public-local law applicable to such municipality, it being intended that this subchapter shall be cumulative and additional authority for the issuance of bonds and notes. (1917, c. 138, s. 17; 1919, c. 178, s. 3 (17); 1919, c. 285, s. 2; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 49; 1933, c. 259, s. 1; 1935, c. 302, s. 1; C. S. 2938.)

§ 160-380. Ordinance not to include unrelated purposes.—Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection 4 of § 160-382 of this subchapter may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue. Separate issues of funding and/or refunding bonds may be made under authority of the same bond ordinance for the retirement of two or more different debts or classes of debts. (1919, c. 178, s. 3 (17); 1919, c. 285, s. 3; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; C. S. 2939.)

§ 160-381. Ordinance and bond issue; when petition required.—In cases where a petition of property owners is required by law for the making of local improvements, a bond ordinance authorizing bonds for such local improvements may be passed before any such petition is made, but no bonds for the local improvements in respect of which such petitions are required shall be issued under the ordinance, nor shall any temporary loan be contracted in anticipation of the issuance of such bonds, unless and until such petitions are made, and then only up to the actual or estimated amount of the cost of the work petitioned for. The determination of the governing body as to the actual or estimated cost of work so petitioned for shall be conclusive in any action involving the validity of bonds or notes or other indebtedness. The bond ordinance may be made to take effect upon its passage, notwithstanding that the necessary petitions for the local improvements have not been filed: Provided, that it appears upon the face of the ordinance that one-fourth or some greater proportion of the cost, exclusive of the cost of work at street intersections, has been or is to be assessed. (1919, c. 178, s. 3 (17); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

§ 160-382. Determining periods for bonds to run:

1. How Periods Estimated.—Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection four of this section, determine and declare:

a. The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or

b. If the bonds are to be funding or refunding bonds, either the shortest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred.

2. Average of Periods Determined.—In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

3. Maturity of Bonds.—The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

4. Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

a. Sewer systems (either sanitary or surface drainage), forty years.

b. Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.

c. Gas systems, thirty years.

d. Electric light and power systems, separate or combined, thirty years.

e. Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.

f. Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.

g. Playgrounds, fifty years.

h. Buildings for purposes not stated in this section, if they are:

(1) Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.

(2) Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

(3) Of other construction, twenty years.

i. Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

j. Lands for purposes not stated in this section, fifty years.

k. Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:

(1) Is constructed of sand and gravel, five years;

(2) Is of waterbound macadam or penetration process, ten years;

(3) Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

l. Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.

m. Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

n. Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

o. Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

p. Land for cemeteries, or the improvement thereof, thirty years.

q. Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

r. The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

s. Equipment, apparatus, or furnishings not included in the foregoing clauses of this subsection, ten years.

t. Any improvement or property not included in other clauses of this subsection, forty years.

u. Land for airports or landing fields, including grading and drainage, forty years.

v. Buildings and equipment and other improvements of airports or landing fields, other than grading and drainage, ten years.

5. Improvements and Properties Defined.—The maximum periods fixed herein for the improvements and properties mentioned in clauses numbered from a to i, both inclusive, of subsection 4 of this section shall be applied thereto whether such improvements or properties are to be acquired, constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or are not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one clause of subsection 4 above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

6. Kind of Construction Determined. — If the bonds are for a building referred to in clause h of subsection 4 above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in clause k of subsection 4 above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material, as the case may be, shall be determined by resolution before any of the bonds are issued.

7. Period of Payment.—In determining for the purpose of this section the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the tax-payers of the municipality, the governing body shall not deem said period to be greater than fifty years. (1917, c. 138, s. 18; 1919, c. 178, s. 3 (18); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 929, c. 170; 1931, c. 60, s. 50; 1931, cc. 188, 301; 1933, c. 259, s. 1; C. S. 2942.)

§ 160-383. Sworn statement of indebtedness.—1. What Shall Be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

(a) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:

(1) Outstanding debt not evidenced by bonds.

(2) Outstanding bonded debts.

(3) Bonded debt to be incurred under ordinances passed or introduced.

(b) The deductions to be made from gross debt

in computing net debt, which deductions shall be as follows:

(1) Amount of unissued funding or refunding bonds included in gross debt.

(2) Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.

(3) The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.

(4) The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.

(5) The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.

(6) The amount of existing bonded debt included in the gross debt, and incurred or to be incurred for the construction of sewerage systems or sewage disposal plants where said sewerage system is entirely supported by sewerage service charges or when said systems or plants are operated together with the waterworks as a combined and consolidated system and as an integral part thereof, and when the amount necessary to meet the annual interest payable on the debt, and the annual installment necessary for the amortization of the debt, and the amount necessary for repairs, maintenance and operation of said system or systems is included in the rate for waterworks service and so collected by the municipality.

(7) The amount which the municipality shall be entitled to receive from any railroad or street-railway company under contract theretofore made for payment by such company of all or a portion of the cost of eliminating a grade crossing or crossings within the municipality, which amount will be applied when received to the payment of any part of the gross debt;

(8) Indebtedness for school purposes.

(c) The net debt, being the difference between the gross debt and the deductions.

(d) The assessed valuation of property as last fixed for municipal taxation.

(e) The percentage that the net debt bears to said assessed valuation.

2. Limitations upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) per cent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes or are bonds for sanitary sewers, sewage disposal or sewage purification plants, the construction of which shall have been ordered by the state board of health or by a court of competent jurisdiction, or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

3. Statement Filed for Inspection.—Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this subchapter, unless it appears (in an action or proceeding commenced within the time limited by § 160-385 for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed. (1917, c. 138, s. 19; 1919, c. 178, s. 3 (19); 1919, c. 285, s. 4; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; 1933, c. 321; Ex. Sess. 1938, c. 3; C. S. 2943.)

Local Modification.—Alamance, City of Burlington: 1933, c. 334; Mecklenburg, Transylvania: 1933, c. 321.

§ 160-384. Publication of bond ordinance.—A bond ordinance shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the.... day of....., 19...., and was first published (or posted), on the.....day of.....,19.....

Any action or proceeding questioning the validity of said ordinance must be commenced within thirty days after its first publication (or posting).

....., Clerk (or Secretary).

(1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2944.)

§ 160-385. Limitation of action to set aside ordinance.—Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2945.)

§ 160-386. Ordinance requiring popular vote.—1. When Vote Required.—If a bond ordinance provides that it shall take effect thirty days after its first publication unless a petition for its submission to the voters shall be filed in the meantime, the ordinance shall be inoperative without the approval of the voters of the municipality at an election if a petition shall be filed as provided in this section.

2. Petition Filed.—A petition demanding that a bond ordinance be submitted to the voters may be filed with the clerk within thirty days after the first publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least twenty-five per centum of the total number of registered voters in the municipality as shown by the registration books for the last preceding election for municipal officers therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures), made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

3. Sufficiency of Petition.—The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the sufficiency of the petition and the determination of the governing body shall be conclusive. (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; 1919, c. 178, s. 3 (21); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 2; C. S. 2947.)

§ 160-387. Elections on bond issue.

1. What Majority Required.—If a bond ordinance provides for the issuance of bonds for a purpose other than the payment of necessary expenses of the municipality, the approval of a majority of the qualified voters of the municipality, as required by the constitution of North Carolina, shall be necessary in order to make the ordinance operative. If however, the bonds are to be issued for necessary expenses, the affirmative vote of the majority of the voters voting on the bond ordinance shall be sufficient to make it operative, in all cases where the ordinance is required by this subchapter to be submitted to the voters. If the bonds will result in an increase in the municipal debt by more than two-thirds of the amount by which it was decreased during the preceding year, a majority of the votes cast will be required to make the ordinance operative.

2. When Election Held.—Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinances by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but no such special election shall be held within one month before or after a regular election. Several ordinances or other matters may be voted upon at the same election.

3. New Registration.—The governing body of the city or town in which such election is held may, in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from nine a. m. to six p. m. on each day, except Sundays and holidays, for three weeks, beginning on a Monday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books, stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case the registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary.

4. Notice of Election.—A notice of the election shall be deemed sufficiently published if published once not later than twenty days before the election. Such notice shall state the maximum amount of the proposed bonds and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The date of the election shall be stated therein.

5. Ballots.—A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "for the ordinance authorizing $.... bonds (briefly stating the purpose), and a tax therefor," and "against the ordinance authorizing $.... bonds (briefly stating the purpose), and a tax therefor," with squares in front of each proposition, in one of which squares the voter may make an (X) mark, but this form of ballot is not prescribed.

6. Returns Canvassed.—The officers appointed to hold the election in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

7. Application of other laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for municipal officers in such municipality, and governing the registration of the electors for such election of officers.

8. Statement of Result.—The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted. and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in

the book of ordinances of the municipality and file the original in his office and publish it once.

9. Limitation as to Actions.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement: Provided, that §§ 160-386 and 160-387 shall not apply to the incorporated towns of Madison county. (1917, c. 138, s. 22; 1919, c. 178, s. 3 (22); 1919, c. 291; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2948.)

§ 160-388. Preparation for issuing bonds.—At any time after the passage of a bond ordinance, all steps preliminary to the actual issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect. (1917, c. 138, s. 23; 1919, c. 178, s. 3 (23); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2949.)

§ 160-389. Within what time bonds issued.—After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within three years after the ordinance takes effect, unless the ordinance shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of appeal), unless notes shall have been issued in anticipation of the receipts of the proceeds of the bonds and shall be outstanding: Provided, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the ordinance takes effect. (1917, c. 138, s. 24; 1919, c. 178, s. 3 (24); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1939, c. 231, s. 1; C. S. 2950.)

§ 160-390. Amount and nature of bonds determined.—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. The bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; C. S. 2951.)

§ 160-391. Bonded debt payable in installments.—Each bond issue made under this subchapter shall mature in annual installments or series, the first of which shall be made payable not more than three years after the date of the first issued bonds of such issue, and the last within the period determined and declared pursuant to § 160-382, of this subchapter. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. This section shall not apply to funding or refunding bonds. (1917, c. 138, s. 26; 1919, c. 178, s. 3 (26); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1; C. S. 2952.)

§ 160-392. Medium and place of payment.—The bonds may be made payable in such kinds of money and at such place or places within or without the state of North Carolina as the governing body may by resolution provide. (1917, c. 138, s. 27; 1919, c. 178, s. 3 (27); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2953.)

§ 160-393. Formal execution of bonds.—The bonds shall be issued in such form as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or, if the governing body makes no such designation, then by the mayor or other chief executive officer and by the clerk, and the corporate seal of the municipality shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office, at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occurring after the signing and sealing of the bonds. (1917, c. 138, s. 28; 1919, c. 178, s. 3 (28); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2954.)

§ 160-394. Registration and transfer of bonds:

1. Bonds Payable to Bearer.—Bonds issued under this subchapter shall be payable to the bearer unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

2. Registration and Effect.—A municipality may keep in the office of its financial officer or in the office of a bank or trust company appointed by the governing body as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

3. Registration and Transfer Noted on Bond.—Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond as to both principal and interest he shall also cut off and cancel the coupons.

4. Agreement for Registration.—A municipality may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bond-

holder. (1917, c. 138, s. 29; 1919, c. 178, s. 3 (29); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2955.)

§ 160-395. Application of funds.—The proceeds of the sale of bonds under this subchapter shall be used only for the purposes specified in the ordinance authorizing said bonds, and for the payment of the principal and interest of temporary loans made in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1917, c. 138, s. 31; 1919, c. 178, s. 3 (31); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2957.)

§ 160-396. Bonds incontestable after delivery.—Any bonds reciting that they are issued pursuant to this subchapter shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this subchapter and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds. (1917, c. 138, s. 32; 1919, c. 178, s. 3 (32); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2958.)

§ 160-397. Taxes levied for payment of bonds.—The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this subchapter, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this subchapter as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this subchapter, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this subchapter.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality: Provided, in the case of funding or refunding bonds which do not mature in installments, as provided in § 160-391 of this subchapter, a tax for the payment of the principal of said bonds need not be levied prior to the fiscal year or years said bonds mature unless it is so provided for in an ordinance or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such ordinance or resolution. (1917, c. 138, s. 33; 1919, c. 178, s. 3 (33); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; C. S. 2959.)

§ 160-398. Destruction of surrendered bonds of cities and towns.—All surrendered bonds of a city or town may, in the discretion of the governing board of such city or town, be destroyed. Before such bonds are destroyed the treasurer of the municipality shall make a correct descriptive list of all surrendered bonds of the municipality, in a substantially bound book to be kept by him for that purpose, which list shall include the number, date and amount of each bond and the purpose for which it was issued, when this can be ascertained; and after such list shall be made, such surrendered bonds shall be destroyed by burning in the presence of the mayor, treasurer or auditor, city attorney and secretary of the governing board of the city or town, who shall each certify under his hand in such book that he saw the described bonds so burned and destroyed. (1941, c. 203.)

Art. 29. Restrictions upon the Exercise of Municipal Powers.

§ 160-399. In borrowing or expending money:

1. No municipality shall:

a. Make an appropriation of money except as provided in this subchapter.

b. Borrow money or issue bonds or notes except as provided in this subchapter;

c. Make an expenditure of money unless the money shall have been appropriated as provided in this subchapter, or unless the expenditure is a payment of a judgment against the municipality or is a payment of the principal or interest of a bond or note of the municipality; or,

d. Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

2. The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized amount of the bonds for the purposes for which they are to be issued. (1917, c. 138, s. 34; 1919, c. 178, s. 3 (34); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2960.)

§ 160-400. Manner of passing ordinances and resolutions.—Ordinances and resolutions passed pursuant to this subchapter shall be passed in the manner provided by other laws for the passage of ordinances and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this subchapter shall, unless they relate solely to elections held under this subchapter, be so approved before they take effect. (1917, c. 138, s. 35; 1919, c. 178, s. 3 (35); 1921, c. 8, s. 4; Ex. Sess. 1921, c. 106, s. 1; C. S. 2961.)

§ 160-401. Enforcement of subchapter.—If any board or officer of a municipality shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this subchapter to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers or other persons to carry out such order. (1917, c. 138, s. 36; 1919, c. 178, s. 3 (36); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2962.)

§ 160-402. Limitation of tax for general purposes.—For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar on the one hundred dollars valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section: Provided, that in cities where the taxable values for the year 1920 amounted to one hundred million dollars or more, the rate of taxation for general purposes shall not exceed sixty-five (65) cents on the one hundred dollars valuation. (1917, c. 138, s. 37; 1919, c. 178, s. 3 (37); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; C. S. 2963.)

Art. 30. General Effect of Municipal Finance Act.

§ 160-403. Effect upon prior laws and proceedings taken. — All acts and parts of acts, whether general, special, private or local, regulating or relating in any way to the issuance of bonds or other obligations of a municipality, or relating to the subject-matter of this subchapter, are hereby repealed: Provided, however, that this subchapter shall not affect any local or private act enacted at the extraordinary session, 1921, of the general assembly, or regular session of one thousand nine hundred and twenty-one, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the extraordinary session, 1921, of the general assembly, or regular session of one thousand nine hundred and twenty-one, so that any municipality may, at its option, proceed under any such local or private act applicable to it enacted at the extraordinary session, 1921, of the general assembly or regular session of one thousand nine hundred and twenty-one without regard to the restrictions imposed by this subchapter, or may proceed under this subchapter without regard to the restrictions imposed by any other act: Provided further, that this subchapter shall not affect any of the provisions of article nine of subchapter one of chapter 160, except those provisions which prescribe methods of procedure for borrowing money or issuing bonds or other obligations, and said article shall apply to all municipalities in this state, notwithstanding any inconsistent, general, special, local or private laws: Provided further, that this subchapter shall not affect any acts or proceedings heretofore done or taken for the issuance of bonds or other obligations under the municipal finance act, as it stood prior to December 20, 1921, or under any other law, and every municipality is hereby authorized to complete said acts and proceedings pursuant to the laws under which they were done or taken, and to issue said bonds or other obligations under such acts in the same manner as if this subchapter had not been passed: Provided further, that this subchapter shall not render invalid any bonds or notes or proceedings for the issuance of bonds or notes in cases when such bonds, notes or proceedings have been validated by any other act. (Ex. Sess. 1921, c. 106, s. 2; C. S. 2969(a).)

Art. 31. Municipal Fiscal Agency Act.

§ 160-404. Title of article.—This article shall be known as "The Municipal Fiscal Agency Act." (1925, c. 195, s. 1.)

§ 160-405. Payment of fees to bank.—Whenever any county, city, town, township, school district or school taxing district is or shall be authorized or permitted to make payments of bonds or coupons issued by it or in its behalf at any place other than within such county, city, town, township, school district or school taxing district, and such bonds or coupons are by their terms payable at such other place, it shall be lawful for the officer disbursing the funds for such payment to pay the reasonable fees of the bank, trust company or other agency making payment at such place, and to agree to pay such fees at a fixed rate throughout the term of the bonds as to which such payment is to be made at such place, but no fee in excess of one-fourth of one per cent of the amount of interest paid and one-eighth of one per cent

of the amount of principal paid shall be deemed reasonable. (1925, c. 195, s. 2.)

Local Modification.—Buncombe: 1937, c. 320.

Art. 32. Municipal Bond Registration Act.

§ 160-406. Title of article.—This article shall be known as "The Municipal Bond Registration Act". (1925, c. 129, s. 1.)

§ 160-407. Registration.—Each county, city, town, school district and school taxing district which has issued or shall hereafter issue bonds in its own name, and each county, city and town, which has issued or shall hereafter issue bonds in behalf of a school district or a school taxing district, is hereby authorized to keep in the office of its treasurer or financial agent or its clerk, or in the office of the bank or trust company appointed by its governing body as bond registrar, a register or registers for the registration as to principal of such bonds in the name of the owner thereof, in which it may register any such bond as to principal at the time of its issue, or at the request of the holder thereafter. Such registration shall not affect the payment of interest, but such interest shall continue to be made upon the presentation and surrender of interest coupons if issued, but after such registration as to principal, the principal shall be payable to the person in whose name registered or to the person in whose name the bonds registered may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner: Provided, however, that a registered bond may be discharged from registry by a transfer to bearer registered as herein provided. Upon the registration or transfer of a bond as aforesaid the bond registrar shall note such registration or transfer on the back of the bond. (1925, c. 129, s. 2.)

§ 160-408. Powers in addition to existing powers.—The powers herein granted are not in substitution of existing powers but in addition thereto. (1925, c. 129, s. 3.)

SUBCHAPTER IV. FISCAL CONTROL.

Art. 33. Fiscal Control.

§ 160-409. Municipalities brought under terms of county fiscal control act.—All cities and towns shall be subject to and be governed by all of the provisions of the County Fiscal Control Act [§§ 153-114 to 153-141] and acts amendatory thereof and supplemental thereto, including acts ratified at the 1931 session of the General Assembly, except as herein otherwise provided or except as the context shows that it is not intended that such acts shall be applicable to cities and towns. (1931, c. 60, s. 65.)

§ 160-410. Terms in county fiscal control act made applicable to cities and towns. — Except as the context may otherwise show, and for the purpose of applying the provisions of the County Fiscal Control Act to cities and towns, the following words and phrases in the County Fiscal Control Act, and acts amendatory thereof and supplemental thereto, shall be deemed to have the following meanings when applied to cities and towns:

County Accountant, County Treasurer, County Auditor, County Depository and County Treasury shall mean Municipal Accountant, Municipal Treasurer, Municipal Auditor, Municipal Depository and Municipal Treasury; the Board of County Commissioners shall mean the governing body of a municipality, sub-division shall mean a school district, school taxing district or other political corporation or sub-division wholly or partly within a municipality, the taxes for which are under the law levied by the governing body of the municipality: county as a noun shall mean municipality; county as an adjective shall mean municipal; Clerk of the Board of County Commissioners shall mean clerk of the municipality or of its governing body; courthouse door shall mean door of the municipal building; appropriation resolution and resolution making tax levy shall mean appropriation ordinance and ordinance making tax levy, respectively; County Fiscal Control Act shall mean Local Government Act, being Public Laws 1931, chapter 60, and acts amendatory thereof and supplemental thereto; County Government Advisory Commission shall mean the Director of Local Government whose office is created by the Local Government Act. (1931, c. 60, s. 67.)

§ 160-411. Purposes of municipal funds required by article.—The municipal funds required by this article for cities and towns are not those funds required by the County Fiscal Control Act for counties, but are funds for each of the following functions of municipal government:

(1) Current operating expense of the municipality.

(2) School expenses of the municipality supplemental to constitutional school maintenance.

(3) Municipal debt service.

(4) Each special purpose to which the General Assembly has given its special approval, separately stated.

(5) Debt service of each sub-division, separately stated.

(6) Maintenance of each sub-division, separately stated.

(7) Permanent improvements in each sub-division, separately stated.

(8) Such other funds as may be established by the governing body, separately stated. (1931, c. 60, s. 68.)

§ 160-412. Exceptions.—Notwithstanding the foregoing, none of the provisions of the County Fiscal Control Act or acts amendatory thereof or supplemental thereto in relation to maintenance of schools for the constitutional term, depositories and security for deposits, abolition of the office of County Treasurer or appointment of financial agents to perform functions of the County Treasurer shall be applicable to or govern cities or towns. (1931, c. 60, s. 69.)

Art. 34. Revenue Bond Act of 1938.

§ 160-413. Title of article.—This article may be cited as the "Revenue Bond Act of One Thousand

Nine Hundred and Thirty-Eight." (Ex. Sess., 1938, c. 2, s. 1.)

§ 160-414. Definitions.—Wherever used in this article, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

(1) Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school dormitories and teacherages, club houses and golf courses.

(2) Systems, plants, works, instrumentalities, and properties: (i) used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses, (ii) used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water, (iii) used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private uses, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment.

(b) The term "municipality" as used in this article shall mean any county, city, town, incorporated village, or sanitary district of this state now or hereafter incorporated.

(c) The term "governing body" shall mean the board or body in which the general legislative powers of the municipality are vested. (Ex. Sess., 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2.)

Local Modification.—Cabarrus: 1939, c. 288.

§ 160-415. Additional powers.—In addition to the powers which it may now have, any municipality shall have power under this article:

(a) to acquire by gift, purchase, or the exercise of the right of eminent domain, to construct, to improve, to better, and to extend any undertaking wholly within or wholly without the municipality, or partially within and partially without the municipality; and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith;

(b) to operate and maintain any undertaking for its own use, for the use of public and private consumers, and when operated primarily for its own use and users within the territorial boundaries of the municipality, such undertaking may be operated incidentally for users outside of the territorial boundaries of the municipality;

(c) to prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking; and in anticipation of the collection of the revenues of such undertaking, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(d) to pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of such undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of such undertaking;

(e) to make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payment of its bonds; Provided, no encumbrance, mortgage, or other pledge of property of the municipality is created thereby; and provided, no property of the municipality is liable to be forfeited or taken in payment of said bonds; and provided, no debt on the credit of the municipality is thereby incurred in any manner for any purpose. (Ex. Sess., 1938, c. 2, s. 3.)

§ 160-416. Procedure for authorization of undertaking and revenue bonds. — The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body in determining such cost may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses, and interest, which it is estimated will accrue during the construction period and for six months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this article. (Ex. Sess., 1938, c. 2, s. 4.)

§ 160-417. Bond provisions.—Revenue bonds may be issued under this article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding thirty years from their respective dates; may bear interest at such rate or rates, not exceeding six per centum per annum, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or

resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess., 1938, c. 2, s. 5.)

§ 160-418. Covenants in resolutions.—Any resolution or resolutions authorizing the issuance of bonds under this article to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants (notwithstanding that such covenants may limit the exercise of powers conferred by this article) as to:

(a) the rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of such undertaking;

(b) the use and disposition of the revenue of said undertaking;

(c) the creation and maintenance of reserves or sinking funds, the regulation, use and disposition thereof;

(d) the purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;

(e) events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(f) a fair and reasonable payment by the municipality to the account of said undertaking for the services, facilities, or commodities furnished said municipality or any of its departments by said undertaking;

(g) the issuance of other or additional bonds or instruments payable from or a charge against the revenue of such undertaking;

(h) the insurance to be carried thereon, and the use and disposition of insurance moneys;

(i) books of account and the inspection and audit thereof;

(j) limitations or restrictions as to the leasing or otherwise disposing of the undertaking while any of the bonds or interest thereon remain outstanding and unpaid; and

(k) the continuous operation and maintenance of the undertaking.

The provisions of this article and of any such resolution or resolutions shall be a contract with every holder of said bonds; and the duties of the municipality and the governing body and the officers of the municipality under this article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding at law or in equity. (Ex. Sess., 1938, c. 2, s. 6.)

§ 160-419. No municipal liability on bonds. — Revenue bonds issued under this article shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon; nor to enforce payment thereof against any property of the municipality; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality. Every bond issued under this article shall contain a statement on its face that "this bond is not a debt of ....., but is payable solely from the revenues of the undertaking for which it is issued, as provided by law and the proceedings in accordance therewith, and the holder hereof has no right to compel the levy of any tax for the payment of this bond or the interest to accrue hereon and has no charge, lien or encumbrance legal or equitable upon any property of said .....". (Ex. Sess., 1938, c. 2, s. 7.)

§ 160-420. Right to receivership upon default.— (a) In the event that the municipality shall default in the payment of the principal or interest on any of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days; or in the event that the municipality or the governing body, or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this article or shall default in any agreement made with the holders of the bonds, any holders of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the municipality is located or any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such bonds. Upon such application the superior court or any other court of competent jurisdiction may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such bonds then outstanding, or any trustee for holders of such bonds in such principal amount, shall appoint a receiver of the undertaking.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the undertaking and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the undertaking as the municipality itself might do.

Such receiver shall maintain, restore, insure and keep insured, the undertaking, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the undertaking as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds and interest thereon, and upon any other notes, or other obligations, and interest thereon, having a charge, lien, or other encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of bonds shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the undertaking to the municipality, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. (Ex. Sess., 1938, c. 2, s. 8.)

§ 160-421. Approval of state agencies and sale of bonds by local government commission.—All revenue bonds issued pursuant to this article shall be approved and sold by the local government commission in the same manner as municipal bonds are approved and sold by that commission, except that the said commission may sell any bonds issued pursuant to this article to the United States of America, or any agency thereof, at private sale and without advertisement. It shall not be necessary for any municipality proceeding under this article to obtain any other approval, consent, or authorization of any bureau, board, commission, or other like instrumentality of the state for the construction of an undertaking, provided, however, that existing powers and duties of the state board of health shall continue in full force and effect; and provided, further, that no municipality shall construct any systems, plants, works, instrumentalities and properties used or useful in connection with the generation, production, transmission and distribution of gas (natural, artificial, or mixed), or electric energy for lighting, heating, and power, for public and private uses, without having first obtained a certificate of convenience and necessity from the public utilities commissioner, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized, or the bonds for which have been authorized, by any general, special or local law enacted prior to August 13, 1938. (Ex. Sess., 1938, c. 2, s. 9.)

§ 160-422. Construction of article.—The powers conferred by this article shall be in addition and supplemental to, and not in substitution for; and the limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law. Bonds or interim receipts may be issued under this article without regard to the provisions of any other general, special, or local law. The general assembly hereby declares its intention that the limitations of the amount or percentage of, and the restrictions relating to indebtedness of a municipality and the incurring thereof contained in the constitution of the state and in any general, special or local law shall not apply to bonds or interim receipts and the issuance thereof under this article. (Ex. Sess., 1938, c. 2, s. 10.)

§ 160-423. Termination of power to issue bonds.—Except in pursuance to any contract or agreement entered into prior to March 14, 1941, by any municipality, no municipality shall borrow any money or deliver any bonds pursuant to this article to the purchaser, or purchasers, thereof, after March first, one thousand nine hundred and forty-three. (Ex. Sess., 1938, c. 2, s. 11; 1941, c. 207, s. 1.)

§ 160-424. Article applicable to school dormitories and teacherages.—All the terms, conditions and provisions of this article are hereby made applicable to the acquisition, construction, reconstruction, improvement, betterment, or extension of school dormitories and teacherages within this state. (Ex. Sess., 1938, c. 5.)

Chapter 161. Register of Deeds.

Sec.

Art. 1. The Office.

161-1. Election and term of office.
161-2. Four-year term for registers of deeds; counties excepted.
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Art. 1. The Office.

§ 161-1. Election and term of office.—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, a register of deeds. (Rev., s. 2650; Const., Art. VII, s. 1; C. S. 3543.)

§ 161-2. Four-year term for registers of deeds; counties excepted. — At the general election for the year one thousand nine hundred and thirty-six and quadrennially thereafter there shall be elected in each county of this state by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Avery, Beaufort, Bladen, Clay, Davidson, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Macon, Mitchell, Orange, Rowan, Swain, Vance, Yadkin, Cherokee, Dare, Lincoln, and Moore counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192.)

§ 161-3. Oath of office.—The register of deeds shall take the oath of office on the first Monday of December next after his election, before the board of county commissioners. (Rev., s. 2652; Code, s. 3647; 1868, c. 35, s. 2; 1876-7, c. 276, s. 5; C. S. 3544.)

§ 161-4. Bond required.—Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, payable to the state, and conditioned for the safe keeping of the books and records, and for the faithful discharge of the duties of his office, and shall renew his bond annually on the first Monday in December. (Rev., s. 301; Code, s. 3648; 1868, c. 35, s. 3; 1876-7, c. 276, s. 5; 1899, c. 54, s. 52; C. S. 3545.)

Local Modification.—Dare: 1907, c. 75.

§ 161-5. Vacancy in office.—When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. (Rev., s. 2651; Code, s. 3649; 1868, c. 35, s. 4; C. S. 3546.)

§ 161-6. Deputies may be appointed.—The registers of deeds of the several counties in this state are hereby authorized and empowered to appoint deputies, whose acts as such shall be valid and for which the registers of deeds shall officially be responsible. They shall file the certificate of the appointment of the deputy in the office of the clerk of the superior court, who shall record the same. (1909, c. 628, s. 1; C. S. 3547.)

Local Modification.—Dare: 1907, c. 393; Durham: 1909, c. 91; Person: 1909, c. 546.

§ 161-7. Office at courthouse.—The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable. (Rev., s. 2653; Code, s. 3650; 1868, c. 35, s. 5; C. S. 3548.)

§ 161-8. Attendance at office.—The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly. (Rev., s. 2654; Code, s. 3651; 1868, c. 35, s. 6; C. S. 3549.)

§ 161-9. Official seal.—The office of register of deeds for every county in the state shall have and use an official seal, which seal shall be provided by the county commissioners of the several counties, and shall be of the same size and design as the seals now used by the clerk of the superior court, with the words "Office of Register of Deeds," the name of the county and the letters "North Carolina" surrounding the figures. (Rev., s. 2649; 1893, c. 119, s. 1; C. S. 3550.)

§ 161-10. Fees of register of deeds.—The register of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such per diem as such board may respectively allow, not exceeding two dollars; and shall be allowed the following fees for his services as register of deeds:

For registering any deed or other writing authorized to be registered by them, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, eighty cents; and for every additional copy-sheet, ten cents.

Registering chattel mortgage, statutory form, twenty cents.

For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing, one dollar.

For a copy of any record or any paper in their offices, like fees as for registering the same.

For issuing each notice required by the county commissioners, including subpœnas for witnesses, fifteen cents. This shall not include county orders on the treasury.

Recording and issuing each order of commissioners, ten cents. Where a standing order is made for the payment of money, monthly or

otherwise, there shall be charged but one fee therefor.

Making out original tax list, two cents for each name thereon; for each name on each copy required to be made, two cents.

Issuing marriage license, one dollar.

For transcript and certificate of limited partnership, fifty cents.

For recording the election returns from the various voting precincts, ten cents per copy-sheet, to be paid by the county.

For attaching and indexing subdivisions or plats now allowed by law to be registered, fifty cents; for transcribing and indexing subdivisions and plats, seventy-five cents. If such subdivision or plat contains more than three lots or tracts of land, the register of deeds shall be entitled to charge twenty-five cents for transcribing each and every lot or tract of land in excess of three that is contained in such plat or subdivision, but in no case shall the fees exceed five dollars for transcribing and indexing such plat or subdivision. (Rev., s. 2776; Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; 1899, c. 247, s. 3; 1899, cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; 1911, c. 55, s. 3; C. S. 3906.)

§ 161-10(1). Local variations as to fees of registers of deeds.—The register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, fifty cents in the counties of Davidson, Halifax, Northampton, Union, Vance, Warren and Wayne; thirty cents in the counties of Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, Martin, McDowell, Moore, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Washington, Watauga and Wilson; twenty cents in the counties of Chatham, Columbus, Cleveland, Iredell, Johnston and Mecklenburg. (Rev., s. 2776; 1907, cc. 421, 65[illegible], 717; 1909, cc. 23, 532; P. L. 1913, c. 49; P. L. 1917, c. 182; 1933, c. 48; C. S. 3907.)

In Alexander county the board of county commissioners are authorized and empowered to pay the register of deeds the sum of one cent each per name for indexing births and deaths in said county. Likewise in Cleveland county. (P. L. 1915, c. 513; P. L. 1917, c. 423; C. S. 3907.)

In Catawba county the register of deeds shall be allowed as a fee for his services for registering any deed of trust, in which real property is conveyed to a trustee to secure a loan from a building and loan association, the sum of eighty cents. (1909, c. 43; C. S. 3907.)

In Forsyth county the register shall receive for registering any deed or other writing authorized to be registered, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, sixty-five cents; and for every additional copy-sheet, ten cents: Provided, that the registration of any deed of trust shall not cost more than one dollar and ten cents, where the same does not contain more than four copy-sheets, and for every additional copy-sheet, ten cents each. (Rev., s. 2776; P. L. 1913, c. 626; P. L. Ex. Sess. 1913, c. 177; C. S. 3907.)

In Jackson county the register shall, for his service in acting as clerk of the board of commissioners, for recording minutes, and doing other clerical work for or under the direction of the board of commissioners, receive three dollars per day, to be paid by the county. (P. L. 1913, c. 182; C. S. 3907.)

In Tyrrell county the register shall receive for canceling mortgages, deeds of trust or instruments intended to secure the payment of money, fifteen cents. (1909, c. 780; C. S. 3907.)

In Union county the county commissioners may revise the fees and commissions which may be charged by the register of deeds, and may fix all such fees and commissions at such amounts and rates as in their judgment will give the register of deeds and his deputies and assistants reasonable compensation. The fees and commissions so fixed shall be the legal fees chargeable by and payable to the register of deeds. (P. L. 1917, c. 366; C. S. 3907.)

In Gates county the register of deeds shall receive for canceling of a mortgage or deed of trust, ten cents. (P. L. 1919, c. 4; C. S. 3907.)

In Wake county the register of deeds shall charge and receive the following fees for registration of the papers herein mentioned, to wit: For registering lien bond, fifty cents; for registering short form of chattel mortgage provided for securing a sum not exceeding three hundred dollars, thirty cents; for registering short form of agricultural lien and chattel mortgage for advances, thirty cents; for registering short form of crop lien to secure advances and chattel mortgage to secure pre-existing debt, and to give additional security to the lien, thirty cents; for registering short-form notes given for the purchase price of personal property or combining also a conveyance of the property or other additional property as security, and retaining title to the property sold, twenty cents. (P. L. 1915, c. 138; C. S. 3907.)

In Yadkin county the fees for recording chattel mortgages, crop liens, conditional sales, etc., shall be twenty cents for the first two copy-sheets or fraction thereof and ten cents for each additional copy-sheet or fraction thereof. (P. L. 1911, c. 414; C. S. 3907.)

Local Modification.—Alamance: Pub. Loc. 1921, c. 234, s. 2; Alleghany: Pub. Loc. 1927, c. 175, s. 3½; Ashe: Pub. Loc. 1927, c. 372, s. 2; Avery: Pub. Loc. 1927, c. 612; Beaufort: Pub. Loc. 1921, c. 229, s. 3; Brunswick: Pub. Loc. 1921, c. 436, s. 3; Burke: Pub. Loc. 1937, c. 564; Catawba: Pub. Loc. 1921, c. 47, s. 2; 1939, c. 33; Cherokee: Pub. Loc. 1921, c. 523, s. 3; Chowan: Pub. Loc. Ex. Sess. 1920, c. 63; Cleveland: Pub. Loc. 1921, c. 75; Columbus: Pub. Loc. 1921, c. 77, s. 6; c. 350, s. 6; Craven: Pub. Loc. 1921, c. 461, s. 3; 1941, c. 68; Cumberland: Pub. Loc. 1927, c. 172, s. 1; Pub. Loc. 1931, c. 523; Davidson: Pub. Loc. 1921, c. 421, s. 2; Davie: Pub. Loc. 1921, c. 84, s. 9; Durham: Pub. Loc. 1921, c. 46, s. 4; Forsyth: Pub. Loc. 1921, c. 69, s. 1; Franklin: Pub. Loc. 1921, c. 45; Gates: Pub. Loc. 1927, c. 177; Pub. Loc. 1933, c. 237, s. 3; Graham: Pub. Loc. 1921, c. 453; Pub. Loc. 1927, c. 475; Pub. Loc. 1931, c. 28, s. 3; Halifax: Pub. Loc. 1921, c. 519, s. 1; Henderson: Pub. Loc. 1921, c. 189, s. 1; Pub. Loc. 1927, c. 528; Lee: Pub. Loc. Ex. Sess. 1920, c. 164; Lincoln: Pub. Loc. 1921, c. 122, s. 1; Macon: Pub. Loc. 1921, c. 145; Madison: Pub. Loc. 1921, c. 151, s. 2; Martin: Pub. Loc. Ex. Sess. 1921, c. 250; Pub. Loc. 1927, c. 415; Mitchell: Pub. Loc.

1927, c. 516; Pub. Loc. 1935, c. 93; Montgomery: 1937, c. 137; New Hanover: Pub. Loc. 1921, cc. 95, 442; Pub. Loc. 1927, c. 390; Northampton: 1931, c. 11, s. 2; Pasquotank: Pub. Loc. 1921, c. 320, s. 2; Pub. Loc. 1927, c. 518; Perquimans: Pub. Loc. 1921, c. 152; Person: Pub. Loc. 1921, c. 577; Pitt: Pub. Loc. 1927, c. 255; c. 597, s. 2; Polk: 1925, c. 44; Robeson: Pub. Loc. 1921, c. 37; Rockingham: Pub. Loc. Ex. Sess. 1921, c. 108; Rutherford: Pub. Loc. 1921, c. 443, s. 4; Stokes: Pub. Loc. 1921, c. 285, s. 7; Pub. Loc. 1927, c. 569, s. 2; Swain: Pub. Loc. 1921, c. 422; Transylvania: Pub. Loc. 1933, c. 386, s. 10; Union: Pub. Loc. 1921, c. 75; Wake: Pub. Loc. 1921, c. 190; Warren: Pub. Loc. 1921, c. 294, s. 2; Wayne: Pub. Loc. 1939, c. 118; Wilkes: Pub. Loc. 1927, cc. 406, 547.

§ 161-11. Fees for issuing certificates of encumbrances.—The fee charged by the register of deeds for preparing and issuing a certificate of encumbrance as required for federal chattel mortgages and/or crop liens shall be limited to fifty (50c) cents for each such certificate. (1933, c. 437.)

Art. 2. The Duties.

§ 161-12. Apply to clerk for instruments for registration.—The register of deeds shall at least once a week apply to the clerk of the superior court of his county for all instruments of writing admitted to probate, and then remaining in the office of such clerk for registration, and also for all fees for registration due thereon; which fees the clerk of the superior court shall receive for the register. (Rev., s. 2655; Code, s. 3652; 1868, c. 35, s. 7; C. S. 3551.)

§ 161-13. Failure of clerk to deliver papers.—In case the clerk fails to deliver such instruments of writing, and pay over such fees as are prescribed in § 161-12, on application of the register, the clerk shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the superior court, on motion in behalf of the register, on a notice of ten days thereof to the clerk. (Rev., s. 2656; Code, s. 3653; 1868, c. 35, s. 8; C. S. 3552.)

§ 161-14. Registration of instruments.—The register of deeds shall register all instruments in writing delivered to him for registration forthwith. He shall indorse on each instrument in writing the day and hour on which it is presented to him for registration, and such indorsement shall be entered on his books and form a part of the registration, and he shall, immediately upon making the indorsement herein required upon each instrument in writing, index and cross-index the same in the order of time in which such instruments are presented to him: Provided, that the register of deeds may, if in his opinion it is proper to do so, prepare and use in lieu of his permanent index a temporary index until the instrument is actually recorded, upon which all instruments shall be indexed immediately upon receipt of same into his office, and until said instruments shall have been recorded the temporary index shall operate in all respects as the permanent index. In the event the register of deeds shall use a temporary index, however, all instruments shall be recorded and cross-indexed on the permanent index within thirty (30) days from date of receipt of same. (Rev., s. 2658; Code, s. 3654; R. C., c. 37, s. 23; 1868, c. 35, s. 9; 1921, c. 114; C. S. 3553.)

§ 161-15. Certify and register copies.—When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall indorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered, and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose. (Rev., s. 2657; 1899, c. 302; C. S. 3554.)

§ 161-16. Liability for failure to register.—In case of his failure to register any deed or other instrument within the time and in the manner required by § 161-15, the register shall be liable, in an action on his official bond, to the party injured by such delay. (Rev., s. 2659; Code, s. 3660; 1868, c. 35, s. 10; C. S. 3555.)

§ 161-17. Papers filed alphabetically.—The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same. (Rev., s. 2660; Code, s. 3661; 1868, c. 35, s. 11; C. S. 3556.)

§ 161-18. Transcribe and index books.—The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board shall be public records as the original books, and copies therefrom may be certified accordingly. (Rev., s. 2661; Code, s. 3662; 1868, c. 35, s. 12; C. S. 3557.)

§ 161-19. Number of survey in grants registered.—The register of deeds in each county in this state, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey. (Rev., s. 2662; 1889, c. 522, s. 2; C. S. 3558.)

§ 161-20. Certificate of survey registered.—It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all indorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant. (Rev., s. 2663; 1905, c. 243; C. S. 3559.)

§ 161-21. General index kept.—The board of county commissioners, at the expense of the county, shall cause to be made and consolidated into one book a general index of all the deeds

and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation. The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the appropriate family name and the appropriate alphabetical sub-division of said family name, according to the particular system in use. (Rev. s. 2664; Code, s. 3663; 1868, c. 35, s. 13; 1929, c. 327, s. 1; C. S. 3560.)

§ 161-22. Index and cross-index of registered instruments.—The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having sub-divisions of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct sub-division of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances; Provided, further, that it shall be the duty of the register of deeds of each county, in which there is a separate index for conveyances of personal property and for those of real estate, to double index every such conveyance, provided that such conveyance shall contain both species of property. A violation of this section shall constitute a misdemeanor. (Rev. ss. 2665, 3600; Code, s. 3664; 1899, c. 501; 1876-7, c. 93, s. 1; 1929, c. 327, s. 2; C. S. 3561.)

§ 161-23. Clerk to board of commissioners.—The register of deeds is ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of the said board. (Rev., s. 2666; Code, s. 3656; 1868, c. 35, s. 15; Const., Art. VII, s. 2; C. S. 3562.)

§ 161-24. Notices to certain officers served by mail.—The register of deeds shall serve by mail all notices issued by the board of county commissioners to justices of the peace and school committeemen, in lieu of the service by the sheriff, and shall receive as his compensation his actual expenses for mailing, and nothing more. (Rev., s. 2667; Code, s. 3657; 1879, c. 328, ss. 1, 3; C. S. 3563.)

§ 161-25. Keep list of statutes authorizing special tax.—The register of deeds in each county, or the auditor in those counties having county auditors, must keep on file and subject to inspection by the public a list of the statutes authorizing a special tax levy in their respective counties, showing the year in which such special tax levy was authorized by the general assembly of North Carolina and the chapter of the public laws containing the authority for such special levy. Upon payment of a fee of one dollar the register of deeds or county auditor shall furnish to any one making application therefor a certified copy of said list of statutes. (1917, c. 182; C. S. 3565.)

§ 161-26. Duties unperformed at expiration of term.—Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby. (Rev., s. 2669; Code, s. 3655; 1868, c. 35, s. 14; C. S. 3566.)

§ 161-27. Register of deeds failing to discharge duties; penalty.—If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office. (Rev., s. 3599; Code, s. 3659; 1868, c. 35, s. 18; C. S. 3567.)

Chapter 162. Sheriff.

Art. 1. The Office.

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Art. 1. The Office.

§ 162-1. Election and term of office.—In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold his office for four years. (Rev., s. 2808; Const., Art. IV, s. 24; C. S. 3925.)

§ 162-2. Disqualifications for the office.—No person shall be eligible to the office of sheriff who is not of the age of twenty-one years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the general assembly, or practicing attorney, or who theretofore has been sheriff of such county and has failed to settle with and fully pay up to every officer the taxes which were due from him. (Rev., s. 2809; Code, ss. 2067, 2068, 2069; R. C., c. 105, ss. 5, 6, 7; 1777, c. 118, ss. 2, 4; 1806, c. 699, s. 2; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; C. S. 3926.)

§ 162-3. Sheriff may resign.—Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff. (Rev., s. 2810; Code, s. 2077; R. C., c. 105, s. 15; 1777, c. 118, s. 1; 1808, c. 752; C. S. 3927.)

§ 162-4. Removal for misdemeanor in office.—If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office. (Rev., s. 2811; Code, s. 2071; R. C., c. 105, s. 11; R. S., c. 109, s. 11; 1829, c. 5, s. 8; C. S. 3928.)

§ 162-5. Vacancy filled; duties performed by coroner.—If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled. (Rev., s. 2811; Code, s. 2071; R. C., c. 105, s. 11; R. S., c. 109, s. 11; 1829, c. 5, s. 8; C. S. 3929.)

§ 162-6. Fees of sheriff.—Sheriffs shall be allowed the following fees and expenses, and no other, namely:

Executing summons or any other writ or notice, sixty cents; but the board of county commissioners may fix a less sum than sixty cents, but not less than thirty cents, for the service of each road order.

Arrest of a defendant in a civil action and taking bail, including attendance to justify, and all services connected therewith, one dollar.

Arrest of a person indicted, including all services connected with the taking and justification of bail, two dollars.

Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents.

Executing subpoena on a witness, thirty cents.

Conveying a prisoner to jail to another county, five cents per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, one dollar.

In claim and delivery for serving the original papers in each case, sixty cents, and for taking the property claimed, one dollar, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, two dollars per day and actual necessary expenses; also one dollar a day and actual necessary expenses for each guard, not to exceed one

guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the board of commissioners of the county in which the criminal proceedings were instituted.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison and grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commissions for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, fifteen cents.

Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, fifty cents.

The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on the special venire.

For serving any writ or other process with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and five cents per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs.

For levying an attachment, one dollar.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, one dollar; and for attendance, to qualify commissioners for any other purpose, seventy-five cents.

Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser.

Service of writ of ejectment, one dollar.

For every execution, either in civil or criminal cases, fifty cents.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service not only the fees allowed by law, but a further compensation of five cents for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled. Provided, that when the summons in a civil action or special proceedings shall be from any court of any county other than his own county, the sheriff's fees for serving the same shall be one dollar ($1) for each defendant named therein; and such service shall include the delivery of copy of said summons and complaint or petition attached to the original summons; and that for subpoenas served from other than the county of said sheriff he shall receive a fee of fifty cents (50c.) for each witness named therein.

The preceding sentence shall not affect fees provided in § 162-7 for service upon the waters of the counties of Carteret, Dare, Hyde, and Pamlico. For the service of summons together with a copy of the complaint, petition or other pleading, the sheriff shall have the fees now prescribed by law in the respective counties for the service of summons only, and shall not be entitled to an additional fee for serving the copy of the pleading unless it is necessary that it be served separately. (Rev., s. 2777; Code, ss. 931, 2089, 2090, 2135, 3752; 1885, c. 262; 1891, cc. 112, 143; 1903, c. 541; 1901, c. 64; R. C., c. 102, s. 21; R. C., c. 31, s. 56; 1822, c. 1132; 1924, c. 101; 1925, c. 275, s. 6; 1929, c. 227; 1933, c. 132; 1939, c. 138, s. 2; C. S. 3908.)

§ 162-7. Local modifications as to fees of sheriffs.—The sheriff of Hyde county shall be allowed the sum of two dollars for serving all warrants or capiases or other criminal processes on the waters of Pamlico sound or on the waters of any bay in Hyde county. Whenever such sheriff is compelled to go by boat or vessel a distance of more than two miles from any shore or landing in Hyde and of Dare county to serve any civil process upon the waters of Pamlico sound and waters of Dare county or any bay in Hyde county, such sheriff, in addition to the fee prescribed by law for serving such process, may add the expense of hiring such boat or vessel, which cost or expense shall be taxed by the clerk of the superior court of the county from which such process issued in the bill of costs in the action in which such process issued. Sheriffs and constables of Hyde and Carteret counties shall receive three dollars for every process executed on board of any boat or vessel lying in the waters between Ocracoke island, Hyde county, and Portsmouth in Carteret county. (Rev., s. 2777; 1907, c. 206; C. S. 3909.)

The sheriff of Dare county shall be allowed his actual traveling expenses incurred by him in serving warrants, capiases or other criminal process on the waters of Dare county or at any point in Dare county across the water. (1909, c. 527; C. S. 3909.)

For every illicit distillery seized as required by law the sheriffs of Haywood, Lincoln, Pitt and Transylvania counties shall receive the sum of twenty dollars, and in Madison county thirty dollars, which shall be allowed by the commissioners of the county in which the seizure was made. (Ex. Sess. 1908, c. 97; P. L. 1919, c. 30; C. S. 3909.)

For each person summoned on a special venire the sheriff of Robeson county shall receive thirty cents; but not for a special venire ordered to be summoned from the bystanders, in which case he shall receive ten cents for each person so summoned. (1909, c. 317; C. S. 3909.)

The sheriff of Wayne county shall receive the following fees, in addition to other fees allowed by law, for services of the following processes:

For arrest fee for state warrant	$ 2.00
For arrest fees for capias	2.00
Fees for claim and delivery	3.00
Fees for ejectment proceedings	2.00
Fees for service of executions on civil judgments	2.00

(1937, c. 254.)

The sheriff of Greene County shall be allowed the following fees, viz.:

Arrest of a defendant in a civil action and taking bail including attendance to justify, and all services connected therewith, two dollars ($2).

Arrest of any person indicted including all services connected with taking of bail, two dollars ($2).

Taking any bond or undertaking, including furnishing the blanks, seventy-five cents (75c).

Executing a subpoena on a witness, fifty cents, when not traveling less than one mile to do so.

Levying an attachment, two dollars ($2).

Service of writ ejectment, two dollars ($2).

Serving claim, and delivery process, two dollars ($2).

Advertising sale of property under execution at each place required thirty-three and one-third cents (33 1/3c). (P. L. 1919, c. 313; C. S. 3909.)

The Sheriff of Northampton County shall collect for the use of Northampton County the following fees:

Serving civil summons, one dollar for each defendant;

Subpoena, for each person, thirty cents;

For each arrest, two dollars. (1931, c. 11, s. 4.)

The board of county commissioners of Mitchell County shall make provision in the county budget for the fiscal year beginning July first, one thousand nine hundred thirty-two, for the payment of the salary of the Sheriff, which is hereby fixed at the rate of three thousand ($3,000) dollars per annum payable in equal monthly installments and shall also make provision in said budget for the payment to the sheriff at the same rate per annum for such time as he has served as sheriff since the first Monday of December, one thousand nine hundred thirty.

In addition to the salary, as hereinabove provided, the sheriff of Mitchell County shall be entitled to all fees and emoluments accruing to him, by virtue of his office, including such fees as are provided in chapter fifty-six, Public Laws of one thousand nine hundred twenty-nine. (1931, c. 53, ss. 6, 8.)

The Sheriff of Harnett County shall be allowed the following fees:

For an arrest, one dollar, with fifty cents additional for taking bond.

For the service of summons, with or without complaint attached, or for the service of notices, execution, or other Court orders, a fee of one dollar each for the first five persons upon whom the process is served; and fifty cents for each additional person.

For the service of claim and delivery process, two dollars for the first defendant, and one dollar each for additional defendant; also actual expenses of caring for property seized.

For the collection of judgments, five per cent on the first five hundred dollars, and two and one-half per cent upon all amounts in excess of five hundred dollars.

In allotting homesteads, a fee of fifty cents for each appraiser and one dollar to the sheriff for his return, and an additional allowance of one dollar each for the use and benefit of each appraiser.

Guardhouse fees shall be sixty cents.

There shall be taxed in each bill of costs for the use and benefit of the Sheriff of Harnett County in all cases wherein defendants have been convicted or pleaded guilty to the charge of manufacturing whiskey or possession of any whiskey still, the sum of $10.00 for each still captured by the Sheriff or his Deputies and for which such defendant or defendants may have been found guilty or pleaded guilty of possessing.

The Sheriff of Harnett County shall receive for his services all such fees as are now allowed by law and not herein specifically enumerated. (1933, c. 75, s. 1.)

Art. 2. Sheriff's Bonds.

§ 162-8. Sheriff to execute three bonds.—The sheriff shall execute three several bonds, payable to the state of North Carolina, as follows:

One conditioned for the collection and settlement of state taxes according to law, a sum not exceeding the amount of the taxes assessed upon the county for state purposes in the previous year.

One conditioned for the collection and settlement of county and other local taxes according to law, a sum not exceeding the amount of such county and other local taxes for the previous year.

The third bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars, in the discretion of the board of county commissioners, and shall be conditioned as follows:

The condition of the above obligation is such that, whereas the above bounden ..... is elected and appointed sheriff of ..... County; if, therefore, he shall well and truly execute and due return make of all process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person to whom the same shall be due, his executors, administrators, attorneys, or agents; and in all other things well and truly and faithfully execute the said office of sheriff during his continuance therein, then the above obligation to be void; otherwise to remain in full force and effect. (Rev., s. 298; Code, s. 2073; R. C., c. 105, s. 13; 1777, c. 118, s. 1; 1823, c. 1223; 1879, c. 109; 1895, c. 270, ss. 1, 2; 1899, c. 207, s. 2; 1903, c. 12; 1899, c. 54, s. 52; C. S. 3930.)

§ 162-9. County commissioners to take and approve bonds.—The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safekeeping. The bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or reënter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected. (Rev., s. 2812; Code, ss. 2066, 2068; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; R. C., c. 105, s. 6; 1806, c. 699, s. 2; 1830, c. 5, s. 5; C. S. 3931.)

§ 162-10. Duty of commissioners when bonds insufficient.—It shall be the duty of the board of county commissioners whenever they shall be of opinion that the bonds of the sheriff of their county are insufficient, to notify the sheriff in writing to appear within ten days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bonds, or to justify his bonds, it shall be the duty of the board to elect forthwith some suitable person in the county as sheriff for the unexpired term, who shall give proper and lawful bonds and be subject to like obligations and penalties. (Rev., s. 2813; Code, s. 2074; 1879, c. 109, s. 2; C. S. 3932.)

§ 162-11. Liability of commissioners.—If any board of county commissioners shall fail to comply in good faith with the provisions of this article, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. (Rev., s. 2814; Code, s. 2075; 1868-9, c. 245, s. 3; C. S. 3933.)

§ 162-12. Liability of sureties.—The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty. (Rev., s. 2815; Code, s. 2076; R. C., c. 105, s. 14; 1829, c. 33; C. S. 3934.)

Art. 3. Duties of Sheriff.

§ 162-13. To receipt for process.—Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (Rev., s. 2816; Code, s. 2081; R. C., c. 105, s. 18; 1848, c. 97; C. S. 3935.)

§ 162-14. Execute process; penalty for false return.—Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding term after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages.

Every sheriff and his deputies, and every constable, shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting one hundred dollars for each neglect or refusal, where such process shall be delivered to him ten days before the return day thereof, to be paid to the party aggrieved by order of such court, upon motion and proof of such delivery, unless the sheriff or constable can show sufficient cause to the court at a day within three months from the date of the entry of the judgment nisi, of which the officer shall be duly notified. (Rev., s. 2817; Code, s. 2079; 1899, c. 25; R. C., c. 105, s. 17; 1777, c. 218, s. 5; 1821, c. 1110; 1874, c. 33; C. S. 3936.)

§ 162-15. Sufficient notice in case of amercement.—In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court. (Rev., s. 2818; Code, s. 446; 1871-2, c. 74, s. 4; C. S. 3937.)

§ 162-16. Execute summons, order or judgment.—Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law. (Rev., s. 2819; Code, s. 598; C. C. P., s. 354; C. S. 3938.)

§ 162-17. Liability of outgoing sheriff for unexecuted process.—Any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the

same shall have been thereafter executed by the successor of such sheriff and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties. (Rev., s. 2820; Code, s. 2088; R. C., c. 105, s. 25; C. S. 3939.)

§ 162-18. Payment of money collected on execution.—In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars, to be collected as other penalties. (Rev., s. 2821; Code, s. 2080; C. S. 3940.)

§ 162-19. Deposit county tax money with treasurer.—Every sheriff shall deposit the county and other local taxes, by him collected, with the county treasurer, if there be a county treasurer, as often as he shall collect or have in his possession at any one time of such county or local taxes a sum equal to five hundred dollars. (Rev., s. 298; Code, s. 2073; C. S. 3941.)

§ 162-20. Publish list of delinquent taxpayers.—Whenever any sheriff or tax collector shall be credited on settlement with any tax or taxes by him returned as insolvent, dead or removed, he shall forthwith make publication at the courthouse door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county. Any sheriff or tax collector failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than one hundred dollars. (Rev., ss. 2826, 3587; Code, s. 2092; 1876-7, c. 78, ss. 1, 2, 3; C. S. 3942.)

§ 162-21. Liability for escape under civil process.—When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment, for not performing a judgment for the payment of any sum of money, and shall willfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the execution or attachment, and damages for detaining the same. (Rev., s. 2823; Code, s. 2083; R. C., c. 105, s. 20; 13 Edw. I, c. 11; 1777, c. 118, ss. 10, 11; C. S. 3943.)

§ 162-22. Custody of jail.—The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof. (Rev., s. 2824; Code, s. 2085; R. C., c. 105, s. 22; C. S. 3944.)

§ 162-23. Prevent entering jail for lynching; county liable.—When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this state. (Rev., s. 2825; 1893, c. 461, s. 7; C. S. 3945.)

§ 162-24. Not to farm office.—No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one-half to the use of the county and the other half to the person suing for the same. (Rev., s. 2828; Code, s. 2084; R. C., c. 105, s. 21; 23 Hen. VI, c. 10; C. S. 3946.)

§ 162-25. Obligation taken by sheriff, payable to himself. — The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case and other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services and the allowance given and provided by law. (Rev., s. 2829; Code, s. 2082; R. C., c. 105, s. 19; 1777, c. 118, s. 8; C. S. 3947.)

Division XVIII. Elections and Election Laws.

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SUBCHAPTER I. GENERAL ELECTIONS.

Art. 1. Political Parties.

§ 163-1. Political party defined; creation of new party.—A political party within the meaning of the election laws of this state shall be any group of voters which, at the last preceding general state election, polled for its candidate for governor, or for presidential electors, in the state at least three per cent of the entire vote cast therein for governor, or for presidential electors; or any group of voters which shall have filed with the state board of elections, at least ninety days before a general state election, a petition signed by ten thousand qualified voters, declaring their intention of organizing a state political party, the name of which shall be stated in the petition together with the name and address of the state chairman thereof, and also declaring their intention of participating in the next succeeding election. No such group of electors shall assume a name or designation which shall be so similar, in the opinion of the state board of elections, to that of an existing political party, as to confuse or mislead the voters at an election. When any new political party has qualified for participation in an election as herein required, and has furnished to the state board of elections the names of such of its nominees as is desired to be printed on the official ballots by the first day of September prior to the election, it shall be the duty of the state board of elections to cause to be printed on the official ballots furnished by it to the counties the names of such nominees. When any political party fails to cast three per cent of the total vote cast at an election for governor, or for presidential electors, it shall cease to be a political party within the meaning of this chapter. (Rev., s. 4292; 1901, c. 89, s. 85; 1933, c. 165, s. 1; C. S. 5913.)

Art. 2. Time of Elections.

§ 163-2. For state officers.—On Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred and four, and every four years thereafter, an election shall be held in the several election precincts in each county for the following officers: Governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, and other state officers whose terms last for four years, and at said time and every two years thereafter, elections shall be held in the several election precincts in each county for other state officers whose election is not otherwise provided for by law. (Rev., s. 4293; 1901, c. 89, s. 3; C. S. 5914.)

§ 163-3. For presidential electors. — On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand nine hundred and eight, and every four years thereafter, or on such days as the congress of the United States shall have directed, a poll shall be opened in each of the precincts of the state for the election of electors of president and vice president of the United States, the number of whom is to be equal to the number of senators and representatives in congress to which this state may be entitled, and the persons shall be electors for the state as aforesaid, and the voting place in each ward or precinct shall be the same as in elections for members of the general assembly, unless changed by the county board of elections. (Rev., s. 4294; 1901, c. 89, s. 77; C. S. 5915.)

§ 163-4. For congressmen, legislators, county officers, and solicitors.—On the Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred six, and every two years thereafter, an election shall be held in the several election precincts in each county for members of the House of Representatives of the Congress of the United States in the several districts, and members of the General Assembly for their respective counties and districts. At the same time and in the same manner as members of the General Assembly are elected, subject to whether the term is for two years or four as by law provided, an election shall be held in each county for a Clerk of the Superior Court, register of deeds, sheriff, coroner, county surveyor, county commissioners, where the county commissioners are elected by the people, and in such counties as have one, a county treasurer, and other officers; and at such times an election shall be held in the several judicial districts for the office of solicitor. (Rev., s. 4296; 1901, c. 89, s. 1; 1935, c. 362; Const. Art. IV, s. 24.)

§ 163-5. For township offices. — On the first Tuesday after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every two years thereafter, an election shall be held in each township for the office of constable, and also for justices of the peace in such counties as elect them by a vote of the people, and all other officers elected by a vote of

the township. (Rev., s. 4297; 1901, c. 89, s. 2; C. S. 5918.)

§ 163-6. Special election for members of general assembly.—When a vacancy occurs in the general assembly by death, resignation, or otherwise, it shall be the duty of the chairman of the county board of elections, or of the sheriff of the county in which the late member resided, provided the general assembly shall not be in session, to notify the governor of such vacancy, and in case the general assembly shall be in session when such vacancy occurs, it shall be the duty of the presiding officer in the house in which the vacancy occurs to notify the governor of the same, who shall thereupon issue a writ of election to the chairman or chairmen of the district or county represented by the late member, said election to be held at such time as the governor may designate, and in such manner as may be prescribed by law. (Rev., s. 4298; 1901, c. 89, s. 74; C. S. 5919.)

§ 163-7. For vacancies in state offices.—Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following offices, to wit, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, solicitor, justices of the supreme court, judges of the superior court, or any other state officer elected by the people, the same shall be filled by elections, to be held in the manner and places and under the same regulations and rules as prescribed for general elections, at the next regular election for members of the general assembly which shall occur more than thirty days after such vacancy, except as otherwise provided for in the constitution. (Rev., s. 4299; 1901, c. 89, ss. 4, 73; C. S. 5920.)

Art. 3. State Board of Elections.

§ 163-8. State board of elections; appointment; term of office.—There shall be a state board of elections, consisting of five electors, whose terms of office shall begin on the first day of January, nineteen hundred and thirty-four, and continue for four years and until their successors are appointed and qualified. The governor shall appoint the members of this board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of said board shall be of the same political party. (Rev., s. 4300; 1901, c. 89, s. 5; 1933, c. 165, s. 1; C. S. 5921.)

§ 163-9. Meetings of board; vacancies; pay.—The state board of elections shall meet in Raleigh whenever the chairman of said board shall call such meetings as may be necessary to discharge the duties and functions imposed upon said board by this chapter at such times and places as he may appoint. At the first meeting held after the appointment of members for a new term, the members shall take the oath of office and the board shall then organize by electing one of its members chairman and another secretary of said board.

The chairman of the state board of elections shall call a meeting of the board upon the application in writing of any two members thereof, or if there be no chairman, or if the chairman does not call such meeting, any three members of said board shall have power to call a meeting of the board and any duties imposed or power conferred by this chapter may be performed or exercised at such meeting, although the time for performing or exercising the same prescribed by this chapter may have expired; and if at any meeting any member of said board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day, for not more than three days, at the end of which time, if there should be no quorum, the governor may remove the members so failing to attend summarily and appoint their successors.

Any vacancy occurring in the said board shall be filled by the governor, and the person so appointed shall fill the unexpired term.

The members of the board shall receive in full compensation for their services four dollars per day for the time they are actually engaged in the discharge of their duties, together with their actual traveling expenses, and such other expenses as are necessary and incidental to the discharge of the duties imposed by this chapter. (Rev., ss. 2760, 4301; 1901, c. 89, s. 7; 1933, c. 165, s. 1; C. S. 5922.)

§ 163-10. Duties of the state board of elections.—It shall be the duty of the state board of elections:

1. To appoint, in the manner provided by law, all members of the county boards of elections, and to advise such members of such boards as to the proper methods of conducting primaries and elections.

2. To prepare rules, regulations and instructions for the conduct of primaries and elections.

3. To publish and furnish to the county boards of elections and other election officials, from time to time, a sufficient number of indexed copies of all election laws then in force.

4. To publish, issue and distribute such explanatory pamphlets as in the opinion of the board should be issued to the electorate.

5. To furnish to the county boards of elections such registration and poll books, cards, blanks, instructions and forms as may be necessary for the registration of voters and holding elections in the respective counties.

6. To determine, in the manner provided by law, the forms of ballots, the forms of all blanks, instructions, poll books, tally sheets, abstract and return forms, and certificates of elections to be used in primaries and elections.

7. To prepare, print and distribute to the county boards of elections all ballots for use in any primary or election held in the state which the law provides shall be printed and furnished by the state to the counties, and to instruct the county boards of elections as to the printing of their county and local ballots.

8. To certify to the several county boards of elections the names of such candidates for district offices who are required to file notice of candidacy with the state board of elections, but whose names are required to be printed on the county ballots.

9. To require such reports from the several county boards and election officers as are provided by law, or as may be deemed necessary.

10. To compel the observance, by election officers in the counties, of the requirements of the

election laws, and the state board of elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws pertaining to their duties thereunder. And the state board of elections shall have power to remove any member of a county board of elections for neglect or failure in his duties and to appoint a successor.

11. To investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and to report violations of the election laws to the attorney general or solicitor of the district for further investigation and prosecution.

12. To tabulate the primary and election returns and to declare the results of same, and to prepare abstracts of the votes cast in each county in the state for such offices as is provided by law shall be tabulated by the state board of elections.

13. To keep a minute book showing a record of all proceedings and findings at each meeting of the state board of elections, which book shall be kept in the office of the state board of elections.

14. To make such recommendations to the governor and legislature relative to the conduct and administration of the primaries and the elections in the state as it may deem advisable.

15. To have the general supervision over the primaries and elections in the state and it shall have the authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable: Provided same shall not conflict with any provisions of the law.

In the performance of these enumerated duties, the chairman of the state board of elections shall have the power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records and other evidence; and to fix the time and place for hearing any matter relating to the administration and the enforcement of the election laws: Provided, however, the place of hearing shall be had in the county where the irregularities are alleged to have been committed. (Rev., s. 4302; 1901, c. 89, s. 7; 1933, c. 165, s. 1; C. S. 5923.)

Art. 4. County Board of Elections.

§ 163-11. County boards of elections; appointments; term of office and qualifications.—There shall be in every county in the state a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the state board of elections on the tenth Saturday preceding each primary election, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party, and the state chairman of each political party shall have the right to recommend three electors in each county for such offices, and it shall be the duty of the state board of elections to appoint said county board from the names thus recommended: Provided, that said chairman shall recommend such persons on or before the tenth Saturday before a primary election is to be held.

No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office in the primary or election. (Rev., s. 4303; 1901, c. 89, s. 6; 1933, c. 165, s. 2; C. S. 5924.)

§ 163-12. Meetings of county elections boards; vacancies; pay.—The county board of elections in each county in the state shall meet in their respective counties at the courthouse at noon on the seventh Saturday before each primary election, and a majority being present, they shall take the oath of office and shall then organize by electing one of its members chairman and another member secretary, and it may meet at such other times and places as the chairman of said board, or any two members thereof may direct, for the performance of such duties as required by law.

Vacancies in the membership of the county boards of elections shall be filled by the state board of elections and the persons so appointed shall fill the unexpired term.

The members of the county board of elections shall receive in full compensation for their services three dollars per day for the time they are actually engaged in the discharge of their duties, together with such other expenses as are necessary and incidental to the discharge of their duties. Provided, that the chairman of a county board of elections shall receive for his services, when actually engaged in the discharge of his duties, the sum of five dollars ($5.00) per day. (Rev., s. 4304; 1901, c. 89, s. 11; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; C. S. 5925.)

Local Modification.—Currituck, Hyde, Iredell and Nash: 1941, c. 305, s. 2.

§ 163-13. Removal of member of county board of elections.—The state board of elections shall have the power to remove from office any member of the county board of elections for incompetency, failure of duty, fraud, or for any other satisfactory cause. When any member of the county board shall be removed by the state board, the vacancy occurring shall be filled by the state board of elections; a vacancy occurring in the county board of elections for any other cause than removal by the state board of elections may be filled by either the board or by the chairman of the state board of elections, but the person so appointed shall be of the same political party as his predecessor. (Rev., s. 4305; 1901, c. 89, s. 11; 1913, c. 138; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, s. 2; C. S. 5926.)

§ 163-14. Duties of county boards of elections.—The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this chapter, and shall perform all the duties imposed by law which shall include the following:

1. To establish, define, provide, rearrange and combine election precincts.

2. To fix and provide the places for registration, when required, and for holding primaries and elections.

3. To provide for the purchase, preservation and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers and equipment as may be used in registration, nominations and elections.

4. To appoint and remove its clerk, assistant

clerks, and employees, and all registrars, judges, clerks and other officers of elections, and to fill vacancies, and to designate the ward or district and precinct in which each shall serve.

5. To make and issue such rules, regulations and instructions, not inconsistent with law, or the rules established by the state board of elections as they may deem necessary for the guidance of election officers and voters.

6. To advertise and contract for the printing of ballots, and other supplies used in registrations and elections.

7. To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

8. To provide for the delivery of ballots, poll books and other required papers and materials to the polling places.

9. To cause the polling places to be suitably provided with stalls and other supplies required by law.

10. To investigate irregularities, non-performance of duties, or violations of laws by election officers and other persons; to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney.

11. To review, examine and certify the sufficiency and validity of petitions and nomination papers.

12. To receive the returns of primaries and elections, canvass the returns, make abstracts thereof and transmit such abstracts to the proper authorities provided by law.

13. To issue certificates of election to county officers and members of the general assembly, except state senators in districts composed of more than one county.

14. To keep minute book of proceedings of board.

15. To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

16. To perform such other duties as may be prescribed by law or the rules of the state board of elections. (Rev., s. 4306; 1901, c. 89, s. 11; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; C. S. 5927.)

Art. 5. Precinct Election Officers and Election Precincts.

§ 163-15. Appointment of registrars and judges of elections; qualifications.—The county boards of elections, at the first meeting herein provided to be held on the seventh Saturday before each primary election, shall select one person of good repute who shall act as registrar and two other persons of good repute who shall act as judges of election for each election precinct in the respective counties for both the ensuing primary and general election, whose terms of office shall continue for two years from the time of their appointment, or until their successors are appointed and qualified, and who shall conduct the primaries and elections within their respective precincts. Each registrar and judge of election so appointed shall be able to read and write and they shall be residents of the precincts for which they are appointed. The chairman of each political party in each county shall have the right to recommend from three to five electors in each precinct, who are residents of the precinct, and who shall be of good moral character and able to read and write, for appointment as registrar and for judges of election in each precinct, and such appointments may be made from such names so recommended: Provided, such recommendations are made by the seventh Saturday before each primary election: Provided, further, that in any primary, when only one political party participates in such primary then all of the precinct officials selected for holding such primary shall be chosen only from such political party so participating. In a primary, where more than one political party participates, and in the general election, not more than one judge of election in each precinct shall be of the same political party with that of the registrar. The county boards of elections shall also have the right to appoint assistants for such precincts where there are more than three hundred registered voters when deemed advisable. No person holding any office or place of trust or profit under the government of the United States, or of the state of North Carolina, or any political sub-division thereof, except justices of the peace, shall be eligible to appointment as an election official. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant.

The registrars, judges and assistants shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. (Rev., s. 4307; 1901, c. 89, s. 8; 1933, c. 165, s. 3; C. S. 5928.)

Local Modification.—Durham: 1937, c. 299.

§ 163-16. Names of precinct officers published by board.—The county board of elections shall, immediately after the appointment of the registrars and judges of elections as herein provided, publish the names of the persons so appointed, at the courthouse door of said county, and shall notify each person appointed of his or her appointment, either by letter or by having a notice to be served upon said persons by the sheriff. (Rev., s. 4308; 1901, c. 89, s. 16; 1923, c. 111, s. 2; 1933, c. 165, s. 3; C. S. 5929.)

§ 163-17. Vacancies in precinct offices; how filled.—If any registrar or judge of election shall fail to perform the duties of his office, and for that, or for any other cause be removed from office, or shall die or resign, or if there shall for any other cause be a vacancy in said office, the chairman of the county board of elections may appoint another in his place, of the same political party, and have such person or persons notified of the appointment. If any person appointed judge of election shall fail to attend at the polls at the hour of opening the same, the registrar of the township, ward or precinct shall appoint some suitable elector of the same political party as the judge failing to attend, if practicable, to act in his stead, who shall be by him sworn before acting. If the registrar shall fail to appear at the polls, then the judges of election may appoint another to act as registrar, who shall also be sworn before acting. (Rev., s. 4309; 1901, c. 89, s. 9; 1933, c. 165, s. 3; C. S. 5930.)

§ 163-18. Removal of precinct officers; reasons for.—The county board of elections shall have

power to remove any registrar or judge of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud or for any other satisfactory cause. (Rev., s. 4310; 1901, c. 89, s. 10; 1933, c. 165, s. 3; C. S. 5931.)

§ 163-19. Compensation for certain duties relating to elections.—The registrar shall receive three cents for each name registered in the new registration when ordered, and thereafter in the revision of the registration book he shall receive one cent for each name copied from the original registration book: Provided that in addition to the compensation herein before allowed the registrar, it shall be lawful for the county commissioners to pay to the registrar such additional compensation as may be by them considered just and fair. The registrar or judge of election who shall act as returning officer shall be allowed three dollars, to be payable out of the county treasury.

Each sheriff shall receive thirty cents for each notice he is required to serve under the law provided for holding elections. The compensation allowed officers shall be paid by the county treasurer after being audited by the board of county commissioners.

Clerks and registers of deeds shall also be allowed the usual registration fees for recording the election returns, to be paid by the county. (Rev., ss. 2784, 4304; 1901, c. 89, ss. 11, 62; 1905, c. 434; 1907, c. 760; 1919, c. 61; C. S. 3917.)

§ 163-20. Compensation of precinct officers.—Judges of elections and assistants shall each receive for their services on the day of a primary or election the sum of four dollars. The registrar shall receive the sum of five dollars per day for his services on the day of a primary or election, and shall also receive the sum of five dollars per day for each Saturday during the period of registration that he attends at the polling place for the purpose of registering voters, and said registrar shall receive no other compensation whatsoever. Any person sworn in to act as registrar or judge of election shall receive the same compensation as the registrar and judge: Provided, that markers appointed for assisting voters in marking their ballots shall not receive any compensation therefor. Provided, further, that the registrars and judges of elections shall receive the same compensation for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election. (Rev., s. 4311; 1901, c. 89, s. 42; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; C. S. 5932.)

Local Modification.—Alleghany, Ashe, Watauga: 1939, c. 264; Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Mecklenburg: 1937, c. 382.

§ 163-21. Duties of registrars and judges of election.—The registrars and judges of election shall perform such duties as are provided by law, which duties shall consist of:

1. The fair and impartial conduct of the primaries and elections within their respective precincts on the day of election.

2. The enforcement of peace and good order in and about the place of registration and voting. They shall especially keep the place of access of the electors to the polling place open and unobstructed, prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult or disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election law, but such arrest shall not prevent such person from registering or voting if he is entitled so to do. The sheriff, all constables, police officers and other officers of the peace, shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws.

3. The registrar shall have in his charge the actual registration of voters within his precinct and shall attend the polling place on the days required for the registration of new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe not inconsistent with the law.

4. The registrar shall have charge of the registration book on the day of election or primary for passing on the registration of voters who present themselves at the polls for the purpose of voting.

5. One of the judges of election shall keep a poll book in which shall be entered the name of every person who shall vote in the primary or election. The poll and registration books shall be signed by the registrar and judges of election at the close of any primary or election and filed with the clerk of the superior court.

6. The registrars and judges shall hear challenges on the right of electors to vote as provided by law.

7. The registrars and judges shall count the votes cast in their precinct and make such return of same as is required by law.

8. The precinct officers shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as required by law. (Rev., s. 4312; 1901, c. 89, s. 41; 1933, c. 165, s. 3; C. S. 5933.)

§ 163-22. Election precincts established or altered.—The county boards of elections may, in their respective counties, adopt the present election precincts, or they may establish new precincts, but the election precincts and polling places as now fixed in each county shall remain as they now are until altered. In the case of the alteration of the election precincts or polling places therein, they shall give twenty days' notice thereof, prior to the beginning of the registration period, in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. And the county board of elections shall have power from time to time, after dividing their counties into election precincts, to establish, alter, discon-

tinue, or create such new election precincts in their respective counties as they may deem expedient, giving twenty days' notice thereof, prior to the beginning of registration period, by advertising in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. If any polling place is changed in any precinct, like advertisement of such change shall be given. And there shall be at least one polling place in every township, conveniently located for a majority of the voters. (Rev., s. 4313; 1913, c. 53; 1921, c. 180; 1933, c. 165, s. 3; C. S. 5934.)

§ 163-23. New registration of voters or revision of registration books; how made.—The county board of elections shall have power from time to time to order a revision of the registration book of any precinct in any township and to order a new registration for any precinct; and if and when a new registration is ordered, notice shall be given as hereinbefore provided for the alteration of an election precinct or polling place: Provided, however, when a new registration or revision is ordered as herein provided for, the names of all persons who have been registered under the absentee voters' law shall remain upon the registration books unless the said persons so registered have died or otherwise become disqualified electors. The several county boards of elections shall have power to revise the registration books of any precinct and may require them to be purged of illegal or disqualified voters, after notice to such voters as herein directed. When an order for revision is made by said county board of elections, it shall be directed to the registrar and judges of election of the precinct to which it relates, directing said officials to meet at the polling place on the first Saturday for the registration of voters, before any primary or general election, and to prepare from the registration books a list of the names of registered voters, with their names and addresses as appearing on the registration books, who are, in the opinion of said precinct officials, dead or disqualified by removal from said precinct or county for the length of time prescribed by law to be disqualified to vote in that particular precinct. When such list is prepared it shall, within forty-eight hours, be delivered to the chairman of the county board of elections, who shall cause to be mailed to each of the names on said list, at his or her address as shown on said list, a notice requiring such person to appear at the polling place for the precinct in which they are registered, on the Saturday prescribed for hearing challenges, and show that they are legally entitled to vote in that particular precinct, or in lieu of a personal appearance at the precinct on the day named for hearing challenges, such person may furnish such satisfactory evidence by mail or otherwise, that he or she is qualified to vote in said precinct. Upon failure of such person to make such personal appearance on challenge day, or upon failure of such person to offer satisfactory evidence that he or she is qualified and entitled to vote in said precinct in the approaching primary or general election, their names shall be stricken off the registration book. After due investigation, such precinct officers shall strike from the registration book the names of all such persons found by them to be dead or disqualified to vote by removal from the precinct for such time as prescribed by law shall disqualify them from voting in such precinct.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in that precinct, should appear at the polling place on election day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the registration book and he shall be allowed to vote in said precinct as before. (Rev., s. 4314; 1905, c. 510; 1909, c. 894; 1921, c. 181, s. 3; 1933, c. 165, s. 3; C. S. 5935.)

Art. 6. Qualification of Voters.

§ 163-24. Persons excluded from electoral franchise.—The following classes of persons shall not be allowed to register or vote in this state, to wit: First, persons under twenty-one years of age; second, idiots and lunatics; third, persons who have been convicted or confessed their guilt in open court, upon indictment, of any crime the punishment of which is now or may hereafter be imprisonment in the state's prison, unless such person shall have been restored to citizenship in the manner prescribed by law. (Rev., s. 4315; 1901, c. 89, s. 14; C. S. 5936.)

§ 163-25. Qualifications of electors; residence defined.—Subject to the exceptions contained in the preceding section, every person who has been naturalized, and who shall have resided in the state of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, four months next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward, or township in which he resides: Provided, that removal from one precinct, ward, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which he has removed until four months after such removal.

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

b. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.

c. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

d. The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence; except that where the husband and wife have separated and live apart, the place where he or she resides the length

of time required by the provisions of this article to entitle a person to vote, shall be considered and held to be his or her residence.

e. If a person remove to another state or county within this state, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.

f. If a person remove to another state or county within this state, with the intention of remaining there an indefinite time and making such state or county his place of residence, he shall be considered to have lost his place of residence in this state or county from which he has removed, notwithstanding, he may entertain an intention to return at some future time.

g. School teachers who remove to a county for the purpose only of teaching in the schools of that county temporarily and with the intention or expectation of returning to the county of their parents or other relatives during the vacation period to live, and who do not have the intention of becoming residents of the county in which they have moved to teach, shall be considered residents of that county of their parents or other relatives for the purpose of voting.

h. If a person remove to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this state during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence. This rule shall also apply to employees of the state government who remove from one county to another within the state, unless a contrary intention is shown by such employee.

i. If a person goes into another state or county, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this state or county.

j. All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the registrar and judges of election in the precinct where the question arose. (Rev., s. 4316; 1901, c. 89, s. 15; 19th amendt. U. S. Const.; amendt. State Const., 1920; 1920 (Ex. Sess.), c. 18, s. 1; 1933, c. 165, s. 4; C. S. 5937.)

§ 163-26. Residence of women.—For the purpose of the registration and voting of women, the residence of a married woman living with her husband shall be where her husband resides, and of a woman living separate and apart from her husband or where for any reason her husband has no legal residence in this state, then the residence of such woman shall be where she actually resides. (Ex. Sess. 1920, c. 18, s. 3; C. S. 5937(a).)

§ 163-27. Registration a prerequisite.—Only such persons as are registered shall be entitled to vote in any election held under this chapter. (Rev., s. 4317; 1901, c. 89, s. 12; C. S. 5938.)

§ 163-28. Voter must be able to read and write; exceptions.—Every person presenting himself for registration shall be able to read and write any section of the constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: Provided, however, that no male person who was, on January first, one thousand eight hundred and sixty-seven, or at any time prior thereto, entitled to vote under the laws of any state in the United States where he then resided, and no lineal descendant of such person, shall be denied the right to register and vote at any election in this state by reason of his failure to possess the educational qualification aforesaid: Provided, that said elector shall have registered prior to December 1st, 1908, in accordance with article six, section four, of the constitution and the laws made in pursuance thereto. (Rev., s. 4318; 1901, c. 89, s. 12; 1927, c. 260, s. 3; C. S. 5939.)

Art. 7. Registration of Voters.

§ 163-29. Qualification as to residence for voters; oath to be taken. — In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name, age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. If the applicant has removed from another precinct, ward or election district in the same city, town or township since his last registration, such applicant shall, before being allowed to register, present to the registrar a written certificate signed by the registrar of the precinct, ward or election district from which he has so removed, showing that the applicant's name has been removed from the registration book of such precinct, ward or election district, and that he is no longer a registered voter therein. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from whence he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of North Carolina not inconsistent therewith; that I have been a resident of the state of North Carolina for one year and of.....township (precinct or ward) for four months; or that I was a resident of..... township (ward or precinct) on the..... day of..... (being four months preceding the election) and removed therefrom to..... township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register. (Rev., s. 4319; 1901, c. 89, s. 12; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; C. S. 5940.)

§ 163-30. When person can register on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date. (Rev., s. 4322; 1901, c. 89, s. 21; C. S. 5946.)

§ 163-31. Time when registration books shall be opened and closed; oath and duty of registrar.—The registration books shall be opened for the registration of voters at nine o'clock a. m., on the fourth Saturday before each election. The said books shall be closed at sunset on the second Saturday before each election. Every registrar, before entering upon the discharge of the duties of his office, shall take an oath before a justice of the peace or some other person authorized to administer oaths, that he will support the constitution of the United States and the constitution of North Carolina not inconsistent therewith, and that he will honestly and impartially discharge his duties as registrar, and honestly and fairly conduct such election. The registrar of each township, ward or precinct shall be furnished with a registration book prepared as hereinbefore provided, and it shall be his duty, between the hours of nine o'clock a. m. and sunset on each day during the period when registration books are open, to keep open said books for the registration of any voters residing within such township, ward or precinct, and entitled to registration. On each Saturday during the period of registration the registrar shall attend with his registration books at the polling place of his precinct or ward, betwen the hours of nine o'clock a. m. and sunset, for the registration of voters. (Rev., s. 4323; 1901, c. 89, s. 18; 1923, c. 111, s. 3; 1933, c. 165, s. 5; C. S. 5947.)

Art. 8. Permanent Registration.

§ 163-32. Persons entitled to permanent registration.—Every person claiming the benefit of section four of article six of the constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall, prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the state for members of the general assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the state of North Carolina; I am .....years of age I was, on the first day of January, A. D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ....., in which I then resided (or, I am a lineal descendant of ....., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ....., wherein he then resided.) (Rev., s. 4325; 1901, c. 550, s. 1; C. S. 5949.)

§ 163-33. Oaths administered; names recorded.—It shall be the duty of the officer charged with the registration of voters in all such elections held in this state until November first, one thousand nine hundred and eight, to administer such oaths and to record the name of such person on his roll of registered and qualified voters; and all registration under this article and under the said section of the constitution shall be had and taken at the times and places provided by law for registration of voters for all such elections in this state until November first, one thousand nine hundred and eight. (Rev., s. 4326; 1901, c. 550, s. 2; C. S. 5950.)

§ 163-34. Registrar to return list to clerk of court; record.—It shall be the duty of such registration officer, within five days after the close of the election, to return to the clerk of the superior court of the county in which he resides a list of the names of all the persons so registered by him, stating therein the name and age of such person, and the name of the person from whom descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, and the state wherein he or his ancestor was a voter, and the date on which he applied for registration, and it shall be the duty of the clerk of the superior court, within ten days after receipt of said list, to make an alphabetical roll by townships of all persons taking such oath and registered by such registrar, and to record the same in a book to be provided for that purpose, which said book shall contain the name and age of such person, the name of the person from whom he was descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, the state in which he was such voter and the date he applied for registration. And the said roll shall, during the office hours of said clerk, be open to the inspection of the public. (Rev., s. 4327; 1901, c. 550, s. 3; 1903, c. 557; C. S. 5951.)

§ 163-35. Clerks to certify list to secretary of state.—It shall be the duty of the several clerks of the superior courts of this state to certify to the secretary of state, within thirty days after the close of each election, a copy of the said roll in his office, and it shall be the duty of the secretary of the state to record, in a book provided for that purpose, the facts set out in such certified copy, and keep the lists from each county separate. The clerk of the superior court shall keep the lists from each township in separate columns. The books kept by such clerks and the secretary of state shall be plainly lettered "Permanent Roll of Registered Voters," and they shall prepare a complete alphabetical index to the same. And for recording and indexing such names the clerks of the superior courts shall receive as compensation ten cents for each copy-sheet, to be paid by the county commissioners. (Rev., s. 4328; 1901, c. 550, s. 4; 1903, c. 557, s. 2; C. S. 5952.)

§ 163-36. How permanent roll prepared and certified; certified copies from roll.—It shall be the duty of all officers charged with the registration of voters in any election held in the state to enter the name of such person on the registration book and voting lists of his township, ward, or precinct, and to give a certificate in the following form:

I, ..., registrar for ..... town-

ship (ward or precinct) of .....county, do hereby certify that on this day.....of..... race, of ..... county, ... township, ... precinct (or ward), age ..... years, took and subscribed the oath required by law, and has this day been registered on the permanent roll as a voter in said township (ward or precinct), in accordance with section four, article six, of the constitution of North Carolina.

This the ..... day of ....., 19....

.....,
Registrar.

And it shall be the duty of the clerk of the superior court to certify, under his hand and seal, to the genuiness of such certificate as follows:

North Carolina, ... county.

I, ..., clerk of the superior court of the aforesaid county, do hereby certify that the foregoing certificate is in due form, and that the signature of said ....., registrar of said precinct (ward or township), is in his own proper handwriting.

Witness my hand and official seal, this the.... day of ....., 19.....

.....,
Clerk of the Superior Court.

And for furnishing such certificates and administering such oaths neither the said registrar nor clerk shall be paid any compensation by the person so applying for registration. In the event of the loss of such certificate the person entitled to the same, upon the payment of twenty-five cents, may obtain from the clerk of the superior court, or from the secretary of state, a certificate under his official seal to the effect that his name is on the permanent roll of registered voters from his county, in his office, and such certificate shall, in all respects, take the place of such original, and be used as such. (Rev., s. 4329; 1901, c. 550, s. 5; C. S. 5953.)

§ 163-37. When copy of roll obtainable by clerk from secretary of state.—In the event of loss or destruction of such rolls in the clerk's office, it shall be his duty to obtain from the secretary of state a certified copy of said roll for his county, and such certified copy shall be good and effectual for all purposes as the original would have been. (Rev., s. 4330; 1901, c. 550, s. 6; C. S. 5954.)

§ 163-38. Copy of, or certificate from roll evidence of voter's rights.—In all suits involving the right to vote, or trying the title to office, or other action in which such rolls are produced in evidence, all of the facts and recitals therein shall be taken as prima facie evidence of such facts and recitals, and if the right of any voter upon such rolls to vote is challenged, either his certificate or a certified copy of such permanent roll shall be deemed prima facie evidence of his right to vote. (Rev., s. 4331; 1901, c. 550, s. 7; C. S. 5955.)

§ 163-39. Registration of voters removing residence.—Whenever any voter so registered shall remove from one precinct to another in the same county, or from one county to another in the state, he shall make application for registration, and upon production of his certificate of his being on the permanent roll, as provided in this article, under the hand and seal of either the clerk of the superior court or of the secretary of state, and proof of his identity, the proper officer charged with the registration of voters shall register his name and make record of the same as in cases of original registration under this chapter. (Rev., s. 4332; 1901, c. 550, s. 8; C. S. 5956.)

§ 163-40. Educational qualification not applicable to permanent registrants.—Any person holding a certificate of registration, as herein provided, shall be entitled to register in any county in this state, notwithstanding his inability to read and write: Provided, that he shall be otherwise qualified as an elector. (Rev., s. 4333; 1901, c. 550, s. 9; C. S. 5957.)

§ 163-41. State board of elections furnishes necessary blanks.—The state board of elections shall procure, provide, and furnish to the several officers named in this article and charged with duties under it, all such books, blanks, and other printed matter as may be necessary to carry into effect the provisions of this article. (Rev., s. 4334; 1901, c. 550, s. 10; 1921, c. 181, s. 4; C. S. 5958.)

§ 163-42. Books constitute roll in secretary of state's office.—The books containing the permanent roll of registered voters, sent to the office of the secretary of state by clerks of the courts of the several counties, shall be and constitute the permanent roll of registered voters, required by this article to be kept in the office of the secretary of state, and such books shall be deemed a full and complete compliance with the requirements of this article. It shall be the duty of the several clerks of the court, within thirty days after the close of each registration hereafter to be held, up to the first day of December, one thousand nine hundred and eight, to forward to the secretary of state the names of all persons registering under article six, section four, of the constitution of North Carolina, as required by this article, and it shall be the duty of the secretary of state to record such names in the permanent roll of registered voters for the several counties. (Rev., s. 4335; 1903, c. 178; C. S. 5959.)

Art. 9. New State-Wide Registration of Voters.

§ 163-43. State-wide revision of registration books and relisting of voters. — Prior to the next state-wide primary election held after March 30, 1939 there shall be a revision made of the registration books and a relisting of the voters in each and every precinct in the state in the manner hereinafter provided. On the first Saturday following the appointment of the members of the county board of elections preceding the one thousand nine hundred and forty primary election, the members of each county board of elections shall, after due notice of their appointment has been received, meet at eleven o'clock A. M. in the office of the clerk of the superior court of the county and, after first taking their oath of office, shall organize by electing one member as chairman and another member as secretary of said board. The said board shall at this meeting authorize the revision of the registration books and the relisting of the voters in each precinct in the county in accordance with the provisions of this article, The clerk of the superior

court shall, at this meeting, deliver to the chairman of the county board of elections three new registration books and one new poll book for each precinct in the county, which new books shall have been furnished to said clerk of the superior court by the state board of elections prior thereto together with a copy of this article. The cost of printing and distribution of said new books shall be paid for by the state out of the contingency and emergency fund. The said clerk of the superior court shall, at this meeting, deliver to the said chairman of the county board of elections the old registration books for each precinct in the county together with the poll books used in each precinct in the one thousand nine hundred and thirty-six and one thousand nine hundred and thirty-eight general elections, and he shall take a receipt from said chairman for the same. At this meeting the county board of elections shall authorize and direct the chairman of the county board of elections, with the assistance of the registrars and any other necessary assistance to proceed with the relisting of the voters in the county, the cost of which shall be paid for by the board of county commissioners out of the county funds, but which shall be held to as low an amount as is consistent with the purposes of this article. The said chairman of the board of elections shall begin said work within eight days after said meeting and supervise the same until it is completed. (1939, c. 263, s. 1.)

§ 163-44. "General election registration book" for each precinct.—For each precinct the chairman shall have copied in a new registration book, to be known and labeled as "The General Election Registration Book," the names only of all registered electors who are shown by the poll book to have voted in such precinct in either the one thousand nine hundred and thirty-six or the one thousand nine hundred and thirty-eight general election or the primary election, except electors who are known by the chairman to have died or moved their voting residence, and to record in said book opposite each name, information available with reference to the race, age, residence, place of birth and the township, county and state from whence he has removed, in the event of a removal. The party affiliation of the voters shall not be entered in this general election registration book. When this is completed, there shall be prepared for each precinct in duplicate a list of all the registered voters whose names were not transferred to the new general election registration book for the reason that such electors did not appear, according to the poll books, to have voted in either the general election or the primary election of one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight. The said chairman of the county board of elections shall thereafter publish said lists once a week for at least two consecutive weeks in a county journal or in his discretion have said lists posted at the courthouse door of said county at least two weeks prior to the opening of the regular primary registration period notifying all persons on said lists that their names would be erased from the registration books unless such persons personally appeared before their respective registrars during the regular registration period and showed their right to remain on the registration book and vote as qualified electors in said precinct. In the event that either the one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight poll books for a precinct are lost and cannot be found then the chairman shall order a new registration of voters in such precinct before the primary election. In all counties having had a new county-wide registration of voters, either in the year one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight, the said chairman in said county is authorized to transfer to the new registration books the names of all persons registered therein regardless of whether any of the persons so registered voted in neither of said elections or primary elections of one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight, except that the chairman shall remove from the books the names of all persons known by the chairman to have died or moved their voting residence elsewhere since said registration was held: Provided, however, that if the registration books in those counties having had a new registration within the time above mentioned do not show the party affiliation of the voter together with the other required information then the chairman shall order a new registration therein. In instances where the party affiliation is shown part of the time and is not shown in some cases, then the procedure set forth in § 163-46 shall be followed: Provided, further, that in those counties having had a new county-wide registration of voters either in the year one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight, which registration, revision and relisting of voters was performed in substantial compliance with the terms of this article, in the opinion of the chairman of the state board of elections the said chairman will not be required to comply with the terms and provisions of this article. (1939, c. 263, s. 2.)

§ 163-45. New registration in discretion of county board.—In lieu of the procedure prescribed in this article, any county board of elections in its discretion, may order a new registration of the voters in that county, or in any precinct or precincts therein: Provided, that in all cases the three registration books provided for in this article shall be made so that there shall be a general election registration book and a separate primary registration book. (1939, c. 263, s. 2½.)

§ 163-46. Required information may be supplied by registered persons who voted in 1936 or 1938 general election.—Where the registration books do not show in part the voters party affiliation, or age, race, residence, place of birth, etc., and the poll book for the precinct shows that such persons voted in either the one thousand nine hundred and thirty-six or the one thousand nine hundred and thirty-eight general election, or primary election, then the said chairman shall prepare a list of all such registered persons—including all of those absent from the county and employed outside of the county—and shall immediately mail a blank form to each of such persons whose address is given or known, instructing them to fill in the requested information on the blank return form enclosed and to return the

same to the said chairman or registrar of the precinct by the close of the registration period or their names will be removed from the registration book. It shall then be the duty of the registrar to remove from the registration book the names of all such persons who fail to return the blank return form with the requested information by the close of the registration period. All blank return forms of this kind so received by the registrars shall be kept until after the primary election and thereafter filed with the said chairman along with the precinct returns as part of the public records in the chairman's office: Provided, however, that the provisions of this section shall not be mandatory as to any voter when the chairman of the county board of elections with the assistance of the registrars, or from any available source of information can obtain the facts, set out in said section, required to be obtained by the election laws of the state; but in all cases the party affiliation shall be shown on the primary registration books in order for the voter to participate in the primary election.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in the precinct, should appear at the polling place on election or primary day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the general election registration book and on the primary registration book if he declares his party affiliation as provided in § 163-50, and he shall be allowed to vote in said precinct as before. (1939, c. 263, s. 3.)

§ 163-47. Return of registration and poll books to chairman of county board.—On the day of the canvass of votes the registration books herein provided for shall be returned together with the poll books by the registrar to the chairman of the county board of elections who shall have the care and custody of the same until they are placed in the hands of the registrar for the purpose of registration of voters or holding subsequent primary or general elections. Said chairman of the county board of elections shall keep said books in a safe and secure place, a fire-proof vault if possible. (1939, c. 263, s. 3½.)

§ 163-48. Democratic and Republican primary registration books. — After the completion of the transfer of the names of registered electors to the general election registration book, as above provided, the chairman of the county board of elections shall then transcribe to another new registration book to be labeled and known as "The Democratic Primary Registration Book," the names of all registered democrats who are shown by the poll books to have voted in either the one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight general election or primary election, and on another registration book shall transcribe the names of all registered republicans who voted in either of the above specified elections, which book shall be known and labeled as the "Republican Primary Registration Book." The names of all electors registered on the old books without any party affiliation being given, or who are registered as independents, or who fail to show their age, race, place of birth, residence, etc., shall not be transcribed to either party primary registration book until the said chairman or registrar shall have received back the blank return form from such electors as above provided for giving the requested information, or shall have obtained said information otherwise as hereinbefore provided in § 163-46.

Only the party primary registration book of the party participating in a primary election shall be used at the polls at a primary election and if only one party so participates then the other party primary registration book shall not be used or kept at the polls on primary day but shall, after the close of the registration period, be transmitted to the chairman of the county board of elections along with the general election registration book. At a general election, only the general election registration book shall be used at the polls on election day, and after the close of the registration period the two party primary registration books shall be transmitted to the said chairman. In all registrations hereafter held before a primary or an election, the registrars shall register all qualified applicants for registration in both the general election registration book and also in the party primary book of the party with which the elector professes affiliation, but the party affiliations shall not be recorded in the general election registration book. Any applicant for registration who refuses to state his or her party affiliation shall not be registered in a party primary registration book and shall not be permitted to vote in a primary until the affiliation is stated and so recorded in the primary book of such party. (1939, c. 263, s. 4.)

§ 163-49. Transfer of persons registered under the "Grandfather Clause."—The chairman of the county board of elections shall transcribe to the new registration books the names of all persons who are recorded as having registered under the Grandfather Clause of the constitution of North Carolina, regardless of whether such persons voted in either the one thousand nine hundred and thirty-six or one thousand nine hundred and thirty-eight election. The said chairman, however, shall not transcribe to the new books the names of any persons so registered who are known to have died or moved their voting residence elsewhere. (1939, c. 263, s. 5.)

§ 163-50. Change of party affiliation.—No registered elector shall be permitted to change his party affiliation for a primary or second primary after the close of the registration period. Any elector who desires to change his party affiliation for a primary from the registration book on which registered to that of another party shall, during the registration period only, go to the registrar of his precinct and request that such change be made on the party primary books. Before being permitted to change his party affiliation, for the purpose of participating in a primary election, however, such elector shall be required by the registrar to take the oath of party loyalty to the party to which he wishes to now affiliate, and the

registrar shall thereupon administer to the said elector the following oath:

I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the ..... party to the ..... party, and that such change of affiliation be made on the party registration books, and I further solemnly swear (or affirm) that I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law, so help me God.

If at any time the chairman of the board of elections or the registrar of any precinct shall be satisfied that an error has been made in designating the party affiliation of any voter on the primary registration books then and in all such events the chairman of the county board of elections or the registrar, having the custody of the registration book may make the necessary correction upon the voter taking the oath of party loyalty in substance of the form set forth in this section. (1939, c. 263, s. 6.)

§ 163-51. Willful violations made misdemeanor. —Any chairman of a county board of elections who willfully and knowingly refuses or fails to comply with the provisions of this article with respect to his duties as herein specified shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine, imprisonment, or both, in the discretion of the court.

Any registrar who wilfully and knowingly registers an elector in the wrong party primary registration book contrary to the direction of the voter; or any registrar who willfully and knowingly refuses to make the change in the affiliation from one party primary book to another party primary book at the request of an elector who has taken the oath prescribed in § 163-50; or any registrar who willfully and knowingly permits any person to vote in the primary of a party in whose registration book such person is not registered; or any registrar who willfully and knowingly fails to comply with any of the duties placed upon him by this article shall be guilty of a misdemeanor and shall be punished by a fine, imprisonment, or both, in the discretion of the court. (1939, c. 263, s. 7.)

§ 163-52. Removal of chairman of county board for violations; appointment of successor. — The state board of elections shall have the authority to summarily remove any chairman of a county board of elections who fails or refuses to comply with any of the duties placed upon him by the provisions of this article, and shall thereupon request the chairman of the state executive committee to recommend a person to succeed the member removed from said county board of elections, which said person shall thereupon be appointed by the state board of elections as the chairman of such county board of elections. (1939, c. 263, s. 8.)

Art. 10. Absent Voters.

§ 163-53. Registration of voters expecting to be absent during registration period.—Any citizen of the state, not duly registered, who may be qualified to vote under the constitution and laws of this state, and who expects to be absent from the county in which he lives during the usual period provided for registration of voters, may be registered as herein provided. The State Board of Elections shall furnish to the chairman of the county board of elections in each county a book for the registration of absent electors, which book shall contain separate columns for the name of elector, name of precinct in which elector resides, age, place of birth, race, and precinct in which elector last resided. It shall be the duty of the chairman of the board of elections in each county to register on said county registration book any qualified elector who presents himself for registration at any time other than the usual registration period, and who expects to be absent from the voting precinct in which he resides during the usual registration period, if found to be otherwise entitled to registration, in the same manner as now provided by law for the registration of voters before the precinct registrar in the usual registration period. The Chairman of the county board of elections shall, immediately after the appointment of a registrar or registrars for any election to be held in his county, either legalized primary or general election, either for the county or for any political subdivision thereof, certify to the respective registrars in each of such precincts the names, age, and residence, place of birth, etc., of any electors registered on the said county registration book and thereby entitled to vote in such precinct; and it shall be the duty of the registrar in every such precinct to enter upon the regular registration book for such precinct the names of all such electors so certified to him by the chairman of the county board of elections, marking opposite the names of such electors the words "Registered before chairman county board of elections"; and electors so registered shall be entitled to vote in any election in such precinct in the same manner as if registered by the precinct registrar. (1917, c. 23, s. 2; C. S. 5961.)

§ 163-54. Absentee voting in general elections. —Any qualified voter of the state who finds that he will be absent from the county in which he is entitled to vote during the day of the holding of any general election, or who by reason of sickness or other physical disability will be unable to travel from his home, or place of confinement, to the voting place in his precinct, may vote in any such general election, in the manner as hereinafter provided. (1939, c. 159, s. 1.)

Local Modification.—Jackson: 1939, c. 309; Sampson: 1941, c. 167.

§ 163-55. Written application for official ballot.—Such voter, not more than thirty days, nor less than two days prior to the date of such general election shall make application, in person, by some member of his or her immediate family (husband and wife, brother and sister, parent and child only) or by mail, in writing, to the chairman of the county board of elections of his county, for an official ballot to be voted in such general election. Provided that said two days minimum shall not apply to voters becoming unexpectedly physically disabled to attend the polls.

Such application shall be made on a blank to be furnished by the chairman of the county board

of elections and shall be substantially in the following form:

Application for Absentee Voter's Ballot

I, ..., do hereby certify that I am a duly qualified voter in ..... precinct, ... Township, in the County of ....., North Carolina, and that I am entitled to vote in the general election to be held therein on the ..... day of ..... 19.....:

(a) That I will be absent from the county during the day of the election;

(b) That by reason of sickness, or other physical disability, I will be unable to travel from my home, or place of confinement, to the voting place in my precinct;

(Strike out whichever of (a) or (b) is inappropriate)

and I hereby make application for the official ballot, or ballots, to be voted by me in such general election, and that I will return said ballot, or ballots, to the official issuing the same, before the date of said general election.

Dated.....

P. O. Address.....

(Signed).....

Witness: .....

There shall be printed as part of the application a certificate to be executed by the chairman of the county board of elections as follows:

Certificate of Chairman of Election Board

I, ..., chairman of the county board of elections of ..... County, do hereby certify that the above application was received by me from ....., on the ..... day of ....., 19....., by personal delivery to me by the voter or by a member of his or her immediate family, or by mail addressed to me; that this application is number ....., and that I have delivered, or caused to be delivered at my direction and under my supervision, in person to ....., the said voter, or ....., a member of his or her immediate family, or have mailed to him, or her, at the designated post office address, the official ballot with the name of the applicant certified on said ballot or ballots, and that I delivered, or caused to be delivered at my direction and under my supervision, in person, or to said member of his or her immediate family, or mailed, to the voter a container envelope for said ballot, bearing the same number with the name of the voter and his voting precinct entered thereon; and that I also, at the same time, furnished a return envelope, bearing my name and address, in which the ballot could be returned to me.

I further certify that this application was registered by me, in a register furnished for that purpose by the state board of elections, on the day that it was received and the ballot issued, and that it bears the same number on the register as this application and the container envelope furnished.

Dated.....

(Signed).....

Chairman, ... County.

Board of Elections.

On the back of said application there shall be printed §§ 163-65 and 163-66. (1939, c. 159, s. 2.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-56. Issuance of official ballot. — Upon receipt of such application (provided it shall be received not more than thirty days, nor less than two days prior to such general election, except as hereinbefore provided), the chairman of the county board of elections, after entering on the register to be supplied to him for that purpose, by the state board of elections, the name of the voter, the number of the application, the precinct in which the applicant certified he is a qualified voter, the reason assigned as entitling the voter to the absentee ballot, the date of the receipt of the application, the date of the delivery of the ballot, and whether the ballot was delivered in person to the voter, to a member of his or her immediate family, or by mail, shall deliver in person, only, or to a member of his or her immediate family, or mail to the applicant at the designated post office address, an official ballot, with a container envelope, and a return envelope bearing the name, title, and address of the chairman issuing same.

It shall be the duty of the chairman of the county board of elections issuing such ballot, to place on the back thereof, by stamp, in writing, or otherwise, a certificate as follows:

I certify that this ballot was delivered in person to ..... the voter who applied for same or to a member of his immediate family for him, or mailed to his post office address and whose application is on file in my office. That the container envelope furnished with the ballot bears the same number as the application upon which this ballot was issued.

(Signed).....

Chairman ..... County Board of Elections

(1939, c. 159, s. 3.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-57. Container envelopes provided for absentee ballots; affidavit of absent or sick voter.— It shall be the duty of the said chairman of the county board of elections to fold the ballot, or ballots, enclose them in the container envelope to be furnished by him, which envelope shall bear upon the face thereof the name of the voter, the number of the application, and the precinct in which the ballot is to be voted, and upon the other side, a printed affidavit in one of the following forms, according to whether the application was based upon absence from the county, or upon illness of the voter, to-wit:

Affidavit of Absentee Voter

North Carolina, ... County.

I, ..., do solemnly swear that I am a resident and duly qualified voter in ..... precinct ..... Township, ... County, North Carolina, and I am entitled to vote in such precinct in the general election to be held on the ..... day of ....., 19.....; that I find that I will be absent from my county during the day of the election; I further swear that I made due application for the ballot enclosed herein and received same from the official to whom the application was made; I fur-

ther swear that I marked the enclosed ballot, or ballots, or that the same were marked in my presence according to my instructions.

Date.....
P. O. Address .....(Signed).....
Sworn to and subscribed before me this .....
day of ....., 19.....
Witness my hand and official seal .....
Title of Officer

I, ..., hereby certify that I administered the oath of the affiant in the manner prescribed by laws; that the affiant exhibited the enclosed ballot to me; that the affiant marked such ballot or that the same was marked in his presence according to his instructions and enclosed the same and sealed it in this envelope; that affiant was not solicited nor advised by me to vote for or against any candidate, nor for or against any measure.

Date.....
(Signed).....
Title of Officer

Affidavit of Sick Voter

I, ..., do solemnly swear that I am a resident and duly qualified voter in ..... precinct, ... Township, ... County, North Carolina, and I am entitled to vote in such precinct in the general election to be held on the ..... day of ....., 19.....; and that due to illness or other physical disability, I will be unable to travel from my home, or place of confinement, to the voting place in my precinct. I further swear that I made due application for the ballot enclosed herein and received the same from the official to whom application was made; I further swear that I marked the enclosed ballot, or that the same was marked in my presence according to my instructions.

Dated.....
P. O. Address.....
(Signed).....
Sworn to and subscribed before me this .....
day of ....., 19.....
Witness my hand and official seal .....
Title of Officer

I, ..., hereby certify that I administered the oath in the manner prescribed by law; that the enclosed ballot was exhibited to me, by affiant, or by a member of his, or her, family, or attendant, and in the presence of the affiant; that I further certify that the ballot was marked by the elector, or that the same was marked in his presence according to his instructions. That the affiant was not solicited or advised by me to vote for or against any candidate, or measure.

Dated.....
(Signed).....

The chairman shall also furnish, at the same time, an envelope bearing his name, title and address for the return of the ballot to him. (1939, c. 159, s. 4.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-58. Instructions for voting absentee ballots.—In using such ballot the absent voter shall make and subscribe to the appropriate affidavit prescribed in § 163-57, before an officer authorized by law to administer oaths, having an official seal, which seal shall be affixed, and in the presence of such officer, mark the ballot, or ballots, or cause the same to be marked in his presence according to his instructions, and shall sign or cause to be signed on the back or margin of said ballot, or ballots, his or her name; and the ballot, or ballots, shall then in the presence of the officer be folded by the voter or attendant, so that each ballot will be separate and then in the presence of such officer be placed in the container envelope, and the container envelope securely sealed. The container envelope, with the ballot enclosed, shall be placed in the return envelope and shall be mailed or delivered by the voter, or some member of his or her immediate family, in person, to the chairman of the county board of elections issuing the ballot. Such envelope containing the ballot must be in the hands of the chairman of the county board of elections by three o'clock, P. M. on the day of the general election. No ballots received after that time shall be voted or counted: Provided that in the case of voters who are members of the armed forces of the United States the signature of the Commanding Officer, or any commissioned officer, of the voter, as witness to the execution of any certificate required by this or any other section of this article to be under oath, shall have the force and effect of the jurat of an officer with a seal. (1939, c. 159, s. 5; 1941, c. 248.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-59. List of applications made in triplicate; certificate of correctness.—On the morning of the day before any general election, the chairman of the county board of elections shall make a list, in triplicate, on blanks furnished by the state board of elections for that purpose, of all applications received by him from voters to whom he has issued absent voters ballots, and mail said list, with the original of all applications received by him, by registered mail, to the chairman of the state board of elections, at Raleigh, North Carolina, and post one copy thereof at a conspicuous place at the courthouse door; reserving for himself the duplicate of said list. On said list he shall make, under oath, a certificate as follows:

I, ..., chairman of the county board of elections of ..... county, do hereby certify that the foregoing is a list of all applications filed with me for absent voters ballots to be voted in the election, on the ..... day of ....., 19.....; and I further certify that I have issued ballots to no other persons than those listed therein, whose original applications are enclosed and filed herewith; and I further certify that I did not deliver any of the ballots to any other person than to the elector, personally, or a member of his, or her, immediate family, or by mail addressed to the voter.

(Signed).....
Chairman ..... County
Board of Elections
Dated.....
Sworn to and subscribed before me this .....
day of ....., 19.....
Witness my hand and official seal .....
Title of Officer

(1939, c. 159, s. 6.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-60. List of ballots issued for each precinct delivered to registrar on day preceding election.—On the day preceding any general election, the chairman of the county board of elections shall deliver to the registrar a list of all absent voters ballots issued for such precinct and on the day of the general election the chairman of the county board of elections shall deliver the absent voters ballots received by him to the precinct officials of the appropriate and proper precinct or precincts in his county.

The registrar shall post said list in a public place, at the opening of the polls in said precinct, where it can be seen and inspected by any interested voter. (1939, c. 159, s. 7.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-61. Ballots deemed voted upon delivery to precinct officials; opening, depositing and recording; rejected ballots; challenges.—Absent voters ballots shall be deemed to be voted when delivered to the precinct officials, unless upon being opened and inspected it shall appear that the affidavit and jurat, or either, are not in due form, or that the name on the container envelope, the ballot and the chairman's certificate do not correspond. In either of which events, the ballot shall not be voted, nor counted. At any time during the day or, if more convenient, immediately upon the closing of the polls for the voting of voters in person, the recording of the absent voters names on the poll book and depositing the ballot in the ballot box shall be begun and the procedure shall be as follows:

(1) The name of the voter as it appears on the affidavit shall be called by one of the judges of the elections. If it be found that he is a qualified voter of the precinct, and no challenge is offered to the vote, the name shall then be recorded on the poll book, with the notation—"Absent Voter." A judge of elections shall then open the envelope by slitting it with a sharp instrument in such manner as not to destroy, tear or obliterate any part of the affidavit; the ballot shall be removed from the envelope without unfolding the same so as to disclose how the ballot is marked, and if the signature of the voter on the ballot or ballots corresponds with the name on the envelope and with the name set out in the chairman's certificate on the back of the ballot, such ballot, without examination as to how it is marked, shall be deposited in the appropriate ballot box, as other ballots are deposited; provided, however, that if the name on the envelope and the name on the ballot and in the chairman's certificate on the back of the ballot do not correspond, or if the affidavit and jurat are not in due form, said ballot shall not be deposited in the ballot box, nor counted, but returned to its envelope and marked —"Rejected."

(2) If an absent voter's ballot is challenged and the challenge is sustained, the ballot shall be returned to its envelope and marked "Challenge Sustained" and returned as provided for the return of rejected ballots.

All envelopes shall be carefully preserved, and, with ballots marked "Rejected" and "Challenge Sustained," shall be filed with the chairman of the county board of elections, at the time the returns from said precinct are filed, and shall be preserved, intact, by the chairman of the county board of elections for a period of six months, or longer if any contest shall then be pending concerning the validity of any of the absentee ballots so delivered to him. (1939, c. 159, s. 8.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-62. Challenged voter granted right of hearing before county board.—The absent voter, whose ballot has been challenged, shall, upon notice, have the right to appear before the county board of elections on canvass day and be given the opportunity to sustain the validity, and if its validity is sustained, his ballot shall be counted and added to the returns from the proper precincts. (1939, c. 159, s. 9.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-63. Register of applications declared a public record.—The register of applications for absent voters ballots, required to be kept by the chairman of the county board of elections, shall constitute a public record and shall be opened to the inspection of any elector of the county, at any time within thirty days before and thirty days after any general election, or at any other time when good and sufficient reason may be assigned for such inspection. (1939, c. 159, s. 10.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-64. Certification without administering oath made misdemeanor.—Any person authorized to administer oaths, who wilfully signs a certificate that any person has subscribed and sworn to an affidavit for use in obtaining an absent voters application, or absent voters affidavit, or any other purported affidavit referred to and required by this article, when, as a matter of fact, he has not administered the oath to such person, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 11.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-65. False statements under oath made misdemeanor.—If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement, under oath, is required to be made by the provisions of this article, such person shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars ($100.00), or imprisoned for not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 12.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-66. False statements not under oath made misdemeanor.—If any person, for the purpose of obtaining or voting any official ballot hereunder, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, such person shall be guiity of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 13.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-67. Custody of applications, ballots, etc.—The chairman of the county board of elections

in each county shall be the sole custodian of blank applications for absent voters ballots, the official ballots, blank certificates and envelopes, and he shall issue same only in strict accordance with the provisions of this article. The issuance of such absent voters ballots is the responsibility and duty of the chairman of the county board of elections. Blank applications for absent voters ballots may be delivered to any elector applying for same. He shall keep all records and make all reports, promptly, required by him by the terms of this article.

The wilful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 14.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-68. Violations not otherwise provided for made misdemeanor. — If any person shall willfully violate any of the provisions of this article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, such person shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1939, c. 159, s. 15.)

Local Modification.—Sampson: 1941, c. 167.

§ 163-69. Reports of violations to attorney general and solicitor.—It shall be the duty of the state board of elections to report to the attorney general of North Carolina, and to the solicitor of the appropriate judicial district, any violation of this article, or the failure of any person charged with a duty hereunder to comply with and perform such duty, and it shall be the duty of the solicitor to cause such person to be prosecuted therefor. (1939, c. 159, s. 16.)

Local Modification.—Sampson: 1941, c. 167.

Art. 11. Absent Voters in Military or Naval Service.

§ 163-70. Voting by persons in armed forces; act void upon repeal of Selective Service Act. — Any qualified voter entitled to vote in the primary of any political party, who, on the date of such primary, is in the military, naval or other armed forces of the United States may vote in the primary of the party of his affiliation in the manner as hereinafter provided.

This act shall be null and void on or after the repeal of the Selective Service Act of one thousand nine hundred and forty by the Congress of the United States of America. (1941, c. 346, ss. 1, 1-a.)

§ 163-71. Application for ballot; blanks furnished; name of applicant and other information entered on register.—Such voter at any time before the date of the primary may make an application in writing duly signed by him or signed in his name by a member of his immediate family (wife, brother, sister, parent or child) to the chairman of the county board of elections of his county for an official primary ballot of the party of his affiliation as shown by the party primary registration books.

Said application shall show the precinct in which the applicant is registered and entitled to vote and the company or other armed unit of which he is a member.

The county board of elections shall furnish appropriate application blanks to any such voter or the immediate family of such on request. The application, however, shall not be required to be on such form but may be informally made in writing signed by the voter or signed in his name by a member of his immediate family as herein defined.

Upon the receipt of such application the chairman of the county board of elections of the county of the voter's residence shall enter on a register kept for that purpose the name of the applicant, his party affiliation and the precinct in which applicant is entitled to vote as shown by the application. (1941, c. 346, ss. 2, 3.)

§ 163-72. Ballot mailed to applicant; form of certificate on ballot.—The chairman of the county board of elections after registering said application shall mail to the applicant the official primary ballot of the political party with which the applicant is affiliated, certifying on said ballot that it was furnished to the voter, naming him, whose application for the ballot was made to the chairman of the county board signing the same.

On the back of the ballot a certificate shall be printed in the following words:

I, ..., a duly registered Democrat—Republican (Strike whichever is inappropriate) in .....Precinct, ...County, do hereby certify that I am a qualified voter of said Precinct; that I am in the Armed forces of the United States, a member of ..... Company or unit and am sending this ballot duly marked by me to the Chairman of the County Board of Elections of the County of my residence to be voted in the forthcoming Primary of said party.

Witness my hand in the presence of my commanding officer this the ..... day of ....., 19...

.....

Witnesses:

.....

Name of Officer.

.....

Title and Unit.

(1941, c. 346, ss. 4, 5.)

§ 163-73. Envelope for return of ballot.—The chairman of the county board of elections shall send with the official ballot an envelope for the return of the ballot addressed to the chairman and having printed thereon the following form:

This envelope contains the ballot of ....., a member of the Armed forces of the United States to be voted in .....Precinct, ... County, in the Primary of the ..... Party to be held on the ..... day of ....., 19...

.....

Signature of Voter.

(1941, c. 346, s. 6.)

§ 163-74. Voting of ballots; delivery to appropriate precincts, unchallenged ballots deposited and counted.—The voter receiving said ballot may vote same by properly marking the ballot, completing the certificate on the back thereof and signing his name to said certificate in the presence

of his commanding officer or a commissioned officer who shall sign his name thereto as witness to the signature of the voter.

The ballot shall then be placed in the envelope furnished, securely sealed, the voter completing and signing the certificate on the back of the envelope and mailing the same to the chairman of the county board of elections by United States mail.

The chairman of the county board of elections on the day of the primary shall deliver or cause to be delivered to the appropriate precinct all primary ballots received by him from members of the armed forces of the United States. Said ballots shall be delivered in the envelope in which received and without the seals being broken.

All ballots delivered to the precinct officials by the chairman of the county board of elections shall be deemed voted at three o'clock on the day of the primary except such as may have been successfully challenged. Such ballot shall not be voted, however, unless the voter is duly registered on the primary books of the political party in whose primary he offers to vote.

At any time after three o'clock or the close of the polls all unchallenged ballots shall be deposited in the appropriate ballot box and counted as and in the same manner as other ballots are counted. (1941, c. 346, ss. 7-10.)

§ 163-75. Preservation of envelopes in which ballots transmitted.—The precinct officials with the returns of the primary shall deliver to the chairman of the county board of elections all envelopes from which absentee ballots have been voted and said envelopes with all applications received by the chairman of the county board of elections on which he has issued ballots shall be preserved for at least six months after the primary and longer if there should be reason or necessity therefor. (1941, c. 346, s. 11.)

§ 163-76. Register of ballots a public record; posting list.—The register of the ballots issued by the chairman shall be a public record open to inspection by any voter of the county at any time.

A list of all ballots received at a precinct to be voted therein shall be posted at a conspicuous place about the polls as soon as practical after receipt of the ballots and before they are voted. (1941, c. 346, ss. 12, 13.)

§ 163-77. Unlawful voting made misdemeanor.—Any person who shall vote or attempt to vote absentee ballot in any primary, not then being a member of the armed forces of the United States, shall be guilty of a misdemeanor and punished by fine of not more than two hundred dollars ($200.00) or imprisoned for not more than six months or both in the discretion of the court. (1941, c. 346, s. 14.)

Art. 12. Challenges.

§ 163-78. Registrar to attend polling place for challenges.—It shall be the duty of the registrar to attend the polling place of his township or precinct with the registration books on Saturday preceding the election, from the hour of nine o'clock a. m. till the hour of three o'clock p. m., when and where the said books shall be open for the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection, the registrar shall enter upon his books, opposite the name of the person so objected to, the word "Challenged," and shall appoint a time and place, before the election day, when he, together with the judges of election, shall hear and decide said objection, giving personal notice of such challenge to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence: Provided, nothing in this section shall prohibit any elector from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so challenged or objected to shall be found not duly qualified, the registrar shall erase his name from the books. (Rev., s. 4339; 1901, c. 89, s. 19; C. S. 5972.)

§ 163-79. How challenges heard. — When any person is challenged, the judges and registrar shall explain to him the qualifications of an elector, and shall examine him as to his qualifications; and if the person insists that he is qualified and shall prove his identity with the person in whose name he offers to vote, and his continued residence in the precinct since his name was placed upon the registration list, as the case may be, by the testimony, under oath, of at least one elector, one of the judges or the registrar shall tender to him the following oath or affirmation:

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years old, and that you have resided in this state for one year, and in this precinct (ward or township) for four months next preceding this election, and that you are not disqualified from voting by the constitution and laws of this state; that your name is (here insert name given), and that in such name you were duly registered as a voter of this township; and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any other polling place. So help you, God.

And if he refuses to take such oath, when tendered, his vote shall be rejected; if, however, he does take the oath when tendered, his vote shall be received: Provided, that after such oath or affirmation shall have been taken, the registrar and judges may, nevertheless, refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualification of a person offering to vote. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in this section, the registrar or one of the judges shall write on the poll books, at the end of such person's name the word "Sworn." The same powers as to the administration of oaths and affirmations and the examination of witnesses, as in this section granted to registrars and judges of election, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to. (Rev., s. 4340; 1901, c. 89, s. 22; Ex. Sess. 1920, c. 93, s. 2, IV; C. S. 5973.)

§ 163-80. Challenge as felon; answer not used on prosecution. — If any person is challenged as

being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution. (Rev., s. 3388; 1901, c. 89, s. 71; C. S. 5974.)

Art. 13. Conduct of Elections.

§ 163-81. Special elections.—Every election held in pursuance of a writ from the governor shall be conducted in like manner as the regular biennial elections, so far as the particular case can be governed by general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers holding and the persons elected to the same penalties and liabilities as if the same had been held at the time and according to the rules and regulations prescribed for the regular biennial elections. (Rev., s. 4341; 1901, c. 89, s. 75; C. S. 5975.)

§ 163-82. Power of election officers to maintain order.—The registrar and judges of election in each ward or precinct, the board of elections of each county, and the state board of elections shall respectively possess full power and authority to maintain order, and to enforce obedience to their lawful commands during their sessions, respectively, and shall be constituted inferior courts for that purpose, and if any person shall refuse to obey the lawful commands of any such registrar or judges of election, county boards of elections, or state board of elections, or by disorderly conduct in their hearing or presence shall interrupt or disturb their proceedings, they may, by an order in writing, signed by their chairman, and attested by their clerk, commit the person so offending to the common jail of the county for a period not exceeding thirty days, and such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by such state or county boards of elections in writing, and the keeper of such jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment. (Rev., s. 4376; 1901, c. 89, s. 72; C. S. 5977.)

§ 163-83. Voter may deposit his own ballot. — The ballot may be deposited for the voter by the registrar, or one of the judges of election, or the voter may deposit it if he chooses. (Rev., s. 4343; 1901, c. 89, s. 24; C. S. 5979.)

Art. 14. Counting of Ballots; Precinct Returns; Canvass of Votes and Preparation of Abstracts; Certification of Results by County Board of Elections.

§ 163-84. Proceedings when polls close; counting of ballots. — At the time for closing the polls the registrar shall announce that the polls are closed, but any qualified electors who are in the process of voting, or are in line within the voting enclosure waiting to vote, shall be allowed to vote before the polls close. After the polls are closed the registrar shall then proceed to open one ballot box at a time for the purpose of counting the ballots in that box in the presence of all election officials, witnesses and watchers, if there are any present.

The counting of ballots shall be conducted as follows: One of the ballots shall be taken out of the ballot box by one of the judges and opened in full view of all the judges and witnesses. If the judges and registrar all agree as to how the ballot shall be counted, one of them shall place it where it can be seen by any one present and shall read aloud distinctly the names of the candidates voted for and the vote on any issue submitted; and the tally-man shall tally the same directly on the tally sheets. In the event the registrar and judges cannot agree as to how the ballot shall be counted, such ballot shall not be counted, but shall be placed in an envelope and marked "disputed ballots" and returned to the county board of elections.

No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice.

The counting of ballots shall be continuous until completed. From the time the ballot box is opened and the count of votes begun, until the votes are counted and returns are made out, signed and certified as herein required, and given to the presiding judge or registrar for delivery to the county board as required herein, the registrar and judges of election in each precinct shall not separate, nor shall a registrar or judge leave the polling place except from unavoidable necessity. In case of illness or unavoidable necessity, the board of elections may substitute another qualified person for any precinct official so incapacitated. (1933, c. 165, s. 8.)

§ 163-85. How precinct returns are to be made and canvassed.—When the results of the counting of the ballots have been ascertained, such results shall be embodied in a duplicate statement to be prepared by the registrar and judges on forms provided by the county board of elections and certified to by said officers. One of the statements of the voting in the precinct shall be placed in a sealed envelope and delivered to the registrar or judge selected by them for the purpose of delivery to the county board of elections, at its meeting to be held on the second day after the election or primary. The other duplicate statement shall be mailed by one of the other precinct election officers to the chairman of the county board of elections immediately.

The county board of elections shall meet on the second day next after every primary or election, at eleven o'clock A. M. of that day, at the courthouse of the county, for the purpose of canvassing the votes cast in the county and the preparation of the county abstracts. Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver those returns at the meeting of the county board of elections by twelve o'clock A. M. on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. In the event any precinct returns have not been received by the county board by twelve o'clock A. M. on the first day of its meeting, or if any returns are incomplete or defective, it shall have authority to dispatch an officer to the residence of such precinct officials for the purpose of securing the proper returns for such precinct. (1933, c. 165, s. 8.)

§ 163-86. County board of elections to canvass returns and declare results.—The county board of elections at their said meeting required to be held on the second day after every primary or election, in the presence of such electors as choose to attend, shall open the returns and canvass and judicially determine the results of the voting in the respective counties, stating the number of legal ballots cast in each precinct for each candidate, the name of each person voted for and the political party with which he affiliated, and the number of votes given to each person for each different office, and shall sign the same. The said county board of elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall have power and authority to send for papers and persons and examine the same, and to pass upon the legality of any disputed ballots transmitted to them by any precinct officer. (1933, c. 165, s. 8.)

§ 163-87. What returns placed on same abstract.—The abstract of votes for each of the following classes of officers shall be made on a different sheet:

1. President and vice president.
2. Governor and all state officers; justices of the supreme court; judges of the superior court; and United States senator.
3. Representatives in congress.
4. Solicitor.
5. Senators and representatives of the general assembly.
6. County officers.
7. Township officers.

(1933, c. 165, s. 8.)

§ 163-88. Preparation of original abstracts; where filed.—When the canvass has been completed, the county board of elections shall prepare on forms furnished by the state original statements of the results showing:

1. Upon a single sheet an abstract of votes for president and vice-president of the United States, when a presidential election is held.
2. Upon another sheet an abstract of votes for Governor, and all state officers, judges of the supreme court, judges of the superior court and United States senator.
3. Upon another sheet an abstract of votes for representatives to congress.
4. Upon another sheet an abstract of votes for solicitor.
5. Upon another sheet an abstract of votes for state senators and representatives in the general assembly.
6. Upon another sheet an abstract of votes for county officers.
7. Upon another sheet an abstract of votes for township officers for each township in the county.
8. Upon another sheet an abstract of votes for all constitutional amendments and propositions submitted to the people. Each of these abstracts shall be so prepared as to show the total number of votes cast for each candidate of each political party for each office in each precinct in the county.

Each of these original abstracts shall be signed by the members of the county board of elections with their certificate as to their correctness, and each of the original abstracts together with the original precinct returns shall be filed with the clerk of the superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8.)

§ 163-89. Duplicate abstracts to be sent to state board of elections; penalty for failure to comply.—When the county boards of elections shall have completed the original abstracts, they shall also prepare separate duplicate abstracts for all offices for which the state board of elections is required to canvass the votes and declare the results, which shall include the following: For president and vice-president; for state officers and United States senator; for representatives to congress; for solicitors; and for state senators in senatorial districts composed of more than one county; and for amendments and propositions submitted.

When said duplicate abstracts shall have been prepared, the county board of elections shall sign an affidavit on each abstract that they are true and correct; then the chairman of said board shall mail said duplicate abstracts, within five days after the primary or election is held, to the chairman of the state board of elections at Raleigh, so that said abstracts shall be received by the chairman of the state board of elections within one week after the primary or election.

The chairman of the county board of elections, failing or neglecting to transmit said abstracts to the chairman of the state board of elections within the time above prescribed shall be guilty of a misdemeanor and subject to a fine of one thousand dollars: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 163-90. Clerk of superior court to send statement of votes to secretary of state in general election.—In a general election, the clerk of the superior court shall, within two days after the original abstracts are filed in his office by the county board of elections, certify under his official seal to the secretary of state, upon blanks furnished to him by the state for that purpose, a statement of the votes cast in his county for all national, state and district officers, and for and against constitutional amendments and propositions submitted to the people. The clerk of superior court shall at the same time also certify under his official seal to the secretary of state a list of all the persons voted for as members of the state senate and house of representatives and all county officers, together with the votes cast for each and their postoffice address.

The clerk of the superior court, failing or neglecting to transmit these returns to the secretary of state within the time herein provided, shall be subject to a fine of five hundred dollars and be guilty of a misdemeanor: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 163-91. Who declared elected by county board; proclamation of result.—In the general election, the person having the greatest number of legal votes for a county or township office, or for the house of representatives, or for the state senate in a district composed of only one county, shall be declared elected by the county board of elections. But, if two or more county candidates, having the greatest number of votes, shall have an equal number the county board of elections shall determine which shall be elected.

When the county board of elections shall have completed the canvass, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door with the number of votes cast for each. (1933, c. 165, s. 8.)

§ 163-92. Chairman of county board of elections to furnish county officers certificate of election.—The chairman of the county board of elections of each county shall furnish, within ten days, the member or members elected to the house of representatives and the county officers, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified. (1933, c. 165, s. 8.)

Art. 15. Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-93. State board of elections to canvass returns for higher offices.—The state board of elections shall constitute the legal canvassing board for the state of all national, state and district offices, including the office of state senator in those districts consisting of more than one county. No member of the state board of elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9.)

§ 163-94. Meeting of state board of elections to canvass returns of the election.—The state board of elections shall meet in the city of Raleigh on the Tuesday following the third Monday after each general election held in this state under the provisions of this chapter, in the hall of the house of representatives, at eleven o'clock A. M. for the purpose of canvassing the votes cast in all the counties of the state for all national, state and district officers and to determine whom they ascertain and declare by the count to be elected to the respective offices, and shall prepare abstracts of same as hereinafter provided. At this meeting, the board shall examine the county abstracts, if they shall have been received from all of the counties, and if all have not been they may adjourn, not exceeding ten days for the purpose of obtaining the abstracts and returns from the missing counties, and when they have all been received the board shall proceed with the canvass, which shall be conducted publicly in the hall of the house of representatives. In obtaining the abstracts from the counties whose abstracts have not been received by the date of this meeting, the board is authorized to obtain from the clerk of the superior court or the county board of elections, at the expense of such counties, the original abstracts or returns, or if they have been forwarded, copies of them. The state board of elections shall be authorized to enforce the penalties provided by law for the failure of a clerk of a superior court or a chairman of the county board of elections to comply with the law in making their returns of an election. (1933, c. 165, s. 9.)

§ 163-95. Meeting of state board of elections to canvass returns of a special election for congressmen.—In all cases of special elections ordered by the governor to fill vacancies in the representation of the state in congress as provided for in § 163-105, the state board of elections may meet as soon as the chairman of said board shall have received returns from all of the counties entitled to vote in said special elections for the purpose of canvassing the returns of said special election and for preparing an abstract of same. It shall be the duty of the chairman of the state board of elections to fix the day of meeting which shall not be later than ten days after such elections, and it shall be the duty of all returning officers to make their returns promptly so that the same may be received within the ten days. (1933, c. 165, s. 9.)

§ 163-96. Board to prepare abstracts and declare results of elections.—The state board of elections, at the conclusion of its canvass of the general election, shall cause to be prepared the following abstracts:

1. Upon a single sheet an abstract of votes for president and vice-president of the United States when an election is held for same.
2. Upon another sheet an abstract of votes for governor and all state officers, justices of the supreme court, judges of the superior court, and United States senators.
3. Upon another sheet an abstract of votes for representatives to congress for the several congressional districts in the state.
4. Upon another sheet an abstract of votes for solicitor in the several judicial districts in the state.
5. Upon another sheet an abstract of votes for state senators in the several senatorial districts in the state, where such districts are composed of more than one county.
6. Upon another sheet an abstract of votes for and against any constitutional amendments or propositions submitted to the people.

These abstracts so prepared by said board shall state the number of legal ballots cast for each candidate, the names of all persons voted for, for what office they respectively receive the votes, the number of votes each receive, and whom said board shall ascertain and judicially determine and declare by the count to be elected to the office. These abstracts shall be signed by the state board of elections in their official capacity and have the great seal of the state affixed thereto. (1933, c. 165, s. 9.)

§ 163-97. Results certified to the secretary of state; certificate of election issued.—After the state board of elections shall have ascertained the result of the election as hereinbefore provided, they shall cause the result to be certified to the secretary of state, who shall prepare a certificate for each person elected, and shall sign the same, which certificate he shall deliver to the person elected, when he shall demand the same.

The state board of elections shall also file with the secretary of state the original abstracts prepared by it, also the original county abstracts to be filed in his office. (1933, c. 165, s. 9.)

§ 163-98. Secretary of state to record abstracts.—The secretary of state shall record the abstracts filed with him by the state board of elections in a book to be kept by him for recording the results of elections and to be called the election book, and shall also file the county abstracts. (1933, c. 165, s. 9.)

Art. 16. State Officers, Senators and Congressmen.

§ 163-99. Contested elections—how tie broken.—The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto by the state board of elections, but if two or more be equal and highest in votes for the said office, then one of them shall be chosen by joint ballot of both houses of the general assembly. In contested elections, the state board of elections shall certify to the speaker of the house of representatives a statement of such facts as the board has relative thereto and such contests shall be determined by joint vote of both houses of the general assembly in the same manner and under the same rules as described in cases of contested elections for members of the general assembly. (Rev., s. 4363; 1901, c. 89, s. 44; 1915, c. 121, s. 1; 1927, c. 260, s. 14; 1933, c. 165, s. 10; C. S. 5999.)

§ 163-100. Regular elections for senators.—United States senators to fill vacancies caused by the expirations of regular terms shall be elected by the people at the last regular election before each vacancy shall occur as now provided for state officers, and the tickets shall be furnished, blanks sent out and returns made as for state officers, and the returns canvassed and results declared in the same way. (1913, c. 114, s. 3; C. S. 6001.)

§ 163-101. Governor to fill vacancies until general election.—Whenever there shall be a vacancy in the office of United States senator from this state caused by death, resignation, or otherwise than by expiration of a term, the governor shall appoint to fill the vacancy till there shall be an election. (1913, c. 114, s. 1; C. S. 6003.)

§ 163-102. Election of senator to fill unexpired term.—If such vacancy shall occur more than thirty days before any general state election, the governor shall issue his writ for the election by the people, at the next general election, of a senator to fill the unexpired part of the term, and said election shall take effect from the date of the canvassing of the returns, which shall take place at the same time and in the same way as the canvassing of the returns for state officers. (1913, c. 114, s. 2; C. S. 6002.)

§ 163-103. Congressional districts specified.—For the purpose of selecting representatives to the Congress of the United States, the State of North Carolina shall be divided into twelve (12) districts as follows:

First District: Camden, Chowan, Currituck, Beaufort, Dare, Gates, Hertford, Perquimans, Pitt, Pasquotank, Hyde, Tyrrell, Martin, and Washington counties.

Second District: Bertie, Edgecombe, Greene, Halifax, Lenoir, Northampton, Warren, and Wilson counties.

Third District: Craven, Duplin, Jones, Onslow, Pender, Pamlico, Sampson, Wayne, and Carteret counties.

Fourth District: Chatham, Franklin, Johnston, Nash, Randolph, Wake, and Vance counties.

Fifth District: Caswell, Forsyth, Granville, Person, Rockingham, Stokes, and Surry counties.

Sixth District: Alamance, Durham, Guilford, and Orange counties.

Seventh District: Bladen, Brunswick, Columbus, Cumberland, Harnett, New Hanover, and Robeson counties.

Eighth District: Anson, Davie, Davidson, Hoke, Lee, Montgomery, Moore, Richmond, Scotland, Union, Wilkes, and Yadkin counties.

Ninth District: Ashe, Alleghany, Alexander, Cabarrus, Caldwell, Iredell, Rowan, Stanly, and Watauga counties.

Tenth District: Avery, Burke, Catawba, Lincoln, Mecklenburg, and Mitchell counties.

Eleventh District: Cleveland, Gaston, McDowell, Madison, Polk, Rutherford, and Yancey counties.

Twelfth District: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Swain, and Transylvania counties. (Rev., s. 4366; 1911, c. 97; 1931, c. 216; 1941, c. 3; C. S. 6004.)

§ 163-104. Election after reapportionment of congressmen.—Whenever, by a new apportionment of representatives among the several states, the number of representatives in the congress of the United States from North Carolina shall be either increased or decreased, and neither the congress nor the general assembly shall provide for the election of the same, then if the said representatives shall be increased, the increased number shall be elected by the qualified voters of the whole state, and shall be voted for on one ballot, and the representatives from the several congressional districts shall be elected by the voters of said districts, respectively, and shall each be voted for on another ballot; but if the number of said representatives shall be decreased as aforesaid, in that event all the representatives in congress shall be elected by the qualified voters of the whole state and shall be voted for on one ballot. (Rev., s. 4368; 1901, c. 89, s. 58; C. S. 6006.)

§ 163-105. Special election for congressmen.—If at any time after the expiration of any congress and before another election, or if at any time after an election, there shall be a vacancy in the representation in congress, the governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships in their respective counties at such times as may be appointed therein, and at the places established by law, then and there to vote for a representative in congress to fill the vacancy; and the election shall be conducted in like manner as regular elections. (Rev., s. 4369; 1901, c. 89, s. 60; C. S. 6007.)

§ 163-106. Certificate of election for congressmen.—Every person duly elected a representative to congress, upon obtaining a certificate of his election from the secretary of state, shall procure

from the governor a commission, certifying his appointment as a representative of the state, which the governor shall issue on such certificate being produced. (Rev., s. 4370; 1901, c. 89, s. 61; C. S. 6008.)

Art. 17. Election of Presidential Electors.

§ 163-107. Conduct of presidential election. — The election of presidential electors shall be conducted and the returns made as nearly as may be directed in relation to the election of state officers, except as herein otherwise expressed. (Rev., s. 4371; 1901, c. 89, s. 79; 1933, c. 165, s. 11; C. S. 6009.)

§ 163-108. Arrangement of names of presidential electors.—The names of candidates for electors of president and vice-president of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each party or group of petitioners and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. (Rev., s. 4372; 1901, c. 89, s. 78; 1933, c. 165, s. 11; C. S. 6010.)

§ 163-109. How returns for president shall be made.—The county board of elections shall meet at the courthouse on the second day next after every election for president and vice-president, and shall ascertain and determine the number of legal votes cast for the electors for president and vice-president and shall prepare abstracts and make their returns to the state board of elections in the same manner as hereinbefore provided for state officers. (Rev., s. 4373; 1901, c. 89, s. 80; 1927, c. 260, s. 16; 1933, c. 165, s. 11; C. S. 6011.)

§ 163-110. Declaration and proclamation of results by state board; casting of state's votes for president and vice-president. — The state board of elections shall canvass the returns for electors for president and vice-president at the same time and place as hereinbefore required to be made for state officers, and an abstract for same shall be prepared and certified to the secretary of state in the same manner.

The secretary of state shall, under his hand and seal of his office, certify to the governor the names of as many persons receiving the highest number of votes for electors of president and vice-president of the United States as the state may be entitled to in the electoral college. The governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon on the first Monday after the second Wednesday in December next after his election, at which time the said electors shall meet, and then and there give their votes on behalf of the state of North Carolina for president and vice-president of the United States. In case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for the president and vice-president of the United States And the governor shall, on or before the said first Monday after the second Wednesday in December, make out six lists of the names of the said persons so elected and appointed electors and cause the same to be delivered to them, as directed by the act of congress. (Rev., s. 4374; 1917, c. 176, s. 2; 1901, c. 89, s. 81; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2; C. S. 5916; 6012.)

§ 166-111. Presidential electors; compensation. —Presidential electors shall receive, for their attendance at the meeting of said electors in the city of Raleigh, the sum of $10.00 (ten dollars) per day and traveling expenses at the rate of 5c (five cents) per mile in going to and returning from said meeting. (Rev., s. 2761; 1901, c. 89, s. 84; 1933, c. 5; C. S. 3878.)

§ 163-112. Penalty for presidential elector failing to attend and vote.—Each elector, with his own consent previously signified, failing to attend and vote for a president and vice-president of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident), shall forfeit and pay to the state five hundred dollars, to be recovered by the attorney-general in the superior court of Wake county. (Rev., s. 4375; 1901, c. 89, s. 83; 1933, c. 165, s. 11; C. S. 6013.)

Art. 18. Miscellaneous Provisions as to General Elections.

§ 163-113. Agreements for rotation of candidates in senatorial districts of more than one county.—When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for senator, or any one of the candidates for senator, of any political party (as the words "political party" are defined in the first section of this subchapter) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county officers in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of senator, made as hereinbefore provided, shall be duly certified, by the chairman and secretary of the executive committee of the party making the same, and for the county in which they are made, to the chairmen of the executive committees of such party in all other counties constituting the senatorial district; and no other action shall be deemed necessary to constitute such candidate the nominee of his party for such office. (1911, c. 192; C. S. 6014.)

§ 163-114. Judges and solicitors; commission; when term begins.—Justices of the supreme court,

judges of the superior court, and solicitors shall be commissioned by the governor, and their terms of office shall begin on the first day of January next succeeding their election. An election for officers, whose terms shall be about to expire, shall always be held at the general election next preceding the expiration of their terms of office. (Rev. s. 4377; 1901, c. 89, s. 69; C. S. 6015.)

§ 163-115. Registrars to permit copying of poll and registration books.—In any primary or general election held in this State, and at any time prior to the holding of such primary or general election, and while the registration and poll books shall be in the hands of any Registrar, it shall be the duty of such Registrar, on application of any candidate or the chairman of any political party, to permit said poll book or registration book to be copied; provided, such poll book or registration book shall not be removed from the polling place if there, or the residence of such registrar, if there; provided, also, it shall be lawful for such registrar himself to furnish to such applicant, in lieu of the books themselves, a true copy of the same, for which service he shall be entitled to receive one cent per name. Any person wilfully failing or refusing to comply with the provisions and requirements of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 4382; 1901, c. 89, s. 83; 1931, c. 80; C. S. 6016.)

§ 163-116. Forms for returns sent to proper officers by state board of elections.—The state board of elections shall cause proper forms of returns to be prepared and printed, and send copies thereof, with plain directions as to the manner of endorsing, directing, and transmitting the same to the seat of government, to all of the returning officers of the state, at least thirty days before the time for holding any election. The said board shall also furnish to the clerk of the superior court of each county all such printed blanks as may be necessary for making the county returns. (Rev., s. 4383; 1901, c. 89, s. 43; 1921, c. 181, s. 5; 1927, c. 260, s. 18; C. S. 6017.)

SUBCHAPTER II. PRIMARY ELECTIONS.

Art. 19. Primary Elections.

§ 163-117. Date for holding primaries.—On the last Saturday in May next preceding each general election to be held in November for state officers, representatives in congress, district officers in districts composed of more than one county, and members of the general assembly of North Carolina, or any such officers, there shall be held in the several election precincts within the territory for which such officers are to be elected a primary election for the purpose of nominating candidates of each and every political party in the state of North Carolina for such offices as hereinafter provided; and at such primary election next preceding the time for the election of a senator for this state in the congress of the United States there shall likewise be nominated the candidate of each political party in this state for such office of United States senator. (1915, c. 101, s. 1; 1917, c. 218; 1939, c. 196; C. S. 6018.)

§ 163-118. Primaries governed by general election laws.—Unless otherwise provided in this article, such primary elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of this state, and all the provisions of this chapter and of other laws governing elections not inconsistent with this article shall apply as fully to such primary elections and the acts and things done thereunder as to general elections; and all acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held hereunder. (1915, c. 101, s. 3; 1917, c. 218; C. S. 6020.)

§ 163-119. Notices and pledges of candidates; with whom filed. — Every candidate for selection as the nominee of any political party for the offices of governor and all state officers, justices of the supreme court, the judges of the superior court, United States senators, members of congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the state board of elections, by six o'clock p. m. on or before the tenth Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as ..... in the primary election to be held on ..... I affiliate with the ..... party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the ..... party."

Every candidate for selection as the nominee of any political party for the office of state senator in a primary election, member of the house of representatives, and all county and township offices shall file with and place in the possession of the county board of elections of the county in which they reside by six o'clock p. m. on or before the sixth Saturday before such primary is to be held a like notice and pledge. (1915, c. 101, s. 6; 1917, c. 218; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; C. S. 6022.)

§ 163-120. Filing fees required of candidates in primary.—At the time of filing a notice of candidacy for nomination for any congressional or state office, including judges of the supreme and superior court and solicitors, each candidate for such office shall pay to the state board of elections a filing fee of one per cent of the annual salary of such office. At the time of filing a notice of candidacy for nomination for any legislative or county office, each candidate for such office shall pay to the county board of elections of the county of their residence a filing fee of one per cent of the annual salary of such office: Provided that all candidates for nomination for any county or township office operated on a fee basis instead of a salary basis shall pay to the county board of elections a filing fee of five dollars, unless the holder of such office has in the year next preceding received in fees a sum in excess of five hundred dollars: In

which event the filing fee shall be one per cent of such total amount received; the purpose of this amendment being to raise the filing fees of all county and legislative candidates to the same basis as that of all candidates for state offices; that is, one per cent of the annual salary of the office for the first year; and further to fix a filing fee for candidates for county and township offices operated on a fee basis instead of a salary basis at five dollars, unless the compensation for the office in the year next preceding was in excess of five hundred dollars. (1915, c. 101, s. 4; 1917, c. 218; 1919, c. 139; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; C. S. 6023.)

Local Modification.—Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

§ 163-121. Fees erroneously paid refunded. — Where a candidate erroneously files a notice of candidacy, accompanied by the proper sum of money, with the state board of elections, instead of with the local county board, and the money is paid into the state treasury; or where a candidate files a notice, accompanied by the sum fixed by law with the state board, the money being paid into the state treasury, and afterwards, but before the time for filing such notices, as fixed by law, shall have expired, he wishes to withdraw his candidacy, then, in both these cases, the money may be refunded to the candidate, upon certificate from the chairman of the state board of elections that the facts exist which entitle him to such refunding. Upon such certificate, the auditor shall give his warrant upon the treasurer of the state, and the treasurer shall pay the same. (1919, c. 50; C. S. 6024.)

§ 163-122. Payment of expense for primary elections.—The expense of printing and distributing the poll and registration books, blanks, ballots for those offices hereinafter provided to be furnished by the state, and the per diem and expenses of the state board of elections while engaged in the discharge of the duties herein imposed, shall be paid by the state; and the expenses of printing and distributing the ballots hereinafter provided to be furnished by the counties, and the per diem and expenses of the county board of elections, and the registrars and judges of election, while engaged in the discharge of the duties herein imposed, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections. (1915, c. 101, s. 7; 1917, c. 218; 1927, c. 260, s. 21; 1933, c. 165, s. 14; C. S. 6026.)

§ 163-123. Registration of voters. — The regular registration books shall be kept open before the primary election in the same manner and for the same time as is prescribed by law for general elections, and electors may be registered for both primary and general elections.

No person shall be entitled to participate or vote in the primary election of any political party unless he be a legal voter, or shall become legally entitled to vote at the next general election, and has first declared and had recorded on the registration book that he affiliates with the political party in whose primary he proposes to vote and is in good faith a member thereof, meaning that he intends to affiliate with the political party in whose primary he proposes to vote and is in good faith a member thereof. (1915, c. 101, s. 5; 1917, c. 218; C. S. 6027.)

§ 163-124. Notices filed by candidates to be certified; printing and distribution of ballots.—When the time for filing notices by candidates for nomination shall have expired, the chairman of the state board of elections shall within three days thereafter certify the facts as to such notices as have been filed with it to the secretary of state; and in the senatorial districts composed of more than one county where there is no agreement as provided for in § 163-113, the chairman or secretary of the county board of elections of each county in such senatorial district shall, within three days after the time for filing such notice shall have expired, certify to every other chairman of the county board of elections in such senatorial district the names of all candidates who have filed notice of candidacy in their respective county for the office of the state senator; and said chairman, acting under the direction of the state board of elections and under such rules and regulations as may be prescribed by it, shall, without delay, at the expense of the state, cause a sufficient number of official ballots to be printed for each political party having candidates to be voted for in the primary and distributed to the chairman of the county boards of elections in the several counties, upon which ballot shall appear the names of candidates who shall, under the provisions of this article, have filed notice of their candidacy and otherwise complied with the requirements of this article, except candidates for offices ballots for which are herein provided to be printed by the several county boards of elections, so that such ballots shall be received by the respective county boards of elections, at least thirty days before the date of holding such primaries. The expense of printing and distributing such official ballots shall be paid by the state treasurer out of funds appropriated to the State Board of Elections, in accordance with the Executive Budget Act. Said ballots so printed by the state board of elections shall be for each of the several political parties in the state, as hereinafter defined and described, and the names of the respective parties and the candidates shall be printed on the ballots prepared for the respective parties with which the candidates affiliate, and upon the ballots the office for which each aspirant is a candidate shall be indicated. Three days before the primary election the chairman of the county boards of elections shall distribute the official ballots to the several registrars in their respective counties, and take a receipt therefor, and the registrars shall have them at the several polling places for the use of the electors at the time of holding the primary. Any election or other officer who shall accept appointment and who shall, without previously resigning, fail to perform in good faith the duties prescribed in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1915, c. 101, s. 8; 1917, c. 218; 1927, c. 260, s. 22; C. S. 6028.)

§ 163-125. Only official ballots to be voted; contents and printing of ballots.—There shall be voted in primary elections only the official ballots

furnished to the chairmen of the county boards of elections and by them to the registrars; and if other ballots be voted in a party primary, they shall not be counted. There shall be as many kinds of official ballots as there are political parties, members of which have filed notice of their candidacy for primary elections. (1915, c. 101, s. 9; 1917, c. 218; C. S. 6029.)

§ 163-126. How primary conducted; voter's rights; polling books; information given; observation allowed.—When an elector offers himself and expresses the desire to vote at a primary held under this article, he shall declare the political party with which he affiliates and in whose primary he desires to vote, as hereinbefore provided, and he shall then be furnished by the registrar ballots, as desired by him, of the political party with which he affiliates, which he may vote, and he shall not in such primary be allowed to vote a ticket marked with the name of any political party of which he has not declared himself to be a member as herein defined; but any one may at any time any elector proposes to vote challenge his right to vote in the primary of any party upon the ground that he does not affiliate with such party or does not in good faith intend to support the candidates nominated in the primary of such party, and it shall be the duty of the registrar and judges of election upon such challenge to determine whether or not the elector has a right to vote in said primary: Provided, that he may vote for candidates for all or any of the offices printed on such ballot, as he shall elect, and he shall be required to disclose the name of the political party printed thereon and no more. He may in the manner hereinbefore prescribed mark such names as he desires, and these and only these shall be counted as being voted for by him, and he shall have the right to so vote for only one candidate as his choice for each office. If he be a qualified elector and has elected to vote in the primary of a party of which he has declared himself to be a member, as provided herein, he may deposit his ballots in the proper ballot boxes, or he may permit the registrar or a judge of election to so deposit them for him. Any person who has become of the age of twenty-one years between the time when the books closed for registration and the day of the primary election, and who is otherwise a qualified elector, and who desires to register and vote as a member of a political party, may do so in the manner herein provided.

At the time of voting, the name of the voter shall be entered on a primary polling book to be provided and kept for the purpose, under rules prescribed by the state board of elections, which said book shall be provided at the expense of the state for all state primaries and state elections, and upon said book shall be entered, opposite the name of such voter and in proper column provided for the purpose, the name of the political party whose ticket he shall have voted, and said books shall be filed for safe-keeping, until the next election, in the clerk's office of the county in which the ballots are so cast.

It shall be the duty of the county board of elections and of the judges and registrar in each precinct to make all necessary arrangements by providing a proper number of places in each precinct whereby each voter shall have an opportunity, both at all primary and all general elections, to arrange his ballot in secret and without interference from any other person whatsoever; and it shall be the duty of the judges of election and registrars holding primary and general elections to give any voter any information he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and in response to questions asked by him, they shall communicate to him any information which he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information necessary to enable him to mark his ballot as he desires.

At the written request of the chairman of any political party of any county, the judges and registrar of any precinct shall designate the name of some elector in each precinct, if there be such elector who affiliates with such political party, who shall be furnished the opportunity to observe the method of holding such primary election; but such elector shall in no manner interfere with the method of holding such election or interfere or communicate with or observe any voter in casting his ballot, but shall make such observation and notes of the manner of holding such election and the counting of the ballots as he may desire: Provided, nothing herein contained shall be construed to prevent any elector from casting at the general election a free and untrammeled ballot for the candidate or candidates of his choice. (1915, c. 101, s. 11; 1917, c. 218; 1921, c. 181, s. 6; 1923, c. 111, s. 14; C. S. 6031.)

§ 163-127. Counting ballots and certifying results.—When the polls have been closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election at the several precincts and such electors as may desire to be present: Provided, the registrars and judges may fix such space as they may consider reasonable and necessary to enable them to count the ballots. The ballots of each of the several parties in the boxes in each precinct shall be counted and bound in separate packages, and the result shall be certified to the proper county board of elections and by them to the state board of elections upon blanks to be provided by the state board of elections at the expense of the state within the time and, as near as may be, in the manner provided for the certification of the result of general elections. (1915, c. 101, s. 12; 1917, c. 218; C. S. 6032.)

§ 163-128. Names of candidates successful at primaries printed on official ballot; where only one candidate.—Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary elections shall have their names printed on the official ballot of their respective political parties. In all cases where only one aspirant for nomination for a particular political office to be voted for by his political party on the state or district ballot or, for the state senate in districts

composed of two or more counties shall have filed such notice, the board of elections of the state shall, upon the expiration of the time for filing such notices, declare him the nominee of his party, and his name shall not therefore be placed on the primary ballot, but shall be placed on the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 13; 1917, c. 218; C. S. 6033.)

§ 163-129. Primaries for county offices; candidates to comply with requirements.—At the time of holding primary elections for state officers, as hereinbefore provided, there shall likewise be held primary elections for the nomination of the candidates of the several political parties in the state for county offices; and no one shall be voted for in such primary elections for the nomination of candidates for county offices unless he shall have filed a notice with the appropriate county board of elections and shall have taken the pledge required of candidates filing notice with the state board of elections, as hereinbefore provided, and shall have otherwise complied with the requirements applicable to such candidates for nomination for state offices, except in so far as such requirements are modified by the provisions of this article with reference to candidates for primary nominations for county offices. (1915, c. 101, s. 14; 1917, c. 218; C. S. 6034.)

Local Modification.—Ashe: C. S., 6054; 1929, c. 319; Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Watauga: C. S., 6054; 1935, c. 391; 1937, c. 264.

§ 163-130. Primaries for county offices; notices of candidacy and official ballots.—The state board of elections, prior to the time fixed by law for the appointment of registrars and judges of primary elections, shall prescribe, print, and furnish to the several county boards of elections a sufficient number of notices to be filed by candidates desiring nomination for county offices, which said notices shall be substantially the same in form as those required to be filed by candidates for primary nomination for state offices as hereinbefore provided; and the several county boards of elections shall have printed and shall provide official ballots for county officers similar in form and otherwise to the ballots hereinbefore provided for state officers, and shall distribute the same to the several precincts in the manner and at the time hereinbefore prescribed in the case of state offices. (1915, c. 101, s. 15; 1917, c. 218; C. S. 6035.)

§ 163-131. Primaries for county offices; voting and returns.—In primary elections for the selection of candidates for county offices the voting shall be done in the manner hereinbefore prescribed for primary elections for state offices, and all of the provisions herein contained governing primary elections for state offices shall apply with equal force to primary elections for county offices when not inconsistent with other provisions herein with reference to such primary elections for county officers; and the returns in such primary elections for county officers shall be certified to the appropriate county board of elections, which shall declare and publish the results. (1915, c. 101, s. 16; 1917, c. 218; C. S. 6036.)

§ 163-132. Primary ballots; provisions as to names of candidates printed thereon.—It shall be the duty of the state board of elections to print and furnish to the counties for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed for in § 163-124, which official ballots shall have printed thereon the names of candidates for the United States senate, for the national house of representatives, and for governor and for all other state offices, with the exception of the office of solicitor and judge of the superior court. All of these candidates, ballots for which are required to be furnished by the state, may be printed on one form of ballot or they may be printed on a number of forms of ballots as may be decided by the state board of elections.

It shall be the duty of the county board of elections to print and furnish to the voting precincts in the county for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed in § 163-124, which official ballots shall have printed thereon the names of candidates for the following offices in the order in which they are named and shall be known as the "official primary ballot for judge superior court, solicitor, state senator and county and township offices" when candidates for all of said offices are participating in the primary within the county. Whenever there is no contest for any of the aforesaid offices, then such names will not appear on the county ballot. The county board of elections may print the township ballot separate from the county ballot if it should so desire.

The ballots to be printed by the counties shall be of such width, color, form and printed in such type and on such paper as the state board of elections may direct.

It shall be the duty of the chairman of the state board of elections to certify to the chairman of the county board of elections in each county, by the fourth Saturday before each primary election, the names of such candidates for the nomination for judge of the superior court and solicitor as have filed the required notice and pledge and filing fee with the state board of elections and entitled to have their names placed on the official county ballot, and it shall be the duty of each county chairman to acknowledge receipt within two days after the receipt of the letter of certification to the chairman of the state board of elections so that the state chairman will know that each candidate's name has been properly certified and received. (1915, c. 101, s. 17; 1917, c. 218; 1933, c. 165, s. 16; C. S. 6037.)

§ 163-133. Boxes for county officers; how labeled.—All ballots for nominations for county officers shall be deposited in the box labeled "Legislative Primary Box" hereinbefore provided for, which box, in addition to bearing the label "Legislative Primary Box," shall also immediately thereunder be labeled "County Primary Box." (1915, c. 101, s. 18; 1917, c. 218; C. S. 6038.)

§ 163-134. Sole candidate declared nominee. — In all cases where only one aspirant for nomination by the party with which he affiliates for the state senate in districts composed of only one

county or for the house of representatives of the general assembly or for a county office shall have filed the notice of candidacy in this article required, the county board of elections shall, upon the expiration of the time fixed for filing such notice, declare him the nominee of his party, and his name shall therefore not be placed on the primary ballot, but shall be placed upon the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 19; 1917, c. 218; C. S. 6039.)

§ 163-135. Primaries for township and precinct officers.—The several county boards of elections shall provide for holding in their respective counties primary elections for the choice of candidates for the nomination for township and precinct officers, which primary elections shall be held at the same time and places as the primaries for county officers: Provided, that in the counties exempt from the operation of the primary law for the nomination of county officers, township officers may also be nominated in the same manner as county officers within such counties. The expenses for holding primaries for township officers shall be paid for by the counties. (1915, c. 101, s. 20; 1917, c. 218; 1933, c. 165, s. 17; C. S. 6040.)

§ 163-136. Returns of precinct primaries; preservation of ballot.—The registrar and judges of election at each precinct in the state of North Carolina shall certify upon blanks prepared and printed by the state board of elections and distributed through the county board of elections to the election officers of each of the several precincts the result of the primary election of each precinct; and there shall be made by the judges of election and registrar at each precinct two copies of their returns, one copy of which shall be filed by them with the clerk of the court of their county for public inspection, and one shall be filed with the county board of elections to be kept on file by it; and it shall by the duty of the judges and registrars to preserve and keep for two months after each election the original ballots cast at such election, which ballots, after being counted, shall be placed in bundles, a separate and distinct bundle to be made of the ballots of each and every political party cast in each of the boxes, and each box in which ballots were cast shall be carefully sealed up before the election officers shall separate, so that nothing put in may be taken from them, and the signatures of the registrar and judges of each precinct shall be inscribed at the same time on a seal placed on each box of the precinct, and no box shall be opened except upon the written order of the county board of elections or a proper order of court. The state board of elections, in preparing the printed form for returns to be made by the judges and registrars of the several precincts to the county boards of elections, and in preparing the forms for the returns to be made by the county boards of elections to the state board of elections of the result of primary elections, shall prepare them in such form as will show the number of votes cast for each candidate for nomination for office. (1915, c. 101, s. 21; 1917, c. 179, s. 1; 1917, c. 218; 1923, c. 111, s. 15; C. S. 6041.)

§ 163-137. County board tabulates results of primaries; returns in duplicate. — The county boards of elections of the several counties shall tabulate the returns made by the judges and registrars of the several precincts in their respective counties with reference to candidates in the primaries, so as to show the total number of votes cast for each candidate of each political party for each office, and, when thus compiled on blanks to be prepared and furnished by the state board of elections for the purpose, these returns, in the case of officers other than the state senate in districts composed of only one county, the house of representatives and county offices, shall be made out for each county in duplicate, and one copy shall be forwarded to the state board of elections and one copy shall be filed with the clerk of the superior court of the county from which such returns are made; in the case of member of the state senate in district composed of only one county, member of the house of representatives and county officers, such returns shall be made out in duplicate, and one copy thereof filed with the clerk of the superior court and one copy retained by the county board of elections, which shall forthwith, as to such last mentioned offices, publish and declare the results. (1915, c. 101, s. 21½; 1917, c. 218; C. S. 6042.)

§ 163-138. State board tabulates returns and declares nominees.—The state board of elections shall compile and tabulate the returns for each candidate for each office for each political party voted for in the primary except in cases in which it is in this article provided that the result shall be declared by the several county boards of election, and if a majority of the entire votes cast for all the candidates of any political party for a particular office shall be for one candidate, he shall be declared by the state board of elections the nominee of his political party for such office. (1915, c. 101, s. 22; 1917, c. 218; C. S. 6043.)

§ 163-139. Returns of election boards to be under oath. — The chairman or secretary of each of the county boards of elections and the chairman or secretary of the state board of elections shall file with all returns and declarations of results of election required by law to be filed by such boards an affidavit that the same are true and correct according to the returns made to them; and a judge of election or registrar shall accompany the precinct returns as to results of primary elections with an affidavit that the same are true and correct, according to the votes cast and correctly counted by them. (1915, c. 101, s. 23; 1917, c. 218; C. S. 6044.)

§ 163-140. When results determined by purality or majority; second primaries.—In the case of all officers mentioned in this article, nominations shall be determined by a majority of the votes cast.

If in the case of an office no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for: Provided, that if either of such two shall withdraw and decline to run, and shall file notice to the effect with the appropriate board of elections, such board shall declare the other aspirant nominated: Provided further, that unless the aspir-

ant receiving the second highest number of votes shall, within five days after the result of such primary election shall have been officially declared, and such aspirant has been notified by the appropriate board of elections, file in writing with the appropriate board of elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by such appropriate board.

If a second primary be ordered by the state or a county board of elections, it shall be held four weeks after the first primary, in which case such second primary shall be held under the same laws, rules, and regulations as are provided for the first primary, except that there shall be no further registration of voters other than such as may have become legally qualified after the first primary election, and such persons may register on the day of the second primary, and shall be entitled to vote therein under the provisions of this article. If a nominee for a single office is to be selected, with more than one candidate, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all candidates by two, and any excess of the sum so ascertained shall be a majority within the meaning of this section.

If nominees for two or more offices (constituting a group) are to be selected, and there are more candidates for nomination than there are such offices, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all of such candidates by the number of positions to be filled, and then dividing the result by two. Any excess of the sum so ascertained, shall be the majority within the meaning of this section. If in ascertaining the result in this way, it appears that more candidates have obtained this majority than there are positions to be filled, then those having the highest vote, if beyond the majority just defined, shall be declared the nominees for the positions to be filled. Where candidates for all the offices within such group do not receive a majority as defined and set out in this section, those candidates equal in number to the positions to be filled and having the highest number of votes shall be declared nominated unless a second primary shall be demanded, which may be done by any one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes. When any one or all of such candidates in the group receiving the second highest number of votes demand a second primary, such second primary shall be held and the names of all those candidates in the group receiving the highest number of votes and all those in the group receiving the second highest number of votes and demanding a second primary shall be put on the ballot for such primary. In no case shall there be a third primary, but the candidates receiving the highest number of votes in the second primary shall be nominated. (1915, c. 101, s. 24; 1917, c. 179, s. 2; 1917, c. 218; 1927, c. 260, s. 23; 1931, c. 254, s. 17; C. S. 6045.)

§ 163-141. Attorney-general to aid board by advice and as to forms.—In the preparation and distribution of ballots, poll books, forms of returns to be made by registrars and judges, and forms of the returns to be made by the county boards of elections to the state board of elections and to be made by the state board of elections, and all other forms, it shall be the duty of the state board of elections to call to its aid the attorney-general of the state of North Carolina, and it shall be the duty of the attorney-general to advise and aid in the preparation of all such ballots, books, and forms. (1915, c. 101, s. 25; 1917, c. 218; C. S. 6046.)

§ 163-142. Returns, canvasses, and other acts governed by general election law.—The returns to be made by the registrars and judges as to the results of primary elections, and the canvassing by the county boards of elections of such results and declarations of such results, and the reports to be made by the county boards of elections to the state board of elections and other acts and things to be done in ascertaining and declaring the results of primary elections, unless otherwise provided herein, shall be done within the time before or after the primary election, and, as near as may be, under the circumstances prescribed for like acts and things done with reference to a general election, unless such acts and things prescribed to be done within certain times under the general election law shall, with respect to primary elections, be changed by general rules promulgated by the state board of elections for what may seem to them a good cause. (1915, c. 101, s. 26; 1917, c. 218; C. S. 6047.)

§ 163-143. Election board may refer to ballot boxes to resolve doubts.—When, on account of errors in tabulating returns and filling out blanks, the result of an election in any one or more precincts cannot be accurately known, the county board of elections and the state board of elections shall be allowed access to the ballot boxes in such precincts to make a recount and declare the results, which shall be done under such rules as the state board of elections shall establish to protect the integrity of the election and the rights of the voters. (1915, c. 101, s. 27; 1917, c. 218; C. S. 6048.)

§ 163-144. Political party defined for primary elections.—A political party within the meaning of the primary law shall mean any political group of voters which, at the last preceding general election, polled at least three per cent of the total vote cast therein for such offices as are described in § 163-1. (1915, c. 101, s. 31; 1917, c. 218; 1933, c. 165, s. 17; C. S. 6052.)

§ 163-145. Filling vacancies among candidates.—In the event that any person nominated in any primary election as the candidate of a political party for a state office shall die, resign, or for any reason become ineligible or disqualified between the date of such primary election and ensuing general election, the vacancy caused thereby may be filled by the action of the state executive committee of such political party; in the event of such vacancy in the case of a district office, the same may be filled by the action of the executive committee for such district of such political party; and in the event of such vacancy in the case of a county office, or the house of representatives or the state senate in a district composed of only one county, the same

may be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurs: Provided, that should a vacancy occur in any office after the primary has been held, a nomination shall be made in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot: Provided further, that after the time for filing notice of candidacy has expired and the candidate who has been declared the nominee for any office shall die before the date of the primary, the vacancy thus created may be filled by nomination in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot: Provided further, that if, after the time for filing notice of candidacy has expired, any person who has filed notice of his candidacy in accordance with law, die, and there be only one other person who has filed notice of his candidacy for such office, the board of elections shall reopen the time for filing notice of candidacy, and fix a date upon which the primary election for such office shall be held. (1915, c. 101, s. 33; 1917, c. 179, s. 3; 1917, c. 218; 1923, c. 111, s. 16; C. S. 6053.)

§ 163-146. Contests over primary results.—All contests over the results of a primary election shall be determined according to the law applicable to similar contests over the results of a general election. (1933, c. 165, s. 19.)

§ 163-147. Notice of candidacy to indicate vacancy; votes only effective for vacancy indicated.—In any primary when there are two or more vacancies for chief justice and associate justices of the supreme court of North Carolina to be filled by nominations all candidates shall file with the state board of elections at the time of filing notice of candidacy a notice designating to which of said vacancies the respective candidate is asking the nomination. All votes cast for any candidate shall be effective only for the vacancy for which he has given notice of candidacy, as provided herein. (1921, c. 217; C. S. 6055(a).)

SUBCHAPTER III. GENERAL ELECTION LAWS.

Art. 20. Election Laws of 1929.

§ 163-148. Applicable to all subdivisions of State.—The provisions of this article shall be applicable to all counties, cities, towns, townships and school districts in the State of North Carolina, without regard to population or number of inhabitants thereof. (1929, c. 164, s. 2.)

Local Modification.—Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

§ 163-149. Preparation and distribution of ballots; definitions.—All ballots cast in general elections for national, State, county, municipal, and district officers in the towns, counties, districts, cities and other political divisions, and in primaries for the nomination of candidates for such offices, shall be printed and distributed at public expense. The printing and distribution of all ballots other than the county or local ballots hereinafter designated and the ballots for elections in cities and towns and the ballots for elections on bonds or other local measures, shall be arranged and handled by the State Board of Elections and shall be paid for by the State; and the printing and distribution of ballots in all county and local elections or primaries shall be arranged and handled by the County Board of Elections and shall be paid for by the respective counties; the printing and distribution of ballots in all municipal elections shall be arranged and handled by the municipal authorities conducting such election or primary and shall be paid for by such municipality. The term "State elections" as used in this article shall apply to any election held for the choice of Presidential Electors, United States Senators, State, county or district officer or officers. The term "National elections" shall apply to any member of Congress of the United States. The term "city election" shall apply to any municipal election so held in a city or town, and the term "city officers" shall apply to any person to be chosen by the qualified voters at such an election. (1929, c. 164, s. 3.)

§ 163-150. Applicable to all issues submitted to people; form of ballot.—This article shall apply to and control all elections for the issuance of bonds and to all other elections in which any question or issue is submitted to a vote of the people. And the form of ballot in such elections shall be a statement of the question, with provisions to be answered "Yes" or "No" or "For" or "Against" as the case may be. (1929, c. 164, s. 4.)

§ 163-151. Ballots, provisions as to; names of candidates and issue.—The ballots printed for use under the provisions of this article shall be printed and delivered to the County Boards of Elections at least thirty days previous to the date of election, and shall contain the names of all candidates who have been put in nomination by any primary, convention, mass meeting, or other assembly of any political party in this State, or have duly filed notice of their independent candidacy, and all questions or issues to be voted on. It shall be the duty of the County Board of Elections to have printed all necessary ballots for use under the provisions of this article for county, township, and district elections. It shall be the duty of the State Board of Elections to have printed all necessary ballots for use under the provisions hereof for State and national elections, constitutional amendments and propositions submitted to the vote of the people. (1929, c. 164, s. 5.)

§ 163-152. Independent candidates put upon ballot, upon petition.—The Boards of Election shall cause to be printed upon said ballots as an independent or non-partisan candidate, the name of any qualified voter who has been requested to be a candidate for office by written petition signed by at least twenty-five per cent of those entitled to vote for a candidate for such office according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for, when such petition is accompanied by an affidavit from such proposed candidate that he seeks to become an independent or non-partisan candidate and does not affiliate with any political party: Provided, such petition is filed with said Board of Elections at or before the time prescribed by law for the nomination of candidates by the political parties within the particular political division. The written petition

provided herein, in municipal elections shall be signed by at least twenty-five per cent of the votes cast for the candidate running, in the last municipal election, for the particular office. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236.)

§ 163-153. Becoming candidate after the time fixed for the printing of the official ballot; provision as to ballot.—If any qualified citizen is nominated to fill any vacancy, in any primary or election, after the time fixed herein for the printing of the official ballots, then said names shall not be printed upon said ballots. But, the candidate nominated may, at his own expense, have the Board of elections print a separate ticket upon which the title of the office for which he is a candidate and his own name shall be printed. Such ticket so printed as aforesaid shall be an official ticket. This section relates to all elections, whether nominating primaries, general elections, or others. (1929, c. 164, s. 7; 1931, c. 254, s. 1.)

§ 163-154. Withdrawal of candidate. — After the proper officer has been notified of the nomination, as hereinbefore specified, of any candidate for any office, he shall not withdraw same unless upon the written request of the candidate so nominated, made at least thirty days before the day of the election. (1929, c. 164, s. 8.)

§ 163-155. Number of ballots; what ballots shall contain; arrangement.—There shall be seven kinds of ballots, called respectively: official ballot for presidential electors; official ballot for United States senator; official ballot for members of congress; official state ballot; official county ballot; official township ballot; and official ballot on constitutional amendments or other proposition submitted. In addition to these, there shall be a definite form of ballot for primary elections as hereinafter provided and a ballot for municipal elections as hereinafter provided: Provided, further, that the state board of elections, or the county board of elections may, in their discretion, combine any one or more of the ballots for either the primary or the general election. The ballots herein provided for shall be used for the purpose for which their names severally indicate, and not otherwise, that is to say:

(a) On the official presidential ballot, the names of candidates for electors of president and vice-president of the United States of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballot the names, of the candidates for president and vice-president of the United States respectively, of each such political party or group of petitioners, and they shall be arranged under the title of the offices. The party columns shall be separated by black ink lines. At the head of each party column shall be printed the party name in large type and below this a circle one-half inch in diameter, below this the names of the candidates for president and vice-president in the order prescribed. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle."

If the state board of elections, in its discretion, should combine the presidential ballot with some other kind of ballots, such as the state, senatorial, or congressional ballots, then in that event, there shall be printed at the left of the names of such candidates for president and vice-president of each party or group, a single voting square large enough so that a voter, desiring to vote for candidates for other officers of another party, may vote for the candidates for president and vice-president together in the one single square. When the presidential ballot is combined with another ballot, instruction number two on the state ballot shall be included with the instructions given herein for the presidential ballot.

On the face of the ballot, at the top, shall be printed in heavy black type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. A vote for the names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(aa) On the official ballot for United States senator the names of the nominees or candidates for United States senator, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the state board of elections, as to all ballots herein required to be printed and distributed by such state board of elections, and by the county board of elections with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(aaa) On the official ballot for members of congress, the names of the nominees or candidates for members of congress, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the state board of elections, as to all ballots herein required to be printed and distributed by such state board of elections, and by the county board of elections, with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

1. To vote a straight ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(b) On the official state ballot shall be printed the names of all candidates for state public offices, including candidates for judges of the superior court, and all other candidates for state offices not otherwise provided for. The names of all such state candidates to go upon the said official ballot which is herein provided, of each party and group of independent candidates, if any, shall be printed in one column and the party column shall be parallel and shall be separated by distinct black lines. At the head of each party column shall be printed the party name and under this shall be a blank circle one-half of an inch in diameter, which party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle." The columns for the independent candidates shall be similar to the party columns, except that above each column shall be printed the words "independent candidate." In each party column the names of all nominees of that party shall be printed in the customary order of the office, and the names of all candidates of each party for any one office shall be printed in a separate section, and at the top of each section shall be printed on one line the title of the office and a direction as to the number of candidates for whom a vote may be cast, unless there shall not be room for the direction, in which case it shall be printed directly below the title. If two or more candidates are nominated for the same office for different terms the term for which each is nominated shall be printed as a part of the title for the office. Each section shall be blocked in by black lines and the voting squares shall be set in a perpendicular column or columns to the left of each candidate's name. The printing on said ballot shall be plain and legible, and in no case shall it exceed in size ten-point type.

On the face of the ballot, at the top, shall be printed in heavy type, the following instructions:

1. To vote a straight party ticket, make a cross (x) mark in the circle of the party you desire to vote for.

2. To vote a mixed ticket, or in other words for candidates of different parties, either omit making a cross (X) mark in the party circle at the top and mark in the voting square opposite the name of each candidate on the ballot for whom you wish to vote; or, make a cross (X) mark in the party circle above the name of the party for some of whose candidates you wish to vote, and then mark in the voting squares opposite the names of any candidates of any other party for whom you wish to vote.

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

The instructions hereby given for the state ballot shall be used when there are two or more state offices to be filled at an election, or when two or more kinds of ballots as herein given are printed on one ballot.

(c) On the official county ballot shall be printed the names of all candidates for solicitor for the judicial district in which the county is situated; for member of the general assembly, and all county offices. It shall conform as nearly as possible to the rules prescribed for printing the state official ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(d) The township ballot shall contain the names of the candidates for constable and justices of the peace, and the municipal ballot shall contain the names of all offices to be filled in the municipality at the election for which the ballot is to be used, and shall conform as near as may be to the provisions herein set out with respect to the county ballot.

(e) On the official ballot on constitutional amendments or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other

body submitting such amendment or proposition. Each amendment or proposition shall be printed in a separate section and the section shall be numbered consecutively, if there be more than one. At the left of each question shall be printed two voting squares, one above the other, each at least one-fourth (¼) inch square. At the left of the upper square shall be printed the word "yes" and at the left of the lower square shall be printed the word "no." At the top of the ballot shall be printed the following instructions:

1. To vote "yes" on any question, make a cross (X) mark in the square to the right of the word "yes."

2. To vote "no" on any question, make a cross (X) mark in the square to the right of the word "no."

3. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of each ballot shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

(f) In primary elections there shall be no provision for designating the choice of a party ticket by one act or mark, but there shall be a separate ballot for each party and of different colors. The ballots containing the names of the respective candidates shall be so printed that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the said ballots shall be distributed impartially and without discrimination. A square shall be to the left of the name of each candidate in which the voter may make a cross (X) mark indicating his choice for each candidate. On the bottom of each ballot in such primary election printed by the state board of elections shall be printed the following:

.....

Facsimile of signature of chairman of state board of elections.

And on the bottom of each ballot printed by the county board of elections shall be printed the following:

.....

Facsimile of signature of chairman of county board of elections.

(g) In all city or municipal elections and primaries there shall be an official ballot on which shall be printed the names of all candidates for city or town offices. It shall conform as nearly as possible to the rules prescribed for the printing of the official general ballot, but on the bottom thereof shall be printed the following:

.....

Facsimile of signature of city clerk. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1.)

§ 163-156. Ballots for each precinct wrapped separately.—All ballots for use in each precinct shall be wrapped in packages, each package to contain whatever number of ballots the chairman of the county board of elections may deem advisable for the respective precincts in his own county, but each package shall have written or stamped thereon the number of ballots contained therein so the registrar will know how many ballots to account for in his precinct. (1929, c. 164, s. 10; 1933, c. 165, s. 22.)

§ 163-157. Number of ballots to be furnished polling places.—There shall be provided for each voting place at which an election or primary is to be held such a number of ballots that there shall be at least one hundred and twenty-five ballots for every one hundred registered voters at each polling place, or an excess of ballots of twenty-five per cent over the registration at each precinct. (1929, c. 164, s. 11; 1933, c. 165, s. 22.)

§ 163-158. Ballot boxes. — The County Board of Elections shall provide for each precinct ballot boxes for the official ballots, as herein specified, which boxes shall respectively be plainly marked "Presidential Electors," "Ballot Box Members of Congress," "Ballot Box United States Senator," "Official State Ballot Box," "Official County Ballot Box," "Official Township Ballot Box," and "Official Propositions Ballot Box," and also one additional box for spoiled ballots, to be plainly marked "For Spoiled Ballots." Each box shall be supplied with a lock and key and with an opening in the top large enough to allow a single folded ballot to be easily passed through, but no larger. (1929, s. 164, s. 12; 1931, c. 254, s. 11.)

§ 163-159. Sample ballots. — The State Board of Elections shall prepare sample ballots of each kind of ballot printed by the State for the purpose of instructing voters in marking their ballots, which sample ballots shall be printed on colored paper and with the words "Sample Ballots" printed conspicuously thereon and shall distribute the same to the County Boards of Elections. The County Boards of Elections shall likewise print on colored paper and distribute county and township sample ballots for instructing said voters. (1929, c. 164, s. 13; 1931, c. 254, s. 12.)

§ 163-160. Distribution of ballots and boxes.—The County Board of Elections shall deliver to the Registrar in each precinct the proper number of ballots and boxes, as required by the provisions of this article, three days before the day of election, and shall obtain from each Registrar a receipt for same. (1929, c. 164, s. 14.)

§ 163-161. Destroyed or stolen ballots; how replaced; reports as to.—In case the ballots furnished to any precinct in accordance with the provisions of this article shall be destroyed or stolen, it shall be the duty of the County Board of Elections to cause other ballots to be prepared in the form of the ballots so wanting. Within three days after the close of the polls on election days, the Registrars having lost such ballots shall make a written report of the whole circumstances of the loss of the ballots, under oath, to the County Board of Elections. (1929, c. 164, s. 15.)

§ 163-162. Registrars, duties of, compensation; failure to serve.—In addition to the compensation for performance of the duties required in the registration of voters, each Registrar shall receive for his services on election day the sum of five dollars. If any Registrar or Judge of election fails or refuses to serve as herein provided, the officer holding the election shall swear in a bystander of the same political faith as the Registrar not serving, and if none such be present then any other qualified elector. The bystander sworn in to act as Registrar or Judge shall receive the same compensation as the Registrar is entitled to. One of the judges appointed for such purpose by the precinct election officers shall have charge of the ballots and furnish them to the voters in manner hereinafter set forth. The Registrar shall promptly, at the close of the registration period, certify to the County Board of Elections the number of voters registered in his precinct. (1929, c. 164, s. 16; 1939, c. 264.)

§ 163-163. Voting booths; arrangement and number of; provisions as to.—The County Board of Elections in each county whose duty it is to hold the election and appoint polling places therein, as herein provided for, shall cause the same to be suitably provided with a sufficient number of voting booths, equipped with the tables or shelves on which voters may conveniently mark their ballots. Each voting booth shall be at least three feet square and six feet high and shall contain three sides and have a door or curtain in front, which door or curtain shall extend within two feet of the floor; and each booth shall be so arranged that it shall be impossible for one voter in one voting booth to see another voter at another voting booth in the act of marking his ballot. The arrangement shall be such that the ballot boxes and voting booths shall be in plain view of the judges of election. The number of such voting booths shall be not less than one for each hundred voters qualified to vote at such polling places. Each voting booth shall be kept properly lighted and provided with proper supplies and conveniences for marking ballots. The County Board of Elections may provide buildings by lease or otherwise in which the elections are to be conducted, or they may cause a space not more than one hundred feet from the ballot box to be roped off, in which space no person shall be allowed to enter except through a way not exceeding three feet in width for the entrance and exit of voters. They may prescribe the manner in which the place for holding elections shall be prepared in every precinct so as to properly effectuate the purpose of this article. The County Board of Elections shall also be entitled to demand and use any school or other public building for the purpose of holding any election and require that such building be vacated for such purpose. (1929, c. 164, s. 17.)

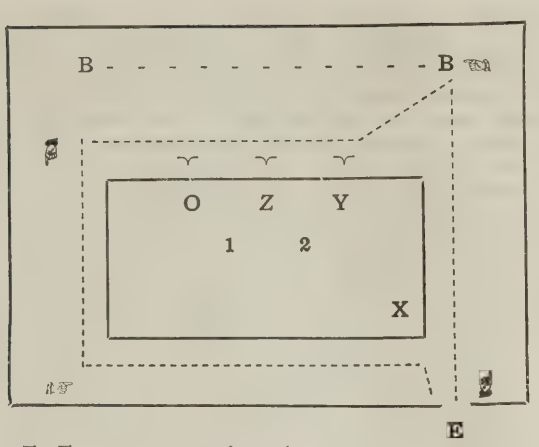
§ 163-164. Regulations for opening polls; oath of judges and registrars.—The Judges of election and Registrars of each precinct shall meet at the polling places therein at least one-half hour before the time set for opening polls for each election referred to in this article, and shall proceed to arrange the space within the enclosures set apart for election, and to prepare the booths for the orderly and legal conduct of the election. They shall then and there have the official ballot boxes, herein referred to, together with the boxes for ballot stubs and the boxes for spoiled ballots as hereinbefore provided, the sealed packages of official ballots, the registration book, the polling book, and the required supplies. They shall see that the voting booths are supplied with pencils, or pen and ink; unlock the official ballot boxes; see that the same are empty; allow the authorized watchers present and any other electors who may be present to examine said boxes, and shall lock the same again while empty. After such official ballot boxes are relocked they shall not be unlocked or opened until the closing of the polls; and except as authorized by law no ballot or other matter shall be placed in such boxes. Each Judge of election and Registrar shall before the opening of the polls take the following oath:

"I do solemnly swear that I will administer the duties of my office without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition, and that I will not keep or make any memorandum of anything occurring within the voting booths, except I be called upon to testify in a judicial proceeding for a violation of the election laws of this State: so help me God."

This oath shall be administered at the time hereinbefore prescribed by the Registrar to the two Judges of election and by one of them to the Registrar. The same oath shall be taken before the Registrar or Judge by every person rendering assistance. They shall then open the sealed package of ballots, and one of the Judges shall make proclamation that the polls are open and of the time when they will be closed. From the time of opening of the polls until the announcement of the result of the canvass of the votes after the close of the polls and the signing of the official returns the official ballot boxes and the other boxes herein provided for and all the official ballots herein provided for shall be kept within the precinct election enclosures. (1929, c. 164, s. 18.)

§ 163-165. No loitering or electioneering allowed within 50 feet of polls; regulations for voting at polling places; banners or placards; guard rail; diagram.—No person shall, while the polls are open at polling places, loiter about or do any electioneering within such polling place or within fifty feet thereof, and no political banner, poster, or placard shall be allowed in or upon such polling places during the day of the election. The election officials and ballot boxes shall at all times be in plain view of the qualified voters who are present, and a guard rail shall be placed not nearer than ten feet nor further than twenty feet from the said election officials and ballot boxes.

The arrangement of the polling place shall be substantially according to the following diagram, and shall conform as nearly thereto as the building or other place in which said election is held will permit:



E. Entrance to voting place.
X. Judge with ballots and box for spoiled ballots.
B. Voting booths.
Y. Polls book.
Z. Ballot box.
O. Box for stubs.
1, 2. Other election officials.
- - - - - Direction of entry and exit of voter.
(1929, c. 164, s. 19.)

§ 163-166. Delivery of ballot to voter; testing registration.—The voter shall enter through the entrance provided, and shall forthwith give to the Judge of election his name and residence. One of the Judges shall thereupon announce the name and residence of the voter in distinct tone of voice. The Registrar shall at once announce whether the name of such voter is duly registered. If he be registered, and be not challenged, or if he be challenged and the challenge decided in his favor, or if he take the requisite oath and be lawfully entitled to vote, the proper Judge of election shall prepare for him one official ballot of each kind, folded by such judge in the proper manner for voting, which is: first, bring the bottom of the ballot up to the margin of the printing at the top of the ballot, allowing the margin to overlap; and second, fold both sides of the center, so that when folded the face of the ballot, except the one inch margin at the top thereof, shall be concealed, and so that the ballot shall be not more than four inches wide. Such Judge shall then instruct the voter to refold the ballot in the same creases when he has marked it. (1929, c. 164, s. 20; 1931, c. 254, s. 13.)

§ 163-167. Marking ballots by voter. — The voter shall then go to one of the voting booths and shall therein prepare his ballot by marking in the appropriate margin or place a cross (X) mark opposite the name of the candidate or party of his choice for each office to be filled, or by filling the name of the candidate of his choice in the blank space provided therefor, and marking a cross (X) opposite thereto. The voter may designate choice of candidate by a cross (X) or by a check mark, or other clear indicative mark. (1929, c. 164, s. 21.)

§ 163-168. Folding and depositing of ballots; signature of voter if challenged; delivery of poll books to clerks of Superior Court.—When the voter shall have prepared his ballot or ballots, he shall leave the voting booth with his ballot folded so as to conceal the face of the ballot, and keep it so folded, shall proceed at once to the judge of election designated to receive ballots and shall offer them to such judge who shall then deposit the ballots in the proper boxes: Provided, however, that if the voter shall have been challenged and the challenge be decided in the voter's favor, before depositing the ballot or ballots in the proper boxes, the voter shall write his name on the ballot or ballots for identification in the event that anv action should be taken later in regard to the voter's right to vote. After voting, the voter shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain for purposes other than voting. No ballots except official ballots bearing the official endorsement shall be allowed to be deposited in the ballot boxes or to be counted. No official ballot folded shall be unfolded outside of the voting booth until it is to be counted. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots. When a person shall have received an official ballot from the judge, he shall be deemed to have begun the act of voting, and if he leave the guard-rail before the deposit of his ballot in the box he shall not be entitled to pass again within the guard-rail for the purpose of voting.

The poll books required to be kept by the judges of elections shall be signed by the judge at the close of the election, and delivered to the registrar, who shall deliver them to the Clerk of the Superior Court. (1929, c. 164, s. 22; 1931, c. 254, s. 14.)

§ 163-169. Manner and time of voting.—On receiving his ballot the voter shall forthwith, and without leaving the enclosed space, retire alone, unless he be one that is entitled to assistance as hereinafter provided, to one of the voting booths, and without undue delay unfold and mark his ballots. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters are waiting. It shall be unlawful purposely to deface or tear an official ballot in any manner, or to erase any name or mark written thereon by a voter If a voter wrongly mark or deface or tear a ballot he may obtain others successively one at a time, but not more than three of any one kind, upon returning to the Judge each ballot so spoiled. (1929, c. 164, s. 23.)

§ 163-170. Who allowed in room or enclosure; peace officers. — No person other than voters in the act of voting shall be allowed in the room or enclosure in which said ballot box and booths are, except the officers of election and official markers as hereinafter provided. In case of cities having duly enrolled policemen or peace officers, the city authorities may designate the officers to keep the peace at the polls on the outside of the enclosure in which is the ballot box. But in no event shall said policemen or peace officers come nearer to said entrance than ten feet, or enter the room or enclosure in which is the ballot box, unless specially requested to do so by the officers holding

the elections, and then only for the purpose of preventing disorder; and at any time when requested to do so by said officers holding the elections, the said policemen shall retire from the room or enclosure in which is the ballot box, and to a point not nearer than ten feet to the aforesaid entrance. (1929, c. 164, s. 24.)

Local Modification.—Cumberland: 1937, c. 426.

§ 163-171. Ballots not taken from polls; other ballots for spoiled ballots; delivery to County Board of Elections.—No person shall take or remove any ballots from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one to the Registrar, and the Registrar shall deposit said spoiled ballot in the box kept for the purpose by him. Within three days after each election or primary the Registrar of each precinct shall deliver to the County Board of Elections in an envelope to be furnished by the County Board of Elections for such purpose the spoiled ballots so deposited at such precinct, and shall at the same time in another envelope furnished for such purpose, deliver to the said County Board of Elections the unused ballots from said precinct. The County Board of Elections shall thereupon make a check to ascertain whether the total of such spoiled ballots and such unused ballots when added to the number of ballots cast at such precinct shall equal the total number of ballots furnished to the Registrar of such precinct prior to such election or primary. (1929, c. 164, s. 25.)

§ 163-172. Assistance to voters in elections.—Prior to the date of any election hereunder the county board of elections, together with the registrar of each precinct of each county, shall designate for each precinct therein a sufficient number of persons of good moral character and of the requisite educational qualifications, who shall be bona fide electors of the precinct for which they are appointed, to act as markers, whose duty it shall be to assist voters in the preparation of their ballots. The assistants or markers so appointed by the said county board of elections shall be so appointed as to give fair representation to each political party whose candidates appear upon the ballot. The chairman of the county organization of any political party may, not more than ten days before any election to be held, hereunder, submit to the county board of elections the names of not less than ten qualified voters in any voting precinct of the county, and thereupon the marker or markers appointed to represent such party in said election at said voting precinct shall be selected from among those so named. Such persons shall remain within the enclosure prepared for the holding of elections, but shall not come within ten feet of the guard-rail, except when going to or returning from the booth with any elector who has requested assistance. Such marker or assistant shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way, and shall not make or keep any memorandum of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person how in any particular such voter marked his ballot, unless he, or they, be called upon to testify in a judicial proceeding for a violation of the election laws. Every such marker or assistant, together with the registrar and judge of election, shall, before the opening of the polls, take and subscribe an oath that he will not, in any manner, seek to persuade or induce any voter to vote for or against any particular candidate, or for or against any particular proposition, and that he will not make or keep any memorandum of anything occurring within the booth, and will not disclose the same, unless he be called upon to testify in a judicial proceeding for a violation of the election laws of this state. The said oath, after first being taken by the registrar, may be administered by him to the two judges of election and to the markers or assistants, as herein provided: Provided, that in all general elections held under the provisions of this article any voter may select another member of his or her family who shall have the right to accompany such voter into the voting booth and assist in the preparation of the ballot, but immediately after rendering such assistance the person so assisting shall vacate the booth and withdraw from the voting arena. This section is not applicable to primary elections. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1.)

Local Modification.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

§ 163-173. Aid to persons suffering from physical disability or illiteracy.—Any person who, on account of physical disability, is obviously unable to enter the booth without assistance, or who on account of such disability, or because of illiteracy, or for any other good reason, shall request assistance from the registrar or judges of election, may, upon such declaration and upon his own request, have assistance from any one of the markers or assistants provided for in § 163-172. The voter may indicate which of the markers he desires to assist him; whereupon the registrar shall direct that the marker or assistant so indicated by the voter accompany said voter into the booth and give him such aid as may be requested in the preparation of his ballot, whereupon said marker or assistant shall withdraw from said booth and to his place within the rail, and shall not accompany the voter to the ballot box unless assistance be required on account of physical infirmity and such assistance is requested by the voter, or have any further conversation with said voter prior to the time that he deposits his ballot. In the event the voter does not request the assistance of any particular marker or assistant, then the registrar shall appoint from among the official markers or assistants some person to aid the voter in preparing his ballot. This section is not applicable to primary elections. (1929, c. 164, s. 27; 1939, c. 352, s. 1.)

Local Modification.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

§ 163-174. Assistance to illiterate or disabled voter in primary.—Any qualified voter entitled to vote in any primary, but who by reason of any physical disability or illiteracy is unable to mark his ballot may upon statement to the registrar of his incapacity and upon his request

be aided by a near relative (husband or wife, brother or sister, parent or child, grandparent or grandchild), who shall be admitted to the booth with such voter, or if no near relative is present such voter may call to his assistance any other voter of his precinct who has not given aid to another voter, and who shall likewise be admitted to the booth with such voter: Provided that if the voter needs and is entitled to the assistance as herein provided for, and there is no near relative present, or anyone else authorized hereunder to give assistance, the voter may call to his assistance the registrar or one of the judges of the election: Provided, further, that any voter may upon his request be accompanied into the voting booth by a near relative (as above defined), and obtain such assistance from said member of the family as he may desire whether disabled or not. It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary to any voter otherwise than as is herein provided for. (1939, c. 352, s. 2.)

Local Modification.—Cumberland, Wilson: 1939, c. 402.

§ 163-175. Method of marking ballots; improperly marked ballots not counted; when.—The voter shall observe the following rules in marking his ballot:

1. If the elector desires to vote a straight ticket, or in other words, for each and every candidate of one party for whatever office nominated, he shall, either—

(a) Make a cross mark in the circular space below the name of the party at the head of the ticket; or

(b) Make a cross mark on the left of and opposite the name of each and every candidate of such party in the blank space provided therefor.

2. If the elector desires to vote a mixed ticket, or in other words for candidates of different parties, he shall, either,

(a) Omit making a cross mark in the party circle above the name of any party and make a cross mark in the voting square opposite the name of each candidate for whom he desires to vote on whatever ticket he may be; or

(b) Make a cross mark in the party circle above the name of the party for some of whose candidates he desires to vote, and then make a cross mark in the voting square opposite the name of any candidates of any other party for whom he may desire to vote, in which case, the cross mark in the party circle above the name of a party will cast the elector's vote for every candidate on the ticket of such party, except for offices for which candidates are marked on other party tickets, and the cross marks before the names of such candidates will cast the elector's vote for them.

3. If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in with a pencil or ink in the proper place, and making a cross (x) mark in the blank space at the left of the name so written in. When a name is written in on the official ballot, the new name so written in is to be treated like any other name on the ballot. No sticker is to be used.

4. If the elector marks more names than there are persons to be elected to an office, or, if for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office but shall be returned as a blank vote for such office.

5. If a voter shall do any act extrinsic to the ballot itself, such as enclosing any paper or other article in the folded ballot, such ballot shall be void.

6. No ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

7. Every elector who does not vote a ballot delivered by the election officer shall, before leaving the polling place, return such ballot to such officer.

8. A cross (x) mark shall consist of any straight line crossing any other straight line at an angle within a voting circle or square. A voter may designate his choice of candidate by the cross (x) mark or by a check mark, or any other clear indicative mark. Any ballot which is defaced or torn by the voter shall be void. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2.)

§ 163-176. Offenses of voters; interference with voters; penalty.—A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, or who shall take or remove, or attempt to take or remove, any ballot from the polling place or any person who shall interfere with, or attempt to interfere with any voter when inside said enclosed space, or when marking his ballot, or who shall remain longer than the specified time allowed by this article in the booth, after being notified that his time has expired, or who shall endeavor to induce any voter, while within the enclosure, before voting, to show how he marks or has marked his ballot, or aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the enclosure, in marking his ballot, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court; and election officers shall cause any person committing any of the offenses herein set forth to be arrested and shall cause charges to be preferred against the person so offending, in a court of competent jurisdiction. (1929, c. 164, s. 29.)

§ 163-177. Offenses of election officers. — Any judge of election or registrar, or other election officer, after having qualified, who wilfully and knowingly refuses or fails to perform the duties herein prescribed, or who wilfully and knowingly violates the provisions of this article, shall be guilty of a misdemeanor and subject to a fine, or to imprisonment in the county jail not less than ten nor more than ninety days, at the discretion of the court. (1929, c. 164, s. 30.)

§ 163-178. Reading and numbering the ballots; certificate of result; delivery of boxes to Board of Elections.—When the polls are closed the Registrar and Judge shall, in the presence of the watchers appointed by the respective executive committees of the several political parties and any other electors of the precinct who choose to be present open the box and count and record the number of the votes received by each candidate and on each question or measure. The said Judge

of election and Registrar shall not adjourn or postpone the canvass of the vote in such precinct until it shall be fully completed. The Judges of election may, at their discretion, open the ballots of absent electors immediately after the close of the polls, subject to the rights of challenge now allowed by law. A certificate setting forth the results of such election shall be signed by the Registrar and Judges of election. Upon the close of the counting of the ballots, as herein provided, the said election official shall replace said ballots in the official ballot box and lock the same. The ballot box shall then be delivered to such place as may be designated by the county board of elections. (1929, c. 164, s. 32.)

§ 163-179. Hours of primaries and elections. — In all primary and general elections held in this state, including all local and municipal elections, the polls shall open at six-thirty o'clock A. M. and shall close at the hour of six-thirty o'clock P. M. Eastern Standard Time. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222.)

§ 163-180. Application to all primary elections; repeal of conflicting law; one-party primary officials selected from party.—The provisions of this article shall apply to any and all primary elections held in this State, or in any county thereof, as fully as it applies to general elections, as herein provided, and § 163-126 is hereby repealed, in so far as it conflicts with this article, the intent being to provide the same laws for the conduct of primaries as for general elections.

Provided, further, that in any primary election held under the provisions of this article, when only one political party participates in such primary, then, all of the election officials selected for holding such primary shall be chosen only from the political party so participating. (1929, c. 164, s. 34.)

§ 163-181. Assistants at polls; when allowed and amount to be paid. — The county board of elections may appoint one clerk or assistant at any precinct in the county which has as many as five hundred qualified registered voters on the registration books in such precinct, and one additional such clerk or assistant for each additional five hundred qualified registered voters at such precinct. No other clerk or assistant shall be appointed for any precinct except as herein set out. Such assistants and clerks shall, in all cases, be qualified voters of the ward, or precinct, for which they are appointed, and they shall be paid the same compensation as is provided by law for the judges of election to be paid. (1929, c. 134, s. 35; 1933, c. 165, s. 24.)

§ 163-182. Watchers; challengers.—Each political party or independent candidate named on the ballot may, by a writing signed by the county chairman of such political party, or, as the case may be, by the independent candidate or his manager, filed with one of the Judges of election, appoint two watchers to attend each polling place. Such watchers shall serve also as challengers; Provided, that no person shall be appointed as a watcher who is not of good moral character; and the Judges of election and registrar may for good cause shown reject any appointee and require that another be appointed. Such watchers shall in no case enter the guard-rail, but may be present at the opening of the boxes and the canvass of the ballots at the close of the election. Provided that any elector when the name of any elector is called by the judges of election, may exercise the right of challenging the elector's right to vote and when he or she does so then such challenger may enter the election space to make good such challenge and then retire at once when such challenge is heard. (1929, c. 164, s. 36.)

§ 163-183. Supervision over primaries and elections; regulations.—The State Board of Elections shall have general supervision over the primaries and elections provided for herein, and may delegate its authority to county boards appointed by it, and in case where sufficient provision may not appear to have been made herein may make such regulations and provisions as it may deem necessary: Provided, none of the same shall be in conflict with any of the provisions of this article. (1929, c. 164, s. 37.)

§ 163-184. Ballots furnished absentee electors; when deemed voted before sunset; deposit in boxes.—The ballots to be furnished absentee electors under the provisions of article 10 shall be the same as the official ballots hereinbefore designated. No vote of an absent elector shall be counted unless upon the official ballot printed as prescribed in this article.

Any absentee ballots received by the registrar during the hours now fixed by law for the receipt thereof shall be deemed to be voted before sunset, and, if the convenience of the voters or officers holding the election will be promoted thereby, may in their discretion be opened and deposited in the box immediately after the closing of the polls. (1929, c. 164, s. 39.)

§ 163-185. Fraud in connection with absentee vote; forgery.—Any person attempting to aid and abet fraud in connection with any absentee vote cast, or to be cast, under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court. Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly. (1929, c. 164, s. 40.)

§ 163-186. Public officials violating subchapter disqualified from holding office and voting. — Any public official who knowingly and wilfully violates any of the provisions of this article, and thereby aids in any way the illegal casting or attempting to cast a vote, or who shall connive to nullify any provision of this article in order that fraud may be perpetrated, shall upon conviction therefor be disqualified from holding office in the State of North Carolina, and shall be disqualified from exercising the right of franchise, as now provided in case of conviction for felony. (1929, c. 164, s. 41.)

§ 163-187. Definitions as applied to municipal primaries and elections.—With respect to all municipal primaries and elections, wherever in this article appear the words "county board of elections" shall be deemed to be written the words "city or town governing body;" and wherever appear the words "chairman of board of elections"

shall be deemed to be written the words "mayor of town or city." (1929, c. 164, s. 42.)

Art. 21. Corrupt Practices Act of 1931.

§ 163-188. Title of article.—This article may be cited as the Corrupt Practices Act of one thousand nine hundred thirty-one. (1931, c. 348, s. 1.)

§ 163-189. Definitions. — When used in this article:

(a) The term "Candidate" means an individual whose name is presented for any office to be voted upon on any ballot at any primary, general or special election;

(b) The term "campaign committee" includes any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any primary, general or special election;

(c) The term "contribution" means any gift, payment, subscription, loan, advance, deposit of money, or anything of value, and includes any contract, promise or agreement to give, subscribe for, pay, loan, advance or deposit any money or other thing of value to or for the benefit of any candidate at any primary, general or special election, and whether or not said contract, promise or agreement is legally enforceable;

(d) The term "expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything else of value whatsoever, and includes a contract, promise or agreement to pay, distribute, give, loan, advance, or deposit any money or anything of value whatsoever, and whether or not such contract, promise or agreement is legally enforceable;

(e) The term "person" includes an individual, partnership, committee, association, corporation or any other organization or group of persons. (1931, c. 348, s. 2.)

§ 163-190. Detailed accounts to be kept by candidates and others.—It shall be the duty of every candidate and the chairman and treasurer of any and every campaign committee to keep a detailed and exact account of:

(1) All contributions made to or for such candidate or committee;

(2) The name and address of every person making any such contribution, and the date thereof;

(3) All expenditures made by or on behalf of such candidate or committee;

(4) The name and address of every person to whom any such expenditure is made, and the date thereof. (1931, c. 348, s. 3.)

§ 163-191. Detailed accounting to candidates of persons receiving contributions.—Every person who receives a contribution for a candidate or for a campaign committee in any primary, general or special election shall render such candidate or campaign committee, within five days after receipt of such contribution, a detailed account thereof, including the name and address of the person making such contribution. (1931, c. 348, s. 4.)

§ 163-192. Detailed accounting of persons making expenditures. — Every person who makes any expenditure in behalf of any candidate or campaign committee in any primary, general or special election shall render to such candidate or campaign committee, within five days after making such expenditure, a detailed account thereof, including the name and address of the person to whom such expenditure was made. (1931, c. 348, s. 5.)

§ 163-193. Statements under oath of pre-primary expenses of candidates; report after primary.—It shall be the duty of every person who shall be a candidate for nomination in any primary for any Federal, State or district office, or for the State Senate in a district composed of more than one county, except where there shall be agreement for rotation as provided in § 163-113, to file, under oath, ten days before such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by any one for him, and of all contributions made to him, directly or indirectly, and also to file, under oath, within twenty days after such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by any one else for him, and also of all contributions made to him, directly or indirectly, by any person, with detailed account of such contributions and expenditure as set out in § 163-194. And it shall be the duty of every person who shall be a candidate for nomination for the State Senate, except those to whom the preceding sentence applies, for the House of Representatives, and for any county office, to file a like statement with the clerk of the Superior Court of the county of his residence at the times hereinbefore prescribed for filing such statements by candidates for Federal, State and district officers as set out in the preceding sentence. (1931, c. 348, s. 6.)

§ 163-194. Contents of such statements. — The statement of contributions and expenditures as required by the preceding section shall be itemized as follows:

(1) The name and address of each person who has made a contribution to or for such candidate or to or for his campaign committee within the calendar year, together with the amount and date of such contribution;

(2) The total sum of all contributions made to or for such candidate or to or for his campaign committee during the calendar year;

(3) The name and address of each person to whom, during the calendar year, an expenditure has been made by or in behalf of such candidate or by or in behalf of his campaign committee, and the amount, date, and purpose of such expenditure;

(4) The name and address of each person by whom an expenditure has been made during the calendar year in behalf of such candidate or his campaign committee and reported to such candidate or campaign committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made during the calendar year in behalf of such candidate or his campaign committee by any person and reported to such candidate or his campaign

committee, and the amount, date, and purpose of such expenditure;

(6) The total sum of all expenditures made by such candidate or his campaign committee, or any person in his behalf during the calendar year. (1931, c. 348, s. 7.)

§ 163-195. Statements required of campaign committees covering more than one county; verification of statements required.—A like statement as that required in the preceding section shall be filed by any and all campaign committees as hereinbefore defined with the Secretary of State not more than fifteen days nor less than ten days before any primary, general or special election, and not more than twenty days after any such primary, general or special election, if said campaign committee is making expenditures in more than one county; and if such campaign committee is making expenditures in only one county, a like or similar report so itemized shall be made within the same periods to the clerk of the Superior Court of such county.

All of the statements or reports of contributions or expenditures as in this article required of any candidate or campaign committee must be verified by the oath or affirmation of the person filing such statement or report, taken before any officer authorized to administer oaths. (1931, c. 348, s. 8.)

§ 163-196. Certain acts declared misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections to prepare the books, tickets and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ticket or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections.

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election or any registrar or judge of elections in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppress any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to make any contribution or expenditure to aid, or in behalf of any candidate or campaign committee, in any primary, general or special election, unless the same be reported immediately to such candidate or campaign committee, to the end that it may be included by him or it in the reports required of him by law;

(8) For any candidate or any chairman or treasurer of a campaign committee to fail to make under oath the report or reports required of him or it by §§ 163-193 to 163-195, or for any campaign committee to fail to furnish to a candidate a duplicate copy of the report to be made by it or its chairman or treasurer;

(9) For any candidate for any political office to receive contributions or to make expenditures, or to assent to or to permit contribution or expenditures in behalf of his candidacy in any primary, whether the same be done before or after said primary is held, in excess of the following sums:

A candidate for Governor and United States Senator	$12,000
A candidate for Congressman	6,000
A candidate for Lieutenant Governor	2,500
A candidate for any other elective State office, one-half of the amount of the annual salary of such office	
A candidate for the General Assembly, either the Senate or the House of Representatives	600

Any candidate for any district, county or other office not hereinbefore named, one-half the annual salary of that office as it may be at the time of such primary: Provided, however, all candidates may lawfully pay, in addition to these amounts, their transportation expenses, board and lodging bills while campaigning for nomination to such office, and the sums so expended need not be reported in the reports hereinbefore required: Provided further, that in any second primary for any of said offices, said candidate or candidates may spend in such second primary one-half of the amounts as above set out;

(10) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(11) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(12) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(13) For any chairman of a county board of elections or other returning officer to fail or neglect, wilfully or of malice, to perform any duty, act, matter or thing required or directed in the

time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(14) For any register of deeds or clerk of the Superior Court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement in a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(15) For any corporation doing business in this State, either under domestic or foreign charter, directly or indirectly, to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation of this sub-section shall, in addition to being guilty of a misdemeanor as hereinbefore set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof;

(16) For any person wilfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires. (1931, c. 348, s. 9.)

§ 163-197. Certain acts declared felonies. — Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's Prison not less than four months or fined not less than one thousand dollars, or both, in the discretion of the Court. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voted for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of the election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ticket, or to do any fraudulent act, or knowingly and fraudulently omit to do any act or make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person, convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters, and the person so offending shall be guilty of perjury;

(7) For any person with intent to commit a fraud to register or vote at more than one box or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure or alteration in any registration or poll books with intent to commit a fraud;

(10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;

(12) For any registrar, poll holder, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services.

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as an elector, or to attempt thereby to secure to any person the privilege of voting. (Rev., c. 3401; 1901, c. 89, s. 13; 1913, c. 164, s. 2; 1931, c. 348, s. 10; C. S. 4186.)

§ 163-198. Compelling self-incriminating testimony; person so testifying excused from prosecution.—No person shall be excused from attending or testifying or producing any books, papers or other documents before any Court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of the two preceding sections, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of the said two preced-

ing sections; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11.)

§ 163-199. Duty of Attorney General and solicitors to prosecute violations of article.—It shall be the duty of the Attorney General, the solicitors of the several judicial districts, and all prosecuting attorneys of Courts inferior to the Superior Court, to make diligent inquiry and investigation with respect to any violations of this article, and said officers are authorized and empowered to subpoena and compel the attendance of any person or persons before them for the purpose of making such inquiry and investigation. (1931, c. 348, s. 12.)

§ 163-200. Duty of Secretary of State and Superior Court Clerks to call for required statements and report violations. — It shall be the duty of the Secretary of State and the several clerks of the Superior Court to call upon the candidates and chairmen and treasurers of campaign committees for the reports required to be made to them by §§ 163-193 to 163-195. If any candidate or chairman or treasurer of a campaign committee shall fail or neglect to make to the Secretary of State the reports required by said sections, then the Secretary of State shall bring such failure to the attention of the Attorney General, whose duty it shall then be to initiate a prosecution against such candidate or chairman or treasurer of such campaign committee for such violation of this article. If the Attorney General shall be a candidate in any such primary or election, such duty as herein required to be performed by him with respect to any contest in which he participates shall be performed by the solicitor of the judicial district of which Wake County is a part. If a candidate or the chairman or treasurer of a campaign committee fails to make the report to the clerk of the Superior Court as required by said sections, then said clerk of the Superior Court shall bring such failure to the attention of the solicitor of the district in which such county is a part, and said solicitor shall institute a prosecution for violation of this article. (1931, c. 348, s. 13.)

Art. 22. Other Offenses against the Elective Franchise.

§ 163-201. Intimidation of voters by officers made misdemeanor.—It shall be unlawful for any person holding any office, position, or employment in the state government, or under and with any department, institution, bureau, board, commission, or other state agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which such subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine and/or imprisonment, in the discretion of the court. (1933, c. 165, s. 25.)

§ 163-202. Disposing of liquor at or near polling places.—If any person shall give away or shall sell any intoxicating liquor, except for medical purposes and upon the prescription of practicing physician, at any place within five miles of the polling place, at any time within twelve hours next preceding or succeeding any public election, whether general, local or municipal, or during the holding thereof, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred nor more than one thousand dollars. (Rev., s. 3389; 1901, c. 89, s. 76, c. 531; C. S. 4188.)

§ 163-203. False oath of voter in registering. — If any person shall knowingly register under the permanent registration law who is not qualified within the meaning of that law and article six, section four, of the constitution, or if any person shall knowingly take any false oath in registering under the same, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than five years. (Rev., s. 3392; 1901, c. 550, s. 12; C. S. 4191.)

§ 163-204. Willful failure of registration officer to discharge duty.—If any officer charged with any duty under the permanent registration law willfully fails and neglects to perform the same, he shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and be fined not more than one thousand dollars or imprisoned not more than five years. (Rev., s. 3393; 1901, c. 550, s. 11; C. S. 4194.)

§ 163-205. Making false returns or tampering with poll books.—If any person shall make, certify, deliver or transmit a false return of an election held in this state, or make any erasure or alteration in the poll books, he shall be guilty of a felony and shall be imprisoned in the state's prison not less than one year, and shall, in addition, forfeit and pay five hundred dollars, one-half to the use of the person who shall sue for the same and the other half to the use of the state. (Rev., s. 3397; 1901, c. 89, s. 83; C. S. 4195.)

§ 163-206. Using funds of insurance companies for political purposes.—No insurance company or association, including fraternal beneficiary associations, doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organiza-

tion, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars. Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The insurance commissioner may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding. (1907, c. 121; C. S. 4199.)

Division XIX. Concerning the North Carolina Code of 1943.

Chapter 164. Concerning the North Carolina Code of 1943.

Sec.
164-1. Title of revision.
164-2. Effect as to repealing other statutes.
164-3. Repeal not to affect rights accrued or suits commenced.
164-4. Offenses, penalties and liabilities not affected.
164-5. Pending actions and proceedings not affected.
164-6. Effect of repeal on persons holding office.
164-7. Statutes not repealed.
164-8. North Carolina Code of 1943 effective December 31, 1943.

§ 164-1. Title of revision. — This revision shall be known and cited as the North Carolina Code of 1943.

§ 164-2. Effect as to repealing other statutes.— All public and general statutes not contained in the North Carolina Code of 1943 are hereby repealed with the exceptions and limitations hereafter mentioned in this chapter. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the North Carolina Code of 1943 or by the omission of any repealing statute from the Code. All public and general statutes enacted at the regular session of the General Assembly of 1943 shall be deemed to repeal any conflicting provisions of the North Carolina Code of 1943.

§ 164-3. Repeal not to affect rights accrued or suits commenced.—The repeal of the statutes described in § 164-2 shall not affect any act done, any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect, but the proceedings in any such case shall be conformed, when necessary, to the provisions of the North Carolina Code of 1943.

§ 164-4. Offenses, penalties and liabilities not affected.—No offense committed, no penalty or forfeiture incurred, no liability arising, and no remedy availed of, under any of the statutes hereby repealed, before the time when such repeal shall take effect shall be affected by the repeal.

§ 164-5. Pending actions and proceedings not affected.—No action or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the North Carolina Code of 1943.

§ 164-6. Effect of repeal on persons holding office. — All persons who at the time this Code becomes effective shall hold any office under any of the statutes hereby repealed shall continue to hold the same according to the tenure thereof.

§ 164-7. Statutes not repealed. — The North Carolina Code of 1943 shall not have the effect of repealing statutes or provisions of statutes which affect only a particular locality, public-local or private statutes, statutes exempting pending litigation from operation of statutes, statutes relating to the boundary of the State or of any county, acts ceding or relating to the ceding of lands of the State to the federal government, statutes relating to the Cherokee lands, statutes relating to the construction or interpretation of statutes, statutes by virtue of which bonds have been issued and are outstanding on the effective date of this Code, validating acts or curative statutes, or acts granting pensions to named individuals if such statutes were in force on the effective date of this Code.

§ 164-8. North Carolina Code of 1943 effective December 31, 1943.—All provisions, chapters, subdivisions of chapters and sections contained in the North Carolina Code of 1943 shall be in force from and after the thirty-first day of December, one thousand nine hundred and forty-three.

Table of Comparative Sections

The numbers preceding the dots refer to sections in the Consolidated Statutes and in Michie's Codes; the numbers following the dots give the corresponding section in the North Carolina Code. The letters L. M. following the dots indicate that the section is not codified but has been made a local modification citation under the number following the above letters.

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Explanatory Note Regarding Index

In view of the fact that the legislative edition of the Code cannot contain the additional laws enacted by the 1943 Session of the General Assembly, or reflect any changes made by that Session, it is obviously impossible to set forth the complete index in this edition. The final index cannot be set up and published until after the adjournment of the General Assembly of 1943, at which time the editorial work incident to the inclusion of the 1943 laws will be commenced. However, in order to illustrate the make-up and general features of the index, a word of explanation is in order with reference to the use of the "See" references in this index.

As primarily used in this index, the word "See" differs from its use in prior indexes in that it is not a direction to the user of the index to look elsewhere for additional citations of statutes on the same subject matter, but rather, it follows a reference which gives the inclusive section numbers for which the user is looking in order to refer the user to the place where these statutes are "broken down" into a line-by-line index analysis. For example, on Page 2073 under the black letter title "Abandonment" one finds the following lines:

"Streets and highways, §§ 136-26, 136-58, 136-67, 136-96.
See Streets and Highways."

The latter line is not intended to refer the user to other statutes relating to the abandonment of streets and highways, but merely to refer the user to the title "Streets and Highways" if he should desire to approach the question in which he is interested from the standpoint of a more detailed analysis of the individual statutes. He has already been cited to all the statutes on the subject by section numbers but not by detailed contents of the statutes and the sole purpose of the "See" reference is to give him a reference to the black letter heading where the sections referred to are fully analyzed and indexed. This use of the word "See" is thus different from the use of that word in prior indexes and should not be confused with the former practice. It may thus be seen that the frequent appearance of the word "See" is due in large part not to a continuation of the former practice but to a policy of using that word to improve the over-all effectiveness of the index.

However, in a relatively few instances, where the number of sections involved would run to such length that a mere listing would serve no useful purpose and on the other hand a detailed line-by-line "break down" would involve too much duplication, the "See" reference has been employed to refer the user of the index to the proper index title under which may be found the detailed line-by-line index analysis. The latter use of "See" is absolutely necessary and in accordance with the best indexing standards.

Reference is made to the Preface for further explanation of the index work.

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